



BERMUDA

ACQUISITION OF LAND ACT 1970

1970 : 519

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[preamble and words of enactment omitted]

PART I

Interpretation

- 1 In this Act, unless the context otherwise requires—
- “arbitration” means arbitration by arbitrators appointed under section 10;
 - “land” includes land covered by water and any building erected on land and any estate, interest, right or easement in or over any land or building;
 - “the Minister” means the Minister for the time being responsible for public lands;
 - “notice to treat” has the meaning given by section 5;
 - “person interested” in relation to any land, means any person having any estate, interest, right or easement in or over that land;
 - “prescribed” means prescribed by regulations made under section 25;
 - “subject to compulsory purchase”, in relation to land, means that the compulsory purchase thereof is authorized by a compulsory purchase order made under section 4.

[“Minister” amended by BR 5/2011 para.5 effective 25 February 2011]

Acquisition of land by Government; purposes; methods

- 2 (1) No land shall be acquired by the Government—
- (a) unless the acquisition of the land or the purpose for which it is to be acquired has been expressly authorized by the Legislature; or
 - (b) unless the land is, in the opinion of the Minister, required for the purpose of improving a public road:

Provided that nothing in this subsection shall be construed so as to affect the acquisition of land by the Government by means of any gift or devise.

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(2) Subject to subsection (1), the acquisition of land by the Government shall be by means of purchase by agreement or by means of compulsory purchase as hereinafter provided.

PART II

Purchase by agreement

3 (1) Subject to this Act, where any land is required by the Government it shall be lawful for the Minister to agree with all persons interested in the land, or by any Act or law enabled to sell and convey the land, for the purchase thereof at such price as the Minister may think proper.

(2) A conveyance of land on the purchase thereof by agreement may be in the form set out in the Schedule, or as near thereto as circumstances permit, or in such form as the Attorney-General advises.

PART III

Minister may make compulsory purchase order

4 (1) Where the Minister is of the opinion that purchase by agreement—

- (a) is impracticable; or
- (b) having regard to the urgency of the intended purchase, would cause undue delay,

he may make a compulsory purchase order in the prescribed form in respect of the land to be acquired.

(2) As soon as may be after the making of a compulsory purchase order under subsection (1), the Minister shall—

- (a) serve a copy of the compulsory purchase order on such persons as are, within the knowledge of the Minister, interested in the land to be acquired; and
- (b) publish a notice in the Gazette and in two separate issues of a daily newspaper—
 - (i) describing the land to be acquired;
 - (ii) stipulating the purpose for which the land is to be acquired;
 - (iii) stating that a compulsory purchase order has been made in respect of that land; and
 - (iv) naming a place where a copy of the order and, where the Minister considers it desirable, a copy of a plan of the land to be acquired may be inspected at all reasonable times.

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Notice to treat

5 (1) When the Government proposes to purchase any land subject to compulsory purchase, the Minister shall give notice (hereinafter referred to as a "notice to treat") to all the persons interested or claiming to be interested in the land, so far as is known to the Minister after making reasonable enquiry.

(2) Every notice to treat—

- (a) shall give particulars of the land to which the notice relates;
- (b) shall demand particulars of the recipient's estate and interest in the land and of the claim made by him in respect of the land; and
- (c) shall state that the Minister is willing to treat for the purchase of the land and as to the amount of compensation to be paid for the damage which may be caused by reason of the execution of any works.

Arbitration

6 (1) If a person served with a notice to treat does not—

- (a) within twenty-one days from the service of the notice, state the particulars demanded in the notice to treat pursuant section 5(2)(b); or
- (b) agree with the Minister upon the amount of compensation to be paid by the Government for the interest belonging to him, or which he has power to sell, or for any damage which may be sustained by him by reason of the execution of any works,

the question of compensation shall be referred by the Minister to arbitration.

(2) Without prejudice to the power of the Minister to refer any question of compensation to arbitration in pursuance of subsection (1)(b), where no agreement has been reached on the amount of compensation to be paid in respect of any land subject to compulsory purchase, the Minister shall, on the expiration of six months from the date on which the notice to treat was served, refer the question of disputed compensation to arbitration.

