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GENERAL NOTICE

NOTICE 440 OF 2008

PUBLICATION OF EXPLANATORY SUMMARY OF THE EXPROPRIATION BILL, 2008

1. The Minister of Public Works intends to introduce the Expropriation Bill, 2008 in the National Assembly. The explanatory summary of the Bill is hereby published in accordance of rule 241(1) (C) of the National Assembly. Expropriation of property in South Africa is governed by the Constitution.¹ In section 25, the Constitution empowers the State to expropriate property for a public purpose or in the public interest. The term "public interest" is defined to include South Africa's commitment to land reform and to reforms to bring about equitable access to all of South Africa's resources.
2. The State has a constitutional obligation 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. Further, the state is permitted to take legislative and other measures to achieve land, water and related reform, in order to redress the results of past racial discrimination. Finally, the Constitution also provides that expropriation is subject to compensation, which must be agreed between the property owner and the expropriating authority. Where there is no agreement, compensation may either be decided or approved by a court.
3. The Expropriation Bill, 2008 creates a framework to give effect to the Constitution. It re-emphasises the salient provisions of the Constitution. It gives the Minister of Public Works powers to expropriate property in the public interest or for a public purpose. Through the powers provided for in the draft Bill, the Minister would be entitled to expropriate in the public interest. This is a fundamental shift from the present legislative framework governing expropriations.² The Expropriation Act of 1975, clearly a product of its time, did not permit the state to expropriate in order to bring about equitable access to the country's mineral and water resources. Expropriation under the 1975 Act could only be done for a public purpose and not in the public interest.
4. Under the 1975 Act, holders of unregistered rights generally were not entitled to claim compensation where they lost rights as a result of an expropriation. The Bill seeks to extend the scope of protected rights to include holders of unregistered rights.

¹ Constitution of the RSA Act 108 of 1996.

² The applicable statute is the Expropriation Act, 1975

5. The Bill also gives the Minister powers to withdraw expropriations where it is in the public interest or for a public purpose. The powers of the Minister to withdraw expropriations may not be delegated.
6. An innovation introduced by the Bill is that the Minister will be advised by an expropriation advisory board, which will exist nationally and at a regional level. The main function of the Board is to provide advice to the Minister and all expropriating authorities on all aspects of expropriation including the determination of compensation.
7. The Bill creates a clear and concise framework for expropriations. It provides for the following stages in the process of expropriations:

7.1 Investigations and gathering of information before expropriating

During this phase, the expropriating authority, will gather information which will enable it to make a decision on whether or not a property must be expropriated in the public interest or for a public purpose. The expropriating authority or its agents will be entitled to access any property, which is the subject of expropriation subject to prior notification of the owner. Information about whether there are holders of unregistered rights in the property must also be provided.

7.2 Taking of the decision and notice of expropriation

The Bill provides that once information has been gathered, an expropriating authority must decide whether or not to expropriate. If a decision is taken to expropriate, notice to that effect ought to be served on the owner or people residing at the property in question. The notice must also contain an amount, if any, which is proposed as compensation. The Bill also provides that any person whose rights and interests are adversely affected by the decision to expropriate may lodge an objection to the decision. Such an objection must be dealt with through negotiations with the expropriating authority. The property vests on an expropriating authority on the date the notice of expropriation is served.

7.3 Basis for determining compensation

The Bill empowers the Minister, in the absence of an agreement with the expropriated owner, to make a determination on the amount of compensation. Compensation must be just and equitable and must reflect an equitable balance between the public interest and the interests of those affected. Unlike the 1975 Act, the Bill does not make the market value of the property the sole factor to be taken into account when determining compensation.

7.4 Approval of compensation by Court

The Bill provides that the Minister is the primary decision maker in relation to compensation. Any interested party may challenge the decision of the Minister by way of review proceedings. The court hearing the review proceedings may disagree with the decision of the Minister. In that event, such a court should enter its reasons on the record. The Minister may, after, considering the reasons of the review court, make a new determination. After a court has entered its reasons on the record, any party may take the matter to a higher court on appeal. A panel of specialist judges to hear expropriation matters of proposed.

Copies of the Bill can be obtained from:

Mr Ivan Ka-Mbonane

Director: Legal Services and Litigation

Department of Public Works

Isivuno House

Cnr Van der Walt and Vermeleun

Office 1514

Tel: 012 337 2877