
DECREE No. 135/2005/ND-CP OF NOVEMBER 8, 2005, ON CONTRACTUAL ASSIGNMENT OF AGRICULTURAL LAND, PRODUCTION FOREST LAND AND LAND WITH WATER SURFACE FOR AQUACULTURE IN STATE-RUN AGRICULTURAL FARMS AND FORESTRY FARMS

THE GOVERNMENT

Pursuant to the December 25, 2001 Law on Organization of the Government;

Pursuant to the November 26, 2003 State Enterprise Law;

Pursuant to the November 26, 2003 Land Law;

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.- Regulation scope

1. This Decree provides for contractual assignment of agricultural land, production forest land and land with water surface for aquaculture in State-run agricultural or forestry farms, companies and factories (referred collectively to as State-run agricultural or forestry farms)

2. Protective and special-use forest land shall not be governed by this Decree.

Article 2.- Application subjects

1. State-run agricultural or forestry farms (referred collectively to as the contracting party) which conduct independent or dependent cost-accounting and are assigned or leased by the State with land, forests, or land with water surface for aquaculture.

2. Officials, workers and employees working for the contracting party; family households with members working for the contracting party, having retired or stopped working due to the loss of their working capacity, who are entitled to social benefits and residing in the localities; family households that wish to directly involve in agricultural production, forestry or aquaculture and reside in the localities (priority shall be given to indigenous ethnic minority households, difficulty-hit poor ethnic minority households residing in the localities, that wish to be assigned land). These subjects shall be referred collectively to as the contracted party.

Article 3.- Contractual land assignment objectives

1. To use land and forest resources as well as water surface in an efficient and sustainable manner.

2. To mobilize capital sources and labor force of the contracted party in order to raise production and business efficiency of State-run agricultural or forestry farms.

3. To ensure the harmony of interests between the contracted party, the contracting party and the State; to create more jobs and increase incomes of laborers, contributing to elimination of hunger, alleviation of poverty, maintenance of security and defense in the localities.

Article 4.- Contractual land assignment principles

1. Exercise of the rights and performance of the obligations related to land use management by State-run agricultural or forestry farms according to the provisions of land law, law on forest protection and development, and law on aquatic resources.

2. Raising of the contracting party's sense of responsibility for management of production, services and consumption of products.

3. Assurance of benefits and duties of employers and employees as provided for by labor law.

4. Free will, publicity, democracy and equality between the contracting and contracted parties.

5. The assignment of land must be based on contracts and any contractual disputes shall be settled in accordance with the provisions of civil law.

6. A land assignment contract shall be cancelled when the land is recovered by the competent state agency according to law, or be adjusted or supplemented under agreement between the contracting and contracted parties.

Article 5.- Bases for contracting and receiving contracted land

1. The land fund or forest fund of the contracting party, covering the land area or forest area assigned or leased by competent state agencies for use for agricultural production, forestry or aquaculture.

2. The land-use planning and plans of the contracting party.

3. The investment project or production/business plan of the contracting party which has been approved by the competent state agency.

4. The financial capacity, managerial skills and

labor force of the contracted party.

5. The state investment and capital support policies as well as other socio-economic policies.

Article 6.- Types of land and forest to be contracted

1. Land for planting of annual crops.
2. Land for planting of perennial trees.
3. Production forest land, including land with existing forests and land for afforestation.
4. Production forests being natural forests.
5. Land with water surface for aquaculture.

Article 7.- Forms of contractual assignment

Based on their forms of production and business organization as well as managerial skills, the contracting party may select either of the following forms of contractual assignment to suit the capability of the contracted party:

1. Stable assignment corresponding to the crop cycle or the business cycle.
2. Stage -based assignment.

Article 8.- Land assignment contracts

1. Land assignment contracts must state clearly the rights and obligations of the contracting and contracted parties according to the provisions of Articles 3, 9 and 10 of this Decree.

2. In cases where the contracted parties are officials or public employees, they shall enjoy wages from results of production through performance of land assignment contracts and all regimes on wages, social insurance, health insurance and labor protection, which shall be reflected in production cost items in contracts.

3. The Ministry of Agriculture and Rural Development shall provide forms of land assignment contract.

Article 9.- Obligations and rights of the contracting party

1. Obligations of the contracting party

a/ To take responsibility before the competent state agency for management and use of land and forests for proper purposes, according to the set planning and plans;

b/ To correctly determine the assigned land area, location, boundaries and forests on maps and in the field; determine the actual values of planted trees, livestock, forest trees and works on land or water surface;

c/ To elaborate investment projects, determine investment portions of works and contractual unit price for each project item;

d/ To consume products for the contracted party under the signed contract;

e/ To manage and direct the production/ business process, carry out agricultural, forestry or fishery extension activities, processing and consumption of products; promptly provide supplies and capital for production according to economic and technical norms under the signed contract;

f/ To pay compensation for damage caused by contractual breaches to the contracted party;

g/ To perform the employer's responsibilities toward employees in terms of wages, social insurance, health insurance and labor protection;

h/ To consider the exemption or reduction of amounts payable by the contracted party according to the provisions of Point g, Clause 2 of Article 10.

