


 Law matters for farmers

Agricultural Land Reform Act and the deceased estate

I am sure you are all aware of the preferential right in favour of the state which comes into play whenever any owner of a farm intends to alienate his farm.

I will mention various points related to this topic in the article.

However, please bear in mind that for a more detailed explanation of the points raised in this article, especially regarding the process of applying to the ministry of land reform for a waiver certificate, please consult your legal practitioner.

But what is the position when the owner of a farm dies?

The fact of the matter is when the owner of a farm dies and his wife and or children inherit the farm, his farm is alienated in accordance with the administration of a deceased estate to an heir or legatee of his estate.

That means the preferential right in favour of the state is not applicable, so you do not need to apply

for a waiver certificate. You also do not need to apply for a waiver when the heirs enter into an redistribution agreement and the executor transfers the farm to a beneficiary in terms of the redistribution agreement. When the farmer in his will appoints a company or a close corporation as the beneficiary who inherits his farm, then the position is different and the estate has to apply for a waiver.

In other words, the exemption from the preemptive right in deceased estates only applies where the heir of legatee is a natural person and not a legal entity such as a company or a close corporation. Bear in mind the same distinction is applicable where the owner bequeaths a usufruct in favour of someone in his will. The usufruct must be bequeathed to a relative, namely a spouse, child, parent or sibling of the owner.

Thus when the owner be-

queaths a usufruct to a company or a close corporation, the state deems that the owner wanted to alienate the farm and the state's preferential right becomes effective.

Should the farm be sold by the estate itself, the executor will have to apply for a waiver.

Once the waiver is obtained, the executor can sell the farm.

However the proceeds of the sale is an asset in the estate.

Should the state exercise its right and decide to buy the farm, the farm will be sold to the state and the proceeds of the sale will fall into the deceased estate.

There are some other points regarding the Agricultural Land Act that I also want to deal with briefly:

Before a farmer can apply to the ministry of land reform for a waiver certificate, his land tax payments must be up to date and a tax clearance certificate must be issued by the

ministry of land reform. The state will not consider any waiver application before a tax clearance certificate is issued by the ministry.



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