

IIF: ENVIRONMENTAL AND SOCIAL SAFEGUARDS FRAMEWORK (ESSF)¹

A. Background

1. Infrastructure is seen as a critical constraint on economic growth in Indonesia but a series of attempts to lure back the private investors, many of them foreign, which had driven private infrastructure investment in the early 1990s, has failed. The Government of Indonesia (“GoI”) has now launched a broad range of measures to attract private, particularly domestic, investment to infrastructure. An important element of this effort is the development of domestic capacity to finance commercially viable infrastructure projects by complementing existing domestic financial institutions. As part of this effort, the GoI has decided to establish a new, specialized lending institution, PT Indonesia Infrastructure Finance (“IIF”), which will offer long term, mainly local currency, financing for infrastructure.

2. IIF has been established as a commercial financial institution, to mobilize domestic currency financing of appropriate tenor, terms and price for creditworthy infrastructure projects by: (i) using its good credit rating to borrow from domestic institutional investors and banks looking for long-term placements with margins higher than sovereign and large corporate offerings, and by (ii) providing financial products which meet the needs of infrastructure Public Private Partnership (“PPP”) and wholly private projects. IIF will be a non-bank financial intermediary with the capacity to assess infrastructure projects and with the long-term liabilities to match a portfolio of long-term assets. It is expected to focus on long-term senior and subordinated debt and minority equity positions, but its range of products is likely to broaden to credit enhancements, securitizations, advisory services and other mechanisms to promote infrastructure investment.

3. IIF will operate as a commercial entity, with market-based rates and fees. It will respond to market demand, and adhere to international best practices on corporate governance, operating policies and risk management; providing Indonesia with much needed infrastructure financing expertise. GoI has embedded this concept in its policy statements on IIF and it will be reflected in the structure and governance of the institution.

B. Project Objectives

4. The proposed project has two overall objectives: (i) strengthen and further develop the institutional framework of the financial sector to facilitate financing of commercially viable infrastructure projects; thereby resulting in (ii) increased provision of infrastructure in Indonesia. IIF is expected to achieve the first objective through building necessary capacity and skills, providing long-term financing, other innovative financial products, and advisory services. IIF’s ultimate objective is to increase the provision of infrastructure in Indonesia to support a more inviting investment climate, sustained growth, and poverty reduction in the long term

5. IIF is a non-bank private financing institution under Minister Finance Regulation Number 100/PMK.010/2009 regarding Infrastructure Financing Company, that will borrow from the local debt market and lend to viable infrastructure projects. In its initial establishment, its fund sources will come from the Asian Development Bank (“ADB”) and International Bank for Reconstruction and Development (“IBRD”) loans, and from

¹ This is a revised version of the draft ESSF following the public consultative meetings held by IIF on March 29, 2011 in Jakarta.

International Finance Corporation (“IFC”), Deutsche Investitions- und Entwicklungsgesellschaft mbH (“DEG”), ADB and GoI through PT Sarana Multi Infrastruktur (“SMI”) equities.

6. The IIF’s mandate will be flexible, to permit investments in infrastructure on a commercial basis. In the beginning, the fund likely will focus on sectors that put forward projects on a commercial basis to attract private sector investments. The sectors that IIF will have under its investment mandate will include:

- a. Transportation infrastructure, covering sea, river or lake ports, airports, railways and train stations;
- b. Road infrastructure, covering toll roads and toll bridges;
- c. Irrigation infrastructure, covering raw water channels;
- d. Drinking water infrastructure, covering intake building for raw water, transmission networks, distribution networks, drinking water processing plant;
- e. Waste water infrastructure, covering waste water processing plant, collection networks and main networks and garbage facilities covering transportation and disposal;
- f. Telecommunication infrastructure, covering telecommunication networks;
- g. Electricity infrastructure, covering power generation, transmission and distribution;
- h. Oil and gas infrastructure, covering oil and gas processing, storage, transportation, transmission or distribution;
- i. Other infrastructure projects which are not included in items a. to h. with the approval from the Minister of Finance.

C. Project Component and Financial Products

7. The project will have one component: an investment loan to the Borrower that will be made available to IIF as subordinated debt by the Borrower. World Bank – along with other development partners involved in the project – will approve an Operations Manual (OM) that will form the basis for IIF’s selection process regarding specific projects to support and the financial instruments through which to provide such support. World Bank will not be involved in approving individual subprojects that IIF chooses to support, provided that the Environmental and Social Unit in IIF has sufficient capacity to ensure that the IIF’s environmental and social policies will be met. However, World Bank will review the implementation of subprojects to ensure that the safeguard policies are properly followed.

8. In its initial operation, the IIF will focus on the following sectors: (i) energy; (ii) water and sanitation; (iii) transportation; and (iv) industrial and commercial infrastructure. Taking into account that Indonesia’s private infrastructure program is still in its infancy, and the fact that IIF is itself expected to play a significant role in development of the pipeline going forward, the Bank team has deliberately assumed a slow growth of the balance sheet of IIF. The Bank’s loan is expected to be fully disbursed over a four-year period (2009-2012).

9. IIF will have three main financial product categories:

- Fee based products provide fee income to IIF (for e.g.: for its advisory services) and do not involve any disbursement of IIF funds.
- Fund based products (for e.g.: senior debt, subordinated debt, mezzanine funding, equity investment, bridge finance, refinancing, securitization) do involve actual disbursement of Bank (through IIF) funds. The first five categories - senior debt, subordinated debt, mezzanine funding, equity investment, bridge finance - all involve financing for new infrastructure. The final two categories (refinancing

and securitization) involve raising financing on the basis of existing infrastructure (effectively as collateral), for the purpose of building new infrastructure.

- Non-fund based products - such as guarantees - involve contingent disbursement of Bank funds (through IIF). If a subproject to which IIF has provided a guarantee defaults on its loan obligations to another financial institution or other investors, only then is IIF required to pay the loan instead of the subproject. Therefore, this is a contingent disbursement of Bank funds. However, since there is the ex-post possibility that Bank funds may be disbursed, ex-ante, the same set of safeguard requirements as for fund-based products must apply.

D. Types of Subprojects According to the Level of Preparedness

10. IIF will offer different financial products and will consider for subprojects with different levels of preparedness or readiness for implementation. There will be four types of subprojects, which will require different types of review procedures:

- Type 1 – Subprojects in the early stages of preparation (with sites that have not been selected and design options that are still open): The IIF client will prepare and disclose all Environmental Assessment (EA) documents (EIA, EMP, SIA, RP, IPDP, etc.) prior to the approval of the subproject by IIF.
- Type 2 – Subprojects that have been fully prepared (where construction bids have been invited): IIF will review the EA documents that are available and will ask its clients to supplement them or develop new ones. All required documents must be disclosed prior to subproject approval.
- Type 3 – Subprojects under construction or with facilities that have already been constructed: IIF will carry out a due diligence to confirm that: (a) the subproject is in compliance with all applicable national environmental and social laws and regulations; (b) there are no reputational risks for the IIF and the World Bank Group (“WBG”); and (c) there are no legacy issues or no pending legal disputes or liabilities. Based on the findings of such an assessment, the IIF will ask its clients to implement remedial measures, if needed, or to mitigate potential reputational risks or to address legacy issues or liabilities.
- Type 4 – Fee-based advisory services: The ESSF must include procedures to ensure that all fee-based advisory services are provided in a manner that is consistent with the objectives of IIF’s policies and that do not create reputational risks for the WBG.

E. Objective of the Environmental and Social Safeguards Framework (ESSF)

11. The purpose of the ESSF is to provide the IIF, particularly the Environmental and Social Unit within its organizational structure, a set of policies and guidelines that will assist them in the screening, appraisal and supervision of the environmental and social aspects of subprojects.

