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GAZETTED LAND (CONSEQUENTIAL PROVISIONS) BILL, 2006

MEMORANDUM

This Bill is necessitated by the enactment of section 16B of the Constitution by the Constitution of Zimbabwe Amendment (No. 17) Act, 2005. Section 16B saved in force those provisions of the Land Acquisition Act [*Chapter 20:10*] that were concerned with compensation for improvements to what was called in that Act "agricultural land required for resettlement purposes". However, the status of certain other provisions relating to such land was left undetermined, with the result that it was felt desirable to re-enact those provisions or make new provisions in this Bill.

The following is a clause-by-clause analysis of this Bill.

Clause 1

This clause sets out the Bill's short title.

Clause 2

This clause contains definitions of terms used in the Bill. Of particular note is the definition of "Gazetted land" (that is, agricultural land whose compulsory acquisition is specifically provided for in section 16B of the Constitution), which covers a broader spectrum of agricultural land that simply "agricultural land required for resettlement purposes" (see section 16B(2)(a)(iii) of the Constitution).

Clause 3

This clause makes it any offence to occupy or to continue to occupy land without lawful authority after it has been gazetted in accordance with section 16B(2)(a) of the Constitution.

Clause 4

This clause provides that the payment of compensation for improvements to specially Gazetted land will be governed by the provisions of the Land Acquisition Act [*Chapter 20:10*], as suitably amended by clause 8 of this Bill.

Clause 5

This clause saves to in force all proceedings, whether administrative, civil or criminal, that were commenced under the Land Acquisition Act [*Chapter 20:10*] before its amendment by this Bill.

Clause 6

This clause validates all offer letters issued before the fixed date that are not withdrawn by the acquiring authority.

Clause 7

This clause repeals the Rural Land Occupiers (Protection from Eviction) Act [*Chapter 20:26*] (No. 13 of 2001), whose provisions have become redundant because they do not apply to State land.

Clause 8 and Schedule

This clause seeks to make various consequential amendments to the Land Acquisition Act [*Chapter 20:10*], most significantly, substitutes the term "agricultural land required for resettlement purposes" by the broader category of "Gazetted land".

PRESENTED BY THE MINISTER OF LANDS AND LAND REFORM

BILL

To make certain provisions that are consequential to the enactment of section 16B of the Constitution; to amend the Land Acquisition Act [*Chapter 20:10*]; to repeal the Rural Land Occupiers (Protection from Eviction) Act [*Chapter 20:26*] (No. 13 of 2001); and to provide for matters connected therewith or incidental thereto.

ENACTED by the President and the Parliament of Zimbabwe.

1 Short title and date of commencement

(1) This Act may be cited as the Gazetted Land (Consequential Provisions) Act, 2006.

(2) This Act shall come into operation on a date to be fixed by the President by notice in a statutory instrument.

2 Interpretation

(1) In this Act-

"acquiring authority" means the Minister responsible for land or any other Minister to whom the President may, from time to time, assign the administration of this Act;

"fixed date" means the date fixed in terms of section 1(2) as the date of commencement of this Act;

"Gazetted land" means agricultural land that-

(a) in accordance with section 16B(2)(a)(i) or (ii) of the Constitution-

(i) was identified on or before the 8th July, 2005, in the *Gazette* or *Gazette Extraordinary* under section 5(1) of the Land Acquisition Act [*Chapter 20:10*] and which is itemised in Schedule 7 to the Constitution, being agricultural land required for resettlement purposes; or

(ii) was identified after the 8th July, 2005, but before the 14th September, 2005, in the *Gazette* or *Gazette Extraordinary* under section 5(1) of the Land Acquisition Act [*Chapter 20:10*], being agricultural land required for resettlement purposes.

or

- (b) in accordance with section 16B(2)(a)(iii) of the Constitution, is identified in terms of that provision by the acquiring authority on or after the 14th September, 2005, in the *Gazette* or *Gazette Extraordinary* for whatever purpose;

"land resettlement lease" means a lease of any Gazetted land, or a portion of Gazetted land, issued by the State to any person, whether in terms of the Rural Land Act [*Chapter 20:18*] or the Agricultural Land Settlement Act [*Chapter 20:01*] or otherwise;

"lawful authority" means-

- (a) an offer letter; or
(b) a permit; or
(c) a land settlement lease;

and "lawfully authorised" shall be construed accordingly;

"offer letter" means a letter issued by the acquiring authority to any person that offers to allocate to that person any Gazetted land, or a portion of Gazetted land, described in that letter;

"permit", when used as a noun, means a permit issued by the State which entitles any person to occupy and use resettlement land;

"resettlement land" means land identified as resettlement land under the Rural District Councils Act [*Chapter 29:13*].

(2) Any word or expression to which a meaning has been assigned in the Land Acquisition Act [*Chapter 20:10*] shall have the same meaning when used in this Act.

3 Occupation of Gazetted land without lawful authority

(1) Subject to this section, no person may hold, use or occupy Gazetted land without lawful authority.

