

Agribusiness Investment in Timor-Leste: Guidelines Supporting Win-Win Outcomes



Chamber of Commerce and Industry of Timor-Leste





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Suggested foreword by **Presidential Council** of the Chamber of Commerce and Industry of Timor-Leste

Timor-Leste is a country with many opportunities for investors, particularly in rural areas where most of our people are living. In fact, agribusiness has been identified by the Government of Timor-Leste as a key priority in its recently released Strategic Development Plan. Yet, it can be a challenging environment to work in. At the Chamber of Commerce and Industry of Timor-Leste, we are dedicated to helping investors overcome some of these challenges and creating a conducive business environment for investors for the benefit of our people.

These guidelines have been developed in collaboration with international experts, investors and government partners and draw upon experience of successful investments and win-win solutions for investors and communities in Timor-Leste.

The guidelines are very much a practical “how to” guide for an investor contemplating an agribusiness engagement in Timor-Leste. They include information about local conditions (government processes, the conduct of agriculture itself and how our rural communities are organized) and provide practical suggestions about preventing problems that result from poor communication and misguided expectations. It is our hope that the guidelines may be used by any investor interested in exploring the many opportunities that Timor-Leste has to offer.



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Summary of Key Principles

Category	Aspect
Consultation and Informed Decision Making	Have you consulted and advised key agencies and individuals concerning your proposed project at all levels (national, district, subdistrict, and <i>suco</i>)?
	Do those you plan to work with at the <i>suco</i> level really understand the division of responsibilities and benefits associated with the proposed project?
	Have all areas of land associated with the proposed project been physically visited with community leaders, landholders, and landholders of adjoining areas?
	Have a significant and representative number of women been consulted and have they agreed to the proposed project? Have negotiations taken place concerning the role of women in the project and associated training and benefit distribution aspects?
	Have the key aspects of the project (who provides which inputs, who receives which benefits, and how benefits are distributed throughout the community) been outlined in writing in an appropriate language? Have copies of the agreement been distributed to community members participating in the project?
	Has attention been given to an ongoing communications program to enable queries and misunderstandings to be resolved before they develop into disputes?
	Have the nature and likely extent of the project been communicated to nonparticipants and members of neighboring communities to ensure an accurate understanding of the nature of the project and to prevent unrealistic expectations from arising?
Evaluation and Risk Assessment and Management	Have you sought relevant information to inform your approach from all potential sources, such as the Ministry of Agriculture and Fisheries (MAF) and other agribusiness operators?
	Have you trialed your proposed production process first so that you will not place the livelihoods of community members (and your own investment) at unnecessary risk once you launch full-scale production? (Note that trial programs are normally more productive than farmers' plots.)
	Have you evaluated the capacity of members of the local community so that you are able to gauge capacity building/training needs and the level of extension activities required?
	Is the proposed project of such a size or nature that social or environmental impact assessment is required? If so, have opportunities to maximize positive impacts been identified, as well as means of mitigating or eliminating negative impacts? Have the specific social or environmental impacts on women in the project area been considered?
	Have participating community members been strongly encouraged to maintain subsistence production as a safety net in case the project fails to realize the expected results?
	Do you have appropriate managerial and technical capacity to manage the proposed project?
Communications and Extension	Have you designed a communications and extension program that will enable direct two-way communication between community members and representatives of the enterprise, and the delivery of an appropriate level of extension support?
	Has the design of the communication/extension program taken into account

	the need for consultation with women and the delivery of training to women, and is it planned to include female members in the extension team?
	Do communications/extension staff have access to means of transport (for example, motorcycles) and sufficient fuel to enable them to do their work?
	Is there a monitoring program in place to ensure that the communications/extension staff are doing their job?
	Have language aspects and literacy levels been taken into account in relation to the design of the communications and extension program and the recruitment of staff?
	Are there special provisions to enable individual community members to file complaints/grievances to senior management if necessary?
Benefit Distribution	Is the engagement likely to be of sufficient value to participating community members that they will remain committed to it?
	Does the engagement offer community members the opportunity to access new knowledge and skills, technologies and other inputs, and markets?
	Has a direct means of compensating individual project participants been designed?
	Will female participants be directly compensated for their input into the project?
	Has consideration been given to means by which additional benefits from the engagement can flow to the community?
	Will traditional ceremonies be periodically supported to maintain goodwill among the community?
Dispute Management	Regular meetings between an investor and community members can facilitate the exchange of information and prevent misunderstandings and disputes from developing. Have ample arrangements for such meetings been made?
	Has a basic (noncourt) dispute-resolution model been identified and agreed upon between the investor and members of the community, including women?

Introduction

Timor-Leste needs private sector agribusiness investment. Productivity levels in Timor-Leste are low by world standards and there is room for the private sector to play an important role in introducing new technologies, providing access to markets, and investing capital in the intensification of production. For these same reasons, investors must understand that life in rural Timor-Leste is precarious, defined largely by subsistence agricultural patterns that remained essentially unchanged throughout the period of Portuguese colonial engagement, which ended in 1975, and the subsequent period of Indonesian occupation that lasted until 1999. Given the nature of the rural economy, adhering to a few key principles could make the difference between a successful engagement that reaps benefits for both investors and community members, and an unsuccessful project that not only fails to generate income but also places the livelihoods of farmers at risk and discourages them from engaging in future ventures with outside actors.

These guidelines outline a number of central principles for the consideration of agribusiness investors involved in primary industry engagement in rural Timor-Leste. The principles are based on an analysis of rural development and agricultural performance in Timor-Leste drawn from several engagements between investors and community members over the last decade since the country gained its independence. They also draw on a review of advances in international thinking concerning agribusiness investment in developing countries as well as developments in the local context. This document is divided into two sections. The first provides guidelines intended to assist those investing in agribusiness in Timor-Leste or considering such an investment. The second section presents additional background information on rural development in Timor-Leste and the private sector. Some more general considerations relevant to investing in agribusiness in a developing country are included in the annex.

1. Guidelines for Investment in Agribusiness in Timor-Leste

Research undertaken in Timor-Leste has identified a number of considerations key to successful engagement between investors and community members in that country. Experience here and in similar contexts elsewhere suggests that attention to these areas can make the difference between a successful engagement and one that not only fails to produce a return for the parties involved, but also deters community members from working with investors on future occasions. These essential considerations are (1) consultation and informed decision making, (2) evaluation and risk management, (3) communication and extension, (4) benefit distribution, and (5) dispute management.

Differences in World View and Expectations

As a preliminary note before discussing the themes outlined above, agribusiness investors intent on engaging with rural communities in agribusiness ventures should be mindful of the world view among members of the subsistence communities in rural Timor-Leste. While entrepreneurs are characteristically keen to experiment with new initiatives, members of rural communities tend to place a high value on time-honored approaches that have supported the survival of past generations in difficult environments.

For example, as in other traditional societies, ancestors are considered to play an important role in daily life. Certain senior community members are understood to be able to communicate with the spirit world, and rituals involving ancestors are common. Ancestors represent a conservative influence in the positive sense, reinforcing the legitimacy of traditional knowledge patterns that have proven effective in the past and resisting practices that could endanger the survival of present and future generations. From the perspective of community members, ancestors may not be

unresponsive to change, but like members of the present generation, they will need (through ritual) to be informed of the logic of new approaches proposed by investors.¹



Figure 1: *Uma Luliks* (sacred houses) like this one in Aileu are testament to the continuing strength of local beliefs in Timor-Leste. (Photo: Rod Nixon)

Additionally, it is likely that the main contact with outsider development agents that many community members have had in the past is with donor-supported, nongovernmental organizations (NGOs) or government development projects (such as the *Povo Kuda Governo Sosa* or Farmers Plant



Figures 2–3: The bust of former Portuguese governor Jose Celestino da Silva (L) continues to look out over the facilities of the SAPT coffee plantation (above) he established in the late nineteenth century. (Photos: Rod Nixon)

¹ Based on a discussion with ritual and community leaders, mainly in Oecusse and Aileu districts in the 2002–03 period. For background reading on the conservatism of traditional societies, see Weber (1915/1976, 283; [1922] 1978, 227).

Government Buy program). Accordingly, the concept of engaging in a reciprocal and unsubsidized commercial relationship with outsiders may be a new one. Thus, investors are advised to carefully explain that they are a commercial actor and must generate a profit in order to remain in business and continue to provide benefits to those community members who engage with them. It is therefore recommended that investors make sure that they accurately communicate the scale of their intended development and leave no space for unrealistic expectations that may later lead to dissatisfaction.

Furthermore, especially in the coffee sector, companies with close state connections were common during the Portuguese and Indonesian periods, notably *Sociedade Agrícola Pátria e Trabalho* (SAPT) and P.T. Salazar, respectively. These state-allied companies are perceived as having employed many workers, and community members may harbor impractical expectations about the benefits that may result from engagement with a commercial firm.

