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GENERAL NOTICE

**NOTICE 282 OF 2008
DEPARTMENT OF LAND AFFAIRS****PUBLICATION OF PROVISION OF LAND AND ASSISTANCE
AMENDMENT BILL FOR GENERAL COMMENT**

The Provision of Land and Assistance Amendment Bill is hereby published for general comment.

Comment must be submitted in writing within 21 days from the date of publication of this notice to :

The Director-General: Land Affairs
(For attention: Ms C van der Merwe)

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20.02.2008
MINISTER FOR AGRICULTURE AND LAND AFFAIRS

CD P + LD
09.01.08

REPUBLIC OF SOUTH AFRICA

PROVISION OF LAND AND ASSISTANCE AMENDMENT BILL

*As introduced in the National Assembly as a section 75 Bill;
(Bill published in Government Gazette No. 30804)
(The English text is the official text of the Bill)*

(MINISTER FOR AGRICULTURE AND LAND AFFAIRS)

[B - 2008]

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.
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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; and to provide for matters connected therewith.

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

Insertion of section 1A in Act 126 of 1993

1. The following section is hereby inserted in the Provision of Land and Assistance Act, 1993 (hereinafter referred to as the principal Act), after section 1:

"Objects

1A. The objects of this Act are to give effect to the state's obligations to facilitate , within its available resources, land reform and reforms to bring about equitable access to all South Africa's natural resources as contemplated in section 25 of the Constitution of the Republic of South Africa, 1996, and without derogating from the generality of the foregoing, particularly –

- (a) to enable historically disadvantaged persons –
- (i) who have no or limited land or access to land, and who wish to acquire land, access to land, secure tenure of land or additional land;
 - (ii) who wish to secure or upgrade their tenure of land;
 - (iii) who have been dispossessed of land or of a right in land but who do not have a right to restitution in terms of the Restitution of Land Rights Act, 1994 (Act 22 of 1994),
to gain access to land on an equitable basis;
- (b) to effect or to promote, facilitate and support the sustainable use, development and improvement of land designated or acquired under this Act;
- (c) to alleviate poverty; and
- (d) to 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

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

“(b) acquisition of land or a right in land by any person contemplated in section 10: Provided that section 17(1) and (2) of the Deeds Registries Act, 1937,

shall apply in respect of the acquisition of land on behalf of any person contemplated in section [10(1)(d)]10(2).”.

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

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

“Provision of property for land reform purposes

10. (1) The Minister may, for the benefit of any person contemplated in subsection (2), from money appropriated by Parliament for this purpose and on such terms and conditions as he or she may determine –

- (a) make available state land administered or controlled by him or her or made available to him or her;
- (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
 - (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 contemplated in this paragraph,

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;

- (c) plan, develop or improve property made available or acquired in terms of this Act, or cause such planning, development or improvement to be conducted by a person or body with whom or which he or she has concluded an agreement for that purpose;
- (d) provide financial assistance by way of an advance, subsidy, grant or otherwise -
 - (i) to any person contemplated in subsection (2) for the acquisition, planning, development or improvement by or on behalf of such person of property contemplated in this section; or
 - (ii) to a municipality to acquire property to be used as a commonage or to extend an existing commonage; or
- (e) for the purposes of this section, in writing authorise the transfer of funds to—
 - (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.

(2) For the purposes of this section, persons for whose benefit state land may be made available or property may be acquired, planned, developed or improved, or to whom or on whose behalf financial assistance may be provided, are historically disadvantaged persons who –

- (a) have no or limited land or access to land, and who wish to acquire land, access to land or additional land;
- (b) wish to secure or upgrade their tenure of land; or
- (c) have been dispossessed of land or a right in land but who do not have a right to restitution in terms of the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994).

(3) Land contemplated in this Act may be used for any land use purpose permitted by law and any change in such use must be effected in accordance with any applicable law regulating such land use.

(4) 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
- (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)."

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

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

"Minister's power to dispose of [certain land] property

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] property designated, made available or acquired under this Act or, if the [land] property is no longer required for the purposes of this Act, for any other purpose."

Amendment of section 14 of Act 126 of 1993

5. 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

6. 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

7. 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, 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

8. This Act shall be called the Provision of Land and Assistance Amendment Act, 2008. which shall be deemed to have come into operation on 27 April 1994.

DRAFT MEMORANDUM ON THE OBJECTS OF THE PROVISION OF LAND AND ASSISTANCE AMENDMENT BILL

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 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 redistribution.
- 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 properties, economic enterprises and shares in or the right, title or interest in or to a juristic persons and to grant financial assistance for the acquisition, planning, development or improvement of various types of properties, including economic enterprises, are clarified and extended in the process.
- 1.3 The proposed amendments contained in the Bill to address the above-mentioned issues are urgently needed to achieve the land redistribution targets of the Department of Land Affairs, the implementation of the Pro-Active Land Acquisition Strategy and other redistribution programs.

2. OBJECTS OF BILL

- 2.1 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)). A new section 1A is therefore proposed in *clause 1* of the Bill which states the objects. An important object which is expressly mentioned is the promotion of economic growth.
- 2.2 The proviso to section 9(8) of the Act presently provides that section 17(1) and (2) of the Deeds Registries Act, 1937 (Act 47 of 1937)(registration of immovable property in the name of married persons) apply 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 of the proviso to section 9(8) is necessary in view thereof that the numbering of the new section 10 will change. This amendment is provided for in *clause 2* which substitutes the expression "land on behalf of any person contemplated in section 10" for "land on behalf of any person contemplated in section 10(1)(d)"
- 2.3 Section 10 of the Act is presently no longer sufficient to give effect to policy developments such as the Pro-Active Land Acquisition Strategy of the Department of Land Affairs. 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 to historically disadvantaged persons for the acquisition, planning, development or improvement of property are not provided for adequately. Doubt exists whether 100 % grants may be made and whether acquired economic enterprises may be conducted by the Minister.

Clause 3 proposes a new section 10 which will replace the existing section. It will create the necessary provisions and clarify the Minister's powers.

- 2.4 *Clause 4* 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.
- 2.5 Section 14 of the Act which deals with the power of the Minister to make regulations is amended by *clause 5*. This power is extended to regulations regarding matters contemplated in the new section 10 proposed in *clause 3*, for instance the terms and conditions which the Minister may determine in terms of section 10(1).
- 2.6 Because of the above-mentioned amendments the ambit of the Act will be substantially changed. It is therefore proposed in *clause 6* that the short title be changed to the "Land Reform: Provision of Land and Assistance Act, 1993"

and in *clause 7* that the long title be substituted to reflect the proposed new objects and contents of the Act.

- 2.7 *Clause 8* contains the short title of the Bill. The Bill is made retrospective to 27 April 1994 as in the case of section 14 of the Provision of Certain Land for Settlement Act, 1998 (Act No. 26 of 1998), which introduced the substituted section 10 contained in the present principal Act.

3. CONSULTATION

The following external stakeholders will be 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;
- 3.6 Farming communities; and

3.7 Organs of civil society

4. FINANCIAL IMPLICATIONS FOR STATE

None

5. CONSTITUTIONAL IMPLICATIONS

There are no constitutional implications.

6. COMMUNICATION IMPLICATIONS

The amendments will be communicated to all effected 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 section 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 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

Wetgewing – Provision of Land And Assistance Amendment Bill (Object Memo 9.1.08)