

MINISTRY OF FINANCE

No. 109/2000/TTLT/BNN-BTC

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INTER-MINISTERIAL CIRCULAR

Guidance for implementation of the Decision 187/1999/QD-TTg of 16 September 1999 by the Prime Minister on reform of organization and management mechanism of State Forest Enterprises (SFE)

The Prime Minister has promulgated Decision 187/1999/QD-TTg of 16 September 1999 on reform of organization and management mechanism of State forest enterprises (SFE). The Ministry of Agriculture and Rural Development jointly with the Ministry of Finance provide guidance for implementation of some major issues as follows:

I. OBJECTS FOR APPLICATION IN IMPLEMENTATION OF DECISION 187/QD-TTG

II. RE-ORGANIZATION OF THE SFEs

Basing on the current status of the existing SFEs, re-organization of the SFEs will be implemented in 3 categories as stipulated at Article 3 of the Decision 187/DQ-TTg, as follows:

1. The SFEs to be maintained and consolidated to operate under business mechanism
2. SFEs to be changed into Protection Forest Management Board
3. SFEs to be changed into other types of business

III. REVIEW OF THE FOREST AND FORESTLAND ACREAGE; ALLOCATION OF FOREST AND FORESTLAND TO SFEs

Provincial People's Committees shall direct related agencies and localities in the province to review of the SFEs' forest and forestland areas for SFEs' reorganization and doing necessary procedures for forest allocation to and to grant use-right certificates to those SFEs.

1. Review contents

a. Land: To identify area and borders of different types of land managed by the SFEs on map and on the field:

- Land area planned for production and less critical protection forests includes natural, planted forests, land without forests;

- Area planned for very crucial and crucial protection forests includes natural, planted forests, land without forest;

- Agricultural land and other land types of land include residential area, fields, upland field, pool, lake, garden...of the households;

- Forestland area located within the SFE's area but the SFE is not capable of using ineffectively.

b. Forest: To identify the status, area and quality of the forest managed by the SFEs. For production and less critical natural forests: the SFEs should reconsider and readjust the plan on regulating forest, and make the proposal for business and production for each 5-year period, submitting to PPCs for approval and implementation. On a 5-year periodical basis, a review should be done and another 5-year proposal should be drawn up. Contents and implementation methods should be in line with the regulations of the Directive 15LS/CNR dated 19/07/89 of Ministry of Forestry (MARD) so as to have simple way in building up the forest regulation plans for SFEs

2. Methodology for the review

Based on results of the general inventory over forests according to the Directive 286/TTg of 2 May 1997 and the Directive 24/CT-TTg of 18 September 1999 by the Prime Minister on overall inventory of land by 2000, the provincial People's Committees are consulted by Departments of Agriculture and Rural Development and Departments of Cadastral together with district PCs and the SFEs' managing agencies (if any) to direct commune People's Committees and SFEs directors in the review and clarification of the mentioned-above contents.

3. Land allocation and Issuance of land use right certificates and forest allocation to the SFEs

Basing on the review's results, the area of residential, agricultural land, gardens of the households and the forest area that the SFEs are not able to use ineffectively shall be separated from the SFEs' allocated area. These areas will then be handed over to local authorities for allocation or giving to organizations, households, individuals in accordance with Decree 64/CP of 27 September 1993, Decree 85/ND-CP of 28 August 1999 and Decree 163/ND-CP of 16 November 1999 by the Government.

The provincial People's Committee shall do necessary procedures to grant land use right certificates for the remaining land and forest area to the SFEs for long-term and stable use in forestry/agriculture/aquaculture purposes.

Order and procedures for land and forest allocation and granting land use-right certificates according to guidance given in the Joint Circular 62/200/TTLT/BNN-TCDC dated 6/6/2000 of MARD and Land Administration Department on guiding the land allocation, land lease and granting forestland use-right certificates.

4. Fund source for review and granting land use right certificates to the SFEs shall be allocated from the local budget basing on the cost estimation approved by the provincial People's Committee.

