

REPUBLIC OF SOUTH AFRICA

PROPERTY VALUATION BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. 36993 of 1 November 2013)
(The English text is the official text of the Bill)*

(MINISTER OF RURAL DEVELOPMENT AND LAND REFORM)

[B 54—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 regulation of the valuation of property that has been identified for land reform as well as property that has been identified for acquisition or disposal by a department; and to provide for matters connected therewith.

PREAMBLE

WHEREAS the Constitution of the Republic of South Africa, 1996, 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 conditions 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 of the Republic of South Africa, 1996, further stipulates that no provision of 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,

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

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CHAPTER 1

INTERPRETATION, OBJECTS AND APPLICATION

Definitions

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| 1. | In this Act, unless the context indicates otherwise— | 30 |
| | “ authorised valuer ” means a registered valuer who has been authorised by the Valuer-General in terms of section 11, to conduct valuations; | |
| | “ department ” has the meaning assigned to it in section 1 of the Public Finance Management Act; | |
| | “ land reform ” includes land redistribution, land restitution, land development and tenure reform; | 35 |
| | “ 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 other credible data is available, prices paid by the State for any acquisition of property may be considered; | 40 |

- “Minister”** means the Minister responsible for rural development and land reform;
- “Office of the Valuer-General”** means the Office of the Valuer-General established by section 4;
- “prescribe”** means prescribed by regulations in terms of section 20; 5
- “property”** means—
- (a) immovable property registered in the name of a person; and
 - (b) any movable property which is contemplated to be acquired together with the relevant immovable property;
- “Property Valuers Profession Act”** means the Property Valuers Profession Act, 2000 (Act No. 47 of 2000); 10
- “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 No. 103 of 1994); 15
- “registered valuer”** means a person registered in terms of the Property Valuers Profession Act as a Professional Valuer, Professional Associated Valuer or a specified category as a Public Sector Professional Associated Valuer;
- “valuation”** means the—
- (a) 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 20
 - (b) outcome or result of the process referred to in this paragraph (a);
- “value”** for purposes of section 12(a), means the value of property identified for purposes of land reform, 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 the— 25
- (a) current use of the property;
 - (b) history of the acquisition and the use of the property; 30
 - (c) market value of the property;
 - (d) extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and
 - (e) purpose of the acquisition; and
- “Valuer-General”** means the individual appointed as Valuer-General in terms of section 8 or acting as such. 35

Objects of this Act

2. The objects of this Act are to—
- (a) give effect to the provisions of the Constitution which provide for land reform and to facilitate land reform through the regulation of the valuation of property; 40
 - (b) provide for the establishment of the Office of the Valuer-General;
 - (c) provide for the valuation of property that has been identified for purposes of land reform;
 - (d) provide a voluntary valuation service to departments; and 45
 - (e) provide for the setting of criteria and procedures and the monitoring of valuations.

Application of Act

3. The provisions of this Act apply to the valuation of property contemplated in section 12. 50

CHAPTER 2

OFFICE OF VALUER-GENERAL

Part 1

Establishment, status, functions and powers

Establishment of Office of Valuer-General 5

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

Status

5. The Office of the Valuer-General—
- (a) is a juristic person with full legal capacity and is subject to this Act;
 - (b) must be impartial and must exercise the powers and perform the functions of office without fear, favour or prejudice; and 10
 - (c) is accountable to the Minister.

Functions

6. The Office Valuer-General—
- (a) must value any property contemplated in section 12(a); 15
 - (b) may, at the request of a department, value property contemplated in section 12(b);
 - (c) must make recommendations to the Minister regarding the—
 - (i) criteria for the determination of the value of property contemplated in section 12(a); 20
 - (ii) 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; and
 - (iii) system to monitor compliance with the criteria and procedures contemplated in subparagraphs (i) and (ii); and 25
 - (e) must determine the matters that must be reflected in a valuation report contemplated in section 15.

Powers

7. The Office of the Valuer-General may do all that is necessary to perform its functions, including— 30
- (a) the determination of its own staff establishment, with the concurrence of the Minister;
 - (b) to obtain, by agreement, the services of any suitably qualified person, for the performance of any specific act or function; and
 - (c) to engage in any activity, with other organisations to promote the proper, efficient and effective valuation of property that has been identified for land reform. 35

Part 2

Appointment of Valuer-General and Deputy Valuer-General

Appointment 40

8. (1) The Minister must, subject to the provision of 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, a registered valuer and have sufficient experience and knowledge relating to— 45

- (a) public administration;
- (b) public finance; or
- (c) legal and constitutional matters affecting public administration.

Deputy Valuer-General

9. (1) The Minister must, subject to the provisions of the Public Service Act, appoint a Deputy Valuer-General.
- (2) The person appointed as Deputy Valuer-General must be a South African citizen and registered valuer. 5
- (3) The Deputy Valuer-General performs such powers and duties assigned to him or her in terms of this Act or delegated to him or her in terms of section 19.
- (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. 10
- (5) When acting in terms of subsection (4), the Deputy Valuer-General has all the powers and duties of the Valuer-General.

