

13 February 2014

Ms P Nyamza
Chairperson
The Portfolio Committee on Rural Development
and Land Reform
Parliament of RSA

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Attention: Ms Phumla Nyamza

Dear Madam

**DRAFT PROPERTY VALUATION BILL [B54-2013], NOTICE 504 OF 2013
COMMENTS SUBMITTED BY THE BANKING ASSOCIATION SOUTH AFRICA**

1. BACKGROUND

The Banking Association South Africa (BASA) is the official trade association for all private sector commercial banks registered in terms of the Banks Act (no.94 of 1990, together with Amendments thereto and Regulations in respect of this Act). BASA therefore represents the views of its membership. Our members have an estimated exposure of nearly R1 trillion to the immovable property market, of which in excess of R120 billion is to the agriculture sector. They are therefore key stakeholders.

2. INTRODUCTION

BASA welcomes the opportunity to comment on the draft Property Valuation Bill. We are pleased to note that a number of positive changes were made to the previous draft version of this Bill following public commentary.

Based on the pre-amble and explanatory memorandum to this Bill, our interpretation of this Bill is that it seeks to:

- Provide for the establishment , functions and powers of the Office of the Valuer-General
 - Provide for the regulation of property valuations in respect of Land reform;
 - Upon request, the acquisition, disposal or lease of property by the State.

3. COMMENTS

Our comments are as follows

3.1. Chapter 1 Interpretation, objects and application (definitions)

"Land reform"

We are of the view that this definition is too wide as it does not draw a distinction between land reform and the State acquiring/disposing or leasing property in its normal course of business. Section 25(3) of the Constitution defines "public interest" as "includes the nation's commitment to land reform and to reforms to bring about access to all South Africa's natural resources." It follows that the definition of "just and equitable" compensation as contained in this section of the Constitution does not include the acquisition, disposal or lease of property in the State's normal course of business should be excluded from this definition as such valuations should be based purely on market value.

Recommendation

We recommend that the definition of "land reform" should be expanded upon to draw a clear distinction between what constitutes "land reform" and normal State acquisitions, disposal or leases of property as well as highlighting the distinction in factors to be taken into account when undertaking such different categories of valuations.

"Market Value"

As regards "the absence of other credible data, prices paid by the State for any acquisition of property may be considered", we recommend that:

- "credible data" should be defined in this Bill;
- in the event of there being no "credible data" it may be preferential for alternative valuation methods to be used, for example, the Direct Capitalisation Method, as the usage of prices based on State acquired properties for land reform purposes could distort what is deemed to be the market value of such properties.

Recommendation

We recommend that:

- a definition for "credible data" is created within the Bill;
- the definition of "market value" should be altered as highlighted above

"Value"

This definition within the Bill is a direct extract from section 25(3) of the Constitution, which definition could result in valuations being less than market value. This is of great concern to financial institutions as Banks Act Regulations (which are derived from the global regulatory framework), requires financial institutions to derive the security value of a property from the market value of a property.

The extension of credit is a risk has to be managed in terms of strict prudential rules imposed on financial institutions by such legislation, as consequences for not adequately managing the risk credit posed can lead to systemic consequences for the economy as is being evidenced by the current global financial crisis. Lenders therefore adhere to strict risk based pricing principles when calculating the interest rate which they are to charge on a loan. These principles also include the risk profile of a client and their ability to repay a loan.

Unless valuations are calculated on the market of the property, a consequence of this Bill would therefore be that private sector lenders:

- withdraw from providing loans where property is being offered as security for the loan and/or

- adopt a more conservative approach to the extent of the loans they would be prepared to provide as compared to property values (so called maximum loan to property value) and/or
- more importantly, this could impact negatively on the capital adequacy and the stability of commercial banks.

In turn, this could sterilize the market, affecting food security. In stakeholder engagements with the Department of Rural Development and Land Reform (DoRD) over the past two years, DoRD recognized the need for the State to avoid such an occurrence. We understand that in December 2012, Cabinet approved their policy framework document styled "A policy framework for land acquisition and land valuation in a land reform context and for the establishment of the Office of the Valuer General, dated 18 October 2012". The following paragraphs are extracted from this document for ease of reference:

Legislating the definition of market value: The international definition of market value should be domesticated in appropriate legislation, and interpreted to specifically exclude prices paid by government as evidence for market value. This will have the immediate effect of aligning prices paid by government with those of the private sector in those cases where market value is the basis of transaction and thereby help to control price speculation.

Guarantees to financial institutions: Just and equitable compensation may lie below market value. Given that most lending by banks and other financial institutions is with reference to a market value base, the change to just and equitable compensation will have implications for the collateral value of existing debt. This will in turn impact negatively on the capital adequacy of these institutions, and on their

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ability to provide credit to the agricultural sector. This could have serious implications for food security and agricultural/rural employment.

