
III. Current Laws, Regulations, and Policies Concerning Land Acquisition and Resettlement in the PRC

A. Current Laws, Regulations, and Policies on Land Acquisition and Resettlement

The PRC's present land acquisition system has basically established a legal framework based on the Land Administration Law (LAL) and on its implementation regulations, as well as the Decision of the State Council on Deepening the Reform of Strict Land Administration issued in October 2004. The research that informs this study is mainly concerned with the enforcement scope and the valuation methods of land acquisition compensation, and resettlement policies. Therefore, this section will review current laws and regulations and policies from the above three perspectives.

B. Legal Basis for Land Acquisition

Article 10 of the Constitution of the PRC states that land in the cities is owned by the State, while land in the rural and suburban areas is owned by collectives, except for those portions that belong to the State in accordance with the law. Collectives also own house sites and private plots of cropland and hilly land. The State may, in the "public interest", lawfully expropriate land by paying compensation to collectives.

Relevant Provisions in the Land Administration Law of the PRC. Article 2: The PRC practices socialist public ownership of land, namely, ownership by the whole people and collective ownership by the working people. There are further provisions concerning land acquisition, for example, Article 2: The State may, in the public interest, lawfully expropriate land by paying compensation. Article 43: All units and individuals that need land for construction purposes shall, in accordance with law, apply for the use of state-owned

land, with the exception of the ones that have lawfully obtained approval for using the land owned by peasant collectives of their own collective economic organizations to build townships or town enterprises or to build houses for villagers and the ones that have lawfully obtained approval for using the land owned by peasant collectives to build public utilities or public welfare undertakings of a township (town) or village.

The state-owned land mentioned in the preceding paragraph includes land owned by the State and land originally owned by peasant collectives but subsequently expropriated by the State.

C. Compensation Principles and Standards for Land Acquisition

Principles for compensation resettlement. Subject to Article 47 of the LAL of the PRC, land expropriation should be compensated for based on its original purpose of use.

1. Compensation Matters

Subject to Article 47 of the LAL of the PRC, compensation for expropriated cultivated land should include compensation for land, resettlement subsidies, compensation for attachments on acquisitioned land, and compensation for young crops on the expropriated land. To explain these provisions further

- (i) *Compensation for land:* means compensation for losses of investment in and proceeds from land caused by the State's land acquisition against the "landowners". "Landowners" are the object of compensation.
- (ii) *Resettlement subsidies:* means compensation

for land-loss farmers who are disadvantaged because of the State's acquisition of farmers' collective land where those farmers rely on land for their main productive means and income source.

- (iii) *Compensation for young crops*: means a lump-sum payment for losses of crops grown on the acquired land, such as paddy rice, wheat, corn, potato, and vegetables, as a result of land acquisition.
- (iv) *Compensation for attachments on the acquisitioned land*: means fees for relocation and restoration of various buildings and structures on the acquisitioned land, such as houses, wells, roads, pipelines, and aqueducts, as well as compensation or felling charges for forest on the acquisitioned land.
- (v) *Other compensation*: means compensation other than the compensation for land, resettlement subsidies, compensation for attachments on the acquisitioned land, and compensation for young crops, namely, compensation paid for losses on other aspects caused by land acquisition against the affected units and farmers, such as water conservancy facilities restoration charges, charges for loss of working time, relocation charges, and infrastructure restoration charges.

2. Compensation Standards

- (i) The standards for compensation for expropriation of cultivated land are set out in paragraph 2 of Article 47 of the LAL of the PRC, where it states that compensation for expropriation of cultivated land should be 6–10 times the average annual output value of the expropriated land for the 3 years preceding such expropriation.
- (ii) The standards for resettlement subsidies for expropriation of cultivated land are outlined in paragraph 2 of Article 47 of the LAL of the PRC, where it states that the standard resettlement subsidies to be divided among members of the agricultural population of a collective needing resettlement should be 4–6 times the average annual output value of the expropriated cultivated land for the 3 years preceding such expropriation. However, the highest resettlement subsidies for each

hectare of the expropriated cultivated land should not exceed 15 times its average annual output value for the 3 years preceding such expropriation.

