

legal update

- for speculative purposes would qualify on expropriation for nil compensation. There are land owners whose sole purpose of business may be to speculate in land. They do not get the land for free and have holding costs. It seems to be irrational to indicate these instances as qualifying for nil compensation.
- There is no definition of “purely speculative purposes” referred to in clause 12(3)(b) – a definition needs to be included.

Where the land is owned by a state-owned corporation or other state-owned entity

Presumably this sub-clause has cases in mind where stand land was transferred by endorsement in terms of the interim Constitution to provincial and municipal authorities.

In those circumstances, the land would have been acquired without paying for it. However, there are instances where provincial and municipal authorities as well as state-owned entities, paid full market value for the acquisition of the land they hold. Surely, in those circumstances, sub-clause (c) cannot be intended to apply. State-owned entities in particular have their own balance sheets and are subject to the PMFA. Again, sub-clause (c) should be suitably qualified to relate only to those instances where the particular land was acquired without having paid for it.

Where the owner of the land has abandoned the land

When will land have been abandoned by its owner? Does this relate to land which is not occupied by the owner?

Ownership cannot formally be abandoned, because it is registered in the Deeds Office in the name of the owner. There are instances of so-called *bona vacantia*, such as where a company owning land has been deregistered, or where a natural person who is an owner of land has died without a will and without anyone qualifying as an heir in terms of the Law of Intestate

Succession. In those instances, the property becomes *bona vacantia* vesting in the state.

Bona vacantia will then be state property which may, perhaps, be expropriated without compensation from the state represented by the Minister of Public Works for public interests. Other than that, there are no instances where ownership has been “abandoned”.

However, is the intention that the abandonment in this sub-clause relates to physical abandonment by the owner? Examples may be where multi-storey residential buildings in the centre of cities have been taken over by unlawful tenants and the owner has no hope whatsoever of having them removed, while the building is being vandalised.

The concept of abandoned land must thus be much more closely circumscribed.

The market value of the land surpassed by present value of direct state investment of subsidy in acquisition and beneficial capital improvement

This sub-clause hardly needs comment because it is the logical consequence of the application of clause 12(1)(d) and Section 25(3)(d) of the Constitution.

Clause 7(2)(h)(ii): The owner stipulating the amount claimed by him as just and equitable compensation prior to expropriation

There can be no compensation prior to an expropriation. The wording should thus be changed to make clear that it would be the amount claimed by him if he or she is expropriated. If agreement could be reached, the expropriation will be in an agreed amount.

In principle, however, it should not be required from the owner to state what the compensation would be that he would claim if he is expropriated. The state has at the stage when the notice of intended expropriation is delivered, full particulars of what the value of the land is. The position should be the other way around, i.e., the state should mention the amount which

they will be offering if an expropriation takes place.

The practical effect of the procedure as set out in the sub-clause will be that an owner will have to expend thousands of rand to have his property valued by a valuer, only to hear afterwards that the state is not going to expropriate in view of the claim. Then it would be wasted expenditure and there is no mechanism whereby the owner will be compensated for the expense incurred.

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The notice of intended expropriation is thus used as a negotiating instrument, which it should not be. Negotiations should take place separately from this notice.

Clause 21: Determination of compensation by the Court

Clause 21(2) must expressly make provision, as is the position in Section 14 of the Expropriation Act 63 of 1975, for the owner to apply to a competent court to determine just and equitable compensation, in the event of a disagreement between the parties.

The words “the expropriation authority must refer the matter to a competent court” is indeed nonsensical in view of existing court procedures. That so-called referral can only take place by means of an application either on motion or by civil summons. How else would the expropriating authority or the owner “refer” the matter to a court? A court does not act on “referrals” by the executive authority.

It is difficult to conceive why sub-clause 21(2) is formulated the way it is. It should be reformulated as in Act 63 of 1975. There is no reason at all why the wording had to be changed.