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TECHNICAL GUIDE FOR INVESTORS

On the Voluntary Guidelines for the Responsible Governance of Tenure

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One of the roundtable discussions at the end of Main Conference Day 1 (Tuesday) will feature a discussion of the development of a UN FAO Technical Guide to help investors manage their agricultural land investments responsibly. The authors will seek input from conference attendees on the current structure and content of the guide and how it could be improved to be more useful to investors. As part of the consultation process, others will be asked for their suggestions throughout the drafting process. Thus, the present structure and proposed content may well change.

What Is the Guide About?

In May 2012, the UN Committee on World Food Security endorsed the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (the "Guidelines"). The primary objective of the Guidelines is to "improve governance of tenure of land, fisheries and forests."[1] While primarily for governments, certain key provisions of the Guidelines are addressed to businesses and financial investors: "Non-state actors including business enterprises have a responsibility to respect human rights and legitimate tenure rights. Business enterprises should act with due diligence to avoid infringing on the human rights and legitimate tenure rights of others. They should include appropriate risk management systems to prevent and address adverse impacts on human rights and legitimate tenure rights."[2]

The technical guide is not an attempt to set new standards. Rather, it will explain what the Guidelines mean and how they can help firms invest responsibly and manage land tenure and other risks arising from investing in agricultural land assets.

Why a Technical Guide on Financial Investments in Land?

The "rules" of the agricultural investment game are changing. The Guidelines are just one indication that governments, civil society, NGOs, consumers, and others are becoming increasingly aware of the importance of secure land rights. Those with rights to land in low-income countries—governments, local communities, individuals—are becoming increasingly aware of the value of their land. The playing field is leveling and that trend will continue.

This is an evolving situation, similar to what has happened previously with other issues such as labor rights or environmental protection. What constitutes responsible investment practices has changed and will likely continue to change. Investors will need to change and improve their practices to keep pace.

Many businesses have done so already. Multinationals such as Nestle, Coca Cola, PepsiCo and others have come to understand the risks of irresponsible land tenure practices in their supply chains and are adopting policies and procedures to mitigate them. There are also certification processes that apply to particular commodities, such as biomaterials, palm oil, soy and sugar. Large institutional financial investors have committed to invest in accordance with the Principles for Responsible Investment in Farmland, which includes respect for existing land rights.[3] Many large banks and institutional lenders apply the International Finance Corporation Performance Standards (sometimes via the Equator Principles for private lenders) to larger projects.

All of this means that making land-based investments in developing countries has high transaction costs. Investing in accordance with evolving definitions of what constitutes a responsible investment can be expensive. Conducting social and environmental impact assessments and consulting effectively with local communities, as discussed in the guide, can be quite costly.

But the costs of getting it wrong are even higher. If an investment displaces and impoverishes local people they are likely to find a way to make the investment fail. Recent research has begun to document just how expensive it can be if land rights-related conflicts arise in an investment. Costs can run into the millions of dollars.

At the end of the day, it simply makes financial sense to invest responsibly. Based on the Guidelines, this guide provides advice that will help investors to better understand and manage the substantial financial, legal, operational and reputational risks inherent in investing in land-based assets in many low-income countries.

Who Is the Guide for?

The primary target audience of the guide are those organizations that provide capital or manage funds that are ultimately used for investing in and/or operating land-based assets. The audience includes asset owners, land aggregators, asset managers, state-owned companies and sovereign wealth funds, strategic corporates that invest directly in land, the financial services sector and commodity traders. These investors have different levels of exposure to the underlying assets and thus may utilize the guide differently. Those who are directly involved in buying or leasing land can use it to help them navigate through the responsible investment process. Investors that are one or more steps removed from the underlying assets can use the guide as a basis to evaluate and negotiate with the actual manager or operator of the assets, and to make clear what the investor expects the operator to do as a condition of receiving the investment.

What Key Issues do the Chapters Cover?

Broadly speaking, the guide provides concrete advice to financial investors on how they can utilize the Guidelines to be more responsible investors in agricultural land and thus better address the inherent risks of these investments. The current draft of the guide makes specific recommendations on risk management in relation to several thematic categories: (1) tenure rights; (2) consultation and negotiation; (3) food security; (4) human rights; (5) environment and sustainability; (6) grievances and dispute resolution; (7) transparency; (8) corruption; and (9) local capacity building.

Join Us

At the end of the day, land-based investments in developing countries are more likely to be successful if everyone—investors, local communities and governments—benefit. The Guidelines provide a framework for achieving this win-win-win scenario; the guide seeks to help investors better manage their risk and play their part in achieving that result. Please join us at the roundtable so we can benefit from your suggestions and experience. ■

End Notes

1. Guidelines, paragraph 1.1.
2. Guidelines, paragraph 3.2.
3. Principles for Responsible Investment in Farmland, Principle 3.