



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

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## Government Notice

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### OFFICE OF THE PRIME MINISTER

No. 33

2014

#### PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 1 of 2014:      Agricultural (Commercial) Land Reform Amendment Act, 2014.

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**Act No. 1, 2014                    AGRICULTURAL (COMMERCIAL) LAND REFORM  
AMENDMENT ACT, 2014**

**EXPLANATORY NOTE:**

- \_\_\_\_\_ Words underlined with a solid line indicate insertions in existing provisions.
- [            ] Words in bold type in square brackets indicate omissions from existing provisions.

**ACT**

**To amend the Agricultural (Commercial) Land Reform Act, 1995, so as to insert a certain definition; to provide for further situations where the State has the right of preference to purchase land; to provide for a negotiating committee on purchase prices; and to provide for incidental matters.**

*(Signed by the President on 12 March 2014)*

**BE IT ENACTED** as passed by the Parliament, and assented to by the President of the Republic of Namibia, as follows:

**Amendment of section 1 of Act No. 6 of 1995, as amended by section 1 of Act No. 16 of 2000, section 1 of Act No. 2 of 2001, section 1 of Act No. 13 of 2002 and section 1 of Act No. 14 of 2003**

**1.** Section 1 of the Agricultural (Commercial) Land Reform Act, 1995 (in this Act referred to as “the principal Act”) is amended by the substitution for the definition of “alienate” of the following definition:

“alienate, in relation to agricultural land, means sell, exchange, donate or otherwise dispose of, whether for any valuable consideration or otherwise, and includes, in the case where such land is registered in the name of -

- (a) a company, the sale or transfer of shares of the company to another person; or
- (b) a close corporation, the sale or transfer of any member’s interest in the close corporation or any portion of such interest to another person.”

**Substitution of section 9 of Act No. 6 of 1995, as amended by sec 6 of Act 13 of 2002 and section 1 of Act No. 8 of 2013**

**2.** The following section is substituted for section 9 of the principal Act:

**“Committees**

**9.** (1) There is established for every region a regional resettlement committee to assist the Commission in the exercise of such of its powers or the performance of such of its duties or functions under this Act as the Commission may delegate or assign to the committee.

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- (2) A regional resettlement committee established under subsection (1) consists of not less than 11 and not more than 19 members -
- (a) the regional governor appointed in terms of the Special Advisors and Regional Governors Appointment Act, 1990 (Act No. 6 of 1990) for the respective region who is the chairperson of the committee;
- (b) one or more members of the Commission, designated by the Commission for that purpose, and, if the Commission considers it necessary, one or more other suitable persons who are not members of the Commission appointed by the Commission.
- (3) The Commission may -
- (a) establish one or more committees to assist the Commission in the exercise of such of its powers or the performance of such of its duties or functions under this Act as the Commission may delegate or assign to it;
- (b) at any time dissolve or reconstitute a committee contemplated in paragraph (a).
- (4) If so authorised by the Commission, a committee may invite any person, whose presence is in its opinion desirable, to attend and to participate in the deliberations of a meeting of the committee, but such person has no vote.
- (5) A delegation or assignment under this section may be made subject to such conditions and restrictions as the Commission may determine and may, at any time, be varied or withdrawn by it.
- (6) The Commission is not divested or relieved of any power or function delegated or assigned by it under this section, and may, without prejudice of a right, vary or set aside any decision taken in the exercise of the power so delegated.”.

**Amendment of section 17 of Act No. 6 of 1995, as amended by section 9 of Act No. 13 of 2002**

- 3.** Section 17 of the principal Act is amended -
- (a) by the substitution for subsections (1A), (2) and (3) of the following subsections:
- “(1A) Whenever one or more members of a company or close corporation which is the owner of agricultural land intends to sell or transfer -
- (a) in the case of a company, any shares of the company [**which would have the effect of passing the controlling interest in the company**] to another person; or

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- (b) in the case of a close corporation, any interest or interests in the close corporation, or any portion of such interest, [**which would have the effect of passing the controlling interest in the close corporation**] to another person,

it shall, for the purposes of subsection (1) of this section and section 17A(3), be deemed that the company or close corporation in its capacity as owner of the agricultural land held by it, intends to alienate such land.”;

- (b) by the insertion after subsection (1A) of the following subsection:

“(1B) An owner of agricultural land who intends to have a usufruct registered over the whole or part of such land in favour of a person, other than a relative of the owner, it is, for the purposes of subsection (1) and section 17B(3), deemed that the owner intends to alienate such land, and for the purpose of this subsection “relative” means spouse, child, parent or sibling of the owner.”;

- (c) by the substitution for subsections (2) and (3) of the following subsections:

(2) Notwithstanding anything to the contrary in any law contained but subject to subsection (3), no agreement of alienation of agricultural land entered into by the owner of such land, or, in the case where such land is alienated by a company or close corporation in the circumstances contemplated in paragraphs (a) and (b), respectively, of the definition of “alienate”, no agreement of sale or instrument of transfer or transfer otherwise of any shares of the company or of any member’s interest in the close corporation or of any portion of such interest [**which, but for this subsection, would have passed the controlling interest in the company or close corporation**] to another person, shall be of any force and effect until the owner of such land -

- (a) has first offered such land for sale to the State; and
- (b) has been furnished with a certificate of waiver in respect of such land and in respect of a specific buyer who in most cases must be a previously disadvantaged person contemplated in Article 23(2) of the Namibian Constitution.

(3) Subsections (1) and (2) shall not apply where agricultural land is alienated -

- (a) by or to a regional council or a local authority council or a body corporate as defined in section 1, but only to the extent that such land is alienated otherwise than being sold in the open market;
- (b) [**in the administration of a deceased estate or**] in accordance with a redistribution of assets in [**such an**] a deceased estate between heirs and legatees;

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- [(c) **by the trustee of an insolvent estate or the liquidator of a company, close corporation or co-operative society in the liquidation of such estate or the winding-up of such company, close corporation or co-operative society;**
- (d) **by a deputy-sheriff or messenger of the court in the execution of a judgment or an order of a competent court;]**
- (e) by a co-owner of such land to another co-owner thereof, except where -
- (i) the other co-owner is a foreign national; or
  - (ii) such land is owned by a company or close corporation; or
- (f) in such other circumstances as the Minister may prescribe.”;
- (d) by the substitution for subsection (6) of the following subsection:
- “(6) Within 14 days after the receipt of the recommendations of the Commission, the Minister shall by notice in writing to the owner concerned, either -
- (a) decline the offer and issue to the owner a certificate of waiver; or
  - (b) if the Minister decides to acquire the land in question for the purposes contemplated in section 14(1) -
    - (i) accept the offer; or
    - (ii) if the Minister, acting on the recommendation of the Commission, considers the purchase price specified in the offer to be excessive -
      - (aa) make a counter offer to such owner, specifying the price which the Minister is prepared to pay for the land;
      - (bb) inform the owner that if such counter offer is not accepted by the owner, the owner **[may not later than a date specified by the Minister in the notice, which shall not be sooner than 90 days from the date of notice, make an application to the Lands Tribunal for the determination of the purchase price]** must inform the

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Minister in writing within 14 days of receipt of the counter offer; and

[(cc) **advise the owner of the provisions of subsection (7)**].

(iii) after receipt of the letter referred to in paragraph (ii)(bb), the Minister must convene a negotiating committee to negotiate the purchase price with the owner, and advise the Minister.

(iv) if the negotiating committee and the owner fail to reach an agreement on the purchase price -

(aa) the owner, not later than 60 days after the failure to reach the agreement, may make an application to the Lands Tribunal for the determination of the purchase price; and

(bb) the committee must forthwith advise the owner of the provisions of subsection (7).”; and

(e) by the substitution for subsection (7) of the following subsection:

“(7) Unless -

(a) the Minister has issued to the owner a certificate of waiver;

(b) the Minister, acting on a recommendation of the Commission, and the owner have agreed on the purchase price for the land in question; or

(c) the Minister, acting on the advice of the negotiating committee, and the owner have agreed on the purchase price,

it shall be deemed that the owner has accepted a counter offer made by the Minister in terms of subsection (6)(b)(ii) if, upon expiry of the **[date determined and specified by the Minister in terms]** period specified in subparagraph (iv) of that subsection, the owner has not made application to the Lands Tribunal for the determination of the purchase price.”.

**Amendment of section 20 of Act No. 6 of 1995, as amended by section 11 of Act No. 13 of 2002 and section 4 of Act No. 14 of 2003**

4. The following subsections are substituted for subsection (1) of section 20 of the principal Act.