(2) Every former owner or occupier of Gazetted land-

- (a) referred to in paragraph (a) of the definition of "Gazetted land" in section 2(1), shall cease to occupy, hold or use that land forty-five days after the fixed date, unless the owner or occupier is lawfully authorised to occupy, hold or use that land;
- (b) referred to in paragraph (b) of the definition of "Gazetted land" in section 2(1), shall cease to occupy, hold or use that land forty-five days after the date when the land is identified in accordance with section 16B(2)(a)(iii) of the Constitution, unless the owner or occupier is lawfully authorised to occupy, hold or use that land:

Provided that-

- (i) the owner or occupier of that land referred to in paragraph (b) may remain in occupation of his or her living quarters on that land for a period of not more than ninety days after the date when the land is identified;
- (ii) the owner or occupier shall cease to occupy his or her living quarters after the period referred to in proviso (i).

(3) If a former owner or occupier of Gazetted land who is not lawfully authorised to occupy, hold or use that land does not cease to occupy, hold or use that land after the expiry of the appropriate period referred to in subsection (2)(a) or (b), or, in the case of a former owner or

occupier referred to in section 2(b), does not cease to occupy his or her living quarters in contravention of proviso (ii) to section 2(b), he or she shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(4) Any person, other than a person referred to in subsection (2), who contravenes subsection (1), shall be guilty of an offence and liable to a fine not exceeding level seven or imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(5) A court which has convicted a person of an offence in terms of subsection (3) or (4) shall issue an order to evict the person convicted from the land to which the offence relates.

4 Compensation for improvements effected on Gazetted land before its acquisition

For the avoidance of doubt it is declared that the compensation which is payable for improvements to Gazetted land effected before it is acquired shall be dealt with in accordance with the provisions of the Land Acquisition Act [*Chapter 20:10*] concerning "specially Gazetted land" as defined in that Act.

5 Savings in respect of criminal proceedings under Cap. 20:10

(1) For the avoidance of doubt it is declared that the enactment of section 16B of the Constitution by the Constitution of Zimbabwe Amendment (No. 17) Act shall not-

- (a) affect the previous operation of the Land Acquisition Act [*Chapter 20:10*] with respect to the assessment and payment of compensation under that Act; or
- (b) affect any offence committed against the Land Acquisition Act [*Chapter 20:10*] before the date of enactment section 16B of the Constitution, or any penalty, forfeiture or punishment incurred in respect thereof; or
- (c) affect any investigation, legal proceeding or remedy in respect of any offence, penalty, forfeiture or punishment referred to in paragraph (b), and any such investigation, legal proceeding or remedy shall be exercisable, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if no part of the Land Acquisition Act [*Chapter 20:10*] had been amended or superseded.

6 Validation of offer letters issued on or before the fixed date

Any offer letter issued on or before the fixed date that is not withdrawn by the acquiring authority is hereby validated.

7 Consequential amendments to Cap. 20:10

The provisions of the Land Acquisition Act [*Chapter 20:10*] specified in the first column of the Schedule are amended to the extent specified opposite thereto in the second column of the Schedule.

8 Repeal of Cap. 20:26 (No. 13 of 2001)

The Rural Land Occupiers (Protection from Eviction) Act [*Chapter 20:26*] (No. 13 of 2001) is repealed.

SCHEDULE (Section 7)

CONSEQUENTIAL AMENDMENTS TO CHAPTER 24:20

| <i>Provision</i> | <i>Extent of amendment</i> |
|---|---|
| Section 2 | By the repeal of the definition of "agricultural land required for resettlement purposes" and the substitution of- "specially Gazetted land" means agricultural land referred to in section 16B(1)(a)(i), (ii) or (iii) of the Constitution, and the term "specially Gazetted" shall be construed accordingly;" |
| Sections 2 (in the definitions of "fair compensation" and "improvements"), 5(1)(a)(iii)B, the proviso to section 5(1)(b), proviso (i) to section 8(1) and section 16(a) and (b) | By the deletion of "agricultural land required for resettlement purposes" and the substitution of "specially Gazetted land". |
| Section 2 (in the definition of "preliminary notice") | By the insertion of the "Provided that in the case of specially Gazetted land, the notice identifying that land shall be deemed to be a preliminary notice for the purposes of section 5(3), (5), (6), (7) and (8);". |
| Section 5(5)(a)(i) | By the deletion of "paragraph (a) or (b) of":. |
| Section 8(2) | By the repeal of subsection (2) and the substitution of- "(2) Immediately after making an order in terms of subsection (1) an acquiring authority may exercise any right specified in that order if the exercise does not require the eviction of the owner or occupier of the land concerned: "Provided that this subsection shall not permit an acquiring authority, other than the President or a Minister, to do any thing which interferes with the rights acquired in terms of the Mines And Minerals Act [Chapter 21:05] without the permission in writing of the Minister responsible for mines." |

| <i>Provision</i> | <i>Extent of amendment</i> |
|--|--|
| Section 9(1) | By the repeal of paragraph (b). |
| Section 9(2) and (3) | By the repeal of subsections (2) and (3). |
| Sections 20(1), (3), (4) and (5), 21(3), 22(1) and (2), 24(1), 29A(3), 29C(1), 29D(1), and the heading to Parts I and II of the Schedule | By the deletion of "acquisition of agricultural land required for resettlement purposes" and the substitution of "specially Gazetted land". |
| Part VA | By the deletion of the heading and the substitution of "COMPENSATION FOR SPECIALLY GAZETTED LAND". |
| Section 29B(1) | By the deletion of "a preliminary notice has been published in respect of any agricultural land required for resettlement purposes" and the substitution of "any agricultural land has been specially Gazetted be". |
| Section 50(2) | By the deletion of "agricultural land required for resettlement purposes, where the preliminary notice relating to the acquisition" and the substitution of "specially Gazetted land, where the notice identifying that land". |