Purchase only of part of land

7 No person shall be required by virtue of a compulsory purchase order to sell a part only—

- (a) of any house, building or manufactory; or
- (b) of a park or garden belonging to a house,

if he is willing and able to sell the whole of the house, building, manufactory, park or garden, unless the arbitrators determine that—

- (i) in the case of a house, building or manufactory, the part proposed to be acquired can be taken without material detriment to the house, building or manufactory; or

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(ii) in the case of a park or garden, the part proposed to be acquired can be taken without seriously affecting the amenity or convenience of the house, and, if the arbitrators so determine, they shall award compensation in respect of any loss due to severance of the part proposed to be acquired in addition to its value and thereupon the person interested shall be required to sell to the Government that part of the house, building, manufactory, park or garden.

Minister may enter on land and take possession

8 (1) If the Minister—

- (a) has served notice to treat on the persons interested or claiming to be interested in any land subject to compulsory purchase; and
- (b) has served not less than fourteen days' notice on such persons of his intention to enter on and take possession of the land,

he may enter on and take possession of that land, or of such part of that land as is specified in the notice,

(2) Any compensation agreed or awarded for the land of which possession is taken under subsection (1) shall carry interest, at such rate as the Minister may from time to time prescribe, from the date of entry until the compensation is paid or is paid into court in accordance with this Act.

(3) The Minister may, after giving not less than seven days' notice to the persons interested in any land subject to compulsory purchase, enter on that land for the purpose of—

- (a) surveying and taking levels of the land;
- (b) probing and boring to ascertain the nature of the soil; and
- (c) setting out the line of works.

(4) Compensation shall be payable in respect of any damage occasioned to the person interested in the land by virtue of any entry on the land in pursuance of subsection (3) and any question of disputed compensation under this subsection shall be referred by the Minister to arbitration.

(5) Except as provided by subsections (1) and (3), the Minister shall not, except with the consent of the persons interested in the land, enter on any of the land subject to compulsory purchase until the land becomes vested in Her Majesty in pursuance of section 16.

(6) Nothing in this section shall be construed to prejudice any power of entry conferred by any other provision of law.

Abandonment of compulsory purchase

9 (1) Where the Minister is of the opinion that any land subject to compulsory purchase under this Part is no longer required by the Government, he may, at any stage in the proceedings for the acquisition of that land prior to the delivery of a written award by

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the arbitrators under section 15 and after giving not less than fourteen days' notice to the persons interested in the land, cause a notice to be published in the Gazette revoking the compulsory purchase order in respect of that land; and in that event, the persons interested in the land shall be entitled to compensation in respect of any damage suffered by reason of the making and subsequent revocation of the order.

(2) Where, prior to the revocation of a compulsory purchase order under subsection (1), the Minister has in pursuance of section 8 entered on the land in respect of which it is made, compensation shall be payable in respect of any damage which may have been caused by reason of the execution of any works thereon and the Minister shall, so far as is practicable, restore the land to its condition prior to the date of entry.

(3) Any question of disputed compensation under this section shall be referred by the Minister to arbitration.

Governor may appoint arbitrators

10 (1) Where, under this Act, any question is referred to arbitration, the Governor shall, upon application being made by the Minister, appoint three or five persons to be arbitrators, being persons who, in the opinion of the Governor, are impartial and disinterested persons and otherwise qualified to discharge the duties imposed upon arbitrators by or under this Act.

(2) One of the persons appointed under subsection (1) shall be appointed by the Governor as Chairman of the arbitrators and in any matter to be determined by the arbitrators the Chairman shall vote as one of the arbitrators.

(3) If the Chairman or any other arbitrator dies or resigns, or for any reason is unable or, in the opinion of the Governor, is unfit to discharge his duties, the Governor may appoint another person to be Chairman, or, as the case may be, an arbitrator, in his stead.

(4) In the exercise of his powers under this section the Governor shall act in his discretion.

(5) Where arbitrators are appointed in pursuance of this section, it shall be the duty of the Minister to furnish them in writing with full particulars of the land to be acquired and of the Minister's negotiations, if any, and with such particulars of the persons interested or claiming to be interested in the land as are within the knowledge of the Minister.

(6) It shall be the duty of the arbitrators to proceed expeditiously to determine, in accordance with this Act and subject to rules made under section 26, the total amount of compensation payable by the Government in respect of the compulsory acquisition of any land and any other question referred to them under this Act.

Arbitration proceedings

11 (1) The assembling of arbitrators for the purpose of determining the amount of compensation payable in respect of the acquisition of land as aforesaid and the proceedings thereat are hereinafter in this Act referred to as "arbitration proceedings".

(2) Arbitration proceedings shall be held in public:

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Provided that the amount of compensation awarded (if any) shall not be communicated to any person other than the Minister, the Accountant General or a person interested.

