

SALE OF AGRICULTURAL LANDS IN ROMANIA

The sale of agricultural lands located extramuros shall be subject to a set of restrictions, such as the compliance with the pre-emption right to the benefit of certain categories of persons

1. Background

On January 1st, 2014, the seven-year period provided for in the Treaty regarding Romania's Accession to the European Union during which Romania could maintain the restrictions on the acquisition of agricultural lands, forests and forestry lands has expired. These restrictions were related to the acquisition of such lands by: (i) nationals of the European Union member states (the "**Member States**"); (ii) nationals of the states which are a party to the European Economic Area Agreement (the "**EEAA States**"); and (iii) companies formed in accordance with the laws of another Member State or an EEAA State which are neither established nor registered in Romania.

In the context of the liberalisation of the sale of lands, on March 7th, 2014, the Romanian Parliament adopted Law no. 17/2014¹ on certain measures for regulating the sale-purchase of agricultural lands located *extramuros* and for amending Law no. 268/2001 on the privatization of the companies having in administration public and private agricultural lands and the establishment of the State Domain Agency (the "**Law**"). The Law aims to set forth certain measures for: (i) the protection of the national interest; (ii) the regulation of the sale-purchase of agricultural lands located *extramuros* (outside the city borders – in Romanian: *extravilan*); and (iii) the merger of agricultural lands in order to increase the dimensions of the agricultural farms and their economic viability.

2. Applicability of the Law

The Law shall be applicable: **(a)** to the transfer of agricultural lands by means of sale agreements only; **(b)** to agricultural lands located *extramuros* (the "**Lands**"), being expressly stated that the provisions of the Law are not applicable to the agricultural lands located *intramuros* (within the city borders – in Romanian: *intravilan*); and **(c)** to natural persons (*i.e.* citizens of Romania or of a Member State / EEAA State / Swiss Confederation, as well as to stateless persons having their domicile within one of the above-mentioned states) and to legal entities having the nationality of one of the above-mentioned states.

¹ Published with the Official Gazette of Romania, Part I, no. 178/12.03.2014

Still, the Law sets forth that the citizens and the legal entities of a Member State / EEAA State / Swiss Confederation may acquire agricultural lands in Romania subject to reciprocity conditions, meaning that such citizens and legal entities may acquire Lands in Romania subject to the restrictions and benefits applicable to Romanian citizens / legal entities upon the acquisition of the ownership right to extramuros agricultural lands located in such a state.

The provisions of the Law are not applicable to: **(a)** citizens of a state other than the ones mentioned above (“Third State”), stateless persons with their domicile in a Third State and legal entities having the nationality of a Third State, who may acquire the Lands under the conditions set forth in international treaties, on a reciprocity basis; **(b)** sales between relatives up to 3rd degree; and **(c)** pre-agreements and option agreements authenticated by public notaries before the entry into force of the Law.

3. Sale procedure

3.1 Pre-emption right

In accordance with the Law, **(a)** the joint owners; **(b)** the lessees (in Romanian: *arendasi*) having concluded a valid land lease agreement duly registered at the date when the sale offer is displayed at the city hall; **(c)** the neighbouring owners; and **(d)** the Romanian State through the State Domain Agency benefit, in this order, of a pre-emption right (at equal price and equal conditions) in respect of the Lands which are subject to the sale.

This order is not applicable to Lands encompassing classified archaeological sites, in which case the Romanian State benefits of a pre-emption right in compliance with Law no. 422/2001 on the protection of historical monuments.

3.2 Main Steps of the Sale Procedure

In accordance with the Law, the execution of a sale agreement or the rendering of a court decision ascertaining the execution of a sale agreement with respect to Lands shall be subject to the issuance of an endorsement (in Romanian: *aviz*) by the relevant department within the Ministry of Agriculture and Rural Development (the “Relevant Authority”) regarding the fulfilment of the legal conditions for such sale.

The main steps to be performed for the issuing of the above mentioned endorsement are:

- (i) Submission by the seller of an application with the municipality where the Lands are located and requesting the display of the sale offer, in order to allow the pre-emptors to exercise their pre-emption right;
- (ii) Display by the municipality of the sale offer at the city hall and on its web-site for 30 days and submission by the municipality of the file regarding such sale offer to the Relevant Authority (which will display the sale offer on its own web site for 15 days);

- (iii) Acceptance by the pre-emptors of the sale offer (if the case) and the registration of such acceptance with the relevant municipality within the 30-day term mentioned above. If several pre-emptors of equal rank express their intention to purchase at the same price and in the same conditions, the seller may choose the purchaser from amongst them and notify the municipality accordingly. If none of the pre-emptors exercises its pre-emption right within the 30-day term mentioned above, the sale of the Lands is free (but subject to compliance with the price and the conditions mentioned in the sale offer);
- (iv) Display by the municipality of the acceptance of the sale offer and its submission to the Relevant Authority (including the submission by the municipality to the Relevant Authority, for verification purposes, of the chosen pre-emptor's identification details, if the case);
- (v) Verification by the Relevant Authority that the pre-emptors' right was observed (if the case).

In case none of the pre-emptors expresses its intention to purchase, the sale agreement shall be concluded based on a certificate (in Romanian: *adeverinta*) issued by the relevant municipality in this respect.

3.3 Special Endorsements

The Law sets forth the obligation for the seller to obtain a special endorsement from the National Defence Ministry in case of sale of Lands located: (i) within 30 kilometres from the state frontier or from the Black Sea shore towards the interior; or (ii) at less than 2,400 metres distance from special objectives. This special endorsement is not necessary in case of sale to a pre-emptor.

Lands encompassing archaeological sites may be sold only if a special endorsement for sale is obtained from the Ministry of Culture.

3.4 Other provisions

The Law also sets forth that in case one of the parties to a pre-sale agreement refuses to execute the final sale agreement, the following conditions must be met in order for the other party to obtain a court decision ascertaining the execution of the sale agreement: (i) the pre-sale agreement must have been authenticated by a public notary; and (ii) the provisions of the Law with respect to the pre-emption right and to the aforementioned endorsements must have been complied with.

Under the Law, requesting and using the land registry excerpt in relation to agreements having as object the transfer of ownership right or of other real estate rights to immovable assets shall make full evidence of the parties' and public notary's good faith in respect of the seller's capacity as owner of the immovable asset described in the respective land registry.

4. Sanctions

The sale of Lands (i) without observing the pre-emption right; (ii) at a price lower than the one mentioned in the sale offer or in more advantageous conditions than the ones mentioned therein; or (iii) without obtaining the special endorsements mentioned above, triggers the nullity of such transfer. Furthermore, failure to observe these legal provisions is deemed an offence and may be sanctioned with a fine in the range of RON 50,000 (*i.e.* approximately EUR 11,100) to RON 100,000 (*i.e.* approximately EUR 22,200).

5. Entry into force

The Law shall enter into force within 30 days as of its publishing with the Official Gazette of Romania (*i.e.* on April 11th, 2014).

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