



Republic of Namibia
Annotated Statutes

Expropriation Ordinance 13 of 1978

(OG 3796)

came into force on date of publication: 24 July 1978

as amended by

National Transport Corporation Act 21 of 1987 (OG 5439)

brought into force in relevant part on 1 July 1988 by AG Proc. 19/1988 (OG 5567)

This Ordinance is the relevant law on the expropriation of land. The South African *Expropriation Act 63 of 1975*, which deals with the expropriation of land (and commenced on 1 January 1977, in terms of RSA Proc. 273 of 1976) once applied to South West Africa in respect of *expropriations by the Railway Administration under section 4*. Section 4(4) of that Act stated: "The provisions of this section, and the other provisions of this Act, in so far as they are connected with the application of this section, shall also apply in the territory of South West Africa, including the Eastern Caprivi Zipfel", thus making sections 7-24 of the Act applicable to expropriations by the Railway Administration in terms of the Railways and Harbours Control and Management (Consolidation) Act 70 of 1957 (which is no longer in force in Namibia). However, section 4 of this Act was repealed by the National Transport Corporation Act 21 of 1987, thus effectively ending the applicability of any part of the Act to South West Africa (which was always only via section 4). Section 139 of the Minerals (Mining and Prospecting) Act 33 of 1992 (GG 564) confusingly purports to repeal sections 74 and 75 of the *Expropriation Act 63 of 1975*, but these sections were never applicable to Namibia.

ORDINANCE

To provide for the expropriation of land and other property for public and certain other purposes, and for matters incidental thereto.

(Assented to 14 July 1978)

(Afrikaans text signed by the Administrator-General)

(Date of commencement 24 July 1978)

[The notations in italics appear above the long title in the *Official Gazette*. They have been placed in the usual position here, for consistency with the format of other legislation.]

ARRANGEMENT OF SECTIONS

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BE IT ORDAINED by the Legislative Assembly for the Territory of South West Africa, with the consent of the Administrator-General, in so far as such consent is necessary, previously obtained and communicated to the Assembly by the Chairman of the Assembly, as follows:-

[In the *Official Gazette*, the words “fideicommissum” and “fideicommissary” are sometimes italicised and sometimes not italicised. They have been reproduced here as they appear in the *Gazette*.]

Definitions

1. Unless the context otherwise indicates -
 - (a) “Administration” means the Administration of the Territory;
 - (b) “date of expropriation” means the appropriate date contemplated in section 5(2)(b);
 - (c) “date of notice” means the date upon which a notice of expropriation is in terms of the provisions of section 5(3) delivered, tendered or posted to a person or is in

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terms of the provisions of section 5(5) published in the *Official Gazette* and if such a notice is, in respect of the same property so delivered, tendered or posted and published, the date upon which it is so published;

- (d) “date of offer of compensation” means if an amount is mentioned as compensation in the notice of expropriation in question, the date of notice in question or, the date upon which an amount is in terms of the provisions of section 8(2) or (4) offered as compensation, if such an amount is not mentioned in such notice but is offered in terms of the provisions of the said section 8(2) or (4);
- (e) “Executive Committee” means the Executive Committee constituted under section 4 of the South West Africa Constitution Act, 1968 (Act 39 of 1968);

[The South-West Africa Constitution Act 39 of 1968 was repealed by Article 147 of the Namibian Constitution.]

- (f) “immovable property” includes a real right in or over immovable property;
- (g) “local authority” means the Council of a municipality constituted or established under the provisions of the Municipal Ordinance, 1963 (Ordinance 13 of 1963), a Village Management Board established under the provisions of the Village Management Boards Ordinance, 1963 (Ordinance 14 of 1963), and a Peri-Urban Development Board established under the provisions of the Peri-Urban Development Board Ordinance, 1970 (Ordinance 19 of 1970);

[The Local Authorities Act 23 of 1992 repealed the Municipal Ordinance 13 of 1963, the Village Management Boards Ordinance 14 of 1963 and the Peri-Urban Development Board Ordinance 19 of 1970.]

- (h) “Master”, in relation to particular property, means the Master of the South West Africa Division of the Supreme Court;
- (i) “notice of expropriation” means a notice contemplated in section 5;
- (j) “owner” means -
- (i) in relation to land or a registered right in or over land, the person in whose name the land or right in question is registered and -

- (aa) if the owner of property is deceased, the executor in his estate;
- (bb) if the estate of the owner of property has been sequestrated, the trustee of his insolvent estate;
- (cc) if the owner of property is a company which is being wound up, the liquidator thereof;
- (dd) if property has passed to a liquidator or trustee elected or appointed in terms of the provisions of the Agricultural Credit Act, 1966 (Act 28 of 1966), that liquidator or trustee;

[The Agricultural Credit Act 28 of 1966 was repealed by the Agricultural Bank Amendment Act 27 of 1991.]

- (ee) if the owner of any property is otherwise under a legal disability, his legal representative;

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- (ff) if any property has been attached in terms of an order of a court, also the messenger of the court, the sheriff or deputy-sheriff concerned, as the case may be;
- (gg) in relation to a holding allotted, leased, sold or granted in terms of the provisions of the Land Settlement Consolidation and Amendment Proclamation, 1927 (Proclamation 310 of 1927, of the Republic of South Africa), the person to whom such holding was so allotted, leased, sold or granted or the cessionary or sublessee of that person;

[The RSA Agricultural Credit Amendment Act 66 of 1970, which applied the Agricultural Credit Act 28 of 1966 to South West Africa, repealed Proc. 310 of 1927. The Agricultural Credit Act 28 of 1966 was repealed by the Agricultural Bank Amendment Act 27 of 1991.]

