

Our reference: L Schultz

### **REGULATIONS ON ALIEN AND INVASIVE SPECIES**

On the 1<sup>st</sup> October 2014 the **Alien and Invasive Species Regulations** (“the Regulations”) to **The National Environmental Management: Biodiversity Act, 2004** (“NEMBA”) came into effect.

The Regulations call on land owners and sellers of land to assist the Department of Environmental Affairs to conserve our indigenous fauna and flora.

Non-adherence to the Regulations by a land owner or seller of land, can result in a criminal offense punishable by a fine of up to R5 million (in case of 2<sup>nd</sup> offence, R10 million) and / or a period of imprisonment of up to 10 years.

The Regulations, identifies alien species (birds, animals, insects and plants), which is categorized as:

1. Invasive species; and
2. Prohibited species

According to the classification of these species, certain invasive species must be controlled and eradicated, while others require a permit to be obtained.

The lists of Alien Invasive Species can be found at: <http://www.invasives.org.za/legislation.html>.

Section 29 of the Regulations to NEMBA reads as follows:

**29. Sale or transfer of alien and listed invasive species**

- (1) *If a permit-holder sells a specimen of an alien or listed invasive species, or sells the property on which a specimen of an alien or listed invasive species is under the permit-holder's control, the new owner of such specimen or such property must apply for a permit in terms of Chapter 7 of the Act.*
- (2) *The new permit-holder contemplated in sub-regulation (1) will be subject to the same conditions as the permit-holder who has sold the specimen of an alien or listed invasive species, or the property on which a specimen of an alien or listed invasive species occurs, unless specific circumstances require all such permit conditions to be revised, in which case full reasons must be given in writing by the issuing authority.*
- (3) *The seller of any immovable property must, prior to the conclusion of the relevant sale agreement, notify the purchaser of that property in writing of the presence of listed invasive species on that property.*

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We believe that the practical effect of the aforesaid regulation gives rise to the following scenarios:

1. **Sellers who have permits:**

If you have a permit for an alien species on your property, you must inform the buyer so that he can:

- a. apply for a new permit (which process could entail a survey and a certificate from an environmental practitioner); or
- b. remove the alien species, which will require permit conditions to be revised (which process will require a survey).

2. **Sellers who do not have permits:**

- a. If the seller of the immovable property is aware of any invasive species on his property, then he should declare it in the sale agreement. This will fulfill the requirement of notifying the purchaser of the property in writing of the presence of listed invasive species on the property (no survey is presently required, but is expected to become necessary sometime in the future).
- b. If the seller of the immovable property is unaware of invasive species on the property, then he should declare it in the sale agreement (therefore no need to conduct a survey).

In view of the above:

1. estate agents should ask sellers to declare in writing whether they are aware of any alien invasive species on their properties and if so, if they hold permits for those species that require permits to be held.
2. We believe that sales agreements, subsequent to 1 October 2014, should incorporate the following clauses:

**\*(a) In terms of the ALIEN AND INVASIVE SPECIES REGULATIONS, 2014 to the NATIONAL ENVIRONMENTAL MANAGEMENT: BIODIVERSITY ACT, 2004 (ACT NO. 10 OF 2004), the seller declares that the best of his knowledge there are no Invasive Alien Species, as per the National Register of Alien and Listed Invasive Species, present on the property.**

**\*(b) In terms of the ALIEN AND INVASIVE SPECIES REGULATIONS, 2014 to the NATIONAL ENVIRONMENTAL MANAGEMENT: BIODIVERSITY ACT, 2004 (ACT NO. 10 OF 2004), the seller declares that the following listed alien invasive species are present on the property:**

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**\*(c) The purchaser acknowledges and understands that, once the property has been transferred, he is obliged to apply for a permit in his own name with regard to all Category 2 Alien Invasive Species, in terms of the ALIEN AND INVASIVE SPECIES REGULATIONS, 2014 to the NATIONAL**

**ENVIRONMENTAL MANAGEMENT: BIODIVERSITY ACT, 2004 (ACT NO. 10 OF 2004).**

(\*Delete what is not applicable)

- (d) **The purchaser acknowledges that he has acquainted himself with the extent and nature of the property and accepts the property as such, including the vegetation and fauna on the property.**

Various practical difficulties regarding the enforcement of this legislation still need to ironed out and the Department of Environmental Affairs is still formulating guidelines in consultation with Municipalities and other bodies. We hope that in time, there will be greater certainty and understanding of the obligations of property owners insofar as this legislation is concerned.

Yours faithfully

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