Review Paper

« Compulsory Land Acquisition »

[LRC_R&P 146, August 2020]
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(c) the Solicitor-General or his representative;
(d) the Director of Public Prosecutions or his representative;
(e) a barrister, appointed by the Attorney-General after consultation with the Mauritius Bar Council;
(f) an attorney, appointed by the Attorney-General after consultation with the Mauritius Law Society;
(g) a notary, appointed by the Attorney-General after consultation with the Chambre des Notaires;
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Executive Summary

Review Paper about « Compulsory Land Acquisition »
[LRC_R&P 146, August 2020]

The Law Reform Commission has compared provisions in our law on Compulsory Land Acquisition with provisions in the laws of other legal systems (such as UK, Australia, New Zealand, France, Hong Kong, Singapore, India, South Africa, and Trinidad and Tobago), and considered changes which can be made to our law to ensure that when land is compulsorily acquired there is “prompt and adequate compensation” and the person dispossessed is dealt with fairly by public authorities.
Introduction

1. Compulsory acquisition of land is the power of the government which is derived from a statute, to acquire private rights in land without the willing consent of the owner or occupier, in order to benefit society at large.\(^1\) According to Grotius, "The property of subjects is under the eminent domain of the state, so that the state or those who act for it may use and even alienate and destroy such property, not only in the case of extreme necessity, in which even private persons have a right over the property of others, but for ends of public utility, to which ends those who founded civil society must be supposed to have intended that private ends should give way. But, when this is done, the state is bound to make good the loss to those who lose their property".\(^2\)

2. Article 1 of Protocol No. 1 to the European Convention on Human Rights recognizes "that everyone has the right to the peaceful enjoyment of his possessions, Article 1 is in substance guaranteeing the right of property. This is the clear impression left by the words "possessions" and "use of property" (in French: "biens", "propriété", "usage des biens"); the "travaux préparatoires", for their part, confirm this unequivocally: the drafters continually spoke of "right of property" or "right to property" to describe the subject-matter of the successive drafts which were the forerunners of the present Article 1. Indeed, the right to dispose of one's property constitutes a traditional and fundamental aspect of the right of property".\(^3\)

\(^1\) FAO land tenure studies, *Compulsory acquisition of land and compensation* (2008), p.5
\(^2\) Nowak, John E.; Rotunda, Ronald D., *Constitutional Law* (Seventh ed.), 2004, p. 263
\(^3\) *March v. Belgium*, Judgment of 13 June 1979, Series A no. 31
3. The right to property is also afforded protection under Article 14 of the African Charter on Human and Peoples’ Rights (ACHPR), according to which “The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws”. Thus, “a law that allows the deprivation of property through seizure which is not justified by a public interest imperative is a violation of the right to property”.4

4. Therefore, the compulsory acquisition statutes of each country should provide fair and transparent procedures of acquisition and should at the same time ensure that adequate compensation is given to a person dispossessed. Effective safeguards in land acquisition “are essential to both secure land rights and facilitate projects that are in the public interest. Public officials often worry that strengthening the safeguards could hinder public purpose projects, as they might struggle to acquire the necessary land or could incur unsustainable costs in compensation. But research shows that getting land acquisition wrong can not only devastate livelihoods and social identities, it can also foster conflict between companies and communities, and ultimately delay implementation and undermine project returns”.5

5. This Review Paper examines whether the 1973 Land Acquisition Act (LAA) of Mauritius provides any dispossessed person with a due and fair procedure of acquisition, consisting most importantly of the accessibility to mechanisms for any objections arising against the acquisition. The Law Reform Commission has also considered whether the LAA ensures

4 M. G. Nyarko, Compulsory Land Acquisition in Ghana, African Journal of International and Comparative Law, 27.1, 2019, p. 107
5 Lorenzo Cotula, Brendan Schwartz, Towards fair and effective legislation on compulsory land acquisition in Cameroon, International Institute for Environment and Development, Jan 2018
that the payment of compensation is equivalent and proportional to the actual amount of losses caused by compulsory acquisition. The Commission has then reflected upon the possible changes or improvements which can be brought to our LAA to ensure that when a person is dispossessed, he is dealt with in a fair manner and to ensure that the person evicted receives prompt and adequate compensation to cover maximum losses he has incurred.

6. This has been done by firstly having a look at the provisions of the LAA of Mauritius and by pointing out its lacunas. The Commission has then closely considered the compulsory acquisition statutes of other legal systems (namely, the UK, Australia, France, South Africa, Hong Kong, India, Singapore, New Zealand and also Trinidad and Tobago) in relation to their legislative provisions on the procedure prior to acquisition, types of compensation that are given and the payment of compensation. This is then followed by a comparison between the LAA of Mauritius and the land acquisition statutes of each legal system. Finally, recommendations are made, in the light of foreign statutes which are examined, as to changes which can be brought to our legislation so that the evicted person can benefit of prompt and adequate compensation.
A. Land Acquisition Legislative Provisions

7. Legislative provisions concerning Land Acquisition in Mauritius will first be examined, before proceeding to an analysis in other legal systems individually with a view to compare them afterwards.

1. Mauritius

8. Section 3 of the Constitution forbids not only compulsory acquisition, but also deprivation of property of any kind without compensation. If an individual sustains loss as a result of an activity of the State or a public authority, he should be compensated if justice and fairness so require. The view was taken that section 3 has transformed into legal rights the freedoms and advantages which Mauritians enjoyed de facto prior to independence.\(^6\)

9. In Mauritius, the compulsory acquisition of land is regulated by the 1973 Land Acquisition Act (LAA). Since the enactment of the LAA in 1973, the Act has been amended only once, that is, in the year 2013. The amendment introduced the concept of “interim payment” in the process of compensation as will be seen further.

10. Under the provisions of this Act, the government of Mauritius can compulsorily acquire (or take possession of) any privately used land provided that the following conditions are satisfied:

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a. It is not possible or expedient to acquire the land by private agreement; and

b. The conditions of Section 8(1) of the Constitution are fulfilled, that is, the acquisition should be necessary for public interests and public benefit, and there is reasonable justification for the causing of any hardship that may result to any person having an interest in or right over the property and provided that there is payment of “adequate compensation” to the person dispossessed.

11. In Compagnie Sucrière de Bel Ombre Ltée v. Government of Mauritius (1995) P.C. No. 46, the Judicial Committee, regarding the ambit of sections 3(c) and 8 of the Constitution. Considered that:

“When construing the language of sections 3 and 8 of the Constitution in accordance with these principles, it is also appropriate to give weight to the two legal traditions which exist in Mauritius, both of which attach great importance to the protection of property rights from deprivation by the State without proper compensation. They are, as to Mauritian private law, the French civil code and, as to Mauritian public law, the common law. An illustration of the former is provided by Article 545 of the Mauritian Civil Code, now repealed by the Land Acquisition Act 1973, which was derived from Article XVII of The Declaration of the Rights of Man and of the Citizen 1789; and as to the position at common law reference can be made to the statement of Lord Warrington in Colonial Sugar Refining Co. Ltd. v. Melbourne Harbour Trust Commissioners [1927] A.C. 343 at 359. Construed literally the language of section 3 could have been treated as only providing an introductory declaration as to the scope of the rights referred to in the subsequent sections of Chapter II, including section 8. However because of the background to the Constitution, both in the Supreme Court of Mauritius, in Societe United Docks v. Government of Mauritius [1981] M.R. 500 and in the Privy Council, in Societe United Docks and Others v. Government of Mauritius
[1985] A.C. 585, section 3 has been held to create additional protection for property to that provided by section 8.

The correct approach is therefore to read section 3(c) and section 8 together, with the relevant language of each section influencing the interpretation of the other. Section 3(c), however, remains at the same time both the more general and the more qualified provision: more general, as its protection applies to a wider range of situations and a broader concept of property than does section 8; more qualified, because the protection it provides is restricted by broader limitations than that to which the protection provided by section 8 is subject. Even when generously construed section 8 is limited to protecting property and property interests from interference which in a broad sense involves some formal compulsory taking of possession or acquisition of property or of what loosely corresponds to a right over property. The property or interest in property must be sufficiently identifiable to be capable of being taken possession of or acquired in this way. However once property to which section 8 applies is compulsorily taken or acquired, then the section is contravened unless all the requirements of section 8(1) (a), (b) and (c) are fulfilled or one of the other limited exceptions in section 8 applies. The qualification on the protection provided by section 3 is in much more general terms. There is therefore a significant distinction between the protection provided by section 3(c) and section 8, notwithstanding their close relationship."

12. The conditions of Section 8(1) of the Constitution are as follows:

8. Protection from deprivation of property

(1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where --
(a) the taking of possession or acquisition is necessary or expedient in the interests of defense, public safety, public order, public morality, public health, town and country planning, the development or utilisation of any property in such a manner as to promote the public benefit or the social and economic well-being of the people of Mauritius;
(b) there is reasonable justification for the causing of any hardship that may result to any person having an interest in or right over the property; and
(c) provision is made by a law applicable to that taking of possession or acquisition --
   (i) for the payment of adequate compensation; and
   (ii) securing to any person having an interest in or right over the property a right of access to the Supreme Court, whether direct or on appeal from any other authority, for the determination of his interest or right, the legality of the taking of possession or acquisition of the property, interest or right, and the amount of any compensation to which he is entitled, and for the purpose of obtaining payment of that compensation.

13. It is essential to draw attention on the fact that our Constitution only uses the terms “adequate compensation”; there is no provision for a “prompt compensation”. Also, our Constitution ensures that compulsory acquisition will be allowed only if legislative provisions have been made which give the owner of an interest in land acquired the right of access to the Supreme Court in 3 situations. Firstly, statutory provision should be made for the person to have a right of access to court asking the determination of his interest or right in the property. Secondly, provisions should be made providing the person with a right appeal to the court to challenge the legality of compulsory acquisition of the property. And lastly, there should be legislative provisions ensuring the judicial determination and payment of any compensation amount to which a person is entitled after compulsory acquisition.
14. In order to be able to consider what improvements can be brought to our provisions on compulsory land acquisition, it is imperative to have a look at the whole procedure of land acquisition and compensation in Mauritius.

1.1 Procedure for compulsory acquisition of land

15. The law relating to compulsory acquisition of land in Mauritius "is strikingly different from that (...) in England. The Mauritius Act gives the Minister a power of compulsory acquisition which is quite general in its ambit and which he can exercise by notice under section 8 of the Act if he is satisfied that the conditions of section 8(1)(a) and (b) of the Constitution are fulfilled. There is no provision in the Act for any inquiry into the merits of the proposed acquisition to be held or otherwise giving the landowner objecting to the acquisition any opportunity to be heard before the Minister makes his decision to acquire and issues his notice to give effect to it under section 8 of the Act. It is in section 8 of the Constitution alone that a safeguard for the interests of the landowner is provided."  

16. The LAA provides for two types of compulsory acquisition of land. The first one is compulsory acquisition of land on behalf of a person who requires a land and has not been able to acquire it by private agreement. The second one is the compulsory acquisition of land on behalf of the government.

17. It is worth mentioning that the government will only resort to compulsory land acquisition by the process provided under the 1973 Land Acquisition Act when no

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7 Harel Freres v. Minister of Housing [1986] M.R. 74 (P.C.)
8 Section 5 of the 1973 Land Acquisition Act
agreement has been reached with the land owner/occupier through private negotiations, or when it is not expedient to acquire the land by private agreement.⁹

18. In practice, prior to the commencement of any process for compulsory land acquisition, the Road Development Authority (RDA) identifies with precision the location and extent of the land proposed to be acquired. A preliminary survey will also be conducted concerning the ownership of the land and a list containing all the details on ownership will be drawn up. All this information will then be sent to the Ministry of Housing and Lands¹⁰ which will subsequently start the procedure for land acquisition as provided under the 1973 LAA and as will be set out in detail below.

19. Where land is only likely to be acquired, that is, at the stage when the Government has not yet confirmed its decision to acquire the land, Section 6 of the 1973 LAA provides that an investigation of the land is necessary to determine its suitability for the purpose for which it is proposed to be acquired. Under this Section, a notice is published and served on the owner of an interest in land likely to be acquired and the owner of any other land that may be entered for the purpose of the investigation. The object of this Notice is to inform the owner or occupier or any interested person that the land is going to be entered upon and is going to be subjected to preliminary investigations and works while at the same time stating the purpose for which the land is likely to be acquired and to notify the owner of Government’s intention to acquire his land.¹¹

20. The LAA also caters for any possible abandonment of the intended acquisition.¹² In this case, the Act ensures that compensation is given to cover the damage which may be

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⁹ Abbreviated Resettlement Action Plan (Rap)Mauritius – Urban Infrastructure Project, p. 4
¹⁰ Abbreviated Resettlement Action Plan (Rap)Mauritius – Urban Infrastructure Project, p. 3
¹¹ Section 6 of the 1973 Land Acquisition Act
¹² Section 7 of the 1973 Land Acquisition Act
caused to the owner of an interest in land due to the fact that the compulsory acquisition of land has been abandoned.

21. Where after the investigation, the Minister\textsuperscript{13} decides to compulsorily acquire land either on behalf of a person or on behalf of the government, Section 8 of the LAA provides that a notice should be published as well as served on the owner of an interest in land. The objective behind this notice is to inform any interested person of the purpose for which the land is being acquired and invite the person to declare the nature of his interests and the amount of compensation to which he thinks he is entitled to.

22. Furthermore, at this stage of the compulsory acquisition process, Section 10 of the Act gives a right of appeal to any interested person who wishes to challenge the legality of such compulsory acquisition at the Supreme Court. When the legality of compulsory acquisition of land is challenged, the notice is not transcribed and a judgment of the Supreme Court is awaited as to whether to continue with the compulsory acquisition or not.\textsuperscript{14}

23. Where no challenge to the legality of compulsory acquisition has been made, or where such challenge has been overruled, the Notice under Section 8 of the LAA is transcribed by the Conservator of Mortgages. This is a crucial step because once transcribed, the Notice will serve as legal title to the land, free from all charges and encumbrances in favour of the government as clearly stated in Section 11(2) of the LAA. At this point, no judicial actions can be entered which will prevent the transfer of ownership in favour of the government.\textsuperscript{15}

\textsuperscript{13} According to Section 2 of the 1973 Land Acquisition Act, it is the Minister to whom the responsibility for the subject of lands is assigned.

\textsuperscript{14} Abbreviated Resettlement Action Plan (RAP) Mauritius – Urban Infrastructure Project, p. 6

\textsuperscript{15} Section 11(3) of the 1973 Land Acquisition Act
1.2 Types of compensation, compensation rules, interim compensation, interests and payment into court

24. First and foremost, Section 12 of the Act provides that “An "interested person" whose land is compulsorily acquired shall be entitled to the payment of compensation under this Act.” This section not only gives the statutory right to any “interested person” whose land is compulsorily acquired to be entitled to compensation, but, in addition to that, the use of the word “shall” in the law makes it imperative for the State to compensate that person. Section 2 of the Act further defines an “interested person” as a person who owns, possesses, holds a mortgage or charge over, is entitled to or is otherwise interested in land which is being compulsorily acquired or a person who holds interest in land affected by the exercise of statutory powers in relation to the entering and investigation of land likely to be acquired. It can therefore be inferred that the Act provides a right to compensation to the owner, occupier, mortgagee, charge holder and any other person holding an interest in land being acquired. In addition to that, it can also be inferred here that any person affected by the investigation of land should be entitled compensation under the Act. We will see further whether the law indeed makes provision for it.

25. Moreover, after a Section 8 notice has been published, Section 14 of the LAA requires that an interested person has to make a claim for compensation.
Compensation rules

26. Compensation under the Act is catered by Sections 19, 20 and 21.

27. Section 19 of the LAA, under the heading “Nature of compensation”, provides for the different types of compensation that are to be granted to the owner of an interest in land who is affected by the compulsory acquisition. This Section also contains rules upon which the Board shall rely upon to determine the amount of compensation.

28. Section 19(1)(a) provides that any loss sustained as a result of an act or omission under Section 6 of the LAA (which relates to the entry upon and investigation of the land and any other adjoining land) is compensable. It therefore means that any loss sustained by the owner of an interest in land due to the commission of an act or the failure of doing an act relating to the exercise of statutory powers during the investigation is indemnified. Next, Section 19(1)(b) of the Act provides that compensation will also be given to the owner of an interest in land for the loss sustained as a result of abandonment. Where the government no longer wishes to proceed with the compulsory acquisition of land, the owner of an interest in land affected by such abandonment will be indemnified.

29. The next type of compensation is compensation for the value of interest held in the land compulsorily acquired provided under Section 19(1)(c) of the Act. This section should be read in parallel with Subsection (3) of Section 19 which states that the value of any interest in the land shall be the amount which that interest if sold on the open market by a willing seller might be expected to realise at the date of the first publication of statutory notice. In other words, the basic rule is that compensation is payable for the value of the

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16 Section 19(1)(a) of the 1973 Land Acquisition Act
interest which a person has in the land compulsorily acquired is to be determined in accordance with section 19(3) of the Act.

30. The Judicial Committee of the Privy Council further clarified this principle in the case of *Mon Trésor and Mon Desert Limited v Ministry of Housing and Lands and anor*\(^{17}\) in relation to the assessment of the market value of a compulsorily acquired immovable property. The Privy Council stated that "in assessing this value the best evidence is comparison with figures from other sales of comparable property. The court also added that "the land acquired must be valued not merely by reference to the use to which it is being put at the time at which its value has to be determined, but also by reference to the uses to which it is reasonably capable of being put in the future. Where there are no comparable sales resort may be had to the residual value method. This should be reserved for exceptional cases and will not be applied where the open market value is otherwise ascertainable by such assessments as a spot valuation. A spot valuation can take into account the existence and amount of hope value. Its assessment depends upon an amalgam of factors, the likelihood (ranging from complete certainty to a very slight possibility) of the requisite planning permission being granted, the demand for the suggested development, the time which such development would take and the projected costs. The resulting figure represents the premium over existing use value which a developer may be thought willing to pay in order to acquire the land in the hope of turning it to profitable account." Even though these propositions made by the Privy Council are not expressly catered in our LAA, it has been followed by our Courts in many cases, for the determination of the open market value of the property.

31. The other type of compensation which is granted is provided under Section 19(1)(d) of the LAA which is compensation "for loss sustained as result of severance of other lands"

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\(^{17}\) *Mon Trésor And Mon Desert Limited v Ministry Of Housing And Lands & Anor* 2006 PRV 92 2008 MR 365
by the owner of an interest in the remaining land from the land compulsorily acquired. The wording used in this Section is quite unclear. This is because the wording of this Section does not distinguish between compensation for the decrease in the value of the retained land as a result of the severance (separation) of the acquired land from the retained land and compensation for any depreciation in the value of the retained land occurring due to the carrying out of works on the acquired land.

32. It has been noticed that compensation for loss in the value of retained land is given under the heading "injurious affection". This compensation for injurious affection of remaining land under Section 19(1)(d) of the Act is most of the time awarded to indemnify a person for any loss in the value of the retained land as a result of the severance. For instance, compensation was awarded for injurious affection to compensate for the loss of value by the fact that the surplus land had to be used as residential instead of commercial\(^\text{18}\); compensation was also awarded for the reduced value of the land and for the changed shape of the land with a decreased view as a result of the excision\(^\text{19}\). Thus, Section 19(1)(d) caters for compensation for severance which is usually termed as compensation for "injurious affection" by the Board. There is no precision whether this provision is meant to include loss sustained from the reduced value of land caused by the carrying out of public works on the land acquired.

33. Coming to the next category of compensation, section 19(1)(e) provides that any affected person will be compensated "for any other loss sustained as a result of the compulsory acquisition". This provision enables any interested person to claim compensation for any other type of loss and expenses incurred (which are not already catered by previous sections of the law) as a result of the compulsory acquisition. Legal and professional fees

\(^{18}\) Rosunee D v The Ministry Of Housing And Land & Anor 2014 SCJ 249
\(^{19}\) Compagnie Man Hin Bros Industries Ltd v The Honourable Minister Of Housing And Lands & Anor 2014 SCJ 173 citing the case of Deramann Ltd v The 8 Government of Mauritius
spent by an affected person due to the compulsory acquisition are often claimed under this section.\textsuperscript{20}

34. Moreover, section 19(2) of the LAA provides for a second type of valuation of compensation (the first one being assessment based on the market value approach) which is known as equivalent reinstatement. This section states that “Where land is, and, but for compulsory acquisition, would continue to be, devoted to a purpose for which land is not readily available and the Board is satisfied that the interested party bona fide intends to continue to use land for that purpose in other place compensation may be assessed on the basis of the cost of reinstating the interested person on other land.” This approach applies to certain types of property which do not normally come up on the market and whose value cannot readily be assessed by ordinary methods of valuation, such as churches, almshouses, schools, hospitals, public buildings and certain classes of business premises where the business can only be carried on under special conditions.\textsuperscript{21} In the case of Rosunee v The Ministry of housing and land and anor, the court referred to the textbook \textit{Modern Methods of Valuation}, by William Britton, Keith Davies & Tony Johnson and stated that equivalent reinstatement would seem to imply putting the claimant in the same position, or in an equally advantageous position, as that which he occupied when his land was acquired.\textsuperscript{22}

35. Furthermore, section 20 of the LAA provides for a list of certain aspects to be ignored during the assessment of the amount of compensation.\textsuperscript{23}

\textsuperscript{20} Dhunnoo B.N. v The Board Of Assessment & Ors 2018 SCJ 239
\textsuperscript{21} Nazeer F. & Anor v Board Of Assessment & Ors 2007 SCJ 61
\textsuperscript{22} Rosunee D v The Ministry Of Housing And Land & Anor 2014 SCJ 249
\textsuperscript{23} Section 20 of the LAA of Mauritius: No allowance shall, in the assessment of compensation be made on account of: (a) the fact that the acquisition is compulsory or the other degree of urgency or necessity which has led to the acquisition (b) any lack of interest of the interested person to part with the land acquired;
36. However, Section 30 of the LAA provides that the Act shall not prejudice any claim for
damage sustained after the compulsory acquisition as a result of the use to which the land
acquired is put. It may thus be inferred that nothing prevents a person to enter a separate
claim where after the compulsory acquisition, the latter has suffered any loss arising as a
result of the use to which the acquired land is put.

Advance payments and interests on compensation

37. Section 14(2) of the LAA states that where such a compensation claim has been made,
and the compensation amount is being disputed by the parties, the Minister should refer
the claim to a Board of Assessment within 28 days after receiving the claim. At this
stage, that is, pending the award of the Board, the law provides that an interim payment
of compensation may be awarded to an interested person. The amount to be paid is to be

(c) any loss sustained by the interested person as a result of an act or omission which would not give rise to an
action under any other enactment;
(d) any increase to the value of the land acquired which has accrued or is likely to accrue from the use to which the
land acquired has been or will be put by Government or by the person for whom it is acquired
(e) any investment in or improvement of the land acquired, commenced or continued after the first publication of the
notice under section 8 other than an investment or improvement –
(i) for the continuing use of the land as an economic unit;
(ii) for the satisfaction of a legal obligation;
(iii) for the maintenance of the land;
(f) the fact that Government may exploit the land acquired in cooperation with private interests;
(g) the special suitability or adaptability of the land acquired for any purpose if that purpose is a purpose for which
it could be used only in pursuance of statutory powers, or if that purpose is a purpose for which land may be
acquired under this Act;
(h) the value of any increase to the land acquired by reason of its use in a manner which –
(i) could be restrained by a court;
(ii) is contrary to law; or
(iii) is detrimental to health.
determined by the Director, Valuation and Real Estate Consultancy Services.\textsuperscript{24} From the use of the word "may" in the law, it is inferred that this advance payment of compensation is permissive and optional.\textsuperscript{23} In other words, it is at the discretion of the Minister to decide whether or not to make an advance payment of compensation before the final determination of any compensation amount by the Board. When an interim payment has been made, section 18(1A) of the LAA provides that the amount paid for interim payment is to be deducted from the final compensation award reached by the Board thus ensuring that no person is paid more than what is statutorily guaranteed to him. However, no mention has been made in the Act as to the timeframe within which the interim payment should be made to the affected person nor does the Act provide for any interest on the interim payment of compensation.

38. After the delivery of a compensation award by the Board of Assessment, section 24 of the 1973 LAA gives the statutory right to a dispossessed person to appeal against such award to the Supreme Court. In practice, and where it is necessary, where either party still do not agree with the appellate compensation decision delivered by the Supreme Court, either party may make a further appeal at the Judicial Committee of the Privy Council (JCPC). But this appeal is not provided by the LAA; it is rather catered by our Constitution which is the instrument providing for the right to appeal against a Supreme Court decision at the JCPC.

39. The law also provides for interests to be paid on the final compensation award delivered by the Board. Section 18(6) of the LAA states that the Board, in awarding compensation, may allow interest at a legal rate, which is calculated from the day the land is vested in

\textsuperscript{24} Section 14(3) of the 1973 Land Acquisition Act: Notwithstanding subsection (2), the authorised officer may, pending the award of the Board, make an interim payment of compensation to an interested person of such amount as may be determined by the Director, Valuation and Real Estate Consultancy Services.

\textsuperscript{23} Section 5(4) (b) of the 1974 Interpretation and General Clauses Act: The word "may" shall be read as permissive and empowering.
the Government until the “date of the award of the Board”. This expression “date of the award of the Board” in section 18(6) is subject to interpretations. This is because it is unclear as to whether interests on the total amount of compensation will be calculated only up till the date of delivery of the award by the Board or whether consideration should be given to additional time taken if there is any possible appeal against the award delivered by the Board. Let us consider Section 22(1) of the LAA which caters for the payment of total compensation into Court. This Section states that compensation is to be deposited at the Registry of the Court within 30 days of the date of award by the Board, where there is no appeal and within 30 days of the date the appeal is finally determined where an appeal is lodged. Section 22(1) is clear that, whenever there is an appeal, payment of compensation by the State should be made within 30 days as from the date of delivery of judgment on appeal. But the law is unclear whether interests on compensation will continue to accrue up till the date that the appeal will be finally determined. If this is not the case, that is, if interests stop running only up till the date of the award of the Board, it would imply that the interests would not cover any delay in the payment of compensation due to any appeal; which is unfair to the person who has been dispossessed and who is awaiting compensation.

40. Furthermore, the LAA does not mention whether there are any interests which accrue on the interim payment of compensation granted under Section 14(3) of the Act. Section 18(6) of the Act states that “The Board, in awarding compensation, may allow interest.” Since interim payment of compensation is determined by the Director, Valuation and Real Estate Consultancy Services and not by the Board, it can be inferred that interest is not paid on the interim compensation.

41. Also, interests accruing on compensation from the date of vesting of the land are calculated only until the date of award of the Board and not until the date of payment.
Nevertheless, in *Minister of Housing and Lands v. Board of Assessment & Or*\textsuperscript{26}, which was an appeal against a compensation award delivered by the Board, the Supreme Court was not satisfied with the amount of interest awarded on compensation, calculated from the date of vesting till the date of the award. The Court took into consideration the fact that the dispossessed person was deprived of the use of her property for a long period of time and therefore the court ordered that additional interests shall accrue at the legal rate on the amount of compensation awarded from the date of vesting up to the date of payment. Therefore, it can be inferred that the court may exercise a discretionary power to order that interests are accrued up till the date of payment; but only where it is necessary considering the circumstances of the case. However, the fact remains that the LAA provides for interest only until the date of the award of the Board. There are no express legislative provisions mentioning that interests should be calculated up till the date an appeal is finally determined or until the date of payment.

*Payment of compensation*

42. Section 22 of the LAA provides for the payment of compensation which is made into court. The State, through an authorised officer, acting as an intermediary, will deposit the total compensation payable to an affected person at the Registry of the Supreme Court. This deposit should be made within 30 days from the date of the award delivered by the Board of Assessment where the compensation award delivered by the Board has not been appealed against or within 30 days from the date on which the appeal is finally determined where the award has been appealed against.\textsuperscript{27} After the deposit, the compensation is paid out to the interested person upon application by the latter and upon his satisfying the Registrar of his claim. The time limit provided for the payment of

\textsuperscript{26} Minister Of Housing And Lands v Board Of Assessment & Ors 2016 SCJ 269

\textsuperscript{27} Section 22(1) of the 1973 Land Acquisition Act
compensation into court as from the date of delivery of the award by the Board and as from the date the appeal is finally determined is of 30 days; which is quite prompt.

43. The only thing which will take time and hence delay the payment of compensation is the time taken by the Board to deliver the award or the time taken by the Supreme Court to determine the appeal. The LAA lacks precision as to the time period within which the Board should deliver the award. It means that the Board may take an exceptionally long time to give a compensation award which delays the date of delivery of the award which hence automatically delays the payment of compensation into court. Section 17 of the LAA catering for the award to be delivered by the Board makes no specification as to the time within which the Board should deliver the compensation award. One good point which seems to be provided under the Act is the interim payment of compensation that we have seen earlier. But again, the Act does not specify the time limit within which the payment of advances should be made. Section 14(3) of the Act only sets out that "the authorised officer may, pending the award of the Board, make an interim payment of compensation to an interested person..." The only information which is available from this abstract and which is still vague, is that interim payment is made before the final determination of the compensation award by the Board.

44. Now, in cases where the compensation has already been deposited at the Registry, but has not been paid out to any person within 6 months from the date of deposit or where there is a dispute with respect to the title or any right concerning the land acquired, Sections 22(3) and 22(4) of the LAA provide that the compensation deposited will vest in the Curator and will thereafter be regulated by the 1973 Curatelle Act.
1.3. The Revenue and Valuation Appeal Tribunal (Amendment) Bill 2014

45. The object of this Bill is to amend the Revenue and Valuation Appeal Tribunal Act\(^{28}\) to provide for claims for compensation for the compulsory acquisition of land under the Land Acquisition Act to be dealt with by the Tribunal instead of Boards of Assessment, and for matters related thereto.

*The mechanism for assessing compensation*

46. The main purpose of the 2014 Amendment Bill is to attribute the jurisdiction of assessing compensation to the Revenue and Valuation Appeal Tribunal established under the 2013 Revenue and Valuation Appeal Tribunal Act (not in force). Thus, the change that this Bill purports to make is that compensation will no longer be determined by the Board of Assessment, but rather by a quasi-judicial Tribunal. It should also be noted that in the UK, Australia, Hong Kong and New Zealand, compensation is determined by a quasi-judicial land tribunal.

47. Since the Bill is proposing that the Revenue and Valuation Appeal Tribunal will thereafter hear all appeals against a decision of the Minister in relation to the amount of compensation, it also means that the proceedings at the Tribunal will be regulated by Section 5 of the 2013 Revenue and Valuation Appeal Tribunal Act. Section 5(9) of the 2013 Act, which provides that the parties may resort to mediation before the hearing of an appeal provided that they mutually agree to do so. Any agreement reached by the

\(^{28}\) The 2013 Revenue and Valuation Appeal Tribunal Act (Act No. 14 of 2013) was enacted with a view to create a Revenue and Valuation Appeal Tribunal merging the Assessment Review Committee, the Board of Assessment and the Valuation Tribunal. The purpose of merging these institutions was to improve their efficiency and a better allocation of resources. This Act is not in force. 

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parties before a mediation panel is final, conclusive and binding on the parties, and considered to be a decision of the Tribunal. Section 5(9)(f) further adds that where no agreement is reached within a period of 90 days from the date an appeal is referred to a mediation panel, the appeal shall be referred back to the Tribunal.

48. Presently, Section 17(6) of our LAA states that where the matter is already before the Board of Assessment, and the parties agree on the amount of compensation to be paid, the agreement of the parties shall be made the award of the Board. But the legislation does not give the parties the statutory right (if they would have wished to exercise it) to resort to a proper mediation mechanism when the matter is before the Board.

Claims of compensation

49. Section 7 of the 2014 Amendment Bill proposes to repeal Section 14 of the LAA and replace it by a new Section. The Bill proposes to increase the delay for submitting compensation claims from 14 days (Section 8(2)(d) of the 1973 LAA) to one year (Section 7(b) and 7(c) of the 2014 Amendment Bill) while keeping the onus on the affected persons to make a compensation claim.

50. Moreover, after the receipt of the claim, the Bill further provides for a delay of 90 days for the authorised officer to make an offer of compensation and further gives another delay of 60 days to the affected person to accept the offer of the authorised officer. The Bill also proposes a new section 14(4) of the LAA which will provide that where the offer of the authorised officer is not accepted within 60 days, the matter shall be referred to the Minister for a decision as to the amount of compensation payable under the Act.
Interim compensation

51. Section 6 of the 2014 Bill proposes to amend Section 7 of the principal 2013 Act which will modify the current process for interim compensation under the LAA.

52. Firstly, it is proposed that it should be the Tribunal to order the interim payment of compensation (Section 6 of the 2014 Bill) while under the current legislation (Section 14(3) of the LAA), an interim payment is made by the authorised officer.

53. Secondly, the Bill has addressed two important elements which are lacking in our LAA and which are: interests to be paid on interim compensation and the delay in effecting payment of interim compensation.

54. The new Section 7(7)(c) which the Bill proposes to add to the 2013 Act will read as follows: The Tribunal, in reaching a decision in relation to an appeal under section 4(1)(d), may allow interest at the legal rate calculated from the date of vesting under section 11 of the Land Acquisition Act until the date of the decision of the Tribunal or until the date of the order of the Tribunal for the interim payment of compensation. Thus, similar to the law in the UK and Hong Kong, interests will be given on advance payments, thus providing for a more adequate compensation. Nevertheless, the Bill proposes that the interests will be calculated only until the date of the order of the Tribunal for interim compensation while in Hong Kong, interests are calculated from the date of vesting until the date the interim payment is made. Hence, the advantage is that the Bill has introduced interests on interim compensation, but to make those interests more proportionate to the waiting period, a slight amendment could be made in the proposed provision: namely, to calculate those interests until the date of payment.
55. Furthermore, Section 7 of the 2014 Bill purports to amend Section 13 of the 2013 Act which will in turn amend Section 22 of the Land Acquisition Act. After the amendment, Section 22(1)(d) will read as follows: The authorised officer shall within 30 days where an interim payment of compensation is made under Section 7(d), of the date of the order of the Tribunal, deposit the compensation payable at the Registry.

2. United Kingdom (UK)

56. In the United Kingdom, the terms used to describe compulsory land acquisition are “compulsory purchase”. The UK government will have recourse to “compulsory purchase” only where land cannot be acquired by agreement. The process of “compulsory purchase” and the subsequent compensation paid is mainly regulated by four different Acts of parliament namely: the 1981 Acquisition of Land Act, the 1965 Compulsory Purchase Act, the 1961 Land Compensation Act and lastly the 1973 Land Compensation Act. The 1981 Acquisition of Land Act sets out the conditions for allowing a valid compulsory purchase while the 1965 Compulsory Purchase Act provides for the process of compulsory land acquisition whereas the 1961 and 1973 Land Compensation Acts cater for the different compensations that can be awarded as well as the rules applied in the determination of disputed compensation.

57. The process of compulsory land acquisition in the UK will be examined under the following headings: procedure before acquisition, jurisdiction for the determination of compensation and finally compensation rules.
2.1 Procedure before acquisition

Compulsory Purchase Orders

58. The relevant law concerning the making and authorization of orders for compulsory purchase is the 1981 Acquisition of Land Act. The power of compulsory purchase is vested and can be exercised by various "Acquiring Authorities" which are the local authorities (councils and municipalities)\(^{29}\) or providers of utility services.\(^{30}\) Such power of compulsory acquisition can only be vested on the Acquiring Authority through a Compulsory Purchase Order (CPO).\(^{31}\) The Acquiring Authority will not have any power to compulsorily acquire land until the Government Minister (known as the confirming authority) authorizes the CPO.

59. This CPO is prepared by the Acquiring Authority seeking authorization to compulsorily acquire land and this order is confirmed by the relevant ministry (confirming authority). The order is made under relevant Acts of Parliament containing a range of specific purposes for which land may be compulsorily purchased.\(^{32}\) Sections 10 and 11 of the 1981 Land Acquisition Act provides that prior to the submission of the CPO to the confirming authority, the acquiring authority must publish notices in the Newspaper stating that the order has been made and is about to be submitted for confirmation, describe the land and state the purpose for which the land is required. Section 12 of the 1981 Land Acquisition Act further provides that the same notice is served on every

\(^{29}\) Section 7(1) of the 1981 Acquisition of Land Act: "acquiring authority", in relation to a compulsory purchase, means the Minister, local authority or other person who may be authorised to purchase the land compulsorily


\(^{31}\) Section 7(1) of the 1981 Acquisition of Land Act

owner, lessee and occupier (except tenants for a month or any period less than a month). It is worth noting that the notice also invites any interested person, including those who have been served with the notice (statutory objectors), who feel that they will be affected by the confirmation of the CPO, to make objections against the order within a certain delay specified in the notice.