- (hh) includes the authorised representative in the Territory, of a person who qualifies as an owner in terms of the provisions of this subparagraph;
- (ii) where there is in this Ordinance referred to the owner of expropriated property or of property which has been expropriated, such a reference shall, notwithstanding the provisions of section 6(1), be construed as a reference to the person who, immediately prior to the date of expropriation, is the owner of the property in question in terms of, *inter alia*, the preceding provisions of this subparagraph;
- (ii) in relation to property other than land or a registered right in or over land, includes the persons contemplated in subparagraph (i)(aa), (bb), (cc), (dd), (ee), (ff), (hh) and (ii): Provided that any reference to property in that subparagraph shall for the purposes of this subparagraph be construed as a reference to property other than land or a registered right in or over land;
- (k) “property” means both movable and immovable property;
- (l) “public purposes” includes any purposes connected with the administration of the provisions of some or other law by an authoritative body;
- (m) “regulation” means a regulation made under the provisions of section 20 of this Ordinance;
- (n) “Territory” means the Territory of South West Africa;
- (o) “this Ordinance” includes the regulations.

Power of Executive Committee to expropriate or otherwise acquire property for public and certain other purposes or to take the right to use property temporarily for public purposes

2. (1) Subject to the provisions of this Ordinance the Executive Committee may, subject to the obligation to pay compensation, expropriate any property for public purposes or take the right to use temporarily any property for public purposes.

(2) The power of the Executive Committee in terms of the provisions of subsection (1) to expropriate property for public purposes, and a power in terms of the provisions of any other law to expropriate or otherwise acquire any property on behalf of the Administration shall, if in the opinion of the Executive Committee the expropriation or acquisition of certain immovable

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property in terms of the provisions of the said subsection or other law affects or will affect any other immovable property, also include the power to expropriate so much of such other immovable property as the Executive Committee for any reason deems expedient.

(3) The power of the Executive Committee in terms of the provisions of subsection (2) to expropriate immovable property which, in the opinion of the Executive Committee, is affected by an expropriation, shall, in the case where only a portion of a piece of land is expropriated in terms of the provisions of this section, at the request of the owner concerned include the power to expropriate also the remainder of that piece of land if the owner satisfies the Executive Committee that the said remainder has become useless to the owner in consequence of the expropriation of the aforesaid portion.

Executive Committee may confer its powers in relation to land in terms of this Ordinance upon a local authority

3. (1) The Executive Committee may, with the exception of the power contemplated in section 19, confer any of its powers in relation to land or a right in, over or in respect of land in terms of the provisions of this Ordinance upon a local authority to the extent contemplated in subsection (2), and in the exercise of such a power by such local authority the provisions of this Ordinance shall apply and any reference therein to the Executive Committee and the Administration shall be construed as a reference to such local authority.

(2) The Executive Committee may confer the powers referred to in subsection (1) either in general or in relation to particular land or in respect of a particular case.

Inspection of property for purposes of expropriation or taking of right of temporary use

4. (1) If any property or the temporary use of any property is required for public purposes, the Executive Committee may -

- (a) in order to ascertain whether any particular property is suitable for the purposes or use contemplate or in order to determine the value of such property, authorise any person to -
 - (i) enter upon any land in question with the necessary workmen, equipment and vehicles;
 - (ii) survey that land and to determine the area and levels thereof;
 - (iii) dig or bore on or into that land;
 - (iv) construct and maintain a measuring weir in any river or stream;
 - (v) in so far as it is necessary to gain access to that land, enter upon and go across any other land with the necessary workmen, equipment and vehicles; and
- (b) authorise any person to demarcate the boundaries of any land required for the said purposes or use:

Provided that such person shall enter no building nor enter upon any enclosed yard or garden attached to any building without the consent of the owner or lawful occupier thereof, unless such person has given the said owner or occupier at least twenty-four hours' notice of his intention to do so.

(2) If any person has suffered damage as a result of the exercise of any power conferred in terms of the provisions of subsection (1), the Administration shall be liable to pay damages or to repair that damage.

(3) Any proceedings by virtue of the provisions of subsection (2) shall be instituted within six months after the damage in question has been caused or within six months after the completion of the acts contemplated in subsection (1), whichever is the longer period: Provided that no such proceedings shall be instituted before the prospective plaintiff has given the Executive Committee at least one month's notice thereof and has stated, together with such notice, the cause of the alleged damage.

Provisions applicable to the notice that property is to be expropriated or is to be used temporarily

5. (1) Whenever the Executive Committee has decided to expropriate or to take the right to use temporarily any property in term of the provisions of section 2, the said Committee shall, subject to the provisions of subsection (5), cause an appropriate notice of expropriation to be served upon the owner of the property in question in accordance with the provisions of subsection (3).

(2) The notice of expropriation shall -

- (a) contain a clear and full description of the property in question and, in the case of the taking of the right for use property temporarily, also of such right, as well as, in the case where only a portion of a piece of land or a real right in or over only such portion is expropriated, or where the right is taken to use temporarily only such a portion a sketch plan showing the approximate position of the portion in question and stating the approximate extent of such portion: Provided that whenever only a portion of a piece of land or a real right in or over only such a portion is expropriated, or where the right is taken to use temporarily only the said portion, the owner of the said portion may, within thirty days from the date of notice, request the Executive Committee by registered post to furnish, in the manner contemplated in subsection (3), further particulars of the portion in question so as to enable the said owner to determine the position or extent of that portion, and upon the furnishing of such further particulars, the date of the notice in which such further particulars were furnished, shall, in applying this Ordinance, be deemed to be the date of the notice of expropriation;
- (b) state the date of expropriation, or, in the case of the taking of the right to use property temporarily, the date as from which the property will be so used as well as the date upon which the right to so use the property shall be terminated: Provided that the date of expropriation or the date as from which the property is to be so used, as the case may be, shall not be later than one hundred and eighty days after the date of notice: Provided further that the date as from which the property may be used, shall not be earlier than sixty days as from the date of notice unless the Executive Committee is of the opinion that the said property is urgently required for a purpose for which it will be used by the Administration;
- (c) either state the amount which is offered as compensation for the property or for the temporary use thereof, or request the owner of the property to advise the Executive Committee in writing within sixty days as from the date of notice of the amount which that owner claims as such compensation and how much of the last-mentioned amount represents each of the respective amounts contemplated in section 9(1)(a)(i) and (ii) or (b) with full particulars regarding the composition of such amounts:

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Provided that if that owner requests the Executive Committee in writing within thirty days as from the date of notice to extend the said period, the Executive Committee shall extend such period by a further sixty days;

- (d) if an amount is therein offered as compensation, draw the attention of the owner of the property to the fact that if any person has, in respect of the said property, a right contemplated in section 7(1)(d)(i), (iii) or (iv) of which the Executive Committee had no knowledge on the date of notice, the Executive Committee may withdraw the said offer.

(3) Subject to the provisions of subsection (5), the Executive Committee shall cause the notice of expropriation to be served by causing the original notice or a true and correct copy thereof to be tendered or presented or sent by registered post to the owner in question.

(4) If the property to be expropriated or used temporarily is land, the Executive Committee shall, subject to the provisions of subsection (5), cause a copy of the notice contemplated in subsection (2), or a notice to the effect that the land is being expropriated or that the right to use the land temporarily is being taken, and in which is stated the particulars regarding such expropriation or the taking of such right (as the case may be), to be served in accordance with the provisions of subsection (3) -

- (a) upon every person who has an interest in that land according to -
 - (i) the title deed of the land;
 - (ii) the registers of the Registrar of Deeds; or
 - (iii) the registers of any other government office in which rights granted in terms of any law dating to prospecting or mining activities, are recorded; and
 - (b) where the land is situated within the area of a local authority, upon the local authority in question; and
 - (c) if to the knowledge of the Executive Committee, the land is the subject of an agreement contemplated in section 7(1)(d)(ii), upon the purchaser concerned.
- (5) Whenever the Executive Committee -
- (a) is unable readily to ascertain the dwelling place or head office of -
 - (i) the owner or of every owner of the property in question; and
 - (ii) any or every person or institution who has, in terms of the provisions of subsection (4), an interest in the land in question; or
 - (b)
 - (i) by reason of the number of persons who are in terms of the provisions of paragraph (a) owners or interested parties; or
 - (ii) for any other reason is convinced that the service of a notice in accordance with the provisions of subsection (3) is not expedient; or
 - (c) in the case where the property is subject to a fideicommissum does not know who all the fideicommissary heirs are or will be,

the Executive Committee shall, in addition to or instead of causing a notice to be served in accordance with the provisions of subsection (3), cause to be published once in the *Official Gazette* and once a week for two consecutive weeks in an English and in an Afrikaans newspaper circulating in the area in which the property in question is or is situated, an appropriate notice which complies with the requirements of subsection (2): Provided that in the case where there is in circulation in the said area only a newspaper in which the news service is provided in both the English and the Afrikaans languages, the Executive Committee shall, in applying this subsection, cause the said notice to be published in the last-mentioned newspaper in both those languages.

Passing of ownership in respect of expropriated property and exercise of right to use property temporarily

6. (1) The ownership of property which has been expropriated in terms of the provisions of this Ordinance shall, subject to the provisions of subsection (3), on the date of expropriation, pass to the Administration released from all mortgage bonds (if any) with which such property is burdened immediately prior to such date and, if the property thus expropriated is land, the said land shall remain subject to all such rights (except mortgage bonds) as are immediately prior to the date of expropriation registered in favour of third parties in respect of the land in question unless or until such time as those rights have been expropriated from the owner thereof in accordance with the provisions of this Ordinance.

(2) If the Executive Committee has in terms of the provisions of section 2 taken the right to use any property for some or other purpose, the Administration may, as from the date of expropriation, exercise that right.

(3) Notwithstanding the fact that in terms of subsection (1) the ownership in expropriated property passes to the Administration already on the date of expropriation and subject to the provisions of subsection (5), the Administration shall not, in the case where immovable property has been expropriated, take possession of the property in question until -

- (a) a period of not less than sixty days, calculated as from the date of expropriation, has expired; or
- (b) in the case where the period contemplated in paragraph (a) has been extended by agreement between the Executive Committee and the owner concerned, that extended period has expired:

Provided that if the property in question is, in the opinion of the Executive Committee, urgently required for the purposes for which it was expropriated, the Executive Committee may cause that property to be taken into possession at any time prior to the expiration of the period contemplated in paragraph (a) or (b), as the case may be: Provided further that the aforesaid accelerated taking into possession shall only be effected on the date which has been specifically designated therefor in the notice of expropriation or other appropriate notice which must be served or published in accordance with the provisions of section 5(3) or (5).

- (4) Any owner of expropriated immovable property -
 - (a) shall with due regard to the provisions of paragraph (b) take care of and maintain the immovable property in question during the period which runs from the date of expropriation to the date upon which the Administration takes that property into possession, and shall be compensated by the Executive Committee for any costs which were, in the opinion of the Executive Committee, necessarily incurred during the said period in connection with such care or maintenance;

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- (b) who wilfully, or negligently fails to take care of and to maintain the immovable property in question or to take care of or to maintain it in accordance with the provisions of this subsection, with the result that that property depreciates in value, is, if the Executive Committee so decides, indebted to the Administration for the amount of such depreciation which amount may, at any time after such decision, be recovered by the Executive Committee from such owner.

