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Land Acquisition (Amendment) Act 2016 — Key Changes

Strata and underground development are primarily driven by the relative scarcity of suitable land in the city. The Natural Resources and Environment Minister has said that changes to the Land Acquisition Act 1960 (“the Acquisition Act”) are necessary especially for infrastructure development to retain the country’s competitiveness in heading towards a developed nation. [1]

Some 19 years after the last round of amendments to the Acquisition Act, [2] the Land Acquisition (Amendment) Act 2016 [3] (“Amendment Act 2016”) will soon be in force.

There are a few key changes in the Amendment Act 2016:

1. Underground land

Currently, the Acquisition Act does not expressly provide for compulsory acquisition of underground land. [4] The amendment, consistent with Part Five (A) sections 92A to 92G of the National Land Code 1965, will provide an express power for the State Authority to acquire private underground land. To acquire private underground land, as an extension to the existing power to acquire “part of the land”, the extent and depth of the area of the underground land to be acquired must be specified in a plan prepared by the land administrator. [5] However, the Amendment Act 2016 does not provide for the definition of underground land, nor does it provide the extent of the details that have to be stated in the acquisition plan.

2. Subdivided building or land

The Amendment Act 2016 includes changes aimed at tightening up the procedures involved in a compulsory acquisition of a subdivided building or land:

- A note of the intended acquisition will now be required to be endorsed on the strata register. [6]
- The land administrator will be required to also serve Form K (Notice to take formal possession of land) on the management corporation. [7]
- The land administrator will also be required to comply with the provisions under the Strata Titles Act 1985 where it involves acquisition of part of a subdivided building or land. [8]

3. Late payment charges

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The current rate of 8% per annum for late payment charges will be reduced to 5% per annum.^[9] The Amendment Act 2016 also suggests that late payment charges on additional compensation awarded by the court may no longer be automatic and is to be paid only if the court so orders.^[10]

4. Objection against land administrator's award

Currently, if a landowner is not satisfied with the compensation made by the land administrator upon a full land enquiry,^[11] he can appeal to the High Court by filing an objection. The amendment will introduce a similar right to appeal on compensation awarded by the land administrator where the state Authority:

- a. withdraws from the acquisition;^[12]
- b. needs temporary occupation and use of land.^[13]

5. Threshold for right to appeal to High Court

The threshold for the right to appeal by the landowner will be increased from RM3,000 to RM5,000.^[14]

The threshold for the right to appeal by any government or acquiring agency will be increased from RM15,000 to RM30,000.^[15]

6. Temporary occupation or use of land

In addition to the four sets of circumstances^[16] in which the State Authority is currently empowered to procure temporary occupation or use of land for a term not exceeding three years, the State Authority will be able to do so where such temporary occupation or use is needed as indicated in a development plan under the town and country planning laws. The land administrator is duty-bound to endorse a note of temporary occupation or use of land on the document of title.^[17]

The land administrator will now be permitted to obtain a written opinion on the value of the land from a valuer before making an offer of compensation for temporary occupation or use of land.^[18] The land administrator will also have the power to substitute the monetary compensation by entering into an equitable arrangement with the person interested, the particulars of which must be endorsed on the register.^[19]

7. Miscellaneous

It will be mandatory for the land administrator to record all the evidence during the enquiry.^[20] In cases where possession of land has been taken pursuant to the Certificate of Urgency, it will now be mandatory for the land administrator to continue to make a full enquiry to determine land compensation.^[21]

In the last three years, the construction of the country's largest infrastructure development, the Klang Valley Mass Rapid Transit project, had provoked a common allegation that there is no real "need" for the State Authority to acquire the surface of the land when the construction is wholly underground.^[22] It is hoped that the Amendment Act 2016, which provides an express power to compulsorily acquire underground land, will resolve the impasse between the acquiring authority and the landowner where underground land is concerned.

If you have any query or would like to know more about the Amendment Act 2016, please contact Rosli Dahlan (rd@lh-ag.com) or Ho Ai Ting (hat@lh-ag.com).

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- [1] "Dewan Rakyat passes Land Acquisition (Amendment) Bill", *theSun daily* (24 May 2016) <<http://www.thesundaily.my/news/1813597>>
- [2] Land Acquisition (Amendment) Act 1997 [Act A999], which came into force on 1 March 1998
- [3] [Act A1517], which received the Royal Assent on 31 August 2016 and was published in the *Gazette* on 9 September 2016
- [4] The National Land Code 1965 had been specifically amended in 1990 to insert provisions (sections 92A to 92G) governing the alienation of underground land, independent of a land's surface portion. The amendment enables the disposal of "underground land", which can then either be alienated or leased for the use to construct tunnels, car parks and to lay pipes.
- [5] New subsection 7(2)
- [6] New subsection 9(2)(a)
- [7] New subsection 22(3)(c)
- [8] New subsection 26(4)
- [9] Amendment to subsections 29A(5), 32(1) and (1B)
- [10] Amendment to section 48
- [11] Acquisition Act, s 14
- [12] *Ibid*, s 35
- [13] *Ibid*, Part VII
- [14] Amendment to section 37
- [15] *Ibid*
- [16] (i) public purpose; (ii) purpose which is beneficial to the economic developments of Malaysia or public; (iii) the purposes of mining, residential, agricultural, commercial, industrial, recreational, or any combination of such purposes; or (iv) public works
- [17] Amendment to section 57
- [18] New subsection 58(2A)
- [19] New subsection 58(4)
- [20] New subsection 12(4)
- [21] New section 19A
- [22] Vijenthi Nair, "MRT: Shopowners can develop land above ground", Metro News, *the Star Online* (28 October 2015) <<http://www.thestar.com.my/metro/community/2015/10/28/mrt-shopowners-can-develop-land-above-ground/>>; "MRT tunnels below Bukit Bintang completed", *the Star Online* (27 October 2014) <<http://www.thestar.com.my/business/business-news/2014/10/27/mrt-tunnels-below-jalan-bukit-bintang-completed/>>; Ida Lim, "MRT Corp: Possible delay to Bukit Bintang station but project on track", *Malay Mail Online* (29 August 2013) <<http://www.themalaymailonline.com/malaysia/article/mrt-corp-possible-delay-to-bukit-bintang-station-but-project-on-track/>>; Maizatul Nazlina, "Ampang Park owners allowed to challenge MRT land acquisition", *the Star Online* (20 January 2016) <<http://www.thestar.com.my/news/nation/2016/01/20/court-allows-ampang-park-owners-review-over-mrt-land-acquisition/>>; Ida Lim, "Court freezes government's acquisition move on Ampang Park mall for MRT project", *Malay Mail Online* (20 January 2016) <<http://www.themalaymailonline.com/malaysia/article/court-freezes-governments-acquisition-move-on-ampang-park-mall-for-mrt-proj/>>; S Tamarai Chelvi, "High Court grants leave to Ampang Park owners in MRT acquisition", *theSun daily*

(20 January 2016) <<http://www.thesundaily.my/news/1671260>>; Hidir Reduan, *New Straits Times* (20 January 2016) <<http://www.nst.com.my/news/2016/01/123118/court-orders-halt-ampang-park-demolition>>; Arnaz M Khairul, "Save Ampang Park' campaign steps up a gear", *New Straits Times* (8 January 2016) <<http://www.nst.com.my/news/2016/01/121164/save-ampang-park-campaign-steps-gear>>