(3) The Chairman of the arbitrators shall preside over arbitration proceedings and may adjourn the proceedings from time to time as he thinks fit.

(4) The Minister, or any officer of the Department of Works and Engineering duly authorized in that behalf by the Minister and any person interested or bona fide claiming to be interested in the land to be acquired, or enabled to sell and convey the land, shall be entitled to give evidence at arbitration proceedings and to make representations to the arbitrators either directly or through a barrister and attorney or through any person whom the Chairman of the arbitrators allows to make representations on his behalf.

(5) Evidence taken in arbitration proceedings shall be on oath.

Arbitrators may summon witnesses

12 (1) Pending or during any arbitration proceedings the Chairman of the arbitrators may summon any person to give evidence at the proceedings.

(2) If any person summoned to give evidence at arbitration proceedings fails without reasonable excuse to attend the proceedings as directed in the summons, or refuses to give evidence when required by the Chairman of the arbitrators to do so, he commits an offence against this Act:

Punishment on summary conviction: a fine of \$150.

Provided that a person required to give evidence at arbitration proceedings shall be entitled to all the protection and privileges to which he would have been entitled if the proceedings had been proceedings before the Supreme Court.

Arbitrators may inspect land

13 In any arbitration proceedings the arbitrators, before determining the amount of compensation payable, may inspect the land to be acquired and for that purpose may at any reasonable hour enter that land and any building thereon.

Principles applicable to determination of value of land

14 (1) Without prejudice to any other provision of this Act whereby compensation is payable in respect of any matter, the total amount of compensation payable by the Government in respect of the compulsory acquisition of any land shall be determined by the arbitrators in accordance with this section,

(2) The following principles shall apply in relation to the determination of the value of the land—

- (i) no allowance shall be made on account of the acquisition being compulsory;

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- (ii) the value of the land shall, subject to this subsection, be taken to be the amount which the land if sold in the open market by a willing seller might be expected to realize;
- (iii) the special suitability or adaptability of the land for any purpose shall not be taken into account if that purpose is a purpose to which it could be applied only in pursuance of statutory powers, or for which there is no market apart from the special needs of a particular purchaser or the requirements of any authority possessing compulsory purchase powers;
- (iv) where the value of the land is increased by reason of the use thereof or of the premises thereat in any manner which could be restrained by any court, or is contrary to law, or is detrimental to the health of the occupants of the premises or to public health, the amount of that increase shall not be taken into account;
- (v) where the land is, and but for the compulsory acquisition would continue to be, devoted to a purpose of such a nature that there is no general demand or market for land for that purpose, the compensation may, if the arbitrators are satisfied that reinstatement in some other place is bona fide intended, be assessed on the basis of the reasonable cost of equivalent reinstatement;
- (vi) paragraph (ii) shall not affect the assessment of compensation for disturbance or any other matter not directly based on the value of the land,

and for the purposes of this subsection the value of the land shall be determined at the date of the award of compensation.

- (3) The arbitrators shall take into consideration—
 - (a) any damage likely to be sustained by the person interested by reason of the acquisition injuriously affecting his earnings;
 - (b) any damage likely to be sustained by the person interested by reason of the severing of the land to be acquired from other land of that person or by reason of that other land being otherwise injuriously affected;
 - (c) any increase in the value of other land belonging to the person interested which is likely to accrue from the use to which the land to be acquired will be put;
 - (d) any damage that will be sustained by the person interested in respect of standing crops on the land to be acquired; and
 - (e) any other financial loss that will be sustained by the person interested as a result of the acquisition and that is directly attributable thereto.
- (4) The arbitrators shall not take into consideration—
 - (a) the degree of urgency which has led to the acquisition;
 - (b) any increase in the value of the land to be acquired likely to accrue from the use to which it will be put when acquired; and

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- (c) any outlay on the land to be acquired or improvements effected thereon after the date of the serving of the notice to treat under section 5.

(5) For the purposes of this section a certificate signed by the Attorney-General certifying that any person is a person interested shall be sufficient evidence of the facts stated therein.

Award of arbitrators

15 (1) In any arbitration proceedings the arbitrators, after determining the total amount of compensation in accordance with section 14 shall embody their conclusions in a written award signed and dated by the Chairman, and, as far as is practicable, shall show in the award the several amounts awarded as compensation under headings corresponding to the several matters which are required to be taken into consideration by subsection (3) of section 14.

(2) If the arbitrators are not unanimous, their decision shall be governed by the voice of the majority.

