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Facoltà di Architettura

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Town planning and cultural heritage regulatory
framework

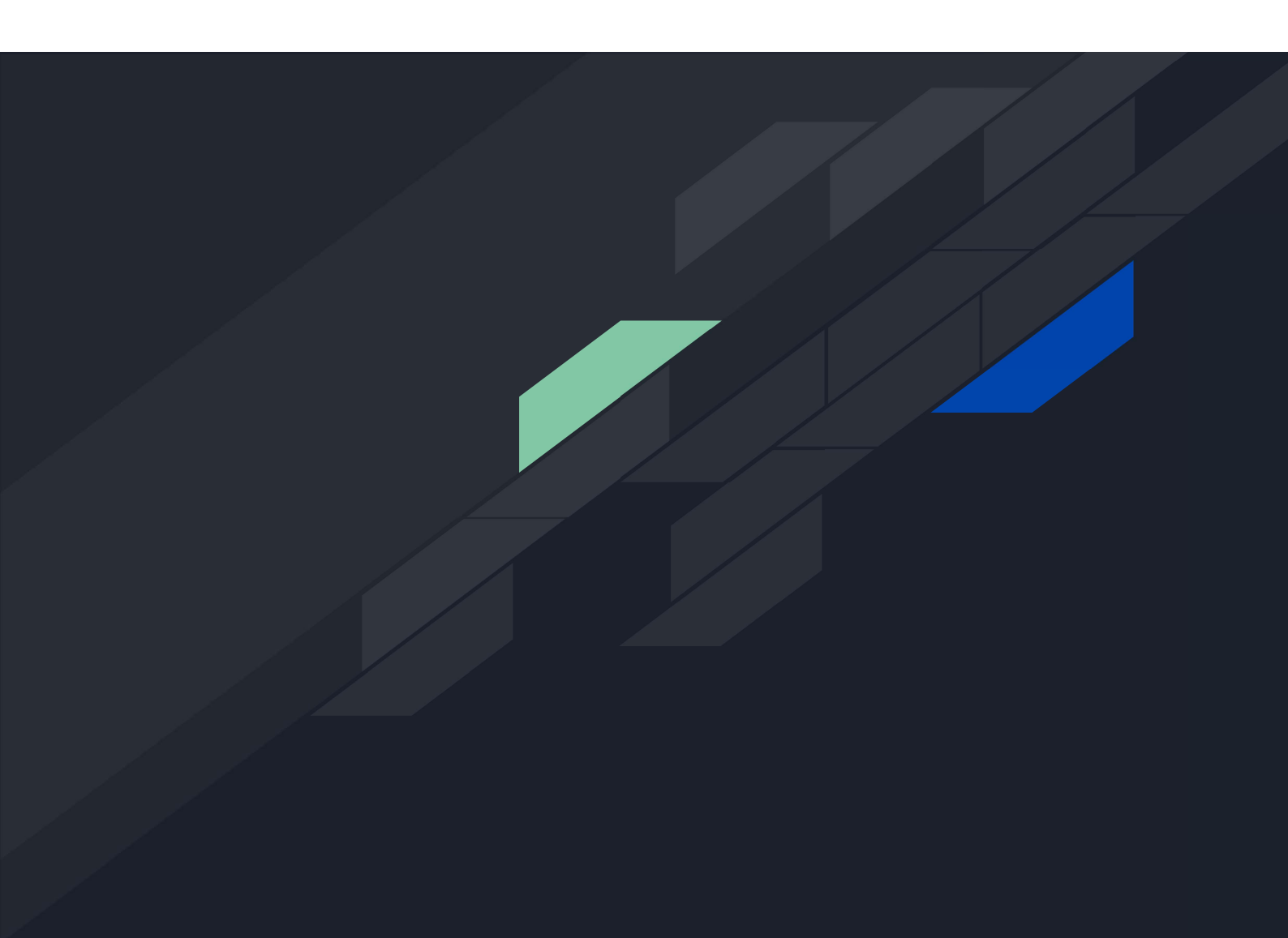
URBAN LAW REITERATION OF THE BOND

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Land expropriation

Land expropriation is treated in many countries all over the world as the classic legal norm. According to this rule, government has the power to acquire private real estates only in order to provide land realization the significant public purposes.

The compulsory purchase ought to be legitimate and the process in which property is taken over should be clearly identify in legislation. Owners, whose property is taken by government for public use, are entitled to be paid adequate compensation. It is constitutionally ensured and is one of the fundamental principles within a rule of law.



Binding prescription

- It comes from public administration “Municipality”.
- It limits the right that each one has to his own land.
- It's absolutely mandatory, very strict, & aims at public interest.
- It results in expropriation/Taking possession of a property.
- The owner of the land loses his right to build anything on it.
- Negotiation should take place between administration & the owner until a contract is prepared.

There are three kinds of binding prescription:

Instrumental prescription (expropriate prescription)

1

- It's an instrument to get the ownership of the land.
- It concerns one owner.
- The private owner loses the ownership of the property, along with the possibility of any private usage.
- It has a duration of five years.
- It offers restoration/Compensation.

