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GENERAL NOTICE

NOTICE 504 OF 2013

The Minister for Rural Development and Land Reform hereby publishes The Property Valuation Bill, 2013 for public comment.

Members of the public are invited to submit to the Minister, within 30 days of publication of the notice in the Gazette, written comments to the following address:

By post to: The Director – General Rural Development and Land Reform
Attention: Mr Fanie Louw or Ms B R Naidoo
Private Bag X 833
Pretoria
0001

By fax to: 012 – 324 2118, and by e-mail to: ovg@ruraldevelopment.gov.za
[/SLLouw@ruraldevelopment.gov.za/](mailto:SLLouw@ruraldevelopment.gov.za) BRNaidoo@ruraldevelopment.gov.za.

Hand delivered at: 184 Jeff Masemola Street, Pretoria, 0001 (Old Building).

Any inquiries in connection with the Property Valuation Bill, 2013 can be directed to Ms Tshepo Mahlaela at (012) - 312 8314.

Comments received after the closing date may not be considered.

REPUBLIC OF SOUTH AFRICA

THE PROPERTY VALUATION BILL

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

(MINISTER FOR RURAL DEVELOPMENT AND LAND REFORM)

[B - 2013]

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BILL

To provide for the establishment, functions and powers of the Office of the Valuer-General; to provide for the appointment and responsibilities of the Valuer-General; to provide for the valuation of property that has been identified for land reform or expropriation for purposes of determining a value as well as property that has been identified for acquisition or disposal by a department, organ of state or a municipality; to provide for the establishment of a review committee to consider and decide on objections to valuations by the Office of the Valuer-General; to provide for the repeal of the Land Affairs Act and to provide for matters connected therewith.

PREAMBLE

WHEREAS the Constitution provides for the protection of property, the expropriation of property for a public purpose or in the public interest and subject to just and equitable compensation and the state taking reasonable legislative and other measures within its available resources to foster condition which will facilitate land reform and restitution of land of which a person or community was dispossessed as a result of past discriminatory laws or practices;

WHEREAS the Constitution further stipulates that no provision of the property clause in section 25 may impede the state from taking legislative and other measures to achieve land, water and related reform in order to redress the results of past discrimination; and

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WHEREAS it is necessary to establish uniform norms and standards for the valuation of property where a department, organ of state or municipality has an interest and where property has been identified for land reform.

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

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CHAPTER 1

INTERPRETATION AND OBJECTS OF ACT

Definitions

- 1. (1) In this Act, unless the context indicates otherwise—

“**authorised valuer**” means a person who has been authorised by the Valuer-General in terms of section 10, to conduct valuations;

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“department” has the meaning assigned to it in section 1 of the Public Finance Management Act;

“Director-General” means the Director-General of the Department of Rural Development and Land Reform;

“market value” means the estimated amount for which the property should exchange on the valuation date between a willing buyer and a willing seller in an arm’s length transaction after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion: Provided that in determining market value for purposes of this Act, prices paid by the State for any acquisition of property must be excluded: Provided further that in the event that no creditable data is available, prices paid by the State for any acquisition of property must be considered;

“Minister” means the Minister responsible for rural development and land reform;

“municipality” has the meaning assigned to it in section 1 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

“Office of the Valuer-General” means the Office of the Valuer-General established by section 3;

“organ of state” means an organ of state that has been authorised to expropriate property in terms of legislation;

“person” includes –

- (i) a trustee, in the case of a property in a trust;
- (ii) an executor or administrator, in the case of a property in an insolvent estate or in liquidation;
- (iii) a judicial manager, in the case of a property in the estate of a person or of a person under judicial management;

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- (iv) a trustee or liquidator, in the case of a property in an insolvent estate or in liquidation;
- (v) a curator, in the case of a property in the estate of a person under curatorship; and
- (vi) a person in whose name a usufruct or other personal servitude is registered, in the case property that is subject to a usufruct or other personal servitude.