(3) The Chairman of the arbitrators shall, on the date on which the award is made, deliver the award and the record of the proceedings to the Minister, and the Minister shall, within three days of the date of the award cause a certified copy of the award to be given to each person interested and to the Accountant General; and thereupon the total amount of the award shall become a charge upon the Consolidated Fund for payment in accordance with this Act to the persons entitled thereto.

Vesting of land in Crown

16 On the completion of a conveyance on purchase by agreement under section 3 or twenty-one days after delivery of a written award to the Minister under section 15, the land conveyed or which is the subject of the award, as the case may be, shall vest absolutely in Her Majesty, and every person having or claiming any right, title, estate or interest, use, trust, property, claim or demand whatsoever in, of, to or out of such land shall, subject to section 17, be for ever barred of all such right, title, estate, interest, use, trust, property, claim or demand notwithstanding any Act, law, usage, matter or thing to the contrary.

Appeals to Supreme Court

17 (1) Any person interested in the land to be acquired or having a right over such land may, within twenty-one days of the last publication in the Gazette of a notice under section 4(2)(b), or such longer period as the Supreme Court may for good cause allow, appeal to the Supreme Court on the grounds that—

- (a) the extent of the interest or right in the land to be acquired has been wrongly determined; or
- (b) the taking of possession or acquisition of the property, interest or right in the land is not in accordance with this Act or is otherwise unlawful.

(2) The Minister or any person interested in the land to be acquired or having a right over such land who is aggrieved by an award of the arbitrators under this Part may, within twenty-one days of the date of the award or such longer period as the Supreme Court

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may for good cause allow, appeal to the Supreme Court on the ground that the amount of compensation awarded has been wrongly determined.

- (3) On an appeal under this section the Supreme Court may—
- (a) where it is satisfied that—
 - (i) there is no urgency in the taking of possession or acquisition of the property, interest or right in the land; and
 - (ii) the appeal is not merely frivolous or vexatious,
by interim order suspend the operation of any order or action of which the validity is questioned by the appeal until the final determination of the appeal;
 - (b) make such order (including an order for costs) as it thinks fit and any such order may direct that the land be conveyed to the person specified therein.

PART IV

Interpretation of Part IV

18 In this Part of this Act—

- (a) “the land” means any parcel of land which has been the subject of an award by arbitrators;
- (b) “compensation money” means the amount of the award of arbitrators, or any part thereof, in respect of the acquisition of the land;
- (c) “person entitled” means any person whom the arbitrators or the Supreme Court, as the case may be, determine to be a person who has a good title to compensation money and any other person whom the Attorney-General determines to be a person who has a good title to compensation money.

Payment of compensation money

19 (1) Subject to this section, compensation money shall be paid by the Minister to the person entitled according to the estate, interest or right which he possessed in or over the land.

(2) Where there are two or more persons entitled who had varying estates or interests in the land, then if such persons agree among themselves as to the apportionment of the compensation money the Minister shall pay them the compensation money in accordance with their agreement and the terms of any such agreement shall be notified to the Minister in writing signed by all of the parties thereto.

- (3) Subject as hereinafter provided, where—
- (a) a person entitled refuses to accept compensation money tendered to him by the Minister; or
 - (b) a person entitled cannot after reasonable enquiry be found; or

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- (c) a person entitled is a person under a legal disability; or
- (d) there are two or more persons entitled who had varying estates or interests in the land and who are unable to agree among themselves as to the apportionment of the compensation money; or
- (e) there is no person entitled to the compensation money or no person entitled to compensation money payable in respect of some particular estate or interest in the land,

the Minister shall pay the compensation money into the Supreme Court:

Provided that in the case of a person under a legal disability the Minister may pay compensation money to any person who is enabled by law to receive and give a valid discharge for such money on behalf of the person under legal disability.

Payment into court

20 (1) Any money paid into the Supreme Court under this Act may, on the application of any person claiming to be entitled thereto, or of any person lawfully representing any such person, be dealt with and disposed of as the Court may think fit; and the Court in directing payment out of court of any such money may impose such terms and conditions as to the investment of the money or the creation of a trust in respect thereof or otherwise as the Court may think proper having regard to the circumstances.

(2) Where money paid into the Supreme Court does not exceed the sum of two thousand dollars the powers conferred on the Court by subsection (1) may be exercised by a judge.

Application for order for immediate payment

21 (1) Where a person is by virtue of an award of arbitrators or an order of the Supreme Court made under section 17 entitled to compensation money, that person may apply to the Supreme Court for an order that the compensation money be paid forthwith.

