

REPUBLIC OF SOUTH AFRICA

PROVISION OF LAND AND ASSISTANCE AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. 31102 of 30 May 2008)
(The English text is the official text of the Bill)*

(MINISTER FOR AGRICULTURE AND LAND AFFAIRS)

[B 40—2008]

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GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Provision of Land and Assistance Act, 1993, so as to state the objects of the Act; to clarify and extend the application of the provisions on the acquisition, planning, development, improvement and disposal of property and the provision of financial assistance for land reform purposes; to provide for the maintenance of property for land reform purposes; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 126 of 1993, as amended by section 1 of Act 68 of 1995 and section 1 of Act 26 of 1998

1. Section 1 of the Provision of Land and Assistance Act, 1993 (hereinafter referred to as the principal Act), is hereby amended by the insertion after the definition of “prescribe” of the following definition: 5

 “**property**” means movable or immovable, corporeal or incorporeal property and includes shares, rights, title or interest in or to a juristic person, other entity or a trust;” 10

Insertion of section 1A in Act 126 of 1993

2. The following section is hereby inserted in the principal Act after section 1:

“Objects of Act

1A. The objects of this Act are to—

- (a) give effect to the land and related reform obligations of the State in terms of section 25 of the Constitution of the Republic of South Africa, 1996; 15
- (b) effect, promote, facilitate or support the maintenance, planning, sustainable use, development and improvement of property contemplated in this Act; 20
- (c) contribute to poverty alleviation; and
- (d) promote economic growth.”

Amendment of section 9 of Act 126 of 1993, as amended by section 68 of Act 67 of 1995 and section 4 of Act 26 of 1998

3. Section 9 of the principal Act is hereby amended by the substitution for subsection (8) of the following subsection:

- “(8) Despite section 14 of the Deeds Registries Act, 1937 (Act No. 47 of 1937), 5
and the provisions of any other law to the contrary, the transfer of ownership of any property contemplated in this Act—
(a) may be passed and registered directly from the owner of such property to a person to whom the Minister has disposed of such property; and
(b) shall be exempt from the payment of any transfer, stamp or other duty, fees of 10
deeds office or other charge.”.

Substitution of section 10 of Act 126 of 1993, as substituted by section 5 of Act 26 of 1998

4. The following section is hereby substituted for section 10 of the principal Act:

“Provision of property for land reform purposes 15

10. (1) The Minister may, from money appropriated by Parliament for this purpose, on such terms and conditions as he or she may determine and in the prescribed manner—

- (a) make available state land administered or controlled by him or her or made available to him or her; 20
(b) acquire—
(i) immovable property, including land;
(ii) movable property, including incorporeal property;
(iii) a business or other economic enterprise as a going concern; or 25
(iv) the shares in or the right, title or interest in or to a juristic person or other entity or a trust owning, controlling or administering property as contemplated in this Act;
(c) maintain, plan, develop or improve property or cause such maintenance, planning, development or improvement to be conducted by a person or body with whom or which he or she has concluded a written agreement for that purpose; 30
(d) provide financial assistance by way of an advance, subsidy, grant or otherwise to any person for the acquisition, maintenance, planning, development or improvement of property; or
(e) in writing authorise the transfer of funds to— 35
(i) a provincial government;
(ii) a municipality;
(iii) any other organ of state; or
(iv) any other person or body recognised by the Minister for such purposes, 40

which he or she considers suitable for the achievement of the objects of this Act, whether in general, in cases of a particular nature or in specific cases.

(2) The laws governing land use, the subdivision or consolidation of land, or the establishment of townships, shall not apply to land contemplated in this Act unless the Minister directs otherwise in writing. 45

(3) The Minister shall have all the rights, powers and duties arising from or incidental to anything contemplated in this section and, without detracting from the generality of the foregoing, may—

- (a) maintain property, including state land;
(b) conduct a business or other economic enterprise; or 50
(c) exercise the rights of a holder of shares or a right in or to a juristic person, other entity or trust,

contemplated in subsection (1).

