

**THE REGULATION ON BENEFIT SHARING APPLICABLE TO PROJECTS ON PLANTING WATERSHED PROTECTION FORESTS IN QUANG TRI, THUA THIEN HUE, QUANG NAM, QUANG NGAI AND PHU YEN PROVINCES, FUNDED WITH LOANS OF THE JAPAN BANK FOR INTERNATIONAL COOPERATION (JBIC)**

**THE MINISTER OF AGRICULTURE AND RURAL DEVELOPMENT**

*Pursuant to the December 14, 2004 Law on Forest Protection and Development;*

*Pursuant to the Government's Decree No. 23/2006/ND-CP of March 3, 2006, on implementation of the Law on Forest Protection and Development;*

*Pursuant to the Government's Decree No. 01/2008/ND-CP of January 3, 2008, defining the functions, tasks, powers and organizational structure of the Ministry of Agriculture and Rural Development;*

*Pursuant to the Government's Decree No. 05/2008/ND-CP of January 14, 2008, on forest protection and development funds;*

**THE MINISTRY OF AGRICULTURE AND RURAL DEVELOPMENT**

*Pursuant to the Specialized Credit Agreement coded VN VI-8, concluded on March 30, 1999, between the Overseas Economic Cooperation Fund (Japan) and the Government of the Socialist Republic of Vietnam;*

**DECISION No. 109/2008/QĐ-BNN OF NOVEMBER 11, 2008, PROMULGATING**

*Pursuant to the Prime Minister's Decision No.*

152/2001/QĐ-TTg of October 9, 2001, on investment mechanisms and policies for planting watershed protection forests in Quang Tri, Thua Thien Hue, Quang Nam, Quang Ngai and Phu Yen, funded with loans of the Japan Bank for International Cooperation (JBIC);

Pursuant to the Prime Minister's Decision No. 186/2006/QĐ-TTg of August 14, 2006, promulgating the Regulation on forest management;

Pursuant to the Prime Minister's Decision No. 178/2001/QĐ-TTg of November 12, 2001, on rights to enjoy benefits and obligations of households and individuals that are allocated, leased or contracted forests and forestland;

Pursuant to the Agriculture and Rural Development Minister's Decision No. 40/2005/QĐ-BNN of July 7, 2005, promulgating the Regulation on exploitation of timber and other forest products;

At the proposal of the director of the Forestry Department,

#### DECIDES:

**Article 1.-** To promulgate together with this Decision the Regulation on benefit sharing applicable to projects on planting watershed protection forests in Quang Tri, Thua Thien Hue, Quang Nam, Quang Ngai and Phu Yen provinces, funded with JBIC loans.

**Article 2.-** This Decision takes effect 15 days after its publication in "CONG BAO."

**Article 3.-** The director of the Ministry's Office, the director of the Forestry Department, the head of the Forest Projects Management Unit, the presidents of the People's Committees of Quang Tri, Thua Thien Hue, Quang Nam, Quang Ngai and Phu Yen provinces, and heads of concerned units shall implement this Decision.

*For the Minister of  
Agriculture and Rural Development  
Vice Minister  
HUA DUC NHI*

### REGULATION ON BENEFIT SHARING APPLICABLE TO PROJECTS ON PLANTING WATERSHED PROTECTION FORESTS IN QUANG TRI, THUA THIEN HUE, QUANG NAM, QUANG NGAI AND PHU YEN PROVINCES, FUNDED WITH JBIC LOANS

(Promulgated together with Decision No. 109/2008/QĐ-BNN of November 11, 2008, of the Minister of Agriculture and Rural Development)

#### Chapter I

#### GENERAL PROVISIONS

**Article 1.-** Governing scope and subjects of application

1. Governing scope

This Document provides for benefit sharing mechanisms applicable to projects on planting watershed protection forests in Quang Tri, Thua Thien Hue, Quang Nam, Quang Ngai and Phu Yen provinces, funded with JBIC loans.