IV. AUTHORITIES AND COMPETENCIES OF SFEs IN MANAGING AND USING ALLOCATED FORESTS

V. POLICY FOR THE LABOURER

1. To provide housing land for the worker/staff households working for the SFEs
2. To allocate forest and agricultural land to SFEs' worker/staff households
3. To deal with social assurance and residing registration for the SFEs' workers/staff that no longer work
4. Land availability for resident, agricultural and forest production land for the SFEs' workers/staff households

VI. FINANCIAL POLICY

1. Financial regulations applied to cost-accounting SFEs and other state-owned enterprises that use forestry land and involve in forest business

- a. Management of the SFE assets and capitals
- b. Management of revenue, costs and manufacturing prices at the SFE
- c. Distribution of after-tax profits and funds management by the SFE
- d. Procedures on the distribution of the capital generated from corporate tax :
- e. The state budget will subsidize 100% the approved cost estimation. PPC approves the SFE's proposals for infrastructure construction serving public utilities and production, including:
 - Plantation, tending and management of crucial and very crucial protection forests.
 - Construction of essential infrastructures (roads, yards,...) for production undertaken in the areas planned for concentrated material forests.
 - Support to the socio-economic development to ensure the national security, safety in the upland and remote areas.
- g. The SFE is entitled to the state support policies to implement the project on natural forest protection, regeneration and enrichment such as Material Forest Plantation Project regulated in the Decree 43/1999/ND-CP dated 29/6/1999 of the Government on development investment credit of the state

2. For Protection Forest Management Board

VII. Reform of management organization in SFEs:

1. Production organization
2. Organization mechanism

VIII. Implementation organization

Based on the above-mentioned guidance, The DARD Director shall assume the major responsibility in coordination with Department of Finance and Prices, related agencies of centrally-run provinces and cities, and corporations who have SFEs to formulate proposals for renovation of organisation and management structure of the SFE to submit to the PPC (if the SFE is locally run) and to the managing ministry (if the SFE is centrally run) for approval. The proposal should be done in 2000.

Minister of MoFI
Vice Minister

Tran Van Ta
(signed and stamped)

Minister of MARD
Vice Minister

Nguyen Van Dang
(signed and stamped)

I. OBJECTS FOR APPLICATION IN IMPLEMENTATION OF DECISION 187/QD-TTG

- State forest enterprises (SFE)
- State-owned enterprises: companies, enterprises that are allocated with forest and forest land by the state competent agencies for forestry production and business; companies having SFEs as their sub-units with dependent accounting

II. RE-ORGANIZATION OF THE SFEs

Basing on the current status of the existing SFEs, re-organization of the SFEs will be implemented in 3 categories as stipulated at Article 3 of the Decision 187/DQ-TTg, as follows:

1. The SFEs to be maintained and consolidated to operate under business mechanism
 - a. The SFEs managing natural and planted forests planned for production and less-critical protection forests.
 - b. The SFEs planting forests for industrial materials (materials for producing paper, artificial board; pillars for mining, specialities; bamboo...)

The SFEs have the following main duties: forest management, protection, plantation and tending; forest exploitation, wood and forest product processing; supply of material wood and forest products to industrial processing establishments and consuming demand of the national economy. Besides, the SFEs are entitled to conduct compound business on the areas like agriculture, industry, fishery, services... in order to bring into play all the potentials in terms of labour, technique, land and forest resources that they are allocated.

If the mentioned-above SFEs are being assigned to manage very crucial and crucial protection forests located alternately in production and less crucial protection forests, and smaller than 5,000 ha - not large enough to have its own Management Board, the SFE shall maintain its duties for management of the forest in compliant with regulations on protection forest management. Protection and plantation of protection forests at the very crucial and crucial areas are considered the SFE's public duty, and subsidized by the State budget.

