

THE POSSIBILITY OF ARBITRATION PROCESSES  
IN THE CONTRACT FARMING SYSTEM\*

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**Abstract**

This article endeavors to address the problem of significant bargaining power imbalance between farmers and agricultural business operators under the contract farming system. In Thailand, it is clear that the majority of farmers face economic challenges, limited access to knowledge, and limited financial resources, whereas agricultural business operators are financially powerful capitalists and businessmen with extensive expertise and substantial capital.

As a result, there is a clear power imbalance between farmers and agricultural business operators, which increases the likelihood of disputes in the contract farming system. When disputes arise, agricultural business operators generally exploit such a comparative advantage during dispute resolution, especially in negotiation and mediation processes because there is no involvement of a neutral third party with the authority to resolve such disputes effectively. Although the Thai Contract Farming Promotion and Development Act B.E. 2560 (2017) ('Thai Contract Farming Act') has been enacted to address these problems, the majority of farmers still face the aforementioned challenges. These underline the need for effective dispute resolutions for all parties involved.

To achieve a more equitable balance of bargaining power among disputing parties, the author thoroughly examines the legal frameworks of India, Vietnam, the United States of America, and China, where arbitration is currently employed for dispute resolution in the contract farming system. The objectives are to identify and explore methods that can redress the prevailing power imbalance and foster fairness to farmers.

The results assert that dispute resolution through mediation under the Thai Contract Farming Act needs updating and improvement to align with the complexities and vulnerabilities of the agricultural business environment. In the end, this article provides

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recommendations to ensure a just and effective framework for the dispute resolution process for agricultural businesses in Thailand.

**Keywords:** Contract Farming, Farmers, Arbitration, Dispute Resolution

## 1. Introduction

‘Contract Farming System’ is a reciprocal agreement (quid pro quo) formed between farmers and agricultural business operators, aimed at securing the sale of agricultural products in advance, with predetermined quantities, quality standards, and agreed-upon prices.<sup>1</sup> This arrangement provides a valuable sense of stability for farmers by ensuring a guaranteed market for their products and helps them avoid price fluctuations by offering a steady income.<sup>2</sup>

Under the contract farming system, farmers provide their land and labor, while agricultural business operators supply necessary resources and production factors, such as seeds, fertilizers, plant species, livestock, equipment, and facilities.<sup>3</sup> The agricultural business operators also manage the production process and transfer valuable agricultural technology and knowledge to the farmers to benefit their agricultural practices.<sup>4</sup>

One of its significant advantages is its ability to alleviate concerns for farmers regarding the marketability and sale of their agricultural products at specific locations,<sup>5</sup> as they can rely on the partnership with the agricultural business operators. In addition, it also fosters positive relationships between farmers and the local community, establishing a ‘Win-Win Situation’ for the parties involved.

In general, the contract under this system includes various terms and conditions related to product purchase, payment, loan application,<sup>6</sup> price assurance, responsibilities, contract duration, and production methods. By having these terms in place, both farmers and agricultural business operators have clear expectations and obligations.<sup>7</sup>

In summary, contract farming plays a crucial role in modern agriculture by providing stability and security to farmers, ensuring a steady income stream, and facilitating the transfer of knowledge and technology. Through this collaborative system, farmers can focus on

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<sup>1</sup> Isakorn Konthongkham, ‘Legal Issues Related to Unfair Contract Terms in the Contract Farming System’ Suan Sunandha Rajabhat University Graduated Journal, page 80 <<http://journal.grad.ssru.ac.th/downloads/journal/7-2/07.pdf>> accessed 21 November 2021.

<sup>2</sup> Contract Farming Promotion and Development Act B.E. 2560 (2017), Section 4.

<sup>3</sup> Sondhikanj Pueansongkram, Radio Journal on the topic of "Contract Farming Promotion and Development Act B.E. 2560 (2017)" page 2.

<sup>4</sup> *ibid*, page 1.

<sup>5</sup> Amornchai Banmueang, “The Challenges of Implementing the Promotion and Development of Contract Farming System Act B.E. 2560”, Master Degree Thesis Faculty of Law, Thammasat University, page 11.

