

REPUBLIC OF SOUTH AFRICA

## EXPROPRIATION BILL

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*(As introduced in the National Assembly (proposed section 75); explanatory  
summary of the Bill published in Government Gazette No .....  
(The English text is the official text of the Bill)*  
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(MINISTER OF PUBLIC WORKS)

[B 2013]

**BILL**

**To provide for the expropriation of property for a public purpose or in the public interest, subject to just and equitable compensation; and to provide for matters connected therewith.**

**PREAMBLE**

**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 amount of compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between public interest and the interests of those affected, having regard to all relevant circumstances;
- \* further provides that public interest includes the nation's commitment to land reform, and reforms to bring about equitable access to all South Africa's natural resources; and
- \* provides that everyone has the right to administrative action that is lawful, reasonable and procedurally fair;

**AND IN ORDER TO ENSURE—**

- \* there is a framework for expropriation of property;
- \* expropriation of property for a public purpose or in the public interest subject to compensation which is just and equitable and reflects an equitable balance between the public interest and the interests of those affected; and
- \* respect of the rights of everyone including the rights to equality 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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## **SCHEDULE**

## CHAPTER 1 DEFINITIONS

### Definitions

1. (1) In this Act, unless the context indicates otherwise—
- “**claimant**” means a person who has lodged a claim for compensation with an expropriating authority arising from or in connection with an expropriation of property;
- “**Constitution**” means the Constitution of the Republic of South Africa, 1996;
- “**court**” means the court that has jurisdiction where the defendant is domiciled or where the property is situated;
- “**date of expropriation**” means the date of expropriation mentioned in the notice of expropriation;
- “**day**” excludes Saturdays, Sundays, public holidays and the days during the period starting from 24 December of a particular year up to and including 1 January of the following year;
- “**deliver**”, in relation to any document, means deliver in terms of section 25(3) and (4);
- “**Department**” means the Department of Public Works;
- “**Director-General**” means the Director-General of the Department;
- “**expropriated holder**” means a holder of an unregistered right in property, which right has been expropriated or suspended as contemplated in section 10(1);
- “**expropriating authority**” means—
- (a) the Minister;
  - (b) the executive authority of a national or provincial department, the municipal council of a municipality, or an organ of state empowered by a law of general application; and
  - (c) any person contemplated in section 2 of the Expropriation (Establishment of Undertakings) Act, 1951 (Act No. 39 of 1951);
- “**expropriation**” includes the taking of a right to use a property temporarily and
- “**expropriate**” has a corresponding meaning;

**‘juristic person’** means a juristic person established in terms of law and who accounts for the management of its finances in terms of the Public Finance Management Act, 1999 or the Local Government: Municipal Finance Management Act, 2003;

**“Master”** means the Master of the High Court;

**“Minister”** means the Minister responsible for public works;

**"municipality"** means the municipality where the land is situated;

**"municipal manager"** means the municipal manager of a municipality;

**“notice of expropriation”** means a notice contemplated in section 9;

**“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 appointment has lapsed, the Master;
- (b) if the estate of the owner of any land or registered right in land has been sequestrated, 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;
- (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;
- (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, means 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, means that municipality;
- (h) for the purposes of section 6, includes a lawful occupier of the land concerned; and
- (i) includes the authorised representative of the owner, which authorised representative is ordinarily resident in the Republic;

“**possession**” includes the exercise of a right;

“**prescribed**” means prescribed by regulation;

“**property**” is not limited to land and includes a right in or to such property;

“**public interest**” includes the nation’s commitment to land reform, and to reforms to bring about equitable access to all South Africa’s natural resources and other related reforms in order to redress the results of past racial discriminatory laws or practices;

“**public purpose**” includes any purposes connected with the administration of the provisions of any law by an organ of state;

“**registered**” means registered with a government office in which rights in respect of land, minerals or any other property are recorded for public record;

“**regulation**” means a regulation made in terms of section 28 of this Act;

“**scheme**” means an undertaking or project of an expropriating authority or a juristic person in respect of which a property is intended to be expropriated or is expropriated;

“**service**” means service in accordance with section 25(1), and “**serve**” has a corresponding meaning;

“**this Act**” includes regulations made in terms of section 28 of this Act;

“**unregistered right**” includes an informal right in land;

“**valuer**” means a person registered as a Professional Valuer or Professional Associated Valuer in terms of section 19 of the Property Valuers Profession Act, 2000 (Act No. 47 of 2000).

