

Agriculture, Aquaculture & Fishing Sector

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SOUTH AFRICA

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Fragmentation of agricultural land: Subdivisions, consolidations and notarial ties

South Africa's agricultural sector is one of the cornerstones of its economy that has been intricately woven into the legal fabric of the country. Despite its relatively small share of the total gross domestic product (GDP), agriculture remains a significant provider of employment in rural areas and is one of the major earners of foreign exchange in South Africa. South African agriculture is, however, limited by the relative scarcity of arable land and water resources, thus resulting in the evolution of the legislative framework governing agricultural land, which encompasses the country's commitment to sustainable agriculture and environmental conservation.

Creation of smaller agricultural land segments: Subdivisions

The Subdivision of Agricultural Land Act 70 of 1970 (Act), with specific reference to section 3(a) to (e) of the Act, aims to prevent the creation of smaller farming fragments that would be uneconomical and cause damage to the agricultural sector. It can therefore be interpreted that the purpose of the Act is to maintain farming viability.

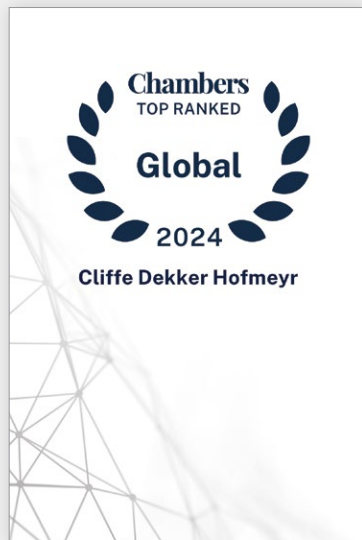
Accordingly, section 4 of the Act makes provision for the application to the Minister of Agriculture, Land Reform and Rural Development (Minister) for their consent for the subdivision of agricultural land, which consent the Minister,

at their discretion, may refuse or approve. Therefore, should a registered owner of agricultural land wish to subdivide their land, they will need to attend to the following:

- Appoint a town planner to conduct a cadastral survey of the property as well as to assist with the preparation and submission of the application to the Minister.
- Submit the application for subdivision to the Minister. The Minister will consider the reasons behind the subdivision application, which, for example, could be the owner's intention to sell a portion of the agricultural land, to establish a new farm on a portion, etc.
- Obtain a letter from the Department of Agriculture, Land Reform, and Rural Development to the effect that the farmland in question is not agricultural land as defined in section 1 of the Act (Chief Registrar's Circular 6 of 2002), where applicable.
- Once the consent from the Minister has been given, an application needs to be submitted to the roads authority and the local authority for their approval and consent. The local authority will issue a certificate in terms of the Spatial Planning and Land Use Management Act 16 of 2013 (SPLUMA), which certifies that all of the by-laws and spatial planning requirements of the local authority have been complied with.
- Appoint a land surveyor who will survey the proposed subdivision and draw a diagram of the subdivided agricultural land. The land surveyor will then submit the draft diagram to the office of the Surveyor General for approval.
- Appointment of a conveyancer once the above has been received, to lodge and register the subdivision in the relevant Deeds Office.

Fragmentation of agricultural land: Subdivisions, consolidations and notarial ties

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It is important to bear in mind that the Preservation and Development of Agricultural Land Bill (Bill) was tabled in Parliament in December 2020, with the objective to “*protect and preserve agricultural land and its productive use*” so that it is “*available and viable*” for the development of South Africa’s agricultural sector. One of the key aims behind the Bill is to preserve agricultural land by taking further steps towards preventing fragmentation. The Bill’s focus on sustainable land use practices and broader societal objectives may lead to stricter criteria for subdivisions to ensure alignment with these goals, which could impact the subdivision process. However, until the Bill comes into force, the Chief Registrar’s Circular 6 of 2002 maintains that the creation of smaller agricultural land segments shall be governed by the Act.

Creation of larger agricultural land parcels: Consolidations and notarial ties

There are two ways of creating larger parcels of agricultural land – either via consolidations or via notarial ties.

The former involves the merging of multiple parcels of land into a larger single parcel with a unified ownership structure and the latter restricts the use or development of land according to specific conditions. Understanding the difference between these concepts is crucial for farmers or landowners seeking to manage and develop agricultural land in a sustainable and compliant manner while capitalising on the benefits of less fragmented agricultural land.