Responsibilities of Valuer-General and Deputy Valuer-General

10. (1) The Valuer-General—
- (a) is responsible for the performance by the Office of the Valuer-General of its functions; 15
 - (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 law; and 20
 - (d) is the chief executive officer for the Office of the Valuer-General.
- (2) As chief executive officer, the Valuer-General is responsible for the—
- (a) formation and development of an efficient administration;
 - (b) appointment of staff, subject to the Public Service Act, in posts on the staff establishment referred to in section 7(a); 25
 - (c) organisation, control, management, effective utilisation and training of all staff;
 - (d) maintenance of discipline; and
 - (e) promotion of sound labour relations and compliance with applicable laws.
- (3) Persons seconded to the Office of the Valuer-General or appointed on contract to perform specific tasks, must carry out their functions under the control and directions of the Valuer-General in accordance with the secondment or contract. 30
- (4) The Deputy Valuer-General is the accounting authority for the Office of the Valuer-General and is responsible for—
- (a) all income and expenditure of the Office of the Valuer-General; 35
 - (b) all assets and the discharge of all liabilities of the Office of the Valuer-General; and
 - (c) the proper and diligent implementation of the Public Finance Management Act.

CHAPTER 3 40

VALUATION OF PROPERTY

Authorised valuers and assistants

11. (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)— 45
- (a) to conduct a valuation must be—
 - (i) a member of the staff of the Valuer-General who is a registered valuer with extensive experience in the valuation of property; or
 - (ii) a private practitioner who is a registered valuer;
 - (b) to assist in the conduct of a valuation may be a person with non-valuation 50
 - 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. 55

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

Valuations by Office of Valuer-General

- 12.** Whenever, a property has been identified for—
- (a) purposes of land reform that property must be valued by the Office of the Valuer-General for purposes of determining the value of the property having regard to the prescribed criteria procedures and guidelines; or 5
 - (b) acquisition or disposal by a department, for any reason other than that mentioned in paragraph (a), the market value of such property may, at the request of a department, be determined by the Office of the Valuer-General. 10

General valuation powers

- 13.** (1) When performing a valuation contemplated to in section 12, an authorised valuer may—
- (a) make extracts from documents, written or electronic records or information;
 - (b) question any person about, any such document, written or electronic record or information; 15
 - (c) 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; 20
 - (d) direct a person to disclose, either orally or in writing, any information that may be relevant for the valuation, and question any person about such information relating to the land or property;
 - (e) 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; and 25
 - (ii) that any such information or answers be recorded, relating to the property; or
 - (f) must be in possession and on request produce the identity card referred to in section 11(3). 30
- (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 such property for the purpose of the valuation. 35
- (3) Before an authorised valuer enters or inspects a property as contemplated in subsection (2), a written notice must be delivered to the owner or person apparently in charge of the property not less than 72 hours before the intended access, specifying the name of the authorised valuer who is to conduct the valuation and the dates and times the valuation is to be conducted. 40

Conduct of authorised valuers

- 14.** An authorised valuer—
- (a) may not use the position of valuer for private gain or to improperly benefit another person;
 - (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; 45
 - (c) may not perform the valuation of a property in which that authorised valuer, or any spouse, parent, child, partner, or business associate of the valuer, has a personal or private business interest; and 50
 - (d) must comply with the criteria and procedures contemplated in section 6.

Valuation reports

15. (1) A registered 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 and must reflect an opinion or conclusion on the valuation 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 value was determined. 5

Valuation fees

16. 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, in respect of valuations referred to in section 12(b). 10

CHAPTER 4

FINANCIAL AND OTHER MATTERS

Part 1

Financial administration

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Funds of Office of Valuer-General

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

(a) appropriated by Parliament to enable the Office of the Valuer-General to perform its functions; or

(b) received from any other source through the National Revenue Fund. 20

(2) For the purpose of subsection (1), the Office of the 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 of the Valuer-General, a budget of estimated revenue and expenditure for that financial year, for approval by the Minister. 25

(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 a surplus unless prior written approval of the National Treasury has been obtained. 30

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

Audit

18. The financial statements and records of the Office of the Valuer-General must be audited annually by the Auditor-General. 35

Part 2

Miscellaneous

Delegation of powers and duties

19. (1) The Valuer-General may—

(a) delegate management or other functions of the Valuer-General 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; 40

(b) delegate any power and duty assigned to the Valuer-General in terms of this Act or any other law to the Deputy Valuer-General or any member of the staff of the Office of the Valuer-General; or 45

(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) The Deputy Valuer-General may delegate any power or function assigned to the Deputy Valuer-General in terms of this Act to any staff members of the Office of the Valuer-General who possesses appropriate skills.

