

REPUBLIC OF SOUTH AFRICA

EXPROPRIATION BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No 30963 of 11 April 2008)
(The English text is the official text of the Bill)*

(MINISTER OF PUBLIC WORKS)

[B 16—2008]

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BILL

To provide for the expropriation of property, including land, in the public interest or for public purposes and subject to compensation, including compensation to holders of unregistered rights; to provide for the establishment of Expropriation Advisory Boards; to provide for the approval of compensation by a court; and to provide for matters connected therewith.

WHEREAS the Constitution of the Republic of South Africa, 1996—

- permits the expropriation of property only in terms of law of general application, for a public purpose or in the public interest and subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court;
- provides that the compensation and time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances;
- further provides that the public interest includes the nation's commitment to land reform, and reforms to bring about equitable access to all South Africa's natural resources;
- places an obligation on the State to take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis;
- permits the State to take legislative and other measures to achieve land, water and related reform, in order to redress the results of past racial discrimination;
- is founded on the values of human dignity, the achievement of equality and the advancement of human rights and freedoms; and
- provides that everyone has the right to administrative action that is lawful, reasonable and procedurally fair;

AND IN ORDER TO ENSURE—

- that there is a framework for expropriation of property, including land;
- the expropriation of property in the public interest or for public purposes, subject to just and equitable compensation; and
- the respect of the rights of everyone including the rights of access to courts and other forums and to administrative action that is lawful, reasonable and procedurally fair,

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

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CHAPTER 1

DEFINITIONS

Definitions

1. (1) In this Act, unless the context indicates otherwise—
 - “**Board**” means any Expropriation Advisory Board established in terms of section 5
6;
 - “**claimant**” means a person who has lodged a claim for compensation with an
expropriating authority arising from the expropriation of property;
 - “**Constitution**” means the Constitution of the Republic of South Africa, 1996;
 - “**court**” means any High Court; 10
 - “**date of expropriation**” means the date mentioned in the notice of expropriation
on which the expropriated property vests in the expropriating authority and all
unregistered rights in respect thereof are expropriated as is contemplated in section
13(1)(b);
 - “**deliver**”, in relation to any document, means deliver in terms of section 27(3) and 15
(4);
 - “**Department**” means the Department of Public Works;
 - “**Director-General**” means the Director-General of the Department;
 - “**expropriating authority**” means any organ of state contemplated in section 239
of the Constitution, authorised by this Act or any other law to acquire property 20
through expropriation, and includes the Minister and any person contemplated in
section 2 of the Expropriation (Establishment of Undertakings) Act, 1951 (Act No.
39 of 1951);
 - “**holder of an unregistered right**” means any person whose unregistered right in
property is expropriated as is contemplated in section 13(1); 25
 - “**juristic person**” includes a nonprofit organisation contemplated in the Nonprofit
Organisations Act, 1997 (Act No. 71 of 1997);
 - “**land**” includes a right in land;
 - “**Master**”, in relation to any property, means the Master of the High Court
appointed in respect of the area in which that property is situated; 30
 - “**Minister**” means the Minister responsible for public works;
 - “**municipal manager**” means the municipal manager of a municipality;
 - “**municipality**” means any institution or body contemplated in section 155 of the
Constitution and established in terms of Chapter 2 of the Local Government:
Municipal Structures Act, 1998 (Act No. 117 of 1998); 35
 - “**notice of expropriation**” means a notice contemplated in section 12;
 - “**owner**”, in relation to land or a registered right in land, means the person in
whose name such land or right is registered, and—
 - (a) if the owner of any land or registered right in land is deceased, means the
executor of his or her estate and if no executor has been appointed or his or her 40
appointment has lapsed, the Master;
 - (b) if the estate of the owner of any land or registered right in land has been
sequestered, means the provisional or final trustee of his or her insolvent
estate, as the case may be, or if no such appointment has been made, the
Master; 45
 - (c) if the owner of any land or registered right in land is a company that is being
wound up, means the provisional or final liquidator of that company or if no
such appointment has been made, the Master;
 - (d) if any land or registered right in land is vested in a liquidator or trustee in
terms of any other law, means that liquidator or trustee; 50
 - (e) if the owner of any land or registered right in land is otherwise under a legal
disability, means his or her representative by law;
 - (f) if any land or registered right in land has been attached in terms of an order of
a court, includes the sheriff or deputy sheriff, as the case may be;
 - (g) in the case of a public place, road or street under the control of a municipality, 55
means that municipality;
 - (h) for the purposes of section 10, includes any lawful occupier of the land
concerned; and
 - (i) includes the authorised representative of the owner in the Republic;

- “**ownership**”, for the purposes of section 13(1), includes ownership of any right in the property described in the notice of expropriation;
- “**possession**” includes the exercise of a right;
- “**prescribed**” means prescribed by regulation in terms of section 31;
- “**professional valuer**” means a registered valuer referred to in section 19(1)(a) or (b) of the Property Valuers Profession Act, 2000 (Act No. 47 of 2000);
- “**property**” includes a right in property and includes movable property;
- “**public interest**” includes the nation’s commitment to land reform and to reforms to bring about equitable access to South Africa’s natural resources;
- “**public purpose**” includes any purpose connected with the administration of the provision of any law by an organ of state;
- “**publication**” means publication in accordance with section 27(2), and “**publish**” has a corresponding meaning;
- “**registered**” means registered with any Registrar of Deeds or the Registrar of Mining Titles or in any government office in which rights in respect of any land, minerals or any other property are recorded for public record;
- “**road**” includes—
- (a) a railway line or street as defined in any relevant provincial legislation; and
- (b) any land acquired or used for quarries, outspans or camps or any other purpose in connection with a road, railway line or street;
- “**scheme**” means any undertaking or project of an expropriating authority in respect of which any property is intended to be expropriated or is expropriated;
- “**service**” means service in accordance with section 27(1), and “**serve**” has a corresponding meaning;
- “**this Act**” includes any regulation.

CHAPTER 2

POWERS OF EXPROPRIATION

Powers of expropriation

2. (1) (a) An expropriating authority may expropriate property for a public purpose or in the public interest subject to compensation contemplated in section 25 of the Constitution.
- (b) No property may be expropriated unless the procedures contained in this Act have been followed.
- (2) The powers to expropriate may only be exercised in terms of this Act or any other law of general application.

Power of Minister to expropriate property

3. The Minister may expropriate any property for a public purpose or in the public interest subject to compensation contemplated in section 25 of the Constitution.

Expropriation of property on behalf of juristic persons

4. (1) If a juristic person satisfies the Minister that it reasonably requires property for a public purpose or in the public interest and that it has not come to an agreement with the owner thereof, the Minister may, subject to subsections (3) and (4), expropriate such property on behalf of that juristic person.
- (2) If the Minister expropriates any property on behalf of a juristic person in terms of subsection (1), such juristic person becomes the owner of that property on the date of expropriation.
- (3) The fees, duties and other charges that would have been payable by the juristic person in question in terms of any law if it had purchased the property in question are payable in the event of an expropriation in terms of subsection (1).
- (4) The juristic person bears responsibility for all costs incurred or to be incurred by the State in effecting the expropriation of the property, which costs include—
- (a) the appointment of professional valuers in order to assess the market value of the property to be expropriated;

- (b) the appointment of professional valuers or other professional advisers to advise the Minister on the amount of compensation to be paid to the expropriated owner or to expropriated holders, if any;
 - (c) all costs incurred or to be incurred in respect of any application to court in respect of the amount of compensation payable to the expropriated owner and expropriated holders, if any; 5
 - (d) the registration of transfer of the expropriated property in the name of the juristic person;
 - (e) any legal costs incurred by the State in respect of any application in terms of any law for review of the decision to expropriate the property in terms of section 11; and 10
 - (f) any compensation and interest payable by the Minister to the expropriated owner and expropriated holder.
- (5) (a) Subject to paragraph (b), the Minister may require the juristic person to furnish the State with an acceptable bank guarantee in an amount estimated by the Minister in order to cover the costs contemplated in subsection (4) prior to exercising the power of expropriation in terms of subsection (1). 15
- (b) The Minister may from time to time reassess the amount of the costs and may direct the juristic person to adjust the bank guarantee in accordance with the reassessed amount. 20
- (c) The juristic person in question must adjust the bank guarantee in accordance with the reassessed amount within a reasonable time after receiving the direction contemplated in paragraph (b).