60. The confirming authority may, if necessary, hold a public inquiry or hearing for objections by statutory objectors before confirming the order. Objections may be overlooked by the confirming authority where they address problems solely of compensation since these matters will be dealt with by the Lands Tribunal of the UK.

61. Whether there have been no objections to the order, or if those objections were removed or disregarded, the CPO may be validated by the confirming authority, with or without modifications. When the order confirmed by the confirming authority comes with a modification to acquire an additional land not originally included in the order, the law protects any interested person in the sense that the Acquiring Authority will have the power to acquire additional area of land only if all the affected persons consent to the additional acquisition. Notice of confirmation of the order is then published in one or more local newspapers and served on the owner, lessee or occupier of the land.

62. After the confirmation of the CPO, the law further provides for a statutory right to challenge the validity of the CPO at the High Court of the UK on the ground that any

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33 Section 12(1) of the 1981 Acquisition of Land Act
34 Section 11(2)(d) and 12(1)(c) of the 1981 Land Acquisition Act
35 Section 13A(3) of the 1981 Acquisition of Land Act
36 Section 13(4) of the 1981 Acquisition of Land Act
37 Section 13(1) of the 1981 Acquisition of Land Act
38 Section 14 of the 1981 Acquisition of Land Act
39 Section 15 of the 1981 Acquisition of Land Act
relevant requirement has not been complied with.\textsuperscript{40} The Court has the powers under the Act and where necessary, to suspend the operation of the confirmed CPO until the final determination of proceedings and the power to quash in whole or in part the CPO.\textsuperscript{41}

\textit{After confirmation of CPO}

63. The relevant law regulating the implementation of CPOs after confirmation is the 1965 Compulsory Purchase Act.

64. The fact that an acquiring authority has obtained a confirmed CPO does not rule out the possibility of acquiring the land by agreement at this stage. Indeed, Section 3 of the 1965 Compulsory Purchase Act still gives the possibility to the acquiring authority after obtaining a confirmation of the CPO to negotiate with the owner of the land or any party having an interest in land in order to acquire the land by agreement without the need for the acquiring authority to implement its compulsory purchase powers. The compensation paid for acquisition by agreement will follow normal compensation rules that are applied for any acquisition by compulsory purchase that will be discussed further.\textsuperscript{42}

65. Once the CPO has ministerial confirmation, it may be implemented in 2 ways: the notice to treat procedure and the vesting declaration procedure\textsuperscript{43}. Only the former will here be discussed. Section 5(1) of the 1965 Compulsory Purchase Act states that when the acquiring authority requires to purchase any of the land subject to compulsory purchase,

\textsuperscript{40} Section 23 of the 1981 Acquisition of Land Act
\textsuperscript{41} Section 24 of the 1981 Acquisition of Land Act
\textsuperscript{43} The general vesting declaration procedure enables the authority, after confirmation, to make a declaration, vesting in itself title and authorisation to enter after expiry of a defined period (not less than 28 days) from the service of a notice on those affected. Title passes on the date so fixed in the declaration, whether or not compensation has been settled (Section 4 of the 1981 Compulsory Purchase (Vesting Declarations) Act of UK).
they shall give a notice to treat to all the persons interested in the land. It involves the service of a statutory notice on each of the mentioned interested person to initiate the process of agreeing or determining compensation and it is usually the trigger for any affected person to submit a claim for compensation\textsuperscript{44}. Furthermore, any disagreement as to the amount of compensation for the compulsory acquisition of interests in land is referred to the Lands Tribunal\textsuperscript{45}.

66. Following the service of a notice to treat on the owner, lessee or occupier of the land, the acquiring authority must then serve a notice of entry on the affected persons. The acquiring authority can then enter on and take possession of the land after the end of a period specified in the notice of entry. When there is such a taking of possession, the law shall ensure that interests are paid on the compensation amount from the date of entry onto land until the date of payment into court\textsuperscript{46}. Also, where the acquiring authority wishes to make any survey, valuation or investigation of the land subject to compulsory purchase, prior notice has to be given to the owners and occupiers of the land before making any entry on that land. At this point, the law ensures that any damage caused due to such survey or investigation is compensated to the owners and occupiers of the land and any amount of disputed compensation is referred to the Lands Tribunal\textsuperscript{47}. It is also important to bear in mind that even though the acquiring authority has taken possession of the land through the notice to treat procedure, title will only become vested in acquiring authority once compensation has been paid to the person having an interest in land\textsuperscript{48}.

\textsuperscript{44} Section 5 of the 1965 Compulsory Purchase Act
\textsuperscript{45} Section 6 of the 1965 Compulsory Purchase Act
\textsuperscript{46} Section 11(1) of the 1965 Compulsory Purchase Act
\textsuperscript{47} Section 11(3) of the 1965 Compulsory Purchase Act
\textsuperscript{48} Schedule 5 of the 1965 Compulsory Purchase Act and The Law Commission Consultation Paper No 165 TOWARDS A COMPULSORY PURCHASE CODE: (I) COMPENSATION A Consultative Report, p.21
67. Additionally, it must be noted that the 1965 Compulsory Purchase Act also contains provisions enabling the owner of land which has been partly acquired, to compel the acquiring authority to purchase the whole plot of land.\textsuperscript{49}

*Acquisition of mortgage interests, apportionment of rent and tenants*

68. The UK 1965 Compulsory Purchase Act also contains specific provisions concerning the acquisition of special interests such as mortgage interests and interests of tenants. Section 14(1) of the Act provides that the acquiring authority may purchase the interests of a mortgagee in the land subject to compulsory purchase. In order to immediately release the mortgage interests of the mortgagee in its favour, the acquiring authority will have to effect payment of the principal and interest due on the mortgage, together with his costs and charges, if any, and also six months additional interest.\textsuperscript{50}

69. Moreover, just like the LAA of Mauritius, Section 19 of the 1965 Compulsory Purchase Act provides for the apportionment of rent under leases. The provisions are basically similar, namely those in relation to the apportionment of rent between the land acquired and the residue of the land and those in relation to the future accruing rent payable by the lessee after the apportionment. Nevertheless, subsection 5 of Section 19 of the Compulsory Purchase Act of UK provides for an additional aspect which is absent in our LAA. Indeed, Section 19(5) of the Act states that "Every such lessee shall be entitled to receive from the acquiring authority compensation for the damage done to him in his tenancy by reason of the severance of the land required by the acquiring authority from that not required, or otherwise by reason of the execution of the works." In addition to that, Section 20 having as heading "tenants at will, etc.", ensures that compensation is

\textsuperscript{49} Section 8 of the 1965 Compulsory Purchase Act
\textsuperscript{50} Section 14(2) of the 1965 Compulsory Purchase Act
paid to such tenants when the land which they are occupying is subject to compulsory purchase. Section 20(1) provides that where the land being compulsorily acquired is occupied by a tenant who is required to give up possession of the land so occupied by him before the expiration of his term, he shall be entitled to compensation for the value of his unexpired term, and for any loss or injury he may sustain. The same principle applies if only part of the land is acquired; the tenant is in this case entitled to compensation for the damage done to him by severing or injurious affection of the land held by him.\textsuperscript{51}

Any disagreement as to the amount of compensation between the tenant and the acquiring authority is referred to the Lands Tribunal.\textsuperscript{52}

2.2 Jurisdiction for the determination of compensation

70. As mentioned previously, any disagreement concerning the amount of compensation at any stage of the compulsory purchase procedure is referred to the Lands Tribunal. This is further confirmed by Section 1 of the 1961 Land Compensation Act which comes with a general application and states that where land is compulsorily acquired, any question of disputed compensation and apportionment of rent under lease is determined by the Lands Tribunal of the UK.

2.3 Compensation and compensation rules

71. Akin to Mauritius, the right to compensation in the UK arises out of statutes. In general, the 4 statutory sources which contain provisions on compensation are the 1961 Land Compensation Act, the 1965 Compulsory Purchase Act, the 1973 Land Compensation

\textsuperscript{51} Section 20(2) of the 1965 Compulsory Purchase Act
\textsuperscript{52} Section 20(3) of the 1965 Compulsory Purchase Act
Act and the 1981 Acquisition of Land Act. Nevertheless, the laws which specifically provide for the different types of compensation and compensation rules are the 1961 Land Compensation Act, the 1973 Land Compensation Act and one additional law, namely the 2004 Planning and Compulsory Purchase Act. Ultimately, these laws, when taken together, cater for a variety of different types of compensation and they also set out the rules applicable to assess compensation to be paid by the government.

2.3.1 Compensation for the acquisition of whole land

72. Compensation following the compulsory acquisition of land in the UK is based on the general principle of equivalence. It means that those entitled to compensation are in no better and in no worse position financially than they would have been if their interests in land were not acquired.\(^{53}\)

73. The first and most classic type of compensation is compensation for land taken. Section 5 of the 1961 Land Compensation Act, as quoted below, provides for six general rules applied when assessing “compensation in respect of any compulsory acquisition” without making reference to one particular type of compensation. It is therefore suggested that these six rules find their application in the assessment of compensation for land taken as well as other types of compensation that will be discussed further.

5. Rules for assessing compensation

Compensation in respect of any compulsory acquisition shall be assessed in accordance with the following rules:

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(1) No allowance shall be made on account of the acquisition being compulsory

(2) The value of land shall, subject as hereinafter provided, be taken to be the amount which the land if sold in the open market by a willing seller might be expected to realise

(2A) The value of land referred to in rule (2) is to be assessed in the light of the no-scheme principle set out in section 6A

(3) The special suitability or adaptability of the land for any purpose shall not be taken into account if that purpose is a purpose to which it could be applied only in pursuance of statutory powers, or for which there is no market apart from the special needs of a particular purchaser or the requirements of any authority possessing compulsory purchase powers

(4) Where the value of the land is increased by reason of the use thereof or of any premises thereon in a manner which could be restrained by any court, or is contrary to law, or is detrimental to the health of the occupants of the premises or to the public health, the amount of that increase shall not be taken into account

(5) Where land is, and but for the compulsory acquisition would continue to be, devoted to a purpose of such a nature that there is no general demand or market for land for that purpose, the compensation may, if the Lands Tribunal is satisfied that reinstatement in some other place is bona fide intended, be assessed on the basis of the reasonable cost of equivalent reinstatement

(6) The provisions of rule (2) shall not affect the assessment of compensation for disturbance or any other matter not directly based on the value of land.

74. The basic principle or approach applied in the determination of compensation is the above-mentioned second rule which states that compensation should be paid at an open-market value of the property at the time of the compulsory acquisition assuming there is a
willing seller. It means that the value of compensation is determined based upon what the land might reasonably be able to realise if it was sold in an open market by a willing seller. This criterion is said to be the legal basis for a fair compensation payable for land acquired. In a Privy Council case, it was said that the compensation must be determined by reference to the price which a willing vendor might reasonably expect to obtain from a willing purchaser. The disinclination of the vendor to part with his land and the urgent necessity of the purchaser to buy must alike be disregarded. The valuation date where the notice to treat procedure is used is generally the date the acquiring authority enters upon and takes possession of the land (or the date of determination of compensation if earlier).

75. Subsection 2A, which has been recently included in the Act, further adds that the value of land based on the open market value theory should be in accordance to a no-scheme principle. The no-scheme principle is one which reinforces the essence of the open market value assessment. Section 6A(2) of the 1961 Land Compensation Act further defines the no-scheme principle as being that principle which states that during the valuation of land using the market value approach (in order to determine the amount of compensation to be paid for the land acquired), any increase or decrease in the value of land caused by the scheme for which the authority acquires the land or caused by the prospect of that scheme, should be disregarded. In addition, the law contains 5 “no-scheme rules” which provides for assumptions to be made while applying the no-scheme principle. In broad terms, these rules provide that it is to be assumed that there was no scheme of acquisition on the valuation date and it is to be assumed that no development

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54 Christopher Barclay, *Compulsory Purchase and Compensation* (2010), p.2
55 *Vishwa Narayana Gajiapativu v The Revenue District Officer*, *Vizagapatam* 1939 AC 302, also known as the ‘Indian case’.
56 Or the date the title of the land vests in the acquiring authority when the general vesting declaration procedure is followed.
57 Section 5A of the 1961 Land Compensation Act of UK
or works have been made in relation to the scheme. In other words, the amount of compensation must be assessed based upon a consideration of the normal state of transactions which would have occurred, if there had been no scheme of acquisition. This principle seems to give a fair compensation to affected persons since it ensures that an Acquiring Authority does not have to compensate for any value which it has created nor is it to benefit from any loss which it has created.

76. Furthermore, section 14 of the 1961 Land Compensation Act provides for the concept of “planning assumptions” to be taken into account while assessing the value of land using the market value method, for the purpose of determining compensation for the compulsory acquisition of interests in land. Usually, the value of land is assessed on its existing use. Where the value of land is to be assessed on its potential development value, Section 14 generally provides that it may be assumed that there exists a valid planning permission for development on the land of which the value is being determined.

77. Moreover, in Section 5 of the 1961 Land Compensation Act quoted above, it has been observed that the law contains three aspects to be disregarded in the assessment of compensation. No allowance is to be made due to the fact that the acquisition is compulsory and due to the special suitability or adaptability of the land acquired for a purpose which can be exploited statutorily. Also, any increase to the value of the land acquired will not be compensated if the land was used in a manner which could be restrained by court, contrary to the law or detrimental to health. These 3 mentioned aspects to be disregarded are similarly disregarded under Section 20 of the LAA of Mauritius during the assessment of compensation.

59 Section 5(1) of the 1961 Land Compensation Act
60 Section 5(3) of the 1961 Land Compensation Act
61 Section 5(4) of the 1961 Land Compensation Act

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78. The first approach is applied in the determination of compensation is the market value theory. The second approach which can be applied in the assessment of compensation is the “equivalent reinstatement” theory as provided by subsection 5 of Section 5 of the 1961 Land Compensation Act. According to the Law Commission of England and Wales, this rule is an exception to the open market value approach and it is discretionarily employed by the Lands Tribunal.\textsuperscript{62} It is applied where property is of such a kind for which there is no general demand or market for its use. In such cases, a claimant can have compensation fixed on the basis of cost of reinstating that use, instead of market value. It has been found, therefore, that equivalent reinstatement compensation is payable on acquisition of such premises used for example for religious purposes or for charitable purposes. It is not applied in cases of residential properties.\textsuperscript{63} The rule of “equivalent reinstatement” provides that 3 conditions must be satisfied for the payment of compensation namely, it must be satisfied that the land would have continued to be devoted to its current purpose if there were no acquisition, the purpose cause the land to have no general demand or market and the claimant (of such compensation) must have the genuine intention to reinstate elsewhere.\textsuperscript{64}

79. Furthermore, Section 10A of the 1961 Land Compensation Act states that when the interests of a person in land has been subject to compulsory acquisition and the person was not in occupation of the land at the time of acquisition, any incidental expenses incurred by that person within the period of one year beginning with the date of entry on the land, for the acquisition of another interest in another land, are to be taken into account in the assessment of compensation payable to that person.

\textsuperscript{62} Law Commission of England and Wales, \textit{ibid}, p. 65
\textsuperscript{63} Communities and Local Government, \textit{Compulsory Purchase and Compensation, Compensation to Residential Owners and Occupiers} (2010), p.11
\textsuperscript{64} Law Commission of England and Wales, \textit{ibid}, p. 65
2.3.2 Compensation for the depreciation in the value of land

80. Additional compensation may be paid to an owner whose land has been partly compulsorily acquired and who also retains some land which has been reduced in value. Compensation is paid for loss in value of the remaining land in which a person has the same interest he had in that part of the land which has been acquired.

81. The relevant law is Section 7 of the 1965 Compulsory Purchase Act which provides that in assessing compensation to be paid by the acquiring authority, compensation should not only be made for the value of the land acquired, but compensation should also be made for any damage sustained by the owner of the land by reason of the severing of the land purchased from the other land of the owner, or otherwise for the injurious affection of the other land by the exercise of the powers by the Acquiring Authority. Thus, in cases of severed land, in addition to compensation given for the land acquired based on its market value, the land owner will also be given compensation for any adverse effects sustained by the retained land due to the acquisition.

82. In this type of compensation, the land owner is indemnified for two types of devaluation, firstly, severance and secondly, injurious affection. The Law Commission of England has defined severance as the depreciation in the value of the retained land because of its separation with the acquired land while injurious affection is interpreted as the loss in value of the retained land because of works carried out by the acquiring authority on the land acquired.\textsuperscript{65} The compensation is calculated on a "before and after" valuation approach. This involves valuing the whole property before severance and then deducting

\textsuperscript{65} Law Commission of England and Wales, \textit{ibid}, p. 54
from that valuation figure the value of the land retained after severance. The difference in value represents the landowner’s loss.66

83. The law provides that where land has been acquired for the purpose of works which are to be carried out partly on that land and partly elsewhere, compensation for injurious affection of land retained is assessed by reference to the whole of the works and not only the part situated on the land acquired.67 The law also provides that when a person has already been compensated for injurious affection of retained land, and subsequently the retained land is compulsorily purchased, the compensation for the acquisition of the retained land is reduced by the amount which the person received in compensation for injurious affection of that retained land.68

84. Additionally, the 1973 Land Compensation Act specifically provides for compensation for the depreciation of land caused by the use of public works. One of the reasons behind the introduction of this type of compensation in the legislation of UK was to allow compensation in cases where no land is taken but where the value of land is depreciated by the use of public works.69 Section 1 of the said Act provides that a person is entitled to compensation by the responsible authority70 whereby the value of his interests in land has been reduced by physical factors caused by the use of public works. Those physical factors are noise, vibration, smell, fumes, smoke and artificial lighting and any discharge on to the land71 and the public works are any highway, aerodrome and any other works or

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66 Law Commission of England and Wales, *ibid*, p. 58
67 Section 44(1) of the 1973 Land Compensation Act
68 Section 6C of the 1961 Land Compensation Act
70 Section 1(4) of the 1973 Land Compensation Act defines responsible authority as: in relation to a highway, the appropriate highway authority and, in relation to other public works, the person managing those works.
71 Section 1(2) of the 1973 Land Compensation Act
land used in the exercise of statutory powers\textsuperscript{72}. Any depreciation in value attributable to reasons other than these specific factors; such as loss of view is not compensated. Section 2 of the same Act further states that this compensation is granted to those having an owner’s interest in the land as well as tenants. If the interest in land which has been reduced in value is subject to a mortgage, the compensation is paid to the mortgagee.\textsuperscript{73} The law also provides for interests on this compensation which accrue from the day on which a compensation (for depreciation caused by the use of works) claim is made until the date of payment.\textsuperscript{74}

85. The value of the retained land may be reduced as a result of severance and injurious affection and by the use of public works. However, it may happen that instead, there is an enhancement in the value of the retained land due to the acquisition scheme which is called ‘betterment’. This is catered by section 6B(2) of the 1961 Land Compensation Act which provides that where part of an owner’s land is acquired and developed under the acquisition scheme, as a result of which the value of the person’s interest in the contiguous retained land has increased, the total amount of compensation payable for the land acquired is reduced by the amount of the increase in the value of the person’s interest in the land retained. A deduction for betterment can only be specifically made if it is provided under an Act of Parliament.\textsuperscript{75}

86. Another interesting aspect which is provided by the 1973 Land Compensation Act is the payment of expenses to persons who have to move temporarily from their dwellings as a result of construction works. This is provided by Section 28 of the Act and it has not been qualified per se as ‘compensation’; rather the terminology ‘payment of an expense

\textsuperscript{72} Section 1(3) of the 1973 Land Compensation Act
\textsuperscript{73} Section 10(1) of the 1973 Land Compensation Act
\textsuperscript{74} Section 18 of the 1973 Land Compensation Act
\textsuperscript{75} Law Commission of England and Wales, \textit{ibid}, p. 61
incurred by an affected person’ has been used. Section 28 provides that where works are
carried out for the construction or alteration of a highway or any other public works, and
the carrying out of those works affects the enjoyment of an adjacent dwelling to such an
extent that inhabitation of that dwelling becomes unreasonably practicable, the
responsible authority\[76\] may pay expenses incurred by the occupier of that dwelling in
providing suitable alternative residential accommodation for himself and members of his
household for the whole or any part of the period during which the works are being
carried out.

2.3.3 Compensation for other losses (Disturbance)

87. The right to compensation for disturbance is derived from UK court cases as well as
certain statutory provisions. The essence of this compensation reflects the fact that
owners and occupiers are disturbed in their occupation of land which gives the right to a
compensation for disturbance.\[77\] Compensation for disturbance reflects the costs incurred
as a direct, natural and reasonable consequence of having to move out of the property due
to acquisition. This type of compensation is granted mainly to owners and tenants. Also,
disturbance compensation will only be awarded subject to the fact that compensation for
land acquired has been assessed based on its existing use market value and not the
development value\[78\] of the land.\[79\]

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\[76\] Section 1(4) of the 1973 Land Compensation Act defines responsible authority as: in relation to a highway, the
appropriate highway authority and, in relation to other public works, the person managing those works.

\[77\] Frances Pflimner, *ibid*, p. 154

\[78\] Usually, land is assessed based on its open market value. This open market value is based on the existing use of
the property. Nevertheless, it may also reflect the development value of the land provided that it is shown that the
land would have a development potential if it was not compulsorily purchased.

\[79\] Office of the Deputy prime Minister, *Compulsory Purchase and Compensation, Compensation to Agricultural
Owners and Occupiers* (2004), p.19
88. These compensations for other losses are paid in addition to the compensation for land acquired thus providing for a more adequate compensation covering maximum losses that have been incurred by an affected person during compulsory purchase of his land. The relevant legislation here is the 1973 Land Compensation Act certain provisions thereof having been amended by the 2004 Planning and Compulsory Purchase Act. These laws contain provisions which accommodate for different types of disturbance compensation to people who have been displaced from their lands due to compulsory purchase.

89. A person has a right to Home Loss Payment where that person is compelled to move away from his dwelling due to compulsory purchase\textsuperscript{80} provided that certain criteria are satisfied before entitlement to payment\textsuperscript{81}. It applies to those having an owner’s interest in land and to those having a right to occupy the dwelling under tenancy or a contract of employment.\textsuperscript{82} Usually the amount of home loss payment is 10% of the market value of the person’s interest in land.\textsuperscript{83} The claim is to be made within 6 months as from the day of displacement.\textsuperscript{84} The law further provides that payment should be made on the last day after the elapse of 3 months as from the date on which the compensation claim was made; or on or before the date of displacement; or on or before the date on which the market value of the land was determined, whichever is the latest.\textsuperscript{85} The law also allows for advance payments on this type of compensation which can be made at any time\textsuperscript{86} and which are less than 10% of the amount of compensation for Home Loss Payment\textsuperscript{87}.

\textsuperscript{80} Section 29 of the 1973 Land Compensation Act
\textsuperscript{81} According to Sections 29(2) and 29(4) of the 1973 Land Compensation Act, the person must have been in continuous occupation of the land for a period of not less than one year before the date of displacement and the right of that person to occupy the land being acquired must have derived from title, lease or statutory tenancy.
\textsuperscript{82} Section 29(4) of the 1973 Land Compensation Act
\textsuperscript{83} Section 30(1) of the 1973 Land Compensation Act
\textsuperscript{84} Section 32(1) of the 1973 Land Compensation Act
\textsuperscript{85} Section 32(2) of the 1973 Land Compensation Act
\textsuperscript{86} Section 32(2A) of the 1973 Land Compensation Act
\textsuperscript{87} Section 32(2B) of the 1973 Land Compensation Act
90. The second type of compensation statutorily provided is the basic loss payment which is available to owners and tenants who are not entitled to the home loss payment. The law also caters for a third type of compensation which is the occupier's loss payment. This compensation is granted to an occupier for the acquisition of his agricultural land or any other land. The law provides three options for the valuation of this compensation (namely, either 2.5% of the market value of land; or the land amount; or the buildings amount) and the occupier is entitled to the greatest of those three options, in addition to compensation for land acquired. Both the basic loss payment and the occupier's loss payment must be made not later than the date of displacement; or the day on which the amount of payment is determined; or within three months as from the day a compensation claim was made, whichever is the latest. The law also allows for advance payments on these two types of compensation and further provides for payment of any interest accrued from the day of displacement until payment.

91. The fourth type of compensation is disturbance payments. It is granted to those persons who have no proper compensable interests in land (which is not agricultural land) which has been compulsorily purchased provided that they were in lawful possession of that land at the time of acquisition. These disturbance payments cover the reasonable cost of removal from the premises and, for commercial occupiers, the loss in trade which

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88 Section 33A of the 1973 Land Compensation Act  
89 Section 33B of the 1973 Land Compensation Act  
90 Section 33C of the 1973 Land Compensation Act  
91 Section 33B(2) and Section 33C(2) of the 1973 Land Compensation Act  
92 Section 33I(2) and 33I(3) of the 1973 Land Compensation Act  
93 Section 33I(4) of the 1973 Land Compensation Act  
94 Section 33I(6) of the 1973 Land Compensation Act  
95 An interest which is entitled to compensation under a statute  
96 Section 37 of the 1973 Land Compensation Act
2.3.4 Other Provisions

92. The law also imposes a legal obligation on the local housing authority of the UK to rehouse occupiers who have been displaced from their residential accommodation on land due to compulsory purchase. Nevertheless, this does not apply to a trespasser or any other person who has been permitted to reside in the dwelling pending its demolition. Rehousing will at no given point reduce any amount of compensation to which an affected person is entitled. Moreover, where the owner or tenant of a dwelling which has been compulsorily acquired wishes to acquire or construct another residential dwelling in substitution for that from which he is displaced, the law provides that the acquiring authority may advance money (make a loan) to that person. The law also ensures that compensation is paid to disabled persons due to compulsory acquisition of their residential dwellings which were adapted to meet their special needs.

93. In addition, we have seen that provisions of the UK law allow for advance payment with respect to specific types of compensation. Nevertheless, Section 52 of the 1973 Land Compensation Act comes with a more general approach by stating that a person entitled to compensation for compulsory acquisition of land has the statutory right to make a
claim for an advance payment. The request for advance payment may be made before or after the acquiring authority has taken possession of the immovable property. The advance payment to be made is 90% of the total amount of compensation payable. This payment should usually be made within 2 months of receipt of the request or on the day on which the notice of entry is served or on the day the vesting declaration is executed. In cases where the land is mortgaged, the legislation provides that the advance payment made to the mortgagor must be reduced by the amount that the acquiring authority will pay to the mortgagee to secure the release of the mortgagee’s interest. The law also guarantees that interests are paid in cases of late advance payments. The interests run as from the day advance payment was supposed to be made until actual day of payment.

2.3.5 Comparison with Mauritius

94. In the UK, the process of compulsory purchase is dealt with by different Acts of Parliament each catering for a specific part of the process, while in Mauritius, the whole process of compulsory land acquisition is embodied in one single Act.

Comparison of compulsory acquisition procedure

95. The process of acquisition is different in both countries. The Mauritius 1973 LAA provides for a basic process of compulsory acquisition. The Minister responsible for the subject of lands will conduct a preliminary investigation on the land likely to be acquired in order to ascertain whether the land is suitable for the proposed acquisition project.

104 Section 52 of the 1973 Land Compensation Act
105 Section 52(3) of the 1973 Land Compensation Act
106 Section 52(4ZA) of the 1973 Land Compensation Act
107 Section 52ZA of the 1973 Land Compensation Act
108 Section 52B of the 1973 Land Compensation Act
Then, it is only after the Minister has taken the decision to acquire land that an interested person will be statutorily allowed to contest the compulsory acquisition and it is only after that, that the next stage of compensation and compensation claims will be started. On the other hand, the 1981 Land Acquisition Act of the UK provides for a more complex but fairer procedure of compulsory purchase. The whole process starts with a Compulsory Purchase Order (CPO) made by an acquiring authority, which acts on behalf of the government just like the role of the Minister of lands in Mauritius acting on behalf of the government. This CPO is submitted to a confirming authority for confirmation and the law allows any interested person to object to the confirmation of the order. Then, it is only after confirmation that the compensation and compensation claims process will be started. Also, contrary to Mauritius where investigation of land is provided as the first step of compulsory acquisition, the law of the UK allows the acquiring authority to enter upon, take possession and investigate the land only after the confirmation of the CPO.

96. Furthermore, the 1981 Acquisition of Land Act of the UK provides for a right of challenge at the initial confirmation stage itself; the law offers the possibility to object to the authorization of a CPO itself. That is, the law gives a person the right to raise an objection at an initial stage of the compulsory purchase process which is before the confirmation of the order. It means that any interested person may object and if successful, prevent an Acquiring Authority to be vested with that power which would have enabled that Acquiring Authority to compulsorily acquire land. This preliminary objection may be determined through a public hearing or an inquiry and the objection should relate to legal matters only since objections with respect to compensation will be referred to the Lands Tribunal of the UK. Comparatively, in Mauritius, an objection at such an early stage of the process is not statutorily provided. The LAA only provides for the challenge of legality of compulsory acquisition under Section 10 of the Act and that
also, after a decision to compulsorily acquire land has already been taken by the government.

97. Nevertheless, it has also been observed that in addition to providing for a right of objection at an initial stage, the law in the UK also provides for a statutory right of challenging the validity of a CPO after it has been granted. This concept is similar to the concept of challenging of legality of compulsory acquisition. Therefore, in both countries, the laws provide for a right to challenge after a decision to compulsorily acquire land has already been taken. However, the law of the UK additionally provides for the right to object to the confirmation of a CPO, which if successful, may stop the acquiring authority to exercise its statutory powers in relation to compulsory purchase. In view of this, it may be recommended that an objection at such a preliminary stage be also introduced in our LAA. The right to objection may be provided at the stage following the publication of the notice of investigation of land, thus ensuring that any interested person is given a fair opportunity to be heard by public authorities before the Minister takes a final decision of acquiring the land and before the process proceeds any further.

98. Furthermore, Section 11 of the LAA of Mauritius states that once the transcription of the notice announcing the decision of the government to compulsorily acquire land has been made, title to the land is transferred to the government. Subsection 3 of Section 11 of the LAA further guarantees the transfer of title in favour of the government by providing that no legal proceedings can be instituted to prevent such a transfer of title. This Subsection also adds that the compulsorily acquired rights of any affected person are satisfied by compensation. On the other hand, Schedule 5 of the 1965 Compulsory Purchase Act of the UK provides that title will only vest in the government upon payment of compensation. This UK legislative provision seems to be better and if it is introduced in our LAA, it might indirectly force the State to make a prompt payment of compensation.
because then, the State will only obtain title to the land after compensating the affected person.

99. As to the mechanism for the resolution of any matter relating to disputed amount of compensation, in Mauritius, the assessment of disputed compensation is made through a judicial process commonly referred to as a Board of Assessment. In the UK, the determination of any amount of compensation is made by a quasi-judicial institution which is the Lands Tribunal of the UK.

Comparison of compensation provisions

100. The laws of both Mauritius and the UK provide for some similar types of compensation and compensation rules.

101. The first type of compensation which is provided by the legislative provisions of both countries is compensation for the land acquired. In both legal systems, the assessment of the value of interests in land acquired is based on the open market value approach. Nevertheless, the 1961 Land Compensation Act of the UK has two additional rules which are to be followed during the determination of compensation for land acquired using the open market value method, namely the no-scheme principle and the planning assumptions. There are no provisions in our LAA relating neither to a no-scheme principle nor relating to the assumptions which are to be made about the grant of planning permission for the development of the land.

102. Furthermore, other compensations which are similarly provided by the laws of both countries are: compensation for any damage caused to a person during the entry
upon and investigation of land and compensation for the loss sustained as a result of severance in cases where land is partly acquired. As for the compensation for severance, the 1965 Compulsory Purchase Act in the UK expressly states that compensation will be granted for the reduction in the value of land by reason of severance or by reason of any injurious affection. It has been seen that in the UK, a distinction is made between severance and injurious affection; severance being the decrease in the value of land due to the separation of the acquired land from the retained land while injurious affection being a reduction in the value of land caused by works carried out on the land acquired. In Mauritius, Section 19(1)(d) of the LAA states that compensation is to be granted for any loss sustained as a result of ‘severance’. The Act does not use the term ‘injurious affection’ anywhere. Nevertheless, the Board will usually compensate for severance of land under the heading of ‘injurious affection’. In view of this, it can be contended that the compensation for ‘injurious affection’ in Mauritius does not have same meaning as that in the UK. Thus, in Mauritius, compensation is given only for severance and not for the depreciation in value of land caused by works carried out on the land acquired. Also, the 1973 Land Compensation Act of the UK provides for compensation where no land is acquired but the value of land has been reduced by the use of public works. This is not provided by the LAA of Mauritius.

103. One proposed solution here could be to introduce compensation for the depreciation in the value of land caused by works carried out on the land compulsorily acquired. The term ‘injurious affection’ may be added in Section 19(3)(d) in our LAA and it may be given the same definition that it has in the UK. This proposition will provide for more adequate compensation and may add more clarity to our law in terms of the different heads of compensation claims.
104. Another similar aspect is that the laws of both Mauritius and the UK provide that the rule of equivalent reinstatement is to be applied in cases where the land acquired is and would have continued to be devoted to a purpose for which there is no general market demand if there would have been no scheme of acquisition. In addition, the legislative provisions of both countries provide that the compulsory or urgent nature of the acquisition is to be ignored and the special suitability or adaptability of the land acquired for a purpose which can be exploited statutorily should also be ignored. In the same way, any increase in the value of land by reason of its use in a manner which is restrained by court, contrary to law and detrimental to health is to be disregarded under the laws of both countries.

105. Moreover, even though UK statutes are complex, they seem to be efficient since they provide for a wide variety of compensation covering as many losses as possible, thus ensuring that the losses sustained are indemnified adequately.

106. An additional compensation which is given in the UK but not in Mauritius is compensation for the depreciation in the value of land caused by the use of public works where no land is acquired. Also, another type of compensation is compensation for disturbance which is paid in addition to compensation for the land acquired and which is catered by the 1973 Land Compensation Act. This compensation is further categorized in the form of payment and it allows any affected person to claim any additional losses which are suffered as a result of having to vacate the land. These payments are home loss payment which is generally provided to any owner or occupier of a dwelling, basic loss payment and occupier's loss payment which is usually granted to owners and tenants. Section 37 of the 1973 Land Compensation Act also provides disturbance payments for those persons who were in lawful possession of the land at the time of acquisition but have no compensable interests in the land acquired. For example, disturbance payments
to compensate for loss in trade if a person was carrying out a business on the land acquired.

107. Furthermore, the 1973 Land Compensation Act gives a time limit within which the payments of disturbance compensations should be made. The payment of disturbance compensation should in general be made either on the date of displacement, or on the last day of a period of three months as from the date on which the compensation claim was made or the day on which the amount of payment is finally determined whichever date is the latest. This ensures that the acquiring authority will promptly indemnify the persons entitled to disturbance compensation.

108. In addition, under the 1965 Compulsory purchase Act of the UK, where tenants occupying land are required to give up possession of the land, they are entitled to compensation for the value of their unexpired term and any other loss sustained as a result of compulsory purchase. Tenants are also compensated for any damage caused to them due to severance or injurious affection if acquisition concerns only part of the land they are occupying. In addition, where any person was not in occupation of the land at the time of acquisition, the 1961 Land Compensation Act of the UK provides that any expenses incurred by that person in acquiring another land will be taken into account in assessing the total amount of compensation payable to him.

109. On the other hand, Section 19(1) of the LAA of Mauritius provides for only 5 types of compensation that have already been discussed above. These compensations are compensation for the loss sustained during investigation of the land, compensation for loss sustained as a result of abandonment of the compulsory acquisition project, compensation for the value of land acquired, compensation for severance and compensation “for any other loss sustained as a result of the compulsory acquisition”.

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The wording ‘any other loss’ which are used in the law might lead us to infer that compensation for all other types of damage sustained by any affected persons will be given under this category. But in practice, it has been observed that this category of compensation has not been exploited and explored fully; it has rather been given a limited interpretation so far. That is why, in light of what we have seen in the UK, it might be proposed that these compensations are included in our LAA: disturbance compensation, compensation to tenants and compensation to a person whose land has been acquired while he was not in occupation of the land. This will enable that owners, tenants and occupiers of the land are given sufficient compensation to cover maximum losses they have sustained as a result of the compulsory acquisition.