## **CHAPTER 2**

### **APPLICATION OF ACT AND POWERS OF EXPROPRIATION**

#### **Application of Act**

2. The provisions of this Act shall not derogate from a power to expropriate conferred by another law, provided that if such power is exercised after the commencement of this Act, such power must be exercised in accordance with the procedures set out in this Act.

#### **Power of Minister to expropriate property**

3. The Minister may, subject to the obligation to pay compensation, expropriate property for a public purpose or in the public interest.

#### **Expropriation of property on behalf of a juristic person**

4. (1) The Minister may, subject to subsection (2), (3), (4) and (5), expropriate property on behalf of a juristic person if he or she is satisfied that the juristic person—

- (a) requires the property for a public purpose or in the public interest;
- (b) has failed to reach agreement with the owner of the property in attempting to purchase the property on the open market;
- (c) is able to give effect to the purpose for which the property is required; and
- (d) accepted, in writing, the conditions imposed by the Minister.

(2) The juristic person referred to in subsection (1) must satisfy the Minister charged with the administration of the law in terms of which such juristic person was established, that it reasonably requires the property for a public purpose or in the public interest and that it has failed to reach agreement with the owner for the acquisition of the property, whereafter such Minister may request the Minister to expropriate the property on behalf of such juristic person in terms subsection (1).

(3) If the Minister expropriates 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, subject to the following conditions—

- (a) the juristic person must give effect to the purpose for which the property is expropriated within the time period determined by the Minister, or within any extended period granted by the Minister in writing;
- (b) the juristic person may only use the expropriated property for the purpose for which it is expropriated, unless written approval is obtained from the Minister to use the property for a different purpose, provided that any change in the use of the property remains for a public purpose or in the public interest;
- (c) the juristic person must transfer ownership of such property to the State if the juristic person—
  - (i) fails to give effect to the purpose for which the property is expropriated within the time period determined by the Minister or within any extended period granted as contemplated in paragraph (a); or
  - (ii) after receiving written notice from the Minister to desist from doing so, continues to use the property for a purpose other than for which the property is expropriated or for which approval is given as contemplated in paragraph (b);
- (d) the property may not be burdened by a notarial lease or alienated by donation, sale or exchange, unless the prior written approval of the Minister is obtained;
- (e) if the property is to be alienated, the national government has the right of first refusal, which right must be exercised within 90 days from receipt of notice to exercise such right; and
- (f) any other condition which the Minister may deem necessary and as agreed to in writing by the juristic person prior to the Minister exercising his or her powers of expropriation in terms of subsection (1).

(4) The Registrar of Deeds must endorse the title deed of the expropriated property with the conditions imposed by the Minister in terms of subsection (3).

(5) 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 when property is expropriated in terms of subsection (1).

(6) The juristic person is responsible for all costs incurred or to be incurred by the Department in effecting the expropriation of the property, which costs include—

- (a) the appointment of valuers or other relevant specialists to either—
  - (i) assess the value of the property to be expropriated; or
  - (ii) advise the Minister on the merits of the intended expropriation and on the amount of compensation to be paid to the expropriated owner or expropriated holder;
- (b) the costs referred to in subsection (5);
- (c) all costs incurred in respect of any application to court arising from or in connection with the expropriation of the property; and
- (d) any compensation and interest payable by the Minister to the expropriated owner or expropriated holder.

(7) Prior to the Minister exercising the power of expropriation in terms of subsection (1), the juristic person must, subject to subsection (9)—

- (a) deposit the amount estimated by the Minister to cover the expected cost contemplated in subsection (6)(a), (b) and (c) into the trust account of a nominated attorney; and
- (b) furnish the Department with an acceptable bank guarantee in an amount estimated by the Minister in order to cover the expected expenditure contemplated in subsection (6)(d).

(8) In the event of any court proceedings arising from or in connection with the expropriation of the property, the juristic person must, subject to subsection (9), deposit the amount estimated by the Minister to cover the expected cost into the trust account of a nominated attorney, within a reasonable time after receiving the directive of the Minister.

(9) The Minister may from time to time reassess the amounts referred to in subsections (7) and (8) and may direct the juristic person to adjust the deposit or bank guarantee, in accordance with the reassessed amounts, within a reasonable time after receiving the directive of the Minister.

(10) The juristic person concerned must refund the Department all costs incurred by the Minister in exercising his or her power in terms of subsection (1) and in the performance of his or her functions in terms of this Act.