- (iii) The standards for compensation for attachments and young crops on the expropriation land can be found in paragraph 4 of Article 47 of the LAL of the PRC, and states that compensation for attachments and young crops on the expropriated land should be prescribed by provinces, autonomous regions, and municipalities directly under the central Government. Provinces, autonomous regions, and municipalities have developed their own regulations on the standards for compensation for attachments and young crops on the acquisitioned land when developing the implementation measures of the LAL of the PRC.
- (iv) Standards for land compensation and resettlement subsidies for expropriation of other types of land are subject to paragraph 3 of Article 47 of the LAL of the PRC, which states that standards of land compensation and resettlement subsidies for expropriation of other types of land should be prescribed by provinces, autonomous regions, and municipalities directly under the central Government by reference to the standards of compensation and resettlement subsidies for expropriation of cultivated land. Generally, provinces, autonomous regions, and municipalities have developed their own regulations on the standards for land compensation and resettlement subsidies for expropriation of other types of land through developing the implementation measures of the LAL of the PRC in consideration of local, actual conditions and within the extent stated by law. But these standards are all lower than the compensation standard for cultivated land. For example, the Land Administration Regulations of Hebei Province states that

“...compensation for expropriation of land other than cultivated land should be 5–8 times the average annual output value of the expropriated land in the village (town) for the 3 years preceding such expropriation. Compensation for expropriation of unutilized

land should be 4–5 times the average annual output value of the expropriated land in the village (town) for the 3 years preceding such expropriation.”

It is stated in Decision No. 28 of the State Council on Deepening the Reform of Strict Land Administration issued in October 2004 that land acquisition compensation measures should be improved. In accordance with provisions of current law, if land compensation and resettlement subsidies paid in accordance with the provisions of current law are still insufficient³ to help the land loss farmers to maintain their original living standards, the resettlement subsidies may be increased upon approval by the people’s governments of provinces, autonomous regions, and municipalities directly under the central Government. If the total of the land compensation and resettlement subsidies are still insufficient to help the land-loss farmers to maintain original living standards when reaching the legal upper limit, the local people’s governments may pay subsidies with income received from compensated use of state-owned land.⁴

3. Objects of Land Acquisition Compensation

Subject to provisions of law, different types of land acquisition compensation should be paid in full to the affected people.

- (i) If the land is owned by the rural collective economic organization, compensation should be paid to the rural collective economic organization from which land is acquisitioned. If the land expropriated belongs to the rural collectives, the compensation should be managed by the rural collective economic organization of the village or the villagers’ committee. If the land expropriated belongs to the joint collectives of two or more rural collective economic organizations, the respective rural collective economic organizations or villager groups should manage the compensation. If the land expropriated belongs to township collectives,

the compensation should be managed by the township collective economic organizations.

- (ii) Resettlement subsidies are for specific use to provide for the land-loss farmers’ production and living. The resettlement subsidies should go to the rural collective economic organization if the organization is in charge of the resettlement arrangement, e.g. land adjustment. If other entities are in charge of this then the resettlement subsidies should go to them. In the absence of a unified resettlement arrangement, the subsidies should go to the land-loss farmers or be used to pay their social insurance, if they consent.
- (iii) Compensation for attachments and young crops on the acquisitioned land should be paid to owners of attachments and young crops on the acquisitioned land.

4. Payment of Land Acquisition Compensation

Subject to Article 25 of the Implementation Regulations of the LAL of the PRC, land acquisition compensation should be paid fully within 3 months from the date of approval of the land acquisition and resettlement programs.⁵

D. Resettlement Policy for Land-Loss Farmers

1. Overall Principle for Resettlement of Land Loss Farmers

Subject to Article 47 of the LAL of the PRC, an overall requirement for resettlement of land-loss farmers is

³ In most conditions land compensation and resettlement subsidies should be paid in accordance with the local social security standard for urban population. This is one way to determine whether the land compensation and resettlement subsidies are sufficient or not.

⁴ After the Decision was issued, all of the provinces, autonomous regions, and municipalities directly under the central Government have developed their own regulations in accordance with the local conditions to guarantee the implementation of the Decision.

⁵ Subject to the Land Administration Law (LAL) of the PRC: embezzling or diverting the use of land compensation fees and other relevant expenses of the units whose land is expropriated, criminal responsibilities shall be affixed whereas the case constitutes the crime and administrative punishments shall be meted out whereas the case is not serious enough to constitute a crime. It is stated in Provisional Measures on Administrative Punishments for Behaviors against Land Administration Law, issued in March 2005, that administrative punishments shall be given to persons in charge and persons directly responsible when the units they serve in embezzle or divert the use of land compensation fees and other relevant expenses of the units whose land is expropriated: (i) Embezzling or diverting the use of money less than yuan (CNY)100,000 and causing heavy loss—administrative punishments, such as warning, or demerit record, or heavy demerit record, will be given; (ii) Embezzling or diverting the use of money more than CNY100,000 and less than CNY500,000—administrative punishments, such as demotion or demission will be given; (iii) Embezzling or diverting the use of money more than CNY500,000—administrative punishments will be given. In addition, the Ministry of Land and Resources (MLR) has established a feedback system for land acquisition since 2002. That means after the land acquisition plans have been approved, land administrative departments of all provinces should report back about the payment of compensation for requisitioned land and resettlement, the resettlement of affected farmers to MLR at every end of year. MLR will make sample examination based on their reports and announce the results of the sample examination.

to enable the farmers needing resettlement to restore their original living standards.

