

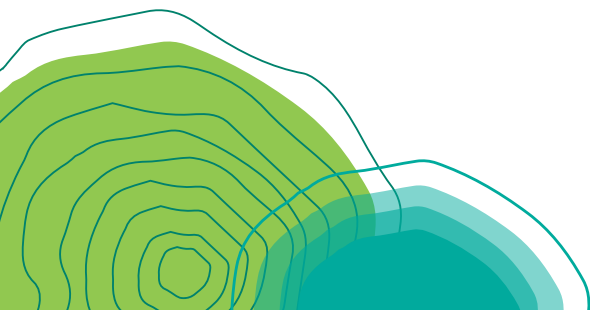


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RESTRUCTURING STATE FOREST COMPANIES

Findings and Policy Recommendations



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Project

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BACKGROUND

The restructuring process of forestry companies continues progressing in the context that the Party and the State carry on in defining forestry as an economically and technically significant sector for the country's development, guiding the sustainable development of the forestry sector towards a multi-purpose and multi-value green, sustainable, circular production, with expanded integration into the global value chain based on efficient forest resource management and utilisation. The strengthened international economic integration trend promotes favourable conditions for easing forest product circulation in the forest products markets. Meanwhile, the export of forest products continues to grow. Forests are being restored and developed steadily, the productivity of planted forests is increasing rapidly, the quality of forests is improving, and the domestic timber market is recovering. Implementation over the past seven years of Resolution No. 30-NQ/TW and Decree No. 118/2014/NĐ-CP has produced notable results. The production models of forestry companies that have undergone reorganisation have shown to be more practically aligned with reality. Positive changes have been seen in some forestry companies regarding business management, financial transparency, and land use, and the capacity to attract these companies' investment has also been improved. However, forestry enterprises have also faced challenges, particularly the continuous alterations to the policies related to management, protection, development, and the use of forests.

In addition, natural forests are publicly owned and represented by the State, which provides uniformed management oversight. Forest owners acting as companies are given numerous rights. Concerning the usage rights of natural forests, many issues emerge, while experience in properly handling these issues is lacking. There are no comprehensive, consistent policies to create momentum for the whole sector. The demand for conversion of land towards other purposes stands as a significant pressure on forest management, protection, and development. As a result, the reorganisation process is slow, and practical problems have arisen. As a result, improved business efficiency has not been clearly achieved, and many forestry companies have not fully completed the restructuring and renewal plan as approved by the competent authority. In response, the Ministry of Agriculture and Rural Development (MARD) has submitted a proposal to the Government for the amendment of certain provisions of Decree 118/2014/NĐ-CP to resolve issues, remove obstacles, and address existing difficulties promptly in order to expedite progress and improve the efficiency of forestry companies while ensuring the harmony of interests among economic, social, and environmental development goals, along with the conservation of biodiversity.



1. Results of formulation and promulgation of guiding documents

To specify the provisions of Decree 118/2014/ND-CP, a series of legal documents has been issued by relevant ministries. These documents, comprising of eight circulars, aim to provide guidance to local authorities, companies and corporations on how to restructure, develop and improve forestry companies according to production and business models aligned with existing regulations and industry practices outlined in Table 1.

Table 1. Decree 118/2014/ND-CP guiding documents

No.	Issuing authority	Code of the circular	Content
1	Ministry of Agriculture and Rural Development	Circular No. 02/2015/TT-BNNPTNT	Provide guidance on the formulation of schemes and master plans for restructuring of agricultural and forestry companies.
2	Ministry of Agriculture and Rural Development, Ministry of Finance	Joint Circular No. 17/2015/TTLT-BNNPTNT-BTC	Provide guidance on determining the value of planted forests and gardens when restructuring and on improving the performance of agricultural and forestry companies.

3	Ministry of Finance	Circular No. 51/2015/TT-BTC	Provide guidance on financial arrangements when restructuring and on improving the performance of agricultural and forestry companies.
4	Ministry of Finance	Circular No. 52/2015/TT-BTC	Provide guidance on a number of specific financial policies for agricultural and forestry companies after the restructuring.
5	Ministry of Finance	Circular No. 330/2016/TT-BTC	Provide guidance on the estimation, allocation, payment and finalisation of funds from state budget funds to protect forestry companies' natural forest areas that must suspend exploitation according to Decision No. 2242/QD-TTg dated December 11, 2014, of the Prime Minister.
6	Ministry of Labor, War Invalids and Social Affairs	Circular No. 44/2015/TT-BLDTBXH	Guidance for the Implementation of Certain Provisions of Decree No. 63/2015/NĐ-CP dated July 22, 2015, by the Government, which stipulates policies for redundant labourers when restructuring a single-member limited liability company with the State as the sole owner.
7	Ministry of Natural Resources and Environment	Circular No. 07/2015/TT-BTNMT	Provide guidance on the formulation of land use plans; documenting land use boundaries; cadastral measurement and mapping; determination of land rental prices; land allocation, land lease and issuance of certificates of land use rights, and ownership of houses and other assets attached to land for agricultural and forestry companies.
8	Viet Nam State Bank	Circular No. 11/2015/TT-NHNN	Provide guidance on the settlement of loans of agricultural and forestry companies at credit institutions when restructuring according to the Government's Decree 118/2014/ND-CP dated December 17, 2014.



