

EXPROPRIATION OF LAND WITHOUT COMPENSATION – UPDATE

On 21 December 2018 the draft Expropriation Bill, 2019 (the “Bill”) was published in the Government Gazette by the Department of Public Works. The Expropriation Bill is the enabling legislation which is proposed to give effect to expropriation of land.

The draft Expropriation Bill was first introduced in the National Assembly in 13 February 2015 and it has been developed over a period of time and has been subject to a number of amendments. The last version of the Expropriation Bill was rejected by the National Assembly in terms of Joint Rule 203(3)(c) on 4 September 2018.

The Entire Expropriation Bill is available at:

https://www.gov.za/sites/default/files/gcis_document/201812/42127gon1409s.pdf

Written comments may be submitted by the public within 60 days of the date of publication of the Bill on 21 December.

Changes to the Expropriation Bill

The new version of the Expropriation Bill as published contains the following new amendments to the draft bill (compared to the previous version B4D-2015):

- The preamble was amended to record that the Expropriation Bill must enable expropriation in terms of the Constitution. This section replaced the previous recordal which provided that the Expropriation Bill must ensure: that expropriation must not take place arbitrarily and takes place only for a public purpose or in the public interest; procedural norms and standards are set for organs of state and persons with powers to expropriate; persons who are expropriated of unregistered rights in property are treated on a procedurally fair basis; and a person whose right in property is expropriated is entitled to just and equitable compensation.
- A new section 2(2) was inserted which provides that despite the provisions of any law to the contrary, an expropriating authority may not expropriate the property of a state-owned corporation or a state-owned entity without the concurrence of the executive authority responsible for that corporation or entity.

- A new section 12(3) was inserted which governs expropriation without compensation which section reads as follows:

“It may be just and equitable for nil compensation to be paid where land is expropriated in the public interest, having regard to all relevant circumstances, including but not limited to:

- a. Where the land is occupied or used by a labour tenant, as defined in the Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996);*
- b. where the land is held for purely speculative purposes;*
- c. where the land is owned by a state-owned corporation or other state-owned entity;*
- d. where the owner of the land has abandoned the land;*
- e. where the market value of the land is equivalent to, or less than, the present value of direct state investment or subsidy in the acquisition and beneficial capital improvement of the land.”*

Brief summary of the Expropriation Bill, 2019

Section 3 of the Bill grants the Minister of Public Works the power to expropriate property for a public purpose or in the public interest.

Chapter 3 governs the investigation and valuation process to be undertaken in expropriating property. Chapter 3 amongst other provisions provides:

- When an expropriation is being considered the expropriation authority must consider the suitability of the property and the existence of registered and unregistered rights in such property and the impact of such rights on the intended use of the property.

Chapter 4 governs the intention to expropriate and the expropriation of property and amongst other provisions provides:

- The Bill governs the manner in which the notice of an intention to expropriate must be notified and published. This includes a directive for the owner and rights holders to respond and advise of the amount they are claiming as just and equitable compensation. The expropriating authority may then advise whether the amount claimed is accepted by it, and if not accepted indicate the amount being offered by it. If no agreement is reached the authority may then

decide whether to withdraw the expropriation, to proceed with the expropriation or to continue with negotiations regarding compensation.

- If the expropriating authority decides to expropriate a property certain notice requirements and publication requirements are to be complied with in the manner provided for in the Bill.

Chapter 5 governs compensation for expropriation and provides:

- Section 12(1) states that the amount of compensation to be paid to an expropriated owner must be just and equitable while balancing the interest of the expropriated owner and the public interest, having regard to all relevant circumstances 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 expropriation.
- Section 12(2) sets out the circumstances which the expropriating authority must not take account of in determining the amount of compensation to be paid (unless it is just and equitable to do so). These circumstances include the fact that the property was expropriated without consent of the owner; the special suitability or usefulness of the property if it is unlikely that the property would have been purchased for that purpose in the open market; any enhancement if it is a consequence of the use of the property that is unlawful; improvements made after the notice to expropriate; anything done with the object of obtaining compensation; any enhancement or depreciation in the property attributed the purpose for which the property is expropriated.
- As quoted above the new section 12(3) provides for instances when it may be just and equitable for no compensation to be paid, which instances are limited.

Chapter 6 governs mediation and determination by a court in the event that the parties can't reach agreement on the amount of compensation to be paid. 3

Conclusion

While various criticisms have been levied against the Bill, many of which are valid, it is reassuring that expropriation will be undertaken within the public knowledge by means of a pre-determined procedure that will mitigate the abuse of such power. It is also reassuring that the expropriation of land without compensation appears to be limited in its intended application by the expropriation authority and does not seem to be the general approach which will be followed.



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