Delegation of functions by Minister

5. (1) The Minister may either generally or in relation to a particular property or in relation to a particular case delegate to an official of the Department of a level not lower than— 25
- (a) deputy director-general, any of the functions contemplated in sections 3, 4, 11(5)(c) and 18(5); and
 - (b) director, any other function contemplated in this Act. 30
- (2) The Minister may not delegate the function to withdraw an expropriation in terms of section 25(1) or the function to make regulations in terms of section 31.

CHAPTER 3

ESTABLISHMENT OF EXPROPRIATION ADVISORY BOARDS

Establishment of expropriation advisory boards 35

6. (1) The Minister may by regulation establish a National Expropriation Advisory Board and such number of Regional Expropriation Advisory Boards as he or she deems appropriate.
- (2) The Minister must determine the area of jurisdiction of each Regional Expropriation Advisory Board. 40

Composition of Boards

7. A Board consists of—
- (a) a chairperson;
 - (b) a deputy chairperson; and
 - (c) such number of members as the Minister deems fit. 45

Functions of Boards

8. (1) A Board must advise an expropriating authority on all aspects of expropriation, including the determination of compensation.
- (2) A Board must, when requested, advise all organs of state on the fair price of immovable property and rights therein when organs of state acquire property, other than through expropriation, or dispose of property. 50
- (3) A Board may investigate and identify suitable property for land, water and related reform in order to redress the results of past racial discrimination.

- (4) A Board may perform such other functions as the Minister may prescribe.
- (5) The National Expropriation Advisory Board must advise the Minister on uniform norms and standards for the functioning of Regional Expropriation Advisory Boards.
- (6) The Minister may prescribe a dispute resolution mechanism in the event of a dispute between the National Expropriation Advisory Board and any Regional Expropriation Advisory Board or between two or more Regional Expropriation Advisory Boards. 5

Appointment and other conditions of service of Board members

9. (1) The Minister must appoint persons nominated in the prescribed manner to serve on a Board. 10
- (2) When appointing members to a Board, the Minister must consider the need for the Board to reflect broadly the racial and gender composition of the Republic.
- (3) A member of a Board is appointed for a period of five years and is eligible for reappointment on termination of the initial period of appointment for one further period not exceeding five years. 15
- (4) A person may not be appointed as a member of a Board if that person—
- (a) is not a South African citizen and ordinarily resident in the Republic;
 - (b) is an unrehabilitated insolvent;
 - (c) has been convicted of an offence in the Republic, other than an offence committed prior to 27 April 1994 associated with political objectives, and was sentenced to imprisonment without an option of a fine or, in the case of fraud, to a fine or imprisonment or to both a fine and imprisonment; 20
 - (d) has been convicted of an offence in a foreign country and was sentenced to imprisonment without an option of a fine or, in the case of fraud, to a fine or imprisonment or to both a fine and imprisonment; or 25
 - (e) has, as a result of improper conduct, been removed from an office of trust.
- (5) A member of a Board must vacate his or her office if he or she—
- (a) becomes disqualified in terms of subsection (4) from being appointed as a member of a Board;
 - (b) resigns by written notice addressed to the Minister; 30
 - (c) is declared by the High Court to be of unsound mind or mentally disordered or is detained under the Mental Health Act, 1973 (Act No.18 of 1973); or
 - (d) has without leave of the Board been absent for three consecutive meetings of the Board.
- (6) If a member of a Board dies or vacates his or her office before the expiry of his or her term of office, the Minister may appoint a person to fill the vacancy for the unexpired portion of the period for which that member was appointed. 35
- (7) If the Minister appoints a person to fill a vacancy, the appointment must be made within 60 days from the date on which the vacancy occurred.
- (8) A member of a Board receives such remuneration and allowances as the Minister, with the concurrence of the Minister of Finance, may determine. 40
- (9) Save as is otherwise provided for in this Act, the Minister must determine the conditions of service of any member of a Board.

CHAPTER 4

INVESTIGATION AND VALUATION OF PROPERTY, INTENTION TO EXPROPRIATE AND EXPROPRIATION OF PROPERTY 45

Investigation and gathering of information for purposes of expropriation

10. (1) An expropriating authority must, when investigating the possible expropriation of property required for a public purpose or in the public interest, consider—
- (a) the existence of unregistered rights in respect of the said property and must obtain information from reasonable sources of information, including the Department of Land Affairs, the Land Claims Commission, the municipality in whose area the land is situated, any occupier of the land and the land-owner; and 50
 - (b) the need for land, water and related reform in order to redress the results of past racial discrimination. 55

- (2) An expropriating authority may at any time before deciding to expropriate or before expropriating property—
- (a) in writing call upon the owner of the property, the Regional Land Claims Commissioner in whose area the property is situated and the Director-General of the Department of Land Affairs to submit in writing within 30 days of delivery of the notice the names and addresses of all persons holding unregistered rights in respect of the property and particulars of the rights held by them in the property, to the extent that such names, addresses and particulars are within their knowledge; 5
 - (b) require the relevant Board to investigate and provide the following information within 60 days of the date of the delivery of the notice contemplated in paragraph (a): 10
 - (i) The current use of the property;
 - (ii) the history of the acquisition and use of the property;
 - (iii) the market value of the property; 15
 - (iv) the extent of direct State investment and subsidy in the acquisition of the property;
 - (v) any beneficial capital improvement of the property; and
 - (vi) whether the property is property from which people were forcibly removed or whether people were dispossessed of that property as a result of past racial discrimination; and 20
 - (c) require the Board to conduct an investigation on the suitability of the property for the purposes for which it is required.
- (3) The Board may, when it conducts an investigation contemplated in subsection (2)(b) or (c)— 25
- (a) enter upon the property in question with the necessary equipment and vehicles;
 - (b) survey and determine the area and levels of that property;
 - (c) dig or bore on or into that property;
 - (d) construct and maintain a measuring weir in any river or stream; 30
 - (e) insofar as it may be necessary to gain access to that property, enter upon and go across any other property with the necessary workers, equipment and vehicles; and
 - (f) demarcate the boundaries of any property contemplated in subsection (1).
- (4) A person conducting an investigation contemplated in subsection (1) may not enter upon property or perform any of the acts set out in subsection (3) unless he or she is authorised to do so in writing by the expropriating authority or the Board, and— 35
- (a) the owner of the property in question or the owner of the land over which access to that property is to be gained, as the case may be, has consented in writing thereto; or 40
 - (b) in the absence of such written consent, written notice has been delivered to such owner or owners not less than 72 hours before the intended access, specifying—
 - (i) the name of any person authorised by the expropriating authority or the Board to conduct that investigation, the actions which are to be performed on the property during the investigation and the time and dates on which the investigation is to be done; and 45
 - (ii) in the case where access is to be gained over any other property contemplated in subsection (3)(e), the route to be used over such other property, the name of any person who is to use such route and the time and dates on which such route is to be used. 50
- (5) Any person conducting an investigating contemplated in subsection (2)(b) and (c) may—
- (a) require the owner, tenant or occupier of the property, or the agent of the owner, on instruction of the expropriating authority or the Board, to give that person access to any document in possession of the owner, tenant, occupier or agent that the person reasonably requires for the purposes of valuing the property; 55
 - (b) make extracts from or copies of any such document;
 - (c) in writing require the owner, tenant or occupier of the property, or the agent of the owner, to provide that person, either in writing or verbally, with particulars regarding the property that he or she reasonably requires for the purposes of valuing the property; 60

