



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

N\$3.00

WINDHOEK - 9 December 2002

No.2875

CONTENTS

Page

GOVERNMENT NOTICE

No. 218 Promulgation of Agricultural (Commercial) Land Reform Amendment Act, 2002
(Act No. 13 of 2002), of the Parliament 1

Government Notice

OFFICE OF THE PRIME MINISTER

No. 218 2002

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. 13 of 2002: Agricultural (Commercial) Land Reform Amendment Act, 2002.

**AGRICULTURAL (COMMERCIAL) LAND REFORM
AMENDMENT ACT, 2002**

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 define or further define certain expressions; to provide for the reconstitution of the Commission; to extend the grounds for the vacation of office of members of the Commission; to further regulate the procedure at meetings of the Commission; to further regulate the constitution and functions of committees of the Commission; to provide for the payment of remuneration to members of committees of the Commission and certain other persons; to further provide for administrative assistance to the Commission; to provide that the passing to another person of the controlling interest in a company or close corporation owning agricultural land be deemed to be an alienation of such land and to provide for such passing of the controlling interest to be void without a certificate of waiver having been first obtained; to restrict the exemptions applicable to the State's preferent right to purchase agricultural land; to provide that an offer to sell agricultural land to the State may be withdrawn and to provide for the period within which such offer may be so withdrawn; to provide that the Minister and the owner of agricultural land offered to the State may agree to extend the period within which certain acts related to such offer are to be performed; to regulate the period of validity of certificates of waiver; to provide for a right of appeal against the decision of the Minister in certain circumstances; to repeal provisions relating to the purchase of farming units by lessees and the outright sale of farming units to qualified persons; to further regulate the power to enter and inspect farming units; to impose a duty on the Registrar of Companies and the Registrar of Close Corporations to in certain circumstances report changes in the controlling interest of companies and close corporations owning agricultural land; to criminalise the sale of agricultural land to foreign nationals and certain nominee owners without the consent of the Minister; to extend the exemptions applicable to the acquisition of agricultural land by foreign nationals; to provide for the payment of certain expenses from the Fund; and to substitute certain expressions; to amend the Agricultural (Commercial) Land Reform Second Amendment Act, 2001, so as to amend the short title of the said Act; and to provide for matters incidental thereto.

(Signed by the President on 11 November 2002)

BE IT ENACTED by the Parliament 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 and section 1 of Act No. 2 of 2001

1. Section 1 of the Agricultural (Commercial) Land Reform Act, 1995 (hereinafter referred to as the principal Act), is hereby amended -

(a) 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 which results in the controlling interest in the company being passed to another person; or

**AGRICULTURAL (COMMERCIAL) LAND REFORM
AMENDMENT ACT, 2002**

(b) a close corporation, the sale or transfer of any member's interest in the close corporation, or any portion of such interest, which results in the controlling interest in the close corporation being passed to another person,

and 'alienation' has a corresponding meaning;";

(b) by the insertion after the definition of "alienate" of the following definition:

"'body corporate' means a body corporate established by an Act of Parliament, but does not include a company or close corporation formed by virtue only of being registered respectively under the Companies Act, 1973 (Act No. 61 of 1973), and the Close Corporations Act, 1988 (Act No. 26 of 1988);";

(c) by the insertion after the definition of "Lands Tribunal" of the following definition:

"'legal practitioner' means a legal practitioner as defined in section 1 of the Legal Practitioners Act, 1995 (Act No. 15 of 1995);"; and

(d) by the insertion after the definition of "Registrar" of the following definition:

"'staff member' means a staff member as defined in section 1(1) of the Public Service Act, 1995 (Act No. 13 of 1995);".