Confirmative prescription.

2

- It Decides that a private property is designated to a superior purpose of public use "Health, Environment, jurisdiction".
- It offers no restoration/compensation.
- The ownership of the property remains private, with no possibility of private usage.
- It affects many owners (aims at a big area/territory)
- There is no time limit.

Morphological prescription.

3

- It concerns the morphological aspects of a territory.
- Its decision comes from an authority higher than the municipality.
- It prepares a plan on a national level, all chosen areas should remain empty of buildings.
- It offers no Restoration/Compensation.
- The ownership of the property remains private, with no possibility of private usage.
- There is no time limit.



Instrumental prescription:

- It's an instrument to get the ownership of one specific land from one individual owner, in order to designate a future function for a certain area, or to localise public infrastructure...
- ➤ The landlord loses the ownership of the property, along with the possibility of any private usage. It has a duration of five years, can be renewed for another five years, if the administration didn't finish the work during the first period.
- When a land is under expropriation, the owner is entitled to a fair indemnity, proportional to the market value of the land.

In order for the administration to renew the contract for another five years, it must:

- Justify why it was not able to execute the project within the first five years, as the contract is not only about realizing a public project, but also about executing it in a specified land.
- Pay a compensation to the owner after renewing the contract for another five years, because the owner has lost all rights of use of the land for ten years, that compensation will be equal to the damage caused by this contract to the owner.



Instrumental prescription:

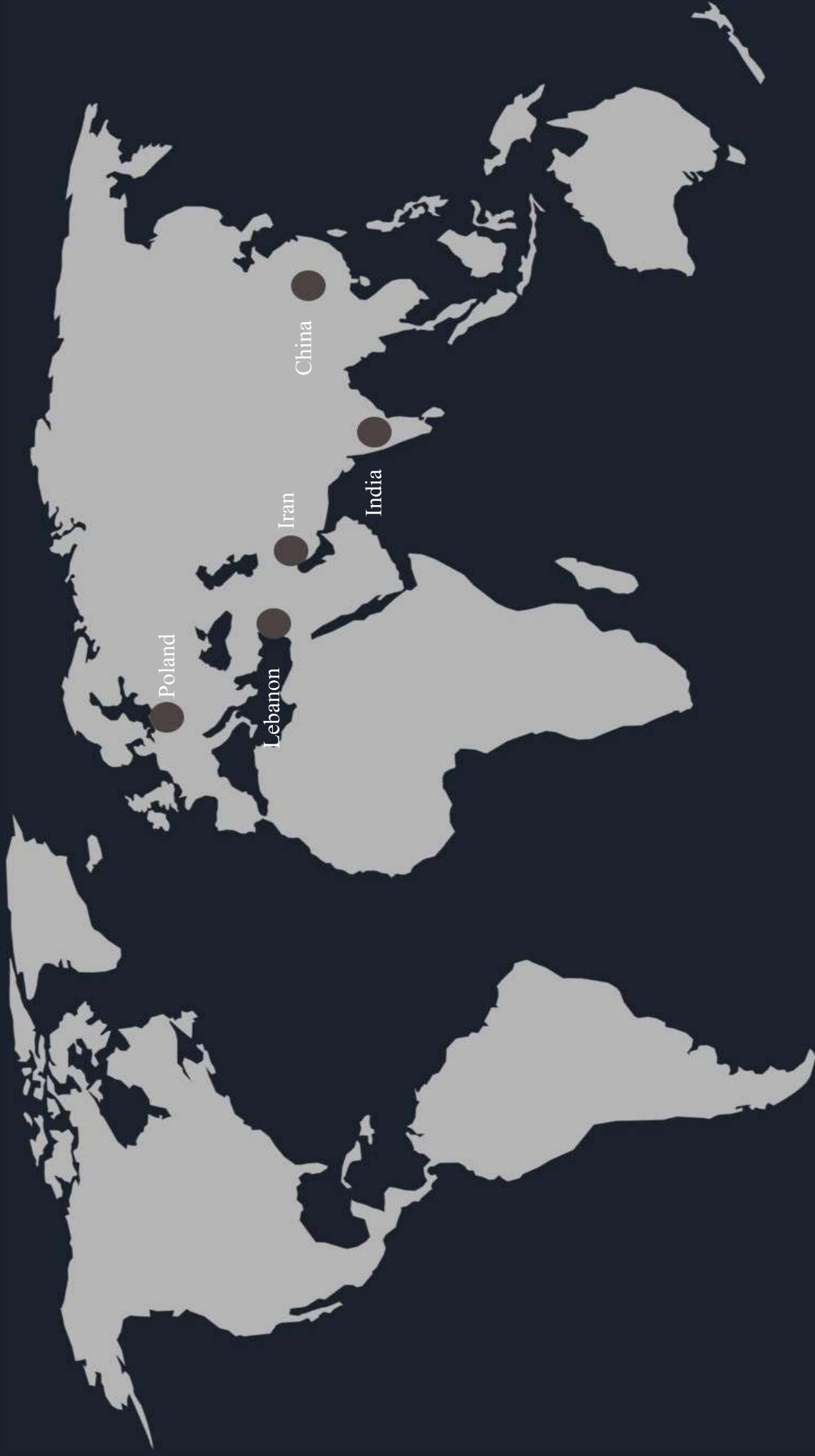
In case the first 5 years are over and the administration did not achieve any progress, the owner of the land can bring the case to the national court, and the intermediate authority will help the owner get back the ownership, but only if there was an evidence that the municipality is abusing its authority.