2. Rights of the contracting party:

a/ To inspect and supervise the performance of the contract, ensuring strict compliance with the provisions of land law, law on forest protection and development and law on aquatic resources;

b/ To cancel the contract in case of breach by the contracted party, which shall have to pay damages.

Article 10.- Obligations and rights of the contracted party

1. Obligations of the contracted party:

a/ To use the contracted land and forests for proper purposes in accordance with the planning; to submit to guidance, inspection and supervision by the contracting party in terms of production plans, technical process and quality of products in the course of performance of the contract;

b/ To pay production costs and service charges to the contracting party according to the signed contract;

c/ To have the contract cancelled if breaching it and causing damage to the contracting party and pay compensation therefor according to the extent of damage;

d/ To return the contracted land or forests when they are recovered by competent state agencies according to the provisions of land law;

e/ To fulfill all duties and obligations of the employee toward the employer in accordance with the provisions of labor law.

2. Rights of the contracted party:

a/ To receive all contractual dossiers on land assignment, accept service activities related to agricultural, forestry or fishery extension, processing and consumption of products, supplies and capital under the signed contract;

b/ To receive harvested or exploited products with a value corresponding to the capital and labor it has invested and 100% of the value of products in excess of the contractual value;

c/ To raise animals or cultivate subsidiary crops other than the main crops, under the forest canopy and according to guidance of the contracting party, and enjoy 100% of products from such animals or crops;

d/ To build makeshifts to protect production, store labor tools and production supplies; to build drying yards, dig wells, build water tanks and canals, culverts for water supply and drainage, compost silos, cattle stables, pigsties, fowl coops, according to regulations of the contracting party;

e/ When leaving the State-run agricultural or forestry farm, changing their jobs or being able to perform only part of the signed contract, to return the whole or part of the assigned land or forests to the contracting party and be refunded, or compensated for the invested properties on land according to the contracting scheme;

e/ To enjoy compensation for damage caused by the contracted party's breach of the contract;

f/ In case of natural disasters or risks, to be considered for exemption or reduction of amounts payable to the contracting party in accordance with the provisions of law.

Article 11.- Contracting dossiers

1. A contracting dossier comprises:

a/ An application for being contracted with land;

b/ A land assignment contract;

c/ The extract of the map or diagram of the location of the plot of agricultural land or land with water surface for aquaculture or forest land to be contracted;

d/ A written record on assignment and receipt of land, planted trees and livestock, and present conditions of forests and assets on land;

e/ Legal documents and annexes related to the contractual assignment of land (if any).

2. A contracting dossier shall be made in two sets, one to be kept by the contracting party and the other by the contracted party.

Chapter II

CONTRACTUAL ASSIGNMENT OF LAND FOR AGRICULTURAL PRODUCTION

Article 12.- Contractual assignment of land for planting perennial trees

The contractual assignment of land for planting perennial trees is associated with the administration of production by the contracting party and carried out as follows:

1. For land where perennial trees already exist: The contracting party shall base itself on the economic and technical norms and actual state of tree gardens to conclude a contract on assignment of land together with tree gardens on a stable basis corresponding to the life circle of planted trees. Such a contract has the following principal contents:

a/ The land area assigned together with tree gardens;

b/ The production task, remaining value of tree gardens and remaining production duration of gardens on the contracted land area;

c/ The total production costs for every hectare in a full business cycle;

d/ The quantity of products per hectare in a full business cycle;

e/ The annual production costs per hectare;

f/ The value of products per hectare annually paid to the contracting party;

g/ The investment expenses paid by the contracting party;

h/ The investment expenses paid by the contracted party;

i/ The implementation solutions;

j/ The mode of payment of products and distribution of revenues after subtraction of the expenses;

k/ The right to enjoy benefits from products in excess of the contractual value, and responsibilities and obligations towards the volume of products below the contractual value.

2. Contractual assignment of land for planting perennial trees based on the capital construction stage and the business stage: depending on technical requirements for each type of tree, based on economic and technical norms as well as investment portions, the contracting party shall:

- Assign land for both stages of capital construction of tree gardens and of business to the contracted party;

- Assign land for the stage of capital construction of tree gardens and for the business stage separately.