12. The Framework outlines (1) the WBG policies that will apply to subprojects supported by IFF and (2) the implementation arrangements that will be put in place to ensure that these policies are implemented successfully and that subprojects meet all the applicable requirements of the WBG, as well as Indonesian laws and regulations.

13. The IIF will develop detailed procedures for the environmental and social review of subprojects. These procedures, which will be integrated into IIF’s Operations Manual, will cover subproject screening, appraisal and supervision.

F. Applicable Policies

14. It is not possible to determine prior to project implementation the various activities for which loan funds will be requested. The financing is for medium and large size subprojects that meet certain eligibility criteria.

15. IIF, as a Financial Intermediary (FI) supported by the WBG and IFC as well as ADB and DEG, will finance mostly *private sector* subprojects. For this reason, the ESSF will use the IFC's Performance Standards (PSs) as the governing core set of standards. The final ESSF will reconcile the differences between the PSs and the WB policies by following the guidance provided in the document "Environment and Social Policy and Procedural Guidelines for Projects Financed Jointly by Bank, IFC and/or MIGA", dated January 21, 2009.

16. The Operations Manual is being developed taking into account:

- Indonesian laws and regulations: The Law No. 32/2009 regarding Environmental Protection and Management, Presidential Regulation No. 36/2005, Presidential Regulation No. 65/2006. BPN Implementation Guideline No, 3/2007, Act No. 13/2003 concerning Man Power, Agrarian Law No. 5/1960, Forestry Law No. 41/1999, Food Security Laws No. 7/1996, Road Law No. 38/2004, Electricity Law No. 30/2009, and other relevant to IIF's infrastructure focus.
- The eight Performance Standards (PS) of the IFC (PS 1: Social and Environmental Assessment and Management System; PS 2: Labor and Working Conditions; PS 3: Pollution Prevention and Abatement; PS 4: Community Health, Safety and Security; PS 5: Land Acquisition and Involuntary Resettlement; PS 6: Biodiversity Conservation and Sustainable Natural Resource Management; PS 7: Indigenous Peoples; and PS 8: Cultural Heritage);
- The seven World Bank Safeguard Policies that could be triggered by IFF's subprojects (Environmental Assessment (OP/BP 4.01); Natural Habitats (OP/BP 4.04); Cultural Property (OP 4.11); Involuntary Resettlement (OP/BP 4.12); Indigenous Peoples (OP 4.10); Forests (OP/BP 4.36); and Safety of Dams (OP/BP 4.37); and
- The guidance provided in the document "Environment and Social Policy and Procedural Guidelines for Projects Financed Jointly by Bank, IFC and/or MIGA", dated January 21, 2009, to resolve any differences between IFC standards and Bank policy.

17. IIF's will follow one set of standards, as specified in its ESSF and Operations Manual.

G. Environmental Screening

18. Each subproject will be screened to determine the appropriate extent and type of EA. An environmental category will be assigned to the subproject, depending on the type, location, sensitivity, and scale of the subproject and the nature and magnitude of its potential environmental impacts. The screening process will also determine the scope of the safeguards instruments (e.g. EA, RAP) to be prepared.

19. Infrastructure investment subprojects (Types 1, 2 and 3) under this project are likely to have moderate to significant environmental and social impacts; they will be Category A or B subprojects under World Bank OP 4.12 on Environmental Assessment and IFC's Procedures for the Environmental and Social Review of Projects). Subprojects that involve fee-based advisory services (Type 4) will be assigned Category C.

H. Implementation Arrangements

20. The procedures to be followed for each type are defined in detail in the Operations Manual that has been approved by the WBG. The OM will contain procedures for screening subprojects and for ensuring that all project-associated adverse impacts are identified, effectively mitigated, and monitored.

21. The project OM will lead to the establishment of IIF's Environmental and Social Management System (ESMS). An Environmental and Social Unit is being created under IIF's Risk Management Unit. This unit will include environmental and social specialists, who will ensure that the IIF clients will comply to the social and environmental procedures and protocols in the OM²

22. The OM will contain all the necessary procedures to ensure that subprojects meet IFC's PS and WB Safeguard Policies. The procedures will cover the following aspects:

- Environmental screening and assignment of environmental category;
- Identification of the social and environmental impacts and risks of subprojects;
- Assessment and management of subproject impacts, including impacts on natural habitats, forests, and safety of dams, as applicable;
- Consultation and disclosure requirements for each type of subproject, consistent with Indonesian regulations and WBG policies;
- Land acquisition and resettlement, including procedures to compensate and rehabilitate affected persons;
- Indigenous Peoples, including procedures for free, prior and informed consultations; and
- Review of EA documents and the capacity of IIF's clients to manage environmental and social issues.

23. The OM will include an Indigenous Peoples Planning Framework (IPPF) and a Guidance for Land Acquisition and Involuntary Resettlement in compliance with the requirements of OP 4.10 and OP 4.12, and consistent with the requirements of PS5 and PS7. Both of these documents are included in the IIF's Operations Manual and in Attachments 1 and 2 of this ESSF. Consultation and Disclosure of ESSF

I. Consultation and Disclosure of ESSF

24. The draft of the ESSF had been developed on the basis of ADB-approved Safeguards Planning Document, which was subject to several rounds of consultations and disclosed locally and at the ADB's Website in English language. This draft was discussed with the project stakeholders, including participating development partners.

25. The environmental and social policies adopted in the draft ESSF have been discussed among the key project stakeholders, including IFC, WBG, the ADB, DEG, and GoI/Minister of Finance (Directorate General of State Assets). It has been agreed that the IIF will have one common ESSF that complies with the environmental and social policies of all the parties that will finance IIF. This ESSF is an update of the draft ESSF incorporating inputs from additional consultations carried out by the IIF on March 29, 2011 with key stakeholders,

² Details are presented in the OM Volume 1 on the Social and Environmental Management System, Chapter 3, 4, and 5.

including civil society. This final version of the ESSF, prepared prior to loan effectiveness, will be disclosed locally and at World Bank's InfoShop and is adopted as the basis for the environmental and social sections of the Operations Manual.

26. The consultations and disclosure carried out to date are appropriate, given the fact that specific subprojects to be financed by IIF have not yet been identified. The Borrower will continue to carry out consultations and disclosure activities as the ESSF is updated. Subproject specific safeguards instruments will be subject to consultations and disclosure by IIF's clients, as required by Bank Policies.

27. IIF's clients will disclose EA reports, Resettlement Action Plans (RPs), Indigenous Peoples Development Plans, etc., in the client's websites, a public place accessible to affected groups, local NGOs and other stakeholders.

28. As a core part for updating the Environmental and Social Safeguards Framework (ESSF), IIF held a two separate consultation meetings with private sector and key government agencies, and relevant non-governmental organizations (NGOs) on March 29, 2011. Twenty-four participants representing different stakeholders from the government, civil society organizations, academe, private sector and development agencies attended the Public Consultation Meeting to consider IIF Environmental and Social Safeguards Framework. These meetings were conducted to: a) seek inputs on the IIF's ESSF from private sectors, key government agencies, relevant NGOs, and other institutions, b) socialize IIF's corporate commitment that will follow international best practices in ensuring that the projects it funds meet the requirements of its ESSF. The inputs are incorporated in this final ESSF.

J. Exclusion list

29. IIF will not finance activities that are not eligible for financing by the World Bank or the IFC (see Attachment 3).

Attachment 1: Guidance on the Land Acquisition and Involuntary Resettlement³

1. This Section provides guidance on the application of Principle 5 (Involuntary Resettlement), as described in Annex C of the IIF Operations Manual. This guidance applies to Type 1, 2, and 3 project categories.