(11) The Minister must within 180 days of the State acquiring ownership of the property in terms of subsection (3)(c) decide whether to retain such property.

(12) (a) Should the Minister decide to retain the property as contemplated in subsection (11), the Minister must compensate the juristic person for the property less the costs incurred in determining the value and in transferring the property in the name of the national government.

(b) Should the Minister decide not to retain the property as contemplated in subsection (11), the juristic person must be compensated for the property from the proceeds of the disposal thereof, less costs incurred by the Department in maintaining and disposing of the property.

(c) If the Minister decides to dispose of the property in terms of subparagraph (b), the expropriated owner of the property may be given the right of first refusal to purchase the property at the prevailing market value, which right must be exercised within 60 days of receipt of a notice to exercise such right.

### **Delegation of duties 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 any power or duty conferred or imposed on him or her in terms of this Act.

(2) The Minister may not delegate the powers conferred to him or her in terms of sections 3, 4(1), 8(5), 16(1) and (2), 23(1), 24(1) and 28.

### CHAPTER 3

## INVESTIGATION AND VALUATION OF PROPERTY

### Investigation and gathering of information for purposes of expropriation

6. (1) When investigating the possible expropriation of a property, an expropriating authority must—

- (a) investigate or cause an investigation to be conducted on—
  - (i) the suitability of the property for the purposes for which it is required;
  - (ii) the existence of registered rights and take all reasonable steps to establish the existence of unregistered rights in the property;
  - (iii) the current use of the property;
  - (iv) the history of the acquisition and use of the property;
  - (iv) the market value of the property;
  - (v) the extent of direct state investment and subsidy in the acquisition of the property and any beneficial capital improvement of the property; and
  - (vi) other relevant factors;
- (b) in writing call upon the following persons—
  - (i) the owner and the person apparently in charge of the property; and
  - (ii) any other affected person known to the expropriating authority to submit in writing, within 30 days of delivery of the notice, or within such extended period as may be granted by the expropriating authority in writing, the names and addresses of holders of unregistered rights in the property and particulars of such rights, to the extent that such names, addresses and particulars are within his or her knowledge or in the possession of his or her organisation: Provided that in the event of an expropriation of land the following persons must also be called upon to furnish the requested particulars:
    - (aa) the municipal manager;
    - (bb) the Director-General of the Department of Rural Development and Land Reform; and

- (cc) the Director-General of the Department of Mineral Resources;
- (c) in the event of an expropriation of land, consult with the municipality as contemplated in section 7.

(2) If authorised in writing by the expropriating authority to do so, a person conducting an investigation contemplated in subsection (1)(a)—

- (a) may—
  - (i) enter upon the property with the necessary equipment and vehicles;
  - (ii) survey and determine the area and levels of the property;
  - (iii) dig or bore on or into the property;
  - (iv) construct and maintain a measuring weir in any river or stream;
  - (v) insofar as it may be necessary to gain access to the property, enter upon and go across another property with the necessary workers, equipment and vehicles;
  - (vi) demarcate the boundaries of the property;
  - (vii) require the owner, tenant or occupier of the property, or the agent of the owner, on instruction of the expropriating authority, to give him or her access to a document in possession of the owner, tenant, occupier or agent that the person reasonably requires for the purposes of valuing the property;
  - (viii) make extracts from or copies of a document to which he or she is given access in terms of subparagraph (vii);
  - (ix) in writing require the owner, tenant or occupier of the property, or the agent of the owner, to provide him or her, either in writing or verbally, with particulars regarding the property that he or she reasonably requires for the purposes of valuing the property; and
  - (x) require the municipality to provide him or her with—
    - (aa) access to building plans of improvements to the property;
    - (bb) a copy of the building plans referred to in item (aa) at the cost of the expropriating authority;
    - (cc) 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 the property

as is in the possession of the municipality and as may be reasonably required for the valuation of the property.

