



**LAND ACQUISITION IN
ACCORDANCE WITH THE
EQUATOR PRINCIPLES AND THE
LEGISLATION OF THE REPUBLIC
OF KAZAKHSTAN. PROJECT
FINANCING IMPACT**

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One of the world's social problems is involuntary resettlement or, in other words, the problem of 'displaced persons'. At first glance, banks activities are not related to resettlement issues. The best international practice of 'socially responsible investment', however, directly affects the very possibility of financing large infrastructure projects.

What are the Equator Principles?

Equator Principles is a risk management framework adopted by financial institutions for determining, assessing and managing environmental and social risk in project implementation. As noted in the Preamble to the Equator Principles, large infrastructure and industrial projects may have an adverse impact on the population and the environment. The purpose of adopting the Equator Principles is to determine, assess and manage environmental and social risk and impact in a structured and ongoing manner. Having realised the importance of factors such as climate change, biodiversity and human rights, the negative impacts of the project on ecosystems, populations, and climate shall be addressed wherever practical. If such an impact is unavoidable, it shall be minimised, mitigated and/or compensated for.

Based on the Equator Principles, international financial institutions developed internal environmental and social policies. These policies govern a number of issues related to the implementation of large projects financed by international financial institutions.

What is the impact of the Equator Principles on project financing?

One of the conditions for the provision of financing by international financial institutions is compliance with their policies based on the Equator Principles.

The current legislation of the Republic of Kazakhstan does not fully comply with the social policies of international financial institutions (especially in terms of land acquisition and compensation for involuntary resettlement). Such non-compliance may lead to the refusal by international financial institutions to provide financing for the project.

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At the same time, given the size of large infrastructure projects, the absence of funding from international financial institutions can make it difficult or impossible to attract financing in the required amount and, in principle, to implement the project. It is, therefore, required to bring the legislation of the Republic of Kazakhstan in this term in line with the requirements of international financial institutions.

As part of this review, we focus on land acquisition and community resettlement in accordance with the Safeguard Policy adopted in June 2009 by the Asian Development Bank (the '**ADB Policy**') and the Environmental and Social Policy adopted in May 2014 by the European Bank for Reconstruction and Development (the '**EBRD Policy**').

Comparative table of regulation on land acquisition and involuntary resettlement according to the ADB and EBRD Policies and the legislation of the Republic of Kazakhstan

ADB and EBRD Policies	Legislation of the Republic of Kazakhstan
<i>Who are eligible for compensation?</i>	
<p>i) Persons who have formal legal rights to the land (including customary and traditional rights recognised under national laws);</p> <p>ii) Persons, who have no formal legal rights to the land at the same time of the census, but who have claims to land that are recognised or recognisable under national laws;</p> <p>iii) Persons, who have neither formal legal right nor recognised or recognisable claims to the land they occupy (paragraph 7 of the ADB Policy, paragraph 18 of the EBRD Policy).</p>	<p>i) Legal owners;</p> <p>ii) Legal non-state land users;</p> <p>iii) Other persons, whose rights in respect to the involuntarily acquired land plot will be terminated or restricted (Article 67 of the Law of the Republic of Kazakhstan dated 1 March 2011 No. 413-IV 'On State Property' (the 'State Property Law').</p> <p>Where the title to the land plot is not registered in the manner established by the legislation of the Republic of Kazakhstan, the owner upon adoption of the decree on the initiation of the involuntary acquisition of the land plot or other real estate in connection with the land involuntary acquisition for state needs, may take the necessary measures to prove the title to the land plot, in which respect the decree was issued.</p> <p>At the same time, the timing for involuntary acquisition for state needs established by the decree can be extended by no more than one year (Article 63 of the State Property Law).</p> <p>In other words, one may argue that the legislation of the Republic of Kazakhstan follows a narrower approach, and only (i-ii) categories of those provided for by the ADB and EBRD Policies are eligible for compensation. The provision of compensation to illegal land users will be contrary to, inter alia, the principles of equality and the prohibition of unjust enrichment.</p>

ADB and EBRD Policies	Legislation of the Republic of Kazakhstan
<i>When a person is eligible for compensation?</i>	
<p>i) Physical displacement (relocation, loss of residential land, or loss of shelter);</p> <p>ii) Economic displacement (loss of land, assets, access to assets, income sources, or means of livelihoods) (paragraph 5 of the ADB Policy, paragraph 1 of the EBRD Policy).</p>	<p>It is theoretically possible to obtain compensation in both cases, physical and economic displacement, if such displacement is caused by the expropriation of the land plot or other real estate in connection with the land involuntary acquisition for state needs. There is no such separation at the legislative level.</p>
<i>How is the compensation rate calculated?</i>	
<p>The rate of compensation for the acquired housing, land, and other assets must be calculated at full replacement costs.</p> <p>The calculation of full replacement cost will be based on the following elements: (i) fair market value; (ii) transaction costs; (iii) interest accrued, (iv) transitional and restoration costs; and (v) other applicable payments, if any (paragraph 10 of the ADB Policy, paragraph 1 of the EBRD Policy).</p>	<p>The rate of compensation includes:</p> <ol style="list-style-type: none"> 1) the value of the land plot or the land use right; 2) the market value of the real estate located on the land plot, including fruit trees and perennial plantings; 3) the costs associated with the land development, operation, protective measures, increasing soil fertility, in view of the inflation; 4) all losses caused to the owner or land user by the land involuntary acquisition at the time of termination of the title or land use, including losses that they incur in connection with the early termination of their obligations to third parties; 5) lost profits (Article 166 of the State Property Law). <p>In other words, the legislation of the Republic of Kazakhstan follows a narrower approach and is aimed at compensating for the costs associated with the involuntarily acquired land plot only, rather than relocating to a new land plot.</p>
<i>What the compensation includes in addition to the equivalent reimbursement (cash payments or provision of an equivalent land plot)?</i>	
<p>In addition to cash payments, as indicated above, the Borrower/Client also shall provide appropriate assistance to economically displaced persons in the form of additional targeted assistance (credit facilities, training, or job opportunities) so that they can improve, or at least restore their</p>	<p>The legislation of the Republic of Kazakhstan follows a narrower approach and does not provide for any other measures in addition to providing equivalent reimbursement (cash payments, including the market value of the land plot and losses) and (or) the provision of an equivalent land plot.</p>

