

Advisory Note: Due Diligence for Land Acquisition and Resettlement - New Manufacturing Facilities, Myanmar

Overview

Myanmar is at the early stage of a nation-building process. Given the underdeveloped infrastructure and weak rule of law companies which may be looking to invest in Myanmar will face many challenges, including business partners who plan to set up new manufacturing operations. One of the most immediate short-term risks is the displacement and resettlement of local people, as new industrial sites are developed. If not properly managed, land acquisition and site development could adversely impact existing land users and neighbouring communities. Forced resettlement and conflicts with local communities over land ownership, land use and access rights must be avoided. If not properly managed such conflicts could constitute human rights violations, and therefore breach adidas Group policies.

To reduce potential problems, adidas Group's Social and Environmental Affairs department has developed a general approach to help our business partners review and assess land acquisition and resettlement issues. By following the guidance given in this advisory note, business partners will be able to satisfy us that they have completed the due diligence needed prior to purchasing, leasing or otherwise developing land for new manufacturing operations in Myanmar. By doing so, they will also enable adidas Group to meet its obligations under the OECD Guidelines for Multinational Enterprise.

Due diligence in this context is an investigative process, one which aims to prevent harm. It must be completed before development commences.

The objectives of conducting a due diligence review of land acquisition are:

1. To avoid, and when avoidance is not possible, minimize displacement by exploring alternative project designs
2. To avoid forced eviction and displacement of people
3. To anticipate and avoid, or where avoidance is not possible, minimize adverse social and economic impacts from land acquisition or restriction on land use by:
 - Providing compensation for loss of assets at **replacement cost**
 - Ensuring that resettlement activities are implemented with appropriate disclosure of information, consultation, and the informed participation of those affected.
 - To improve, or restore, the livelihoods and standards of living of displaced persons.
 - To improve living conditions amount physically displaced persons through the provision of adequate housing with **security of tenure** at resettlement sites.

What do the terms *replacement cost* and *security of tenure* mean?

Replacement cost is defined as the market value of the asset plus transaction costs. In applying this method of valuation, depreciation of structures and assets should not be taken into account. Market value is the value required to allow affected communities and persons to replace lost assets with assets of similar value. The valuation method of determining replacement cost should be documented and included in an applicable Resettlement and/or Livelihood Restoration Plan.

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Security of tenure is where communities are resettled to a site that they can legally occupy and where they are protected from the risk of eviction.

IFC Performance Standards

The adidas Group has adopted the International Finance Corporation's (IFC) Performance Standard No.5 on *Land Acquisition and Involuntary Resettlement* as its benchmark and reference document. The guidance given in IFC Performance Standard No.5 can be downloaded here:

http://www1.ifc.org/wps/wcm/connect/c8f524004a73daeca09afdf998895a12/IFC_Performance_Standards.pdf?MOD=AJPERES

In some cases the impacts on the rights and livelihood of indigenous people may also be of concern. If it is, please follow the guidance given in IFC's Performance Standard 7: Indigenous People

http://www.ifc.org/wps/wcm/connect/c8f524004a73daeca09afdf998895a12/IFC_Performance_Standards.pdf.

Business partners should familiarize themselves with these performance standards and follow the general principles to ensure that they have addressed potential community concerns and land rights issues, including impacts on the displacement and resettlement of people. According to the guidance given by the IFC, displacement persons may be classified as a person:

- i. Who have formal legal rights to the land or assets they occupy or use;
- ii. Who do not have formal legal rights to land or assets, but have a claim to land that is recognized or recognizable under national law; or
- iii. Who have no recognizable legal right or claim to the land or assets they occupy or use.

To help business partners manage this process, adidas Group's Social & Environmental Affairs department has identified and prepared a list of consultancies that are able to conduct Social Impact Assessments and verify and check on the impacts of land acquisition and resettlement in Myanmar. See Annex 1 for our approved list of independent assessors.

Minimum Expectations

As a minimum, when a manufacturing project involves land acquisition and redevelopment, our business partners must appoint a competent and independent assessor to consider the social impacts of such a development on local communities and any potential displacement and resettlement of people occupying the property.

The assessment should include the following:

STEP 1 - PRE-SCREENING: The assessor must obtain firsthand knowledge of the project and meet with factory representative and, if necessary, any local partners, and review all available and pertinent information, including maps, plans and legal deeds. To assist in this process the business partner should complete the Disclosure Checklist below. The assessor must conduct a pre-screening to determine whether there are potential risks or likely conflicts arising from the land acquisition and site development, including the possible displacement of people occupying

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the land, or impact on existing land users. If the pre-screening shows there are no potential risks – due, for example, to the land already being used for industrial purposes or as an undeveloped plot within a pre-existing and established industrial park, or its legal status – then a summary of the findings should be submitted to the business partner and adidas Group for our review and records.