- (b) may not enter upon the property or perform any of the acts set out in paragraph (a) unless he or she is authorised to do so in writing by the expropriating authority and—
- (i) the owner or the person apparently in charge of the property or the owner or the person apparently in charge of the land over which access to that property is to be gained, as the case may be, has consented in writing thereto; or
  - (ii) 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—
    - (aa) the name of the person authorised by the expropriating authority to conduct the investigation, the actions which are to be performed on the property during the investigation and the dates and times when the investigation is to be conducted; and
    - (bb) in the case where access is to be gained over other land as contemplated in paragraph (a)(v), the route to be used over such other land, the name of the person who is to use such route and the dates and times when such route is to be used.
- (3) (a) A person, authorised in writing to perform an act contemplated in subsection (2) on behalf of the expropriating authority, must—
- (i) on demand, provide the owner, tenant or occupier of the property or the agent of that owner, tenant or occupier 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
  - (iii) on demand, identify himself or herself by means of an official identification document to the owner, tenant or occupier of the property or the agent of that owner, tenant or occupier.

(b) If the person contemplated in paragraph (a) fails to comply with subparagraphs (i), (ii) or (iii) of that paragraph the owner, tenant or

occupier of the property or the agent of the owner, tenant or occupier, may refuse that person entry to the property or may refuse the performance of an act contemplated in subsection (2).

(4) If a person suffers a loss or damage as a result of the performance of an act contemplated in subsection (2)(a), the expropriating authority is liable to repair such damage or compensate that person.

(5) A person who unreasonably or wilfully fails to comply with a request in terms of subsections (1)(b) or (2)(a)(ix) is guilty of an offence.

### **Consultation with municipality during investigation**

7. (1) The expropriating authority must, when contemplating the expropriation of land, in writing request the municipal manager to inform the expropriating authority of the effect which the expropriation may have on existing and future engineering services, infrastructure and housing and town planning.

(2) The request referred to in subsection (1) must include—

- (a) a statement that the expropriating authority is contemplating an expropriation of land;
- (b) a full description of the land in question;
- (c) details of the purpose for which the land is to be expropriated;
- (d) the period within which the municipal manager is required to respond to such request, as contemplated in subsection (3); and
- (e) any other details that the expropriating authority may deem necessary.

(3) The municipal manager referred to in subsection (2) must submit his or her written response to the expropriating authority within the period stipulated in subsection (2)(d), or within such extended period as may be granted by the expropriating authority in writing.

(4) If the expropriating authority is a municipal council, the request referred to in subsection (1) is not required.

## CHAPTER 4

### INTENTION TO EXPROPRIATE

#### Notice of intention to expropriate

8. (1) If an expropriating authority intends to expropriate property, it must—

- (a) publish in accordance with section 25(2) a notice to that effect;
- (b) serve a copy of the notice on all persons, including holders of unregistered rights, of whom it is aware and whose rights or interests may be affected by the intended expropriation; and
- (c) deliver a copy of that notice to the Director-General, except if the expropriating authority is the Minister.

(2) If the property which the expropriating authority intends to expropriate is land, the expropriating authority must also serve, for written comment within 14 days from date of service, a copy of the notice referred to in subsection (1) on—

- (a) the Director-General of the Department of Rural Development and Land Reform to inform the expropriating authority of any land claim and any unregistered rights derived from or protected by any law under the administration of the Minister responsible for rural development and land reform, to the extent that such claim or unregistered right is likely to be affected by the intended expropriation: Provided that if the expropriating authority is the Minister responsible for rural development and land reform, no such service is required; and
- (b) the municipal manager to inform the expropriating authority of the effect which the intended expropriation may have on existing and future engineering services, infrastructure and housing, and town planning, and of any holders of unregistered rights in the land of which the municipality is aware: Provided that if the expropriating authority is the relevant municipality, no such service is required.

(3) The notice contemplated in subsection (1) must include—

- (a) a statement of the intended expropriation;
- (b) full description of the property earmarked for expropriation;

- (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) an invitation to any person who may be affected by the intended expropriation to lodge with the expropriating authority at a given address within 30 days after the publication or service of the said notice—
  - (i) any objections against the intended expropriation;
  - (ii) any submissions relating to the intended expropriation;
  - (iii) a postal address and a facsimile number, if any, to which 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
- (e) a directive to the owner to submit in writing the names and addresses of all holders of unregistered rights and particulars of such rights, to the extent that such names, addresses and particulars are within the knowledge of the owner.
  - (4) The expropriating authority must—
    - (a) upon receiving an objection from an affected person, notify that person that the objection has been received; and
    - (b) within 30 days of receiving the objection referred to in paragraph (a), invite that person to enter into negotiations with it regarding the intended expropriation.
  - (5) If no agreement can be reached between the expropriating authority and the person referred to in subsection (4)(b) within 60 days of the invitation contemplated in that subsection, the expropriating authority must decide on whether to expropriate the property, and if the decision is—
    - (a) to expropriate, serve the required notice in terms of section 8(1); and
    - (b) not to expropriate, inform the affected parties accordingly in writing.

