

## **THE GOVERNMENT**

### **DECREE No. 05/2008/ND-CP OF JANUARY 14, 2008, ON FOREST PROTECTION AND DEVELOPMENT FUNDS**

THE GOVERNMENT

*Pursuant to the December 25, 2001 Law on Organization of the Government;*  
*Pursuant to the December 3, 2004 Law on Forest Protection and Development;*  
*At the proposal of the Minister of Agriculture and Rural Development,*

DECREES:

Chapter I

GENERAL PROVISIONS

***Article 1.-*** Scope of regulation

1. This Decree provides for the establishment, management and use of Forest Protection and Development Funds (below referred to as Funds for short).
2. When treaties or international agreements to which Vietnam has signed or acceded otherwise provide for, those treaties or international agreements prevail.

***Article 2.-*** Subjects of application

This Decree applies to state agencies; domestic organizations, households, individuals and village communities that make financial contributions or donations to, or receive support from, Funds; and international organizations, foreign organizations and individuals, and overseas Vietnamese that make financial contributions or donations to Funds.

***Article 3.-*** Purposes of Fund establishment

1. To mobilize resources of the society for forest protection and development, contributing to realizing the guideline on forestry socialization.
2. To raise awareness about, and responsibilities for, forest protection and development for those benefiting from forests or involved in activities that have direct impacts on forests.
3. To increase forest owners' capacity and efficiency in forest protection, use and management, contributing to implementing the forestry development strategy.

***Article 4.-*** Principles for operation of Funds

1. Funds operate for non-profit purposes, but must preserve the initial capital funded by the State.
2. Funds may finance programs, projects or non-project activities in which the State has not invested or which fail to meet investment requirements.

3. Ensuring publicity, transparency, efficiency, use for proper purposes and compliance with law.

**Article 5.-** Conditions for establishing a Fund

1. To establish the Fund for forest protection and development.
2. To be capable of mobilizing financial sources and managing the Fund and ensuring its stable, sustainable and efficient operation.
3. To commit to preserving the initial capital funded by the State.
4. To have a scheme (plan) on establishment, management and use of the Fund and a competent state agency's decision on the Fund's establishment.

Chapter II

MANAGEMENT AND OPERATION OF FUNDS

**Article 6.-** Tasks and powers of a Fund

1. Tasks of a Fund

- a/ To raise, receive and manage compulsory contributions; aid, donations and voluntary and entrusted contributions from domestic and overseas organizations and individuals; and state budget-funded financial sources;
- b/ To appraise and select programs, projects or non-project activities and submit them to competent authorities for approval or investment support decision;
- c/ To provide financial support for programs, projects or non-project activities;
- d/ To direct and guide beneficiaries of the Fund;
- e/ To comply with the law on statistics, accounting and audit;
- f/ To perform other tasks assigned or prescribed by competent state agencies.

2. Powers of a Fund

- a/ To allocate funds to each program, project or non-project activity according to approved annual plans;
  - b/ To examine, evaluate and take over results of programs, projects or non-project activities supported by the Fund;
  - c/ To suspend or recover funded amounts when detecting that organizations, households, individuals or village communities have violated commitments on the use of funds or other relevant regulations;
  - d/ To propose competent state agencies to promulgate, supplement or amend provisions on beneficiaries and activities eligible for the Fund's support.
3. A Fund is a state financial institution, has the legal person status and a seal and may open bank or treasury accounts according to law.

## **Article 7.- Organization of a Fund**

### 1. Organization of the central-level Fund

a/ The central-level Fund (below referred to as the central Fund) is established under the decision of, and managed by, the Ministry of Agriculture and Rural Development;

b/ The Fund is composed of a Fund Management Council (below referred to as the Council for short), a Control Board and a Management Apparatus.

- The Council is set up under the Minister of Agriculture and Rural Development's decision. It is composed of the Council chairman, Council vice chairmen and Council standing members. Council members work on a part-time basis.