Amendment of section 4 of Act No. 6 of 1995, as amended by section 2 of Act No. 16 of 2000

2. (1) Section 4 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) The members of the Commission shall consist of -

- (a) the Permanent Secretary, who shall be the chairperson;
- (b) two other staff members of the Ministry of Lands, Resettlement and Rehabilitation, one of whom shall be designated by the Minister as deputy chairperson;
- (c) one staff member of the Ministry of Agriculture, Water and Rural Development designated by the Minister of Agriculture, Water and Rural Development;
- (d) one staff member of the Ministry of Justice who possesses the necessary knowledge of law to make a substantial contribution towards the functions of the Commission, designated by the Minister of Justice;
- (e) two persons nominated by each of such associations or bodies involved in agricultural affairs as the Minister may by notice in the *Gazette* designate for the purposes of this paragraph;
- (f) one person nominated by the Agricultural Bank of Namibia mentioned in section 3 of the Agricultural Bank Act, 1944 (Act No. 13 of 1944); and
- (g) four persons, of whom at least two shall be females, and who shall be persons who are not employed in the Public Service and who, in the opinion of the Minister, are suitably qualified having regard to the functions of the Commission,

Act No. 13, 2002

**AGRICULTURAL (COMMERCIAL) LAND REFORM
AMENDMENT ACT, 2002**

all of whom shall be appointed by the Minister, but the persons referred to in paragraph (g) shall be so appointed only with the approval of the National Assembly.”.

(2) Any person who immediately before the commencement of this Act held office as a member of the Land Reform Advisory Commission established by section 2 of the principal Act by virtue of his or her appointment under section 4 of the principal Act before the amendment of the said section 4 by this Act, shall, notwithstanding section 5 of the principal Act, at such commencement cease to hold office by virtue of that appointment.

Amendment of section 6 of Act No. 6 of 1995

3. Section 6 of the principal Act is hereby amended -

(a) by the deletion of the word “or” at the end of paragraph (c) of subsection (1);

(b) by the addition to subsection (1) of the following paragraphs:

“(e) in the case of a member referred to in paragraph (a), (b), (c) or (d) of subsection (1) of section 4, ceases to hold the qualification by virtue of which he or she was appointed as a member of the Commission;
or

(f) in the case of a member referred to in paragraph (e) or (f) of subsection (1) of section 4, by reason of the withdrawal of his or her nomination by written notice addressed and delivered to the Minister, no longer represents the association, body or banking institution that has nominated him or her.”; and

(c) by the substitution in subsection (2) for the words following on paragraph (b) of the following words:

“the Minister may remove such member from his or her office, but a member referred to in paragraph [(e)] (g) of subsection (1) of section 4 shall not be removed from office, except with the approval of the National Assembly.”.

Substitution of section 7 of Act No. 6 of 1995

4. The following section is hereby substituted for section 7 of the principal Act:

“Remuneration and allowances

7. A member of the Commission or of a committee thereof established under section 9(1), who is not in the full-time employment of the Public Service, shall be paid such remuneration and allowances as the Minister may determine with the concurrence of the Minister of Finance.”.

Amendment of section 8 of Act No. 6 of 1995

5. Section 8 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) The chairperson of the Commission or, in his or her absence, the deputy chairperson shall preside at the meetings of the Commission, and if both the chairperson and the deputy chairperson are absent from, or for any other reason are unable to preside at, any meeting of the Commission, the members present thereat shall elect one of their number to preside at that meeting.”.

Amendment of section 9 of Act No. 6 of 1995

6. Section 9 of the principal Act is hereby amended -

(a) by the substitution for subsection (1) of the following subsection :

“(1) The Commission may establish one or more committees to inquire into and to report to it in regard to any matter falling within the scope of the functions of the Commission or 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) by the substitution for subsection (2) of the following subsection :

“(2) (a) A committee established under subsection (1) shall consist of one or more members of the Commission, designated by the Commission for that purpose, and, if the Commission deems it necessary, one or more other persons not being a member or members of the Commission and whom the Commission may consider fit to appoint to the committee.

(b) The Commission may at any time dissolve or reconstitute such a committee.”; and

(c) by the addition of the following subsections:

“(4) A delegation or assignment under subsection (1) 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.

(5) The Commission shall not be divested or relieved of any power, duty or function delegated or assigned by it under subsection (1), and may vary or set aside any decision taken in the exercise of the power so delegated or in the performance of the duty or function so assigned.”.