(3) A delegation or instruction in terms of subsection (1)—

- (a) must be in writing; 5
- (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; 10
- (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.

(4) The Valuer-General or Deputy Valuer-General may confirm, vary or revoke any decision taken in consequence of a delegation or sub-delegation in terms of this section, 15 subject to any rights that may have accrued to a person as a result of the decision.

Regulations

20. (1) The Minister may make regulations with regard to—

- (a) any matter the Office of the Valuer-General is required or permitted to determine in terms of this Act; 20
- (b) the criteria, procedures and guidelines for the valuation of property in terms of this Act; and
- (c) a system to monitor compliance with the criteria and procedures contemplated in paragraph (b).

(2) (a) Before the Minister makes, repeals or amends any regulation under this section, he or she must publish by notice in the *Gazette* a draft of the proposed regulation, repeal or amendment calling on interested persons to submit comment in writing, within a period not less than 30 days from the date of publication of the notice. 25

(b) If the Minister alters the draft regulations as a result of any comment received, the Minister need not publish those alterations before making the regulations. 30

Short title and commencement

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

MEMORANDUM ON THE OBJECTS OF THE PROPERTY VALUATION BILL, 2013

1. BACKGROUND

- 1.1 A central feature of the land reform 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 this programme, 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 land reform 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 compensation which should be linked to section 25(3) of the Constitution of the Republic of South Africa, 1996, (“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. The Property Valuation Bill was developed with a view to meet these challenges.
- 1.6 The Bill provides for the establishment, functions and powers of the Office of the Valuer-General which will provide a compulsory valuation service in respect of property that has been identified for land reform, as well as a voluntary valuation service to departments for the acquisition or disposal of property. The Office of the Valuer-General will also provide a regulatory service which will entail the setting of criteria and procedures for valuations as well as the monitoring of valuations to ensure compliance.

2. STRUCTURE OF THE BILL

- 2.1 Chapter 1 contains the definitions of the key terms used in the Bill, the objects of the legislative proposals and the application of the Bill.
- 2.2 Chapter 2 provides for—
 - 2.2.1 The establishment of an Office of the Valuer-General—
 - (a) as a juristic person that is accountable to the Minister; and
 - (b) that will be responsible—
 - (i) for the valuation of property that has been identified for land reform;

- (ii) to, at the request of a department, the valuation of property that has been identified for acquisition or disposal;
- (iii) for making recommendations to the Minister regarding the—
 - (aa) criteria and procedures for the valuation of property that has been identified for purposes of land reform; and
 - (bb) system to monitor compliance with the criteria and procedures contemplated in subparagraph (aa); and
- (iv) for determining the matters that must be reflected in a valuation report.

2.2.2 The appointed Valuer-General who—

- (a) must be a South African citizen, a registered valuer and sufficient experience in or knowledge appropriate to—
 - (i) public administration;
 - (ii) public finance; or
 - (iii) 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 of the Office of the Valuer-General.

2.2.3 The appointment of a Deputy Valuer-General, who is the accounting authority of Office of the Valuer-General and 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; and
- (c) the proper and diligent implementation of the Public Finance Management Act.

2.3 Chapter 3 provides for the—

- (a) authorisation of registered valuers to conduct valuations;
- (b) valuation of property that has been identified for—
 - (i) purpose of land reform for purposes of determining the value of the property;
 - (ii) acquisition of disposal by a department, for purposes other than those contemplated in subparagraph (i) for purposes of determining the market value of the property;
- (c) powers of an authorised valuer when conducting valuations;
- (d) conduct of authorised valuers;
- (e) the preparation of valuation reports; and
- (f) the setting of valuation fees.

2.4 Chapter 4 provides for the—

- (a) funding of the Office of the Valuer-General;
- (b) auditing of statements and records of the Office of the Valuer-General;
- (c) delegation of powers and duties;
- (c) making of regulation by the Minister; and
- (d) short title.

3. DEPARTMENTS AND INSTITUTIONS CONSULTED

The following Departments and institutions were consulted—

- Department of Cooperative Governance;
- Department of Public Works;

- South African Institute of Valuers;
- South African Council of Property Valuers Profession;
- AgriSA;
- Agricultural Business Chamber;
- South African Local Government Association;
- University of Cape Town; and
- Institute for Municipal Finance Officers.

The Bill was published for public comment in the *Government Gazette* of 23 May 2013.

4. FINANCIAL IMPLICATIONS FOR THE STATE

- 4.1 Government's funding for the first three years of operation is estimated at R75 million for year one, R60 million for year two and R50 million for year three.
- 4.2 National Treasury was consulted and support the proposed establishment of the Office of the Valuer-General.

5. PARLIAMENTARY PROCEDURE

- 5.1. The State Law Advisers and the Department of Rural Development and Land Reform 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 section 76 of the Constitution applies.
- 5.2. 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.