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Legal Bulletin



Summary:

1. Law No. 175/2020 amending and supplementing Law No. 17/2014 on regulatory measures concerning the sale and purchase of *extra-muros* agricultural lands and amending Law No. 268/2001 on the privatization of companies that hold for management purposes lands that are the public and private property of the State and have agricultural use and the establishment of the State Property Agency (*Agenția Domeniilor Statului*)

Change of conditions for selling *extra-muros* agricultural lands

In the Official Journal of Romania, Part I, No. 741 of 14 August 2020 was published the Law No. 175/2020 amending and supplementing Law No. 17/2014 on regulatory measures concerning the sale and purchase of *extra-muros* agricultural lands and amending Law No. 268/2001 on the privatization of companies that hold for management purposes lands that are the public and private property of the State and have agricultural use and the establishment of the State Property Agency (*Agenția Domeniilor Statului*) (“Law No. 175/2020”). The new piece of legislation will come into force within 60 days after its publishing in the Official Journal - i.e. on 12 October 2020.

This recent regulation provides for new limitations and conditions for the sale of *extra-muros* agricultural land and considerably widens the circle of holders of pre-emptive rights. Moreover, Law No. 175/2020 roughens the sanctions applicable to the sale of the *extra-muros* agricultural land without the observance of the pre-emptive procedure and without obtaining the mandatory endorsements: the absolute nullity of the sale agreements concluded by failure to observe the law, respectively the fine of which increased amount can vary between RON 100,000 and RON 200,000.

1. New elements regarding the pre-emptive right

1.1. The holders of the pre-emptive right

Law No. 175/2020 widens the circle of holders of pre-emptive right upon purchase of *extra-muros* agricultural land, by establishing 7 (seven) categories of pre-emptive right holders: (i) co-owners, 1st degree relatives, spouses, relatives and in-laws up to the 3rd degree (inclusive); (ii) owners of agricultural investments and land lessees; (iii) owners or land

lessees of agricultural lands adjacent to the land that is being sold; (iv) young farmers; (v) the research and development units in areas related to agriculture, forestry and food industry, as well as the education units specialized in agriculture; (vi) natural persons domiciled/residing in the administrative-territorial units where the land is located or in the neighboring administrative-territorial units; (vii) the Romanian State.

At the same time, the new piece of legislation establishes an order of priority for the purchase of the pre-emptive holders in the same category, as well as certain conditions that same pre-emptive holders right must meet; for example, in order to be able to exercise the right of preemption, certain categories of preemptors must have their domicile/headquarters registered in Romania for a minimum period of time (e.g. 5 years for land lessees - natural tenants, respectively for the shareholders/stakeholders of the land lessee - legal person; or 1 year in the case of young farmers).

1.2. Restriction applicable to natural persons and legal entities, other than the holders of the pre-emptive right

If the holders of the pre-emptive right do not express their intention to purchase the land within the legal time limit, Law No. 175/2020 establishes a series of requirements for the purchase of *extra-muros* agricultural land by natural persons and legal entities that are not categorized as holders of the pre-emptive right.

In this respect, both in the case of natural persons and legal persons, they shall: (i) be domiciled/residing/headquartered on the national territory at least 5 years prior to the date when the offer to sell is registered, (ii) carry out agricultural activities on the national territory for at least 5 years prior to the date when the offer to sell is registered, (iii) be registered with the Romanian tax authorities at least 5 years prior to date when the offer to sell is registered, for the natural persons, respectively, to prove that at least 75% of the overall income of the past 5 tax years was earned from agricultural activities, for the legal entities. Moreover, the legal persons must meet the following conditions as well: (i) the shareholder/stakeholder controlling the company must be domiciled on the national territory for at least 5 years prior to the date when the offer to sell is registered and (ii) if the shareholding comprises legal entities, the controlling shareholders/stakeholders - natural persons must prove that they have had a domicile on the national territory for at least 5 years prior to the date when the offer to sell is registered.

1.3. Free sale

If the pre-emptive right is not exercised and no other natural person or legal entity which fulfils the conditions indicated above expresses its intention to purchase within the legal timeframe, the sale may be freely executed to any natural person or legal entity.

2. Fiscal conditions as regards the sale of *extra-muros* agricultural land

According to Law No. 175/2020, the alienation by sale of an *extra-muros* agricultural land before the 8th anniversary of its purchase by the seller is conditioned by the payment by the

seller of a tax of 80% of the amount representing the difference between the sale price and the purchase price, calculated based on the grid of notaries in that period.

The same 80% tax is applicable as well in case of direct or indirect sale of the controlling interest in the companies that own *extra-muros* agricultural land and which account for more than 25% of their assets. The tax is applicable to the value difference of those lands calculated based on the notaries' official price chart between the date when the land was acquired and the date when the controlling interest was sold. In this case, the corporate income tax for the value difference of the sold shares shall be applied to a base proportionally reduced by the percentage of those agricultural lands in the fixed assets and any double taxation shall be strictly forbidden.

Failure to observe the obligation to pay the tax shall lead to absolute nullity of the sale.

The above provisions shall not apply to the reorganization or redistribution of assets within the same group of companies.

3. Restriction to change the use category for *extra-muros* agricultural lands

Law No. 175/2020 establishes that, once purchased, the *extra-muros* agricultural land will have to be used exclusively for agricultural activities from the date of the purchase and if there are agricultural investments on the land for tree crops, vines, hops and irrigation, their agricultural destination will have to be preserved.

4. Procedural aspects

Law No. 175/2020 extends the term for exercising the preemption right from 30 calendar days to 45 business days and adds to the procedure the 30-calendar day time limit imposed for natural persons and legal entities to exercise their intention to purchase, as described in paragraph 1.2 above. Moreover, in accordance with this recent regulation, Mayor's offices shall have the obligation to notify the holders of pre-emptive rights on the registered offers to sell.

Law No. 175/2020 provides for a Sole Register to be created as regards the transfers and use of *extra-muros* agricultural land, which will include information with respect to the disposal of *extra-muros* agricultural land.

5. Sanctions

Law No. 175/2020 provides for new sanctions: the sale of *extra-muros* agricultural land by failure to observe the pre-emptive procedure or without obtaining the necessary permits shall be penalized by absolute nullity (prior to the amendment, Law No. 17/2014 provided the relative nullity as sanction) and the fine for the failure to observe Law No. 17/2014 has been increased and ranges from RON 100,000 to RON 200,000.

Editors

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We act on a regular basis for investment funds, developers, end-users, banks and investors and are actively involved in all aspects of title clearing, the negotiation and preparation of documents and, when required, the prosecution or defense of foreclosure, bankruptcy and related litigation.



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