LAND ACQUISITION PROCEDURES FOR PROJECTS SUPPORTED BY IIF

2. Land for an IIF project can be acquired with government assistance and through procedures defined by Indonesian Regulations if two conditions are met: (1) the project is considered to be in the public interest and (2) the area to be acquired is larger than one hectare.

3. The following projects are considered in the public interest: public roads, toll road, rail, water supply, waste water system and sanitation; dam, irrigation and irrigation facilities; airports, seaports, railway station and terminal; garbage disposal, cultural and natural resources; power plants, transmission and electricity distribution lines; and public safety.

4. Projects that are not classified as projects in the public interest, or require an area that is smaller than one hectare, must be acquired directly from the owner through a purchase, trade, or other voluntary method, without resorting to the procedures defined in the presidential regulations.

5. IIF clients that implement projects that are classified in the public interest and require the acquisition of an area that is larger than one hectare have two options. The first is to acquire the land directly, through negotiations. The second is to do it with the assistance of government. If the first method fails, they can request government assistance. The land acquisition procedures with government involvement require negotiations with the affected land owners; however, if the negotiations fail, the private developer can get access to the land through expropriation or by consigning the compensation offered with the courts.

Land Acquisition Procedures following existing regulations

6. The procedures that must be followed to acquire land for public purposes are described in (1) the Presidential Regulation No. 36/2005 (Perpres 36/2005) on “Land Provision for Development Activities in the Public Interest”, revised by Presidential Regulation No. 65/2006 (Perpres 65/2006) and (2) Implementation Guidelines No. 3/2007 for Perpres 36/2005 and Perpres 65/2006 issued by the National Land Agency (*Badan Pertanahan Nasional*—BPN). These procedures are summarized below, along with the supplemental actions that need to be implemented to comply with Principle 5 (the supplemental actions are described in the indented paragraphs).

Definition of project area

7. The government institution that requires land for Projects submits the project proposal to the District Heads/Mayors of the districts/cities where the Project is located or to the Governor of Jakarta (GoJ) in cases of Projects within the Special Capital Region of Jakarta⁴. If the District Head/Mayor (or GoJ) considers that the Project is appropriate, they issue a “determination of location”, defining the Project area⁵.

³ Refer to the IIF Operations Manual for details, Annex C on Principle 5.

⁴ BPN Implementation Guidelines No 3/2007, Article 2, subsection (1); Article 5, subsection (3).

⁵ Ibid, Article 5, subsections (1) to (3)

Establishment of the Land Provision Committee

8. The District Heads/Mayors (or the GoJ) establish a Land Provision Committee (LPC) or *Panitia Pengadaan Tanah* (P2T) to facilitate land acquisition. The LPC is chaired by the District Head (*Sekda*) other regional heads and includes members from relevant government agencies (e.g., Land Agency, Technical Agency requiring the land, Administrative Agency, sub-district head (*camat*) and chief of village (*lurah*)).

Consultations with affected communities and/or holders of land rights

9. After the Project area has been defined, the LPC explains the Project to the affected communities and/or holders of land rights by way of public consultation, face-to-face consultations, and dissemination of information through the media⁶.

Supplemental actions or procedures:

- Consultation meetings are organized with all categories of PAPs (not just land owners). PAPs are provided with information on the potential impacts of the project and their rights and obligations under this Guidance for Land Acquisition and Involuntary Resettlement.
- The concerns expressed by the PAPs during the consultation meetings and the actions proposed to address such concerns are recorded in the Resettlement Plan.

Inventory of affected land and other assets

10. The LPC carries out an inventory of affected land and other assets⁷. The inventory of affected land and other assets is carried out after the project designs are available.

Supplemental actions or procedures:

- The LPC carries out the inventory of affected land and other assets with the assistance of a project consultant, if such assistance is requested by LPC.
- The inventory of affected land and other assets includes the following information for each household that loses land or their assets: (i) total size of the plot affected, area to be taken for the Project, and area of the residual land; (ii) structures affected, indicating the percentage of the structure to be affected by the Project; the legal status of land to be taken; and (iii) description of land use in the lot affected – residential, commercial, agricultural.
- The inventory distinguishes between total and partial land takings. In cases of partial land takings, the inventory will indicate if the residual land is economically viable. In cases of dwellings and business structures, the inventory will indicate if the residual land/building is sufficient for shelter or work place.

Identification of displaced persons/households

11. The LPC produces a list with the names of the land owners or holders of land rights affected by the Project⁸.

⁶ Perpres 36/2005, Article 7, as revised by Perpres 65/2006; BPN Implementation Guideline, Article 8.

⁷ BPN Implementation Guidelines No 3/2007, Articles 20 to 24.

⁸ BPN Implementation Guidelines No 3/2007, Articles 20 to 24.

Required supplemental actions to comply with Principle 5

- The LPC carries out a census of all the occupants of the affected area, including renters and occupants without rights to the land affected. The date of completion of the census is the cut-off date to determine the persons in the Project area who are entitled to compensation, rehabilitation assistance and rehabilitation support. Subsequent inflows of people are excluded from these benefits.
- The census of displaced persons/households is carried out with the assistance of a project consultant, if such assistance is requested by the LPC.
- The census identifies the persons/households that must move to another location, distinguishing between:
 - PAPs who must move permanently and PAPs who must move temporarily; and
 - PAPs who can rebuild their homes within the residual land and PAPs who must move to another location because their residual land is not economically viable.
- The census also identifies displaced persons or households that lose more than 20% of their productive assets.
- A socio-economic study is carried out, covering all PAPs/ PAHs that lose more than 20% of their productive assets and/or are forced to move to another location. In such cases, displacement can affect the income-earning opportunities and livelihoods of displaced persons, which makes it necessary to collect basic socio-economic data on them, including data on income, sources of livelihood and living conditions, as appropriate. The survey will constitute the “baseline” of the social and economic conditions before the implementation of the Project. Progress in the implementation of income or livelihood restoration measures will be monitored against the baseline information generated by the survey⁹.

Dissemination of information on affected persons and assets

12. The list of affected assets and of the owners of the assets is announced in the village offices, municipal/district offices and in websites for 7 days and/or in two publications in order to enable the parties affected to raise their objections¹⁰.

Required supplemental actions to comply with Principle 5:

- The results of the inventory of affected persons and assets is displayed for 30 days in the village office (*kantor kelurahan* for urban areas and *kantor desa* for rural areas) in order to enable affected persons to submit their objections. If affected persons raise objections within this period, the grievance procedure is activated (see paragraph 19 and Principle 5 Annex C of the OM).

⁹ The survey should permit the assessment of the impact of land acquisition and/or relocation on the PAP's patterns of economic and social activity, including impacts on social networks and social support systems. The survey should produce all the information that is necessary to monitor the progress towards the full rehabilitation of displaced households.

¹⁰ BPN Implementation Guidelines No 3/2007, Article 23 (3).

- Establishment of a Cut-off Date. The cut-off date for determining the persons eligible for compensation and other forms of support under this Guidance for Land Acquisition and Involuntary Resettlement will be the date of the announcement of the results of the census of the population affected by a project. Persons who occupy the area after this date will not be entitled to benefits under the Guidance for Land Acquisition and Involuntary Resettlement. The cut-off date for determining the eligibility for compensation and other supports under this Guidance for Land Acquisition and Involuntary Resettlement will be the date on which project affected persons, land and other assets attached to land, income sources, means of livelihood, and/or access to income sources, means of livelihood, are clearly identified through a census survey, provided that (i) all the land potentially affected by a project has been clearly delineated through aerial photography, ground survey, and confirmed by the detailed engineering design; and (ii) information on the area delineated is disseminated in an effective, systematic and continuous manner to the affected persons within the delineated area.

