



# Welcome

Policy and Legislative Outlook, 2020

Agbiz Media Day

5 December 2019

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# For today...

1. Amendment of section 25 of the Constitution
2. Expropriation Bill
3. Land Reform policy
4. Preservation & Development of Agricultural Land Bill
5. Amendments to the Water Use License Regulations
6. Climate change mitigation

# 1. Constitutional Amendment

- Workshop hosted in the 2nd week of November;
- 2 proposals for amended wording submitted by Parliament's legal advisor; and
- 1 proposal submitted by EFF member of committee;
- Committee to deliberate on proposed wording and publish draft Constitutional Amendment Bill expected by 10 December 2019;
- Published for public consultation Jan 2020;
- Public hearings from Feb 2020
- Agbiz will provide thoroughly researched inputs!

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# 1. Constitutional Amendment

- Proposed wording option 1:
- “25 (2) Property may be expropriated only in terms of law of general application
- a) for a public purpose or in the public interest; and
- b) subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court; provided that a court may determine that no compensation is payable in the event of expropriation of land for the purposes of land reform.”
- Option 2 – new insertion:
- “(4A) Notwithstanding the requirement for compensation contemplated in section 25 (2), (3) and (4), land may be expropriated without the payment of any compensation as a legitimate option for land reform in order to redress the results of past racial discrimination”

# 1. Constitutional Amendment

## Looking forward to 2020

- The Constitutional amendment still has a long way to go;
- After the Ad Hoc Committee decided on wording, a recommendation must be made to the National Assembly who in turn must vote on it.



EWC (unconditional/wholesale  
to facilitate nationalisation)  
(Venezuela/Zimbabwe)



EWC (conditional)  
**(Towards inclusive  
economy)**



No to EWC  
**(current provisions of  
the constitution)**

*When the wording for amendment of section 25 of the Constitution is finalised, will there be sufficient/unanimous vote for it?*

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# 2. Expropriation Bill

## Process

- Revised following public consultations (2018);
- Nedlac consultation 5 December 2019;
- Set to be submitted to Parliament in February 2019;
- **Content**
- The key amendments relate to nil-compensation; but other issues still remain:
  - Definition of 'rights holder' excludes bond holders;
  - Definition of 'expropriation' limits scope to instances where the state acquires property = no 'constructive expropriation' or compensation where only rights in the land are taken but not full ownership (NB! Water rights?);
  - Role of the Valuer-General still uncertain.

*Will motivate for a full discussion on amendments at Nedlac*

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2018 Published Bill	2019 Amended Bill
Land use by labour tenants	Land <b>occupied</b> by labour tenants
	Land <b>claimed</b> by labour tenants
Speculation	Land that “is not being used and the owner’s main purpose is not to develop the land or use it to generate income, but to benefit from the appreciation of its market value”
State-owned entities, subject to consent from Minister of Public Entities	Organ of state owns land, not used for its <b>core functions</b> and is not reasonably required for future activities <b>and where it was acquired for no consideration.</b>
Abandoned land	Owner has failed to exercise control over the land
Value less than subsidies	Value less than subsidies
	Where the nature or condition of the property poses a health, safety or physical risk to persons or other property



# 2. Expropriation Bill

## **S12 (3) nil-compensation**

“It may be just and equitable for nil compensation to be paid where land is expropriated in the public interest, having regard to all relevant circumstances including but not limited to:” Nedlac consultation 5 December 2019;

- Just & equitable remains the measure and all circumstances must be considered; but
- Suggested that it may be just & equitable for nil compensation in the listed instances.
- Courts very unlikely to find it just & equitable for nil compensation in most instances (weight of caselaw); but
- Danger that Ministers may offer nil compensation in all listed instances and the owner/bond holder will have to motivate for compensation in court.