Avoid giving rise to unrealistic expectations within partner communities

1.1 Consultation and Informed Decision Making

National Level

The agribusiness community in Timor-Leste is relatively small. Thus, new entrants to the sector would be advantaged by linking with existing operators and learning from their experiences about what does and does not work.² No less importantly, new operators should make a point of becoming known among the relevant government departments, in particular the Ministry of Agriculture and Fisheries (MAF), the Ministry of Economy and Development (MED), the Ministry of Tourism, Commerce and Industry (MTCI), and the Ministry of Justice, of which the National Directorate of Land, Property and Cadastral Services (DNTPSC) is a part. Although working with the government in Timor-Leste can be time consuming and the civil service is in only the early stages of development, the more widely investors connect with relevant officials, and the more these officials learn about the project and how it benefits the community, the more assistance and understanding the investor is likely to receive during challenging times. Additionally, as capacity develops over time, staff from MAF and other agencies will increasingly be able to provide technical and economic information that will benefit investors.

Within the District

At the subnational level, it will be important for investors to introduce themselves and explain their project to the district administrator and the subdistrict administrators of all the subdistricts where they are considering working. Historically, dating back to the early twentieth century, the subdistrict level of administration has played an important role as the interface between the state and the traditional social organization of the *suco* (see box 1). Significantly, the first generation of subdistrict administrators appointed in independent Timor-Leste appears to have held ritual power in the customary system as well as positions in the new state administration.³ As officials from *above* the

² For information on existing agribusiness actors, contact the Chamber of Commerce and Industry Timor-Leste or see the Peace Dividend Trust (PDT) business database at <http://timor.buildingmarkets.org/>.

³ Typically, in addition to being ritual leaders, these individuals were former members of the resistance-era *Concelho Nacional da Resistência Timorese* (National Council of Timorese Resistance or CNRT), which had a shadow administration reflecting the Indonesian-era division of the country into 13 districts, 62 subdistricts, and 442 villages. For further information see Nixon (2008, 77, 156–74, 227–31).

suco level, it is not uncommon for subdistrict administration officials to be involved in the resolution of disputes between different *sucos* (Nixon 2008, 343), and they could also be expected to have sound local knowledge, including an understanding of the distribution of the populations of the various *sucos* throughout the subdistrict. This is important, because the settlement patterns of *suco* communities are commonly dispersed and may be inconsistent with the formal *suco* boundaries outlined on administrative maps.⁴ The historic role of subdistrict officials in the community means that investors should be sure to work closely with them in relation to agribusiness investments.

Box 1: Timor-Leste Sociopolitical Organization

Formal sociopolitical organization in Timor-Leste comprises the national level, the 13 districts, and the 65 subdistricts. As the country has not yet decentralized, the administrators of the districts and subdistricts are officials of the central government. Below this, as outlined in Law 3/2009 on *Community Leaderships and their Election*,⁵ there are “community leadership structures” associated with the 442 official *sucos* (villages characterized by dispersed settlement patterns).⁶ The *suco* level “community leaderships structures,” headed by *chefes de suco*, are not technically part of the state administrative system,⁷ despite the fact that two rounds of local elections have been held since independence to elect *concelhos de suco* (*suco* councils). *Sucos* are themselves comprised of multiple (perhaps seven or eight) *aldeias* (hamlets), each of which comprise a number of *uma kain* (households or extended families), which have their own entitlements to land, sometimes through membership in *uma knua* (lineage/descent) groups spread throughout the *aldeias*. Notwithstanding their semi-formal status, the *sucos* are of course a fundamental level of sociopolitical organization in Timor-Leste.

Suco Level

The *suco* is the level where the most detailed consultations will have to be conducted, since it is there that an investor will be engaging with those working directly on the project. Discussions are likely to begin (facilitated perhaps with an introduction by the subdistrict administrator) with meetings with the *chefe de suco*, members of the *suco* council, and senior individuals (*katuas*) with traditional responsibility for agriculture, land, and water allocation.⁸ Discussions with these individuals will be of great importance to the success of any project. However, investors must also be certain to meet and negotiate, in due course, directly with those who are going to be involved in the project on a day-to-day basis. The terms and conditions of the proposed arrangement should be clarified and agreed upon with the actual participants, with reference to any inputs that both the investor and community members agree to provide. Some possible models that may be appropriate (perhaps in hybridized form) to the Timor-Leste context are outlined in table 1 below. In the case of management contract or contract farming arrangements, the payment or profit-sharing arrangement should also be established prior to the commencement of activities. If it is proposed that the return to farmers will be subject to market fluctuations (in either direction), the realistic

⁴ Metzner (1981) discusses this theme in relation to the Amarasi in Indonesian West Timor. More recently in Timor-Leste the issue has been given some attention by the UN Development Programme, among others.

⁵ RDTL (República Democrática Timor-Leste) LAW 3/2009, of July 8, 2009 [on] *Community Leaderships and Their Election*.

⁶ Information concerning the official number of subdistricts and *sucos* was provided by Faustino Cardoso Gomes (pers. comm., October 23, 2010) from the Timor-Leste *Comissão Nacional de Eleições* (National Electoral Commission). As indicated on the website of the Timor-Leste Ministry of State Administration and Territorial Management (see http://estatal.gov.tl/English/Municipal/Municipal_main.html), there are also additional unofficial *sucos* in some subdistricts.

⁷ As outlined under Article 2 of the community leadership law (see n. 5), “community leaders are not included in the Public Administration and their decisions are not binding upon the State.”

⁸ For a discussion of the distribution of natural resource management responsibilities in relation to the Dawan of Oecusse district, see Meitzner Yoder (2005, 149–50) and Nixon (2008, 331).

parameters of this fluctuation and the factors that will determine the final price should be clearly explained.⁹

Finally, efforts should be made to disseminate information about the project to members of the community *not* involved in the project, as well as people from surrounding communities. This is important to ensure accurate local understanding of the nature and extent of the project and to prevent unrealistic expectations about potential benefits that could flow from the project .

Table 1: Examples of Possible Models of Agribusiness in Timor-Leste¹⁰

Model	Description	Comments
Spot markets	Farmers produce on their own land for sale to buyer. No contracts are involved and no inputs are provided in advance by any sponsor. ¹¹	This is the dominant form of agribusiness in Timor-Leste. The absence of inputs by investors or others is a factor contributing to continuing low productivity levels.
Use of certification programs	An investor pays the costs of certification of crops grown by particular communities. The certification program might, for instance, be for organic production or fair-trade labeling.	Investment in certification can strengthen relations between community members and the investor because both can profit from the resulting increased market value of certified produce. However, this arrangement does not necessarily increase overall crop productivity.
Fixed-term land use agreement and hire of labor	The investor rents land from members of a community and takes overall responsibility for planting and crop management. The investor hires local workers to farm the land as employees. Community landholders benefit from rent payments by the investor and individual workers benefit from wages.	<p>Land use agreements, even if only on a small scale, are likely to be important for trialing agricultural approaches prior to upscaling (for example in relation to contract farming projects). In some cases, however, the business approach might be entirely centered around agricultural cultivation on rented land.</p> <p>This approach may minimize risks for community members, but also potential <i>gains</i> (compared to other models). However, it could still serve as an introduction to more intensive cultivation methods.</p> <p>For investors, securing use rights over agricultural land would require negotiations with community landholders (see section 2).</p>

⁹ Market indexing is reported (Eaton and Shepherd 2001, 14–15) to be a feature of some contract farming arrangements.

¹⁰ See also Vermeulen and Cotula (2010, 87–91) for a discussion concerning “inclusive models for agribusiness investment,” which notes that “what works best locally while still being attractive to investors is very much context specific, and is contingent on tenure, policy, culture, history as well as on biophysical and demographic considerations.”

¹¹ See Simmons (2002, 3–4) for references to characteristic aspects of spot markets.

Management contracts	An arrangement whereby the investor manages (community) agricultural land in a negotiated arrangement with community landholders. Experience elsewhere indicates that management contracts might involve a profit-sharing arrangement instead of set payments. ¹² In this respect, management contract arrangements can be seen as similar to share-farming arrangements. ¹³	In the context of Timor-Leste, local (community) labor would in all probability be engaged by the investor to work on the project. Their return for labor could be based on a profit-share arrangement, a fee-for-labor wage arrangement, or a mixture of both. In a documented case, farmers received payments for work such as land clearing and weeding, supplemented by a share of the profits at the conclusion of the cycle. There is evidence from elsewhere, however, indicating that daily payments have the advantage of reducing misunderstandings.
Contract farming	An arrangement where an investor provides inputs (potentially seeds, fertilizer, and provision of machinery or training) and the farmer cultivates produce for sale to the investor. The price is generally always agreed on before production and quite specific quotas and specifications are set prior to planting. Payment is likely to be made on collection of the harvest, minus the cost of inputs provided by the investor (Eaton and Shepherd 2001, 2; Silva 2005, 11). ¹⁴	Land holders would normally retain control of most land associated with project activities and directly manage farming activities (commonly in accordance with requirements specified in the contract regarding land preparation, planting regimes, and fertilizer use). The investor may require a use-rights agreement over some land for trial purposes, at least for an initial period.

