



Media release

Land reclaim and leasing land - why transformation should be the focus

Cape Town, 24 February 2015 - At SONA 2015, President Jacob Zuma advised that the proposal to restrict foreign ownership of land was not going to chase away existing and potential foreign investors as they would still have the option to lease land for business use.

However, this, coupled with land reclaim and current transformation objectives, leaves a lot of questions up for debate at the upcoming Budget Speech.

Christine du Toit, Agricultural specialist and Partner at BDO's Cape Town practice sites government's intentions with regards to land reclaim and the leasing of land as a 'noble cause' but one that may bring future problems for our country and the next government.

Du Toit warns that leasing of land has its own pitfalls such as:

- The validity of the lease agreement: ensuring that the entities leasing land do so in a legal fashion, safeguarding that the lease agreement ultimately protects government as lessor as well as the lessee. This also means beefing up the current lease laws in our country to cater for this.
- There are capital commitments to be made on the farm: so who owns the immovable and agricultural assets? Who will provide the finances for this, government or financial institutions? If financial institutions provide financing, who will be liable?
- What happens if the lease gets cancelled? Will government then step in and reimburse the lessee who will now be without land and profit?

'Proper, strategic partnerships with agricultural operating entities and government need to be set up in order to ensure the success of these leases and land reclaim agreements as currently the risk is too high for investors,' continues Du Toit.

In the Western Cape, land claims have not been as big a focus, with transformation agreements being more strictly enforced to meet government's requirements. 'We have seen transformation work first hand from experiences with our clients. Formal legal structures are set up where in some instances part ownership is transferred and other instances there is a share in the ultimate profit of the entity. In these instances, the workers of the organisation and the community as a whole benefit from the transformation.' This ensures the workers are taking up the responsibility for operating with the other stakeholders as they have a vested interest.

However, that doesn't mean we can't be successful in our leasing and land claim agreements. 'Zambia is one of our African counterparts who has seen some successes in their land distribution and leasing agreements', says Abel Myburgh, Head of the Africa Desk at BDO SA. 'Mainly because Zambia has had the experience of both freehold and leasehold tenure. Major

land reform changes were announced as far back as 1975 by, then President Kaunda, later to be followed by the new MMD government's 1995 Land Act aiming at stimulating investment from abroad and agricultural productivity. Studies at the time showed that 80% of Zambian agricultural land was not under cultivation.'

Individuals that could convert customary land into leasehold were given 99 year leases. A large amount of customary land (previously called Reserves and Trust and Barotse Land) was converted to private tenure by adding a clause in the 1995 Land Act to provide for the conversion of communal land to leaseholds, as more foreign investors flooded the country. But the question remained, how does the Zambian Government balance the huge potential of private investment against poverty alleviation strategies especially in the rural areas?

'Currently, in general, the least productive land in Zambia is held under customary tenure by small farmers while the most productive land is leased for commercial farms, mining operations, and urban and tourism developments. In some cases these leaseholds have resulted in needed investment in rural areas and created opportunities for local employment, contract farming, and secondary businesses, development of infrastructure and social services, and transfer of know-how,' continues Myburgh.

'In 2012, a considerable amount of business in Zambia was generated, whereby 99-year land-use permits were transferred between buyers and sellers, or transferred from one generation of farmers to the next. This type of policy encourages agricultural investment, spurring food production in the country. Zambia produced a million more tonnes of maize in that year than the country could eat, and Zambia is now one of the three largest maize producers in a continent of food shortage which could promote trade within the African regions. Agriculture is still the most important sector from a socio-economic point of view, providing employment opportunities for 60% of the country's informally employed population,' he concluded.

Land reclaim was originally aimed at giving back to South Africans but as stated by Du Toit, 'It doesn't make commercial sense, as to function effectively agricultural land needs to be farmed as one unit. By giving away parts of land you lose the commercial viability of that farm.' But that isn't the only reason, 'It is such a complex process, you have to set up a structure comprising of the rightful owners of the land through the land claim. Furthermore, it is now a group of people that are compelled to work together without necessarily the expertise to commercially operate the land as well as the financial support to do so. There have been initiatives to operate it in a co-operative entity but even there the stumbling block was still expertise and proper management of such a structure. This is how government has now come to the notion of leasing land to agricultural entities. By doing this, these entities handle the operational aspects while the land owners receive their income through a lease charge. Unfortunately it isn't as straight forward as we would hope due to the pitfalls previously mentioned.'

Let's hope that the implications and pitfalls will be addressed in the Budget Speech on 25 February.

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