

CHAPTER 32:11
LAND CONTROL
ARRANGEMENT OF SECTIONS

SECTION

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Act 23, 1975,
Act 17, 1986.

An Act to provide for the control of transactions in agricultural land.

[Date of Commencement: 15th August, 1975]

1. Short title

This Act may be cited as the Land Control Act.

2. Interpretation

In this Act unless the context otherwise requires-

"agricultural land" means land other than tribal land or land within a township;

"controlled transaction" means one of the transactions specified in section 3(1) other than that specified in section 3(3);

"land" includes any estate, interest or right in land;

"mortgage" includes charge or bond;

"private company" means a private company within the meaning of the Companies Act;

"registrar" means any person charged with the registration of dealings in land under any written law, or, in relation to shares in a company, the person keeping the register of shares in that company;

"share" means a share or debenture within the meaning of the Companies Act.

3. No dealings in agricultural land without consent of Minister

(1) Each of the following transactions, that is to say-

- (a) the sale, transfer, lease capable of running for a period of five years or more, exchange, partition or other disposal or dealing with any agricultural land;
- (b) the division of any such agricultural land into two or more parcels to be held under separate titles;
- (c) the issue, sale, transfer, mortgage or any other disposal of or dealing with any share in a private company owning any agricultural land,

shall, if the party acquiring any interest in such land or in such shares is a person who is not a citizen of Botswana, be void for all purposes unless the Minister has given his consent in respect of that transaction in accordance with this Act.

(2) An agreement to be a party to a controlled transaction shall become void for all purposes-

- (a) at the expiration of three months after the making of such agreement if application for the Minister's consent has not been made within that time; or

- (b) if application for the Minister's consent has been made and consent has been refused, at the expiration of 30 days after the date of such refusal.

(3) This section shall not apply to a transaction in agricultural land by virtue of the will or intestacy of a deceased person unless that transaction would result in the division of the land into two or more parcels held under separate titles.

(4) In this section "citizen" shall not include a company incorporated or registered under the Companies Act, unless the majority of all classes of shares in such company are beneficially owned by individuals who are citizens of Botswana.

4. Recovery of consideration

If any money or valuable consideration has been paid in the course of a controlled transaction that becomes void by virtue of section 3(1), or under any agreement that becomes void by virtue of section 3(2), such money or valuable consideration shall, subject to section 10, be recoverable as a debt by the person who paid it from the person to whom it was paid.

5. Proposed transactions to be advertised

(1) Any person who proposes to enter into a controlled transaction shall, not less than 90 days before the proposed date of such transaction, publish a notice of such proposal in the *Gazette* and in at least one newspaper circulating in Botswana giving in such notice-

- (a) a description of the agricultural land, the subject of the controlled transaction;
- (b) the full names of the parties to the proposed controlled transaction;
- (c) details of the proposed controlled transaction;
- (d) the consideration for the proposed controlled transaction; and
- (e) a reference to the right of any citizen of Botswana interested in entering into a similar transaction in respect of the property in question to receive priority notwithstanding the controlled transaction set out in the notice.

(2) Any person wishing to object to a proposed controlled transaction may give written notice of his objection, with reasons therefor, to the Minister.

6. Application for consent

(1) An application for consent in respect of a controlled transaction shall be made in writing to the Minister and shall be accompanied by evidence of the notices published under section 5(1).

(2) The Minister may grant or refuse his consent and his decision shall be final and conclusive and shall not be questioned in any court.

7. Grant or refusal of consent

In deciding whether to grant or refuse consent in respect of a controlled transaction, the Minister shall-

- (a) have regard to the effect that the grant or refusal of consent is likely to have on the economic development of the land concerned or on the maintenance or improvement of standards of good husbandry on the land concerned;
- (b) take into account any objections made under section 5(2) and, in particular, the wish of any citizen of Botswana to enter into the controlled transaction; and
- (c) act on the principle that consent generally ought to be refused where-
 - (i) the person to whom the land is to be disposed of is unlikely to farm the land well or develop it adequately or already has sufficient agricultural land;
 - (ii) the person to whom the shares are to be disposed of would, by acquiring the shares, be likely to bring about the transfer of the control of the company from one person to another and the transfer would be likely to lower the standards of good husbandry on that land; or
 - (iii) in the case of a division of land into two or more parcels, the division would be likely to reduce the productivity of the land.

8. Registration of documents

(1) The registrar shall not register any instrument or document effecting a controlled

transaction unless he is satisfied that-

- (a) all the relevant provisions of the Act have been complied with;
- (b) documentary evidence has been produced that establishes the price at which the transaction was concluded.

(2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and liable to a fine not exceeding P5000 or to imprisonment for a term not exceeding six months, or to both.

9. False statements

Any person who knowingly makes any false statement in any application under this Act or who knowingly gives any false information to any person in connection with the determination of any application under this Act shall be guilty of an offence and liable to a fine not exceeding P10 000 or to imprisonment for a term not exceeding one year, or to both.

10. Acts in furtherance of void transaction

Where a controlled transaction or an agreement to be a party to a controlled transaction is avoided by section 3, and any person either-

- (a) pays or receives any money; or
- (b) enters into or remains in possession of any land,

in such circumstances as to give rise to a reasonable presumption that such person pays or receives such money or enters into or remains in possession of such land in furtherance of the avoided transaction or agreement or of the intentions of the parties to the avoided transaction or agreement, that person shall be guilty of an offence and liable to a fine not exceeding P10 000 or to imprisonment for a term not exceeding one year, or to both.