The Decision of the State Council on Deepening the Reform of Strict Land Administration issued in October 2004 requires that land-loss farmers should be resettled properly, i.e., compensation and resettlement subsidies should not only enable the land loss farmers to restore their original living standards but also guarantee their longer-term livelihoods.

2. Manner of Resettlement

Subject to Article 47 of the LAL of the PRC, the main manner of resettlement now is to allocate a part of charges (resettlement subsidies) from the land acquisition compensation to be specially used for the production and living of land-loss farmers, the standard for which is 4–6 times the average annual output value of the expropriated cultivated land for the 3 years preceding such expropriation. This type of resettlement is called “money or cash resettlement”. Generally, resettlement subsidies are paid to land loss farmers.

In addition, Article 50 of the LAL states that local people's government at all levels should support the rural collective economic organizations, the land of which is expropriated, and the farmers in their efforts to engage in development, other business operations, or to start enterprises.

Decision No. 28 of the State Council on Deepening the Reform of Strict Land Administration issued in October 2004 states that (i) within the planned area of a city, the local people's government should include landless farmers as a result of land acquisition in the urban and town employment system and established social security system; and (ii) outside the planned area, when collectively-owned land is taken, the local people's government should reserve necessary cultivated land for the farmers or provide corresponding jobs to them within its administrative area; those landless farmers where local provision does not meet basic productive and living conditions, as set out under Article 47, should be resettled in different area(s). Decision 28 does not specify where such areas might be.

MLR issued the companion document Guiding Opinions on Improving the Land Acquisition Resettlement System of the Decision of the State Council on Deepening the Reform of Strict Land Administration at the end of 2004. It further clarifies the ways and means of resettlement for land-loss farmers due to land acqui-

sition, including resettlement through agricultural production, resettlement through new jobs, resettlement through share holding and dividend distribution, and resettlement through relocation in other places.

E. Procedures for Land Acquisition

1. Declaration of Land Acquisition

In Articles 20 and 23 of Implementation Regulations of LAL of the PRC, the declaration of land acquisition expressly specifies detailed procedures. First, a survey on land acquisition conditions is carried out. The people's government of cities and counties shall, in accordance with the needs of urban development, or after the prospective land users file a petition for use of land, local land administration departments, carry out a field survey in the village or unit of which land is under acquisition in respect of agricultural population, per-capita arable land, annual output value, land area, land type, and land ownership of the village or unit affected.

Second, the drafting of a land acquisition program. A land acquisition program is the basis for the Government to approve land acquisition and carry out land acquisition compensation and resettlement. Land administration departments of the people's governments of cities and counties should draft the land acquisition program based upon a comprehensive survey of the prospective site. The land acquisition program should state the agency approving the expropriation of the collectively-owned land, the name and purpose of land use, the exact position of the expropriated land in its neighborhood, the entity owning the land, and the land area.

Third, reporting to the people's governments at the provincial level or the State Council. Land administration departments of the people's governments of cities and counties submit the land acquisition program and other materials necessary for approval to the land administration departments of the people's governments of the people's of cities (prefectures) for checking. If the materials are eligible and complete, they can be reported to the people's governments at the provincial level or the State Council for approval.

The Decision of the State Council on Deepening the Reform of Strict Land Administration issued in October 2004 expressly requires that before land acquisition is formally approved according to the law, local land resource departments should

inform the affected farmers of the purpose, location, compensation standard, and resettlement channels for the land to be acquisitioned. The field survey results are subject to confirmation by the rural collective economic organizations and farmers affected. If deemed necessary,⁶ land resource departments should organize a hearing. The Government requires that relevant materials be provided to affected farmers for the purposes of the hearing before land acquisition can be formally approved.

2. Examination and Approval of Land Acquisition

Land acquisition should be examined and approved by the State Council of people's governments at the provincial level. The approval authority is expressly stated in Article 45 of the LAL of the PRC.