END OF GAZETTED BILL

See next page for additional material

ADDITIONAL MATERIAL

NOTE

The following additional material is not part of the Gazetted Land (Consequential Provisions) Bill as published in the Government *Gazette* on 16th June 2006. It has been added by Veritas in an effort to assist readers to follow the Bill.

EXTRACT FROM CONSTITUTION OF ZIMBABWE

16B Agricultural land acquired for resettlement and other purposes

(1) In this section—

"acquiring authority" means the Minister responsible for lands or any other Minister whom the President may appoint as an acquiring authority for the purposes of this section;

"appointed day" means the date of commencement of the Constitution of Zimbabwe Amendment (No. 17) Act, 2005.

[Compiler's note: the "appointed date" is the 14th September, 2005, the date on which the Constitution of Zimbabwe Amendment (No. 17) Act, 2005 (No. 5 of 2005) was published in the *Gazette*.]

(2) Notwithstanding anything contained in this Chapter—

(a) all agricultural land—

(i) that was identified on or before the 8th July, 2005, in the *Gazette* or the *Gazette Extraordinary* under the proviso to section 5(1) of the Land Acquisition Act [*Chapter 20:10*], and which is itemised in Schedule 7, being agricultural land required for resettlement purposes; or

(ii) that is identified after the 8th July, 2005, but before the appointed day, in the *Gazette* or the *Gazette Extraordinary* under section 5(1) of the Land Acquisition Act [*Chapter 20:10*], being agricultural land required for resettlement purposes; or

(iii) that is identified in terms of this section by the acquiring authority after the appointed day in the *Gazette* or the *Gazette Extraordinary* for whatever purpose, including, but not limited to—

A. settlement for agricultural or other purposes; or

B. the purposes of land reorganization, forestry, environmental conservation or the utilization of wild life or other natural resources; or

C. the relocation of persons dispossessed in consequence of the utilization of land for a purpose referred to in subparagraph A or B;

is acquired by and vested in the State with full title therein with effect from the appointed day or, in the case of land referred to in subparagraph (iii), with effect from the date it is identified in the manner specified in that paragraph; and

(b) no compensation shall be payable for land referred to paragraph (a) except for any improvements effected on such land before it was acquired.

(3) The provisions of any law referred to in section 16(1) regulating the compulsory acquisition of land that is in force on the appointed day, and the provisions of section 18(9), shall not apply in relation to land referred to in subsection (2)(a) except for the purpose of determining any question related to the payment of compensation referred to in subsection (2)(b), that is to say, a person having any right or interest in the land—

(a) shall not apply to a court to challenge the acquisition of the land by the State, and no court shall entertain any such challenge;

(b) may, in accordance with the provisions of any law referred to in section 16(1) regulating the compulsory acquisition of land that is in force on the appointed day, challenge the amount of compensation payable for any improvements effected on the land before it was acquired.

(4) As soon as practicable after the appointed day, or after the date when the land is identified in the manner specified in subsection (2)(a)(iii), as the case may be, the person responsible under any law providing for the registration of title over land shall, without further notice, effect the necessary endorsements upon any title deed and entries in any register kept in terms of that law for the purpose of formally cancelling the title deed and registering in the State title over the land.

(5) Any inconsistency between anything contained in—

(a) a noticed itemised in Schedule 7; or

(b) a notice relating to land referred to in subsection (2)(a)(ii) or (iii); and the title deed to which it refers or is intended to refer, and any error whatsoever contained in such notice, shall not affect the operation of subsection (2)(a) or invalidate the vesting of title in the State in terms of that provision.

(6) An Act of Parliament may make it a criminal offence for any person, without lawful authority, to possess or occupy land referred to in this section or other State land.

(7) This section applies without prejudice to the obligation of the former colonial power to pay compensation for land referred to in this section that was acquired for resettlement purposes.

[Section inserted by s. 2 of Act 5 of 2005 – Amendment No. 17 - with effect from the 14th September, 2005.]

EXTRACTS FROM RURAL DISTRICT COUNCILS ACT

2 Interpretation

“resettlement land” means—

- (a) land acquired or owned by the State for resettlement purposes; or
- (b) land that has been declared in terms of section *three* to be resettlement land;

3 Minister may classify land into categories

After consultation with any council established for the area concerned, the Minister may, subject to any other law, by notice in the Gazette, declare that any land shall be—

- (a) large-scale commercial land; or
- (b) resettlement land; or
- (c) small-scale commercial land; or
- (d) urban land;

for the purposes of this Act.