

The effects of the CPA Amendment Act, 2017

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With the introduction of the Restitution of Land Rights Act 22 of 1994, which allowed both individuals and communities alike to claim rights to land that had been dispossessed of as a result of past racially discriminative laws or practices, there arose the question of how the land claimed by the land claimants, particularly communities, would be held and managed for the benefit of the beneficiaries if restitution was granted. Partly in answer to this question, the concept of Communal Property Associations (“CPAs”) was birthed.

CPAs are legal entities formed for the purposes of enabling communities to acquire, hold and manage property on a basis agreed to by members of a community in terms of a written constitution and to provide for matters connected therewith. Until 8 October 2024, CPAs were governed by the Communal Property Associations Act 28 of 1996 (“**principal Act**”) which provided for the constitution, administration and governance of CPAs.

In reflecting on the effectiveness of the principal Act, it was reported in the 2023/24 Commission on Restitution of Land Rights’ (“**CRLR**”) reporting period that 75% of the registered CPAs across the country were found to be non-compliant with various provisions contained in the principal Act and as a result, could not function or did so illegally.

The reasons advanced by the CRLR for the non-compliance range from a lack of proper leadership and governance in the executive committees of the CPAs, a lack of proper administration and a lack of a solid business model. These often result in illegal transactions taking place within the CPAs and no proper records being kept, ultimately leading to the beneficiaries of the CPAs not receiving their dues.

From a legislative point of view, the non-compliance was also attributed to the ambiguous and vague nature of the provisions contained in the principal Act.

In order to remedy these shortcomings, the Communal Property Associations Amendment Bill (“**Bill**”) was drafted. The Bill has since been signed into law and has come into effect from 8 October 2024 thereby introducing the Communal Property Associations Amendment Act, 2017 (“**new Act**”). The new Act seeks to provide certainty to the provisions that were left open to interpretation in the principal Act and solidifies the status of CPAs as legal entities that can be effectively used as tools to manage the properties belonging to communities. The new Act has also widened the scope of application of the principal Act and has established various bodies to ensure proper enforcement of the Act and functioning of CPAs.

Notable Amendments Introduced by the Communal Property Associations Bill, 2017

Below, we highlight notable amendments to the principal Act and their implications on the operation of CPAs.

Provisional Associations [section 18A of the new Act]

1. The principal Act allowed for communities to form provisional associations which would hold and administer the land belonging to the community whilst the community drafted its CPA's constitution and arranged all necessary papers to ensure compliance with all relevant processes. An interim committee sat on the provisional association's board pending registration of the association.
2. The Bill has eliminated the option of provisional associations and has indicated that all provisional associations which have not adopted a constitution or been registered as associations must be registered as CPAs within 12 months of the commencement of the ‘Act’ (8 October 2024), which period may be extended by a further 12 months only.
3. Should currently existing provisional associations not be registered accordingly within the stipulated time periods, they will cease to exist and any property held by them must be dealt with by the Registrar in accordance with the Minister's direction and with due regard to public interest.

Communal Property Associations Office [section 2B of the new Act]

4. A completely novel addition, the Bill provides for the establishment of a Communal Property Associations Office (“**CPA office**”) within the Department of Rural Development and Land Reform (“**Department**”).
5. The Bill envisages that the CPA office will be the centre of operations for all matters relating to CPAs in the country, in tandem with any regional offices that may be established as branches of the CPA office.

Registrar [section 2C and 2D of the new Act]

6. A registrar of CPAs (“**Registrar**”) will be appointed by the Minister of the Department (“**Minister**”).
7. The minimum qualifications and experience required of the Registrar will be determined by the Minister together with the Registrar's remuneration, in consultation with the Minister of Finance.
8. In furtherance of the Registrar's main role of administering the CPA office and any regional offices, the Registrar's functions include, *inter alia*, –
 - establishing a provincial office in each province and appointing a Deputy Registrar for each office established;
 - providing assistance to the communities and associations concerned;
 - ensuring verification of members of the association;
 - registering associations and keeping record of all certificates of registration issued;
 - ensuring compliance by associations with the new Act;
 - keeping record of any bank account opened in the name of an association;
 - keeping record of any delegation made in terms of the new Act;
 - providing members of the public with copies of the constitution of any association or similar entity in line with PAIA;
 - impressing the seal of Communal Property Associations on –
 - any certificate of registration;
 - any addendum to a certificate of registration, e.g. in the event of a CPA changing its name;
 - any letter that the Registrar provides to an association to present to a bank or institution where the association wishes to open an account and which is valid for the period indicated in the letter; and
 - any other documents as may be prescribed; and
 - performing any other functions assigned to him or her as directed by any court or as may be requested by the Minister or Director-General.
9. Regarding the registration of associations, the Bill replaces the Registration Officer referred to in the principal Act with the Registrar and states that the Registrar –
 - shall consider an application for registration of an association together with any prescribed information and the constitution adopted by the association, which constitution must reflect the views of the members of the community; and
 - may, if satisfied of compliance with the Act, register associations in the prescribed manner, allocate a registration number and issue a certificate of registration.

Quorums [various sections in the new Act]

10. In stark contrast to the principal Act, the Bill provides for a 60% minimum vote in favour of a decision to be made. As such, for a decision to be valid, 60% of the attendees of a meeting, who are eligible to vote must vote in favour of the motion. This 60% rule is applicable when –
 - a community adopts a constitution;
 - a community decides to amend the constitution or dissolve the association or to dispose of or to encumber immovable property; and
 - members of an association adopt a resolution to deregister the association.

Conclusion

11. Since the inception of the concept of CPAs and the establishment of the principal Act, CPAs have been marred by tales of corruption, incompetence, lack of service delivery to their beneficiaries and being the scene of outright illegal activities. The CPA Amendment Act aims to resolve the bulk of the challenges faced by CPAs by expressly outlining the rights of communities and the steps to be taken for proper administration.

The establishment of a specialised CPA office and the appointment of a Registrar are welcomed in order to ensure, at a minimum, that there is a centralised agency for the administration of CPAs which will hopefully lead to more accurate record keeping, proper assistance to communities and more information sessions held for the benefit of communities that are beneficiaries to CPAs. The success or failure of the CPA Amendment Act is hinged upon the offices of the Registrar and the CPA office being adequately resourced with adequate skills and resources. A wholesale public awareness drive must be undertaken in order to capacitate communities and CPAs to comply with the provisions of the CPA Amendment Act.



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