

New limits imposed on foreign investors seeking to acquire farmland in Quebec

July 8, 2014

An Act respecting the acquisition of farmland by non-residents

Near the end of the 1970s, the Quebec National Assembly recognized the need for a law to regulate the specific problem of foreign ownership of farm land, which was becoming more and more common¹.

As a result, *An Act respecting the acquisition of farmland by non-residents*² (the “Act”) was adopted on December 21, 1979. The purpose of the Act is to control the acquisition of any type of farmland by a person who is not resident in Quebec. The *Commission de protection du territoire agricole* (the “Commission”) is responsible for overseeing the implementation of the Act. A person who is not resident in Quebec may not, directly or indirectly, make an acquisition of farmland without the authorization of the Commission³.

The Act applies to farmland covering a minimum area of four hectares, south of the 50th parallel north⁴. Geographically, this delimitation draws a line passing north of Chibougamau, but south of Port-Cartier⁵.

One of the purposes of the Act is to ensure that farmland remains in the hands of residents as much as possible, to encourage active farming, and to prevent a market imbalance caused by foreign price scales, which could potentially impact Quebec residents’ financial capacity to acquire farmland.

The Act stipulates the conditions for a legal person⁶ or a natural person⁷ to be considered “resident in Quebec.” The Act also provides for an application procedure through which the Commission exercises control over the acquisition of farmland by non-residents⁸.

Bill 46

Concerned parties in the farming community deemed it necessary to amend the Act to ensure that the legislation better reflects today’s economic reality and to counter farmland grabs by foreign investors, which had increased in recent years, and not only in Quebec, notably due to the 2007-2008 global food crisis⁹.

On October 30, 2013, the date of royal assent and entry into force of Bill 46¹⁰, it became more difficult for a non-resident to acquire agriculturally zoned land suitable for the cultivation of the soil and the raising of livestock. The additional restrictive measures added to the Act by Bill 46 are: (i) strengthening of the “resident in Quebec” status, (ii) imposition of an annual quota on the total area of farmland the Commission may allow to be acquired by persons who do not intend to settle in Quebec, and (iii) new evaluation criteria enabling the Commission to exercise greater control.

Strengthening of the “resident in Quebec” status as provided under the Act

Before Bill 46 came into force, a natural person was deemed to be resident in Quebec if the person had lived in the province for not less than 366 days (12 months and one day) in the 24 months immediately preceding the date of

acquisition of farmland¹¹, or following the date of acquisition in the case of a non-resident who had the intention of settling in Quebec¹².

Since October 30, 2013, a natural person is deemed to be resident in Quebec if the person is a Canadian citizen or a permanent resident within the meaning of the *Immigration and Refugee Protection Act*¹³ and has lived in Quebec for not less than 1,095 days (36 months) in the 48 months immediately preceding the date of acquisition of farm land¹⁴, or following the date of acquisition in the case of a non-resident who has the intention of settling in Quebec¹⁵.

Imposition of an annual Quota

Bill 46 added a completely new restrictive condition to the Act:

“Except for areas of land in respect of which an authorization is granted to natural persons who intend to settle in Québec, no more than 1,000 ha of farmland suitable for the cultivation of the soil or the raising of livestock may be added in a year to the total of such areas that any other persons have already been authorized to acquire.”¹⁶

Once this cumulative annual area of 1,000 hectares¹⁷ has been reached, the Commission can no longer authorize acquisitions by non-resident persons who do not intend to settle in Quebec.

This new measure of control imposed on the Commission is designed to somewhat reduce the risk of massive grabs of good farm land by non-residents.

New Evaluation Criteria

Regarding the third restrictive measure brought by Bill 46, when assessing an application by a non-resident for the acquisition of farmland suitable for the cultivation of the soil or the raising of livestock based on the biophysical conditions of the soil and the environment, the Commission must henceforth take the following factors into consideration:

- The intended use, in particular the applicant's intention to cultivate the soil or raise livestock on the farmland that is the subject of the application;
- The impact of the acquisition on the price of farmland in the region;
- The effects of the acquisition or projected use on the economic development of the region;
- The increase in value of agricultural products and the development of underutilized farmland; and
- The impact on land occupancy.

This decision-making framework imposed on the Commission is designed to ensure that the farmland acquired will in fact be used for agricultural activities, and to prevent farmland from being acquired for purely speculative purposes. For applications pending on October 30, 2013, the Commission will, however, apply the evaluation criteria provided in paragraph 3 of former Section 15 of the Act.

Sanction¹⁸

Any interested person, including the Attorney General, may apply to the Superior Court to declare the nullity of an acquisition made in contravention of the Act (i.e., an acquisition made by a non-resident who did not obtain the Commission's prior authorization), or an acquisition made following a conditional authorization given by the Commission, for which the conditions were not subsequently met (i.e., a non-resident who had intended to settle in Quebec as stipulated under section 15.2 of the Act). The Commission may also, by order, enjoin a person having acquired farmland in contravention of the Act to divest himself of that farmland within 6 months of the service of that

order, and ultimately, may apply to a judge of the Superior Court to obtain authorization for the judicial sale of the farmland.

The group at Dentons Canada LLP's Montreal office is available to answer any questions regarding the Act, as amended by Bill 46, and, ultimately, to assist you with an application for authorization from the Commission.

References

- 1 Mario MASSE, "La Loi sur l'acquisition de terres agricoles par des non-résidents : conditions générales d'application," (2007) 1C.P. du N. 1, 7.
- 2 *An Act respecting the acquisition of farm land by non-residents*, C.Q.L.R. c. A-4.1 (hereinafter "A.R.A.F.L.N.R.")
- 3 A.R.A.F.L.N.R., s. 8.
- 4 A.R.A.F.L.N.R., s. 5.
- 5 This example is from Serge Cardinal, "*Loi sur la protection du territoire agricole du Québec et Loi sur l'acquisition des terres agricoles par des non-résidents – Présentation des textes de lois et jurisprudence*," Commission sur la protection du territoire agricole du Québec, 1989, internal document, p.160.
- 6 A.R.A.F.L.N.R., s. 2.
- 7 A.R.A.F.L.N.R., s. 4.
- 8 A.R.A.F.L.N.R., s. 12 to 20.
- 9 The 2007-2008 global food crisis was triggered by a steep increase in basic food prices, throwing some of the world's poorest countries into a state of crisis. Many affected areas experienced riots and political instability.
- 10 *An Act to amend the Act respecting the acquisition of farm land by non-residents*, S.Q. 2013, c. 24.
- 11 A.R.A.F.L.N.R., s. 2 and 3 as published on October 29, 2013.
- 12 A.R.A.F.L.N.R., s. 16 as published on October 29, 2013.
- 13 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27
- 14 A.R.A.F.L.N.R., s. 2 and 3 as modified by *An Act to amend the Act respecting the acquisition of farm land by non-residents*, S.Q. 2013 c. 24.
- 15 A.R.A.F.L.N.R., s. 15.2, section added by *An Act to amend the Act respecting the acquisition of farm land by non-residents*, S.Q. 2013 c. 24.
- 16 A.R.A.F.L.N.R., s.15.3 para.1, section added by *An Act to amend the Act respecting the acquisition of farm land by non-residents*, S.Q. 2013 c. 24.
- 17 10,000,000 sq. m. or 107,639,104.2 sq. ft.
- 18 A.R.A.F.L.N.R., s. 27, 28.

Your Key Contacts



Chantal Sylvestre

Partner, Montréal

D +1 514 878 5874

chantal.sylvestre@dentons.com