Land Area

Customary land tenure systems in Timor-Leste are complex and involve a range of ownership and use rights, including community, family, and individual rights. It is also not uncommon for land



reported to have been alienated from customary tenure during the Portuguese and Indonesian periods to remain subject to customary claims. To avoid any misunderstanding, it is helpful to physically visit and measure areas of land proposed for use in association with a project. This should be done in the company of community leaders, landholders, and, preferably, landholders of adjoining areas. Note that Timor-Leste does not yet have a complete legislative framework regulating land. This is discussed further in section 2.

Figure 4: Examining a disputed boundary marker near Citrana, Oecusse (Photo: Rod Nixon)

¹² For a definition and further information see Vermeulen and Cotula (2010, 29–33).

¹³ Research conducted in 2010 in Timor-Leste by the World Bank's Justice for the Poor (J4P) program in collaboration with the Haburas Foundation documented an example of an agribusiness investor experimenting with a version of this approach.

¹⁴ See also the Food and Agriculture Organization's (FAO) online Contract Farming Resource Center at <http://www.fao.org/ag/ags/contract-farming/index-cf/en/>.

The Importance of Consulting and Engaging with Women

It is important that the investor consult and negotiate with all workers involved in the project, not just male household heads who may be nonparticipants. For reasons discussed in these guidelines, women may well be key to the success of the project due to their role in agricultural activities, and every effort must be made to involve them in the consultation, negotiation, training, implementation, and benefit distribution (discussed below) stages.¹⁵ Attracting the participation of women in consultation and other activities may require additional effort by investors, such as the provision of childcare arrangements to enable women to attend meetings.



Figure 5: Women participants in agribusiness partnership, Baucau (Photo: Carlos Alves)

Recording the Agreement

After being agreed to by local authorities and participants, the terms of the engagement should be outlined in written agreements in as simple and clear terms as possible (updated as frequently as necessary), with copies provided in an appropriate language (Tetum or Indonesian). Contracts should be signed by individual farmers, including women, as well as farmers' representatives and other relevant individuals. When the investor intends to make deductions from final payments to compensate for inputs provided, this should be clearly spelt out in the agreement.¹⁶ Extra care should be taken to ensure that multiple copies of the agreement are distributed, preferably in plastic folders, and filed in appropriate places, including the offices or residences of the *chefes de suco*, the office of the subdistrict administrator, and the residence of the head of the farmers' group. While the preparation and distribution of written agreements is important, however, the key to developing a good working relationship between investors and community members will be the establishment and maintenance of accessible channels of meaningful communication. This area is addressed further in section 1.3.

Evaluation First

Finally, while consultation and negotiation with community leaders and all others likely to be involved in an agribusiness project are essential, investors are warned against proposing a highly defined project at full scale until sufficient evaluation of the physical and social environment has been undertaken. It is preferable that the feasibility of the intended approach be tested through implementation on a trial basis and then refined as appropriate. This is addressed in the following section.

1.2 Evaluation and Risk Management

Experience in other jurisdictions demonstrates how failure to undertake sufficient crop trialing and broader evaluation activities, including assessment of local capacity, can result in crop failure and lasting disaffection. This may discourage community members from further engagement with investors, possibly for generations. For example, Eaton (1988, 59–65, 82) refers to the case of a failed banana contract farming program in Fiji, where factors contributing to failure included

¹⁵ For a detailed discussion of this area featuring examples from Africa, see Eaton (2011).

¹⁶ For examples of contract farming agreements see Annexes 1–5 in Eaton and Shepherd (2001, 121–37).

unsuitable soils,¹⁷ and where project breakdown left a negative legacy that persisted for 40 years. Given the need for agricultural intensification in Timor-Leste, as well as the desirability that all parties profit from rural development ventures, it is important that investors trial their intended approaches to ensure appropriateness to the social and environmental context. Failing to do this before upscaling means placing at risk not only their own investment, but also the livelihoods of community members involved in the project and their inclination to collaborate with other outside actors from whom they could learn new approaches in the future.

**Be sure to evaluate your approach before upscaling
and risking not only your investment, but also the livelihoods of
community members and the willingness of community members
to engage with outside actors in the future**

The Fragile Nature of Subsistence Existence

As already noted, the subsistence nature of the rural economy, the basic agricultural technologies currently in use, the low levels of agricultural productivity, and the conservative nature of the rural population mean that special attention should be given to evaluating projects in the Timor-Leste context. Subsistence farmers in Timor-Leste lead a fragile existence with little room for error, hence they can scarcely afford to invest effort in poorly thought out agricultural enterprises. Due to the finite nature of time and land, participating in agribusiness projects is likely to mean reduced investment in the cultivation of traditional crops. Although the transfer of new agricultural approaches to members of rural communities is an important priority, the respective abilities of investors and subsistence farmers to sustain several cycles of failed crops are dramatically different, since what might be experienced merely as a financial loss or forgone profit margin for an investor could push a group of subsistence farmers to the brink (see below).

Establishing the Viability of the Approach

In order to maximize the chances of success and reduce the risk for all parties to a joint venture arrangement, it is the responsibility of the investor to establish, at its own risk and expense, that its intended approach is viable. This should be accomplished by researching the nature of the physical environment and conducting initial trials before upscaling and involving large numbers of farmers in a venture. In making conclusions about the viability of the approach based on the trials, investors should be mindful of international experience indicating that yields from trial programs are normally much greater than results from farmers' plots (Eaton and Shepherd 2001, 31).

**Agricultural trials should be used to gauge local capacity and training
needs, as well as the suitability of the intended production methods**

¹⁷ More recent information concerning this case study (Eaton forthcoming) indicates that fertilizer provided to farmers to combat the poor soils that predominated in relation to this case study was sold for cash.

Trials should not only test and fine-tune technical agricultural aspects but also gauge the capacity of community members (through, for example, employing them in trial activities) to enable an accurate assessment of training and extension needs.



Figure 6: As suggested by this coffee drying scene from Ermera, the small scale on which production and processing for commercial markets have occurred to date means that investors must take care to estimate the level of training required. (Photo: Edio Guterres)

It is in connection with evaluating the feasibility of agricultural approaches that the need for land, even if only a few hectares (which the investor can control directly), becomes such an important issue. While in some instances vacant state land may be available for this purpose, it is likely in most cases that negotiations for access to trial plots on a short-term lease basis will have to be conducted with community members. As discussed in section 2, future legislation may facilitate the demarcation of community protection zones and areas of community property, and establish a framework for regulating engagement between outside investors and community members in these areas.

Impact Assessment

Where a proposed development is of such a size or nature that significant environmental and/or social impacts are possible (including the potential for land or other forms of dispute), the investor should commission an independent impact assessment, whether or not this is required by law. The impact assessment should evaluate the extent to which areas of land proposed for the project are used for purposes such as food crops, water access, or the harvesting of bush materials, wild foods, or medicines. Community members using land for these purposes may not be members of the main landholder groups for the areas concerned, but their needs should still be taken into account in project design and areas may have to be set aside for continued community use. The impact assessment process should include a gender component to evaluate the project's potential effect on women in the community. It should also be seen as an opportunity not only to eliminate or mitigate potential negative impacts but also to identify means by which the project can maximize positive outcomes for community members, thereby contributing to the development of good will and trust between the investor and community members.¹⁸

Risk Management

The success of a commercial agribusiness venture could be jeopardized by such developments as the failure of a commercial crop, changes in market demand, bankruptcy of the investor, or other unforeseen events. To avoid situations where the welfare or stability of community members is placed at serious risk, investors and other parties (for example government agencies or civil society organizations) should strongly encourage members of a community engaging with an investor to maintain a minimum level of subsistence production.

¹⁸ See, for example, Barrow (2000, 22–28).

Figure 7: The rice harvest in Viqueque (Photo: Rod Nixon)



This level of subsistence production should be sufficient to support the livelihoods and stability of project participants and their dependents in the event of the project's failure.¹⁹ Crop insurance for farmers is unlikely to be available in Timor-Leste for many years, but investors should consider

other means through which they can offer support to farmers in the event the predicted benefits of a project fail to materialize. This is important for investors to consider, as the potential risk to livelihoods may be a substantial deterrent to subsistence farmers who are considering engagement with an investor.²⁰

Organizational and Management Capacity of the Investor

As raised in connection with contract farming engagements (Eaton forthcoming), members of rural communities have a right to information concerning the investors' "financial background and technical competence," which investors should be prepared to provide. The failure of investors to pay due diligence to day-to-day operational matters can compromise the viability of a project. Untested variations to the usual planting cycle, the provision of unsuitable equipment due to lack of field trials, and the failure to collect harvests on time due to inadequate communication are all ways in which the returns on investment put into a project by community members can be compromised. These examples, drawn from previous engagements between investors and communities in the Timor-Leste context,²¹ are profiled in table 2.