Valuation of affected land and other assets

Valuation of land

13. The value of affected land is determined by a Land Appraising Institution¹¹ appointed by the District Heads/Mayors or the GoJ. In cases where there is no Land Appraising Institution in the municipality or district or city where the project is located, or in the surrounding municipalities, the District Heads/Mayors or the GoJ establish a “Land Appraisal Team” (LAT), which appraises the land based on the Selling Value of Taxable Objects (SVTO) or by observing the SVTO of the current year. The LAT can consider other factors affecting land price, such as location¹².

Required supplemental actions to comply with Principle 5:

- The value of the affected land is determined by a Land Appraising Institution or a licensed land appraiser.

Valuation for buildings and other objects related to the land

14. The valuation for building and other objects related to land (including trees and crops) shall be conducted by the Head of Office in municipalities/regencies in charge of buildings, plants and other objects related to land, based on the price standard having been stipulated by the regulation of the Law¹³.

Required supplemental actions to comply with Principle 5:

- Buildings and other objects related to the land will be valued at their “replacement cost”, i.e., the market cost of the materials to build a replacement structure with an area and quality similar to those of the affected structure, or to repair a partially affected structure, plus the cost of transporting building materials to the construction site, plus cost of any labour and contractors’ fees. In applying this method of valuation, depreciation of structures and assets will not be taken into account.

¹¹ “Land Price Appraising Institutions” are defined in Article 1 of the BPN Implementation Guidelines No 3/2007 as “professional and independent institutions that possess the skill and ability in land appraisal”. Article 25, subsection 2, of the same Guidelines state that Land Appraising Institutions must be licensed by the National Land Agency.

¹² BPN Implementation Guidelines No. 3/2007, Article 26, subsection (1); Article 28.

¹³ Ibid, Article 29.

Compensation

Deliberations on the compensation

15. The results of the appraisal are submitted to the LPC and are used as the basis for the “deliberation” on the “form and/or the amount of compensation” between government institutions requiring the land and the owners affected¹⁴. The deliberation is conducted “directly and collectively” between the government institutions and the owners¹⁵. If the number of owners makes direct deliberations impossible, the deliberations can be conducted in stages¹⁶. The deliberation can last up to 120 calendar days¹⁷.

Required supplemental actions to comply with Principle 5:

- Before beginning the deliberations on the form and/or the amount of compensation, the LPC will share the results of the appraisal carried out by the Land Appraising Institution or the licensed land appraiser with the affected land owners.
- In cases where a Project displaces persons whose livelihoods are land-based, such persons will be offered replacement land whenever possible.

Compensation payment or offer

16. After the end of the deliberation period, the government institution requiring the land presents a compensation payment or makes a compensation offer, all of which is included in official reports. If the compensation is in the form of money, the LPC orders the institution requiring the land to pay the compensation 60 days at most since the date of the decree of the Land Provision Committee stipulating the form and/or amount of compensation¹⁸. The invitation to receive compensation must be received by the land owners at least 3 days prior to the date of payment¹⁹. If the compensation is in a form other than money, the timing of the compensation is agreed by the owners and the government institutions requiring the land. Persons who lose land or other assets should be compensated before their land and/or other assets are taken for the Project.

Forms of compensation

17. The compensation can be in the form of (1) cash; (2) substitute lands and/or buildings; (3) resettlement; or (4) a combination of two or more of the previous forms of compensation²⁰. Compensation in the form of replacement land and/or buildings will be given according to the wish of the owners and as agreed by the government institutions requiring the land²¹.

Required supplemental actions to comply with Principle 5:

¹⁴ BPN Implementation Guidelines No. 3/2007, Articles 30 and 31.

¹⁵ Ibid, Article 32, subsection (1). If a collective right is affected, deliberations are carried out by all holders of the collective right; and if a wakaf property is affected, deliberations are carried out with the parties as stipulated in Law No. 41/2004 on wakaf (Article 32, subsection (2)). Wakaf (charitable trust/endowment) is defined in Article 1, subsection (1) of Law No. 41/2004 as the legal act of a Wakif (the donator) in dividing and/or transferring part of their wealth either permanently or for a set period for religious purposes and/or public welfare in accordance with the Syar'iyah (Islamic Law).

¹⁶ BPN Implementation Guidelines No. 3/2007, Article 33.

¹⁷ Ibid, Article 37, subsection (1).

¹⁸ Ibid, Articles 40 and 44.

¹⁹ Ibid, Article 44.

²⁰ Perpres 65/2006, Article 13 ; BPN Implementation Guidelines No. 3/2007, Article 45.

²¹ BPN Implementation Guidelines No. 3/2007, Article 45 (a).

- If replacement land is offered, such land will be of equal or higher value, considering factors such as size, location, productive potential, etc.
- In cases where a project displaces persons whose livelihoods are land-based, such persons will be offered replacement land whenever possible. The provision of cash compensation to this type of displaced person is not appropriate, except in cases where the land taken for the project constitutes a small fraction (less than 20%) of the affected asset and the residual land is economically viable or active markets for land exist near the Project area and there is sufficient supply of land.
- If it is not possible to offer substitute lands to persons whose livelihoods are land based and who lose more than 20% of their productive assets, the procedures described in Section 3.1.19 on Economic Displacement of Principle 5 in Annex C of the OM will be followed.

18. In the case of *wakaf* properties (properties donated for religious or charitable purposes and that are put in a trust) compensation will be in the form of land and/or buildings and/or other facilities of at least the same value as that of the revoked *wakaf* properties²². In cases where *ulayat* land (land over which a community has customary land rights) is affected by a Project, the compensation will be in the form of public facilities or other facilities that contribute to the welfare of the affected communities²³.

Required supplemental actions to comply with Principle 5:

- Communities affected by the loss of land over which they have customary rights (*ulayat* land) will be offered compensation based on consultations with them, and could consist of public facilities, replacement land or cash, depending on their preferences.

Grievance procedure

19. The owners that object the LPC's decision on the form and/or amount of compensation can raise their objections to the District Heads/Mayors or the GoJ or the Minister of Internal Affairs during a period of 14 days, following the LPC's decision. These authorities must make a decision on the objections within 30 days and confirm or modify the form and/or amount of compensation.²⁴

Procedures if negotiations fail

20. If the land owners do not agree to relinquish their rights and the project location cannot be changed, the LPC proposes to the District Heads/Mayors or to the GoJ to apply Law No. 20/1961 (Revocation of Rights to Lands and Objects upon them)²⁵. If these authorities or the Minister of Internal Affairs decide to resolve the disagreement by revoking land rights on the basis of Law 20/1961²⁶, the LPC issues a decision on the form and/or amount of compensation and orders the government institutions requiring the land to consign the compensation to the District Court whose legal territory covers the location of the land for public interests²⁷. Projects can begin after the compensation has been consigned in the District

²² BPN Implementation Guidelines No. 3/2007, Article 45 (b).

²³ Ibid, Article 45 (c).

²⁴ Ibid, Article 41.

²⁵ Ibid, Article 19.

²⁶ Ibid, Articles 41 and 42.

²⁷ Ibid, Articles 38 and 40.

Court and the District Head/Mayor (or GoJ) has issued a decree for the implementation of the physical development²⁸.

Required supplemental actions to comply with Principle 5:

- If the land owners affected by a project do not agree to relinquish their rights, and IIF cannot verify that a compensation that meets the requirements of section has been offered prior to the land take, the project will be excluded from IIF's investment program.