The Council chairman is a representative of the Ministry of Agriculture and Rural Development's leadership and Council vice chairmen are appointed under the Minister of Agriculture and Rural Development's decisions.

Council standing members who are appointed under the Minister of Agriculture and Rural Development's decisions are department-level officials of the Ministries of Agriculture and Rural Development, Finance, and Planning and Investment.

The Council is responsible for its entire operation before law and the Minister of Agriculture and Rural Development.

- The Fund Control Board is decided by the Council.

- The Fund Management Apparatus is established at the Forestry Department (under the Ministry of Agriculture and Rural Development) and shall take responsibility before the Council, the Forestry Department director and law.

c/ The Ministry of Agriculture and Rural Development shall approve the regulation on the Fund's organization and operation.

### 2. Organization of a Fund at the provincial level

a/ A Fund at the provincial level (below referred to as provincial-level Fund) is set up under the decision of the president of a provincial-level People's Committee when satisfying the conditions specified in Article 5 of this Decree. The Fund is attached to the provincial-level People's Committee or provincial-level Agriculture and Rural Development Service;

b/ The Fund Management Apparatus is decided by the president of a provincial-level People's Committee or the director of a provincial-level Agriculture and Rural Development Service.

3. The State encourages the establishment of Funds at district, commune and village levels; the tasks, powers and organizational structure of these Funds are prescribed by presidents of provincial-level People's Committees.

## **Article 8.- Relations between the central Fund and provincial-level Funds**

### 1. Responsibilities of the central Fund

- a/ To provide funds for provincial-level Funds;
- b/ To guide, examine and supervise the management and use of funds provided by the central Fund;
- c/ To guide and share experience in Fund management.

## 2. Responsibilities of a provincial-level Fund

- a/ To receive, manage and use funds from the central Fund;
- b/ To be examined and supervised by the central Fund for funds provided by the central Fund;
- c/ To report on the management and use of the Fund to the Ministry of Agriculture and Rural Development.

## Chapter III

### FINANCIAL SOURCES FOR FUND ESTABLISHMENT, AND MANAGEMENT AND USE OF FUNDS

#### **Article 9.-** Financial sources for Fund establishment

##### 1. Financial sources of the central Fund

- a/ The state budget shall provide an initial support of VND 100 billion within two years from the date of establishing the Fund;
- b/ Voluntary financial contributions and donations from international organizations; and domestic and overseas organizations and individuals;
- c/ Capital entrusted by international organizations; domestic and overseas organizations and individuals; and other funds and financial sources.

##### 2. Financial sources of provincial-level Funds

- a/ The provincial-level state budget shall provide initial support upon establishment of a Fund. Provincial-level People's Committees shall specify the level of support according to their competence;
- b/ Compulsory contributions from those specified in Article 10 of this Decree;
- c/ Voluntary financial contributions and donations from international organizations; and domestic and overseas organizations and individuals;
- d/ Capital entrusted by international organizations; domestic and overseas organizations and individuals; and other funds and financial sources;
- e/ Support from the central Fund.

#### **Article 10.-** Compulsory contributors to provincial-level Funds

- 1. Forest owners exploiting and trading in timber in the following cases:

- a/ Economic organizations that are allocated production forests by the State without having to pay forest use levy;
  - b/ Economic organizations that are allocated production forests by the State with payment of forest use levy or are transferred forests for which the paid forest use levy or forest transfer money are originated from the state budget;
  - c/ Households and individuals that are allocated production forests without having to pay forest use levy.
2. Establishments doing business in forest scenery, resorts and eco-environment services.
  3. Investment projects that have to exploit forests for ground clearance and are required to replant forests but unable to do so.
  4. The Ministry of Agriculture and Rural Development shall assume the prime responsibility for, and coordinate with the Ministry of Finance in, specifying levels of contribution and agencies and organizations responsible for collecting these contributions.

