

REPUBLIC OF SOUTH AFRICA

REPEAL OF THE OVERVAAL RESORTS LIMITED BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No 41306 of 8 December 2017)
(The English text is the official text of the Bill)*

(MINISTER OF PUBLIC ENTERPRISES)

[B 36—2017]

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BILL

To repeal the Overvaal Resorts Limited Act, 1993; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Repeal of law

1. The Overvaal Resorts Limited Act, 1993 (Act No.127 of 1993), is hereby repealed.

Savings

5

2. Despite the repeal of the Act referred to in section 1, the servitudes acquired under section 3(2) of the Act continue to be of force and effect.

Short title and commencement

3. This Act is called the Repeal of the Overvaal Resorts Limited Act, 2017, and comes into operation on a date determined by the President by proclamation in the *Gazette*. 10

MEMORANDUM ON THE OBJECTS OF THE REPEAL OF THE OVERVAAL RESORTS LIMITED BILL, 2017

1. BACKGROUND

- 1.1 The Overvaal Resorts Limited Act, 1993 (Act No. 127 of 1993), was enacted to establish Overvaal Resorts Limited as a public company in order to hold and manage public resorts on behalf of government. The name of the company Overvaal Resorts Limited was later changed to Aventura Ltd.
- 1.2 The Cabinet took a decision in 2001 to dispose of Aventura resorts. Aventura acquired about fourteen resorts. Six of the resorts which were not making profit were the first to be disposed of to different purchasers. The remaining eight (8) resorts were sold to one bidder called Forever Resorts. However, difficulties were encountered when the eight resorts were being transferred to Forever Resorts. Some of the challenges which prolonged the transfer of the eight remaining resorts were the incorrect descriptions of the resorts from the deeds office, land claims and the resorts which were not registered under Aventura's name but registered under government as at the date when transfer was sought to be affected.
- 1.3 In an attempt to address these challenges and fast tracking the transfer process, an addendum to the sale agreement seeking to make amendments was concluded between government, Aventura and Forever Resorts in 2007. Notwithstanding this initiative, various challenges kept on recurring. As a result, liquidation was found to be the only viable option of disposing the Aventura resorts.
- 1.4 In 2012, the former Minister of Public Enterprises passed a special resolution for the liquidation of Aventura. The company was eventually put under liquidation in 2012, thereafter the liquidation of Aventura was finalised.
- 1.5 In light of the foregoing, the legislation that established Aventura is no longer relevant, hence the need for the repeal of the Act.

2. PURPOSE OF THE BILL

The Repeal Overvaal Resorts Limited Bill, aims to repeal the Overvaal Resorts Limited Act.

3. CLAUSE BY CLAUSE ANALYSIS

3.1 Clause 1

Clause 1 of the Bill seeks to repeal the Act.

3.2 Clause 2

Clause 2 of the Bill seeks to provide for the savings in order to retain section 3(2) of the Act. The retention of section 3(2) is to ensure that the State does not lose its rights to servitudes in respect of those resorts mentioned in the section as a result of the repeal.

3.3 Clause 3

Clause 3 provides for the short title and commencement of the Act.

4. PARTIES CONSULTED

Department of Rural Development and Land Reform.

5. FINANCIAL IMPLICATIONS FOR THE STATE

None

6. IMPLICATIONS FOR PROVINCES

None

7. PARLIAMENTARY PROCEDURE

7.1 The State Law Advisers and the Department of Public Enterprises are of the opinion that the Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or section 76 of the Constitution applies.

7.2 The Constitution regulates the manner in which legislation may be enacted by the legislature. It prescribes different procedures for Bills, including ordinary Bills not affecting provinces (section 75 procedure), and ordinary Bills affecting provinces (section 76 procedure). The determination of the procedure to be followed in processing the Bill is referred to as tagging.

7.3 The test for tagging is not concerned with determining the sphere of government that has the competence to legislate on a matter, nor the process concerned with preventing interference in the legislative competence of another sphere of government. The test for tagging is distinct from legislative competence in that it focuses on all the provisions in the Bill in order to determine the extent to which they substantially affect the functional areas listed in Schedule 4 to the Constitution and not whether any of its provisions are incidental to its substance.

7.4 In the case of *Tongoane and Other v Minister for Agriculture and Land Affairs and Others*, 2010 (8) BCLR 741(CC), the Constitutional Court pronounces on the test to be used when tagging legislation. The case deals with Communal Land Rights Act, 2004 (Act No.11 of 2004), (“CLARA”), which had been enacted in terms of section 75 of the Constitution. Parliament was of the view that the main purpose of CLARA did not fall within any Schedule 4 functional area. The applicants contended that the wrong test had been used and that for the purposes of tagging, it should be determined whether some provisions in substantial measure fall within a functional area listed in Schedule 4.

7.5 In *Tongoane* the Constitutional Court held that ‘the test for determining how a Bill is to be tagged must be broader than that from determining legislative competence’. The tagging test ‘focuses on all the provisions of the Bill in order to determine the extent to which they substantially affect functional areas listed in Schedule 4, and not on whether any of its provisions are incidental to its substance’. In applying the tagging test to the Bill, the question that should be asked is whether the provisions in the Bill substantially affect a Schedule 4 functional area. Overvaal Resorts Limited is not an item listed in Schedule 4 or 5 of the Constitution.

7.6 The Bill seeks to repeal the Overvaal Resorts Limited Act, 1993 and to retain section 3(2) of the Act. The retention of section 3(2) is to ensure that the State does not lose its rights to servitudes in respect of those resorts mentioned in the section as a result of the repeal.

7.7 As the Bill does not deal with a functional area listed in Schedule 4 or Schedule 5 of the Constitution, we submit that section 44(a)(ii) of the Constitution is applicable with regard to the power of the National Assembly to pass legislation on “any matter”.

- 7.8 We are of the view that the Bill must be dealt with in accordance with the legislative procedure outlined in section 75 of the Constitution since it contains no provisions to which the procedure set out in section 74 or 76 of the Constitution applies.
- 7.9 The State Law Advisers are also of the opinion that it is not necessary to refer the Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or custom of traditional communities.

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