

LAND ACQUISITION

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PART I – PRELIMINARY

1 Short title

This Act may be cited as the Land Acquisition Act.

2 Interpretation

In this Act –

“acquisition” includes the taking of possession;

“authorised officer” means any person designated as such under section 25;

“Board” means a Board of Assessment appointed under section 25;

“body corporate” means a body corporate of the kind described in section 8(6) of the Constitution;

“Chairman” means Chairman of the Board;

“divesting order” has the same meaning as in section 2 of the Curatelle Act;

“interested person” –

(a) means a person who owns, possesses, holds a mortgage or charge over, is entitled to or is otherwise interested in, land –

(i) described in a notice published under section 8 or 9; or

(ii) affected by the exercise of the powers conferred on the authorised officer under section 6(4);

(b) does not include –

(i) a tenant the term of whose lease is less than one month;

(ii) a person who, otherwise than by the operation of the law relating to testamentary or intestate succession, acquires an interest in land, the acquisition of which is contemplated under this Act, after service of notice on the owner under section 8 or 9;

“land” includes buildings and any right or interest in land;

“Minister” means the Minister to whom responsibility for the subject of lands is assigned;

“owner” means the person capable of alienating any land;

“party” means the authorised officer, an interested person who has made a claim for compensation under this Act or a person on whose behalf the Government is acting under section 5;

“period of public emergency” has the same meaning as in Chapter II of the Constitution;

“vesting order” has the same meaning as in section 2 of the Curatelle Act.

3 Application

This Act shall apply to all cases of compulsory acquisition of land.

PART II – COMPULSORY ACQUISITION OF LAND

4 Land owned by a body corporate

(1) Notwithstanding this Act, the Minister may compulsorily acquire any land owned by a body corporate after he has given notice of his intention to do so in the *Gazette*.

(2) The Minister shall cause the notice published under subsection (1) to be transcribed by the Conservator of Mortgages who shall, after the transcription, deliver to the Minister a certificate to the effect that the notice has been transcribed under section 7 of the Transcription and Mortgages Act.

(3) The transcription of the notice under subsection (2) shall constitute in favour of the Government title to the land to which it relates free from all charges and encumbrances.

5 Acquisition other than for the Government

(1) Where a person requires any land and has not been able to acquire it by private agreement, he may make a written request to the Minister for the compulsory acquisition of the land.

(2) A request under subsection (1) shall –

(a) set out –

- (i) a description of the land which is required;
- (ii) the approximate value of the land for compensation purposes; and
- (iii) the reasons for which the land is required; and

(b) state that it has not been possible to acquire the land by private agreement.

(3) On receipt of a request under subsection (1), the Minister may –

(a) require the person making the request to furnish him with such further information as he requires to enable him to determine whether or not the land may be acquired compulsorily;

(b) acquire the land compulsorily on behalf of the person making the request in accordance with this Act.

(4) Any expenses incurred in connection with the acquisition of land under this section shall be reimbursed to the Government by the person on whose behalf the land has been acquired and shall be paid into the Consolidated Fund.

6 Investigation of land

(1) Subject to section 9, where land is likely to be acquired compulsorily and the Minister is satisfied that –

(a) an investigation of the land is necessary to determine its suitability for the purpose for which it would be acquired;

(b) it is not possible to obtain access to the land by private agreement; and

(c) the conditions of section 8(1)(a) and (b) of the Constitution are fulfilled,

he shall give notice to that effect in 2 issues of the *Gazette* and in 2 issues of 2 daily newspapers, there being in each case an interval of at least 7 days between the first and second publications.

(2) A notice published under subsection (1) shall –

(a) state the approximate extent of the land;

(b) describe the boundaries of the land;

(c) state the purpose for which the land is likely to be acquired; and

(d) in the case of an acquisition on behalf of a person under section 5, state the name, address and occupation of the person for whom the land may be acquired.

(3) On or about the day of the first publication of the notice specified in subsection (1) a copy of the notice shall be served by the authorised officer on the owner of the land likely to be acquired and on the owner of any other land that may be entered by the authorised officer for the purposes of this section.