**Article 11.-** Cases entitled to contribution exemption or reduction

1. Cases entitled to contribution exemption:

a/ Timber exploiting or trading organizations, households and individuals specified in Clause 1, Article 10 of this Decree that are hit by natural disasters or *force majeure* circumstances causing a loss of the exploited timber may be considered for exemption from the whole or part of contributions;

b/ Households and individuals specified in Clause 1, Article 10 of this Decree that are allowed to exploit timber for their domestic needs are entirely exempted from contributions.

2. Cases entitled to contribution reduction:

Organizations, households and individuals specified in Clause 1, Article 10 of this Decree directly exploiting and trading in timber in localities meeting with socio-economic difficulties or exceptional socio-economic difficulties under the November 29, 2005 Investment Law are entitled to a 50% reduction of contribution.

3. The Ministry of Agriculture and Rural Development shall assume the prime responsibility for, and coordinate with the Ministry of Finance in, specifying the order of, procedures for, and competence of exempting and reducing contributions prescribed in Clauses 1 and 2 of this Article.

**Article 12.-** Beneficiaries and contents of support

1. Beneficiaries are domestic organizations, households, individuals and village communities that have programs, projects or non-project activities under Clause 2 of this Article.

2. Contents eligible for support

Depending on specific conditions of Funds of each level, contents of programs, projects or non-project activities eligible for support include:

- a/ Propagating, disseminating and implementing policies and law on forest protection and development;
- b/ Testing, publicizing and expanding models of sustainable forest protection and development and forest management;
- c/ Activities against illegal logging, forest destruction and forest product production, trading and transport;
- d/ Testing and applying new varieties of forest trees;
- e/ Planting dispersed trees;
- f/ Developing non-timber forest products on forest land;
- g/ Training human resources for forest protection and development at grassroots level;
- h/ Implementing programs, projects or other non-project activities entrusted by domestic and overseas organizations and individuals.

**Article 13.-** Conditions for receiving support

1. Programs, projects or non-project activities must be decided by a competent authority.
2. Organizations to be supported must have personnel with expertise and experience in forestry and implementation of programs, projects or non-project activities supported by Funds.
3. Households, individuals and village communities to be supported must have full civil capacity for implementing programs, projects or non-project activities supported by Funds.
4. Committing to refund the whole or part of capital as prescribed by the agency competent to establish a Fund.

**Article 14.-** Financial support modes of a Fund

1. Non-refundable support of the whole or part of capital for the implementation of programs, projects or non-project activities specified in Article 12 of this Decree.
2. The agency competent to establish a Fund shall specify the order of, procedures for and beneficiaries of, non-refundable support of the whole or part of capital depending on each kind of program, project or non-project activity; and simultaneously specify levels of support, time for refunding, and cases eligible for exemption from or reduction of to-be-refunded amounts.

**Article 15.-** Cost estimation and final settlement by Funds

1. The central Fund

a/ The central Fund shall annually elaborate and report to the Ministry of Agriculture and Rural Development on its income and expenditure plans;

b/ The Fund shall periodically (quarterly, annually) elaborate, and submit a report on the implementation of, its income and expenditure plan to the Ministry of Agriculture and Rural Development. At the end of a fiscal year, the Fund shall make an annual financial statement and submit it to the Ministry of Agriculture and Rural Development for consideration and approval.

## 2. Provincial-level Funds

Provincial-level People's Committees shall specify the order of and procedures for elaborating and reporting on income and expenditure plans; and final settlement of incomes and expenditures of provincial-level Funds in accordance with the law on finance.

## Chapter IV

### APPROVAL AND MANAGEMENT OF PROGRAMS, PROJECTS OR NON-PROJECT ACTIVITIES SUPPORTED BY FUNDS

**Article 16.-** The order of, procedures for registering and approving programs, projects or non-project activities

#### 1. The central Fund

Programs, projects or non-project activities applying for support from the central Fund shall be registered and considered for approval as follows:

a/ Subjects specified in Clause 1, Article 12 shall send an application dossier to the Fund Management Apparatus.