2. Subjects of application

a/ Subjects that are allocated land or forests by the State (below referred to as forest owners); subjects that are contracted protection forests for management, protection, development and use in the post-investment period, including:

- Protection forest management units, armed forces units and state-run forestry farms (forestry companies);

- Households and individuals;

- Communities of villages, hamlets or equivalent administrative units (referred to as village communities);

b/ Commune-level People's Committees (for protection forest areas temporarily not allocated or contracted to organizations or other subjects).

**Article 2.-** Interpretation of terms

The terms referred to in this Regulation are construed as follows:

1. JBIC forestation projects means projects on planting watershed protection forests in five central provinces (Quang Tri, Thua Thien Hue, Quang Nam, Quang Ngai and Phu Yen) funded with JBIC loans, which are formulated on the basis of the forestation component under the Project on development of rural infrastructure and

improvement of living standards III (SPL-III).

2. Post-investment period means a period starting after the completion of a project, i.e., after December 30, 2008.

3. JBIC forests include new forest plantations, protected natural forests, zoned off natural forests additionally or not additionally planted with trees, which are financed by JBIC forestation projects.

4. People's Committees of project-implementing provinces include the People's Committees of Quang Tri, Thua Thien Hue, Quang Nam, Quang Ngai and Phu Yen provinces.

5. Forest owners include organizations, village communities, households and individuals that are allocated forests by the State for stable and long term use for forestry purposes.

6. Contractors include village communities, households and individuals that sign long-term contracts for forest management, protection and development.

7. Average or difficult site refers to a type of site associated with the accessibility to (distance, topographical conditions, etc.), and the productivity and quality of forests, in each site, which is considered and decided by the People's Committee of a project implementing province.

**Article 3.-** Allocation of forests to forest owners for long-term management, protection, development and use

Provincial or district People's Committees shall decide to allocate forests to subjects in the

post-investment period under the Government's Decree No. 23/2006/ND-CP of March 3, 2006, on implementation of the Law on Forest Protection and Development (below referred to as Decree No. 23/2006/ND-CP), and the Agriculture and Rural Development Ministry's Circular No. 38/2007/TT-BNN of April 25, 2007, ~~guiding the~~ order of and procedures for allocation and lease of forests to organizations, households, ~~individuals~~ and village communities.

**Article 4.-** Forest management, protection, development and use contracts between forest owners and contractors

1. ~~State~~ organizations (principals) shall, based on the practical conditions for determination of forest areas, sign forest management, protection, development and use contracts with contractors. The two parties shall consider and decide on the contractual limits under Articles 8, 13 and 14 of the Government's Decree No. 163/1999/ND-CP of November 16, 1999, on allocation and lease of forestland to organizations, households and ~~individuals~~ for long-term use for forestry purposes, and the current Land Law.

2. Contract term: Based on the local actual conditions of forest management, protection, development and use, the principal and the contractor shall consider and decide on the term of a contract under current regulations.

3. People's Committees of project-implementing provinces shall issue the form of contract on the basis of the form in the Appendix to this Regulation for implementation.

**Article 5.-** Forest management, protection, development and use

1. People's Committees of all levels and forest owners shall manage and use land and forests under the Law on Forest Protection and Development; Decree No. 23/2006/ND-CP; the Prime Minister's Decision No. 178/2001/QD-TTg of November 12, 2001, on rights to enjoy benefits and obligations of households and individuals that are allocated, leased and contracted forests and forestland (below referred to as Decision No. 178/2001/QD-TTg); the Prime Minister's Decision No. 186/2006/QD-TTg of August 14, 2006, promulgating the Regulation on forest management (below referred to as Decision No. 186/2006/QD-TTg); the Agriculture and Rural Development Minister's Decision No. 40/2005/QD-BNN of July 7, 2005, promulgating the Regulation on exploitation of timber and other forest products (below referred to as Decision No. 40/2005/QD-BNN), and other current regulations.

2. People's Committees of project-implementing provinces shall retrieve part of investment funds and use it for forest management, protection and development in their localities under current law.

