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Draft regulations to the Property Valuation Act released for public comment

The Department of Rural Development and Land Reform published the draft regulations to the Property Valuation Act (Act 17 of 2014) this past Friday, the 21st of April 2017. The public has been given 60 days to submit comments and Agbiz will be preparing comments for submission before the 22nd of June.

The Property Valuation Act was enacted primarily to provide the Department of Rural Development and Land Reform with inhouse capacity to conduct valuations on land acquired for land reform. This concept in itself can be enabling however confusion is created by the legislation as it dictates that land identified for land reform must be valued according to the factors set out in the constitution for the calculation of just and equitable compensation.

This creates a great deal of confusion because the Act mixes up two fundamental concepts, namely the state's obligation to effect land reform and the manner in which they do. The concept of 'just and equitable' is unique to the calculation of compensation upon expropriation. Whilst the state is empowered to expropriate for the purpose of land reform, this is but one option, and there is no provision in the constitution which states that properties acquired for land reform purposes in any other way must be done subject to a 'just and equitable' amount. The latter is merely a construct of the Department which has made its way into legislation via the Property Valuation Act. Office of the Valuer-General (OVG) does not have the ability to determine compensation upon expropriation, the Constitution is clear in that compensation must either be agreed upon or be determined by a court of law. At most, the OVG can apply the factors to arrive at an estimation of what it believes the amount of compensation would be had an expropriation taken place, and offer that amount as an offer to purchase.

Be that as it may, the OVG has been given the task to give substance to the factors listed in section 25 as far as it relates to valuations. These regulations are an attempt to do so. It should be noted that the conceptual disconnect between the calculation of compensation upon expropriation and conducting a valuation is vast. The factors listed in section 25 of the constitution relate to competing interests between the public good and need to protect individuals from encroachment onto their property rights by the state. It is by its very nature never intended to be a mathematical calculation, but rather a balancing of rights and interests. To expect the OVG to give content to these factors was therefore a near-impossible task to begin with, which is perhaps why the manner of calculating value in the regulations bear little resemblance to the factors listed in section 25 of the Constitution.

In terms of the draft regulations, 'value' for land reform purposes will be calculated as the difference between the productive value and the market value, minus the value of any state subsidies received in the acquisition or capital improvement of the property. As mentioned above, this formulation bears little reference to factors listed in section 25 of the Constitution such as the 'purpose' or current use of the property, but perhaps that is a good thing as any attempt to ascribe a value or weight to normative factors such as the 'purpose' of the



acquisition or the 'interest' of the public v the 'interests' of the owner would have been arbitrary in the absence to any reference to the individual circumstances of the case.

In the coming weeks, Agbiz will strive to consult internally as well as with experts in the field of agricultural economics to fully analyse the impact of the formula proposed in the regulations and prepare comments accordingly.

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