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**SUBJECT: NEGOTIATING MANDATES ON THE PP BILL BY PROVINCES**

1. **GENERAL REMARKS AND OBSERVATION FROM PUBLIC HEARINGS**

After it was passed by the National Assembly during November 2018, the Property Practitioners Bill (Bill) was referred to the National Council of Provinces for deliberation in terms of section 76 of the Constitution. Provinces co-ordinated and successfully held public hearings across their respective regions supported by the Legal Services of the National Department of Human Settlements.

Contained herein are general, administrative and specific comments and advice made by the various provinces on the Bill as well as responses on the comments by the National Department.

1. **GENERAL COMMENTS**

Generally, there is overwhelming support in favour of the Bill by Provinces. The Bill creates a chapter on transformation of the property sector which amongst others, obliges the Authority to establish a transformation fund to fund the implementation of transformation programmes ( incubation) within the sector.

 Additionally, the Bill obliges government across all spheres to implement transformation programmes when procuring property related goods and services. Moreover, the Bill obliges property practitioners to comply with the provisions of the Property Sector Charter Code and BEE.

Lastly, the Bill empowers the Minister to provide exemptions upon application by any affected Property Practitioner in the interest of promoting transformation in the sector. This provision intents to remove all the barriers of entry into the sector.

Many of the stakeholders and the public at large views the Bill as a catalyst for changing the landscape of the property market. Transformation programs to be implemented by the Authority should be geared to attract young people, women and people with disabilities to the sector and promoting the sector as a career of choice.