Substitution of section 12 of Act No. 6 of 1995, as substituted by section 3 of Act No. 16 of 2000

7. The following section is hereby substituted for section 12 of the principal Act:

“Expenditure

12. The remuneration and allowances payable to -

(a) members of the Commission or of a committee thereof; and

(b) any person referred to in paragraph (c) of subsection (1) of section 13,

and all expenses incidental to the performance of the functions of the Commission, shall be defrayed from the Fund.”.

Substitution of section 13 of Act No. 6 of 1995

8. The following section is hereby substituted for section 13 of the principal Act:

**AGRICULTURAL (COMMERCIAL) LAND REFORM
AMENDMENT ACT, 2002**

“Performance of functions of Commission

13. (1) The Commission shall in the exercise of its powers and the performance of its duties or functions under this Act be assisted by -

- (a) staff members of the Ministry of Lands, Resettlement and Rehabilitation designated for that purpose by the Permanent Secretary;
- (b) such other staff members in the Public Service as may be seconded to the Ministry of Lands, Resettlement and Rehabilitation in terms of section 23 of the Public Service Act, 1995 (Act No. 13 of 1995), for purposes of the functions of the Commission; and
- (c) such other persons as the Commission, with the approval of the Minister granted with the concurrence of the Minister of Finance, may enter into an agreement with to so assist the Commission or to advise it in regard to any matter falling within the scope of its functions.

(2) An agreement referred to in paragraph (c) of subsection (1) shall be subject to such conditions as to remuneration and otherwise as the Minister may determine with the concurrence of the Minister of Finance.”

Amendment of section 17 of Act No. 6 of 1995

9. Section 17 of the principal Act is hereby amended -

(a) by the insertion after subsection (1) of the following subsection:

“(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
- (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 substitution for subsection (2) of the following subsection:

“(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 -

**AGRICULTURAL (COMMERCIAL) LAND REFORM
AMENDMENT ACT, 2002**

- (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.”;
- (c) by the substitution for paragraph (a) of subsection (3) of the following paragraph:
- “(a) by or to a regional council or a local authority council or a body corporate **[established by or under any law]** as defined in section 1, but only to the extent that such land is alienated otherwise than being sold in the open market;”;
- (d) by the substitution for paragraph (e) of subsection (3) of the following paragraph:
- “(e) by a co-owner of such land to another co-owner thereof, except where such land is owned by a company or close corporation; or”;
- (e) by the substitution for subsection (5) of the following subsection:
- “(5) Unless the Minister decides to issue a certificate of waiver to the owner concerned, the Permanent Secretary shall **[forthwith refer]** within 60 days after receipt of an offer in terms of subsection (4) refer such offer to the Commission, which shall consider the offer and make its recommendations thereon to the Minister within 30 days after [the date] receipt of such referral.”;
- (f) by the insertion after subsection (5) of the following subsection:
- “(5A) (a) The owner of agricultural land offered to the State as required by subsection (2)(a) may, by notice in writing given to the Minister through the Permanent Secretary, withdraw such offer at any time before the Minister -
- (i) issues a certificate of waiver to such owner in terms of subsection (5) or (6)(a); or
- (ii) accepts such offer or makes a counter offer for such agricultural land in terms of subsection (6)(b)(i) or (ii).
- (b) On receipt of a notice of withdrawal under paragraph (a), the Permanent Secretary shall forthwith refer such notice to the Minister.
- (c) A withdrawal of an offer under paragraph (a) shall have effect from the time the notice of withdrawal -
- (i) is delivered or tendered to the Permanent Secretary; or
- (ii) is sent by registered post to the Permanent Secretary.”;
- (g) by the insertion after subsection (6) of the following subsection:

**AGRICULTURAL (COMMERCIAL) LAND REFORM
AMENDMENT ACT, 2002**

- “(6A) (a) The Minister and the owner concerned may, at any time before the expiry of the periods of 30 days and 14 days referred to in subsections (5) and (6), respectively, and notwithstanding those subsections, by written agreement extend the period within which -
- (i) the Commission shall make its recommendations as required by subsection (5);
 - (ii) the Minister shall decline or accept the offer in question or make a counter offer as required by subsection (6),
- for such period, not exceeding 90 days at a time, and on such conditions as the Minister and such owner may agree.
- (b) An offer made in terms of subsection (4) shall be deemed to have been declined by the Minister -
- (i) if the Commission has failed to make its recommendations thereon to the Minister in terms of subsection (5) within the period of 30 days referred to in that subsection, or, where that period has been extended by agreement under paragraph (a)(i) of this subsection, such extended period; or
 - (ii) if the Minister has failed to accept the offer or to make a counter offer in terms of paragraph (b) of subsection (6) within the period of 14 days referred to in that subsection, or, where that period has been extended by agreement under paragraph (a)(ii) of this subsection, such extended period.
- (c) Where, in the circumstances contemplated in paragraph (b), an offer is deemed to have been declined, the Minister shall, at the request of the owner concerned, issue a certificate of waiver in respect of the agricultural land offered for sale.”; and

- (h) by the substitution in subsection (11) for the words preceding paragraph (a) of the following words:

“Subject to [subsection (7)] subsections (5A) and (7), and unless the Minister has issued to the owner concerned a certificate of waiver in respect of the land in question or the Minister and such owner have agreed otherwise, an offer made in terms of subsection (4) and a counter offer made in terms of subsection (6)(b)(ii) shall remain in force until -”.

Insertion of section 17A in Act No. 6 of 1995

10. The following section is hereby inserted in the principal Act after section 17:

“Period of validity of certificates of waiver

17A. (1) Subject to subsection (2), a certificate of waiver issued in respect of agricultural land shall remain in force for a period of one year from the date on which it was issued and, unless such certificate is for the purpose of transferring such land lodged with the Registrar within that period, it shall lapse.

(2) The Minister may, on good cause shown in writing by the owner concerned, at any time before the expiry of the period referred to in subsection (1) extend such period.

**AGRICULTURAL (COMMERCIAL) LAND REFORM
AMENDMENT ACT, 2002**

(3) When a certificate of waiver has lapsed in terms of subsection (1), the preferent right previously conferred on the State by subsection (1) of section 17 to purchase the agricultural land in question, shall revive if at any time after such lapsing the owner of such land intends to alienate such land.”.

Amendment of section 20 of Act No. 6 of 1995

11. Section 20 of the principal Act is hereby amended by the substitution for subsection (6) of the following subsection:

“(6) Notwithstanding anything to the contrary contained in this Act, the Commission shall, **[when making a recommendation to the Minister in relation to the expropriation of]** where the Minister decides in terms of subsection (1) to expropriate any agricultural land, consider the interests of any persons employed and lawfully residing on such land, and the families of such persons residing with them, and may make **[any]** such recommendation to the Minister in relation to such employees and their families as it may consider fair and equitable in the circumstances.”.

Substitution of heading to Part V of Act No. 6 of 1995

12. The following heading is hereby substituted for the heading to Part V of the principal Act:

“ALLOTMENT OF AGRICULTURAL LAND”.

Amendment of section 37 of Act No. 6 of 1995

13. Section 37 of the principal Act is hereby amended by the substitution for the words preceding paragraph (a) of the following words:

“Subject to the provisions of this Part, the Minister, after consultation with the Commission **[and with the concurrence of the Minister of Agriculture, Water and Rural Development]**, may, by way of **[alienation]** lease or in such other manner as may be prescribed, and under a scheme or otherwise allot to any person or group of persons contemplated in section 14(1), for agricultural purposes -”.

Amendment of section 39 of Act No. 6 of 1995

14. Section 39 of the principal Act is hereby amended by the substitution for paragraph (e) of subsection (4) of the following paragraph:

“(e) **[where any farming unit is offered for sale, the approximate purchase price of such unit, or]** where any [such] farming unit is offered for lease, the approximate rent thereof;”.