(4) Anything purporting to have been done by the Minister before the commencement of this Act and which could have been done under the principal Act as amended by this Act, is hereby validated.”. 55

Substitution of section 11 of Act 126 of 1993, as inserted by section 6 of Act 26 of 1998

5. The following section is hereby substituted for section 11 of the principal Act:

“Minister’s power to dispose of [certain land] property

11. The Minister may, on such terms and conditions as he or she may deem fit, for the purposes of this Act, sell, exchange, donate [or], lease, award or otherwise dispose of or encumber any [land designated or acquired under] property contemplated in this Act or, if [the land] such property is no longer required for the purposes of this Act, for any other purpose.”.

Amendment of section 12 of Act 126 of 1993, as substituted by section 7 of Act 26 of 1998

6. The following section is hereby substituted for section 12 of the principal Act:

“Expropriation Act

12. (1) Without derogating from the powers that a Minister may exercise under the Expropriation Act, [1975 (Act No. 63 of 1975),] the Minister may for the purposes of this Act[,] exercise equivalent powers to the powers that such other Minister may exercise under the Expropriation Act[, 1975].

(2) Notwithstanding the provisions of the Expropriation Act, [1975,] the owner of the land in question shall be given a hearing before any land is expropriated in terms of this Act.

(3) In the event of expropriation, compensation shall be paid as prescribed by the Constitution, with due regard to the provisions [of section 12(3), (4) and (5)] of the Expropriation Act[, 1975].

(4) Any right in land which derives from the provisions of this Act will be capable of expropriation in accordance with the provisions of any applicable legislation.

(5) For the purposes of this section, ‘Expropriation Act’ means the Expropriation Act, 1975 (Act No. 63 of 1975), or any Act of Parliament amending or repealing that Act.”.

Amendment of section 14 of Act 126 of 1993

7. Section 14 of the principal Act is hereby amended by the addition of the following paragraph:

“(g) the matters contemplated in section 10.”.

Substitution of section 16 of Act 126 of 1993, as substituted by section 10 of Act 26 of 1998

8. The following section is hereby substituted for section 16 of the principal Act:

“Short title

16. This Act shall be called the Land Reform: Provision of Land and Assistance Act, 1993.”.

Substitution of long title of Act 126 of 1993, as substituted by section 12 of Act 26 of 1998

9. The following long title is hereby substituted for the long title of the principal Act:

“To provide for the designation of certain land; to regulate the subdivision of such land and the settlement of persons thereon; to provide for the [rendering of financial assistance for the acquisition of land and to secure tenure rights] acquisition, maintenance, planning, development, improvement and disposal

**of property and the provision of financial assistance for land reform purposes;
and to provide for matters connected therewith.”.**

Short title

10. This Act shall be called the Provision of Land and Assistance Amendment Act, 2008.

MEMORANDUM ON THE OBJECTS OF THE PROVISION OF LAND AND ASSISTANCE AMENDMENT BILL, 2008

1. BACKGROUND

- 1.1 Policy developments, including the implementation of the Pro-Active Land Acquisition Strategy of the Department of Land Affairs (“the DLA”) necessitate the revision of the Provision of Land and Assistance Act, 1993 (Act No. 126 of 1993) (“the Act”). This Act was adopted and assented to prior to the commencement of the Interim Constitution. The Act no longer contains a sufficient legislative framework for land reform.
- 1.2 The Provision of Land and Assistance Amendment Bill, 2008 (“the Bill”), seeks to resolve certain interpretation problems and critical deficiencies in the Act. Ministerial powers to—
- acquire movable and immovable property;
 - acquire economic enterprises;
 - acquire shares in or the right, title or interest in or to juristic persons; and
 - grant financial assistance for the acquisition, planning, development or improvement of various types of property, including economic enterprises, are clarified and extended in the process.

Provision is also made for the maintenance of land for land reform purposes.