110. Furthermore, the laws of the UK consisting of legislative provisions specifically setting out the different types of compensations, to which a person is entitled to, will also expressly state that interests are to be paid on certain types of compensations. For instance, the 1965 Compulsory Purchase Act of the UK ensures that any compensation paid with respect to the entry on the land carries interests as from the date of entry until the date of payment of compensation into court. The 1973 Land Compensation Act provides that compensation paid for the loss in value of land due as a result of public works shall also carry interests from the date of claim until the date of payment into court. The same act also provides for interests to be paid on disturbance compensation from the date of displacement of the person until the date of payment.

111. Comparatively, the LAA in Mauritius comes only with a general provision as regards to the payment of compensation. Section 18(6) of our LAA states that the Board may, while determining compensation, allow interest at a fixed legal rate from the date of vesting of title until the date of award. Thus, interests on compensation are calculated as a percentage of the total amount of compensation and not as a percentage of a specific type
of compensation. Also, not only does the law classify the payment of interests as being optional but the interests will stop only till the day the Board renders a compensation award and not until the day of payment. As was mentioned previously, the LAA does not take into account any appeal which will extend the time for the payment of compensation as a result of which a person entitled to compensation would not be adequately compensated. This is because the interests awarded on the total compensation amount will not include interests accrued during the time taken for appeal. Hence, at this point two recommendations may be made. Firstly, interests on compensation should be made compulsory and secondly, section 18(6) of the LAA should be amended so that interests on compensation are calculated as from the date of vesting until the date of payment into court.

112. Hence, it has been noticed that the laws of the UK provide for more types of compensation thus ensuring a more adequate and sufficient compensation to affected persons. The UK laws also ensure that compensation is paid not only to owners and occupiers but to mortgagees as well for the release of mortgage interests. In contrast, the LAA comes only with a general provision for the entitlement of compensation. It not only lacks adequate compensation but it fails to precise what type of compensation is to be provided in the case of acquisition of a mortgage interest in land. It may thus be proposed that provisions in relation to the compensation to mortgagees be included in our LAA.

113. Lastly, section 52(4ZA) of the 1973 Land Compensation Act of UK sets out the time limit within which advance payments should be made which is either before the end of the day on which the notice of entry is given or within two months from the day on which the request for advance payment was received. In light of this UK provision, it
may be proposed that a time frame be added to the LAA of Mauritius to ensure a prompt payment of advances.

3. Australia

114. Australia consists of nine jurisdictions (the Commonwealth, states and territories), each having their own land acquisition legislation.

115. Compulsory land acquisition of privately owned property in Australia is regulated by the 1989 Land Acquisition Act. This legislation has been enacted in pursuance to Section 51(wwwi) of the Constitution of Australia which provides that the parliament has the power to make laws for the peace, order, and good government of the Commonwealth with respect to the acquisition of property on just terms from any person for any statutory purpose.

116. The 1989 Land Acquisition Act refers to the acquisition of ‘an interest in land’ which is defined as any legal or equitable interest in the land, a charge or privilege over the land.\textsuperscript{109} It can therefore be inferred that those having an interest in land and who are thus entitled to compensation rights under the Act include land owners, lessees or licensees, and mortgagees.\textsuperscript{110}

\textsuperscript{109} Section 6 of the 1989 Land Acquisition Act of Australia

\textsuperscript{110} Australian Government Department of Finance and Deregulation, \textit{The Commonwealth and You: Compulsory Acquisition of Land} (2011), p. 2
3.1 Procedure of compulsory acquisition

117. The Act provides for a preliminary examination of the land to ascertain whether the land is suitable for a public purpose. An authorised person\footnote{According to Section 7 of the 1989 Land Acquisition Act of Australia, an authorised person is one who has been given written permission by the Minister responsible for land matters to act under any provision of the Act.} may enter the land which is likely to be acquired or any adjoining land to make surveys and other investigations on the land.\footnote{Section 10 of the 1989 Land Acquisition Act of Australia} What is interesting to note is that contrary to Mauritius, the law also imposes obligations on the authorised person in relation to the exercise of his powers while carrying out investigations on the land. The authorised person has the legal duty to:

(a) take all reasonable steps to ensure that the exercise of the powers causes as little detriment and inconvenience, and does as little damage, as is practicable to the land and to anything on, or growing or living on, the land;

(b) remain on the land only for such period as is reasonably necessary;

(c) remove from the land at the end of the occupation all plant, machinery, equipment, goods or structures brought onto, or erected on, the land other than any of those things that the owner or occupier agrees may be left on the land; and

(d) leave the land, as nearly as practicable, in the condition in which it was immediately before it was occupied.\footnote{Section 13 of the 1989 Land Acquisition Act of Australia}

118. The law further expressly gives the power to an authorised person who was, is or will be hindered in his entry and investigation on the land, to apply for a judicial order asking for police assistance.\footnote{Section 14 of the 1989 Land Acquisition Act of Australia}
119. The Act then provides for a three-step procedure when the Minister finds that land is indeed suitable for acquisition. It involves firstly the making of a pre-acquisition declaration, secondly the reconsideration or review of the pre-acquisition declaration and the third step consist of making an acquisition declaration.\footnote{Section 20 of the 1989 Land Acquisition Act of Australia}

120. The pre-acquisition declaration will declare that the government is considering the acquisition of an interest in land for a public purpose and will usually identify the acquiring authority, the land, the interest in land and the public purpose for which land is to be acquired. The declaration will also state the contemplated use or development of the land along with setting out the reasons why the land appears suitable for that use or development.\footnote{Section 22 of the 1989 Land Acquisition Act of Australia} A copy of the declaration is then given to the owners of an interest in the land and published as well.\footnote{Sections 22 and 23 of the 1989 Land Acquisition Act of Australia}

121. The owner of an interest in the land may under the same Act apply to the Minister for a reconsideration of the pre-acquisition declaration.\footnote{Section 26 of the 1989 Land Acquisition Act of Australia} When the Minister reconsiders the decision to compulsorily acquire land, the latter may, within 28 days after receiving the application confirm, revoke or vary the declaration.\footnote{Section 27 of the 1989 Land Acquisition Act of Australia} The law also provides for the review of the pre-acquisition declaration when it has been confirmed or varied by the Minister. The application for review of a pre-acquisition declaration is made to the Administrative Appeals Tribunal of Australia.\footnote{Section 28 of the 1989 Land Acquisition Act of Australia} Lastly, when the pre-acquisition declaration has become obsolete, the Minister will make a written declaration that the land has been compulsorily acquired. This declaration will identify the land concerned as well as the purpose for which an interest in land is acquired and will be published. On the
day of publication, the land becomes vested in the government free from all other interests, trusts, obligations, mortgages, contracts, licenses and charges.\textsuperscript{121}

3.2 Compensation and compensation rules and timeframes

122. Section 52 of the Act expressly states that a person whose interest has been compulsorily acquired has the legal right to be entitled to compensation. The provisions with respect to compensation in the Act have been divided into 2 sections: firstly, amount of compensation to be paid for the acquisition of interests other than mortgage interests and secondly, amount of compensation to be paid for the acquisition of mortgage interests in land.

123. Section 55 of the Act provides that the amount of compensation for compulsory acquisition of any interests in land is such an amount that “will justly compensate the person for the acquisition”. Thus, the Act is already stating beforehand that compensation in Australia is assessed in a just and fair manner. In other words, the legislation ensures that the person dispossessed is placed in the same and similar position prior to the acquisition of his land.

\textit{Compensation for land acquired}

124. Pertaining to the rules applied in the determination of compensation to which a person is entitled when interests in his land (other than mortgage interest) are acquired, Section 55(2)(a)(i) of the 1989 Land Acquisition Act of Australia provides that regard must be made to the market value of the interest on the day of land acquisition. The law

\textsuperscript{121} Section 41 of the 1989 Land Acquisition Act of Australia
further defines "market value" as the amount that would have been paid for the land under ordinary circumstances by a willing seller and a willing buyer.\textsuperscript{122} Compensation will also take into account the value of any financial advantage additional to the market value at the time of acquisition.\textsuperscript{123} This additional value refers to the financial advantage that the owner has at the time of acquisition that is connected to his or her owning interests in the land being acquired.\textsuperscript{124} Nevertheless, where the market value of the interest in land is based on a potential purpose for which the land could have been put into use, other than the purpose for which it was used at the time of acquisition, compensation will not be given for any loss which could have been made in realising that potential.\textsuperscript{125}

\textit{Severance and injurious affection of retained land and disturbance}

125. Compensation is also provided in cases of partial land acquisition for any reduction in the market value of any other interests in the retained land as a result of severing the acquired land from the retained land.\textsuperscript{126} Still in the context of partial land acquisition, where there has been severance, compensation will take into consideration any increase or decrease in the market value of the interests in the retained land resulting from the carrying out of the purpose for which the land was acquired.\textsuperscript{127} It is important to note that the Land Acquisition Act of Australia does not use the words "injurious affection". However, in the UK, the decrease in the value of the retained land caused by the carrying out of works for which the land was acquired is referred as "injurious affection".

\textsuperscript{122} Section 56 of the 1989 Land Acquisition Act of Australia
\textsuperscript{123} Section 55(2)(a)(ii) of the 1989 Land Acquisition Act of Australia
\textsuperscript{124} Australian Government Department of Finance and Deregulation, \textit{Ibid}, p. 5
\textsuperscript{125} Section 57 of the 1989 Land Acquisition Act of Australia
\textsuperscript{126} Section 55(2)(a)(iii) of the 1989 Land Acquisition Act of Australia
\textsuperscript{127} Section 55(2)(a)(iv) of the 1989 Land Acquisition Act of Australia

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126. Any loss, injury or damage suffered and expenses incurred by a person whose interests have been compulsorily acquired as a direct, natural and reasonable consequence of the compulsory acquisition will also be compensated.\textsuperscript{128} The Australian legislation also expressly states that compensation will similarly cover any legal costs reasonably incurred by the affected person in connection with compulsory land acquisition.\textsuperscript{129} Compensation will also take into account the likelihood of continuation or renewal of an acquired interest if the interest was time bound or could have been terminated by another person.\textsuperscript{130}

127. Moreover, in addition to receiving compensation for the acquisition of an interest in land, a person may also receive compensation if his/her home is found on the land compulsorily acquired. Section 61 of the 1989 Land Acquisition Act provides that a person is entitled to compensation where that person occupied a dwelling as principal place of residence which was located on the land acquired and where the compulsory acquisition has caused the person to stop using the dwelling as principal place of residence. Section 61 entitles the owner to additional compensation where a dwelling is acquired and essentially this provides for an extra payment of $10,000 either on the total amount of compensation; or, the value of the costs for acquiring another land that entitles the person to occupation of a reasonable equivalent dwelling; whichever amount is the greatest.

\textsuperscript{128} Section 55(2)(c) of the 1989 Land Acquisition Act of Australia
\textsuperscript{129} Section 55(2)(e) of the 1989 Land Acquisition Act of Australia
\textsuperscript{130} Section 55(2)(d) of the 1989 Land Acquisition Act of Australia
Land devoted to a purpose for which there was no general demand

128. Furthermore, where the land acquired was used for a purpose for which there was no general demand or market at the time of acquisition, and the affected person acquires, or intends to acquire another interest in another land with the intention to devote the new land to the same purpose, the law provides that compensation is assessed on the market value of the acquired interest on the day of acquisition. The market value of the land is taken to be either the market value of the interest on the day of acquisition or the net acquisition cost of the interest in the new land; whichever value is the greatest.\textsuperscript{131} Compensation based on the net acquisition cost of the interest in the new land covers the costs for acquiring the new land as well as the expenses incurred or likely to be incurred as a result of ceasing to use the land acquired and use the new land for the same purpose but it excludes any savings in costs gained by the person as a result of relocation.\textsuperscript{132}

Matters to be disregarded

129. The Act also provides for a list of four matters to be disregarded and which are not compensable. Firstly, the special suitability or adaptability of the land for a statutory purpose or use is to be disregarded. Secondly, no compensation is to be made for any increase in the value of land caused by its use in a manner or for a purpose which is contrary to the law. Thirdly, any increase or decrease in the value of the land caused by the carrying out or the proposal to carry out any purpose for which the interest was acquired. Lastly, any increase in the value of the land after the service of a pre-
acquisition declaration on an affected person due to improvements carried out on the land is to be ignored.  

Compensation paid on acquisition of mortgage interests

130. Concerning compensation rules that apply when interests acquired in land are subject to an existing and valid mortgage, as a general rule, section 62 of 1989 Land Acquisition Act of Australia provides that where the interests acquired in land are subject to a mortgage, the compensation for land acquisition to which the owner is entitled must be determined as if the interest was not subject to any mortgage. Also, where interests in land have been acquired and these interests are subject to one or more mortgages, compensation is usually awarded to both the owner and the mortgagee under the Act. However, it may happen that the total compensation is payable to the owner in special circumstances.

131. In cases where compensation is payable both to the owner and the mortgagee (as will be seen below), the total compensation payable to the owner will be reduced by that amount which is payable to the mortgagee. On the other hand, it may happen that the mortgagee waives his right to receive this compensation (compensation for the acquisition of interests which are subject to a mortgage). In this matter, the Act further provides that any amount of compensation to be received by the owner as a result of the acquisition will be increased to justly include compensation in respect of interest upon the mortgage debt accruing from the time of the acquisition, or in respect of any other liability to the mortgagee.  

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133 Section 60 of the 1989 Land Acquisition Act of Australia
134 Section 62 of the 1989 Land Acquisition Act of Australia
132. Where compensation is payable to a mortgagee in respect of the acquisition of a mortgage interest, the compensation includes the amount of the principal secured by the relevant mortgage at the time of acquisition of the mortgage interest together with the amount of any interest, costs or charges due to the mortgagee under the relevant mortgage at that time. The Act mentions that this amount should not exceed the amount of compensation payable to the mortgagor for the acquisition of interests in land subject to a mortgage.\textsuperscript{135} This compensation payable to the mortgagee will also include legal or other professional costs reasonably incurred by the mortgagee with respect to the acquisition of the mortgage interest.\textsuperscript{136} [Compensation to mortgagee= (amount of principal secured at the time of acquisition of mortgage interest) + (interest, costs or charges due to the mortgagee under the mortgage) + (legal or other professional costs)]

133. The compensation payable to the mortgagor in respect of the acquisition of his interest subject to a mortgage is assessed such that it is taken to be the compensation that would have been payable to the mortgagor if there had been no mortgage over the interest.\textsuperscript{137} The Act has also catered for cases having more than one mortgage over the interest in land at the time of acquisition and where a mortgage does not have priority over other mortgages. In such a case, the compensation payable to the mortgagor is taken to be that amount that would have been payable to the mortgagor if there had been no mortgage over the interest but the amount of compensation payable to him will exclude the principal secured at the time of the acquisition by, and the interest, costs and charges due at that time under, mortgages having priority over the relevant mortgage.\textsuperscript{138}

\textsuperscript{135} Section 65(1)(a) of the 1989 Land Acquisition Act of Australia
\textsuperscript{136} Section 65(1)(b) of the 1989 Land Acquisition Act of Australia
\textsuperscript{137} Section 65(2) of the 1989 Land Acquisition Act of Australia
\textsuperscript{138} Section 65(3) of the 1989 Land Acquisition Act of Australia
Other compensations provided under the law

134. As observed earlier, the Commonwealth will, prior to acquisition, conduct an initial investigation on the land proposed to be acquired to determine its suitability for the acquisition. The 1989 Land Acquisition Act of the Commonwealth contains provisions which guarantee compensation for any loss, damage or injury suffered by the owner of an interest in the land as a result of any activity done on the land by the state with respect to the entry and investigation of the land prior to acquisition. Under Section 95 of the Act, where the owner of an interest in land has suffered a loss because of the exercise of legislative powers in relation to the entry and investigation of the land prior to compulsory acquisition, that person may be entitled to a compensation for any expenses incurred. This Section further states that "the Commonwealth is liable to pay to that person as compensation such amount as will justly compensate him or her for the loss". The Act also caters for compensation in cases where the state decides to abandon the intended acquisition. Where a pre-acquisition declaration or a certificate for urgent acquisition is revoked because the state no longer wish to proceed with the compulsory acquisition, the owner of an interest in land is entitled to such amount of compensation that will justly compensate him for any loss suffered as a consequence of the failure to acquire land.\(^{139}\)

Payment of compensation

135. Briefly, the steps for claiming compensation under the Act are as follows. A person (including a mortgagee), who considers he/she is entitled to compensation may make a compensation claim specifying the interest (whether mortgage interest or not) that has been compulsorily acquired as well as the amount that the latter thinks he/she is

\(^{139}\) Section 96 of the 1989 Land Acquisition Act
entitled to. Where the Minister is satisfied that the interests specified in the claim has been subject to compulsory acquisition, the Minister shall accept the claim and make an offer of compensation to the person, with reasons justifying the amount of compensation. On the other hand, the Minister may also reject the claim and inform the claimant through a written notice the reasons for such rejection. Where the Minister rejects a claim for compensation, the law gives the claimant a right to apply to the Administrative Appeals Tribunal for a review of the decision of the Minister to reject the claim within 3 months after receiving the notice of rejection. This Administrative Appeals Tribunal shall either affirm the rejection or accept the compensation claim. The Act also provides for an alternate solution when compensation claims have been rejected. The claimant may bring an action in the Federal Court against the Commonwealth claiming a declaration that the interest specified in the claim was compulsorily acquired from the claimant. Both avenues, if successful, will result in the government accepting the compensation claim and make an offer to the person of the compensation amount to which the Minister considers that the person is entitled.

136. Just like a compensation claim may be made by any person affected by the compulsory acquisition, the Act further ensures that no person is deprived from his or her right to compensation. But this is only applied for the compulsory acquisition of interests in land other than mortgage interest. In cases where an interest in land other than a mortgage interest has been compulsorily acquired, and a compensation claim has still not yet been made after the elapsed 12 months after the date of acquisition, the Minister may come forward and make an offer of compensation to the affected party. In this situation

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140 Section 67 of the 1989 Land Acquisition Act
141 Section 70 of the 1989 Land Acquisition Act
142 Section 71 of the 1989 Land Acquisition Act
143 Section 72 of the 1989 Land Acquisition Act
144 Section 74A of the 1989 Land Acquisition Act

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as well, any disputed amount of compensation may be submitted by either party to the Federal Court for determination.\textsuperscript{145}

137. In addition, after any compensation offer is made to an affected person, the law gives the right to the person dispossessed to accept or reject and make a counter claim for compensation.\textsuperscript{146} The Minister shall then reconsider the counter claim for compensation and make a final offer of compensation with reasons,\textsuperscript{147} which may finally be accepted or rejected by the person dispossessed.\textsuperscript{148} Where any compensation offer (including a final offer) is rejected by a person, the Act gives the possibility to both parties (the Minister and the person) to submit, through agreement, the issue concerning the determination of compensation amount to arbitration or to an expert.\textsuperscript{149} Also, a person who has rejected a final offer of compensation has the statutory right to apply to the Administrative Appeals Tribunal for a review of the decision of the Minister to make the final offer.\textsuperscript{150}

138. Moreover, the law provides for advance payments on compensation for the compulsory acquisition of interests in land. From the wording used in the legislation, it can be inferred that the remittance of advance payments can be optional and mandatory.

Section 85(1) of the 1989 Land Acquisition Act provides that \textit{"The Minister may, on behalf of the Commonwealth, make an advance on account of compensation that may become payable to a person"}. In other words, the Minister responsible for land matters has an option to make an advance payment where compensation may become payable to a ‘person’ for compulsory acquisition of interests in land. As regards cases where the Minister has made an offer of compensation to that person, Section 85(2) of the Act

\textsuperscript{145} Section 82 of the 1989 Land Acquisition Act
\textsuperscript{146} Section 75 of the 1989 Land Acquisition Act
\textsuperscript{147} Section 76 of the 1989 Land Acquisition Act
\textsuperscript{148} Section 77 of the 1989 Land Acquisition Act
\textsuperscript{149} Section 80 of the 1989 Land Acquisition Act
\textsuperscript{150} Section 81 of the 1989 Land Acquisition Act
Law Reform Commission of Mauritius [LRC]
Review Paper about “Compulsory Land Acquisition”
[LRC_R&P 146, August 2020]

provides that “the Minister shall make an advance on account of compensation payable.”\textsuperscript{151} In this case, advance payment is a mandatory requirement. The law further safeguards the persons entitled to advance payments by providing that “The mere receipt by a person of an advance on account of compensation does not constitute an acceptance of any offer made by the Minister.”\textsuperscript{152} It thus means that, even after an advance payment, the persons are still given a fair opportunity to contest any amount of compensation offered to them.

139. Moreover, after the compulsory acquisition of interests in land, payment of compensation is usually made after the end of 3 months after the determination of the amount of compensation, if payment of compensation was not done previously.\textsuperscript{153} The total amount of compensation paid will deduct any taxes, rates or other amounts charged on the land that were due at the time of acquisition and which may have been by the Minister.\textsuperscript{154}

140. Furthermore, the Act ensures that interests are paid on the compensation but the rules applied in determining these interests will be different for the acquisition of interests other than mortgage interests and for the acquisition of mortgage interests in land. For compensation payable due to the acquisition of interests in land other than mortgage interests, interests are to be paid on the compensation at a fixed legal rate and run as from the day of acquisition until payment.\textsuperscript{155} As for compensation payable for the acquisition of mortgage interests, interests are usually paid on the amount representing principal included in the compensation at the lowest rate (whether for prompt payment or

\textsuperscript{151} Section 85 of the 1989 Land Acquisition Act of Australia
\textsuperscript{152} Section 85(4) of the 1989 Land Acquisition Act of Australia
\textsuperscript{153} Section 90 of the 1989 Land Acquisition Act of Australia
\textsuperscript{154} Section 90(3) of the 1989 Land Acquisition Act of Australia
\textsuperscript{155} Section 91(2) of the 1989 Land Acquisition Act of Australia
otherwise) provided for by the mortgage from the day of the acquisition until the day of payment.\textsuperscript{156}

3.3 Comparison with Mauritius

\textit{Comparison of compulsory acquisition procedure}

141. In Australia as well as Mauritius, the process of compulsory acquisition that follows after a decision to compulsorily acquire land has already been made. The pre-acquisition declaration is nearly comparable to the notice of acquisition under Section 8 of the LAA of Mauritius in terms of their contents and the purpose they serve. Both the pre-acquisition declaration and the notice (as the case may be) are, under their own respective statutes, served on the owner of an interest in land as well as published.

142. Moreover, the legal provisions of both countries also allow an affected person to contest these 2 mentioned documents, even though both countries provide a different way of challenging these documents. In Mauritius, Section 10 of the LAA provides for a single challenge of the legality of compulsory acquisition through an appeal at the Supreme Court. On the other hand, the 1989 Land Acquisition Act of Australia gives a person two opportunities to challenge a pre-acquisition declaration which is after the Minister’s decision to compulsorily acquire land. Firstly, an affected person not satisfied with the pre-acquisition declaration may apply to the Minister for a reconsideration of the declaration. Secondly, where the affected person is still not satisfied with the decision of the Minister under the first challenge, the law provides that the affected person may then apply to the Administrative Appeals Tribunal now asking for a review of the declaration.

\textsuperscript{156} Section 92(2) of the 1989 Land Acquisition Act of Australia
143. Furthermore, the legislative provisions of both countries provide for the conduct of a preliminary inquiry on the land to determine whether it is suitable for acquisition. Nevertheless, in addition to provisions authorizing the examination of land likely to be acquired, the 1989 Land Acquisition Act of Australia imposes legal obligations to be followed during that investigation. These legal obligations primarily consist of taking all necessary and reasonable precautions during and at the end of the investigation to ensure that no damage or only minimal damage is caused to the land. Comparatively, the LAA of Mauritius makes provision only with respect to the rights of an authorised person after entering the land and does not contain provisions which impose legal obligations to be followed by the latter after entry on the land. If such legislative provisions are included in our Act, it would ensure the protection of the rights of the owner of an interest in the land which can potentially be acquired and it might as well ensure that the person who is likely to be dispossessed is dealt with fairly by the Mauritian authorities.

144. In addition, the land acquisition statute of Australia provides for 3 types of dispute resolution mechanisms for resolving disputed compensation; namely judicial, quasi-judicial and an alternate dispute resolution mechanism. Indeed, the statute allows the parties to assess the amount of compensation by arbitration, by the quasi-judicial Administrative Appeals Tribunal or by the judicial Federal Court of Australia while in Mauritius, compensation is determined by a judicial Board of Assessment.
Comparison of the types of compensation and compensation rules

145. To start with, Section 52 of the 1989 Land Acquisition Act of Australia, similar to Section 12 of the LAA of Mauritius, expressly states the right of a person to be entitled to compensation where the latter's interest in land has been subject to compulsory acquisition. Nevertheless, concerning the structure of both statutes, it has been observed that in the 1989 Land Acquisition Act of Australia, the legislative provisions concerning compensation have been separated into two main parts; namely compensation for the acquisition of interests other than mortgage interests on one hand, and on the other hand, compensation for the acquisition of mortgage interest. Comparatively, the LAA of Mauritius compacts all compensation under one main heading, and that is 'Nature of compensation' catered by Section 19. The LAA does not set out what compensation rules are to be followed in the event that the interests in land that have been acquired are subject to a mortgage.

146. Coming to the similarities, it has been observed that the statutes of both Mauritius and Australia have comparable legislative provisions (concerning the acquisition of interests other than mortgage interests), namely those with respect to the assessment of compensation based on the open market value theory and those provisions relating to the assessment of compensation based on the method of equivalent reinstatement where the land acquired has no general market demand. Also, the laws of both countries have been found to award certain similar types of compensation namely: compensation for any decrease in the value of retained land as a result of severance, compensation for any loss suffered caused by the exercise of statutory powers in relation to the entry upon and investigation of land and compensation for any loss sustained as a result of the abandonment of the intended acquisition.
Furthermore, the statutes of both countries also contain some similarities as to the matters to be disregarded during the determination of compensation. The special suitability or adaptability of the land acquired for a purpose which can be exploited statutorily is to be disregarded and the increase in the value of land caused by its use in a manner contrary to the law is also to be disregarded under the laws of both countries. Also, the law of Australia provides that no account should be taken for any increase or decrease in the value of land caused by the carrying out or the prospective carrying out of the purpose for which the land was acquired, while the LAA of Mauritius provides for the disregard of only an increase in the value of the land.

However, similar to the legislative provisions of the UK, the Land Acquisition Act of Australia provides for additional types of compensation which are not found in the 1973 LAA of Mauritius. In relation to the acquisition of interests in land other than mortgage interests, the law in Australia states that in the assessment of compensation, regard should be made of any decrease in the value of retained land caused by the carrying out of the purpose for which the land was acquired. In other words, the amount of compensation to which a person will be entitled under the law of Australia will also include compensation for injurious affection of the land retained caused by the carrying out of works. This aspect is not found in the LAA of Mauritius and we may consider inserting compensation for injurious affection of land retained caused by the carrying out of works in the Act.

Additionally, the compulsory acquisition statute of Australia expressly states that the compensation payable to a person should include any legal or other professional costs reasonably incurred by the person in relation to the acquisition. This compensation is not expressly provided by the LAA of Mauritius but it is in practice usually awarded under the heading "any other loss sustained" catered by Section 19(1)(e) of the Act. Hence, to
ensure that any legal or professional costs incurred are mandatorily compensated under our LAA, it may be proposed that these costs should expressly be included as another type of compensation under Section 19 of the Act.

150. Furthermore, in addition to compensation for land acquired, the law of Australia provides an additional type of compensation to a person if the person occupied a dwelling on the land acquired at the time of acquisition. Indeed, Section 61 of the 1989 Land Acquisition Act of Australia ensures that compensation is payable to a person who has ceased to occupy his dwelling due to the compulsory acquisition of his interests (other than mortgage interests) in land. This amount of compensation consists of a fixed statutory sum of money and may also include the cost incurred by the dispossessed person to acquire another equivalent dwelling elsewhere. This compensation bears some similarities with the home loss payment under the UK law which is awarded to compensate a person who is displaced from his dwelling as a result of the compulsory purchase of his interests in land. Thus, if this compensation is included in our LAA, it would impose a mandatory obligation on the State to adequately indemnify a person not only for the costs incurred as a result of the displacement but for the costs for finding a new dwelling as well.

151. In addition, when the acquisition of interests in land concerns the acquisition of mortgage interest, the 1989 Land Acquisition Act of Australia expressly provides for compensation to be paid to both the owner of the land and the mortgagee. Section 65 of the 1989 Act prescribes that the compensation to which a mortgagee is entitled to represents the sum of the principal, any interests due on the mortgage together with legal or professional costs incurred by the mortgagee in relation to the compulsory acquisition. As for the mortgagor, the compensation payable to him in respect of the acquisition of his mortgage interest is to be assessed as if there is no mortgage over the interest.
Comparatively, section 19 of the LAA only sets out in a general manner the compensations to be provided to an 'interested person' which also includes a mortgagee according to the definition given in Section 2 of the Act. But the Act does not contain specific provisions for compensation to be paid to a mortgagee and a mortgagor when acquisition of interests in land concerns the acquisition of mortgage interests. Therefore, another proposal to be made is that the LAA may be amended to include compensation to a mortgagee and a mortgagor.

152. Moreover, Sections 91 and 92 of the Land Acquisition Act of Australia respectively provides for interests payable on compensation for the acquisition of interests other than mortgage interests and on compensation for acquisition of mortgage interests in land. The interests on compensation are calculated at a fixed legal rate from the date of acquisition until the date of payment. In contrast, the LAA of Mauritius allows interests on compensation only until the date of the award by the Board. Thus, our LAA may be amended to provide for interests until the date of payment of compensation into court, in this way ensuring that a person is sufficiently indemnified.

153. Lastly, the 1989 Act of Australia sets out that when a person has not submitted a compensation claim after the elapse of 12 months after the date of acquisition, the Minister may come forward on its own and make a compensation offer to that person. This, in a way, ensures that the statutory right of a person to be entitled to compensation is respected. Such a legislative provision which is absent in our LAA may be inserted which will ensure that any dispossessed person is not deprived of his/her right to be entitled to compensation.
4. Hong Kong

154. In Hong Kong, compulsory acquisition of land is regulated by two Ordinances. The first one is the Cap. 130 Land Acquisition (Possessory Title) Ordinance which provides for the acquisition of land held under a possessory title required for public purposes as well as the compensation for such acquisition. Section 2 of the Ordinance defined “possessory title” as a possessory title to land against the government, that is, a possessory title is said to be held by any person who has a right of action (to recover the land) after being dispossessed of their lands.\footnote{Section 2 of the Cap. 130 Land Acquisition (Possessory Title) Ordinance: “possessory title” means a possessory title against the Government to land by virtue of sections 7(1) and 17 of the Limitation Ordinance (Cap. 347)} The second Ordinance is the Cap 124. Lands Resumption Ordinance which facilitates the resumption of government lands required for public purposes. Section 2 of this Lands Resumption Ordinance describes “land” as government land of whatever description whether held under government lease or any other title recognized by the government. Thus, this Ordinance will only concern acquisition of land belonging to the government but which has been leased out to individuals.

4.1 Land Acquisition (Possessory Title) Ordinance

155. Section 2 of this statute also defines what is meant by “acquisition for a public purpose”. It states that “acquisition for a public purpose” includes the acquisition of insanitary property for the purpose of securing the erection of improved dwellings or buildings, the acquisition of any land upon which any building is erected which, by reason of its proximity to or contact with any other buildings is a threat to human
habitation and injurious to human health, and any other acquisition which may be found to be necessary for a public purpose.\textsuperscript{158}

156. Moreover, the procedure for the compulsory acquisition of land bears some similarities with the procedure under the LAA of Mauritius. It starts with an acquisition order which is made after it is decided that an acquisition is necessary for public purposes.\textsuperscript{159} A notice will be served on any affected persons as well as published in the newspaper.\textsuperscript{160} Another point to note is that the law also provides that the same notice will declare that on the expiration of 1 month from the date the notice was affixed or on the expiration of a longer period stated in the notice, the land will vest in the Government and that every interest, right or easement of any person in or over the land shall be extinguished.\textsuperscript{161} At the expiration of the period of time mentioned in the notice, the land described in the notice, together with the right to enter upon and take possession of it, will vest in the Government free of all interests, rights or easements of any kind.\textsuperscript{162}

\textsuperscript{158} Section 2 of the Cap. 130 Land Acquisition (Possessory Title) Ordinance: “acquisition for a public purpose”
\textsuperscript{159} Section 3 of the Cap. 130 Land Acquisition (Possessory Title) Ordinance
\textsuperscript{160} Section 4 of the Cap. 130 Land Acquisition (Possessory Title) Ordinance
\textsuperscript{161} Section 4(2)(e) of the Cap. 130 Land Acquisition (Possessory Title) Ordinance
\textsuperscript{162} Section 5 of the Cap. 130 Land Acquisition (Possessory Title) Ordinance
Compensation and compensation rules

157. The law of Hong Kong seems to be more stringent than the laws of other common law systems we have studied previously. The Cap. 130 Land Acquisition (Possessory Title) Ordinance does not provide for any right to object to the compulsory acquisition. Section 6 of the Ordinance rather only provides for the right of any affected person to claim his ownership, interests, rights or easement over the land.\(^{163}\) The claim is made to the Director of Lands of Hong Kong who has the absolute discretion to accept or reject the claim.\(^{164}\) Where the Director of Lands rejects the claim, the claimant may apply to the Court of First Instance of Hong Kong for the determination of his claim.\(^{165}\) This claim of ownership is not an objection to the compulsory acquisition; it is rather one which is made to obtain compensation. Section 7(1) of the Ordinance provides that where the claim of ownership or any interest in land has been accepted, or the Court of First Instance declares that the person had a right over the land prior to the date of vesting, the person who made the claim will be entitled to compensation.

158. Then, at the end of the determination of the claim of ownership if it is established that a person is entitled to compensation, the law states that the person may submit his claim for compensation to the Director of Lands together with any documents in support of his claim.\(^{166}\)

159. After that, when the Director of Lands and the person who submitted the claim disagree on the amount of compensation, the matter is referred to the Lands Tribunal

\(^{163}\) Section 6(1) of the Cap. 130 Land Acquisition (Possessory Title) Ordinance
\(^{164}\) Section 6(2) of the Cap. 130 Land Acquisition (Possessory Title) Ordinance
\(^{165}\) Section 6(3) of the Cap. 130 Land Acquisition (Possessory Title) Ordinance
\(^{166}\) Section 7 of the Cap. 130 Land Acquisition (Possessory Title) Ordinance
which has the jurisdiction to assess the amount of compensation to be paid.\textsuperscript{167} Section 7(5) of the Ordinance further provides that the reference of any dispute concerning the compensation should generally be made within 1 year from the date of vesting or within such further period as the Lands Tribunal may allow in any case, but the total period for the reference shall not exceed 6 years from the date of vesting.

160. Regarding the rules for assessing compensation as catered by Section 8 of the Ordinance, the Lands Tribunal assesses compensation on the basis of loss or damage suffered by the claimant due to the acquisition of land. Section 8(2) of the Ordinance provides for a list of damages (if any) for which compensation will be given. Section 8(2)(a) of the Land Acquisition (Possessory Title) Ordinance provides that compensation will be given for the value of the land acquired together with any buildings erected thereon at the date of vesting. Section 8(3)(c) further adds to this provision by stating that the value of the land acquired shall be taken to be the amount which the land if sold in the open market by a willing seller might be expected to realise. Moreover, Section 8(4) of the Ordinance provides for further rules which the Lands Tribunal may take into consideration while determining the value of the land acquired together with any buildings erected thereon. The law expressly states that the Lands Tribunal may take into account the nature and existing condition of the land and the probable duration of the buildings in their existing state, and the state of repair thereof.\textsuperscript{168} The Tribunal may additionally decline to make any compensation for any addition to or improvement of the land made after the date of publication in the Gazette of the notice of intended acquisition, or any notice of intended resumption under the Lands Resumption

\textsuperscript{167} Section 6(4) of the Cap. 130 Land Acquisition (Possessory Title) Ordinance
\textsuperscript{168} Section 8(4)(a) of the Cap. 130 Land Acquisition (Possessory Title) Ordinance
Ordinance, unless such addition or improvement was necessary for the maintenance of the property in a proper state of repair.\textsuperscript{169}

161. Compensation will also be paid for any other interest, right or easement in or over the land acquired, owned, held or enjoyed by the claimant at the date of vesting.\textsuperscript{170}

162. Compensation is also given for loss or damage suffered by the claimant due to the severance of the land acquired or any building erected thereon from any other land of the claimant, or building erected thereon, contiguous or adjacent thereto.\textsuperscript{171} Also, any loss or damage to a business conducted by the claimant at the date of vesting on the land acquired or in any building erected thereon, caused by the removal of the business from that land or building due to the acquisition will be compensated by the Lands Tribunal.\textsuperscript{172} A person will also be compensated for any other expenses reasonably incurred by the claimant in moving from any premises owned or occupied by him on the land acquired to, or in connection with the acquisition of, alternative land or land and buildings.\textsuperscript{173} In addition, section 7(3) of the Ordinance provides that a claim for compensation may also include a claim for any costs or remuneration reasonably incurred or paid by the owner or person entitled to compensation in employing persons to act in a professional capacity in connection with his claim to compensation. Thus, it can be inferred that compensation will also be given for any professional fees that have been paid with respect to making the compensation claim.

