



PROCEDURE TO BE FOLLOWED IN THE CASE OF PROHIBITING THE EXPORT OF A HERITAGE OBJECT

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In terms of the National Heritage Resources Act of 1999 (Act No.25 of 1999), no person may, without a permit from SAHRA, export a heritage object listed in the register of heritage objects provisionally declared in the Government Gazette Vol 240 No 21297 of 23 June 2000. In the event that SAHRA refuses such a permit, the Act stipulates the procedure that must be followed.

In determining whether to issue a permit for the export of a cultural heritage object SAHRA must consider:

1. Whether the object is “outstanding significance by reason of its close association with South African history or culture, its aesthetic qualities, or its value in the study of the arts or sciences” and
2. Whether the object is “of such a degree of national importance that its loss to South Africa would significantly diminish the national heritage”.

In the event that SAHRA decides **not** to issue a permit for the export of a cultural heritage object the following procedure is required:

The applicant may, within 30 days after such refusal, by written notice require the compulsory purchase of the heritage object to which such refusal relates.

On receipt of such a notification SAHRA must

- a) if it considers that a fair offer to purchase the object might be made by a party in South Africa, establish a delay period of two to six months, or
- b) on its own behalf or on behalf of another party offer to purchase the object for cash or by compensation determined by the Ministers; or
- c) failing either of the above must issue a permit.

Where SAHRA establishes a delay period, it:

- a) must give written notice of the delay period to the applicant and the Minister;
- b) must advise institutions and public authorities in South Africa of the delay period;
- c) may by advertise the delay period and the object and
- d) may stipulate that the heritage object be place on temporary loan with a specified institution.

SAHRA, in consultation with the Minister, may extend a delay period for two years.

If, during a delay period, an offer is made but the applicant and party making the offer cannot agree, then a panel appointed by the Minister (consisting of equal representatives of dealers in heritage objects, museums and collectors of heritage objects) must determine the amount of a fair offer.

Where a delay period expires without a fair offer being made to purchase the heritage object concerned, SAHRA must forthwith on the request of the applicant issue a permit to export the heritage object. Where a delay period expires and SAHRA is satisfied that a fair offer

has been made, SAHRA may not issue an export permit.

The above is, of course, based on the Act and the relevant extract is appended below:

In terms of the National Heritage Resources Act of 1999 (Act No.25 of 1999), no person may, without a permit from SAHRA, export a heritage object listed in the register of heritage objects provisionally declared in the Government Gazette Vol 240 No 21297 of 23 June 2000. In the event that SAHRA refuses such a permit, the Act stipulates the procedure that must be followed.

(Extract from National Heritage Resources Act of 1999 (Act No.25 of 1999), Section 32(22)-32(32))

(22) On receipt of an application to export a heritage object SAHRA may refer it to one or more expert examiners, who must submit to SAHRA a written report on the application.

(23) SAHRA must consider the report and issue a permit to export the object concerned, subject to such conditions, if any, as SAHRA considers necessary; or

(b) refuse to issue a permit.

(24) In considering an application to export any object of a type listed in Part I of the register of heritage objects permanently, an expert examiner and SAHRA must consider whether the object-

(a) is of outstanding significance by reason of its close association with South African history or culture, its aesthetic qualities, or its value in the study of the arts or sciences; and

(b) is of such a degree of national importance that its loss to South Africa would significantly diminish the national heritage, and if satisfied that the object fulfils both these criteria, may not recommend the issue of a permit, or issue a permit, as the case may be, to export the object permanently.

(25) In the event of SAHRA refusing to issue an export permit the applicant may, within 30 days after such refusal, by written notice require the compulsory purchase of the heritage object to which such refusal relates.

(26) On receipt of a notification under subsection (25) SAHRA must-

(a) if it is of the opinion that a fair offer to purchase the object concerned might be made by a person or public authority in South Africa within the following six months, establish a delay period of not less than two months and not more than six months during which an export permit may not be issued in respect of such object, or

(b) on its own behalf or on behalf of a public institution or authority in South Africa or a person who will undertake to keep the object in the country, offer to purchase the object either by an immediate cash payment or by payment of compensation in such manner as the Minister in consultation with the Minister of Finance may determine;

or

(c) in any other case, issue a permit to export the object concerned.

(27) Where SAHRA establishes a delay period under subsection (26)(a) in respect of a heritage object, it-

(a) must give written notice of the delay period to the applicant, and the Minister;

(b) must advise such institutions and public authorities in South Africa as it sees fit of the delay period and of the object in respect of which such delay period was established;

(c) may by public advertisement or any other means it deems appropriate make known the delay period and the object in respect of which it was established; and

(d) may stipulate that the heritage object concerned is deposited on temporary loan with a specified South African museum or public authority for the duration of the delay period.

(28) SAHRA, in consultation with the Minister, may extend a delay period established under subsection (26)(a) for a maximum period of two years.

(29) In the event that-

(a) during a delay period established under subsection (26)(a), an offer to purchase the heritage object concerned is made and the applicant and a public authority or person making such offer cannot agree as to the amount of a fair cash offer; or

(b) SAHRA and the applicant cannot agree as to the amount of a fair offer or compensation under subsection (26)(b), such dispute must be arbitrated by a panel appointed by the Minister, consisting of equal representatives of dealers in heritage objects, museums and collectors of heritage objects, which must determine the amount of a fair cash offer to purchase such heritage object and must notify the parties concerned and SAHRA thereof.

(30) Where a delay period established under subsection (26)(a) expires without a fair offer being made to purchase the heritage object concerned, SAHRA must forthwith on the request of the applicant issue a permit to export such heritage object.

(31) Where a delay period established under subsection (26)(a) expires and SAHRA is satisfied that a fair offer to purchase the heritage object concerned has been made, SAHRA may not issue a permit to export such heritage object.

(32) A person who intends to import an object which is of a type listed in Part I of the register of heritage objects, for temporary purposes or in circumstances in which the person may subsequently wish to export the object, may apply to SAHRA for a certificate of exemption authorising the export of the object concerned for the period specified in the certificate.