

Agribusiness

Contributing editors

Carol VandenHoek and Eric FW Johnson



2019

GETTING THE
DEAL THROUGH

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Carol VandenHoek and Eric FW Johnson

Miller Thomson LLP

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Preface

Agribusiness 2019

Third edition

Getting the Deal Through is delighted to publish the third edition of *Agribusiness*, which is available in print, as an e-book and online at www.gettingthedealthrough.com.

Getting the Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured.

Getting the Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.gettingthedealthrough.com.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Carol VandenHoek and Eric FW Johnson of Miller Thomson LLP, for their continued assistance with this volume.

GETTING THE 
DEAL THROUGH 

London
September 2018

Malaysia

Azman bin Othman Luk, Amelia Koo, Moy Pui Yee, Pauline Khor, Raymond Yong and Jack Yow

Rahmat Lim & Partners

Overview

1 Describe the agriculture and food supply chain in your jurisdiction.

The agriculture industry alone was responsible for 8.2 per cent of Malaysia's gross domestic product in 2017. The agriculture industry consists mainly of industrial commodities such as rubber, palm oil, cocoa and agro-food including rice, fruits, vegetables, fisheries and livestock. Large-scale commercial plantation owners dominate the landscape in respect of industrial commodities, while smallholders are concentrated mainly in the agro-food industry.

Under the Eleventh Malaysia Plan (the Plan) for 2016–2020, the government aims to transform the agro-food sector through, among other things, research and development (R&D) and modernisation initiatives, strengthening institutional support and extension services, implementing measures to increase food security and safety, increasing farmers' incomes and boosting productivity.

Despite the gradual growth rate in the export of food over the years, Malaysia is still a net importer of food and agricultural produce, with an increasing deficit in the food trade balance, primarily because of heavy demand for animal feed, sugars and honey, meat and meat products, and vegetables to meet the country's agro-food requirements. Malaysia produces approximately 72 per cent of the rice required by the population and imports the rest. Under the Plan, the government aims to increase the self-sufficiency level of the majority of agro-food commodities, including initiatives towards achieving full self-sufficiency in respect of rice.

2 What is the regulatory environment for primary agriculture and primary food processors in your jurisdiction?

The Ministry of Agriculture and Agro-based Industry (MOA) is responsible for agriculture in Malaysia. The MOA oversees various other bodies and departments such as the Department of Agriculture, the Department of Veterinary Services, the Department of Fisheries, the Department of Malaysian Quarantine and Inspection Services, and the Federal Agricultural Marketing Authority. Many of these departments are responsible for administering the relevant legislation affecting primary agriculture and primary food processors.

In addition, important commodities such as cocoa, palm oil, pepper, pineapple, tobacco and rubber are overseen by specific bodies (such as the Malaysian Cocoa Board and the Malaysian Palm Oil Board) which regulate, among other things, the import, export, processing, sale, distribution and storage of such commodities.

Depending on the scale and scope of the processing activities carried out, primary food processors may require a manufacturing licence under the Industrial Co-Ordination Act 1975 issued by the Malaysian Investment Development Authority. Certain promoted activities and products are eligible for tax incentives under the Promotion of Investment Act 1986.

Generally, the Malaysian regulatory environment is based on licensing and approval frameworks that enable regular supervision and control over the players in the agriculture industry. The relevant statutes also provide for penal sanctions (ie, a fine or imprisonment or both) for offences committed under such statutes.

3 What are the main non-governmental organisations and non-profit organisations in the agribusiness sector in your jurisdiction?

Most of the non-governmental organisations (NGOs) in the agribusiness sector in Malaysia are farmer-based associations or organisations.

Malaysia has a network of farmers' organisations that come under the administrative jurisdiction of the Farmers' Organisation Authority, a statutory body under the supervision of the Department of Agriculture. Under the Farmers' Organisation Act 1973, any person engaged in agricultural or livestock production is eligible to be a member of, and to form, a farmers' organisation registered under the Act.

Other relevant NGOs and associations include the:

- Federation of Livestock Farmers Association of Malaysia;
- Federation of Vegetable Farmers Association of Malaysia;
- Malaysian Fruit Farmers Association;
- Malaysian Animal Health and Nutrition Industries Association;
- Marine Fish Farmers Association of Malaysia;
- Malaysian Seafood Industries Association;
- Malaysian Fisheries Society; and
- Roundtable on Sustainable Palm Oil.

Land acquisition and use

4 Identify and summarise the legislation addressing agricultural property transactions in your jurisdiction. Outline how farmland is typically held.

Pursuant to the Federal Constitution of Malaysia (the Constitution), land matters generally lie within the jurisdiction of the various state governments. The Constitution specifically provides, however, for federal legislation to apply for the purposes of ensuring uniformity of law and policy in various aspects of land matters.

The federal legislation governing land matters in Malaysia includes:

- the National Land Code 1965 (NLC), which contains provisions relating to land and land tenure, the registration of title to land and of dealings therewith, within Peninsular Malaysia and Labuan;
- the Sarawak Land Code (Chapter 81), which governs all matters relating to land in the state of Sarawak, including:
 - land tenure;
 - registration of titles relating to land;
 - transfer of land;
 - leases and charges in respect of land; and
 - easements and other rights and interests in land in the state; and
- the Sabah Land Ordinance (Chapter 68), which governs matters relating to land in the state of Sabah including:
 - land tenure;
 - registration of titles relating to land;
 - transfer of land, leases and charges in respect of land; and
 - easements and other rights and interests in lands in the state.