Depending on the actual situation of the contracting party and the contracted party, the following forms of contractual assignment shall apply:

a/ The contracting party shall invest 100% of capital (covering costs of soil preparation, plant varieties, supplies, fertilizers, labor, etc.), in the designing work, technical guidance and management of the production process. The contracted party shall

undertake all jobs, from tree planting and tending till the end of the capital construction stage and shall be paid wages corresponding to the volume of performed jobs.

Upon the end of the stage of capital construction of tree gardens, the contracting and contracted parties shall conduct pre-acceptance test, evaluate and determine the value of tree gardens before shifting to the business stage.

The contracting party shall assign tree gardens for business to the contracted party, to which the land has been assigned in the capital construction stage, or to other subjects. The contents of contractual assignment of land associated with tree gardens for business shall comply with the provisions of Clause 1 of this Article.

b/ The contracting and contracted parties shall jointly invest capital. The contracting party shall take charge of the designing work, supply of plant varieties and technical guidance. The contracted party shall plant and tend trees and protect tree gardens.

After the complete construction of tree gardens, the contracting and contracted parties shall conduct pre- acceptance test and evaluation of such gardens before shifting to the production and business stage. The value proportions of tree gardens put into production and business for each party shall be determined correspondingly to their respective capital and labor contributions as agreed upon in the contract and actually made by each party. The contracting party shall assign the business tree gardens to the contracted party according to the contents stipulated in Clause 1 of this Article.

3. The term of contractual assignment of agricultural land for planting perennial trees shall be agreed upon between the contracting and

contracted parties according to the life cycle of planted trees but shall not exceed 30 years. Upon the expiration of such term, if not breaching the contract and having demand therefor, the contracted party may further enter into the assignment contract.

Article 13.- Contractual assignment of land for planting annual crops

Land assigned under contracts for planting annual crops include land for planting short-term industrial trees, land for planting food and foodstuff plants or pasture. The contractual assignment of land for planting annual crops must be associated with administration of production by the contracting party and be conducted as follows:

1. Annually, the contracting party shall base itself on the production plan and econo-technical norms to work out a contracting scheme.

2. The duration of assignment of land for planting annual crops shall be agreed upon by the contracting and contracted parties but shall not exceed 20 years.

Article 14.- Contractual assignment of land with water surface for aquaculture

1. Land with water surface for aquaculture invested with state capital:

a/ The contracting party must determine the value of works and livestock raised on land with water surface for contractual assignment; the contracted party must refund the value of the works and livestock to the contracting party under the contract. The valuation of the works and livestock must be based on accounting books and actual value left after the revaluation of assets;

b/ For ponds, lakes, marshes and other small water surface areas, land use rights shall be

assigned to family households and individuals under contracts;

c/ The duration of contractual assignment of land with water surface for aquaculture shall be agreed upon between the contracting and contracted parties but shall not exceed 10 years.

2. Land with water surface not invested with the state capital shall be assigned through bidding to individuals and family households under contracts.

Chapter III

CONTRACTUAL ASSIGNMENT OF PRODUCTION FOREST LAND

Article 15.- Contractual assignment of production forests being natural forests or planted forests

1. Contractual assignment of production forests being natural forests

a/ To assign forests under contracts to the contracted party so that it may take initiative in investing capital and labor and organizing combined agro-forestry production and business;

b/ The contracting party shall have to adopt a forest-regulation scheme for management, protection, tending and exploitation of forests on the principle of sustainability. Based on the forest-regulation scheme already approved by the competent authority, the contracting party shall enter into a forest assignment contract with the contracted party so that the latter may take initiative in organizing production (managing, protecting, zoning off forests for natural regeneration in combination with afforestation) and exploiting forests according to the exploitation cycle of each type of forest;

c/ Contents of an assignment contract must reflect clearly the land area, forest area, actual

quality of assigned forests; position and boundaries of the assigned area as indicated on maps and in the field; the sharing of major products in value between parties in each cycle corresponding to their respective capital and labor investments, and specific measures to organize the contractual assignment of forests, ensuring equality, democracy and publicity;

d/ In the course of performing the assignment contract, the contracted party shall be entitled to fully exploit forest products, apply silvicultural measures according to current technical procedures and processes; conduct combined agro-forestry production; raise animals under the forest canopy and exploit additional forest products under guidance of the contracting party;

e/ The contracting term shall correspond the business cycle of each type of forest but shall not exceed 50 years.