If no agreement took place, the land will be considered as part of a white zone - agricultural area (since it's not in an urban plan).

The procedure:

- A competition takes place, along with an announcement of a public utility.
- The administration has to prepare an urban plan, a project that aims at public utility.
- The declaration of public utility should be approved.
- An evaluation of the market value of the land should be prepared.
- The Administration has to send a letter to the owner for approval.
- If the owner doesn't agree, the amount of money proposed by the administration should be placed in a bank account, until the agreement takes place.
- The owner also can declare the evaluation of the property and ask for more money, according to the real market value of the property.
- The final part of the procedure is the expropriation even if the owner doesn't agree.

Comparison with the same law in other countries



Expropriation and Compensation Law:

Land expropriation in Lebanon is relatively rare. The Law on Expropriation (Law No. 58, dated May 29, 1991, Article One), as well as Article 15 of the Constitution, specifies that expropriation must be for the public utility and calls for fair and adequate compensation.

Compensation is paid at the time of expropriation, but is often perceived as below fair market value.

The Lebanese Constitution May 23, 1926.

Art 15 - Rights of ownership shall be protected by law. No one's property may be expropriated except for reasons of public utility, in the cases established by law and after fair compensation has been paid beforehand.

Law No. 58, dated May 29, 1991

Article 1

It's not permitted to deprive anyone of his property except for reasons of public benefit, and after offering him a fair compensation.

Article 2

Public benefit shall be determined by a decree on the proposal of the minister based on the request of the concerned admin., the municipality or the optional authority.

Article 3

The decree shall specify the maximum period during which acquisition transactions shall be started, provided that it shall not exceed eight years from the date of publication of the decree in the Official Newspaper.

The administration has to prepare an urban plan, & to present a project that has public utility.

Article 4

The declaration of public utility should be approved.

Article 5

The Administration has to send a letter to the owner for approval.

Article 6

Article 30

The Admin. may decide to use the property in another project different than the one for which the acquisition has taken place, If the Admin. decides to cancel the project, the owner may ask for it within 1 year from the date of notifying them officially.

Article 31

If 10 years have elapsed since the date of the expropriation, & the admin. has not started the implementation of the project for which the acquisition was partially or wholly approved, or the admin. has not decided to allocate it to another declared public benefit project or decided this allocation and hasn't implemented it within 10 years, the owner may request the recovery of the land within a period of 1 year from the date of expiry of the said ten-year period, provided that they submit a written request to the management, and in that case the owner has to pay back the amount of money that he got as compensation.

Land Acquisition & Rehabilitation and

Resettlement Act, 2013 :

Proposals for land acquisition and Social Impact Assessment report by appropriate Government.

- (7) The appropriate Government shall ensure that—
- (a) there is a legitimate and *bona fide* public purpose for the proposed acquisition which necessitates the acquisition of the land identified;
 - (b) the potential benefits and the public purpose referred to in clause (a) shall outweigh the social costs and adverse social impact as determined by the Social Impact Assessment that has been carried out;
 - (c) only the minimum area of land required for the project is proposed to be acquired;
 - (d) there is no unutilized land which has been previously acquired in the area;
 - (e) the land, if any, acquired earlier and remained unutilized, is used for such public purpose and make recommendations in respect thereof.



Land Acquisition & Rehabilitation and Resettlement Act, 2013 :

(2) The appropriate Government shall examine the report of the Collector, if any, and the report of the Expert Group on the Social Impact Assessment study and after considering all the reports, recommend such area for acquisition which would ensure minimum displacement of people, minimum disturbance to the infrastructure, ecology and minimum adverse impact on the individuals affected.

(3) The decision of the appropriate Government shall be made available in the local language to the Panchayat, Municipality or Municipal Corporation, as the case may be, and the offices of the District Collector, the Sub-Divisional Magistrate and the Tehsil, and shall be published in the affected areas, in such manner as may be prescribed, and uploaded on the website of the appropriate Government:



Land Acquisition & Rehabilitation and Resettlement Act, 2013 :

Provided that where land is sought to be acquired for the purposes as specified in sub-section (2) of section 2, the appropriate Government shall also ascertain as to whether the prior consent of the affected families as required under the proviso to sub-section (2) of section 2, has been obtained in the manner as may be prescribed.



