Agricultural law in Zimbabwe: overview

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AGRICULTURAL POLICY

1. State whether and when your jurisdiction has joined the following:
   - The World Trade Organization.
   - The Food and Agriculture Organization of the United Nations.
   - The International Plant Protection Convention.
   - The Office International des Epizooties, also known as the World Animal Health Organization.

World Trade Organization (WTO)
Zimbabwe has been a member of the WTO since 5 March 1995.

Food and Agriculture Organization of the United Nations (FAO)
Zimbabwe joined the FAO on 7 November 1981.

International Plant Protection Convention (IPPC)
Zimbabwe adhered to the IPPC on 30 November 2012 without any declarations or reservations.

Office International des Epizooties (IOE)/World Animal Health Organization
Zimbabwe is a member of the IOE.

2. Describe the most recent national agricultural policy of your jurisdiction, in particular with respect to biotech crops and new crop growing technologies.

Zimbabwe does not have a single document outlining the country’s agricultural policy. However, the authors were advised by the Ministry of Agriculture, Mechanisation and Irrigation Development that a single documented national agricultural policy was proposed. To date, this has not been concluded or published.

Currently, the government’s approach to agriculture can be drawn from fragments of other established policies and programmes. Zimbabwe’s recent agricultural policy, in particular reference to biotech crops and new crop growing technologies, can best be drawn from the following:

- Zim Asset is a national government policy geared towards Zimbabwe’s accelerated economic growth and wealth creation. The government set certain targets to be achieved over the period October 2013 to December 2018 as benchmarks of the success of the aims to be accomplished through the programme. The policy identifies the agricultural sector as a key contributor for its projected growth and wealth targets, particularly under its Food Security and Nutrition Cluster matrix. This matrix specifically identifies the following relevant strategies in achieving sustained food security by December 2018:
  - Promoting the production of drought, high yielding and heat tolerant varieties.
  - Establishing livestock breeding and multiplication centres.
  - Strengthening the livestock pest and diseases surveillance programme.
  - Strengthening livestock research and extension services.
  - Implementing drought mitigation programmes.
  - Investing in research, science and technology for agricultural development.

Zim Asset shows the government’s open stance towards biotech crops and the development of new crop technologies in so far as they can make a meaningful contribution to the food security and national nutrition goals of the country, which are under the policy’s all-embracing objectives of economic growth and wealth creation.

The National Biotechnology Policy, developed under the United Nations Environment Programme (UNEP)/Global Environment Facility (GEF) Global Project for the Development of National Biosafety Frameworks, recognises the need for Zimbabwe to harness biotechnology in order to provide for:

- Agricultural development.
- Improvement of human health.
- Promotion of industrial development.
- Provision of affordable green energy.
- Sustainable management of the environment.

The policy envisages biotechnology as playing a critical role in:

- National food security.
- Sustainable exploitation of the country’s biological resources.
- Climate change alleviation.
- Improvement of health delivery.
- Provision of renewable bioenergy, food and beverage industries.
- Biodiversity conservation.

This policy shows how Zimbabwe has embraced biotechnology as an instrument for sustainable economic and social development. The policy also takes into consideration that there are some aspects of modern biotechnology that can pose a danger to human health, biodiversity, the environment, national security and Zimbabwe’s socioeconomic interests. Due to such challenges, the policy suggests a set of certain measures to evaluate and manage...
controversial biotechnologies like genetic modification. These measures are focussed on the need to establish a balance between research and development interests, and safety and security concerns.

**ACQUISITION OF AGRICULTURAL COMPANIES**

3. **Is the acquisition of domestic agricultural companies by foreign investors subject to special prior government approval(s)?** Set out the approval procedures and the authorities involved.

Acquisition of any company in Zimbabwe is subject to prior approval.

The following are the relevant approval procedures for acquisition of domestic agricultural companies:

- Acquisition by foreign investors is subject to limitations imposed by the Indigenisation and economic empowerment (General) regulations Statutory Instrument (SI) 21 of 2010 and the amendment regulations SI 66 of 2013. Under these regulations the agricultural sector is deemed a reserved sector against foreign investment in favour of indigenous Zimbabweans.

This restriction only applies to the agricultural sector as far as it is concerned with primary production of food and cash crops. The restriction does not extend to other parts of the agricultural sector that are not mentioned in the regulations.

The restriction in the sector is essentially a reservation for indigenous Zimbabweans to have a right of first preference in the agricultural sector, specifically in the food and cash crop production areas. This implies that for foreign investment to be permissible, the foreign investor must make an application for an indigenisation compliance certificate to the Minister of Agriculture.

- Approval under the Zimbabwe Investment Act is also required, which requires all new foreign investment into Zimbabwe to be licensed by the Zimbabwe Investment Authority.

- Foreign investors also require Exchange Control Approval from the Reserve Bank of Zimbabwe to facilitate the movement of funds into the country and repatriation on disinvestment.

The following authorities are involved:

- Zimbabwe Investment Authority.
- Ministry of Agriculture, Mechanisation and Irrigation Development.
- Reserve Bank of Zimbabwe.

4. **Describe if specific legal forms (such as co-operatives) are regulated or used in the agricultural sector and whether they are open to foreign investment.**

There are currently no special legal forms that are recognised by the state.

5. **To what extent does competition (anti-trust) law apply to agriculture?**

Competition law in Zimbabwe is governed by the Competition Act, which applies to all economic activities within or having an effect within Zimbabwe. The Act is a control measure on monopoly situations, it prohibits unfair trade practices and regulates mergers.

**ACQUISITION OF AGRICULTURAL LAND**

6. **Set out the domestic laws that apply to the acquisition of:**

- **Usage rights to agricultural land.**
- **Ownership of agricultural land.**

**Usage rights to agriculture land**

In Zimbabwe agricultural land means land used for or suitable for agriculture such as horticulture, viticulture, forestry, aquaculture and husbandry. Generally, such land is vested with the state although some of the land is privately owned.