Procedures for acquiring the land through direct negotiations

21. If the IIF project is classified as a project in the public interest and the area required exceeds one hectare, the IIF client has the option to request government assistance to acquire the land and has the legal means to obtain the land without the consent of the owner. These transactions, therefore, are Type II transactions (negotiated settlements) under Principle 5. If the transactions require relocation of people, the IIF client is required to develop a resettlement plan that covers the applicable requirements of this Principle 5. The IIF client will document all transactions to acquire land rights, as well as compensation measures and relocation activities. The client will also establish procedures to monitor and evaluate the implementation of resettlement plans and take corrective action as necessary.

22. In the case of negotiated land purchases that do not require relocation, the IIF client will develop procedures to offer to the affected persons and communities compensation and other assistance that meet the objectives of Principle 5.

TYPES OF PROJECT AFFECTED PERSONS (PAPs) AND THEIR ENTITLEMENTS

23. There are two general categories of PAPs for the purposes of defining entitlements under this Guidance for Land Acquisition and Involuntary Resettlement:

- PAPs with rights to the land affected by the project
- PAPs without rights to the land affected by the project

PAPs with rights to the land affected by the project

24. According to Indonesian regulations, persons with rights to the land affected by projects in the public interest are entitled to compensation for loss of land and assets related to the land. Persons in this category include "lawful owners of the land affected, or anyone who has rights over such land, and the *Nazhir* or recipient of donated *wakaf* properties²⁹".

25. Land titles in Indonesia are regulated by Law No. 5/1960³⁰ and issued by the National Land Agency or Badan Pertanahan Nasional (BPN). Land titles, also called land certificates, include:

- *Hak Milik* or right to own title, which confers full ownership rights over land and is roughly equivalent to Freehold title of English common law jurisdictions;

²⁸ Ibid, Article 67.

²⁹ Perpres 36/2005, Article 16 (1) ; BPN Implementation Guideline, Article 43 (1). Wakaf is the dedication of properties by a Muslim through a will or otherwise for purposes recognized by Islamic law as pious, religious or charitable.

³⁰ UU 5/1960, also known as UUPA (Undang-undang Pokok Agraria) or Basic Agrarian Law Act. Despite the word "Agrarian" in the title, UU 5/1960 does not only regulate rural land, but all land, including urban land, forests, rice lands, plantations, mines and coastal waters, including fisheries.

- *Hak Guna Bangunan* or right to build title, which confers the right to construct and own buildings on state-owned land³¹;
- *Hak Pakai* or right to use title, which confers the right to use land for any purpose³²; and
- *Hak Guna Usaha* – right to cultivate title, which confers the right to use state-owned land for agricultural purposes³³.

26. However, the vast majority of land in Indonesia is not registered at the BPN. Land rights are based on traditional title (*Hak Adat*) or documents issued by local officials that demonstrate land ownership, such as property tax receipts and contracts of sale of the land in question.

27. In proposed projects, the following persons and communities will be considered “holders of land rights”, i.e., persons or communities with rights to the land affected by a project:

- PAPs holding land rights titles or certificates issued by the local office of the National Land Agency or *Badan Pertanahan Nasional* (BPN), including full ownership titles (*Hak Milik*), right to build titles (*Hak Guna Bangunan*), right to use titles (*Hak Pakai*), or right to cultivate titles (*Hak Guna Usaha*).
- PAPs holding documents issued by local officials³⁴ that demonstrate ownership (normally a property tax receipt³⁵, accompanied by other documents such as the contract of sale of the land in question and receipts of payment of public services, such as water and electricity);
- communities with traditional land rights (*Hak Ulayat*);
- PAPs (individuals) with traditional rights (*Hak Adat*); and
- the Nazhir or recipient of donated *wakaf* land.

28. According to Perpres 36/2005, all holders of land rights affected by a Project are entitled to compensation for loss of land and other assets on the land. In a proposed projects, holders of land rights are also entitled to relocation assistance (if they must relocate as a result of land acquisition for the project) and rehabilitation support (if they suffer losses of income and/or livelihoods).

29. In proposed projects, PAPs who do not fall under any of the categories in paragraph 27 above at the time the census begins, but have a claim to such land or assets (derived, for example, from adverse possession or from continued possession of public lands without government action for eviction), will be treated as holders of land rights, as long as such

³¹ A right to build title is typically granted to Indonesian citizens or legal entities for a maximum period of 30 years, and has to be renewed every 20 years. It can be converted into full a full ownership title (*Hak Milik*).

³² A right to use title (*Hak Pakai* – HP) is normally granted for a period of 25 years and can be renewed every 20 years.

³³ The Land Cultivation Title (*Hak Guna Usaha* – HGU) is granted to Indonesian citizens or legal entities for periods of 25 to 35 years, and can be renewed every 25 years if the land is deemed to be managed and utilized properly.

³⁴ Sub-district head (*camat*) or the village head (*lurah* or *kepala desa*).

³⁵ The property tax receipt (*Pajak Bumi dan Bangunan* – PBB).

claim is recognized under Indonesian legislation³⁶ or through a process specified in the Resettlement Plan.

PAPs without rights to the land affected by the project

30. PAPs without rights to the land affected by the project - PAPs occupying the land required by the project, but do not have any recognizable legal right or claim to the land they occupy, fall under two categories:

- a. Renters or tenants, including agricultural tenants and sharecroppers
- b. Informal occupants of the land without any land certificate or claims to land (based on tax receipts or other evidence of ownership, *Hak Adat*, or other evidence of rights to land), including:
 - Informal occupants of privately owned land (in residential, agricultural, commercial or industrial zones) without rights to land derived from rental/lease agreements or adverse possession; and
 - Informal occupants of public land without a legally valid claim to such lands derived from its continued possession without government action for eviction, including occupants of sites such as roads, parks, or other public facilities in the Project area.

31. Renters or tenants - According to Law 20/1961 on the Revocation of Land Rights, people who lose their residence or their source of income as a result of the revocation of land rights should be provided with shelter (replacement housing) or replacement land³⁷.

32. In proposed projects, displaced renters who are in the project area at the time of the census will be assisted in finding a rental-house, or a housing site of similar size to the one lost, which can be rented or rent-purchased through affordable installments.

33. Informal occupant - Occupants without land rights are not entitled to compensation, relocation assistance or rehabilitation support under Indonesian legislation, except for persons with cultivation and other use rights, who are entitled to compensation for the loss of assets related to the land³⁸. Informal dwellers and commercial establishments without rights to the land are not mentioned in Perpres No. 36/2005 (as amended by Perpres 65/2006) or in the BPN Regulation No. 3/2007; however, it is common practice among municipalities and other government agencies to offer them small cash payments to encourage them to leave the project area. This practice forces informal occupants to relocate to public or hazardous areas without access to basic infrastructure or services.

34. In proposed projects, informal occupants without land rights, as defined in the Section PAPs without rights to the land affected by the project (paragraph 30 above), are entitled to compensation for the loss of assets other than land, plus relocation assistance (if they must relocate as a result of land acquisition for the project) and rehabilitation support (if they suffer losses of income and/or livelihoods). Displaced persons without land rights include occupants of hazardous areas, such as rights-of-way of roads, and other public areas over which land rights cannot be acquired.

³⁶ According to Government Regulation 24/1997 (PP 24/1997), persons who occupy a parcel of land for twenty consecutive years are eligible to obtain a land title or certificate over such land.

³⁷ Law 20/1961, Explanation of Article 2.

³⁸ Law 20/1961, Explanation of Article 2 and BPN Implementation Guideline, Article 43 (2).