In order to mitigate these potential effects, government should automatically guarantee the difference between just and equitable compensation determined in terms Section 25(3) and market value. Thus where mortgaged land has been acquired at less than market value, government should pay directly the financial institution concerned the difference between the purchase price and the outstanding amount, up to a maximum of the market value of the property. This guarantee will allow the financial institutions to continue lending to the agricultural sector on the basis of market value.

Recommendation

We believe that the definition of “value” should be broadened to either include the:

- need for valuations to take cognisance of and where necessary to adjust valuation calculations upwards to a level where monies owed to registered rights holders (mortgagees/special notarial bond holders) up to the level of their security will be paid;
- provision of a blanket State guarantee that financial institutions will not suffer losses if State valuations and hence the compensation paid to property owners is less than market value.

3.2. Chapter 2 Office of the Valuer-General

3.2.1. Clause 5.(c)

We do not believe that the Office of the Valuer-General “must be impartial and must exercise the powers and perform the functions of office without fear, favour or prejudice” if it is to be accountable to the Minister DoRD, given the departments vested interest in the quantum of compensation to be paid for the acquisition of property for land reform purposes. There is therefore a conflict of interest if the Office of the Valuer General is to be accountable to the Minister DoRD. We deem this to be a critical issue.

We also note that the Office of the Valuer-General is intended to provide a specialist valuation service to multiple national and provincial departments in respect of the acquisition, disposal or lease of properties. It follows that as its intended function is broader than catering specifically for the valuation needs of DoRD that it should vest within the Department of Public Works, as this department has been established to cater for the needs of the broader State.

Recommendation

We recommend that clause 5.(c) be amended to read “is accountable to the Minister of Public Works”.

3.2.2. Powers Clause 7.(c)

This clause makes provision for the Office of the Valuer-General to “engage in any activity to promote the proper, efficient and effective valuation of property...” We are of the view that this power should be qualified to reflect that this should be restricted to comply with Constitutional principles such as the rule of law (the Dawood Constitutional Court case held that an administrative action which affects a person’s fundamental rights is unconstitutional).

Recommendation

We recommend that either the wording of this clause should be amended so as to ensure that a person’s constitutional rights are not infringed upon or the words “engage in any activity to” be deleted from the sentence.

Section 9 Deputy Valuer-General

As the Office of the Valuer-General is to fulfil a specialist valuation and advisory function, it follows that the Deputy Valuer-General must be able to fulfil these specialist functions, which skill set would be no different to those of the Valuer-General.



Recommendation

We recommend that section 9 be amended to include the need for the skills set of the Deputy Valuer-General to include being a registered valuer, with suitable experience and knowledge in respect of public administration and public finance matters.

3.3. Chapter 3 Valuation of Property

Clause 11. (2) (b)

We do not understand what is meant by this clause. The Property Valuers Professions Act and the SA Council for the Property Valuers Profession make provision for the registration and usage of candidate Valuers who are professionals studying towards their valuer qualification and registration as Valuers. They may conduct valuations subject to these being counter signed by a registered Valuer. We assume that this is what is being suggested by this clause. If so, we recommend that the law drafters align this clause to those clauses within these Acts. Further, if such a valuation is disputed by the property owner, we recommend that an independent Valuer be tasked with conducting a fresh valuation of the property. Further, we recommend that the content of this clause be amplified by the law drafters to clearly specify what assistance such assistants may provide.

Recommendation

We recommend that this clause should be amended as per the above comments.

Clause 13(3) General Valuation Powers

We submit that holders of registered rights (mortgagees/holders of special notarial bonds) who enjoy real rights, should also be notified that a valuation is to be conducted on the property by the authorised Valuer.

Recommendation

This clause to be changed to read "a written notice must be delivered to the owner or person apparently in charge of the property and the holders of registered rights..."

3.4. Financial and Other matters

Section 19 permits the Valuer-General and/or Deputy Valuer-General to delegate all "functions and powers" to staff within the Office, but at the same time it authorizes either the Valuer-General or the Deputy Valuer-General to "confirm, vary or revoke any decision taken in consequence of a delegation or sub-delegation in terms of this section, subject to any rights that may have accrued to a person as a result of the decision". This raises two concerns, namely:

- there are certain functions and powers which we do not believe can be delegated to staff within the Office;
- should functions and powers be delegated to staff, they are being authorised to bind the Office on decisions or actions that they make/take and the Valuer-General/Deputy-Valuer will be held accountable for their decisions/actions (one can delegate responsibility but you cannot delegate accountability).

It follows that section 19 should be amended to clearly define what functions/powers may/may not be delegated to staff below Valuer-General/Deputy Valuer-General level.

4. Conclusion

We trust that the Committee will view our comments as being of a constructive nature. If the Committee requires clarification or wishes to engage on any of the comments we have made, please do not hesitate to contact the writer.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Pierre Venter', with a small dot at the end.

Pierre Venter
General Manager
Banking and Financial Services Division