The operation of these statutes is supplemented by various pieces of subsidiary legislation, including various state land enactments and ordinances in force in the respective states in Malaysia.

Pursuant to the NLC:

- the 'entire property' in all state lands situated within Peninsular Malaysia and Labuan is vested in favour of the relevant state authority;

- there are three categories of land use, namely, agriculture, building and industry; and
- each state authority has the power to alienate land:
 - for a term not exceeding 99 years or in perpetuity; and
 - subject to certain conditions such as payment of annual rent, the category of land use and such express conditions or restrictions in interest, as may be imposed by the state authority.

The NLC does, however, restrict a state authority from alienating any land 'so as to have the effect of less than two-fifths of a hectare of land subject to the category of 'agriculture' or to any condition requiring its use for agricultural purpose being held by more than one person or body', except in exceptional circumstances.

5 Outline any rules related to use of farmland for non-agricultural uses.

When land has been categorised as agricultural on the land title, it cannot be used for non-agricultural purposes. Pursuant to the NLC, any breach of a condition to which land is subject may result in the land becoming liable to forfeiture to the state authority.

A land proprietor may, however, apply to the relevant state authority for the alteration of category of land use from agricultural to non-agricultural use.

6 How is lending secured by farmland addressed in your jurisdiction? Do special rules apply for farm lending?

In Malaysia, security over land, whether granted by the borrower or a third-party security provider, is usually by way of a statutory charge over the land in favour of the financier.

Pursuant to the NLC, the land proprietor is entitled to charge for the whole (but not a part) of any alienated land; or the whole (but not a part) of any undivided share in the alienated land. The power to place a charge over the land includes the power to create a second charge and subsequent charges. Every charge created will take effect upon the registration so as to render the land liable as security in accordance with the provision of the charge. Similar rules apply in East Malaysia.

The first chargee of any land, subject to any agreement to the contrary, is entitled to custody of the land title so long as any liability subsists under the charge.

7 Are there provisions relating to creditors' rights on default by farmers that apply in your jurisdiction?

Creditors in whose favour a charge has been registered would be entitled to enforce the charge by obtaining an order for sale of the land in the event of default by the borrower. The relevant creditor will be required to comply with the relevant provisions under the NLC, which include serving a default notice in the prescribed form, and to apply to the High Court or the relevant land administrator or collector of land revenue, as the case may be, for an order for sale of the land by public auction. Upon the registration of any certification of sale given to a purchaser in respect of the charged land, title to the land will pass to and vest in the purchaser, free from all liabilities under the charge in question. Similar rules apply in the East Malaysian states of Sabah and Sarawak.

8 Describe any rules relating to public control of farm property in your jurisdiction. What legislation governs them?

There is no specific legislation pertaining to public control of farmland per se. Under the Land Acquisition Act 1960, however, in Peninsular Malaysia the relevant state authority may acquire any land that is needed:

- for any public purpose;
- by any person or corporation for any purpose that in the opinion of the state authority is beneficial to the economic development of Malaysia or any part thereof or to the public generally; or
- for the purpose of mining or for residential, agricultural, commercial, industrial or recreational purposes or any combination of such purposes.

Upon any land or part thereof being acquired by the state authority in accordance with the provisions of the Land Acquisition Act 1960, the relevant land administrator will take possession of such land or part thereof.

Insofar as Sarawak is concerned, under the Sarawak Land Code, whenever it appears to the Sarawak state government that any land is needed for any of the purposes specified in the Sarawak Land Code, the relevant state minister may make a declaration that such land is required for a public purpose. These include:

- the planning, establishment, extension, improvement, development and redevelopment of towns, bazaars, growth centres, housing estates, sites for industries, factories, trade and commerce; the provision of accommodation for workers employed by factories and in industrial estates; or the provision and establishment of public parks and green open spaces, public amenities or recreational facilities;
- the provision of residential accommodation for any section or class of the community including the officers, servants or employees of the federal or state government and the families and employees thereof;
- the provision or improvement and development of roads and means of communications and any public utility or public service, whether undertaken or managed, or to be undertaken or managed, by the federal or state government or by a public body or private enterprise or otherwise;
- slum clearance or the resumption, with the object of improving the condition thereof, of property that is, or renders other property, unfit for human habitation or is dangerous or injurious to health;
- the provision of land for aquaculture or the cultivation of agricultural crops or for research or experimental purposes in connection herewith;
- the settlement or resettlement of any community or of any section or class of the public;
- any work or undertaking by any person, corporation or statutory body, which in the opinion of the Sarawak state government is beneficial to the economic or social development of the state or any part thereof or to the public generally or any class of the public; and
- any purpose declared to be a public purpose by or under any written law either for the purpose of the Sarawak Land Code or for the purpose of any written law repealed by the Sarawak Land Code.