REVIEW, APPROVAL, DISCLOSURE AND IMPLEMENTATION OF RESETTLEMENT PLANS AND FRAMEWORKS

In the case of Type 1 and 2 projects³⁹ in which the resettlement impacts are certain, because the zone of impact or precise sitting alignments can be determined by appraisal, Resettlement Plans must be approved by IIF's Risk Management/E&S Unit and made available to the affected communities prior to Board consideration. The contents of a full Resettlement Plan and an Abbreviated Resettlement Plan are described below.

In the case of Type 1 and 2 projects in which the zone of impact and precise sitting alignments of the project or specific subprojects cannot be determined during project appraisal, the IIF client will prepare a Resettlement Framework, which must be approved by IIF's Risk Management/E&S Unit prior to Board consideration, as specified in the OM. The contents of a Resettlement Framework are described below.

In the case of Type 2 and 3 projects⁴⁰ in which resettlement has already occurred, IIF's Risk Management/E&S Unit will carry out a due diligence to see whether past resettlement was carried out according to the requirements of the OM. Should there be inconsistency between the handling of IP communities and IIF requirements, IIF will request the client or developer to prepare an Action Plan in accordance with IIF requirements.

The client or developer will implement all Resettlement Plans prior to commencement of construction. The IIF will ensure that the Resettlement Plan has been satisfactorily implemented.

IMPLEMENTATION OF RESETTLEMENT PLANS

39. During the implementation of the RP or Abbreviated RP and/or Action Plan (as applicable), the client or developer will provide regular progress reports to the IIF (the S&E Unit). Construction can commence after the PAPs have accepted the compensation offered.⁴¹

CONTENTS OF A RESETTLEMENT PLAN

Below is a description of the contents of a Resettlement Plan, which should be prepared for all projects that cause physical displacement (relocation of people) or significant economic displacement. If the project does not cause physical displacement, or if the economic impact of land acquisition is minor,⁴² an Abbreviated Resettlement Plan can be prepared (the contents of an Abbreviated Resettlement Plan are described below).

Executive Summary

An executive summary is a succinct report on the key aspects of the Resettlement Plan. It should cover the salient points in the resettlement plan.

Project Description

³⁹ Project types are defined according to the level of preparedness. Type 1 projects are those in the early stages of preparation (with sites that have not been selected and design options that are still open). Type 2 projects are those that have been fully prepared (where construction bids have been invited). See Chapter 1.2 of the SEMs.

⁴⁰ Type 2 projects are those that have been fully prepared (where construction bids have been invited). Type 3 projects are those under construction or with facilities that have already been constructed. See Chapter 1.2 of the SEMs.

⁴¹ Perpres 36/2005, Article 3, paragraph 1; BPN Implementation Guideline, Article 67, paragraph 1.

⁴² The economic impacts of land acquisition are considered "minor" if the affected people are not physically displaced and less than 10 percent of their productive assets are lost.

- i. General description of the project, discussion of project components that result in land acquisition or involuntary resettlement or both, and identification of the project area.
- ii. Description of alternatives considered to avoid or minimize resettlement. Include a table with quantified data and provide a rationale for the final decision and why remaining effects are unavoidable.
- iii. State the main objectives of the RP.
- iv. For clarity, please also indicate whether the project is based on a feasibility study and state the arrangements for updating the RP after detailed technical/engineering design and detailed measurement survey and submission for review and approval.

Scope of Land Acquisition and Resettlement

- i. Discuss the potential impacts of the project. Include maps of the areas or zone of impact of such components or activities.
- ii. Describe scope of land acquisition (use maps), and why it is necessary for the main investment project.
- iii. Summarize the key effects in terms of assets acquired and affected persons, including a table.
- iv. Provide details of any common property resources.
- v. Describe the consultation process with agencies responsible for land acquisition and resettlement.
- vi. Briefly discuss the national legal framework for land acquisition including an overview of the laws, regulations and guidelines that apply to land acquisition and resettlement. Include procedural requirements, and timelines.

Socioeconomic Information/Profile

The socioeconomic survey, while providing data, should be accompanied by a careful analysis/impact assessment disaggregated by gender, vulnerability, and other social groups.

- i. Define, identify and enumerate the people to be affected.
- ii. Describe the likely impact of land and asset acquisition on the people affected, taking into account social, cultural and economic parameters; prepare disaggregated tables.
- iii. Discuss project impacts on the poor, indigenous/ethnic minorities, and other vulnerable groups.
- iv. Identify gender and resettlement impacts. Identify the socio-economic situation, impacts, needs, and priorities of women.
- v. Core tables to be prepared for this section:
 - a. Socioeconomic profile of the affected persons disaggregated by gender
 - b. Vulnerability and risk analysis

Information Dissemination, Consultation, Participatory Approaches, and Disclosure Requirements

- i. Identify project stakeholders, specifically primary stakeholders.
- ii. Describe the mechanisms for consultation to be conducted during the different stages of the project cycle.
- iii. Describe the activities undertaken to disseminate information.
- iv. Summarize the results of consultations with affected persons (including host communities) and discuss how concerns raised and recommendations made were addressed in the RP.
- v. Confirm disclosure of draft resettlement plan to affected people and include arrangements to disclose any subsequent plans.

Grievance Redress Mechanisms

- i. Mechanisms for resolution of conflicts and appeals procedures.
- ii. Describe the grievance redress framework (informal and formal channels) that will be put in place by the project proponent setting out the time frame and mechanisms for resolution of complaints about resettlement.

Policy and Legal Framework

- i. Describe the national and local laws and policies that apply to the project and prepare a gap analysis indicating how the gaps will be addressed.
- ii. Describe the principles, legal and policy commitments from the project sponsor for different categories of project impacts. Describe the principles and methodologies used for determining valuation and compensation rates at replacement costs for assets, incomes and livelihoods. Describe compensation and assistance eligibility criteria, and how and when compensation will be paid.
- iii. Describe the land acquisition process and prepare a schedule for meeting key procedural requirements.

Entitlements

- i. Define entitlement and eligibility of affected persons. Ensure all resettlement assistance, including transaction costs, are included.
- ii. Assistance to vulnerable groups and other special groups should be included.

Relocation of Housing and Settlements

- i. Description of options for relocation of housing and other structures, including replacement housing, replacement cash compensation, and/or self-selection. Ensure gender concerns and support to vulnerable groups are identified and integrated when preparing replacement housing programs.
- ii. Description of the alternative relocation sites considered, community consultations conducted, and justification for selected sites, including details on location, environmental assessment of site, and development needs.

- iii. Timetables for site preparation and transfer. Measures to assist with transfer and establishment at new sites.
- iv. Legal arrangements to regularize tenure and transferring titles to resettlers, including provision of joint titles as well as plot allocation to adult children as relevant.
- v. Transition housing should be avoided.
- vi. Ensure location-specific considerations to protect livelihood access to public services, etc.
- vii. Plans to provide civic infrastructure.
- viii. Integration with host populations.

Income Restoration and Rehabilitation

- i. Identify livelihood risks, prepare disaggregated tables based on demographic data and sources of livelihood.
- ii. Description of income restoration programs; include multiple options to restore all types of livelihoods. A few examples include:
 - a. Project benefit-sharing
 - b. Revenue sharing arrangements
 - c. Joint-stock for equity contributions such as land
- iii. Discuss sustainability and safety nets.
- iv. Social safety net through social insurance / project special funds.
- v. Special measures to support vulnerable groups.
- vi. Gender considerations.
- vii. Training programs should be supported by skills analysis and needs assessment.

