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Regulation of Landholdings Bill released for public comment

On Friday, the 17th of March the Regulation of Landholdings Bill was officially published in the Government Gazette for public comment. The Bill seeks to establish upper thresholds for various categories of agricultural landholdings in each district, also known as 'land ceilings', place a prohibition on foreign ownership of agricultural land and create a commission to receive the compulsory disclosures of ownership by all agricultural land owners detailing race, gender and nationality. The Agbiz office is in the process of compiling draft commentary that will be presented to the Council on the 6th of April for mandating.

The concept of land ceilings was officially placed on the table as far back as 2011 when the Green Paper on Land Reform called for '*private ownership with limited extent'* as part of a four-tiered land tenure system which also called for *'obligations and conditions'* to be placed on land ownership by foreigners. What followed was a series of consultations and intensive working groups including the NAREG working group on land ceilings as well as the working group on the regulation of landholdings under the auspices of the Inter-Departmental Task Team on outcome 7, chaired by the Department of Rural Development and Land Reform. Over the course of several years' empirical research was presented by top academics and private sector as to the feasibility of land ceilings and the potential impacts it could have on the industry. In roughly the same period, the National Development Plan was adopted as official government policy, with chapter 6 calling for *"a more rapid transfer of agricultural land to black beneficiaries without distorting land markets or business confidence in the sector",* an objective that is difficult to reconcile with a radical approach such as land ceilings. Never-the-less, the publication on Friday indicates that the Department is intent on pursuing this policy direction irrespective of the best advice to the contrary.

Public pronouncements initially focused on a maximum ceiling of 12 000 hectares. This was followed by a pronouncement that the 12 000 limit would only apply to forestry, game farming and renewable energy projects and that the upper limit for large farms would be 5 000 hectares, 2 500 hectares for medium farms and 1 000 hectares for small farms. As was suspected at the time, the figures are red-herrings as the published Bill does not contain any figures at all, instead it contains an empowering provision that permits the Minister to set different ceilings for each district as well as ceilings for each 'category' of farm in each district. One should therefore not be distracted by any figures mentioned as there is no indication that previously mentioned figures will be binding. It is the principal that should attract attention.

The mechanism proposed by the Bill can be summed up as follows:

1. The Minister prescribes ceilings for each district;
2. Land owners in excess of the ceiling must identify the ‘excess’ portion and offer it for sale to a historically disadvantaged person within the prescribed time period;
3. If no suitable buyer is found, the Department of Rural Development and Land Reform is given the right of first refusal to buy the excess portion;
4. If the owner and the Minister cannot agree on the terms, the Minister is permitted to expropriate the land.

The Bill also prohibits the acquisition of agricultural land by a foreign person and prescribes a similar procedure that must be followed in the event that a foreign person wishes to sell land acquired before the prohibition comes into effect. An exception is however made where a historically disadvantaged person owns a ‘controlling interest’ in the land or a foreign juristic person.

The measures contained in this Bill constitutes a radical limitation on agricultural land owner’s property rights in terms of section 25 of the Constitution. Concerns have also been raised as to the Bill’s ability to contribute towards the land reform objectives outlined in the National Development Plan as well as the costs that will be required to administer the Bill if promulgated.

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