2. SFEs to be changed into Protection Forest Management Board

a. The SFEs which manage 5,000 ha of forestland and over that are planned for very crucial and crucial areas (established under the Prime Minister's or provincial People's Committee's decision), and account for 70% and over the total land area allocated for the SFEs.

b. For SFEs which manage over 5,000 ha forestland that are planned for very crucial and crucial protection areas and account for less than 70% total land area allocated to the SFEs: the protection area will be separated for the establishment of a Protection Management Board or transferred to a neighboring Protection Management Board (if any); the SFEs will manage the remaining areas which are production and less crucial protection forests. If the establishment of a separated Protection Management Board is not yet possible, the SFEs will continue to manage the protection area under the protection forest regulations and in the form of public duty of the SFEs

When changing the SFEs to Protection Forest Management Board, the production and less critical forests located in between protection forests shall also be handed over to the Protection Forest Management Board for management, protection, plantation, exploitation and use in compliant with the regulations for production forests.

3. SFEs to be changed into other types of business:

For the SFEs managing less than 1,000 ha of forestland located in between agricultural land and close to residential area or the SFEs facing with difficulties in their management and business, they can change their business types such as agro-forest service enterprises, enterprises to purchase forest products, seedling stations to serve agro-forest production at the locality.

During the transitional period, the SFEs have to prepare the proposal to submit to provincial People's Committee (if the SFE is under the province) or to its managing ministry (if the SFE is centrally run) for approval. The proposal has to identify clearly land use demand for business, service activities of the new organizations, as well as to clarify solutions to redundant staff after the reorganization; to return the remaining forests and forestland area to the local authority for re-allocation or lease to organizations, households and individuals in accordance with effective laws and regulations.

III. REVIEW OF THE FOREST AND FORESTLAND ACREAGE; ALLOCATION OF FOREST AND FORESTLAND TO SFEs

Provincial People's Committees shall direct related agencies and localities in the province to review of the SFEs' forest and forestland areas for SFEs' reorganization and doing necessary procedures for forest allocation to and to grant use-right certificates to those SFEs.

1. Review contents

a. Land: To identify area and borders of different types of land managed by the SFEs on map and on the field:

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- Agricultural land and other land types of land include residential area, fields, upland field, pool, lake, garden...of the households;

- Forestland area located within the SFE's area but the SFE is not capable of using ineffectively.

b. Forest: To identify the status, area and quality of the forest managed by the SFEs. For production and less critical natural forests: the SFEs should reconsider and readjust the plan on regulating forest, and make the proposal for business and production for each 5-year period, submitting to PPCs for approval and implementation. On a 5-year periodical basis, a review should be done and another 5-year proposal should be drawn up. Contents and implementation methods should be in line with the regulations of the Directive 15LS/CNR dated 19/07/89 of Ministry of Forestry (MARD) so as to have simple way in building up the forest regulation plans for SFEs

2. Methodology for the review

Based on results of the general inventory over forests according to the Directive 286/TTg of 2 May 1997 and the Directive 24/CT-TTg of 18 September 1999 by the Prime Minister on overall inventory of land by 2000, the provincial People's Committees are consulted by Departments of Agriculture and Rural Development and Departments of Cadastral together with district PCs and the SFEs' managing agencies (if any) to direct commune People's Committees and SFEs directors in the review and clarification of the mentioned-above contents.

3. Land allocation and Issuance of land use right certificates and forest allocation to the SFEs

Basing on the review's results, the area of residential, agricultural land, gardens of the households and the forest area that the SFEs are not able to use ineffectively shall be separated from the SFEs' allocated area. These areas will then be handed over to local authorities for allocation or giving to organizations, households, individuals in accordance

with Decree 64/CP of 27 September 1993, Decree 85/ND-CP of 28 August 1999 and Decree 163/ND-CP of 16 November 1999 by the Government.

The provincial People's Committee shall do necessary procedures to grant land use right certificates for the remaining land and forest area to the SFEs for long-term and stable use in forestry/agriculture/aquaculture purposes.

Order and procedures for land and forest allocation and granting land use-right certificates according to guidance given in the Joint Circular 62/200/TTLT/BNN-TCDC dated 6/6/2000 of MARD and Land Administration Department on guiding the land allocation, land lease and granting forestland use-right certificates.

4. Fund source for review and granting land use right certificates to the SFEs shall be allocated from the local budget basing on the cost estimation approved by the provincial People's Committee.

