



HAN KUN LAW OFFICES

Legal Commentary



CHINA PRACTICE • GLOBAL VISION

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Brief of the Regulation on Expropriation and Compensation of Real Properties on State-owned Land

On January 21, 2011, the State Council issued the *Regulation on Expropriation and Compensation of Real Properties on State-owned Land* (the “**New Expropriation Regulation**”) which became effective since its enactment. *The Regulation on Expropriation of Real Properties at Urban Area* which was enacted by the State Council on June 13, 2001 shall be repealed simultaneously.

Corresponding to the PRC Property Law, the New Expropriation Regulation embodies the principle that the expropriation shall be for public interest. In respect of the concrete system, the New Expropriation Regulation adopts certain new measures to protect the public interest and the legitimate interests of the expropriated parties, such as: (1) the expropriating party shall be the municipal or county-level government rather than the real estate enterprises; (2) the compensation shall be accomplished before the expropriation; and (3) conducting the expropriation through invalid ways is prohibited.

The Application Scope of the New Expropriation Regulation

According to the New Expropriation Regulation, it only applies to “the expropriation and compensation in connection with the real properties on state-owned land”. Thus, the expropriation of the real properties on collectively-owned land is not subject to the New Expropriation Regulation.

The Basic Principles for Expropriation and Compensation

According to the New Expropriation Regulation, if the cause of expropriation is for public interest, the decision of such expropriation shall be made by the municipal or county-level government. The New Expropriation Regulation defines the concept of “public interest” by enumeration which

includes: national defense and diplomacy; infrastructure project sponsored by the government; public utilities sponsored by the government; affordable housing project sponsored by the government; renovation project in connection with aged urban areas sponsored by the government; and other public interest situations.

The compensation for expropriated parties made by the municipal or county-level government shall include: (1) the compensation for the value of the expropriated properties; (2) the compensation for the relocation and temporary settlement; and (3) the compensation for the loss arising from the suspension of production and operation.

The Executive Authority to Conduct Expropriation and Compensation

According to the New Expropriation Regulation, the municipal or county-level government shall be respectively responsible for the expropriation and compensation of the real properties within its administrative area. Real estate enterprises are not allowed to participate in the expropriation activities. In addition, the municipal or county-level government may authorize relevant entities to implement the expropriation works however such entities shall not be profit-pursuing in nature.

By specifying that the responsible party for the expropriation and compensation shall be the government rather than the real estate enterprise, the New Expropriation Regulation tries to solve the interest conflict and establish a cushion between the real estate enterprise and the expropriated parties.

The Plan for Expropriation and Compensation of Real Properties

According to the New Expropriation Regulation, draft plan for the expropriation and compensation shall be submitted to the municipal or county-level government by the governmental department responsible for expropriation. The municipal or county-level government shall make public announcement of the draft plan and seek public opinion.

It shall be noted that for renovation project in connection with aged urban areas, where a majority of the expropriated parties hold that the plan for expropriation and compensation is not in compliance with the New Expropriation Regulation, the municipal or county-level government shall hold a public hearing for the expropriated parties and the representatives of the public. The draft plan shall be revised according to the results of such public hearing.

Determination of the Value of the Expropriated Properties

The New Expropriation Regulation has adopted more market-oriented approach regarding the way of determining the value of expropriated real properties. According to the New

Expropriation Regulation, the ascertained value of the expropriated properties shall not be lower than the then market value of similar-situated properties as of the date of public announcement of the expropriation decision. The value of expropriated properties shall be determined by qualified real estate appraisal agencies. Also, the expropriated parties have the right to choose a qualified real estate appraisal agency through negotiation. If no such agency can be determined through negotiation, a simple majority vote or random choice as well as other methods could be adopted.

By specifying that the ascertained value of the expropriated properties shall not be lower than the then market value of similar-situated properties and the expropriated parties shall have the right to choose a real estate appraisal agency, the New Expropriation Regulation effectively ensures that the expropriated parties could protect their interest during the process of expropriation and compensation.

Compensation Agreement and Compensation Decision

According to the New Expropriation Regulation, the compensation agreements shall be entered into between the governmental department responsible for expropriation and compensation and the expropriated parties. If one party thereto does not perform its obligations, the other party thereto could file a lawsuit according to the relevant laws and regulations.

Where such a compensation agreement cannot be reached within the time limit specified in the plan of expropriation and compensation or where the property owners are not clear, the governmental department responsible for the expropriation shall report to the municipal or county-level government which may make the compensation decisions according to the draft compensation plan and then make public announcement of such decision. The expropriated parties who do not agree with such decision may file an administrative petition or an administrative lawsuit.

The New Expropriation Regulation grants the right of the municipal or county-level government to unilaterally make the compensation decisions under certain special circumstances. To protect the interest of the expropriated parties, however, the New Expropriation Regulation specifies that the full compensation shall be accomplished before such decision.

Judicial Mandatory Expropriation and Prohibition of Illegal Actions of Expropriation

According to the New Expropriation Regulation, after receiving the compensation from the municipal or county-level government, the expropriated parties shall finish the relocation within the time limit as specified in the compensation agreement or compensation decisions. However, any illegal actions of expropriation, such as cutting off water supply, gas supply, heating supply,

threat and coercion, as well as violent or threatening methods are prohibited. In addition, the real estate enterprises are prohibited to participate in the relocation. All these provisions contribute to the protection of the legitimate interest of the expropriated parties.

The New Expropriation Regulations also stipulates new judicial mandatory expropriation procedure. According to this new procedure, where property owners do not file an administrative petition or an administrative lawsuit against the decision of expropriation and meanwhile refuse to relocate within the time limit specified in the expropriation decision, the municipal or county-level government may petition the local court to conduct judicial mandatory expropriation. However, the concrete enforcement ways and the corresponding supervision have not been provided in the New Expropriation Regulation.

Legal Liabilities for Illegal Actions of Expropriation and Illegal Actions Obstructing Expropriation

According to the New Expropriation Regulation, illegal actions of expropriation such as cutting off water supply, gas supply, heating supply, threat and coercion, as well as violent or threatening methods could be subject to civil liabilities for compensation, administrative penalties or criminal liabilities. The personnel in charge or are directly responsible for such illegal actions may also be subject to criminal liabilities or other penalties. Meanwhile, the people who obstruct the expropriation and compensation through violent or threatening ways could also be subject to administrative penalties or criminal liabilities.

If you have any questions regarding the foregoing, please feel free to contact us. Thank you!

Important Announcement

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