

Case 2¹: New Forests | Malaysia | Investment in a Forest Plantation

The company

New Forests is a real assets investment manager specializing in forestry, land management, and conservation projects. Currently, the company has investments in Australia, New Zealand, Southeast Asia, and the United States. New Forests raises funds from private investors and development finance institutions, and then deploys the capital as it identifies promising opportunities. Its Tropical Asia Forest Fund (TAFF) targets hardwood timber plantations and environmental assets, and then works to improve the operations and eventually achieve Forest Stewardship Council (FSC) certification. New Forests has committed to mandatory due diligence on land tenure rights before making investment decisions through the TAFF.

The investment

In June 2013, New Forests made its first investment through the TAFF in 25,000 hectares of established hardwood plantations in Northern Sabah, Malaysia under a lease held by Acacia Forest Industries (AFI). The plantations were established in the early 1980s as a part of watershed restoration with support from New Zealand. The project inherited several legacy tenure issues and there is a mix of areas that have been de-gazetted by the Sabah Forestry Development Authority (SAFODA) for community use. However, not all areas were de-gazetted so some plantation areas are still occupied by households that may have land or use rights.

Pre-investment actions on land tenure

Before deciding whether to invest, New Forests commissioned a study on existing land rights from a local consultant. The intent of the study was to understand the full extent of land tenure claims and the minimum area that could be planted to avoid potential conflicts and meet financial objectives. The study also included a gap analysis to determine how far the existing practices were from FSC and IFC Performance Standards. New Forests invested when it was confident that the project could reach international standards and investment return benchmarks.²

Post-investment actions on land tenure

New Forests and its partners developed a community engagement plan based on a multi-year social baseline study conducted by a local NGO, PACOS Trust. Importantly, PACOS Trust was already well-versed in dealing with community land in the region. The NGO was instrumental in helping the project gain access to key stakeholders.

Additionally, New Forests commissioned participatory mapping of the project area by a respected local consultant, which was completed in 2016. The objectives of the participatory mapping were to identify:

- The “perceived” boundary between SAFODA and villages;
- Land use development and encroachment by “outsiders”;
- Important sites for the community; and
- Extent of land use disputes within the gazetted area.

In all, 59 communities and around 12,000 people were identified in the project area. Active lands were identified in consultation with community members and through field work. AFI operational plans were adjusted based on the mapping.

Since there are few economic opportunities in the region outside of subsistence agriculture and working on the plantation, New Forests identified joint-venture opportunities in consultation with communities during participatory mapping to increase their profit share and stake in the project. Another key result was identifying the need to increase local capacity in natural resource management. Subsequently, AFI held a

¹ Based on an interview with MaryKate Bullen, Associate Director of Sustainability & Communications, New Forests on July 26, 2017.

² New Forests. 2013. New Forests Announces Final Close of the Tropical Asia Forest Fund with \$170 Million of Capital Commitments and Completes Fund's First Transaction. <https://www.newforests.com.au/new-forests-announces-final-close-of-the-tropical-asia-forest-fund-with-170-million-of-capital-commitments-and-completes-funds-first-transaction>.

series of workshops centered near village clusters, including one at the local district land office, to provide education and resources on this subject.

Lastly, AFI established a grievance mechanism to comply with FSC and IFC performance standards. AFI maintains a register at its office to record comments received. There are also three community liaisons actively engaging with communities to identify and address complaints before they become major grievances. Communication channels with the community are available, including via WhatsApp if there are any urgent needs.

Impacts on the company from acting on land tenure

The operational benefits of the land tenure assessment include a better understanding of the operational environment, establishing trust, and opening communication channels. The actions taken demonstrate the company's willingness to actively avoid land tenure conflict and encourage local development on the communities' terms.

As a consequence of the mapping, the planted area has decreased as the company ensures that contested areas are not replanted. While there are no active conflicts over land tenure, some residual encroachment does occur after final harvest in contested areas.

Challenges

- **Sequencing the activities to ensure FPIC:** New Forests makes equity investments in operating forestry companies. It therefore does not have the on-the-ground presence required for lengthy FPIC processes. Instead, during its investment decision-making process, the company makes a plan to proactively achieve FPIC once it has invested.
- **Diverging standards:** FSC certification requires FPIC for all communities, while IFC certification only requires FPIC for indigenous peoples. New Forests has committed to FPIC for all communities to comply with FSC requirements and go beyond IFC requirements.
- **VGGT present best practice, but are difficult to incorporate in investment process:** For example, the VGGT call on businesses to use only the minimum area possible for their investment. Yet, quickly and accurately identifying all existing land claims and legacy land issues to estimate the minimum plantable area³ is challenging without extensive on-the-ground mapping and consultation, which is not possible for an investor evaluating its investment opportunities.

Lessons

- **Have a clear plan in place if FPIC is not possible pre-investment:** Proactively seek out the best local expertise to evaluate the existing land claims and advise on whether achieving FPIC is possible through a rigorous consultation and engagement process.
- **Engage with affected stakeholders early, especially during project design:** Attain a better perspective of the situation and avoid assuming that the conclusions of the previous project owners are completely reliable. Identify and interview the appropriate type and number of mid-level staff, such as community liaisons and technicians, during due diligence.
- **Communicate clearly with investment partners about why land tenure risks are important:** Do not force project implementation if the social risks are too high.
- **Land tenure issues are not isolated to emerging or frontier markets:** New Forests has identified land tenure issues in its other funds, including in the United States and New Zealand.

³ During the pre-investment phase, New Forests estimates its expected returns from making the investment based on a minimum plantable area (i.e. the amount of land that must be planted to generate enough revenue to exceed costs and return a profit).