The domestic laws that apply to the acquisition of usage rights to agricultural land include:

- Agricultural Land Settlement Act.

**Ownership of agricultural land**

The Land Acquisition Act applies to ownership of agricultural land.

7. **Are there any legal restrictions on the acquisition of agricultural land (or usage rights) by a foreign (or foreign invested) party?**

State-owned land cannot be acquired by a foreign party. However, the state can only lease that land subject to the discretion of the Minister of Lands and Agriculture.

If the land is privately owned there are certain restrictions to its acquisition. The state has a right of first refusal, which means that the land must first be offered to the state before it is acquired by a third party (Land Acquisition Act).

8. **Are there any compulsory tendering or prior approval procedures required for a sale and purchase of agricultural land? Briefly describe these procedures and the approval authorities (if any).**

State-owned land cannot be sold and there are no provisions for the sale of state-owned land. The state can only lease that land on application to the Minister of Lands by an interested party. These applications are solely at the discretion of the Minister and the land can only be leased if the Minister approves.

If land is privately owned, the land must be first offered to the state. If the state is not interested in buying the land it issues the seller a Certificate of No Present Interest. Once the certificate is issued the seller can then proceed to sell the land to any other interested persons.

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9. Does the law and/or regulations prescribe minimum land purchase prices if the (local) government sells agricultural land?

Local government does not have a mandate to sell agricultural land; it can only sell residential plots.

10. Is there a maximum term applicable to the lease (or use) of agricultural land?

The maximum term applicable to the lease of agricultural land by the state is 99 years and transfer of such leases requires government approval.

11. In which circumstances can the government authorities expropriate agricultural land?

The government can expropriate agricultural land that is required for public purposes, for example (section 72, Constitution):
- Settlement for agricultural purposes.
- Land reorganisation, forestry, environmental conservation or utilisation of wild life or other natural resources.
- Relocation of persons dispossessed as a result of the utilisation of land.

**Tax and financing**

12. Which taxes apply with respect to the sale and transfer of land ownership (or usage rights)?

Capital gains tax (CGT) applies to the sale and transfer of land ownership (or usage rights). CGT is levied on the capital gain arising from the disposal of a specified asset. Specified assets are immovable property such as land or buildings.

The tax is either remitted by the seller, depository or an agent. The tax rate varies according to when the land was acquired. If it was acquired before 1 February 2009 and disposed on or after 1 February 2009 the tax is levied at 5% of the purchase price.

If the land was acquired on or after 1 of February 2009 and disposed of thereafter the tax is levied at 20% of the gain. If the purchaser is a company the tax is 20%.

Stamp duty also applies, which is paid by the purchaser on transfer or registration of ownership (Stamp Duties Act).

13. Does your jurisdiction have special regulated agri/green-parks and is (foreign) investment in such parks incentivised? If so, what incentives apply in general?

Zimbabwe has agri/green parks, which are regulated by the Parks and Wildlife Act. Foreign investment in these parks is incentivised subject to partnering with local authorities. The incentives that apply are tax incentives, which vary according to the type of investment.

14. Briefly describe the procedures to mortgage/pledge agricultural land rights in order to acquire domestic financing.

State-owned land cannot be mortgaged. However, if there is a lease extended by the state, rights to the lease can be transferred on approval by the Minister of Lands.

Privately owned land can be mortgaged by registration of a mortgage bond with the Registrar of Deeds.

**CROP SEED BUSINESS**

15. Which domestic laws and regulations regulate the crop seed industry and which domestic authorities/agencies supervise this sector?

The following laws and regulations relate to the crop industry:
- Statutory Instrument (SI) 661/1971 on seed regulations.
- Plants Pests and Diseases Act of 1 January 1959.
- SI 48/1980 on Plants Pest and Diseases regulations.

The following are the main agencies that supervise the crop seed industry:
- Plant Protection Institute established under the Plant Pests and Diseases Act regulated by the Ministry of Agriculture, Mechanisation and Irrigation Development, which is under the Department of Research and Specialist Services.
- Seed Services Institute established under the Seed Act, which is also under the Ministry of Agriculture, Mechanisation and Irrigation Development.
- Chemistry and Soil Institute, which is under the Department of Research and Specialist Services regulated by the Ministry of Agriculture, Mechanisation and Irrigation Development.
- Plant Quarantine Services established under the Plants Pests and Diseases Act regulated by the Ministry of Agriculture, Mechanisation and Irrigation Development.

**Entry of prohibition of harmful species**

Zimbabwe prohibits entry of injurious organisms, plant packed soil and weed seed such as wild oats, cowpea witchweed, bug tree and so on. These are prohibited under SI 154/176 and SI 48/88.

However, injurious organisms and plants packed in soil can be imported with written consent from the Chief Plant Protection Officer for scientific purposes only.

**Seed export measures**

Seed crops must be registered with the Seed Services to allow phytosanitary field inspections to be conducted while the crop is actively growing. These inspections are done with the Plant Quarantine Services and inspectors are placed at the entry points to Zimbabwe. After harvesting, the seed must be labelled and packed into identifiable seed lots. Authorised government samplers then sample the seeds lots and seal them. The samples drawn are submitted to the government laboratory at the Seed Services for testing. Samples are tested for minimum purity and germination standards. If these standards are met, Orange International Certificates are issued to the exporter. A phytosanitary certificate is then applied for, which confirms that the seed is free of pests and diseases of quarantine importance to the importing country.
Seed import procedure
The variety to be imported must be firstly registered in Zimbabwe and the seeds must be tested. When seeds are tested a seed testing certificate is produced and a clearance letter is issued regarding the Genetically Modified Organism (GMO) showing the status of the seed. Zimbabwe does not allow importation of genetically modified seed. After verification and approval by the Seed Services a phytosanitary certificate is issued, which highlights pest and diseases prohibited in Zimbabwe.