Table 2: Examples of Poor Investor Management Practices Documented in Timor-Leste

Example 1: Lack of attention to seasonal cycles	At the beginning of the project, the investor introduced a new farming model from overseas. Extension staff instructed farmers across several sites to prepare the land and plant in January instead of the beginning of the wet season (November/December) as usual. Some farmers questioned the instructions but still planted in January as requested. However, in one of the sites the crop failed, with lack of water a major factor.
Example 2: Provision of unsuitable equipment and lack of attention to land tenure aspects	The investor asked farmers to undertake initial land clearing to prepare land for several stages of ploughing by tractor prior to planting. However, the soil had never been used for intensive cultivation before and the machinery was not sufficiently heavy-duty to cope with the work (a factor that could have been established in the course of a thorough evaluation). Due to ongoing mechanical failure, only one-third of the land that had been partially prepared for planting was planted, eroding community confidence in the project and threatening

¹⁹ For further discussion drawing on experience from different jurisdictions, see Eaton and Shepherd (2001, 66, 103).

²⁰ For further information on risks and constraints associated with agribusiness partnerships, see Eaton (2011).

²¹ Based on J4P research in 2009 and research conducted in 2010 by J4P in collaboration with Haburas.

	plans for expansion.
Example 3: Failure to collect harvest on time	Poor communication and understanding of responsibilities and roles between the investor and the community meant that community members did not understand that they were responsible for harvesting the crop. Consequently, the community did not begin harvesting the crop on time and much of it went rotten. Both parties were the losers. Following this incident, the company was unable to continue with the project due to local opposition (although the project may recommence at a later date).

In some instances of poor management by investors, such as planting out of season, there may be a case for compensation for farmers, or at least the writing-off of any debts owed by farmers to the investor resulting from contract farming agreements.

Occupational Health and Safety

Investors should ensure that farmers have the necessary skills to operate equipment and handle materials safely, and provide training and personal protective equipment as appropriate. Particular care should be taken with chemicals, including ensuring that pregnant and breastfeeding women do not work with them and that emergency showers are available near chemical-mixing facilities. Recent experience with farmers in Timor-Leste suggests that mixing and applying chemicals in the correct concentrations can present serious challenges. Accordingly, there is good reason that these tasks be undertaken by specially trained teams only.²²

1.3 Communications and Extension

Channels of communication are critical to the development of good relations and trust between investors and community members. Trust between parties is itself recognized (Doria n.d.) as a core feature of successful agribusiness collaborations. It is through effective communication channels that instructions and agricultural extension/training can be delivered to farmers, and through which farmers can seek clarification of, and provide feedback on, technical issues and other concerns and grievances associated with a project. Commercial agribusiness supply chains frequently require precise product specifications that will not be realized in a largely traditional rural economy without detailed attention to communication and extension channels. There is significant linguistic diversity in Timor-Leste, with as many as 17 languages spoken²³ and a number of areas in which multiple languages are used. Investors should take this into account when selecting field staff.

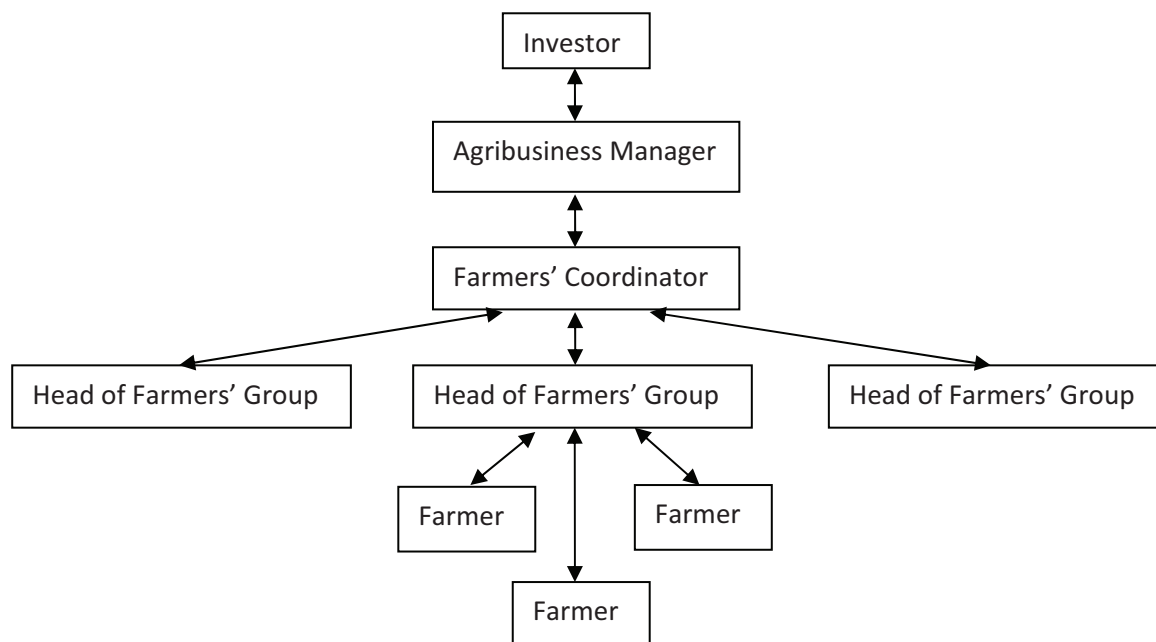
The Dangers of Long and Indirect Communication Chains

As evident from above-mentioned examples, such as planting cycles, equipment failure, and harvest collection, the sooner that minor or routine issues can be addressed, the less chance that a standard operational matter needing attention will develop into a significant problem. Long and indirect chains of communication/extension are unlikely to prove effective, especially in the initial phases of a project when the system is unfamiliar to the participating community members—and possibly the investor as well. Information transferred through long communication chains may be inaccurate and can prevent farmers from easily clarifying areas of uncertainty. Insufficient communication may also increase the potential for corruption and manipulation, which compromises benefits to individual participants and erodes their motivation and commitment to the project. The case study profiled in box 2 below highlights some of the hazards associated with long chains of communication.

²² This policy is followed in equivalent contexts elsewhere, including by New Britain Palm Oil limited in Papua New Guinea.

²³ For details see Wurm and Hattori (1981).

Box 2: The Shortcomings of Long Communication/Extension Chains²⁴



In the case of this long communications chain, communication appears to have been largely limited to interaction between the agribusiness manager and the farmers' coordinator. As a consequence, farmers report that clear instructions and extension advice failed to get to their level of the communications chain, resulting in misinformation, confusion, and the erosion of trust. Farmers suspected the farmers' coordinator of manipulating aspects of the project in his own interest. While some instruction was provided concerning the use of chemical fertilizers, there was insufficient follow-up and monitoring. As a consequence, the inappropriate application of fertilizer by some farmers' groups appears likely to have contributed to crop failure. The lack of local language skills by overseas technical specialists provided by the investor was a further factor contributing to poor extension outcomes.

The Importance of Direct and Effective Communications and Extension

In contrast to long communications chains, investors should seek to have as direct a line of communication as possible, and seek to work closely with participating community members. This means communicating and delivering extension information to women as well as men. In many cases, women will be the ones doing the work, so excluding them from the communications and extension process will mean that the information may not be going to the people who matter. To avoid situations where highly qualified technical specialists are unable to communicate information to farmers because of language difficulties, investors should ensure that extension officers have appropriate language skills.

Responsibility for Extension Delivery

The Ministry of Agriculture and Fisheries' agricultural extension service remains in a nascent state. The result is that investors must take primary responsibility themselves for delivering extension services that are adequate for the needs of the project. While ratios of extension workers to farmers vary widely depending on a range of factors,²⁵ the lack of experience of intensive agriculture in

²⁴ Based on 2010 field work conducted by J4P in collaboration with the Haburas Foundation.

²⁵ Eaton and Shepherd (2001, 95–96) refer to ratios of extension workers to farmers varying from 1:55 to 1:500.

Timor-Leste means that extension services should be more, rather than less, intensive. For the reasons illustrated in box 2 above, effort should be made to ensure that extension activities target those who are directly involved in the project, including women.

