

PERSONALISED LEGAL ASSISTANCE

Professional legal and property consulting

SONNENBERG & ASSOCIATES PROPERTY AND LEGAL ADVICE NEWSLETTER #81

1. Legal Quotes

"Charge what you're worth. And don't apologise." [unknown]

"A lawyer's time and advice are his stock in trade." [Abraham Lincoln]

"Lawyers are always more ready to get a man into troubles than out of them." [William Goldsmith]

2. Property short

Albert Einstein dies and goes to heaven. He asks the first person he sees what the person's IQ is. The person replies, "280." Einstein says, "Great! We can talk about astro physics!" He asks the second person he runs into the same question, "What's your IQ?" The person replies, "150." "Fantastic!" says Einstein, "we can talk about events of the day!" He again asks the third person he passes about their IQ. This time the person says "45." Einstein says, "Wonderful! Where do you think the property market is headed?"

3. Inspiring quotes

"Don't look back; you're not going that way." [unknown]

"You are strong when you know your weaknesses. You are humble when you're aware of your flaws. You are wise when you learn from your mistakes." [Nicky Gumbel]

"If your compassion does not include yourself, it is incomplete." [Buddha]

4. The New Expropriation Bill

Government and industry players have been in discussions for more than two years to appropriately align the bill to the Constitution's provisions for property rights.

The process is now nearing an end with the Bill being passed by Parliament's Public Works Committee last week. The Bill still needs to be debated in the National Assembly and thereafter move to the National Council of Provinces dealing with Public Works matters before it can be sent to the president for assent.

The biggest change to the Expropriation Act of 1975 is the introduction of a clause stating that a property might be expropriated not only for public purposes, but also in the public interest (as opposed to the Expropriation Act of 1975, which provided solely for expropriation for public purposes).

For example, expropriating land for a new train station development would largely trump individual land rights. The old Act also didn't take into account that **the State's actions must be administratively just**, meaning that **the State should consider the impact of its actions on the broad citizenry.**

Although the Bill is a slight improvement over the old Act, there is still **criticism** of the Bill from various role players, especially the **definition of "expropriation"**. **The Bill refers to the State as owner of the land upon expropriation (instead of being a custodian for disadvantaged individuals).** **This definition (possibly) paves the way for the government not to offer compensation to individuals deprived of their land.** The Bill does however specify that compensation offered to property owners deprived of their land must be "just and equitable."

As the Bill states that no compensation is payable until an amount has been agreed with the State or decided upon by a court, this may allow the government to delay paying compensation (which might not be market related) until possession has been passed to the State. Because litigation is costly and takes a long time, many affected

landowners may be under pressure to agree to the amount proposed by the State, whether it is "just and equitable" or not.

The Bill also makes provisions for the State to conduct an investigation into the merits of expropriation before issuing a notice of intention to expropriate and **allows the State to take ownership and possession of a property by notice to the owner.**

Many critics feel that it would be unconstitutional for the State to "simply take ownership and possession of a property via notice." The argument here is that the government should first be obliged to get a court order confirming that the expropriation is in line with the Constitution and that it is for public purposes or in the public interest.

Watch this space and expect changes to be made to the Bill before it becomes law.

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