163. Besides, Subsection (3) of Section 8 provides for two matters to be ignored by the Lands Tribunal during the assessment of the amount of compensation to be paid. Firstly,

\textsuperscript{169} Section 8(4)(b) of the Cap. 130 Land Acquisition (Possessory Title) Ordinance
\textsuperscript{170} Section 8(2)(b) of the Cap. 130 Land Acquisition (Possessory Title) Ordinance
\textsuperscript{171} Section 8(2)(c) of the Cap. 130 Land Acquisition (Possessory Title) Ordinance
\textsuperscript{172} Section 8(2)(d) of the Cap. 130 Land Acquisition (Possessory Title) Ordinance
\textsuperscript{173} Section 8(2)(e) of the Cap. 130 Land Acquisition (Possessory Title) Ordinance
no allowance is made on account of the fact that the acquisition is compulsory.\textsuperscript{174} No compensation will be given for the fact that the land lies within or is affected by any area, zone or district reserved or set apart for the purposes specified the Town Planning Ordinance (Cap. 131) of Hong Kong.\textsuperscript{175}

\textit{Provisional payment of compensation}

164. Section 9(1) of the Land Acquisition (Possessory Title) Ordinance provides that the Director of Lands of Hong Kong may, pending the determination of any amount of compensation by the Lands Tribunal, grant a provisional payment of the amount (if any) together with interest on such provisional payment for the period from the date of vesting until the date the advance payment is made. Such interest on the provisional payment of compensation is calculated on a daily basis. Section 9(2) of the Ordinance further adds that any provisional payment of compensation will be deducted from the final compensation amount that will be decided by the Lands Tribunal.

\textit{Payment of compensation}

165. Section 10(2) of the Land Acquisition (Possessory Title) Ordinance states that at any time after agreement or determination by the Lands Tribunal of the amount of compensation, the Director of Lands may by notice published in the Gazette require the person entitled to the compensation to collect it within the time and at the place specified in the notice. The compensation will bear interest from the date of vesting until the date

\textsuperscript{174} Section 8(3)(a) of the Cap. 130 Land Acquisition (Possessory Title) Ordinance
\textsuperscript{175} Section 8(3)(b) of the Cap. 130 Land Acquisition (Possessory Title) Ordinance
the compensation is paid out and the interest is calculated at a rate fixed by the Lands Tribunal. 176

166. If any provisional payment of compensation has been made, interest will only run on the amount of compensation that remains after the advance payment has been deducted. This interest will be calculated from the date of the provisional payment until the date of payment. 177

4.2 Lands Resumption Ordinance

167. With regard to the Cap. 124 Lands Resumption Ordinance which deals with the resumption of Government lands for public purposes, it is different from the Land Acquisition (Possessor Title) Ordinance because it caters specifically for the compulsory acquisition of government lands which have been leased out to individuals. The procedure initiating the acquisition is, however, almost similar to the procedure provided under the Land Acquisition (Possessor Title) Ordinance. It starts with a decision taken by the Chief Executive Council ordering that the resumption of government land is necessary for public purpose. 178 A notice will then be served on the owner of the land as well as published. The notice will also state that the land will be resumed after the expiration of one month from the date it has been affixed on the land or after the expiration of such period as specified in the notice. 179 On the expiration of this period of one month or after the elapse of any longer period specified in the notice,
reverts and vests in the Government and all the rights of the owner over the land or any part thereof will absolutely cease.\textsuperscript{160}

168. Similar to the Land Acquisition ( Possessory Title) Ordinance, the Lands Resumption Ordinance does not provide for a right to challenge the legality of the compulsory acquisition.

169. As for the compensation procedure, the process is slightly different from that provided under the Lands Acquisition (Possessory Title) Ordinance. Section 6(1) of the Lands Resumption Ordinance provides that within 28 days from the date on which the land reverts to the Government, the Director of Lands of Hong Kong has the obligation to do two things. He should either write to the former owner and any person who had an interest in the land before the reversion making an offer of compensation in relation to the resumption of the land. Or he should serve a notice on the former owner and any other affected persons requiring them to submit their compensation claims within a time limit specified in the notice. Thus, it can be inferred that when it concerns the resumption of government lands, the law of Hong Kong imposes a duty on the government, even though it is optional, to first make an offer of compensation to any affected person.

170. Any disputed amount of compensation will be referred to and assessed by the Hong Kong Lands Tribunal.\textsuperscript{161}

\textsuperscript{160} Section 5 of the Cap. 124 Lands Resumption Ordinance
\textsuperscript{161} Section 6(3) of the Cap. 124 Lands Resumption Ordinance
Compensation and compensation rules

171. The different types of losses for which compensation is given under this Ordinance are almost similar to those under the Land Acquisition (Possessory Title) Ordinance. Compensation will be given for the value of the land resumed and any other buildings erected thereon at the date of resumption \(^{182}\) which is calculated based on the market value of the resumed land at the date of vesting \(^{183}\). The assessment of the value of the land resumed may also take into consideration the nature and existing condition of the property, and the probable duration of the buildings in their existing state. No compensation will be made for any addition to or improvement of the property made after the date of the publication in the Gazette of the notice of intended resumption (unless such addition or improvement was necessary for the maintenance of the property in a proper state of repair). \(^{184}\)

172. Any other interest in the land resumed \(^{185}\) and any damage or loss caused by the severance of the resumed land from any other land of the claimant will also be compensated \(^{186}\). Any loss or damage caused to a business conducted by a claimant at the date of resumption on the land resumed due to the removal of the business from that land as a result of the resumption will also be compensated. \(^{187}\) Compensation will also be given for any damage that is caused by reason of the entry into and upon the land or of any works performed during the investigation of the land. \(^{188}\) Compensation may also be given to any person having an interest in land for any costs incurred by him in employing

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\(^{182}\) Section 10(2)(a) of the Cap. 124 Lands Resumption Ordinance
\(^{183}\) Section 12(d) of the Cap. 124 Lands Resumption Ordinance
\(^{184}\) Section 11(1) of the Cap. 124 Lands Resumption Ordinance
\(^{185}\) Section 10(2)(b) of the Cap. 124 Lands Resumption Ordinance
\(^{186}\) Section 10(2)(c) of the Cap. 124 Lands Resumption Ordinance
\(^{187}\) Section 10(2)(d) of the Cap. 124 Lands Resumption Ordinance
\(^{188}\) Section 7(2) of the Cap. 124 Lands Resumption Ordinance
persons to act in a professional capacity in connection with an offer or a claim of compensation.\textsuperscript{189}

173. Nevertheless, compensation under the Lands Resumption Ordinance will not take into account for the fact that the resumption is compulsory and any use which is non-conforming with the government lease under which the land was held.\textsuperscript{190} There may be provisional payment of compensation as well under this Ordinance which is given pending the final determination of compensation by the Lands Tribunal and which is given together with interests calculated from the date on which the land reverts to the Government until the date of payment of the provisional compensation.\textsuperscript{191} Nevertheless, there is no provision as to the time limit within which the provisional payment of compensation should be made.

174. Moreover, similar to provisions under the Land Acquisition (Possessory Title) Ordinance, there is no statutory delay to collect compensation. The Director of Lands will rather cause the publication of a notice specifying a time limit within which a person will be required to collect the amount. The compensation will also bear interest at such rate fixed by the Lands Tribunal and which accrues from the date of resumption of the land until the date of payment.\textsuperscript{192}

\textsuperscript{189} Section 6(2A) of the Cap. 124 Lands Resumption Ordinance
\textsuperscript{190} Section 12 of the Cap. 124 Lands Resumption Ordinance
\textsuperscript{191} Section 16A of the Cap. 124 Lands Resumption Ordinance
\textsuperscript{192} Section 17 of the Cap. 124 Lands Resumption Ordinance
4.3 Comparison with Mauritius

Comparison of compulsory Acquisition procedure

175. As indicated earlier, the procedure for land acquisition is nearly similar in relation to the notice of intended acquisition which is served on the affected persons and which is published.

176. What is different is that the legislative provisions of both the Land Acquisition (Possessory Title) Ordinance and the Lands Resumption Ordinance provide that the notice mentioned earlier will automatically vest the land or resume the land in favour of the government after the expiration of one month or after such longer time period as specified in the notice. Both statutes of Hong Kong do not provide for a right to object to the validity of the compulsory acquisition or the resumption, as the case may be. Comparatively, concerning this aspect, the 1973 LAA of Mauritius seems to provide a fairer procedure to a dispossessed person. This is because Section 10 of the LAA gives the statutory right to an interested person to challenge the legality of compulsory acquisition through an appeal at the Supreme Court. Also, Section 11(1) of the LAA clearly states that it is only after the determination of a challenge to the legality of compulsory acquisition and only after transcription that the land will vest in the government. Therefore, the LAA of Mauritius seems to be fairer since it better safeguards the right of a dispossessed person after acquisition compared to the statutes of Hong Kong.

177. Furthermore, the Ordinances of Hong Kong contain different provisions with respect to claims and offers of compensation. Under the Lands Acquisition (Possessory Title) Ordinance, any interested person should submit a written notice of his claim of
ownership or any other interest in land to the Director of Lands of Hong Kong before the date of vesting or within such period as the Director may allow. It is only after the notice of claim of ownership is accepted that a person will be entitled to compensation and will then have to submit his compensation claim to the Director of Lands. This process so far is quite similar to that provided under the LAA of Mauritius. Section 8(2)(d) of the LAA as well requires every interested person to make a written declaration of the nature of his interest in the land and make a claim for compensation (The claim for compensation is specifically catered by Section 14 of the Act).

178. Thus, two consequences are derived from the above. First, the Land Acquisition (Possessory Title) of Hong Kong gives no opportunity to an owner or occupier of a land to contest the compulsory acquisition of such land. It only provides for a claim of ownership which is not a right to challenge the acquisition but the claim of ownership is rather one which is made to determine the eligibility of a person to be entitled to compensation. Secondly, the Ordinance does not provide for an offer of compensation by the State, it is rather the person himself who has to come forward and submit his compensation claim, which is similar to what is provided under the LAA of Mauritius.

179. The case is slightly different under the Lands Resumption Ordinance. The statute provides that within a period of 28 days after the date the land reverts to the government, the Director of Lands has the statutory obligation to either make an offer of compensation to any former owner and any other person who had an interest in the land prior to the reversion or to serve a notice on these persons requiring them to submit their claim for compensation within a time period specified in the notice. What is interesting to note here is that the Lands Resumption Ordinance of Hong Kong not only imposes an obligation on the acquiring authority though optional, to make an offer of compensation to dispossessed persons but the statute also sets out the time frame within which the
acquiring authority should make such offer. On the other hand, the LAA of Mauritius as we have already seen imposes no duty on the State to come forward and make an offer of compensation. Even though the Lands Resumption Ordinance of Hong Kong only caters for the resumption of government lands, we can draw inspiration from its provisions and recommend that a time frame should be set up within which the State makes a compensation offer to any dispossessed person. This will ensure a much speedier compensation procedure.

180. Furthermore, any disagreement on the amount of compensation under both Ordinances of Hong Kong will be referred to the Lands Tribunal of Hong Kong. However, it is only the Land Acquisition (Possessory Title) Ordinance which provides for a time limit to refer the matter to the Lands Tribunal. Indeed, Section 7(5) of the Land Acquisition (Possessory Title) Ordinance states that whenever any party choose to refer a compensation claim to the Lands Tribunal, such reference should be made within 1 year from the date of vesting or within such further period as the Lands Tribunal may allow, but the total period for the vesting shall not exceed 6 years from the date of vesting. This provision seems to be a good one because it not only provides for a general time frame to refer the matter to the Lands Tribunal, but in addition to that, the law imposes a maximum amount of time within which such reference should absolutely be made.

181. Section 14(2) of the LAA of Mauritius also provides for a time limit to refer any disagreement to the Board of Assessment, which is of 28 days from the date of its receipt. Thus, statutorily, the time limit for reference is more prompt in Mauritius than in Hong Kong. Nevertheless, even if the law gives 28 days from the date of its receipt to refer the claim to the Board, in practice, some compensation claims are referred to the Board several years after the receipt of the claim. Thus, it may be recommended that in parallel to the time frame of 28 days, a maximum time limit, say for instance one year could be
provided for referring the compensation dispute to the Board so as to make the whole process prompt and legal.

**Comparison of compensation and compensation rules**

182. Under both Ordinances of Hong Kong, compensation will be given for the value of the land acquired or resumed (as the case may be) together with any buildings erected thereon and the value of any interest held in the lands at the date of vesting under the Land Acquisition (Possessory Title) Ordinance and at the date of resumption under the Lands Resumption Ordinance. The date of resumption under the Lands Resumption Ordinance is the date on which all the rights held by any person over the land, will revert and vest absolutely in the government. Thus, the date of resumption can be assimilated to the date of vesting. Similarly, the provisions of both Ordinances state that the value of the land acquired or resumed shall be determined using the open market value approach based on the willing seller theory.

183. Likewise, Section 19(1)(c) of the LAA of Mauritius also guarantees compensation for the value of interest held by an interested person in the land which has been compulsorily acquired. Similar to the Ordinances of Hong Kong, Section 19(3) of the LAA also provides that the value of any interest in land should be calculated based on the open market value approach. The only aspect which is different is that the date of valuation under the LAA is the date of the first publication of its Section 8 notice. This is unfair because the transcription of the notice may usually take a long time and the law does not take into account the time period from the date of the first publication of the notice under section 8 until the date the land officially vests in the government; a time period during which the value of the land acquired may increase. Thus, it may be

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193 Section 4(3) and Section 5 of the Lands Resumption Ordinance
recommended that the date of valuation should be the date of vesting of the land in favour of the government, that is, on the date of the transcription of the notice under Section 8.

184. Furthermore, it is observed that the Ordinances of Hong Kong and the LAA of Mauritius bear some similar legislative provisions with respect to the types of compensation which are given. Under the laws of both countries, compensation is granted for any loss incurred due to the severance of the acquired or resumed land or any building erected thereon from any other land belonging to the claimant. In the same manner, both the Land Resumption Ordinance of Hong Kong and the LAA of Mauritius provide that compensation is also awarded for any damage caused by reason of the entry upon and investigation of the land acquired.

185. However, the laws of Hong Kong contain certain provisions which are not provided by the LAA of Mauritius. Both Ordinances of Hong Kong provide that compensation is to be given for any loss or damage caused to a business that was conducted at the date of vesting or at the date of resumption due to the removal of the business from the land acquired or resumed as a result of the acquisition or resumption; compensation is also provided for any costs incurred in employing persons to act in a professional capacity with respect to an offer or a claim of compensation. Section 8(2)(e) of the Land Acquisition (Possessory Title) Ordinance of Hong Kong also expressly states that any expenses reasonably incurred by the claimant in moving from any premises owned or occupied by him on the land acquired will also be compensated.

186. By comparison, these compensations are not expressly provided under the LAA of Mauritius. The Board, in practice, allows for professional and legal fees which fall within the category of “any other loss sustained as a result of the compulsory acquisition” under section 19(1)(e) of the LAA. Thus, in order to provide for more adequate
compensation, it could be recommended that express provisions should be included in our law to compensate for the loss of any business which was carried out on the land acquired at the date of vesting and to compensate for any expenses reasonably incurred by the dispossessed persons in moving from the land acquired or in relation to the acquisition of alternative land. It could also be recommended that “legal costs and professional fees” that is often granted by the Board of Assessment be expressly provided by the LAA so as to make it more coherent and consistent with what is usually awarded by the Board.

187. Another similar aspect is that the laws of both countries state that no allowance should be made on account of the fact that the acquisition is compulsory.

*Comparison of interim payment of compensation*

188. Both the Land Acquisition (Possessory Title) Ordinance and the Lands Resumption Ordinance of Hong Kong provide that the Director of Lands may, pending the determination of any disputed amount of compensation by the Lands Tribunal, make a provisional payment of compensation together with interest on the provisional payment from the date of vesting until the date of such provisional payment of compensation.

189. Therefore, it is observed that both Ordinances of Hong Kong and the LAA of Mauritius provide for an advance payment of compensation pending the final determination of any amount of compensation, even though they are termed differently in the respective statutes of both countries (“provisional payment” in Hong Kong and “interim payment” in Mauritius). Nevertheless, it also needs to be pointed out that just like the LAA of Mauritius, the Land Acquisition (Possessory Title) of Hong Kong does
not provide for a time frame within which the provisional payment of compensation should be made.

190. However, one interesting aspect which can be noticed under the Ordinances of Hong Kong is that the law expressly states that any provisional payment of compensation made will also carry interest which runs as from the date of vesting until the date of provisional payment. Comparatively, there is no interest which is granted on the interim payment of compensation under the LAA of Mauritius. Thus, in order to provide for a more adequate interim compensation, it may be recommended to introduce interest on any amount of interim payment of compensation made accruing as from the date of vesting until the date of payment of the interim compensation.

*Comparison of payment of compensation and interest*

191. Both Ordinances of Hong Kong provide that after the Lands Tribunal has determined the amount of compensation to be paid, the Director may by notice require the person entitled to compensation to collect the compensation within the time and at the place specified in the notice. Both statutes also state that the compensation will also bear interest from the date of vesting or the date of resumption of the land until the date the compensation is paid to the person. Therefore, it is observed that the Ordinances of Hong Kong provide for interest on compensation until the date of payment while section 18(6) of the LAA provides for interest on compensation only up till the date of the award of the Board. Therefore, it could be recommended that the Board must grant interests from the date of vesting up till the date of payment of compensation into court. This will ensure that a dispossessed person is indemnified for any prejudice caused to him by reason of any delay in the payment of compensation which also includes delays caused by any appeal against the award of the Board.
192. Moreover, unlike the LAA of Mauritius, the Ordinances of Hong Kong do not fix a delay within which payment of compensation should be made. Thus, the LAA contains better provisions with respect to the time frame within which compensation should be paid after the determination of the amount of compensation.

5. France

193. In France, the compulsory acquisition of land is known as expropriation and it is regulated by the Code de l'expropriation pour cause d'utilité publique. Article L1 of the Code states that l'expropriation will only take place if it is necessary for public interests and the second alinéa of the same Article further adds that the compulsory acquisition of land will give rise to a "juste et préalable indemnité".

194. The whole process of expropriation in France is carried out in two steps; the first step being administrative and the second step being judicial. The first administrative stage consists of the proof by the State to show that the acquisition is essential for public benefit. The second stage is a judicial process to determine the transfer of property in favour of the government and guaranteeing the payment of compensation to a person dispossessed.\textsuperscript{194}

\textsuperscript{194} Information available at: https://www.service-public.fr/particuliers/vosdroits/F762
Procedure prior to acquisition - administrative stage

195. A commission d’enquête will be conducted at the request of the state (personne publique). This commission d’enquête will be initiated and controlled by le préfet du département où doit se dérouler l'opération. Broadly, le préfet, after consulting the commissaire enquêteur ou le président de la commission d'enquête will set out the conditions and manner in which the enquiry will proceed such as the purpose of the enquiry, the date and its duration. Le préfet will then cause the publication of a notice informing the public at large that a commission d’enquête will be started. Then, once the project is found to be in public interests, le préfet prononce une déclaration d'utilité publique. At this point, any interested person may raise any objection against the déclaration d'utilité publique at the tribunal administratif of France.

196. Another enquiry known as l’enquête parcellaire will also take place to identify precisely which properties are concerned with the acquisition. This enquête parcellaire can take place either in parallel or after l’enquête d’utilité publique. A notice will then be published and served on the owners of the land informing them that the enquête parcellaire will occur during such period of time and for such reasons specified in the notice. At the end of the enquiry, the commissaire enquêteur ou le président de la commission d'enquête will give his conclusions. After these conclusions, the préfet will déclare cessibles those lands or those immoveable property rights which have been found necessary to be acquired for public benefit through an arrêté de cessibilité. This arrêté

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195 Article R112-1 of the Code de l'expropriation pour cause d'utilité publique
196 Article R112-12 of the Code de l'expropriation pour cause d'utilité publique
197 Article R112-14 of the Code de l'expropriation pour cause d'utilité publique
198 Information available at: https://www.service-public.fr/particuliers/vosdroits/F762
199 Information available at: http://www.cours-de-droit.net/l-arrete-de cessibilite-a127057040
200 Article R131-5 and R131-6 of the Code de l'expropriation pour cause d'utilité publique
201 Article L132-1 of the Code de l'expropriation pour cause d'utilité publique

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de cessibilité only means that the identified properties are suitable for the proposed acquisition and may be acquired by the acquiring authority; it does not constitute a transfer of ownership in favour of the acquiring authority.\textsuperscript{202}

\textit{Procedure prior to acquisition - judicial stage}

197. The judicial stage consists of two parts. In the first part, \textit{le juge de l'expropriation} will order the transfer of property in favour of the acquiring authority and in the second part, he will determine the amount of compensation to be awarded to the dispossessed person.\textsuperscript{203}

198. Once the proposed acquisition has been declared as \textit{utilité publique} and the \textit{arrêté de cessibilité} has already been notified to the owner of the land to be acquired, the transfer of property can now take place. Even at this point, the transfer of ownership of immovable property or immovable property rights may take place through agreement between the parties.\textsuperscript{204} Nevertheless, where there is no agreement, such transfer of ownership will occur through a judicial process more precisely \textit{par voie d'ordonnance du juge de l'expropriation}.\textsuperscript{205} The \textit{ordonnance d'expropriation}, which is the final step for the validation of compulsory acquisition, will specify the land or part of the land to be acquired and the identity of the persons dispossessed.\textsuperscript{206} Furthermore, \textit{Article L222-1} of the Code also expressly states that \textit{"L'ordonnance envoie l'expropriant en possession, sous réserve qu'il ait procédé au paiement de l'indemnité ou, en cas d'obstacle au paiement ou de refus de le recevoir, à la consignation de l'indemnité ou qu'il ait obtenu}\textsuperscript{207}

\textsuperscript{202} Information available at: http://www.cours-de-droit.net/l-arrete-de-cessibilite-s127057040
\textsuperscript{203} Information available at: https://www.notaire.fr/fr/collectivites/collectivites-territoriales/droit-de-pr%C3%A9emption-et-de-propre-temporai/les-decisions-de-l-expropriation
\textsuperscript{204} Information available at: https://www.service-public.fr/particuliers/vosdroits/F762
\textsuperscript{205} Article L220-1 of the Code de l'expropriation pour cause d'utilité publique
\textsuperscript{206} Article R221-4 of the Code de l'expropriation pour cause d'utilité publique
l'acceptation ou la validation de l'offre d'un local de remplacement." Thus, the ordonnance will only vest the possession of the land in favour of the government only when payment of compensation has been made.

199. Also, the Code provides that the dispossessed persons should vacate the premises within a period of one month as from the day the compensation is paid, or else, there may be a judicial eviction.\textsuperscript{207} It means that the acquiring authority will be able to take possession of the acquired property only after one month following the payment of compensation.

200. In addition, any droits réels ou personnels on the land will cease to exist as from the day the ordonnance d'expropriation is granted.\textsuperscript{206} The law also provides for the possibility for any dispossessed person to challenge the ordonnance d'expropriation at the Court of Cassation on grounds of excès de pouvoir, vice de forme or on the ground that the déclaration d'utilité publique ou l'arrêté de cessibilité was declared null by the judge of the tribunal administratif.\textsuperscript{209}

201. Another interesting aspect is that the Code de l'expropriation has also made provision for a situation whereby a person whose built-up land has been partly acquired and the latter can no longer make reasonable use of the remaining land. The said Code gives the possibility to the dispossessed person to request for the total acquisition of his whole land.\textsuperscript{210} This request is made to the juge de l'expropriation who will grant

\textsuperscript{207} Article L231-1 of the Code de l'expropriation pour cause d'utilité publique
\textsuperscript{206} Article L222-2 alinéa 1 of the Code de l'expropriation pour cause d'utilité publique
\textsuperscript{209} Article L223-1 and L223-2 of the Code de l'expropriation pour cause d'utilité publique
\textsuperscript{210} Article L242-1 of the Code de l'expropriation pour cause d'utilité publique
additional compensation for the additional land that has been acquired after accepting the request for total acquisition.\(^{211}\)

202. As mentioned previously, the second task of the juge de l'expropriation is to assess the amount of compensation to be paid to the affected person.

5.1 Compensation procedure, compensation rules and payment of compensation

203. The procedure for the payment of compensation starts with a notification of the ouverture de l'enquête, or l'acte déclarant l'utilité publique, either l'arrêté de cessibilité, or l'ordonnance d'expropriation by the acquiring authority to the owner and usufructuary of the land.\(^{212}\) They are asked, within a delay of one month as from the notification, to inform the acquiring authority about the existence of any fermiers, locataires, ceux qui ont des droits d'emphytéose, d'habitation ou d'usage and ceux qui peuvent réclamer des servitudes on the land.\(^{213}\) In addition to this provision, the Code also provides that any other person affected by the acquisition are invited (through a published notice by the acquiring authority) to inform the acquiring authority about their interests in land within one month as from the date of publication, failing which, they will not be entitled to any compensation.\(^{214}\) Article R311-3 further adds that this notification and publication may be done in parallel with the notifications and publications done at the end of the enquête publique and enquête parcellaire. This procedure not only ensures an identification of all those having a compensable interest in the land acquired but it also makes sure that these

\(^{211}\) Article L.242-2 of the Code de l'expropriation pour cause d'utilité publique
\(^{212}\) Article L.311-1 of the Code de l'expropriation pour cause d'utilité publique
\(^{213}\) Article R311-1 of the Code de l'expropriation pour cause d'utilité publique
\(^{214}\) Article L.311-3 and Article R311-2 of the Code de l'expropriation pour cause d'utilité publique
persons are identified at an initial enquiry stage, thus assuring that no time is wasted having to identify those who are entitled to compensation at a later stage.

204. In regards to the offers of compensation by the acquiring authority, Article L311-4 of the Code states that: "L’expropriant notifie le montant de ses offres et invite les expropriés à faire connaître le montant de leur demande." Thus, it can be construed that in France, it is up to the acquiring authority to make an initial offer of compensation.

205. Article R311-4 of the Code further adds that the acquiring authority may, at the start of the first enquiry (l’enquête préalable à la déclaration d’utilité publique) and once the lands to be acquired become precisely identifiable, offer, through notice, an amount of compensation to chacun des intéressés susceptibles d’obtenir une indemnisation. This offer of compensation will specify the different compensation for the various types of loss sustained namely: l’indemnité principale, les offres en nature et chacune des indemnités accessoires and the compensation offer will also locate the region in which the dispossessed person will be rehoused if ever it is found that rehousing is necessary. Alongside this, the notification will invite those persons to whom the notice has been served upon, to inform the acquiring authority, within a delay of one month as from the date of notification to them, either their acceptance of the offer or otherwise, to indicate a detailed compensation claim.

206. Furthermore, if the acquiring authority does not offer compensation, the Code provides that any interested person may, once the arrêté de cessibilité has been ordered

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215 Article R311-4 and Article R311-5 alinéa 1 of the Code de l’expropriation pour cause d’utilité publique
216 Article R311-5 alinéa 2 of the Code de l’expropriation pour cause d’utilité publique
by the judge, order the acquiring authority (through a mise en demeure) to proceed with the compensation procedure.\textsuperscript{217}

207. In addition, if there is no agreement on the amount of compensation during the period of one month as from the date of notification of compensation offer or as from the mise en demeure by the dispossessed party, the matter is referred to the juge de l'expropriation.\textsuperscript{218} Article L311-6 of the Code further adds that Le juge est saisi soit par l'expropriant, à tout moment après l'ouverture de l'enquête prescrite à l'article L.1 soit par l'exproprié à partir de l'ordonnance d'expropriation. The law only states that the matter may be referred either by the acquiring authority at any time after the initiation of the enquête d'utilité publique or the enquête parcellaire or by the dispossessed party at any time after the ordonnance d'expropriation. Thus, the Code does not fix a time limit within which a disputed amount of compensation should be referred to the judge.

208. For the purpose of assessing the amount of compensation to which a person will be entitled to, there will be an inquiry held by the juge de l'expropriation.

209. Briefly, le juge fixe, par ordonnance, la date de la visite des lieux et de l'audition des parties. The on-site visit of the land will be conducted by the judge within two months as from the date that the ordonnance is served.\textsuperscript{219} What is interesting to point out here is that the expropriation judge may, if he finds necessary, ask to be assisted by a notary during the site visit and for the purpose of evaluating the value of the lands.\textsuperscript{220}

\textsuperscript{217} Article R311-7 of the Code de l'expropriation pour cause d'utilité publique
\textsuperscript{218} Article L311-5 and R311-9 of the Code de l'expropriation pour cause d'utilité publique
\textsuperscript{219} Article R311-14 of the Code de l'expropriation pour cause d'utilité publique
\textsuperscript{220} Article R322-1 of the Code de l'expropriation pour cause d'utilité publique
the end of the site visit, a public hearing will be conducted during which the expropriation judge will hear the parties.\textsuperscript{221}

210. Furthermore, Article R311-21 of the Code provides that if the acquiring authority and the dispossessed person are still in disagreement concerning the compensation after a period of 8 days as from the day of the site visit, the judge will render his decision on compensation. In a way, this legislative provision sets out a fixed delay after which the expropriation judge should adjudicate on the issue of compensation and render a compensation award promptly after the site visit.

\textit{Compensation rules}

211. Article L321-1 of the Code reads as follows: "Les indemnités allouées couvrent l'intégralité du préjudice direct, matériel et certain causé par l'expropriation." In other words, in France, there is an obligation on the State to give complete compensation for a loss incurred, provided that the loss is a direct consequence of the acquisition, the loss has a patrimonial value and is certain. In addition to that, alinéa 1 of Article L321-2 of the Code states that "Le juge prononce des indemnités distinctes en faveur des parties qui les demandent à des titres différents." It can thus be inferred that under the French compulsory acquisition Code, compensation is given to any person who has suffered losses as a result of the acquisition and who, according to the judge have compensable interests in land. The compensation award delivered by the expropriation judge will consist of the different types of compensation to which different persons are entitled to according to their degree of interest in the land acquired.

\textsuperscript{221} Article R311-18 alinéa 1 and Article R311-20 of the Code de l'expropriation pour cause d'utilité publique
212. Furthermore, we have seen earlier that the juge de l'expropriation may seek the help of public notaries during the onsite visit. But in addition to that, the Code also gives the possibility for the judge to ask for the assistance of any expert or any other qualified persons when he is experiencing problems in the assessment of the value of immovable properties and the amount of compensation for other losses to be paid.\textsuperscript{222}

213. In addition, the law also ensures that the compensation awarded to each person should specify the principal amount (l'indemnité principale) and any other incidental compensation (les indemnités accessoires) while at the same time justifying on what grounds these compensations have been given.\textsuperscript{223} The indemnité principale is based on the valeur vénale des biens, that is, the market value of the immovable property acquired. The indemnité principale constitutes the largest part in the total amount of compensation. Alongside the indemnité principale, indemnités accessoires may also be granted which consist mainly of indemnités de remplacement and other types of compensation as will be seen further below.\textsuperscript{224}

214. For the indemnités principales, the first alinéa of Article L322-2 of the Code provides as a general rule that “Les biens sont estimés à la date de la décision de première instance ». It means that the market value of the land acquired is assessed à la date de la décision de première instance. In parallel, alinéa 1 of Article L322-1 sets out that « Le juge fixe le montant des indemnités d'après la consistance des biens à la date de l'ordonnance portant transfert de propriété ». That is, the expropriation judge will consider the ownership rights and the consistance (the physical conditions and the rights existing thereon) of the property on the date on which the ordonnance d'expropriation

\textsuperscript{222} Article R322-1 of the Code de l'expropriation pour cause d'utilité publique
\textsuperscript{223} Article L321-3 alinéa 1 of the Code de l'expropriation pour cause d'utilité publique
\textsuperscript{224} Gilbert Ganez Lopez, Fixation des indemnités d'expropriation Principes D'évaluation (2016)
certifying the transfer of ownership was granted because it is precisely on this date that the person has been dispossessed of his property and has suffered prejudice.

215. On the basis of Article L211-2 of the Code which states that: *Les ordonnances et jugements en matière d'expropriation sont rendus en première instance par un juge unique*, it can be concluded that the date of the *ordonnance d'expropriation* is the same as *la date de la décision de première instance*. It can also be deduced that the market value of the land is assessed on the date that the *ordonnance d'expropriation* is granted, that is, on the date the ownership of the property is transferred to the acquiring authority. However, when this date does not coincide with *la date de la décision de première instance*, *la consistance du bien s'apprécie à la date du dit jugement.*

216. Any improvements such as additional constructions, plantations made to the lands after the initiation of the *enquête d'utilité publique* will be presumed, unless otherwise is proved, to be made with the intention of obtaining more compensation as a result of which no compensation will be given for such improvements.

217. Where land has been partly acquired, and the execution of works on the land acquired for the scheme of acquisition causes an increase in the value of the retained land, the law provides that this amount of increase is set off in the total amount of compensation paid for the acquisition.

218. The Code also caters for the valuation of *terrains à bâtir*. These *terrains à bâtir* are those lands which have been acquired and *dont les capacités juridiques et physiques leur permettent de recevoir immédiatement une construction*. In France, when land

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225 Gilbert Ganez Lopez, *ibid*
226 Article L322-1 alinéa 2 of the *Code de l'expropriation pour cause d'utilité publique*
227 Article L321-5 of the *Code de l'expropriation pour cause d'utilité publique*
acquired is evaluated based on its qualification as a *terrain à bâtir*, it adds greater value to the land.\(^{228}\) According to Article L322-3 of the Code, the qualification of a land as a *terrain à bâtir*, is applied only to those lands, which, one year prior to the *enquête d'utilité publique*, were located in an area where building is possible and have facilities such as access roads, water supply, electricity supply and sanitation services. This evaluation will also take into account the probability of constructions at that time, the degree of facilities provided, and any rights (*servitudes*) or restrictions on the land.\(^{229}\) It can be argued that this valuation of lands on the basis of *la qualification de terrains à bâtir* is comparable to the assessment of land based on its development potential value which is commonly used in common law legal systems.