“property” means -

- (a) immovable property registered in the name of a person;
- (b) a right in or to such property ; and
- (c) any movable property which is contemplated to be acquired together with the relevant immovable property,

Provided that for purposes of expropriation, property has the meaning assigned to it in the Expropriation Act, 2013

“Property Valuers Profession Act” means the Property Valuers Profession Act, 2000 (Act No. 47 of 2000);

“Public Finance Management Act” means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

“Public Service Act” means the Public Service Act, 1994 (Proclamation 103 of 1994);

“review committee” means a review committee established in terms of section 20;

“value” for purposes of section 12(a) and subject to section 5(2) (a), means the value of property identified for purposes of land reform or expropriation, which must reflect an equitable balance between the public interest and the interests of those affected by the acquisition, having regard to all the relevant circumstances, including but not limited to -

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- (a) the current use of the property;
- (b) the history of the acquisition and the 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 acquisition;

“valuer” means a person registered in terms of the Property Valuers Professions Act as a professional valuer or as a professional associated valuer and includes an authorised valuer;

“valuation” –

- (a) means the process of estimating the value for a specific purpose of a particular interest in property at a particular moment in time, taking into account all the features of the property, including the legal framework and also considering all the underlying economic factors of the market and **“valued”** has a corresponding meaning; and
- (b) where the context requires, also means the outcome or result of the process referred to in paragraph (a).

“Valuer-General” means the individual appointed as Valuer-General in terms of section 7 or acting as such.

(2) In this Act, a word or expression derived from a word or expression defined in subsection (1) has a corresponding meaning unless the context indicates that another meaning is intended.

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Objects of this Act

2. The objects of this Act are—
- (a) to give effect to the provisions of the Constitution which provide for land reform and to facilitate land reform through the valuation of property in order to determine the purchase price for or payment in respect of property;
 - (b) to provide for the establishment of the Office of the Valuer-General;
 - (c) to provide a valuation service to departments, organs of state and subject to section 4 (2), to municipalities; and.
 - (d) to provide for a review mechanism contemplated in Chapter 4.

CHAPTER 2 OFFICE OF THE VALUER-GENERAL

Part 1: Establishment and status

Establishment of Office of the Valuer-General

3. The Office of the Valuer-General is hereby established.

Status

4. (1) The Office of the Valuer-General—
- (a) is, notwithstanding the provisions of any other Act, but subject to subsection (2), the only institution responsible for the valuation of property where a department, a municipality or an organ of state is a party or has an interest, including cases of

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expropriation or acquisition of property for purposes of land reform;

- (b) is a juristic person with full legal capacity, is autonomous and is subject to this Act;
- (c) must be impartial and must exercise the powers and perform the functions of office without fear, favour or prejudice; and
- (d) is accountable to the Minister.

(2) The provisions of this Act do not apply for purposes of the valuation of property in terms of the Local Government: Municipal Property Rates Act 2004 (Act No. 6 of 2004).

Functions

5. (1) The Office Valuer-General must –

- (a) value any property contemplated in section 12;
- (b) provide specialist valuation and property related advice to departments;
- (c) create and maintain a data base of property market information; and
- (d) undertake property market research and property sales analysis.

(2) The Office Valuer-General may-

- (a) develop criteria for the determination of the value of property contemplated in section 12 (a);
- (b) develop policies, standards, procedures and guidelines, excluding the method of valuation for the valuation of properties, the manner in which a valuation must be performed and any other relevant factors;

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- (c) determine the matters that must be reflected in a valuation report contemplated in section 15.

(3) A municipality may, for purposes of preparing a valuation roll or a supplementary valuation roll in terms of the Local Government: Municipal Property Rates Act, 2004 (Act No. 6 of 2004), and subject to the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), secure the services of the Office of the Valuer-General.

(4) In the event of the property being property to which a person is entitled to restitution in terms of section 2 of the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994) or property which is subject to expropriation and a party disputes the valuation of the Office of the Valuer-General, that dispute may not be used to delay, postpone or in any other way frustrate either the restitution of the property in question or the expropriation thereof.

Powers

6. The Office of the Valuer-General may do all that is necessary or expedient to perform its functions, including –

- (a) the determination of its own staff establishment, with the concurrence of the Minister;
- (b) obtain, by agreement, the services of any person, for the performance of any specific act or function;
- (c) engage in any activity, whether alone or together with other organisations to promote the proper, efficient and effective valuation of property.

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Part 2: Appointment of Valuer-General

Appointment

7. (1) The Minister must, subject to the provisions the Public Service Act, appoint the Valuer-General.

(2) The person to be appointed as Valuer-General in terms of subsection (1), must be a South African citizen and have a South African qualification and extensive experience obtained in South Africa in or knowledge appropriate to –

- (a) the valuation of properties generally; and
- (b) any of the following –
 - (i) public administration;
 - (ii) public finance; or
 - (iii) legal and constitutional matters affecting public administration.

Deputy Valuer-General

8. (1) The Minister must, subject to the provisions of the Public Service Act, appoint a Deputy Valuer.-

(2) The person appointed as Deputy Valuer-General must be registered as a professional valuer in terms of the Property Valuers Profession Act.