In contrast, in Sabah, pursuant to the Sabah Land Acquisition Ordinance (Chapter 69) (SLAO), if the Sabah state government considers that any land should be acquired for a public purpose, a declaration may be made to that effect in the manner provided in the SLAO. Any such declaration would then be conclusive evidence that the land to which it relates is required for a public purpose. 'Public purpose' is defined under the SLAO to mean any, or any combination of, the following purposes:

- for the exclusive use of the state government, the federal government or the general public;
- for or in connection with the planning, establishment, extension, improvement or development of any town or township, any purpose reasonably necessary or desirable in regard thereto, including the provision of open spaces and amenities and the setting apart of suitable sites for factories industries and trade;
- for or in connection with the provision of residential accommodation for any section or class of the community including the officers, servants or employees of the state government or the federal government, and the families and employees thereof;
- for obtaining control over land contiguous to, or required for or in connection with, any port, airport, railway, road or other public works of convenience;
- for or in connection with any public utility undertaking or the provision of any public service;
- for or in connection with any scheme relating to the settlement or resettlement of any community, or of any section or class of the public, rural or urban;
- for or in connection with the provision of land for the cultivation of padi, or for agricultural research or experimental purposes; and
- for or in connection with the conservation, improvement or exploitation of natural resources.

9 Are there any restrictions on foreign ownership of farm property in your jurisdiction? What legislation governs them?

The Guideline on Acquisition of Properties (the Guideline) issued by the Economic Planning Unit, Prime Minister's Department (EPU) is the relevant legislation.

Under the Guideline, a 'foreign interest' (including foreign entities and individuals) is not allowed to acquire, among other things, properties (including agricultural land) valued at less than 1 million Malaysian ringgit per unit.

The Guideline also states that the acquisition of agricultural land valued at 1 million Malaysian ringgit and above, or that amounts to at least five acres, for specific agricultural purposes does not require the approval of the EPU but falls under the purview of the relevant ministries or government departments. However, the form of acquisition mentioned above is subject to the condition that the said property must be registered under a locally incorporated company.

NLC

In Peninsular Malaysia, under the NLC, foreign companies and non-citizens have to apply for and obtain the prior consent of the relevant state authority for the acquisition of agricultural land. Furthermore, where an order for sale of land has been made under the provisions of the NLC pursuant to enforcement of a charge or lien, a foreign company or a non-citizen, regardless of whether he or she is the chargee or a lienholder, will not be entitled to bid at the sale if the property falls under the 'agriculture' or 'building' categories or to any condition requiring its use for a purpose related to agriculture or building, unless the prior approval of the relevant state authority has been obtained by the foreign company or non-citizen in question.

Sarawak Land Code

Under the Sarawak Land Code, no foreigners are allowed to acquire any land in Sarawak without the consent of the relevant state minister.

Sabah Land Ordinance

In Sabah, there are no restrictions on the acquisition of land by foreigners under the Sabah Land Ordinance (except for land categorised as 'native land' in respect of which prior state approval is required). The acquisition by foreigners of non-native land is, however, still subject to the approval of the EPU.

Government programmes

10 Does the government provide agriculture support programmes to producers, processors or agriculture-related businesses and organisations? Outline the programmes and how they are generally accessed.

The MOA administers incentive schemes and provides development funds to fishermen (such as the Lembaga Kemajuan Ikan Malaysia (LKIM)). These funds are made available to finance activities closely related to fisheries, aquaculture and processing activities, and to increase fishermen's productivity - including purchase or replacement of boats, engines, nets and equipment, emergency loans - and provision of capital for the Fishermen's Association marketing projects.

The MOA also provides fiscal and non-fiscal incentives to support the development of the agricultural sector. Fiscal incentives are provided in the form of deductions or exemption in the payment of income tax, sales tax or duties. Non-fiscal incentives include advisory and technical consulting, equipment assistance, training courses related to certification, branding, production, entrepreneurship and food marketing.

ScienceFund and TechnoFund

The MOA also maintains the ScienceFund scheme to fund research and development (R&D) to generate new knowledge in strategic and applied science, development of new processes for product commercialisation, and improvement of national research capabilities and expertise in order to achieve national agricultural goals. The ScienceFund focuses on areas such as paddy, herbs and spices, vegetables, rubber, food processing and fisheries. It finances:

- the salary and allowance of researchers;
- travel allowances;
- rent;
- research materials and supplies;
- small-scale modifications and repair;
- special services; and
- equipment and accessories for R&D.

In addition, the MOA also maintains the TechnoFund scheme for the development of new technology and upgrading of existing technology developed through R&D projects financed by the ScienceFund. The TechnoFund focuses on agriculture, fishery, livestock, food and agro-based industries. It covers:

- the financing of pilot plants and equipment;
- field studies for the purposes of test and demonstrations;
- registration of intellectual property in Malaysia (excluding maintenance);
- commercial-ready prototype;
- market testing of commercial-ready prototype, regulatory and standard compliance;
- contract expenditures (eg, contractors and subcontractors salary);
- expenditure of service;
- acquisition of intellectual property; and
- training.

FAMA

The Federal Agricultural Marketing Authority (FAMA) is a body established under the MOA to improve the marketing of agro-food agricultural products and to encourage entrepreneurs to be involved in the agro-food sector. Some of the agricultural support programmes implemented by the FAMA are as follows.

