



## ***Agricultural Business Chamber Landboubesigheidskamer***



3 November 2011

### **SUMMARISED UPDATE ON ABC'S CURRENT POSITIONS:**

#### **CONSULTATION PROCESS ON THE GREEN PAPER ON LAND REFORM**

After the gazetting of the Green Paper on Land Reform, Rural Development and Land Reform Minister Gugile Nkwinti, invited certain stakeholders to participate in a National Reference Group (NAREG), to play a constructive and participatory role, which is vital to the consultation process.

The Agricultural Business Chamber (ABC) took up the opportunity to provide constructive, business oriented and politically neutral input to all 6 working groups within NAREG. The ABC had an internal workshop to set the general mandate and appointed Prof. Nick Vink, an acknowledged agricultural economist from University of Stellenbosch, to assist in constructing a well-informed position paper. The ABC will present this position paper to its Council on 15 November, whereby it will be submitted to the Minister before the official deadline for comments at the end of November 2011.

#### **Hereby a general update on the progress within NAREG:**

NAREG consists of six working groups: [1] 3-Tier land system, [2] Valuer-General, [3] Land Management Commission, [4] Land Rights management Board, [5] Legislative Amendments and [6] Communal land tenure.

[1] The **"3-Tier land tenure system"**-working group started off very constructively, with open, sometimes tough, but constructive discussions on:

[a] **Foreign Land ownership**, whereby the major discussion ranges on management thereof in future, to prevent exploitation by foreign owners of productive, or strategically important land.

The ABC agrees that some sort of precarious tenure should be instituted for foreign landownership, in line with what is also the case in many developed and advanced developing countries, but it should not be a disincentive to foreign direct investment into our economy, especially also in the agricultural sector. The agriculture sector is already starting to battle under the strain of relatively poor investment into the sector. This Legislation can tie up the conditions under this form of tenure and to clearly indicate the conditions under which such investment would be welcome and sought.

[b] **State and Public land**, whereby leasehold of the land is discussed in the context of government's intention to ensure productive use of land procured by the state. The ABC was delighted by the confirmation that the DRDLR has approved an audit on all state owned land, as it is absolutely essential to effectively manage this national asset. It is the old adage of: "If you measure, you can manage". The ABC strongly states its position that excess state and public land should be made available for private sector endeavours – either selling it in economic viable units to BEE beneficiaries and backing them up with Post Settlement Support, or leasing the land to beneficiaries under certain conditions. The ABC certainly advocates the first option as we believe government should in principle considerably broaden and extend property ownership and ownership rights to far more previously disadvantaged individuals, especially to those that have not generally benefitted from BBBEE to date. If leasehold is implemented, the ABC would advocate that the leasehold be effective for a period of at least 49 years, but preferably for 99 years, and be transferable (tradable). In this way the lessee could use the land as security (collateral) to access finance for his venture(s), as well as invest in improvements/capital structures to enhance the value and productivity of the property, and then be able to recoup the investment and hopefully profit therefrom when he/she wishes to sell/trade the leasehold. That is by far the most effective way of wealth/value creation. State support to beneficiaries, such as through the Recapitalisation and Development Programme, together with support from mentors, strategic partners – being either other commercial farmers, or through agribusinesses, is inevitable in this context.

[c] **Privately owned land with limited extent**: The proposed freehold system of tenure (title deed and full ownership rights) for the commercial agriculture area of South Africa is supported by the ABC. This is necessary to maintain the integrity of the land market and agriculture markets in general since the markets are by far the best driving force to ensure optimal use of land and stewardship of the resource within a globally competitive agro-food system. It is the market system that drives competition and ensures efficiencies in the value chains, thus ensuring national food security. The ABC can however not support the limited extent rider or condition proposed as this essentially goes against the grain of the market argument indicated in the aforementioned

bullet. It is also impossible, from an agricultural economics point of view, to determine what sort of threshold should be imposed in which farming areas and on what grounds, also given the range of enterprises, often mixed and vertically integrated, in the industry. It must also be recognized that certain large-scale or mega farmers have invested their life savings into this land and most often use it productively and sustainably in the competitive agro-food industry. The ABC however recognises the concern of government in terms of land owners that may hold large tracts of land that are not used productively or for sustainable economic activity. Alternatives should be sought to address this problem and this could be through certain measures such as a land tax (there is already a municipal land tax that strongly discourages land ownership if the land is not used productively), or through some regulatory process/measure managed by the LMC, but a blunt threshold system we believe would severely constrain investment and most certainly impact negatively on competitive production and national food security in South Africa. It would also be extremely costly and difficult to manage such a threshold system.