(5) If the owner of expropriated immovable property desires to place the Administration in possession of that property before the appropriate period contemplated in subsection (3) has expired, the said owner shall give the Executive Committee not less than twenty-one day's written notice of the date of the intended accelerated placing into possession, whereupon the Executive Committee shall be deemed to have caused the property in question to be taken possession of on that date.

[The word "day's" should be "days" to be grammatically correct.]

(6) The owner of expropriated property shall, during the period which runs from the date of expropriation to the date upon which the Administration may or shall take possession of that property, be entitled to the use of and to the fruits and income from that property, and shall during such period be liable for the payment of taxes and for any other costs which were incurred in respect of the expropriated property as if that property had never been expropriated.

Duties of owner whose property has been expropriated or which is to be used by the Administration

7. (1) An owner whose property has been expropriated in terms of the provisions of this Ordinance, shall, within sixty days from the date of notice in question, deliver or cause to be delivered to the Executive Committee a written statement in which is indicated -

- (a) if there was in the notice of expropriation any compensation offered for the property in question whether or not the said owner accepts that compensation and, if he does not accept it, the amount claimed by him as compensation and how much of that amount represents each of the respective amounts contemplated in section 9(1)(a)(i) and (ii) or (b) and full particulars regarding the composition of those amounts;
- (b) if no compensation has been offered for the property in question in the manner contemplated in paragraph (a) of this subsection, the amount which the said owner claims as compensation and how much of that amount represents each of the respective amounts contemplated in section 9(1)(a)(i) and (ii) or (b) and full particulars regarding the composition of those amounts;
- (c) if the expropriated property is land and any amount is claimed in terms of the provisions of paragraph (a) or (b) of this subsection, full particulars of all improvements effected on the said land which, in the opinion of the said owner, affect the value of the land in question;
- (d) if the expropriated property is land -
- (i) which prior to the date of notice was leased for business or agricultural purposes in terms of an unregistered contract of lease, the name and address of the lessee concerned, accompanied by the relevant contract of lease or a certified copy thereof, where that contract is in writing, or full particulars regarding the contract, where the contract of lease is not in writing;

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- (ii) which, prior to the date of notice, was sold by the said owner, the name and address of the buyer concerned together with the relevant contract of purchase and sale or a certified copy thereof;
 - (iii) upon which a building has been erected which is subject to a builder's lien by virtue of a written building contract, the name and address of the builder concerned together with the relevant building contract or a certified copy thereof;
 - (iv) which was on the date of notice farmed by a sharecropper, the name and address of the sharecropper concerned accompanied by the relevant sharecropper contract or a certified copy thereof, if that contract is in writing, or full particulars regarding the contract where the sharecropper contract is not in writing;
- (e) the address to which the said owner desires that further documents in connection with the expropriation be posted to him:

Provided that the Executive Committee may at its discretion extend the said period of sixty days, and that, if the said owner requests the Executive Committee in writing within thirty days as from the date of notice to extend the said period of sixty days, the Executive Committee shall extend that period by a further sixty days.

(2) The Executive Committee may, after the receipt of the written statement contemplated in subsection (1) request the owner of the expropriated property in question to deliver or cause to be delivered to the Executive Committee within the period determined by such Committee (which period shall not be less than one month), in writing the further particulars which are required in that request in respect of some or other matter contemplated in the said subsection and which the Executive Committee considers necessary for the determination of the amount of the compensation.

(3) If the property being expropriated is immovable property, the Executive Committee may, in the manner contemplated in section 5(3) or (5) -

- (a) request the owner of the property in question to deliver or caused to be delivered to the Executive Committee -
 - (i) within sixty days the title deed of that property; or
 - (ii) if the title deed of that property is not in the possession or under the control of that owner, written particulars of the name and address of the person who has the possession of or the control over the said title deed;
- (b) request any person in respect of whom particulars have been furnished in terms of the provisions of paragraph (a)(ii), to deliver or cause to be delivered to the Executive Committee within sixty days the title deed of the property in question.

(4) The provisions of subsection (1)(a), (b) and (c) shall *mutatis mutandis* apply in respect of the taking, in terms of the provisions of section 2, of a right to use any property for public purposes temporarily.

(5) Any person who wilfully furnishes false or misleading particulars in any written instrument which he, by virtue of the provisions of subsection (1), (2) or (3)(a) delivers or causes to be delivered to the Executive Committee, shall be guilty of an offence and on conviction liable to be punished as if he had been convicted of fraud.

(6) Any person who refuses or fails to comply with a request by the Executive Committee in terms of the provisions of subsection (3) shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred rand or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

Consequences of failure by owner to inform Executive Committee concerning compensation offered or desired, further offer by Executive Committee, and failure to institute action

8. (1) If compensation has in an expropriation notice been offered for the property in question and the owner of that property fails to indicate in terms of the provisions of section 7(1)(a) whether or not he accepts that compensation or fails, after he has indicated that he does not accept such compensation, to furnish the relevant information in terms of the provisions of section 7(1)(a) and (2) and, if the property in question is land, also 7(1)(c) and (d), the Executive Committee may apply to an appropriate court contemplated in section 11(1) for the determination by such court of the amount of the compensation, in which event no interest up to the date of such determination, and no costs, shall be payable by the Administration unless the said owner satisfies that court that notwithstanding such failure, there exist special reasons which justify the payment by the Administration of such interest or costs or a portion of such interest or costs: Provided that, if the property in question is land, the Executive Committee shall cause a copy of such application or particulars thereof to be served -

- (a) upon the said owner; and
- (b) upon every holder of a mortgage bond over that land; and
- (c) where that land, to the knowledge of the Executive Committee, is the subject of an agreement contemplated in section 7(1)(d)(ii), upon the buyer concerned,

in the manner, *mutatis mutandis*, contemplated in section 5(3) or (5).