(3) The Deputy Valuer-general performs such powers and duties assigned or delegated to him or her in terms of section 39.

(4) When the Valuer-General is absent or otherwise unable to perform the functions of office or during a vacancy in the office of the Valuer-General, the Deputy Valuer-General must act as Valuer-General.

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(5) When acting in terms of subsection (4), the Deputy Valuer-General has all the powers and duties of the Valuer-General.

Responsibilities

9. (1) The Valuer-General –

- (a) is responsible for the performance by the Office of the Valuer-General of its functions;
- (b) takes all decisions in the exercise by the Office of the Valuer-General of its powers;
- (c) performs any function and exercises any power assigned to the Office of the Valuer-General in terms of this Act or any other legislation;
- (d) Is the chief executive officer and also the accounting authority for the Office of the Valuer-General.

(2) As chief executive officer the Valuer-General is responsible for –

- (a) the formation and development of an efficient administration;
- (b) the appointment of staff, subject to the Public Service Act, in posts on the staff establishment referred to in section 6 (a);
- (c) the organisation, control, management, effective utilisation and training of all staff;
- (d) the maintenance of discipline; and
- (e) the promotion of sound labour relations and compliance with applicable legislation.

(3) Persons seconded to the Office of the Valuer-General or appointed on contract to perform specific tasks, must carry out their duties under the control and directions of the Valuer-General in accordance with the secondment or contract.

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(4) As accounting authority the Valuer-General is responsible for –

- (a) all income and expenditure of the Office of the Valuer-General;
- (b) all assets and the discharge of all liabilities of the Office of the Valuer-General;
- (c) the proper and diligent implementation of the Public Finance Management Act.

CHAPTER 3 VALUATION OF PROPERTY

Authorised valuers

10. (1) The Valuer-General may authorise one or more persons to conduct or to assist in the performance of a valuation contemplated in section 12.

- (2) A person authorised in terms of subsection (1) –
 - (a) to conduct a valuation must be –
 - (i) a member of the staff of the Valuer-General who is registered as -
 - (aa) a professional valuer or a professional associated valuer in terms of the Property Valuers Profession Act with extensive experience in the valuation of property;
 - (bb) a candidate valuer in terms of the Property Valuers Profession Act: Provided that any valuation conducted by a candidate valuer must be approved by a professional or professional associated valuer in accordance with the provisions of the Property Valuers Profession Act; or

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(ii) a private practitioner who is registered as a professional valuer or a professional associated valuer in terms of the Property Valuers Profession Act and is engaged in private practice as a valuer;

(b) to assist in the conduct of a valuation must be a person with non-valuation qualifications, experience and competence to the extent that a person with such qualifications, experience and competence is necessary for assisting with any valuation.

(3) The Valuer-General must issue an authorised valuer with an identity card containing a photograph of the authorised valuer; and

(4) Authorised valuers exercise their functions and powers subject to any directives issued by the Valuer-General.

Determinations by Office of the Valuer-General

11. (1) The Office of the Valuer-General must determine—

- (a) a work programme for the conduct of valuations referred to in section 12;
- (b) the nature and scope of such valuations; and
- (c) procedures for the handling of complaints when performing such valuations.

(2) The Office of the Valuer-General may—

- (a) make different determinations on the matters mentioned in subsection (1) for different categories of valuations based on recognised best practice; or
- (b) issue specific directives on those matters in any specific case.

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Valuations by the Office of the Valuer-General

12. Whenever, a property has been identified for –
- (a) purposes of expropriation or land reform that property must be valued by the Office of the Valuer-General for purposes of determining the value of the property; or
 - (b) acquisition including leasing and disposal including letting by a department, organ of state or a municipality for any reason other than those mentioned in paragraph (a), the market value of the property must be determined by the Office of the Valuer-General.

General valuation powers

13. (1) When performing a valuation referred to in section 12, an authorised valuer–
- (a) has at all reasonable times full and unrestricted access to any document, written or electronic record or information in possession of or under the control of the property owner which reflects or may assist the authorised valuer to assess the value of the property;
 - (b) may make extracts from document, written or electronic record or information;
 - (c) question any person about, any such document, written or electronic record or information;
 - (d) require the owner, tenant or occupier of the property, or the agent of the owner, to provide the authorised valuer, either in writing or orally, with particulars regarding the property which the authorised valuer reasonably requires for purposes of valuing the property;
 - (e) direct a person to disclose, either orally or in writing, any information that may be relevant for the valuation, including any

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(f) confidential, secret or classified information, and question any person about such information relating to the land or property; or direct—

(i) a person to disclose information or to give answers to questions in terms of this subsection in writing or under oath or affirmation; or

(ii) that any such information or answers be recorded, relating to the property;

(g) must be in possession and on request produce the identity card referred to in section 10 (3).