Zimbabwe is a member of the World Trade Organization (WTO) and a signatory to the Agreement on Sanitary and Phytosanitary Measures. Zimbabwe also ratified the International Plant Protection Convention (IPPC) and follows the international phytosanitary standards that were codified in the Plants Pest and Diseases Act. The author contacted Dr C Mguni who is the IPPC co-ordinator, and who provided some of the information for this Q&A, and confirmed Zimbabwe’s adherence to the international phytosanitary standards (Dr C Mguni, Department of Research and Specialist Institute Services, Ministry of Agriculture, Mechanisation and Irrigation Development).

16. State the approvals/licences that are required to engage in the following activities:
   - Import of new plant species or varieties and import of crop growing technologies.
   - Set up of R&D centres and use of test plots of new crops.
   - Crop seed production.
   - Commercial crop production.
   - Distribution of seeds or crops (wholesale/retail/e-commerce).

Import of new plant species or varieties and crop growing technologies
The import of new plant species or varieties is regulated by the Plants Pests and Diseases Importation Regulations 1976. A plant import permit authorising the importation is required to import these plants into the country. A non-compliance notification issued by the importing country is also required, which is forwarded to the National Plant Protection Organisation (NPPO) of the exporting country. An application for a permit is made to the Chief Plant Protection Officer. The permit may impose conditions such as the production of a phytosanitary certificate, quarantine or any treatment considered to be necessary. An import permit licence is required for the importation of crop growing technologies.

Set up of R&D centres and usage of test plots of new crops
Research permits are required to set up R&D centres, which can be obtained from the Ministry of Agriculture, Mechanisation and Irrigation Development under the department of research and specialist services.

Crop seed production
Seed companies can only multiply seed crops if they are licensed to produce. A seed licence is required, which can be obtained from the Ministry of Agriculture, Mechanisation and Irrigation Development. The seed company must formally notify the Seed Services of its seed growers, where they are located, hectarage grown and varieties being produced.

Commercial crop production
Contractors must obtain a licence for commercial crop production from the Agricultural Marketing Authority. No licence is required for individual farmers.

Distribution of seeds or crops (wholesale/retail/e-commerce)
Only registered seed companies, through licensed sellers can facilitate the distribution of seeds. Authorised seed sellers with seed seller's licences must clearly display certificates on the premises where seed is sold. The seed seller's licences are classified into two classes:
   - Class B for wholesalers that are allowed to re-pack seed with the consent of the supplier.
   - Class C for retailers who can only sell seed in their original containers as provided by the seed company.

These licences are obtained from the Ministry of Agriculture, Mechanisation and Irrigation Development.

17. Set out the domestic labelling requirements in the crop business sector.

Packages of certified seed must be clearly labelled and show the following:
   - Name and address of the seed company.
   - Variety name and type of crop.
   - Class of seed.
   - A tag is placed either inside the bag or sewn on the upper part of the seed bag. The tag must have the following information:
     - Year of production, type of seed crop, processor’s and lot numbers.
     - Purity and germination test results.
     - Expiry date.

18. Are there any restrictions on foreign direct investment (FDI) in this sector?

There are no FDI restrictions in this sector. However, foreign investments must be approved by the Zimbabwe Investment Authority.

19. Summarise landmark or recent cases that have defined the law and practice in this sector.

There are currently no cases that define law and practice in this sector, due mainly to the strict procedures in regulating and managing the crop seed industry.

PLANT VARIETY RIGHTS (PVR)


Zimbabwe has not yet ratified the UPOV Convention. However, the country is in the process of seeking ratification.

Dr Claid Mujaju, Head of Seed Services at the Department of Research and Specialist Services for the Ministry of Agriculture Zimbabwe, and who is also the Registrar General for Plant Breeders’ Rights, advised the author that a country seeking ratification with Zimbabwe must comply with the set guidelines outlined in the UPOV Convention.

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21. Briefly describe the registration process for PVR in your jurisdiction.

The Seed Services Department of the Ministry of Agriculture, Mechanisation and Irrigation Development is responsible for the registration of new crop plant and forestry plant varieties in Zimbabwe.

The registration of a plant breeder's right (PVR) in Zimbabwe is governed by the Plant Breeders’ Rights Act (PBR Act) and the Plant Breeders’ Rights Regulations 1998 (Statutory Instrument 113/1998) (PBR Regulations). A person must either be a breeder of a new variety or his assignee to register under the PBR Act.

Application for a plant variety right

An application for a plant variety right in Zimbabwe must be made in the prescribed form and lodged with the Registrar (currently Dr Claid Mujaju) (section 7(a - b), PBR Act).

The application must:

- Indicate the origins of the plant.
- Give the full name of the breeder.

For foreign applicants, the application must specify the country in which the plant has its origin and any prior rights obtained in the country of origin.

Examination of the application

The Registrar examines the application to determine whether:

- The plant concerned should be regarded as a new variety of a prescribed kind.
- The applicant of the right is entitled to do so under the PBR Act.
- The variety belongs to the plant genera or species listed in the schedule of protected plant varieties under the PBR Regulations.
- The variety is inventive (inventiveness).
- The name of the variety is properly chosen.

Procedure after application and examination

The Registrar assesses the application and has discretion to grant or refuse it. Refusal to grant the application can be based on the requirements (see section 10, PBR Act):

- The application does not comply with the requirements (see above, Application for a plant variety right and Examination of the application).
- The plant in which the application is being made is not a new variety of a prescribed kind.
- The applicant is not entitled under the PBR Act to make the application.
- Growing the plant is contrary to the interests of agriculture, forestry and horticulture in Zimbabwe.
- The production of the plant would require the repeated use of the reproductive material of another plant variety for which the plant breeders’ rights are granted to another person.