STEP 2 - SITE INVESTIGATION: If the pre-screening shows gaps in information or potential risks or issues that would potentially impact those currently occupying or using the land, or the neighbouring community, then the assessor should engage with the business partner and proceed to conduct a site visit, meet and discuss the planned land acquisition and development with affected group and obtain information needed to determine the issues which must be addressed as part of a focused social impact assessment.

STEP 3 – STAKEHOLDER ENGAGEMENT: A primary concern with land acquisition and resettlement is that current owners, occupiers and users, are consulted with and have provided their **free, prior and informed consent** (FPIC) to any planned sale and resettlement or compensation plan. The independent assessor should engage with all relevant stakeholders, including affected people, local government agencies, etc., to determine that such consents have been freely given.

STEP 4 - REPORTING: Within 14 days of completing their investigations and engagements with stakeholders the assessor should complete an assessment report and submit this to SEA and the business partner for their review and comment. The report should indicate the project's positive and negative social impacts with respect to land acquisition, site development, and resettlement (if any). It should highlight if there are identified community impacts, or issues related to physical or economic displacement, or the resettlement of people. It should detail recommendations for mitigation to address those impacts.

STEP 5 - MITIGATION: The assessor should support the business partner in designing appropriate resettlement plans and/or restoration/compensation plans where people and users are likely to be displacement or otherwise impacted by the land acquisition and site development.

STEP 6 - REVIEW: Following completion of Step 5, a review should be conducted and a report given to adidas Group and the business partner, to confirm that the impacts on the community or individual users or occupiers has been successfully mitigated. A joint meeting should be held with the assessor, the business partner and adidas Group, to review the results and discuss next steps.

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Disclosure Checklist for Land Acquisition and Resettlement:

General Information

Factory Name:

Description of the business:

Address:

Form of investment:

Form of land acquisition/lease:

Name of business partners (if any):

Land Details:

Size of the land (acres or square meters):

Does the plot have access to public road or through another landowner’s property?

A map showing surrounding land:

List out the chronology of ownership of the land:

Question	Yes	No	Comments
Title and tenure:			
1. Is the original title deed available?			
2. Name of land holder.			
3. Is there any litigation case against the owner which may affect the land and property?			
4. Is the land registered and certified by Yangon City Development Committee (YCDC)?			
5. Is the land free of all form of encumbrances including mortgages, claims, charges, liens?			
6. Is the land free from pending investigation, actions, suits or proceeding that seek to prohibit, challenge or restrict the lease of property?			
7. Does the lease agreement registered at the Office of the Registration of Deeds?			
8. Does the registration and change of land ownership comply with the Transfer of Property Act (1882)?			
9. Prior to the intended use by the business partner, has the site been occupied or used by others and for what purpose and for how long?			

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10. Has there been any report of prior inhabitants of the plot according to the Department of Human Settlement and Housing Development in relevant to this land?			
11. What type of land the factory sets up Operation?*			
<ul style="list-style-type: none"> • Freehold Land • Grant Land • Agricultural Land • Garden Land • Grazing land • Cultivable land, Fallow Land and Waste land • Forest Land • Town land • Village land • Cantonments • Monastery <p>*For definitions, please see below</p>			
12. Is there any evidence of current zoning and land use classification and in comply with respect to City of Yangon Development Law and the City of Yangon Municipal Act 1992?			
13. Prior to the intended use by the business partner, has there been an indigenous person or communities occupying, using or accessing the land?			
14. Do the existing occupiers and/or users have any legal or other rights to the land?			
15. Are there any of the following present or immediately adjacent to the project:			
<ul style="list-style-type: none"> • Designated areas of archaeological importance? • Conservation areas? • Ancient Landscapes? 			
16. Is the project situated where involuntary restrictions on land use and access to natural resources cause a community or groups within a community to lose access to resources usage where they have traditional or recognizable usage rights? (see Note 1)			
17. Is the project situated in the area that require evictions of people occupying land without formal, traditional, or recognizable usage rights? (see Note 2)			
18. Is there any restriction on access to land or use of other resources including communal property and natural resources such as marine and aquatic resources, timber and non-timber forest products, freshwater, medicinal plants, hunting and gathering grounds and grazing and cropping areas?			
19. Is there any form of physical displacement (when people are forced to leave their homes or land) found as part of land acquisition?			

