

Legal Newsletter August 2020

1. New rules and restrictions on the sale of agricultural land

Law no. 175/2020 amends the existing law on the purchase of agricultural land and establishes a new order of pre-emption and new purchase conditions. The new rules will apply as of **13 October 2020**. The main changes to the law are as follows:

A. Temporary ban on the alienation of agricultural land

The new provisions introduce a prohibition on the alienation of agricultural land for a period of 8 years, **with the exception** of agricultural land located outside built-up areas that may still be alienated, by sale, before the passing of 8 years from the date of purchase, **on condition of payment of a tax equal to 80%** of the difference between the sales price and the purchase price, as calculated based on the notaries' grid valid for the period in question.

In the event of a **direct or indirect alienation**, prior to the passing of 8 years from the date of purchase, of a controlling interest belonging to companies in possession of agricultural land located outside built-up areas and **representing more than 25% of their assets**, the seller will be obliged to pay a tax equal to 80% of the difference in value of the land in question, as calculated on the basis of the notaries' grid, on the date of acquisition of the land and the date of alienation of the controlling interest. In this case, the profit tax on the difference in value of the shares or equity interests sold will be applied on a reduced basis commensurate with the percentage for which the agricultural land in question accounts in the fixed assets, with any double taxation being prohibited.

Failure to comply with these provisions will result in the **absolute nullity** of the transaction, and after acquisition the agricultural land in question **must be used exclusively** for the purposes of carrying out agricultural activities from the date of purchase.

These provisions **do not apply** to the reorganization or reallocation of assets within the same group of companies.

B. New categories of preemptor and the imposition of new conditions

The alienation by means of sale of agricultural lands located outside built-up areas is to take place in compliance with the substantive and formal conditions provided for under Law no. 287/2009 on the Civil Code and the right of preemption, at the same price and under the same conditions, and in the following order:

- a) **1st rank preemptors**: co-owners, first degree relatives, spouses, relatives and relatives up to and including the third degree
- b) **2nd rank preemptors**: owners of agricultural investment projects for the cultivation of trees, grape vines, hops, exclusively for private irrigation and/or lessees. If there exist agricultural investment projects for the cultivation of trees, vines, hops and irrigation on the land subject to sale, the owners of these investment projects have priority in the purchase of these lands
- c) **3rd rank preemptors**: the owners and/or lessees of agricultural land adjacent to the land subject to sale
- d) **4th rank preemptors**: young farmers
- e) **5th rank preemptors**: the Gheorghe Ionescu-Șișești Academy of Agricultural and Forestry Sciences and the research and development bodies in the fields of agriculture, forestry and the food industry established and regulated by Law no. 45/2009 on the establishment and functioning of the Gheorghe Ionescu-Șișești Academy of Agricultural and Forestry Sciences and the research and development system in the fields of agriculture, forestry and the food industry, as well as tertiary educational institutions specialised in agriculture, with the aim of purchasing agricultural land located outside of built-up areas with the use designation strictly required for agricultural research and located in the vicinity of existing lots belonging to their estate.
- f) **6th rank preemptors**: natural persons with domicile/residence in the administrative-territorial units where the land is located or in neighbouring administrative-territorial units

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g) **7th rank preemptors**: the Romanian State, through the State Property Agency.

C. New rules for lessees

A lessee wishing to purchase agricultural land located outside of built-up areas must have obtained the capacity of lessee by means of a valid lease concluded and registered according to the relevant legal provisions at least one year prior to the date of posting of the offer of sale at the town hall and must meet the following conditions:

- a) **lessees who are natural persons/legal entities/associations** must prove they have been domiciled/resident in Romania for a period of 5 years prior to registration of the offer of sale for the agricultural land located outside a built-up area
- b) **in the case of lessees who are legal entities and whose shareholder is another legal entity**, the shareholders in control of the company must prove they have had a registered/secondary office in Romania for a period of 5 years prior to registration of the offer of the sale of agricultural land located outside of a built-up area

D. Restrictions for natural/legal persons who are not preemptors

Law no. 175/2020 establishes the cumulative conditions for the purchase of agricultural land by natural/legal persons that do not fall under the category of preemptors, as follows:

1. **they must have been domiciled/resident or had a registered and/or secondary office in Romania for a period of at least 5 years** prior to the registration of the offer of sale (including for the partner/shareholder natural/legal person in control of the company)
2. **they must have been registered with the tax authorities in Romania for a period of at least 5 years**
3. **in the case of individuals**, at least 75% of the total income from the previous 5 tax years must have been derived from agricultural activities, etc.