- (d) despite any law to the contrary, require the municipality in whose area the property in question is situated, to provide that person with—
- (i) access to building plans of improvements to that property;
 - (ii) a copy of those building plans at the cost of the expropriating authority; 5
 - (iii) such information in respect of municipal property rates or charges, land use rights including the zoning of the property, availability of engineering services to such property or such other information in respect of such property as is in the possession of the municipality and as may be reasonably required for the valuation of that property; 10
and
- (e) only act in terms of paragraphs (a) to (d) if authorised in writing by the expropriating authority or the Board to determine the market value of the property.
- (6) (a) Any person, authorised in writing to perform any act contemplated in subsection (2)(b) or (c) on behalf of the expropriating authority or the Board, must— 15
- (i) on demand, provide the owner, tenant or occupier of the property or anyone acting through or on behalf of the owner, with a copy of the said written authorisation;
 - (ii) at all times whilst performing any such act on behalf of the expropriating authority, be in possession of such written authority; and 20
 - (iii) on demand, identify himself or herself by means of an official identification document to the owner, tenant or occupier or anyone acting through or on behalf of that owner, tenant or occupier.
- (b) If the person contemplated in paragraph (a) fails to comply with paragraph (a)(i), (ii) or (iii), the owner, tenant or occupier, or anyone acting on behalf of or through that owner, tenant or occupier, may refuse that person entry to the property in question or may refuse the performance of any act contemplated in subsection (3). 25
- (7) An owner who fails to comply with any request in terms of subsections (2)(a) or (5)(c) is guilty of an offence. 30

Intention to expropriate

- 11.** (1) If an expropriating authority intends to expropriate property, it must—
- (a) publish a notice to that effect;
 - (b) serve a copy of that notice on all persons, including holders of unregistered rights, of whom it is aware and whose rights or interests may be materially and adversely affected by the intended expropriation; and 35
 - (c) deliver a copy of that notice to the Director-General.
- (2) (a) If the property which forms the subject of the intended expropriation is land, the notice contemplated in subsection (1)(a) must also be served for written comment within the period mentioned in subsection (3)(e) on the Regional Land Claims Commissioner in whose area the land is situated and the Director-General of the Department of Land Affairs. 40
- (b) The Regional Land Claims Commissioner or the Director-General, as the case may be, must within seven days of the notice being served on him or her inform the expropriating authority of any land claim and any unregistered rights derived from or protected by any law under the administration of the Commissioner or of the Minister responsible for land affairs, to the extent that such claim or unregistered rights are likely to be affected by the intended expropriation. 45
- (c) The notice contemplated in subsection (1)(a) must also be served for written comment within the period mentioned in subsection (3)(e) on the municipal manager of the municipality where the land is situated in order for the manager to inform the expropriating authority of the effect which the intended expropriation is likely to have on existing and future engineering services, infrastructure and housing and urban planning, and of any unregistered rights in the land in question of which the municipality is aware: Provided that if the expropriating authority is the relevant municipality, no such service is required, but the municipality must take into account the effect which the intended expropriation is likely to have on those services, infrastructure and planning. 50
- (3) The notice contemplated in subsection (1)(a) must contain—
- (a) notification of the intended expropriation;
 - (b) a description of all property forming part of the scheme to which such notice applies; 60

- (c) a short description of the scheme in respect of which the intended expropriation applies and the address at which documents fully setting out the scheme may be inspected and particulars of the scheme may be obtained during business hours;
 - (d) the amount offered as compensation to the owner and holders of unregistered rights together with an explanation of how the compensation was arrived at; 5
 - (e) an invitation to any such persons to lodge with the expropriating authority at a given address within 21 days after the publication or service of the said notice, in writing—
 - (i) any objections against the intended expropriation; 10
 - (ii) any submissions relating to the intended expropriation;
 - (iii) a postal address and a facsimile number, if any, to which any further communications to such person may be addressed by the expropriating authority; and
 - (iv) the choice of official language for the purposes of further written communication; and 15
 - (f) a directive to the owner of the property in question to submit in writing the names and addresses of all persons holding unregistered rights in respect of the property, and particulars of the rights held by them in the property, to the extent that such names, addresses and particulars are within the knowledge of the owner. 20
- (4) The expropriating authority must—
- (a) immediately after receiving an objection from any person, notify that person in writing that the objection has been received; and
 - (b) within 14 days of notifying that person that his or her objection has been received, invite that person in writing to enter into negotiations with it regarding the intended expropriation. 25
- (5) If no agreement can be reached between the expropriating authority and any person referred to in subsection (4)(b) within 21 days of the invitation contemplated in that subsection, the expropriating authority must make a decision whether to expropriate or not. 30
- (6) (a) An expropriating authority may depart from the provisions of subsections (1) to (4) where it is reasonable and justifiable to do so.
- (b) In determining whether such a departure and the extent thereof is reasonable and justifiable, an expropriating authority must take into account all relevant factors, including— 35
- (i) the purpose of the expropriation;
 - (ii) whether the need for expropriating the property for a public purpose or in the public interest is so compelling that departure from the said requirements is warranted; 40
 - (iii) whether the expropriation has to be effected as a matter of urgency;
 - (iv) the prejudice to the owner of the property and other persons whose rights and interests may be materially and adversely affected by the decision to expropriate; and
 - (v) advice of a Board. 45

Notice of expropriation

- 12.** (1) In order to expropriate property, an expropriating authority must serve a notice of expropriation on the owner of the property in question and must publish it within seven days of such service.
- (2) A copy of the notice of expropriation must be delivered to— 50
- (a) the Registrar of Deeds or the Registrar of Mining Titles or any government office in which rights in respect of the expropriated property are registered or recorded for public record; and
 - (b) the Director-General.
- (3) If the property is land, a copy of the notice of expropriation must also be delivered to— 55
- (a) the municipality in whose area of jurisdiction the land in question is situated;
 - (b) the Director-General of Land Affairs and the Regional Land Claims Commissioner in whose area the land is situated; and
 - (c) every holder of a registered mortgage bond in respect of that land. 60

- (4) The notice of expropriation must include an offer of compensation and must—
- (a) contain a clear and full description of the property, including—
 - (i) in the case where the expropriation applies to only a portion of a piece of land, the approximate extent of such portion and an annexed survey diagram showing the position of such portion in relation to the whole; or
 - (ii) in the case where the expropriation applies to a right in land, an annexed survey diagram showing the position of the right in land on such land, unless the right in land is accurately described without such survey diagram;
 - (b) state the date of expropriation or the date from which the property will be used temporarily, as the case may be, including the period of such temporary use;
 - (c) state the date upon which the expropriating authority will take possession of the property;
 - (d) contain a statement as to the date or dates on which the expropriating authority proposes to pay the compensation and any interest due in respect thereof in terms of section 16, if any such date is later than the date on which the compensation and interest becomes payable in terms of section 20(3) and (4);
 - (e) call upon the expropriated owner to submit in writing the names and addresses of all holders of unregistered rights terminated or abated by the expropriation, together with particulars of the rights held by such holders, to the extent that particulars of such rights are within the knowledge of the expropriated owner concerned;
 - (f) draw attention to the fact that if a person has an unregistered right in respect of the property of which the expropriating authority had no knowledge when making the offer of compensation, the expropriating authority may withdraw that offer;
 - (g) inform the expropriated owner that he or she may request a translation of the notice of expropriation in the official language of his or her choice; and
 - (h) contain an explanation of how the amount of compensation was arrived at.
- (5) (a) Multiple rights in respect of the same property or properties may be expropriated from different owners or holders of rights in such property in the same notice of expropriation.
- (b) A separate offer of compensation must be stated in respect of each owner or holder mentioned in the notice of expropriation contemplated in paragraph (a).