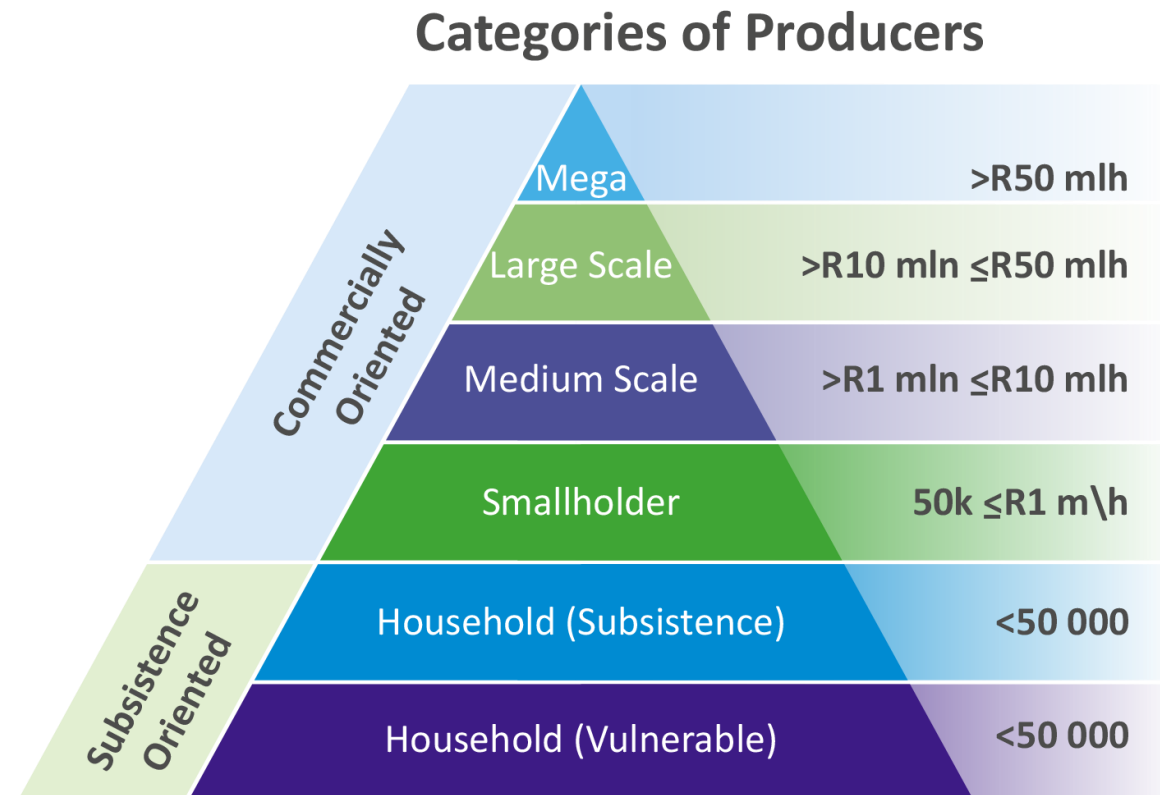
# 3. Land Reform Policy

## **Will the Presidential Panel's Recommendations be accepted?**

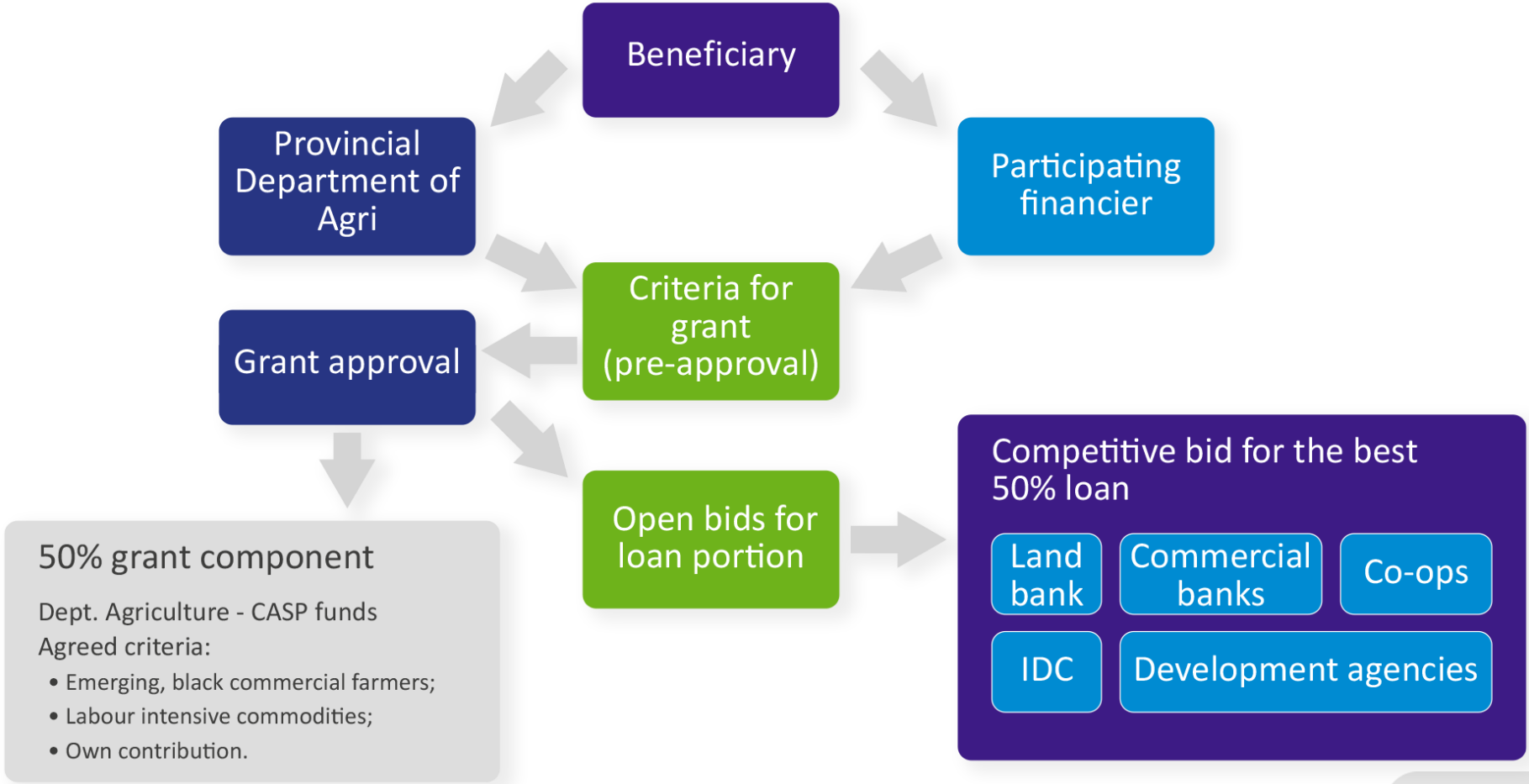
- The Panel's report was made public in July but there has still been no word as to which recommendations have been accepted by Government;
- The Inter-Ministerial Committee (IMC) are busy debating this and we may see policies published for public comment in 2020 relating to:
  - Beneficiary selection;
  - The release of state land for land reform;
  - Blended finance;
  - Land ceilings & foreign ownership;
  - Tax on unused land.