1.4 Benefit Distribution

Making Participation Worthwhile to the Farmer

The development of contract-based agribusiness is also still in its early stages in Timor-Leste and instances of default by farmers (involving the sale of the crop to another buyer) are not uncommon. Contributing factors to default, involving the investor's loss of any inputs contributed to the production process (for example, seeds, fertilizers, machinery costs, training expenses), include insufficient trust and goodwill between investors and farmers, a lack of communication, and the absence of price or other incentives encouraging the farmers to sell to the investor as opposed to other buyers. In this last respect, experience and common sense suggest that an agribusiness contract "will only be sustainable if [both] partners perceive that they are better off by engaging in it...[and]...see it as a source of gain – financial or otherwise – that could not be matched in the next best alternative." (Silva 2005, 22). Accordingly, it is important for prospective investors to consider strategies that will motivate farmers to maintain their engagement with investors. As outlined in box 3, organic certification is one way this has been achieved, by increasing the price that farmers will receive through sale to an investor who has facilitated the organic certification of their crops.

Box 3: Providing an Incentive to Farmers

An organic candlenut enterprise based in Baucau district provides an example of how to present farmers with a price incentive to sell to a particular firm rather than another. In operation as a small trading firm since the 1990s, the company received support from several international organizations²⁶ to break into the area of organic agriculture. The company is now one of a number of businesses in Timor-Leste (others involve coffee) sponsoring the organic certification of agricultural land belonging to communities. This case study demonstrates that investment in organic certification can serve to bond investors and farmers in a mutually beneficial relationship. In this case, the premium that the company is able to pay for produce from five *sucos* over which the company has arranged organic certification means that farmers would sell to them out of self-interest. At 2009 prices, the company was able to pay farmers 100 percent more for organically certified candlenuts than the farmers could obtain from other buyers. During the time of year when demand for candlenuts is higher (sometimes reaching 60 cents per kg or more), the company claimed that it was still able to guarantee a minimum of five cents more per kg than other buyers.²⁷

Community members are likely to be attracted to a partnership with an investor by the prospect of accessing new technologies and markets, developing new knowledge and skills, and expanding their cash income. Experience in Timor-Leste to date suggests that since supply of cash is typically tight in the predominantly subsistence rural economy, the staggering of payments throughout the crop cycle would be worth considering. Although perhaps not a common feature of some agribusiness models, the staggering of payments where possible (perhaps at key junctures associated with clearing, planting, weeding, and harvesting) would be likely to contribute to continuing interest in the project among farmers.

The Importance of Fair and Direct Payment to Participating Community Members

As described above, long and unwieldy chains of engagement between investors and farmers are unlikely to lead to successful outcomes because of poor transfer of information and reduced opportunity for clarification. Similarly, in relation to the distribution of benefits, extended and

²⁶ Including the University of Hawaii and GTZ.

²⁷ Based on Jastis Blong Evriwan (JBE, a part of J4P) research undertaken in 2009. See also Nixon (2009).

indirect channels utilizing intermediaries will increase the risk of transparency issues (see box 4). Even community cooperatives, according to the field findings informing these guidelines, are not immune from financial mismanagement and transparency problems. Accordingly, to avoid payment irregularities that risk eroding the commitment of the individual farmers on whom the project depends for success, investors are strongly advised to implement a direct and transparent payment regime so that participants know they are being fairly compensated for their input.

Box 4: Transparency at the Local Level

The crop cycle had been successful and produced a 13,248 kg harvest in this example from Baucau district. The farmers' share of this was US\$3,500, which the investor paid to the farmers' coordinators and which was to be shared among the 41 farmers who had participated (some with their families) in the project. The share for each farmer should have been around US\$300, but seven farmers received only US\$10–20. These farmers all belonged to one farmers' group and their return was very low in view of the work (land clearing, planting, weeding, and harvesting) they had put into the project. The situation caused tension between the farmers and the farmers' coordinator, requiring the *chefe de suco* and traditional leaders to step in to assist with identifying a solution. Following the next harvest, the distribution of payments to farmers was witnessed by the district administrator, the subdistrict administrator, police representatives, representatives of the investor, and a Catholic priest. This level of oversight is likely to prove excessive once rural Timor-Leste communities gain increased experience of commerce, but it does indicate the importance of being transparent—and being seen to be transparent—in relation to engagements with community members at the present time.²⁸ In this case, the original problem could have been avoided had payment been made directly to farmers right from the beginning.

Paying Women for their Work

Experience with agribusiness projects in Timor-Leste to date suggests that women have routinely been involved in the work as members of farmer households, but sometimes have been excluded not only from training and decision-making opportunities but also from receiving direct payment for their work. Such exclusion of women is understood to have led to a number of difficulties for the projects. What appears clear is that by remunerating women directly for their input, investors will increase the commitment of female workers to the agribusiness project and also contribute to increasing the status of women within the family, thereby potentially improving outcomes for families more generally.²⁹ What is more, investors should pay women in their communities, as family obligations may prevent women from being able to travel elsewhere to collect payments. Whereas incoming technologies such as mobile telephone banking may present new opportunities for transferring funds associated with agricultural engagements in the future, investors at the present time should take special care to ensure that their payments to women are transferred directly to the intended recipients.

Benefitting the Broader Community

In the course of the research informing these guidelines, several *katuas* or elders expressed disappointment that despite their role as community leaders in facilitating engagement between an investor and members of the community, the ensuing benefits were enjoyed only by those immediately involved in the project. This highlights the importance, in the social context of the *suco*, of taking broader community needs into account when planning and undertaking an engagement. The extent to which strategies can be implemented to accomplish this will differ with the scale and

²⁸ Based on 2010 field work conducted by J4P in collaboration with the Haburas Foundation.

²⁹ As outlined in a recent FAO report (FAO 2011, 43), “[e]vidence from Africa, Asia and Latin America consistently shows that families benefit when women have greater status and power within the household. Increased control over income gives women a stronger bargaining position over economic decisions regarding consumption, investment and production. When women have more influence over economic decisions, their families allocate more income to food, health, education, children’s clothing and the children’s nutrition.”

nature of the project, but first thought should go to benefits that can be provided for little or no additional cost or inconvenience. This might include the delivery of extension advice to an audience broader than that directly involved in the project, or the purchase where possible of produce additional to that produced under the contract, thereby providing community members with a market linkage.

More specialized training to reduce the need to source labor from other areas is also important to consider. For example, field findings suggest that training in the operation and maintenance of tractors and other machinery would be likely to prove popular. Again, investors should also take care to include women in such technical training programs, and avoid making assumptions about what comprises “male” or “female” work. As another example of broadening community benefits, community members suggested that given the opportunity, they would be willing to participate with an investor operating locally in a joint venture that is aimed at rehabilitating roads—and willing to do so on a “food for work” basis. At the very least, investors will be expected by the community to support periodic traditional ceremonies intended to ensure the success of the agribusiness partnership.

At the very least, investors will be expected to support traditional ceremonies intended to ensure the success of the agribusiness partnership

Providing benefits to the community is important and the employment of community members as extension workers or other staff members is common in agribusiness. However, experience elsewhere with contract farming arrangements has shown “a tendency for the development of a gradual reliance on the contracting company for non-farm-related matters” (Silva 2005, 18). The development of an overly dependent relationship between the community and the investor should thus be avoided.



Figures 8–10: As in the case of this event in Baucau, it is important for agribusiness engagements to be celebrated with traditional feasts. (Photos: Carlos Alves)

1.5 Dispute Management

As discussed above, experience elsewhere indicates that the best way to prevent disputes from disrupting a partnership between an investor and community members is by holding regular forums that enable farmers to meet with investor representatives. Regular meetings promote the exchange of information and prevent misunderstandings between the parties. It is important for both sides to recognize that agribusiness contracts are essentially *voluntary partnerships* and that it is up to them to make these collaborations work. Both parties should be aware that if misunderstandings or disputes cannot be resolved, the partnership may not be sustainable.

In the event that a dispute develops that is unable to be addressed through dialogue between the main parties, or that perhaps involves a new party, it is recommended that the court system be used only as a last resort³⁰ and that the parties instead agree upon a basic dispute-resolution method. An arbitration model, involving a facilitator who hears both sides of the story and then issues a binding decision, might not be appropriate. Rather, a mediation model might be more suitable, in which an agreed-upon mediator encourages each party to understand the position of the other to encourage an acceptable outcome.

The contract between parties entering an agribusiness partnership might include the following content:

- The parties acknowledge the voluntary nature of the partnership and the importance of working hard to avoid and resolve misunderstandings through dialogue.
- Identification of a basic dispute-resolution model in the event that contested issues cannot be resolved through dialogue. This could be a mediation model facilitated by an individual or panel agreed on by both sides. To avoid compromising the commitment of the parties to resolving misunderstandings through dialogue, it is suggested that facilitators be identified only in the event they are required, and not in advance.
- The courts will be used only as a last resort or in relation to serious or criminal matters.

