POLICY AND
LEGISLATION

Draft Land Donations Policy requires out-of-the-box thinking

One the many recommendations made by the Presidential Advisory Panel on Agriculture and Land Reform was to incentivize owners to donate excess, unused land for land redistribution. Unfortunately, it seems as if only one of those elements was taken on board as the draft Land Donations Policy deals at length with the manner in which donated land would be allocated, but leaves out the part about incentives entirely.

The draft policy is based on the notion of a 'pure donation', understood to be an altruistic act done without the expectation of receiving anything in return. There may well be instances where land owners have such a desire, but the simple fact of the matter is that there is nothing preventing these owners from donating land directly to the beneficiary of their choice. For the donations policy to add any value, it must include ways and means to either incentivize land owners or at least reduce the costs associated with a donation. As it currently reads, there is no reason for a land owner to involve the state, which defeats the purpose of the recommendation.

As the law currently reads, a donation is certainly not free. A donor would be liable to pay donations tax to the state and finance the costs of transfer. These costs are not insignificant. Where agricultural land is transferred, no distinction is made between donations and a sale which means that the donor would have to pay transfer duties, appoint a conveyancer, deregister a mortgage bond and follow the administratively cumbersome and costly procedure of subdivision. In its comments submitted to the department, Agbiz strongly motivated for qualifying donations to be exempted from donations tax and for the state to finance the costs of transfer. As long as the draft policy fails to do so, there is no reason why a donor would make use of the state when he/she would incur the same costs to simply donate the land to his/her intended beneficiary directly.

Aside from lowering the costs, the panel's recommendation goes a step further and recommends that the donor receives recognition for the donation through B-BBEE accreditation and access to preferential finance. Whilst the B-BBEE scorecard may fall outside of the scope of this policy but it should at the very least show a clear policy intent to initiate a review that will cater for this. Likewise, the same department has proposed a system of blended finance in their Comprehensive Producer Development Support Policy. Once again, intradepartmental consultation is required but the policy would need to showcase a policy intent to incentivize donations through access to blended finance if it is to do justice to the panel's recommendation.

The recommendations made by the Presidential Panel were expected to shake up the current status quo as the current mechanisms have not delivered to the extent required by the Constitution. It is therefore hoped that the policy makers within the state can find a way to give effect to these recommendations even if it requires other policies and departments to alter their programmes to accommodate same. A business-as-usual approach will simply not work.

8 April 2020

Theo Boshoff
Head: Legal Intelligence
Tel: +27 12 807 6686
Email: theo@agbiz.co.za

www.agbiz.co.za