

CLIENT ALERT

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THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT BILL, 2012

In Brief

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Bill, 2012 (the “**Bill**”) was passed by the Lok Sabha and the Rajya Sabha on August 29, 2013 and September 04, 2013 respectively. The Bill will replace the Land Acquisition Act, 1894 that suffers from various shortcomings, including silence on the issue of resettlement and rehabilitation of those displaced, and it rests on three main pillars: (i) consent, (ii) compensation and; (iii) rehabilitation/ resettlement. The Bill also introduces a number of unique and far reaching safeguards to look after an individual’s right to his or her personal property from arbitrary and indiscriminate acquisition.

In this Bill, many new provisions have been made which may have a significant impact on the way business is conducted in India.

In this update, we discuss the salient features of the Bill.

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BACKGROUND

The Bill was passed by the Lok Sabha and the Rajya Sabha on August 29, 2013 and September 04, 2013 respectively. The Bill will replace the Land Acquisition Act, 1894 that suffers from various shortcomings, including silence on the issue of resettlement and rehabilitation of those displaced, and it rests on three main pillars: (i) consent, (ii) compensation and; (iii) rehabilitation/ resettlement. The Bill also introduces a number of unique and far reaching safeguards to look after an individual's right to his or her personal property from arbitrary and indiscriminate acquisition.

The Bill proposes that farmers and landowners be paid up to 4 (four) times the market value for land acquired in rural areas, and 2 (two) times the market value in urban areas. The other noteworthy aspect of the Bill is that the consent of 80 (eighty) per cent and 70 (seventy) per cent of land owners is required for acquiring land for private and public private-partnership projects respectively.

APPLICATION OF THE BILL

The provisions of this Bill shall apply when the appropriate government¹ will acquire land for its own use, including for public sector undertakings, for 'public purpose' such as national security or defence; infrastructure projects; project for project affected families; for planned development or improvement of village sites or any site in urban areas or provision of land for residential purposes for weaker sections in rural and urban areas.

This Bill shall also be applicable when the appropriate government will acquire the land for public private-partnership projects, where the ownership of the land continues to vest with the government for public purpose and for private companies for public purpose.

SALIENT FEATURES

The salient features of the Bill are as follows:

1. Consent: Process of Acquisition

There must first be a Social Impact Assessment² ("SIA"), before any process of acquisition is initiated, or any notice, preliminary or otherwise is issued. This process is an elaborate exercise to determine consent, measure anticipated impacts on a wide scale of indices. Everything, from the socio-economic impact on an area to the number of families to be affected, presence of viable alternatives and the loss of livelihood that occurs as a result, is considered and recorded. This is accompanied by a compulsory public hearing to weigh public opinions on all matters of concern regarding the purpose for which the SIA is being carried out.

¹ Section 3 (e) "appropriate Government" means,- (i) in relation to acquisition of land situated within the territory of, a State, the State Government; (ii) in relation to acquisition of land situated within a Union territory (except Puducherry), the Central Government; (iii) in relation to acquisition of land situated within the Union territory of Puducherry, the Government of Union territory of Puducherry; (iv) in relation to acquisition of land for public purpose in more than one State, the Central Government, in consultation with the concerned State Governments or Union territories; and (v) in relation to the acquisition of land for the purpose of the Union as may be specified by notification, the Central Government.

Provided that in respect of a public purpose in a District for an area not exceeding such as may be notified by the appropriate Government, the Collector of such District shall be deemed to be the appropriate Government;

² Section 4, Chapter II, Determination of social impact and public purpose

This evaluation is then scrutinised by an ‘Expert Group’ comprised of outside experts (including two non-official social scientists, two experts on rehabilitation and a technical expert in the subject relating to the project). The Expert Group reviews the SIA and submits recommendations as to whether the project is worth pursuing given the social and economic cost of displacement³.

It is only after the Government submits reports in favour of the acquisition and the consent of 80 (eighty) per cent of those whose land is about to be acquired (70 (seventy) per cent in the case of public private-partnership projects) has been determined through a prior informed process, that a preliminary notice for acquisition shall be issued. If however, the preliminary notification is not issued within twelve months of the SIA, then the SIA is deemed to have lapsed and a fresh SIA will need to be conducted if the land is to be acquired⁴. Further objections may also be entertained⁵ if an individual still feels aggrieved by the findings contained in the SIA or the recommendations of the Expert Group.

2. Compensation⁶

Compensation has been significantly increased under this Bill. An elaborate formula has been devised to make sure that frequent amendments will not be required to make it relevant in terms of varying land and property values.

The market value of the land⁷ is multiplied by 2 (two) and is then enhanced by 100 (one hundred) per cent⁸, thereby bringing the compensation amount to 4 (four) times the market value.

In the case of urban areas the multiple is 1 (one) and not 2 (two), so the compensation amount shall be at least twice the original market value.

