

GENERAL NOTICES • ALGEMENE KENNISGEWINGS

DEPARTMENT OF RURAL DEVELOPMENT AND LAND REFORM NOTICE 229 OF 2017

The Minister for Rural Development and Land Reform hereby publishes the Regulation of Agricultural Land Holdings Bill, 2017 and the Explanatory Memorandum for public comment.

Members of the public are invited to submit written comments within 30 calendar days of the publication of this notice to the following address:

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Hand delivery: 184 Jeff Masemola Street, Pretoria, (Old Building reception).

Comments received after the closing date will not be considered.

REPUBLIC OF SOUTH AFRICA

REGULATION OF AGRICULTURAL LAND HOLDINGS BILL

*(As introduced in the National Assembly (proposed section 75; explanatory
summary of Bill published in Government Gazette No. of) (The
English text is the official text of the Bill)*

(MINISTER OF RURAL DEVELOPMENT AND LAND REFORM)

[B – 2017]

BILL

To establish the Land Commission; to provide for the composition, appointment, qualification and remuneration of members of the Land Commission; to provide for the functions and powers of the Land Commission; to provide for the delegation of powers by the Minister and the Land Commission; to provide for the establishment and maintenance of a register of public and private agricultural land holdings; to provide for the declaration of present ownership and acquisition of private agricultural land; to provide for the submission of information on public agricultural land; to provide for prohibition on the acquisition of agricultural land by a foreign person; to provide for and regulation of lease by foreign persons; to provide for the determination of ceilings in respect of agricultural land; to provide for redistribution agricultural land; to provide for investigations by the Land Commission; to provide for the appointment and responsibilities of the chief operations officer; to provide for funds for the Land Commission; to provide for auditing of the financial statements and records of the Land Commission; to provide for a certificate to be received as evidence; to provide for searches; to provide for manuals and guidelines; to limit the liability of the Land Commission and its employees in respect of acts done in good faith under this Act; to provide for the exemption from liability; to provide for the forfeiture of unlawfully acquired land; to provide for offences and penalties; to provide for regulations; and to provide for matters connected therewith.

PREAMBLE

WHEREAS section 25 of the Constitution of the Republic of South Africa, 1996 ("the Constitution"), provides for the State to take reasonable legislative and other measures within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis;

WHEREAS section 25 of the Constitution further stipulates that no provision of that section may impede the State from taking legislative and other measures to achieve land, water and related reforms in order to redress the results of past discrimination;

AND WHEREAS there is a need to redistribute agricultural land more equally by race and class, raise agricultural output and food security and to advance social justice and political stability by obtaining agricultural land to support and promote productive employment and income to poor and efficient small scale farmers,

Parliament of the Republic of South Africa therefore enacts as follows:—

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CHAPTER 1

INTERPRETATION, OBJECTS AND APPLICATION OF ACT

Definitions

1. (1) In this Act, unless the context indicates otherwise—
"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);

"chief operations officer" means the chief operations officer appointed in terms of section 28;

"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;

"Commission" means the Land Commission established by section 4;

"department" means a department as defined in section 1 of the Public Service Act, 1994 (Proclamation No. 103 of 1994);

"Director-General" means the Director-General of the Department of Rural Development and Land Reform;

"district" means the area, determined in terms of section 4 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), of a district municipality as defined in section 1 of that Act;

"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;

"Institutional Funds" includes investment funds, pension funds, hedge funds that invest or trade in agricultural land and related derivatives in their use of agricultural land as an asset class;

"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);

"long term lease" means any registered lease of agricultural land which, when entered into, was for a period 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 which together with the first period amount to not less than 30 and not more than 50 years;

"Minister" means the Minister responsible for Rural Development and Land Reform;

"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;

"person" includes a trust;

"prescribe" means prescribe by regulation in terms of section 37;

"public agricultural land" means agricultural land that—

- (a) vests in the national government or relevant provincial government in terms of section 239 of the Constitution of the Republic of South Africa, 1993 (Act No.200 of 1993), and any other agricultural land which after the commencement of the said section was acquired by any national or provincial department;
- (b) vests in a public entity as defined in section 1 of the Public Finance Management Act, 1999 (Act No.1 of 1999);
- (c) vests in a municipality as defined in section 1 of the Local Government: Municipal Structures Act, 2000 (Act No, 32 of 2000); or
- (d) vests in a municipal entity as defined in section 1 of the Local Government: Municipal Structures Act, 2000 (Act No, 32 of 2000);

"redistribution agricultural land" means all agricultural land that falls between or exceeds any category of agricultural land holdings contemplated in section 25.

"register" means the register of public and private agricultural land contemplated in section 12;

"registered" means to record in a register in terms of—

- (a) the Deeds Registries Act, 1937 (Act No. 47 of 1937);
- (b) the Mining Titles Registration Act, 1967 (Act No. 16 of 1967); or
- (c) the Sectionals Titles Act, 1986 (Act No. 95 of 1986); and

"registrar" means a registrar of deeds appointed in terms of the Deeds Registries Act, 1937 (Act No. 47 of 1937).