- [2] The ABC involved the technical expertise and relevant experience from the commercial banks to assist in the positioning with regard to the **“Valuer-General”** (VG) working group. Surprisingly, private sector directly related to the problems the department faced with valuations. In general, the ABC is assisting in constructing solutions, possibly by means of an Office of the Valuer-General (OVG), which can address the problems. The ABC considers the OVG to be an independent structure in assistance to the Government departments and does not duplicate, nor undermine, the functions of the South African Council for the Property Valuers Profession (SACPVP), which regulates the profession in terms of the Property Valuers Profession Act. At the same time, should the functions of the office not be to manipulate market forces or values but rather to fulfil the function of an auditing body ensuring valuations were conducted by suitable qualified persons and the correct methodology has been applied. The willing buyer, willing seller principle is the international accepted way of determining the value of a property. Although the definition of market refers to a transaction between a willing buyer and willing seller, in this context where the buyer and seller might not be willing parties, we will rather refer to a well informed buyer and a well informed seller to conclude the transaction and it is for this reason we recommended that the necessary structures and processes be in place to enable the DRDLR to act from a point of knowledge. The basis of compensation should always be market value based on values determined by demand and supply. The market approach finds its rationale in the economic principle of substitution. Informed buyers will not pay more for given properties than the cost of comparable substitute properties. The VG must therefore play the role of the informed buyer where government intend to acquire a property or an informed seller where the property will be sold.

The ABC suggests that the OVG must:

1. Task all property valuations required by the state through sourcing and appointing suitable and professional valuers to do it,
2. Set guidelines regarding payment structures of valuers,
3. Vet all valuation compiled to ensure compliance with valuation standards (Only once the VG is satisfied that the valuation is compliant and that the value reflected is a fair indication of market value, then the valuation can be provided to the requesting government department),
4. Enforce policies regarding valuations done for government on tasked valuers,
5. Maintain an up to date database of comparable sales on approved valuations, which can be used to provide guidance to valuers,
6. Handle the appeal when sellers are disputing governments' offer based on an approved valuation (The VG should avail itself to defend the valuation in court)
7. Be independent and autonomous, serving the whole of government.

[3] + [4] The proposed **Land Management Commission** (LMC) and the **Land Rights Management Board** (LRMB) are discussed at two respective working groups. The ABC is not, in principle against a LMC, and in fact agrees that it may in certain cases be of value, especially in a co-ordination function and in maintaining a land register (land audit). If properly structured (including significant private sector representation), with a clear mandate and the concomitant authority, it can assist to address the land question. However, the powers currently assigned to it are draconian and require checks and balances to curb those powers. The underlying function of the LRMB, and its proposed local committees, being to enable better communication on land rights and the assistance in addressing disputes, together with the consideration of developing "agri-villages" is recognised as vitally important. However, the suggested bureaucratic structures are of concern, because it is not clear whether it will be able to address the problem, which the current structures within the government could not, or in some cases failed at doing so (e.g. Independent Mediator SA / IMSA). The required capacity, and availability thereof, to perform these functions are also of concern and is being discussed. The ABC is currently rather concerned about the realities regarding the construction of agri-villages. It will require proper planning and efficient management, together with provision of adequate basic services, such as water, electricity, sanitation, schools and hospitals. The people "placed" in these agri-villages should have adequate employment or economic opportunities, together with secured ownership/land tenure over their allocated land/property to enable them to exercise their economic and livelihood opportunities. Otherwise, this concept could introduce "small squatter camps" scattered across the rural areas and could become plagued by serious social issues.

- [5] The ABC again involved the legal expertise from the commercial banks to assist in the “**Legislative Amendments**” working group. Currently the two legislations under discussion is the Communal Property Associations Amendment Bill, as well as the Restitution of Land Rights Amendment Bill. Structures, such as the Recapitalisation and Development Programme are also considered as background to the functionality of this legislation. The ABC specifically considers how these pieces of legislation should be constructed to enable businesses to get involved with CPA’s and Restitution beneficiaries to assist them to produce sustainably and to successfully enter the commercial farming sector.

Ultimately the ABC keeps Section 25 of the Constitution as the backbone of the negotiations on the outcomes of the Green Paper. The ABC strives to assist government to achieve a successful land reform and transformation in the rural economy. The comments and positions articulated by the ABC will be finalised and consolidated, and then submitted to the DRDLR as a holistic position, as called for in the Government Gazette Notice No. 34656 of 30 September 2011.

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