

# Insight into the Regulation of Agricultural Land Holdings Bill

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On 17 March 2017, the Minister of Rural Development and Land Reform published the draft Regulation of Agricultural Land Holdings Bill for public comment. The Bill is aimed at progressing land reform within the agricultural sector and will have far-reaching implications for current and future owners of agricultural land.



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## In summary, the Bill aims to improve the land reform process by:

- Prohibiting the outright sale of agricultural land to foreign persons and only permitting the registration of long-term leases in favour of a foreign person;
- Requiring all owners of agricultural land to register their land and ownership structures with a Land Commission to be established in terms of the Bill. The requirement to notify the Land Commission extends to current owners of land and also to persons who are in the process of acquiring ownership of land;
- Requiring all foreign persons intending to sell their agricultural land, to first offer their land to the minister to purchase. If the minister, within 90 days, refuses such offer or does not respond to the offer, only then can the foreign person advertise the land for sale to citizens. It should be noted that the definition of a "citizen" excludes foreign persons, but does include any foreign person who has permanent resident status in terms of the Immigration Act 13 of 2002;
- Setting ceilings or capped ownership parameters on agricultural land.

Any land holdings in excess of those ceilings are regarded as "redistribution agricultural land". The owner of the redistribution agricultural land, irrespective of whether the owner is a foreigner or a citizen, must offer the land for sale first to black people (as defined in the Employment Equity Act No. 55 of 1998, essentially being Indian, African and Coloured citizens) and thereafter to the minister; and

- Granting the minister the right to expropriate the redistribution agricultural land should the minister and the land owner not be able to reach agreement on the purchase price of the land. It should be noted that any expropriation process must be done in accordance with the expropriation legislation in force at the time of the expropriation.

While it is not unheard of for countries to restrict foreign ownership of land (eg Hungary, Denmark, Brazil, India, Ireland, Morocco, etc. do so in some form), the current draft of the Bill does give rise to a number of concerns about its practical implementation.

## Some of the concerns include:

- The reference in the Bill to concepts of an "offer" and "a right of first refusal" may result in confusion. The Bill purports to attempt to grant the minister a right of first refusal but places an obligation on a foreign owner to "offer" the right of first refusal to the minister. In our view, it would be preferable if the minister were rather granted a clear legislative right of first

refusal;

- It is unclear whether a sale agreement subject to a suspensive condition and the sale of controlling interest in a juristic owner of land, would be regarded as acquisitions of ownership which would trigger a requirement to notify the transaction to the Land Commission;
- The Bill does not adequately deal with leases in favour of foreign persons with lease periods below 30 years and in excess of 50 years which would ordinarily be capable of registration at the Deeds Office in terms of the Deeds Registries Act 47 of 1937; and
- The Bill attempts to categorise agricultural land as (a) land that falls within the ceilings of capped or ceiling ownership requirements; and (b) redistribution agricultural land, which is the land in excess of the capped ownership requirements. The current wording of the Bill appears to provide the minister with both a legislative obligation to purchase the redistribution agricultural land as well as the discretion to refuse to buy agricultural land, which would include redistribution agricultural land. As such, it would seem that the minister has both a compulsory obligation as well as a voluntary obligation to purchase redistribution agricultural land.

*The Webber Wentzel Real Estate team has carefully considered the Bill and submitted substantial comments on the Bill to the Minister for his consideration. The closing date for the submission of public comments has been extended to 13 June 2017.*

## ABOUT THE AUTHOR

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