- (i) Approval authority of the State Council. Approval should be obtained from the State Council for expropriation of the following land: basic farmland;⁷ cultivated land, not included in basic farmland that exceeds 35 hectares (ha); and other land exceeding 70 ha.
- (ii) Approval authority of the people's governments at the provincial level (smaller holdings). Expropriation of land other than that provided for in the preceding paragraph should be subject to approval of the people's governments at the provincial level. Specific approval authority of the people's governments at the provincial level covers expropriation of cultivated land less than 35 ha (excluding basic farmland) or expropriation of other land less than 70 ha.

3. Implementation of Land Acquisition

Implementation procedures for land acquisition are stated in Article 46 of the LAL of the PRC and Article 25 of Implementation Regulations of the LAL of the PRC, including

- (i) *Announcement of land acquisition program.* Where land is to be expropriated by the State,

people's governments of cities and counties shall, after approval is obtained through legal procedure, announce the expropriation. Units and individuals that own or have the right to the use of the land under expropriation shall, within the time limit fixed in the announcement, register for compensation with the land administration department of the local people's government by presenting their certificates of landownership or land-use right.⁸

- (ii) *Formulation of land acquisition compensation and resettlement programs.*⁹ Land administration departments of the people's governments of cities and counties shall, based upon the approved land acquisition program, further verify the holders of landownership, holders of the right to the use of land, as well as attachments and young crops on the land to formulate the programs for land acquisition compensation, personnel resettlement, and relocation of attachments on land.
- (iii) *Announcement and implementation of land acquisition compensation and resettlement programs.* Upon confirmation, land acquisition compensation and resettlement programs should be announced by the relevant people's government administration. Opinions of the affected rural collective economic organizations and farmers should be solicited¹⁰ to revise the land acquisition compensation and resettlement programs. Relevant payment should be made to the affected rural collective economic organizations and farmers. Program for resettlement of people and relocation of attachments on land should be confirmed.

⁶ Rural collective economic organizations or affected farmers or other related persons have great disputes on the purpose, location, and compensation standard of the expropriated land and the resettlement channels.

⁷ In the land-use plans of the PRC, "basic farmland" is defined as good-quality farmland that should be preserved. If basic farmland is converted to other uses, some other farmland must be upgraded and designated as basic farmland to maintain the amount of land for food security.

⁸ Presently, the system of "two announcements and one registration" (announcement of the expropriation plan, announcement of the compensation and resettlement plan, registration for compensation subsidies) has already started to function in real life. In the PRC, a lot of rural land has not been registered for ownership, but few disputes arise over those nonregistered lands. When disputes arise over nonregistered lands, they should first be solved in accordance with present laws. Then registration for compensation of nonregistered land can be made according to the results of the solution offered.

⁹ According to *Implementation Regulations of Land Administration Law of the PRC*, after the announcement of the land acquisition plan, land administrative departments of people's governments of cities or counties should prepare compensation and resettlement plans according to the approved land acquisition plan together with related departments and then declare it. Compensation and resettlement plans approved by the people's governments of cities or counties will be carried out by the land administrative departments of people's governments of cities or counties.

¹⁰ Opinions of affected rural collective economic organizations and farmers should be solicited each time before carrying out land compensation and resettlement plan in order to make adjustment in details of the plan.

Articles 9–11 of the Guidance on the Compensation for Expropriation of Land and Resettlement (2004) by MLR have specified the implementation procedure of the notification of the expropriation plan, confirmation of investigation result, and the organization of public hearing on the issue (Figure 1).

F. Other Provisions

Specific provisions on land acquisition announcement. To regularize implementation by the people's governments after the land acquisition program is approved, the form, content, time, and place of land acquisition are specifically stated in Circular No. 10 of MLR.

Specific provisions for hearings on land acquisition compensation and resettlement. In the process of land acquisition implementation, land-loss farmers may apply for a hearing according to law if they have any objection to the land acquisition compensation and resettlement programs. Articles 19 and 20 of No. 22 Circular of MLR of the PRC Provisions on Hearing for Land Resource) state that before the land acquisition is approved according to law, land administration departments should inform, in writing, the parties concerned that they have rights to require to hold a hearing. If a party requires a hearing, it should be organized.

Regulations on the supervision of land expropriation. Notice of MLR on Strengthening the Administration of Land Expropriation, Decision of the State Council on Deepening the Reform of Strict Land Administration (No. 28, 2004), and the

Guiding Opinions on Improving the Land Acquisition Resettlement System by MLR at the end of 2004, all three documents have specified the supervision and regulation of the implementation process.