(2) If no compensation was in the expropriation notice offered for the property in question and the owner of the property in question fails to furnish any relevant information in terms of the provisions of section 7(1)(b) and (2) and, if the property in question is land, also 7(1)(c) and (d), the Executive Committee shall offer the owner concerned an amount as compensation for that property, in the manner *mutatis mutandis*, contemplated in section 5(3) or (5), and in the case where the property in question is land the provisions of section 5(4) shall, *mutatis mutandis*, apply in connection with such an offer.

(3) If the owner of the property in question does not within thirty days after an offer in terms of the provisions of subsection (2) or (4) notify the Executive Committee that he does not accept that offer, the provisions of subsection (1) shall *mutatis mutandis* apply.

(4) If an owner has in terms of the provisions of section 7(1)(a) or (b) indicated what amount is claimed by him as compensation and has complied with the relevant provisions of section 7(1)(a), (b) and (2) and, if the property in question is land, also 7(1)(c) and (d), and the Executive Committee is not prepared to pay that amount as compensation, the Executive Committee shall offer him an amount as compensation and indicate how much of that amount represents each of the respective amounts contemplated in section 9(1)(a)(i) and (ii) or (b) and furnish full particulars regarding the composition of such amounts.

(5) If an amount has been offered as compensation in the Executive Committee in terms of the provisions of this Ordinance, the owner of the property in question shall be deemed to have accepted that offer if -

- (a) an application for the determination of an amount as compensation is not made by that owner to an appropriate court contemplated in section 11(1) within eight months (or such longer period as the Executive Committee may determine) from the date of the offer of compensation in question; and
- (b) the Executive Committee has, not later than thirty days prior to the expiration of the period contemplated in paragraph (a), by way of written notice which is served in accordance with the provisions of section 5(3), directed the attention of the said owner to the preceding provisions of this subsection, unless that owner and the Executive Committee have prior to the expiration of the period contemplated in paragraph (a), agreed to refer the matter in dispute to arbitration.

Basis upon which compensation is calculated

9. (1) The amount which is to be paid as compensation to an owner in terms of the provisions of this Ordinance in respect of property which has been expropriated from him in terms of the provisions of this Ordinance, or in respect of the taking, in terms of the provisions of this Ordinance, of a right to use his property temporarily, shall not, subject to the provisions of subsection (2), exceed -

- (a) in the case where the property in question consists of property other than a right, the aggregate of -
 - (i) the amount which would have been paid for the property in question if that property had been sold on the date of notice in the open market by a willing seller to a willing buyer; and
 - (ii) an amount to make good the actual financial loss which is caused by the expropriation; and
- (b) in the case of a right, an amount to make good the actual financial loss or the inconvenience which is caused by the expropriation or taking of the right.

(2) Notwithstanding any provisions to the contrary contained in this Ordinance, an amount, equal to ten per cent of the amount payable in accordance with the provisions of subsection (1)(a)(i) shall, in the case of land, be added to the last-mentioned amount: Provided that the amount which is thus added shall not exceed ten thousand rand.

(3) Subject to the provisions of subsection (4) interest at a rate determined from time to time by the Executive Committee shall be paid in respect of any outstanding portion of the amount of the compensation payable in accordance with the provisions of subsection (1)(a)(i) in respect of expropriated property with effect from the date upon which the Administration, in terms of the provisions of section 6(3) or (5), takes possession of the property in question: Provided that in a case contemplated in section 16(4), in respect of the period calculated as from the expiration of thirty days from the date upon which -

- (a) the property in question was so taken possession of, if compensation for the said property was offered or agreed upon before that date; or
- (b) compensation for the property in question was offered or agreed upon, if the date of such offer or agreement is later than the date upon which the said property was so taken possession of

to the date upon which, within the meaning of the said section 16(4), the dispute was settled or the doubt was resolved or the owner and the buyer or the mortgagee notified the Executive

Committee in terms of the provisions of section 14 as to the payment of the compensation money, the amount which is so payable shall for the purposes of the payment of interest not be deemed to be an outstanding amount.

(4) If the owner of property which has been expropriated occupies or utilises that property or any portion thereof, no interest shall in respect of the period during which he so occupies or utilises the said property, be paid in terms of the provisions of subsection (3) on so much of the outstanding amount as, in the opinion of the Executive Committee, relates to the property which is so occupied or utilised.

(5) In determining the amount of compensation which is to be paid in terms of the provisions of this Ordinance, the following rules shall apply, namely -

- (a) the fact that the property or the right to use property temporarily has been taken without the consent of the owner concerned, shall not be taken into account;
- (b) the special suitability or usefulness of the property in question for the purpose for which, it is required by the Administration, shall not be taken into consideration if it is unlikely that the said property would have been purchased for that purpose on the open market or that the right to use the property for that purpose would have been so purchased;
- (c) if the value of the property has been enhanced in consequence of the use of such property in a manner which is unlawful or detrimental to the health of any person, such enhancement shall not be taken into account;
- (d) improvements which, after the date of notice, were made on or to the property in question (except where such improvements were necessary for the proper maintenance of improvements which existed up to and on that date or where those improvements were undertaken in pursuance of obligations entered into before the date of notice), shall not be taken into consideration;
- (e) an unregistered right in respect of any other property or any indirect damage or anything which is done with the object of obtaining compensation therefor shall not be taken into account;
- (f) any enhancement or depreciation before or after the date of notice in the value of the property in question which may be attributed to the purpose for which or in connection with which the property is being expropriated or is to be used, or which is the result of any work or act which the Administration carries out or performs or has already carried out or performed or intends to carry out or perform in connection with that purpose, shall not be taken into consideration;
- (g) account shall also be taken of -
 - (i) any benefit which the person who is to be compensated in terms of the provisions of this Ordinance, obtains or will obtain from any works which the Administration has built or constructed or has undertaken to build or construct on behalf of that person in order to compensate the said person in whole or in part for any financial loss which he suffers or will suffer in consequence of the expropriation or, as the case may be, the taking of the right in question;
 - (ii) any benefit which the person concerned obtains or will obtain in consequence of the expropriation of the property or the use thereof for the purpose for which it was expropriated or, as the case may be, the right in question was taken;