Vesting of expropriated property in expropriating authority

- 13.** (1) The effect of an expropriation of property is that—
- (a) the ownership of the property described in the notice of expropriation vests, subject to section 4(2), in the expropriating authority on the date of expropriation or on the date on which a mortgagee is released from any mortgage bond;
 - (b) all unregistered rights in such property are simultaneously expropriated on the date of expropriation; and
 - (c) the property as described in the notice of expropriation remains subject to all registered rights, with the exception of mortgage bonds, in favour of third parties with which the property has been burdened prior to expropriation, unless or until such registered rights are expropriated from the holder thereof in accordance with the provisions of this Act.
- (2) Possession of the expropriated property vests in the expropriating authority on the date stated in terms of section 12(4)(c) or such other date as may be agreed upon between the expropriated owner concerned and the expropriating authority.
- (3) (a) The expropriated owner of land must from the date of expropriation to the date upon which the expropriating authority takes possession of the land, take care of and maintain the land.
- (b) If an expropriated owner wilfully or negligently fails to take care of and maintain the land and as a result thereof the land depreciates in value, the expropriating authority may recover the amount of the depreciation from the expropriated owner concerned.
- (c) The expropriating authority must compensate the expropriated owner for such unusual maintenance costs incurred after the date of expropriation as may be agreed upon between the owner and expropriating authority.

(4) If the expropriated owner desires to place the expropriating authority in possession of the expropriated land prior to the date stated in terms of section 12(4)(c) and that owner and the expropriating authority do not agree upon a date on which the possession of such land passes to the expropriating authority, the owner may give the expropriating authority notice in writing not less than 21 days before the date on which he or she desires to place the expropriating authority in possession of the land, in which case possession of the land passes to the expropriating authority on that date. 5

(5) The expropriated owner remains entitled to the use of and the income from any expropriated land from the date of expropriation to the date upon which possession of the land passes to the expropriating authority, but that owner remains, during that period, responsible for the payment of municipal property rates, other charges and normal operating costs and maintenance in respect of the expropriated land as if the land had not been expropriated. 10

Consequences of expropriation of unregistered rights and duties of expropriating authority 15

14. (1) The expropriated holder of an unregistered right in property which has been expropriated as is contemplated in section 13(1)(b) is entitled to compensation for such expropriation as if the unregistered right was expropriated by separate notice of expropriation in terms of section 12(1). 20

(2) As soon as the expropriating authority becomes aware that an unregistered right in expropriated property has been expropriated as is contemplated in section 13(1)(b) and becomes aware of the identity of the expropriated holder thereof, the expropriating authority must serve on that expropriated holder a notice that the unregistered right has been expropriated, together with a copy of the notice of expropriation served on the expropriated owner in terms of section 12(1). 25

(3) The notice contemplated in subsection (2) must—

- (a) direct the attention of the expropriated holder to the date upon which possession of the expropriated property vests in the expropriating authority in terms of section 13(2);
- (b) contain a statement contemplated in section 12(4)(d), if applicable; and 30
- (c) contain a request to the expropriated holder to deliver within 14 days to the expropriating authority a copy of any written instrument in which the unregistered right is contained if such instrument is in his or her possession or under his or her control.

(4) When a notice in terms of subsection (2) has been served on the expropriated holder, this Act applies with the changes required by the context as if such notice were a notice of expropriation in terms of section 12(1) in respect of such unregistered right: Provided that— 35

- (a) if the date when possession vests in the expropriating authority in terms of section 13(2) is a date less than 30 days from the date on which the said notice was served on such expropriated holder, possession only vests in the expropriating authority as against the expropriated holder from a date 30 days from such service or from such date as the expropriating authority and such holder may agree upon; 40
- (b) the expropriated holder is entitled to claim compensation in terms of section 17 despite no notice having been served upon him or her in terms of subsection (2), and in such an event this Act applies with the changes required by the context as though a notice has been served in terms of subsection (2) on the date upon which the expropriated holder delivered the claim for compensation; and 45
- (c) if the expropriated holder is a lessee, he or she remains liable to pay rental to the expropriated owner until possession passes in terms of section 13(2) and, if applicable, thereafter to the expropriating authority until possession passes in terms of subsection (4)(a). 50

(5) No order for the eviction of an expropriated holder from expropriated land may be granted unless the application for eviction has been served on the Director-General of Land Affairs and a court is satisfied that it is just and equitable to do so having regard to all relevant circumstances, including— 55

- (a) whether compensation has been paid fully or in part for the expropriation of the unregistered right; 60
- (b) the amount of compensation so paid;

- (c) whether comparable alternative accommodation is or will be available to the expropriated holder and his or her family; and
 - (d) the period of notice given to such expropriated holder of the intended expropriation, the expropriation and the date upon which possession is vested in the expropriating authority in terms of paragraph (a) of the proviso to subsection (4). 5
- (6) If the expropriated owner of land knows of the existence of any unregistered right in respect of such land and fails to inform the expropriating authority of the existence thereof, that owner is liable to the expropriating authority for any loss sustained by the expropriating authority in the event of the expropriating authority having to pay compensation for the expropriation of such unregistered right after the date of payment of compensation to that owner. 10

CHAPTER 5

COMPENSATION FOR EXPROPRIATION

Basis on which compensation is to be determined 15

- 15.** (1) Every expropriated owner and every expropriated holder is entitled to compensation contemplated in section 25(3) of the Constitution.
- (2) In determining the amount of compensation to be paid, the expropriating authority must ensure that compensation is just and equitable, reflecting an equitable balance between the public interest and the interests of those affected. 20
- (3) (a) In determining whether compensation contemplated in subsection (2) is just and equitable all relevant factors must be considered, including—
- (i) the current use of the property;
 - (ii) the history of the acquisition and use of the property;
 - (iii) the market value of the property; 25
 - (iv) the extent of direct State investment and subsidy in the acquisition and beneficial capital improvement of the property;
 - (v) the purpose of the expropriation; and
 - (vi) any advice received from a Board.
- (b) Subject to subsections (2) and (3), an expropriating authority may determine an amount of compensation that is below the market value of the property. 30
- (c) An expropriation authority must take no account of—
- (i) the fact that the property has been taken without the consent of the expropriated owner or expropriated holder;
 - (ii) the special suitability or usefulness of the property for the purpose for which it is required by the expropriating authority, if it is unlikely that the property would have been purchased for that purpose in the open market; 35
 - (iii) any enhancement in the value of the property, if such enhancement is a consequence of the use of the property in a manner which is unlawful;
 - (iv) improvements made on the property in question after the date on which the notice of expropriation was served upon the claimant, except where they were agreed to by the expropriating authority in terms of section 13(3) or where they were undertaken in pursuance of obligations entered into before that date; 40
 - (v) anything done with the object of obtaining compensation therefor; and
 - (iv) any enhancement or depreciation, before or after the date of service of the notice of expropriation, in the value of the property in question, which is due to the scheme or purpose in connection with which the property was expropriated. 45