Consolidations

- Consolidation of agricultural land can be defined as uniting two or more farms or agricultural holdings to form one larger farm or agricultural holding.
- The land parcels need to be owned and registered in the name of the same person or entity, they need to share a common border (be contiguous to each other) and they must fall within the same registration division.
- The registered landowner will need to appoint a town planner to conduct a cadastral survey of the property as well as to assist with the preparation and submission of the application to the local authority.
- Once the local authority has approved the consolidation and issued the relevant SPLUMA certificate, a land surveyor will need to be appointed to survey the proposed consolidated property and draw a diagram of the new property for submission to the office of the Surveyor General for approval.
- Once all of the requirements have been met and approvals obtained, a conveyancer will need to be appointed by the landowner to attend to the registration of the consolidation in the relevant Deeds Office in terms of section 40 of the Deeds Registries Act 47 of 1937 (Deeds Registries Act).
- Note that consolidated land cannot be dealt with separately unless they are subsequently subdivided.



Fragmentation of agricultural land: Subdivisions, consolidations and notarial ties

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Notarial ties

- A notarial tie agreement is a notarial deed entered into by two or more parties, in terms of which a condition is registered against the title deeds of the relevant properties/land parcels, thus the land parcels cannot be separately sold, leased, alienated or otherwise disposed of, or mortgaged and independently dealt with.
- Unlike consolidations, it is not a requirement for the properties being tied to be owned by the same registered owner, nor do the properties need to share a common border (i.e be contiguous to each other).
- In accordance with section 65 of the Deeds Registries Act, the notarial tie agreement needs to be signed by the landowners or parties in the presence of a notary. The agreement is then lodged and registered in the relevant Deeds Office.
- These agreements generally state that the tied properties shall, from the date of registration, for all intents and purposes, be dealt with as if they are one property.
- These agreements will be endorsed against the title deeds of the relevant properties and prohibit separate dealings of the properties cited in the said agreement.
- Should the respective landowners or parties to the agreement wish to deal with the properties separately, they can cancel the agreement by means of a bilateral notarial agreement, which agreement is then registered in the relevant Deeds Office and the cancellation noted on the respective title deeds of the properties.

Some of the benefits of less fragmented land:

- *Helps with better managing natural resources, protecting the environment, and planning land use effectively.*
- *Adjusting parcel boundaries is often necessary for better planning and management of water and other resources.*
- *Supports rural development by making infrastructure investments more efficient.*
- *Enhance social stability by revitalising communities.*
- *Integrated planning and co-operation can prevent conflicts between agricultural growth and environmental protection.*
- *Improves land administration by updating ownership records, promoting land markets, and resolving land disputes.*

Conclusion

As South Africa navigates these legal landscapes, the importance of sustainable practices and inclusive policies cannot be overstated. By focusing on conserving agricultural land rather than subdividing/fragmenting the land, South Africa can forge a legal framework that underpins a resilient and prosperous agricultural sector, benefiting all its citizens. While the Act and its amendments aim to balance farm viability with flexible regulations, the Bill seeks to further enhance the protection and sustainable use of agricultural land. As these laws continue to evolve, stakeholders must adapt to ensure that agricultural land is managed in a manner that benefits society.

Ceciley Oates and Raaheel Bux

OUR TEAM

For more information about our Agriculture, Aquaculture & Fishing sector and services in South Africa and Kenya, please contact:



André de Lange

Sector Head:
Agriculture, Aquaculture & Fishing
Director: Corporate & Commercial
T +27 (0)21 405 6165
E andre.delange@cdhlegal.com



Sammy Ndolo

Partner | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E sammy.ndolo@cdhlegal.com



Emil Brincker

Practice Head & Director:
Tax & Exchange Control
T +27 (0)11 562 1063
E emil.brincker@cdhlegal.com



Chris Charter

Practice Head & Director:
Competition Law
T +27 (0)11 562 1053
E chris.charter@cdhlegal.com



Jackwell Feris

Sector Head:
Industrials, Manufacturing & Trade
Director: Dispute Resolution
T +27 (0)11 562 1825
E jackwell.feris@cdhlegal.com