Land Acquisition & Rehabilitation and

Resettlement Act, 2013 :

Payment of compensation or deposit of same in Authority.—(1) On making an award under section 30, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award and shall pay it to them by depositing the amount in their bank accounts unless prevented by someone or more of the contingencies mentioned in sub-section (2).

(2) If the person entitled to compensation shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Authority to which a reference under section 64 would be submitted:



Land Acquisition & Rehabilitation and Resettlement Act, 2013 :

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount:

Provided further that no person who has received the amount otherwise than under protest shall be entitled to make any application under sub-section (7) of section 64:

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.



Safeguards against indiscriminate acquisition :

Change of ownership :

- No change of ownership without specific permission of Appropriate Govt. is allowed.

Land not Used :

- Land that is not used within 5 years in accordance with the purposes for which it was acquired at the time of acquisition, shall be transferred to the State Governments Land Bank **or** to the original land owner.

Sharing Appreciated Value :

- Upon every transfer of land without development, 40% of the appreciated land value shall be mandatorily shared with the original owner whose land has been acquired.





	1984 Law	2013 Act	2014 Ordinance
Consent from Affected People	No provision	Mandatory consent of owners of the land – 70% for Private Public Participation (PPP) projects and 80% for private projects, which could be raised to 100% by State Governments.	Not required for defense, security, rural infrastructure, social infrastructure and industrial corridors.
Social Impact Assessment (SIA)	No provision	Compulsory SIA for every acquisition.	Not required for defense, security, rural infrastructure, social infrastructure and industrial corridors.
Multi Crop Land	No provision	Only in extreme situations, with an upper cap of 5% acquisition of multi crop land per district.	Not required for defense, security, rural infrastructure, social infrastructure and industrial corridors.
Return of land if left unused for 5 years	No provision	Clause present	No provision
Consideration of Food Security	No provision	Clause present	No provision
Role of Panchayat	No provision	Required public hearing and Gram Sabha.	No provision
Land Acquisition can be done by	Public Sector	Public Sector and Private Companies	Public Sector, Private Companies and Private Entities (including proprietorship, partnership, and NGOs)

Expropriation and Compensation Law:

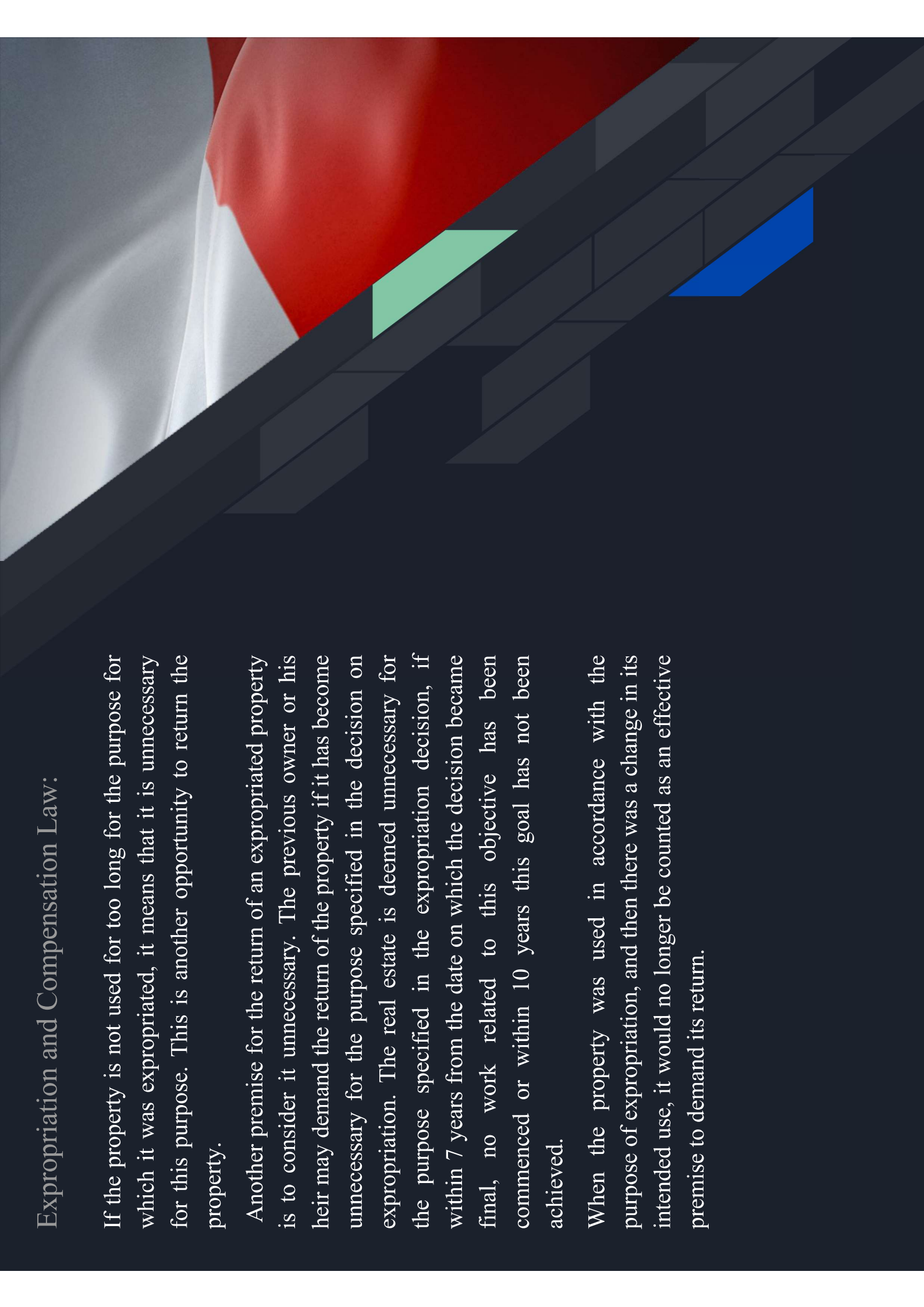
Expropriation can occur only for a specific public purpose, for example for public roads, airports or construction of a school.