## *Chapter II*

### **RIGHTS AND OBLIGATIONS OF FOREST OWNERS**

**Article 6.-** Rights of forest owners

1. To exploit timber and non-timber forest

products in protection forests under Articles 5 and 6 of Decision 178/2001/QĐ-TTg and Articles 32 and 33 of Decision No. 186/2006/QĐ-TTg, and enjoy benefits under Article 8 of this Regulation.

2. To be compensated by the State for forest-related damage when the State issues forest recovery decisions.

3. Individuals may exchange and inherit rights to manage, protect and use forests under law and enjoy rights under Articles 73 and 76 of the Land Law.

4. Forest owners that are state organizations may contract forests to households, individuals and village communities for protection and development.

**Article 7.-** Obligations of forest owners

1. To fulfill the obligations under the law on forest protection and development and other regulations related to forest management, protection and development. To conserve and develop allocated forests and regenerate forests after exploitation. To observe the Regulation on exploitation of timber and other forest products under Decision No. 40/2006/QĐ-BNN.

2. To use received economic benefits for setting up forest protection and development funds under the Government's Decree No. 05/2008/ND-CP of January 14, 2008, on forest protection and development funds.

**Article 8.-** Share of the value of exploited and thinly pruned timber products between forest owners (organizations, village communities,

households or individuals) and the State

1. Based on the actual conditions of each type of site, People's Committees of project-implementing provinces shall decide on specific ratios for sharing the value of timber products between forest owners and the State according to the following brackets of benefit sharing:

a/ For timber products exploited and thinly pruned from newly planted forests

The value of timber products after paying taxes and expenses for exploitation and transportation of products to places of sale shall be shared as follows:

- For subsidiary trees:

The forest owner is entitled to 100% of products exploited from subsidiary trees, alternately planted trees or thinly pruned products according to the design approved by a competent authority under Decision No. 40/2006/QĐ-BNN.

The forest owner shall also additionally plant or re-plant principal trees of protection forests right after exploiting subsidiary trees (under the guidance of the local forestry agency).

- For principal trees (indigenous trees):

The forest owner may exploit timber being principal trees of protection forests (after having exploited subsidiary trees and when principal trees have grown up enough to form protection forests ensuring the protection function and reached the exploitable age) by selectively logging trees with an exploitation intensity not exceeding 20% when protection forests are allowed to be exploited under regulations according to the design

approved by a competent authority under Decision No. 40/2006/QĐ-BNN. The value of timber products after paying taxes and expenses for exploitation and transportation of products to places of sale shall be shared as follows: 90-95% for the forest owner and the remainder to be remitted into the communal budget.

b/ For timber products exploited and thinly pruned from natural forests which are protected and zoned off for tending

The forest owner may exploit timber by selectively logging trees with an exploitation intensity not exceeding 20% when protection forests are allowed to be exploited, except rare and precious forest animals and plants prescribed in the Government's Decree No. 32/2006/ND-CP of March 30, 2006, on management of endangered, rare and precious forest plants and animals. The value of timber products after paying taxes and expenses for exploitation and transportation of products to places of sale shall be shared as follows: 85-90% for the forest owner and the remainder to be remitted into the communal budget.

2. People's Committees of project-implementing provinces shall promulgate a Regulation on management and use of the value of timber products remitted into communal budgets, including the value for setting up forest protection and development funds at district and communal levels.

3. Organizations, households and individuals are encouraged to invest their capital in planting protection forests after the first cycle and exploit

and use forest products under law and current regulations. They are entitled to 100% of the value of products after paying taxes (if any).

4. Forest owners that sub-contract forests to households, individuals or village communities are entitled to a share of the value of exploited and thinly pruned timber products at the ratio specified in Article 11 of this Regulation.

### *Chapter III*

#### **RIGHTS AND OBLIGATIONS OF CONTRACTORS**

##### *Article 9.- Rights of contractors*

1. To exploit timber under contracts according to Clause 5, Article 15 of Decision No. 178/2001/QĐ-TTg and current regulations related to land and forest management and use, and enjoy benefits under Article 11 of this Regulation.

