

**DEPARTMENT: PUBLIC ENTERPRISES**

**REPUBLIC OF SOUTH AFRICA**

**BRIEFING TO THE PORTFOLIO COMMITTEE ON THE OVERVAAL RESORTS BILL**

The Department presented to the Portfolio Committee on the Overvaal Resorts Bill on 25 April 2018. The Portfolio Committee requested the following additional information from the Department:

1. Names and Location of the 8 Aventura Resorts sold to Forever Siyonwaba Consortium.
2. Tagging of the Bill.
3. Land claims on the properties.
4. Rentals on the properties subject to land claims.
5. **Names and Location of the 8 Aventura Resorts sold to Forever Siyonwaba Consortium**

1. Tshipise (Limpopo)

2. Warmbaths (Limpopo)

3. Swadini (Mpumalanga)

4. Blydepoort (Mpumalanga)

5. Loskopdam (Mpumalanga)

6. Gariep (Free State)

7. Plettenberg (Western Cape)

8. Badplaas (Mpumalanga).

1. **Tagging of the Bill**

The Portfolio Committee wanted to establish what the impact of tagging the Bill a section 75 as opposed to a section 76 Bill is as some assets (portion of land) at the Gariep Resort in the Free State was erroneously registered in the name of the Provincial Government of the Free State i.e. as a Province is affected. Does this not require the Bill to be tagged a section 76?

The reason for tagging the Bill a section 75 Bill is that none of the circumstances set out under section 76 applies to this Bill for it to be tagged a section 76. The fact that the properties were registered in a name of a province is not one of the reason(s) set out under section 76 for a Bill to be tagged a section 76.

To put succinctly, in the case of Tongoane and other vs Minister of Agriculture and Land *Affairs and others 2010(8) BCLR 741(CC)*, the Constitutional Court pronounces on the test to be used when tagging legislation. The case deals with Communal Land Rights Act 2004, which had been enacted in terms of section 75 of the Constitution. Parliament was of the view that the main purpose of the Communal Rights Act 2004, did not fall within any schedule 4 functional area. The Court held that the tagging test focuses on all the provisions of the Bill in order to determine the extent to which they substantially affect functional areas listed in Schedule of the Constitution, and not whether any of its provisions are incidental to its substance.

In applying the tagging the test to the Bill, the question that should be asked is whether the provisions in the Bill substantially affect a schedule 4 functional area. Overvaal Resorts Bill is not an item listed in Schedule 4 or 5 of the Constitution. It is for this reason that neither section 74 nor 76 of the Constitution finds application herein. This notwithstanding, it should be borne in mind that it is still a requirement in terms of section 75 that a Bill must be referred to both the National Assembly and the National Council of Provinces for consideration. Therefore, this does not detract from the fact that this Bill will still be subjected to the processes/procedures of the National Council of Provinces prescribed under section 75.

On advice from the Chief State Law Advisor which advice the Department concurs with, as the Bill does not deal with a functional area listed in Schedule 4 or 5 of the Constitution, it is submitted that section 44(a) (ii) of the Constitution is applicable with regard to the power of the National Assembly to pass legislation on any “any matter”. Thus, the Chief State Law Advisor advised that the Bill is correctly tagged section 75.

1. **Land claims on the properties (Blydepoort and Swadini)**

It has come to the Department’s attention that even though the land claims on these properties was successful, the land has not been transferred to the successful claimants (Mashilane and Moletele Communities) by the Department of Rural Development and Land Reform due to the following:

* ongoing disputes(feuding) in the said communities;
* lack of registration of the affected land with the Deeds Office; and
* failure by the successful claimants communities to establish a structure that can hold the affected land on their behalf.

Pending the resolution of the land claims by the Department of Rural Development and Land Reform, Forever Resorts needs to enter into a lease agreement with the Department of Public Works as the current holder of the affected land on behalf of Government until the land claim is resolved and the lease is ceded to the claimant communities and Forever Resorts.

1. **Rental on properties subject to land claims (Blydepoort and Swadini)**

The Department has discovered that no rental has been paid by Forever Resorts on these two resorts. This is due to failure by Government to resolve the land claims to conclusion in the affected areas.

The Department has recently engaged Forever Resorts and the Department of Public Works and both parties are prepared to engage in negotiations to conclude the lease agreement. Forever Resorts is prepared to negotiate the lease (on the basis of a market related rental) with the Department of Public Works provided the improvements that Forever Resorts has made to those two Resorts ever since it took over are taken into account during such negotiations. Department of Public Works has advised that it needs to engage first with the Political principals in this matter. The Department of Rural Development and Land Reform is a critical player to any negotiations going forward to ensure that the successful claimants’ communities are not short-changed in the lease agreement that will be concluded on their behalf by the Department of Public Works and Forever Resorts.