- (iii) any amount payable as compensation in terms of the provisions of section 10(1) in respect of an unregistered right;
- (h) in respect of the goodwill of any business or profession which is, on the date of expropriation, conducted or pursued by any person upon the land which has been expropriated, there shall be paid no more than -
 - (i) the highest net profit which, according to written proof, had been obtained from such business or profession during any twelve consecutive months of the period of thirty-six months or part thereof which immediately preceded the date of expropriation; or
 - (ii) where such business or profession has, on the date of expropriation, been conducted or pursued for a period of less than twelve months, an amount equal to the net profit for a period of twelve months, which amount shall be computed in relation to the net profit which was; according to written proof, in fact obtained from that business or profession during the period in which such business or profession was conducted or pursued on the land in question.

Payment of compensation in respect of certain unregistered rights in respect of expropriated land

10. (1) Any person who by virtue of a contract contemplated in section 7(1)(d)(i), (iii) or (iv), possesses a right in respect of land, which right is, in terms of the provisions of section 17 terminated on the date upon which that land is expropriated, shall, subject to the provisions of subsections (2) and (3) of this section, after the expropriation of that land, be entitled to the payment of compensation as if the said right were a registered right in respect of the land in question and such registered right were also expropriated on the date of expropriation in respect of such land.

(2) The Executive Committee shall, in the manner, *mutatis mutandis*, contemplated in section 5(3) or (5), offer any person contemplated in subsection (1) of this section an amount as compensation and, in applying this Ordinance such an amount so offered shall be deemed to have been offered in terms of the provisions of section 5(2)(c).

(3) If an owner of expropriated land fails to comply with the provisions of section 7(1)(d)(i), (iii) or (iv), the Administration shall not be obliged to pay compensation to the lessee, builder or sharecropper concerned in respect of the unregistered right in question, but such owner shall be liable to any such lessee, builder or sharecropper for any damage sustained by him in consequence of the expropriation of the land in question.

Determination of compensation by magistrate's court or South West Africa Division of Supreme Court

11. (1) Subject to the provisions of subsection (7) of this section and section 8(1) and (3), the compensation which is to be paid by the Administration for any property expropriated by the Executive Committee or for any right to use property temporarily which was taken by the Executive Committee, shall in the absence of agreement, on the application of any party concerned, be determined -

- (a) if the amount of the compensation claimed is less than ten thousand rand, by the magistrate's court of the district in which the property in question is or is situated;

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- (b) if the amount of the compensation claimed is ten thousand rand or more, by the South West Africa Division of the Supreme Court.

(2) If there is no claim in terms of which it can be determined which court has jurisdiction under the provisions of subsection (1)(a) or (b), the amount last offered as compensation by the Executive Committee shall, for the purposes of determining such jurisdiction, be deemed to be the amount claimed: Provided that this subsection shall not be construed so as to prevent any such court from awarding an amount other than the said amount last offered by the Executive Committee, as the amount of compensation.

(3) Any proceedings contemplated in subsection (1) shall be instituted and conducted by way of action.

(4) The law of procedure applicable in civil proceedings in a court in which any proceedings contemplated in subsection (1) are conducted, shall, subject to the provisions of this Ordinance, apply *mutatis mutandis* in respect of any such proceedings, and any order or judgement of the court in such last-mentioned proceedings shall be deemed to be an order or a judgement in civil proceedings.

(5) Notwithstanding any provisions to the contrary contained in any other law a Court may, after the close of pleadings in any proceedings contemplated in subsection (1), in its discretion regulate the further procedure in the conducting of the said proceedings and, without derogating from the generality of such power -

- (a) call upon the parties to file a written instrument setting out -
- (i) the relevant facts not in issue;
 - (ii) the relevant facts in issue;
 - (iii) the grounds upon which each of the parties concerned disputes a fact in issue;
 - (iv) any other matters which the Court considers to be of importance; and
- (b) issue directions in respect of inspections and all other matters which are connected with the preparation for and the hearing of the said proceedings.

(6) In any proceedings contemplated in subsection (1), the magistrate or judge, as the case may be, may invoke the assistance of not more than two persons who are skilled and experienced in the relevant matter and are prepared to sit as assessors in an advisory capacity.

(7) The provisions of this section shall not be construed so as to prohibit the Executive Committee and the owner in question from -

- (a) submitting by agreement any dispute concerning the amount of the compensation which is to be paid in terms of the provisions of this Ordinance in consequence of the expropriation of property or the taking of any right to use property temporarily, to arbitration in accordance with the provisions of the Arbitration Act, 1965 (Act 42 of 1965); or
- (b) having, by agreement; the amount of the compensation contemplated in paragraph (a) of this subsection determined by a court contemplated in subsection (1)(a), notwithstanding the fact that the amount claimed as such compensation exceeds the amount of ten thousand rand.

Orders as to costs

12. (1) Costs in any proceedings contemplated in section 11(1) shall be calculated in accordance with the table of costs applicable in the court in question.

