



Land Reform Policy Committee

Department of Land Affairs

Departement van Grondsake

Kgoro ya tsa Naga

UMnyango wezoMhlaba

PROCEDURES FOR FARM WORKER EQUITY SCHEMES

(Submitted by Directorate: Redistribution Policy and Systems)

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1. BACKGROUND

Farm worker equity schemes have been adopted by the DLA as a specific type of redistribution project. This is not, however, a

separate land reform programme, but part of the land redistribution programme.

For some time now, there has been confusion at implementation level around the procedures of farm worker equity schemes. No formal procedures have been in place. The lack of clarity, concerning the interpretation of Act 126 of 1993, has also been identified.

Each farm worker equity scheme will in all probability be an unique model and it must be taken into account that the R15 000 grant is a once in a lifetime grant. Farm worker equity schemes are being used for the sole purpose of acquiring capital. Each joint venture should therefore be carefully studied to determine the feasibility of such a venture and agreements between the parties involved must be signed.

This document proposes a set of procedures on how to implement farm worker equity schemes and provides clarity needed on various issues.

2. RECOMMENDATIONS

It is recommended that the following procedures be approved, to be adopted for the farm worker equity schemes volume of the Technical and Procedural Land Reform Manual. These

procedures should be seen as an extension of land redistribution.

2.1 Possible scenarios for farm worker equity schemes

There are basically two scenarios applicable:

2.1.1 The Land Holding Company is owned jointly by the landowner [farmer] and the farm workers [the farm workers own a share of the Land Holding Company]. They form a partnership to purchase a neighbouring farm, or the farm workers acquire shares in the existing farm. The two parties then enter into a joint venture or equity scheme and establish an Operating Company on the farm.

2.1.2 The Land Holding Company is owned by an individual, company or group:

* The Land Holding Company is owned by the farmer or a company. The farmer and the farm workers form partnerships for the introduction of new enterprises on the existing farm, such as a dairy or livestock enterprise. The parties have shares in the Operating Company.

* The Land Holding Company is owned by a group ie. Trust of farm workers. They form a partnership with a neighbouring farmer, enter into a joint venture of an equity scheme with the adjacent farmer and establish an Operating Company, in which both parties will have a certain amount of shares.

2.2 Interpretation of section 10 of Act 126.

Where the Settlement Grant is given to people for development on land which they do not own, there has to be a tripartite agreement between them, the owner and the DLA which stipulates how their interest in the land is secured. Tenure will be secured by means of the tripartite agreement. If, however, the land is owned or is to be owned by the grant beneficiaries - partially, individually or jointly - then they are not occupants of land not owned by them and sections 10 (a) and (b) apply which require the land to be designated. Tenure security must be provided for in the Trust document or an agreement.

2.3 Procedures to be followed with Section 10 of Act 126

The type of scheme and whether the Grant applicants own the land, will determine whether section 10 [a], [b] or [c] is applicable.

2.3.1 If the R16 000 grant is used by the farm workers to buy shares in the Land Holding Company in respect of the land they presently live on (ie they become co-owners of the company that owns the land) or to buy another farm, the procedure is the same as a normal redistribution case. This means that the land must be designated and it is not necessary to form a tripartite agreement. Sections 10 (a) and (b) apply.

If a portion of the grant is used to buy shares in the Land Holding Company and a portion is used to establish the Operating Company then the above still applies as the grant beneficiaries are not occupants of land not owned by them.

2.3.2 The R16 000 grant can also be used by the farm workers to buy shares in the Operating Company, such as a dairy or livestock enterprise. The Land Holding Company is owned by the farmer. This means that the farm workers do not own land and that section 10[c] of the Act is applicable. A tripartite agreement between the owner, occupant and Department is needed, which includes tenure security. A real right can be registered against the Trust Deed to ensure tenure rights.

If approached with such a project, the Provincial Director must appraise the feasibility and viability of the project and careful consideration should be given to this option. The project must allow for the alleviation of poverty and economic growth and should be in line with Land Reform principles. Officials from the Directorate Redistribution Policy and Systems, at Pretoria Head Office are available for assistance on these projects.

Thus, in some farm worker equity projects where, for example, grant beneficiaries use the grant to become shareholders of the Land Holding Company [co-owners of the company that owns the land], the land needs to be designated. In other farm equity schemes where, for example, grant beneficiaries use the grant to become shareholders of an Operating Company and not of the Land Holding Company, [not co-owners of land], a tripartite agreement is necessary.

