

## Client Brief

### AGRICULTURAL LANDS | ROMANIA

OCTOBER 2020

#### LEGISLATIVE UPDATES WITH RESPECT TO THE SALE OF AGRICULTURAL LANDS

Law no. 175/2020 published with the Official Gazette no. 741 / 14 August 2020 (the "Law") amending law no. 17/2014 on the sale and purchase of *extra muros* agricultural lands (the "Law no. 17/2014") entered into force on the 13<sup>th</sup> of October.

The declared purpose of the Law is to consolidate the Romanian agricultural lands and its main amendments (i) extend the categories that benefit from a preemption right upon the sale of an *extra muros* agricultural land, (ii) set out certain requirements to be met by the buyers not benefitting from the preemption right (which include the requirement to have had the domicile / residence on the national territory for a certain period prior to the sale offer, as detailed below) and (iii) impose the obligation to pay a tax if the land is re-sold within the first eight years as of the acquisition. Before promulgation, the draft Law was subject to a constitutionality control on six alleged unconstitutionality grounds, including that related to the indirect limitation of the EU and EEA citizens' right to become owners of agricultural land. The Constitutional Court panel of ten judges rejected the unconstitutionality objection, but it is noteworthy that three of the judges issued a separate opinion stating that the Law is fully / partially unconstitutional.

#### I. Categories of preemptors

Where Law no. 17/2014 provided for only four types of entities that benefit from the preemption right upon the sale of the agricultural lands located *extra muros*, namely the co-owners, the land lessees, the neighboring owners and the Romanian State (via the State Property Agency), the amended version provides for seven different ranks of pre-emptors, each including several types of beneficiaries, namely:

- rank I: co-owners, first degree relatives, spouses, relatives and in-laws (up to and including the third degree);
- rank II: owners of the agricultural investments related to tree crops, vine, hop and exclusively private irrigations (which are correspondingly prioritized in case one of such agricultural investments already exists on the land subject to the sale), as well as natural persons and legal entities that act as land lessees under a land lease agreement validly concluded and legally registered at least one year before the sale offer, it being specified that additional rules are provided with respect to land lessees, who should prove, if they are natural persons, that their domicile / residence was located on the national territory for a period of five years before the registration of the agricultural land sale offer (the principle is maintained and adapted in case of land lessees that are legal entities);

**Contact**

LEROY ȘI ASOCIAȚII SCA  
10-12 Maior Gh. Șonțu  
Str. 011448 Bucharest  
tel. +40 (21) 223 03 10  
fax: +40 (21) 223 03 42  
[www.leroylaw.ro](http://www.leroylaw.ro)

- rank III: owners and / or land lessees of the agricultural lands neighboring the land subject to the sale, it being specified that additional priority rules are set out in this respect;
- rank IV: young farmers (as defined under Regulation (EU) No 1305/2013 on support for rural development by the European Agricultural Fund for Rural Development), it being specified that the young farmers performing activities related to zootechnics are prioritized, subject to fulfilling the condition of having the domicile / residence on the national territory for a period of at least one year prior to the registration of the agricultural land sale offer;
- rank V: research and development entities in the field of agriculture, forestry and food industry, for acquiring the lands neighboring plots of land already owned by such entities, for the purpose of performing agricultural researches,
- rank VI: natural persons having the domicile / residence located in the administrative units where the land is located or in the neighboring administrative units;
- rank VII: the Romanian State, via the State Property Agency.

**II. Requirements to be met by non-preemptor buyers**

In case the entities benefiting from the preemption right do not exercise their preemption right, the Law provides that the sale of the agricultural *extra muros* lands can be made to (i) natural persons who, for at least five years before the registration of the sale offer: had the domicile / residence on the national territory, carried out agricultural activities and were registered by the Romanian tax authorities; (ii) legal persons that, for at least five years before the registration of the sale offer: had the headquarters / secondary establishment registered on the national territory, carried out agricultural activities, had a minimum of 75% of the revenue deriving from agricultural activities and, in addition, the controlling shareholder had the domicile on the national territory for at least five years before the registration of the sale offer. However, in case the preemption right is not exercised and none of the potential buyers provides documents evidencing the fulfilment of the above conditions within the legal deadline, the *extra muros* agricultural land can be sold to any natural or legal person.

**III. Taxation for re-sale within eight years as of the acquisition**

Agricultural *extra muros* lands can be sold within the first eight years as of the acquisition only subject to the payment of a tax of 80% of the amount calculated as the balance between the sale price and the initial acquisition price (as per the market report published by the notaries public for the relevant period). Direct or indirect sale of the controlling interest in companies that own such lands, to the extent such lands account for more than 25% of the company's assets, is also subject to taxation.

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