<sup>6</sup> Bank for Agriculture and Agricultural Cooperatives, Credit Project to Promote and Develop the Contract Farming System (Contract Farming), <[https://www.baac.or.th/file-upload/16625-1-Sales%20Sheet\\_โครงการสินเชื่อเพื่อส่งเสริมและพัฒนาระบบเกษตรพันธสัญญา%20\(Contract%20Farming\)%20ระยะที่%202.pdf](https://www.baac.or.th/file-upload/16625-1-Sales%20Sheet_โครงการสินเชื่อเพื่อส่งเสริมและพัฒนาระบบเกษตรพันธสัญญา%20(Contract%20Farming)%20ระยะที่%202.pdf)> accessed on 05 January 2023.

<sup>7</sup> Vissanu Tinmanee, Legal Problems of the Contract Farming Business, Master Degree Thesis Faculty of Law, Thammasat University, page 17.

production while relying on the support and expertise of agricultural business operators, leading to increased productivity and overall agricultural development. Meanwhile, the agricultural business operators also benefit from cost savings in term of land acquisition, as they are not required to bear expenses associated with renting or purchasing land for cultivation purposes from farmers.

## **2. Problems of contract farming system in Thailand**

Contract farming is a system in agricultural production where farmers and agricultural business operators collaborate based on a mutual agreement. This arrangement establishes predetermined conditions for producing and marketing a specific commodity, including fixed prices and expected quantity and quality levels.<sup>8</sup> Such an agreement typically includes the provision of production support, where the agricultural business operators offer intellectual inputs, knowledge, and technical guidance to the farmers.<sup>9</sup>

However, a significant problem currently existing in contract farming is the issue of inequality of bargaining power between the parties involved.<sup>10</sup> The allocation of risks, sharing of benefits, and bargaining power are often shared disproportionately in favor of the agricultural business operators, leading to an unfair situation for the farmers. The primary concern lies in the prevalence of standardized contracts between agricultural business operators and farmers, which are typically drafted and determined by the agricultural business operators in advance. Moreover, a significant number of farmers are unaware of the contractual terms and frequently find themselves at a disadvantaged status, resulting in unfair contract terms. Furthermore, external factors, such as droughts or diseases, can prevent the farmers from fulfilling their contractual obligations, putting farmers at risk of being sued by the agriculture business operators.<sup>11</sup> In such cases, the existing dispute resolution channels often prove inadequate in addressing the issues and fail to provide satisfactory solutions for the farmers. The author finds the major challenges and problems for Thai farmers in the following areas.

### **(1) Lack of specialized organization**

The complexity of agricultural business introduces significant challenges for both farmers and agricultural business operators. Uncontrollable factors like weather conditions, pest infestations, and diseases can lead to crop failures and financial losses.<sup>12</sup> Additionally,

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<sup>8</sup> Contract Farming Promotion and Development Act B.E. 2560 (2017), Section 4

<sup>9</sup> Konthongkham, (n 1), page 84.

<sup>10</sup> Issara Kongtongkham, SRRU Graduates Studies Journal on the topic of “Legal Problems on Unfair Contract Farming”, <<http://journal.grad.srru.ac.th/downloads/journal/7-2/07.pdf>> accessed on 20 January 2023.

<sup>11</sup> Pueansongkram, (n 3), page 2.

<sup>12</sup> Pueansongkram, (n 3), page 2.

the use of specific intellectual property, such as patented technology or seeds, adds another layer of complexity to the contractual arrangements. These factors may be beyond the control of either party and can affect the quantity and quality of the commodity produced. In Thailand, there is no specific organization or neutral third party to regulate, supervise, and control these complexities. Also, existing dispute resolution channels may lack a thorough understanding of these complexities, making it challenging to provide satisfactory resolutions for all parties involved.<sup>13</sup>

## **(2) Ineffectiveness of dispute resolution processes**

The root cause of the problem under the Thai contract farming system is the imbalanced bargaining power between parties. It mainly arises from the prevailing practice of agricultural business operators by stipulating the terms and conditions of the contracts in advance in the form of standardized contracts. These contracts, drafted by agricultural business operators,<sup>14</sup> often leave many farmers unaware of the contractual terms, resulting in unequal negotiations. As a result, farmers may find themselves accepting unfair conditions that favor the agricultural business operators disproportionately. The lack of transparency and farmers' involvement during contract negotiations further exacerbates this problem, making it difficult for farmers to assert their rights or influence the agreement's terms.

Once disputes arise, the disputing parties may choose to resolve their disagreements in various dispute resolution mechanisms, including negotiation, mediation, arbitration, and traditional court proceedings.<sup>15</sup> However, most Thai farmers always find themselves with limited options to settle disputes effectively in various aspects as follows.