(2) For the purposes of this Act —

- (a) a person shall be deemed to have a controlling interest in a juristic person or trust, where the person alone or together with any associate, is in a position to control not less than 50% of the voting power in the juristic person or attached to the trust, as the case may be ;
- (b) a reference to the voting power in a juristic person or a trust is a reference to the maximum number of votes that might be cast at a general meeting of the juristic person or by the beneficiaries of the trust, as the case may be.

(3) For purposes of this Act, a juristic person shall be deemed to be Black in the event that Black people as defined in the Employment Equity Act, 1998 (Act No. 55 of 1998), who are citizens own and control 50% or more of such juristic person.

(4) If a person is required to disclose his or her race and gender in terms of this Act, such person must indicate—

- (a) his or her race as Black, Indian, Coloured, White or other; and
- (b) his or her gender as female or male.

Objects of this Act

2. The objects of this Act are to—

- (a) obtain agricultural land for redistribution in order to support and promote productive employment and income to poor and efficient small scale farmers;
- (b) ensure redress for past imbalances in access to agricultural land;
- (c) promote food security in the Republic;
- (d) provide a transparent and more conducive regulatory framework for the generation and utilisation of policy-relevant information on agricultural land ownership and usage, thereby improving the State's ability to monitor and evaluate its compliance with the Constitutional directive to ensure land, tenure and related reforms in respect of land with the intent of taking measures to redress results of past racial discrimination;
- (e) provide certainty regarding the ownership of public and private agricultural land; and
- (f) enable the State to effectively deliberate on matters of land, natural resource economics, property market and extent of land use to meet the policy and legislative intent of the State including its principles and objectives.

Application of Act

3. (1) This Act applies in respect of all agricultural land, and to all transactions whereby agricultural land is acquired or disposed of.

(2) 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 this Act.

(3) In the event of a conflict between the provisions of this Act and any other law relating to the acquisition and disposal of agricultural land, the provisions of this Act prevail.

CHAPTER 2 LAND COMMISSION

Establishment of Land Commission

4. (1) There is hereby established a juristic person called the Land Commission.

(2) The Commission—

- (a) has jurisdiction throughout the Republic;
- (b) must perform the functions provided for in this Act; and
- (c) is accountable to the Minister.

Composition of Commission, tenure of office, vacancies and removal

5. (1) The Commission consists of the following members appointed in writing by the Minister:

- (a) the chairperson; and
- (b) at least five but not more than nine other members.

(2) The members referred to in subsection (1) shall be appointed by virtue of their knowledge and experience of agriculture, economics, business and financial management, the law, the environment, rural development, land administration or research or possessing academic training, expertise and experience as determined by the Minister.

(3) The Minister must appoint one person from amongst persons contemplated in subsection (1)(b) as deputy chairperson.

(4) Members of the Commission, other than the chairperson are appointed on a part time basis, for a period of five years, which is renewable for a further period of not more than five years.

(5) Whenever it is necessary to appoint a member in terms of subsections (1)(b), the Minister must by notice, in two newspapers circulating nationally and in the *Gazette*, invite all interested persons stakeholders and institutions to submit, within a specified period of time and in a manner

mentioned in the notice, written nominations of people to be appointed as members of the Commission .

(6) The nomination must be supported by—

- (a) personal details of the nominee;
- (b) particulars of qualifications, knowledge and experience in matter contemplated in subsection (2), or related matters or skills which may make the nominee suitable for appointment; and
- (c) any other information that may be mentioned in the notice referred to in subsection (5).

(7) When the chairperson is unable to perform the functions of that office, such functions shall be performed by the deputy chairperson.

(8) (a) If a member of the Commission contemplated in subsections (1) (b) dies or vacates his or her office before the expiry of the period for which he or she was appointed, a suitable person must be appointed to fill the vacancy for the remainder of the period; and

(b) The provisions of subsections (5) and (6) apply to the filling of a vacancy in terms of paragraph (a).

(9) (a) The Minister may remove a member of the Commission on the ground of misconduct, incapacity or incompetence; or if the member no longer meets any of the qualifications listed in section 6.

(b) A decision to remove a member of the Commission on the ground of misconduct, incapacity or incompetence must be based on a finding to that effect by an investigation committee appointed by the Minister.

(c) The Minister may suspend a member of the Commission who is under investigation in terms of paragraph (b) pending the finalisation of the investigation.

Qualification and vacation of office of member of Commission

6. (1) A member of the Commission must be a person who—

- (a) is a South African citizen or a holder of a permanent resident permit;
- (b) is ordinarily resident in the Republic of South Africa;
- (c) is not insolvent;

- (d) has not been declared by a court of law to be mentally incompetent or is detained in terms of the Mental Health Care Act, 2002 (Act No. 17 of 2002);
- (e) has not been convicted, whether in the Republic of South Africa or elsewhere, of an offence involving dishonesty and for which he or she was sentenced to imprisonment without the option of a fine, unless the person has received a grant of amnesty or a free pardon before the date of his or her appointment;
- (f) has not been removed from an office of trust on account of improper conduct;
- (g) is not a political office bearer at the national, provincial or municipal sphere of government; and
- (h) is a fit and proper person to be appointed.

