



Republic of Namibia
Annotated Statutes

REGULATIONS

REGULATIONS MADE IN TERMS OF

Agricultural (Commercial) Land Reform Act 6 of 1995

section 77 read with section 20(1A)

Regulations on Criteria to be used for Expropriation of Agricultural Land

Government Notice 209 of 2016

(GG 6115)

came into force on date of publication: 1 September 2016

ARRANGEMENT OF REGULATIONS

1. Definitions
2. Criteria to be used in expropriating agricultural land
3. Identification criteria for agricultural land
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ANNEXURE

Expropriation criteria

Definitions

1. In these regulations a word or an expression to which a meaning has been assigned in the Act has that meaning, and unless the context otherwise indicates -

“assessment report” means an assessment report prepared by a person authorised in writing by the Commission under section 15(1) of the Act;

“Ministry” means the Ministry administering land affairs;

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“the Act” means the Agricultural (Commercial) Land Reform Act, 1995 (Act No. 6 of 1995); and

“valuer” means a valuer as defined under the Land Valuation and Taxation Regulations published under Government Notice No. 120 of 3 July 2007.

[The Land Valuation and Taxation Regulations referred to are contained in GN 120/2007 (GG 3870), as amended.]

Criteria to be used in expropriating agricultural land

2. (1) Where the Minister, after consultation with the Commission, decides to expropriate any agricultural land under section 20 of the Act for the purposes of section 14(1) of that Act, the Minister must -

- (a) use the identification criteria set out in regulation 3 in identifying the agricultural land eligible for expropriation; and
 - (b) conduct a suitability assessment as contemplated in regulation 4 in order to determine the suitability of agricultural land for the purposes of section 14(1) of the Act.
- (2) The Minister, after having -
- (a) identified agricultural land for expropriation under subregulation (1)(a); and
 - (b) conducted a suitability assessment of the agricultural land as contemplated in regulation 4,

must for the purposes of section 14(1) of the Act score the agricultural land in accordance with the scoring criteria set out in the Annexure.

(3) The Minister, after consultation with the Commission and having scored the identified agricultural land in accordance with subregulation (2), may decide to expropriate the identified agricultural land.

Identification criteria for agricultural land

3. (1) The Minister must identify and scrutinise the agricultural land intended to be expropriated for purposes of section 14(1).

- (2) For the purposes of subregulation (1), the Minister must ascertain -
 - (a) the ownership of the identified agricultural land with the deeds registry and any condition endorsed on the title deed of the agricultural land;
 - (b) whether agricultural land is owned by a Namibian citizen or foreign national;
 - (c) whether agricultural land is owned by a natural or juristic person;

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- (d) any other relevant information pertaining to the identified agricultural land which includes -
 - (i) whether the identified agricultural land is managed by a person other than a foreign owner who resides in a foreign country;
 - (ii) whether the agricultural land is leased to another person by a foreign owner who resides in a foreign country;
 - (iii) whether the owner has abandoned the agricultural land;
 - (iv) whether the agricultural land is or has been neglected by an owner without fully or efficiently utilising the identified agricultural land for agricultural purposes;
 - (v) whether a foreign owner of the identified agricultural land owns other agricultural land other than the agricultural land identified for expropriation; and
 - (vi) whether the identified agricultural land will contribute to the utilisation of the adjacent State land.

Suitability assessment for agricultural land

4. (1) The Minister using the assessment report must verify the following information in order to determine whether the identified agricultural land is suitable for the purposes of section 14(1) -

- (a) the size of the agricultural land, including -
 - (i) the carrying capacity of the agricultural land;
 - (ii) hydrological area (ground water potential); and
 - (iii) number and condition of boreholes and water quality and quantity;
- (b) the location of the agricultural land, including -
 - (i) the region and registration division; and
 - (ii) the agro-ecological zone;
- (c) the infrastructures on the agricultural land such as -
 - (i) boreholes, troughs, reservoirs, water distribution, water quality and quantity; and
 - (ii) internal camps;
- (d) climate, relief and soil, including -
 - (i) topography (contour and spot heights - topographic map); and

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- (ii) rainfall pattern.

(2) Where the Minister intends to expropriate agricultural land owned, possessed or occupied by a foreign national for the purposes of section 58 of the Act, the Minister must, in addition to the criteria set out in the Annexure, assess the Certificate of Status Investment issued to the foreign national under section 4 of the Foreign Investments Act, 1990 (Act No. 27 of 1990).

[Note that the Foreign Investments Act 27 of 1990 will be repealed and replaced by the Namibia Investment Promotion Act 9 of 2016 when the latter Act is brought into force.]

Scoring criteria for agricultural land

5. (1) The method of calculating whether an agricultural land is highly suitable, suitable, moderate suitable or not suitable for expropriation for purposes of these regulations is by using the following formula:

Scores of identification criteria + suitability criteria – citizenship preference criteria = total scores

- (2) An agricultural land that, in terms of the Annexure, scores -
 - (a) at least 80 percent is considered as highly suitable for expropriation;
 - (b) 60 percent to 79 percent is considered as suitable for expropriation;
 - (c) 40 percent to 59 percent is considered as moderately suitable for expropriation; and
 - (d) less than 39 percent is considered not suitable for expropriation.

ANNEXURE

[The Table below is reproduced as it appears in the Government Gazette, including with respect to capitalisation.]

Expropriation criteria

Code	Identification criteria	Identification criteria description	Qualification indicators	Weight	Score
01	Ownership identified under regulation 3(2) (a) to (c)	natural or juristic person	agricultural land owned by a natural person or juristic person	5	
		foreign national	agricultural land owned by a foreign national	15	
02	Other relevant information in terms of regulation 3(2)(d)	*absent foreign owner	agricultural land managed by another person on behalf of foreign owner who resides in a foreign country	15	
			agricultural land leased to another person by a foreign owner	15	

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		*abandoned, undeveloped or underutilised agricultural land	abandoned agricultural land	4	
			underdeveloped, underutilised agricultural land	4	
		multiple ownership	foreign owner owns more than one agricultural land	20	
Plus					
Code	Suitability criteria	Suitability criteria description	Qualification indicators	Weight	Scores
03	suitability criteria in terms of regulation 4	Size	carrying capacity area	5	
			ground water potential	5	
		*location	agricultural land adjacent to State land or resettlement farm	15	
			Agricultural land not adjacent to resettlement farm or State land	15	
		infrastructure	boreholes, troughs, reservoirs or other infrastructure	4	
			internal camps	4	
		climate, relief	topography	4	
			rainfall	4	
Subtotal				.../100	
Minus					
Code	Citizen preference criteria	Citizen preference	Qualification indicators	Weight	Scores
04	Citizenship	Citizenship preference	agricultural land owned by a Namibian natural person	25	
			agricultural land owned by a Namibian juristic person	15	
			agricultural land owned by Namibian citizen and adjacent to resettlement farm or State land	25	

* Choose whichever is applicable in respect of the qualification indicator in Column 4 and weight in Column 5.