IV. AUTHORITIES AND COMPENTECIES OF SFEs IN MANAGING AND USING ALLOCATED FORESTS

1. SFEs answer the responsibility to the State in conservation and development of allocated forest resources. The SFEs are allowed to utilize the forest as stipulated in clauses 3, 4, 5, 6 of the Article 4 of Decision 187/199/QD-TTg :

2. The SFE director assumes the major responsibilities in the management and protection of allocated forest and forestland; arranges with Forest Protections to have forest protection staff to supervise the protection activities and help the SFE director to organize the forest protection force of the SFE to protect the forest and give sanctions against illegal actions that cause damages to forest resources, they have right to ask for compensation and recollection of properties for forest owners from illegal persons according to the provisions of Law.

3. Based on allocated forest resources and forestland, the approved proposal on forest regulation, other resources of the SFEs and the local social-economic condition, the SFE director will prepare the proposal on organization of their production and business to submit to the provincial People's Committee (if the SFE is provincially run), to the Ministry or sector (if ministerial run) or to the Corporation (if under the corp.) for approval and implementation.

V. POLICY FOR THE LABOURER

1. To provide housing land for the worker/staff households working for the SFEs

Director of the SFE shall have responsibility to review the land used by the worker households of the SFE (including of those who have retired or resigned due to weak health conditions) residing in the area managed by the SFE, request the local authority for processing procedures to allocate land and grant land use right certificates for households that have not had housing land or borrowed land from the SFE for residing in compliant with the existing law:

a. For households that have not had housing land, the Director of the SFE in coordination with commune People's Committee consider the situation and do procedures to request the

district People's Committee for allocation and issuance of land use right certificates based on the local land restriction;

b. For households that borrowed land of the SFEs to reside, the SFE shall, in coordination with the commune People's Committee, do procedures to request the district People's Committee to legalize and issue land use right certificates to these households.

2. To allocate forest and agricultural land to SFEs' worker/staff households

Based on legally approved planning, the Director of the SFE shall have responsibility to coordinate with commune People's Committee to consider the situation and request the People's Committee of district to allocate land and grant land use right certificates of agricultural, forest land for staff and workers of the SFE, who have retired due to re-structure of the production, reduction of the number of permanent staff, workers, that they can get one full allowance package or allowance for certain years; and for children of the SFE's workers/staff that are at the working age but unemployed and now living on the land area managed by the SFE as stipulated in the clauses 3,4 of the article 7 of the Decree 64/CP dated 27/9/1993, Decree 163/1999/ND-CP dated 16/11/1999 of the Government. The allocated level is as the average level allocated to farmer households living at the locality.

3. To deal with social assurance and residing registration for the SFEs' workers/staff that no longer work

a. In the process to re-structure the production, the redundant workers/staff, that the SFEs can provide neither employment nor vocational training to get another job, will retire in accordance with the existing regulations. The SFEs that have difficulties, are in lack of fund to deal with this matter, and if the redundant staff agrees, the SFEs can pay the allowance for their resignation by value of production forests planted by the SFEs.

When making allowance payment by value of the planted forests, the SFE has to set up an assessing board for planted forest at the paying time, to do account balance for reducing value of the assets managed by the SFE, and do procedures for handing over forests for the ones that resign. After exploitation, the ones that get payment for their resignation by value of the planted forests have to return land to the SFE. The SFE can contract the land to those people if they have demand.

b. If the ones that have resigned ask for residing in the SFE's area, the local authority shall charge with to do residential registration and allocate agricultural and forest land for them as stipulated in part V.2 above.

4. Land availability for resident, agricultural and forest production land for the SFEs' workers/staff households

Land to allocate for resident, agricultural and forest production for the SFEs' workers/staff households will be extracted from the land availability of the locality. In case there is no available land at the locality, the SFEs shall ask local authority for permission to use the SFEs' land subject to the planning so that the SFEs' land will not be divided into small pieces. It is also required that the land area to allocate for the mentioned above purpose will be deducted from forest and forestland area allocated to the SFEs by the provincial People's Committee.

