



Expropriation Bill [B23B-2020]

Select Committee on Transport, Public Service and Administration, Public Works and Infrastructure
National Council of Provinces

27 September 2023

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The Banking Association South Africa

BASA represents the interests of its members – domestic and international banks licensed to operate in South Africa - so banks are better able to provide the financial services that support inclusive economic growth, good governance and environmental and social sustainability in South Africa.

As an industry association, BASA:

- Acknowledges that current land ownership and food production in South Africa is not sustainable and have their origins in colonialism and apartheid.
- BASA is committed to supporting sustainable land reform that will enhance inclusive economic growth and food security.



Financial Stability



In its present form, the Expropriation Bill creates policy uncertainty for banks and investors.

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- The rights of bondholders and banks needs to be protected in the event of compensation below market value or expropriation without compensation
 - ✓ Government should automatically guarantee the difference between ‘just and equitable’ compensation and market value.
 - ✓ Agreed principles, mechanisms and formalised structures of valuation are necessary to minimise property value discrepancies. Banks must be consulted on valuations.
 - ✓ Below market value compensation would conflict with global norms, including the OECD.
 - Under the current property and contractual regime, bondholders will remain liable for the full debt on expropriated property
 - ✓ Government needs to ensure that banks can fully recover depositor’s funds, which have been extended as credit.
 - The Constitution defines property in its broadest sense, the Bill is aligned to this.
 - ✓ The definition of property that can be expropriated should be restricted to tangible property. Intellectual property must be removed from the ambit of the Bill.



Financial Stability

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- The Banks Act imposes an obligation on banks to value property at market value to meet their capital, solvency and liquidity requirements.
 - ✓ A sound banking system is essential for inclusive economic growth.
 - Uncertain property values will inhibit a bank's ability to provide credit, where the property serves as security for a loan.
 - ✓ Without adequate security the cost of credit increases, to cover the greater risk to depositor's funds.
 - Property development loans (supply side) and mortgage loans (demand side) finance the provision of housing by the private sector and alleviate the burden of government.
 - ✓ As per the BA 900, the housing market has shown growth in excess of 6% YoY to March 2023, despite the impact of loadshedding, high inflation and elevated interest rates.
 - ✓ The introduction of uncertainty in the housing market will curtail banks' efforts in financing the provision of sustainable housing.



Section 12



Section 12 must include:

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- ✓ A closed list of property that will qualify for EWC.
 - ✓ Clarity on the specific instances where EWC will apply.
 - ✓ The wording in the introductory paragraph must be amended to limit instances where EWC can apply to a closed list.

- **Section 12(3)(a)** This clause should be removed from the Bill, or provide clear parameters of the circumstances where unused land would be included; for example: restricting the failure to use or develop the land only to the circumstances referenced in sub-paragraphs (b) to (e).
- **Section 12(3)(b)** The minister should not be able to decide without consulting the executive authority to expropriate state-owned land. The executive authority should however be able to review the decision based on municipal Spatial Development Plans which are required in terms of the Spatial Planning and Land Use Management Act (2015).
- **Section 12(3)(c)** Reference to “failing to exercise control” should be removed and clear parameters should be included for the circumstances under which land is considered as having been abandoned by the owner.



Conclusion

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- Land reform must be implemented faster and more effectively, especially in urban areas, where about 1.2 million families live in informal settlements.
 - Uncertain property values will inhibit banks' ability to provide credit to residential property developers, buy-to-let investors, homebuyers and tenants; placing greater demands on government to supply residential stock.
 - Crisp and clear legislation is needed to remove policy uncertainty and ensure that the more than 230 state entities, which are empowered to expropriate property, do so in a prudent and balanced manner, aligned to Section 25 of the Constitution.
 - The financial sector is committed to working with government to ensure land reform is undertaken in a legal, constitutional, inclusive and sustainable manner, which continues to protect property rights.



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