Amendment of section 41 of Act No. 6 of 1995

15. Section 41 of the principal Act is hereby amended -

(a) by the substitution for subsection (8) of the following subsection:

“(8) The Minister shall, by written notice, inform all applicants of his or her decision on their applications.”; and

(b) by the insertion after subsection (8) of the following subsection :

Act No. 13, 2002

**AGRICULTURAL (COMMERCIAL) LAND REFORM
AMENDMENT ACT, 2002**

“(8A) Any applicant who is aggrieved by a decision of the Minister under this section not to allot a farming unit to him or her or it may, within 30 days from the date of notice of the Minister’s decision not to allot a farming unit to the applicant, or such extended period as the Minister in a particular case may allow, appeal against that decision to the Lands Tribunal.”.

Amendment of section 45 of Act No. 6 of 1995

16. Section 45 of the principal Act is hereby amended by the addition of the following subsections:

“(4) The Minister shall, by written notice, inform a lessee of the amount -

(a) of any compensation payable to the lessee in terms of subsection (1); and

(b) when compensation is so payable to the lessee, of any deductions under subsection (3).

(5) Any lessee who is aggrieved by the amount of any compensation determined by the Minister under subsection (2), or by the amount of any deductions made under subsection (3) from the compensation payable to him or her or it, may, within 30 days from the date of notice of the amount so determined or deducted, or such extended period as the Minister in a particular case may allow, appeal against the determination of that compensation or that deductions, or both, to the Lands Tribunal.”.

Amendment of section 46 of Act No. 6 of 1995

17. Section 46 of the principal Act is hereby amended by the addition of the following subsections:

“(3) The Minister shall, by written notice, inform the lessee concerned of his or her decision under subsection (1).

(4) Any lessee who is aggrieved by a decision of the Minister under subsection (1) may, within 30 days from the date of notice of that decision, or such extended period as the Minister in a particular case may allow, appeal against that decision to the Lands Tribunal.

(5) No act referred to in paragraph (a) of subsection (1) which entails the registration, execution or attestation of any deed or other document in a deeds registry shall be so registered, executed or attested, unless proof of the required consent of the Minister under subsection (1) is submitted to the Registrar.”.

Repeal of sections 47, 48 and 49 of Act No. 6 of 1995

18. Sections 47, 48, and 49 of the principal Act are hereby repealed.

Amendment of section 50 of Act No. 6 of 1995

19. Section 50 of the principal Act is hereby amended -

(a) by the substitution for subsection (1) of the following subsection:

“(1) Subject to subsection (3), if a lessee fails to comply with any provision of this Act which is applicable to the lessee or to fulfil any term or condition of the lease, the Minister may cause written notice to be served

**AGRICULTURAL (COMMERCIAL) LAND REFORM
AMENDMENT ACT, 2002**

upon such lessee calling upon that lessee to remedy any default within a period specified by the Minister in the notice, and if the lessee fails to remedy such default within that period, the Minister, acting on the recommendation of the Commission, may cancel the lease, and, if the lease is so cancelled, the Minister shall by written notice inform the lessee of such cancellation.”;

(b) by the substitution for subsection (2) of the following subsection:

“(2) Subject to subsection (3), upon cancellation of a lease under subsection (1), the right to occupy the farming unit in question and all improvements thereon shall vest in the State, subject to the payment of compensation in accordance with the provisions of section 45.”; and

(c) by the addition of the following subsections:

“(3) A cancellation of a lease under subsection (1) shall not take effect unless and until -

- (a) the period for noting an appeal under subsection (4) has expired and the lessee concerned has not noted an appeal; or
- (b) where an appeal has been noted under subsection (4), the appeal has been abandoned or dismissed.

(4) Any lessee who is aggrieved by a decision of the Minister under subsection (1) to cancel his or her or its lease may, within 30 days from the date of notice of the Minister’s decision to cancel the lease, or such extended period as the Minister in a particular case may allow, appeal against that decision to the Lands Tribunal.”.

