

Managing Resettlement Risks for Multinational Corporations In China



Against a backdrop of increasing alignment between Chinese regulations and international expectations for land acquisition and resettlement, the frequency of resettlement disputes in China continues to gather pace, posing risks to both investors and government. ERM examines the reasons for this and provides guidance for avoiding common pitfalls.

Alignment of PRC and International Approaches

Chinese policy and legislation relating to land acquisition and resettlement is becoming increasingly aligned with international standards, including the International Finance Corporation's Performance Standard 5 (PS5): Land Acquisition and Involuntary Resettlement, 2006.

Fundamentally, Chinese resettlement policy and legislation is consistent with IFC PS5 in seeking to "restore the livelihoods and improve the standards of living of displaced persons". Despite sensationalist reporting in the international media, there are essentially no contradictions between the Chinese Land Administration Law and accepted international practice.



Pictured: Public Disclosure of Land Survey Results for Resettlement in Southwest China

Perhaps the most significant difference between Chinese regulations and international expectations for land acquisition and resettlement is not that which is covered by Chinese laws but

that which is not. In particular, IFC's PS5 contains detailed requirements during the planning and implementation of resettlement programs in consultation with affected communities that, until recently, were largely absent from Chinese regulations. In recent years, the Chinese government has promulgated a number of measures and procedures for the planning and execution of resettlement programs that partly address this issue.ⁱ However gaps remain, particularly in relation to planning for resettlement, disclosure of project information, consultation with affected households, documentation and monitoring.

ⁱ Examples include:

- The *Public Announcement Measure of Land Acquisition* requires disclosure of land acquisition plans and applicable compensation.
- *Decree No. 10 of the Ministry of Land Resources on Methods of Land Acquisition Notification* (1 January, 2002) provides transparency of compensation payments through public disclosure of payments related to collective compensation.
- The *Guideline for Provision of Job Retraining and Social Insurance for Farmers that Lose Land* (2006) provides requires restoration and insurance for farmers whose land is acquired.
- The *Property Law* (2007) for the first time provided limited rights to transfer or sublet rural land use rights.



Common reasons for resettlement disputes

Despite the established and robust regulatory framework for managing resettlement, disputes are the norm. Common reasons include:

- Failure by investors and government authorities to follow established legal requirements.
- Variable implementation of national and local regulations. A contributing factor is that provinces issue their own administrative measures for national laws and that the capacity of government to effectively manage resettlement programs varies between provinces (and in different counties within a province).
- Lack of upfront planning. Households are often resettled with cash payouts under “transitional arrangements” without planning for post-resettlement livelihood restoration or integration into host communities.
- A lack of effective mechanisms for grievance redress that may lead to community protests.
- Corruption.

Both Chinese and international press are awash with high profile cases that have caused embarrassment to both the government and investors involved. More common are the unreported land and resettlement disputes that arise from poor planning and consultation with local communities that end up in project delays that can be measured in months. International investors are generally inexperienced in dealing with such issues and the result is often long-term community resentment towards the companies and projects involved.

PRC Land Ownership and Administration

All land in China is owned by the State or by rural collectives (in the case of rural). The principal law governing land acquisition and resettlement in China is the Land Administration Law (2004). The law empowers lower level governments to issue local implementation guidelines and compensation standards (which may be updated annually) in accordance with the law.

Industrial land use transactions can be divided into two broad categories:

- 1) Leasing within an existing industrial park or development zone; or
- 2) Land acquisitionⁱⁱ, in rural areas involves conversion of collective-owned land for industrial use.

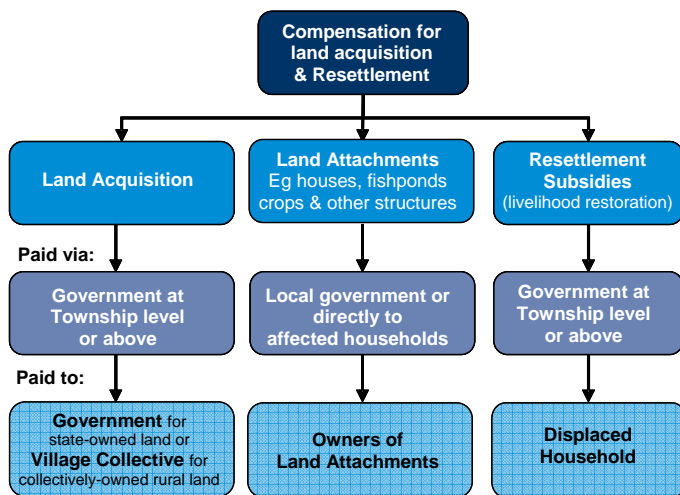
Clearly leasing land within an existing industrial park or development zone is the simpler alternative since the land acquisition and conversion for industrial use has already been undertaken by government. Some projects, notably extractive industries and agri-businesses, don't have the choice of being able to establish within existing development zones and hence acquisition of collectively owned rural farm land is required.