(2) An authorised valuer may for the purpose of a valuation of a property—

(a) subject to any legislation that restricts or prohibits entry to any specific property, between 07.30 and 18.00 on any day except a Sunday or public holiday, enter any property that must be valued; and

(b) inspect the property for the purpose of the valuation.

Conduct of Authorised Valuers

14. (1) An authorised valuer-

(a) may not use the position of authorised valuer for private gain or to improperly benefit of another person; and

(b) must disclose any personal or any private business interest that the authorised valuer, or any spouse, parent, child, partner or business associate may have in any property to be valued by that authorised valuer; and

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- (c) may not perform the valuation of a property in which that valuer, or any spouse, parent, child, partner, or business associate of the valuer, has a personal or private business interest.

(2) An authorised valuer who contravenes the provisions of subsection (1) is guilty of misconduct and subject to dismissal as an authorised valuer.

(3) A decision in terms of subsection (2) to dismiss an authorised valuer who is a staff member of the Office of the Valuer-General must be based on a finding of an enquiry conducted in accordance with the terms and conditions of employment of the authorised valuer.

(4) In the event that an authorised valuer is dismissed, such dismissal together with the reasons therefor must be reported to the South African Council for the Property Valuation Profession established by section 2 of the Property Valuers Profession Act.

Valuation reports

15. (1) The authorised valuer must in respect of each valuation referred to in section 12 prepare a valuation report.

(2) A valuation report must reflect such opinions, statements and information as may be required or prescribed but must reflect at least an opinion or conclusion on the valuation or rental of the property which is the subject of the valuation and must include all relevant information including, where applicable, the current use of the property, the history of the acquisition and use of the property, the market value of the property and an explanation on how a purchase price or rental was determined.

Valuation fees

16. (1) The Valuer-General, having regard to the professional fees determined in terms of section 35 of the Property Valuers Profession Act determines the basis for the calculation of valuation fees to be recovered from departments, organs of state and municipalities in respect of valuations referred to in section, 5 (3) and 12 or an investigation referred to in section 17.

(2) The department, municipality, organ of state or party must settle the account for valuation fees within 30 days from the date of invoice, failing which the Valuer-General must promptly take legal steps to recover the amount, unless it is not practical to do so.

(3) The Valuer-General may charge interest on any valuation account not paid within 30 days of the date of the account at the rate prescribed in terms of section 1(2) of the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975).

Special investigations

17. (1) The Minister or any department, organ of state, municipality or other person or institution may request the Valuer-General to conduct a special investigation.

(2) The Valuer-General may designate an authorised valuer to carry out any special investigation.

(3) If the Valuer-General issues a special report on a special investigation in terms of this section, the Valuer-General must simultaneously submit the special report—

- (a) to the party or parties which is / are the subject of the investigation; and
- (b) to the Minister.

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(4) The Valuer-General may charge a fee, calculated in terms of section 16, for carrying out an investigation in terms of this section.

CHAPTER 4

REVIEW OF VALUATIONS

Part 1: Objection and right of review

Objections to Valuations

18. (1) Any person, who has a direct interest in a particular valuation conducted by an authorised valuer, may lodge an objection with the Office of the Valuer-General.

(2) An objection referred to in subsection (1), must be in writing setting out the reasons on which the objection is based and must be lodged within 30 days after having received the outcome of the valuation.

(3) (a) On receipt of an objection, the Office of the Valuer-General must refer the objection to the valuer that conducted the valuation and any other party that is affected by the particular valuation; and

(b) Any party contemplated in paragraph (a) may, in writing, make a submission to the Office of the Valuer-General in respect of the objection referred to in subsection (1).

(4) The valuer contemplated in subsection (3) must promptly—

- (a) consider the objection as well as the submission in accordance with a procedure as may be prescribed;
- (b) decide the objections on facts, including the submissions of the objector and any party referred to in subsection (3) (a);

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- (c) if necessary, adjust the valuation in accordance with any decision; and
- (d) provide written reasons for the decision referred to in paragraph (b).

(5) The valuer must, in writing, notify the objector, any party referred to in subsection (3) (a) and the Office Valuer-General of –

- (a) the valuer's decision in terms of subsection (4) regarding the objection together with the reasons for such decision; and
- (b) any adjustments made to the valuation in respect of the property concerned.

Right of review

19. (1) An objector contemplated in section 18, who is not satisfied with the decision of the valuer, may, in writing, lodge an application for review of such decision.

