

June 2020

## POTENTIAL CHANGES CONCERNING SALE OF AGRICULTURAL LAND IN ROMANIA

The Romanian Parliament has recently passed a draft law which would amend Law no. 17/2014 concerning the sale of agricultural land located outside of the "built-up area" – in Romanian, *extravilan* – which will significantly impact future real estate transactions if this draft law is promulgated in its current form by the President.

One of the most relevant changes is the extension of potential preemptors and defining the priority of preemption for each category. The exact preference order is as follows:

- Co-owners, parents, spouses, heirs, as well as in-laws up to and including the third degree;
- Owners of agricultural investments on the respective land plot, including but not limited to trees, vines, hops and irrigation channels, as well as tenants, with the former category being preferred if the investments were carried out on the plot of land intended for sale.
- Land owners and/or tenants of neighboring plots of land;
- Young farmers, as defined by EU Regulation no. 1305/2013;
- The National Academy for Agricultural and Silvic Sciences "Gheorghe Ionescu-Sisesti" and other entities with agricultural R&D objectives, as defined by Law no. 45/2009;
- Individuals domiciled in the same administrative unit with the land plot intended for sale;
- The Romanian State.

The draft goes into detail on procedures and conditions that must be fulfilled by certain preemptor categories in order to legally exercise their respective preemption rights.

The existing term of thirty (30) days during which the sale offer must be displayed at the City Hall will be extended to forty-five (45) business days, during which the preemptors may exercise their right.

In case none of the legal preemptors wishes to purchase the plot of land the forty-five (45) business day term has expired, other individuals or legal entities may choose to purchase the plot of land under the same conditions set forth in the initial public offer. However, the

draft law introduces new conditions that these other categories must fulfill in order to conclude a valid transaction.

As such, both individuals, as well as legal entities must be domiciled / headquartered in Romania for at least 5 (five) years prior to the sale offer registration with the City Hall, as well as conduct agricultural business and be registered with the local tax authorities for the same time period. For legal entities, the above condition also extends to its shareholders, whether individuals or legal entities. Additionally, companies must present written proof from the tax authorities that at least 75% of their annual income is derived from agricultural businesses conducted under the appropriate NACE code.

Furthermore, after the transaction is concluded, the buyer may not sell the asset for a period of 8 (eight) years, under a penalty equivalent to 80% of the difference between the purchase and final sale prices.

Another provision to be implemented states that the same penalty is also applicable if the buyer that is a company undergoes a change of control and/or partial buy-out that leads to a change of control and the agricultural plot of land represents at least 25% of the company's assets.

Once purchased, the plot of land must continue to be used exclusively for agricultural purposes.

In conclusion, most of the upcoming measures will severely restrict the possibilities for purchase of agricultural land by new foreign investors, and will strengthen the already established market for local players seeking to maintain and expand their positions and further develop their portfolios.

Currently there is a constitutional challenge submitted by a group of senators against the law draft, arguing that the draft severely restricts circulation of agricultural land without any real justification and excessively infringes on private ownership principles. The Romanian Constitutional Court has set the hearing date for 14 July, date on which the merits of the challenge will be analyzed and a decision will be rendered.

## About WOLF THEISS

Wolf Theiss is one of the leading law firms in Central, Eastern and Southeastern Europe (CEE/SEE). We have built our reputation on a combination of unrivalled local knowledge and strong international capability. We opened our first office in Vienna over 60 years ago. Our team now brings together over 340 lawyers from a diverse range of backgrounds, working in offices in 13 countries throughout the CEE/SEE region.

For more information about our services, please contact:



**Flaviu Nanu**  
Counsel  
[flaviu.nanu@wolftheiss.com](mailto:flaviu.nanu@wolftheiss.com)  
T: +40 21 3088 100



**Andrei Salageanu**  
Associate  
[andrei.salageanu@wolftheiss.com](mailto:andrei.salageanu@wolftheiss.com)  
T: +40 21 3088 100

This memorandum has been prepared solely for the purpose of general information and is not a substitute for legal advice.

Therefore, WOLF THEISS accepts no responsibility if – in reliance on the information contained in this memorandum – you act, or fail to act, in any particular way.

If you would like to know more about the topics covered in this memorandum or our services in general, please get in touch with your usual WOLF THEISS contact or with:

Wolf Theiss  
Schubertring 6  
AT – 1010 Vienna

[www.wolftheiss.com](http://www.wolftheiss.com)