(4) Subject to subsection (6), the authorised officer or any person delegated by him may, 14 days after the date of the last publication of a notice under subsection (1), in relation to any land specified in the notice –

(a) enter, survey and take or mark levels;

(b) dig, bore into or take samples of the subsoil;

(c) set out boundaries and the intended line of any work proposed to be done;

(d) place marks and cut trenches;

(e) if necessary, cut down and clear away any standing crop, fence, tree or bush; and

(f) with the concurrence of the Central Water Authority, set up and maintain gauges in any stream or watercourse.

(5) For the purpose of exercising any power vested in him under subsection (4), the authorised officer may do any act specified in subsection (4)(a) or (e) in relation to any other land.

(6) The authorised officer shall not enter on any land for the purposes of this section except –

- (a) at reasonable hours; and
- (b) after having previously given the owner and the occupier at least 48 hours' written notice.

7 Abandonment

(1) Where any land in relation to which a notice under section 6(1) has been published is not to be acquired compulsorily, the Minister may, at any time after the publication of the notice, declare by a fresh notice published in the *Gazette* that the intended acquisition of the land is abandoned.

(2) Where, within 8 months after the date of the second publication of a notice in the *Gazette* under section 6(1), the land has not been acquired compulsorily or has been abandoned, any interested person may serve a notice on the authorised officer requiring the acquisition of the land to be completed or abandoned.

(3) Where a notice has been served under subsection (2) and the land to which it relates has not been acquired compulsorily within one month of the date of that notice, the intended acquisition shall be deemed to have been abandoned.

8 Compulsory acquisition

(1) Subject to section 9, where the Minister has decided to acquire compulsorily any land either on behalf of the Government or on behalf of another person under section 5 and is satisfied that –

- (a) it is neither possible nor expedient to acquire the land by private agreement; and
- (b) the conditions of section 8(1)(a) and (b) of the Constitution are fulfilled,

he shall, whether or not a notice has been served under section 6(1), give notice to that effect in 2 issues of the *Gazette* and in 2 issues of 2 daily newspapers, there being in each case an interval of at least 7 days between the first and second publications.

(2) A notice published under this section shall –

- (a) describe the land with precision, either in words or by reference to a map or plan which shall be deposited at such place as may be specified in the notice and which shall be open to inspection by the public;
- (b) state the purpose for which the land is being acquired;
- (c) in the case of an acquisition under section 5, state the name, address and occupation of the person for whom the land is being acquired; and
- (d) require every interested person to give the authorised officer, within 14 days of the second publication of the notice in the *Gazette*, a written declaration of the nature of his interest in the land and of the amount and details of his claim for compensation.

(3) On or about the date of the first publication of the notice under subsection (1), a copy of the notice shall be served by the authorised officer on the owner of the land.

9 Emergency

Where land is required by the Government during a period of public emergency for reasons related to that emergency only one notice under section 6 or 8 shall be required to be published.

10 Challenge of legality of acquisition

An interested person who wishes to challenge the legality of the compulsory acquisition of any land may appeal to the Supreme Court within such time and in such manner as may be provided by Rules made by the Supreme Court for the purpose.

11 Vesting of land

(1) Where no challenge to the legality of the compulsory acquisition of any land has been made under section 10 or where any such challenge has been overruled, the authorised officer shall cause the notice published in the *Gazette* under section 8 to be transcribed by the

Conservator of Mortgages, who shall forthwith deliver to the authorised officer a certificate under section 7 of the Transcription and Mortgages Act.

(2) The transcription of the notice published in the *Gazette* under section 8 shall constitute in favour of the Government, or where the acquisition of the land is made pursuant to a request under section 5(1), of the person specified in the notice, title to the land to which it relates, free from all charges and encumbrances.

(3) Upon the transcription of the notice published in the *Gazette* under section 8, no proceedings shall be instituted to prevent the transfer of title in the land to which the notice relates, and the rights of any interested person shall be satisfied out of the compensation payable under this Act.

PART III – COMPENSATION AND APPORTIONMENT OF RENT AND RESCISSION OF LEASES

12 Right to compensation

An interested person whose land is compulsorily acquired shall be entitled to the payment of compensation under this Act.

