

AGRICULTURE, AQUACULTURE & FISHING SECTOR

ALERT

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INCORPORATING
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New legislative developments in Kenya under the Land Control Bill, 2022

The Kenyan Land Control Bill, 2022 (Bill) was published on 25 February 2022 with the intention of repealing and replacing the Land Control Act (Cap 302) (LCA). The LCA was enacted in 1967 with the aim of protecting inexperienced African landowners from the improvident use of their newly acquired land rights and controlling unproductive use of agricultural land. The intention of the Bill is to align the dealings in agricultural land with the Constitution of Kenya, 2010 (Constitution) and recent legislation affecting disposition of interests and rights in land such as the Environment and Land Courts Act Number 19 of 2011, the Land Registration Act Number 3 of 2012 (LRA) and the Land Act Number 6 of 2012 (Land Act).



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In aligning with the Constitution and recent legislation, the Bill adopts constitutional concepts such as advocating for alternative dispute resolution mechanisms and upholding leadership, integrity gender and youth inclusivity in appointments under the Bill. The Bill also aligns its wording with recent legislation such as the Land Act and the LRA by adopting references to disposition of interests in land.

The Bill includes several substantive developments, specifically in the role and function of the land control committee (LCC) which replaces the land control board (LCB) under the LCA. The LCA allowed the LCB a limited administrative approach to its function whereas the Bill adopts a management approach where the role and function of the LCC is aggrandized to a regulator who monitors the terms of controlled transactions, albeit through a stakeholder inclusive approach.

We have highlighted some of the substantive developments introduced by the Bill below.

DEFINITION OF AGRICULTURAL LAND

The Bill retains the location and user criteria that were used in the LCA in identifying agricultural land. However, the references to municipalities and townships in the definition of agricultural land in the Bill have been updated and consolidated, and are now known as urban areas as referred to under the Urban Areas and Cities Act Number 13 of 2011.

CONTROLLED TRANSACTION

Under the LCA, a controlled transaction is a transaction on agricultural land that requires consent under the LCA. The LCA's definition is extensive and allows a textual approach to interpreting controlled transactions. The LCA lists the types of transactions that are considered controlled transactions and includes a general catch-all reference to "*disposal of or dealing with agricultural land*".

The Bill adopts a broad interpretation of a controlled transaction as "*any transaction affecting agricultural land*" and all transactions relating to "*the disposition of*" agricultural land or land used for agricultural purposes. This will likely require a purposive interpretation of the meaning of "*any transaction*" and "*disposition*" by reference to external sources such as the Land Act's definition of disposition or parliament's intention.

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Notably, the Bill does not retain the issue, sale, transfer, mortgage or any other disposal of or dealing with any share in a private company or co-operative society which owns agricultural land and a declaration of trust of agricultural land as controlled transactions. Although it is not clear whether both these transactions amount to controlled transactions, the Bill allows the LCC to refuse consent to a controlled transaction if a share is to be disposed of to a person who is not a citizen of Kenya, a private company or co-operative society wholly owned by Kenyans.

LAND CONTROL COMMITTEE

The LCA is implemented through the LCB, which either grants or refuses to consent to a controlled transaction. The Bill retains the role of the LCB through the LCC. Under the Bill, members of the LCC are appointed by the Chief Lands Registrar, which differs from the appointment of the members of the LCB by the Cabinet Secretary in charge of agriculture.

Qualifications of members of the LCC

The Bill includes additional qualifications to the ones provided under the LCA, such as academic qualifications, leadership and integrity qualifications under Chapter 6 of the Constitution of Kenya, and knowledge of the culture, traditions and dispute resolution mechanisms of the people living in the area under the jurisdiction of the LCC.

Composition

The composition of the LCC embraces an inclusive approach to gender, youth and elderly persons, in addition to the administrative representatives from the National and County Governments.

Role

In addition to the role of the LCB under the LCA, which was solely that of reviewing, granting or refusing consent to controlled transactions, the Bill includes additional roles such as:

- consenting to the exercise of the power of sale by charge;

- reviewing of any other dealings in land referred to it by the Chief Land Registrar;
- resolving any dispute over general boundaries;
- undertaking alternative dispute resolution including conciliation, mediation and traditional dispute resolution mechanisms; and
- undertaking fact-finding or evidence gathering matters related to land and succession.

Guidelines and considerations for granting or refusal of consent

The Bill prescribes considerations and guidelines for the LCC in reviewing, granting or refusing consent to controlled transactions. These considerations and guidelines adopt a stakeholder inclusive approach that safeguards the economic and cultural interests of affected parties and controlling unproductive use of agricultural land.

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Exemptions

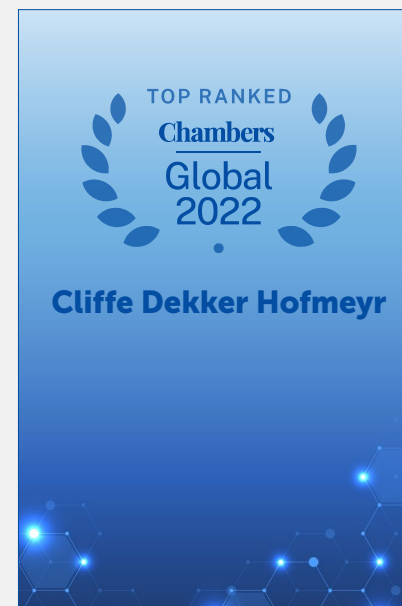
The Bill allows the Cabinet Secretary to exempt any land, share or controlled transaction from the provisions of the Bill. This differs from the LCA, which only allowed exemptions by the President of the Republic of Kenya.

CONCLUSION

Although the Bill was presented to the National Assembly and underwent its first reading at the National Assembly on 11 May 2022, there have been delays in passing it into legislation since the National Assembly

was dissolved on 9 June 2022 in preparation for the general elections on 9 August 2022. Kenya now expects the first sitting of the new and re-elected members of the National Assembly on 29 September 2022. Once the National Assembly is back in sitting, we will continue to monitor the progress of the passing of the Bill.

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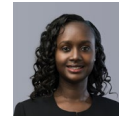
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BBBEE STATUS: LEVEL ONE CONTRIBUTOR

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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