In the expropriation decision, the amount of compensation is determined at the same time. In the Act of August 21, 1997 about real estate management (Journal of Laws 1997 No. 115 item 741, as amended), regulations regarding the above issues were included, as well as the premises and procedure for the return of the expropriated property.

reimbursement can be claimed when the purpose for which the property has been expropriated will change. The three-month deadline for the return of the property must be remembered, otherwise the chance to recover the property will be lost.

Expropriation and Compensation Law:

As a rule, expropriated property cannot be used for any purpose other than specified in the expropriation decision. Exceptionally, if the property is intended to be used for another purpose, the competent authority notifies the previous owner or his heir of that intention, at the same time informing about the possibility of returning the expropriated property. The right to return will expire if the previous owner or his heir fails to submit an appropriate application within 3 months from the date of receipt of the notice of the possibility of return.

The background of the slide is a dark blue-grey color. In the upper left corner, there is a stylized representation of a flag with a red upper half and a white lower half, separated by a diagonal line. Overlaid on the dark background are several geometric shapes: a large, dark grey parallelogram that runs diagonally from the top left towards the bottom right, and several smaller, lighter grey parallelograms and rectangles scattered around it. A small green triangle is located near the top left, and a small blue rectangle is located near the bottom right.

Expropriation and Compensation Law:

If the property is not used for too long for the purpose for which it was expropriated, it means that it is unnecessary for this purpose. This is another opportunity to return the property.

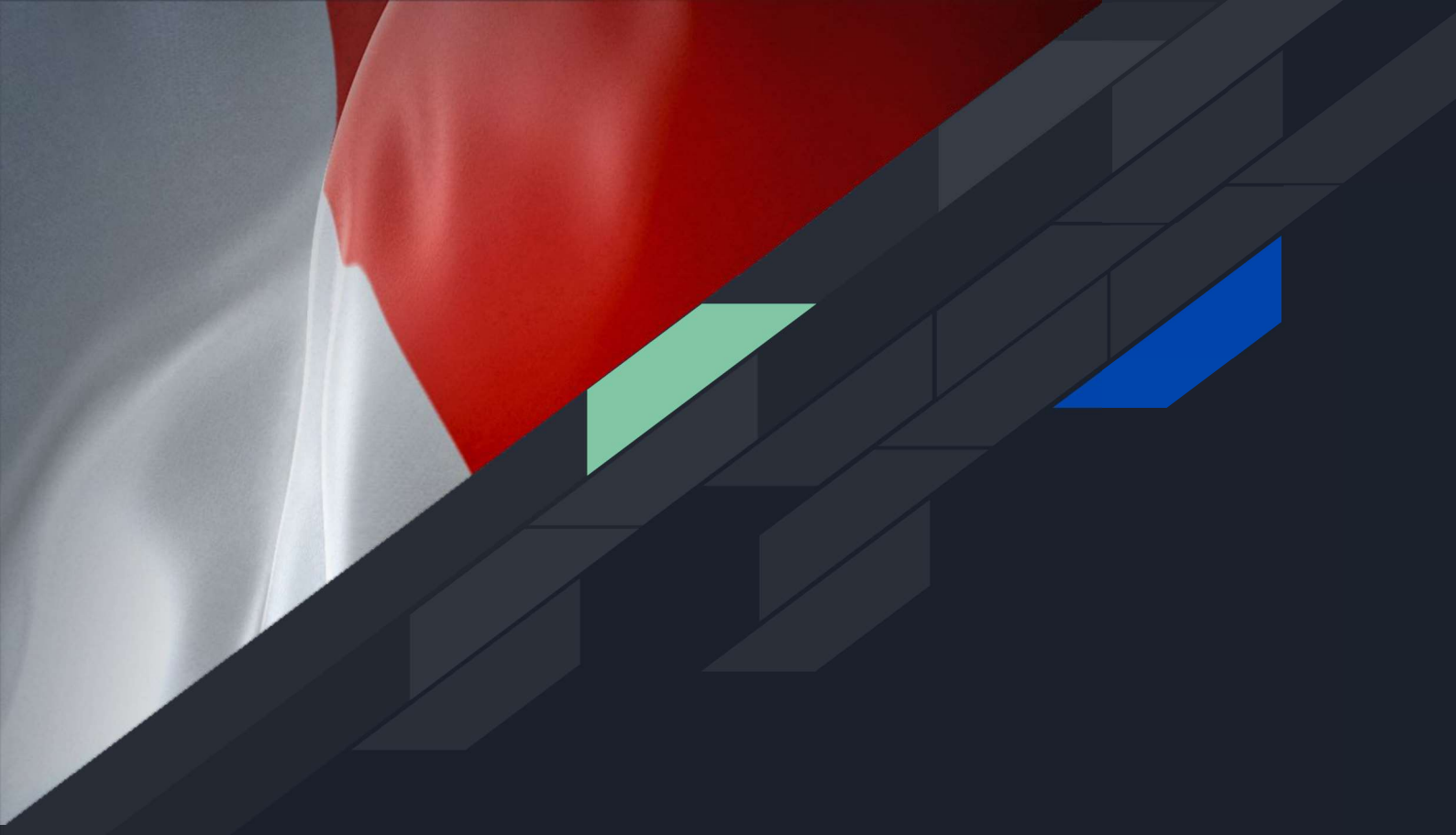
Another premise for the return of an expropriated property is to consider it unnecessary. The previous owner or his heir may demand the return of the property if it has become unnecessary for the purpose specified in the decision on expropriation. The real estate is deemed unnecessary for the purpose specified in the expropriation decision, if within 7 years from the date on which the decision became final, no work related to this objective has been commenced or within 10 years this goal has not been achieved.