13 Determination of persons entitled

The authorised officer shall take such steps as may be necessary to determine to whom compensation is payable under this Act and may, for that purpose, require any interested person in relation to whose land a notice has been published under section 6 or 8 to deliver, within 14 days of the date of the service of the notice, a statement in writing specifying so far as is within that person's knowledge the name of every other interested person and the nature of his own and that of such other interested person's interest in the land.

14 Application for compensation

(1) A claim for compensation, or for the apportionment of compensation, payable under this Act shall be made in writing to the Minister.

(2) Where a claim is made under subsection (1), the Minister shall, unless the claim is sooner settled, refer it, within 28 days of the receipt of the claim, to the Board.

15 Board of Assessment

(1) A Board of Assessment shall be established to determine the right of any interested person and to assess, award and apportion compensation, and to rescind leases and apportion rent.

(2) The Board shall consist of –

- (a) a Chairman, who shall be a person who holds or has held judicial office in Mauritius, to be designated by the Chief Justice; and
- (b) 2 members appointed by the Minister.

(3) No person who –

- (a) is a public officer;
- (b) is a member of, or a candidate for election to, the Assembly or a local authority;
- (c) has a direct or indirect interest in the land acquired compulsorily; or
- (d) is related, by marriage or consanguinity within the fourth degree, to an interested person,

may be appointed as a member of the Board.

16 Report to the Board

(1) Where a claim has been referred to the Board under section 14(2) the authorised officer shall, within 28 days of the reference of the claim, forward to the Chairman a report and the following documents and particulars relating to the land compulsorily acquired –

- (a) a copy of any notice which has been published in the *Gazette*;
- (b) a copy of any notice, statement or other communication issued or received by the authorised officer; and

- (c) the name and address of every person whom the authorised officer knows or has reason to believe is an interested person.
- (2) The authorised officer shall, in any report under subsection (1), state his opinion, and the reasons for his opinion, on –
 - (a) the nature of the land, including particulars of any trees or standing crops;
 - (b) the value of the land;
 - (c) the amount of any compensation to be paid;
 - (d) the description and value of any State land offered by way of payment or part payment of the compensation due;
 - (e) the apportionment of the compensation among the interested persons.

[Amended 48/91]

17 Inquiry by the Board

(1) Where a claim has been referred to the Board under section 14(2), it shall hold an inquiry at such place and on such date and time as may be fixed by the Chairman.

(2) At least 14 days' notice of the first meeting of the Board shall be given to the authorised officer and to every interested person.

(3) At any inquiry before the Board, the procedure, the giving and taking of evidence, the summoning and remuneration of witnesses for attendance, and all other questions relating or incidental to the inquiry shall, in the absence of Rules made by the Supreme Court, be governed by the laws prescribed for civil proceedings before the Supreme Court.

(4) The parties may appear by counsel before the Board.

(5) The Board, or any person authorised by the Chairman, may at any time before an award is made, enter upon and inspect land for any purpose connected with the inquiry.

(6) Where after the appointment of the Board and before an inquiry is started under subsection (1), or while the inquiry is in progress, the parties agree on the amount of compensation to be paid under this Part, the agreement of the parties shall be made the award of the Board.

18 Award of the Board

(1) At the conclusion of an inquiry under section 17, the Board shall make an award on the claim for compensation and the Chairman shall cause that award to be filed in the Registry.

(2) In case of disagreement among the members of the Board, the decision of the majority of the members shall be the decision of the Board.

(3) Where, with regard to the amount of compensation to be paid, all the members of the Board differ, the mean between the amount determined by the Chairman and the amount determined by the other members which is nearer the amount determined by the Chairman shall be the decision of the Board.

(4) Every award shall state the total compensation to be paid and also the amounts awarded under different heads of compensation and the grounds for awarding each of those amounts.

(5) Where a claim for compensation under section 14(1) specifies the amount to be paid as compensation, no award shall be made which is in excess of the amount claimed.

(6) The Board, in awarding compensation, may allow interest at the legal rate, calculated from the date of vesting under section 11 until the date of the award of the Board.

(7) (a) The Chairman shall make such order as to costs as he thinks fit in all the circumstances of the case.

(b) An order made under paragraph (a) shall be enforced in the same manner as an order for costs in proceedings before a Judge.

(c) Where the Chairman orders a party to pay costs to the authorised officer, the authorised officer may deduct the amount so payable from the amount of any compensation to be paid to that party.