Contract Farming

Under the Contract Farming regime, farmers under the supervision of various governmental departments produce crops that are then purchased and marketed by the FAMA, provided that the crops meet certain minimum requirements.

Contract Marketing Entrepreneur Development

This scheme involves farmers entering into binding agreements with the FAMA, pursuant to which the farmers agree to produce agricultural products according to requirements determined by the FAMA. In return, the FAMA markets the agricultural products, in accordance with the terms of such agreements.

Marketing Contract for Processed Products

This programme involves the selection of certain processed food products or 'winning products' supplied by small and medium-sized enterprise entrepreneurs, which are then distributed by the FAMA under known brand names such as OleMas and AgroMas.

Priority is given to selected or winning products, which are:

- products that are accepted by local and international consumers, with apparent market potential;
- products that do not directly compete with products developed by multinational corporations; and
- products that are supported by sufficient domestic and regional supplies of raw materials.

Marketing Effort

The Marketing Effort initiative is an initiative by the FAMA to introduce and expand agricultural yield product marketing by organising various promotional activities and carnivals, festival expositions and concession sales in supermarkets. Entrepreneurs wishing to participate must be registered with the FAMA and their products must possess market potential.

Plantation Collection Centre

This scheme revolves around clustered agriculture collection centres built in plantation areas to reduce post-harvest damage and add value through the process of grading, labelling and packaging.

Distribution Centre

The Distribution Centre initiative is centred on the provision of marketing infrastructure facilities and centres for redistribution from producers to consumers.

Farmers Market Mega and Farmers Market

The Farmers Market Mega and Farmers Market initiatives that have a mobile and carnival-like atmosphere concept are essentially marketing platforms for farmers and producers to market their crops directly to consumers.

Fresh Food Stall Entrepreneur Development Programme

This programme is set up to develop the entrepreneurship of fruit markets in a more structured and uniformed retail market. All entrepreneurs selected to join this programme will be given assistance in the form of equipment loans, promotional materials, and expert guidance and advisory services.

11 Are there any programmes addressing assistance or government incentives for investment by foreign ownership in agribusiness?

At present, the MOA does not have any programmes or government incentives for foreigners to invest in the agriculture sector.

Food safety, certification programmes, animal safety and disease

12 Outline the applicable legislation for primary processors of live animals. Is any distinction made between meat for domestic consumption and meat for export?

The primary applicable legislation is the Animals Act 1953 and the regulations and rules made thereunder. The Animals Act provides rules in relation to, among other things:

- preventing the introduction or spread of diseases of animals and birds;
- the control of the movement and slaughter of animals and birds; and
- measures pertaining to the general welfare, conservation and improvement of animals and birds.

Rules made under the Animals Act, such as the Animal Rules 1962 and the Animals (Control of Slaughter Rules) 2009, provide detailed requirements in relation to the import, export and quarantine of animals and birds and in relation to the slaughter of animals respectively.

The main distinction between meat for domestic consumption and meat for export lies in the additional licensing and permit requirements applicable in relation to meat for export under the Malaysian Quarantine and Inspection Services Act 2011 (MAQIS Act), administered by the Department of Malaysian Quarantine and Inspection Services and under the Customs (Prohibition of Exports) Order 2017 issued pursuant to the Customs Act 1967.

13 Describe the food safety regime in your jurisdiction, including applicable legislation and regulations.

The food safety regime centres around the Food Act 1983 and the Food Hygiene Regulations 2009 made thereunder. The provisions of the Food Act are intended to protect the public against health hazards and fraud in the preparation, sale and use of food. The Food Hygiene Regulations set out a framework for the registration of food premises by the Ministry of Health and the conduct and maintenance of food premises, including requiring the proprietor, owner or occupier to provide a food safety assurance programme and food traceability system, as well as requiring food handlers to undergo appropriate training.

14 What enforcement can take place in relation to food supply chain safety? What penalties may apply?

The Food Act and the Food Hygiene Regulations generally impose penal sanctions such as fines or imprisonment in relation to the offences prescribed thereunder. In addition, upon the conviction of any person of an offence under the Food Act, the court may, in addition to any other penalty that it may lawfully impose, cancel any licence issued to such person under the Food Act or Regulations.

15 Describe any certification programmes and rules for genetically modified foods, organic foods or other differentiated products.

The Department of Agriculture has developed the Malaysian Organic Scheme to certify organic farms that meet the requirements of Malaysian Standard MS 1529 relating to the production, processing, labelling and marketing of plant-based organically produced foods. The Food Regulations 1985 issued pursuant to the Food Act provide that no label that describes any food may include the word 'organic', 'biological', 'ecological', 'biodynamic' or any other words of the same

significance unless the food conforms to the requirements specified in MS1529.

The Organic Malaysia Mark Scheme is a label scheme operated by Organic Alliance Malaysia (OAM) Bhd in collaboration with the Department of Agriculture. The OAM mark is for use by operators on certified organic products (in respect of domestically produced and imported products) that have been approved by the Department of Agriculture as meeting the requirements of Malaysian organic labelling requirements.

Insofar as genetically modified (GM) foods are concerned, the Biosafety Act 2007 prescribes import approval requirements in respect of 'living modified organisms' (defined to mean any living organisms that possess a novel combination of genetic material obtained through the use of modern biotechnology). This categorisation would apply in respect of certain types of GM food or food materials.