### **● Mediation: unequal bargaining power in the mediation process**

Although the Thai Contract Farming Act stipulates mediation procedures to apply when disputes arise, Thai farmers frequently find themselves at a disadvantaged status to agricultural business operators because they have less bargaining power in negotiation during the mediation process.<sup>16</sup> Farmers with less negotiating power may be left in a helpless situation and unable to move forward if agricultural business operators refuse to participate in the mediation process or sign a conciliation agreement. Furthermore, mediators lack the authority to issue binding orders or make final decisions with enforceable consequences for disputing parties. Regarding this matter, mediation in Thailand's contract farming system faces significant

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<sup>13</sup> Thammasat University, "Summary of the Key Points from the Academic Seminar on 'Contract Farming'", <<https://www.law.tu.ac.th/seminar-summary-contract-farming/>> accessed 11 July 2024.

<sup>14</sup> Contract Farming Promotion and Development Act B.E. 2560 (2017), Section 20.

<sup>15</sup> Thammasat University, (n 13), page 1.

<sup>16</sup> *ibid*

challenges, including enforceability issues, which might not be enforceable<sup>17</sup> as prescribed in the definition of “dispute mediation” in Section 3 of The Dispute Mediation Act 2562 B.E. (A.D. 2019): “the operation intended to provide parties with an opportunity to agree to resolve civil and criminal disputes by a peaceful means and without adjudication of the disputes...”.

It could be seen that, the mediation process is heavily reliant on the willingness and cooperation of the disputing parties, and mediators lack the authority to enforce decisions or issue binding orders between the disputing parties.<sup>18</sup> This limitation often results in mediation being less effective, especially in cases where there is an imbalance of bargaining power between parties, such as between farmers and agricultural business operators.<sup>19</sup> Consequently, mediation may not provide a fair resolution due to the complication of this specific type of business, leading to additional costs and complications if parties seek alternative dispute resolution methods.

- **Arbitration: costly fees and expenses**

Access to justice is essential for protecting the rights of farmers in contract farming agreements. However, many farmers, particularly those with limited financial resources and lack of negotiation power, may face challenges in seeking legal counsel or pursuing legal action during disputes, especially considering the high costs associated with the current arbitration proceedings.<sup>20</sup> It can be seen that the costs associated with legal proceedings, including lawyer fees and other expenses, can be prohibitive for small-scale farmers from accessing justice by way of arbitration. Additionally, the dispute in contract farming can also be considered as a public policy issue, comparable to a dispute in labor law<sup>21</sup> and unfair contract issues, as the bargaining power between small farmers and large agricultural business operators remains unequal in contract negotiations.<sup>22</sup> This topic, related to public policy issues, will be discussed further in the conclusion and recommendation section.

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<sup>17</sup> Dispute Mediation Act B.E. 2562 (2019) Section 3.

<sup>18</sup> Minburi Civil Court’s Website, ‘What is the Mediator’s Role?’ <<https://civilmbc.coj.go.th/th/faq/item/index>> accessed 11 July 2024.

<sup>19</sup> Thammasat University, (n 13), page 1.

<sup>20</sup> Thailand Arbitration Center (THAC), The arbitration costs are fixed by the THAC in accordance with the schedule of costs attached to the THAC set of rules. <<https://thac.or.th/fee-calculator/>> accessed on 18 January 2023.

<sup>21</sup> Chanathip Chinanawin, ‘The Settlement of Labour Dispute by Arbitration’ (LL.M. Thesis Chulalongkorn University 2004) 31.

<sup>22</sup> Thammasat University, (n 13), page 1.

- **Judicial system: inadequate knowledge and financial resources**

If agricultural business operators choose the court to settle the conflicts, farmers, who have limited bargaining power and financial resources, face enormous risks in judicial proceedings. Inadequate financial resources may prohibit farmers from hiring legal counsel to plead their cases effectively against agricultural business operators, who are typically capitalist companies with more resources and legal knowledge. As a result, court proceedings as a means of settling their conflicts may not offer justice, as most cases end up with the process of compromise without the farmers' defense or fact investigation.<sup>23</sup>

### **3. International perspectives on alternative dispute resolution in contract farming**

The author examined the laws and regulations of India, Vietnam, the United States, and China, where arbitration is utilized for dispute resolution. The purpose is to explore how these jurisdictions employ alternative dispute resolution methods to address and resolve the issue of unequal bargaining power. In addition, the research also includes third-party funding measures from several jurisdictions to find solutions that the Thai Contract Farming Act is unable to resolve.