If the application is not refused under section 10 of the PBR Act, the Registrar publishes in the Government Gazette (section 12, PBR Act). When the Registrar grants the plant breeder’s right to a successful applicant, he also:

- Issues a certificate of registration of the right for the plant.
- Publishes a notice in the Government Gazette.

22. Briefly describe the laws and procedures of your jurisdiction covering the protection of PVR in terms of:

Requirements for protection

For a plant breeder’s right to be protected he must submit a proper application and that application must be approved/granted by the Registrar (see Question 21).

Extent of the protection

The term of a plant breeder’s right is 20 years from the date of the grant (section 17, Plant Breeders’ Right Act). This term can be extended by a further five years subject to justification by the applicant and the Registrar’s discretion.

Restrictions on the rights of the holder

There is minimal restriction on a breeder once he has a right over a plant variety. However, there is a general public morality restriction in the sense that if that plant is needed for the greater public good the right holder cannot withhold it from the country even though the breeder has a right over a specific plant variety. Procedurally, prior consent of a breeder is required and royalties for the use of the rights are permitted subject to the regulations imposed by the Ministry of Agriculture, Mechanisation and Irrigation Development.

Farmer’s privilege

A farmer’s privilege is a right of use of a plant variety, which is contractually conferred onto the farmer by the holder of a plant variety right. There are no legislative measures regulating a farmer’s privilege. However, consent is needed from a plant variety holder for the use of propagation material of a protected plant variety.

23. Which legal actions are available to owners of PVR in the event of PVR infringements?

The legislation is silent on the issue of infringements and the remedies of infringements. The author was advised by the Registrar of Plant Variety Rights that their system of registration and assessment of plant variety rights is so rigid and proper that the right holder of a plant variety retains his full royalties, and there have been no reports of infringements to date.

If there is an infringement, the right of recourse of a right holder is to file a delictual claim under the common law through the courts.

24. Summarise landmark or recent cases that have defined the law and practice in this sector.

There have been no reported cases or disputes in this sector.
**GENETICALLY MODIFIED (GM) CROPS**

25. Has your jurisdiction ratified the Cartagena Protocol on Biosafety 2002? What is the domestic policy with respect to GM crops?

Zimbabwe signed the Cartagena Protocol on Biosafety on 4 June 2001 and it was ratified on 26 May 2005. The domestic policy relating to GM crops is restrictive. Domestic commercial production, selling and use of GM crops is prohibited under the current biosafety framework. To date, there have been no commercial releases of GM crops in Zimbabwe.

In line with the domestic ban on GM crops, all imported crops must have a genetically modified organism (GMO) limit of qualification of less than 0.02%.

Research into GM crops and generally into all aspects of modern biotechnology is however actively supported and encouraged. Accordingly, non-commercial regulator controlled trial releases of GM crops are permitted in Zimbabwe; examples include the 2001 trials of Bt cotton and Bt maize.

26. Describe the domestic laws regulating genetic engineering. Which authority(ies) is(are) responsible for approving GM crops? Set out the permit requirements and prohibitions as well as sanctions in the event of infringement.

Regulatory authorities

Genetically modified organism (GMO) regulation is divided primarily between the Ministry of Agriculture, Mechanisation and Irrigation Development, and the National Biotechnology Authority.

Laws regulating genetic engineering

The main law regulating genetic engineering and GM crops is the National Biotechnology Act (NBA Act). The NBA Act establishes the National Biotechnology Authority, a statutory body that supports and manages biotechnology research, development and application. The NBA Act also gives the National Biotechnology Authority the power to fix standards of quality and of general matters relating to products of biotechnology in Zimbabwe. The authority carries out its mandate through issuing legally binding biotechnology guidelines and standards of practice and procedure. The authority can prohibit any activity involving GMOs (NBA Act).

Permits

All institutions and persons carrying out work involving GMOs or their products must be registered with the National Biotechnology Authority (NBA Act). To carry out trial releases of GM crops, institutions and persons must first seek approval from the authority. This approval is required under the biotechnology guidelines and standards of practice and procedure issued by the authority and approval is in the form of a trial release permit.

Approval process for trial release of GM crops

To obtain approval for trial release of GM crops a proposal is prepared, submitted and considered as follows:

- Preparation of a proposal. Before a trial release of a GMO can take place, the institution or person intending to carry out the trial release must submit a written proposal to the National Biotechnology Authority as outlined in the biotechnology guidelines and standards of practice and procedure. As soon as the trial release of a GMO is contemplated, it becomes the responsibility of the project supervisor to give full consideration to all possible impacts of the proposed trial release. In particular, the steps necessary to comply with the NBA Act and the biotechnology guidelines and standards of practice and procedure must be considered. Compliance with the NBA Act does not, however, exempt the institution or person intending to undertake the trial release from other relevant requirements, whether legal or ethical.
  - Submission of a proposal. Once the proposal is prepared, the institution or person intending to undertake the trial release must answer extensive biosafety questions relating to the GMO that is planned for release. Where the proposal is considered satisfactory in an elementary respect it is then considered substantively by the National Biotechnology Authority.
  - Where a proposal includes commercially sensitive information, the institution or person intending the trial release can mark relevant portions as "Commercial-in-confidence". Substantial reasons why any marked sentences or passages should be treated as confidential must be given to the authority. The authority will treat all marked information as confidential unless it is of the view that disclosure is necessary. If the authority deems disclosure is necessary, it will notify the institution or person intending the trial release in writing and will subsequently attempt to negotiate a mutually agreed resolution as to disclosure. Where an agreement is not reached regarding disclosure, the proposal can be withdrawn at any time before the necessary disclosure. Withdrawal is made without any disclosure and without prejudice to the institution or person intending the trial release.
  - Consideration by the National Biotechnology Authority. When the National Biotechnology Authority receives a proposal for the trial release of a GMO, it will publicly announce receipt of the proposal as well as a brief description of the content of the proposal. Where the authority advises that a trial release can proceed, it will issue a public information sheet regarding the specific GMO. Copies of the public information sheet are also made available to any interested members of the public and to local area officials in the area of the planned trial release. Any person or body has up to 14 days, from the date the public information is made available, to lodge any objections to the intended trial release to the National Biotechnology Authority. Where no objections are received, the authority informs the institution or person intending the trial release that it can proceed.