(2) An application for review must be lodged with the Registrar referred to in section 29 within 30 days after the date on which the notice referred to in section 18(5) was received by the objector and must contain at least the following –

- (a) the identity of the objector;
- (b) details of the property that was valued; and
- (c) motivation and reasons for the review application.

(3) The Registrar must promptly forward any application for review together with the documents referred to in section 18 (5) to the chairperson of the review committee with a copy to the valuer concerned.

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Part 2: Valuation review committee

Establishment and functions of valuation review committee

20. (1) The Minister must, by notice in the *Gazette* establish one or more valuation review committees.

(2) The function of a review committees to review the decisions of a valuer submitted to it in terms of section 19.

Composition

21. (1) A review committee consists of-

- (a) a chairperson, who must be a person with a South African legal qualification and sufficient South African experience in the administration of justice;
- (b) not fewer than four other members, of which at least three must be a professional valuer or a professional associated valuer registered in terms of the Property Valuers Profession Act with extensive experience in the valuation of property: Provided that where more than four members are appointed in terms of this paragraph, at least 75% of them must be professional or professional associated valuers; and
- (c) if circumstances require a person contemplated in section 10 (2) (c).

(2) The chairperson and other members of the review committee must be appointed by the Minister, taking into account the need for representivity, including gender representivity.

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Disqualifications

22. (1) The following persons are disqualified from being a member of an review committee -

- (a) an unrehabilitated insolvent;
- (b) a person under curatorship;
- (c) a person declared to be of unsound mind by a court of the Republic;
- (d) a person who, after 24 April 1994, was convicted of an offence and sentenced to imprisonment without an option of a fine for a period of not less than 12 months; or
- (e) a person who has been disqualified in terms of applicable legislation from practicing as a valuer or legal practitioner.

(2) A disqualification in terms of subsection (1)(d) ends five years after the imprisonment has been completed.

Term of office

23. The term of office of members of the review committee is five years, but members are eligible to be re-appointed.

Conditions of appointment

24. (1) The Minister must, determine the conditions of appointment of members of the review committee.

(2) Conditions of appointment may differ in respect of the chairperson and other members of the review committee.

(3) The Director-General must remunerate the members of the review committee in accordance with their conditions of appointment and the directions of the Minister

Conduct of members

25. (1) A member of the review committee-

- (a) must perform the duties of office in good faith and without fear, favour or prejudice;
- (b) must disclose any personal or any private business interest that that member or any spouse, parent, child, partner or business associate of that member may have in any matter before the review committee and must withdraw from the proceedings of the review committee, unless the committee decides that the member's interest in the matter is trivial or not relevant, and announces its decision in public at the first available sitting of the committee;
- (c) may not use the position or privileges of a member for private gain or to improperly benefit another person; or
- (d) may not act in any other way that compromises the credibility, impartiality, independence or integrity of the review committee.

(2) A member of the review committee who contravenes or fails to comply with subsection (1) is guilty of misconduct.

Termination of membership

26. (1) A person ceases to be a member of the review committee when that person-

- (a) resigns;
- (b) is no longer eligible to be a member in terms of section 22;
- (c) is removed from office in terms of subsection (2); or
- (d) dies.

(2) The Minister may remove from office a member of the review committee but only on the grounds of misconduct, incapacity or incompetence.

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(3) A decision to remove a member of the review committee on the grounds of misconduct or incompetence must be based on a finding to that effect by an investigating tribunal appointed by the Minister.

(4) The Minister may suspend a member of the review committee who is under investigation in terms of subsection (3).

Alternates

27. (1) The Minister may appoint alternate members of the review committee.

(2) The person appointed as an alternate member must comply with the provisions of section 21.

(3) An alternate acts as a member when-

- (a) a member is absent, or has recused himself or herself or is suspended; or
- (b) the filling of a vacancy on the committee is pending.

Meetings

28. (1) The chairperson of the review committee decides when the committee meets, but must promptly convene a meeting if a majority of the members of the committee request him or her, in writing, to convene the committee meeting at such time as set out in the request.

(2) If the chairperson is absent or not available, or if there is a vacancy in the office of chairperson, the other members of the review committee must elect a member with experience in the administration of justice or the alternate for the chairperson to preside at the meeting or to act as chairperson.

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(3) Meetings of the review committee are open to the public, but the committee may adjourn in closed session when deliberating an issue before the committee.

Administrative assistance

29. (1) The Minister must after consultation with the review committee and subject to the Public Service Act, second –

- (a) as many officers and employees from the Department of Rural Development and Land Reform as he or she considers necessary, to discharge the work of the review committee; and
- (b) a suitable staff member from that Department as Registrar of the review committee.