The Food Regulations 1985 provide that no person may import, prepare or advertise for sale or sell any food and food ingredients obtained through modern biotechnology (which would include GM foods) without the prior written approval of the Deputy Director General of Health (Public Health) of the Ministry of Health. Detailed rules are prescribed in the Guidelines on Labelling of Foods and Food Ingredients Obtained Through Modern Biotechnology, issued by the Ministry of Health.

With regard to differentiated products, a halal certification may be obtained to certify foods as halal (or permitted to be consumed by Muslims) from the Department of Islamic Development Malaysia.

16 What are the food labelling requirements, including the applicable legislation, enforcement and penalties?

The Food Regulations 1985 set out detailed rules in relation to labelling and packaging of foods. The specific standards and particular labelling requirements for different types of food products are set out in the Food Regulations. Various guidelines have also been issued by the Ministry of Health that are intended to provide guidance to players in the food industry in relation to the rules prescribed under the Food Act and the Food Regulations, including:

- the General Guideline for Food Labelling;
- the Guide to Nutrition Labelling and Claims;
- the Guideline to Labelling of Food Additives; and
- the Guideline to Labelling of Ingredients, regarding ingredients that may cause hypersensitivity.

The Food Act provides that where a standard has been prescribed for any food, any person who prepares, packages, labels or advertises any food that does not comply with that standard, in such a manner that it is likely to be mistaken for food of the prescribed standard commits an offence.

It is also an offence for any person who prepares, packages, labels or sells any food to do so in a manner that is false, misleading or deceptive with regard to its:

- character;
- nature;
- value;
- substance;
- quality;
- composition;
- merit or safety;
- strength;
- purity;
- weight;
- origin;
- age;
- proportion; or
- compliance with regulations made under the Food Act.

Persons who have committed such offences are liable on conviction to imprisonment for a maximum term of three years, a fine, or both.

In addition, the Federal Agricultural Marketing Authority (Grading, Packaging and Labelling of Agricultural Produce) Regulations 2008 (FAMA Regulations) prescribe grading, packaging and labelling standards in respect of certain types of agricultural produce in its raw form.

17 Outline any applicable legislation regarding health of food animals, including transportation and disease outbreak and management.

The Animals Act contains provisions intended to prevent the introduction or spread of disease in animals and birds.

The Animals Act provides wide-ranging powers for 'veterinary authorities' (ie, the Director General of Veterinary Services, other veterinary officers or persons appointed by the Director) to:

- examine animals or birds suspected of disease;
- order the immediate isolation or destruction of any diseased animal or bird;
- treat any diseased animal or bird or those that may have been exposed to infection;
- order the destruction of stables, sheds, pens, cages and other articles that have been occupied or used in connection with an infected animal or bird; and
- order the disinfection of the body and clothing of any person and of vehicles that have been or may have been in contact with a diseased animal or bird.

In addition, every owner or person in charge of any animal or bird infected with, or reasonably suspected to be infected with, disease, or to have died of disease, is under a duty to immediately make a report to a veterinary authority or to the nearest police station. There are also strict requirements prescribed in relation to the disposal of dead animals or birds that have died from disease.

Furthermore, the chief minister of a state may issue an order declaring a state, or part of a state, to be an infected area, a disease control area or a disease eradication area for the specified disease, pursuant to which he or she may, among other things:

- prohibit either absolutely or conditionally the moving into or out of such area of any animal, bird or carcass;
- the slaughter of any animal or bird within such area; and
- the rearing or keeping of any such animal or bird.

The Animals Act also provides specific power to the chief minister of a state to order the prohibition of movement or slaughter of any cattle or swine for a specified period except under licence.

18 What are the restrictions on the movement of animals within your country?

Under the Animals Act, the chief minister of a state may order the prohibition of movement or slaughter of any cattle or swine for a specified period, except under licence.

19 Describe any restrictions on import of food animals.

The Animals Act contains provisions in relation to the importation and exportation of animals and birds. The Animals (Importation) Order 1962, issued pursuant to the Animals Act, specifies:

- the animals and birds that may be imported into Malaysia;
- the countries from which they may be imported; and
- the permitted purposes for such importation, subject to the restrictions set out in the Animals (Importation) Order (eg, importation to be accompanied by the relevant import licence or a health certificate issued by an authority from the country of import).

Similar requirements apply in relation to the importation of the carcasses of any animal or bird or any part thereof, including the meat. In addition, the MAQIS Act sets out a general requirement for importers of, among other things, any animal to obtain a permit, licence or certificate issued under the Act by the Director General of Quarantine and Inspection Services.

The Customs (Prohibition of Imports) Order 2017 (Customs (Imports) Order) issued pursuant to the Customs Act 1967 lists goods that are either absolutely prohibited or that may be imported subject to the importer obtaining the relevant import licence from the specified authority.

All animals or birds imported or about to be imported will be examined by an enforcement officer at the entry points, quarantine stations or quarantine premises in accordance with the MAQIS Act. In addition, the Animal Rules prescribe immediate quarantine on arrival of any imported animal for a specified period in quarantine stations before such animals may be released.

