

No. 42, 1949.]

ACT

To amend the law relating to land settlement.

(Afrikaans text signed by the Governor-General.)
(Assented to 24th June, 1949.)

BE IT ENACTED by the King's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa, as follows:—

Definitions.

1. In this Act, unless the context otherwise indicates—
 - (i) "controlling interest" means a controlling interest as defined in section *eleven* of the Asiatic (Land and Trading) Amendment Act (Transvaal), 1919 (Act No. 37 of 1919); (i)
 - (ii) "non-European" means a person who is not a white person and includes any non-European company; (iii)
 - (iii) "non-European company" means any company wherein a controlling interest is held by or on behalf or in the interest of a non-European; (iv)
 - (iv) "principal Act" means the Land Settlement Act, 1912 (Act No. 12 of 1912), as amended, (ii)

and any expression to which in the principal Act a meaning has been assigned bears, when used in this Act, the same meaning.

Amendment of section 28 of Act 12 of 1912, as amended by section 7 of Act 23 of 1917, section 7 of Act 26 of 1925, section 2 of Act 42 of 1944 and section 2 of Act 23 of 1948.

2. Section *twenty-eight* of the principal Act is hereby amended by the deletion of paragraph (*b*) of sub-section (1).

Repeal of section 9 of Act 45 of 1937 as substituted by section 3 of Act 42 of 1944.

3. Section *nine* of the Land Settlement Amendment Act, 1937, is hereby repealed.

Amendment of section 2 of Act 42 of 1944.

4. Section *two* of the Land Settlement Amendment Act, 1944, is hereby amended by the deletion in sub-section (2) of the words after the words "said date".

Repeal of Act 23 of 1948.

5. The Land Settlement Amendment Act, 1948, is hereby repealed.

Cancellation of certain conditions contained in certain title deeds.

6. (1) If, prior to the commencement of this Act, a condition embodying the prohibition contained in paragraph (*b*) of sub-section (1) of section *twenty-eight* of the principal Act or registered in pursuance of any provision of sub-section (1) of section *nine* of the Land Settlement Amendment Act, 1937, was included in the title deeds of any land, the registered owner of such land may apply to the Minister for the cancellation of the said condition on the title deeds of his land.

(2) An application under sub-section (1) shall be in writing and shall be accompanied by the title deeds in question.

(3) The Minister shall cause the title deeds to be submitted to the registrar in charge of the deeds registry in which the land is registered, and the said registrar shall, free of charge, cancel on such title deeds and in the appropriate registers any condition embodying such prohibition or registered in pursuance of any such provision.

Cancellation of certain conditions contained in certain leases.

7. (1) If, prior to the commencement of this Act, a condition embodying the prohibition contained in paragraph (*b*) of sub-section (1) of section *twenty-eight* of the principal Act was included in the lease of any holding the lessee of such holding may apply to the Minister for the cancellation in his lease of the said condition.

(2) An application under sub-section (1) shall be in writing and shall be accompanied by the lease in question.

(3) The Minister shall cause the lease to be submitted to the registrar in charge of the deeds registry in which the lease is registered, and the said registrar shall, free of charge, cancel in such lease and in the appropriate registers any condition embodying such prohibition.

Restriction on alienation, hypothecation or lease of certain land.

8. (1) Every Crown grant or deed of transfer of a holding issued or passed by the State after the commencement of this Act, shall contain a condition that the land comprised in the holding or any part thereof or undivided share therein shall not, without the consent of the Governor-General, be alienated, hypothecated, or leased to a non-European; and the said condition shall be included in every subsequent transfer of such land or any portion thereof or undivided share therein.

(2) Any hypothecation or lease effected contrary to the terms of a condition registered in pursuance of any provision of sub-section (1), shall be null and void and the Minister may enforce compliance with any such condition relating to the lease of such land against any such holder of a Crown grant or transferee.

(3) The consent of the Governor-General to any particular hypothecation or lease of such land, granted in pursuance of a condition referred to in sub-section (1), shall not be construed as authorizing any subsequent or other hypothecation or lease.

(4) For the purposes of this section the word "lease" includes any agreement or arrangement whereunder land is to be worked by another on a share basis, and "leased" has a corresponding meaning.

Compulsory sale of land alienated contrary to the terms of a registered condition.

9. (1) If any land to which the provisions of sub-section (1) of section *eight* apply, has been alienated contrary to the terms of a condition registered in pursuance of any provision of the said sub-section, the Minister shall by notice in writing direct the person to whom the land has been so alienated, to dispose of it within a period specified in the notice to a person who is not by law disqualified from acquiring it and who is not a person to whom such land may not be alienated in terms of such condition.

(2) If such land is mortgaged the Minister shall cause written notice of such direction to be given to every mortgagee.

(3) If the person referred to in sub-section (1) fails or refuses to comply with such direction within the period so specified or within any extension of that period which the Minister may allow, the Minister may, without recourse to a court of law, enter upon and take possession of the land and sell it by public auction, through an auctioneer or a sheriff or his deputy, whether or not such sheriff or deputy is a licensed auctioneer, upon such conditions as appear under all the circumstances to be just, and the proceeds of such sale shall, after payment of any costs incurred by the Minister in connection with the sale of the land, be paid to such person, unless the land is subject to any mortgage bonds, in which case payment shall first be made, in accordance with the legal order of preference, to the legal holders of any such bonds against evidence of the amounts owing thereunder: Provided that no such sale shall take place until the expiry of at least fourteen days from the date of publication of a notice in the *Gazette* and in some newspaper circulating in the district in which the land concerned is situated stating the date, hour, place and the conditions of sale.

(4) The Minister may transfer any land sold under the provisions of sub-section (3) to the purchaser and give a valid title thereto without production to the registrar of deeds of the title deeds, provided it is certified that the Minister has been unable to obtain the same, and any such transfer shall be free from any mortgage bond which may formerly have been registered against the title deeds.

(5) If any land against the title deeds of which a condition has been registered in pursuance of the provisions of sub-section (1) of section *eight*, is alienated to a company which, at the time of alienation, is not a non-European company, but thereafter becomes a non-European company, the Minister may, unless the Governor-General has upon the application of the said company consented to that company continuing to hold such land after it became a non-European company, *mutatis mutandis* apply in respect of that company and the land held by it the preceding provisions of this section.

Short title.

10. This Act shall be called the Land Settlement Amendment Act 1949.