

## BUS INDUSTRY PROPERTY ACQUISITION ACT

Act 16 of 1983 – 19 April 1983

### ARRANGEMENT OF SECTIONS

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## BUS INDUSTRY PROPERTY ACQUISITION ACT

### 1. Short title

This Act may be cited as the Bus Industry Property Acquisition Act.

### 2. Interpretation

In this Act—

“acquisition” includes the taking of possession;

“authorised officer” means any person designated as such under section 20;

“Board” means the Compensation Board established under section 12;

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

“bus” has the same meaning as in the Road Traffic Act;

“Chairperson” means the Chairperson of the Board;

“interested person” means a person who owns, possesses, holds a charge over, is entitled to or is otherwise interested in, property described in a notice published under section 5;

“Minister” means the Minister to whom responsibility for public transport is assigned;

“owner” means the person entitled to dispose of any property;

“party” means—

- (a) an authorised officer;
- (b) an interested person who has made a claim for compensation under this Act; or
- (c) a person on whose behalf Government is acting under section 3;

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

“property” —

- (a) includes any bus or apparatus, machinery, spare part, component or any other object which is used or required in the bus passenger transport industry; but
- (b) does not include any land or building;

“vested property” means property which is vested under section 7 (1);

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

### **3. Acquisition other than for Government**

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

(2) An application under subsection (1) shall—

- (a) specify—
  - (i) the property which is required;
  - (ii) the approximate value of the property for compensation purposes;
  - (iii) the reasons for which the property is required; and
- (b) state that it has not been possible to acquire the property by private agreement.

(3) On receipt of an application under subsection (1), the Minister may—

- (a) require the applicant to furnish him with further information to enable him to determine whether or not the property may be acquired compulsorily;
- (b) acquire the property compulsorily on behalf of the applicant in accordance with this Act.

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

#### 4. Examination of property

(1) Subject to section 6, where any property is likely to be acquired compulsorily and the Minister is satisfied that—

- (a) an examination of the property is necessary to determine its suitability for the purpose for which it would be acquired;
- (b) it is not possible to examine the property by private agreement;
- (c) the conditions of section 8 of the Constitution are fulfilled,

he shall serve a notice on the owner of the property.

(2) A notice under subsection (1) shall—

- (a) give a description of the property;
- (b) state the purpose for which the property is likely to be acquired; and
- (c) in the case of an acquisition on behalf of a person under section 3, state the name, address and occupation of the person for whom the property may be acquired.

(3) An authorised officer may, at any time after the service of the notice under subsection (1), enter at all reasonable hours any premises and inspect any property which is intended to be acquired compulsorily.

#### 5. Compulsory acquisition

(1) Subject to section 6, where the Minister has decided to acquire compulsorily any property either on behalf of Government or on behalf of another person under section 3 and he is satisfied that—

- (a) it is not possible or expedient to acquire the property by private agreement; and
- (b) the conditions of section 8 of the Constitution are fulfilled,

he shall serve a notice on the owner of the property and 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 property with precision;
- (b) state the purpose for which the property is being acquired;
- (c) in the case of an acquisition under section 3, state the name, address and occupation of the person for whom the property 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 property and of the amount and details of his claim for compensation.

## **6. Emergency**

Where a property is required by Government during a period of public emergency for reasons related to that emergency, only one notice under section 5 shall be required to be published.

## **7. Vesting of property**

(1) The property shall, on the day the notice is served under section 5, vest free from all charges and encumbrances in Government or in the person specified in the notice where the acquisition of the property is made pursuant to a request under section 3.

(2) Every person who is in possession of any vested property shall, within 14 days of the date of vesting of the property—

- (a) furnish to the authorised officer a complete inventory of the vested property and such other information or documents as the Minister may require;
- (b) deliver the vested property to the authorised officer in such manner, at such place and on such conditions as the Minister may specify.

(3) Where any vested property is not delivered under subsection (2) (b), the authorised officer may, with the assistance of the Police or such other person as may be designated by the Minister, take possession of the property.

(4) The authorised officer or any person delegated by or accompanying the authorised officer may, for the purpose of subsection (3), enter at all reasonable hours any premises.

(5) No person shall tamper with any vested property.

## **8. Challenge of legality of acquisition**

(1) Any interested person who wishes to challenge the legality of the compulsory acquisition of any property may appeal to the Supreme Court within 21 days and in such manner as may be provided by rules made by the Supreme Court for the purpose.

(2) No appeal under subsection (1) nor any other judicial proceedings in respect of any compulsory acquisition under this Act shall affect the operation of section 7.

(3) Where any interested person has successfully challenged the legality of any compulsory acquisition of property, the Supreme Court may, without

prejudice to any other power it may have, award to that person such damages as it thinks fit in addition to any compensation to which he may be entitled.

[S. 8 amended by Act 29 of 1992.]

