THE BANKING ASSOCIATION SOUTH AFRICA

Land Expropriation
Reactions from the Banking Sector

Gauteng Attorney's Association
Annual General Meeting
29 August 2019

Presented by Pierre Venter
General Manager Human Settlements
Market Conduct Division

THE BANKING ASSOCIATION SOUTH AFRICA

The Banking Association South Africa (BASA) is the sole industry association which represents the 33 South African and international banks registered to operate in the country.

BASA fully supports sustainable land reform in South Africa that, it:

- Corrects historically unjust land ownership patterns,
- Restores the dignity of those who have suffered from property and land dispossession,
- Recognises the need to reverse skewed property ownership patterns which reflects: 67% ownership of commercial agricultural land by White farmers; 15% of land is in Black Communal Areas (much of which is State owned);10% reflects other State-owned land (conservation areas, hospitals, schools etc); and 8% is urban land.
- Enhances food security, inclusive socio-economic growth, job creation, financial & social stability and promotes much-need investment.
- Benefits the poor by creating sustainable human settlements,
- Positively impacts the property, financial and agricultural sector.

The South African banking sector remains committed to finding practical solutions to the challenges of inequality, unemployment, correcting current land ownership patterns, poverty alleviation and broader transformation objectives.

This can however be done without an amendment of Section 25 of the Constitution.

Section 25 of the Constitution: *"A mandate for transformation" - Moseneke and Sachs*

Strength:

- Section 25 (3): *"just and equitable compensation"* can range from zero to above market value, depending on individual circumstances.

  This is supported by the Motlanthe High-Level Panel Report and former Constitutional Court Judges Moseneke and Sachs.

- Section 25 (5,6,7): imposes an obligation on the State to create a right of access to land on an equitable basis.

- Section 25(8) provides for the state to take legislative measures for land and water reform to redress past racial discrimination.

  This section needs to be read with Section 36(1) (limitation of rights clause) that requires the limitation to be reasonable and justifiable in a democratic society based on human dignity, equality and freedom.

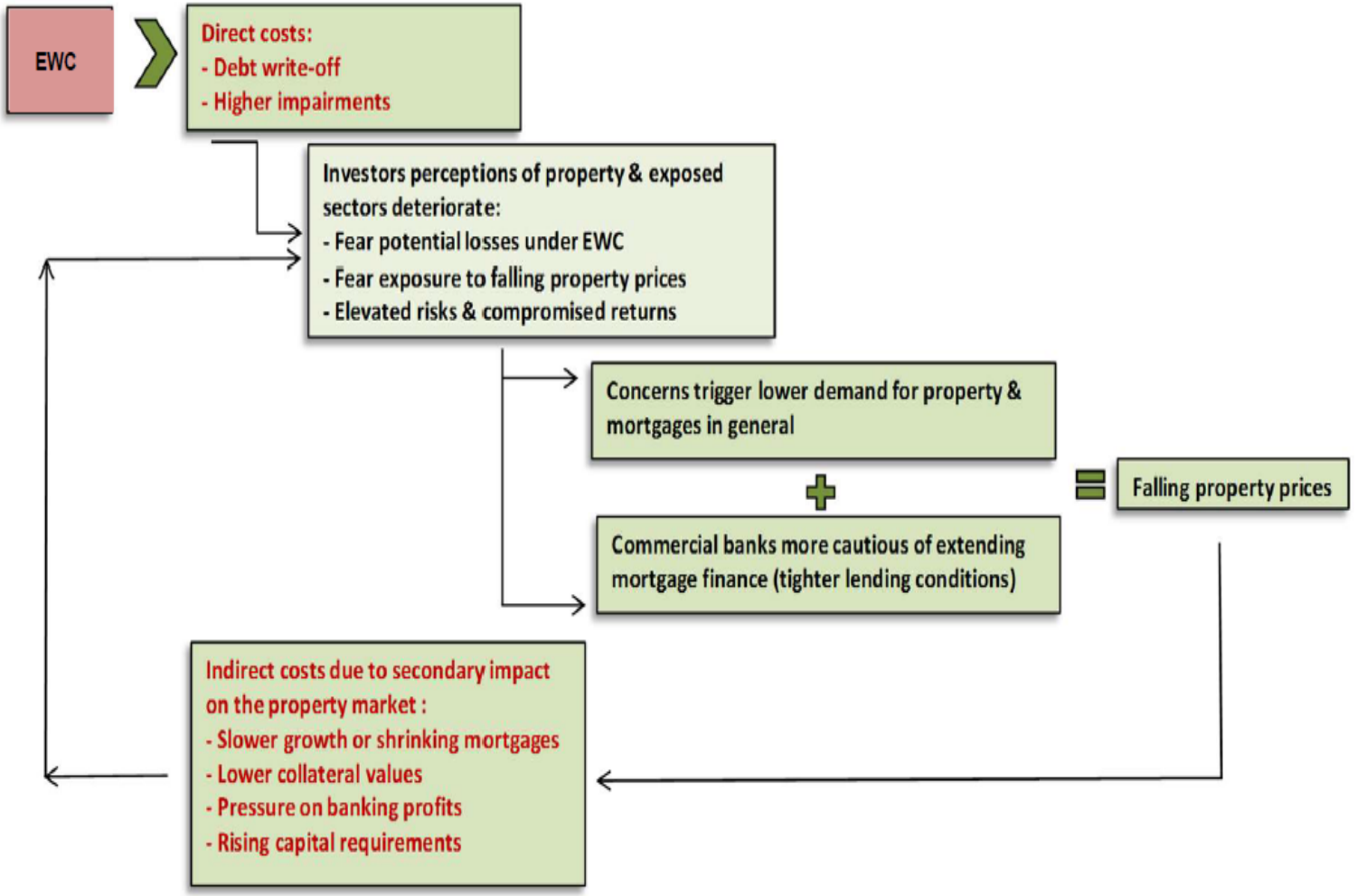
Threat:

