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FREQUENTLY ASKED QUESTIONS CONCERNING THE EXPROPRIATION ACT (ACT 13) OF 2024 OF THE REPUBLIC OF SOUTH AFRICA

1. Is the 2024 Expropriation Act in force?

Although the President has signed the legislation into law, a date for it coming into effect has not yet been announced. So, it has not yet come into operation.

2. Is this Act aimed at land reform?

This is not land reform legislation. It is a procedural law that falls under the jurisdiction of the Minister of Public Works. It deals with the expropriation procedures that must be followed when any kind of property is expropriated.

3. What is expropriation?

Expropriation is a form of deprivation of property, where the state acquires, on a compulsory basis, property for a public purpose such as building a public road or in the public interest which includes land reform. When expropriation takes place, the Constitution, and international law requires that compensation be paid. Of key importance - the processes of expropriation and compensation are not arbitrary, as can be seen by the regulatory processes detailed below.

4. Does the Act grant any new powers to expropriate?

No, powers to expropriate are already contained in many other laws such as the Restitution Act, the Labour Tenants Act, the National Water Act etc. It is a common misconception that the state cannot expropriate without this legislation, this is incorrect. Expropriation exists in the SA Constitution and these other laws. Without this legislation, there will be a lack of uniformity in the process followed. It can be noted that expropriation is not a novel concept to SA law. The 2024 law replaced the Expropriation Act 63 of 1975.

5. How is compensation calculated?

Valuations must be done to establish the market value. The standard of compensation in South Africa is just and equitable compensation. Various factors, besides market value can be taken into account in arriving at just and equitable compensation, including the history of acquisition and use of the property, the current use of the

property, the extent of direct state investment in the acquisition and improvement of the property and the purpose of the expropriation. These factors must be quantified and justified if they are taken into account.

6. What is the R Nil compensation section all about?

The Constitution makes it clear that market value is not the only factor that has a bearing on just and equitable compensation. Compensation may be more or less than market value, depending on which other factors are taken into consideration but the end result must be just and equitable. In extreme cases, just and equitable compensation may even amount to R Nil. The Act provides circumstances which can be taken into consideration to determine if nil compensation will be just and equitable. A good example of a circumstance which the Act deems relevant is where an owner has abandoned a building and is not paying rates and taxes and the building becomes a public nuisance. It is vital to remember that Nil Rand compensation will only be upheld by a court if it deems it just and equitable. Nil compensation is not an exception to the rule that compensation must be just and equitable.

Please note that: the R Nil compensation section only applies to land (not all property) and only when the purpose of the expropriation is in the public interest (i.e. land reform).

7. What does the process of expropriation entail under the Act?

Step 1: Investigation and valuation of property to ascertain

- Suitability of identified property for intended purpose; and
- Registered and unregistered rights in such property.

Please note that: The power to expropriate property may not be exercised unless the expropriating authority has without success attempted to reach an agreement with the owner or holder of a right in property for the acquisition thereof on reasonable terms.

Step 2: Notice of Intention to Expropriate

Such a notice must be:

- Published to inform the public;
- Served on all known affected persons (including the owner, bond holders, long term lessees etc.), inviting objections & submissions;
- If property is land, delivered to DRDLR; DEA; DMR; DWS and Municipality. Affected persons must lodge objections or submissions within 30 working days, or within extended period granted by the expropriating authority.

Step 3: Notice of expropriation

If an expropriating authority, after due consideration of all information and submissions received, decides to proceed with the expropriation, he/she must cause a Notice of Expropriation to be –

- Served on owner and holders of registered rights;
- Served on all known holders of unregistered rights; and
- Published to inform unknown holders of unregistered rights and broader public;
- If the property in question is land, copy of notice must be delivered to – DRDLR; DEA; DMR; DWS; other relevant organs of state and the Municipality; Registrar of Deeds and Mineral & Petroleum Titles Registration Office; Holder of mortgage bond registered against property.
- Notice of Expropriation must include:
 - purpose of the expropriation // reason for expropriation of that particular property;
 - date of expropriation and date of possession of the property;
 - amount offered as compensation (including compensation offered to known holders of
 - unregistered rights in the property);
 - explanation of what compensation comprises and how it was determined.

Step 4: Process in negotiating compensation

- Notice of Expropriation must include details of an offer of compensation.
- Expropriated owners and holders of rights must indicate (within 20 working days from date on which notice of expropriation was served) whether the offer is accepted. [The expropriating authority may extend this period].
- If not accepted, expropriated owners and holders of rights must indicate the compensation claimed and provide full particulars of such claim (including valuations or other professional reports informing such claim).
- If the expropriating authority does not accept the claim by an expropriated owner or holder of rights, he/she must make a revised offer; indicating full details thereof.
- A claim for compensation and an offer of compensation remains in force until –
 - expropriating authority makes a revised offer;
 - a claim or offer has been accepted; or
 - compensation has been decided or approved by a court.

Step 5: Resolution of disputes through Mediation or approval / determination by Court

- In the absence of agreement on compensation, the expropriating authority and the expropriated owner or expropriated holder of a right may attempt to settle their dispute by mediation.

- If the parties are unable to settle their dispute by consensus, or if any party did not agree to mediation, the expropriating authority must refer the matter to a competent court.
- The court must determine the dispute between the expropriating authority and the expropriated owner or expropriated holder of a right in the property.
- These provision does not preclude a person from approaching a competent court on any dispute relating to the application of the envisioned Expropriation Act.
- Where a court finds that a provision of the envisioned Expropriation Act has not been complied with, it must make such order as it considers just and equitable, having regard to all circumstances.