Interest on compensation money

- 16.** (1) Interest at the interest rate prescribed in terms of section 80(1)(b) of the Public Finance Management Act, 1999 (Act No. 1 of 1999), is due from the date of expropriation on any outstanding portion of the amount of compensation payable in accordance with section 15, and becomes payable in the manner contemplated in section 20(3) and (4): Provided that—
- (a) if the expropriated owner or expropriated holder fails to comply with section 17(1) and (2) within the periods referred to in that section, including any extension of such periods, the amount so payable during the period of such 55

failure and for the purposes of the payment of interest, is not regarded as an outstanding amount;

- (b) interest due in terms of this subsection must be regarded as having been paid on the date on which the amount has been made available or by prepaid registered post posted to the expropriated owner or the expropriated holder concerned, or electronically transferred to his or her account, as the case may be; and 5
- (c) any deposit, payment or utilisation of any amount in terms of section 20(1), 22(2) or 23(1) or (4) must be regarded as being a payment to the expropriated owner or expropriated holder and no interest is due by the expropriating authority on any such amount as from the date on which it has been so deposited, paid or utilised. 10

(2) If land has been expropriated, no interest is due to the expropriated owner of such land, or to any expropriated holder, for any period before possession of such land has passed to the expropriating authority in terms of section 13(2) or (4) or 14(4)(a), as the case may be. 15

(3) If land has been expropriated and the expropriated owner or any expropriated holder occupies or utilises that land or any portion thereof, no interest is due to him or her in respect of the period during which he or she so occupies or utilises the land or portion thereof on so much of the outstanding amount as relates to the land or the portion so occupied or utilised. 20

Compensation claim by expropriated owner and expropriated holder

17. (1) An owner of property who received a notice of expropriation must, within 21 days from the date upon which that notice of expropriation was served on him or her, deliver or cause to be delivered to the expropriating authority a written statement indicating whether or not the offer of compensation included in the notice of expropriation is accepted or not, and, if not accepted, he or she must set out in that statement— 25

- (a) the amount claimed by him or her as compensation;
- (b) full particulars as to how such amount is made up, including a copy of any valuation or other professional report, if any, that forms the basis of the compensation claimed; 30
- (c) if the property expropriated is land, full particulars of—
 - (i) any improvements on the land that in the opinion of the claimant affect the value of such land; and 35
 - (ii) all unregistered rights that exist in respect of such land and that he or she is aware of, including the name and address of the holder of such unregistered right and, if such unregistered right is contained in a written instrument in his or her possession or under his or her control, a copy of such written instrument; 40
- (d) the physical address, or postal address and facsimile number, if any, contemplated in section 27(3) and (4) to or at which he or she desires that further documentation in connection with the expropriation must be delivered; and
- (e) such information and annexing such documentation as may be prescribed by the Minister in order to facilitate electronic payment of compensation to the expropriated owner. 45

(2) Every expropriated holder must, subject to section 14(4)(b) and within 21 days of receipt of the notice in terms of section 14, deliver or cause to be delivered to the expropriating authority a written statement— 50

- (a) indicating his or her name and accompanied by a copy of his or her identity document, passport or other official identification document, if any;
- (b) containing full particulars of his or her unregistered right and, if such right is contained in a written instrument, be accompanied by a copy of such instrument; 55
- (c) if the unregistered right in the expropriated land entitled him or her to the use of improvements on the expropriated land—
 - (i) containing a full description of those improvements; and

- (ii) indicating whether or not such improvements were erected by him or her and if so, whether or not the materials used for erecting such improvements belonged to him or her;
- (d) indicating whether he or she intends to claim compensation from the expropriating authority and, if so, setting out fully the amount claimed as compensation by him or her and how such amount is made up; 5
- (e) containing the physical address, postal address and facsimile number, if any, contemplated in section 27(3) and (4) to or at which he or she desires that further documentation in connection with the expropriation must be delivered; and 10
- (f) containing such other information and be accompanied by such other documentation as may be prescribed by the Minister in order to facilitate electronic payment of compensation to the expropriated holder.
- (3) (a) The expropriating authority may extend the period of 21 days referred to in subsections (1) and (2). 15
- (b) If the expropriated owner or expropriated holder requests the extension of the period of 21 days in writing before the expiry of that period, the expropriating authority must extend such period by a further 21 days.
- (4) If the property expropriated is land the expropriating authority may request—
 - (a) the expropriated owner to deliver or cause to be delivered to the expropriating authority within 21 days of the request his or her title deed thereto or, if it is not in his or her possession or under his or her control, written particulars of the name and address of the person in whose possession or under whose control the title deed is; and 20
 - (b) any person in whose possession the title deed referred to in paragraph (a) may be, to deliver or cause to be delivered to the expropriating authority within 21 days of the request, the title deed in question. 25
- (5) Any person who refuses or fails to comply with a request by the expropriating authority in terms of subsection (1)(c)(ii) or (4)(a) or (b) is guilty of an offence.
- (6) Subject to section 16(1), an expropriated owner or expropriated holder that fails to comply with subsection (1) or (2), as the case may be, is entitled to such compensation as would otherwise have been payable to him or her in terms of this Act. 30

Offers of compensation

- 18.** (1) If the expropriating authority is not prepared to pay the amount claimed by a claimant in the written statement delivered in terms of subsection (1) or (2) of section 17, as the case may be, and the relevant information has been furnished in terms of that section, the expropriating authority must, within 21 days of delivery of that statement— 35
- (a) make an offer of compensation to the claimant in writing; and
 - (b) indicate how such amount is made up and calculated.
- (2) If an expropriated owner or an expropriated holder fails to claim an amount of compensation or to furnish the information contemplated in section 17, the expropriating authority must within 30 days after the expiry of the period or extended period contemplated in that section, offer in writing an amount of compensation to such expropriated owner or expropriated holder. 40
- (3) The offer of compensation contemplated in subsection (2) must be accompanied by copies of reports detailing how the amount of compensation was determined. 45
- (4) Subject to section 24, the offer of compensation contemplated in subsection (1)(a) or (2), as the case may be, by the expropriating authority must be regarded as final.

Particulars of claims and offers

- 19.** (1) The expropriating authority and the claimant may from time to time in writing deliver a request for reasonable particulars regarding the claimant's claim for compensation or the offer of compensation, as the case may be, and particulars so requested must be furnished within 21 days of such request. 50
- (2) If the expropriating authority or the claimant fails to comply with a request in terms of subsection (1), the court may, on application, issue an order directing him or her to comply therewith. 55
- (3) A claim for compensation and an offer of compensation remain in force until—
- (a) the expropriating authority makes a final determination;

- (b) it has been accepted; or
- (c) the compensation has been approved by a court.