2. Rural Development in Timor-Leste and the Private Sector

2.1 The Timor-Leste Rural Economy

Timor-Leste was noted in the past for its rich resources, and history highlights how the island of Timor originally came to the attention of European colonists because of its reputation as a source of sandalwood.³¹ The expansion of the coffee industry in the nineteenth century was also a remarkable achievement, despite its difficult beginnings and the present need for rehabilitation (discussed below).³² Notwithstanding these resource-based industry successes of the past, various geographic features of the island of Timor have historically presented challenges, including unpredictable rainfall patterns and the changeable nature of natural aquifers. Associated with these characteristics is the tendency of droughts to cause food shortages (Ormeling 1957, 21, 239–40), so that for early

³⁰ In relation at least to contract farming partnerships, international experience indicates that agribusiness investors and farmers rarely consider taking each other to court over breaches of agreement, although this by no means negates the importance of spelling out the nature of agreements between parties (Eaton and Shepherd 2001, 62; Doria n.d.). In the Timor-Leste context, the chances of one party taking another to court are perhaps even more unlikely given the emergent nature of the formal justice system and the tendency of the backlog of cases before the courts to reach “formidable” proportions on occasion (World Bank 2006, 19). Accordingly, it is important for noncourt avenues of dispute resolution to be identified before the commencement of an engagement involving investors and community members. In Timor-Leste, for reasons including the nature of settlement patterns and sociopolitical organization, the limited reach of the state historically, lack of confidence in the state justice system during the occupation, and the inaccessibility and unfamiliarity of the courts for many, *suco* forums of justice and dispute resolution continue to be widely used throughout the country. These *suco* forums tend to emphasize three features: (1) clarification of the origin of the problem and culpability (through examination of the complete “story” concerning a dispute), (2) the negotiation of compensation, and (3) reconciliation between the various parties.

³¹ As historian Charles Boxer (1960, 350) observes, “[l]ong before Vasco da Gama rounded the Cape of Good Hope, Timor was known to the Chinese as their best source for the supply of sandalwood.”

³² For further reading on the expansion of the coffee industry in the second half of the nineteenth century, see Clarence-Smith (1992), Gunn (1999, 160–63), and Davidson (1994, 8, 90–95).

residents, the hydrological patterns of Timor necessitated “a scattered form of settlement and cultivation” (Fox 1988, 262).³³

Today, the majority of Timor-Leste’s population remains primarily engaged in the cultivation of subsistence crops. Moreover, agricultural productivity is “very low by world and regional standards,” with food crop yields around 20–35 percent of those achieved across a range of Asian countries.³⁴ Factors contributing to low productivity include minimal rotation of crops, the limited technical knowledge of farmers, and lack of access to high-yield varieties and inputs such as fertilizer (Young, Santos, and Shetty 2010, 15). Additionally, the low level of productivity is exacerbated by post-harvest losses stemming from poor food storage practices (Timor-Leste 2008, 17).



Figures 11–13: Sandalwood can still be found in Timor-Leste. As suggested by these pictures from Covalima, many families also grow teak as a source of timber and cash, and a number of teak plantations (of varying quality) remain, which date back to the period of Indonesian occupation. (Photos: Rod Nixon)

Today, initiatives such as the Seeds of Life project³⁵ supported by the Australian Agency for International Development (AusAID) are playing an important role in promoting higher-yield staples to improve subsistence livelihoods. However the outlook remains poor, with one assessment concluding that “no significant increases in food production” occurred over the 2000–07 period.³⁶ Another analysis predicts that while levels of productivity will increase, production increases may “be outpaced by the high population growth . . . expected to occur in the medium term” (Timor-Leste 2008, 33).

The Importance of Private Sector Investment

The immensity of the agricultural development challenges in Timor-Leste and the challenges associated with the development of an effective public agricultural extension service³⁷ suggest that

³³ According to a Ministry of Agriculture, Forestry and Fisheries (MAFF) report, the island of Timor also “has relatively unproductive, low fertility, fragile soils” (Timor-Leste 2004, 1).

³⁴ According to Young, Santos, and Shetty (2010, 15), food crop production in 2007 approximated 70,000 tons maize, 50,000 tons cassava, 45,000 tons rice, and 34,000 tons sweet potato. See also Timor-Leste (2009b, 12–14).

³⁵ See <http://www.seedsoflifetimor.org/>. Note that the project pays particular attention to maize, rice, sweet potato, cassava, and peanuts.

³⁶ See Young, Santos, and Shetty (2010, 2), who refer to International Monetary Fund (IMF) and FAO data.

³⁷ According to government documentation (Timor-Leste 2008, 15), “MAF has identified human resources limitations, their capacity and deployment, and the lack of an effective performance monitoring system as major constraints to MAF’s ability to implement its high priority programs in the field and services to farmers

the private sector could play a valuable role delivering new technologies, connecting farmers to markets, and investing capital in the intensification of agriculture. To date, however, while numerous private sector players are active in Timor-Leste, only minimal private sector investment in agricultural intensification has occurred, covering a total of no more than several hundred hectares.³⁸

A major hurdle to private sector investment in intensification concerns the lack of established means by which investors can engage with community members in productive arrangements, since it is clear that neither land use agreements nor contracts currently play a significant role in agribusiness in Timor-Leste. In the absence of contractual mechanisms enabling investors to invest in increased production through the provision of such inputs as seeds, fertilizer, irrigation, or training, private sector agribusiness in Timor-Leste tends to be characterized by a small group of buyers who compete with each other for a share of the limited and, according to some reports, declining harvest. With the exceptions of the Cooperativa Cafe Timor (CCT) enterprise and one small-scale private sector initiative (Timor Global), there is currently almost no private sector investment in the expansion of agribusiness production or the improvement of quality.³⁹

As described in the World Bank *Diagnostic Trade Integration Study* (2011, 44), the lack of investment in intensification is particularly apparent in the coffee subsector, in which a small number of businesses compete to purchase a share of the “stagnant coffee output” from farmers for export:

[O]ne of the key bottlenecks is the lack of extension service support from the private sector to farmers because of potential free rider problems. There is little incentive for the private sector to provide extension advice to farmers because benefits can be captured by competitors.

One coffee trader⁴⁰ has asserted that “[c]urrent yield per hectare is extremely low and should the trend continue to fall, could reduce our coffee industry to be irrelevant in the international trade.” The Timor-Leste coffee sector, which comprises over 50,000 hectares of plantation area, has been a source of cash to an estimated 67,000 families, amounting to around 30 percent of the population (World Bank 2011, 41, 46). If coffee productivity does decline, it will therefore impact negatively on the cash incomes of almost one-third of the population. Meanwhile, investment in improved management strategies, including replanting and pruning, is estimated to have the potential to increase the productivity of coffee productivity in Timor-Leste between three and four times, with flow-on benefits to members of the rural population.

2.2 Agriculture and Land in Timor-Leste

The Timor-Leste Context

Agribusiness investment in developing countries is a growing concern (see annex). As a small, mountainous, half-island state with nonvolcanic soils of limited fertility, Timor-Leste is likely to be a less sought-after destination for international investors than African states with large tracts of productive land, perhaps featuring expansive river plains enriched annually by deposits of silt (Funk 2010, 61). While investors are known to have approached the government in relation to large-scale

in a timely manner.” This conclusion is also reflected in the more recent findings of the *Diagnostic Trade Integration Study* (DTIS) completed by the World Bank (2011, 73).

³⁸ Notably, some instances of successful investment involve organic certification schemes that appear to successfully bond investors and farmers in a mutually beneficial relationship, based on the premium that investors can pay for produce from areas for which they have arranged organic certification. In such instances, farmers sell to the investors out of self interest even without contracts, as they would not be able to obtain the same price from another buyer.

³⁹ For further information see Nixon (2009).

⁴⁰ Bobby Lae, cited in Timor-Leste (2009a, 29).

development proposals, as evidenced by a 2008 Memorandum of Understanding between the government and an agribusiness firm concerning a renewable 50-year lease for 100,000 hectares “of unproductive land,”⁴¹ there is nothing to suggest that any proposal has moved beyond the most preliminary stage. Although experience in subsistence-dominated states in the region suggests that endeavors to establish large-scale agribusiness projects without the agreement of community members will encounter substantial resistance, the level of vigilance exercised in Timor-Leste by international agencies and civil society organizations may assist in ensuring that any such proposals are exposed to intense scrutiny. Still, there are concerns about the lack of legal clarity concerning which land the Government of Timor-Leste could potentially grant to investors, and perceived “plans to accelerate development of state land, including through resettlement of families and expropriation” (ICG 2010, 16).

