

REPUBLIC OF SOUTH AFRICA

PROVISION OF LAND AND ASSISTANCE AMENDMENT BILL

*(As amended by the Portfolio Committee on Agriculture and Land Affairs
(National Assembly))
(The English text is the official text of the Bill)*

(MINISTER FOR AGRICULTURE AND LAND AFFAIRS)

[B 40D—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 67 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— 5

(a) by the insertion before the definition of “deeds registry” of the following definition:

“**‘agricultural enterprise’** includes an enterprise engaged in activities pertaining to agricultural production and plantation, livestock production, agricultural services, hunting, trapping and game propagation, forestry and logging, aquaculture and fishing and any property utilised to carry on that enterprise;”;

(b) by the insertion after the definition of “deeds registry” of the following definition: 15

“**‘Department’** means the National Department responsible for Land Affairs;”;

(c) by the insertion before the definition of “Minister” of the following definition:

“**‘enterprise’** means an undertaking engaged in production or distribution of goods or services not for the sole purpose of own consumption;”;

and

(d) by the insertion after the definition of “prescribed” of the following definition:

“**‘property’** includes 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.”. 25

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—

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| (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; | 5 |
| (b) | effect, promote, facilitate or support the maintenance, planning, sustainable use, development and improvement of property contemplated in this Act; | 10 |
| (c) | contribute to poverty alleviation; and | |
| (d) | promote economic growth and the empowerment of historically disadvantaged persons.”. | |

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

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3. Section 9 of the principal Act is hereby amended by the repeal of subsection (8).”.

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

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10. (1) The Minister may, from money appropriated by Parliament for the purpose of this Act—

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| (a) | acquire property; and | |
| (b) | on such conditions as he or she may determine— | |
| (i) | make available state land administered or controlled by him or her or made available to him or her; | 25 |
| (ii) | 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 |
| (iii) | 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 and for capacity building, skills development, training and empowerment; or | 35 |
| (iv) | in writing authorise the transfer of funds to— | |
| | (aa) a provincial government; | |
| | (bb) a municipality; | |
| | (cc) any other organ of state; or | |
| | (dd) 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.

(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—

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| (a) | maintain property, including state land; | 50 |
| (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).

(4) Despite section 14 of the Deeds Registries Act, 1937 (Act No. 47 of 1937), 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 deeds office or other charge.”.

Insertion of section 10A in Act 126 of 1993

5. The following section is hereby inserted in the principal Act after section 10:

“Activities to be managed as separate unit

10A. (1) The Department must account for the acquisition, management, disposal and leasing of property and the provision of financial assistance in terms of this Act through a trading entity established and operating in accordance with the requirements of the Public Finance Management Act, 1999 (Act No. 1 of 1999).

(2) The trading entity referred to in terms of subsection (1), once established, must maintain separate and itemised financial accounts and accounting records in respect of each agricultural enterprise or separately administered portion of immovable property which it acquires, manages, disposes of, or leases.”.

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

6. 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 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 definitions of agricultural enterprise, Department, enterprise, and 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 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.

- 2.4 *Clause 5* introduces a new section 10A to describe “activities to be managed as separate unit” by means of a trading entity in accordance with the requirements of the Public Finance Management Act, 1999 (Act No. 1 of 1999).
- 2.5 *Clause 6* 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 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*.
- 2.7 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”.
- 2.8 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.