

# ENVIRONMENTAL

THE THORN IN THE PROPERTY OWNER'S SIDE: THE NEW ALIEN AND INVASIVE SPECIES REGULATIONS

## THE THORN IN THE PROPERTY OWNER'S SIDE: THE NEW ALIEN AND INVASIVE SPECIES REGULATIONS

The National Environmental Management: Biodiversity Act, No 10 of 2004 (Biodiversity Act) was enacted to provide for the management and conservation of South Africa's biodiversity, protected species and ecosystems. In support of that objective, the Alien and Invasive Species Regulations were recently published under Government Notice R.598 in Government Gazette 37885 of 1 August 2014. These Regulations came into force on 1 October 2014.

The Biodiversity Act provides that anyone carrying out 'restricted activities' must hold a permit before such activities may validly be undertaken. Importantly for property buyers and sellers, the Regulations impose various obligations on persons owning property where listed alien invasive species are growing. These include the obligation on the seller of a property, and subsequently the buyer, to apply for a permit. The Regulations also oblige the seller of property to notify the buyer in writing of the presence of listed invasive species on that property.

This stands to have potentially far-reaching consequences by requiring property owners to take steps to ensure the early detection and, if necessary, eradication of alien and invasive species on their properties. A detailed Alien and Invasive Species List can be found at <http://www.invasives.org.za/legislation.html>.

Significantly, penalties for non-compliance with these provisions include a fine not exceeding R5 million rand and/or imprisonment for a period not exceeding ten years; and in the case of a second or subsequent conviction, a fine not exceeding R10 million and/or imprisonment for a period not exceeding ten years.

It is therefore recommended that property owners intending to sell their properties as well as other players in the real estate industry (such as property developers and estate agents) ensure that an appropriate clause is included in any sale agreement, stipulating that the buyer has acquainted him or herself with the property, knows that alien invasive plants are present on the property and understands the legal implications of that.

*Terry Winstanley and Gareth Howard*

<p><b>2013</b> 1st in M&amp;A Deal Flow, 1st in M&amp;A Deal Value, 1st in Unlisted Deals - Deal Flow.</p> <hr/> <p><b>2012</b> 1st in M&amp;A Deal Flow, 1st in General Corporate Finance Deal Flow, 1st in General Corporate Finance Deal Value, 1st in Unlisted Deals - Deal Flow.</p> <hr/> <p><b>2011</b> 1st in M&amp;A Deal Flow, 1st in M&amp;A Deal Value, 1st in General Corporate Finance Deal Flow, Legal Advisor - Deal of the Year.</p> <p><b>DealMakers</b></p>	<p><b>HIGHEST RANKING OF CLIENT SATISFACTION AMONGST AFRICAN FIRMS 2013</b></p> <p><b>Legal Week</b></p>	<p><b>VOTED NO.1 LAW FIRM FOR CLIENT SERVICE EXCELLENCE FOUR YEARS IN A ROW</b></p> <p><b>pmr africa</b></p>
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