# Blended finance 'game changer'

- Agbiz & Banking Association pursuing this since 2015 and finally making real progress through Nedlac;
- #1 intervention for agriculture listed in the Job Summit & PPGI;
- Latest:
- **Terms of reference for an open and competitive system being jointly developed by Government & Industry through the Nedlac Job Summit process;**
- **Expected to be finalised in 2020**



# Blended finance concept



# Blended finance

## More work required:

- 100% black owned entity v joint ventures;
- Agricultural production finance only v inclusion of land acquisition;
- Risk sharing between beneficiary, state & financier – first loss, collateral or right of first refusal?
- How to define the ‘missing middle’
  - – static turn over v commodity specific threshold?
- Application of points system (women, youth, graduates etc.) to legal entities?

Details to be finalised in 2020

## 4. Preservation & Development of Agricultural Land Bill

- Stuck in Nedlac since 2015 but due to be tabled in Parliament in 2020;
- Aim: regulate competing interest for agricultural land (e.g. mining & urban sprawl)
- NB! – not about ownership, only about the natural resource;
- Mechanisms:
  - Protected agricultural areas (high value soils);
  - Steer urban developments to least-impact areas through spatial planning;
  - “Listed activities” that may only take place on agricultural land with a permit from the Minister of Agriculture;
  - Norms & standards for non-agricultural activities on agricultural land (i.e. housing location, tourism etc.)

# 5. Water Use Licence Regulations

- Amended Regulations likely to be published for comments first quarter of 2020;
- Aim is to improve the ease of doing business by:
  - Allowing for integrated processes between different authorisations (Water, EIAs etc);
  - Clarify the roles & responsibilities of DWS v applicant to facilitate public participation;
  - Criteria for when financial provision must be arranged for rehabilitation;
  - Criteria + guidelines as to what detail of information is required to accompany a licence application.

# 6. Climate change

- Carbon Tax Act in operation since 1st of June 2019;
- Indirect effect: 8c levy per litre of Diesel;
- Direct effect: Tax liability commenced on the 1st of June but only payable in June 2020;
- Liability for direct emissions based on annual GHG reporting (commenced March 2017);
- The staggered commencement:
  - Tax period runs from July to June; but
  - Green House Gas Emission Reporting takes place in March every year:
  - How will companies calculate liability for 2020?
  - Projection based on 7 months' GHG emissions?



# 6. Carbon Tax Calculations

Basic liability: R120 per tonne CO2 equivalent

Possible deductions	Extent of rebate	Status – 2020?
Basic fossil fuel combustion	Up to 60%	Active but possible double counting for diesel
Fugitive emissions	Sliding scale	Active
Trade exposure	Up to 10%	Not yet published for comment.
Performance allowance	Up to 5%	Not yet published for comment.
Carbon budget	5%	Climate Change Bill (still at Nedlac)
Carbon offsets	Sliding scale	Not yet promulgated.
<b>Total possible:</b>	<b>Up to 95%</b>	<b>Total not possible until all regulations finalised</b>

# 6. Climate change Bill

- Aim: framework legislation to combat climate change by:
  - Introducing 'carbon budgets' for large emitters (5-year target to reduce emissions);
  - Sectoral Emission Targets set by line departments (DALRRD);
  - National & Sector Adaptation Plans (how to build resilience and cope with the effects of climate change);
- Introduced to Nedlac in 2019 but Gov placed deliberations on hold to sort out alignment between Carbon Tax & Carbon Budgets;
- Submitted to Parliament in 2020?



# Thank you!

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