Accessing Agricultural Land in Timor-Leste

To practice agriculture, investors must either have access to land or engage with those who do. In Timor-Leste, engagement with community members is critical to successful agricultural endeavors for historical reasons. During the Portuguese and Indonesian periods, only a small proportion of the land was used for intensive agricultural purposes and less than 5 percent of land in the country appears to have ever been registered or definitively alienated from customary tenure (Nixon 2007). Accordingly, the rural economy remains overwhelmingly based on subsistence agriculture, and customary ownership and/or use claims are likely to prevail over the majority of agricultural land. Even land that technically belongs to the state, such as estate plantation land formerly leased to businesses, may be subject to customary ownership and/or use claims dating to either before or after the date the land was originally alienated from customary tenure.⁴² The experience of one company that secured a lease over plantation estate land from the state suggests that in and of itself, a lease over “state” land may provide insufficient basis for agribusiness investment. In this case (see box 5 below), the lease failed to deliver vacant possession, as the land was occupied and used by community members.

Although in some situations a lease over state land may be a viable option, possibly as part of a package of measures, any successful engagement between agribusiness and communities is likely to require consultation and negotiation with community members (as discussed above). Investors should ensure that proposed agribusiness developments will not interfere with the production of food crops, access to water, or the harvesting of bush materials, wild foods, or medicines. Here, too, women as well as men should be consulted on land issues, as women may be the primary users of land in the vicinity of the proposed project site.

⁴¹ See <http://www.laohamutuk.org/Agri/08Agrofuels.htm#sugarcane>.

⁴² For example, Clarence-Smith’s study (1992, 11) of smallholder agriculture in Timor-Leste indicates that some of the earliest coffee plantations consisted of areas that had been established by local cultivators before being taken over by Portuguese planters with little interest in introducing management advances. Customary claims could still prevail over these areas. Additionally, most plantation leases were abandoned by their owners/managers in 1975 (see Nixon 2007), and are likely to be subject to further (use) claims by those who have harvested the crop since that time.

Box 5: Why Leasing “State” Agricultural Land May Not Be a Solution



Figure 14: Padi fields in Aileu (Photo: Rod Nixon)

The case of a lease issued to an investor by the Government of Timor-Leste in 2005 for 3,000 hectares of old coffee estate land in Fatubesi (Ermera district) illustrates the reasons why investors should be cautious about leasing “state” agricultural land. Although formally state land on the basis of historical inclusion in the *Sociedade Agrícola Pátria e Trabalho* (SAPT) plantation, this lease was issued by the state without consultation with community members from

the lease area. The land has proven subject to both use rights and ownership claims by groups residing on and near the lease area. Accordingly, the lease has provided a fragile basis for the company to undertake crop improvement and management activities, and access to the site has been possible only after complex and extended negotiations with community members addressing terms of engagement, employment provisions, and land tenure aspects.

By 2011 the company had rehabilitated around 25 hectares of plantation and commenced less intense rehabilitation activities on around 70 more hectares of the lease area. Interestingly, the fact that the lease was issued by the state appears to have acted as a disincentive to a number of smallholders who were interested in participating in the project but concerned that participation could compromise their claims to land in the lease area.⁴³

It is important in the subsistence context of Timor-Leste for the viability of particular agribusiness approaches to be trialed and fine-tuned before production is scaled up. Undertaking sufficient field trials will also enable the capacity of local farmers to be assessed, thereby facilitating the determination of training needs and levels of extension support. If these evaluative activities are done by the investor, access to at least several hectares of land via a use agreement with community landholders is likely required, even if the scaling-up stage of the project is conducted on a contract farming basis. In due course, possibly depending on the scale of the development, such use agreements may be subject to the community land provisions of a future land law.

A Future Land Law

It is anticipated that a land law will be passed, after a decade of formulation and discussion. Future legislation regulating community land may facilitate the demarcation of community protection zones and areas of community property and thereby provide a basis for protecting community property from the possibility of predatory land grabbing.⁴⁴ Importantly for investors and communities alike,

⁴³ Based on interviews with Timor Global between 2009 and 2011 and fieldwork conducted by J4P in collaboration with the Haburas Foundation in 2010. See also Nixon (2009).

⁴⁴ See in particular Chapter V of the Timor-Leste Draft Land Law on “Protection Zones and Community Property.” Article 22 of the draft vests responsibility with the state for ensuring that “all customary practices conform to the Constitution and are participatory, non-discriminatory and respect gender equality,” for

the law may establish a framework regulating a range of aspects related to engagement between investors and communities, including consultation obligations; the granting of third-party use rights; social, environmental, and natural resource management considerations; and dispute resolution. To avoid unnecessary delays associated with small-scale developments, the legislation may establish a staggered or tiered system whereby the obligations of investors with respect to these various aspects increase in proportion to the size of the development. One policy option for ensuring social and environmental compliance in relation to large-scale investments is for the Government of Timor-Leste to require mandatory accreditation with an international voluntary industry certification scheme (see annex). This could be a means of ensuring conformity with internationally recognized principles of good practice in the short term, while the state of Timor-Leste goes about the more protracted process of developing its own monitoring and enforcement capacity.

promoting “environmental and socio-cultural sustainability in the uses of natural resources and the way of life of each local community,” and for protecting “immovable property in the community from real estate speculation.” RDTL, “Special Regime for Determination of Ownership of Immovable Property.” Timor-Leste Draft Land Law Version 5.

Annex: Investing in Agribusiness in a Developing Country

Concerns about “Land Grabbing” in Developing Countries

While sensitive agribusiness investment can connect farmers to new markets and facilitate the transfer of knowledge, skills, and new technologies, insensitive agribusiness can displace communities and destroy livelihoods. In recent years, increased attention has focused on reports, often unverified, of increasing levels of “land grabbing” by foreign investors (including governments, sometimes acting in partnership with private sector actors) in developing countries, and the potential impact on food security in local communities. A 2009 paper by the International Food Policy Research Institute (IFPRI) (Braun and Meinzen-Dick 2009, 3–4) referred to the “proliferating acquisition of farmland in developing countries by other countries seeking to ensure their food supplies,” and cited news reports of large areas of agricultural land said to have been acquired in developing countries in the 2006–09 period. The paper also noted, however, that “[w]ell documented examples are scarce, details on the deals are often murky, and some reports are contradictory.”

In September 2010, the World Bank released a report that included more detailed analysis of similar data. Drawing on news reports of land acquisitions that came to light between October 2008 and August 2009, the authors⁴⁵ developed a “database of 464 projects, with 203 including area information that totals 46.6 million ha” (Deininger et al. 2010, vi, 35–36). Although the authors assert that recent demand for farmland has been “enormous” based on “an average annual expansion of global agricultural land of less than 4 million hectares before 2008,” they also report marked differences between the intentions of investors and outcomes:

In sharp contrast to reported intentions, according to media reports most of the projects listed have either not acquired land or fail to use the land they have acquired as intended. In fact, almost 30 per cent are still in an exploratory stage (that is, they have not obtained government approval); 18 percent have been approved but have not started yet; more than 30 percent are at initial development stages; and only 21 percent have initiated...actual farming, often on a scale much smaller than intended.

Whatever the empirical reality concerning foreign “land grabbing” in developing countries, the increased attention the issue has received has led to calls for standards aimed at ensuring good outcomes for community members as well as investors in connection with agribusiness investments.

Principles and Codes of Conduct

As a means of safeguarding the welfare of communities, a number of international organizations have proposed the development of codes of conduct, sets of principles, or guidelines that should be applied to agribusiness developments in developing countries. Table 3 outlines relevant input into the development of voluntary guidelines provided respectively by IFPRI and the World Bank.⁴⁶ It should be noted that various aspects referred to in the table are reflected in this paper.

⁴⁵ Note some minor formatting changes in reproduction.

⁴⁶ More detailed voluntary guidelines on “responsible governance of tenure of land and other natural resources” are in the process of being developed by FAO and its partner organizations. These are intended to be consistent with 26 relevant international agreements on governance and access to land and natural resources. For further information, see FAO (2009).