(2) The Registrar must subject to the directions of the review committee, perform work as is incidental to the exercise or performance by the review committee of its powers and functions.

(3) The Registrar must be supported in the exercise or performance of his or her functions by the staff contemplated in subsection (1) (a).

(4) The Department of Rural Development and Land Reform must provide the review committee with the necessary office accommodation, equipment and a suitable venue for conducting meetings.

Procedures

30. The review committee may determine its internal procedures to dispose of reviews.

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Quorum

31. (1) A majority of the members of the review committee serving at any relevant time constitutes a quorum for a meeting of the committee.

(2) A matter before a review committee is decided by a supporting vote of a majority of the members of the committee.

(3) If on any matter before a review committee there is an equality of votes, the member presiding at the meeting must exercise a casting vote in addition to that person's vote as a member.

Decisions

32. (1) The review committee –

- (a) may decide to confirm or adjust a decision of a valuer submitted to it in terms of section 19; and
- (b) must inform the objector who lodged the application for review, the party referred to in section 18 (3) (a), the valuer concerned and the Director-General of its decision in terms of paragraph (a).

(2) A decision of the review committee is final and binding on the parties and subject only to review by a court of law.

Inspection of property and access to information

33. (1) The provisions of section 13 apply to the review committee and any reference in the said section to an authorized valuer shall be construed as a reference to any member of the review committee

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Protection of information

34. (1) A member of, or any other person authorised by the review committee to inspect property may not disclose to any person any information obtained whilst exercising a power referred to in section 33, except-

- (a) within the scope of that person's powers and duties in terms of this Act;
- (b) for the purpose of carrying out the provisions of this Act;
- (c) for the purpose of legal proceedings; or
- (d) in terms of a court order.

(2) Subsection (1) also applies to a person accompanying a member of the review committee or a person authorised by the review committee.

Powers

35. (1) The review committee may –

- (a) by notice, summons a person to appear before it –
 - (i) to give evidence; or
 - (ii) to produce a document available to that person and specified in the summons;
- (b) call a person present at a meeting of the review committee, whether summoned or not-
 - (i) to give evidence; or
 - (ii) to produce a document in that person's custody;
- (c) administer an oath or solemn affirmation to that person;
- (d) question that person, or have that person questioned; or
- (e) retain a document produced in terms of paragraph (a) (ii) or (b) (ii) for a reasonable period.

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(2) A person appearing before the review committee, whether summoned or not, may at his or her own expense be assisted by a legal representative.

- (3) (a) a person summoned to appear before the review committee is entitled to witness fees paid to state witnesses in criminal proceedings in a court.
- (b) fees referred to in paragraph (a) must be paid by the Department.

(4) The law regarding privilege applicable to a witness summoned to give evidence in a criminal case in a court applies to the questioning of a person in terms of subsection (1).

Proceedings by, or against the valuation committee

36. (1) Legal proceedings by, or against, the review committee may be instituted in the name of the committee.

(2) Any costs awarded in any legal proceedings against the review committee must be borne by the Department of Rural Development and Land Reform.

CHAPTER 5

FINANCIAL AND OTHER MATTERS

Part 1: Financial administration

Funds of the Office of the Valuer-General

37. (1) The funds of the Office of the Valuer-General consist of money—

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- (a) earned as fees for valuations or services performed by the Office of the Valuer-General in terms of this Act or any other legislation;
- (b) appropriated by Parliament to enable the Office of the Valuer-General to perform its functions efficiently;
- (c) received from any other source through the National Revenue Fund.

(2) For purposes of subsection (1), the Office Valuer-General must submit to the Minister, at least six months before the start of the financial year of the Department of Rural Development and Land Reform, or another period agreed to between the Minister and the Office Valuer-General, a budget of estimated revenue and expenditure for that financial year, for approval by the Minister.

(3) The budget must be submitted to the Minister through the accounting officer of the Department of Rural Development and Land Reform.

(4) The Office of the Valuer-General may not budget for a deficit and may not accumulate surpluses unless prior written approval of the National Treasury has been obtained.

(5) The Valuer-General is responsible for ensuring that expenditure is in accordance with the approved budget.