(2) A member of the Commission must vacate his or her office, if such a member—

- (a) no longer meets any of the requirements listed in subsection (1);
- (b) resigns by written notice to the Minister;
- (c) is incapable of performing his or her duties due to ill health;
- (d) has been removed from office in terms of section 5(7); or
- (e) has, without the leave of the Commission, been absent from three or more consecutive meetings of the Commission.

Remuneration of members of Commission

7. The members of the Commission who are not in the full-time service of the State, must be paid such remuneration and allowances, as the Minister with the concurrence of the Minister of Finance may determine, taking into account—

- (a) the roles, duties and responsibilities of the different members;
- (b) affordability in relation to the responsibilities of the different members;
- (c) whether a member has been appointed in a full time or part time capacity; and
- (d) the level of expertise and experience required for a member.

Functions of Commission

- 8.** (1) The functions of the Commission are to—
- (a) establish and maintain a register of agricultural land in respect of all private and public agricultural land holdings;
 - (b) for purposes of an enquiry, subpoena information and call for oral representation before the Commission, or a person appointed by the Commission, in terms of the provisions of this Act; and
 - (c) advise the Minister on—
 - (i) compliance with section 25 and 26; and
 - (ii) any other matter referred to it by the Minister.
- (2) The information that must be reflected in the register referred to in subsection (1)(a), must be as prescribed.

Powers of Commission

- 9.** Subject to the provisions of the Act and compliance with any other law, the Commission may do all that is necessary or expedient to perform its functions effectively in order to give effect to the objects of the Act, which includes the power to—
- (a) enquire into the correctness and accuracy of disclosures regarding nationality, race and gender of an owner and the use and size of the agricultural land holdings;
 - (b) determine its own staff establishment, with the concurrence of the Minister;
 - (c) collect and disseminate relevant information;
 - (d) determine the manner of convening meetings, the procedure at meetings, the quorum for meetings and the manner in which minutes of meetings must be kept;
 - (e) obtain, by agreement the services of any person or institution, including an organ of state, for the performance of any specific act or function;
 - (f) request the Minister to second a person in the employ of the Department of Rural Development and Land Reform to assist the Commission in the performance of any act or function; and

- (g) deal with matters that are incidental to the exercise of any of its powers.

Responsibilities of chairperson

10 The chairperson is the accounting authority of the Commission, and as such, is responsible for—

- (a) formation and development of an efficient administration;
- (b) appointment of staff subject to the Public Service Act, in posts on the staff establishment referred to in section 9 (b); (b) the appointment of staff, subject to the Public Service Act, in posts on the staff establishment referred to in section 9;
- (c) the organisation, control, management, effective utilisation and training of all staff;
- (d) the maintenance of discipline;
- (e) the promotion of sound labour relations and compliance with applicable legislation;
- (f) income and expenditure of the Commission;
- (g) assets and discharge of all liabilities of the Commission;
- (h) proper and diligent implementation of the Public Finance Management Act; and
- (i) the proper control and management of the Commission.

Delegation of powers

11. (1) The Minister may, in writing delegate any of his or her powers in terms of this Act, excluding the power to appoint members of the Commission and the power make regulations, to the Director-General or any other suitably qualified official of the Department of Rural Development and Land Reform.

(2) The Commission may delegate any of its powers to a particular member of the Commission or to the chief operations officer of the Commission.

(3) The chairperson may—

- (a) delegate management or other functions of the chairperson to the chief operations officer or staff members with appropriate skills to assist the chairperson in the management, and control over the functioning of the Commission;
- (b) delegate any power and duty assigned to the chairperson in terms of this Act or any other law to the chief operations officer or any member of the staff of the Commission; or
- (c) instruct the chief operations officer or any member of the staff of the Commission to perform any of the chairperson's duties in terms of this Act.

(4) A delegation in terms of subsection (2) or (3) must be in writing and is subject to any conditions and directions the Commission or the chairperson, as the case may be, may impose.

(5) The Minister, the Commission or the chairperson may confirm, vary or revoke any decision taken in consequence of a delegation or instruction.

CHAPTER 3

REGISTER OF AGRICULTURAL LAND HOLDINGS

Register of public and private agricultural land

12. (1) (a) The Commission must establish and maintain a register in the prescribed format, in which all disclosure notifications in respect of private agricultural land holdings delivered, and information in respect of public agricultural land holdings submitted to the Commission in accordance with the provisions of this Act, must be recorded.

(b) The register must be open for inspection at such place and time as may be prescribed.

(2) The Commission may maintain the register wholly or partly—

- (a) on paper or on microfilm, or in such other medium as the Commission deems appropriate; and
- (b) in such device for storing or processing information as the Commission deems appropriate.