2. Results of the restructuring and development of forestry companies

Nationwide, a total of 136 forestry companies have undergone restructuring, according to Decree 118/2014/ND-CP. Based on the research results by the end of 2022, 44 forestry companies have not completed restructuring according to production organisation models, accounting for 32.4% of all forestry companies, as shown in Table 2.

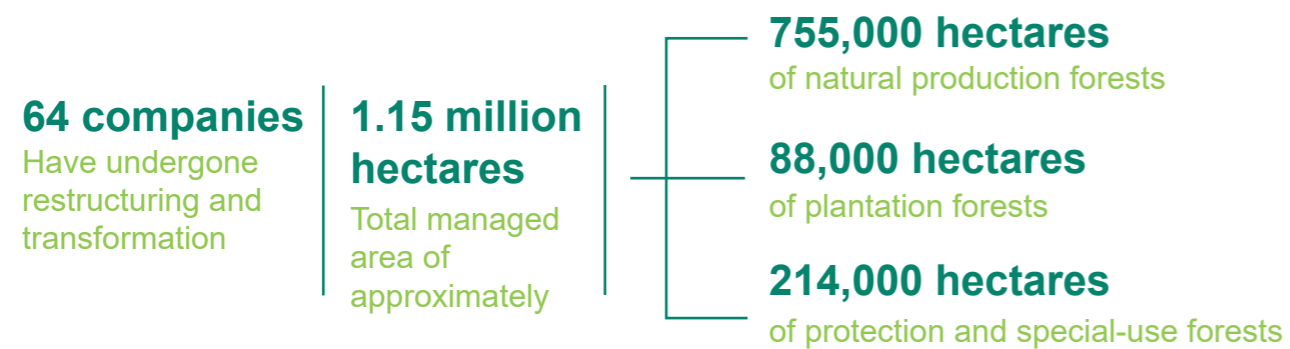
Table 2. Outcomes of Forestry Company Restructuring

Categories of companies	Total number of companies	Complete		Incomplete	
		Number of companies	Percentage %	Number of companies	Percentage %
1. Centrally managed forestry companies (joint stock companies)	9	7	77.8	2	22.2
2. Locally managed forestry companies	127	85	66.9	42	33.1

(1) 100% state-owned production and business limited liability company	3	3	100		
(2) 100% state-owned limited liability company providing public services	61	59	96.7	2	3.3
(3) State joint-stock companies not holding dominant shares	22	3	13.6	19	86.3
(4) Limited liability companies with two or more members	18	13	72.2	5	27.8
(5) Protection Forest Management Board	5	3	60.0	2	40.0
(6) Dissolution	16	4	25.0	12	75.0
(7) The restructuring model remains unapproved	2			2	100.0
Total (1+2):	136	92	67.6	44	32.4

Source: Report reviewing the restructuring of forestry companies according to Decree 118/2014/ND-CP of the Government. Ministry of Agriculture and Rural Development, 2022.





For the Forest Management Limited Liability Company (categories 1 and 2 in Table 2): As many as 64 companies have undergone restructuring and transformation into 100% state-owned limited liability companies with a total managed area of approximately 1.15 million hectares, including 755,000 hectares of natural production forests, 88,000 hectares of plantation forests, and 214,000 hectares of protection and special-use forests. Among these, three companies that perform production and business functions have completed the restructuring and transformation process, with planted forests accounting for about 80% of the total forest land area.

There are 61 companies that are providing public service, primarily managing and protecting forests, with a substantial proportion of natural production forests, protection forests, and special-use forests (two companies [equating to approximately 3.3% of this category] have not completed the restructuring and transformation process). An overall assessment after restructuring and transformation reveals that most of the companies engaged in production and business activities are not yet efficient and have not undergone significant innovation in their production and business operations.

The companies that provide public services, primarily conducting forest management and protection, rely on limited financial support (an average of 200,000 VND per hectare per year), and a few companies generate revenue from payment for forest environmental service (PFES) or other activities. The majority of these companies lack the capital necessary to organise production and business operations, but the State has not provided the additional charter capital. Access to credit is challenging, and the management of natural production forest areas is complex, being imposed with the natural forest logging ban, which means timber harvesting in natural forests is temporarily suspended.

These companies mainly operate in remote, isolated areas and in areas with diverse ethnic groups who face significant challenges in their livelihoods. This situation has created substantial pressure on forest protection efforts, illegal logging prevention, forest conversion for agriculture, and land encroachment.

