

ACQUISITION OF PROPERTY AND COMPENSATION UNDER THE ACT - (One Seikano, Associate)

Under the Acquisition of Property Act, Cap32:10, (the “Act”) the President may acquire any immovable property where the acquisition of such property is necessary or expedient:

- In the interests of defence, public safety, public order, public morality, public health, town and country planning or land settlement, or
- In order to secure the development or utilisation of that or other property for a purpose beneficial to the community, and by paying such compensation thereof as may be agreed upon or determined under the provisions of the Act.

The President has the liberty to agree with the owner of any immovable property required for public purposes for the purchase of such property or such portion as he deems necessary, for such consideration or compensation as may be agreed upon or determined under the Act.

Whenever the President resolves to acquire any property, the Minister shall give notice to the persons interested or claiming to be interested in such property or to the persons entitled by the Act. In such notice, the President may direct such persons to yield up possession of the property within a period prescribed therein (which period shall not be less than two months from service of the notice unless the property is urgently required). At the expiration of the aforesaid period, the President shall be entitled to enter into and take possession of the property.

Upon receipt of a notice to acquire property, an affected person may (and should) lodge a claim for compensation with the President. If no agreement is subsequently reached between the parties on compensation, then the matter must be referred and determined by a Board of Assessment (the constitution and process of which are prescribed in the Act).

In determining the amount of compensation payable for a property, the Board is required to give regard to the following matters:

- The market value of the property at the date of service of the notice of acquisition;
- Any increase in the value of any other property of any person interested likely to accrue from the use to which the property acquired will be put;
- The damage, if any, sustained by any person interested, by reason of the severing of any land from any other land of such person;
- The damage, if any, sustained by any person interested, by reason of the acquisition injuriously affecting any other property of such person; and
- The reasonable expenses, if any, incidental to any change of residence or place of business of any person interested which is necessary in consequence to the acquisition.

If, however, the market value of the property has been increased by means of any improvements made within one year immediately preceding the service of the notice of acquisition, such increase would not be taken into consideration unless the person can prove that the improvements were done in good faith and not in contemplation of the property being acquired compulsorily under the provisions of the Act.

Once the Board has made a determination on compensation, that decision is final and binding on the parties, subject however to a right of appeal to the High Court. Such an appeal must be brought within 30 days of the Boards decision.