(3) The Commission may destroy any part of the register that has been microfilmed or copied in accordance with subsection (2) and such microfilm or copy must be—

- (a) regarded as a true copy of such part or form of the register; and
- (b) received in evidence in any court or tribunal acting judicially.

Correction of errors

13. (1) The Commission may authorise—

- (a) the correction of any clerical error or error in translation appearing in the register; and
- (b) the amendment of any document, the amendment of which no express provision is made in this Act.

(2) The Commission may exercise the authority under subsection (1) of its own accord or upon a request in writing.

(3) Where the Commission intends exercising the authority under subsection (1) of its own accord, the Commission must—

- (a) give notice of its intention to the person in respect of whom the intended correction or amendment applies; and
- (b) give the person contemplated in paragraph (a) 14 days to respond before the Commission exercises its authority.

Access to information in register

14. (1) Subject to subsection (2), a person may, upon payment of the prescribed fee—

- (a) obtain particulars of information recorded or contained in the register;
- (b) obtain extracts of particulars of information recorded or contained in the register; and
- (c) obtain from the Commission copies of any statistical data if available from the information recorded in the register, provided that at least 14 days' notice has been given of such request to allow for the preparation of such data and the copies thereof.

(2) The Commission may not provide to a person any particulars or data recorded or contained in the register if such particulars or data is protected in terms of Chapter 4 of Part 2 of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).

CHAPTER 4 DISCLOSURES IN RESPECT OF PRIVATE AGRICULTURAL LAND HOLDINGS

Disclosure of present ownership

15. (1) Every owner who at the commencement of this Act, owns a private agricultural land holdings must lodge a duly completed notification of ownership in the prescribed format with the Commission within 12 months from the date of the commencement of this Act.

(2) Subject to subsections (3), (4) and section 26, a notification contemplated in subsection (1) must disclose the prescribed information, which information must include—

- (a) the race, gender and nationality of the owner;
- (b) the size and use of the agricultural land holdings;
- (c) any real right registered against and licence allocated to the agricultural land holdings; and
- (d) any other information as may be prescribed.

(3) Subsection (2)(a) does not apply to a statutory body or in respect of public agricultural land.

(4) The requirement to indicate race and gender does not apply to an owner who is a foreign person.

Disclosure of acquisition of ownership

16. (1) (a) Every person who acquires ownership of a private agricultural land holdings after the commencement of this Act must, in respect of such ownership, lodge a duly completed notification of ownership in the

prescribed format with the registrar within 90 calendar days from the date of such acquisition.

(b) A notification contemplated in paragraph (a) must indicate—

- (i) the race, gender and nationality of the owner;
- (ii) any real right registered against and licence allocated to the agricultural land holdings;
- (iii) the size and use of the agricultural land holdings; and
- (iv) any other information as may be prescribed.

(2) The registrar, may not execute a deed of transfer in respect of agricultural land holdings contemplated in subsection (1) unless the notification of ownership contemplated in subsection (1) has been lodged with the registrar.

(3) The registrar concerned must, within 30 days of the registration of agricultural land holdings contemplated in subsection (1), provide the Commission with a copy of the notification of ownership.

CHAPTER 5

PUBLIC AGRICULTURAL LAND HOLDINGS

Submission of information on public agricultural land holdings

- 17.** (1) This Chapter applies to the accounting officer of a—
- (a) department;
 - (b) public entity;
 - (c) municipality; or
 - (d) municipal entity,

who is responsible for the administration of public agricultural land holdings, or whose department, public entity, municipality or municipal entity is the custodian of public agricultural land holdings or in whose department, public entity, municipality or municipal entity public agricultural land holding is vested.

(2) Every accounting officer contemplated in subsection (1) must submit to the Commission, within such period or periods as determined by the Commission—

- (a) such details of all public agricultural land holdings administered by that department, public entity, municipality or municipal entity as the Commission may determine;
- (b) such details of all acquisitions and disposals of public agricultural land holdings as the Commission may determine within a period or periods determined by the Commission; and
- (c) any other information as may be prescribed.

(3) If the details or information contemplated in subsection (2) is not submitted within the period or periods contemplated in that subsection, the accounting officer concerned must submit reasons for the delay in writing, and the Commission may take such steps as it deems necessary to ensure compliance with subsection (2).

Record of public agricultural land holdings

18. The Commission must record the information contemplated in section 17 (2) in the register established and maintained in terms of section 12.

CHAPTER 6

PROHIBITION ON ACQUISITION OF AND LEASE OF AGRICULTURAL LAND BY FOREIGN PERSONS

Prohibition on acquisition of ownership of agricultural land by a foreign person

19. (1) No foreign person shall, from the date of the commencement of this Act, acquire ownership of agricultural land.

(2) Subsection (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, 1998 (Act No. 55 of 1998) has a controlling interest.

Lease of agricultural land holdings

20. (1) A foreign person may, from the date of the commencement of this Act, conclude a long term lease of agricultural land holdings.

(2) A lease contemplated in subsection (1) must be submitted by the lessee and lessor to the registrar concerned who must, within 90 calendar days of receipt of such a lease, register the lease in the register or record of the deeds registry.

