

## Amendments regarding the Legal Status of Agricultural Land in Romania

On 3 June 2020, a draft law amending Law no. 17/2014 (**Law 17/2014**) on the sale and purchase of agricultural land in Romania located outside a built-up area (extravilan) was passed by the Romanian Parliament. The draft law has been sent to the President of Romania for promulgation and will enter into force within 60 days of its publication in the Romanian Official Gazette.

The most relevant amendments introduced by the draft law relate to the conditions for selling agricultural land located outside a built-up area in Romania, conditions which become more severe in particular for companies.

Law 17/2014, as currently in force, provides that agricultural land can be sold to other persons only by observing the pre-emption right of the co-owners, agricultural lessees, owners of the neighbouring land and the Romanian State (through the State Domains Agency), in this specific order, at the same price and for the same contractual conditions.

The draft law extends the category of persons entitled to the pre-emption right in the case of a sale of agricultural land located outside a built-up area to a wider category of persons/institutions, and provides for the following beneficiaries of the pre-emption right: co-owners, relatives, spouses and in-laws up to the third degree (inclusive), owners of agricultural investments over agricultural land for trees, vines, hops, exclusively private irrigation and/or agricultural tenants, young farmers (as provided by EU regulations), the Academy of Agricultural and Forestry Sciences and research and development units in the fields of agriculture,

forestry and food industry, as well as educational institutions.

The most important change introduced by the draft law is the prohibition on foreign individuals preventing them from purchasing, directly, agricultural land in Romania.

As per the draft law, if the pre-emption right is not exercised, agricultural land located outside a built-up area can be sold to:

- individuals who meet the following cumulative conditions: they (i) have had their domicile/residence in Romania for at least 5 years prior to registration of the sale offer; (ii) have performed agricultural activities in Romania for at least 5 years prior to registration of the sale offer; (iii) have been registered with the Romanian fiscal authorities for at least 5 years prior to registration of the sale offer, and
- companies that meet the following cumulative conditions: (i) they have had their headquarters/secondary office in Romania for at least 5 years prior to registration of the sale offer; (ii) they have performed agricultural activities in Romania for at least 5 years prior to registration of the sale offer; (iii) they have provided proof (based on documentation) that, from the total income of the last 5 fiscal years, a minimum of 75% represents income from agricultural activities (as determined by the Code of Classification of Activities in the National Economy – CAEN Code); (iv) the shareholders having control over the company must have had their domicile in Romania for at least 5 years prior to registration of the sale offer.

Failure to comply with the pre-emption right provided for by the draft law can result in the sale being deemed null and void.



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The draft law also provides for an indirect obligation according to which the agricultural land may not be sold for at least 8 years from the date of purchase. In case a landlord decides to sell any part of the agricultural land acquired within the last 8 years, the seller would have to pay a tax of 80% applied to the difference between the selling price and the purchase price.

The sanction of paying 80% tax on the difference between the selling price and the purchase price (based of the notary public's grid) is also applicable in the case of the direct or indirect transfer of a controlled stake, prior to the 8th anniversary of the acquisition by the respective company of the agricultural land which represents more than 25% of the assets of the company. In such a case, the tax on the difference of the value of the shares

sold will be applied on a reduced basis, proportionally to the percentage of the agricultural land within the fixed assets (double taxation is prohibited).

The other amendments introduced by the draft law relate to the exercise of the pre-emption right indicated above.

### For more information

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