Table 3: Voluntary Guidelines for Responsible Agribusiness Investment

International Food Policy Research Institute “Key Elements of a Code of Conduct for Foreign Land Acquisition”⁴⁷	World Bank “Principles for Responsible Agro-Investment”⁴⁸
<p>1. Transparency in negotiations. Existing local landholders must be informed and involved in negotiations over land deals. Free, prior, and informed consent is the standard to be upheld. Particular efforts are required to protect the rights of indigenous and other marginalized ethnic groups. The media and civil society can play a key role in making information available to the public.</p> <p>2. Respect for existing land rights, including customary and common property rights. Those who lose land should be compensated and rehabilitated to an equivalent livelihood. The standards of the World Commission on Dams provide an example of such policies.</p> <p>3. Sharing of benefits. The local community should benefit, not lose, from foreign investments in agriculture. Leases are preferable to lump-sum compensation because they provide an ongoing revenue stream when land is taken away for other uses. Contract farming or out-grower schemes are even better because they leave smallholders in control of their land but still deliver output to the outside investor. Explicit measures are needed for enforcement if agreed-upon investment or compensation is not forthcoming.</p> <p>4. Environmental sustainability. Careful environmental impact assessment and monitoring are required to ensure sound and sustainable agricultural production practices that guard against depletion of soils, loss of critical biodiversity, increased greenhouse gas emissions, or significant diversion of water from other human or environmental uses.</p> <p>5. Adherence to national trade policies. When national food security is at risk (for instance, in case of an acute drought), domestic supplies should have priority. Foreign investors should not have a right to export during an acute national food crisis.</p>	<p>1. Respecting land and resource rights. Existing rights to land and associated natural resources are recognised and respected.</p> <p>2. Ensuring food security. Investments do not jeopardize food security but strengthen it.</p> <p>3. Ensuring transparency, good governance, and a proper enabling environment. Processes for acquiring land and other resources and then making associated investments are transparent and monitored, ensuring the accountability of all stakeholders within a proper legal, regulatory, and business environment.</p> <p>4. Consultation and participation. All those materially affected are consulted, and the agreements from consultations are recorded and enforced.</p> <p>5. Responsible agro-investing. Investors ensure that projects respect the rule of law, reflect industry best practice, are economically viable, and result in durable shared value.</p> <p>6. Social sustainability. Investments generate desirable social and distributional impacts and do not increase vulnerability.</p> <p>Environmental sustainability. Environmental impacts of a project are quantified and measures are taken to encourage sustainable resource use while mitigating the risk of negative impacts.</p>

Although opposed by some commentators for a range of reasons, including but not restricted to their voluntary nature,⁴⁹ codes of conduct and guiding principles for agribusiness investment are

⁴⁷ Cited in Braun and Meinzen-Dick (2009, 3–4). Note that original used bullet points instead of numbers.

⁴⁸ Cited in Deininger (2010, x).

⁴⁹ Borras and Franco (2010, 9–12, 32), who argue the need to question “the fundamental roots of land grabbing...[namely]...the existing industrial pattern of food and energy production and consumption controlled by TNCs,” and list a range of reasons why they are opposed to codes of conduct. In addition to the possible role of such codes in sustaining and extending “the existing global industrial agro-food and energy complex,” these reasons include the possible role of concerns about property rights aspects, whether improved transparency of land deals will be sufficient to produce pro-poor outcomes, and the voluntary nature of codes of conduct. The authors also express concerns about the ability of partnerships between agribusiness investors and farmers to “result in win-win scenarios.” However, though the authors claim that such outcomes have

believed to be of use in “reminding countries and investors of their responsibilities and in drawing attention to situations where they did not apply” (Deininger et al. 2010, x). Codes of conduct or guiding principles also invite attention to the various voluntary industry certification schemes that have developed over recent decades (see below).

Voluntary Industry Certification Schemes

The rise of the ethical consumer movement and legislative change in developed countries have resulted in the establishment of multiple voluntary industry certification schemes. These schemes typically require that companies conform to good international social and environmental practices, wherever they operate, if they wish to achieve and maintain accreditation. In some sectors, notably forest products, certification with recognized schemes is becoming essential for firms intending to access lucrative Western markets.⁵⁰

Industry certification requires that an operator and/or project meets particular social and environmental standards, ideally as verified by external auditors, in order for accreditation with a particular industry scheme to be achieved and maintained. There are now a range of schemes catering to particular industries, including, for example, the Forest Stewardship Council (FSC), designed to promote sustainable timber plantation management,⁵¹ and the Rainforest Alliance Sustainable Agriculture Network (SAN) program, which has standards appropriate to a range of crops, including coffee, tropical fruit, and other products.⁵² Industry certification schemes are not just confined to crops and plantations, and the Rainforest Alliance also has a sustainable tourism program.⁵³ Certification schemes also exist for the offshore fishing industry, and the Marine Stewardship Council offers a certification program for sustainable commercial fishing activities.⁵⁴

So far, the international certification experience has been varied. World Bank information indicates that in the case of palm oil production, for example, for which certification is now possible through the Round Table on Sustainable Palm Oil (RSPO), applying community land rights criteria “to actual operations has been difficult and controversial.” Other certification programs, notably the FSC, appear to have had far greater success. A key feature noted in the World Bank study is that for certification programs to be meaningful, they must include provisions for the “independent verification of compliance” with standards (Deininger et al. 2010, 15, 97–98).

Voluntary industry certification is still in its infancy. On the positive side, measures are being taken to give recognition to those schemes that have proven to be robust. Organizations that *certify* the *certifiers* include the relatively new International Social and Environmental Accreditation and Labelling Alliance (ISEAL)⁵⁵ and the International Standards Organisation.⁵⁶ ISEAL has to date accepted ten certification schemes as “full members,” with additional “associate” and “affiliate” members.

failed to be realized “[o]ver time and in many diverse settings,” they neither refer to examples nor cite sources. For further discussion on this theme see also Palmer (2010).

⁵⁰ For example, following amendment in 2008, the U.S. *Lacey Act* now prohibits the import and trade of forest products (including timber) sourced illegally in any sovereign state. In response to this development (and the market influence of informed consumers who supported such legislation), businesses dealing in forest products are under pressure to demonstrate that they operate in accordance with international social and environmental standards. For further information, see Elson (2008) and Deininger et al. (2010, 97).

⁵¹ See www.fscus.org.

⁵² See <http://www.rainforest-alliance.org/>.

⁵³ See <http://www.rainforest-alliance.org/tourism.cfm?id=main>.

⁵⁴ See <http://www.msc.org/>.

⁵⁵ See www.isealliance.org.

⁵⁶ See www.iso.org.

The advent of voluntary certification schemes and their increasing use by industry offers developing country governments with the option of introducing mandatory certification, with appropriate schemes, for particular kinds of investments (perhaps those exceeding a prescribed land area or a prescribed level of capital). Even if the Government of Timor-Leste decides not to require compliance with international industry certification schemes, investors would still be wise to consider such certification, not just as a means of demonstrating commitment to social and environmental management, but also to potentially maximize export options for their produce.

Emphasis on Smallholders

Increasing concern about corporate domination of agriculture and the marginalization of communities from agricultural land has led to the growing interest in forms of commercial agriculture that do not displace communities and in which smallholders have a role.⁵⁷ From the investor's perspective, this does not necessarily have to be to the detriment of economic performance, since while smallholder agriculture may be less productive than large-scale farms overall, it can be more efficient in terms of costs to output (Deininger et al. 2010, 24). As a means of advancing commercial agriculture with the inclusion of smallholders, contract farming has become the subject of increased attention.⁵⁸ Contract farming can take on a wide range of forms, from informal arrangements to complex nucleus estate developments.⁵⁹ A number of publications provide an analysis of the benefits and risks of the various contract farming arrangements from the perspectives of both investors and farmers (Eaton and Shepherd 2001; Silva 2005; Vermeulen and Cotula 2010).



Figure 15: Women farmers in Oecusse (Photo: Rod Nixon)

⁵⁷ See, for example, Vermeulen and Cotula (2010) and Cotula and Leonard (2010).

⁵⁸ As defined in table 1 of this document, contract farming agreements typically involve an arrangement whereby an investor provides inputs (potentially seeds, fertilizer, and provision of machinery or training) and the farmer cultivates produce for sale to the investor. The price is often agreed on prior to production and quite specific quotas and specifications might be set. Payment is likely to be made on collection of the harvest, minus the cost of inputs provided by the investor.

⁵⁹ The variations are described in detail in Eaton and Shepherd (2001).

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Need Additional Information or Help?

If you need help or additional information there are a number of places you can go in the first instance:

The Chamber of Commerce and Industry of Timor-Leste (CoCITL)

Avenida Mártires da Patria, Colmera, Dili, Telp. +670 7983007- Email: ccitloffice@gmail.com

– Website: www.ccitl.org.tl

The International Finance Corporation (IFC)

World Bank Office, Avenida dos Direitos Humanos Lecidere,

Dili, Timor-Leste



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President of CCI-TL

Suggested foreword by **Presidential Council** of the Chamber of Commerce and Industry of Timor-Leste

Timor-Leste is a country with many opportunities for investors, particularly in rural areas where most of our people are living. In fact, agribusiness has been identified by the Government of Timor-Leste as a key priority in its recently released Strategic Development Plan. Yet, it can be a challenging environment to work in. At the Chamber of Commerce and Industry of Timor-Leste, we are dedicated to helping investors overcome some of these challenges and creating a conducive business environment for investors for the benefit of our people.

These guidelines have been developed in collaboration with international experts, investors and government partners and draw upon experience of successful investments and win-win solutions for investors and communities in Timor-Leste.

The guidelines are very much a practical “how to” guide for an investor contemplating an agribusiness engagement in Timor-Leste. They include information about local conditions (government processes, the conduct of agriculture itself and how our rural communities are organized) and provide practical suggestions about preventing problems that result from poor communication and misguided expectations. It is our hope that the guidelines may be used by any investor interested in exploring the many opportunities that Timor-Leste has to offer.


Julio Alfaro



2011