(8) The award shall, within 7 days of filing in the Registry, be notified, in writing, to the parties by the Master and Registrar and shall, subject to section 24, be conclusive and binding upon them and any person claiming through them.

19 Nature of compensation

(1) Subject to section 20, an interested person shall be entitled to compensation –

- (a) for loss sustained as a result of an act or omission under section 6;
- (b) for loss sustained as a result of abandonment under section 7;
- (c) for the value of his interest in land compulsorily acquired;
- (d) for loss sustained as a result of severance of other lands owned by him from the land compulsorily acquired;
- (e) for any other loss sustained as a result of the compulsory acquisition.

(2) Where land is, and, but for compulsory acquisition, would continue to be, devoted to a purpose for which land is not readily available and the Board is satisfied that the interested person bona fide intends to continue to use land for that purpose in some other place compensation may be assessed on the basis of the cost of reinstating the interested person on other land.

(3) The value of any interest in the land shall be the amount which that interest if sold on the open market by a willing seller, might be expected to realise at the date of the first publication of the notice under section 8.

20 Non-compensable loss

No allowance shall, in the assessment of compensation, be made on account of –

- (a) the fact that the acquisition is compulsory or the degree of urgency or necessity which has led to the acquisition;
- (b) any lack of interest of the interested person to part with the land acquired;
- (c) any loss sustained by the interested person as a result of an act or omission which would not give rise to an action under any other enactment;
- (d) any increase to the value of the land acquired which has accrued or is likely to accrue from the use to which the land acquired has been or will be put by the Government or by the person for whom it is acquired;
- (e) any investment in or improvement of the land acquired, commenced or continued after the first publication of the notice under section 8 other than an investment or improvement –
 - (i) for the continuing use of the land as an economic unit;
 - (ii) for the satisfying of a legal obligation; or
 - (iii) for the maintenance of the land;
- (f) the fact that the Government may exploit the land acquired in co-operation with private interests;
- (g) the special suitability or adaptability of the land acquired for any purpose if that purpose is a purpose for which it could be used only in pursuance of statutory powers, or if that purpose is a purpose for which land may be acquired under this Act; or
- (h) the value of any increase to the land acquired by reason of its use in a manner which –
 - (i) could be restrained by a Court;
 - (ii) is contrary to law; or
 - (iii) is detrimental to health.

21 Access to severed land

(1) Where land acquired compulsorily is severed from other land owned by an interested person and as a result the land which has not been compulsorily acquired has no access, the authorised officer shall provide a reasonable access to that land.

(2) In determining the amount of compensation payable under this Act, in respect of any land as is described under subsection (1), account shall be taken of the fact that reasonable access to the land will be provided.

22 Payment of compensation

(1) **The authorised officer shall within 30 days –**

- (a) where no appeal is lodged under section 24, of the date of the award by the Board; or
- (b) where an appeal is so lodged, of the date on which the appeal is finally determined,

deposit the compensation payable at the Registry.

(2) Any compensation deposited under subsection (1) may, on the application of an interested person claiming to be entitled to it, be paid out to him by the Master and Registrar upon his satisfying the Master and Registrar of his claim.

(3) Where any compensation deposited under subsection (1) is not, within 6 months of the deposit, paid out under subsection (2), or where there is –

- (a) no person competent to receive or give a sufficient discharge for the compensation; or
- (b) a dispute as to the title to any land acquired under this Act, or as to the right or interest of any person therein,

the Master and Registrar shall apply for a vesting order to vest the compensation deposited in the Curator and upon the making of the vesting order the compensation shall vest in the Curator.

(4) Any compensation which has vested in the Curator shall be dealt with in the same manner as any property which has vested in the Curator under the Curatelle Act.

23 Acquisition of land held on lease

(1) **Where land is comprised in a lease for a period of one month or more and part only of the land is compulsorily acquired, the rent payable in respect of the land comprised in the lease may, on the application of the lessor or the lessee to the Board, be apportioned between the land acquired and the residue of the land.**

(2) After an apportionment of the rent under subsection (1) –

- (a) the lessee shall be liable to pay only so much of the future accruing rent, as has been apportioned in respect of the residue of the land;
- (b) the lessor shall have the same rights and remedies for the recovery of the apportioned rent as he had before the apportionment for the recovery of the whole rent due under the lease;
- (c) all the conditions of the lease, except those concerning the amount of rent to be paid, shall remain in force with regard to the residue of the land as if the residue of the land only had been included in the lease.