1. **3. COMMENTS RELATING TO THE BILL BY PROVINCES**

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| **NO.** | **PROVINCE** | **SECTION OF THE BILL** | **COMMENTS** | **RESPONSES** |
| 1. | Eastern Cape**( The Province Vote in Favour of the Bill**) | Definition of property practitioner | The Bill should clearly exclude its application on attorneys and candidate attorneys | This is covered under section 1(v)(g). The Bill excludes attorneys and candidate attorneys. |
|  |  | Section 4.(1) exemption from application of the Bill | The Bill should incorporate the term “applicant” under section 4.(1) | This will be clarified and provided for in the Regulations under the Bill, hence “prescribed” is used the said provision. |
|  |  | Section 11 of the Bill | The Bill should obliges potential board members to make a declaration that they are not disqualified | In practice, this is done in compliance with the Corporate Governance and included into the Share Holders compact before potential board members are appointed as part of their appointment process.  |
|  |  | Section 35 of the Bill dealing claims against the Fund | The Bill should provide a discretion to the Authority to deal claims lodged after the expiry of the prescription period  | The Bill provides for such discretion in section 35 and 37 already. The claim will be lodged in the prescribed manner. |
| 2. | Free State**( The Province Vote in Favour of the Bill**) | Section 57.(1)(b) allows the seller and estate agent to choose the conveyance | The Bill allows for the seller and the estate agent to choose the conveyance for the purchaser | The Bill makes provision for this in that , it is actually the purchaser who chooses the conveyancer in the transaction process |
|  |  | Section 8 dealing with disqualification to be a board member should provide for a period of disqualification | Section should provide for a period of disqualification | Unrehabilitated persons are already disqualified to serve on the board in terms of section 8. |
|  |  | Section 13(3) dealing with meetings of the board | The section should include a quorum which should be the majority of board members | This issue will be clarified more fully by the board charter and the shareholders compact between the Board and the Minister. |
| 3. | Gauteng**(The Province Vote in Favour of the Bill**) | Section 1 dealing with definitions | Replace Attorneys Act with Legal Practice Act | Once the Legal Practice Act has been promulgated. |
|  |  |  | Include definition of business property practitioner | Distinction of different property practitioners and their various roles will be part and provided for in the regulations |
|  |  |  | Include definition of property developer | Property developers are included to the extent that they engage in the facilitation of property transactions where third parties are involved. |
|  |  | Section 4 dealing with exemptions | The section should provide for group exemptions | Various Exemptions are provided for in the Bill and more clarity will be provided in the regulations as may be prescribed |
|  |  | Section 9: duties of the board | Board duty should include protecting of the vulnerable consumers | Generally, the Bill is intended at protecting consumer interests and education as set out in Chapter 10 in including that of vulnerable consumers |
|  |  | Section 22 dealing with research Centre | The scope of the research Centre should be wide and not be narrowed to only rural and urban dynamics | The research Centre will be a catalyst for provide relevant information and statistics within the sector and will accordingly cover the rural and urban environment. |
|  |  | Section 47: validity of fidelity fund certificate | Validity period should be changed from one to three years | Section 47 of the Bill makes provision for the 3 years and it is covered in the Bill. |
|  |  | Section 48: requirement for all directors to have fidelity fund certificates | Bill should provide that if there is one director with FFC, the business should continue to operate | This provision will be covered in the Regulation and It will be part and parcel of the regulations in the prescribed manner. |
|  |  | Section 49 dealing with deemed provisions for issue of FFC | The Bill should provide that failure by the Authority to issue FFC, applicant should be deemed to have been issued with FFC | This provision is covered in the Bill in section 49 and will be clarified in the applications of the regulations. |
|  |  | Section 50 dealing with disqualification IRO tax clearance certificate | It will be challenging to apply the disqualification where one has a valid dispute with SARS | SARS has been consulted and confirmed that the provision will not create challenges and we don’t anticipate any implementation challenges. |
|  |  | Section 51:  | Include information relating to immovable property of deceased estate | This provision is dealt with in another piece of legislation under the Department of Justice and Constitutional Development. |
|  |  | Section 56 dealing with entitlement to commission or remuneration | The section should be reviewed since FFC don’t get to practitioners timeously | FFC’s are electronically issued and the Regulations will provide more clarity thereto. |
|  |  | Section 61 dealing with Code of Conduct | Practitioner should give the consumer the Code of Conduct even if it is not required | This provision will be dealt with in the Regulations and It will be part and parcel of prescribed provision. |
|  |  | Section 64 dealing with supervision and control of practitioners | The Bill should provide for the period, training issues, etc. | This provision will be dealt with in the Regulations and It will be part and parcel of prescribed provision |
|  |  | Section 64.(3) dealing with holding liable the practitioner for the actions of the candidate | It is unfair to hold a principal liable for the actions of the candidate | In order to advance Consumer protection ,the principal is vicariously liable for the actions of the candidate and must always be under the supervision |
| 4. | Kwazulu-Natal**(The Province Vote in Favour of the Bill**) | Section 1: definitions | Define “property sector transformation fund” and “property sector charter code” | The Fund other than the Property Transformation fund is defined in the Bill, and the Code is defined in the Charter “words are given ordinary meaning in legislative drafting. |