## Notice of expropriation

9. (1) In order to expropriate property, an expropriating authority must serve a notice of expropriation on the owner of the property or a known holder of a registered or unregistered right in the property.

(2) A copy of the notice of expropriation must within seven days of such service be—

- (a) published in accordance with section 25(2);
- (b) delivered to the Registrar of Deeds, the Registrar of Mining Titles and any government office in which rights in respect of expropriated property are registered or recorded for public record; and
- (c) delivered to the Director-General, except if the expropriating authority is the Minister.

(3) If the property is land or a right in land, a copy of the notice of expropriation must also be delivered to—

- (a) the municipal manager;
- (b) the Directors-General of the Department of Rural Development and Land Reform and the Department of Mineral Resources ;
- (c) a holder of unregistered rights of whom the expropriating authority is aware and whose rights are not to be expropriated in terms of subsection (1);
- (d) a holder of a mortgage bond registered against the title deed of that land; and
- (e) any other holder of a registered right in that land.

(4) The notice of expropriation must, include an offer of compensation and must—

- (a) contain a full description of the property, including—
  - (i) in the case where the expropriation applies to a portion of land only, the approximate extent of such portion and an annexed survey diagram showing the approximate 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 approximate position of the

right in land on such land, unless the right in land is accurately described without such survey diagram;

- (b) state the purpose for the expropriation;
- (c) state the reasons for the expropriation of that particular property;
- (d) 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;
- (e) state the date on which the expropriating authority or the juristic person, as the case may be, will take possession of the property;
- (f) 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 14, if any such date is later than the date on which the compensation and interest becomes payable in terms of section 18(3) and (4);
- (g) state the amount offered as compensation for the property, including the amount offered as compensation to holders of unregistered rights in the property of whom the expropriating authority is aware;
- (h) contain an explanation of what the amount of compensation contemplated in paragraph (g) comprises of;
- (i) call upon the expropriated owner to submit in writing the names and addresses of all holders of unregistered rights and particulars of such rights, other than those furnished in accordance within section 8(3)(e), to the extent that such names, addresses and particulars are within the knowledge of such expropriated owner;
- (j) 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 adjust that offer;
- (k) 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
- (l) must be accompanied by copies of reports detailing how the amount of compensation was determined.

(5) (a) Rights in the property or properties may be expropriated from different owners or holders of rights 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).

(6) Non-compliance by the expropriating authority with any of the provisions of subsection (2) shall not affect the validity of the expropriation.

### **Vesting of expropriated property**

- 10.** (1) The effect of an expropriation of property is that—
- (a) the ownership of the property described in the notice of expropriation vests in the expropriating authority on the date of expropriation, released from mortgage bonds;
  - (b) all unregistered rights in such property are simultaneously expropriated on the date of expropriation unless otherwise stated in the notice contemplated in section 9(1);
  - (c) in the case of a taking of a right to use a property temporarily:
    - (i) the owner's right to use the property is suspended;
    - (ii) all registered rights in the property, other than the right of use, are not suspended, unless or until such registered rights are temporarily expropriated from the holder thereof in accordance with the provisions of this Act; and
    - (iii) all unregistered rights in such property are suspended for the period of such temporary use; and
  - (d) the property 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 passes to the expropriating authority, or the juristic person, as the case may be, on the date stated in terms of section 9(4)(e) or such other date as may be agreed upon

between the expropriated owner or expropriated holder of a registered or unregistered right, as the case may be, and the expropriating authority.

(3) (a) The expropriated owner or holder of a registered or unregistered right, who is in possession of such property, must from the date of expropriation to the date upon which the expropriating authority takes possession of the property, take care of and maintain the property.

(b) If an expropriated owner or holder of a registered or unregistered right, who is in possession of such property, wilfully or negligently fails to take care of and maintain the property and as a result thereof the property depreciates in value, the expropriating authority may recover the amount of the depreciation from the expropriated owner or the holder of a registered or unregistered right, concerned.

(c) The expropriating authority must compensate the expropriated owner or holder of a registered or unregistered right, as the case may be, for such unusual maintenance costs incurred after the date of expropriation as may be agreed upon between the expropriated owner or the holder of a registered or unregistered right, concerned and the expropriating authority.