#### **3.1 The Republic of India (India)**

The Agricultural Market Act 2003 (the 'India AM Act 2003') governs contract farming and establishes state-level laws.<sup>24</sup> Previously, the India AM Act 2003 mandated details of contractual agreements but lacked penalties for non-compliance, resulting in limitation of enforcement. Afterward, the India AM Act 2003 set up 'market boards' to be comprised of farmers and agriculture business operators to supervise, mediate, and resolve contract farming disputes.<sup>25</sup> In 2007, the State Agricultural Produce Marketing (Development & Regulation) Rules were introduced as an amendment to the India AM Act 2003. It requires registration of contracts, mandates standard contract forms, and imposes penalties for violations.<sup>26</sup> Such an

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<sup>23</sup> Assawin Sangkeattiyut, "Legal Problems Relating to the Bargaining Power of Thai Farmers in the Conclusion of Contract Farming Agreement", Sripatum University Graduated Journal, <<https://www.law.tu.ac.th/seminar-summary-contract-farming/>> accessed 11 July 2024.

<sup>24</sup> Radamanee Punchote, DPU Graduate School Journal on the topic of "The Legal Guide on Adequate Protection to Parties in Contract Farming Agreement According to The UNIDROIT Convention on Contract Farming" (2017), Master Degree Thesis, Pridi Banomyong Faculty of Law, Dhurakij Pundit University, <<https://grad.dpu.ac.th/upload/content/files/ปีที่%206%20ฉบับที่%201/วารสารบัณฑิตศึกษา-65.pdf>> accessed on 31 December 2022.

<sup>25</sup> Ministry of Agriculture Department of Agriculture and Co-operation Government of India, 'Final Report of Committee of State Ministers, In-charge of Agriculture Marketing to Promote Reforms' <[https://dmi.gov.in/Documents/stminpr\\_reform.pdf](https://dmi.gov.in/Documents/stminpr_reform.pdf)> accessed 1 January 2023.

<sup>26</sup> Punchote, (n 24), page 776.

amendment addresses critical aspects of agricultural produce purchase, fee exemption, and protection against forced land seizure owing to farmers' indebtedness. It also outlines essential requirements for production contracts and emphasizes alternative dispute resolution.<sup>27</sup>

In the aspect of alternative dispute resolution, there is state intervention as a formal platform in the dispute resolution process to address conflicts by involving government officials through the market boards.<sup>28</sup> This state intervention can ensure a fair and impartial approach and gain confidence in resolving disputes, particularly for farmers. In addition, state intervention also serves as an appellate body, where the market boards have the authority to appeal decisions on behalf of the aggrieved party.<sup>29</sup> This further strengthens the enforcement of the decisions and helps maintain a stable and reliable environment for contract farming activities.

As a result, the India AM Act and its supporting measures help prevent potential disruptions and conflicts that may occur from contractual disagreements, with the main goal of protecting farmers' rights. These foster trust and cooperation between farmers and agricultural business operators by encouraging more collaborative participation in contract farming and promoting a thriving agricultural economy in India.

### **3.2 The Socialist Republic of Vietnam (Vietnam)**

The legal framework for contract farming in Vietnam stems from its Civil Code 2005, which provides a comprehensive structure for agricultural contracts.<sup>30</sup> Its Civil Procedure Law also addresses dispute resolution related to agricultural production contracts. In addition, local administrative organizations play a pivotal role in overseeing and controlling agricultural production within the contract farming system.<sup>31</sup> There is a regulation, promulgated to encourage the contractual sale of agricultural commodities, called "Policy Decision

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<sup>27</sup> *ibid*, page 115.

<sup>28</sup> S. Singh, "Understanding Practice of Contract Farming in India: A Small Producer Perspective," (2016), <[https://www.academia.edu/72846442/Understanding\\_Practice\\_of\\_Contract\\_Farming\\_in\\_India\\_A\\_Small\\_Producer\\_Perspective](https://www.academia.edu/72846442/Understanding_Practice_of_Contract_Farming_in_India_A_Small_Producer_Perspective)> accessed on 11 July 2024.

<sup>29</sup> Punchote, (n 24), page 58.

<sup>30</sup> Khemchat Tonboon, "Chicken Ranchers under Contract Farming System" (2015), Master Degree Thesis, Chiang Mai University, page 48.