|  |  |  | Exclude non-south African citizen | This provision is covered already in the disqualification section 50 of the Bill. |
|  |  | Section 20 dealing with transformation sector | Clearly outline the role of municipality. Also, include definition of “procure” |  This provision will be dealt with in the Regulations and It will be part and parcel of prescribed provision |
|  |  | Making of regulations | There must be a mandatory time period for issuing of regulations | Regulations are promulgated within a reasonable period to give effect to the implementation of the Bill. Therefore the Executive Authority is compelled.  |
| 5. | Mpumalanga**(The Province Vote in Favour of the Bill**) | Section 1: definitions | Candidature period should be specified in the Bill | This provision will be dealt with in the Regulations and It will be part and parcel of prescribed provision |
|  |  | Section 6: Board | How will the Bill ensure that board members are fully qualified and there is geographic spread in the representation | As set out in section 7 of the Bill, Minister should take into account all relevant factors when appointing board members including experience, expertise and Geographical locations.  |
|  |  | Mpumalanga expressed that other provisions must be dealt with by way of the Regulations under the Bill and the Department must ensure that critical matters are taken into consideration |  | The Department will ensure that all critical provisions as may be prescribed are incorporated into the Regulations. |
| 6. | North-west**(The Province Vote in Favour of the Bill**) | Generally supportive of the Bill (no specific comments) |  |  |
| 7. | Northern Cape**(The Province Vote in Favour of the Bill**) | Generally supportive of the Bill (no specific comments but however Northern Cape is making general comment relating to the implementation of the legislation) | The representation within the Authority must be done on rotational basis to accommodate all Provinces SETA, must provide training in all provinces The Bill must consider the commission paid to property practitioners. | Section 7 of the Bill provides for the composition and the appointment of Board members, an invitation thereto will issued in the government gazette and national newspapers within the Republic.The Department will work corroboration with SETA to ensure that training is provided to all ProvincesThe Transformation Fund will facilitate access to the property market. |
| 8. | Limpopo**(The Province Vote in Favour of the Bill**) | Generally supportive of the Bill (no specific comments on the legislation but however Limpopo is making general comment relating to the implementation of the legislation) | Most of the properties are in the hands of the previously advantage groupYoung estate agents to be empowered.There are some agents who did N5 qualifications but has not their certificates.The Bill is silence on the property that might be the subject of expropriation.  | Chapter 4 of the Bill deals with transformation to redress the imbalances of the past.The Transformation Fund and the incubation programs as set out in chapter 4 will address youth empowerment.The inefficiency of the entity in issuing various compliance certificates on time will be enhanced by the provisions of sections 35 and 39 of the Bill respectively.The issue of property expropriation is dealt with in terms of the Expropriation Act and its intended amendments |
| 9. | Western Cape**(The Province support the Bill**) | Generally supportive of the Bill (however they have raised following substantive issues ) | Clause 22 established of the Property Research Centre (“Centre”), where is going to be established.Clause 50(a)(1)Section 7(7)Technical drafting issues**REBOSA COMMENTS**Definitions of the “Business Property Practitioner”Definition of the “candidate practitioner”Attorneys and Developers are excluded.Claims against the Fund prior to the commencement of the legislationIssue vs possession of FFCSection 48(2) Trust accounts and Accounting Records Supervision of candidate property practitionerSection 47, Fidelity Fund Certificates (FFC)BEE Certificate ComplianceAlign the legislation with the Property Sector Transformation Charter | The primary purpose of the Centre is to provide the Authority will reliable and credible information. Therefore the Authority will established and provide resources to the Centre to achieve its mandate The wording of the clause as provided in this section is correct.The provision means if the Board terms has expired, the Minister may for continuity purposes re-appoint a member but not more than two consecutive.The technical drafting issues are noted but they don’t affect the intention and purpose of the legislation e.g. ( lower case and hyphen)The different of property practitioners will be clarified and defined by Regulations through the provisioning of different occupational level.The definition of the candidate practitioner is included in the Bill as per the initial submission by REBOSAAttorneys and Developers are covered in the Bill to the extent that their employees are engaged in property transaction (you can’t include the a general application of this legislation to attorneys in general)Claims are covered under the provision dealing with claim and in the transitional arrangement of the legislationThe matter is dealt with in terms of section 35 of the legislation to advance efficiency on the part of the AuthorityThe intention of this section is to regulate the activities and conduct of directors, members, partners and trustees in their individual capacity not as an entity Section 54 of the Bill makes provisions for exemption from keeping Trust accounts and section 55 makes provisions relating to keeping of accounting records The common law and statute hold principals vicariously liable for the actions of their candidates who are performing their activities within the scope and course of their employmentThe application period for FFC to the period of three years was included in the Bill as per the initial submission by REBOSAIt is a constitutional requirement to comply with all the empowerment and employment equity Acts and in particular if a property practitioner wish or intend to do business with the State.The real intention of the Bill is to advance transformation within the sector and the Bill is fully aligned with the provisions of the Charter |