Sanctions

Contravention of any biotechnology guidelines set by the National Biotechnology Authority is a criminal offence and is subject to a fine and/or imprisonment of up to three years (NBA Act).

27. Which safety evaluations are legally required before GM crop commercial market entry? How are GM crops regulated?

Not applicable (see Question 25).

28. Describe the GM crop test plot regulations and requirements.

The GM crop test plot regulations and requirements are the same as those for genetic engineering (see Question 26).

29. Describe pre-market approval requirements (and approval timelines) to grow, produce and sell GM food or feed. Provide details on the competent approval authorities.

Not applicable (see Question 29).
livestock and humans, is unethical. Currently, livestock genes can be patented (Patent Act). However, there has not been a case of patenting livestock genes in Zimbabwe to date. It is proposed to have a law that deals specifically with protecting and patenting livestock genetics. An Inter-Ministerial Committee on Intellectual Property Rights (IPR) is working on the modalities; IPR covers a wide spectrum of issues in the country. Additionally, plant genetic sequence is patentable under the Patents Act if it meets the requirements specified in the Act (see above).

34. Which legal instruments are available to protect animal breeding know-how and a resulting animal nucleus?

There are currently no legal instruments that protect animal breeding know-how and animal nucleus resulting from it. However, there are calls for animal breeders’ rights to be put in place.

35. Are there legal or practical restrictions on the introduction of new breeds/species, the breeding of certain animal species or certain breeding practices?

There are no legal restrictions to the breeding of new species or breeds of animals under Zimbabwean law as long as these do not pose a danger to human health or the environment.

36. Summarise landmark or recent cases that have defined the law and practice in this sector.

There have been no cases to date before the Zimbabwean courts that have defined the law on gene rights.

AGRICULTURAL SAFETY AND PRODUCT LIABILITY Standards

37. Summarise the system of food safety standard setting, the main regulator(s) and regulations. If industry input on the standards is possible, indicate how this is conducted.

System

The Government, through a number of statutes, employs mandatory sanitary measures and monitoring systems for food safety for the promotion of public health and fair trade. These services improve with public support. For these food control regimes to work, the system needs to be fully integrated involving all those participating in the food supply chain, beginning with producers (farmers), to transporters, processors, distributors (wholesalers), storage agents, marketers to consumers, in what is commonly referred to as the “farm-to-fork” approach to food safety. The following are the three main players in the food control system in this chain:

- Government or local authorities as official control agents.
- Food business industry.
- Consumers.

In this triad of a commercialised food industry, food safety is the primary responsibility of the food business industry who:

- Ensure that they demonstrably employ standards that include the hygienic handling of foods.
- Maintain on the business premises fully traceable systematic records of the sources of food and incorporated ingredients.
- Can present evidence of process controls and infrastructure that promotes hygiene and safety to provide products of the highest quality and safety.

Regulators

The following regulators implement policy, issue standards, conduct licensing, enforcement and supervision, among other things:

Not applicable (see Question 29).

31. Summarise landmark or recent cases that have defined the law and practice in this sector.

There is no relevant case law that has defined the law and practice in this sector.

IMPORING ANIMALS AND GENE PATENTS

32. Summarise the import/export control measures for animals and genetic resources.

The Animal Health Act was enacted to provide for the eradication and prevention of the spread of animal pests and diseases in Zimbabwe and for the prevention of the introduction into Zimbabwe of animal pests and diseases. No person can import or export goods from Zimbabwe except in accordance with the terms and conditions of a permit issued by the Secretary for Industry and International Trade authorising the importation or exportation.

The law regulating or controlling the import and export of animals and genetic resources provides that a permit is required for the export of animal semen and animal embryos. Animals that are specifically mentioned where a permit is required for their importation and exportation are:

- Cattle, whether live or dead.
- Pigs, whether live or dead.
- Poultry, whether live or dead.

Zimbabwe’s national regulations are based on the Office International des Epizooties (IOE)/World Animal Health Organization standards.

33. Does the law of your jurisdiction allow for patentability of livestock genes on the grounds of isolating and purifying them?

Patents are covered by the Patents Act. To be eligible for patent protection, the subject matter must be novel, inventive, non-obvious and capable of industrial application.

A patent application that is frivolous or contrary to well-established laws cannot be registered (section 13, Patent Act). All subject matter is patentable. This means that plants, animals and micro-organisms or their derivatives can be patented. However, no patents have been filed on genetic resources to date. There is, therefore, an urgent need to revise the Patent Act so that it properly addresses the country’s present economic, social and cultural environment.

For Zimbabwe, patenting of living organisms, especially crops, livestock and humans, is unethical. Currently, livestock genes can be patented (Patent Act). However, there has not been a case of patenting of livestock genes in Zimbabwe to date.
Laboratory national standards to ensure national standards do not conflict with relevant stakeholders. SAZ is a signatory of the World Trade Organization-Technical Barriers to Trade (WTO/TBT) (Annex 3) with respect to the national standards body. The core function of SAZ is to provide a SAZ General Council that consists of 50 representatives of government, local authorities, professional and academic institutions, industry and commerce. The members include the Bankers Association of Zimbabwe, the Business Council for Sustainable Development Zimbabwe, and the Consumer Council of Zimbabwe. The General Council determines the overall policy of SAZ.