(3) Notwithstanding any other law, a registrar may not, after the commencement of this Act, register or record in the register or records of the deeds registry in question any documents lodged with that deeds registry in respect of a lease contemplated in subsection (1), unless the registrar of deeds concerned is satisfied that subsection (1) has been complied with.

Disposal by foreign person of agricultural land holdings

21. (1) A foreign person disposing off ownership of an agricultural land holding, offer the Minister, in the prescribed manner, the right of first refusal to acquire ownership of such agricultural land holdings.

(2) (a) The Minister must, within 90 days or less of the offer contemplated in subsection (1), indicate whether he or she intends acquiring the agricultural land holdings; and

(b) If the Minister—

- (i) does not indicate whether he or she intends to acquire the agricultural land holdings; or
- (ii) does indicate that he or she does not intend acquiring the agricultural land holdings,

within the period referred to in paragraph (a), the foreign person must make the land available for acquisition to the citizens.

(3) The registrar may not execute a deed of transfer in respect of agricultural land holdings contemplated in subsection (1), unless proof is provided that subsection (1) or (2), as the case may be, has been complied with.

Notification of disposal of ownership in agricultural land holdings

22. (1) If the ownership of agricultural land holdings that is registered or recorded in the deeds registry in the name of a foreign person is disposed of in terms of section 21, such foreign person must lodge a duly completed notification of such disposal in the prescribed form with the registrar.

(2) The registrar concerned, must within 30 days of the registration of the disposal contemplated in subsection (1), provide the Commission with a copy of the notification of the disposal.

Notification upon ceasing to be foreign person

23. If a foreign person who is the owner of agricultural land holdings ceases to be a foreign person, such foreign person must lodge a duly completed notification of such cessation in the prescribed manner with the registrar within 90 days from the date on which the cessation took place.

Notification upon becoming foreign person

24. If the owner of agricultural land holdings becomes a foreign person, such foreign person must lodge a duly completed notification in the prescribed manner with the registrar within 90 days from the date on which such owner became a foreign person.

CHAPTER 7

CATEGORIES OF CEILINGS FOR AGRICULTURAL LAND HOLDINGS

Categories of ceilings for agricultural land holdings

25. (1) (a) The Minister must, by notice in the *Gazette*, and after consultation with the Commission and the Minister responsible for agriculture, determine the categories of ceilings for agricultural land holdings in each district;

(b) Different categories of ceilings may be determined in terms of paragraph (a); and

(c) Notwithstanding the provisions of paragraphs (a) and (b) the Minister may determine special categories ceilings and exempt a particular category of agricultural land holding from the provisions of paragraphs (a) and (b).

(2) In determining the ceilings for agricultural land holdings for each district, regard must be had to such criteria and factors as may be prescribed, including the following:

(a) land capability factors, including—

(i) high, medium and unique agricultural land, grazing and cropping land, climatic factors;

(ii) matters pertaining to the current production output, commodity-specific constraints, farm size, farm viability, economies of scale, agro-industries on farms, number of farm workers and their dependents;

(iii) variations in physical potential in terms of soil type, soil depth and quality, grazing capacity, water availability and quality, distances from markets, available infrastructure and any other relevant factor; and

(iv) the relationship between resources, such as between cultivated land and natural pasture, dry land and irrigated land, soil types on cropland and any other relevant factor that will have an influence in determining the economic size within an area.

(b) capital requirements of different enterprises;

- (c) measure of expected household and agro-enterprise income;
- (d) annual turnover;
- (e) relationship between product prices and price margins; and
- (f) any other matter as may be prescribed.

(3) The Minister must, before making a determination in terms of subsection (1), published a draft of the proposed determination by notice in the *Gazette* and in the media circulating nationally and in the relevant district, calling on interested persons to comment on the draft, in writing, within a period not less than 30 days from the date of publication of the notice.

CHAPTER 8 REDISTRIBUTION AGRICULTURAL LAND

Redistribution agricultural land

26. (1) The owner of an agricultural land holding must, together with a notification contemplated in section 15, notify the Commission in the prescribed format of the identity of the portion of such agricultural land holdings which constitutes redistribution agricultural land in terms of the provisions of this Act.

(2) (a) Black people as defined in the Employment Equity Act, 1998 (Act No. 55 of 1998), must be offered the right of first refusal in respect of the redistribution agricultural land contemplated in subsection (1) within a prescribed period and in the prescribed manner.

(b) If no Black person, contemplated in paragraph (a) acquires the redistribution agricultural land within the prescribed period, such land shall be acquired by the Minister within the prescribed period.

(c) If the owner of the redistribution agricultural land and the Minister are unable to reach an agreement on the purchase price, the Minister may, subject to legislation regulating expropriation, expropriate the redistribution agricultural land in question.

(3) (a) Within 90 days of receipt of the notice contemplated in subsection (1), the Commission must advise the owner

concerned whether it agrees with the identification of the redistribution agricultural land contemplated in subsection (1).