VI. FINANCIAL POLICY

1. Financial regulations applied to cost-accounting SFEs and other state-owned enterprises that use forestry land and involve in forest business

The State Forest Enterprises are those owned by the state, undertake financial management according to the Decree 59/CP of 3 October 1996; Decree 27/1999/ND-CP of 20 April 1999 by the Government on revise and supplement to the Regulations on financial management and cost-accounting for SOE promulgated together with Decree 59/CP; decree 56/CP dated 2/10/1996 of the Government on public utility enterprises; and circulars of MOFI guiding related issues, and as well as following regulations:

a. Management of the SFE assets and capitals

- SFE's assets include: fix assets, current assets from long term investment and short-term investments, and planted forests generated from the state budget and other fund sources.

Natural forests allocated by the state to SFEs are state owned properties. The SFE has responsibility to manage these natural forest according to the law on forest protection and development and current regulation of forest management.

All assets that the SFE rents, borrows, receives for processing, selling in form of a sale agent or a consignee are not SFE's assets.

- SFE legal capital is a minimum capital that the SFE is required to own as stipulated by the law

- SFE regulated capital is owned by the State specified in the regulation, it should be publicized the regulated capital and the change of the regulated capital

State-owned capital used by the SFEs = (equal) the total value of the SFE-managed/used assets – (minus) payables at the time of reporting

- Allocating capital to the SFE: After checking and valuating under the provision of law of the State, the SFE is allocated with state capital being used by the SFE .

Capital invested in the plantation by/from the state budgets (in the past as well as currently) is to be managed and used by the SFE.

Corporation tax is to be reimbursed to the SFE for the SFE-managed forest development being subsidized by the state budgets

b. Management of revenue, costs and manufacturing prices at the SFE

- Revenue management:

Revenue of the SFE includes trade turnover and incomes from other activities.

Incomes from forest product sales and other incomes from critical and very critical protection forests are accounted as revenues of the SFE

The SFE should have individual accounts for turnover from forestry trading activities, forestry-related trading activities and other trading activities to identify the trading outputs of each trading activity.

Forestry-related trading activities include agro-forestry production, tourism and forestry services.

- Management of costs and manufacturing price

Business operation costs include those relating to the business operation of the SFE such as: seedling costs, material costs, fixed asset depreciation, forest protection and management costs, salary, other salary payment, payables to the state budget such as health insurance and Trade Union fees, purchasing, and other cash payments.

Expenses for afforestation, regeneration, tending, management and protection of crucial and very crucial protection forest and other public duties assigned by the State should have its own account.

c. Distribution of after-tax profits and funds management by the SFE

Annual profit is business results of the SFE including profit generated from business activities and other activities

Profits from business activities are the difference between the total turnover and cost prices of goods and services consumed during the SFE's fiscal year.

Profits from other activities are profits from financial activities as the difference between the bigger received amount and the smaller spent amount including: asset leasing, stock business, depositing interests, lending interests, share interests, profit from contributions to joint-venture and partnership, balance of the stand-by account for stock depreciation.

The SFE should have an individual account for incomes from forestry activities and from other trading activities.

Profit after corporate tax is deducted is allocated to the Enterprise fund that should be used according to the Circular 64/1999/TT-BTC dated 7/6/1999 of MoFi guiding the after-tax profit distribution scheme and management of funds of SOEs

d. Procedures on the distribution of the capital generated from corporate tax :

Budget generated from corporate tax (on both forestry business and other businesses) will be reimbursed to the SFEs for reinvestment in forestation and implementation of other public services planned and estimated by PPC and approved by Ministerial and central levels.

Reimbursed amount is paid corporate tax (annually or quarterly). The reimbursement will be made by the one who has collected the corporate tax from the SFE. These amount will be forwarded to the next year if unspent.

Capital distribution procedures should be in line with the Circular 25/2000/TT-BTC dated 30/3/200 of the MOFI guiding the reimbursement from the State budget.