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20. Is there any form of economic displacement (when people lose access to assets, land or sources of livelihood) found as part of land acquisition?			
21. Was there any re-settlement action that would have resulted in expropriation or other compulsory procedure?			
22. If any negotiation for settlement was part of the process to acquire the land. Which party that the factory negotiated the settlement with – property owner or other owners with legal rights to the land?			
23. Is there any physical or economic displacement found from the project-related land acquisition and/or restriction on land use?			
Notes:			
Note 1: In such situations, affected persons frequently do not have formal ownership. This may include freshwater and marine environments.			
Note 2: While some people do not have rights over the land they occupy, it requires that non-land assets be retained, replaced, or compensated for; relocation takes place with security of tenure; and lost livelihoods are restored.			
Definitions and Terms:			
Freehold Land	Can be interpreted in the Myanmar Language as ancestral land. Ownership of such land is conclusive and the owner is not required to pay land revenue for it. It is <i>transferable</i> and can only be taken back by the government, for State interest, and in accordance with the “Land Acquisition Act”.		
Grant Land	It is owned by the government. Land at the disposal of the Government. It may be disposed of by grant or lease to any person or entity for a stipulated period which is explicitly spelt out in the document known in the Myanmar language as “Ga-Yan”, an apparent direct adoption of the word ‘Grant’. The lease period can range from 10 years, to 30 years to 90 years etc. This is extendible upon application. It is <i>transferable</i> and the owner is legally bound to pay land revenue with regards to it.		
Agricultural land	Land being utilized or kept in possession for agriculture purposes. This include paddy land, garden land on which vegetable and flower are grown, rubber plantation land and also virgin land occasioned by the diversion of the river current. The decision for allocation of agricultural land is taken by the concerned Village-tract Peace and Development Council which subsequently needs to be approved and confirmed by the concerned Township Peace and Development Council. Agricultural land is <i>not transferable</i> in accordance with the 1953 Land Nationalization Act Article 4.		
Garden Land	In a legal context, the term “Garden Land” is inclusive of the broader definition of the term “Agricultural Land”, types of crop(s) grown on it may be differ from those usually grown an agricultural land. Garden land is <i>not transferable</i> .		
Grazing Land	The concerned Village Tract Peace and Development Councils (VPDC) are assigned by law to look after and maintain grazing land in their respective village tracts. VPDC will see to it that there are no trespassers (occupiers) on grazing land and that is used only by the cattle owned by the people who are residents of the villages permitted access to it. VPDC will report to the township authority for necessary action if any non-compliance found.		
Cultivable Land, Fallow Land and Waste Land	This is a separate class of land over which the government may grant the right to cultivate/utilize to state-owned economic organizations, joint-ventures, or other organizations and private individuals on a commercial basis such as for agriculture, livestock breeding or aquaculture enterprises. Myanmar citizen have the right to apply for 5,000 acres at a time. If foreigners are involved in a group of applicants, the matter has to be referred to the Myanmar Investment Commission. A maximum period of 30 years may be granted to cultivate/utilize the land.		
Forest Land	It is declared and administrated by the Ministry of Forestry in accordance with the ‘Forest Law’. Forest land may not be re-designed into another category of land, unless the Ministry de-registers it from their registry.		
Town Land	Town Land applies under one exception which justifies a specific categorization under Land Nationalization Act 1953 (La Na 39 Land). It is <i>transferable</i> and could be eventually upgraded to be Grant Land by the government.		
Village Land	Village Land is situated out of bounds of ‘Town Land’. Village land could either be Grant Land or La Na 39 Land. Village Land is <i>transferable</i> . However in some villages, houses are built on plots which are still registered as Agricultural Land and have not yet been transformed into ‘Grant’ or La Na 39 type Land. In such case, the plot will not be transferable		
Cantonments	It is a specific type of land acquired by the government for exclusive used by the military which is also exclusively administrated by the military.		
Monastery	The Ministry of Home Affairs may declare an area of land as Monastery Land. Once it has been declared as such, status of the land remains unchangeable for good.		

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ANNEX 1: Approved List of Independent Assessors

Name	Contact name	Contact Details
Myanmabureau	Mr. Nigel Blackwood or Mr. Jeff Moore	26 Fontana Gardens, FMI City, Yangon Myanmar +95 942 0186519 +95 942 0031609 +95 950 15167 Email: jm@myanmarbureau.com Email: nb@myanmarbureau.com http://myanmarbureau.com/
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