

USDA Foreign Agricultural Service

# GAIN Report

Global Agricultural Information Network

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## **South Africa - Republic of**

**Post:** Pretoria

## **Draft Regulation of Agricultural Landholdings Bill**

### **Report Categories:**

Agricultural Situation

Agriculture in the Economy

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### **Report Highlights:**

On March 17, 2017, the Minister for Rural Development and Land Reform published the Regulation of Agricultural Land Holdings Bill (Bill) inviting public comments. The deadline for submitting public comments was set as May 17, 2017. If the Bill is passed, it will set up a commission to register agricultural land, restrict foreign land ownership and place limits on the size of individual agricultural land holdings in South Africa. Post encourages United States stakeholders who own land or are planning to purchase or sell land in South Africa to review the Bill and submit their comments and concerns by no later than May 17, 2017.

## Background

On March 17, 2017, the Minister for Rural Development and Land Reform published the Regulation of Agricultural Land Holdings Bill (Bill) inviting public comments. The deadline for submitting public comments was set as May 17, 2017. The Bill can be downloaded on the following link, <http://www.ruraldevelopment.gov.za/legislation-and-policies/file/5205> .

This Bill forms part of many land reform policies and strategies that the South African government is seeking to pursue. In 2014, Post provided an update on the land reform policy in South Africa, which is still relevant to date. [Click here to download the GAIN report on the South African land reform policy.](#)

Discussions and uncertainty on the land reform policy remain widespread in South Africa, and the proposed Regulation of Agricultural Land Holdings Bill has created robust responses, especially from the commercial agricultural sector. The Bill will only apply to land that is zoned and defined as agricultural land, as per the comprehensive definition provided in the Bill.

## Regulation of Agricultural Land Holdings Bill

Agri SA, one of the oldest federations of agricultural organizations which was established in 1904 as the South African Agricultural Union, and represents the significant majority of commercial farmers, regardless of gender, color or creed, through its affiliated membership, which consists of 9 provincial unions and 24 commodity organizations, has been at the forefront in lobbying against the Bill. They highlighted the following concerns regarding the Bill:

- **Establishment of a Land Commission:**  
The role of the land commission would include administration of the Act through creating a register of all agricultural land detailing the race, gender and nationality of the land owners; the size and use of the agricultural land; and any right registered against the land including the license allocated to the respective agricultural land. While the intention of the Land Commission is to generate accurate data on agricultural land ownership and use, questions have been raised whether the commission will have the ability to administer such a register efficiently and accurately. This criticism is based on perceived poor performance of other government managed entities and that such a commission could be open to corruption, which is currently an issue under discussion throughout the government.
- **Restrictions on Foreigners:**  
Under the Bill, foreigners will not be permitted to purchase agricultural land, but will only be allowed to enter into long term leases. Long term leases would be for a minimum period of 30 years or for the lifetime of the lessee with a maximum period of 50 years. Foreigners who already own agricultural land will not be obliged to sell when the Bill is passed. However, in the event that they decided to sell, they would be obliged to first offer the land for sale to the government. This has raised concerns that government could effectively purchase such land at below market prices, as the Property Valuation Act requires government to pay fair and equitable prices for land based on government evaluations. In addition, there are arguments that restricting foreign land ownership could be unconstitutional and would be subjected to a determination by the constitutional court. While reliable and accurate statistics are currently not publicly available, according to media reports, less than 5% of agricultural land is owned by foreigners.

- **Ceilings for agricultural land holdings:**

The government will set limits on how much agricultural land any one person may own. Any land owned by anyone in excess of the ceiling set by the government would be redistributed. The owner of such land would be obliged to inform the commission of the identity of that land and thereafter obliged within periods set by the government to offer it for sale to black people (as defined in the Employment Equity Act, 1998 (Act No. 55 of 1998)). If no black person buys the land within a given period, the government must purchase the land. If the government and the owner cannot agree on price, then the government will use the Expropriation Act and its procedures to expropriate the land and resolve the matter of price. Concerns have been raised that the Bill does not presently stipulate the ceilings that will be applied, and that the government could set the ceilings incorrectly, failing to take into account economies of scale and the global trend towards larger farms, and the diverse land use mix within South Africa that makes it difficult to stipulate an appropriate size. Further fragmentation of land could occur as farmers dispose of the least productive lands in an effort to meet their ceiling.

While some of the concepts included in this Bill have been under discussion since 2011, what seems to be creating widespread uncertainty and fear is that this Bill is being passed amidst an ambiguous political environment with increasing calls for radical economic transformation at the back of high inequality and an economic downturn. Should the Bill pass, the expropriation of land will likely be subjected to a court process as there are arguments that it could be unconstitutional.

### **Submission of comments**

Post will continue to monitor the developments regarding land reform policy, and encourages United States stakeholders who own land or are planning to purchase or sell land in South Africa to review the Bill and submit their comments and concerns by no later than May 17, 2017 to the following addresses:

By post to:     The Director-General: Rural Development and Land Reform  
                  Attention: Adv. Sello Ramasala  
                  Private Bag X833  
                  PRETORIA  
                  0001

By fax to:       (012) 324 2118

By e-mail to: [sello.ramasala@drdlr.gov.za](mailto:sello.ramasala@drdlr.gov.za)

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