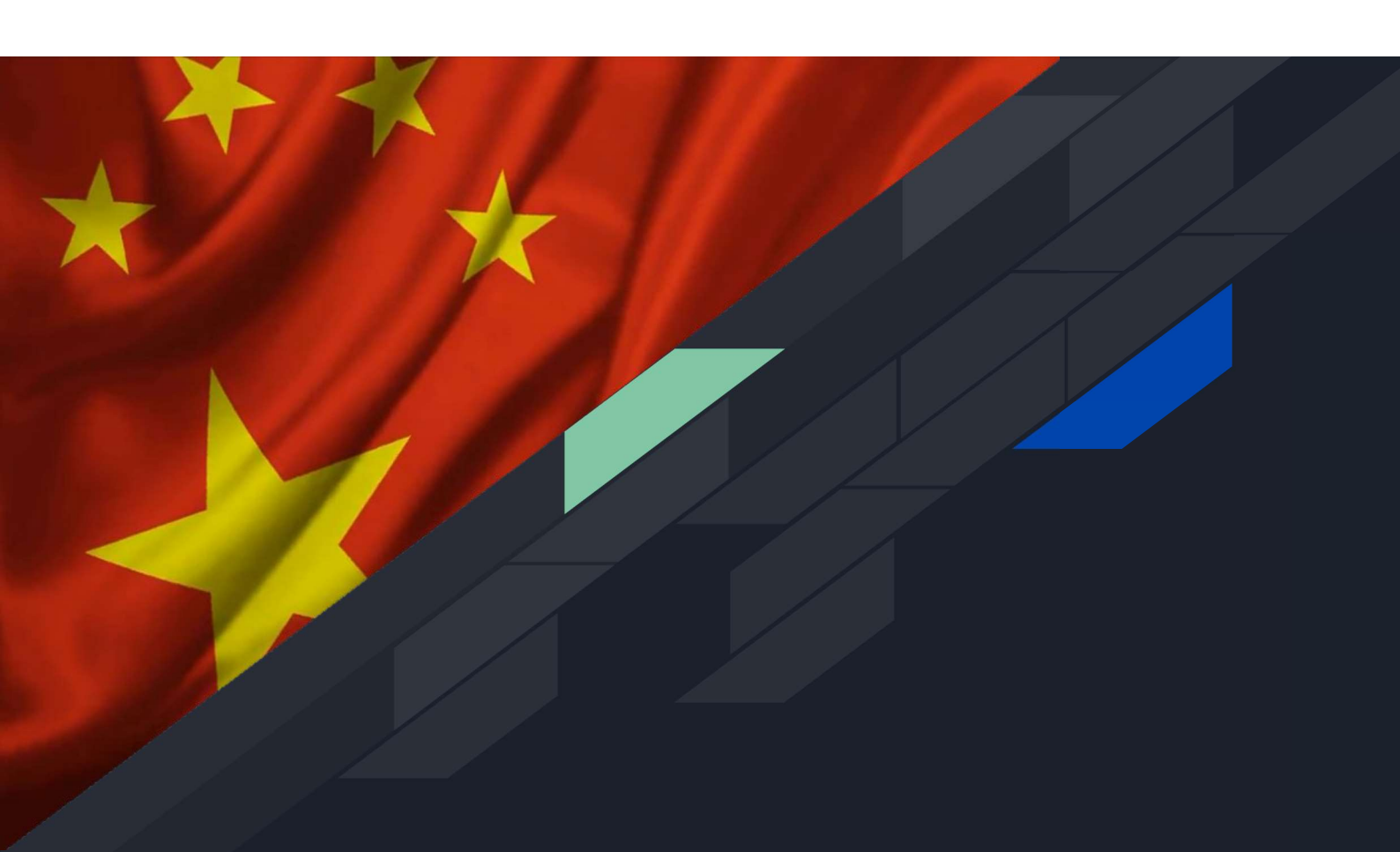
When the property was used in accordance with the purpose of expropriation, and then there was a change in its intended use, it would no longer be counted as an effective premise to demand its return.