2. To exploit firewood, bamboo and non-timber forest products. To salvage dead and diseased trees under contracts and Clauses 2 thru 5, Article 15 of Decision No. 178/2001/QĐ-TTg.

##### *Article 10.- Obligations of contractors*

1. To manage, protect, develop and use forests under contracts, for proper purposes and under plans indicated in contracts according to current regulations related to forest management and protection. Based on the practical conditions, forest owners and contractors shall sign contracts (made according to a set form in the attached

Appendix).

2. If breaching contracts, thereby causing damage to principals, to pay compensation for damage under law.

**Article 11.-** Share of the value of exploited and thinly pruned timber products between contractors and forest owners (principals)

1. Based on the practical conditions of each average or difficult site, People's Committees of project-implementing provinces shall decide on the ratios for sharing the value of exploited timber products between contractors and principals according to the following brackets of benefit sharing:

a/ For timber products exploited and thinly pruned from newly planted forests

The value of timber products after paying taxes and expenses for exploitation and transportation of products to places of sale shall be shared as follows:

- For subsidiary trees:

The contractor enjoys 100% of products exploited from subsidiary trees, alternately planted trees and thinly pruned products, ensuring a forest coverage rate higher than 0.6 after pruning.

- For principal trees (indigenous trees):

The value of timber products after paying taxes shall be shared according to the following ratio:

80-90% for the contractor that has received the project's financial supports for forest planting, tending and protection, and the remainder for the principal.

b/ For timber products exploited and thinly pruned from natural forests which are protected and zoned off for tending

The contractor may exploit timber by selectively logging trees with an exploitation intensity not exceeding 20% when protection forests are allowed to be exploited according to the design developed and submitted by the principal to a competent authority for approval.

The value of timber products after paying taxes and expenses for exploitation and transportation of products to places of sale shall be shared as follows:

- For impoverished forests: 95% for the contractor and the remainder for the principal.

- For forests regenerated after milpa cultivation or after exploitation with timber logs of a diameter of under 20 cm: 75-85% for the contractor and the remainder for the principal.

- For forests with average or rich reserves of over 100 m<sup>3</sup>/ha: From the time of being contracted to the time of exploitation, 2% for the contractor and the remainder for the principal every year.

2. The value of timber products paid to the principal shall be used mainly for forest management, protection and development and monitored and settled according to the State's current regulations.

3. Contractors that have invested capital in forest planting, zoning off or restoration under contract or agreement with the principals are entitled to 100% of the value of products after paying taxes (if any).

*Chapter IV***ORGANIZATION OF  
IMPLEMENTATION****Article 12.-** Responsibilities of People's Committees of provinces

1. To allocate forests to subjects according to law.
2. To set criteria for average or difficult sites.
3. To decide on the ratios for sharing the value of timber products between subjects under this Regulation as suitable to local practical conditions, specifically between:
  - a/ Forest owners and the State.
  - b/ Contractors, forest owners and the State.
  - c/ People's Committees of concerned districts and communes.
4. To promulgate documents guiding this Regulation to suit local practical conditions, including reward and sanctioning regulations applicable in the course of forest management, protection, development and use under current law.
5. To guide district-level People's Committees in using the value of timber products from forests for setting up forest protection and development funds under Decree No. 05/2008/ND-CP.
6. To monitor developments of forest resources and report them to the Ministry of Agriculture and Rural Development according to regulations. To perform the state management responsibility

under the law on forest protection and development.

**Article 13.-** Responsibilities of People's Committees of districts

1. To allocate forests to village communities, households and individuals in localities under current law.
2. To direct People's Committees of communes having forests and concerned agencies in forest management, protection, development and use. To guide People's Committees of communes in using the value of timber products from forests for setting up forest protection and development funds under Decree No. 05/2008/ND-CP.
3. To use in a public, transparent and efficient manner economic benefits from JBIC forests for setting up forest protection and development funds.

**Article 14.-** Responsibilities of People's Committees of communes

1. To disseminate this Regulation and relevant regulations and policies on forest management, protection, development and use to concerned village communities.
2. To use in a public, transparent and efficient manner economic benefits from forests for setting up forest protection and development funds under Decree No. 05/2008/ND-CP.