All of Zimbabwe's national regulations are based on CODEX standards. The author attempted to contact the delegate who declined to comment without approval from the Permanent Secretary in the Ministry of Health and Child Welfare.

**Liability**

38. Set out the legal requirements to establish the liability of producers and suppliers for defective or contaminated food ingredients that cause damage, in relation to:

- Tort.
- Product liability.

Zimbabwe statute law acknowledges that physical or financial harm to others by producing or distributing a defective product is actionable.

Producers or suppliers of defective or contaminated food ingredients are deemed to have that knowledge if it is proved that by the exercise of ordinary care they could have had the knowledge, unless they satisfy the court to the contrary (section 43, Dairy Act). What this means is that a producer or supplier is held liable if it is proved that he did not exercise ordinary care to satisfy himself of the product's safety.

Producers or suppliers are guilty of an offence and liable to a fine or imprisonment if they sell, import for sale or manufacture for sale any food product that is unfit for human consumption (Food and Food Standards Act).

Producers or suppliers are guilty of an offence and liable to a fine or imprisonment if they, with an intent to deceive, supply defective goods (Produce Export Act). This means that, for a producer or supplier to be held liable under the Act, intention on his part must be proved.

Generally, in addition to the statutory requirements, the common law acknowledges that physical or financial harm to others by producing or distributing a defective product is actionable. The law of Zimbabwe has no difficulty in providing a remedy to persons who are harmed physically in person or suffer damage to property caused by a defective product.

**Producers**

In Zimbabwe, regardless of any contractual limitations of liability, if a product is defective or contaminated, its producer can be liable for damages under the common law of negligence. A person claiming damages for harm caused by a defective product must prove that:

- The producer of the product was negligent in allowing the defective or contaminated products to be released into the market.
- Harm was caused to that person by the defective product.

Producers must take reasonable steps to ensure that defective products are not put into the market and cause harm.

**Suppliers**

The principle of negligence is applicable to suppliers. A supplier breaches the duty of care (that is, is negligent) when he fails to foresee and guard against harm that the reasonable person would have foreseen and guarded against.

- Ministry of Health and Child Welfare, which is the overall regulatory agency. It carries out inspections and sampling activities, responding to any food safety challenges and outbreaks.
- Ministry of Agriculture, which is responsible for food safety from the farming process to harvesting. Where food is consumed after harvest without any further processing, this ministry ensures that it is safe for consumption as it is or after cooking.
- Ministry of Industry and International Trade, which deals with food exports and imports. It issues import and export licences and generally promotes food trade.

**Food safety regulations**

The following are the main regulations covering food safety:

- Dairy Act.
- Food and Food Standards Act.
- Fruit Marketing Act.
- Public Health Act.
- Animal Health (Import) Regulations.
- Produce Export Act.

**Food safety standards**

Local authorities are the delegated authority to be food inspectors (Food and Food Standards Act). In addition to enforcing the national food standards, they have bye-laws for their areas of operation, which must not conflict with the national laws.

**Industry input on standards ongoing**

The Food Standards Advisory Body (FSAB) is in general responsible for advising the Ministry responsible for Health on Policy Issues, setting food standards and food legislation. The FSAB derives its advisory mandate from the Food and Food Standards Act. It is made up of representatives from the Ministries of Health and Child Welfare, Agriculture, International Trade and Industry, representatives of local authorities, Standards Association Food Industry and the Consumer Council. In this way the industry has an input in the setting of food standards.

The Standards Association of Zimbabwe (SAZ) is the national standards body. The association is a non-governmental and non-profit making organisation operating under the Companies Act with Articles and a Memorandum of Association.

The SAZ has a Memorandum of Understanding (MoU) between itself and the Government of Zimbabwe represented by the Ministry of Industry and Commerce. This MoU recognises SAZ as the national standards body. The core function of SAZ is to facilitate the development of national standards in consultation with relevant stakeholders. SAZ is a signatory of the World Trade Organization-Technical Barriers to Trade (WTO/TBT) (Annex 3) Code of Good Practice for the Preparation, Adoption and Application of Standards and is guided by the Code’s principles in its standardisation activities.

Increasingly, international and regional standards are adopted as national standards to ensure national standards do not conflict with those of regional and international trade partners. Laboratory facilities are available from SAZ to producers and consumers for testing manufactured goods and raw materials to demonstrate their compliance with standards. SAZ also offers inspection services. It also operates a product certification scheme under which goods produced under proper control are licensed as in compliance with appropriate standards and carry the SAZ mark of approval. To ensure industry input on standards is ongoing, there is a SAZ General Council that consists of 50 representatives of government, local authorities, professional and academic institutions, industry and commerce. The members include the Bankers Association of Zimbabwe, the Business Council for Sustainable Development Zimbabwe, and the Consumer Council of Zimbabwe. The General Council determines the overall policy of SAZ.

All of Zimbabwe's national regulations are based on CODEX standards. The author attempted to contact the delegate who declined to comment without approval from the Permanent Secretary in the Ministry of Health and Child Welfare.

**Liability**

38. Set out the legal requirements to establish the liability of producers and suppliers for defective or contaminated food ingredients that cause damage, in relation to:

- Tort.
- Product liability.

Zimbabwe statute law acknowledges that physical or financial harm to others by producing or distributing a defective product is actionable.