2.4 Overview of phases of farm worker equity schemes

In normal land redistribution the procedures to be followed consist of five phases. It is recommended that for a farm worker equity scheme only four phases will be applicable. These phases are Project Identification, Feasibility Preparation, Designation & Transfer [not always necessary if farm workers do not become owners] and Development and Support Services. It is not necessary for a Detailed design as there would not be any substantial construction costs and no major resettlement.

2.4.1 Project Identification

The purpose of this phase is to provide the farm workers and the farm owner with information, support and advice on farm worker equity schemes. This will entail writing a Project Identification Report to release the Settlement Planning Grant.

The first step will be for the the Provincial Office to have a proper discussion and explanation about farm worker equity schemes with the farm workers and farm owner, including the limitations and constraints of such a scheme. The Provincial Office will then have to convene a meeting with the farm workers to establish who the grant applicants are likely to be and approximately how many applicants there are.

The Provincial Office must do an appraisal of the overall financial position of the enterprise to assess whether it is healthy or not. [Contact DLA, Directorate Redistribution Policy and Systems for advice and guidance]

The Provincial Director should be able to determine whether the Provincial Office has the capacity to do such an appraisal. If the Provincial Office does not have the capacity to do this, they can appoint someone from their panel with financial / economical skills by accessing their Prov. & Spec. funds.

This appraisal should not be done with funds from the Settlement Planning Grant, as this grant commits the PDLA to the project and is used to conduct feasibility studies and to prepare the Project Business Plan.

When the Project Identification Report gets submitted, the Provincial Office should be able to know, whether the project is viable or not.

In equity projects, where this appraisal of the overall financial position is done by a third party involved ie. The New Farmers Development Company or the Development Bank of Southern Africa this should not pose a problem for the Provincial Office.

A Project Identification Report is then prepared for approval by the DLA's Programme Manager, Financial Manager and DDG: Angela Bester. Once delegation is in place, this will be replaced by the relevant Provincial Projects Approval Committee.

The Project Identification Report sets out the following:

Orientation - Province, Community name, Project name etc.;

Profile of the applicants;

Project specifics;

Financial considerations;

Financial position of enterprise and

Institutional arrangements.

Once the report is accepted, a declaration of intent is signed to bind the partners and the Settlement Planning Grant is released.

2.4.2 Feasibility or preparation

The farm workers should now appoint a planning specialist in consultation with the Provincial Office to prepare a feasibility study. In most farm worker equity schemes it will be essential that a facilitator with financial and community skills is appointed to work alongside the farm workers due to the complexity of these projects. This study results in the Project Business Plan.

The Planning team and facilitators [if necessary] help the farm workers to:

- * decide on the number of participants and their level of involvement;
- * obtain legal services to form a legal entity and to agree on detailed arrangements [This sets up the farm workers= trust deed];
- * negotiate the value of the equity to be purchased;
- * identify the sources of finance, conclude negotiations and sign a declaration of intent with the farm owner;
- * establish the Land Holding Company and the Operating Company and
- * prepare a Project Business Plan, which consolidates the above and ensures tenure security.

[provision for development support must be addressed in the Project Business Plan]

Details of what the Project Business Plan must contain and criteria to be used in assessing this, will be described in detail in the farm worker equity scheme volume of the Manual.

Depending on which type of scheme is implemented, once the DLA accepts the Project Business Plan, one of these two options is to be followed:

- * If the land must be designated, the Provincial Office proceeds with the designation of the land. [The advertisement of intention of designation should be placed before this phase, to avoid delays.]

- * If no designation is needed, a tripartite agreement between the land owner, the farm workers and the DLA must be signed. In this agreement tenure security must be specified.

2.4.3 Designation and land transfer

When the land is to be designated the following steps should be taken:

* Approval of Designation by Minister [which is set out in more detail in the Technical and Procedural Land Reform Manual, Volume 4A, Redistribution], based on the designation memo and Project Business Plan.

* Once the land has been designated the Provincial Office must then publish the designation notice in the Government Gazette.

* The plans and diagrams are submitted to the Surveyor-General for approval.

* After approval the transfer must be registered with the Deeds Office.

2.4.4 Development and support services

In farm worker equity schemes it is essential to ensure that proper support is in place to enable the implementation of the Project Business Plan. This will in most cases involve facilitation support for the farm workers. The degree of involvement of the Provincial Office in this phase needs to be clarified.