Resettlement Budget and Financing Plan

- i. Itemized budget for all resettlement activities, including budget for resettlement unit, staff training, monitoring and evaluation, and preparation of RPs during investment implementation.
- ii. Describe the flow of funds. The annual resettlement budget should show the budget-scheduled expenditure for key items.
- iii. Include a justification for all assumptions made in calculating compensation rates and other cost estimates (taking into account both physical and cost contingencies), plus replacement value.
- iv. Include information about the source of funding for the RP budget.

Implementation Schedule

Include a detailed, time-bound, implementation schedule for all key resettlement and rehabilitation activities. (The schedule should be synchronized with the project's schedule of civil works construction).

Institutional Framework for Resettlement

- i. Main tasks and responsibilities of the groups responsible for resettlement preparation, implementation and monitoring should be described, including skills and number of staff.
- ii. Assessment of the institutional capacity of such agencies. Arrangements to build, including technical assistance, if required. Availability of logistics, finance, staff, and other necessary hardware.
- iii. Role of NGOs, if involved, and organizations of affected persons in resettlement planning and management. Involvement of women's groups in resettlement planning, management and operations, job creation and income generation. Arrangements to hire female staff by the resettlement agency to work with and assist women in all aspects of resettlement activities, including planning and implementation of income restoration programs.

Monitoring and Evaluation

- i. *Internal monitoring and evaluation:* Arrangements to monitor resettlement implementation. Describe institutional arrangements, logistics, staff, skills, timelines, and budget allocated.
- ii. *External monitoring and evaluation:* Arrangements to hire an external monitor. Ensure participation of affected people in internal and external monitoring and evaluation. Describe competencies, reporting arrangements, and timelines.

CONTENTS OF AN ABBREVIATED RESETTLEMENT PLAN

An Abbreviated Resettlement Plan can be prepared if the project does not cause physical displacement (relocation of people) and the economic impact of land acquisition is minor. These impacts are considered "minor" if the affected people lose less than 10 percent of their productive assets.

- i. A census survey of displaced persons and valuation of assets;
- ii. Description of compensation and other resettlement assistance to be provided;
 - a. consultations with displaced people about acceptable alternatives;
 - b. institutional responsibility for implementation and procedures for grievance redress;
- iii. Arrangements for monitoring and implementation; and
- iv. A timetable and budget.

CONTENTS OF A RESETTLEMENT FRAMEWORK

1. The purpose of a Resettlement Framework is to clarify resettlement principles and organizational arrangements to be applied to Type 1 and 2 projects in which the zone of impact and precise sitting alignments of the project or specific subprojects cannot be

determined during project appraisal. In such cases, Resettlement Plans will be prepared during project implementation, with the contents specified in this section, as relevant, and submitted to IIF for approval after specific planning information becomes available.

2. The Resettlement Framework covers the following aspects:
 - a) A brief description of the project and components for which land acquisition and resettlement are required;
 - b) Principles and objectives governing resettlement preparation and implementation, which should be consistent with Principle 5;
 - c) A description of the process for preparing and approving resettlement plans;
 - d) Estimated population displacement and likely categories of displaced persons, to the extent feasible;
 - e) Eligibility criteria for defining various categories of displaced persons;
 - f) Legal framework, including a description of the measures required to bridge the gaps between Indonesian legislation and Principle 5, and taking into account the supplemental actions or procedures specified in this Guidance.
 - g) Methods of valuing affected assets;
 - h) Organizational procedures for delivery of entitlements, including, the responsibilities of the government and the private developer;
 - i) A description of the implementation process, linking resettlement implementation to civil works;
 - j) A description of grievance redress mechanisms;
 - k) A description of the arrangements for funding resettlement, including the preparation and review of cost estimates, the flow of funds, and contingency arrangements;
 - l) A description of mechanisms for consultations with, and participation of, displaced persons in planning, implementation, and monitoring; and
 - m) Arrangements for monitoring by the implementing agency and, if required, by independent monitors.

Attachment2: Indigenous Peoples Planning Framework and Suggested Outline of an Indigenous Peoples Development Plan (IPDP)

1. The applicability of this Principle is established during the Social and Environmental Assessment process⁴³, while implementation of the actions necessary to meet the requirements of this Principle is managed through the client's Social and Environmental Management System. The assessment and management system requirements are outlined in Principle 1.
2. There is no universally accepted definition of "Indigenous Peoples". Indigenous Peoples may be referred to in different countries by such terms as "Indigenous ethnic minorities," "aboriginals," "hill tribes," "minority nationalities," "scheduled tribes," "first nations," or "tribal groups."
3. In this Principle, the term "Indigenous Peoples" is used in a generic sense to refer to a distinct social and cultural group possessing the following characteristics in varying degrees:
 - Self-identification as members of a distinct indigenous cultural group and recognition of this identity by others
 - Collective attachment to geographically distinct habitats or ancestral territories in the project area and to the natural resources in these habitats and territories
 - Customary cultural, economic, social, or political institutions that are separate from those of the dominant society or culture
 - An indigenous language, often different from the official language of the country or region
4. Ascertaining whether a particular group is considered as Indigenous Peoples for the purpose of this Principle may require technical judgment.

General Requirements

Avoidance of Adverse Impacts

5. The client will identify through a process of Social and Environmental Assessment all communities of Indigenous Peoples who may be affected by the project within the project's area of influence, as well as the nature and degree of the expected social, cultural (including cultural heritage⁴⁴), and environmental impacts on them, and avoid adverse impacts whenever feasible.
6. When avoidance is not feasible, the client will minimize, mitigate or compensate for these impacts in a culturally appropriate manner. The client's proposed action will be developed with the informed participation of affected Indigenous Peoples and contained in a time-bound plan, such as an Indigenous Peoples Development Plan, or a broader community

⁴³ Also refer to the IIF Operations Manual Annex C Principle 1 for Social and Environmental Assessment and Management System.

⁴⁴ Additional client requirements on protection of cultural heritage are set out in Principle 8.

development plan with separate components for Indigenous Peoples consistent with the requirements of Principle 7 in the Annex C of the OM⁴⁵.

Information Disclosure, Consultation and Informed Participation

7. The client will establish an ongoing relationship with the affected communities of Indigenous Peoples from as early as possible in the project planning and throughout the life of the project. In projects with adverse impacts on affected communities of Indigenous Peoples, the consultation process will ensure their free, prior, and informed consultation and facilitate their informed participation on matters that affect them directly, such as proposed mitigation measures, the sharing of development benefits and opportunities, and implementation issues. The process of community engagement will be culturally appropriate and commensurate with the risks and potential impacts to the Indigenous Peoples. In particular, the process will include the following steps:

- Involve Indigenous Peoples' representative bodies (for example, councils of elders or village councils, among others)
- Be inclusive of both women and men and of various age groups in a culturally appropriate manner
- Provide sufficient time for Indigenous Peoples' collective decision-making processes
- Facilitate the Indigenous Peoples' expression of their views, concerns, and proposals in the language of their choice, without external manipulation, interference, or coercion, and without intimidation
- Ensure that the grievance mechanism established for the project, as described in Principle 1, in Annex C of the OM, is culturally appropriate and accessible for Indigenous Peoples

8. The Risk Management/E&S Unit of IIF will ensure that the client or developer makes the IPDP available to the affected IP communities in an appropriate form, manner, and language prior to Board Consideration as specified in the OM.

Development Benefits

9. The client will seek to identify, through the process of free, prior, and informed consultation with and the informed participation of the affected communities of Indigenous Peoples, opportunities for culturally appropriate development benefits. Such opportunities should be commensurate with the degree of project impacts, with the aim of improving their standard of living and livelihoods in a culturally appropriate manner, and to fostering the long-term sustainability of the natural resource on which they depend. The client will document identified development benefits consistent with the requirements of Principle 7 in the Annex C of the OM, and provide them in a timely and equitable manner.