(4) If the expropriated owner or holder of a registered or unregistered right, as the case may be, desires to place the expropriating authority in possession of the expropriated property prior to the date stated in terms of section 9(4)(e) and that owner or holder of a registered or unregistered right, as the case may be, and the expropriating authority do not agree upon a date on which the possession of such property passes to the expropriating authority, the expropriated owner or holder of a registered or unregistered right, as the case may be, may give the expropriating authority notice in writing of not less than 30 days before the date on which he or she desires to place the expropriating authority in possession of the property, in which case possession of the property passes to the expropriating authority on that date.

(5) The expropriated owner or holder of a registered or unregistered right, whoever is in possession of such property, remains entitled to the use of and the income from the expropriated property, as was enjoyed immediately prior to the date of expropriation, from the date of expropriation to the date on which possession of such property passes to the expropriating

authority, but the owner or holder of a registered or unregistered right who is in possession of the property remains, during that period, responsible for the payment of municipal property rates and other charges and normal operating costs and maintenance in respect of the expropriated property as if the property had not been expropriated.

### **Verification of unregistered rights in expropriated property**

11. (1) If, after the date of expropriation, a person claims to have held an unregistered right in the expropriated property for which such person has not been compensated, the expropriating authority must request such person to deliver within 30 days 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, or any other evidence to substantiate such claim.

(2) If the unregistered right claimed in subsection (1) pertains to the use of improvements on expropriated land, the evidence required in subsection (1) must include—

- (a) a full description of those improvements; and
- (b) an affidavit or affirmation by such person stating whether those improvements were erected by him or her and if so, whether the materials used for erecting such improvements belonged to him or her.

(3) On receipt of the evidence requested in terms of subsection (1) and if the unregistered right pertains to land, the expropriating authority must forward such evidence to the Director-General of the Department of Rural Development and Land Reform for comment on such claim.

(4) The Department of Rural Development and Land Reform must submit comments within 45 days of receipt of the request in terms of subsection (3).

(5) The expropriating authority must make a determination on the claim referred to in subsection (1) within 30 days of expiry of the period referred to in subsection (4) and notify the claimant in writing within 14 days of such determination.

(6) Should the expropriating authority determine that the claim referred to in (1) is valid; the expropriating authority must determine and deliver

an offer of compensation to the claimant, together with a report on how the amount of compensation was determined.

### **Consequences of expropriation of unregistered rights and duties of expropriating authority**

**12.** (1) An expropriated holder is entitled to compensation for the expropriation of his or her unregistered right as contemplated in section 10(1)(b).

(2) As soon as the expropriating authority becomes aware that an unregistered right in the expropriated property has been expropriated as contemplated in section 10(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 9(1).

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

- (a) inform the expropriated holder of the date on which possession of the expropriated property passed to the expropriating authority in terms of section 10(2);
- (b) contain a statement contemplated in section 9(4)(e), if applicable; and
- (c) request the expropriated holder to deliver to the expropriating authority, within 14 days of receipt of the notice, 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 9(1) in respect of such unregistered right, provided that 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 10(2) and, if applicable, thereafter to the expropriating authority.

(5) If the expropriated owner of land knows of the existence of an unregistered right in 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.

## **CHAPTER 5**

### **COMPENSATION FOR EXPROPRIATION**

#### **Determination of compensation**

**13.** (1) The amount of compensation to be paid to an expropriated owner or expropriated holder must be just and equitable reflecting an equitable balance between the public interest and the interests of the expropriated owner or expropriated holder, having regard to all relevant circumstances, including—

- (a) the current use of the property
- (b) the history of the acquisition and use of the property;
- (c) the market value of the property
- (d) the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and
- (e) the purpose of the expropriation.

(2) In determining the amount of compensation to be paid in terms of this Act, the expropriating authority must not take account of—

- (a) the fact that the property has been taken without the consent of the expropriated owner or expropriated holder;
- (b) 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;
- (c) 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;
- (d) 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 10(3) or where they were undertaken in pursuance of obligations entered into before that date;

- (e) anything done with the object of obtaining compensation therefor; and
- (f) 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 can be directly attributed to the scheme or purpose in connection with which the property was expropriated.