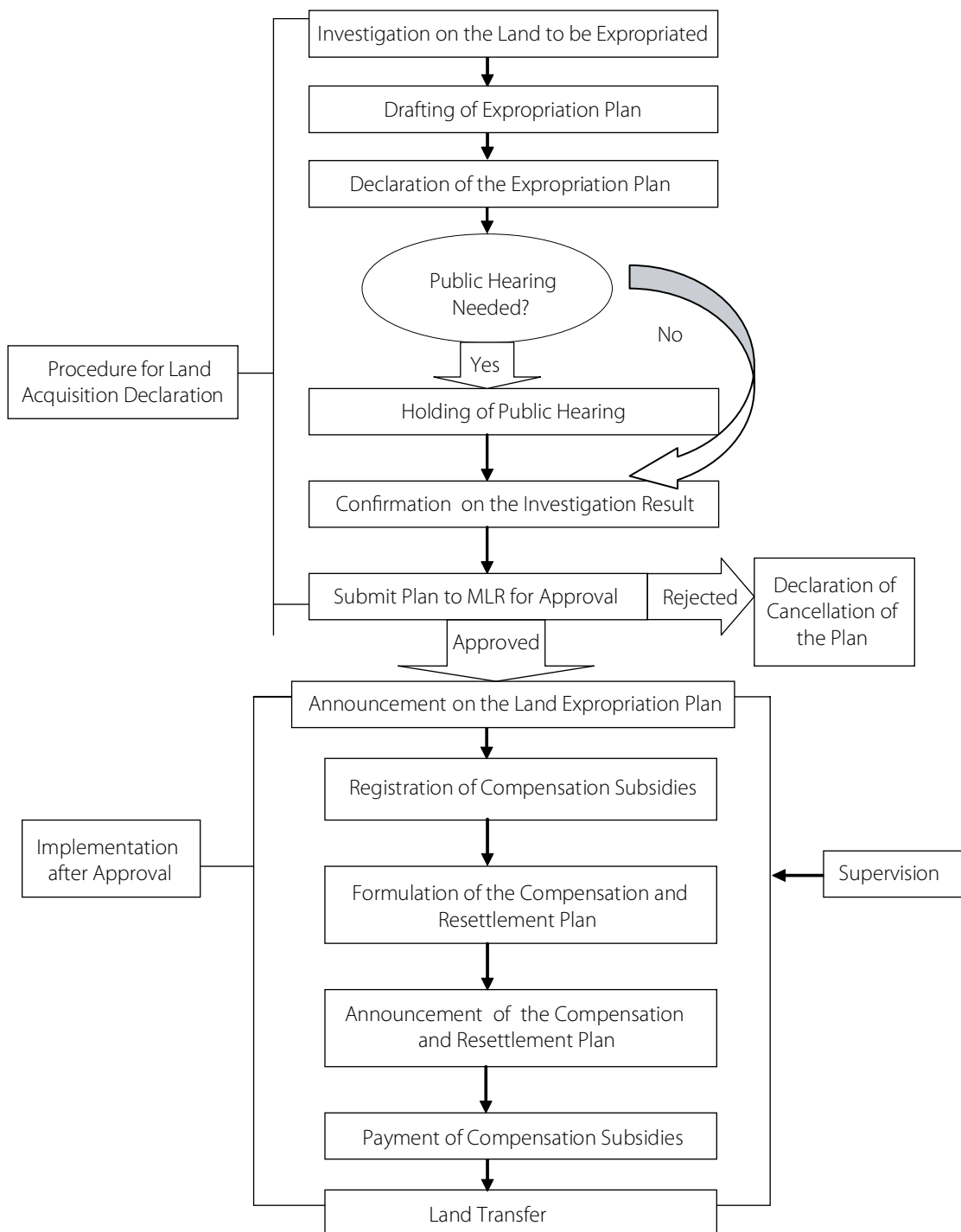
Regulations on the punishment for violation during the expropriation process. The Criminal Law of the PRC and the LAL of the PRC have both specified punishment for any violations during the expropriation process.

Summary. These laws and regulations have provided for the smooth implementation of land expropriation. However, they are not flawless, as manifested in the following three aspects:

- (i) The scope and identification standard of “public interests” are not clearly defined in these laws and regulations, which might lead to the misuse of the land acquisition right.
- (ii) The compensation subsidies under the current valuation methods cannot guarantee the living standards of the land-loss farmers.
- (iii) The current regulations on the resettlement of land-loss farmers are quite general without clear and feasible provisions on the objective and principle of resettlement arrangements. In particular, questions, such as the estimation of the original living standard of the land-loss farmers, are rarely adequately clarified.

Therefore, these problems should be taken into consideration during future revision of land acquisition laws.

Figure 1: Land Acquisition Procedures



MLR = Ministry of Land and Resources.

Source: Based on the Implementation Regulations of the Land Administration Law of the People's Republic of China.