

Phase I: PREPARING FOR COMMERCIAL AGRICULTURAL INVESTMENT

Overview

Communities and investors can take a number of preliminary actions to prepare for prospective investments, even before a particular investment opportunity or suitable location are identified. Taking some steps early on can help lay the groundwork for choosing and nurturing a successful investment over time. The state can support these preparatory efforts in a number of important ways.

Investor

1. Register as a business at the Ghana Investment Promotion Centre (GIPC)

The first step for an investor seeking to do business in Ghana is to register with the GIPC. The GIPC should help the investor to understand basic principles and conditions of doing business in Ghana. It should also direct the investor to other relevant government authorities (such as the Lands Commission) that will be helpful in determining potential locations and host communities for the investment.

2. Learn more about available land and cultural conditions in potential investment areas.

→ Begin working with the Lands Commission and/or with organizations recommended by the GIPC

Once the investor has determined the best region(s) for the venture, approach the Regional Lands Commission to ascertain potentially available land and likely owners, as well as key tenure issues or possible challenges.

→ Hold first meetings with the District Assembly (or Assemblies)

Once the potential area for investment has been narrowed down within a particular Region, the investor will want to meet with relevant District Assemblies to share and obtain information about land, communities and investment planning.

→ Research and understand the cultural and land tenure framework in the geographic area prioritized for investment

Investors can begin to compile this information from government officials, NGOs, academics and other investors. Where this information is lacking or exists but is not current, investors need to commission land tenure assessment studies to generate vital tenure information. Investors should understand from the outset that each community- even within the same geographic area is likely to present a different socio-economic and cultural framework that will impact the investment context.

3. Develop a Business/Venture Plan.

An investor will need to have a well-prepared business plan before he or she approaches specific communities for a long-term lease. One best practice is for investors to create a sequential plan for business development, clearly identifying the timing of the sequential phases, the amounts and types

of land needed in each phase, as well as the expected crops, returns and employment projected in each phase. This will help both the investor and the community to understand what the demands for land will be over what period of time and may help to avoid initial acquisitions that are larger than necessary.

Phase 2: INITIAL ENGAGEMENT BETWEEN COMMUNITY AND INVESTOR

Overview

The initial engagement phase provides a critical opportunity for investors and communities to establish a good rapport. During this phase, the Parties may develop initial agreements such as a Memorandum of Understanding (MOU) to help guide communications between the investor and the community throughout the negotiation process. This is also a very important phase for communities to establish open and transparent internal communications systems.

The Importance of Community Consultation

For an investment to succeed over time, the investor must foster strong reciprocal relationships with communities through regular community consultations. These consultations should begin shortly after the investor makes initial contact with a community and continue through the life of the Agreement. Therefore, in addition to the specific points in the investment process where community consultation may be necessary or required by law or policy, such as those identified in the box below, the investor should view community consultation as part of a consistent and sustained set of actions for obtaining and maintaining the social license to operate in the community.

Principles of Community Consultation 5

- ↪ Community consultation and engagement are necessary at all stages of the investment process.
- ↪ To be effective, community consultations must secure the participation of a broad cross-section of the affected community and must specifically seek to ensure that women can meaningfully participate.
- ↪ Consultations should be premised on transparency and timely access to information. Timely information dissemination to all levels and groups within the community, and in a culturally appropriate manner, is a pre-requisite to meaningful consultations.
- ↪ Consultations should facilitate dialogue and exchange of information and should not consist of one-way communication by the investor to the community.
- ↪ For consultation to be meaningful, it must occur before decisions have been reached on the subject of the consultation.
- ↪ Records of consultations and reports on the outcome of consultations should be prepared and publicly disclosed in a culturally appropriate form to all stakeholders at community, district, regional and national levels.

Investor

1) Identify the key stakeholders for land acquisition within the area of interest:

This step must be done very carefully, as it is common for investors to waste time and money (and create conflict) by incorrectly identifying the customary parties with whom to negotiate. Initial

information may be provided by the Lands Commission and District Assembly/ies. However, an investor will need to confirm this information by talking with people from customary communities within the area of interest. Engaging the services of a professional or NGO adequately knowledgeable of the local land tenure dynamics could be useful at this stage. Within Stool and Skin lands, it will be necessary to understand the hierarchies of chiefs that will need to approve of a deal in any particular area, as well as the protocol for approaching these chiefs and their elders. Within Family lands, it will likely to be necessary to identify heads of a number of different families and to understand where their boundaries lie.

2) Hold an initial meeting with stakeholders.

The investor will want to understand well the protocol for approaching customary leaders with jurisdiction over the area of land identified as part of the process of gaining entry to the community. This protocol will vary by area and regime type (Stool/Skin versus Family lands). In the interest of transparency and building trust within the community, it will almost always be preferable to include people drawn from recognized interest blocks such as traditional leadership, youth, men, women, elected councilors, farmer based organization and opinion leaders among others.

3) Share the business plan and possibly feasibility study with the community. The investor will want to share detailed plans for the potential investment as soon as possible, to encourage an open, informed and transparent negotiation process. The community should be given time to review and reflect upon the business plan before being pressed to make a decision.