219. It may as well be noted that when a land acquired does not satisfy the conditions so as to qualify as a *terrain à bâtir*, the value of the land will be assessed *en fonction de son seul usage effectif*,\(^{230}\) such as an agricultural use. In this case, the land cannot be assessed based on its development potential.\(^{231}\)

220. Moreover, we have seen that under the expropriation Code of France, as a general rule, the compensation paid to a dispossessed person will consist of both an *indemnité principale* and some *indemnités accessoires*. Nevertheless, alinéa 2 of Article L322-12 of the Code provides derogation to this rule. This provision is as follows: « *Toutefois, l'expropriant peut, en lieu et place du paiement de l'indemnité, offrir au commerçant, à l'artisan ou à l'industriel évincé un local équivalent situé dans la même agglomération*.» In other words, if the land acquired was occupied by a *commerçant*, *l'artisan* or *industriel*, the acquiring authority may instead of paying *l'indemnité principale*, offer

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\(^{228}\) Le Moniteur, *La qualification de terrain à bâtir* (1997), available at: [https://www.lemoniteur.fr/article/la-qualification-de-terrain-a-batir-96154](https://www.lemoniteur.fr/article/la-qualification-de-terrain-a-batir-96154)

\(^{229}\) Article L322-3 alinéa 3 of the *Code de l'expropriation pour cause d'utilité publique*

\(^{230}\) Article L322-4 of the *Code de l'expropriation pour cause d'utilité publique*

\(^{231}\) Gilbert Ganez Lopez, *Ibid*, para. 48
them a premises equivalent to that from which they have been dispossessed. In this case, the dispossessed person may nevertheless be entitled to des indemnités accessoires for certain losses incurred such as indemnité de déménagement, une indemnité compensatrice de sa privation de jouissance, frais de transfert et pertes d'exploitation pendant le temps du transfert.232

221. The indemnités accessoires are given alongside the main compensation under the Code. The indemnités accessoires consist mainly of indemnité de remploi. Catered by Article R322-5 of the Code, the indemnité de remploi is given to cover all the losses suffered and expenses incurred by a dispossessed person to obtain a land equivalent to the one which has been expropriated.233 It may include the costs incurred by the person for the transfer of ownership rights, the costs of legal documents as well as negotiation fees.234 The same Article also provides that the assessment of this type of compensation will also take into consideration any financial advantage from which the dispossessed person has benefited during the acquisition of an alternative land. Also, it is one which the State has the statutory obligation to pay.235

222. Other types losses for which compensation is given under the category of indemnités accessoires are: loss in value of the remaining land, reconstruction of fences, loss of rental income, frais de transfert d'activité (commerçant, artisan ou industriel) et

232 Article L322-12 of the Code de l'expropriation pour cause d'utilité publique and Gilbert Ganez Lopez, ibid, para. 33

233 Rémi Grand, Expropriation : que couvre l'indemnité de remploi ? (2018), also available at : https://www.dalloz-actualite.fr/flash/expropriation-que-couvre-l-indemnite-de-remploi#.W4zlAM4zb1U

234 Gilbert Ganez Lopez, ibid, para. 18

235 Except in these 2 circumstances where the indemnité de remploi will not be due by the State: (1) si les biens étaient notoirement destinés à la vente or si le bien a été mis en vente dans les 6 mois précédant la déclaration d'utilité publique. This is provided by Article R322-5 alinéa 2 of the Code de l'expropriation pour cause d'utilité publique.
peres d'exploitation and indemnités de licenciement du personnel de l'entreprise. Nevertheless, this list of losses is not expressly listed out under the Code, they are rather frequently granted by the Court as indemnités accessoires.\textsuperscript{236}

\textit{Payment of compensation}

223. Under the Expropriation Code, compensation will be paid to all those who have been found entitled to it by the expropriation judge. However, the Code does not set out the time limit within which such payment should be made.

224. The Code nevertheless allows for the partial payment of compensation subject to the satisfaction of certain criteria. Article L.323-3 of the Code states that the dispossessed owners who occupied the land for residential or professional purposes, as well as tenants, merchants or artisans may obtain a partial payment of compensation amounting to 50\% of the compensation amount offered by the acquiring authority. This partial payment of compensation is made subject to two main conditions namely firstly, that the ordonnance d'expropriation should already be made and secondly, the acquiring authority should not have ensured the rehousing or relocation of the disposed persons.

225. Nevertheless, the Code contains legislative provisions which ensure a fair payment of compensation. Article L.323-4 provides that if payment of compensation has not been made within one year from the final decision awarding compensation, the person entitled to such compensation may request another ruling on the amount. This is known as a révision du prix which will lead to a fresh assessment of the value of the lands.\textsuperscript{237}

\textsuperscript{236} Gilbert Ganez Lopez, \emph{ibid}, para. 29
\textsuperscript{237} Gilbert Ganez Lopez, \emph{ibid}, para. 38
226. Another safeguard provided under the French Expropriation Code is the payment of interests on compensation. Article R323-14 of the Code provides that if complete payment of compensation has not been made by the acquiring authority within 3 months as from the date of notification of the judgment awarding compensation, the dispossessed party has the statutory right to ask for interests on the total amount of compensation. These interests are calculated at a legal rate on any amount of compensation that is due (excluding any initial partial payment made) and the interests accrue from the date of the request (for interests) up till the date of payment of compensation. The alinéa 2 of the same Article further adds that when there has been reevaluation of the amount of compensation, the interests are calculated as from the date of revaluation on the new amount of compensation.

5.2 Comparison with Mauritius

Comparison of the expropriation procedure

227. The French Code provides for two enquiries to be conducted namely an enquête d'utilité publique and an enquête parcellaire. During the enquête d'utilité publique, the acquiring authority will have to establish that the expropriation is necessary for public purposes. At the end of the enquiry a déclaration d'utilité publique will be issued which only purpose is to declare that the envisaged expropriation is in line with public interests. At this point, the Code provides that any interested person has the right to contest the déclaration.
228. The enquête parcellaire is carried out mainly to identify the lands which will be concerned with the expropriation and to inform those having an interest in the land that their immovable property might be expropriated. At the end of this enquiry, an arrêté de cessibilité which only serves as purpose to inform interested parties that their properties may be expropriated. The French Expropriation Code provides for a preliminary right to raise objections against the déclaration d’utilité publique at the Tribunal Administrative of France. In comparison, the LAA of Mauritius provides for an investigation of the land likely to be acquired\textsuperscript{238} following which, the Minister of Lands will take the decision whether or not to compulsorily acquire the land. Nevertheless, our LAA does not provide for an initial right to contest the proposed acquisition. Section 10 of the LAA of Mauritius only provides for a right to challenge the legality of the compulsory acquisition after the decision to acquire has already been taken which is similar to the right of challenging an ordonnance d’expropriation found under the French Expropriation Code.

229. Moreover, the transfer of ownership under the Code is made through a judicial process, that is, through an ordonnance d’expropriation ordered by the expropriation judge. On the other hand, under the LAA, title to the land will vest in the government through a transcription of Section 8 notice by the Conservator of Mortgages.\textsuperscript{239} An interesting point which has been observed is that despite the ownership of the land will be transferred to the state once the ordonnance d’expropriation has been granted, the Code states that the acquiring authority will obtain the possession of the land only after proceeding with the payment of compensation\textsuperscript{240}. This legislative provision acts as a guarantee that the dispossessed person is compensated quickly because it triggers the payment of compensation in exchange of the possession of the land.

\textsuperscript{238} Section 6 of the 1973 Land Acquisition Act of Mauritius

\textsuperscript{239} Section 11 of the 1973 Land Acquisition Act of Mauritius

\textsuperscript{240} Article L222-1 of the Code de l’expropriation pour cause d’utilité publique
230. Another comparison made is that, that since the transfer of ownership under the Code is made judicially, such transfer can be challenged at the Cassation Court. Comparatively, Section 11(3) of the LAA provides that once the Section 8 notice has been transcribed, no proceedings may be instituted to prevent the transfer of title of the land in favour of the government.

**Comparison of compensation procedure, compensation rules and payment**

231. The legislative provisions of the French Expropriation Code have been framed in such a way so that the procedure for the payment of compensation may start at a very initial stage. It starts with a notification to the owners of the initiation of the enquiries mentioned earlier, or a notification of either the déclaration d'utilité publique, or l'arrêté de cessibilité, or l'ordonnance d'expropriation. The Code starts with an identification of all those parties who may have compensable rights in the land, an identification which should be made within one month as from the date of notification or publication in the newspaper. Such legislative provisions seem to be good because it ensures that all the persons having compensable interests in land are identified at the very start of the procedure of expropriation so that no person affected by the expropriation is left out during the payment of compensation.

232. It may also be pointed that the Code allows the expropriation judge to ask for the assistance of experts at any time during the assessment of compensation whenever he is having difficulties. In light of this provision, it may be recommended that our LAA be amended so that the Board of Assessment (which currently does not consist of a valuer), be allowed to seek the assistance of a valuer.
233. In addition, Article 311-4 of the Code imposes an obligation on the acquiring authority to make an offer of compensation to those who have been dispossessed. The Code does not mention a precise time frame within which such offer should be made but Article R311-4 of the Code states that the offers of compensation may be made at the initiation of the enquiries and once the lands to be acquired have been precisely located. On the other hand, under the LAA of Mauritius, the responsibility lies on any interested person to make a compensation claim and to declare the nature of his interest to the Minister of Lands.\(^{241}\)

234. Also, the Code imposes a time limit of one month as from the date of the offer to either accept or otherwise to make a detailed compensation claim. Thus, we have seen that the Code imposes the obligation on the acquiring authority to make an offer of compensation. Also, by imposing a brief delay of one month to the dispossessed persons to accept the offer or otherwise make a counter offer, the Code ensures that if ever there is any potential disagreement concerning the compensation amount, such disagreement will be identified during this brief period of one month itself as from the date of offer and it can be quickly referred to the expropriation judge.

235. Thus, in light of what we have seen under the French Code, we may consider inserting a provision in our LAA which would invite all interested persons, at a primary stage, for instance at the investigation of the land stage, to declare their interests in the land likely to be acquired. This would in a way help to save time of having to verify the genuineness of the interests later and avoid the acquiring authority from losing time in making the compensation offers.

\(^{241}\) Section 8(2)(d) and Section 14(1) of the 1973 Land Acquisition Act of Mauritius
236. In addition to that, it may be recommended that our LAA be altered so that the Minister of Lands has the obligation to make an offer of compensation (which can be made within a delay provided under the Act). This may be supplemented by another provision which would impose a time frame on the dispossessed persons to either accept the offer or make a counter claim.

237. Moreover, another interesting provision provided by the Code is that if a dispossessed person has not received any offer of compensation, the latter may judicially compel the acquiring authority to do so. Thus, we have observed that the Code gives the possibility for a dispossessed person to benefit from a compensation offer at a preliminary stage of the acquisition procedure itself. On top of that, the law also further secures the right of a person who is entitled to compensation by giving that person the statutory right to ask for an offer of compensation if the State has not yet done so. On the other hand, such a measure is not provided by the LAA. Therefore, consideration may be given to include such a provision in our Act because it will further reinforce the right of a dispossessed person to be indemnified for the compulsory acquisition of his immovable property.

238. Furthermore, as has been discussed, any disagreement concerning the amount of compensation will be referred to the expropriation judge. The Code nevertheless does not mention an exact time frame within which such reference should be made. Comparatively, Section 14(2) of the LAA of Mauritius provides that any disagreement concerning the amount of compensation shall be referred by the Minister of Lands to the Board within 28 days of the receipt of the claim. Hence, it can be deduced that the Act gives a time frame during which disputed compensation claims should be referred to the

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242 Article R311-7 of the Code de l'expropriation pour cause d'utilité publique
Board while the Code of France only uses vague terms as "à tout moment". Therefore, concerning this aspect, the LAA of Mauritius seems to have better legislative provisions.

239. Compensation under the French Expropriation Code is classified in two main types namely: l'indemnité principale which is the compensation given for the market value of the land acquired and l'indemnité accessoire, under which all other types of compensation are given. Nevertheless, it is only indemnité de remboursement, a type of indemnité accessoire, which is expressly provided under the French Code. All other types of compensation are in practice asked in court.

240. In contrast, the LAA of Mauritius does not classify the types of compensation under two main headings. The LAA as well as the compulsory acquisition statutes in other common law jurisdictions that we have seen so far sets out a list of a variety of compensations that will be given for the different types of losses that have occurred as a result of the acquisition. It is also worth mentioning that the Code, by expressly providing for an indemnité de remboursement ensures that a dispossessed person is compensated for all the losses and expenses incurred in acquiring an equivalent immovable property. On the other hand, the LAA does not expressly cater for this type of compensation. We may consider adding such type of compensation under Section 19(1) of the Act, thus providing for a more adequate amount of compensation to the person dispossessed.

241. Moreover, as has been explained, under the French expropriation Code, the market value of the land expropriated is determined on the date of transfer of ownership. Comparatively, Section 19(3) of the LAA provides that the market value of any interest in land is to be evaluated on the date of the first publication of the Section 8 notice. This date is prior to the vesting of title in favour of the government and it may cause serious...

243 Article L311-6 of the Code de l'expropriation pour cause d'utilité publique
prejudice to the owners whenever there is delay in transcribing the notice (for instance where there is a challenge under section 10 of the Act) because then the valuation will not consider any increase in land value during that period. It is therefore recommended that our LAA be amended to provide that the market value of any interest in land is assessed on the date of vesting of title under Section 11 of the Act.

242. In addition, Article L322-3 of the Code provides for the valuation of lands on the basis of *la qualification de terrains à bâtir*. This valuation seems similar to the assessment of the development potential of land in common law jurisdictions. The law at the same time sets out the characteristics that a land should satisfy so as to qualify as a *terrain à bâtir* which might render it easier for the expropriation judge to assess the correct value of a land. Comparatively, the LAA does not provide such provisions.

243. The Code also provides that the acquiring authority may, instead of paying *l’indemnité principale*, choose to relocate a *commerçant, l’artisan or industriel* with their consent.244 Such relocation or rehousing scheme is not provided by the LAA of Mauritius.

244. The French Expropriation Code does not expressly provide for a time frame within which the payment of compensation should be effected. On the other hand, Section 22(1) of the LAA states that payment of compensation should be made into court within a brief period of 30 days as from the date of the award of the Board or as from the date the appeal is finally determined. It is therefore clear that in relation to this aspect, the provisions of the LAA offer a more prompt payment of compensation.

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244 Article R322-12 alinéa 2 of the *Code de l’expropriation pour cause d’utilité publique*
Moreover, similar to the LAA, the Code also allows for an initial payment of compensation. Also, both the LAA and the Code do not mention the time limit within which such payment should be made.

Furthermore, we have observed that the failure or delay to effect payment is sanctioned under the Code in two ways.

Firstly, if payment of compensation has not been made within one year as from the date on which the judge gave its decision on compensation, the Code provides that the dispossessed party has the statutory right to request for a new assessment of the compensation. In this way, when compensation is based on the new value of the land because of the failure of the acquiring authority to effect payment within its time frame, it enables the dispossessed person to benefit from any increase in value of his land which has been subject to the acquisition. In addition this new amount of compensation will also carry interests. We may hence consider including such provision in our LAA because it will ensure that a dispossessed person does not unfairly suffer from any delay in payment of compensation by the acquiring authority. Such measure will further guarantee an adequate and fair amount of compensation because the compensation (together with its interests) given after reevaluation will be based on the true and current value of the land.

Secondly, if within three months as from the date of the notification of the decision of the judge ordering compensation, the total amount of compensation has not been paid, the dispossessed person has the right to ask for interests on such amount. The interests will be calculated from the date of the request up till the date of payment of compensation. The Code also guarantees that interests are paid on any reevaluated amount of compensation as from the date of reevaluation of the new amount of compensation. In contrast, section 18(6) of the LAA states that interests will be
calculated on compensation as from the date of vesting until the date of the award of the Board. In order to provide for more adequate compensation, it may be recommended that interests should be calculated up till the date of payment of compensation under the Act.

6. Singapore

249. The acquisition of private lands by the government for public purposes and the award of compensation to the affected parties are governed by the 1966 Land Acquisition Act of Singapore.

6.1 Compulsory Acquisition procedure

250. The procedure starts with a preliminary investigation of the land likely to be acquired. The land will be entered upon and surveyed to determine its suitability for acquisition. The Act also ensures that any damage caused during such entry will be compensated as will be seen further in the segment dedicated to compensation. A notification will then be published in the Gazette and will be conclusive evidence that the land is indeed required for a public purpose.

251. After the notification, the Collector, who is a public officer, will then begin proceedings for the acquisition. Section 8 of the Act provides that the Collector shall

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245 Section 3 of the 1966 Land Acquisition Act of Singapore
246 Section 4 of the 1966 Land Acquisition Act of Singapore
247 Section 5 of the 1966 Land Acquisition Act of Singapore
cause the publication of a notice stating that the government has decided to acquire the land, and most importantly, the notice invites any interested person to make their claims for compensation. The law further provides that this notice is to be served on every person who may have an interest in the land and who is resident within or outside Singapore. The notice requires every person on whom it has been served, to appear before the Collector within such time and date as mentioned in the notice, such time not being earlier than 21 days as from the date of notice to appear personally or by representation to declare their interests in the land and the details of their compensation claims.

252. Section 10(1) of the Act states that the Collector will inquire into the value of the land and the interests of the persons claiming compensation after which the latter should deliver an award. The Section does not cite a time frame within which the award should be rendered; it only states that the Collector shall “as soon as possible”, after the conclusion of his inquiry, make an award for the amount of compensation which should be paid for the land acquired.

253. Furthermore, Section 16 of the Act provides that once he has delivered an award, the Collector may take possession of the land by serving a copy of an appropriate notice of taking of possession on every interested person. Section 18 of the Statute states that "immediately" on taking possession of the land, the Collector should direct to make an entry in the land registers of Singapore, and upon that entry being made, the land will vest in the State free from all encumbrances.

254. In addition, any appeal against any award delivered by the Collector will be heard by an Appeals Board consisting of a Commissioner of Appeals or Deputy Commissioner
of Appeals, either sitting alone or with 2 assessors. The Appeals Board is a quasi-judicial tribunal established under the Act to hear appeals. Also, the assessors are drawn from a panel of professionals from related fields such as valuation, architecture, quantity surveying and engineering.

6.2 Compensation rules and payment

Firstly, Section 4(1) of the Land Acquisition Act of Singapore provides that any damage done during the entry made while investigating the land will be compensated. The law states that such compensation should be paid “as soon as conveniently may be after such entry and in case of any disagreement as to the amount of compensation, the amount will be determined by the Collector”. This Section thus imposes an obligation on the acquiring authority to indemnify a person as early as possible after the damage has been noted after the entry. This provision of the law of Singapore seems good because it guarantees that any person will be compensated promptly for any loss he has suffered during the investigation of his land, and that, regardless of whether his land will eventually be acquired or not. However, from another point of view, the lack of a specific time frame for the payment of this compensation may render the interpretation of the wording “as soon as conveniently may be after such entry” difficult. This is because though theoretically guaranteeing a quick payment of compensation, the law does not mention whether payment of compensation needs to be made prior to the confirmation of the decision to acquire and invitations for submitting compensation claims are sent or whether the payment is to be made together with payment of compensation for other losses provided under the Act of Singapore.

248 Section 19(1) of the 1966 Land Acquisition Act of Singapore
256. Section 4(1) of the Act further provides that any disagreement on this amount of compensation for damage caused during investigation will be determined by the Collector. The Collector is defined as a public officer of the Singapore Land Authority appointed by the Minister. Section 4(2) of the Act also gives the right to any person not satisfied with the determination by the Collector, to appeal against the assessment to the Minister whose decision will then be final.

257. Moreover, another type of compensation given is compensation for the value of interests in land. It is noteworthy that prior to 2007, the land acquisition statute of Singapore stipulated that compensation for land acquired was based on either the value of the land as at the date of gazette or a historical statutory date, whichever was the lower. This framework of compensation resulted in an inadequate payment of compensation to the dispossessed owners since the value of compensation was not based on the then current market rate of the land at the time of acquisition. In 2007, the historical statutory date of compensation was abolished. Therefrom, the market value of the land acquired is determined based on the market value of the property. Section 33(5)(e) further adds that the market value of the land acquired shall be deemed not to exceed the price which a bona fide purchaser might reasonably be willing to pay at the date of acquisition which is the date of publication of the Section 5 notice declaring that the land is required for a public purpose.

258. In addition, Section 33(1)(c) provides that any damage sustained by an interested person at the time of the Collector’s taking possession of the land by reason of severing that land from his other land will also be compensated. We have also observed that

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256 Section 2 of the Land Revenue Collection Act (Cap.155)  
257 Brian Chew et al., ibid, p. 170  
258 Section 33(6) of the 1966 Land Acquisition Act of Singapore
Section 33(1) of the Land Acquisition Act of Singapore further provides compensation for a wider variety of losses as compared to Section 19 of the LAA of Mauritius.

259. Part (d) of the same subsection states that compensation will also be paid for any damage sustained by an interested person at the time of taking of possession of the land by reason of the acquisition injuriously affecting his other property, whether movable or immovable, in any other manner. As for part (e), it expressly stipulates that if a person is compelled to change his residence or place of business as a result of the acquisition, and reasonable expenses incidental to that change are incurred, the latter will be compensated. Lastly, part (f) ensures that where any reissue of title is necessary as a result of the acquisition, compensation will be awarded for the fees or costs reasonably incurred in relation to the survey, issue and registration of title, stamp duty and such other costs or fees.

260. Furthermore, the law of Singapore also caters for the situation of betterment. That is, if the value of any other land of the person interested has increased as a result of the use to which the land acquired will be put, the increase is to be set-off only against the amount of compensation that has been awarded for severance or injurious affection.253

261. Similar to the legislations in other common law legal systems, the Land Acquisition Act of Singapore, most specifically its Section 34, provides for a list of matters to be ignored during the assessment of compensation. Some of the aspects not to be considered are the degree of urgency of the acquisition, any disinclination of the person interested to part with the land acquired, any increase to the value of the land acquired likely to accrue from the use to which it will be put.

253 Section 33(2) of the 1966 Land Acquisition Act of Singapore
262. Furthermore, Section 35(1) of the Land Acquisition Act of Singapore provides for an additional rule whereby the amount of compensation awarded to an interested person shall not exceed the amount of compensation claimed. A similar provision is found under Section 18(5) of the LAA of Mauritius.

Payment of compensation

263. Section 40 of the land acquisition legislation of Singapore provides that after granting an award, the Collector has the obligation to pay it to an interested person entitled to compensation according to the award. But the law does not specify the time frame within which such payment should be made.

264. Moreover, the provision in relation to the payment of interests is noteworthy. Section 41 of the land acquisition statute of Singapore states that when the amount of compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of 6% per annum from the time of the taking of possession until it has been so paid or deposited in court. This framework in a way compels the State to make a prompt and adequate payment of compensation so as to quickly obtain the ownership of the land in order to start any envisaged constructions.
6.3 Comparison with Mauritius

Comparison of the compulsory acquisition procedure

265. The legislative provisions of both countries in relation to a preliminary investigation of the land prior to acquisition and in relation to the notices to be published and served to inform the interested persons about the acquisition are almost similar.

266. Furthermore, Section 8 of the Land Acquisition Act of Singapore invites every person interested in the land to submit their claims to compensation. Similarly, under Section 8 of the LAA of Mauritius, the obligation is on every interested person to make their claims for compensation within 14 days of the second publication of the notice in the Gazette. Thus, it is observed that in both Mauritius and Singapore, there is no obligation on the acquiring authority to make an offer of compensation, the obligation lies on any interested person to make a compensation claim. In addition to that, the law of Singapore not only invites those dispossessed persons who reside in Singapore to submit their compensation claims, but the invitation extends to those who reside outside Singapore as well\(^{264}\). But when we refer to the definition given to the terms “interested persons” in Section 2 of the LAA of Mauritius, it is not specified whether they include residents outside Mauritius.

267. Moreover, the land acquisition legislation of Singapore, unlike the 1973 LAA of Mauritius does not provide for an opportunity to challenge the legality of compulsory acquisition. Thus, concerning this aspect, the provision of the land acquisition statute of Mauritius is better than that of Singapore.

\(^{264}\) Section 8(2) of the 1966 Land Acquisition Act of Singapore
Furthermore, according to the law of Singapore, the amount of compensation is determined by a Collector of Land Revenue who is a public officer while under the LAA of Mauritius, such determination is carried out by a judicially established Board of Assessment. Hence, it is observed that in Singapore, compensation is not assessed judicially while in Mauritius, the process is a judicial one. However, one similarity that has been noted is that the statutes of both countries do not specify the time limit within which the compensation award should be delivered.

Also, as we have seen earlier, an appeal against an award delivered by the Collector will be heard by an Appeals Board which is a quasi-judicial tribunal. Oppositely, in Mauritius an appeal against any award made by the Board of Assessment will be judicially determined by the Supreme Court. An interesting aspect provided by the law of Singapore is that the Commissioners sitting on the quasi-judicial Appeals Board may ask assistance from assessors being professionals in the fields of valuation, architecture, quantity surveying and engineering. This feature may be helpful while considering whether the Board of Assessment of Mauritius should seek guidance from professional valuers.

Moreover, there is another interesting feature provided by the land acquisition legislation of Singapore. The law ensures that it is only after an award of compensation has been delivered that the state will be allowed to take possession of the land. Then it is only after the taking of possession that the ownership of the land acquired will vest in the State. This framework in a way ensures that a person will be dispossessed of his property only when his right to compensation has been respected. Considering this, it may be suggested that the transcription of the Section 8 notice and the vesting of title (currently catered by Section 11 of the LAA) be made only after the Board of Assessment has made its award under Section 18 of the LAA of Mauritius or after an interim payment of
compensation. Such a provision will act as a guarantee that a person will be dispossessed of his land only when a payment of compensation has been guaranteed to him (in the form of an award by the Board). Such a provision might as well lead to a faster delivery of compensation award by the Board.

Comparison of compensation provisions

271. The first type of compensation that the law of Singapore provides is compensation for any damage caused during the preliminary investigation of the land. Section 4(1) of the Land Acquisition Act of Singapore states that this compensation “shall be paid as soon as conveniently may be” after entry on the land and any disagreement concerning the amount of compensation is to be referred to the Collector. The Act of Singapore has catered for this compensation separately from other compensations that will be discussed further below. This shows that statutorily, this compensation is paid at the earliest after the damage has been caused and irrespective of whether or not the state proceeds with the acquisition. From the wording of the legislation, this compensation seems to be paid before the payment of other types of compensation (if any), but the law of Singapore does not expressly state so.

272. Comparatively, Section 19(1)(a) of the LAA of Mauritius also provides for compensation for any loss sustained as a result of an act or omission during the investigation of the land. It is also necessary to point out that the delay of 14 days provided under our LAA for the submission of compensation claims applies only to the scenario where the Minister has decided to compulsorily acquire the land; in consequence, there is no delay provided for the submission of compensation claims under Section 14 of our Act when the acquisition has been abandoned. Our LAA fails to specify the delay for the submission of compensation claims for the situation where damage has
been caused during the investigation and then the State decides not to proceed further with the compulsory acquisition. It may therefore be suggested that a short delay is imposed for the submission of compensation claims where loss has been caused during the investigation and the acquisition has subsequently been abandoned. Then in light of the legislation of Singapore and only in cases an interested person has suffered a loss during the investigation and subsequently the intended acquisition is abandoned it may also be proposed that, this compensation is paid as early as possible once there is agreement on this amount and any disputed amount may then be referred to the Board of Assessment. Imposing a time limit for the submission of claims and for the payment will ensure a quicker compensation of those persons who, despite not having been dispossessed of their property, have nevertheless suffered a loss.

273. In addition, similar to Mauritius, the statute of Singapore awards compensation for the value of interests in land and in both countries, this assessment is based on the market value of the land at the date of acquisition which is defined under the Act as the date of publication of the notice declaring that the land is needed for a public purpose.\textsuperscript{255} It is therefore observed that in both Singapore and Mauritius, the market value of any interest in land is not evaluated at the date of vesting, it is rather generally based on an anterior date of publication of the notice declaring that the state has decided to acquire the land in lite for a public purpose.

274. Another type of compensation provided under the laws of both Singapore and Mauritius is compensation for the damage caused as a result of severing the land acquired from the land retained.

\textsuperscript{255} Section 33(1)(a) of the 1966 Land Acquisition Act of Singapore
275. However, it has been observed that the Land Acquisition Act of Singapore provides for a broader amount of compensation covering other types of losses which are not catered by the LAA of Mauritius.

276. Under the statute of Singapore, compensation is provided for any damage caused due to the injurious affection of his other property whether moveable or immovable as a result of the acquisition. Therefore, the statute of Singapore seems to guarantee compensation for both losses, that is, loss arising from severance and loss sustained as a result of injurious affection. Comparatively, Section 19(1)(d) of the LAA of Mauritius only states that compensation will be given for the loss sustained as a result of severance of other lands from the land acquired. And as a matter of practice, the Board usually qualifies compensation under this section as “injurious affection” given for reduction in the value of land as a result of the acquisition. It may therefore be suggested that under our LAA, in addition to the compensation which is already given for severance, additional compensation could be provided for the damage caused to any other remaining moveable or immovable property of the dispossessed person as a result of the acquisition.

277. The law of Singapore provides for two other compensations which are not provided under the law of Mauritius. The first one is compensation given for the reasonable expenses incurred by a land owner who is compelled to change his place of residence or his place of business as a result of the acquisition. Secondly, compensation is awarded for the reasonable costs and fees incurred by a dispossessed person for any reissue of title. On the other hand, the LAA of Mauritius does not expressly cater for the loss sustained by a person for being displaced from his dwelling or place of business as a result of the acquisition. It may be recommended that these compensations be added in
our LAA thus ensuring a more adequate compensation which will cover displacement costs.

278. Moreover, both Sections 35(1) of the Land Acquisition Act of Singapore and 18(5) of the LAA of Mauritius similarly provide for the rule that the amount of compensation awarded should not exceed the amount of compensation claimed. Section 8 of the Constitution of Mauritius guarantees an adequate payment of compensation. Thus, Section 18(5) of the LAA which limits the amount of compensation to be awarded to a person seems to be in conflict with Section 8 of our Constitution. Comparatively, the Constitution of Singapore only states that its government has the power to acquire, hold and dispose of property of any kind; there are no express provisions guaranteeing the payment of an adequate amount of compensation which perhaps justifies the existence of the Section 35(1) provision in the Singapore Act. Therefore, the presence of this rule is justified in the Singapore Act but less in the LAA of Mauritius. In order to provide for more adequate compensation comprising of a wider variety of damages in conformity with Section 8 of our Constitution, one proposition could be to remove Section 18(5) from our LAA.

279. The statute of Singapore does not provide for a time frame within which payment of compensation should be effected while Section 22(1) of the LAA of Mauritius imposes a time limit of 30 days as from the date of the award by the Board for the payment of compensation into court. Also, the legislation of Singapore, contrary to that of Mauritius, does not cater for an interim payment of compensation. It may hence be deduced that concerning these aspects, the LAA of Mauritius contains better provisions.

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256 Section 37(1) of the 1965 Constitution of Singapore
280. Furthermore, a provision which can be of inspiration to improve our LAA is Section 41 of the Act of Singapore catering for the payment of interests. It states that when compensation is not paid or deposited in court before taking possession of the land, interests at the rate of 6% per annum accruing from the date of taking possession until the date of payment will have to be paid. It is important to point out two aspects here. First, it triggers the State to make a prompt payment of compensation prior to taking possession of the land itself. Secondly, this legislative provision ensures that any delay in the payment of compensation is covered by adequate interests accruing from the date of taking possession up till the date of payment. As we have seen, the vesting of ownership occurs nearly immediately after the taking of possession, thus the interests on compensation can be taken to be calculated as from the date of vesting until the date of payment.

281. Hence, it can be suggested that Section 18(6) of our LAA be amended so that interests allowed on compensation are calculated up till the date of payment of compensation, similar to Singapore and thus guaranteeing an adequate amount of compensation.
7. India

282. The statute regulating compulsory acquisition of lands in India is the 2013 Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement (LARR) Act. This new enactment has replaced the former 1894 Land Acquisition Act of India, a nearly 120-year-old law which was enacted during the British rule.\(^{257}\) The new 2013 Act introduced several new features in the land acquisition framework of India some of which are the requirement of the consent of affected people before proceeding with the acquisition, a Social Impact Assessment, new rules for the determination of the market value of land and replacement homes for affected families who have been displaced due to the acquisition.\(^{258}\)

7.1 Compulsory Acquisition procedure

283. Prior to starting a compulsory acquisition process, the LARR Act of India provides for a preliminary Social Impact Assessment which must first be conducted. The Social Impact Assessment should be completed within six months as from the date of its commencement. It begins with a study of all aspects of the acquisition project and its impact on the livelihood of affected families and on the facilities and amenities enjoyed by them.\(^{259}\) What is also interesting is that Section 5 of the Act of India provides that a public hearing should be held during the assessment so as to ascertain the views of the affected persons in relation to the proposed acquisition.

\(\text{\(^{257}\) Swati Duggal, Punjab University, Land Acquisition in India (2014)}\)
\(\text{\(^{258}\) Mohammed Ibrahim Lawyers Club India, Valuation for Land (2014), also available at: http://www.lawyersclubindia.com/articles/Valuation-for-Land-Acquisition-5910.asp}\)
\(\text{\(^{259}\) Section 4 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act of India}\)
284. Another interesting concept provided by Section 2 of the Act is the requirement of consent in certain types of acquisition. More precisely, subsection (2) of Section 2 of the Act makes it mandatory to obtain the consent of at least 80% of land owners when land is to be acquired for private companies for public purposes and 70% for acquisition for public private partnership projects. The process of obtaining consent is carried out during the Social Impact Assessment itself. It has been noticed that the transparency of the land acquisition process in India has been considerably increased with the introduction of the concepts of social impact assessment and the requirement of consent. Nevertheless, it is apprehended that those provisions in relation to the need to obtain the consent of a large percentage of landholders will cause procedural delays in the acquisition. That is why the government came up with a proposed Bill which seeks to exempt the requirement of obtaining prior consent of affected persons and the need to carry out the Social Impact Assessment in some categories of projects.

285. Then, in light of the Social Impact Assessment exercise, when it has been confirmed that the project is necessary for public purposes, the process of compulsory acquisition, as envisaged by Section 11 of the LARR Act of India, begins with the issuance of a preliminary notification notifying that land in a specific area is required or likely to be required for public purposes. Section 12 of the Act provides that a preliminary survey should then be conducted so as to determine the extent of land to be acquired.

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261 The 2015 Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Bill. Although the Bill is yet to be passed by the government of India, a number of states, viz., Andhra Pradesh, Gujarat, Haryana, Maharashtra, Tamil Nadu and Telangana, have already enacted legislation amending the 2013 LARR Act.
262 Projects vital for national security or defence, Rural infrastructure projects, Affordable housing and housing for the poor, Industrial corridors, Infrastructure and social infrastructure projects including PPP projects.
286. Moreover, similar to the Land Acquisition Act of Singapore, the Act of India caters for compensation to be given for any damage caused during the preliminary survey in a separate legislative provision. Section 13 of the land acquisition statute of India states that the authorised officer shall at the time of entry pay or tender payment for any damage caused. In case of any dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the decision of the Collector or other chief revenue officer of the district, and such decision shall be final. The payment is made for the intended damage that will be done during the course of surveying the land and any other acts carried out to ascertain whether the land under investigation is capable of being adapted for public purpose.\textsuperscript{263}

287. Furthermore, another interesting provision is Section 15 of the land acquisition legislation of India which gives the statutory right to any “person interested” in any land to object to the area and suitability of land proposed to be acquired as well as objecting to the justification that has been offered for public purpose. The law states that this objection should be made within 60 days as from the date of the preliminary notification which notifies that the land is required or likely to be required for a public purpose.

288. What also needs to be pointed out is the broad definition given to the term “person interested” under the Act of India. Persons having interest in land not only include those with title and those with an easement or tenancy rights in the land but the definition most importantly extends to ‘any person whose primary source of livelihood is likely to be adversely affected’ by the acquisition.\textsuperscript{264} Therefore, the land acquisition

\textsuperscript{263} Swati Duggal, Punjab University, \textit{Land Acquisition in India} (2014)

\textsuperscript{264} Section 3(6) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act of India
legislation of India ensures that no person having any type of interest in the land acquired is dispossessed of his rights to object and his compensation rights.

289. In addition, the LARR Act of India has introduced the rehabilitation and resettlement scheme in the land acquisition proceedings of India since 2013. The rehabilitation and resettlement scheme involves the determination of the families and livelihoods that are likely to be affected by the acquisition as well as the infrastructural facilities which are to be provided in the Resettlement area\textsuperscript{265} (area where the displaced families will be resettled by the state).\textsuperscript{266} Then, after hearing the objections against the acquisition, Section 19 of the LARR Act provides that where the state is satisfied that land is indeed required for a public purpose, a declaration should be published to that effect together with a declaration of an area identified as the resettlement area for the purposes of rehabilitation and resettlement of the affected families.\textsuperscript{267}

290. Moreover, as per Section 21 of the LARR Act of India, any person interested is invited through a public notice to make a compensation claim and additionally, any person interested in the land may submit a claim for rehabilitation and resettlement. Therefore, it is observed that in both Mauritius and India, the onus for claiming compensation lies on any person having an interest in land.