Producers or suppliers of defective or contaminated food ingredients are deemed to have that knowledge if it is proved that by the exercise of ordinary care they could have had the knowledge, unless they satisfy the court to the contrary (section 43, Dairy Act). What this means is that a producer or supplier is held liable if it is proved that he did not exercise ordinary care to satisfy himself of the product’s safety.

Producers or suppliers are guilty of an offence and liable to a fine or imprisonment if they sell, import for sale or manufacture for sale any food product that is unfit for human consumption (Food and Food Standards Act).

Producers or suppliers are guilty of an offence and liable to a fine or imprisonment if they, with an intent to deceive, supply defective goods (Produce Export Act). This means that, for a producer or supplier to be held liable under the Act, intention on his part must be proved.

Generally, in addition to the statutory requirements, the common law acknowledges that physical or financial harm to others by producing or distributing a defective product is actionable. The law of Zimbabwe has no difficulty in providing a remedy to persons who are harmed physically in person or suffer damage to property caused by a defective product.

**Producers**

In Zimbabwe, regardless of any contractual limitations of liability, if a product is defective or contaminated, its producer can be liable for damages under the common law of negligence. A person claiming damages for harm caused by a defective product must prove that:

- The producer of the product was negligent in allowing the defective or contaminated products to be released into the market.
- Harm was caused to that person by the defective product.

Producers must take reasonable steps to ensure that defective products are not put into the market and cause harm.

**Suppliers**

The principle of negligence is applicable to suppliers. A supplier breaches the duty of care (that is, is negligent) when he fails to foresee and guard against harm that the reasonable person would have foreseen and guarded against.

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39. Which defences are available to the producer and/or supplier to avoid liability? For instance, is market-entry prior government approval a legal defence against product liability and under which conditions?

The liability of a producer or a supplier is not an absolute liability. If the producer or supplier took steps to avoid the production or supply of defective or contaminated goods that were reasonable in the sense that nothing more could reasonably have been done, the supplier or producer will not be liable as it would not have been negligent.

If the defect developed after leaving the producer, for example, as a result of improper handling of goods by the distributor, then the distributor and not the producer is liable.

No liability attaches to the producer if:
- The product is safe and reliable if used properly.
- Clear instructions were given about how to use the product safely.
- The customer fails to follow the instructions.

Therefore, a producer or supplier can escape liability if he proves that he had:
- No knowledge of the defect.
- Exercised ordinary care, reasonably expected of him.

40. Which types of damage are generally compensated by civil courts in food safety liability cases? For instance loss of value, repairation costs, loss of revenue, and personal injury. Are punitive damages available?

The types of damages that are generally compensated by civil court in food safety liability cases are:
- In an Aquilian action for personal injury, for pain and suffering. The extent of damages recoverable or the costs awarded in court cases depends on many factors. These factors include the severity of the injury, type of medical treatment received, the length of recovery time, and potential long term consequences of the personal injuries (see Question 41).
- For loss suffered due to a supplier or producer of contaminated or defective goods.

However, no one has successfully claimed damages in food safety liability cases in Zimbabwe to date. Therefore, the exact costs that the courts may award is a matter yet to be decided.

41. Summarise landmark or recent cases that have defined the law and practice in this sector.

In Delta Beverages v Rutsito (Case Number: Civil Appeal No. SC56/11), the respondent, who was the claimant in the court a quo, issued a summons claiming payment of damages of US$20,051 and costs of suit. The basis of his claim was that he had consumed a contaminated coca-cola beverage and that further inspection of the bottle had revealed "a rusting iron nail and blackish foreign substances". In his declaration he alleged that the appellant, as the manufacturer of the beverage, owed him and the general public "a duty of care to ensure that the product is safe, clean, health (sic) and fit for human consumption" and that the appellant had breached that duty by producing the contaminated drink. In the alternative the respondent alleged that the appellant had "negligently allowed the production and selling of contaminated coke", which he consumed. In the result he sought damages for what he termed "distress and anxiety".

The court stated that the position is settled that a claim for damages for pain and suffering strictly constitutes more than a head in a general Aquilian action; it is in origin a separate remedy. It aims at compensating the victim for all pain, suffering, shock and discomfort suffered by him as a result of the wrongful act. It includes both physical and mental pain and suffering and both past and future pain and suffering. In addition to the pain and suffering suffered as a direct consequence of the infliction of the injuries, the pain and suffering associated with surgical operations and other curative treatment reasonably undergone by the claimant for such injuries must be taken into account.

The court further stated that the expression "duty of care" is used in two separate and distinct senses. The first sense is in connection with negligence. A person is said to breach the duty of care (that is, is negligent) when he fails to foresee and guard against harm that the reasonable person would have foreseen and guarded against. The second connotation of this phrase is in connection with wrongfulness. This is where the reasonable man would have foreseen and guarded against harm, but the defendant is not liable in the circumstances as the law does not recognise any duty of care to avoid causing that sort of harm. That is, the conduct was not wrongful or to put it another way, there was no recognised legal duty to avoid causing harm by negligent conduct.

Therefore, in determining whether or not a person was negligent, it is necessary to determine whether harm was reasonably foreseeable and if so whether the reasonable person would have guarded against such harm. It is incumbent on the claimant to plead negligence on the part of the defendant and to set out the particulars of that negligence. Where such particulars are not set out, the defendant does not know the basis on which liability is claimed. It is not enough to allege negligence and fail to give particulars of that negligence.