Audit

38. The financial statements and records of the Office Valuer-General must be audited annually by the Auditor-General.

Assignment of powers and duties

39. (1) The Valuer-General may –

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- (a) assign management or other duties to the Deputy Valuer-General or staff members with appropriate skills to assist the Valuer-General in the management, and control over the functioning of the Office of the Valuer-General;
- (b) delegate any power and duty assigned to the Valuer-General in terms of this Act or any other legislation to the Deputy Valuer-General or any member of the staff of the Office of the Valuer-General or
- (c) instruct the Deputy Valuer-General or any member of the staff of the Office of the Valuer-General to perform any of the Valuer-General's duties in terms of this Act:

(2) A delegation in terms of subsection (1) or (2)—

- (a) must be in writing;
- (b) is subject to any limitations, conditions and directions the Valuer-General may impose;
- (c) may include the power to sub-delegate;
- (d) does not divest the Valuer-General of the responsibility concerning the exercise of the delegated power or the delegated duty;
- (e) does not prevent the exercise of the delegated power or delegated duty by the Valuer-General; and
- (f) may be withdrawn at any time.

(3) The Valuer-General may confirm, vary or revoke any decision taken in consequence of a delegation or sub delegation in terms of this section, subject to any rights that may have accrued to a person as a result of the decision.

Limitation of liability

40. The Valuer-General, any staff member or other person exercising a power or carrying out a duty in terms of this Act, is not liable in respect of any loss or damage resulting from the exercise of that power or the carrying out of that duty in good faith.

Offences and penalties

- 41.** (1) A person is guilty of an offence if that person—
- (a) fails to answer a question, or comply with a request or direction in terms of section 13 or 35;
 - (b) wilfully obstructs, hinders, interferes with or obstructs the Valuer-General or any person exercising a power or carrying performing a duty in terms of this Act;
 - (c) after having been summoned in terms of section 34 fails –
 - (i) to be present at a meeting of the review committee at the time and place specified in the notice;
 - (ii) to remain present until excused; or
 - (iii) to produce a document specified in the notice;
 - (d) after having been called in terms of section 35 refuses –
 - (i) to appear;
 - (ii) to answer any question, except where the answer might incriminate him or her; or
 - (iii) to produce a document in that persons custody.

(2) Any person convicted of an offence in terms of this subsection (1), is liable to a fine or to imprisonment for a period not exceeding 12 months or to a fine as may be prescribed in applicable national legislation.

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Regulations

42. (1) The Minister may make regulations not inconsistent with this Act concerning –

- (a) the criteria for the determination of the value of property referred to in section 12 (a);
- (b) the standards and procedures for the valuation of properties, the manner in which a valuation must be performed and any other relevant matters relating to the valuation of properties;
- (c) fees payable for a valuation in terms of this Act;
- (d) the form and content of the data base referred to in section 5 (1) (c);
- (e) the additional information that must be reflected in a valuation report referred to in section 16; and
- (f) any matter which in the opinion of the Minister is necessary for the effective carrying out or furtherance of the objects of this Act.

(2) The Minister may by regulation in terms of subsection (1) declare a contravention of, or failure to comply, with any specific regulation an offence.

(3) Before regulations in terms of subsection (1) are promulgated, the Minister must publish the draft regulations in the *Government Gazette* for public comment.

Repeal of laws and savings

43. (1) The Land Affairs Act, 1987 (Act No. 101 of 1987), is repealed.

(2) Anything done in terms of the Land Affairs Act, which can be done in terms of a provision of this Act, must be regarded as having been done in terms of this Act.

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Short title

44. This Act is called the Property Valuation Act, 2013 and comes into operation on a date determined by the President by proclamation in the *Gazette*.

(2) Different dates may be determined in respect of different provisions of this Act.

EXPLANATORY MEMORANDUM ON THE PROPERTY VALUATION BILL 2013

1. BACKGROUND

1.1 A central feature of the land redistribution and land restitution programme has been the acquisition of land on the basis of the 'willing buyer willing seller' (i.e. demand-driven and market –based) model, predominantly based upon the historical value at the time of dispossession. Through these programmes, Government has set the target of delivering 30% of commercial agricultural land, or about 25 million hectares, by 2015. To date only a quarter of the 30% target has been reached.

1.2 A critical issue in both restitution and redistribution is that of escalating land prices. Escalating land prices have contributed significantly to the slow pace of land redistribution. This has in turn raised questions about the efficacy of the entire market-based land reform process and Government's ability to participate therein without influencing the market and thus the land prices.

1.3 Questions are increasingly being asked whether market-assisted land reform, based on the principle of willing-buyer-willing-seller, can deliver at the required scale and whether there needs to be greater Government intervention, including more willingness to use expropriation. It has been argued that letting the market alone determine the pace of land reform delivery is not desirable.