\textsuperscript{265} Section 3(zc) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act of India

\textsuperscript{266} Section 16 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act of India

\textsuperscript{267} Section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act of India
7.2 Compensation

*Delivery of compensation award*

291. A compensation award and an award for resettlement and rehabilitation are delivered by a Collector under the land acquisition legislation of India. What is worth mentioning is that the statute also provides for a time frame for the delivery of such awards. Section 25 of the Act states that the Collector shall make an award within a period of twelve months as from the date of publication of a section 19 declaration. The law further adds that if the award is not made within that time frame, then the entire acquisition proceedings for the land will lapse (but this is still subject to the exception where the state decides to extent that time period).

*Compensation and resettlement and rehabilitation*

292. Analogous to other common law jurisdictions, the statute of India also provides for compensation for the market value of the land acquired. Section 26 of the LARR Act of India stipulates that compensation is assessed on the basis of the market value of the land and the date for the determination of the market value is the date of publication of a section 11 preliminary notice stating that land is required or likely to be required for a public purpose. The statute of India additionally sets out detailed and complex rules for the calculation of the market value. Subsection 2 of section 26 then further provides

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268 Section 3(g) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act of India. Collector means the Collector of a revenue district, and includes a Deputy Commissioner and any officer specially designated by the appropriate Government to perform the functions of a Collector under the Act.

269 Section 23 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act of India

270 Under Section 26 of the LARR Act of India, the market value of the proposed land to be acquired shall be set as the higher of.
that the market value would be multiplied by a factor of, at least one to two times the market value for land acquired in rural areas and at least one times the market value for land acquired in urban areas.271 According to the case of Panjabrao Ganpatrao Borade v. The State of Maharashtra272, "The basic reason which seems to be considered for providing higher multiplier factor even up to two for lands situated in rural area sought to be acquired for the project is dependence of the people on such land for their survival and livelihood, coupled with low market price of such remotely located land, as compared to land situated in urban area." The provision of a multiplication of the market value in India is necessary "to provide for infrastructural needs and sustainability of agriculture and rural livelihood" which have been displaced.

293. However, it has to be pointed out that in no other country that we have examined is compensation for acquired land calculated as a multiple of the market value.

294. Furthermore, the statute of India provides for another rule which is to consider the value of things which are attached to the land being acquired. In addition to that, Section 27273 makes it compulsory that the value (if any) of all assets attached to land should be included in the calculation of the total amount of compensation to be paid to the land owner (whose land has been acquired). As stated by Section 29(1) of the LARR Act, the Collector in determining the market value of the building and other immovable property

(a) the market value, if any, specified in the Indian Stamp Act, 1899 (2 of 1899) for the registration of sale deeds or agreements to sell, as the case may be, in the area, where the land is situated; or
(b) the average sale price for similar type of land situated in the nearest village or nearest vicinity area; or
(c) Consented amount of compensation as agreed upon under sub-section (2) of section 2 in case of acquisition of lands for private companies or for public private partnership projects.

271 Section 26(2) of the LARR Act of India complemented by the First Schedule of the Act
273 Section 27 of the LARR Act of India: Determination of amount of compensation: The Collector having determined the market value of the land to be acquired shall calculate the total amount of compensation to be paid to the land owner (whose land has been acquired) by including all assets attached to the land.
or assets attached to the land or building which are to be acquired, use where necessary, the services of a competent engineer or any other specialist in the relevant field. The value of things attached to the land comprises the value of trees and plants attached to the land acquired as provided by subsection (2) of the said Section, the value of the standing crops damaged during the process of land acquisition catered by its subsection (3) as well as the value of other assets such as buildings and wells.\(^{274}\)

295. Thus, two things are observed here. Firstly, the law of India provides that during the assessment of compensation, consideration should be given to the value of assets, including damaged assets attached to the land acquired. On the other hand, the LAA of Mauritius does not cater for such assets. Secondly, the Indian legislation allows the Collector where it is necessary, to seek assistance from an expert in the relevant field during the determination of the market value of the acquired property. By comparison, there is no such provision under Section 15 of our LAA which gives the Board of Assessment the right to require the assistance of experts in cases of difficulty. Hence, in light of the India legislation provision\(^{275}\), it may be suggested to allow our Board of Assessment to seek guidance from a valuer where necessary.

296. In addition, Section 28 of the Act of India provides for a list of parameters to be considered by the collector during the assessment of the award. They are:

a) the damage sustained by the person interested, by reason of the taking of any standing crops and trees which may be on the land at the time of the Collector's taking possession thereof;

\(^{274}\) Salient Features of the Right to fair compensation and Transparency in Land Acquisition, Resettlement and Rehabilitation Act, 2013, p. 3

\(^{275}\) Section 29(1) of the LARR Act of India
b) the damage (if any) sustained by the person interested, at the time of the
Collector's taking possession of the land, by reason of severing such land from his
other land;

c) the damage (if any) sustained by the person interested, at the time of the
Collector's taking possession of the land, by reason of the acquisition injuriously
affecting his other property, movable or immovable, in any other manner, or his
earnings;

d) in consequence of the acquisition of the land, the person interested is compelled to
change his residence or place of business, the reasonable expenses (if any)
incidental to such change;

e) the damage (if any) bona fide resulting from diminution of the profits of the land
between the time of the publication of a Section 19 declaration and the time of the
Collector's taking possession of the land; and

f) any other ground which may be in the interest of equity, justice and beneficial to
the affected families.

297. Moreover, Section 93 of the land acquisition legislation of India provides that an
affected person will also be entitled to compensation where the state decides to withdraw
from the acquisition of land. In such a case, compensation will be given for the damage
suffered by the owner in consequence such abandonment and for all costs reasonably
incurred by him since the initiation of the compulsory acquisition process.

298. Another distinctive feature under the LARR Act of India is the award of another
type of compensation, namely the Solatium catered by Section 30 of the statute. The
Solatium represents an amount of compensation which is added to the total amount of
compensation to obtain the final award which an affected person will be entitled to. It is
equivalent to 100% of the total amount of compensation\(^{276}\) (30% under the old 1984 Land Acquisition Act of India) and it is given to compensate the forcible nature of the acquisition.\(^{277}\)

299. Furthermore, the 2013 land acquisition legislation makes adequate provisions for rehabilitation and resettlement of the affected persons and their families. The rehabilitation and resettlement award\(^{278}\) corresponds to a comprehensive package offering several privileges to displaced families. The Rehabilitation and Resettlement Award\(^{279}\) includes all of the following advantages which are offered to those families whose livelihoods have been affected by the acquisition, including the landless (people who occupy the land but are not owners by title)\(^{280}\): a constructed house if a house is lost in the land acquisition\(^{281}\), the choice of choosing between receiving annuity or employment\(^{282}\), a subsistence allowance of Rs 3,000 per month per affected family for 12 months as from the date of the award, a fixed transportation cost (Rs 50,000) per displaced family for shifting the family and its belongings to the new house, a one-time resettlement allowance per family.\(^{283}\) The package also comprises other facilities such as

\(^{276}\) Section 30(1) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act of India

\(^{277}\) Mohammed Ibrahim, Lawyers Club in India, *Valuation for Land Acquisition* (2014)

\(^{278}\) Section 31 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act of India

\(^{279}\) Section 31(2) and the Second Schedule of the LARR Act


\(^{281}\) If a house is lost in rural areas, a constructed house shall be provided as per the Indira Awas Yojana specifications and if a family opts not to take the house offered, the equivalent cost of the house may be offered in lieu of the constructed house. If a house is lost in urban areas, a constructed house shall be provided, which will be not less than 50sqm in plinth area and if a family opts not to take the offered house, the family shall obtain a one-time financial assistance for house construction.

\(^{282}\) Affected persons are to be provided with one of three options: a job to at least one member of the affected family, or one-time payment of five lakhs Indian rupees or annuity policies that pay not less than rupees two thousand per month per family for twenty years.

\(^{283}\) Each affected family shall be given a one-time Resettlement Allowance of fifty thousand rupees only.
Land for land\textsuperscript{284}, cattle sheds or petty shops cost\textsuperscript{285}, one-time grant to artisan and small traders\textsuperscript{286} and stamp duty and registration fees\textsuperscript{287}. Besides compensation and the resettlement and rehabilitation package, a number of infrastructural facilities (such as roads, proper drainage system) have to be provided in the resettlement area.\textsuperscript{288}

\textit{Payment of compensation and interests}

300. Section 38 of the LARR Act sets out the delays for the payment of compensation and for the rehabilitation programme. Firstly, full compensation has to be paid or tendered to the persons entitled within a period of three months from the date of the award. Secondly, the monetary resettlement and rehabilitation entitlements have to be paid within a period of six months from the date of the award. Lastly, the infrastructural facilities with respect to the resettlement and rehabilitation project need to be provided within a period of eighteen months as from the date of the award.

301. Comparatively, the time limit provided by Section 22 of our LAA for the payment of compensation is 30 days as from the date of the compensation award. Thus, the legislative provision of Mauritius provides for a speedier payment of compensation as compared to India.

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\textsuperscript{284} One acre of land to each family in the command area in lieu of compensation, if land is acquired for an irrigation project.
\textsuperscript{285} Each affected family having cattle or having a petty shop shall get one-time financial assistance of such amount as the appropriate Government may, by notification, specify subject to a minimum of twenty-five thousand rupees for construction of cattle shed or petty shop as the case may be.
\textsuperscript{286} Each affected family of an artisan, small trader or self-employed person or an affected family which owned non-agricultural land or commercial, industrial or institutional structure in the affected area, and which has been involuntarily displaced from the affected area due to land acquisition, shall get one-time financial assistance of such amount as the appropriate Government may, by notification, specify subject to a minimum of twenty-five thousand rupees.
\textsuperscript{287} The stamp duty and other fees payable for registration of the land or house allotted to the affected families shall be borne by the Requiring Body.
\textsuperscript{288} Section 32 and the Third Schedule of the LARR Act of India
\end{flushleft}
302. Section 38 further provides that the Collector will be able to take possession of the land only after ensuring that full payment of monetary compensation has been made (except in cases of urgency). It is good to note that there are no laid down rules as to what constitutes a taking of possession by the state. However, a normal mode of taking possession (which will vest the land in the state) adopted in India is to go on the spot and prepare an appropriate document which is signed by independent witness.

303. Another safeguard is given by subsection 2 of Section 38 and it guarantees that no involuntary displacement will take place without completing the resettlement and rehabilitation of the affected persons.

304. The LARR Act of India also makes provision for interests to be paid where there is delay in the payment of compensation. Section 80 of the Act stipulates that when the amount of such compensation is not paid on or before taking possession of the land, the

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289 Section 40 of the LARR Act of India
290 "(i) No hard and fast rule can be laid down as to what act would constitute taking of possession of the acquired land, (ii) If the acquired land is vacant, the act of the concerned State authority to go to the spot and prepare a panchanama will ordinarily be treated as sufficient to constitute taking of possession. (iii) If crop is standing on the acquired land or building/structure exists, mere going on the spot by the concerned authority will, by itself, be not sufficient for taking possession. Ordinarily, in such cases, the concerned authority will have to give notice to the occupier of the building/structure or the person who has cultivated the land and take possession in the presence of independent witnesses and get their signatures on the panchanama. Of course, refusal of the owner of the land or building/structure may not lead to an inference that the possession of the acquired land has not been taken. (iv) If the acquisition is of a large tract of land, it may not be possible for the acquiring/designated authority to take physical possession of each and every parcel of the land and it will be sufficient that symbolic possession is taken by preparing appropriate documents in the presence of independent witnesses and getting their signatures on such document. (v) If beneficiary of the acquisition is an agency/instrumentality of the State and 80% of the total compensation is deposited in terms of Section 17(3A) and substantial portion of the acquired land has been utilized in furtherance of the particular public purpose, then the Court may reasonably presume that possession of the acquired land has been taken."
Collector shall pay the amount awarded with interest thereon (9% per annum) from the time of taking possession until the date payment is finally made. It is further stated in the same Section that if compensation or any part thereof is not paid within a period of one year as from the date on which possession is taken, interest (15% per annum) will be payable from the expiry of the said period of one year on the amount of compensation or part thereof which has not been paid.

7.3 Comparison with Mauritius

*Comparison of acquisition procedure*

305. The preliminary Social Impact Assessment which is catered by the LARR Act of India serves the purpose of analyzing whether the advantages of the land acquisition project outweigh its socially detrimental effects. This Assessment is accompanied by a public hearing provided under the Act which gives a fair opportunity to affected families to express their views on the adverse social effects that may affect them in case of acquisition. This system helps the appropriate government to reach a wise decision about whether or not to proceed with the acquisition and where acquisition is feasible, it will help the appropriate government to better formulate strategies to minimise the adverse impacts of the acquisition and harm to affected families.\(^{251}\) Comparatively, the LAA of Mauritius does not expressly provide for any similar assessment such as an environmental assessment. In addition, the right to objection under the LAA of Mauritius arises only after the Minister has already finalized his decision to acquire the land in lite;

there is no right of objection at a preliminary stage even prior to the investigation of the land.

306. Following the Social Impact Assessment, the Act of India provides for a preliminary survey of the land to be acquired which is similar to the preliminary investigation of land provided by Section 6 of the LAA of Mauritius. However, the mode of payment of compensation for any damage caused during the survey in India is different from that provided in Mauritius. In India, payment is to be made at the time of entry onto the land, thus providing for a prompt payment of compensation for any damage caused during the investigation. In Mauritius, this compensation is included in the total award delivered by the Board and the payment is made within 30 days from the date of the award (Section 22 of the 1973 LAA). Though there is no precision as to whether such payment in India is literally tendered to the affected persons at the time the public officer will enter the land or whether it is made soon after the investigation is over, such a provision if considered in Mauritius, may nevertheless allow a person (who incurred losses during the investigation) to be promptly compensated at the time of or soon after the completion of the investigation. We shall contemplate whether such a provision will be helpful in providing a prompt payment of compensation in our Analysis Chapter after considering all countries, bearing in mind that interim compensation is already given by our LAA.

307. Furthermore, the LARR Act provides for a second right of objection. In particular, Section 15 of the statute states that any interested person may challenge the justification given for public purpose as well as the area and suitability of the land proposed to be acquired within 60 days as from the date of being notified that the land is

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Section 12 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act of India
acquired or likely to be acquired. Comparatively, our LAA does not provide for a right to objection at the stage where land is only likely to be acquired and the decision has not yet been properly finalized. Thus, we can observe that under the Act of India, a person who is likely to be dispossessed, has the statutory right to object to the proposed acquisition even prior to the investigation of the land (that is, as from the date of the preliminary notification itself) while under the LAA of Mauritius, a person will be able to exercise such right only after the investigation of the land and when the Minister has already taken the decision to acquire land. Thus, the LARR Act of India provides for a fair opportunity to challenge the acquisition at an initial stage itself. This framework provided by Indian law might be considered to ensure that a person is dealt with fairly by the Mauritian authorities.

**Comparison of compensation provisions**

308. Under the laws of both Mauritius and India, the responsibility rests on the affected persons to come forward and make their claim for compensation.293 There is no obligation on the two states to make an offer.

309. Moreover, it has been observed that the LARR Act of India (Section 25) gives a time frame of 12 months during which an award should be made. Failure to do so will render the entire acquisition proceedings void. On the other hand, the LAA does not specify such time period as a result of which the Board may take several years to deliver an award. It may therefore be recommended that in our LAA as well, a time limit should be imposed for the delivery of an award. It may also be suggested that similar to India, if the time limit is not respected, the law may state that the entire acquisition process shall...

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293 Section 21 LARR Act of India and Section 14 of the 1973 LAA of Mauritius
lapse. Such a provision will force the Board to deliver its award promptly within a specified time period.

310. It has been observed that both countries provide for compensation based on the market value of the property assessed on the date of publication of a preliminary notice. Nevertheless, as we have seen above, the rules pertaining to its assessment are much different and complex in India than in Mauritius. Once the market value is determined by the Collector, it will be multiplied by a factor of one or two depending on whether the land acquired is located in a rural or urban area and the amount obtained after multiplication is taken to be the final market value of the land acquired. Though this method of calculation seems to guarantee an adequate compensation, we need to bear in mind the fact that so far, such a framework is only provided in India. Furthermore, the features and conditions of rural and urban areas in India are very different from that of Mauritius. Hence, a provision seeking the multiplication of the market value is not required in Mauritius.

311. In addition, the list of other losses, damages and expenses which are compensated under the land acquisition statute of India have been examined. Other compensations which are provided under the laws of both Mauritius and India are compensation for the damage sustained during the survey of the land prior to acquisition, compensation for the loss sustained from the severing of the land acquired from the original whole and compensation for abandonment.

312. Nevertheless, it has also been observed that the LARR Act of India (Section 28), as compared to the LAA of Mauritius, encompasses a wider variety of damages and expenses to be compensated. For instance, in India, compensation is given for the damage to crops or standing trees on the land acquired, injurious affection to moveable or
immovable properties and earnings\textsuperscript{294} of the person affected as a result of the execution and use of the works as well as any reasonable expenses incurred by a person who is compelled to change his residence or place of business due to the acquisition. Similarly, we may consider compensating these types of losses under Section 19 of our LAA which will lead to a more adequate amount of compensation.

313. Moreover, extra compensation is given in recognition of the compulsory nature of the acquisition. The solatium, which is calculated as hundred percent of the original total compensation amount, enables a dispossessed person to be adequately compensated with an amount which is twice the total amount of compensation. Nevertheless, such extra compensation is provided neither in Mauritius nor in other countries that have been studied previously. Though it might ensure an adequate compensation to the person dispossessed by the acquisition, it is not recommended that such a provision be inserted in our LAA because not only will it contradict Section 20(a) of the Act which clearly states that no allowance is to be made on account of the fact that the acquisition is compulsory, but it will also require additional funds to be spent by the state which are unnecessary.

314. Under the law of India, the land holders not only receive adequate compensation, but they are also entitled to a very generous rehabilitation and resettlement package. This package not only consists of the provision of an alternate house but also includes other monetary entitlements; a displaced person will also be entitled to displacement costs,
resettlement allowance, subsistence allowance and stamp duty and title registration fees amongst others. Comparatively, the LAA of Mauritius does not contain express provisions catering for the relocation of displaced persons. But it has been seen that the Ministry of Housing and Lands may on their own, request the NHDC to temporarily rehouse some families until they construct their own house.\textsuperscript{295} In Mauritius like in other countries, land acquisition results most of the time in the displacement of people. It may hence be recommended that whenever land acquisition in Mauritius results in displacement of people, the Board should give additional compensation for any loss or expenses incurred as a result of such displacement. For instance, just like in India, our law may expressly state that the Board may award compensation to cover displacement and transportation costs and stamp duty and registration costs. Such a provision will ensure that a person is entitled to a complete and adequate compensation which is not only limited to compensating for the value of the land but one which also includes compensating the losses incidental to displacement.

315. Furthermore, section 38 of the LARR Act of India strictly states that the state will be allowed to take possession of the land only after the full amount of compensation has been paid. This framework seems fair because it ensures that a person will be fully dispossessed of his property only at the time he is compensated. Comparatively, in Mauritius, the ownership of the land acquired may vest in the government at an early stage, that is, even before the Board renders its compensation award.\textsuperscript{296} Nevertheless, considering the established framework under our LAA, such a provision if inserted in our law might delay the initiation of the project for public interest for which the land was

\textsuperscript{295} Concerning the Metro Express project, the Minister of Housing and Lands requested the NHDC and the MHC to temporarily rehouse the displaced persons of Résidence Barkly and La Butte. Information obtained at the following link: https://mndh.govm/news/metro-express-trente-sept-maisons-preparées-aux-exploitations

\textsuperscript{296} Section 11 of the 1973 Land Acquisition Act of Mauritius
acquired. However, it may still be suggested that the date of payment of interim compensation is brought close to the date of transcription of a Section 8 notice.

316. Lastly, the law of India provides that interests will be paid on compensation if payment has not been made on or before taking possession of the land. The law further imposes the payment of interest at a higher rate if compensation has not been paid within one year from the date on which the State took possession of the land. In both situations, the interests are calculated until the date of payment is finally made or deposited into court. On the other hand, our LAA does not expressly provide for interests to be paid on compensation in cases where the state delayed in effecting payment. Hence, in order to ensure a more adequate amount of compensation, it may be suggested that whenever the authorized officer fails to issue payment within 30 days (as provided by Section 22 of the Act), interests should be paid on the compensation and these interests should be calculated from the date of vesting until the date of payment into court.
8. South Africa

317. The first land acquisition statute of South Africa is the 1975 Expropriation Act. However, there was a proposal by the current government to change the expropriation regime in the country\(^{297}\) as a result of which an Expropriation Bill was passed in 2016\(^{298}\). Nevertheless, this Bill has been withdrawn pending the conclusion of a parliamentary process to review the merits of changing the Constitution of South Africa to expropriate land without compensation. Thus, the land acquisition legislation which is currently in force in South Africa is the 1975 Expropriation Act\(^{299}\).

318. Akin to Section 8 of the Constitution of Mauritius, Section 25 of the South African Constitution also states that expropriation of land will only be allowed subject to the payment of compensation and provided that it is required for a public purpose or in the public interest. Nevertheless, Subsection 3 of the said Section of the Constitution of South Africa additionally stipulates that the amount of compensation and the time and manner of payment must be just and equitable, striking an equitable balance between public interest and the interests of those affected by the expropriation. This provision also specifies that the amount of compensation should be determined having regard to a list of relevant circumstances\(^{300}\) which will be considered further below.

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\(^{297}\) There is a proposal on the current government’s agenda for ‘expropriation without compensation’ to redress a grave historical injustice so that land is returned to those from whom it was unjustly taken during apartheid and colonialism. The main objectives of the policy are not only to enable the state to use expropriation as an effective means of land reform but also, since it has been found that the 1975 Expropriation Act does not satisfy all constitutional requirements, the policy would also serve as purpose to align the Act with the Constitution.


\(^{299}\) Section 25(3) of the Constitution of South Africa: The amount of compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances, including.
319. Moreover, in the Expropriation Act, the property that can be expropriated is not restricted to moveable and immovable tangible properties but includes incorporeal, real and personal rights such as mineral rights, limited real rights and personal rights.\textsuperscript{301}

8.1 Compulsory Acquisition Procedure

320. The process of compulsory acquisition starts with an inspection of the property for ascertaining whether the property is suitable for the purposes contemplated or for the purpose of determining its value.\textsuperscript{302} Sections 6(2) and 6(3) of the Expropriation Act further imposes an obligation on the State to compensate or to repair the damage suffered by any person as a result of the investigation of the land. The proceedings for such compensation or repair are to be initiated within 6 months after the damage has been caused or within 6 months after the completion of the inspection.\textsuperscript{303} But the Act does not specify by when should such compensation or reparation be paid or made.

321. The Expropriation Act does not provide for a notice to be served to inform the affected parties about the intention (not decision) of the State to expropriate their land nor does the Act create a procedure for a hearing before the decision to expropriate is made. The fact that the Act does not provide for the expropriatee to be consulted before serving

\begin{itemize}
\item[(a)] The current use of the property;
\item[(b)] The history of the acquisition and the use of the property;
\item[(c)] The market value of the property;
\item[(d)] The extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property;
\item[(e)] The purpose of the expropriation
\end{itemize}

\textsuperscript{301} Wilhelmina Jacoba (Elmien) du Plessis, \textit{Compensation for Expropriation under the Constitution} (2009), p. 31
\textsuperscript{302} Section 6(1) of the 1975 Expropriation Act of South Africa
\textsuperscript{303} Provided that the plaintiff has given the Minister not less than one month's notice thereof and of the cause of the alleged damage.
an expropriation notice, that is, before the state decides to expropriate land, is considered as a lacuna in the statute. Nevertheless exceptionally, under 2 Acts, namely the 1997 Extension of Security of Tenure Act (ESTA) and the 1993 Provision of Land and Assistance Act (Act 126), it is expressly provided that before land is expropriated, the property owner must be given a hearing (Section 26 of ESTA and Section 12 of Act 126). The procedural guidelines concerning expropriation under these 2 Acts are set out in a policy document and one of the procedural guidelines is that prior to expropriation, a Notice of Recommendation of Expropriation and Compensation must be served on the owner, having as purpose to notify the owner that a recommendation will be made to the Minister of Land for expropriation of land (or right in land) as well as inviting the latter to respond to the notice within a delay of 21 days. Based on this, the Minister will decide whether or not to proceed with the expropriation. Expropriation under these two Acts is limited only to the expropriation of white-owned farmland for redistribution and tenure reform. Therefore, it is observed that in South Africa, a right to be heard before the decision to expropriate is consolidated is exceptionally provided for a specific type of expropriation.

322. Nevertheless, it has been observed that even though the Expropriation Act in itself does not give the person who is likely to be dispossessed an opportunity to be heard, in practice, the person will still be invited to make representations as to why the property

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[^304]: Wilhelmina Jacobsa (Elmien) du Plessis, *ibid*, p. 97
[^305]: “Owner” means the owner of the land at the time of the relevant act, omission or conduct and includes in relation to the proposed termination of a right of residence by a holder of mineral rights such holder is by law entitled to grant or terminate a right of residence or any associated rights in respect of such land, or to evict a person occupying such land. Section 1(1)(x) of the ESTA
[^306]: Policy and Procedures for Expropriation of Land in terms of Act 126 and ESTA
[^308]: Briefing paper: Expropriating land for redistribution (2003), p. 3
should not be expropriated. This is so because the decision to expropriate is an administrative action which is regulated by the 2000 Promotion of Administrative Justice Act (PAJA) of South Africa. Section 3(1) of the said Act states that an administrative action which materially and adversely affects the rights or legitimate expectations of any person must be procedurally fair. Subsection (2) of the same section further provides that the right to “a procedurally fair administrative action” consists of giving the affected person notice of the nature and purpose of the proposed administrative action and an opportunity to make representations. Thus in practice, even though it is not expressly provided in the Expropriation Act, the expropriating authority will usually, by virtue of Section 3 of the PAJA and before taking the decision to expropriate, invite the person likely to be dispossessed (by a letter) to give reasons why his property should not be expropriated. Not following this procedure will render the taking of the decision to expropriate (administrative action) procedurally unfair and may thus be subject to judicial review.

323. Then, where the Minister has decided to expropriate land, Section 7 of the Expropriation Act provides that a notice of expropriation will be served on the owner of the land stating the date of expropriation (date on which ownership of land passes to the expropriating authority released from all mortgage bonds), or the date as from which the property will be used and also the date upon which the State will take possession of the property. The notice of expropriation will also draw the attention of the owner on any offer of compensation made by the State. However, Section 7 of the South Africa's Act

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310 An administrative action means any decision taken or failure to take a decision by an organ of the State or a natural or juristic person exercising a public function which adversely affects the rights of any person: Section 1 of the 2000 Promotion of Administrative Justice Act 3 (PAJA) of South Africa.


312 Section 6(2)(c) of the 2000 Promotion of Administrative Justice Act (PAJA) of South Africa

313 Section 8 of the 1975 Expropriation Act of South Africa

314 Section 7 of the 1975 Expropriation Act of South Africa
is considered as a fundamental weakness of the statute. This is because the provisions of the said Act allow the State to automatically\textsuperscript{315} acquire ownership of the property on the date of expropriation by mere notice to the owner and also, since no minimum waiting period is specified in the law, nothing prevents the expropriating authority to take possession of the land on the very next day following the transfer of ownership.\textsuperscript{316}

8.2 Compensation

\textit{Procedure}

324. Section 2(1) of the Expropriation Act imposes an obligation on the expropriating authority to pay compensation for the expropriated property. The amount of compensation will be determined in terms of Section 12 of the said Act. Even if the expropriation is authorised by another Act, compensation must be assessed in terms of what is provided in the Expropriation Act\textsuperscript{317} altogether with the legislative provisions in relation to expropriation contained in the Constitution.

325. The notice of expropriation served on the owner or the holder of a registered right in land must make an offer of compensation.\textsuperscript{318} The expropriated party (owner or the holder of any right in land being expropriated) shall then within 60 days from the date of

\textsuperscript{315} Even though ownership is transferred to the State automatically and statutorily to the State on the date of expropriation, it is nevertheless common practice that such transfer is registered in the deeds office for ‘security and greater certainty of title’.

\textsuperscript{316} Ownership of the property in question will then pass automatically and by operation of the law to the State on the ‘date of expropriation’ identified in the notice, which could even be the day after the notice of expropriation was served. This is considered as being in conflict with South Africa’s Constitution. Anthea Jeffery, \textit{The Expropriation Bill: Back and still very, very bad – IRR} (2014)

\textsuperscript{317} Wilhelmina Jacoba (Elmien) du Plessis, \textit{ibid}, p. 40

\textsuperscript{318} Section 10(1) of the 1975 Expropriation Act of South Africa
serving the notice, provide the expropriator with a statement indicating whether he accepts the compensation offer, rejects it or where no offer was made (in cases of urgent expropriation), he must propose an amount of compensation.\textsuperscript{319}

326. Moreover, Section 14(1) of the Expropriation Act provides that any disagreement concerning the amount of compensation must be judicially determined by a provincial or local division of the Supreme Court in whose area of jurisdiction the land is situated on the date of expropriation.

327. However, the law also provides for the possibility to resolve the matter through two alternate dispute resolution mechanisms. The first one is provided by subsection 7 of Section 14 of the Act which stipulates that nothing prevents the expropriating authority and the expropriated party\textsuperscript{320} from submitting by agreement any dispute concerning the amount of compensation to be paid to arbitration.

328. The second type of alternative dispute resolution mechanism is one which is made available to the parties when judicial proceedings have already been initiated for the determination of the amount of compensation. Section 14(8) of the Act states that a party to any judicial proceedings assessing the amount of compensation to be paid may, at any time before or during the hearing of such proceedings, make a written offer to the other party to such proceedings for the settlement of the dispute. Acceptance of the offer will terminate the proceedings, except as regards disputes relating to the interpretation of the negotiation offer or to costs.\textsuperscript{321}

\textsuperscript{319} Section 9(1) of the 1975 Expropriation Act of South Africa
\textsuperscript{320} The owner, including a lessee who is not an owner
\textsuperscript{321} Section 14(8)(d) of the 1975 Expropriation Act of South Africa
Types of compensation and rules for the assessment of compensation

329. Compensation is firstly given for the value that the property will fetch in the open market. Compensation based on the open market value of the property is provided by both the 1975 Expropriation Act [Section 12(1)(a)(i)] and the Constitution [Section 25(3)(c)]. The provision of the Act states that the amount of compensation to be paid to the owner of land or the owner of a registered right in land being expropriated shall not exceed the aggregate of the amount which the property would have realised if sold on the date of notice in the open market by a willing seller to a willing buyer and the aggregate of an amount to make good any actual financial loss caused by the expropriation plus solatium. The phrase “shall not exceed” has been interpreted diversely in different cases and there is thus no uniformity as to what it exactly means. Determination of compensation based according to the rules provided in the Expropriation Act would entail a full market value and an amount of compensation higher to the market value. However, the enactment of the Constitution of South Africa in 1996 came to provide a new framework within which the Expropriation Act of the country began to be interpreted and which might cause a fluctuation in the amount given for compensation.

330. The Constitution of South Africa requires that compensation must be “just and equitable” taking into consideration the non-exhaustive list comprising of five relevant factors listed in its Section 25(3); the market value of the property being one of those five listed factors. The practice that is usually employed by South Africa’s Courts to

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322 In a case the phrase “shall not exceed” has been interpreted to mean that the court should stay as close as possible to the aggregate market value of the property, in another case the court stated that compensation could also be more than market value while in a third case, the court mentioned that compensation can also be less than market value.

323 Wilhelmina Jacoba (Elmien) du Plessis, *ibid*, p. 51

324 These five factors are: the current use of the property; the history of the acquisition and use of the property; the market value of the property; the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and lastly, the purpose of the expropriation.
achieve the "just and equitable compensation" required by the Constitution, is that they will first determine the market value of the property (since it is easily quantifiable) and then adjust this amount (market value) upwards or downwards considering the influence of the other factors found in the constitutional list. In this method of calculation, when the court attempts to strike a balance between private and public interests, it may happen that the interest of the dispossessed party for example, lift the compensation amount to above market value. In the same manner, other criteria such as public interest may reduce the compensation to an amount which is less than market value which will be a disadvantage to the dispossessed owner.

331. The Expropriation Act of South Africa also makes provision to compensate any actual financial loss caused by the expropriation (Section 12(1)(a)(ii) and Section 12(1)(b)). The loss must result from reasonable and direct consequences of expropriation. Some examples of losses which are compensated as actual financial loss are: cost of removal, loss of income, loss of goodwill, loss of an interest in land as well as loss arising from a lower value of the new premises as compared to the higher value of the expropriated premises. Also, where land is only partially expropriated as a result of which the value of the remaining land has diminished, compensation for the depreciation of the remaining land is usually given under the heading of actual financial loss.

332. In addition to market value and actual financial loss compensation, the law of South Africa (Section 12(2)) also provides for an added amount of solatium which is

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325 Not all five factors will be applicable in a particular place and it might be that in certain cases, a particular factor is more relevant than the others. However, it is important that all relevant factors be considered in every case, including those factors that might be relevant, but not included in Section 25(3) of the Constitution of South Africa.

326 Wilhelmina Jacoba (Elmien) du plessis, ibid, p. 109

327 The Challenges To Valuers With Regard To Compensation For Expropriation And Restitution In South African Statistics, p.19, also available at: http://www.prect.net/Papers/Terblanche_Commencement_Expropriation_Restitution_South_African_Statistics.pdf

328 Wilhelmina Jacoba (Elmien) du plessis, ibid, p. 56-57
calculated as a percentage of the total amount of compensation. Solatium is given as an award to compensate the non-financial losses and sentimental damages\textsuperscript{220} incurred due to expropriation. It includes compensation for inconvenience (mental agony and distress)\textsuperscript{330}, and disturbance\textsuperscript{331}. Compensation will also be given for the damages directly or indirectly sustained by a person when the State decides to withdraw from an expropriation.\textsuperscript{332}

Furthermore, Section 12(5) of the South Africa’s Act provides for some features to be ignored while assessing compensation. These are: the fact that the property or the right to use property has been taken without the consent of the owner in question; the special suitability or usefulness of the property in question for the purpose for which it is required by the State if it is unlikely that the property would have been purchased for that purpose on the open market; any increase in the value of the property in consequence of the use thereof in a manner which is unlawful; any improvements made after the date of notice on or to the property in question\textsuperscript{333}; any increase or depreciation in the value of land before or after the date of notice of expropriation which may be caused due to the works or intended works for the purpose for which or in connection with which the property is being or will be expropriated.

\textsuperscript{220} An award of a solatium is similarly defined as an award for sentimental damages that is “intended to neutralise the wounded feelings of the plaintiff of having to suffer a wrongful act.”

\textsuperscript{330} The Challenges To Valuers With Regard To Compensation For Expropriation And Restitution In South African Statutes, p. 23

\textsuperscript{331} Wilhelmina Jacoba (Elmien) du plessis, \textit{ibid}, p. 61

\textsuperscript{332} Section 23 of the 1975 Expropriation Act of South Africa

\textsuperscript{333} Except where they were necessary for the proper maintenance of existing improvements or where they were undertaken in pursuance of obligations entered into before that date.
Payment of compensation and interests

334. We have seen that Section 25(3) of the Constitution of South Africa provides for a just and equitable amount of compensation, but it also clearly requires that the “time and manner of payment of compensation must be just and equitable”, even though it does not specify the time limits. In addition to that, Section 11(1) of the 1975 Expropriation Act imposes a duty on the Minister of Public Works to pay not less than 80% of the amount of compensation offered in the expropriation notice either on the date on which an amount is offered as compensation334; or if the State has not yet taken possession of the property, on the date on which it takes possession thereof. Section 11(3) of the same Act further adds that this part payment of compensation shall not prevent the determination of a different amount of compensation by agreement (arbitration) or by a court. This is, however, subject to the exception that if the amount so determined as compensation is less than the amount already paid, the difference in amount should be refunded to the State together with interest.

335. Furthermore, the land expropriation statute of South Africa interestingly provides that notwithstanding any application made to court for the determination of compensation or any appeal from such determination, the other provisions of the Act will apply as if no such application or appeal had been made.335 By inference, it means that any payment of compensation may still be made even though the assessment of compensation has been referred to court or is subject to an appeal.

334 The date on which the notice of expropriation (containing the offer) was served on the owner of an interest in land; or if no compensation offer was made in the expropriation notice and the owner fails to submit his compensation claim, the date on which the Minister then in turn made an offer of compensation within a reasonable period; or if no compensation was offered in the notice of expropriation and the owner made a compensation claim of an amount not agreed by the Minister, the date on which the Minister made a counter offer of compensation within a reasonable period.

