

## Comparative Analysis of DMC Legal Framework and ADB Safeguard Policy Statement: Involuntary Resettlement

### Malaysia

(A) ADB Safeguard Policy Statement	(B) Corresponding DMC Legal Provisions	(C) Extent of Equivalence <sup>1</sup>	(D) Recommended Gap-filling Measures
Policy Principle 1: Screen the project early on to identify past, present, and future involuntary resettlement impacts and risks. Determine the scope of resettlement planning through a survey and/or census of displaced persons, including a gender analysis, specifically related to resettlement impacts and risks.			
Key elements (1): Project areas are screened at an early stage to identify, past, present or and future involuntary resettlement impacts and risks.	Malaysian legislation does not require an early screening process to identify past, present or future resettlement impacts or risks.	No equivalence.	Prior agreement that field-based screening will be undertaken before TORs for resettlement plan are finalized.
Key elements (2): The scope of resettlement planning is determined through a survey and/or census of displaced persons, including a gender analysis, specifically related to resettlement impacts and risks.	The Land Acquisition Act of 1960 establishes a basis for a physical survey of property to be expropriated, but there is no requirement for a census or survey of displaced persons, including a gender analysis, specifically related to resettlement impacts and risks.	No equivalence.	Prior agreement that a field-based census and/or survey will be conducted to identify and enumerate all persons affected by resettlement impacts and risks.
Policy Principle 2: Carry out meaningful consultations with affected persons, host communities, and concerned nongovernment organizations. Inform all displaced persons of their entitlements and resettlement options. Ensure their participation in planning, implementation, and monitoring and evaluation of resettlement programs. Pay particular attention to the needs of vulnerable groups, especially those below the poverty line, the landless, the elderly, women and children, and Indigenous Peoples, and those without legal title to land, and ensure their participation in consultations. Establish a grievance redress mechanism to receive and facilitate resolution of the affected persons' concerns. Support the social and cultural institutions of displaced persons and their host population. Where involuntary resettlement impacts and risks are highly complex and sensitive, compensation and resettlement decisions should be preceded by a social preparation phase.			

<sup>1</sup> "Full Equivalence" denotes that DMC legal requirement(s) are in complete harmony with the corresponding ADB Safeguard Objective, Scope and Trigger, Policy Principle or Key Element thereof. "Partial Equivalence" denotes that the DMC legal requirement is in partial harmony with the corresponding ADB Safeguard Objective, Scope and Trigger, Policy Principle or Key Element; and "No Equivalence" denotes that no DMC legal requirement can be found that corresponds to the particular ADB Safeguard Objective, Scope and Trigger, Policy Principle or Key Element.

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Key elements (1): Meaningful consultations are conducted with affected persons, host communities, and concerned nongovernment organizations.	No similar requirements.	No equivalence.	Prior agreement on scope and methods for consultations with affected persons, along with any relevant host communities or concerned nongovernment organizations.
Key elements (2): All displaced persons are informed about their entitlements and resettlement options.	The Land Acquisition Act (Section 10) requires an initial notice of intent to expropriate and (Section 11) subsequent delivery to affected persons of the scheduling of a formal expropriation enquiry. The scope is limited to expropriation and compensation, without consideration of any other entitlements or options.	Partial equivalence.	Prior agreement in context of Resettlement Plan (RP) on scope of information to be provided to displaced persons.
Key elements (3): The ability of displaced persons to participate in planning, implementation, and monitoring and evaluation of resettlement programs is ensured.	No similar requirements.	No equivalence.	RP includes relevant measures providing displaced persons opportunities to participate in resettlement planning, implementation and monitoring.
Key elements (4): Resettlement plans and arrangements pay particular attention to the needs of vulnerable groups, especially those below the poverty line, the landless, the elderly,	There are no requirements to prepare a resettlement plan, or to ensure planning arrangements pay particular attention to the needs of vulnerable groups.	No equivalence.	RP establishes appropriate means of assistance for poor and other vulnerable groups affected by the project.

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women and children, and Indigenous Peoples, and those without legal title to land, and ensure their participation in consultations.			
Key elements (5): A grievance redress mechanism is established to receive and facilitate resolution of the affected persons' concerns.	The Land Acquisition Act (Section 38) formally establishes an appeals process, which is limited in scope to measurement of property, calculation of compensation, determining who is to receive compensation, and apportioning compensation among multiple claimants.	Partial equivalence.	RP includes appropriate project-level mechanism to address grievances or concerns of affected persons.
Key elements (6): Plans and arrangements support the social and cultural institutions of displaced persons and their host population.	No similar requirements.	No equivalence.	As relevant, RP includes measures to support the social and cultural institutions of displaced persons and host communities.
Key elements (7): A social preparation phase precedes compensation and resettlement decision-making for projects with involuntary resettlement impacts and risks that are highly complex and sensitive.	No similar requirements.	No equivalence.	For projects with complex or sensitive impacts and risks, RP includes social preparation phase to precede compensation and final resettlement decision-making.
Policy Principle 3: Improve, or at least restore, the livelihoods of all displaced persons through (i) land-based resettlement strategies when affected livelihoods are land based where possible or cash compensation at replacement value for land when the loss of land does not undermine livelihoods, (ii) prompt replacement of assets with access to assets of equal or higher value, (iii) prompt compensation at full replacement cost for assets that cannot be restored, and (iv) additional revenues and services through benefit sharing schemes where possible.			
Key element (1): Livelihoods of all displaced persons are improved, or at least restored through land-	Legislation focuses on expropriation process and determination of compensation. Legislation does not establish an objective to improve, or at least restore livelihoods, or a requirement for land-based resettlement options.	No equivalence.	Agreement that RP will be designed and implemented with the objective to improve, or at least restore, livelihoods of displaced persons. RP to