(3) (a) Where it is shown that the compulsory acquisition of a portion of land comprised in a lease has rendered the residue unsuitable for the purpose for which the land was leased or where in the circumstances the Board, on application by the lessee, considers it just to do so, it may rescind the lease.

(b) Where a lease is rescinded under paragraph (a), the lessee shall be liable to pay only the rent due at the date of the occurrences of the circumstances on which the rescission order is based.

24 Appeals against awards

Any party who is aggrieved by an award made by the Board may appeal to the Supreme Court within such time and in such manner as may be provided by Rules made by the Supreme Court for the purpose.

PART IV – MISCELLANEOUS

25 Authorised officers

The Minister may designate any person to act as an authorised officer for the purposes of this Act.

26 Service of notices

Any notice required by this Act to be served on any person shall be deemed to be effectually served –

- (a) where served by post on the person, or where the land to which the notice relates is vested in the Curator, on the Curator;
- (b) where service under paragraph (a) is not possible, by service on his representative in Mauritius;
- (c) where service is not possible under paragraph (a) or (b), by service on the Curator and the affixing of a copy of the notice conspicuously on the land to which it relates.

27 Vesting in Curator

(1) Where the Curator has been served with a notice under section 26(c), he shall cause the land to which the notice relates to be vested in him.

(2) Where the Curator fails, within 7 days of the service of a notice under section 26(c), to cause the land to which the notice relates, to be vested in him, the Minister may apply for a vesting order to vest the land to which the notice relates in the Curator and, upon the vesting order being made, the land shall vest in the Curator.

28 Expenses

Any sum awarded by way of compensation under this Act, including interest and costs to be paid by the authorised officer, and all other costs, charges and expenses which shall be incurred by or on behalf of the Minister or the authorised officer for carrying into effect the provisions of this Act, shall be paid out of the Consolidated Fund.

29 Exemption from duties

Notwithstanding any other enactment, every document relating to anything done under or for the purposes of this Act, shall be exempt from any stamp duty, registration dues or transcription fee.

30 Loss arising after acquisition

This Act shall not prejudice any claim for damage sustained after the compulsory acquisition as a result of the use to which the land acquired is put.

31 Sale back to owner

(1) Notwithstanding section 5 of the State Lands Act, where the whole or part of any land which has been compulsorily acquired is no longer required for any purpose, the Minister or any person on whose behalf the land has been compulsorily acquired shall offer to sell the land at the price it would fetch on the open market at the time of the offer, to the person who, but for the compulsory acquisition, would have owned it.

(2) Where the person to whom an offer is made under subsection (1) fails to signify his acceptance of the offer within 6 weeks of the notification of the offer to him, the offer shall lapse.

[Amended 48/91]

32 Immunity from legal process

(1) No civil or criminal liability shall attach to the Chairman or any member of the Board, the authorised officer or any person delegated by, or accompanying, the authorised officer in respect of any act done or omitted in good faith for the purposes of this Act.

(2) Subsection (1) shall be in addition to, and not in derogation from the Public Officers Protection Act, and for the purposes of that Act, or of section 156 of the Criminal Code, any person who enters upon any land under this Act or any person accompanying the authorised officer shall be deemed to be a public officer or a person engaged or employed in the performance of a public duty.

33 Offences

Any person who –

- (a) without lawful authority or reasonable excuse, removes or destroys any landmark placed, or removes or defaces or destroys any notice posted by the authorised officer on any land in accordance with this Act;
- (b) is required to make and deliver a statement under this Act and, without reasonable excuse, refuses to make or deliver the statement, or wilfully makes a statement which is false or misleading in any material particular; or
- (c) contravenes any regulation made under this Act,

shall commit an offence.

34 Penalty

Any person who commits an offence under this Act shall, on conviction, be liable to a fine not exceeding 2,000 rupees.

35 Regulations

The Minister may make such regulations as he thinks fit for the purposes of this Act.