335 Section 18 of the 1975 Expropriation Act of South Africa
336. In addition, the Act also provides for interest (on the amount of compensation not yet fully paid out) to be paid from the date the state takes possession of the property to the date of final payment of compensation [Section 12(3)].

8.3 Comparison with Mauritius

*Comparison of acquisition procedure*

337. Similar to Mauritius, the compulsory acquisition procedure in South Africa starts with an investigation of the land proposed to be expropriated.

338. Moreover, it has been observed that the Expropriation Act of South Africa does not expressly provide an opportunity to be heard to the persons likely to be dispossessed. Rather, this right to be heard before the Minister takes the decision to expropriate is provided by two alternate means. First, by two other Acts of Parliament (Act 126 and ESTA) which stipulates that prior to the expropriation of land for redistribution, the owner of land must be given a hearing. Secondly, both the Constitution [Section 33(1)]\(^{336}\) and the PAJA (Promotion of Administrative Justice Act) provides for the right to an administrative action which is procedurally fair which incorporates the right to be given a reasonable opportunity to make representations before the administrative action (which is the decision to expropriate in this case) is taken. Comparatively, our LAA does not afford an opportunity to be heard before the Minister decides to acquire land. The notice of investigation of land served under Section 6 of our Act mainly serves as purpose to

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\(^{336}\) Section 33(1) of the Constitution of South Africa: Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.
inform the person that his land is likely to be acquired; but the person is not invited at this stage to object to the taking of decision to acquire which can also be considered as unfair to those persons likely to be dispossessed. As said earlier, our Act only gives a right to object after the Minister has already taken the decision to acquire (Challenge of legality of acquisition under Section 10). Thus, in order to acquire property in a more procedurally fair manner, it may be suggested that when a notice is served under Section 6 of the LAA, it must be expressly mentioned in the notice that any interested person who is likely to be affected by the proposed acquisition is invited to submit any objections to the Minister as to why his interest in land should not be acquired.

339. In addition, we have also observed that law of South Africa makes a difference between the transfer of ownership and the taking of possession of the property which is defined as exercising a right on the land; while this is not the case under the LAA of Mauritius. Unlike the law of South Africa, our Act only caters for the vesting of title in the State; there is no precision when will the taking of possession of the property occur. However, Section 2 of our LAA defines the term “acquisition” as one which also includes the “taking of possession”. It can therefore be inferred that our LAA does not differentiate between ‘vesting of ownership’ and ‘taking possession’ and that when the State has acquired land by the transfer of title, it would also be taken to mean that the state has taken possession of that property.

340. Also, in South Africa, it seems that ownership of land will pass into the state on the date which has been fixed in the expropriation notice irrespective of whether the expropriation has been contested while in Mauritius, the transfer of ownership is allowed only after an interested person has been given a right to challenge the legality of the

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337 Section 1 of the 1975 Expropriation Act of South Africa which defines “possess” as including the exercise of a right.
acquisition\textsuperscript{338}. Thus, in relation to this, the legislative provisions of Mauritius seem fairer.

\textit{Comparison of compensation provisions}

341. The first comparison which is made is that unlike the LAA of Mauritius which imposes an obligation on the dispossessed party to make a compensation claim\textsuperscript{339}, the law of South Africa requires that it is the expropriating authority that should generally make an offer of compensation\textsuperscript{340}.

342. Next, concerning the assessment of compensation, it has been observed that the land acquisition (or expropriation) statutes of both countries provide for the judicial determination of any disputed compensation.

343. Nevertheless, the Expropriation Act of South Africa additionally provides for an alternate dispute resolution mechanism, which is not afforded by our LAA. The law of South Africa gives the parties the possibility to arbitrate prior to resorting to courts. Comparatively, even though Section 14(2) of our LAA uses the words \textit{unless the claim is sooner settled}, the compensation claim should be referred to the Board\textsuperscript{341}, which might lead us to infer that parties may resolve the compensation dispute otherwise than by a judicial method, the Act, however, does not expressly provide for any alternate dispute resolution mechanisms for the determination of disputed compensation. As already mentioned previously, the Board takes many years to render a compensation award.

\textsuperscript{338} Section 11 of the 1973 Land Acquisition Act of Mauritius
\textsuperscript{339} Section 14 of the 1973 Land Acquisition Act of Mauritius
\textsuperscript{340} Section 10 of the 1975 Expropriation Act of South Africa
Inspiration can therefore be drawn from the legislative provisions of South Africa and it may be recommended that prior to referring the matter to the Board of Assessment, the parties may be afforded an arbitration process which is most likely to be less time-consuming and less costly than the usual court process and may, if not resolving the matter, help to narrow down issues. This framework will help to avoid unnecessary costs (costs of lodging the case for instance) if ever the case is resolved at arbitration level and will also ensure that compensation is determined more promptly resulting in a much earlier payment of compensation than the actual system.

Moreover, both the Expropriation Act [Section 12] and the Constitution of South Africa [Section 25(3)] provides the court with the principles to be followed during the calculation of compensation; but in practice, in determining the amount of compensation to be paid, the court usually reconciles the principles set out in the Act with those stated in the Constitution. Comparatively, the Constitution of Mauritius does not set out the principles and rules to be followed by the Board while assessing compensation. Also, the Constitution of South Africa states that the amount of compensation must be “just and equitable” while the Constitution of Mauritius only states that our land acquisition laws must provide for adequate compensation [Section 8(1)(c)(i)] and must also provide for the determination of that amount in accordance with such principles as may be prescribed in the laws [Section 8(4)(c)(ii)].

Moreover, even though the method of calculating market value is differently provided in Mauritius and South Africa\textsuperscript{341}, one similarity that has been observed is that the land acquisition statutes of both countries provides that the immovable property has

\textsuperscript{341} In South Africa, “market value” is main focus of the Expropriation Act while in the Constitution of South Africa, “market value” is only considered as one of those 5 factors listed for the determination of a “just and equitable” compensation. That is why, several authors are of the opinion that the 1975 Expropriation Act of South Africa is contrary to the Constitution of the country. On the other hand, in Mauritius, “market value” forms the major part of the total compensation awarded by the Board.
to be assessed based on its market value on the date of the notice declaring that the Minister has decided to acquire or expropriate the land and not on the date ownership passes to the State.

347. In addition, in South Africa, compensation is also given for any actual financial loss which consists of indemnifying for certain types of losses caused by the expropriation (such as loss of income, loss of goodwill and cost of removal) which are not compensated under the provisions of our LAA. Similarly, the law of South Africa also provides for a solatium which is an amount added to the total compensation calculated and which is given to cover the non-financial losses and emotional suffering of the dispossessed persons. Solatium is not provided by the 1973 LAA of Mauritius. It may be suggested to compensate for any direct or indirect losses (besides solatium) incurred as a result of the acquisition such as the loss of business income and cost of removal ensuring a more adequate amount of compensation to the dispossessed persons.

348. It has also been observed that similar to Singapore, the law of South Africa provides separately for the compensation given for any damage caused during the investigation of the land, but the laws do not specify the time within which such payment should be effected. On the other hand, under the LAA of Mauritius (Section 19), this compensation is included in the total compensation calculated by the Board.

349. As to the similarities, the land acquisition legislations of both countries provide compensation for: the injurious affection of land and any damage suffered as a result of the abandonment of the acquisition (or expropriation) scheme. Likewise, the laws of both South Africa and Mauritius provide for similar aspects to be ignored during the assessment of compensation. These are: the fact that the acquisition (or expropriation) is compulsory; any increase in the value of land caused by the increase works or intended
works carried out in connection to the acquisition scheme; and any increase to the value of property caused by reason of its unlawful use.

350. Furthermore, it has been observed that in South Africa, though ownership and possession pass to the State on the dates specified in the expropriation notice, the Expropriation Act provides that at least 80% of the compensation due (compensation offered in the expropriation notice) must be paid either on the date on which a compensation offer is made or on the date when the Government takes possession, and that is irrespective of whether the amount of compensation is disputed and has been referred to arbitration or to court for determination. The Expropriation Act of South Africa, however, does not specify as to when the outstanding amount of compensation should be paid. This part payment of compensation is quite similar to the interim payment of compensation awarded under our LAA pending the assessment of compensation by the Board. The only differences are that in Mauritius, such interim payment is not made at the time of vesting of title of land and also, the interim compensation does not consist of such a big percentage. In light of the system in South Africa, it may be suggested that in Mauritius as well, an interim compensation should be paid at the time of vesting of title because it is at that point that a person becomes actually legally dispossessed of his property. Such a framework may also ensure a much earlier part payment of compensation.

351. Interest on the outstanding balance is also payable from the date of possession, until the full amount has been paid\textsuperscript{342} while in Mauritius interests are calculated from the date of vesting until the date of the award of the Board (Section 18(6) LAA). Hence, we may consider amending this provision to allow interests to be calculated up till the date of payment into court.

\textsuperscript{342} http://www.politicsweb.co.za/news-and-analysis/the-expropriation-bill-back-and-still-very-very-ba
9. New Zealand

352. The 1981 Public Works Act of New Zealand sets out the procedures for the compulsory acquisition of land for public works as well as laying out the procedures and rules for assessing compensation.

353. Prior to resorting to acquiring land compulsorily, the Minister of Lands of New Zealand will first try to acquire the land by agreement with the land owner asking the latter whether he wishes to voluntarily sell the land to the State.\textsuperscript{343} It is only when negotiation between the parties fail that the State will proceed to acquire land compulsorily.

9.1 Compulsory acquisition procedure

354. Section 23 of the Public Works Act provides that when land is required for public works\textsuperscript{344}, the Minister of land shall firstly cause a survey of the land to be carried out and secondly, cause a ‘notice of intention to take land’ to be published and served on the

\textsuperscript{343} Section 17 of the 1981 Public Works Act of New Zealand

\textsuperscript{344} Section 2 of the 1981 Public Works Act of New Zealand defines “public works” as: (a) every Government work or local work that the Crown or any local authority is authorised to construct, undertake, establish, manage, operate, or maintain, and every use of land for any Government work or local work which the Crown or any local authority is authorised to construct, undertake, establish, manage, operate, or maintain by or under this or any other Act; and include anything required directly or indirectly for any such Government work or local work or use; (b) every Government work or local work constructed, undertaken, established, managed, operated, or maintained by any education authority within the meaning of the Education Act 1964 and every use of land for any Government work or local work which such education authority constructs, undertakes, establishes, manages, operates, or maintains, and include anything required directly or indirectly for any such Government work or local work or use; (c) any Government work or local work that is, or is required, for any university within the meaning of the Education Act 1989
owner of the land as well as any person with a registered interest in the land informing
the person that the Ministry is proposing to take his interest in land.

355. Concerning the survey of the land, Section 111(2) of the Public Works Act
provides that unless otherwise agreed by the owner or occupier of the land, every entry
upon land must be preceded by a 10 working days' notice served on the owner or
occupier specifying how and when entry is to be made together with the specific powers
intended to be exercised by the authorised officer. The law further states that the owner or
occupier may, within 10 working days after receiving the notice and after giving notice to
the Minister of his intention to do so, object to the District Court nearest to the land
concerned.\(^{345}\) If it appears to the court that the proposed investigation is unreasonable or
unnecessary, the court may either order that the survey or investigation shall not be
undertaken, or shall not be undertaken in the manner proposed; or direct that the survey
or investigation be undertaken in such manner and subject to such limitations and
restrictions as the court thinks fit and all persons concerned shall be bound by any such
order.\(^{346}\)

356. Coming to the notice of intention, this notice will inform the person that his
interest in land has not yet been taken but is intended to be taken and that the latter has a
right to object to such taking and at the same time the notice will invite the person to
make written objections which will be afforded a hearing\(^{347}\) at the Environment Court of
New Zealand\(^{348}\). One of the duties of the Environment Court is to decide whether, in its
opinion; it would be fair, sound, and reasonably necessary for the land of the objector to
be taken for achieving the objectives of the State as well as deciding on the adequacy of

\(^{345}\) Section 111(4) of the 1981 Public Works Act of New Zealand
\(^{346}\) Section 111(5) of the 1981 Public Works Act of New Zealand
\(^{347}\) Schedule I of the 1981 Public Works Act of New Zealand
\(^{348}\) Section 24 of the 1981 Public Works Act of New Zealand
the consideration given to alternative sites, routes, or other methods of achieving those objectives.\textsuperscript{349} The court will then prepare a written report on the objection and on the court's findings which is deemed to be binding on the acquiring authority.

357. Moreover, Section 26(1) of the statute of New Zealand goes on to provide that if there is no objection, or if the objection made is withdrawn by the objector, or if the Environment Court does not uphold any objection\textsuperscript{350}, the Minister then proceeds to take the land by Proclamation. The effect of a Proclamation is that unless otherwise provided (in the proclamation itself or in any Acts), the land becomes absolutely vested in the State free from any existing mortgages, charges, claims, estates, or interests of whatever kind on the 14\textsuperscript{th} day of its publication.\textsuperscript{351} However, if the objection is upheld by the Environment Court, then new land will need to be identified for the public work.\textsuperscript{352}

9.2 Compensation provisions

\textit{Compensation procedure}

358. After land has been taken by Proclamation the relevant parties will need to agree on the amount of compensation payable.

\begin{flushright}
\textsuperscript{349} Section 24(7)(d) of the 1981 Public Works Act of New Zealand
\textsuperscript{350} Further information on Ministerial functions under Public Works Act, Crown Pastoral Leases Act, Overseas Investment Act, New Zealand Geographic Board Act, p.2 also available at: https://www.beehive.govt.nz/sites/default/files/2017/12/Land%20Information%20Further%20Information%20Ministerial%20Role.pdf
\textsuperscript{351} Section 26(3) of the 1981 Public Works Act of New Zealand
\textsuperscript{352} Further information on Ministerial functions under Public Works Act, Crown Pastoral Leases Act, Overseas Investment Act, New Zealand Geographic Board Act, p.2
\end{flushright}
359. The process for obtaining compensation starts with a compensation claim\textsuperscript{353} which according to Section 77 of the Public Works Act needs to be made to the Minister by the owner of any land whether such person has or has not the power to sell and convey the land\textsuperscript{354} and which needs to be made within 2 years after the date of proclamation\textsuperscript{355}.

360. If an agreement on compensation is not reached, then either party can submit the compensation claim to be heard by the Land Valuation Tribunal.\textsuperscript{356} The law also provides that where a person has failed to make a compensation claim, the Minister may, after notice given to that person, apply to the Lands Valuation Tribunal of New Zealand to determine what amount of compensation (if any) shall be paid to that person in respect of the acquisition.\textsuperscript{357} The Land Valuation Tribunal is headed by a Chairperson who must be a District Court Judge and 2 assessors, one of whom or both is a registered valuer.\textsuperscript{358}

\textsuperscript{353} According to Section 82 of the 1981 Public Works Act of New Zealand, the claim must state the following: the several areas and descriptions of the land taken or to be taken or injuriously affected or damaged in respect of which he makes his claim, and the nature and particulars of his interest therein; each matter on account of which he claims compensation; the total amount claimed, the amount and date of advance payment; a valuation report signed by a registered valuer for any sum of compensation in excess of $1,000.

\textsuperscript{354} Section 77 of the 1981 Public Works Act of New Zealand: A claim for compensation may be made by the owner of any land who claims to be entitled to compensation under this Act whether such person has or has not the power to sell and convey the land, or by any executor or administrator of such person; and any such claim on behalf of any beneficiary, ward, or mentally disordered person may be made by his trustee, guardian, or manager, respectively.

\textsuperscript{355} Section 78 of the 1981 Public Works Act of New Zealand

\textsuperscript{356} Section 84 and Schedule 4 of the 1981 Public Works Act of New Zealand

\textsuperscript{357} Section 79 of the 1981 Public Works Act of New Zealand

\textsuperscript{358} Information available at: https://www.justice.govt.nz/tribunals/land-and-title/land-valuation-tribunal/the-hearing/
Types of compensation

361. Section 60 of the Public Works Act provides that the owner of land acquired is entitled to ‘full compensation’. Full compensation entails that the compensation given to a person as a result of the acquisition must be of a fair amount so that they are left in a no better or worse position than they were before the public work started.359

362. The Act has divided compensation into two broad categories; the first one being a basic entitlement to compensation and the second one being additional compensation for other losses.

363. The basic entitlement to compensation consists of compensation for the value of the land acquired, permanent depreciation in the value of any retained land (which the Act calls "injurious affection"), and any damage arising from the exercise of powers under the statute.360

364. The value of the land acquired is the amount which the land if sold in the open market by a willing seller to a willing buyer might be expected to realise361 on the date on which the land became vested in the state362. Section 64 of the Public Works Act also provides for compensation for injurious affection whereby land is only partly acquired and the value of the land retained has been diminished due to the works carried out on the land acquired.362 A right to compensation under Section 63 of the Public Works Act may

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360 Section 60(1) of the 1981 Public Works Act of New Zealand
361 Section 62(1)(b) of the 1981 Public Works Act of New Zealand
362 Section 62(2)(a) of the 1981 Public Works Act of New Zealand
363 This compensation is calculated using the ‘before and after’ method of calculation. This means considering the value of the whole property disregarding any proposed work prior to acquisition, and comparing this with the value of the land you are left with after the acquisition.
also arise where no land is acquired but substantial injurious affection has been caused to the land of a person by the construction (but not the maintenance or operation) of the public work.

365. Moreover, Section 62 of the Act also provides for a list of matters to be ignored during the calculation of compensation, namely:

(i) The fact that the acquisition being compulsory;
(ii) Where the value of the land acquired has been increased or decreased by the work or the prospect of the work for which land has been taken, the amount of that increase or reduction;
(iii) The special suitability or adaptability of the land for a purpose which can be exploited statutorily.

366. Furthermore, Section 66 of the New Zealand statute also provides for Disturbance Payments which is given as additional compensation. Compensation for disturbance is given to cover any direct and reasonable loss incurred by a person for having been required to give up possession of his land and acquire an alternative land due to the acquisition for public works. Disturbance payments will include: the reasonable valuation, legal and professional fees or costs incurred in respect of the land acquired\textsuperscript{364}; the reasonable legal fees or costs incurred for acquiring land in substitution; and removal (or transportation) costs\textsuperscript{362}.

\textsuperscript{364} That is, any reasonable costs (valuation, legal and other professional costs) incurred as a result of negotiating compensation for the land acquired.

\textsuperscript{365} The reasonable costs incurred by a person in transporting his moveable properties together with that of his family from the land compulsorily acquired to the land he has acquired in substitution. This is, however, subject to the fact that the other land needs to be within the same general locality, or a greater distance if that is necessary to reach the nearest land that could have been reasonably acquired in substitution.
Moreover, the provisions of the 1981 Public Works Act provide for other types of additional compensation to which an owner may be entitled to.

These are:

(i) Additional compensation for loss on repayment of mortgage whereby the land owner whose land has been acquired has had to mortgage the other land he acquired in substitution. [Section 67 of the Public Works Act]

(ii) Additional compensation for business loss resulting from relocation of the business made necessary as a result of the acquisition. The loss includes loss of profits and goodwill. [Section 68 of the Public Works Act]

(iii) Additional compensation (also known as home-loss payment) of up to a maximum of $50,000 if the land compulsorily acquired contained a dwelling that was used as the land owner’s principal residence at the time of acquisition. [Section 72 and 72A of the Public Works Act]

(iv) Additional compensation (also referred to as land-loss payment) up to a maximum of $25,000 in cases where the land acquired does not contain the dwelling that is the landowner’s principal place of residence. This is payable to landowners ineligible for the compensation referred to in part (iii). [Section 72 C of the Public Works Act]

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565 The definition of ‘owner’ excludes tenants subject to a weekly or monthly tenancy, a tenancy covered by the Residential Tenancies Act 1986, or a statutory tenancy. This means that the solatium payment is not available to persons living under these types of tenancies. Instead, these persons may receive compensation at the discretion of the notifying acquiring authority under section 75 of the Public Works Act.

567 Where a loss occurs in having to transfer a mortgage as a direct result of land being acquired, the mortgagor (landowner) is entitled to compensation for the loss where he has to take a mortgage of his new land at a higher rate which is more expensive than the existing mortgage over his land acquired.

568 This is, nonetheless, subject to the condition that vacant possession of the land acquired has been given on an agreed date or within one month after the date on which the acquiring authority has served written notice on the owner requiring vacant possession.

569 This is, however, subject to the condition that vacant possession is given on the agreed date or within one month of vacant possession being required by notice in writing.

570 This compensation must not be paid to an owner of land if that person is paid compensation for the loss of a dwelling on that land.
The last 2 additional compensations that we have seen in (iii) and (iv) above have been included in the Act after an amendment in 2013 and the coming into force of the amended provisions in 2017. More precisely, the home-loss payment has been increased and the land-loss payment has been introduced in the Act. The home-loss payment is made for non-land related costs in recognition of the inconvenience and disturbance when a landowner's home is acquired for a public work. It also acts as an incentive for the owner to provide the acquiring authority access to the land as quickly as possible (vacant possession). Prior to 2013, the absence of land-loss payment provision in the Act caused a low efficiency of land acquisition negotiations in some cases and it was also unfair as the landowners (whose land has been acquired but the land does not contain their dwelling) were still subject to disturbance, interference and other forms of inconvenience.\footnote{Office of the Minister for Land Information Cabinet Economic Growth and Infrastructure Committee 2013 Resource Management Reforms - Public Works Act 1981 Amendments} The introduction of the land-loss payment and the increased home loss payment have resulted in a greater amount of compensation payable to an affected person and have improved the fairness of the compensation process.\footnote{https://www.linz.govt.nz/crown-property/acquisition-and-disposal-land/public-works/amendments-public-works-act} This framework is sort of a win-win situation; whereby the affected persons enjoy additional compensation while improving the time it takes for the land to be delivered to the acquiring authority.

Other forms of compensation provided by the Public Works Act of New Zealand are:

(i) Compensation for tenants\footnote{Section 75(4) of the Public Works Act: tenant means a person who has— (a) a weekly tenancy agreement; or (b) a monthly tenancy agreement; or (c) a tenancy to which the Residential Tenancies Act 1986 applies; or} of residential and business premises which may be made at the discretion of the state and upon application by the tenant. [Section 75 of the Public Works Act]
(ii) Assistance to purchase dwelling (which must afterwards be refunded to the acquiring authority) [Section 73 of the Public Works Act]

(iii) Assistance to purchase farm, commercial, or industrial property [Section 74 of the Public Works Act]

(iv) Granting of easement (right of way, right of occupation, etc.) as compensation [Sections 103 and 104 of the Public Works Act]

(v) Granting of state land as compensation where equivalent land is not readily available [Section 105 of the Public Works Act]

*Interests and payment of compensation*

370. Section 94 of the Act provides for interests to be paid on the compensation awarded by the Tribunal. This provision states that interests are to be calculated from the date of vesting or the date on which the owner gives vacant possession of the land to the state (whichever is the later) until the date of making of the award.

371. Moreover, Section 95 of the statute of New Zealand provides that subject to a right of appeal against the decision of the Lands Valuation Tribunal, the award shall be final as regards the amount awarded. The legislation, however, does not provide a time frame within which the payment of compensation should be made.
9.3 Comparison with Mauritius

*Comparison of compulsory acquisition procedure*

372. In both countries, the State will resort to acquiring land compulsorily only when negotiations to purchase the land by agreement with the private parties have failed.

373. Moreover, it has been noted that the law of New Zealand gives a person the opportunity to raise objections at two stages before the State confirms its intention to acquire land. The first right to object is made available at the investigation stage and the second one is provided at the stage when the person is notified of the intention of the Crown to acquire land. Comparatively, since the LAA of Mauritius does not provide a right of objection at such an initial stage, we may consider providing any interested person likely to be affected, with a fair opportunity to contest the proposed acquisition before the State decides to acquire land; that is when the State only ‘intends’ to do so. For instance, it may be suggested that the Section 6 notice which is currently served on an interested person to inform the latter that his land will be subject to investigation for the purpose of a proposed acquisition, may also at this juncture, invite that interested person to submit any well-grounded objections. The objections may be made either to the Ministry or similar to New Zealand, to the Court; but since the latter may add additional pressure on our already overloaded Mauritian courts, the former seems more convenient.

374. It is also necessary to point out that though the land acquisition legislation of New Zealand provides for objections to be made at two points, only one right to object might be recommended. This is because the land acquisition process of New Zealand already takes approximately two years, and appeals to the Environment Court or higher Courts usually affect the timeframe. In addition to that, if a right to object to the investigation of
land is also made available under our LAA, it might render the acquisition process longer. Thus, even though the framework established in New Zealand might lead to a fairer land acquisition procedure, given the affected persons are given two opportunities to contest the proposed acquisition, such a framework is costly, time consuming and may eventually delay any payment of compensation in the event that despite being raised, the objections are rejected and the State proceeds with the acquisition.

375. Lastly, the transfer of ownership of land into the State is similar in both countries. The respective statutes of New Zealand and Mauritius (Section 26(1) of the Public Works Act and Section 11 of the LAA) provide that unless there is any objection against the acquisition, the land becomes absolutely vested in the State free from all encumbrances and charges.

Comparison of compensation provisions

376. It has been observed that under the land acquisition statutes of both countries, the onus lies on the dispossessed party to make a claim for compensation.

377. Nevertheless, one aspect which is different is that in New Zealand, the assessment of compensation is made by a quasi-judicial body while in Mauritius, compensation is determined judicially. The Law Commission of New Zealand is of the opinion that generally, most tribunals, by their very nature to exercise jurisdiction in a narrow field are usually composed of members having a legal expertise and also members who are expertised in the relevant field. The benefits of such a composition are the promotion of balanced decision-making, fairness and enabling a broader range of specialized skills to influence the tribunal’s decisions.
378. It has been noted that the statutes of both countries similarly provide for compensation to be calculated based on the market value of the immoveable property. The only difference is that Section 62 of the Public Works Act of New Zealand states that the date of evaluation is the date on which the land becomes vested in the State while under the LAA of Mauritius [Section 19(3)] it is the date of the first publication of a Section 8 notice. Thus, in light of the legislation of New Zealand, we may consider amending Section 19(3) of our LAA so that the market value of land is evaluated on the date of vesting of title, that is, on the date of transcription of a Section 8 notice.

379. Moreover, both statutes compensate for the depreciation in the value of land retained by the owner in cases as a result of land being partly acquired; the only difference is that in New Zealand, compensation is expressly given for the injurious affection of the land retained caused by works carried out on the land acquired while in Mauritius, the law provides compensation for the decrease in the value of land retained caused by the severance of the land acquired from the land retained. Also, the laws of both countries provide for similar aspects to be ignored during the assessment of the amount of compensation. These similar aspects are: the fact that the acquisition is compulsory; any increase or decrease in the value of land acquired caused by works carried out for the purpose for which land was acquired; and the special suitability or adaptability of land acquired for a purpose which can be exploited statutorily.

380. Furthermore, we have also observed that the legislative provisions of New Zealand offer much wider categories (or types) of compensation which are not provided by the LAA of Mauritius. When the land of a person is compulsorily acquired by the State, in addition to the loss of his land, the latter is deemed to suffer other damages associated with that dispossession. The Act of New Zealand provides for additional
compensations which are meant to cover the maximum types of prejudices which may be suffered by the persons dispossessed.

381. Those additional compensations provided by the New Zealand Act and not under the LAA of Mauritius are: compensation for injurious affection where no land is acquired; disturbance payments which not only includes the legal fees or costs incurred in respect of the land acquired but also in relation to land acquired by the owner in substitution of the land taken from him; and transport costs as a result of the displacement. The additional compensations further include: compensation for loss on repayment of mortgage; compensation for business loss; compensation for land-loss (land-loss payment); and most importantly home-loss payment which is given to indemnify a person for the loss of his principal dwelling which was situated on the land acquired.

382. In light of the New Zealand Act, we may consider that our LAA should also make provision for some, if not all, of those additional compensations that we have seen above. Such a proposal will ensure that dispossessed persons are compensated more adequately for the maximum types of losses they suffer because of the acquisition and as a result of being displaced and this might lead to a greater consistency with Section 8(1)(c)(i) of our Constitution.

383. Lastly, the land acquisition legislations of both countries similarly provide that interests are to be allowed on the compensation award and that the interests are calculated from the date of vesting until the date the award is made.
10. **Trinidad and Tobago**

384. The 1994 Land Acquisition Act of Trinidad and Tobago regulates the compulsory acquisition of private lands by the State for a public purpose as well as the payment of compensation for the property. It is only when the State has been unable to acquire the desired land by a private arrangement with the owner that it will resort to compulsory acquisition.

10.1 **Compulsory Acquisition procedure**

385. The procedure starts with a preliminary entry and survey of the land.\(^{374}\) Any damage or injury caused to any person interested\(^{375}\) in the land so entered will be compensated irrespective of whether the acquisition is abandoned afterwards or the State decides to proceed with the compulsory acquisition.\(^{376}\) If the investigation shows that the land is not suitable, a Section 8 Notice is published declaring that acquisition is

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\(^{374}\) Section 3 of the 1994 Land Acquisition Act of Trinidad and Tobago

\(^{375}\) Section 2 of the 1994 Land Acquisition Act of Trinidad and Tobago defines “person interested” as: “person interested” means every person claiming or entitled to claim compensation under this Act and includes—

(a) in relation to an interest arising under a “statutory lease” within the meaning assigned to that expression in section 2 of the Land Tenants (Security of Tenure) Act, a tenant to whom that Act applies; and

(b) where the Land Tenants (Security of Tenure) Act does not apply, a tenant—

(i) within the meaning of section 15(1) and (3) of the Rent Restriction Act; or

(ii) within the meaning assigned to that expression in section 2(1) of the Agricultural Small Holdings Tenure Act holding any contract of tenancy of a type and for a term set out in section 3(1) of that Act, but except as provided for in paragraph (b)(i) does not include a tenant at will, a tenant at sufferance, or a tenant holding from month to month or for some lesser period.

\(^{376}\) Section 3(7) of the 1994 Land Acquisition Act of Trinidad and Tobago
abandoned. Compensation is payable for any expenses reasonably incurred by any affected person as a result of the abandonment.

386. On the other hand, if the land is found suitable for public purposes, Section 4 of the Trinidad and Tobago Act authorises the acquiring authority, if the circumstances of the case require it, to take possession of the land (through an Order) and to commence the intended work without waiting for the formal vesting of the land in the State. The absolute vesting of the land in the State thereafter takes place on the date of publication and service of an Order made by the President under Section 5 of the Land Acquisition Act of Trinidad and Tobago. The said Act also provides that when there has been prior taking of possession, any person interested becomes entitled to compensation as from the date of the taking of possession, while where there is no prior taking of possession, the interested person becomes entitled to compensation on the date of vesting.

387. Furthermore, after the vesting of the land in the State, a 'Notice of acquisition' will then be published and served on any person interested in the land inviting all the persons interested to submit their compensation claims. A claim of compensation must generally be submitted to the Commissioner of Lands within one year after the date of publication of a section 5 Notice (that is, after the date of vesting of the land in the State, or within one year from the date on which the land became injuriously affected in cases

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377 In this case, any person entitled to the land becomes entitled to the repayment of all expenses reasonably incurred by him as a result of the publication of the notice declaring that the land is likely to be acquired up to the date of publication of a notice declaring the abandonment of the acquisition.

378 Section 8(4) of the 1994 Land Acquisition Act of Trinidad and Tobago

379 The taking of possession can only take place after a Section 4 Order has been published and served upon the persons interested in the land.

380 Section 4(3) of the 1994 Land Acquisition Act of Trinidad and Tobago

381 Section 5(7) of the 1994 Land Acquisition Act of Trinidad and Tobago

382 Section 6 of the 1994 Land Acquisition Act of Trinidad and Tobago
where no land was acquired but land has been injuriously affected by works carried out on the land acquired).\(^{383}\)

### 10.2 Compensation

**Method of determining compensation**

388. Section 11 of the 1994 land acquisition legislation of Trinidad and Tobago provides that any dispute as to the amount of compensation is to be determined by a Judge of the High Court. Therefore, under the current 1994 Act, any disputed compensation is assessed judicially. Nevertheless, we may also take note that prior to independence, an older version of the Land Acquisition Act of Trinidad and Tobago provided for an alternate dispute resolution mechanism. Sections 15 and 16 of the previous version, namely the 1947 Land Acquisition Act provided that compensation should be assessed through arbitration.

**Types of compensation and rules**

389. The different types of compensation provided under the 1994 Land Acquisition Act are the following:

(i) Compensation for the value of the land which is calculated based on the open market value of the property at the date of the taking of possession of the land or the date of vesting of the land in the State, whichever is the earlier.\(^{384}\)

\(^{383}\) Section 23 of the 1994 Land Acquisition Act of Trinidad and Tobago  
\(^{384}\) Section 12(1)(a) of the 1994 Land Acquisition Act of Trinidad and Tobago
(ii) Where land has been partly acquired, compensation is given for any damage sustained by the owner of the land as a result of the severance of the land acquired from the retained land of the owner or as a result of injurious affection of the retained land by the exercise of powers of compulsory acquisition.\textsuperscript{385}

(iii) Where no land is acquired, compensation is also given for the injurious affection of land owned (not the land acquired) caused by the erection or construction on the land compulsorily acquired, or by works in respect of which the land was acquired.\textsuperscript{386}

390. In addition, the Act provides that during the determination of compensation, attention should be given to the lawful existing use of the land and the value attributable to any planning permission granted and in force in respect of the land.\textsuperscript{387} Section 12(1)(d) of the Act also provides that where land is, but for compulsory acquisition would continue to be devoted to a purpose for which there is no general market or demand, the compensation may, if a Judge is satisfied that reinstatement in some other place is bona fide intended, be assessed on the basis of the reasonable cost of equivalent reinstatement.

391. The Land Acquisition Act also provides for certain features to be ignored while assessing compensation. These are:

(i) the special suitability or adaptability of the land for any purpose shall not be taken into account if that purpose is a purpose to which it could be applied only in pursuance of statutory powers;\textsuperscript{388}

\textsuperscript{385} Section 17 of the 1994 Land Acquisition Act of Trinidad and Tobago
\textsuperscript{386} Section 18 of the 1994 Land Acquisition Act of Trinidad and Tobago
\textsuperscript{387} Section 12(3)(a) of the 1994 Land Acquisition Act of Trinidad and Tobago
\textsuperscript{388} Section 12(1)(b) of the 1994 Land Acquisition Act of Trinidad and Tobago
(ii) any increase in the value of the land by reason of the use thereof or in a manner which could be restrained by any Court, or is contrary to law, or is detrimental to health;\(^{399}\)

(iii) the fact that the acquisition is compulsory and any disinclination of any person interested to part with the land acquired;\(^{390}\)

(iv) any damage sustained by any person which, if caused by a private person, would not render such person liable to an action;\(^{391}\)

(v) any damage, not being in the nature of deprivation or of interference with an easement or legal right, which after the time of awarding compensation is likely to be caused by or in consequence of the use to which the land acquired will be put;\(^{392}\)

(vi) any increase to the value of the land acquired likely to accrue from the use to which the land acquired will be put;\(^{393}\)

(vii) any improvement on land which has been made, before the date of the taking of possession or vesting of the land whichever is the earlier, with the intention of enhancing the compensation to be awarded;\(^{394}\)

(viii) any increase or diminution in the value of the land acquired which is attributable to the carrying out or the prospect of the carrying out of so much of a scheme of development as would not have been likely to be carried out if the acquiring authority had not acquired the land.\(^{395}\)

\(^{399}\) Section 12(1)(e) of the 1994 Land Acquisition Act of Trinidad and Tobago

\(^{390}\) Section 12(1)(e) of the 1994 Land Acquisition Act of Trinidad and Tobago

\(^{391}\) Section 12(1)(e)(iii) of the 1994 Land Acquisition Act of Trinidad and Tobago

\(^{392}\) Section 12(1)(e)(iv) of the 1994 Land Acquisition Act of Trinidad and Tobago

\(^{393}\) Section 12(1)(e)(v) of the 1994 Land Acquisition Act of Trinidad and Tobago

\(^{394}\) Section 12(1)(e)(vi) of the 1994 Land Acquisition Act of Trinidad and Tobago

\(^{395}\) Section 13 of the 1994 Land Acquisition Act of Trinidad and Tobago
Payment of compensation, interests and advances

392. Section 21 of the land acquisition statute of Trinidad and Tobago provides for the payment of compensation to be made into court. But the said Section, unlike Section 22 of our LAA, does not specify the time limit within which such payment should be effected.