### **Interest on compensation**

**14.** (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 the outstanding portion of the amount of compensation payable in accordance with section 13, and becomes payable in the manner contemplated in section 18(3) and (4): Provided that—

- (a) if the expropriated owner or expropriated holder fails to comply with section 15(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 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
- (c) a deposit, payment or utilisation of an amount in terms of section 18(1), 20(2) or 21(1) or (4) must be regarded as being a payment to the expropriated owner or an expropriated holder and no interest accrues on any such amount as from the date on which it has been so deposited, paid or utilised.

(2) If land has been expropriated, no interest is due to the expropriated owner of such land, or to an expropriated holder, for any period

before possession of such land has passed to the expropriating authority in terms of section 10(2) or (4) as the case may be.

(3) If land has been expropriated and the expropriated owner or an expropriated holder occupies or utilises that land or a 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.

### **Compensation claims**

**15.** (1) An owner or holder of a registered or unregistered right who receives a notice of expropriation in terms of section 9(1) must, within 30 days from the date on which that notice was served on him or her, deliver or cause to be delivered to the expropriating authority a written statement indicating whether the offer of compensation is accepted, and—

- (a) the physical address or postal address and facsimile number, if any, to or at which further documentation in connection with the expropriation must be delivered; and
- (b) 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 or expropriated holder.

(2) If the offer referred to in subsection (1) is not accepted, the expropriated owner or expropriated holder must also set out in the statement contemplated in subsection (1)—

- (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 a valuation or other professional report, if any, that forms the basis of the compensation claimed; and
- (c) if the property expropriated is land, full particulars of—
  - (i) improvements on the land that in the opinion of the owner or holder affect the value of such land; and
  - (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.

(3) (a) The expropriating authority may extend the period of 30 days referred to in subsections (1).

(b) If the expropriated owner or expropriated holder requests the extension of the period of 30 days in writing before the expiry of that period, the expropriating authority must extend such period by a further 30 days.

(4) If the property expropriated is land—

- (a) the expropriated owner must deliver or cause to be delivered to the expropriating authority, within 30 days of the expropriating authority requesting, the title deed to such land 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
- (b) the person referred to in paragraph (a) in whose possession the title deed may be, must deliver or cause to be delivered the title deed in question to the expropriating authority within 30 days of the expropriating authority requesting it.

(5) A person who refuses or fails to comply with a request by the expropriating authority in terms of subsection (2)(c)(ii) or (4)(a) or (b) is guilty of an offence.

(6) Subject to subsection (1), an expropriated owner or an expropriated holder that fails to comply with subsection (1) is entitled to such compensation as would otherwise have been payable to him or her in terms of this Act.

### **Offers of compensation**

**16.** (1) If the expropriating authority does not accept the amount claimed by a claimant in terms of subsection (1) or (2) of section 15, as the case may be, the expropriating authority must, within 30 days of delivery of the statement contemplated in those subsections—

- (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 15, 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.

(3) The offer of compensation contemplated in subsection (1)(a) and (2) must be accompanied by copies of reports detailing how the amount of compensation is determined, if the amount is different to the amount offered by the expropriating authority in terms of section 9(4).

### **Particulars of claims and offers**

17. (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 30 days of such request.

(2) If the expropriating authority or the claimant fails to comply with a request referred to in subsection (1), the court may, on application, issue an order directing him or her to comply therewith.

(3) A claim for compensation and an offer of compensation remain in force until—

- (a) the expropriating authority makes a revised offer;
- (b) it has been accepted; or
- (c) the compensation has been decided or approved by a court.

### **Payment of amount offered as compensation**

18. (1) 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 between the expropriating authority and the claimant, or approved or determined by court.

(2) Notwithstanding subsection (1) and subject to sections 20 and 21, 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, the date on which possession passes to the expropriating authority in terms of section 10(2); and

(b) unless the expropriating authority has proposed a later date for the payment of the compensation in terms of section 9(4)(e), 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 19(1)(b).

(3) Interest due in terms of section 14 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 9(4)(e), the compensation and the interest are payable, subject to an 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 9(4)(e).

(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 a person to whom compensation or interest is payable in terms of this Act, in order to facilitate electronic payment thereof.

### **Property subject to a mortgage bond or deed of sale**

**19.** (1) If a 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 mortgagee or buyer, as the case may be, has been finally determined; and
- (b) to such person and on such terms as may have been agreed upon between the expropriated owner or expropriated holder 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 an advance payment in terms of section 18(2) 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**

**20.** (1) If a land which has been expropriated is subject to municipal property rates or other charges, the municipal manager must, within 21 days of receipt of a copy of the notice of expropriation in terms of section 9(3)(a) 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 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).