<sup>31</sup> Minister of Agriculture and Rural Development of Vietnam, Quyet-dinh-80-2002-QD-TTg <<https://thuvienphapluat.vn/van-ban/EN/Linh-vuc-khac/Decision-No-80-2002-QD-TTg-of-June-24-2002-on-policies-to-encourage-the-contractual-sale-of-commodity-farm-produce/74417/tieng-anh.aspx>> accessed on 14 April 2023.

80/2002/QĐ-TTĐ”, issued on June 24, 2002.<sup>32</sup> It facilitates and regulates agricultural production and outlines key aspects, including contractual format, outcomes, and remedies for damages. In 2013, Policy Decision 62/2013/QĐ-TTĐ introduced the details of dispute settlement and penalties for violations to foster the growth of contract farming among businesses, farmer representative organizations, and individual farmers in agricultural projects within extensive production zones.<sup>33</sup> It aims to establish fair contracting practices and balanced bargaining power. It can be seen that arbitration is the primary mechanism for dispute resolution in Vietnam, favored by the government for the enforcement of decisions, but there are some challenges of complexity and costs of competent arbitrators with agricultural expertise.

In conclusion, agricultural contract dispute resolution in Vietnam is mostly based on arbitration, which is enforceable but subject to enforcement problems. Promoting mediation might help to strengthen the system by assuring fair resolutions and promoting contract farming development. In addition, the policies of Decision No. 80/2002/QĐ-TTĐ and Decision No. 62/2013/QĐ-TTĐ promote fair contracting practices and dispute resolution between agricultural business operators and farmers. These regulations offer benefits to farmers, which include lower transaction costs, strengthened relationships, and efficient dispute resolution through arbitration with specialized arbitrators, which can deliver binding awards to protect fairness to farmers.

### **3.3 The United States of America**

#### **3.3.1 Seed arbitration**

Seed arbitration is a process in the farming industry where parties submit disputes to an impartial arbitrator for resolution. The arbitrator listens to both sides' arguments and issues a decision to settle the dispute. Seed contracts have specific provisions governing arbitration, including a notice stating that arbitration is a precondition for legal actions related to seed

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<sup>32</sup> Thư Viện Pháp Luật (Law Library), Policy Decision 80/2002/QĐ-TTĐ, "Decision on Policies to Encourage the Contractual Sale of Commodity Farm Produce", <<https://thuvienphapluat.vn/van-ban/EN/Linh-vuc-khac/Decision-No-80-2002-QD-TTg-of-June-24-2002-on-policies-to-encourage-the-contractual-sale-of-commodity-farm-produce/74417/tieng-anh.aspx>> accessed 14 April 2023.

<sup>33</sup> Thư Viện Pháp Luật (Law Library), Policy Decision 62/2013/QĐ-TTĐ, "Decision on Policies to Encourage Development of Cooperation and Production Linkages Associated with Agricultural Product Consumption, Building Large Fields.", <<https://thuvienphapluat.vn/van-ban/Thuong-mai/Quyét-dinh-62-2013-QD-TTg-chinh-sach-khuyen-khich-phat-trien-hop-tac-lien-ket-san-xuat-211219.aspx>> accessed on 14 April 2023.

performance.<sup>34</sup> The commissioner appoints an arbitration council, which provides farmers with efficient dispute resolution, impartiality, confidentiality, cost-effectiveness, flexibility, and relationship continuation, ensuring faster resolution, finality of decisions, and a stable agricultural commodity trade.<sup>35</sup>

In Arkansas, a structured seed arbitration process involves farmers submitting an intent notice for arbitration and a formal arbitration request form. The seed arbitration committee examines the case, and, within 30 days, findings and recommendations are provided to both parties.<sup>36</sup> In Minnesota, seed contracts may include provisions for mediation or arbitration, governed by the Uniform Arbitration Act and the Minnesota Civil Mediation Act.<sup>37</sup> Seed arbitration is a method that minimizes court proceedings, maintains confidentiality, and fosters positive relationships between disputing parties.