Payment of amount offered as compensation

- 20.** (1) Subject to sections 22 and 23, the expropriating authority must—
- (a) on the date on which an amount is offered as compensation or, if it has then not yet taken possession of the property, on the date on which possession passes to the expropriating authority in terms of section 13(2) or section 14(4)(a); and
 - (b) unless the expropriating authority has proposed a later date for the payment of the compensation in terms of section 12(4)(d),
- pay, by way of an advance payment, not less than 80 per cent of the amount of compensation offered to the claimant concerned or to the person referred to in section 21(1)(b).
- (2) Any compensation due to a claimant in terms of this Act, becomes payable on the date on which the amount of such compensation has been determined by agreement or by the expropriating authority.
- (3) Interest due in terms of section 16 becomes payable only after the amount of compensation has been determined and at the time when payment of the last outstanding portion of compensation is made.
- (4) (a) If the expropriating authority has proposed a later date or dates in terms of section 12(4)(d), the compensation and the interest are payable, subject to any agreement to the contrary between the claimant and the expropriating authority, on such date or dates as a court may order.
- (b) An expropriated owner, an expropriated holder or the expropriating authority may apply to the court for an order contemplated in paragraph (a) at any time after the expropriating authority has proposed a later date or dates in terms of section 12(4)(d).
- (5) If value-added tax is payable by a claimant by virtue of section 8(21) of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), payment of compensation must be made by the expropriating authority only upon receipt of an appropriate tax invoice from the claimant.
- (6) The Minister may prescribe the information and documentation to be delivered by any person to whom compensation or interest is payable in terms of this Act, in order to facilitate electronic payment thereof.

Property subject to mortgage bonds or deeds of sale

- 21.** (1) If any property expropriated in terms of this Act was immediately prior to the date of expropriation encumbered by a registered mortgage bond or subject to a deed of sale, the expropriating authority may not pay out any portion of the compensation money to the claimant concerned, except—
- (a) after the compensation due to the claimant and to the mortgagee or buyer, as the case may be, has been finally determined; or
 - (b) to such person and on such terms as may have been agreed upon between the claimant and the mortgagee or buyer concerned, as the case may be, after the claimant has notified the expropriating authority of such agreement.
- (2) If the claimant and the mortgagee or buyer, as the case may be, fail to conclude an agreement contemplated in subsection (1)(b), any of the said persons may apply to the court for an order whereby the expropriating authority is directed to pay out the compensation money or any advance payment in terms of section 20(1) in such manner as the court may determine and the court may on such application issue such order, including an order as to costs, as the court may deem just.

Payment of municipal property rates and other charges out of compensation money

- 22.** (1) If any land which has been expropriated is subject to municipal property rates and taxes or other charges, the municipality in question must, upon receipt of a copy of the notice of expropriation in terms of section 12(3)(a) forthwith, but not later than 21 days after receipt of that notice, inform the expropriating authority in writing of any outstanding municipal property rates or other charges in respect of the payment of which

the production of a receipt or certificate is in terms of any law a prerequisite for the registration of transfer of such land by a registrar of deeds.

(2) The expropriating authority must in writing inform the expropriated owner of any amount so alleged by such municipality and if the said amount is not disputed by the expropriated owner within 14 days of such notification, the expropriating authority may utilise as much of the compensation money in question as is necessary for the payment, on behalf of the expropriated owner, of any municipal property rates or other charges contemplated in subsection (1). 5

(3) If the municipality fails to inform the expropriating authority of such outstanding municipal property rates or other charges within the 21 days referred to in subsection (1), the expropriating authority may pay the compensation to the claimant without regard to such outstanding municipal property rates or other charges, and in such an event and despite the provisions of any law to the contrary— 10

- (a) the Registrar of Deeds may register transfer of the expropriated property;
- (b) the expropriating authority is not liable to the said municipality before or after such registration for any outstanding municipal property rates or other charges; and 15
- (c) the expropriated owner continues to be liable for those rates and charges notwithstanding that the expropriated property has been registered in the name of the State, expropriated authority or juristic person, as the case may be. 20

Deposit of compensation money with Master

23. (1) The expropriating authority may deposit the amount of compensation payable in terms of this Act with the Master after which the expropriating authority ceases to be liable in respect of that amount—

- (a) if any property expropriated under this Act was left in terms of a will or testament to an undetermined beneficiary or beneficiaries; 25
- (b) if compensation is payable in terms of this Act to a person whose address is not readily ascertainable or who fails to supply the prescribed information and documentation for electronic payment after 30 days' written notice to do so; or
- (c) if compensation is payable and the expropriating authority is unable to determine to whom it must be paid. 30

(2) In the event of a dispute or doubt as to the person who is entitled to receive any compensation payable in terms of this Act, or in the event of the issue of an interdict in respect of the payment of any compensation, the expropriating authority may, subject to section 21(2), pay the amount of such compensation to the Master. 35

(3) Any money received by the Master in terms of subsection (1) or (2)—

- (a) is, if the property in question is to be dealt with in terms of section 21(1)(a); and
- (b) must, subject to paragraph (a), be paid into the guardian's fund referred to in section 86 of the Administration of Estates Act, 1965 (Act No. 66 of 1965), for the benefit of the persons who are or may become entitled thereto and bear interest at the interest rate prescribed in terms of section 80(1)(b) of the Public Finance Management Act, 1999 (Act No. 1 of 1999). 40

(4) The court has jurisdiction to make any order which may be expedient in respect of any money received by the Master in terms of subsection (1) or (2). 45

CHAPTER 6

APPROVAL OF COMPENSATION BY COURT

Approval of compensation by court

24. (1) The compensation to be paid for any property expropriated by an expropriating authority and the time and manner of payment must, in the absence of agreement between the expropriated owner or the expropriated holder and the expropriating authority and subject to section 25 of the Constitution, be determined by the expropriating authority. 50

(2) The taking of a decision to expropriate for a public purpose or in the public interest in terms of this Act constitutes an administrative action as defined in section 1 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), and, subject to subsection (5), is subject to review by a court in accordance with that Act. 55

- (3) (a) Any party to an expropriation may request a court, subject to subsection (5), to approve any of the following actions undertaken in terms of this Act:
- (i) Any final determination of compensation contemplated in section 18(4);
 - (ii) the determination of the time of payment of compensation; or
 - (iii) the determination of the manner of payment of compensation. 5
- (b) In deciding any action contemplated in paragraph (a), the court must have regard to the factors set out in section 15.
- (c) If a court, having considered the factors referred to in paragraph (b), is of the opinion that it cannot approve any of the actions referred to in paragraph (a), it must enter the reasons for its decision in the record of proceedings. 10
- (d) Any party may appeal the findings of a court if that court, having considered the factors referred to in paragraph (b), approved any of the actions referred to in paragraph (a).
- (e) If a court, in accordance with paragraph (c), did not approve of any of the actions referred to in paragraph (a) and the expropriating authority has not appealed against such finding, the matter must be referred back to the expropriating authority to reconsider any of the actions referred to in paragraph (a) in accordance with the reasons stipulated by the court in terms of paragraph (c). 15
- (f) If, after an expropriating authority has reconsidered any action contemplated in paragraph (e) and there is still no agreement between the parties, then any party can again approach the court in accordance with this subsection. 20
- (4) (a) In the interests of giving effect to the property rights contemplated in section 25 of the Constitution, court proceedings arising from the application of this Act must be dealt with on an urgent basis and must be concluded without unreasonable delay.
- (b) Rules of court must be developed to give effect to the court proceedings contemplated in paragraph (a). 25
- (5) A court reviewing an administrative action referred to in subsection (2) or approving any action referred to in subsection (3), must be presided over by a judge whose name appears on the list referred to in subsection (6).
- (6) (a) The Chief Justice must, after consultation with the Judges President, enter the names of judges— 30
- (i) who have appropriate experience or expertise in the field of expropriation matters; or
 - (ii) who have successfully completed a prescribed training course in expropriation matters at a prescribed institution, 35
- on a list of judges for the hearing of a matter referred to in subsection (5).
- (b) The Cabinet member responsible for the administration of justice must cause the list referred to in paragraph (a), as well as any changes thereto, to be published in the *Gazette*.