E. Other provisions

The request and use of the land book extract/certificate of tasks and the cadastral documentation valid upon conclusion of the transfer of ownership contracts regarding real estate and other real rights **fully demonstrate the good faith** both of the parties to the contract and before the notary public with regard to the owner's capacity as the seller of the real estate subject to sale as described in the land book.

The period for which the offer of sale must be displayed is extended to **45 days** and the obligation to notify the holders of preemption rights over the registered offer of sale falls on the mayoralties in question.

Sellers and preemptors will be able to withdraw offers, including the acceptance of offers, up until the completion of the sales procedure.

A Single Register of the sale and use of agricultural land located outside built-up areas has been established to record information about real estate transactions involving this type of land.

Law no. 175/2020 also introduces a series of harsher penalties, including the **absolute nullity** of acts of alienation by sale of agricultural land located outside built-up areas that do not respect the right of preemption or which are concluded without obtaining the approvals required by law. It also establishes **finances** for the non-observance of preemption rights with respect to the sale of agricultural land ranging between **RON 100,000 and 200,000**.

Source: Law 175/2020 on the amendment and supplementation of Law no. 17/2014 on various measures to regulate the sale and purchase of agricultural land located outside built-up areas and the amendment of Law no. 268/2001 on the privatization of commercial companies managing the State's publicly and privately-owned land designated for agricultural use and the establishment of the State Property Agency, as published in the Official Gazette no. 741 of 14 August 2020.

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2. Changes to the currency regime

Regulation no. 4/2005 on the exchange rate regime of the National Bank of Romania has been amended by Regulation no. 7/2020, with the latter entering into force on 7 August. The main changes introduced pertain to the following:

1. **The ability to carry out certain transactions between residents in foreign currencies, not only in the national currency (RON).** These operations include but are not limited to:
 - distributions of dividends;
 - financial flows generated by the granting of loans;
 - the setting up of deposits;
 - securities transactions.
2. **Categories of resident allowed to carry out operations in foreign currencies.** The amendments specify the following categories of resident as being allowed to carry out foreign exchange operations with other residents and the situations in which these operations may take place:
 - a) natural and legal persons and other entities conducting direct operations arising from external processing contracts under the lohn system on the basis of collaboration agreements concluded between residents and, where resident collaborators are nominated, in the authorization of inward processing;
 - b) legal persons carrying out payments to suppliers and sub-suppliers relating to goods and services that fall under exported products or contribute to the provision of exported services. This category does not include goods purchased from resident suppliers and sub-suppliers, intended for export trade, in the same form in which they were purchased, without the exporter having added value to those goods.
3. **Entities allowed to carry out foreign exchange activities.** Regulation no. 7/2020 extends the Foreign Exchange Regulation to include a new section describing the different segments of the foreign exchange market. According to Regulation no. 7/2020, the foreign exchange market is composed of the following segments:
 - a) **the interbank foreign exchange market**, on which foreign exchange transactions are carried out by credit institutions as well as the National Bank of Romania
 - b) **the foreign exchange market for entities authorized to carry out foreign exchange activities**, namely:
 - foreign exchange offices and entities that manage tourist establishments with accommodation facilities and which include in their object of activity currency purchase operations, being authorized to carry out foreign exchange activities for individuals
 - entities which carry out foreign exchange activities on the basis of express legal provisions and for which foreign exchange activities is specified in the articles of association that regulate their establishment and operation

Regulation no. 7/2020 states that it is prohibited for foreign exchange activities to be carried out by entities other than those provided for above.

According to the regulation, a **foreign exchange activity** is defined as the activity carried out by a buyer/seller of quoted and unlisted currencies against the national currency at an exchange rate established between the parties and achieved by means of the collection/payment the exchange value.

Source: Regulation no. 7/2020 on the amendment and supplementation of Regulation of the National Bank of Romania no. 4/2005 on the exchange rate regime, as published in the Official Gazette no. 711 on 07.08.2020.



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This newsletter is a service of TPA.

Kind regards

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