



**NAZMI
ZAINI
CHAMBERS**

ADVOCATES & SOLICITORS | CORPORATE SECRETARY

*Persons Interested and Reasonable Expenses
in Land Acquisition in Malaysia*





Compulsory land acquisition refers to the process by which the government obtain land for various purposes, such as infrastructure development, urbanization, industrialization, conservation, or agricultural expansion. It typically involves the legal and administrative procedures through which land rights are acquired from private landowners or communities. Land acquisition is a drastic process for development which affects core constitutional rights of landowners and as such steps taken thereunder must be in accordance with the mandatory processes under the Land Acquisition Act 1960 (“LAA”). This article will briefly set out the meaning of “Persons Interested” in LAA as well as the consideration of “Reasonable Expenses” in determining compensations to persons affected by a compulsory land acquisition exercise.

PERSONS INTERESTED

A person intending to claim compensation as a result of a compulsory acquisition of land must first be a “person interested” within the meaning of LAA.¹ Person interested is defined as “every person claiming an interest in compensation to be made on account of the acquisition of land under this Act, but does not include a tenant at will”.² The term person interested is inexhaustive and inconclusive, and a person can be said to be a person interested if he has interest in the land either directly or indirectly or if he has an interest in the compensation in respect of the land acquired.³ It bears importance to note that LAA stipulates “person interested” and not “registered proprietor” or “persons with registered interest” as basis for compensation – this is in line with principle that an occupier or party in possession of the land is *prima facie* entitled to compensation, being the first party to be affected by the compulsory acquisition, having suffered a loss.

The Court of Appeal, in *Sistem Penyuraian Trafik KL Barat Sdn Bhd v. Kenny Heights Development Sdn Bhd & Anor.*⁴ listed the different categories of “person interested” which among others are **(i)** a person who has entered into a contract to purchase a piece of land, i.e. a beneficial owner; **(ii)** an option holder that obtained an option to purchase land which was subsequently the subject of a compulsory acquisition; **(iii)** a person having an equitable interest in the acquired property under trust. The law on land acquisition does not necessitate a “person interested” to establish an interest in land (e.g., whether the interest had been registered under the National Land Code) to be entitled to compensation but instead establish an interest in the compensation on account of the compulsory acquisition of the land.⁵

¹ Perbadanan Kemajuan Pertanian Selangor v. JW Properties Sdn Bhd [2017] 8 CLJ 392, Federal Court.

² Section 2, Land Acquisition Act 1960.

³ Magasu Sundram T Magasu & Ors v. Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur [2003] 2 CLJ 422, High Court.

⁴ [2009] 4 CLJ 57.

⁵ Perbadanan Kemajuan Pertanian Selangor v. JW Prope



REASONABLE EXPENSE

Land acquisition proceedings generally begin with the Land Administrator issuing a public notice in Form E to announce the date of an inquiry to hear compensation claims from persons interested.⁶ This notice must comply with the procedures outlined in section 52 of the LAA.⁷ Interested parties can voice objections or concerns regarding the acquisition on their accord or via legal representation in the inquiry which resembles a civil court proceeding. At this stage, the Land Administrator will evaluate the subject land's value for compensation,⁸ identify the interests of interested parties,⁹ and address any objections.¹⁰

In assessing compensation, the Land Administrator would often seek information from relevant authorities regarding the subject land's planning status and uses.¹¹ The Land Administrator shall in determining the amount of compensation assess the considerations set out in the 1st Schedule of the LAA which lists additional factors influencing compensation, including the land's general features and market value. One of the factors that is to be taken into consideration in formulating the appropriate compensation is the consequence of the acquisition of the subject land to the person interested where if he is compelled to change his residence or place of business, the *reasonable expenses* incidental to such change must be taken into account. The question that arises then is the meaning of reasonable expenses. From the examination of cases thus far, what is considered reasonable expenses would be determined on a case-to-case basis and there appears to be no hard and fast rule in determining this factor.

Attempt to include the cost incurred in finding a new site as reasonable expenses was struck down in *Sin Hee Yang Property Management Sdn Bhd v. Pentadbir Tanah Daerah Kuala Langat and another case*¹² whereas cost of appointing a building consultant was deemed reasonable expense incidental to the relocation to a new business site in *Lembaga Lebuhraya Malaysia v. Pentadbir Tanah Daerah Klang & Anor and another appeal*.¹³

Similar conundrum can be found on the issue of "loss of income" and "loss of profit" as reasonable expense due to the compulsory acquisition of land where in *Shell (M) Trading Sdn Bhd v. Pentadbir Tanah Wilayah Persekutuan*,¹⁴ loss of profits from sale of petrol and diesel at its petrol station were deemed reasonable expense incidental to the change of residence

⁶ Section 10(1), Land Acquisition Act 1960.

⁷ Section 10(1), Land Acquisition Act 1960.

⁸ Section 12(1), Land Acquisition Act 1960.

⁹ Section 12(2), Land Acquisition Act 1960.

¹⁰ Section 12(2), Land Acquisition Act 1960.

¹¹ Section 9A(1), Land Acquisition Act 1960.

¹² [2023] MLJU 1678.

¹³ [2022] MLJU 36.

¹⁴ [2014] 8 MLJ 94.



or place of business but consideration of loss of income from a similar business was not acceptable in the later decision in *Exxonmobil Malaysia Sdn Bhd v. Pentadbir Tanah Daerah Petaling* on the basis that loss of income was not incidental to the change in residence or place of business.¹⁵

CONCLUSION

Though question of “Persons Interested” is a settled principle in LAA, the same cannot be said in respect of “Reasonable Expenses” which remains fluid and to be determined on a case-to-case basis. Though loss of income does not qualify as reasonable expense, it appears that loss of profit may as held in *Shell (M) Trading Sdn Bhd (supra)*, indicating a need for clearer guidelines in future cases.

¹⁵ [2015] 5 MLJ 541.

Author



Brandon Cheah
Partner
brandon@nzchambers.com



Aireen Natasha
Associate
aireen@nzchambers.com



A-3A-10, Plaza Mont' Kiara
No. 2 Jalan Kiara, Mont' Kiara
50480 Kuala Lumpur
Malaysia

+603 6420 4885
+603 6420 4883
general@nzchambers.com
www.nzchambers.com

Practice Areas

- Financial Services
- Advisory & Compliance
- Projects & Infrastructure
- Mergers & Acquisitions
- Dispute Resolution

Published Date:
19 March 2024