CHAPTER 7 40

WITHDRAWAL OF EXPROPRIATION AND RELATED MATTERS

Withdrawal of expropriation

- 25.** (1) (a) Notwithstanding anything to the contrary contained in any law, the Minister may withdraw any expropriation from a date mentioned in a notice of withdrawal if the withdrawal of that expropriation is in the public interest or such withdrawal is otherwise expedient. 45
- (b) The notice of withdrawal contemplated in paragraph (a) must be served on every person on whom the notice of expropriation in question was served.
- (2) An expropriation may not be withdrawn—
- (a) after the expiration of three months from the date of expropriation, except with the written consent of the expropriated owner and of all expropriated holders or, in the absence of such written consent, if the court, on application by the expropriating authority, authorises the withdrawal on the ground that it is in the public interest that the expropriation be withdrawn; 50
 - (b) if, where the expropriated property is land, the property has already been registered in the name of the expropriating authority in consequence of the expropriation; or 55

(c) if the expropriating authority has already paid compensation in connection with such expropriation unless the agreement in writing of every person to whom such compensation has been paid, is obtained.

(3) If an expropriation of property is withdrawn in terms of this section, ownership of such property again vests, from the date contemplated in subsection (1), in the owner from whom it was expropriated, and any mortgage bonds and other rights discharged or expropriated by virtue of section 13(1) as a consequence of the expropriation are fully revived and the Registrar of Deeds concerned must, on receipt of a copy of the notice of withdrawal, cancel any endorsement made in connection with the expropriation in his or her registers and on the title deed in question.

Provisions applicable to provincial roads

26. (1) This Act does not derogate from any provincial legislation in terms whereof the power is conferred to declare a road or take construction material on land for road purposes.

(2) If provincial legislation does not provide for a procedure similar to the procedure set out in this Act in respect of the intended declaration of a road or the taking of construction material—

- (a) the provisions of this Act are applicable with the changes required by the context to such declaration or taking;
- (b) each owner and holder of an unregistered right in the land in question is entitled to compensation that must be calculated, determined and paid in accordance with the provisions of this Act as if the land to which the declaration or taking relates has, subject to paragraph (c), been expropriated in terms of this Act;
- (c) all old order rights contemplated in Schedule II to the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), and any prospecting rights, mining rights or any other rights existing in terms of the said Act, continue to vest in the person in whom they vested prior to such declaration or taking; and
- (d) the date on which the road has been declared or the construction material has been taken for such road in terms of the provisions of the provincial legislation in question must be regarded as the date of expropriation.

Service and publication of documents and language used therein

27. (1) Whenever a notice in terms of section 11(1), a notice of expropriation or a notice in terms of section 14(2) to an expropriated holder is required to be served by this Act, the original or a true copy thereof must—

- (a) be delivered or tendered to the addressee personally at his or her residential address or place of work or at such address or place as the expropriating authority and the addressee may agree upon;
- (b) be posted by pre-paid registered post to the postal address of the addressee;
- (c) be published in the manner contemplated in subsection (2)—
 - (i) if the whereabouts of the person concerned are unknown to the expropriating authority and is not readily ascertainable; or
 - (ii) in the case of *fideicommissaries* in respect of a property which is subject to a *fideicommissum* and it is not known to the expropriating authority who all the *fideicommissaries* are or will be; or
- (d) if none of the modes of service set out in paragraphs (a) to (c) are practicable under the circumstances, be served in accordance with such directions as the court, on application, may direct.

(2) Whenever publication of a notice in terms of section 11(1), a notice of expropriation or any other document is required by this Act, such publication must take place—

- (a) by the publication of the notice or document in English and in an official language commonly used in the area where the property is situated once in the *Gazette* and simultaneously therewith or not more than one week thereafter, once in the said languages in two newspapers of different languages circulating in the area in which the property is situated;

- (b) if the property is land, by the display of the notice in the said languages on such land in a conspicuous place, from not later than the date of publication in the *Gazette* contemplated in paragraph (a); and
- (c) if the expropriating authority deems it necessary in the circumstances, by the advertising in such languages as may be appropriate on television or radio, transmitting to the area where the land is situated, the contents of such advertisement to adhere as closely as is practicable to the contents of the notice or document so advertised. 5
- (3) Whenever a document must or may be delivered in terms of this Act, such delivery must take place by delivering— 10
- (a) to the expropriating authority, at the address appointed in the notice in terms of section 11(1), the notice of expropriation, the notice in terms of section 14(2) or other document, as the case may be; and
- (b) to any owner, holder of an unregistered right, person who has lodged an objection or submission contemplated in section 11(3)(d), expropriated owner and expropriated holder, at the address or facsimile number appointed by such person in terms of this Act, or in the absence thereof— 15
- (i) at an address supplied in respect of such person in terms of this Act;
- (ii) at the residential or postal address of such person, if known to the expropriating authority; or 20
- (iii) if no address of such person is known to or readily ascertainable by the expropriating authority, by publication in the manner contemplated in subsection (2)(a).
- (4) The delivery contemplated in subsection (3) must take place at the address in question by— 25
- (a) hand;
- (b) facsimile transmission: Provided that a confirmatory copy of the document is sent by ordinary mail or by any other suitable method within one day of such transmission; or
- (c) post. 30
- (5) Whenever a document or a part of a document which is in colour has to be delivered, every copy thereof which is delivered, and in the case of a facsimile transmission, the confirmatory copy, must be in the same colour as the original.
- (6) All documents must be in English and if an addressee has prior to a communication expressed in writing a preference for another official language, also in that preferred official language. 35
- (7) Every addressee who has received a written communication from the expropriating authority is entitled to request, in writing, a translation of such communication in the official language indicated in such request.

Secretariat to Board 40

- 28.** (1) The Director-General must, in consultation with a Board, designate any officer or employee of the Department appointed in terms of the Public Service Act, 1994 (Proclamation No. 103 of 1994), to assist the Board in the proper performance of its functions.
- (2) The personnel contemplated in subsection (1) are responsible to the chairperson of the Board and accountable to the Department. 45
- (3) The Director-General is the accounting officer of a Board.
- (4) Subject to any law governing the provision of services to the State, the Director-General may, at the request of a Board, enter into agreements with persons for the performance of any specific function or for the provision of any specific service. 50
- (5) The expenses of a Board are funded by the Department from money appropriated for that purpose by Parliament to the Department or transferred to the Department by a juristic person for an expropriation contemplated in section 4.

Expropriation register

- 29.** (1) The Director-General must open and maintain a register of all expropriations that are intended, effected and withdrawn, and of decisions not to proceed with a contemplated expropriation by all expropriating authorities. 55

(2) All expropriating authorities must deliver to the Department a copy of any notice of any intended expropriation, expropriation and withdrawal of expropriation, and of any decision not to proceed with an intended expropriation.

Offences

30. (1) Any person convicted of an offence in terms of this Act is liable to a fine or to imprisonment for a period not exceeding six months, or to both a fine and such imprisonment. 5

(2) Any person who wilfully furnishes false or misleading information in any written instrument which he or she by virtue of this Act delivers or causes to be delivered to an expropriating authority, is guilty of an offence, and if convicted, liable to a fine or to imprisonment for a period not exceeding two years or to both a fine and such imprisonment. 10

Regulations

31. The Minister may, by notice in the *Gazette*, make regulations regarding— 15

- (a) any matter that may or must be prescribed in terms of this Act; and
- (b) any ancillary or incidental, administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of this Act.