20 What are the regulations related to livestock slaughtering?

The Abattoirs (Privatisation) Act 1993 (Abattoirs Act) provides a licensing framework in relation to the operation of privately owned abattoirs or slaughterhouses for oxen, buffalo, goats, sheep and pigs. The Abattoirs Act imposes duties on licensed operators to meet performance standards prescribed by the Director General of Veterinary Services, and to have due regard to the efficiency, economy and safety of operations in respect of the services provided by it, and to ensure that operations are carried out under hygienic conditions. The Director General of Veterinary Services is empowered under the Abattoirs Act to exercise regulatory functions in respect of the provision of abattoir services and the running of abattoir facilities by a licensed operator.

The Animals (Control of Slaughter) Rules provide that, except as set out in the Rules, no person may slaughter any animal except at an approved abattoir (ie, an abattoir operated by the Department of Veterinary Services) or a licensed abattoir. Any person who slaughters or causes to be slaughtered or wishes to use any of the services of an abattoir must be the registered user of such abattoir. Applications for registration must be made to the veterinary authority.

The Meat Inspection Rules prescribed pursuant to the Animals Act provide, among other things, for the inspection of slaughterhouses and livestock, carcasses, portions and products thereof by veterinary authorities and prescribes the sanitary requirements of slaughterhouses, and labelling and marking requirements for meat leaving a slaughterhouse.

21 Outline the regulatory regime relating to pest control and pesticides, and other management regimes in relation to disease and pests in plants and animals.

The Pesticides Act 1974 sets out a licensing regime in relation to the importation, manufacture, sale and storage of pesticides overseen by the Pesticides Board established under the Pesticides Act.

The Plant Quarantine Act 1976 covers the control, prevention and eradication of agricultural pests, noxious plants and plant diseases.

Upon the appearance of a dangerous pest (as may be prescribed by the relevant minister), or any plant diseased by a dangerous pest, owners or occupiers of the land are under duties to inform the Director General of Agriculture and to render assistance to inspecting officers in relation to the destruction of such dangerous pests or diseased plants.

The chief minister of a state in Peninsular Malaysia, or the state minister charged with the responsibility for agriculture of Sabah or Sarawak, may also issue an order in relation to the eradication, destruction or treatment of any diseased plant that is affected by a dangerous pest, or of any plant liable to become so affected, including, among other things, requiring the owner or occupier of the land to clear the land entirely of such plants.

Similarly, an owner or occupier of land is required to completely and effectually destroy any noxious plants found growing in or on any land.

Business organisation

22 How are agricultural operations typically organised in your jurisdiction?

Agricultural operations refer to all agricultural activities conducted on agricultural land for gain or reward, including the growing or harvesting of crops, raising of livestock and cultivation of land. In Malaysia, agricultural farming is characterised by dualism (ie, there is a smallholder sector with an average farm size of one to two hectares and an estate-based sector with farm sizes in excess of 500 hectares). Estate-based agriculture places greater emphasis on cash crops such as oil palm, rubber and cocoa, whereas small-scale farmers focus mainly on food crops like rice, fruits, vegetables and herbs.

Smallholders can be divided into scheme smallholders and independent smallholders. Scheme smallholders generally come under the ambit of land development schemes administered by entities such as the Federal Land Development Authority. These smallholders receive support from such entities in the form of seedlings, fertilisers, technical assistance or credit. In contrast, independent smallholders tend to be self-organised and self-financed, with more autonomy to choose the crop they wish to develop, the manner in which their lands are utilised, etc. Although the smallholder sector is predominantly managed by family households, it is not uncommon for businesses in the form of partnerships or corporations to be involved in farming operations on a small-scale basis.

Estates or plantations with individual units covering 2,000–10,000 hectares are often operated by large corporations.

While upstream activities may be operated by sole proprietors, partnerships or corporations, downstream activities and R&D are usually carried out by corporations. This is because corporations are generally in a better financial position and possess the necessary technical know-how to engage in such activities. For example, FGV Holdings Bhd, a global agribusiness leader and a public-listed company in Malaysia, not only produces palm oil and rubber, but also manufactures a comprehensive range of palm oil-based products and carries out R&D in relation to palm oil.

23 Outline any restrictions on foreign ownership of agricultural operations or businesses other than farming operations.

Foreign entities generally require the prior approval of the relevant state authority to acquire land subject to the category agriculture in accordance with the National Land Code 1965 and other related land laws of Malaysia.

Agricultural workers, immigration, and health and safety

24 Describe any specific rules or laws governing the rights of workers or employees for agricultural operations.

There are no specific rules or laws governing the rights of workers for agricultural operations. As is the case with workers from other industries, the rights of workers for agricultural operations are primarily covered under the:

- Employment Act 1955;
- Industrial Relations Act 1967;
- Minimum Retirement Age Act 2012;
- Minimum Wages Order 2016;
- Employees Provident Fund 1991; and
- Employees Social Security Act 1969.

25 How is farmworker immigration regulated in your jurisdiction?

Generally, farmworkers are governed by the same immigration rules and regulations as applicable to workers from other industries. Non-citizens working in Malaysia must obtain the applicable work permits, depending on the types of work carried out.

Under Malaysian immigration laws, foreign workers are only permitted to work in the following sectors:

- manufacturing;
- construction;
- plantation;
- agriculture; and
- services.