Special Requirements

10. Because Indigenous Peoples may be particularly vulnerable to the project circumstances described below, the following requirements will also apply, in the circumstances indicated, in addition to the General Requirements above. When any of these

⁴⁵ The determination of the appropriate plan will require technical judgment. A community development plan may be appropriate when Indigenous Peoples are integrated into larger affected communities.

Special Requirements apply, the client will retain qualified and experienced external experts to assist in conducting the Assessment.

Impacts on Traditional or Customary Lands under Use

11. Indigenous Peoples are often closely tied to their traditional or customary lands and natural resources on these lands. While these lands may not be under legal ownership pursuant to national law, use of these lands, including seasonal or cyclical use, by communities of Indigenous Peoples for their livelihoods, or cultural, ceremonial, or spiritual purposes that define their identity and community, can often be substantiated and documented. Principle 7 in Annex C of the OM specifies the requirements that the client will follow when traditional or customary lands are under use in a manner described in this paragraph.

12. If the client proposes to locate the project on, or commercially develop natural resources located within, traditional or customary lands under use, and adverse impacts⁴⁶ can be expected on the livelihoods, or cultural, ceremonial, or spiritual use that define the identity and community of the Indigenous Peoples, the client will respect their use by taking the following steps:

- The client will document its efforts to avoid or at least minimize the size of land proposed for the project
- The Indigenous Peoples' land use will be documented by experts in collaboration with the affected communities of Indigenous Peoples without prejudicing any Indigenous Peoples' land claim⁴⁷
- The affected communities of Indigenous People will be informed of their rights with respect to these lands under national laws, including any national law recognizing customary rights or use
- The client will offer affected communities of Indigenous Peoples at least compensation and due process available to those with full legal title to land in the case of commercial development of their land under national laws, together with culturally appropriate development opportunities; land-based compensation or compensation-in-kind will be offered in lieu of cash compensation where feasible
- The client will enter into good faith negotiation with the affected communities of Indigenous Peoples, and document their informed participation and the successful outcome of the negotiation

Relocation of Indigenous Peoples from Traditional or Customary Lands

13. The client will consider feasible alternative project designs to avoid the relocation of Indigenous Peoples from their communally held⁴⁸ traditional or customary lands under use. If such relocation is unavoidable, the client will not proceed with the project unless it enters into a good faith negotiation with the affected communities of Indigenous Peoples, and documents

⁴⁶ Such adverse impacts may include impacts from loss of access to assets or resources, or restrictions on land use, resulting from project activities.

⁴⁷ While this Principle requires substantiation and documentation of the use of such land, clients should also be aware that the land may already be under alternative use, as designated by the host government.

⁴⁸ Where members of the affected communities of Indigenous Peoples individually hold legal title, or where the relevant national law recognizes customary rights for individuals, the requirements of Principle 5 will apply, rather than the requirements under this heading.

their informed participation and the successful outcome of the negotiation. Any relocation of Indigenous Peoples will be consistent with the Resettlement Planning and Implementation requirements of Principle 5. Where feasible, the relocated Indigenous Peoples should be able to return to their traditional or customary lands, should the reason for their relocation cease to exist.

Cultural Resources

14. Where a project proposes to use the cultural resources, knowledge, innovations, or practices of Indigenous Peoples for commercial purposes, the client will inform the Indigenous Peoples of: (i) their rights under national law; (ii) the scope and nature of the proposed commercial development; and (iii) the potential consequences of such development. The client will not proceed with such commercialization unless it: (i) enters into a good faith negotiation with the affected communities of Indigenous People; (ii) documents their informed participation and the successful outcome of the negotiation; and (iii) provides for fair and equitable sharing of benefits from commercialization of such knowledge, innovation, or practice, consistent with their customs and traditions.

REVIEW, APPROVAL AND IMPLEMENTATION OF THE IPDP

14. During the appraisal of projects that affect Indigenous Peoples, the client or developer will prepare an IPDP, which will be reviewed by the IIF (i.e., the Risk Management/E&S Unit) for approval.

15. In the case for Type 2 or Type 3 projects (according to the level of preparedness, refer to Chapter 1.2 of the SEMS) that have had adverse impacts on Indigenous Peoples prior to appraisal, this Unit will carry out a due diligence to see whether these impacts have been addressed in a manner consistent with the objectives of Principle 7. Should there be inconsistency between the handling of IP communities and the objectives of Principle 7, IIF will request the client or developer to prepare an Action Plan to address such inconsistencies.

CONTENTS OF AN IPDP

Background and Context

- i. The project and project components
- ii. Brief description of indigenous peoples/ethnic minorities (IP/EM) in the relevant project country
- iii. Relevant legal framework
- iv. Summary of the findings of the Social Assessment (part of S&E Assessment), including among others:
 - a. Baseline data of IP/EM
 - b. Maps of the area of project influence and the areas inhabited by IP/EM
 - c. Analysis of the IP/EM social structure and income sources
 - d. Inventories of the resources used by IP/EM, and technical data on their production systems
 - e. Information on cultural practices and patterns
 - f. Relationships of IP/EM to other local/national groups
- v. Key positive project impacts on IP/EM
- vi. Key negative project impacts on IP/EM

Objectives of the IPDP

Explain the purpose of the IPDP

Development and/or Mitigation Activities

- i. Describe detail of development activities
- ii. Describe detail of mitigation activities

Strategy for IP/EM Participation

- i. Describe mechanism for participation by IP/EM in planning, implementation, and evaluation
- ii. Describe procedures for redress of grievances by IP/EM

Institutional Arrangements

- i. Identify main tasks and responsibilities in planning, managing, and monitoring development, and/or mitigation activities
- ii. Identify role of NGOs or IP/EM organizations in implementing the development and/or mitigation activities.

Budget and Financing

- i. Identify development and/or mitigation activity costs and funding resources

Supervision, Monitoring, and Evaluation

- i. Specify arrangements for supervision, monitoring, and evaluation
- ii. Implementation strategy and schedule
- iii. Prepare a plan for internal monitoring of the targets of the major development and/or mitigation activities

Attachment 3: List of Activities that will not be financed by IIF

1. Any activity with the use of radioactive materials
2. Commercial logging operations for use in primary tropical moist forest.
3. Drift net fishing in the marine environment
4. Introduction of genetically engineered organisms
5. Gambling, casinos and equivalent enterprises
6. Mining or excavation of live coral
7. Production of lead paints
8. Production or trade in tobacco
9. Production or trade in radioactive materials.
10. Production or trade in products containing PCBs
11. Production or trade in alcoholic beverages
12. Production or trade in weapons and munitions.
13. Production and/or use of asbestos containing products
14. Production, dissemination and sale of illegal pesticides
15. Production or trade in or use of unbonded asbestos fibers
16. Production or trade in wood or other forestry products from unmanaged forests
17. Production or trade in ozone depleting substances subject to international phase out
18. Production or trade in pharmaceuticals subject to international phase outs or bans.
19. Production or trade in pesticides/herbicides subject to international phase outs or bans.
20. Production or trade in any product or activity deemed illegal under host country laws or regulations or international conventions and agreements
21. Production or activities involving harmful or exploitative forms of forced labor/harmful child labor
22. Production, trade, storage, or transport of significant volumes of hazardous chemicals, or commercial scale usage of hazardous chemicals
23. Production or activities that impinge on the lands owned, or claimed under adjudication, by Indigenous Peoples, without full documented consent of such peoples
24. Purchase of logging equipment for use in primary tropical moist forest.
25. Trade in wildlife or wildlife products