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# REAL ESTATE ALERT

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ISSUE

## REGULATION OF AGRICULTURAL LAND HOLDINGS BILL PUBLISHED FOR COMMENT

The Draft Regulation of Agricultural Land Holdings Bill (Bill) was published on 17 March 2017. Members of the public are invited to comment before 13 April 2017.

# REGULATION OF AGRICULTURAL LAND HOLDINGS BILL PUBLISHED FOR COMMENT

*The Bill, if enacted in its present form, will have far reaching consequences on the agricultural sector, affecting all owners of agricultural land.*

*Every owner of private agricultural land must file personal details and details of the land with the Commission within 12 months of the Commencement.*



**The Draft Regulation of Agricultural Land Holdings Bill (Bill) was published on 17 March 2017. Members of the public are invited to comment before 13 April 2017.**

The Bill, if enacted in its present form, will have far reaching consequences on the agricultural sector, affecting all owners of agricultural land and in particular, foreign nationals and owners of agricultural land holdings determined to be in excess of 'ceilings' for land ownership, which excess will be available for redistribution, with or without expropriation. There has been limited publicity in regard to the Bill and Cliffe Dekker Hofmeyr has decided to issue this alert to highlight the effects of the Bill and to remind clients of the need to engage on this important Bill.

The Bill makes provision for the establishment of a Land Commission (Commission) appointed by the Minister responsible for Rural Development and Land Reform (Minister).

The Commission is to establish a register of public and private agricultural land ownership. Every owner of a private agricultural land holding must lodge a notification of ownership with the Commission in the prescribed form within 12 months of the commencement of the Act, if enacted in its present form (Commencement). The notification is to include the race, gender and nationality of the owner, and the size and use of the agricultural holding. If a person is a foreign person (see below) or becomes one or ceases to be one, that person must also file a notification within 90 days of such change of status.

'Agricultural land' means all land other than land which forms part of a proclaimed township or land in respect of which an application for the establishment of a township has been submitted prior to the Commencement, land which is excluded by the Minister by notice in the Gazette or which has been determined to be non-agricultural land in accordance with the Spatial Planning and Land Use Management Act, 2013.

Every person who acquires ownership of a private agricultural land holding after the Commencement must lodge a notification with the Commission within 90 days of the acquisition. A Registrar of Deeds (Registrar) may not register the transfer unless the notification has been lodged with the Commission.

A 'foreign person' will not be entitled to acquire ownership of agricultural land from the Commencement. A 'foreign person' is defined as a natural person who is not a citizen or not ordinarily resident in South Africa, a foreign juristic person (excluding a foreign juristic person controlled by a black person as defined in the Employment Equity Act, 1998 (Black Person)), or a juristic person in which a foreign person or foreign juristic person holds a controlling interest, which includes a trust.

After the Commencement, foreign persons may only conclude long leases of agricultural land (30 to 50 years) and such long leases must be registered in a Deeds Registry within 90 days of conclusion.

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*The Bill makes provision for an arbitration process to be followed in the event a dispute between the owner and the Commission.*



A foreign person wishing to dispose of an agricultural land holding must offer it to the Minister who will have a right of first refusal to acquire ownership of such land. The Minister must exercise the right within 90 days. If the Minister does not exercise the right, "the foreign person must make the land available for acquisition to the citizens". This process will presumably be addressed in regulations. A Registrar may not transfer such land unless these provisions have been complied with.

The Minister must, after consultation with the Commission and the Minister responsible for agriculture, "determine the categories of ceilings for agricultural land holdings in each district". In making such determination, the Minister is to have regard for various issues such as "land capability factors" (which include cropping factors, current output, soils, viability, water availability and infrastructure), capital requirements, annual turnover, income levels, price margins and other prescribed matters. Certain public statements indicate that an ownership cap of 12,000 hectares may be imposed on foreign persons.

Owners of agricultural land must notify the Commission "of the identity of the portion of such agricultural land holdings which constitutes redistribution agricultural land in terms of the provisions of the Act" (Redistribution Agricultural Land). The Bill makes provision for an arbitration process

to be followed in the event a dispute between the owner and the Commission, regarding such excess land.

A Black Person must be offered the Redistribution Agricultural Land within a prescribed period, whereafter the Minister will have a right of first refusal to acquire such land for a further period. If the owner and the Minister are not able to reach agreement as to the price for the Redistribution Agricultural Land, the Minister may expropriate the land in question, subject to the expropriation laws at the time. Institutional funds which are owners of Redistribution Agricultural Land may apply for exemption from these expropriation provisions.

If you are of the view that the objectives of the Bill may impact you and you require our assistance in providing commentary on the Bill, please contact Directors, William Midgley or Attie Pretorius timeously before 13 April 2017 to discuss same. Please note that comments received after 13 April 2017 will not be considered.

We have not considered the constitutionality of the Bill, but presumably this will be addressed in the Parliamentary process.

The gazette containing the Bill is available free online at [www.gpwonline.co.za](http://www.gpwonline.co.za), or you can contact us for a copy.

*William Midgley*

CHAMBERS GLOBAL 2017 ranked us in Band 1 for real estate.

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