Workers in the agriculture sector may be sourced from countries such as Thailand, Cambodia, Myanmar, Laos, Kazakhstan, Nepal, Pakistan, Sri Lanka, Turkmenistan, Uzbekistan, Bangladesh, India, Indonesia, the Philippines and Vietnam.

26 Outline the health and safety regulations relating to farmworkers in your jurisdiction.

Health and safety laws in Malaysia are mainly contained in the Occupational Safety and Health Act 1994. Under this Act, there is a general duty on an employer to ensure the safety, health and welfare at work of all its employees so far as is practicable. Such duties are applicable to industries set out in the First Schedule of the Occupational Safety and Health Act, which includes the agriculture industry. Any person who contravenes such provision is guilty of an offence and will, on conviction, be liable to a maximum fine of 50,000 Malaysian ringgit or to imprisonment for a term not exceeding two years, or both.

International trade

27 How are the export and import of agricultural products (animal and non-animal) regulated in your jurisdiction?

As discussed in question 19, the Customs (Prohibition of Imports) Order 2017 and the Customs (Prohibition of Exports) Order 2017 issued pursuant to the Customs Act 1967 list goods that are either absolutely prohibited, or which may be imported or exported subject to the importer or

exporter obtaining the relevant import or export licence from the specified authority.

In addition, the MAQIS Act sets out a general requirement for importers and exporters of, among other things, any plant, animal, carcass, fish and agricultural produce to obtain a permit, licence or certificate issued under the MAQIS Act by the Director General of Quarantine and Inspection Services.

Examination, quarantine, certification and labelling requirements are also applicable under the MAQIS Act and the FAMA Regulations in relation to agricultural products (animal and non-animal) entering and leaving the country.

28 May tariffs, quotas or similar measures be put in place?

The Customs Duties Order 2017 issued pursuant to the Customs Act 1967 prescribes import and export duties in relation to various goods, including agricultural products.

With regard to tariffs and quotas, the Customs Duties Order sets out tariff rate quotas in respect of certain goods.

29 What treaties apply to the import and export of agricultural products in your jurisdiction?

Malaysia is a signatory to several trade treaties that apply to, among other things, agricultural products. Malaysia has concluded free trade agreements (FTAs) with:

- Australia;
- Chile;
- India;
- Japan;
- New Zealand;
- Pakistan; and
- Turkey.

At the regional level, Malaysia and its partners in the Association of Southeast Asian Nations (ASEAN) have established the ASEAN Free Trade Area, which aims to create a single market among the ASEAN countries.

ASEAN has also concluded FTAs with:

- Australia;
- China;
- India;
- Japan;
- Korea;
- Hong Kong and China (expected to enter into force on 1 January 2019); and
- New Zealand.

Malaysia is also a party to the Framework Agreement on Trade Preferential System among the Member States of the Organisation of the Islamic Conference (OIC), which establishes a trade preferential system among OIC countries.

Finally, Malaysia has also signed the Comprehensive and Progressive Agreement for the Trans-Pacific Partnership, comprising 11 members, although such agreement is pending ratification and has not yet been brought into force.

Intellectual property

30 How are plant breeders' property rights protected in your jurisdiction?

Plant breeders' intellectual property rights are protected via the Protection of New Plant Varieties Act 2008 (PNPVA) and the Protection of New Plant Varieties Regulations (PNPVR). These allow plant breeders to seek formal statutory protection over a new plant variety and confers exclusive rights to breeders to exploit their new plant varieties upon registration.

The PNPVA established a statutory body known as the Plant Varieties Board under the purview of the Department of Agriculture of the MOA that is entrusted to administer and implement the plant variety registration system in Malaysia. The PNPVA also introduced the Register of New Plant Varieties to maintain particulars of plant variety registrations.

Registration of a new plant variety will entitle an applicant to a breeder's right and the issuance of a certificate of grant of a new plant

variety by the Plant Varieties Board. The denomination of the new plant variety and grant of a breeder's right will also be recorded in the Register of New Plant Varieties.

In addition, the registration of the new plant variety and grant of a breeder's right will also be published in the government gazette.

Protection and duration

The holder of a breeder's right is conferred the exclusive right to:

- produce or reproduce;
- condition for the purpose of propagation; and
- offer for sale, market, export, import and stock the material for any of the aforementioned purposes, in respect of the registered plant variety on a commercial basis.

The holder of a breeder's right may license, assign or sell to third parties the registered plant variety alongside the accompanying breeder's right granted under the PNPVA.

Different categories of plant varieties are accorded different terms of protection that take effect from the filing date of the application and will subsist for a period of:

- 20 years for a registered plant variety that is new, distinct, uniform and stable;
- 15 years for a registered plant variety that is new, distinct and identifiable; and
- 25 years for trees and vines.

The term of protection may be extended if the holder so applies and the Plant Varieties Board is satisfied that such extension is desirable on the ground of national needs and interests.

Civil proceedings

A plant breeder's right will be infringed by a person who, without the authorisation of the holder:

- produces or reproduces;
- conditions for the purpose of propagation; and
- offers for sale, markets, exports, imports and stocks the material for any of the aforementioned purposes in respect of the registered plant variety on a commercial basis.