### **3.3.2 Packers and Stockyards Act and Minnesota's progressive approach**

The Farm Bill's amendments to the "Packers and Stockyards Act 1921," and Minnesota's progressive approach to dispute resolution, highlight the commitment to fair trade practices and effective dispute resolution in farming contracts. The amendments allow livestock and poultry growers to opt for arbitration,<sup>38</sup> reducing litigation costs and avoiding lengthy court proceedings. In addition, Minnesota's innovative approach, found in Sections 17.691 to 17.702 of the Minnesota Statutes 2022, encourages "informational exchange"<sup>39</sup> between handlers and producer associations, leading to communication to deliver fair contract terms. Voluntary binding arbitration and mediation further promote collaboration and provide legally enforceable resolutions. Arbitration methods also ensure the confidentiality of trade secrets and other confidential business information. These amendments and Minnesota's approach promote fairness, trust, and long-term viability in the farming industry, safeguarding the rights of agricultural producers and supporting sustainable trade practices.

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<sup>34</sup> Cornell Law School, Legal Information Institute, "Scope of Seed Arbitration Claims", <<https://www.law.cornell.edu/regulations/mississippi/2-Miss-Code-R-SS-1-3-12-122-2>> accessed on 11 July 2024.

<sup>35</sup> Arkansas Department of Agriculture, Plant Industries Division, "Seed Arbitration" <<https://www.agriculture.arkansas.gov/plant-industries/feed-and-fertilizer-section/seed-section/arbitration/>> accessed on 15 April 2023.

<sup>36</sup> Arkansas Department of Agriculture, (n 35).

<sup>37</sup> Minnesota Department of Agriculture, Seed Unit, Plant Protection Division, "Seed Arbitration" <<https://www.mda.state.mn.us/sites/default/files/2018-07/seedarbitration.pdf>> accessed on 15 April 2023

<sup>38</sup> Packers and Stockyards Act, 1921, <<https://www.ams.usda.gov/sites/default/files/media/PSAct.pdf>> accessed on 1 May 2023

<sup>39</sup> Minnesota Legislature, 2022 Minnesota Statutes, Section 17.697 Informational Exchanges; Dispute Resolution, <<https://www.revisor.mn.gov/statutes/cite/17.697>> accessed on 1 May 2023

### **3.4 The People's Republic of China**

To resolve rural land contract disputes fairly and promptly and to promote rural economic development and stability, Laws on Mediation and Arbitration of Disputes over Rural Land Contracts and Management ('the China M&A Law')<sup>40</sup> have been enacted to protect farmers who enter into long-term contracts for conducting their agricultural business. This legislation covers disputes related to various aspects of rural land contract and management, including contract conclusion, performance, alteration, and termination. It also addresses sub-contracting, lease, exchange, transfer, and infringement of land contract and management rights.<sup>41</sup> Parties in dispute can seek reconciliation or mediation through farmers' committees or township governments. If unsuccessful, they can apply for arbitration by a committee comprising representatives from local government, relevant departments, farmers' organizations, and legal professionals. The arbitration process involves stakeholders to ensure fair decision-making and maintain stability in China's farming industry.<sup>42</sup>

### **3.5 Third-party funding measures**

Third-party funding is a legal principle in many jurisdictions, such as England, Singapore, and Australia. Its underlying principle is the "Maintenance and Champerty"<sup>43</sup> principle that prohibits unrelated parties from providing financial support in dispute resolution, in exchange for monetary or property gains. This principle was formerly considered a criminal offense under Common Law. However, court decisions over time reduced its strictness, recognizing it as a hindrance for individuals with limited financial resources to access justice. The Criminal Law Act 1967 of England<sup>44</sup> abolished this principle, except in cases where it is contrary to public interest or policy.

In Singapore, most funding agreements were formerly unenforceable as they violated its public policy and the Maintenance and Champerty principle. The amendments officially

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<sup>40</sup> The National People's Congress of The People's Republic of China, 'Law of the People's Republic of China on Mediation and Arbitration of Disputes over Rural Land Contract and Management' <[http://www.npc.gov.cn/zgrdw/englishnpc/Law/2011-02/16/content\\_1620748.htm#:~:text=Article%20%20Mediation%20and%20arbitration,in%20line%20with%20social%20ethics.](http://www.npc.gov.cn/zgrdw/englishnpc/Law/2011-02/16/content_1620748.htm#:~:text=Article%20%20Mediation%20and%20arbitration,in%20line%20with%20social%20ethics.)> accessed 5 January 2023

<sup>41</sup> Law of the People's Republic of China on Mediation and Arbitration of Disputes over Rural Land Contract and Management (2009), Article 2 <[http://www.npc.gov.cn/zgrdw/englishnpc/Law/2011-02/16/content\\_1620748.htm](http://www.npc.gov.cn/zgrdw/englishnpc/Law/2011-02/16/content_1620748.htm)> accessed on 15 May 2023.