Jose Jorge

Director:
Employment Law
T +27 (0)21 481 6319
E jose.jorge@cdhlegal.com



Mashudu Mphafudi

Practice Head & Director:
Finance & Banking
T +27 (0)11 562 1093
E mashudu.mphafudi@cdhlegal.com



David Thompson

Deputy Practice Head & Director:
Corporate & Commercial
T +27 (0)21 481 6335
E david.thompson@cdhlegal.com



Albert Aukema

Director:
Competition Law
T +27 (0)11 562 1205
E albert.aukema@cdhlegal.com



Roy Barendse

Executive Consultant:
Dispute Resolution
T +27 (0)21 405 6177
E roy.barendse@cdhlegal.com



Tessa Brewis

Director:
Corporate & Commercial
T +27 (0)21 481 6324
E tessa.brewis@cdhlegal.com



Alex de Wet

Director:
Real Estate Law
T +27 (0)11 562 1771
E alex.dewet@cdhlegal.com



Simone Franks

Director:
Real Estate Law
T +27 (0)21 481 6464
E simone.franks@cdhlegal.com



Allan Hannie

Director:
Corporate & Commercial
T +27 (0)21 405 6010
E allan.hannie@cdhlegal.com



Andries Le Grange

Director:
Competition Law
T +27 (0)11 562 1092
E andries.legrange@cdhlegal.com

OUR TEAM

For more information about our Agriculture, Aquaculture & Fishing sector and services in South Africa and Kenya, please contact:



Richard Marcus

Director:
Dispute Resolution
T +27 (0)21 481 6396
E richard.marcus@cdhlegal.com



Martha Mbugua

Partner | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E martha.mbugua@cdhlegal.com



Burton Meyer

Director:
Dispute Resolution
T +27 (0)11 562 1056
E burton.meyer@cdhlegal.com



Susan Meyer

Joint Sector Head: Healthcare
Director: Competition Law
T +27 (0)21 481 6469
E susan.meyer@cdhlegal.com



Hugo Pienaar

Sector Head:
Infrastructure, Transport & Logistics
Director: Employment Law
T +27 (0)11 562 1350
E hugo.pienaar@cdhlegal.com



Lucinde Rhoodie

Director:
Dispute Resolution
T +27 (0)21 405 6080
E lucinde.rhodie@cdhlegal.com



Belinda Scriba

Director:
Dispute Resolution
T +27 (0)21 405 6139
E belinda.scriba@cdhlegal.com



Roux van der Merwe

Director:
Corporate & Commercial
T +27 (0)11 562 1199
E roux.vandermerwe@cdhlegal.com



John Webber

Director:
Real Estate Law
T +27 (0)11 562 1444
E john.webber@cdhlegal.com



Charl Williams

Director:
Corporate & Commercial
T +27 (0)21 405 6037
E charl.williams@cdhlegal.com



Simone Dickson

Legal Consultant:
Corporate & Commercial
T +27 (0)11 562 1752
E simone.dickson@cdhlegal.com



Clarice Wambua

Consultant | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E clarice.wambua@cdhlegal.com



Lauriene Maingi

Associate | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E lauriene.maingi@cdhlegal.com



Akhona Mgwaba

Associate:
Corporate & Commercial
T +27 (0)21 481 6321
E akhona.mgwaba@cdhlegal.com



Liëtte van Schalkwyk

Associate:
Dispute Resolution
T +27 (0)11 562 1686
E liette.vanschalkwyk@cdhlegal.com

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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JOHANNESBURG

1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa.

Dx 154 Randburg and Dx 42 Johannesburg.

T +27 (0)11 562 1000 F +27 (0)11 562 1111 E jhb@cdhlegal.com

CAPE TOWN

11 Buitengracht Street, Cape Town, 8001. PO Box 695, Cape Town, 8000, South Africa. Dx 5 Cape Town.

T +27 (0)21 481 6300 F +27 (0)21 481 6388 E ctn@cdhlegal.com

NAIROBI

Merchant Square, 3rd floor, Block D, Riverside Drive, Nairobi, Kenya. P.O. Box 22602-00505, Nairobi, Kenya.

T +254 731 086 649 | +254 204 409 918 | +254 710 560 114

E cdhkenya@cdhlegal.com

STELLENBOSCH

14 Louw Street, Stellenbosch Central, Stellenbosch, 7600.

T +27 (0)21 481 6400 E cdh Stellenbosch@cdhlegal.com

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