(b) If the Commission and the owner concerned cannot agree on the identification of the redistribution agricultural land, the matter may be referred to arbitration in terms of the Arbitration Act, 1965 (Act No.42 of 1965).

(c) If a person who is not in the full-time service of the State is appointed as an arbitrator for the purposes of the arbitration contemplated in paragraph (b), the Director-General of the Department of Rural Development and Land Reform may approve the payment to such arbitrator, of the remuneration and allowances as may be determined by the Minister, in consultation with the Minister of Finance, for services performed by the arbitrator.

(4) (a) Institutional Funds that own agricultural land holdings portions of which constitute redistribution agricultural land in terms of the provisions of this Act, may apply to the Minister for exemption from the provisions of subsection 25(1).

(b) The Minister may, on good cause shown and in furtherance of the objects of this Act as well as in terms of other relevant and applicable legislations of the Republic or international instruments assented to by the Republic, exempt any Institutional Funds contemplated in paragraph (a).

CHAPTER 9

ADMINISTRATIVE AND OTHER MATTERS

Investigation by Commission

27. (1) If the Commission is of the view that the information contained in a disclosure or notification required by this Act, may be false, the Commission may conduct an investigation.

(2) If the Commission decides to conduct an investigation, it may obtain evidence to determine the correctness or otherwise of the information contained in a disclosure or notification.

- (3) For purposes of investigation, the Commission may—
- (a) by written notice subpoena a person, who in its opinion has information which is material to the investigation, to appear before the Commission or its investigation committee to—
 - (i) give evidence; or
 - (ii) produce a document in the possession, control or custody of that person and specified in the subpoena;
 - (b) administer an oath or affirmation to the person contemplated in paragraph (a);
 - (c) question the person contemplated in paragraph (a), or have such person questioned by a person designated by the Commission; and
 - (d) retain for a reasonable period, but not exceeding 21 days, a document produced in terms of subparagraph (a)(ii).

(4) Any person directed to give evidence or produce documents in terms of subsection (3)(a) shall not be compelled to give evidence or produce any document or object which could be used in evidence against him or her in a criminal trial.

Chief Operations Officer

28. (1) The Minister must, in terms of the laws governing the public service and after consultation with the Commission, appoint a person as the chief operations officer of the Commission.

- (2) The chief operations officer must—
- (a) assist the chairperson in the discharge of the chairperson's responsibilities as contemplated in section 10; and
 - (b) subject to the directions of the Commission, perform such other work as is incidental to the exercise of the Commission's powers or performance of its functions.

Funds of Commission

29. (1) The funds of the Commission consist of money—

(a) appropriated by Parliament to enable the Commission to perform its functions efficiently; and

(b) received from any other source through the National Revenue Fund.

(2) For purposes of subsection (1), the Commission must submit to the Minister, at least six months before the start of the financial year of the Department of Rural Development and Land Reform, or another period agreed to between the Minister and the Commission, a budget of estimated revenue and expenditure for that financial year, for approval by the Minister.

(3) The budget must be submitted to the Minister through the accounting officer of the Department of Rural Development and Land Reform.

(4) The Commission may not budget for a deficit and may not accumulate surpluses unless prior written approval of the National Treasury has been obtained.

(5) The chairperson is responsible for ensuring that expenditure of the Commission is in accordance with the approved budget.

Audit

30. The financial statements and records of the Commission must be audited annually by the Auditor-General.

Certificate as evidence

31. In any prosecution under this Act, a certificate purporting to be signed by the Commission or the Minister certifying that an owner has not complied with such provisions of the Act as specified in the certificate, shall be received in evidence without proof of the signature or the official character of the person who appears to have signed the certificate and shall be *prima facie* proof of the fact stated.

Inspections

32. Any person who is in charge of records which are available for inspection by the public, must permit the Commission and any person

authorised by the Commission to, free of charge, inspect and make copies of or extracts from, any documents of title or other records kept in a department, a deeds registry or any other office, or office of the Surveyor-General relating to the acquisition or lease of land or any other relevant matter in which the Commission, for the purposes of this Act, is or may be interested.

Manuals, guidelines and rules

33. The Commission may, in the manner as may be prescribed, prepare any manual or guidelines in respect of any matter of an administrative nature related to the work of the Commission and deemed necessary by the Commission or as may be requested by the Minister or the Director-General, to ensure the effective implementation of or compliance with the provisions of this Act or any regulation made in accordance with the provisions of this Act.

Limitation of liability

34. The Commission or any employee thereof, is not liable in respect of legal proceedings in relation to an act performed in good faith in terms of the provisions of this Act.

Unlawful acquisition of land

35. Any acquisition of land in any manner which is inconsistent with or contrary to the provisions of this Act, is unlawful and a court may make an order for the forfeiture of such land to the State.

Offences and penalties

36. (1) Any person who fails to lodge a duly completed notification or disclosure required in terms of this Act shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding three months.

(2) Any person who provides false information in a notification or disclosure required in terms of this Act shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding three months.