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based resettlement strategies when affected livelihoods are land based where possible, or cash compensation at replacement value for land when the loss of land does not undermine livelihoods.			include land availability assessment to determine the extent to which replacement land may be available, and otherwise reviews feasibility of non-land-based alternatives for income generation.
Key element (2): (Where compensation is not paid), livelihood strategies include prompt replacement of assets with access to assets of equal or higher value.	No requirement for livelihood strategies.	No equivalence.	Same as above.
Key element (3): Where compensation in cash is to be paid, it is provided promptly and at full replacement cost.	Land Acquisition Act (First Schedule) provides for prompt payment of compensation at market value, with some consideration of other costs or losses that may be factored into compensation. Legislation does not require compensation at full replacement cost.	Partial equivalence.	Means for determining valuation and compensation at replacement cost established in RP.
Key element (4): Where possible, livelihood strategies provide for additional revenues and services through benefit sharing schemes.	No similar requirements.	No equivalence.	TORs for RP require consideration of feasibility for provision of additional revenues and services through benefit-sharing schemes.
Policy Principle 4: Provide physically and economically displaced persons with needed assistance, including the following: (i) if there is relocation, secured tenure to relocation land, better housing at resettlement sites with comparable access to employment and production opportunities, integration of resettled persons economically and socially into their host communities, and extension of project benefits to host communities; (ii) transitional support and development assistance, such as land development, credit facilities, training, or employment opportunities; and (iii) civic infrastructure and community services, as required.			
Key element (1): Relocated persons are provided secure tenure to land, better housing at	No similar requirements.	No equivalency.	RP, as relevant, provides for housing improvement to minimum community standards, and arrangements

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resettlement sites, and comparable access to employment and production activities.			for access to employment and production activities.
Key element (2): Relocated persons and host communities are provided integration assistance, and project benefits are extended to host communities.	No similar requirements.	No equivalence.	As relevant, RP provides means to promote integration of displaced persons and host communities, and means to extend project benefits to host communities.
Key element (3): Economically displaced persons are provided transitional support and development assistance, such as land development, credit facilities, training, or employment opportunities.	No similar requirements.	No equivalence.	As relevant, RP includes transitional support and development assistance measures.
Key element (4): Civic infrastructure and community services are restored or improved.	No specific requirements in land acquisition-related legislation	No equivalence.	RP includes review of impacts on infrastructure and services, and provides measures as warranted for their restoration or improvement.
Policy Principle 5: Improve the standards of living of the displaced poor and other vulnerable groups, including women, to at least national minimum standards. In rural areas provide them with legal and affordable access to land and resources, and in urban areas provide them with appropriate income sources and legal and affordable access to adequate housing.			
Key element (1): Resettlement measures include improving the standards of living of the displaced poor and other vulnerable groups, including women, to at least national minimum	No similar requirements.	No equivalence.	RP includes measures to improve standards of living of displaced poor and vulnerable groups as warranted in project context.

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standards.			
Key element (2): In rural areas, the displaced poor and other vulnerable groups are provided with legal and affordable access to land and resources.	No similar requirements.	No equivalence.	RP reviews resettlement arrangements in rural areas to ensure legal and affordable access to land or other resources.
Key element (3): In urban areas, the displaced poor and other vulnerable groups are provided with appropriate income sources, and legal and affordable access to adequate housing.	No similar requirements	No equivalence.	As relevant, RP includes measures to ensure that the displaced poor or vulnerable in urban areas are provided with appropriate income sources, and legal and affordable access to adequate housing.
Policy Principle 6: Develop procedures in a transparent, consistent, and equitable manner if land acquisition is through negotiated settlement to ensure that those people who enter into negotiated settlements will maintain the same or better income and livelihood status.			
Key element (1): Procedures are transparent, consistent and equitable if land acquisition is based on negotiated settlement.	No arrangements in legislation for negotiated settlements.	No equivalence.	RP assesses scope and methods for negotiation in resettlement processes.
Key element (2): If land acquisition is based on negotiated settlement, outcomes ensure improvement, or at least restoration, of incomes and livelihoods.	Same as above.	No equivalence.	Same as above.
Policy Principle 7: Ensure that displaced persons without titles to land or any recognizable legal rights to land are eligible for resettlement assistance and compensation for loss of non-land assets.			
Key element (1):	Land Acquisition Act requires notification of all persons who may be expected to have an interest in	No equivalence.	Prior agreement that persons