The court held that on the facts of this case no particulars of negligence were alleged or proved. Such failure assumes an important dimension when considering the fact that the appellant was a beverage manufacturer. It is now settled that the liability of a beverage manufacturer or brewery is not absolute. If the steps it took to avoid contamination were reasonable, in the sense that nothing more could reasonably have been done, then it would not be liable because it would not have been negligent.
**ONLINE RESOURCES**

**Zimbabwe Legal Information Institute**

*www.zimlii.org*

**Description.** Zimbabwe Legal Information Institute (ZimLII) is an independent not-for-profit trust hosting an online repository of legal information from Zimbabwe and beyond. The organisation aims to provide for the knowledge needs of a growing group of people learning, aware and interested in the justice and legal framework of Zimbabwe. ZimLII is a member of the global Free Access to Law Movement. The organisation works closely with other regional and international Legal Information Institutes (LIIs) to promote justice and rule of law by maximising access at no cost to public legal information.

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**SUMMARY: AGRICULTURAL LAW IN ZIMBABWE**

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<thead>
<tr>
<th>Agricultural policy</th>
<th>Household farming</th>
<th>Industrial farming</th>
<th>Foreign Investment</th>
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<tr>
<td>Acquisition of a domestic agricultural company</td>
<td>Transaction review</td>
<td>National security review</td>
<td>Competition review</td>
</tr>
<tr>
<td>Government approvals?</td>
<td>Mandatory authorisation (Indigenisation, Investment and Exchange Control approval is required).</td>
<td>None.</td>
<td>Yes.</td>
</tr>
<tr>
<td>Foreign acquisition of agricultural land</td>
<td>Allowed/not allowed</td>
<td>Transferable</td>
<td>Auction/tender required</td>
</tr>
<tr>
<td>Agricultural land usage rights (maximum term)?</td>
<td>Allowed but only subject to the discretion of the government.</td>
<td>Yes.</td>
<td>No.</td>
</tr>
<tr>
<td>Mortgage/pledge of agricultural land?</td>
<td>Not allowed for state-owned land; allowed for privately owned land.</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Agri/green parks</td>
<td>Agri investment</td>
<td>Tax</td>
<td>Land fees</td>
</tr>
<tr>
<td>Foreign investment in crop business</td>
<td>Generally permitted</td>
<td>Restricted</td>
<td>Prohibited</td>
</tr>
<tr>
<td>Import of foreign plant varieties?</td>
<td></td>
<td>Restricted (the imported variety must be registered in Zimbabwe).</td>
<td></td>
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<tr>
<td>R&amp;D/test plots?</td>
<td></td>
<td>Restricted.</td>
<td></td>
</tr>
<tr>
<td>Production of crop seed?</td>
<td></td>
<td>Restricted.</td>
<td></td>
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<tr>
<td>Commercial crop production?</td>
<td></td>
<td>Restricted (licensed by the Agricultural Marketing Authority).</td>
<td></td>
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<tr>
<td>Distribution of crop seeds?</td>
<td></td>
<td>Restricted.</td>
<td></td>
</tr>
<tr>
<td>IP protection</td>
<td>Available</td>
<td>Certain varieties/species</td>
<td>Not protected</td>
</tr>
<tr>
<td>Plant variety right?</td>
<td>Available.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Exemption breeder rights protected plant variety</td>
<td>R&amp;D for scientific purpose</td>
<td>Prior consent breeder</td>
<td>Royalty payment obligation</td>
</tr>
<tr>
<td>Farmer’s privilege</td>
<td>Re-use</td>
<td>Share/exchange</td>
<td>Sell</td>
</tr>
<tr>
<td>Genetics</td>
<td>Generally permitted</td>
<td>Restricted</td>
<td>Prohibited</td>
</tr>
<tr>
<td>Import of GM seeds?</td>
<td></td>
<td></td>
<td>Totally prohibited.</td>
</tr>
<tr>
<td>Import of GM crops?</td>
<td></td>
<td>Restricted (GMO limit of qualification on all imported crops less than 0.02%).</td>
<td></td>
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<tr>
<td>Question</td>
<td>Answer</td>
<td></td>
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<td>----------------------------------------------</td>
<td>------------------------------------------------------------------------</td>
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<tr>
<td>Testing of GM crops?</td>
<td>Restricted (subject to approval from the National Biotechnology Association).</td>
<td></td>
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<tr>
<td>Local production of GM seeds?</td>
<td>Restricted (subject to approval from the National Biotechnology Association, may not be produced commercially).</td>
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<tr>
<td>Local production of GM crops?</td>
<td>Restricted (subject to approval from the National Biotechnology Association, may not be produced commercially).</td>
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<tr>
<td>Import of animal genetic material?</td>
<td>Restricted (subject to approval from the National Biotechnology Association).</td>
<td></td>
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<tr>
<td>Import of new animal breeds?</td>
<td>Generally permitted.</td>
<td></td>
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<tr>
<td>Food product liability</td>
<td>Strict liability, Negligence.</td>
<td></td>
<td></td>
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<tr>
<td>Producer?</td>
<td>Not applicable. Negligence.</td>
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<tr>
<td>Importer?</td>
<td>Not applicable. Negligence.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Distributor?</td>
<td>Not applicable. Negligence.</td>
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</tbody>
</table>

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**Non-professional qualifications.** LLB (Hons), University of Zimbabwe  
**Recent transactions**  
- Currently advising on two major energy projects.  
- Advising on syndicated loan transactions.  
- Advising on an acquisition in the telecoms sector.  
- Advising the Issuer of Zimbabwe Diaspora Bond.  
- Legal Advisory on Mergers and Acquisitions.  

**Professional associations/memberships.** Law Society of Zimbabwe, Loan Market Association and International Bar Association.  

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**Areas of practice.** Commercial law.  
**Non-professional qualifications.** LLB (Hons), University of Zimbabwe; LLM in Commercial Law, University of Cape Town  
**Recent transactions**  
- Member of the legal team on two major energy projects.  
- Drafting agreements and advising on a local gas project.  
- Advising on syndicated loan transactions.  
- Advising on schemes of arrangements and general debt restructuring.  