

Circular No. 4

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LAND REFORM – SIGNIFICANT DEVELOPMENTS

The Government is embarking on significant new initiatives to advance land reform.

This includes the new Expropriation Bill which was released for public comment at the end of March, the Restitution of Land Rights Amendment Bill which was released for comment on 23 May 2013 and a new Land Tenure Bill which is currently being circulated within Government departments and which has not yet been released.

The new Expropriation Bill follows a number of earlier Bills which have been prepared by the Department of Public Works, the last of which was introduced in the National Assembly in mid-2008 and then subsequently withdrawn. The old Bill was unconstitutional because it attempted to oust the jurisdiction of the courts and provided that the State could acquire property at a discount if the purpose was to redress former inequalities.

The new Expropriation Bill, once adopted, will be a key tool in driving reform initiatives. It will allow the State to expropriate property to achieve land reform and access to natural resources.

What is to change if the new Expropriation Bill is brought into law?

The Bill substantially widens the definition of property for which compensation must be paid. Under the existing Expropriation Act, compensation is paid only for the expropriation of registered rights. Property will now include all rights in property whether registered or not and property is not limited to land.

The second major change is that the Bill allows the expropriation of property, not only for a public purpose but also for the public interest.

Public Interest is defined to include the State's commitment to land reform and to bring about equitable access to all South Africa's natural resources by previously disadvantaged persons.

The State will be armed with the legal ammunition to achieve land and natural resource reform and redistribution without having to adhere to the willing buyer / willing seller principle.

The final significant change is that the factors which need to be taken into account in determining compensation have been widened from those set out in the current Expropriation Act. Compensation must be just and equitable after balancing the public interest and the interest of the owner of the property having regard to all relevant circumstances. Those circumstances include the current use of the property, the history of the acquisition, the market value of the property, the extent of State investment in the property and the purpose of the expropriation.

In most cases, a just and equitable compensation will be equivalent to market value. The State has abandoned the argument that the Constitution allows the State to acquire property at less than market value if the purpose is to redress former inequalities.

The Restitution of Land Rights Amendment Bill re-opens the land claim process by extending the date for the lodgment of land claims until 31 December 2018. This will allow new land claims to be lodged which were not lodged prior to the earlier cut-off date of 31 December 1998.

There was talk about the Act being amended to allow land claims for those who were dispossessed before 1913. It was not possible for the Bill to be amended to include dispossessions prior to 1913 because Section 25(7) of the Constitution restricts the land restitution programme to dispossessions that took place after 19 June 1913.

The State has indicated that dispossessions of land that took place before 19 June 1913 will be dealt with separately.

A new feature to the Bill is that when allowing restoration of a right in land, the court must now take into account the ability of the claimant to use the land productively.

We are aware that a draft Bill is being circulated within Government departments providing for a new Act on rural land tenure. This will apply to the land set aside (during the apartheid era) for the occupation of blacks. This Bill will fill the gap created by the Communal Land Rights Act which was passed by Parliament but was subsequently found to be unconstitutional.

FURTHER ADVICE

Should you require advice or assistance on the impact of these land reform initiatives, please contact any member of the commercial team at Cox Yeats Michael Jackson (031 – 536 8512, email - mjackson@coxyeats.co.za), Keren Oliver (031 - 536 8518, email - koliver@coxyeats.co.za), Simon Watson (031 - 536 8530, email - swatson@coxyeats.co.za) or Jason Goodison (031 - 536 8517, email - jgoodison@coxyeats.co.za)