3. Rehabilitation and Resettlement (“R&R”)

On the subject of R&R that the Bill incorporates completely new provisions and links them to those connected to land acquisition including a new Schedule⁹ that lists the various entitlements that accrue. Some of these benefits include:

1. **Houses for all affected families:** All affected families are entitled to a house provided they have been residing in an area for 5 (five) years or more and have been displaced. If the families in urban areas which opts not to take the house offered, shall get a one-time financial assistance for house construction, which shall not be less than INR 1,50,000 (Indian Rupees One Lakh Fifty Thousand). Provided that if any affected family in rural areas so prefers, the equivalent cost of the house may be offered in lieu of the constructed house.
2. **Choice of annuity or employment:** Affected families are given a choice of annuity or employment; if employment is not forthcoming they are entitled to a one time grant of INR 5,00,000 (Indian Rupees

³ Section 7

⁴ Section 14

⁵ Section 16

⁶ Schedule I, Compensation for Land Owners

⁷ Sections 26-28, and determined broadly on the basis of average sales prices of similar properties in the area over the last few years to the advantage of the land loser.

⁸ Section 31, by imposition of a ‘solatium’.

⁹ Second Schedule Titled Elements of Rehabilitation and Resettlement Entitlements for all the Affected Families (Both Land Owners and the Families whose Livelihood is Primarily Dependent on Land Acquired).

Five Lakh) per family. Alternatively they will be provided with an annuity payment of INR 2000 (Indian Rupees Two Thousand) per month per family for 20 (twenty) years¹⁰.

3. **Subsistence Allowance:** Affected families which are displaced from the land acquired shall be given a monthly subsistence allowance equivalent to INR 3000 (Indian Rupees Three Thousand) per month for a period of 1 (one) year from the date of award.
4. **Training and Skill Development:** Affected families are also given training and skill development while being offered employment.
5. **Miscellaneous Amounts:** Affected families are given multiple monetary benefits such as transport allowance of INR 50,000 (Indian Rupees Fifty Thousand) and resettlement allowance of INR 50,000 (Indian Rupees Fifty Thousand).
6. **One-Time Financial Assistance:** Each affected family of an artisan, small trader or self-employed person shall get one-time financial assistance of such amount as the appropriate Government may, by notification, specify subject to a minimum of INR 25,000 (Indian Rupees Twenty Five Thousand).
7. **R&R to be completed in all aspects for irrigation projects:** In case of acquisition of land for irrigation or hydel project the rehabilitation and resettlement shall be completed 6 (six) months prior to submergence of the lands proposed to be so acquired.
8. **Possession upon fulfilment of conditions:** The Collector shall take possession of land only after ensuring that full payment of compensation as well as rehabilitation and resettlement entitlements are paid or tendered to the entitled persons within a period of 3 (three) months for the compensation and a period of 6 (six) months for the monetary part of rehabilitation and resettlement entitlements commencing from the date of the award. However, families will not be displaced from this land till their alternative R&R sites are ready for occupation.
9. **Time Limit for provision of R&R entitlements:** The components of the Rehabilitation and Resettlement Package in the Second and Third Schedules that relate to infrastructural entitlements shall be provided within a period of 18 (eighteen) months from the date of the award.

Apart from the abovementioned key features, few other important features are as below:

- 1) The Bill applies retrospectively to cases where no land acquisition award has been made.
- 2) No land can be acquired in Scheduled Areas without the consent of the Gram Sabhas.
- 3) In case land remains unutilised after acquisition, the new Bill empowers states to return the land either to the owner or to the State Land Bank.
- 4) No income tax shall be levied and no stamp duty shall be charged on any amount that accrues to an individual as a result of the provisions of the Bill.
- 5) Where acquired land is sold to a third party for a higher price, then 40 (forty) per cent of the appreciated land value (or profit) will be shared with the original owners.

¹⁰ with appropriate indexation to the Consumer Price Index for Agricultural Labourers.

- 6) In every project, those losing land and belonging to the SC or ST category will be provided land equivalent to the land acquired or two and a one-half acres, whichever is lower (this is higher than in the case of non-SC/STs).
- 7) Where the affected families belonging to the SC or the ST category are relocated outside of the district then they shall be paid an additional 25 (twenty five) per cent R&R benefits to which they are entitled in monetary terms along with a one-time entitlement of INR 50,000 (Indian Rupees Fifty Thousand).

It is to be noted here that the appropriate government may, by notification increase the rate of rehabilitation and resettlement amount payable to the affected families, taking into account the rise in the price index¹¹.

Further, under this Bill, the office of the Administrator for R&R shall first prepare an R&R scheme¹². The Collector shall review¹³ the draft scheme submitted by the Administrator with the R&R Committee¹⁴ at the Project level. Once the R&R scheme has been approved the Collector passes an 'R&R' Award¹⁵.

¹¹ Section 32 (2)

¹² Section 17

¹³ Section 18

¹⁴ constituted under Section 46

¹⁵ Section 32