1. **Introduction**

In Estonia, the most important land-related issue remains to be the land that was unlawfully expropriated during the rule of the Soviet Union and the efforts to re-privatize this land by reform. Although the reform has been a long process, it was reported to be 96% complete in 2015.

When Estonia re-gained its independence in 1991, after the collapse of the Soviet Union, an extensive land reform was deemed necessary. Under the rule of the Soviet Union all land was nationalized and thus sale of land was impossible. Therefore after the collapse of the USSR, nationalized land posed a huge obstacle to establishing a free market economy. However, with the enforcement of the Land Reform Act, based on either previous ownership or residence, pieces of land were privatized again.

Nowadays the execution of the land reform is led by the Land Board and the municipal and national governments. In addition, the state has created a publicly accessible Land Cadastre, which preserves information on the value, natural status and use of land. Estonia has also developed a strict set of conditions for the expropriation of private land. These conditions are present in the Constitution of Estonia and the Immovables Expropriation Act.

In 2016 there was a wide discussion about the expropriation laws in Estonia. The Estonian government is currently in the process of developing a new railway network (Rail Baltic) throughout the nation and has therefore had to expropriate private land. This has been an issue for the owners of the expropriated land and as well to the state, as due to the strict process of expropriation, the plans for a new railway have postponed. Therefore, it has been reported that the government may want to pass legislation that would make expropriation of land for public infrastructure projects easier. However, it was reported in 2018 that the state would rather avoid expropriations and rather try to achieve fair settlements with landowners instead.

1. **Overview of Important Land Legislation and Regulations**

§ 32 of the Estonian Constitution grants a basic right to property. § 32 stipulates that a person’s property is inviolable and equally protected. The paragraph also limits expropriation of land by stating that the expropriation must be in public interest and by a procedure provided by law for fair and immediate compensation. In addition, the paragraph allows a person to contest expropriation in court and grants a right to not be interfered in possessing or making dispositions with one’s property.

There are various national legislations that implement the rights granted by the Constitution. The rights are especially present in the Law of Property Act, the Immovables Expropriations Act and the Land Reform Act.

The Law of Property Act aims to “provide the content for real rights and their content, creation and extinguishment” (§1). As most other systems Estonian property law distinguishes movable and immovables. Immovable property is subject to registration in the land register (§64). Estonia’s land register is public and reflects data about the immovable ((§51 (1) and §55), is presumed to be correct and can only be edited by a notary (§53 (1) and §56 (1)). According to the Act, a person has become the owner of an immovable only after it has been notarially authenticated and entered to the land register (§119 (2)).

The Act distinguishes real rights like ownership (right of ownership, shared ownership) and restricted real rights: servitudes, real encumbrances, right of superficies, right of pre-emption and right of security (§5).

The Immovables Expropriation Act states that expropriation must be for public interest and fair and immediate compensation must be provided. The Act also specifies public interests and provides strict procedure that must be followed.

1. **Land Transfer, Allocation, and Lease**

Expropriation: Land can be expropriated only through the procedure provided by the Immovables Expropriation Act. The Act allows expropriations only if it is in the public’s interests as defined in §3. The general procedure starts with an expropriation application by the state/muncipal, followed by a court decision. If the expropriation is approved and not contested by the owner, the land may be expropriated for a fair and immediate compensation (§5).

Selling land: Immovables may be transferred only by a real right contract. Moreover, the trade of immovables is register-centered, meaning the land is fully transferred to the new owner only after the transfer has been recorded in the land register by a notary (§119 of Law of Property Act). However, there are some restrictions on the sale of land for foreigners due to the fear of a large portion of the land being bought by foreigners after Estonia gained independence.

Lease: An immovable may be leased through a lease contract. §276 of the Law of Obligations sets the general obligations of parties, namely “the lessor being required to deliver the immovable in a suitable condition and ensure the immovable is maintained in such condition during the contract”.

The processes for expropriation, selling and leasing are described in a clear and strict manner.

1. **Land tenure classifications**

There are three types of servitude in Estonia. Firstly, a real servitude entitles the right holder to use the immovable in a particular manner or the actual owner is required to refrain from exercising their right of ownership to some extent (§172 of the Law of Property Act). If the owner of the land changes, the servitude remains. Secondly, a usufruct entitles the right holder to use the immovable and acquire the fruits thereof (§201). The usufruct ends when the person dies (§210). Lastly, a personal right of use grants the right holder the right to use the immovable in a particular manner, which in substance corresponds to a real servitude (§ 225).

Real encumbrances allow an immovable to be encumbered so that the actual owner is obliged to pay periodic payments or perform particular acts to the right holder (§229).

Right of superficies is a transferrable and inheritable right to own a permanent construction on land for a specified time. Only one right of superficies is allowed on a piece of land (§241).

Right of pre-emption gives a right holder or their inheritor an entitlement to be the first one to purchase an immovable in case it is to be sold (§256 and §261).

Real security (mortgage) means that the right holder has the right to a claim that is secured by the mortgage out of the pledged immovable (§325).

Although private land is not explicitly defined, it can be deduced from the Constitution and the Law of Property Act stating that ownership is inviolable and can only be expropriated by a strict procedure. Moreover, as it is required that an ownership of an immovable be registered in the land register, then those registered pieces of land can be assumed to be private land. As state land is the only land not recorded in the register, it may be assumed that land which has not been registered is state land.

The following steps are taken to make an entry to a Land Register to realize a property right. Firstly, the notary will make inquiries and draw up the deed on the creation of the right (§34 of the Land Register Act). Then the notary will send a digitally signed contract with the application to the register where it is automatically registered (§39). The registrar who receives the application checks whether all the necessary information is present and passes the application to an assistant judge. The judge makes an entry to the land register and the registrar sends the decision to the notary and participants and the right has officially come into being (§50).

The process might only prove difficult if there is no proper documentation of the immovable or the person cannot afford the notary fee.