The PNPVA also provides for criminal offences (such as furnishing false or misleading information in respect of an application and acting in contravention of any terms and conditions imposed on the plant breeder as a holder or as a licensee).

There is to date no reported case on infringement of a breeder's right.

31 How is farmers' access to crop varieties and plant technologies addressed in your jurisdiction?

The majority of Malaysian farmers have not adopted sophisticated ways of farming, and have limited knowledge and expertise as to new and different crop varieties and plant technologies. In order to assist rural Malaysian farmers to gain access to new crop varieties and plant technologies, the MOA has undertaken continual efforts and initiatives in educating farmers by offering various first-hand assistance and advice relating to crop varieties and plant technologies.

Training and workshops at district offices under the MOA may be conducted upon request nationwide to introduce different crop varieties to farmers and encourage or educate farmers on the use of advanced plant technologies. The MOA also provides advice to farmers on recommended crop varieties and effective plant technologies to be utilised based on the quality and fertility of the soil and land, and farming specialists will be sent to conduct a farming site visit to analyse the same.

32 What other intellectual property considerations apply to agribusiness in your jurisdiction?

Besides the plant variety protection system, there is also the geographical indication protection system and the patent regime that may be applicable to agribusiness in Malaysia.

Geographical indications are protected under the Geographical Indications Act 2000 (GIA). The geographical indication regime falls under the purview of the Intellectual Property Corporation of Malaysia within the Ministry of Domestic Trade, Co-operatives and Consumerism.

A 'geographical indication' is defined as an indication that identifies any goods as originating in a country or territory, or a region or locality in that country or territory, where a given quality, reputation or other characteristic of the goods is essentially attributable to their geographical origin, whereby 'goods' are defined as including agricultural products.

It is not compulsory to register a geographical indication in Malaysia in order to enjoy the protection afforded by the GIA. A sign that is capable of identifying an agricultural product as originating from a given place with specific qualities, characteristics or reputation of that agricultural product because of the place of origin will be considered as a geographical indication and will be given protection under the GIA regardless of whether it is registered under the GIA. Examples of registered local geographical indications for agricultural products include 'Bario Rice', 'Sarawak Pepper', 'Sabah Tea', 'Tenom Coffee' and 'Tawau Cocoa'.

Once the application for registration of a geographical indication complies with the prerequisites and no opposition has been filed against application, the Registrar of Geographical Indication will register the geographical indication and issue a certificate of registration.

Registered geographical indications remain effective for 10 years from the date of filing and may be renewed for a further 10-year period, subject to payment of renewal fees.

Patents

Plant varieties are classified as non-patentable inventions under the Patents Act 1983. This position goes hand-in-hand with the PNPVA to avoid dual-protection from being granted in respect of a new plant variety.

However, neither the PNPVA nor the Patents Act 1983 addresses protection for GM plants (ie, where the processes for production of plants have heavily involved human intervention). Such inventions of GM plants (eg, plants that are resistant to pesticides) can be patented if the patentability requirements of novelty, inventive steps and industrial applicability are fulfilled.

A granted patent takes effect on the date of issuance of the certificate of grant and remains in force for 20 years (subject to the payment of annual renewal fees) from the filing date of the patent application. The owner of a patent will be granted the exclusive right in relation to the patent to exploit the patented invention, to assign or transmit the patent and to conclude licence contracts.

Environmental issues

33 Describe the regulatory agencies that have a role in managing the environmental impact of agricultural production in your jurisdiction.

The Department of Environment under the Ministry Energy, Science, Technology, Environment and Climate Change is the primary regulatory agency responsible for the prevention, elimination and control of pollution and the enhancement of the environment, and is responsible for the administration of the Environmental Quality Act 1974 (EQA).

34 Describe how water and air pollution is regulated in relation to primary agriculture in your jurisdiction.

Under the EQA, the use and occupation of certain prescribed premises must be licensed by the Director General of Environmental Quality, including those used for the processing of crude palm oil and rubber. Specific regulations apply in relation to licensees engaged in such activities.

Further, under the EQA, any person intending to carry out certain prescribed activities must appoint a qualified person to carry out an environmental impact assessment and submit the report to the Director General of Environmental Quality, and such person may not carry out the prescribed activity unless the report has been submitted and approved. Prescribed activities include, among other things, certain types of activities relating to agriculture, drainage and irrigation and forestry.

More generally, the EQA empowers the Minister Energy, Science, Technology, Environment and Climate Change to issue regulations

- specifying the acceptable conditions for the:
 - emission, discharge or deposit of environmentally hazardous substances, pollutants or wastes; or

- the emission of noise into any area, segment or element of the environment; and
- to set aside any area, segment or element of the environment within which the emission, discharge or deposit is prohibited or restricted.

As an example, regulations have been made in respect of clean air and sewage under the Environmental Quality (Clean Air) Regulations 2014 and the Environmental Quality (Sewage) Regulations 2009 respectively.

The EQA prescribes criminal offences for contravention of restrictions on the:

- pollution of the atmosphere;
- noise pollution;
- pollution of the soil;
- pollution of inland waters;
- discharge of oil into Malaysian waters; and
- open burning.

Persons who have committed such offences are liable on conviction to imprisonment or a fine, or both.

35 Describe how liquid and other waste is regulated in relation to primary agriculture in your jurisdiction.

See question 34.

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