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WHAT YOU NEED TO KNOW ABOUT THE REGULATION OF AGRICULTURAL HOLDINGS BILL

On the 17 March 2017 the Regulation of Agricultural Holdings Bill (the “Bill” or “Act”) was published in the Government Gazette. Although this Bill may be subject to substantial amendment, a number of approvals and final proclamation before it becomes effective, we have sought to outline some of the key provisions of this Bill in its current form. Please note that reference to the Act, shall for the purposes of this article be reference to the Bill once enacted and proclaimed.

The Bill seeks to address amongst other objectives to obtain agricultural land for redistribution in order to support and promote productive employment and income to poor and efficient small scale farmers, to ensure redress for past imbalances in access to agricultural land and to provide certainty regarding the ownership of public and private agricultural land.

In terms of section 3(1) of the Bill, the Bill applies in respect of all agricultural land, and to all transactions whereby agricultural land is acquired or disposed of. Section 3(2) provides that any provision in any agreement to acquire or dispose of agricultural land is void in so far as it purports to exclude, or to limit, any provision of the Bill. As such the application of the Bill bears wide application as it will not only apply to the acquisition of agricultural land after the Bill becomes effective but it will also impact on the disposal of agricultural land owned by foreigners. The Bill contains a number of key definitions as set out below, the concept of foreign person is broadly defined and includes foreign juristic persons and foreign trusts:

“Agricultural land” means all land, excluding land—

- (a) in a proclaimed township: Provided that all land which, immediately prior to the date of commencement of this Act, was formally zoned for agricultural purposes by any sphere of government or any public entity, is excluded from the provisions of this paragraph;
- (b) with regard to which an application for declaration as a township had been submitted in accordance with applicable township establishment legislation prior to the date of commencement of this Act: Provided that such application is approved within a period to be determined by the Minister;
- (c) which, immediately prior to the date of commencement of this Act, was formally zoned for non-agricultural purposes by any sphere of government or any public entity;
- (d) which has been excluded from the provisions of this Act by the Minister by notice in the Gazette; or
- (e) which has been determined as non-agricultural land use in accordance with the provisions of the Spatial Planning and Land Use Management Act, 2013 (Act No. 16 of 2013);

“Citizen” means—

- (a) a person who is a South African citizen in terms of the provisions of the South African Citizenship Act, 1995 (Act No. 88 of 1995);
- (b) a person with permanent residence status in terms of the Immigration Act, 2002 (Act No. 13 of 2002);
- (c) a juristic person;

- (d) a trust; or
- (e) a person who is not a foreign person;

“Foreign juristic person” means a body (whether incorporated or unincorporated) that is formed outside the Republic of South Africa;

“Foreign person” means—

- (a) a natural person—
 - (i) who is not a citizen;
 - (ii) whose continued presence in South Africa is subject to a limitation as to time imposed by law; or
 - (iii) not ordinarily resident in South Africa;
- (b) a juristic person in which—
 - (i) a person contemplated in paragraph (a) or a foreign juristic person holds a controlling interest; or
 - (ii) two or more persons, each of whom is either a person contemplated in paragraph (a) or a foreign juristic person, hold an aggregate controlling interest;
- (c) a foreign juristic person;
- (d) the trustee of a trust in which a person contemplated in paragraph (a) or a foreign juristic person holds a controlling interest; or
- (e) the trustee of a trust in which two or more persons, each of whom is either a person contemplated in paragraph (a) or a foreign juristic person, hold a controlling interest; and
- (f) a foreign trust;

“Foreign trust” means a trust in which—

- (a) a foreign person holds a controlling interest; or
- (b) two or more foreign persons hold an aggregate controlling interest;

“Juristic person” includes a—

- (a) body of persons, corporate or unincorporated under the laws of the Republic;
- (b) partnership or association; and
- (c) trust as defined in the Trust Property Control Act, 1988 (Act No. 57 of 1988);

“Owner”, in respect of agricultural land, means the person in whose name the land is registered, and—

- (a) if the agricultural land is held by a trust, excluding state trust land, means a trustee;
- (b) if the owner of any agricultural land is deceased, means the executor of his or her estate and if no executor has been appointed or his or her appointment has lapsed, the Master;
- (c) if the estate of the owner of any agricultural land has been sequestrated, means the provisional or final trustee of his or her insolvent estate, as the case may be, or if no such appointment has been made, the Master;
- (d) if the owner of any agricultural land is a company that is being wound up, means the provisional or final liquidator of that company or if no such appointment has been made, the Master;

- (e) if the owner of any agricultural land is otherwise under a legal disability, means his or her representative by law;
- (f) if any agricultural land has been attached in terms of an order of a court, means the sheriff or deputy sheriff, as the case may be; and
- (g) includes the authorised representative of the owner, which authorised representative is ordinarily resident in the Republic;”

The Bill provides for the establishment, powers, qualifications, remuneration and composition of a Land Commission (sections 4 to 11). The Land Commission is required to establish and maintain a register of private agricultural land holdings (section 12).

Every owner of private agricultural land holdings at the commencement of the Bill will be required to lodge a completed notification of ownership with the Land Commission within 12 months of the commencement of the Bill (section 15). This notification will include information about:

- the race, gender and nationality of the owner; and
- the size and use of the agricultural land; and
- any real right registered against and license allocated to the agricultural land holdings,

the prescribed contents of the notification will vary if the owner is a foreign person, statutory body or if the agricultural land in question is public agricultural land.

From the commencement of the Bill every person who acquires ownership of private agricultural land holdings will need to lodge a notification of ownership in the prescribed form within 90 days of the date of acquisition. The Registrar of the Deeds Office may not execute a deed of transfer in respect of agricultural land holdings unless the notification of ownership has been lodged with the Registrar of the Deeds Office.

Importantly section 19(1) provides that no foreign person may from the date of commencement of the Act acquire ownership of agricultural land. There is a proviso which states that section 19(1) does not apply to agricultural land that is acquired by a foreign person where a “black person” as defined in the Employment Equity Act has a controlling interest.

In terms of section 20 of the Bill foreign persons may from the date of commencement conclude long term leases in respect of agricultural land holdings. Such leases must be lodged with the registrar of deeds and be registered or recorded in the Deeds Registry. A long term lease is defined within the Bill to mean a lease of not less than 30 years, or for the natural life of the lessee or any other person mentioned in the lease or which is renewable at the will of the lessee for a period or periods of not less than 30 and not more than 50 years.

Section 21 provides that a foreign person disposing of an agricultural land holding must provide the Minister with a right of first refusal of the agricultural land holding in the prescribed manner. The Minister has 90 days to accept the offer, failing which it will become available to acquisition by citizens (as defined in the Bill). In the event of such disposal the foreign person must lodge a completed notification of such disposal with the Registrar of Deeds.

Notifications are also required to be lodged with the registrar in the event of a foreign person ceasing to be a foreign person or in the event of an owner of agricultural land holdings becoming a foreign person (within 90 days of such cessation or the becoming of a foreign person).

Any person who fails to lodge a duly completed notification or disclosure in terms of the Bill shall be guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding 3 months.

Notwithstanding the importance of economic reformation within the South African context the economic impact of this Bill on foreign investment will become apparent as and when this Bill is enacted.

This newsflash has been prepared for information purposes only and does not constitute legal advice, or a legal opinion, the practical application of the provisions of this newsflash will vary depending on the facts of each case.

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