Expropriation and Compensation Law:

The return of the property is connected with the necessity to pay compensation, which the expropriated person has received for expropriation of its right.

The condition for the return of the property is the return by the previous owner or his heir of compensation, which he received as compensation for expropriation. However, it will not be nominally the same sum that the expropriated received when the decision on expropriation became final.





Expropriation and Compensation Law:

Land expropriation in China is often happen. The Law on Expropriation (Law No. 5, dated Jan 1, 1987, Article 47)¹, as well as Article 10 of the Constitution 1. Mostly of GDP in China are real estate. To keep GDP increasing, Chinese government gets land **using rights** from people to build new building or new road. Since **land is belonged to government in China**, chinese government is the owner of land, people just have the rights to use. So if government need land, they usually pay money to people living this land to buy people's land using rights.

The Chinese Constitution Dec 4, 1982.

Article 10-The state may, for the public interest, expropriate or take over land for public use, and pay compensation in accordance with the law. No organization or individual may appropriate, buy, sell or otherwise engage in the transfer of land by unlawful means.

The rights to the use of land may be transferred according to law.

Article 47 Compensation of the expropriated land shall be done on the basis of its original purpose of use. Compensation for cultivated land shall include a compensation for the land, for attachment and young crops on it, plus a resettlement subsidies.

Land compensation for expropriated land shall be six to ten times the average annual output value of the expropriated land, calculated on the basis of 3 years before the expropriation.

Resettlement subsidies for expropriated & shall be calculated according to the agricultural population that needs to be resettled. The agricultural population land by the average area of the original cultivated land per person of the unit the land of which is expropriated.

The standard of resettlement subsidies to divided among members of the agricultural population that needs to be resettled shall be 4 to 6 times the average annual output value of the land calculated on the basis of 3 years before such expropriation.

Law No. 5, dated Jan 1, 1987

However, the maximum resettlement subsidies for each hectare of the expropriated cultivated land shall not exceed fifteen times its average annual output value calculated on the basis of three years before such expropriation.

Article 47 The Rates of land compensation and resettlement subsidies for expropriation of other types of land shall be prescribed by provinces, autonomous regions & municipalities directly under the Central Government with reference to the rates of land compensation & resettlement subsidies for expropriation of cultivated land.

Rates of compensation for attachments and young crops on expropriated land shall be prescribed by provinces, autonomous regions and municipalities directly under the Central Government.

For expropriation of agricultural plots in city suburbs, the land users shall pay towards a development & construction fund for new plots in accordance with the relevant regulations of the State.

Article 47

and compensation and resettlement subsidies paid in accordance with the provisions of the second paragraph in this Article are still insufficient to enable the farmers that need to be resettled to maintain their original living standards, the resettlement subsidies may be increased upon approval by the people's government of province, autonomous region or municipality directly under the Central Government. However, the total of land compensation and resettlement subsidies shall not exceed 30 times the average annual output value of the expropriated land calculated on the basis of three years before such expropriation.

The State Council may, in light of the level of social & economic development and under special circumstances, raise the rates of land compensation and resettlement subsidies for expropriation of cultivated land.

Expropriation and Compensation Law:

Expropriation is also foreseen in Iran's laws And in accordance with **Article 15** of the Constitution, it should be in accordance with the law. The Iranian administrative organization is still inadequate in dealing with disputes between the government and national institutions and people. And the handling of these disagreements is most likely to be addressed in the administrative authorities.

The first law that enacted in Iran was about expropriation for the development of the road and in September 1927 adopted as a single article. The law requires that;

Expropriation is based on a three-way public benefit due to the Legislative Bill on Buying and Owning (Feb 06, 1980) :

Article 1

Its purpose is to provide public benefits and can not be used to meet the individual and trade needs of this legal instrument.

Article 8

Ownership and fair compensation. Assignment of land and buildings, facilities and property of the owner before the transaction and payment of the property or property rights is not permissible.