Repeal of sections 54, 55 and 56 of Act No. 6 of 1995

20. Sections 54, 55 and 56 of the principal Act are hereby repealed.

Substitution of section 57 of Act No. 6 of 1995

21. The following section is hereby substituted for section 57 of the principal Act:

“Right to enter and inspect

57. (1) Any member of the Commission, or any staff member or person referred to in paragraph (a), (b) or (c) of subsection (1) of section 13, or any other person authorised thereto in writing by the Minister or the Commission may at all reasonable times enter and inspect any farming unit allotted under this Part for the purpose of ascertaining whether the provisions of this Act, or the terms and conditions of the relevant agreement of lease **[or purchase and sale, as the case may be]**, are being complied with in respect of the farming unit.

(2) Before exercising the powers conferred by subsection (1), the member of the Commission or staff member or person concerned shall, whenever reasonably practicable, either obtain the consent of the lessee **[or purchaser]** of the farming unit or give the lessee **[or purchaser]** not less than 48 hours’ notice in writing of his or her intention to enter and inspect the farming unit, and unless such consent has been obtained or such notice has been given, the member of the Commission or staff member or person concerned shall not, in the exercise only of the powers conferred by this section, enter into any enclosed building or dwelling-house without the consent of the lessee **[or purchaser]**.”.

**AGRICULTURAL (COMMERCIAL) LAND REFORM
AMENDMENT ACT, 2002****Amendment of section 58 of Act No. 6 of 1995**

22. Section 58 of the principal Act is hereby amended by the insertion after subsection (2) of the following subsection:

“(2A) When -

- (a) the Registrar of Companies becomes aware that the controlling interest in a company; or
- (b) the Registrar of Close Corporations becomes aware that the controlling interest in a close corporation,

owning agricultural land has passed to a foreign national, he or she shall forthwith inform the Permanent Secretary in writing that such interest has so passed.”.

Insertion of section 60A in Act No. 6 of 1995

23. The following section is hereby inserted in the principal Act after section 60:

“Offence relating to sale or disposal otherwise of agricultural land

60A. (1) Notwithstanding any action taken by the Minister under section 60, where any agricultural land has been acquired -

- (a) by a foreign national in contravention of section 58(1)(a); or
- (b) by a nominee owner in contravention of section 59,

the person who sold or otherwise disposed of that agricultural land to the foreign national or nominee owner shall, subject to subsection (2), be guilty of an offence and be liable on conviction to a fine not exceeding N\$100 000 or to imprisonment for a term not exceeding 5 years or to both such fine and such imprisonment.

(2) In any prosecution under subsection (1), it shall be a defence to prove that the accused had reasonable grounds for believing and did believe that the person who acquired the agricultural land in question was not by law disqualified from acquiring it.”.

Amendment of section 61 of Act No. 6 of 1995

24. Section 61 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Notwithstanding anything to the contrary in any law contained, the Registrar shall not register any transfer of agricultural land or any lease or sublease in respect of such land or any cession of such a lease or sublease, unless there is submitted to the Registrar -

- (a) a statement made under oath or affirmation by or, in the case of a company or close corporation, on behalf of the transferee, lessee, sublessee or cessionary, as the case may be, declaring -
 - (i) his or her nationality or, in the case of a company or close corporation, the nationality of each member thereof and whether or not the company or close corporation is a foreign national; and

**AGRICULTURAL (COMMERCIAL) LAND REFORM
AMENDMENT ACT, 2002**

- (ii) whether or not the land to be transferred or mentioned in the lease, sublease or cession, as the case may be, will be held by him or her or it on behalf or in the interest of any other person and, where applicable, giving particulars of the name and nationality of that person or, in the case of a company or close corporation, the name and nationality of each member thereof; and
- (b) if in the statement referred to in paragraph (a), the transferee, lessee, sublessee or cessionary, as the case may be, declares that he or she is not a Namibian citizen or, in the case of a company or close corporation, that it is a foreign national, or that the land in question will be held by him or her or it on behalf or in the interest of another person who is not a Namibian citizen or, in the case of a company or close corporation, which is a foreign national -
 - (i) the written approval of the Minister referred to in section 58; or
 - (ii) proof by affidavit in the form and manner determined by the Registrar that he or she or it qualifies for exemption from the provisions of section 58 by virtue of the provisions of section 58(3) or 62,

and the Registrar may request the transferee, lessee, sublessee or cessionary concerned to submit to the Registrar such further proof as he or she may require that the transferee, lessee, sublessee or cessionary may lawfully acquire or hold such land in terms of this Part.”.

