**INVASIVE ALIEN SPECIES**

*By Fanie Botes*

*Director: Commercial – Millers Inc*

An issue seriously neglected when drafting agreements for the sale of immovable property, is compliance with the legislation pertaining to alien and invasive species which might be present on the immovable property sold.

Invasive alien species are defined by the Convention on Biological Diversity as follows:

*“They are plants, animals, pathogens and other organisms that are non-native to an ecosystem and which may cause economic or environmental harm or adversely affect human health. In particular they impact adversely upon diversity, including decline or elimination of native species through competition, predation or transmission of pathogens and the disruption of local ecosystems and ecosystem functions”*

In South Africa, under the auspices of the Minister of Environmental Affairs, specific legislation was introduced on 1 August 2014 through publication of the Alien and Invasive Species Regulations, which regulations came into effect as from 1 October 2014. These regulations were promulgated in terms of National Environmental Management: Biodiversity (NEMBA) Act 10 of 2004

A total of 559 alien species in four different categories were then listed as invasive and a further 560 species identified and listed as prohibited, which means that these species may not be introduced into the country. The list includes both fauna and flora and was further supplemented in July 2016.

The above legislation is aimed at preventing the spreading of potentially harmful and devastating species, preventing the introduction into the country of more alien invasive species and introducing early detection and control by all landowners. Early detection or prevention of the introduction of alien invasive species might assist in timeous eradication thereof and a reduction in management costs where these aliens have been unwisely and unintentionally introduced.

The pertinent question is how the legislation impacts upon a landowner and in particular the seller of a property?

Regulation 29 requires that:

1. If a person, who holds a permit to have an alien specie, sells the property on which the alien specie is present, the new owner of the property must apply for a permit in terms of the legislation;
2. Any seller of an immovable property must, prior to conclusion of the sale agreement, notify the prospective purchaser of such immovable property in writing in regard to the presence of any listed alien invasive species on the property

Apart from the notification by the seller as aforesaid, it would also advisable that the purchaser be required to acknowledge, as part of the sale agreement, that he has fully acquainted himself with the extent and nature of the property as well as all vegetation thereon and that he accepts it as such. Furthermore, the seller must be required, once again as part of the sale agreement, to confirm that he is not aware of the presence or holds any permit for any alien invasive species on the property.

A standard clause to be included in all sale agreements will typically read as follows:

*The seller hereby records that to the best of his knowledge and belief there are no listed invasive species mentioned in terms of the Alien and Invasive Species Regulations promulgated in terms of the National Environmental Management: Biodiversity Act, No 10 of 2004 upon the property. It is however recorded that as the seller is not sufficiently qualified to identify such species that the purchaser accepts the risk inherent in purchasing the property with any listed invasive species which might be thereon.*

Some advisors argue that the above regulations only pertains to agricultural land, but in the absence of a definition of the term “land” in the regulations, it must be accepted that all immovable property, irrespective whether it is agricultural land or not, is subject to the provisions contained in the regulations.

One pertinent aspect that needs to be highlighted, is the fact that some alien invasive plants are categorised differently in different provinces. A specific plant may be categorised as harmful in the Eastern Cape, but less harmful in the other provinces. Some plants may be categorised as harmful in rural areas, but be exempted in urban areas in the same province. Care should therefore be taken before advising on this aspect.