



10 May 2017

Restitution of Land Rights Amendment Bill returns as a Private Member's Bill

In the winter of 2016 the Constitutional Court handed down judgement in the *Land Access Movement of South Africa (LAMOSA)* case. Due to defective consultation in the provincial legislatures and National Council of Provinces, the court set aside the Amendment Bill that reopened the lodgement period for claims that initially closed in December 1998 whilst interdicting the Land Claims Commission from processing any new claims received before all of the pre-1998 claims were finalised. Since the Amendment Bill was set aside on procedural grounds, it was always expected to be re-enacted. However, it was perhaps less anticipated that the Bill would not be put forth by the Department of Rural Development and Land Reform, but as a Private Member's Bill by ANC MP Mr P Mnguni. The intention to submit the Bill was published on the 7th of May but the actual Bill itself was only made available in the past week. Agbiz has until 19 May to submit comments. The draft Bill seeks to open the lodgement period an additional three years up to 10 June 2021.

The Land Restitution programme is intended to provide for restorative justice and reconciliation in terms of section 25 (7) of the Constitution, so the principle can hardly be faulted. Unfortunately, the implementation to date has not been satisfactory as roughly 7500 claims lodged before 1998 have still not been finalised, creating perpetual uncertainty that may discourage investment into the capital improvement of properties. Should the lodgement period be reopened, the finalisation could be delayed even further. The Court may have issued a directive to finalise all outstanding claims before new claims are processed, however it is tough to conceptualise how this will work as it cannot provide indemnity from a new claim being lodged over the same property.

Unfortunately, the restitution process to date has been marred by several implementation failures characterised by immense time delays between the initial submission of a claim and the eventual finalisation thereof. This delay creates uncertainty which in turn results in lower investment confidence in the sector. Likewise, poor transition planning and support has challenged the beneficiaries' ability to pick up where the previous owner left off. If the reopening is not accompanied by concrete plans to the reduce turnaround times for claims and improve transition planning, the resulting uncertainty may be perpetuated for another decade and many more farms may fall out of production. Agribusinesses may not predominantly be landowners; however, their welfare is inextricably linked to the welfare of their clients.



When considering the reopening of the lodgement process until 2021, one should also carefully consider the potential side effects if expectations are raised but not met timeously. Under the current status quo, applicants have understandably become frustrated as some have waited more than twenty years for their claims to be finalised. If the reopening is not accompanied by improved delivery, frustration may continue to grow and in turn place pressure on policy makers to abandon the current evidence-based process in favour of populist sentiments that advocate for self-help or expropriation without compensation. Such an outcome could severely impact the interests of financial institutions who have an estimated R120 million worth of debt secured by mortgage bonds over agricultural land.

There is no question that land reform and transformation in the agricultural sector needs to be accelerated. However, we also need to be realistic as to what we can achieve within a constrained fiscal environment. When considering the reopening of the lodgement process for restitution, the Portfolio Committee would do well to consider land reform holistically as restitution, redistribution, AgriBEE and all of the other existing programmes are all meant to work towards a common goal. The pros and cons of the various programmes should be analysed to determine how our limited budget can best be applied to get the maximum transformative benefit with minimal disruption to investor confidence, property rights and food security. It might well be that there were claimants who were unfairly denied the opportunity to lodge a claim before the cut-off date, but then a qualified reopening could be considered to cater for those who can show good cause why they were not able to submit claims timeously. Finally, should the Portfolio Committee entertain this Bill, the hope is that its consideration goes hand in hand with concrete and practical plans to speed up implementation and delivery where expectations have been created.

Theo Boshoff (theo@agbiz.co.za)

Disclaimer: Everything has been done to ensure the accuracy of this information, however, Agbiz takes no responsibility for any losses or damage incurred due to the usage of this information