Amendment of section 62 of Act No. 6 of 1995

25. Section 62 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The provisions of this Part shall not apply to the acquisition of agricultural land by a foreign national -

- (a) by virtue of any succession *ab intestat* or testamentary disposition;
- (b) which is a public company conducting business as a banking institution as defined in section 1 of the **[Banks Act, 1965 (Act 23 of 1965)]** Banking Institutions Act, 1998 (Act No. 2 of 1998); [or]
- (c) which is a company of which the shares are listed on a licensed stock exchange in Namibia as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985); or
- (d) who is married in community of property to a Namibian citizen, and when in the case of the acquisition of agricultural land by a company or close corporation the controlling interest in such company or close corporation is to be determined, any interest that the foreign national who is so married may have in such company or close corporation shall, for the purposes of this Part, be disregarded.”.

Act No. 13, 2002

**AGRICULTURAL (COMMERCIAL) LAND REFORM
AMENDMENT ACT, 2002****Amendment of section 63 of Act No. 6 of 1995**

26. Section 63 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) The members of the Lands Tribunal shall be appointed for three years and be paid from the Fund such remuneration as the Minister, with the concurrence of the Minister of Finance, may determine.”.

Amendment of section 69 of Act No. 6 of 1995

27. Section 69 of the principal Act is hereby amended -

(a) by the substitution for subsection (1) of the following subsection:

“(1) There shall be a Rules Board which shall consist of -

- (a) the Judge-President of the High Court of Namibia or any judge of that Court designated from time to time by the Judge-President, who shall be the chairperson of the Rules Board;
 - (b) one **[person]** practising **[as an advocate in Namibia and]** legal practitioner nominated by the **[professional organization representing the interests of advocates]** Law Society of Namibia;
 - (c) one **[person practising as an attorney in Namibia and nominated]** legal practitioner serving in the Ministry of Justice designated by the **[professional organization representing the interests of attorneys]** Minister of Justice;
 - (d) **[an officer]** one staff member serving in the Ministry of Justice designated by the Minister of Justice; and
 - (e) **[an officer]** one staff member serving in the Ministry of Lands, Resettlement and Rehabilitation designated by the Minister.”;
- and

(b) by the substitution for subsection (2) of the following subsection:

“(2) The **[persons]** person appointed as **[members]** a member of the Rules Board in terms of **[paragraphs (b) and (c)]** paragraph (b) of subsection (1) shall be paid **[out of moneys appropriated by Parliament]** from the Fund such remuneration as the Minister, with the concurrence of the Minister of Finance, may determine.”.

Substitution of section 70 of Act No. 6 of 1995

28. The following section is hereby substituted for section 70 of the principal Act:

“Representation

70. In any proceedings before the Lands Tribunal a party to such proceedings may appear personally or by **[an advocate or attorney]** a legal practitioner.”.

Substitution of section 75 of Act No. 6 of 1995

29. The following section is hereby substituted for section 75 of the principal Act:

“Expenses of Lands Tribunal

75. The expenditure incidental to the performance of functions of the Tribunal shall be defrayed from **[moneys appropriated by Parliament for the purpose] the Fund.**”.

Substitution of section 9 of Act No. 2 of 2001

30. The following section is hereby substituted for section 9 of the Agricultural (Commercial) Land Reform Second Amendment Act, 2001:

“Short title

9. This Act shall be called the Agricultural (Commercial) Land Reform **[Second]** Amendment Act, 2001 and shall come into operation on a date to be determined by the Minister by notice in the *Gazette*.”.

Short title and commencement

31. (1) This Act shall be called the Agricultural (Commercial) Land Reform Amendment Act, 2002, and shall, subject to subsection (2), come into operation on a date to be determined by the Minister by notice in the *Gazette*.

(2) Paragraph (a) of section 1 and paragraphs (a), (b) and (d) of section 9 shall come into operation 60 days after the date of commencement of this Act.
