

## **CONSENT REQUIRED FROM THE MINISTER OF LANDS AND HOUSING IN PROPERTY TRANSACTIONS - (Oratile Gaopotlake, Associate)**

There are transactions which require the consent of the Minister of Lands and Housing to be granted before they can be registered at the Deeds Registry.

Two types of transactions that occur frequently and require ministerial consent:

1. Registration of leases which have a ministerial consent condition before the lease can be registered; and
2. Controlled transactions in terms of the Land Control Act.

### **Leases requiring ministerial consent:**

There are leases which contain a condition directing registration at the Deeds Registry. This type of lease usually has another condition requiring that the Minister's consent be sought before the lease can be registered. In this instance, an application must be made to the Minister of Lands and Housing requesting his consent for the registration, highlighting the clause that makes the consent a requirement. If the lease is lodged for registration at the Deeds Registry without the required consent, it will be rejected at the Deeds Registry.

### **Controlled transactions:**

A controlled transaction is defined by the Land Control Act under sections 3(1) and 3(3). The former provides as follows:

- ***(a) the sale, transfer, lease capable of running for a period of five years or more, exchange, partition or other disposal or dealing with any agricultural land;***
- ***(b) the division of any such agricultural land into two or more parcels to be held under separate titles;***
- ***(c) the issue, sale, transfer, mortgage or any other disposal of or dealing with any share in a private company owning any agricultural land, shall, if the party acquiring any interest in such land or in such shares is a person who is not a citizen of Botswana, be void for all purposes unless the Minister has given his consent in respect of that transaction in accordance with this Act.***

The Act requires that a contemplated controlled transaction be advertised to allow citizen purchasers to match the price offered. A controlled transaction also attracts an onerous transfer duty.

The limitation of controlled transactions is designed to keep agricultural land in the hands of Batswana by giving citizens the opportunity to acquire it or object to acquisition by non-citizens with just cause.

There are no turnaround times prescribed in the Act within which the Minister must deliver his consent. From experience, it can take anything from a few weeks to up to a year or more to obtain such consent. Any proposed development of land covered by Section 3 should accordingly be as flexible as possible with respect to time lines. That said, Armstrongs has been successful in procuring and expediting consent from the Minister of Lands and Housing in a relatively quick time frame through active follow up campaigns driven by our Conveyancing Department.