## **9. Right to compensation**

Any interested person, other than a body corporate, whose property is compulsorily acquired shall be entitled to the payment of compensation under this Act.

## **10. Persons to be compensated**

The authorised officer shall take such steps as may be necessary to determine to whom compensation is payable under this Act and may, for the purpose, require any interested person in relation to whose property a notice has been published under section 5 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 of every other interested person's interest in the property.

## **11. 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.

(3) Where no claim is made by an interested person under subsection (1), the authorised officer shall within 60 days of the date of vesting of the property serve a notice on that person specifying the amount of compensation he is willing to offer for that property.

(4) Where the amount of compensation offered under subsection (3) is rejected and the interested person makes a claim, the Minister shall refer the claim within 28 days of the rejection of the offer to the Board.

## **12. Compensation Board**

(1) There is established for the purposes of this Act a Compensation Board which shall determine the right of any interested person and assess, award and apportion compensation.

(2) The Board shall consist of—

- (a) a Chairperson 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 National Assembly or a local authority;
- (c) has a direct or indirect interest in the property 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.

[S. 12 amended by Act 48 of 1991.]

### **13. Report of Board**

(1) Where a claim has been referred to the Board under section 11, the authorised officer shall, within 28 days of the reference of the claim, forward to the Chairperson—

- (a) a report relating to the property which has been compulsorily acquired;
- (b) a copy of every notice which has been published in the *Gazette*;
- (c) a copy of every notice, statement or other communication issued or received by the authorised officer;
- (d) 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) (a), state his opinion, and the reasons for his opinion, on—

- (a) the nature of the property;
- (b) the value of the property;
- (c) the amount of any compensation to be paid;
- (d) the description and value of any property offered by way of payment or part payment of the compensation due;
- (e) the apportionment of the compensation among the interested persons.

### **14. Inquiry by Board**

(1) Where a claim has been referred to the Board under section 11, it shall hold an inquiry at such place and on such date and time as may be fixed by the Chairperson.

(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 enactments 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 Chairperson may, at any time before an award is made, inspect the property which has been compulsorily acquired 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 Act, the agreement of the parties shall be made the award of the Board.

#### **15. Award of Board**

(1) At the conclusion of an inquiry under section 14, the Board shall make an award on the claim for compensation and the Chairperson 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 Chairperson and the amount determined by the other members which is nearer the amount determined by the Chairperson 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 11 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 the vesting of the property until the date of the award of the Board.

(7) (a) The Chairperson 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 Chairperson 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 being filed in the Registry, be notified, in writing, to the parties by the Registrar and shall, subject to section 19, be conclusive and binding upon them and any person claiming through them.

#### **16. Nature of compensation**

(1) Subject to section 17, an interested person shall be entitled to compensation—

- (a) for loss sustained as a result of an act or omission under section 4;

- (b) for the value of his interest in property compulsorily acquired;
- (c) for any other loss sustained as a result of the compulsory acquisition.

(2) The value of any interest in the property 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 vesting of the property.

#### **17. 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 property 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 property acquired which has accrued or is likely to accrue from the use to which the property acquired has been or will be put by Government or by the person for whom it is acquired;
- (e) any improvement of the property acquired, commenced or continued after the vesting of the property, other than an improvement—
  - (i) for the continuing use of the property as an economic unit;
  - (ii) for the satisfying of a legal obligation;
  - (iii) for the maintenance of the property;
- (f) the fact that Government may exploit the property acquired in co-operation with private interests;
- (g) that special suitability or adaptability of the property 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 property may be acquired under this Act;
- (h) the value of any increase to the property 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;
- (i) any loss of profits.

#### **18. Payment of compensation into Court**

- (1) The authorised officer shall within 30 days—
  - (a) of the date of the award by the Board; or



- (b) where an appeal is 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 Registrar on his satisfying the 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 property acquired under this Act, or as to the right or interest of any person in that property,

the 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.

### **19. Appeal against award**

Any party who is aggrieved by an award made by the Board may appeal to the Supreme Court within 21 days of the date on which that award is filed and in such manner as may be provided by rules made by the Supreme Court for the purpose.

[S. 19 amended by Act 29 of 1992.]

### **20. Authorised officer**

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

### **21. Notice and service by post**

Any notice required by this Act to be served on any person may be—

- (a) given to him personally or to his authorised agent; or
- (b) sent by post to his last known address or that of his authorised agent.

### **22. 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 implementing this Act, shall be paid out of the Consolidated Fund.

### **23. Exemption**

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

**24. Immunity from legal process**

No civil or criminal liability shall attach to the Chairperson 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.

**25. Offences**

Any person who—

- (a) hinders, obstructs or molests an authorised officer, or any person delegated by or accompanying the authorised officer, in the performance of his functions under 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) otherwise contravenes this Act or any subsidiary enactment made under this Act,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 2,000 rupees and to imprisonment for a term not exceeding 12 months.

**26. Regulations**

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

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