Land Acquisition & Resettlement Compensation

There are three broad categories of compensation payable for land acquisition and resettlement. Firstly, the fee for acquiring the land; second, compensation for loss of attachments to the land such as crops, trees, houses and other structures; and finally various resettlement subsidies that serve to safeguard the incomes of displaced

ⁱⁱ Strictly speaking, land is not acquired and only confers the right to occupy the land for industrial use for a specified period.

households. On top of this, government will levy fees for land use pre-assessment and permitting (where required) and administration. These fees are generally regulated and published in government circulars.



Compensation for land acquisition and for loss of land attachments is made according to published government standards that may be updated annually. Based on ERM’s experience, the compensation standards for land attachments in rural areas are generally at market value or above. However problems may be encountered when published government compensation rates have not been updated for several years and have not kept pace with. Also, there is little differentiation between compensation rates for the same class of asset. For example, compensation rates for a house of similar structure and quality in the same county will receive the same compensation regardless of locational or other advantages (eg proximity to public transport).

While international resettlement procedures and guidelines favor “in-kind” compensation, population pressure in China makes it impractical to offer land-based compensation to residents displaced by every industrial development and cash compensation is therefore the norm. In certain jurisdictions in China, land-based compensation is prohibited by law.

Private Sector Responsibilities in Government Managed Resettlement

In virtually all cases involving multinational investors, land acquisition and resettlement is managed by local government, usually an office of the Bureau of Lands and Resources. International investors will learn quickly from their local partners that land acquisition and resettlement is the “government’s responsibility” and need to understand and respect host country laws and local practice.

International investors shouldn’t attempt to take on governmental responsibility for physical resettlement and managing inevitable grievances that arise during any resettlement.

The IFC provides specific guidance for private sector clients in the case of government-managed resettlement, as follows:

“Where land acquisition and resettlement are the responsibility of the host government, the client will collaborate with the responsible government agency, to the extent permitted by the agency, to achieve outcomes that are consistent with the objectives of this Performance Standard. In addition, where government capacity is limited, the client will play an active role during resettlement planning, implementation and monitoring.”

IFC Performance Standard 5:
Land Acquisition Involuntary Resettlement, 2006

So what should an international investor do?

With local partners:

- Clearly articulate resettlement expectations in agreements with JV partners where international finance will (or may be) sought.
- Explain the rationale for going beyond Chinese regulatory compliance is about managing project risk.

With government implementing agencies:

- Spend time up front to align project expectations with those of government implementing agencies.
- In consultation with government, develop procedures to be used in surveys, census and asset inventories that will form the basis of compensation to affected households.
- Clearly articulate detailed requirements for resettlement planning, implementation and external monitoring in land acquisition and resettlement agreements with local government.
- Emphasize that PRC laws will be adhered to at all times.
- Support government, where its capacity is limited or if they are inexperienced (particularly on developing and implementing livelihood restoration measures).
- Ensure a grievance procedure has been developed and publicized within the local community so that affected households know that there is a mechanism other than protesting to raise their concerns and seek arbitration.
- Maintain records of resettlement activities including land surveys, asset inventories and valuations, and all payments made to government or affected households.
- Conduct internal and external monitoring of the resettlement activities, including the disbursement of compensation to affected households.

About the authors:

Piers Touzel, Elisa Xiao and Luke Long have a combined 20 years' experience in managing resettlement issues for multinational investors in China. They have worked for both lenders and borrowers to prepare resettlement plans and consultation programmes that meet the requirements of international financiers in a locally appropriate context. They have also worked with project teams and government implementing agencies to plan for, execute and monitor resettlement programs for some of the most challenging projects in China.

Beijing

Mr Piers Touzel piers.touzel@erm.com

Shanghai

Ms Elisa Xiao elisa.xiao@erm.com

Chengdu

Dr Luke Long luke.long@erm.com