- An amendment to Section 25 has the potential to undermine/dilute property rights: a risk to every lender, home owner, business owner and investor (local and foreign).
- Banks have invested over R1,6 trillion of South African's savings, salaries and investments in property loans.
- Properties serve as security for loans, and it is as a last resort used to recover depositors money.
- A marked decrease in the value of properties, caused by an amendment to legislation, ambiguous legislation and/or market uncertainty, would reduce property buyer interest and could destabilise the banking sector, with severe implications for the nation.
- Insecure property rights retard investment and economic development, which is needed to deal with unemployment, inequality and poverty.

Position of banking sector:

R' billion	Agriculture	Residential	Commercial & Industrial	Total
Total exposure	150	1 068	393	1 611

SECONDARY EFFECTS OF EWC ON THE BROADER PROPERTY MARKETS AND THE IMPLICATIONS FOR THE BANKING SECTOR'S ASSETS



Summary of Draft Expropriation Bill:

Draft Expropriation Bill, 2019, No 42127, of 21 December 2018.

The 2019 Expropriation Bill was gazetted in December of 2018. Once signed into law, it will make provision for the legal basis for the application of any amendment to Section 25 of the Constitution *"the property clause"*.

Key considerations:

The Bill establishes the process for expropriation and provides that the Minister of Public Works will hold the power to expropriate land in the interest of the public.

However public interest and public purpose are not adequately defined in the Bill.

Section 12 (3) of the Bill articulates five 5 types of property that maybe be expropriated for no compensation, but with the proceeding words ("but not limited to", which renders the detailed property types as being irrelevant):

- Land occupied or used by a labour tenant.
- Land held purely for speculative purposes.
- Land owned by a state-owned corporation or other state-owned entity.

- Land abandoned by its owner.
- Land where the market value is equivalent to, or less than, the present value of direct state investment or subsidy in the acquisition and beneficial capital improvement to the land.

Proposal:

We propose that some of the criteria/factors to be considered when implementing all land reform legislation include:

- A review of urban and rural development policy and legislation.
- A comprehensive land audit.
- Real empowerment.
- Security of tenure.
- Once land has been transferred, the beneficiaries should be assisted as far as possible to make a success of their chosen enterprise.
- Land reform should not place the wealth creation of current Black beneficiaries at risk.
- Transfer of land should be the primary purpose of land reform.
- As much as there is a need for land reform there is just as much a need for agrarian reform.
- The release of suitable state-owned land for urban human settlements and land redistribution in rural areas.
- The creation of an Ombudsman for Land Reform: to provide communities access to the formal economy and the extension of credit.
- A desperate need for informal settlements upgrading, including the provision of security of tenure.

Position of banking sector:

Property rights and prosperity are inextricably linked, where banks place reliance on property as security for loans.

A sound and secure banking and regulatory framework is essential to enable faster and inclusive economic growth. Banks are also required in terms of the Banks Act (1990) and Regulations thereto (Regulation 225) to value assets at market value.

SA Inc. urgently requires policy certainty.

THANK YOU