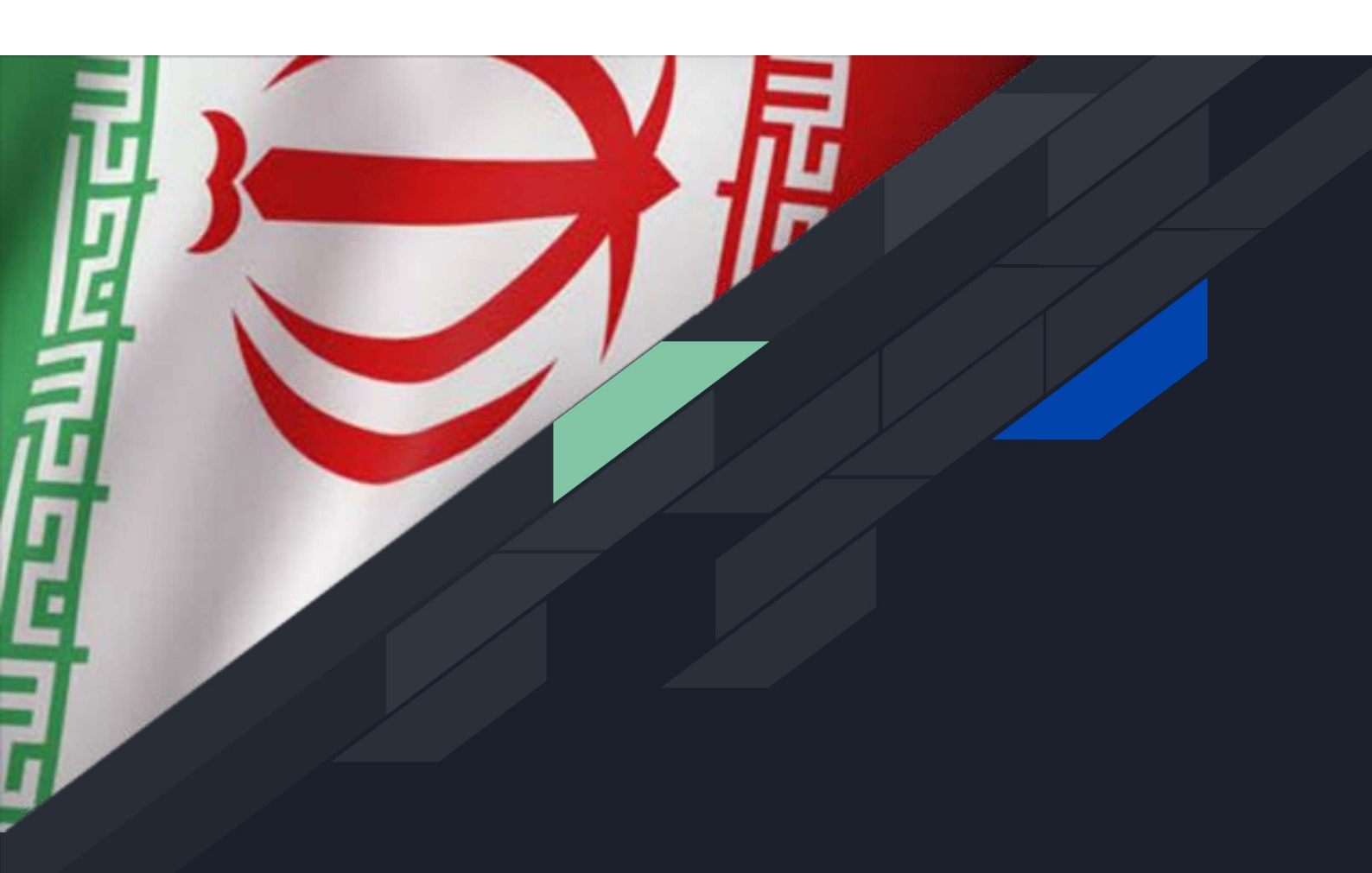
Article 9

Owning is a perfectly ceremonial act that neglects it to void ownership of the state.

Five criteria for legalizing foreclosures & reposessions for government agencies.

(Islamic Revolutionary Council, 6 Feb 1980):

- 1- The landlord must have an approved design.
- 2- Required land purchase credit is required.
- 3- The highest executive authority of the purchaser must confirm the need for ownership.

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- 4- By requesting the Ministry of Housing and Urban Development, it would be impossible to provide suitable land for land and government in that city.
 - 5- The land use is consistent with urban design.

The most important cases that municipalities in the implementation of this measure are to expropriate individuals(Article 55 of the Municipal Law, July 03, 1955):

- 1- Construction of buildings and buildings required by the site, such as fields and stadiums in accordance with sanitary and technical requirements
2. Cooperate with the Ministry of Culture in preserving the city's buildings and buildings and public buildings and mosques.
- 3- Preventing the establishment of all places that somehow cause disturbances to residents or oppose the principles of health in cities.

4- Construction of streets and alleys, fields and public gardens and waterways and development of roads in the limits of the rules

According to this law, the municipality is obliged, after approving its plan, to advertise within a month the details of the project, the start date and the approximate duration of its implementation for the public, and within 3 months after the announcement, pay the price of land and facilities to owners of real estate. Acting and then proceeding with a two-month deadline for the dispossession of the property, the ratio of disposal and destruction. Failure to refer owners or owners to the price will not be blocked.