1.4 One of the problems identified in government's implementation of land reform programmes is the issue of valuations. By virtue of the willing-buyer-willing-seller principle, market value principles are applied when government acquires land for land reform purposes. Government is concerned that the principle of market value is not interpreted correctly and applied in a uniform manner. Further, it has become apparent that there is a need to properly analyse and aggressively implement the framework of

how to deal with land valuations and the determination of the purchase price which should be linked to in section 25(3) of the Constitution.

1.5 In order to deal with the challenges outlined above, new legislation is required to give effect to the provisions of the Constitution which provide for land reform and land restitution and to facilitate land reform and land restitution through the valuation of property in order to determine the purchase price for or payment in respect of property.

2. DISCUSSION OF THE BILL

2.1 Chapter 1 contains the definitions of the key terms used in the Bill and the objects of the legislative proposals.

2.2 Chapter 2 provides for –

2.2.1 The establishment of an Office of the Valuer-General –

- (a) as the only institution responsible for the valuation of property where a department, organ of state or a municipality is a party or has an interest, including cases of expropriation or acquisition of property for purposes of land reform and land restitution. In clause 4 it is however made clear that the provisions of this Act do not apply for purposes of the valuation of property in terms of the Local Government: Municipal Property Rates Act 2004 (Act No. 6 of 2004)
- (b) that will be responsible for –
 - (i) the provision of specialist valuation and property related advice to government;
 - (ii) creating and maintaining a data base of property market information;
 - (iii) undertaking market research and property sales analysis;
 - (iv) developing criteria for the determination of the value of property;
 - and

- (v) developing policies, standards, procedures and guidelines for the valuation of properties and the manner in which the valuation must be performed.

2.2.2 The appointment of the Valuer-General who –

- (a) must be a South African citizen and have a South African qualification and extensive experience in or knowledge appropriate to –
 - (i) the valuation of properties generally; and
 - (ii) any of the following –
 - (aa) public administration;
 - (bb) public finance; or
 - (cc) legal and constitutional matters affecting public administration;
- (b) is responsible for the performance by the Office of the Valuer-General of its functions;
- (c) takes all decisions in the exercise by the Office of the Valuer-General of its powers;
- (d) performs any function and exercises any power assigned to the Office of the Valuer-General in terms of this Act or any other legislation;
- (e) is the chief executive officer and also the accounting authority for the Office of the Valuer-General;
- (f) is responsible for –
 - (i) the appointment of the staff on the establishment of the Office of the Valuer-General;
 - (ii) all income and expenditure of the Office of the Valuer-General; and
 - (iii) the proper and diligent implementation of the Public Finance Management Act, 1999(Act No. 1 of 1999).

2.3 Chapter 3 provides for –

- (a) the performance of valuations by an authorized valuer who must a member of the staff of the Valuer-General, or a private practitioner who is registered as a professional valuer or a professional associated valuer;
- (b) the valuation by an authorized valuer of property that has been identified for –
 - (i) restitution or land reform for purposes of determining the value of the property; or
 - (ii) acquisition, disposal, leasing or letting by a department or municipality for any reason other than those mentioned in subparagraph (i).
- (c) the powers of an authorized valuer when conducting valuations;
- (d) the conduct of authorized valuers;
- (e) the preparation of valuation reports and imposition of valuation fees; and
- (f) the conduct of special investigations by an authorized valuer.

2.4 Chapter 4 deals with the review of valuations and provides for –

- (a) the lodging of objections against a valuation by an authorized valuer;
- (b) the authorized valuer to consider and decide the objection on facts;
- (c) the review of the decision of a valuer in the event that an objector is not satisfied with the decision of such valuer;
- (d) the establishment, functions and operation of a review committee; and
- (e) the decisions and powers of a review committee.

2.5 Chapter 5 provides for -

- (a) the funding of the Office of the Valuer-General;
- (b) the auditing of statements and records of the Office of the Valuer-General;
- (c) the assignment of powers and duties by the Valuer-General;
- (d) offences and penalties;
- (e) regulations by the Minister;
- (f) the repeal of the Land Affairs Act, as the Office of the Valuer-General will be performing the functions of the Land Affairs Board; and

(f) the short title.

3. It is proposed that the Office of the Valuer-General will in the initial stages consist of between 25-30 employees, with additional work being outsourced and managed and will operate nationally and in the following five regions:
- (a) Region 1: Head Office /Gauteng;
 - (b) Region 2: Kwazulu-Natal;
 - (c) Region 3: Western Cape/Eastern Cape;
 - (d) Region 4: Northern Cape/Free State; and
 - (e) Region 5: North West/Limpopo.

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