(2) If the compensation which is awarded by the court in any proceedings contemplated in section 11(1) -

- (a) is equal to or exceeds the amount which was last claimed by the owner concerned one month prior to the date for which the proceedings were for the first time placed on the roll, costs shall be awarded against the Executive Committee;
- (b) is equal to or less than the amount which was last offered by the Executive Committee one month prior to the date contemplated in paragraph (a), costs shall be awarded against the owner in question;
- (c) is less than the amount last so claimed by the owner concerned but exceeds the amount last so offered by the Executive Committee, the liability for the total costs of such proceedings shall be divided between the Executive Committee and that owner in accordance with the relation which the difference between the amount of the compensation thus awarded and the amount of the compensation thus offered bears to the difference between the amount of the compensation thus awarded and the amount of the compensation thus claimed: Provided that the last-mentioned difference shall not be deemed to be a negative amount.

(3) In any case not mentioned in subsection (2), the court shall in its discretion decide as to costs.

(4) The liability for costs and taxation fees of a party who is in terms of the provisions of this Ordinance entitled to compensation shall be a first charge against the moneys which in terms of an order of court in any proceedings contemplated in section 11, and the interest which in terms of the provisions of section 9(3) is to be paid to him, any such moneys and the interest shall be applied, as far as may be required, towards the payment of those costs and fees.

Effect of application for determination of compensation, and of noting of appeal

13. Notwithstanding any application in terms of the provisions of section 11(1) for the determination of compensation, or an appeal against the decision of a court contemplated in that section, the other provisions of this Ordinance shall apply as if no such application had been made or no such appeal had been noted.

Discharge of debt secured by mortgage bond over immovable property, and payment of compensation in case of certain unregistered rights affected by expropriation

14. (1) If any immovable property which has been expropriated under the provisions of this Ordinance was immediately prior to the date of expropriation encumbered by a registered mortgage bond, or to the knowledge of the Executive Committee the subject of an agreement contemplated in section 7(1)(d)(ii), the Executive Committee shall, subject to the provisions of sections 15 and 16, not pay out any portion of the compensation money in question, except to the person upon whom and on the terms upon which there have been agreed upon between the owner of that property and the mortgagee or buyer concerned, as the case may be, of whom and of which the Executive Committee has been notified in writing by the said owner and the said mortgagee or buyer.

(2) If an owner of immovable property which has been expropriated fails to comply with the provisions of section 7(1)(d)(ii), and the buyer concerned in consequence of such failure receives no portion of the compensation money by virtue of the provisions of subsection (1) of this section, the said owner shall be liable to that buyer for any damage which such buyer may have sustained in consequence of the expropriation, and the Executive Committee shall not be under an obligation to pay compensation in respect of that damage.

Payment of certain taxes and other moneys out of compensation moneys

15. (1) If land which has been expropriated is situated within the area of a local authority, such local authority shall, upon receipt of publication of a relevant notice contemplated in section 5, forthwith inform the Executive Committee in writing of any outstanding tax or other moneys in respect of the payment of which the production of a receipt or certificate is in terms of some or other law a prerequisite for the passing of a transfer of that land by a registrar of deeds.

(2) The Executive Committee may utilise so much of the compensation moneys which are payable in terms of the provisions of this Ordinance in respect of the expropriation of land, as is necessary for the full payment, on behalf of the owner of the land in question, of any tax or other moneys contemplated in subsection (1).

Deposit of compensation money with Master and retention thereof by Executive Committee in certain cases

16. (1) If property which has been expropriated under the provisions of this Ordinance was burdened with a *fideicommissum* or if compensation is payable in terms of the provisions of this Ordinance to a person whose place of residence is not known, or if compensation is so payable and there is no person to whom that compensation can be paid, the Executive Committee may deposit the amount of such compensation with the Master, after which deposit the Executive Committee shall no longer be liable in respect of that amount.

(2) Any moneys received by the Master in terms of the provisions of subsection (1) shall -

- (a) if the property in question was burdened with *fideicommissum*, *mutatis mutandis* be subject to all the terms and conditions which are contained in the will or other instrument by which that *fideicommissum* was constituted; and
- (b) subject to the provisions of paragraph (a), be deposited into the Guardian's Fund contemplated by section 86 of the Administration of Estates Act, 1965 (Act 66 of 1965), for the benefit of the persons who are or may become entitled thereto, and bear interest at a rate determined from time to time by the Minister of Finance.

(3) The provisions of subsections (1) and (2) shall not affect the jurisdiction of any court to make an order in respect of any moneys in question.

(4) Whenever, in respect of any compensation payable in terms of the provisions of this Ordinance -

- (a) a dispute or doubt exists as to the person who is to receive any such compensation; or
- (b) an interdict is issued in respect of the payment of any such compensation; or

- (c) in the case of immovable property, the owner and any mortgagee or buyer have not, in terms of the provisions of section 14, notified the Executive Committee in regard to the payment of such compensation,

the Executive Committee shall pay the amount of compensation in question to the Master.

Termination of unregistered rights in respect of expropriated land

17. If a notice of expropriation relates to the expropriation of land, all rights in respect of that land which are not registered or recorded against the title deed of the said land or in an office contemplated in section 5(4), shall terminate on the date of expropriation and the Administration shall, subject to the provisions of sections 10 and 14, not be obliged to pay any compensation for such rights.

Withdrawal of expropriation

18. (1) Notwithstanding any provisions to the contrary contained in any law, the Executive Committee may, if it is of the opinion that it is in the public interest or otherwise expedient that an expropriation of property be withdrawn, withdraw such expropriation as from the date mentioned in the notice contemplated in subsection (2): Provided that an expropriation of property shall not be withdrawn after the expiration of a period of three months as from the date of expropriation or if, where the property which has been expropriated is immovable property, transfer of the property in question in consequence of the expropriation has already been registered, whichever is the shorter period.