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Displaced persons lacking titles or recognizable legal rights to land are eligible for resettlement assistance.	property to be expropriation, in addition to registered owners or users, but does not establish that such persons are entitled to any form of resettlement assistance.		lacking legal title or recognizable legal rights are to be deemed displaced persons, eligible for resettlement assistance as provided in RP.
Key element (2): Displaced persons lacking titles or recognizable legal rights to land are compensated for loss of non-land assets.	No specific requirements.	No equivalence.	Prior agreement that persons lacking legal title or recognizable rights to land required for project purposes will be entitled in RP for compensation at replacement cost for non-land assets.
Policy Principle 8: Prepare a resettlement plan (RP) elaborating on displaced persons' entitlements, the income and livelihood restoration strategy, institutional arrangements, monitoring and reporting framework, budget, and time-bound implementation schedule.			
Key element (1): RP is prepared, elaborating on displaced persons' entitlements.	There are no requirements to prepare a resettlement plan.	No equivalence.	Prior agreement on scope and process requirements for RP.
Key element (2): RP includes an income and livelihood restoration strategy.	Same as above.	No equivalence.	Same as above.
Key element (3): RP includes institutional arrangements for its implementation.	Same as above.	No equivalence.	Same as above.
Key element (4): RP includes a monitoring and reporting framework.	Same as above.	No equivalence.	Same as above.
Key element (5): RP includes full estimation of costs and establishes financial responsibilities.	Same as above.	No equivalence.	Same as above.

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Key element (6): RP includes a time-bound implementation schedule.	Same as above.	No equivalence.	Same as above.
Policy Principle 9: Disclose a draft resettlement plan, including documentation of the consultation process in a timely manner, before project appraisal, in an accessible place and a form and language(s) understandable to affected persons and other stakeholders. Disclose the final resettlement plan and its updates to affected persons and other stakeholders.			
Key element (1): A draft RP (including documentation of the consultation process) is publicly disclosed in a timely manner before project appraisal.	There are no requirements for preparation of a resettlement plan or disclosure of same.	No equivalence.	Prior agreement on RP disclosure arrangements.
Key element (2): The draft RP is disclosed in an accessible place, and in a form and language(s) understandable to, affected persons and other stakeholders.	Same as above.	No equivalence.	Same as above.
Key element (3): The final RP and any subsequent updates or revisions are similarly disclosed.	Same as above.	No equivalence.	Same as above.
Policy Principle 10: Conceive and execute involuntary resettlement as part of a development project or program. Include the full costs of resettlement in the presentation of project's costs and benefits. For a project with significant involuntary resettlement impacts, consider implementing the involuntary resettlement component of the project as a stand-alone operation.			
Key element (1): Resettlement planning includes consideration of opportunities to enhance the number, reach or scale of benefits to local communities.	No similar requirements.	No equivalence.	TORs for RP include consideration of opportunities to enhance the number, reach or scale of benefits to local communities.
Key element (2): Full costs (and benefits) of resettlement are included	No similar requirements.	No equivalence.	ADB project review and appraisal to require consideration of resettlement-

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in calculation of overall project costs and benefits.			related costs in project cost-benefit analysis.
Key element (3): For projects likely to cause significant involuntary resettlement impacts, formulation and implementation of a stand-alone resettlement project is considered.	No similar requirements.	No equivalence.	Agreement between ADB and project proponents as to whether consideration of a stand-alone resettlement project is warranted.
Policy Principle 11: Pay compensation and provide other resettlement entitlements before physical or economic displacement. Implement the resettlement plan under close supervision throughout project implementation.			
Key element (1): Compensation is paid and other resettlement entitlements are provided before physical or economic displacement.	The Land Acquisition Act generally requires prior compensation, or placement of compensation in escrow accounts, before dispossession but also allows for a “Certificate of Urgency” process (Section 18) which enables dispossession before compensation is provided.	Partial equivalence.	RP establishes that all compensation is to be paid in full (or placed in escrow accounts in the event of disputes) prior to dispossession.
Key element (2): Resettlement processes are closely supervised throughout project implementation period.	No similar requirements.	No equivalence.	RP establishes organizational arrangements for project supervision.
Policy Principle 12: Monitor and assess resettlement outcomes, their impacts on the standards of living of displaced persons, and whether the objectives of the resettlement plan have been achieved by taking into account the baseline conditions and the results of resettlement monitoring. Disclose monitoring reports.			
Key element (1): Resettlement outcomes, including impacts on standards of living of displaced persons, are monitored and assessed.	There are no requirements relating to monitoring or evaluation of resettlement outcomes.	No equivalence.	RP establishes arrangements for periodic monitoring of implementation and assessment of outcomes.
Key element (2): Extent to which objectives of RP have been achieved is assessed, with reference to baseline conditions and	Same as above.	No equivalence.	Same as above.

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information obtained through resettlement monitoring.			
Key element (3): Resettlement monitoring reports are disclosed.	There are no requirements relating to preparation of monitoring reports or disclosure of same.	No equivalence.	RP establishes frequency for monitoring reports and arrangements for disclosure.

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