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TRANSFER OF FUNCTIONS FROM THE MINISTER OF PUBLIC WORKS AND INFRASTRUCTURE TO THE MINISTER OF HOME AFFAIRS IN TERMS OF SECTION 97 OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996

1. The above matter refers.
2. In our letter, dated 25 August 2020, we called upon the Department of Public Works and Infrastructure to submit written comments or inputs on the draft proclamation (the "draft proclamation") to transfer functions from Cabinet members responsible for relevant organs of state to the Minister of Home Affairs as contemplated in section 97 of the Constitution of the Republic of South Africa, 1996 (the "Constitution"). We further attached thereto a copy of the draft proclamation for your perusal and consideration.
3. By letter dated 29 August 2020, you confirmed that "the Department of Public Works and Infrastructure (the "DPWI") had perused the draft section 97 proclamation, and respectfully submits that the draft proclamation has no adverse legal effect on the existing or current custodial function of the DPWI".
4. Having had regard to section 23, read together with section 38, of the Border Management Authority Act, 2020 (Act No. 2 of 2020) (the "Act"), the Department of Home Affairs (the "Department"), as well as the office of the Acting Commissioner, Border Management Authority (the "BMA"), wishes to confirm that it has reconsidered its position in relation to custodial functions of the DPWI in relation to assets and liabilities within the border law enforcement area and at ports of entry.

5. For the sake of completeness, section 23 of the Act empowers the Commissioner to, in consultation with the Minister of Home Affairs, acquire, maintain and dispose of immovable property for the purpose of fulfilling the objects of this Act. Section 38 of the Act deals with assets, liabilities and funds during the transitional period.
6. Having had regard to section 23, read together with section 38, of the Act, the Department is of the view that custodial functions, and related functions, of the DPWI, as contemplated in the Government Immovable Asset Management Act, 2007 (Act No. 19 of 2007) ("GIAMA"), be transferred from the Minister of Public Works and Infrastructure to the Minister of Home Affairs, and therefore, that such sections of GIAMA be included in the draft section 97 proclamation.
7. I further wish to indicate that the transfer of functions is only in so far as the administration of or the powers and duties provided for in the identified sections pertaining to any matter relating to the exercise of such powers and performance of functions within the border law enforcement area and at ports of entry. The Department does not anticipate the total administration of GIAMA or the transfer of the powers and functions from DPWI to the Department. As per the BMA's Business Case, the BMA will only assume the functions of implementing pieces of legislation that affects the border law enforcement area and at ports of entry and such execution of the functions, powers or duties transferred will be limited to the border law enforcement area and at ports of entry.
8. It is anticipated that the custodial functions of the DPWI, outside of the border law enforcement area and at ports of entry, will remain with the DPWI.
9. It is against the above backdrop that I write to you to request your office, as well as your Department, to consider the above and also to provide my Department with comments or inputs as to which sections of GIAMA should be considered for inclusion on the section 97 proclamation.

For any enquiries regarding the above, please refer to the contact details above.

Yours faithfully;



MR L T MAKHODE
DIRECTOR-GENERAL

DATE:

29 September 2021