4) Consider striking an initial deal (such as through an MOU) with the community to guide the investment process.

5) Develop a communications/engagement strategy with community. See description above.

6) Consider hiring dedicated community engagement personnel in order to:

- Learn about customary norms and expectations of the community.
- Understand the identity of key stakeholders (including those who may be marginalized from social/political processes within community, such as women and youth) and determine how to build relationships with them and ensure they are represented in the negotiations process.
- Work to build open communication pathways with community members.

7) Ensure that community forums begin early and include processes to ensure robust participation by women, youth and others in the community who are not usually represented among customary leaders and decision-makers.

Note that the Impact Assessment process will necessarily require the investor to engage early and often with the community in the design and development of the impact assessments. Such consultations with the community should be designed to ensure that a diverse group of community stakeholders, including traditional leaders, men, women, youth, migrants and the District Assembly are involved, and that existing cultural and social inhibitions do not suppress the voice of any stakeholder in the deliberative process.

Phase 3: IMPACT ASSESSMENTS

Overview

Impact assessment is the process of identifying, evaluating and mitigating the anticipated environmental and social impacts of a proposed project or development prior to major decisions being taken and commitments being made. The purpose of impact assessments is for the investor and host communities to understand the environmental and social impacts and consequences of projects and to share this information with decision makers, regulatory agencies and the general public so that an informed decision can be made as to whether or not to proceed with a project, whether the project should be modified or whether mitigation measures will be required. The Environmental Assessment Regulations of 1999, LI 1652, as amended in 2002 outline the process for conducting environmental assessments in Ghana. The regulations require the development of an Environmental Impact Assessment (EIA) for any proposed land development for agricultural purposes of 40 hectares or greater and any agricultural program necessitating the resettlement of 20 families or more. In Ghana, the EIA is an integrated impact assessment, meaning that it includes not only the project's impacts on the natural environment but also the “. . . socio-economic, cultural, and health effects of the undertaking.” Additional information about the EIA process in Ghana can be found in Annex I.

It is important to note that compliance with Ghanaian laws and regulations related to impact assessment does not ensure that the investor has followed other international standards (including IFC standards), or best practices related to impact assessment.

Investor

1. Conduct a stakeholder mapping exercise to identify all potentially affected communities, organizations, groups and individuals at the beginning of the assessment process.

Stakeholder mapping involves identifying the people and organizations with a stake in the project. Identifying these entities at the very outset of your project will enable you to develop effective communication and engagement strategies for the various stakeholders involved. Mapping out stakeholders at this stage is also useful in helping to identify how each stakeholder is likely to be affected. This will, in turn, help to assess the nature of benefits/compensation, either financial or otherwise, that will be appropriate for each category of stakeholders.

2. Develop a participatory plan for involving affected communities throughout the assessment process.

Community involvement and participation in the impact assessment process should not consist of ad hoc consultations by the investor. Rather, the investor and the community should meet early in the investment process and agree on an engagement plan that stipulates how communities will be involved at each phase of the impact assessment process, including:

a. Scoping.

This part of the plan should focus on designing mechanisms that involve the community in identifying key environmental and social issues to be analyzed during the assessment. By involving the community in this process, the investor better understands the issues and impacts that are important to the community and where specific emphasis should be placed during the impact assessment process. Communities are not homogenous-- groups of individuals within communities

will be affected differently by planned investments. Investors should take steps to understand these impacts by seeking out a range of community members, both men and women.

b. Identification of impacts and mitigation measures.

The community should be actively engaged in the process of identifying impacts and acceptable options for eliminating or reducing impacts. By involving the community in this process at the outset, the likelihood of disagreement over the appropriateness of mitigation measures will diminish. Investors should work to ensure that all affected individuals participate in identifying impacts and devising mitigation measures.

c. Sharing of information throughout the EIA process with the community.

The engagement process should also include mechanisms for periodically sharing completed studies and analyses with communities and for providing updates on the process and schedule. To ensure that all members of the community—men and women—are well informed and able to participate in engagement activities, communication efforts should be conducted in a manner, medium, time and location that is accessible to men and to women.

d. Monitoring of impacts and mitigation measures. The engagement plan should also identify how the community will be involved in the monitoring of the environmental and social mitigation plans.

3. Identify mechanisms for providing communities with independent technical support during the assessment process

Many communities will lack the technical expertise to review the EIA and make decisions on the appropriateness of the mitigation plan. To address this issue, investors should provide financial support to communities to retain independent technical experts that can provide assistance to the communities throughout the assessment process. The mechanism for providing this support and the level of support to be provided should be agreed to in the impact assessment engagement plan and the MOU, if utilized.

4. Seek approval of the Draft EIA from the affected communities before submitting to Environmental Protection Agency (EPA) of Ghana

At the conclusion of the draft EIA the investor should seek the community's approval of the report before submitting it to EPA for approval and issuance of an environmental permit. This will further build trust between the investor and the community and may reduce the likelihood of disputes between the parties over the findings of the report.