(3) Any person who fails to appear before the Commission, its investigation committee or any officer authorised by the Commission, for the purpose of giving information, evidence or producing a document as contemplated in section 27, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding three months.

Regulations

37. (1) The Minister may, by notice in the *Gazette*, make regulations not inconsistent with this Act regarding—

- (a) any matter that may or must be prescribed in terms of this Act;
- (b) the information that must be reflected in the register contemplated in section 12;
- (c) the place and time the register must be open for inspection as contemplated in section 12(1)(b);
- (d) the fees payable for access to information in the register as contemplated in section 14;
- (e) the format of and information to be contained in a notification or submission in terms of this Act;
- (f) the referral of a matter to arbitration as contemplated in section 21;
- (g) the form of and information to be contained in the register in respect of public land as contemplated in section 17;
- (h) the criteria and factors that must be considered in the determination of the categories of ceilings of agricultural land holdings as contemplated in section 25; and
- (i) any ancillary or incidental administrative or procedural matter that may be necessary for the proper implementation or administration of this Act.

(2) The Minister must, before making any regulation under subsection (1), publish a draft of the proposed regulation, or any repeal or amendment thereof, by notice in the *Gazette*, calling on interested persons to comment on the draft, in writing, within a period of not less than 30 days from the date of publication of the notice.

(3) If the Minister alters the draft regulations as a result of any comment received, he or she need not publish those alterations before making the regulations.

Short title and commencement

38. This Act is called the Regulation of Agricultural Land Holdings Act, 2017, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE REGULATION OF AGRICULTURAL LAND HOLDINGS BILL

1. BACKGROUND

- 1.1 In order to improve the national land reform programme and achieve the vision of integrated and inclusive rural areas by 2030, the Department of Rural Development and Land Reform (DRDLR) has proposed policies to address matters of tenure reform and land administration that were not adequately addressed after the establishment of democratic institutions of governance in 1994.
- 1.2 The complexity of multiple tenure regimes as a result of a history of settler and imperial colonialism, dispossession and social engineering was acknowledged in the 1997 White Paper on Land Reform which proposed a further Green Paper on Tenure Reform.
- 1.3 Currently, whenever the State expresses a land need for its service delivery objectives, it is often reminded that it has a large property portfolio that it should start with. The true extent of this portfolio and its development potential remains debatable. There is therefore a need for an accurate record of all public agricultural land, constant research and analysis on the development potential of the public property portfolio so that assets that are in danger of degradation and total destruction can be timeously identified for corrective action.
- 1.4 The current land tenure system can be traced back to the wars of colonial dispossession, which was entrenched through the heretic system of apartheid; and, legitimized through laws such as the Natives Land Act of 1913; the Native Administration Act of 1927, the Native Trust and Land Act of 1936; the Group Areas Act of 1950; the Promotion of Bantu Self-Government Act of 1959; the Bantu Authority Act of 1951; and, the Bantu Homelands Citizenship Act of 1970.

- 1.5 The aim of the Regulation of Agricultural Land Holdings Bill is to reverse the legacy of colonialism and apartheid; and, to ensure a "*just and equitable*" distribution of agricultural land to Africans.
- 1.6 Furthermore, the decade from 1997 to 2007 was characterised by significant shifts in ownership and land use including increasing acquisition of agricultural properties by foreign nationals in certain regions. However, the nature, extent, trends and impact of land acquisition, land use and investment in the country's land by foreign persons remains unknown as no comprehensive database exists to develop an understanding of such. Related to this is the absence of reliable information regarding the extent of agricultural land holdings owned by South Africans in terms of race and gender as well as the use and size of the land in question.
- 1.7 Thus, the core intervention introduced by the proposed Bill is the creation of a Land Commission which shall serve as the principle structure to oversee the collection and dissemination of all information regarding public agricultural land (agricultural land vested in the national and provincial governments, in a public entity, in a municipality and in a municipal entity), and private agricultural land (land owned by South Africans, and that held by foreign persons).

2. STRUCTURE OF THE BILL

- 2.1 **Chapter 1 contains the definitions of the key terms used in the Bill and the objects and application of the legislative proposals.**
- 2.2 Chapter 2 deals with the Land Commission and provides for –
- (a) the establishment of the Land Commission (Commission) that must perform the functions provided for in the Bill;
 - (b) the composition of the Commission consisting of –
 - (i) the Chairperson;

- (ii) Deputy Chairperson; and
 - (iii) nine other persons appointed by the Minister with specific expertise and experience as determined by the Minister.
- (c) the qualification and vacation of office of member of the Commission;
- (d) the remuneration of members of Commission;
- (e) the functions of the Commission which are to –
 - (i) establish and maintain a register of all public and private agricultural land holdings;
 - (ii) for purposes of an enquiry, subpoena information and call for oral representation before the Commission; and
 - (ii) to advise the Minister on compliance with sections 25 and 26 and any other matter referred to it by the Minister.
- (f) the general powers of Commission which are to –
 - (i) enquire into the correctness and accuracy of disclosures regarding nationality, race and gender and the use and size of the agricultural land holding;
 - (ii) determine its own staff establishment;
 - (iii) collect and disseminate relevant information;
 - (ii) determine the manner of convening meetings, the procedure at meetings, the quorum for meetings and the manner in which minutes of meetings must be kept;
 - (iv) obtain by agreement, the services of any person or institution, including an organ of state, for the performance of any specific act or function;
 - (vi) request the Minister to second a person in the employ of the Department of Rural Development and Land Reform to assist the Commission in the performance of any act or function; and
 - (vii) deal with matters that are incidental to the exercise of any of its powers; and
- (g) the responsibilities of the Chairperson which are –