The distribution papers include:

- The Decision on the legally approved estimation
- The document issued by provinces assigning the capital plan and amount allocated to local SFEs; or issued by Ministries, central agencies to centrally-run SFEs
- Completion certificate certifying the completed amounts signed between the project holder and households or units (if any) who are bidders
- Confirmation by the tax agencies on corporate tax payable and paid by the enterprise

Based on the above papers, financial agencies will process as following:

- + For corporate tax paid by the SFE and contributed to the Central budget, the MoFi will decide and distribute
- + For corporate tax paid by the FE and contributed to the local budget, the Department of Finance and Prices will decide and distribute.
- + For corporate tax paid by the centrally-run SFE and contributed to the local budget, the Department of Finance and Prices will decide and distribute, and then report to the MoFI.

e. The state budget will subsidize 100% the approved cost estimation. PPC approves the FE's proposals for infrastructure construction serving public utilities and production, including:

- Plantation, tending and management of crucial and very crucial protection forests.
- Construction of essential infrastructures (roads, yards,...) for production undertaken in the areas planned for concentrated material forests.
- Support to the socio-economic development to ensure the national security, safety in the upland and remote areas.

g. The SFE is entitled to the state support policies to implement the project on natural forest protection, regeneration and enrichment such as Material Forest Plantation Project regulated in the Decree 43/1999/ND-CP dated 29/6/1999 of the Government on development investment credit of the state

2. For Protection Forest Management Board

The Protection Forest Management Board (PFMB) is run under the mechanism of an economic public utility with receipts, and under the financial management structure as stipulated in effective regulations and laws; part of the margin amount will be used for forest protection and plantation.

The state will subsidize the management, protection, tending and nursing of crucial and very crucial protection forests as per plans approved by competent levels.

The management of funds for basic construction, forest plantation, protection and tending carried out by SFEs and PFMB should be in compliance with the Circular 28/1999/TT-LT dated 3/2/1999 providing guidelines on the implementation of the Decision 661/QD-TTG dated 29/7/1998 of the Prime Minister and the decision 251/QD-TTg dated 23/3/2000 of the Prime Minister on the supplementation and revision of payment procedures for the sake of 5 MHRP; and other effective regulations.

VII. Reform of management organization in SFEs:

1. Production organization

a. Forest and forestland allocated by the State shall be allocated on ownership or contract basis to organizations, households and individuals in stable term in accordance with the Decree 01/CP dated 2 January 1995 by the Government on promulgation of the Regulations on land allocation for agricultural and forestry and aquaculture production in State-owned enterprises and other contract forms suitable with practical conditions and certain situations of SFEs. Local workers and farmers' households are encouraged to take over forestland assigned by SFEs or make joint venture with SFEs performing business with farm model.

When allocating forest and forest land, FEs have to work together with contractors to draft and sign contracts which clearly regulate benefits and obligations of both SFEs and Contractors, making Contractors feel ensured to invest their capital and labour in tending, protecting, developing forest. They are entitled to benefit reasonable percentage of forest products when the forest is exploited.

b. Apart from land allocation to households, the FEs are allowed to organize specialized labour teams, groups and units to carry out production and business activities (forest management, protection, regeneration and plantation) in areas unfavorable for households and individuals, and to produce seedlings, to provide materials and technological services, to market and process agricultural and forest products...

c. The SFEs are entitled to utilize bare forestland and make use of the SFEs' advantages (capital, technology, markets...) so as to cooperate with the SFEs' workers/staff households, farmer households, domestic and international organizations and individuals to undertake afforestation in combination with agricultural and forestry, processing production, forest products marketing, and meanwhile to supply services to different economic sectors in the forestation, protection and development areas.

2. Organization mechanism

To become appropriate with new production organization and management mechanism, management organization of the FEs needs to be reformed neatly and efficiently, particularly as follows:

- At the FE: Director, Deputy Director, Chief Accountant and some technical experts
- Production team: 1 leader and 1 technical assistant.

For large-size FEs performing compound business with various occupations, the FE's director is entitled to propose to its managing agency for permission to set up offices, professional bodies to assist the Director run production and business activities of the FEs like other State-owned enterprises.

VII. Implementation organization

Based on the above-mentioned guidance, The DARD Director shall assume the major responsibility in coordination with Department of Finance and Prices, related agencies of centrally-run provinces and cities, and corporations who have SFEs to formulate proposals for renovation of organisation and management structure of the SFE to submit to the PPC (if the SFE is locally run) and to the managing ministry (if the SFE is centrally run) for approval. The proposal should be done in 2000.