

Circular No. 1/2017

10 February 2017

STATE OF THE NATION 2017 : THE LEGISLATIVE LANDSCAPE FOR THE YEAR AHEAD

The State of the Nation speech (“SoNA”) by the President of the Republic of South Africa has undoubtedly provided food for thought as well as fodder for debate. It also deserves attention as an important indicator of what changes in law can be anticipated in the coming year.

A significant theme running throughout the SoNA was prioritising “radical socio-economic transformation”. This means taking practical measures to drive transformation by using the State’s “strategic levers” to influence the behaviour of the private sector.

A close look at the SoNA reveals that Government wishes to effect change in the following areas.

PROPERTY

After pointing out that less than five percent of the property sector is owned or managed by Black people, the President stated that a draft Property Practitioners Bill will be published for public comment “with the purpose of establishing a more inclusive, representative sector”.

COMPETITION

The President discussed that the Department of Economic Development intends to amend the Competition Act, 1998. The exact manner in which this will be done was not detailed. Rather, the President stated that the amendment “will among others address the need to have a more inclusive economy and to de-concentrate the high levels of ownership we see in many sectors”.

This is with an aim to “open up the economy to new players, give Black South Africans opportunities in the economy and indeed help to make the economy more dynamic, competitive and inclusive”.

MINING

The SoNA noted that the Mining Charter is under review. While broad allusions were made to de-racialisation of the industry and “the internationally accepted right of the state to exercise sovereignty over all the mineral and petroleum resources within the Republic”, no further detail on the discussions between government and business concerning the Charter was given.

Further to this, the President announced that the Mining Company of South Africa Bill will be presented to Cabinet and Parliament this year in a bid to "continue to pursue direct state involvement in mining."

The Minerals and Petroleum Resources Development Bill had been sent back to Parliament over concerns that public participation was not conducted correctly. The President recognised the need for this to be resolved expeditiously to resolve the uncertainty this state of affairs causes for business.

LAND REFORM

The controversial Expropriation Bill, which provides for the expropriation of property for a public purpose or in the public interest, is still yet to receive presidential assent. The President announced that he has decided to refer the Bill back to Parliament for reconsideration. This is on the basis that the Bill may be unconstitutional due to deficiencies in the public participation process before it was passed. He noted that he trusts that Parliament will address this issue without delay.

On the Restitution of Land Rights Amendment Act, 2014, he observed that the reopening of land claims is suspended after the Constitutional Court declared it invalid. This was due to aspects of the public consultation process falling short of the Constitutional standard.

HEALTH

In light of tragic recent events, the President has affirmed the urgent need to review the National Health Act, 2003 and the Mental Health Act, 2002. This is with a view that "certain powers and functions revert back to the National Minister of Health."

He also referred to ongoing efforts to implement National Health Insurance ("NHI"). It is proposed that the NHI will be implemented in a 14-year period in three phases, of which we are in the first. This is the preparatory phase which commenced in 2012.

FURTHER ADVICE

This circular was prepared by Chereese Thakur. Should you require advice or assistance on the pending legislation, please contact any of Michael Jackson on 031 – 536 8512 email : mjackson@coxyeats.co.za, Keren Watson on 031 - 536 5818, email : kwatson@coxyeats.co.za or Simon Watson on 031 - 536 8530, email : swatson@coxyeats.co.za or Jason Goodison on 031 - 536 8517, email : jgoodison@coxyeats.co.za or Jenna Padoa on 031 - 536 8529, email : jpadoa@coxyeats.co.za, Chereese Thakur (031 – 536 8529, cthakur@coxyeats.co.za), Spencer Cason on 031 – 536 8596, email : scason@coxyeats.co.za