- (i) the formation and development of an efficient administration;
 - (ii) the appointment of staff, subject to the public service Act;
 - (iii) income and expenditure of the Commission;
 - (iv) assets and discharge of liabilities of the Commission;
 - (v) proper and diligent implementation of the Public Finance Management Act; and
 - (vi) the proper control and management of the Commission.
- (h) the delegation by the Minister and the Commission of their powers in terms of the Act.

2.3 Chapter 3 provides for -

- (a) the establish and maintain a register of agricultural land holdings, by the Commission, in which all disclosure notifications in respect of agricultural land holdings delivered to it in accordance with the provisions of this Act, must be recorded;
- (b) the manner in which the register must be maintained;
- (c) the correction of errors in the register; and
- (d) access to information in the register.

2.4 Chapter 4 provides for –

- (a) disclosures in respect of the present ownership of private agricultural landholdings, including the race, gender and nationality of the owner, the use and size of the agricultural land holding and any real right registered against and licence allocated to the agricultural land holding; and
- (b) the disclosure of the acquisition of ownership of private agricultural land holdings after the commencement of then Act.

2.5 Chapter 5 deals with public agricultural land and provides for –

- (a) the submission, of such information as may be prescribed, in respect of public agricultural land, by the accounting officer of a department, public entity, municipal entity or municipality, to the Commission;

- (b) the recording of information on public agricultural land in the register of agricultural land

2.6 Chapter 6 deals with the –

- (a) prohibition on the acquisition of agricultural land holding by a foreign person;
- (b) lease of agricultural land holding by a foreign person;
- (c) disposal of agricultural land holding by a foreign person;
- (d) notification upon ceasing to be or becoming a foreign person.

2.7 Chapter 7 deals with the categories of ceilings of agricultural land holdings and provides for –

- (a) the determination of categories of ceilings of agricultural land holdings for each district, by the Minister by notice in the *Gazette*, after consultation with the Commission and having regard to such criteria and factors as may be prescribed;
- (b) the determination of different categories of ceilings as well as special categories of ceilings and for the exemption of a particular category of agricultural land holding;
- (c) the publication of a draft determination for public comment.

2.8 Chapter 8 provides for –

- (a) dealing with redistribution agricultural land.
- (b) redistribution of agricultural land which is all agricultural land holdings that fall between or exceeds any category of agricultural land holding;
- (c) The Minister to be offered the first right of refusal in respect of redistribution agricultural land;

2.9 Chapter 9 deals with administrative and other matters and provides for –

- (a) investigations by the Commission
- (b) the appointment and responsibilities of the Chief Operations Officer;

- (c) the funds of the Commission;
- (d) the auditing of the financial statements and records of the Commission;
- (e) certificates to be received in evidence;
- (f) inspections by the Commission;
- (g) the preparation of manuals, guidelines and rules by the Commission;
- (h) limitation of liability of Commission;
- (i) forfeiture in the event of the unlawful acquisition of land;
- (j) offences and penalties;
- (k) regulations; and
- (h) short title and commencement.

3. DEPARTMENTS AND INSTITUTIONS CONSULTED

3.1 Consultations on the policy and subsequent draft legislation commenced in 2012 via what was the “three tier tenure work stream”.

3.2 The consultations included –

- (a) A 2013 multi stakeholder workshop on proposed ceilings;
- (b) The 2014 Land Tenure Summit;
- (c) The Global Governance Committee;
- (d) Workshops of the Working Group on Regulations of Land Holdings Policy;
- (e) Chief Registrar of Deeds;
- (f) Chief Surveyor-General;
- (g) Agribusiness Intelligence;
- (h) The Banking Association of South Africa;
- (i) Agri-SA;
- (j) Representatives of DAFF; and
- (k) Various technical experts including national and international agricultural economists.

4. FINANCIAL IMPLICATIONS FOR THE STATE

The estimated cost for the operation of the Land Commission as well as the acquisition of redistribution agricultural land is R21.3 million per annum. This excludes the cost of the acquisition of redistribution Agricultural land that will be funded within the baseline of the relevant programmes of the Department.

5. ORGANISATIONAL AND PERSONNEL IMPLICATIONS

The organisational and personnel implications are included in the cost for the operation of the Land Commission.

6. PARLIAMENTARY PROCEDURE

- 6.1. The State Law Advisers and the Department of Rural Development and Land Reform are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution.
- 6.2. The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.