<sup>42</sup> *ibid*, Chapter 4, Article 50.

<sup>43</sup> Thailand Arbitration Center (THAC), 'Third-party Funding: Another promotional option for the arbitration process' <<https://thac.or.th/th/third-party-funding/>> accessed 8 January 2023.

<sup>44</sup> Thailand Arbitration Center (THAC), 'Third-party Funding: Another promotional option for the arbitration process' <<https://thac.or.th/th/third-party-funding/>> accessed 8 January 2023.

came into effect on March 1, 2018,<sup>45</sup> with the principle that funding agreements may be unenforceable if they violate public policy or other legal grounds. The third-party funding regulations in Singapore outline the types of alternative dispute resolution procedures and the types of disputes that can be funded by third-party funders. In 2020, Australia's government implemented regulations to enhance transparency in financing for judicial proceedings, requiring litigation funders to have an Australian financial services license. Courts shall determine if management fees violate public order or morals.<sup>46</sup>

#### **4. Conclusion and recommendations**

In Thailand, agriculture is the primary occupation, but many farmers struggle with capital shortages, limited access to raw materials and resources, and difficulties securing funding and knowledge. To tackle these issues, the Thai Contract Farming Act was introduced to resolve many unfair issues between farmers and agricultural business operators. However, it still does not cover all aspects.

To improve the dispute resolution process in the Thai contract farming system, it is essential to consider these challenges comprehensively by (1) addressing the issues of imbalanced bargaining power, (2) understanding the complexities of agricultural business, (3) ensuring fair representation of farmers' perspectives, and (4) providing financial support for access to justice. The author suggests the following recommendations adopted from the research for the growth and sustainability of the agricultural industry in Thailand.

##### **(1) The establishment of a specialized organization**

Agricultural business is complex, requiring specialized knowledge due to the unique and varied needs of each plant. This complexity can lead to disputes between parties. In Thailand, there is no specific organization or neutral third party to regulate, supervise, and control these complexities. In the United States, some states such as Arkansas and Minnesota have established a special organization called "Seed Arbitration" to deal with specific disputes arising from seed agreements.

To address the complexity of contract farming, the author suggests establishing a distinct arbitration body focusing solely on resolving agricultural disputes, namely "Arbitration

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<sup>45</sup> Ministry of Law Services Centre, "Third-Party Funding to be Permitted for More Categories of Legal Proceedings in Singapore", <<https://www.mlaw.gov.sg/news/press-releases/2021-06-21-third-party-funding-framework-permitted-for-more-categories-of-legal-proceedings-in-singapore/>> accessed 8 January 2023.

<sup>46</sup> Kristy Zander & Katie Walsh, LK Law Pty Ltd, "Changes to the Regulation of Litigation Funding in Australia", <<https://www.lk.law/2020/08/changes-to-the-regulation-of-litigation-funding-in-australia/>> accessed 8 January 2023

Institute Related to Agricultural Dispute Settlement.” To elaborate, government agencies shall act as initial arbitral tribunals and other related sectors’ involvement may be considered, including the farmer sector and the agricultural business operator sector. This specialized institute shall operate independently and be overseen by the Ministry of Agriculture and Cooperatives to ensure a clear and transparent resolution process.

## **(2) Compulsory Arbitration**

Farmers with less bargaining power often face limited dispute resolution options, particularly through mediation and court proceedings. From the research, the India AM Act was established to address such difficulties by state intervention of government officials to resolve disputes between parties. Similarly, Vietnam's Decision No. 62/2013/QD-TTG also implements an arbitration-based dispute resolution mechanism, underlining the importance of ensuring effective enforcement. The author, as a result, suggests state intervention by way of ‘compulsory arbitration’ for disputes to increase farmers’ bargaining power. Furthermore, the author proposes that the following methods be employed in the legislative framework of compulsory arbitration.

### **● Stakeholders’ collaboration**

Stakeholders’ collaboration and information-sharing are vital for effective agricultural dispute resolution. The India AM Act 2003 has been amended to incorporate the establishment of a ‘markets board’ to act as representatives of farmers and agricultural business operators, responsible for monitoring, inspecting, and dealing with disputes arising from farming contracts. Vietnam's Policy Decision No. 62/2013/QD-TTG promotes arbitration to establish facts and resolve disputes. In addition, the China M&A law employs working groups composed of representatives from various fields, including farmer organizations, government agencies, and legal experts. This collaborative approach greatly enhances the efficiency and comprehensiveness of arbitration as it addresses aspects and concerns in different areas.