(2) On an application made under subsection (1) the Supreme Court may grant the order or refuse the order and make such order as to costs as it thinks just.

(3) Where the Supreme Court makes an order that compensation money shall be paid forthwith, the sum due shall thereupon become a charge on the Consolidated Fund and shall be paid from that Fund by the Accountant General to the person named in the order of the Supreme Court within seven days of the date of the order.

PART V

Saving for personal rights

22 Nothing in this Act shall be construed so as to prevent any person, who by virtue of section 16 has been barred in respect of a claim to any land vested in Her Majesty, from bringing an action, for debt or for money had and received to his use or otherwise, against any other person who, under this Act, or any enactment repealed by this Act, has been paid all or any part of the purchase money or of the compensation under an award by arbitrators

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or by an order of the Supreme Court, as the case may be; and in any such action the plaintiff, on proof of such title as would have enabled him to recover the land, shall recover the purchase money or compensation or so much thereof as is the equivalent of his estate or interest in the land, together with such interest as the court hearing the action may allow, calculated from the date of the receipt of the purchase money or compensation by the person to whom it has been paid.

Subsequent sale; Government to offer land to former owner

23 Where any land compulsorily acquired by the Government under this Act, or any enactment repealed by this Act, is subsequently intended to be sold, then the authority empowered to sell shall, as far as is practicable and subject to any Act or law governing the sale of land which is the property of the Government, cause the land to be offered for sale, at a price to be determined by a competent valuer agreed by both parties, to the person from whom it was acquired before entering into any agreement for the sale of the land to another person or selling the land at auction.

Arbitration fees

24 (1) The fees payable in respect of any arbitration proceedings under this Act shall be in accordance with the scale prescribed under section 25.

(2) All fees and other expenses incidental to any arbitration proceedings shall be paid out of the Consolidated Fund.

Minister may make regulations

25 (1) The Minister may make regulations—

- (a) prescribing anything which under this Act is required to be or may be prescribed;
- (b) prescribing the scale of fees payable under section 24; and
- (c) generally for the better carrying out of this Act.

(2) The affirmative resolution procedure shall apply to regulations made under this section.

Chief Justice may make rules

26 (1) The Chief Justice may make rules generally for regulating arbitration proceedings under this Act and, without prejudice to the generality of the foregoing, may make rules in respect of any matter which he considers necessary for the purposes of any proceedings under this Act.

(2) Section 6 of the Statutory Instruments Act 1977 [*title 1 item 3*] shall not apply to rules made under this section.

Service of notices

27 (1) Any notice, order or other document which is required to be served under this Act on any person may be served—

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- (a) by delivering it to the person on whom it is to be served; or
- (b) by leaving it at the usual or last known place of abode of that person; or
- (c) by sending it by prepaid post addressed to that person at his usual or last known place of abode; or
- (d) in the case of a body corporate, by delivering it or sending it by prepaid post to the secretary or clerk of that body at its registered office or other place of business; or
- (e) if it is not practicable after reasonable enquiry to ascertain the name or address of the owner of any land on whom it should be served, by addressing it to him by the description of "owner" or as the case may be "occupier" of the land to which it relates and by delivering it to some person occupying any premises on the land; or if there is no such person to whom it can be delivered, by affixing it or a copy thereof to some conspicuous part of the premises.

(2) Service effected by delivery pursuant to of subsection (1)(a) or (d) shall have effect from the time of delivery.

(3) Service effected otherwise than by delivery shall be deemed to have been effected three days after the steps taken pursuant to any of subsection (1) have been taken unless and to the extent that the contrary is proved.

Proof of service

28 In any arbitration proceedings a certificate purporting to be under the hand of the Minister and specifying the steps taken under section 27(1) to effect service of any notice, order or other document on any person on any date shall be prima facie evidence of the facts stated therein.

Repeal and transitional

29 *[omitted]*

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SCHEDULE
FORM OF CONVEYANCE OF LAND

I [*name in full*] of [*place of residence*] in consideration of the sum of [*purchase price*] paid to me by the Government of Bermuda do hereby grant and release and convey unto Her Majesty, Her heirs and successors, ALL THAT [*description of land etc. to be conveyed*] together with all rights and appurtenances thereto belonging and all such estate, right, title and interest in and to the same as I am or shall become seized or possessed of or am by any Act or law empowered to convey.

In Witness Whereof (etc.)

[Assent Date: 11 December 1970]

[Amended by

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1988 19

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