

# AGRICULTURE, AQUACULTURE & FISHING SECTOR

## ALERT

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INCORPORATING  
KIETI LAW LLP, KENYA

## IN THIS ISSUE

**Navigating the sale or purchase of agricultural land in South Africa: Due diligence, mandatory disclosures and warranties for a successful sale**

The sale or purchase of any immovable property should be concluded with a reasonable amount of due diligence having been performed, before putting pen to paper. However, when moving into the realm of agricultural land, one should apply an even greater degree of scrutiny to the terms of a sale agreement and ensure that a thorough due diligence is conducted before the offer is signed.



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## Navigating the sale or purchase of agricultural land in South Africa: Due diligence, mandatory disclosures and warranties for a successful sale

The sale or purchase of any immovable property should be concluded with a reasonable amount of due diligence having been performed, before putting pen to paper. However, when moving into the realm of agricultural land, one should apply an even greater degree of scrutiny to the terms of a sale agreement and ensure that a thorough due diligence is conducted before the offer is signed.

Ordinarily, the sale of agricultural land will involve land on which farming activities of one nature or another are being conducted. The sale of a farm should raise several preliminary questions, depending on the individual transaction and the requirements of the purchaser, which necessitate careful consideration when preparing the sale agreement, inter alia, the following:

1. Are there any existing restrictions or servitudes registered against or in favor of the land?
2. What is the land currently being used for and will the income producing activities continue once the transfer has been registered?
3. Is there a history of crop rotation available and has soil testing been conducted to determine the suitability of the land for the planting of a particular crop?
4. Are there any water permits, or rights registered in favor of the farm which would impact on the intended use of the land, and what are the scope of such water rights?
5. What is the climate in the area and is information available on the historical annual rainfall/ precipitation?
6. How is the land zoned and are there any restrictions on the use of the land for commercial farming or other purposes?
7. Are there any planned developments in the immediate area which may impact on the use of the land or its value in the future?
8. Are there any ongoing disputes between neighboring farms or labor disputes with farmworkers?
9. Will the farm be sold as a going concern, and would the transaction meet the requirements to qualify as one which is zero rated for purposes of value-added tax?
10. Are there any existing land claims registered against the property?
11. Who will be entitled to the profits from the sale of the harvest of crops, post transfer, which may have been planted prior to acceptance of the offer, and in what proportion?
12. Do any farmworkers or their families currently reside on the farm?
13. Are there any game or other wild animals which may form part of the subject matter of the sale?
14. What is the value of the surrounding farms and what is the current municipal value of the land?

## Navigating the sale or purchase of agricultural land in South Africa: Due diligence, mandatory disclosures and warranties for a successful sale

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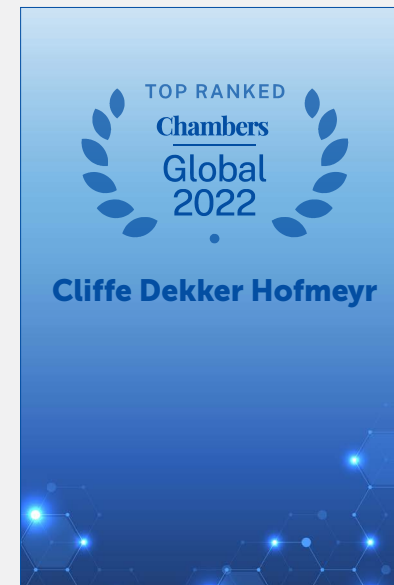
It should further be noted that while the Subdivision of Agricultural Land Act 70 of 1970 (Act) has been repealed, until such time as a commencement date has been confirmed, an astounding 23 years already having passed since the repeal, the restriction on the subdivision of agricultural land and the registration of certain servitudes, remain applicable to agricultural landowners, both still requiring ministerial consent. Save for very limited exceptions detailed in the Act, no servitude shall be registered over agricultural land without the written consent of the Minister of Agriculture, Land Reform and Rural Development. With servitudes being a common feature of agricultural land, this isn't something to be overlooked.

It is evident that the purchase of agricultural land comes with a long list of unique attributes to be aware

of, quite different from those dealt with in the ordinary course of the purchase of residential property. The Property Practitioners Act 22 of 2019 has introduced a mandatory "disclosure form" which should be used to form the framework of the due diligence process, however, when considering the magnitude of most transactions involving the sale of agricultural land, in both hectares and price tag, one should not merely rely on such disclosures.

A farm visit, armed with a copy of the existing title deed, farm diagrams and servitude diagrams, will lay the foundation not only for any mandatory disclosures required to be made, but to allow both parties to include transaction-specific warranties and suspensive conditions in the sale agreement before an offer can be made.

BRIDGET WITTS-HEWINSON



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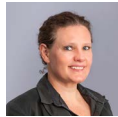
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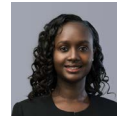
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**BBBEE STATUS: LEVEL ONE CONTRIBUTOR**

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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