The author acknowledges the importance of including representatives from different sectors in arbitration for a well-rounded analysis. However, caution should be exercised in involving representatives from the sector of agricultural business operators in arbitration, as it may impact the balance of bargaining power between farmers and agricultural business operators. It can be seen that above mentioned factors have substantial impacts on public interest and the economy, especially in Thailand, where agricultural products are essential for daily consumption and the economic structure; likewise the labor force, which operate every day in order to drive the economy. Unfair practices in contract farming’s dispute can lead to significant economic and social consequences, similar to labor disputes. The agricultural business in Thailand is considered a main business activity,<sup>47</sup> but meanwhile there is an

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<sup>47</sup> Athisathan Pong-Sirin, “Thailand and Agricultural Business”, Chiang Mai University, <<https://www.law.cmu.ac.th/law2011/177404/files/1325741886.docx>> accessed 11 July 2024.

imbalance of bargaining power among the contracting parties. Therefore compulsory arbitration, as seen in labor law, can also be used to ensure fair resolutions and protect public interests.<sup>48</sup> This approach could help address the power imbalances and exploitation often faced by farmers, ensuring a more equitable and effective dispute resolution process.

To address this concern, the author proposes two possible scenarios. In (1) the first scenario, when there is a significant imbalance in bargaining power, the compulsory arbitral tribunal should include a representative from the state to mediate impartially without involving farmers and agricultural business operators. In (2) the second scenario, if disputes require specialized expertise, representatives from farmers and agricultural business operators should be involved to ensure an informed resolution. The decision on which scenario to adopt should be at the discretion of the arbitration institution responsible for settling agricultural disputes. Such an arbitration institution should determine the specific circumstances of each case to ensure fair and effective dispute resolution.

- **Third-party funding measure**

Since arbitration costs and expenses in Thailand are considerably high for farmers with financial constraints, the author suggests employing a third-party funding measure as a means of financial support for farmers to access justice in the arbitration to cover arbitration costs. Adopted from Singapore,<sup>49</sup> the model of third-party funding measures can assist and enable farmers and stakeholders in the agricultural sector to benefit from accessible funding options. Once third-party funding is used to safeguard farmers' rights and enhance their access to justice, all parties should then have an equal opportunity to seek a fair resolution without the burden of overwhelming expenses. This can be considered as promoting and maintaining public order as well as increasing the bargaining power of Thai farmers.

Although funders typically seek high-value disputes,<sup>50</sup> the economic significance of large-scale farming across various countries makes it an attractive sector for funders.<sup>51</sup> Third-party funding in contract farming may offer a valuable mechanism for achieving fair outcomes in agricultural disputes while promoting social justice and social responsibility. It can be seen

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<sup>48</sup> Chinanawin, (n 21), page 31.

<sup>49</sup> Ministry of Law, Singapore, "Third-Party Funding to be Permitted for More Categories of Legal Proceedings in Singapore" <<https://www.mlaw.gov.sg/news/press-releases/2021-06-21-third-party-funding-framework-permitted-for-more-categories-of-legal-proceedings-in-singapore/#:~:text=From%2028%20June%202021%2C%20the,%2C%20and%20related%20mediation%20proceedings>> accessed on 15 May 2023

<sup>50</sup> Clarke Willmott LLP, "Is third-party funding a viable solution to help resolve the financial risks involved in commercial litigation disputes?", <<https://www.clarkewillmott.com/insights/third-party-funding/>> accessed 11 July 2024.

<sup>51</sup> Thammasat University, (n 13), page 1.

that, if this funding approach is applied to contract-farming disputes, it can support farmers in securing equitable resolutions and balanced negotiation power. This enhances funders' reputations, improves their portfolios, and improves their image, making it attractive to them as well, due to its significant effects on public welfare and the economy. This perspective supports the necessity of compulsory arbitration, with third-party funding to safeguard public interests, and highlights the importance of exploring the wider effects on social justice.

In addition, third-party funding measures should be under the authority of the Arbitration Institute Related to Agricultural Dispute Settlement. It is essential to outline particular and clear provisions concerning rules and obligations, roles and responsibilities, prohibitions and limitations, and legal punishments for regulating such funds under the Thai Contract Farming Act. This assures that the use of the funds will be carefully utilized to preserve farmers' interests as they are essential for the growth and sustainability of the agricultural industry in Thailand.