ADB and EBRD Policies	Legislation of the Republic of Kazakhstan
<p>income-earning capacity, production levels, and standards of living.</p> <p>In cases where land acquisition affects commercial structures, affected business owner shall be compensated for:</p> <ul style="list-style-type: none"> i) the cost of re-establishing commercial activities elsewhere, ii) the net income lost during the transition period, and iii) the costs of the transfer and re-installation of the plant, machinery or other equipment, as applicable. <p>Moreover, persons that are subject to resettlement within the project shall have opportunities to derive appropriate development benefits from the project (paragraph 12 of the ADB Policy, paragraph 37 of the EBRD Policy).</p>	
<p>Special provisions regarding indigenous peoples must be taken into account in order to avoid cases of physical relocation of indigenous peoples that may result in adverse impacts on their identity, culture and customary livelihoods (paragraph 33 of ADB Policy, paragraph 39 of the EBRD Policy).</p>	<p>Not required under the legislation of the Republic of Kazakhstan.</p>
<p><i>What procedural requirements must be followed?</i></p>	
<p>A socio-economic survey(s), assessment and a census are required to identify all persons who will be displaced by the project and to assess the socio-economic impacts of the project on them, as well as to develop actions to minimise the resettlement impacts (paragraph 15 of the ADB Policy, paragraph 14 of the EBRD Policy).</p>	<p>Not required under the legislation of the Republic of Kazakhstan.</p>
<p>Identification of vulnerable groups, further consultation with them and development of targeted measures are required to ensure that adverse impacts do not fall disproportionately on them and they are not disadvantaged in relation to sharing the benefits and opportunities resulting from</p>	<p>Not required under the legislation of the Republic of Kazakhstan.</p>

ADB and EBRD Policies	Legislation of the Republic of Kazakhstan
development (paragraph 16 of the ADB Policy, paragraph 12 of the EBRD Policy).	
<p>Development in consultation with the affected persons, approval, disclosure and monitoring of the Resettlement Action Plan is required, and based on social impact assessments (paragraph 17 of the ADB Policy, paragraph 36 of the EBRD Policy). Resettlement information shall be disclosed in language(s) understandable to affected persons and other stakeholders in an accessible place, and for illiterate people, suitable other communication methods will be used (paragraph 27 of the ADB Policy, paragraphs 16, 29, 38 of the EBRD Policy).</p>	<p>The legislation of the Republic of Kazakhstan follows a narrower approach. Development of an action plan is not required under the legislation of the Republic of Kazakhstan.</p> <p>The decision on the involuntary acquisition of a land plot or other real estate in connection with the land involuntary acquisition for state needs shall be made in the form of a decree of the Government of the Republic of Kazakhstan or the local executive authority. The relevant decree shall be published in the republican or local mass media, respectively, including the Internet resources of the executive authorities, within three (3) business days after their adoption (Article 63 of the State Property Law).</p> <p>The executive authority, or the lower executive authority on behalf of a higher authority shall, within three (3) calendar days after the publication of the decree, send to the owner or non-state land user a written notice of the involuntary acquisition of the land or other real estate in connection with the land involuntary acquisition for state needs by registered mail with return receipt (Article 64 of the State Property Law).</p>
<p>Negotiations are required with confirmation by third parties in order to prevent or minimise resettlement, ensure compensation that is consistent with all resettlement costs, and conduct meaningful consultations with people located in the project area (paragraph 25 of the ADB Policy, paragraphs 10-12 of the EBRD Policy).</p>	<p>The legislation of the Republic of Kazakhstan follows a narrower approach and provides for the right of the owner or non-state land user (but not another person, who is subject to resettlement) to initiate conciliation procedures within fifteen (15) calendar days after the receipt of the notice of the involuntary acquisition of the land or other real estate in connection with the land involuntary acquisition for state needs. Third parties do not participate in conciliation procedures. If agreement is not reached between the parties, the dispute shall be resolved in court (Article 69 of the State Property Law).</p>
<p>Development of a grievance mechanism that will not impede access to or substitute the judicial or administrative remedies or arbitration procedures of the host country is</p>	<p>The legislation of the Republic of Kazakhstan provides for the possibility of disputes settlement in either within conciliation procedures or in a judicial proceeding.</p>

ADB and EBRD Policies	Legislation of the Republic of Kazakhstan
required (paragraph 29 of the ADB Policy, paragraph 21 of the EBRD Policy).	

Conclusion

Despite a number of positive changes introduced to the legislation of the Republic of Kazakhstan in 2019, the legislation on the land involuntary acquisition for state needs does not fully comply with the Equator Principles.

It is required to harmonize current legislation in accordance with the Equator Principles in order to address environmental and social problems, including problems with involuntary resettlement, to increase the level of social responsibility in Kazakhstan, as well as to attract international financing in large infrastructure projects.

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