Impact on existing legislation

32. (1) All laws dealing with expropriation of property for a public purpose or in the public interest that came into force before the date on which this Act came into operation, continue to apply to the extent that they are consistent with this Act and the Constitution. 20

(2) In the event of a conflict between this Act and any other law contemplated in subsection (1) in relation to matters dealt with in this Act, this Act prevails. 25

Amendment of this Act

33. Draft legislation directly or indirectly amending this Act may be introduced— 30

- (a) by the Minister only; or
- (b) only after the Minister has been consulted on the contents of the draft legislation.

Repeal of laws

34. The laws mentioned in the second column of the Schedule are hereby repealed to the extent set out in the third column.

Transitional arrangements

35. (1) (a) This Act does not apply to any expropriation effected prior to the date of commencement of this Act or to any consequences of any expropriation effected prior to the date of commencement of this Act 35

(b) Any proceedings for the determination of compensation in consequence of an expropriation contemplated in paragraph (a) must be instituted, or if already instituted must be concluded, as if this Act had not been passed: Provided that the parties concerned may agree to the application of this Act to such expropriation or proceedings in which case the relevant provisions of this Act apply to the extent agreed upon between the parties as if it were an expropriation or proceedings for the determination of compensation in terms of this Act. 40

(2) The Land Affairs Board established in terms of the Land Affairs Act, 1987 (Act No. 101 of 1987), continues to operate until the National Expropriation Advisory Board has been established in terms of section 6. 45

Short title

36. This Act is called the Expropriation Act, 2008.

SCHEDULE*(Section 34)*

No and year of law	Short title	Extent of repeal	
Act No. 63 of 1975	Expropriation Act, 1975	The whole	5
Act No. 19 of 1977	Expropriation Amendment Act, 1977	The whole	
Act No. 3 of 1978	Expropriation Amendment Act, 1978	The whole	
Act No. 8 of 1980	Expropriation Amendment Act, 1980	The whole	10
Act No. 21 of 1982	Expropriation Amendment Act, 1982	The whole	
Act No. 45 of 1992	Expropriation Amendment Act, 1992	The whole	15
Act No. 101 of 1987	Land Affairs Act, 1987	The whole	

MEMORANDUM ON THE OBJECTS OF THE EXPROPRIATION BILL, 2008

1. BACKGROUND

Although expropriation is a drastic measure of acquisition of another's property, it is recognised as an essential mechanism for the State in certain instances (such as the delivery of essential services and land reform) and is thus protected by the Constitution of the Republic of South Africa, 1996 (the Constitution).

The Expropriation Act, 1975 (Act No. 63 of 1975) (the Act), predates the Constitution, which provides that any law or conduct inconsistent with the Constitution is invalid and any obligation imposed by the Constitution must be fulfilled. The redrafting of the Act therefore became necessary to ensure consistency with the spirit and provisions of the Constitution dealing especially with equality (section 9), property rights (section 25), access to information (section 32), and lawful, reasonable and procedurally fair administrative decision-making (section 33).

Given the array of authorities within the national, provincial and municipal spheres of government who have the power to expropriate property, there is a need to ensure uniformity in the way organs of state undertake expropriation.

2. OBJECTS OF BILL

The Bill seeks to align the Act with the Constitution and to provide a common framework to guide the processes and procedures for expropriation of property by organs of state, by providing for—

- (a) the extension of the purposes for which property may be expropriated from the narrow term of public purpose to include expropriations in the public interest. Expropriation in the public interest, for instance, provides government with a tool to achieve its commitment to land reform, and to reforms to bring about equitable access to all South Africa's natural resources;
- (b) all affected parties to be notified of a contemplated expropriation, to afford such parties an opportunity to raise objections and make representations to the expropriating authority, before a decision to expropriate is taken. The expropriating authority must give consideration to all submissions and must attempt to reach an agreement with persons whose rights and interests may be adversely affected, before deciding to expropriate;
- (c) an expropriating authority to depart from the prescribed procedures where it is reasonable and justifiable to do so, for instance, when an expropriation has to be effected as a matter of urgency;
- (d) the expansion of the scope of protected rights to provide for compensation for both registered and unregistered rights. In terms of the Act only the holders of registered rights and certain unregistered rights are eligible for compensation upon expropriation. Section 25 of the Constitution, however, does not distinguish between registered rights and unregistered rights. It would thus be unconstitutional to terminate unregistered rights without compensation;
- (e) the payment of just and equitable compensation to persons affected by expropriations, with such compensation reflecting an equitable balance between the public interest and the interests of those affected. Whilst the market value of expropriated property is a predominant factor in the Act, the Constitution does not give undue weight to any single factor over others, but requires consideration of all relevant factors, including—
 - the current use of the property;
 - the history of the acquisition and use of the property;
 - the market value of the property;
 - the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and
 - the purpose of the expropriation;
- (f) expropriating authorities and affected parties to exchange technical reports and other relevant information, in endeavouring to reach agreement on compensation. In the absence of agreement, the expropriating authority shall make a determination on compensation. In the event that the expropriated owner or holder of a right does not accept such determination, he or she may

- approach the court for a review of the process. Should any party not accept the ruling of the court, that party would have the right to appeal;
- (g) all disputes emanating from expropriations to be dealt with in a High Court, albeit with special institutional measures. The Bill particularly proposes that the Chief Justice shall appoint a panel of judges with relevant expertise to adjudicate on disputes emanating from expropriations;
 - (h) the establishment of a National Expropriation Advisory Board to advise the Minister and of Regional Expropriation Advisory Boards to advise all expropriating authorities on all aspects of expropriation, including the determination of compensation. The Boards will also render advice to organs of state on the fair value of immovable property when the State acquires property other than through expropriation, or disposes thereof. The Bill proposes that the Minister be empowered to establish those Boards for different geographical areas in order to ensure effective and efficient services to all expropriating authorities and organs of state;
 - (i) the staffing of the Secretariat to the Boards by officials from the Department of Public Works, who shall be responsible for the provision of support functions;
 - (j) the establishment and maintenance of a register of all expropriations by the Department of Public Works. All expropriating authorities will therefore be obliged to provide the Department with copies of all notices of contemplated expropriation, expropriation and withdrawal of expropriation, as well as decisions not to proceed with contemplated expropriations;
 - (k) the withdrawal of an expropriation of property if the Minister is of the opinion that it is in the public interest or otherwise expedient to do so;
 - (l) all existing laws dealing with expropriation to continue to apply, to the extent that they are consistent with the provisions of the Bill and the Constitution. The Bill proposes that no property may be expropriated unless the procedures prescribed in the Bill have been followed; and
 - (m) the repeal of the Act and the Land Affairs Act, 1987 (Act No. 101 of 1987). The current Land Affairs Board will, however, continue to discharge its duties until such time as the National Expropriation Advisory Board has been established.

3. BODIES CONSULTED

In November 2007, the Department of Public Works published a Draft Policy on the Expropriation Bill for public comment and in February 2008, the Department hosted workshops on the policy with organs of state and the private sector, respectively. In the subsequent drafting of the Bill, the Department specifically liaised with the Department of Land Affairs and the Department of Justice and Constitutional Development.

4. FINANCIAL IMPLICATIONS FOR STATE

The implementation of the Bill will have financial implications for the Department of Public Works, in that it will be responsible for the establishment of the Expropriation Advisory Boards and their secretariats, as well as a register of expropriations.

5. PARLIAMENTARY PROCEDURE

5.1 The State Law Advisers and the Department of Public Works are of the opinion that this 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 76 of the Constitution applies.

5.2 The State Law Advisers are of the opinion that it is not necessary to refer this 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 customs of traditional communities.