*For the Minister of  
Agriculture and Rural Development  
Vice Minister  
HUU DUC NHI*

**APPENDIX**

**Forest management and protection contract between organizations having JBIC forests and organizations, households, individuals or communities**

*(To Decision No. 109/2008/QĐ-BNN of November 11, 2008, of the Ministry of Agriculture and Rural Development)*

**SOCIALIST REPUBLIC OF VIETNAM**

**Independence - Freedom - Happiness**

Name of organization: ...  
No.: .../HD-KBVR

**MODEL CONTRACT ON FOREST  
MANAGEMENT AND PROTECTION**

(Applicable to organizations, households, individuals  
and village communities)

....., Date: .....

*Pursuant to the December 3, 2004 Law on Forest Protection and Development;*

*Pursuant to the Government's Decree No. 23/2006/ND-CP of March 3, 2006, on implementation of the Law on Forest Protection and Development;*

*Pursuant to Decision No. .../2008/QĐ-BNN of ... (date), of the Minister of Agriculture and Rural Development, promulgating the Regulation on benefit sharing applicable to JBIC forestation projects;*

*Based on the request for the contractual allocation of forests for management and protection, and the plan to manage and protect JBIC forests in the post-investment period already approved by the provincial-level Agriculture and Rural Development Service<sup>(1)</sup>;*

Today, on ..... (date), in ..... (place),

We, including:

Party A (name of the organization having JBIC forests)<sup>(2)</sup>

represented by Mr./Mrs. .... Position .....

Address: ..... Tel.: ..... Fax: ..... Email: .....

Party B (name of the party contracted forests for management and protection)<sup>(3)</sup>

represented by Mr./Mrs. ....

Address: ..... Identity card number: ..... issued on ..... (date), by the Police Department of ..... province

Tel.: ..... Fax: ..... Email: .....,  
agree to sign a contract on forest management and protection with the following terms:

**Article 1.-** Areas and locations of forest blocks contracted to Party B for management and protection

1. Forest area: ..... (ha); type of forest (forest plantation, natural forest being protection forest); current conditions of forest: .....

In lot ....., compartment ....., sub-area .....<sup>(4)</sup>

2. Locations, boundaries and characteristics of forest blocks are specified in attached tables and maps (*not printed herein*).

**Article 2.-** Term of the forest management and protection contract

The term of the forest management and protection contract is ..... years, counting from ..... (date), to ..... (date)<sup>(5)</sup>.

The contract shall be extended upon the expiration of the above duration if, in the duration of contract performance, Party B strictly observes all terms of the contract and wishes to extend it.

**Article 3.-** Rights of Party A

To receive from Party B .....% of the value of exploited timber after paying taxes and expenses for exploitation and transportation of products to places of sale.

**Article 4.-** Obligations of Party A

1. To provide technical assistance on JBIC forest protection, management and development to Party B.

2. To contact competent state agencies for permission to harvest and exploit JBIC forest products and to use JBIC forestland (when necessary).

3. To promptly direct and allow Party B to harvest and exploit timber and non-timber forest products from JBIC forests.

**Article 5.-** Other supports provided by Party A to Party B<sup>(8)</sup>

To advance capital and supplies to Party B when the latter so wishes for exploitation and

transportation of JBIC forest products. Party B shall refund this advance after collecting money from the sale of forest products (a separate contract on this advance will be signed between the two parties).

**Article 6.-** Rights of Party B

1. To harvest non-timber forest products such as fruit, flowers, oil, turpentine, rattan, bee honey, etc., in the process of forest management and protection under law, current regulations and Party A's guidance, and enjoy all products after paying taxes (if any).

2. To exploit dry dead, fallen and diseased trees in JBIC forests under law, current regulations and Party A's guidance, and enjoy the whole value of products after paying taxes (if any).

3. To fetch firewood in JBIC forests without damaging forests under law, current regulations and Party A's guidance, and enjoy the whole value of products after paying taxes (if any).

4. To exploit bamboo under law, current regulations and Party A's guidance, and enjoy the whole value of products after paying taxes (if any).