- 1.3 The proposed amendments contained in the Bill seek to address the above-mentioned issues which are urgently needed to achieve, amongst other things, the land redistribution targets of the DLA, the implementation of the Pro-Active Land Acquisition Strategy and other redistribution programmes.

2. OBJECTS OF BILL

- 2.1 Clause 1 inserts a definition of property.
- 2.2 There is presently no section stipulating the objects of the Act. In the absence thereof it is difficult to interpret expressions such as “the purposes of settlement” and “the purposes of this Act” (see sections 2(1), 11 and 12(1) of the Act). A new section 1A is therefore proposed in *clause 2* of the Bill which states the objects of the Act.
- 2.3 The proviso to section 9(8) of the Act presently provides that section 17(1) and (2) of the Deeds Registries Act, 1937 (Act No. 47 of 1937), applies to the acquisition of land contemplated in section 10(1)(d). For the reasons discussed in paragraph 2.3 hereunder it is proposed that section 10 of the Act be replaced by a new section. A consequential amendment to the proviso to section 9(8) is necessary as the content and the numbering of the new section 9(8) will change. This amendment is provided for in *clause 3* which regulates the transfer of ownership of all property contemplated in the Act.
- 2.4 Section 10 of the Act is no longer sufficient to give effect to policy developments such as the Pro-Active Land Acquisition Strategy of the DLA. No provision is, for instance, expressly made for the acquisition by the Minister of all types of movable and immovable property and economic enterprises, such as agricultural enterprises. There is no express provision for the acquisition of the shares in or the right, title or interest in or to a juristic person or any entity or trust owning, controlling or administering property. The powers of the Minister to provide financial assistance for the acquisition, maintenance, planning, development or improvement of property are not provided for adequately. Currently doubt exists whether 100% grants may be made and whether acquired economic enterprises may be conducted by the Minister.

Clause 4 proposes a new section 10 which will replace the existing section. It will create the necessary provisions to clarify the Minister’s powers.

- 2.5 *Clause 5* contains a substituted section 11 in terms of which the Minister will, after the commencement thereof, be able to dispose of “property”, which is a wider concept than land. This will bring section 11 in line with section 10. The Minister is also granted the power to award and encumber land.
- 2.6 *Clause 6* substitutes section 12 of the principal Act to accommodate the intended repeal of the Expropriation Act.
- 2.7 Section 14 of the Act, which deals with the power of the Minister to make regulations, is amended by *clause 7*. This power is extended to include matters contemplated in the new section 10 proposed in *clause 4*, for instance the terms and conditions which the Minister may determine in terms of section 10(1).
- 2.8 As a result of the above-mentioned amendments the ambit of the Act will substantially change. It is therefore proposed in *clause 8* that the short title be changed to the “Land Reform: Provision of Land and Assistance Act, 1993” It is further proposed in *clause 9* that the long title be substituted to reflect the proposed new objects and contents of the Act.
- 2.9 *Clause 10* contains the short title of the Bill.

3. CONSULTATION

The following external stakeholders have been consulted:

- 3.1 National Treasury;
- 3.2 National Departments of Agriculture, Housing, Justice and Constitutional Development, and Provincial and Local Government;
- 3.3 Provincial Departments of Agriculture, Housing and Provincial and Local Government;
- 3.4 South African Local Government Association and municipalities;
- 3.5 Organised agriculture; and
- 3.6 Organs of civil society.

4. FINANCIAL IMPLICATIONS FOR STATE

None

5. CONSTITUTIONAL IMPLICATIONS

None, except that the Bill will give better effect to the State’s obligations in terms of section 25 of the Constitution of the Republic of South Africa, 1996.

6. COMMUNICATION IMPLICATIONS

The amendments will be communicated to all affected stakeholders by the Department of Land Affairs.

7. PARLIAMENTARY PROCEDURE

- 7.1 The State Law Advisers and the Department of Land Affairs are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution, since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

- 7.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.