The dossier comprises:

- A written application for support;
- Programs, projects or non-project activities approved by a competent authority.

b/ The Fund Management Apparatus shall assume the prime responsibility for, and coordinate with functional agencies in, appraising those programs, projects or non-project activities and submitting them to the Council for consideration and approval;

c/ After the Council issues an approval decision, the Fund director shall notify the beneficiary and direct the implementation thereof.

#### 2. Provincial-level Funds

Presidents of provincial-level People's Committees or directors of provincial-level Agriculture and Rural Development Services shall specify the registration, appraisal and approval of programs, projects or non-project activities financed by provincial-level Funds.

**Article 17.-** Implementation of programs, projects or non-project activities

1. Organizations or village communities to be supported under programs and projects shall set up project management units and implement approved programs or projects.

2. Organizations, households or individuals to be supported under non-project activities are not required to establish project management units, but shall designate people to supervise and direct the implementation of approved activities.

**Article 18.-** Examination and evaluation of programs, projects or non-project activities

1. The central Fund

The Fund Management Apparatus shall direct and examine the implementation of programs, projects or non-project activities financed by the Fund on a regular or extraordinary basis. When necessary, the Fund Management Apparatus may hire consultants to examine and evaluate the implementation of those programs, projects or non-project activities.

2. Provincial-level Funds

Provincial-level People's Committees shall specify the examination and evaluation of programs, projects or non-project activities of provincial-level Funds.

## Chapter V

### RESPONSIBILITIES OF STATE MANAGEMENT AGENCIES TOWARD FUNDS

**Article 19.-** Responsibilities of ministries and central branches

1. The Ministry of Agriculture and Rural Development shall:

a/ Promulgate the Regulation on organization and operation of the central Fund and a model regulation on operation of provincial-level Funds;

b/ Approve annual plans of action of the central Fund;

c/ Approve annual cost estimates and final settlement of the central Fund;

d/ Direct, guide and examine activities of the central Fund and provincial-level Funds;

e/ Negotiate and sign under the Government's authorization bilateral financial support agreements with international donors who commit to contributing to Funds in accordance with law;

f/ Annually report to the Prime Minister on the operation and results of implementation of programs, projects or non-project activities of the central Fund and provincial-level Funds.

2. The Ministry of Finance shall:

a/ Assume the prime responsibility for, and coordinate with the Ministry of Agriculture and Rural Development in, guiding Funds at all levels in complying with policies on management and use of Funds' financial sources;

b/ Fully provide initial support capital for the central Fund within two years from the time of establishing the Fund according to the approved budget plan;

c/ Examine and supervise financial activities of central and provincial-level Funds.

3. The Ministry of Planning and Investment shall coordinate with the Ministry of Agriculture and Rural Development and the Ministry of Finance in elaborating plans to provide initial support capital for Funds and submitting them to the Government for consideration and decision.

4. Other concerned ministries and branches shall perform the state management of activities of Funds within the scope of their assigned duties.

**Article 20.-** Responsibilities of provincial-level People's Committees

1. To promulgate the Regulation on organization and operation of Funds of its level following the model regulation of the Ministry of Agriculture and Rural Development and in accordance with law.

2. To direct and examine provincial-level Funds in mobilizing compulsory contributions and financial sources for these Funds.

3. To implement and supervise programs, projects or non-project activities financed by the central Fund and provincial-level Funds in their localities.

4. To direct provincial-level Funds in making cost estimates and final settlement of incomes and expenditures and sending reports to People's Committees and financial agencies of the same level and the central Fund.

## Chapter VI

### IMPLEMENTATION PROVISIONS

**Article 21.-** Implementation effect

This Decree takes effect 15 days after its publication in "CONG BAO."<sup>1</sup>

**Article 22.-** Ministers, heads of ministerial-level agencies, heads of government-attached agencies, and presidents of provincial/municipal People's Committees shall implement this Decree.-

On behalf of the Government

Prime Minister

*NGUYEN TAN DUNG*

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<sup>1</sup> CONG BAO Nos 39-40 (20-01-2008)