Phase 4: NEGOTIATION AND CONSENT

Overview

The negotiations phase encompasses ongoing consultations and, ultimately, a consent agreement between the Parties. During this phase the Parties will work out the specific terms of the Agreement. Both Parties will need to understand the full spectrum of options available to them, determine their priorities, communicate these effectively and negotiate a final Agreement. The critical outcome for the investor is to obtain a broad social license to proceed. This will require that community leaders understand and incorporate the perspectives and needs of a broad range of community stakeholders in developing their negotiation priorities. The form of "consent" will vary

in different customary contexts in Ghana. For an investment to succeed over time, however, consent must incorporate not just the approval of community leaders, but also the approval and backing from a diverse range of community stakeholders.

Investor

1. Continue participatory consultations with the community throughout the negotiations process.

Though consultations may be expensive and time-consuming, they are a key step in developing a strong relationship with local communities and long-term positive socioeconomic outcomes, financial and operational success, and helping to minimize the risk of land disputes.

2. For Vested Lands consider including the affected Skin or Stool as a Party to the Agreement and active participant in the negotiations phase.

3. Complete a feasibility study prior to signing any final Agreement and share it with the community. Some aspects of the feasibility study will be necessary to gaining concurrence from the Lands Commission. (The feasibility study is a detailed analysis that provides information on the proposed project, including: background of the investor, an outline of the business plan, a description of the physical and financial and human resources needs of the project to achieve success, analyses of the economic and financial viability of the project and a schedule outlining milestones for project development.).

4. Wherever possible, support the community's need for additional information, for space and time to deliberate and for a process that is free from outside interference. The investor will almost always be operating at an advantage in terms of understanding commercial contract terms. It is very important to the long-term health and success of the agreement that the community also arrive at a solid understanding (and support for) the terms. This may take time, especially as community leaders work to reach consensus among various community stakeholders on key points, but supporting a true "consent" process from the community is likely to yield significant longer term pay-off.

5. Present evidence of outcomes of community engagement and EIA to the Regional Lands Commission with jurisdiction over area(s) of the proposed to be land acquired.

This should be done at a meeting of the Regional Commission as a way of showing compliance and how this compliance was achieved for the Commission to take decision on grant of concurrence to the Lease Agreement or make a recommendation to the National Lands Commission as appropriate.

6. Ensure all relevant representatives from the community (and as many witnesses as possible) are present at signing.

Ensuring that a range of individuals are present to bear witness to the signing will support the legitimacy and awareness of the Agreement and its content over the long term. Ensuring that women and men community members witness--both within and outside of the traditional leadership--will help to limit misunderstandings among community members about the status, import and Parties to an Agreement. Investors should also insist that lease documents are signed in the name of the stool, skin or family, rather than in the name of a single individual. See discussion above.

Phase 5: MONITORING AND ENFORCEMENT OF THE AGREEMENT

Overview

The long term sustainability and success of land transactions between investors and communities ultimately depends on each Party living up to its obligations and responsibilities in the Lease Agreement. Many of the problems and conflicts that have been experienced between investors and communities both in Ghana and across Africa are the result of a failure to develop and implement effective mechanisms to monitor and track timely performance of the Lease Agreement. An effective monitoring program can help investors and communities identify problems early and collaborate on solutions before problems escalate into major conflicts between the Parties. A successful monitoring program will incorporate the following concepts:

Participatory:

Monitoring should involve a collaborative effort between host communities, the investor and regulatory agencies. It is important that all men and women in the community feel that they have an active role in monitoring the investment and participating in the relationship with the investor. The host community should be integrally involved in both the design and implementation of the monitoring program.

Transparency:

Effective monitoring efforts require transparency both with respect to the design, makeup and objectives of the program, as well as the availability and sharing of key documents and information with project stakeholders. True transparency requires taking steps to make sure that information is available, clear and understood by all community members. In some cases this will require specific efforts to ensure that women and youth receive and understand information around an investment.

Grievance Mechanisms:

Monitoring must be reinforced through the inclusion of a community grievance mechanism that can serve as an effective way to resolve complaints and disputes before they escalate into significant conflicts or even violence in the host community. Grievance mechanisms should be fair, prompt and accessible to the entire community. Grievance mechanisms should not limit the ability of community members to access the courts when a dispute cannot be resolved.

Timing:

The monitoring program should be developed and agreed to early in the investment process and provisions should be incorporated into the Lease Agreement to support the implementation of the program.

Investor

→ Ensure that the Lease Agreement is properly registered with the Lands Commission. For a lease to be valid in Ghana it must be registered with the Lands Commission. Therefore, an important way to protect the right to enforce the Lease is to ensure that it has been properly registered by the investor. (Refer to the step-by-step process and spelled out by LAP II)

- ↪ At a point early in the investment process, collaborate with the community and other stakeholders to design a plan for regular and participatory monitoring of the Lease Agreement obligations.
- ↪ Collaborate with the community to design a community grievance mechanism that can serve as an effective way to resolve complaints and disputes.
- ↪ Support fair and equitable funding arrangements between the investor and the community for the monitoring program and the community grievance mechanism.
- ↪ Promote the inclusion of provisions in the Lease Agreement that reinforce and mandate the implementation of both the monitoring program and the community grievance mechanism.

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