393. Furthermore, Section 20(1) of the 1994 Land Acquisition Act provides that compensation payable under the Act must also include interest at a legal rate. Interest is normally calculated either from the date of taking possession until the date of payment or where there has been no prior taking of possession, interest is calculated from the date of vesting until the date of payment.\footnote{Section 20(2)(a) and 20(2)(b) of the 1994 Land Acquisition Act of Trinidad and Tobago}

394. In addition, Section 22 of the 1994 Land Acquisition Act of Trinidad and Tobago allows a claimant to receive up to 80\% of an amount equal to the compensation as estimated by the Commissioner of State Lands to be payable to that person under the Act in respect of the land acquired, in advance of settling the final payment. That benefits both sides since the landowner can get a lump sum to start locating an alternative property and the State can greatly reduce its interest payments on delayed compensation.\footnote{Information available at: https://afraaymond.net/2018/01/25/property-matters-state-land-acquisition/} That advance payment is made upon request made by any person interested and after either the taking of possession of land or after the vesting of land [Section 22(1)]. Section 22(4) of the Act goes on to state that where the amount of advance payment exceeds the compensation as finally agreed by the parties or determined by the Court, the excess must be repaid to the State.
10.3 Comparison with Mauritius

Comparison of compulsory acquisition procedure

395. In both Mauritius and Trinidad and Tobago, the process of acquisition starts with a preliminary survey or investigation of the land likely to be acquired. Nevertheless, the LAA of Mauritius seems slightly fairer than the land acquisition legislation of Trinidad and Tobago because the statute of Mauritius allows a person to challenge the legality of the State’s decision to acquire land, while the statute of Trinidad and Tobago does not make provision for such right of appeal.

396. Another difference which has been observed is that Section 4 of the Land Acquisition Act of Trinidad and Tobago allows the acquiring authority, if necessary according to the circumstances of the case, to take prior possession of the land and to start any work connected with the use to which the land is intended to be put on acquisition. The vesting of land takes place afterwards through a declaration whether or not there has been prior taking of possession (Section 5). On the other hand, the transfer of possession and title under the LAA of Mauritius takes place on the same day, that is, on the date of transcription of a Section 8 notice.

397. Though the vesting of the possession and ownership of land occur on two different days in Trinidad and Tobago, the law ensures that an affected person is entitled to compensation as from the date of that taking of possession or the date of vesting of title, as the case may be. That is, the provisions of its land acquisition legislation ensure that interests are calculated as from and market value is evaluated on the date on which the State took possession of the land or the date of vesting of title in the State (if there was no prior taking of possession), as the case may be. Comparatively, under the LAA of
Mauritius, on one hand, interests are calculated as from the date of vesting; which is similar to Trinidad and Tobago, while on the other hand, market value is evaluated on the date of publication of a Section 8 notice. This shows a kind of inconsistency as it is unclear as to at what time does a person become exactly entitled to compensation.

**Comparison of compensation provisions**

398. It has been observed that the Land Acquisition Acts of both countries provide for the judicial assessment of any disputed amount of compensation. Nevertheless, under the old 1947 Land Acquisition Act of Trinidad and Tobago (Sections 15 and 16), compensation was determined by arbitration.

399. Furthermore, the statutes of both countries similarly require that the obligation is on any person interested to submit their compensation claims.

400. Let us now compare the types of compensation as well as the rules applied for the determination of compensation provided by the legislation of both countries. Both countries provide compensation for the market value of the land acquired. However, as previously mentioned, the date of valuation is different in both countries; the date of valuation in Trinidad and Tobago is the date of taking of possession or the date of vesting of ownership, whichever is the earlier while in Mauritius, it is the date of publication of a Section 8 notice. Thus, we may recommend that similar to the legislative provisions of Trinidad and Tobago, the market value of any interest in land must be evaluated on the

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398 Section 11 of the 1994 Land Acquisition Act of Trinidad and Tobago and Section 15 of the 1973 Land Acquisition Act of Mauritius
date of vesting of title which is the date of transcription of a Section 8 notice under Section 11 of our LAA.

401. Moreover, the laws of both countries provide for compensation for any loss sustained as a result of severance or injurious affection of the land acquired for the retained land of that person. Other losses which are indemnified under the legislative provisions of both countries are: loss arising from the subsequent abandonment of the acquisition\(^{399}\) and any damage caused to a person during the investigation of the land\(^{400}\).

402. Nevertheless, Section 18 of the 1994 Land Acquisition Act of Trinidad and Tobago provides for an additional type of compensation which is not offered by the LAA of Mauritius and that is, compensation where no land has been acquired but has been injuriously affected by any construction carried out on the land acquired for the purpose for which the land was acquired. We may similarly consider adding this type of compensation in Section 19 of our LAA which only seems to concern those having a legal interest in the land acquired. Such compensation will be fairer because it will indemnify any person whose land has not been acquired but the latter has been prejudiced by the loss in value of his land due to the compulsory acquisition.

403. There are two other aspects which are similarly provided in the statutes of both countries are: the assessment of compensation using the equivalent reinstatement method where land is devoted to a purpose for which there is no general market or demand; and a list of matters to be ignored while determining compensation. The matters to be ignored which are similar in both countries are: the fact that the acquisition is compulsory; any

\(^{399}\) Section 8 of the 1994 Land Acquisition Act of Trinidad and Tobago and Section 19(1)(b) of the 1973 Land Acquisition Act of Mauritius

\(^{400}\) Section 3(7) of the 1994 Land Acquisition Act of Trinidad and Tobago and Section 19(1)(a) of the 1973 Land Acquisition Act of Mauritius
lack of interest of a person to part with the land acquired; any increase to the value of the land acquired which is likely to accrue from the use to which the land acquired will be put; the special suitability or adaptability of the land acquired for any purpose if that purpose is a purpose for which it could be used only statutorily; and any increase in the value of the land by reason of the use thereof or in a manner which is illegal or detrimental to health.

404. Coming to the payment of compensation, it has been observed that the LAA of Mauritius provides for a better timely payment. This is because, after the delivery of the compensation award, Section 22 of the LAA of Mauritius provides that the payment of compensation should be made within 30 days as from the date of the award while the Land Acquisition Act of Trinidad and Tobago does not set out a time limit.

405. Besides, in Trinidad and Tobago, interest on compensation is calculated from the date of taking possession or the date of vesting of the land (as the case may be) until the date of payment. By comparison, according to Section 18(6) of the LAA Mauritius, interests awarded by the Board on compensation are calculated from the date of vesting only until the date of award. These interests do not cover any additional time taken if ever there is an appeal against the compensation award. Thus, it may be recommended that Section 18(6) of our LAA be amended so that the Board is allowed to calculate interests up till the date of payment of compensation into court, hence ensuring that a dispossessed person is compensated and not prejudiced for the additional ‘waiting period’ if there is an appeal against a compensation award.

406. Lastly, the land acquisition statutes of both countries provide for interim payment of compensation pending the judicial determination of the final amount and which is made after the vesting of ownership. What is different is the amount; that is, the law of
Trinidad and Tobago [Section 22(3)] allows a person to receive up to 80% of advance payment while despite no such percentage is expressly provided in the LAA of Mauritius, the amount of interim compensation that is usually given to the dispossessed persons is a relatively small sum compared to that given in Trinidad and Tobago.

B. Recommendations for Change

11.1 Acquisition procedure

➤ Recommendation: Allow for objection prior to the taking of the decision to acquire land

407. The LAA of Mauritius does not create a procedure for a hearing before the decision to compulsorily acquire land is made. However, such an option for prior objection is available in the UK, France, India, South Africa (though it is not expressly provided in the 1975 Expropriation Act, a right to prior objection is guaranteed by the Constitution and the PAJA Act whenever an administrative decision is being taken)\(^{401}\) and New Zealand. These objections are made and heard at the level of the acquiring authority itself (as it is the case in the UK, India and South Africa) or at the level of the Court, as it is practiced in New Zealand where written objections against the proposed acquisition of the land are heard by the Environment Court of New Zealand. One of the

\(^{401}\) Both Section 33(1) of the Constitution and Section 3 of the Promotion of Administrative Justice Act (PAJA) guarantees the right to an administrative action which is procedurally fair and which also incorporates the right to be given a fair opportunity to make representations. Since the taking of a decision to expropriate is an administrative action which automatically falls under the purview of these two statutes, a person must impliedly be given the opportunity to make representations and give reasons why his property should not be expropriated.
duties that Section 24(7)(d) of the 1981 Public Works Act of New Zealand imposes on the Environment Court is to decide whether, in its opinion, it would be fair, sound, and reasonably necessary to acquire the land of the objector for achieving the objectives of the Minister.

408. The Law Lords in the case of *Harel Freres Limited v The Minister of Housing, Lands, and Town and Country Planning* 1986 PRV 58 reflected on the nature of Section 10 of our LAA providing for an appeal against the legality of compulsory acquisition of land which is an appeal against the Minister’s decision to acquire land. They concluded that whenever the grounds of appeal under Section 10 of the Act relate to Section 8(1)(a) and 8(1)(b) of our Constitution, the appeal must be treated as a full-scale appeal and the Minister’s decision must be considered on its merits.⁴⁰² Though the challenge of legality of compulsory acquisition is considered on its merits, it must be reminded that since this matter is determined at the level of the Supreme Court, it might take several years for a judgment to be delivered. And it is only after this judgment is given that the transcription of a Section 8 notice takes place and the compensation procedures are proceeded with.

409. That is why in light of foreign practices, it is recommended that the notice published under Section 6 of the LAA, which informs an interested person that his land is likely to be acquired, should in parallel invite the person to raise any objections against the proposed acquisition. The objections may be made to the Ministry of Housing & Land Use Planning itself who may set up an independent panel to consider the matter on its merits and make a decision as to whether or not to proceed with the intended acquisition. Such preliminary right to be heard and raise objections is fairer since it provides any interested person with the opportunity to be heard before a decision which

⁴⁰² Law Reform Commission of Mauritius [LRC], Opinion Paper about “Mechanisms for Settlement of Land Disputes” [LRC_R&P 127, September 2018], p.7-p.8
affects his interests is taken and the matter will also take less time to resolve than the Court. This is not only in line with the *audire alteram partem* principle but it might also result in fewer cases going for appeal under Section 10, thus resulting in an early transcription and an early kick-start of compensation procedures.

11.2 Compensation process provisions

*Recommendation 1: Offer of compensation by the Minister*

Two options may be recommended here. As we have seen in Hong Kong, France and South Africa, the responsibility is on the acquiring authority to make an offer of compensation to the person being dispossessed. It is only Section 6(1) of the Lands Resumption Ordinance of Hong Kong (a statute which only deals with the acquisition of government lands) which imposes a delay for the making of such offer: 28 days. Since it is the State which is responsible for compulsory land dispossession, as a first option it is recommended that instead of a compensation claim, the obligation should be on the Minister to make an offer of compensation within a fixed delay of, for instance, one month as from the date of publication of a Section 8 notice. A fixed delay can then be imposed within which the person indicates whether he accepts or rejects the offer. In parallel to that, we may also consider the additional safeguard of Art 311-7 of the French Expropriation Code which provides that if the acquiring authority does not offer compensation, any person interested person has the right to *mettre en demeure* the acquiring authority to initiate the compensation procedure.
411. The second option is that we may choose to keep the current framework as it is, that is, the onus lying on the owner of an interest in land to make a compensation claim within 14 days as from the date of publication of a Section 8 notice. But an additional provision (similar to that in Australia) could be added in our Act providing that if compensation claims are not submitted within a fixed delay after the date of transcription, the responsibility shifts on the acquiring authority to make an offer, again within a fixed time frame. In both options, failure to comply with same should be penalized by imposing heavy interest on the compensation. Both options will ensure that the right of a dispossessed person to be entitled to compensation is duly respected.

412. In the same vein, Section 7 of the 2014 Revenue and Valuation Appeal Tribunal (Amendment) Bill proposed to repeal Section 14 of the LAA and replace it by a new Section. The Bill proposes to increase the delay for submitting compensation claims from 14 days (Section 8(2)(d) of the 1973 LAA) to one year (Section 7(b) and 7(c) of the 2014 Amendment Bill) while keeping the onus on the affected persons to make a compensation claim. The increased time period seems to be more realistic. This is because, compared to the constraint time frame of 14 days as it is under the current law, it will give reasonable time to any interested person to seek advices from the relevant professionals to better prepare the different heads and amounts of compensation to be sought. Moreover, after the receipt of the claim, the Bill gives a delay of 90 days for the authorised officer to make an offer of compensation and further gives another delay of 60 days to the affected person to accept the offer of the authorised officer. The Bill also proposes a new section 14(4) of the LAA which will provide that where the offer of the authorised officer is not accepted within 60 days, the matter shall be referred to the Minister for a decision as to the amount of compensation payable under the Act.
413. These amendments which are proposed by the 2014 Bill in relation to the time frames for the submission of compensation claims, the making of an offer and the acceptance thereof, establish a better and more comprehensible framework for the processing of compensation claims than the current system under our LAA. To supplement this framework proposed in the Bill, it is recommended that a time period should be set for the authorised officer to refer the matter to the Minister, whenever an offer is not accepted within 60 days (after making the offer).

Recommendation 2: Determination of compensation by an alternate dispute resolution mechanism prior to referring the matter to the Board of Assessment

414. Upon studying the different legal systems, it has been observed that the method of determination of any disagreed amount of compensation may be judicial, quasi-judicial, administrative or by alternate dispute resolution method. A legal system may provide for more than one type of mechanism. In Australia, France, South Africa and Trinidad and Tobago for instance, compensation is assessed by a court of law; in Australia (again), Hong Kong, and New Zealand, compensation is calculated by a quasi-judicial land tribunal; while in Singapore and India, compensation is determined by a Collector who is a public officer appointed by the Ministry responsible for matters of lands.

415. Only the land acquisition statutes of Australia and that of South Africa which, in addition to providing for a judicial determination of compensation, also give the parties the possibility to resolve the matter alternatively. Section 80 of the 1989 Land Acquisition Act of Australia provides that the parties may, by agreement, submit the matter to be settled by arbitration or by an expert. Similarly, the 1975 Expropriation Act
of South Africa allows the parties to submit the matter by agreement to arbitration.\textsuperscript{403} It may also be noted that under the older version of the Land Acquisition Act of Trinidad and Tobago, arbitration was provided as a method of determining compensation.\textsuperscript{404}

416. In contrast, the LAA of Mauritius only provides for a judicial assessment of compensation by a Board of Assessment which takes several years to render an award. Despite the wording of Section 14(2) of the Act stating "unless the claim is sooner settled", the Act does not precisely provide for an alternate method of calculating compensation. Thus, inspiration can be drawn from the laws of Australia and South Africa and it is recommended that the parties should be given an option to resolve their dispute by arbitration prior to referring the case to the Board, subject to the condition that the parties should mutually agree to settle their matter through arbitration. This arbitration process will usually be less costly than a court case and will help to render a compensation award in lesser time compared to the Board.

417. Along the same line of thought, it is essential to highlight Section 5 (9) of the 2013 Revenue and Valuation Appeal Tribunal Act which provided that the parties may resort to mediation before the hearing of an appeal provided that they mutually agree to do so. Any agreement reached by the parties before a mediation panel is final, conclusive and binding on the parties, and considered to be a decision of the Tribunal. Section 5(9)(f) further adds that where no agreement is reached within a period of 90 days from the date an appeal is referred to a mediation panel, the appeal shall be referred back to the Tribunal. Our LAA, as it is currently, does not provide the parties with the possibility to resort to any alternate dispute resolution mechanism for the determination of compensation when the matter is before the Board. Therefore, the mediation mechanism

\textsuperscript{403} Section 14(7) of the 1975 Expropriation Act of South Africa
\textsuperscript{404} Sections 15 and 16 of the old 1947 Land Acquisition Act of Trinidad and Tobago
that is made available within the Tribunal under the 2013 Act is another fair option which will allow the parties to reach an out-of-court agreement with the help of a mediator.

➢ Recommendation 3: A time period for the determination of compensation

418. The LAA does not impose any deadline to render a compensation award and in practice the Board takes several years to make an award. From all the countries studied, only the law of India imposes a time frame on the Collector (public officer) to determine compensation, which is 12 months as from the date of publication of a declaration proclaiming that land is indeed required for a public purpose. The law further states that if no award is made during the said period, the entire acquisition proceedings will lapse.\(^{405}\)

419. Nevertheless, since the determination of compensation by the Board is essentially a court process, we cannot contemplate imposing through statute, a time frame for the court (Board) to give judgment. Therefore, two options are available concerning this issue of time frame.

420. The first option is available under the 2013 Revenue and Valuation Appeal Tribunal Act together with the proposed 2014 Amendment Bill have addressed this issue of time frame. Indeed, the 2013 Act has broken down the procedure before the Tribunal into steps and timelines have been set for each step, thus eliminating any possibility of an almost never-ending process. Section 4(1)(d) of the said Act states that an appeal against a decision of the Minister fixing the amount of compensation should be made within 28 days from the date of the determination or such longer period as the Tribunal may allow. Section 5(7)(a) provides that a division of the Tribunal shall fix the appeal for

\(^{405}\) Section 25 of the LARRR Act of India
preliminary hearing within 120 days from the date the appeal was lodged. Section 5(7)(c) of the same Act further adds that the Tribunal shall make a determination not later than 45 days after the close of the hearing of the appeal. Section 5(7)(d) then comes with a more general ambit and provides that the Tribunal shall endeavour to complete all proceedings and make its decision within 12 months of the lodging of the appeal.

421. Hence, it is observed that the provisions of the 2013 Revenue and Valuation Appeal Tribunal Act address the major lacuna of our LAA which is to impose a time limit for the assessment of disagreed amounts of compensation. The Tribunal framework proposed by the 2014 Bill seems better than the current Board of Assessment system under the LAA. This is because it brings greater certainty and clarity to our law in relation to the time to be taken by the process and it also ensures a much earlier determination of cases than the current judicial Board system.

422. The second option is the arbitration framework that has been proposed in Recommendation 2 which will also address the time frame issue. Article 1015 of the Code de Procédure Civile states that: “Si la convention d’arbitrage ne fixe pas de délai, la mission des arbitres ne dure que six mois à compter du jour ou le dernier d’entre eux l’a acceptée.” Thus, the statutory time limit for arbitration is 6 months, unless otherwise agreed by the parties. It would thus imply that, despite such statutory time frame, both parties may still agree that an arbitral award determining the amount of compensation is to be rendered within certain months after referral of the matter to arbitration. This should, of course, be subject to the condition that the time limits should be realistic and reasonable reflecting the complexity of the case. Therefore, an arbitration mechanism (which is made available prior to resorting to the Board) will drastically reduce the time taken in resolving compensation disputes, as a result of which the sum awarded will be
paid to the dispossessed persons much earlier than it is under the current judicial (Board) system.

➢ Recommendation 4: The constitution of the Board should be reviewed to include valuers

423. Section 15(2) of the LAA of Mauritius provides that the Board of Assessment is constituted only of a chairman and 2 members appointed by the Minister. There is no valuer sitting on the Board despite the fact that compensation is mostly a matter of valuation.

424. By contrast, it has been observed that in France and India, the law gives the possibility for the judge (in France) or the Collector (in India) to seek assistance from an expert in the relevant field during the assessment of compensation. Similarly, the Lands Valuation Tribunal of New Zealand must consist of a chairperson and 2 assessors, one of whom or both must be a registered valuer. It is hence recommended that the Board should be allowed to seek assistance from a registered valuer only where it is required for the interests of the case.

➢ Recommendation 5: Amend Section 14(2) of the LAA to impose a more realistic deadline for reference of claims to the Board

425. Though Section 14(2) of our LAA imposes a delay of 28 days within which a compensation claim should be referred to the Board. In practice, this is not the case. In
some instances, the reference is made after several months and even years because of long delays in making assessment.

426. In light of this situation, we may consider Section 7(5) of the Land Acquisition (Possessory title) Ordinance of Hong Kong which states that the reference of any disputed compensation claim should be made within 1 year from the date of vesting or within a longer period not exceeding 6 years as from the date of vesting. It is the flexible nature of timeframe which is being pointed out here. It is thus recommended to increase the time frame of 28 days provided by Section 14(2) of our LAA and give a maximum delay within which the reference should be made. This will align our law with what actually happens in practice and ensure that the process remains a legal one, not in breach of any legislative provisions.

11.3 Legislative provisions on the types of compensation

➢ Recommendation 1: Time limit and quantum to be provided for interim compensation

427. Even though it is labelled differently in diverse countries, it can be observed that similar to Mauritius, interim compensation is also provided in the UK, Hong Kong, France, South Africa and Trinidad and Tobago. Amongst these countries, some have expressly set out the quantum to be given as interim compensation, others have provided the time within which payment should be effected and few of them have also allowed interests on the interim compensation.
428. It is suggested that a time frame should be set for the payment of interim compensation. In the UK, such payment is effected within 2 months of receipt of request (for advance payment) or on the day on which notice of entry is served; in South Africa, payment is made either on the date of offer of compensation or on the date of taking of possession of the land; while in Trinidad and Tobago, advances are paid after possession of the land has been taken or after the vesting of the property in the State. However, there has been a change in the procedure for interim payment in Mauritius. Henceforth, an interim payment, as assessed by the Valuation Department, would be made soon after the transcription of a section 8 notice under the LAA.\textsuperscript{406} This development which brings the date of interim payment closer to the date of vesting is almost similar to foreign practices but it has to be given statutory status. That is, it should be expressly provided in the LAA so as to bring greater clarity as to the timing for the payment of interim compensation, a feature which is currently lacking in our law.

429. The amount of interim compensation guaranteed by the land acquisition statutes is 90% of the total amount of compensation in the UK; a maximum of 50% of the amount offered by the acquiring authority in France; not less than 80% of the amount offered as compensation in South Africa; and a maximum of 80% of the amount of compensation estimated to be payable in Trinidad and Tobago. Comparatively, Section 14(3) the LAA of Mauritius only states that the amount of interim compensation to be paid is that amount as may be determined by the Director, Valuation and Real Estate Consultancy Services without specifying the quantum. In practice, a relatively small amount is given to the dispossessed persons.

\textsuperscript{406} There has been a cabinet decision on the 9th of November 2018 in relation to land acquisition:
"Cabinet has taken note of the change in procedure pertaining to the timing for payment of compensation in cases of compulsory land acquisition. In order not to penalise former owners, henceforth, whenever an offer of compensation is made to the former owner and the latter is not agreeable thereto, he would be given an option to accept, pending the award of the Board of Assessment, an interim payment, as assessed by the Valuation Department, which would be effected soon after the transcription of the Notice under the Land Acquisition Act."
430. In light of foreign legislations, it is thus proposed to increase the quantum given as advance. An increased percentage of interim compensation will help the dispossessed person to start the procedures for acquiring another land and will greatly reduce interest to be paid by the State on any delayed payment of compensation. It might also result in less resistance during the determination of compensation during arbitration (as proposed) or before the Board of Assessment. In parallel to that, it is also recommended that similar to the UK and Hong Kong, late payment of interim compensation may also be sanctioned by interests to be calculated from the date of vesting until the date interim payment is made.

431. It is worthy of mention that Section 6 of the 2014 Revenue and Valuation Appeal Tribunal (Amendment) Bill proposed that it is for the Tribunal to order the interim payment of compensation. Moreover, Section 7 (7) (c) of the said Bill provided that, similar to the law in the UK and Hong Kong, interests will be given on advance payments, thus providing for a more adequate compensation. Furthermore, the Bill purports to impose a delay of 30 days (from the date of an order of the Tribunal granting interim compensation) for the payment of interim compensation. The imposition of a delay of 30 days (from the date of an order of the Tribunal granting interim compensation) for the payment of interim compensation will not only fill in a major lacuna which is currently missing in our law but will also ensure a prompt payment of advances.
Recommendation 2: The date of valuation of land under Section 19(3) should be the date of vesting

432. In the UK and Trinidad and Tobago, the valuation date is either the date of taking of possession or the date of vesting. In Australia, Hong Kong, France, and New Zealand the date of valuation is the date of vesting, that is, the date of transfer of ownership in the State. It is only in Singapore and India that, similar to Mauritius, the laws provide that the valuation date is the date of publication of a notice declaring that land is required for a public purpose.

433. Section 19(3) of the LAA, as it is currently, causes damage to former land owners especially when there has been a challenge of legality under Section 10 of the Act. This is because the value of the land at the time of the publication of a Section 8 notice and the value of land at the time it is being determined by the Board might not be the same because the value of land always changes. Thus, it is recommended that the valuation date be amended to the date of vesting of the land, that is, the date of transcription of a Section 8 notice under Section 11 of the Act, which is the date an interested person becomes legally dispossessed of his property.

Recommendation 3: Provide for more adequate compensation

434. Section 8(1)(c)(i) of the Constitution of Mauritius states that there can be no compulsory taking of possession or compulsory acquisition except where a provision is made by law for the payment of “adequate” compensation. In the absence of an interpretation of the notion “adequate” by our Courts, the issue that arises is what the test for measuring adequacy is. That is, how much monetary quantum is sufficient to satisfy
the constitutional requirement of adequate compensation. Various adjectives have been used by written constitutions as well as the land acquisition statutes of different countries to describe the nature of compensation; such as: “fair”, “adequate”, “just” or “equitable and appropriate”. Some Constitutions have further described the time of payment of compensation which needs to be “just and equitable” (Constitution of South Africa) or “without undue delay” (Constitution of Hong Kong).

435. The Malaysian Constitution is akin to that of Mauritius, as it guarantees an “adequate compensation” upon compulsory acquisition. It is admitted that market value is the best method of satisfying the requirement that adequate compensation is paid. However, it is also acknowledged that an additional amount should also be paid for other damages associated with the compulsory acquisition. This principle is also reflected in the land acquisition legislation of common law legal systems such as the UK, Australia and Hong Kong. As a general rule, the underlying essence in the constitutions and the compensation provisions of land acquisition legislations is to put a person, so far as money can do it, in the same position as if his land has not been taken from him. In other words, “adequate” compensation would imply that the owner of an interest in land not only has the right to receive a monetary payment for the value of the land which has been acquired but has the right to receive an additional amount covering other types of

407 The Challenges To Valuers With Regard To Compensation For Expropriation And Restitution In South African Statutes, p. 13
408 Section 25(3) of the Constitution of South Africa provides that: “The amount of the compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected....”
409 Article 105(2) of the Constitution of Hong Kong: “Such compensation shall correspond to the real value of the property concerned at the time and shall be freely convertible and paid without undue delay.”
410 Article 13(2) of the Constitution of Malaysia: “No law shall provide for the compulsory acquisition or use of property without adequate compensation.”
411 Anuar Alias and Md Nasir Daud, University of Malaya, Payment of adequate compensation for land acquisition in Malaysia, p.327 and 328, also available at: https://www.researchgate.net/publication/237125458_Payment_of_Adequate_Compensation_for_Land_Acquisition_in_Malaysia
losses incurred which are incidental to the acquisition and which will vary from country to country.

436. It has been observed that there exist other types of compensations not provided by the LAA of Mauritius. The following is a list of compensation that is proposed to be included in the Act:

(i) Compensation for both severance and injurious affection of land retained in cases of partial acquisition of land.
The laws of the UK, Australia, France, Singapore, India, and Trinidad and Tobago, compensate both severance and injurious affection, while in Hong Kong and New Zealand, compensation is given only for severance and injurious affection respectively. In Mauritius, Section 19(1)(d) of the LAA provides for compensation covering the loss arising from severance while the Board awards it under the heading of “injurious affection”. The Act does not compensate for any depreciation in the value of retained land caused due to works carried out on the land acquired for the purpose for which land was acquired.

(ii) Compensation for loss of business
Where business was conducted on the land acquired on the date of acquisition, compensation should be given for the loss of business and for reasonable expenses incurred for being compelled to change the place of business. This compensation is provided by the land acquisition statutes of Hong Kong, France, Singapore, India, and New Zealand. In the latter, compensation for business loss covers the loss of profits and loss of goodwill.
(iii) **Compensation for loss of principal place of residence**

In the UK, compensation is given for the loss of a dwelling which was used as a principal place of residence on the land acquired and in Singapore and India a person is compensated for any reasonable expenses incurred for being compelled to change his place of residence as a result of the acquisition. In Australia and New Zealand, compensation will cover both the loss of dwelling (given as a fixed amount) and the reasonable expenses incurred in relation to the acquisition of a reasonably equivalent dwelling or in respect of land acquired in substitution. In Hong Kong and France, compensation is provided for the expenses reasonably incurred by a dispossessed person in acquiring an equivalent alternate property. Although not exactly similar, these compensations boil down to the essence that a person should be given an additional amount of compensation (be it for the loss of his dwelling or for any reasonable expenses incurred by him in acquiring another land in substitution), if his dwelling was situated on the land acquired.

It may also be noted that in Singapore, India and New Zealand, compensation will also cover any legal fees and costs incurred in relation to the acquisition of an alternate land.

(iv) **Compensation where no land is acquired, but has been injuriously affected (reduced in value) due to works carried out on the land acquired**

This type of compensation is given in the UK, New Zealand and Trinidad and Tobago. Section 1 of the UK 1973 Land Compensation Act states that a person is entitled to compensation for the decrease in the value of land due to the use of public works on the land acquired causing noise, vibration, smell, fumes, smoke
and artificial lighting and the discharge on to the land in respect of which the claim is made of any solid or liquid substance.

(v) **Reasonable transportation costs**

After compulsory acquisition, it is inevitable that a person will incur transportation costs in shifting his moveable properties from the land acquired to the new land. The legislative provisions of France (*indemnités de déménagement*), India and New Zealand provide compensation for such transportation costs, provided they are reasonable.

437. The losses for which the above compensations have been offered, are incidental to the acquisition and some of them are inevitable and which are bound to be incurred by persons having an interest in land. That is why, these compensations if added to our law, will cover a wider range of damages than what is currently covered in the Act and will thus help to provide a dispossessed person with a more adequate amount of compensation. And in the long run, adequate compensation might as well encourage less objections and speedier settlements.

➢ **Recommendation 4: Interests on compensation provided by Section18(6) should be calculated until date of payment**

438. Section 18(6) of the LAA of Mauritius provides for interests at the legal rate to be calculated until the date of the award of the Board. This provision does not take into account any delay which the State may take in issuing payment and any further delay that arises when the award is subject to an appeal. Thus, this provision does not reflect the
true 'waiting period' of those entitled to compensation. In the UK, Australia, Hong Kong, Singapore, India, South Africa, New Zealand and Trinidad and Tobago, interests are calculated from the date of vesting or the date of taking possession (as the case may be) until the date of payment of compensation. Thus, it is recommended that interests should be calculated until the date of payment of compensation into court, which will be adequate and more proportionate to the waiting period.

Recommendation 5: Repeal of Section 18(5) of the Act

439. Section 18(5) of the LAA provides that the Board cannot make an award which is in excess of the amount of compensation claimed. The Land Acquisition Act of Singapore [Section35(1)] contains a similar provision. Nevertheless, the presence of this provision is justified in the statute of Singapore but not in the statute of Mauritius, because the former, unlike that of the latter, contains no express provisions guaranteeing the payment of adequate compensation. Section 18(5) which imposes a limit on the amount of compensation to be awarded is clearly in conflict with Section 8(1)(c)(i) of our Constitution which guarantees adequate compensation, and should therefore be removed.
11.4 Other foreign provisions which may be considered

➢ **Special Interests**

440. In the UK\(^{412}\) and New Zealand, compensation is not only given to an owner for the loss of a dwelling, but also for the acquisition of special interests in land such as tenants.

➢ **Rehousing**

441. The laws of the UK and India provide for the rehousing of owners whenever a residential property is being expropriated.

➢ **Reassessment of compensation for unreasonable delay in payment**

442. Article L323 4 of the French Expropriation Code provides that if payment of compensation has not been made within 1 year from the final decision fixing the amount of compensation, the dispossessed person may ask that this amount should be reassessed with interests.

\(^{412}\) Section 20 of the 1965 Compulsory Purchase Act of the UK: If any of the land subject to compulsory purchase is in the possession of a person having no greater interest in the land than as tenant for a year or from year to year, and if that person is required to give up possession of any land so occupied by him before the expiration of his term or interest in the land, he shall be entitled to compensation for the value of his unexpired term or interest in the land, and for any just allowance which ought to be made to him by an incoming tenant, and for any loss or injury he may sustain.
Conclusion

443. The right to property “has always been and continues to be subject to political contestation”. According to Blackstone, there “is nothing which so generally strikes the imagination, and engages the affections of mankind, as the right to property”. Nevertheless, there are some instances where the State can be recognized the right “to control the use of or even deprive of property belonging to individuals or legal persons under some conditions”.

444. While compulsory land acquisition “has been the subject of an active intellectual debate in many developed countries, actual acquisition of land has proceeded very rapidly in many developing ones. By many definitions, the process of development itself is associated with large-scale change in land use from agriculture to non-agriculture, urbanization, expansion of infrastructure, and urban redevelopment, all processes for which land needs to be made available and for which use of compulsory acquisition is now commonplace.”

445. In Mauritius, the 1973 Land Acquisition Act plays an important role in our legal framework, especially when the state contemplates undertaking big infrastructural

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413 M. G. Nyarko, ibid. p. 102
416 J. Lindsay, K. Deininger, T. Hilhorst, Compulsory land acquisition in developing countries: Shifting paradigm or entrenched legacy? Eminent Domain: A Comparative Perspective, 01/01/2017

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projects in the public interests. Since the enactment of the Act, it has only been amended once in 2013 to include the interim payment of compensation.

446. Legislation on compulsory acquisition can be said to regulate two main aspects. The first is the procedure for acquisition which should be fair. The second is the payment of compensation to those who have been dispossessed of their interests in land which should be prompt (as it is required by the Constitution of Hong Kong\textsuperscript{417}, just (as it is provided by the Constitution of South Africa\textsuperscript{418} and the Land Acquisition Act of Australia\textsuperscript{419}) and adequate (as it is catered by the Constitution of Mauritius).

447. The LAA, in its current form, does not fully satisfy those criteria and that is why the Law Reform Commission is of the view that the Statute should be reviewed. It has been proposed that some existing sections should be amended so as to bring it in line with more modern foreign legislation and it has also been recommended to insert additional provisions in the Act. It is also suggested to take on board some of the provisions contained in the 2013 Revenue and Valuation Appeal Tribunal Act, which did not come into force, as well as those of the 2014 Revenue and Valuation Appeal Tribunal (Amendment) Bill.

448. To ensure that the persons who are being dispossessed are dealt with fairly by public authorities, it is suggested that they should be given a fair opportunity to raise their objections at a preliminary stage which is around the investigation stage. As for the issue

\textsuperscript{417} Article 105(2) of the Constitution of Hong Kong: Such compensation shall correspond to the real value of the property concerned at the time and shall be freely convertible and paid without undue delay.

\textsuperscript{418} Section 25(3) of the Constitution of South Africa: The amount of the compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected.

\textsuperscript{419} Section 55(1) of the Land Acquisition Act of Australia: The amount of compensation to which a person is entitled under this Part in respect of the acquisition of an interest in land is such amount as, having regard to all relevant matters, will justly compensate the person for the acquisition.
of promptness, it is obvious that the right of a person to be entitled to compensation starts
as soon as the latter is deprived of his interests in land for public benefit, and thus, there
should be no delay preventing a person to enjoy his right to compensation. The main
recommendation is to introduce an arbitration procedure prior to referring the matter to
the Board of Assessment which is less costly and less time consuming than litigation, and
to set out a time frame for interim payment.

449. Moreover, Section 8(1)(c)(i) of our Constitution also guarantees an adequate
compensation. The latter would be said to be fair when the individual is compensated to
the point of feeling objectively indifferent from the acquisition. An important proposal
that is being made is to remove Section 18(5) of the LAA which is a bar to the payment
of sufficient and adequate compensation. There is also a need to review the heads of
compensation under Section 19 by incorporating other countries’ practices since the
quantum of compensation that is statutorily provided is not sufficient to abide by the
notion of adequate compensation under the spirit of our Constitution.

450. Finally, the issues of compensation are more than just a matter of law and
valuation; it is a matter of justice and fairness between society and the citizen. The word
“compensation” would serve no purpose if what was paid was something that did not
compensate.420

420 Anuar Alias, Payment of Adequate Compensation for Land Acquisition in Malaysia (2013)
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