(2) Whenever the Executive Committee has decided, in terms of the provisions of subsection (1), to withdraw any expropriation of property, the Executive Committee shall, subject to the provisions of subsection (5), serve or cause to be served in accordance with the provisions of subsection (4) upon the owner from whom the property in question has been expropriated and upon every person or institution upon whom or upon which a notice of expropriation is to be served in terms of the provisions of section 5(4), a notice which contains the particulars mentioned in subsection (3) (hereinafter referred to as the notice of withdrawal).

(3) The notice of withdrawal shall state -

- (a) that the expropriation of the property set out in that notice, is being withdrawn;
- (b) the date upon which the withdrawal contemplated in paragraph (a) comes into effect, subject to the provisions of subsection (1);
- (c) such other particulars or instructions as are necessary in the discretion of the Executive Committee.

(4) The Executive Committee shall, subject to the provisions of subsection (5), cause the notice of withdrawal to be served by causing the original notice or a true and correct copy thereof to be tendered or presented or sent by registered post to the owner and other persons or institutions referred to in subsection (2) of this section.

(5) Whenever the Executive Committee -

- (a) is unable readily to ascertain the dwelling place of -
 - (i) the owner from whom the property in question has been expropriated or of every such owner; and

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- (ii) any or every person or institution who or which has, in terms of the provisions of section 5(4) an interest in the land in question; or
- (b) (i) by reason of the number of persons or institutions who or which are the kinds of owners or interested parties contemplated by paragraph (a); or
- (ii) for any other reason

is convinced that the service of a notice in accordance with the provisions of subsection (4) of this section is not expedient; or

- (c) in the case where the property is subject to a *fideicommissum*, does not know who all the fideicommissary heirs are or will be,

such Committee shall, in addition to or instead of causing a notice to be served in accordance with the provisions of subsection (4) of this section, cause to be published once in the *Official Gazette* and once a week for two consecutive weeks in an English and in an Afrikaans newspaper circulating in the area in which the property in question is or is situated, an appropriate notice which complies with the requirements of subsections (2) and (3) of this section: Provided that in the case where there is in circulation in the said area only a newspaper in which the news service is provided in both the English and the Afrikaans languages, the Executive Committee shall, in applying this subsection, cause the said notice to be published in the last-mentioned newspaper in both those languages.

(6) Any person who in a direct or indirect manner suffers any damage in consequence of the withdrawal of an expropriation, shall be entitled to compensation by the Administration for that damage.

(7) If the expropriation of property is withdrawn in terms of the provisions of this section after the Administration has already paid compensation in connection with that expropriation, the amount of the said compensation shall be a debt payable to the Administration.

(8) If an expropriation of property is withdrawn in terms of the provisions of this section -

- (a) the right of ownership in the property in question shall again pass to the owner from whom that property was expropriated;
- (b) all mortgage bonds, servitudes and any other rights which have been discharged or terminated in connection with the expropriation, shall revive

as from the date contemplated in subsection (1) and the registrar of deeds concerned shall, on receipt of a copy of the notice contemplated in subsection (4) or on publication in the *Official Gazette* of the notice contemplated in subsection (5), cancel every endorsement made in connection with that expropriation in the registers in question and on the title deed of the land in question.

Assignment of powers and duties by Executive Committee

19. The Executive Committee may either generally or in relation to particular property or in any particular case assign to an officer in the service of the Administration any power or duty conferred or imposed on him by or in terms of the provisions of this Ordinance, other than a power contemplated in sections 18 and 20.

Regulations

20. The Executive Committee may make such regulations as it deems necessary or expedient for achieving the objects and purposes of this Ordinance.

Application of Ordinance

21. (1) The provisions of this Ordinance shall not derogate from any power conferred by any other law to expropriate or to take any property or to take the right to use property temporarily: Provided that, subject to the provisions of the Roads Ordinance, 1972 (Ordinance 17 of 1972), as amended, if such a power is exercised after the commencement of this Ordinance, the expropriation or the taking of the property or the taking of the right to use the property temporarily, and the determination of the amount of the compensation therefor, shall be effected, *mutatis mutandis*, in accordance with the provisions of this Ordinance.

(2) The fact that the provisions of any other law make provision for the expropriation of any property, or any right or interest in or over any property shall, subject to the provisions of subsection (3), not be a bar to such property, right or interest being expropriated in accordance with the provisions of this Ordinance.

(3)

[subsection (3) deleted by Act 21 of 1987]

Repeal of laws

22. Subject to the provisions of section 23(1), the Expropriation Ordinance, 1967 (Ordinance 32 of 1967), and the Expropriation Amendment Ordinance, 1970 (Ordinance 19 of 1970), are hereby repealed.

Provisions applicable in the case of matters pending at commencement of this Ordinance

23. (1) If, prior to the commencement of this Ordinance -

- (a) any expropriation has been commenced with by the Executive Committee; or
- (b) proceedings have been instituted by or against the Executive Committee for the determination of compensation

in terms of the provisions of the laws repealed by section 22, the said expropriation and proceedings shall be proceeded with as if this Ordinance had never been passed: Provided that the parties concerned in such an expropriation or such proceedings may agree to proceed with such expropriation or proceedings in accordance with the provisions of this Ordinance, in which case the relevant provisions of this Ordinance shall apply in connection with the continuation of such expropriation or proceedings as if it were a continuation of an expropriation or of proceedings for the determination of compensation in terms of the provisions of this Ordinance.

(2) In applying subsection (1) "Executive Committee" shall be construed so as to include a juristic person who is by law authorised to acquire property by way of expropriation.

Short title

24. This Ordinance shall be called the Expropriation Ordinance, 1978.