2. Contractual assignment of production forests being planted forests

a/ Planted production forests shall be assigned under contracts to the contracted party for further investment, tending, nurture and protection and combined agro-forestry production;

b/ Contents of an assignment contract must clearly state the forest area and age, the reserves and quality of forests, contents of forest tending, nurture, protection and exploitation, responsibilities of the contracting and contracted parties, the share of products in value to each party corresponding to their respective capital and labor investments, and the term of the assignment contract;

c/ In the course of performance of the contract, the contracted party shall be entitled to fully exploit forest products after applying silvicultural measures according to current technical procedures and processes and combining agricultural production

with forestry and fishery under guidance of the contracting party, and shall enjoy such products according to the signed contract;

d/ The contractual assignment term shall correspond the business cycle of each type of forest but shall not exceed 50 years.

Article 16.- Contractual assignment of land for planting production forests

1. The contracting party shall elaborate a forest-planting project, set investment ratios and enter into a land assignment contract with the contracted party for planting, tending and protecting forests until the exploitation thereof. The harvested timber shall be shared between the contracting and contracted parties corresponding to their respective investment capital and labor contributions.

Depending on the actual situation of the contracting and contracted parties, the following models shall apply:

a/ The contracting party shall invest 100% of capital (covering costs of design, plant varieties, fertilizers, supplies and labor), provide technical guidance and support for forest protection work. The contracted party shall take charge of all jobs, from planting, tending and protecting forests till the end of the business cycle. When exploiting forests, the contracted party shall make payment with harvested timber to the contracting party corresponding to the value of the latter's investment (both principals and interests) made under agreements in the contract.

b/ The contracting party shall invest capital; take charge of the designing work; supply plant varieties and fertilizers; provide technical guidance and support for forest protection to the contracted party to plant and take care of forests in the first years. Then, in the stage of forest tending and protection,

the contracted party shall invest its own capital in forest tending and protection till the end of the business cycle. When exploiting timbers, the contracted party shall enjoy a value of products in proportion to its invested capital amount and labor as agreed upon in the contract;

c/ The contracted party shall invest capital in forest planting, tending and protection; the contracting party shall take charge of designing forests, supplying plant varieties, providing technical guidance and fertilizer services, direct the construction, inspect, supervise and support the forest protection throughout the course of performance of the contract.

The exploited timber paid by the contracted party to the contracting party shall be those with value corresponding to the value of plant varieties, services and labor invested by the latter. The contracted party shall enjoy the value of the remaining products but must sell them to the contracting party at the prices agreed upon by the two parties at the time of exploitation; where the contracting party refuses to buy those products, the contracted party shall have the right to freely consume them.

2. Apart from the contractual remuneration or value share of products provided for at Points a, b and c, Clause 1 of this Article, the contracted party shall be entitled to:

a/ Intercropped industrial trees with forest trees before the crown contact, combine agricultural production with forestry and fishery under forest canopy or by forest edge without adversely affecting the growth of forest trees and under guidance of the contracting party, and enjoy all products from such intercropped trees;

b/ Fully exploit forest products in the course of applying silvicultural measures according to current technical procedures and processes and under

guidance of the contracting party, and enjoy those products under the signed contract.

3. The contractual assignment term shall correspond the life cycle of planted trees but shall not exceed 50 years.

Chapter IV

IMPLEMENTATION PROVISIONS

Article 17.- Implementation effect

1. This Decree replaces the Government's Decree No. 01/CP of January 4, 1995, promulgating the Regulation on contractual assignment of land for use for agricultural production, forestry or aquaculture by state enterprises. All regulations contrary to this Decree are hereby annulled.

2. Management boards of protective forests, management boards of special-use forests containing production forests being natural forests or planted forests shall apply this Decree to the contractual assignment of forests.

3. With regard to land areas already assigned to the contracted parties being subjects defined in Clause 2, Article 2 of this Decree, if they properly perform contracts and use forests for proper purposes, they shall continue using such land according to the signed contracts, but adjust some contents of the contracts in accordance with the provisions of this Decree.

4. With regard to State-run agricultural farms and forestry farms having protective forests or special-use forests, the contractual assignment of forests for protection shall apply according to the regulations on contractual assignment of protective forests and special-use forests for protection.

5. This Decree takes effect 15 days after its publication in "CONG BAO."

Article 18.- Responsibility for implementation

1. The Ministry of Agriculture and Rural Development shall assume the prime responsibility for, and coordinate with the Ministry of Natural Resources and Environment and the Finance Ministry in, guiding the implementation of this Decree.

2. Ministers, heads of ministerial-level agencies, heads of Government-attached agencies and presidents of provincial/municipal People's Committees shall have to implement this Decree.

On behalf of the Government
Prime Minister
PHAN VAN KHAI