5. To exploit timber under law, current regulations and Party A's guidance, and enjoy ...% of the value of exploited timber after paying taxes and expenses for exploitation and transportation of products to places of sale.

6. To enjoy 100% of the value of exploited timber after paying taxes (if any) in case Party B has invested capital in planting, managing and exploiting assorted trees as permitted by Party A.

7. To use forestland for cultivating annual and perennial trees under current law and as permitted by Party A.

8. To bequeath part or the whole of the contract to family members (living together in a commune), which is subject to permission of Party A.<sup>(6)</sup>

**Article 7.-** Obligations of Party B

1. To manage, protect, develop and use JBIC forests under Party A's guidance, law and current regulations related to forest management and protection.

2. To get permission and follow Party A's guidance before exploiting and harvesting timber and non-timber forest products from JBIC forests or planting other trees on JBIC forestland.

3. To get permission of Party A if wishing to plant annual and perennial trees on part of JBIC forestland.

4. To monitor and supervise any damage to, and destruction, development and use of JBIC forests for improper purposes due to subjective or objective causes and promptly report thereon to competent state agencies and Party A.

5. To rehabilitate and improve JBIC forest blocks damaged due to *force majeure* causes as required and guided by Party A (a separate contract will be signed between Party A and Party B if jobs are related to materials and labor)<sup>(7)</sup>.

**Article 8.-** Modification of contract

1. Any changes or adjustments of this contract are subject to written consent of the parties.

2. All changes or adjustments will be validated through signing a modified contract or a memorandum of understanding (contract annex).

**Article 9.-** Termination of contract

The contract may be terminated in the following cases:

(a) When the contractual term expires and Party B does not wish to extend it.

(b) When Party B requests Party A to terminate the contract. Party B shall notify in writing its request to terminate the contract to Party A at least 6 months in advance.

(c) When Party A finds that Party B is incapable of fulfilling all the contractual obligations.

(d) When Party A finds that Party B fails to strictly follow Party A's guidance on forest management and protection.

If the contract is terminated in case (c) or (d), Party A shall notify such in writing to Party B at least 6 months prior to the contract termination.

**Article 10.-** Settlement of disputes

The two parties undertake to settle or clarify all disputes arising during or beyond the process of contract performance through negotiations. Disputes which cannot be settled through negotiations shall be settled under law and current regulations.

**Article 11.-** Effect of contract

This contract takes effect on the date of its signing, unless it is terminated ahead of schedule under Article 9.

This contract is made in ... copies which are of the same legal validity. Each party shall keep one copy, and other copies shall be sent to concerned competent state management agencies under law.

The parties present here agree to sign this contract.

Representative of Party A

Signature

(Full name and seal)

Representative of Party B

Signature

(Full name and seal)

Witness

(Signature, if any)

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<sup>(1)</sup> A competent authority's decision approving the forest management and protection plan: Specify its number, date and subject.

<sup>(2)</sup> The principal: Specify the full name and position of the representative.

<sup>(3)</sup> The contractor: If being a household, write the name of the household owner and address of the place of permanent residence registration; if being an individual, write the name of the individual, address of the place of permanent residence registration, serial number of identity card and account number (if any); if being an organization, write the name of the organization, address of its head office, full name and position of its representative and account number.

<sup>(4)</sup> Place and location of the contracted forest block: Clearly indicate names of the commune, ward or township; district, town or provincial city; and province or centrally run city; sub-area, compartment and lot (if any). If many forest lots are contracted, a list of details for each lot is required.

<sup>(5)</sup> Forest use duration, in figure and words, according to the People's Committee's decision on forest allocation.

<sup>(6)</sup> Add other rights (if any) indicated in the provincial People's Committee's decision and/or Party A's decisions. The right to receive remuneration for forest management and protection from Party A may be added if Party A finds it necessary.

<sup>(7)</sup> Add other obligations (if any) indicated in the People's Committee's decision and/or Party A's decisions.

<sup>(8)</sup> This article may be removed if Party A is incapable.-