

MEDIA ARTICLE

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South Africa

CONTROVERSIAL EXPROPRIATION BILL REVISED – WHAT CAN WE EXPECT?

The controversial Expropriation Bill has been extensively opposed since its introduction in 2015. In consequence, it has been subject to various amendments culminating in the Expropriation Bill, 2020 (the **Bill**).

The Bill has received the Chief Legal Advisor's stamp of approval from a Constitutional perspective and was published in the Government Gazette on 9 October 2020. It will now be subject to Parliament's process of consideration, debate and public consultation before it may be enacted into law by the President.

'Nil' compensation for expropriation

The most controversial feature in the Bill is that it entitles the State to expropriate property without compensating the owner.

Initially, Parliament reasoned that in order to allow for expropriation without compensation, section 25 of the Constitution should be amended to explicitly allow for this. However, as this proposed amendment is yet to be finalised, the Bill is drafted in accordance with the section as it currently stands.

Section 25 stipulates that compensation for expropriation must be just and equitable having regard to all relevant circumstances. Accordingly, if property is expropriated by the State for 'nil' compensation it must be just and equitable to do so in the circumstances.

The circumstances are dealt with in clause 12(3) of the Bill:

- Where private land is abandoned or used merely as a market investment, and not for development and income generation;
- If it is state land and not being used by a state entity in line with its core mandate;
- Where the market value of the land is equal to or less than the present value of direct state investment or subsidy in the acquisition and improvement of the land; and
- When the nature or condition of the property poses a health, safety or physical risk to persons or other property.

The introduction of clause 12(3) in the Bill is in line with Parliament's objective to provide clarity and certainty on the land rights of South African citizens. However, the listed circumstances, and the fact that the list is infinite, does little to quell the anxieties of investors and property owners in South Africa.

Some relief can be found in the fact that our Courts can be called upon to determine whether the price of the compensation for the expropriation is just and equitable if the expropriating authority and expropriated owner cannot agree upon the price for compensation.

Definition of property

A further red flag is in the Bill's failure to provide a comprehensive definition of what property may be expropriated. As it stands, the definition expressly states that it is not only limited to land. Precisely what property may be expropriated is left to a wide interpretation and may include intellectual property and movable property. To contextualise this, on the face of it the State would be entitled to expropriate farm land, along with all the livestock, equipment, vehicles and intellectual property required for its operations.

In light of the rising tensions with respect to land restitution in South Africa, the need for coherent expropriation legislation is becoming increasingly more vital. However, the far-reaching implications of the Bill dictate that it must be carefully scrutinised before being enacted into law. Whether the Bill will withstand this scrutiny, by both Parliament and the public, is still to be seen.

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