(3) If the municipal manager 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 expropriated owner or holder 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—

- (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
- (c) the expropriated owner continues to be liable for those rates and charges notwithstanding the registration of the expropriated property in the name of the expropriating authority or juristic person, as the case may be.

### **Deposit of compensation money with Master**

21. (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 a property expropriated under this Act was left in terms of a will or testament to an undetermined beneficiary or beneficiaries;
- (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.

(2) In the event of a dispute or doubt as to the person who is entitled to receive compensation payable in terms of this Act, or in the event of an interdict in respect of the payment of compensation, the expropriating authority may, subject to section 19(2), pay such compensation to the Master.

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

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

## **CHAPTER 6**

### **ACCESS TO COURT, URGENT EXPROPRIATION AND WITHDRAWAL OF EXPROPRIATION**

#### **Access to court**

**22.** (1) A party to an expropriation may, failing agreement, approach a court to decide or approve the following matters:

- (a) the amount of compensation;
- (b) the time of payment of compensation; or
- (c) the manner of payment of compensation.

(2) Subsection (1) does not preclude a person from approaching a court on any other matter relating to the application of this Act.”

#### **Urgent expropriation**

**23.** (1) An expropriating authority may, on an urgent basis, take a right to use a property temporarily.

(2) The power of expropriation referred to in subsection (1) may only be exercised if suitable property held by the national, provincial or local government is not available under the following circumstances:

- (a) In the case of a disaster, as defined in the Disaster Management Act, 2002 (Act No. 57 of 2002); or
- (b) where a court grants an order that an expropriating authority is entitled to use the provisions of this section.

(3) Should an expropriating authority exercise the power referred to in subsection (1), the expropriating authority is exempted from

compliance with the provisions of sections 6(1), 7(1) and 8(1); in effecting the expropriation.

(4) The owner or holder whose right in property has been taken for temporary use in terms of this section is entitled to compensation as calculated, determined and paid in terms of this Act.

(5) The expropriating authority must within 45 days of the notice to use the property temporarily, make a written offer of compensation to such owner or holder.

(6) If the property taken for temporary use in terms of this section is damaged during the use of such property, the expropriating authority is liable to repair such damage or compensate the owner or holder referred to in subsection (4).

(7) Should an expropriating authority wish to extend the period of temporary usage beyond 12 months and the owner or holder whose right in property has been taken is not willing to agree thereto, the expropriating authority may approach the court for an extension of the period of temporary usage, which extension shall not exceed a period of 18 months from the date of expropriation.

(8) An expropriating authority may at any time during the temporary use of the property, commence with the expropriation of the property and must comply with all relevant provisions of this Act.

(9) If the court refuses to grant an extension as requested in terms of subsection (7), the expropriating authority must vacate the property on the expiry of the period of temporary or on the date determined by the court.

### **Withdrawal of expropriation**

**24.** (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.

(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 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;
  - (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
  - (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 10(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.

## **CHAPTER 9 RELATED MATTERS**

### **Service and publication of documents and language used therein**

- 25.** (1) Whenever a notice in terms of section 8(1), a notice of expropriation or a notice in terms of section 12(2) to an expropriated holder is required to be served by this Act, the original or a certified 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 8(1), a notice of expropriation or 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 any other 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.

(3) Whenever a document must or may be delivered in terms of this Act, such delivery must take place by delivering—

- (a) to the expropriating authority, at the address appointed in the notice in terms of section 8(1), the notice of expropriation, the notice in terms of section 12(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 8(3)(e), 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—

- (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
- (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—

- (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.

(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.

(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.

## Expropriation register

**26.** (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.

(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

**27.** (1) A 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.

(2) A 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.

## Regulations

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

- (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 may be necessary for the proper implementation or administration of this Act.

## Impact on existing legislation

**29.** (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.

(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.

### **Amendment of this Act**

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

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

### **Repeal of laws**

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

### **Transitional arrangements**

**32.** (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.

(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.

**Short title**

33. This Act is called the Expropriation Act, 2013.

**SCHEDULE**  
**(Section 41)**

<b>No and year of law</b>	<b>Short title</b>	<b>Extent of repeal</b>
Act No. 63 of 1975	Expropriation Act, 1975	The whole
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
Act No. 21 of 1982	Expropriation Amendment Act, 1982	The whole
Act No. 45 of 1992	Expropriation Amendment Act, 1992	The whole