For joint-stock companies (those belonging to category 3 and centrally managed companies in Table 2) There is a total of 31 companies managed by central and local authorities, with 21 companies yet to complete the restructuring due to various issues. These issues include challenges in selecting the equitisation model for restructuring and enhancing the efficiency of production and business activities of forestry companies in certain areas. Some regions, such as Quang Ninh, Thanh Hoa, and Ca Mau, have faced difficulties implementing the approved restructuring plan for forestry companies. These challenges have resulted from a lack of thorough study and consideration when developing the restructuring and transformation plans for forestry companies and specialised units.

General hinderances of the forest companies restructuring

1. Some provinces did not thoroughly evaluate the current state of forestry companies before proposing the restructuring and transformation models.
2. Many companies have not reached an agreement with local authorities regarding land use plans.
3. Ongoing land disputes and encroachments have not yet been conclusively resolved.
4. Several companies are incurring losses and lack a repayment plan for social insurance, health insurance, employee debts, and other unable-to-pay debts.

Regarding the transformation of 100% state-owned limited liability forestry companies into limited liability companies with two or more members (category 4), 18 companies were involved, with only 72.2% completing the process. The reasons for incomplete transformation are as follows:

1. Some provinces face challenges in selecting investors and developing restructuring and transformation plans.
2. Companies encounter issues related to land mismanagement, land encroachments, and non-delivery of products by concessionaires.
3. Companies owe rental fees for natural production forests.

Additionally, some companies have completed the restructuring and transformation but continue to face challenges in achieving efficient business operations. Some companies have selected investors, but these investors later withdrew due to difficulties in project implementation as it relates to land and contractual arrangements.

Three out of five wholly state-owned limited liability forestry companies (that are managing an area of protection forest accounting for 70% of the land area they are allocated or leased to) over have successfully transformed into Forest Protection Management Boards (category 5). As a public service unit, these Forest Protection Management Boards can provide services and generate revenue for their daily operation.

Twelve forestry companies facing dissolution have not yet completed the process, accounting for 75% of this category (category 6). The primary reason for their inability to dissolve is their financial incapacity, which includes outstanding salaries, social insurance, tax debts, budget obligations, and credit debts, among other financial burdens.

Moreover, two companies have not yet received approval for their restructuring and transformation plans and remain in the category of incomplete restructuring and transformation (category 7).





3. Proposed Solutions

3.1. Implementation Solutions

Urgently complete land measurement, boundary demarcation, land registration, and land use rights certification based on a precise determination of the land types and purposes. Resolve persistent land disputes involving forest origin and forestry companies and conclusively address issues related to encroachments and disputes over forestry land.

Focus on addressing residential and agricultural land issues, with strict control over the transfer of resident land having been granted to ethnic communities. Address the issue of spontaneous migration, especially in the Central Highlands region.

Enhance the management capacity and operational efficiency of forestry companies. After restructuring, forestry companies must develop new mechanisms for production and business management, improve their business and managerial skills, and emphasise the accountability of business leaders. This is particularly crucial for ensuring the conservation and development of state assets.

3.2. Policy Solutions

Several policy adjustments and additions are required in light of the current situation and the results of restructuring and transformation. Some provisions of Decree 118/2014/ND-CP should be modified to promptly resolve challenges for forestry companies, including the following:

 Transform state-owned forestry companies holding 100% charter capital into joint-stock companies, with the State holding over 50% of charter capital as for forestry company having a land use plan for an area of at least 1,000 hectares to ensure state control over forestry companies managing substantial land areas and contribute to forest resource preservation, environmental protection, social safeguards and stability, and national security, especially in remote, disadvantaged, and border regions. Refine the limited liability company model with two or more members for forestry companies with clear conversion plans focused on applying advanced technology to meet domestic and export market demands. Criteria for such companies include:

- 1** Having a plan of production and processing in which advanced technologies are applied in order to meet the need of domestic and international markets in accordance with the following criteria: Applying the advanced technologies are those listed in the list of technologies prioritized for investment and development to develop agricultural products in accordance with the high technology related laws; in production and control of product quality, environmentally friendly practices and energy-efficient methods are applied, adhering to Viet Nam’s standards and technical norms;
- 2** The State’s capital after financial processing and the reassessment of enterprises’ value;
- 3** Being a transformed company or a company whose share of the state-owned capital is partly sold with the State’s capital and to make sure the state’s control over the company is retained as for forestry companies having a land use plan for an area of at least 1,000 hectares.

In addition, the following conditions are to be ensured:

- (i)** having a legal entity status as prescribed by law;
- (ii)** having a minimum capital ownership that is twice the charter capital of the plan to establish a limited liability company with two or more members;
- (iii)** having profitable production and business activities for the last 3 years up to the time of registration for capital contribution or purchase of state capital shares;
- (iv)** having written commitment from the investor when registering to become a member of a limited liability company with two or more members.



Promulgate regulations for the transfer of capital and assets from forestry companies to local authorities through capital increase and decrease transactions between the transferring and receiving parties. Asset transfers should involve handing over original land management records and assets according to the inventory at the time of transfer. Forestry companies should deliver assets as-is during transfers to local authorities.



Allocate funds for addressing redundant labour costs in the case of state-owned forestry companies that undergo consolidation and strengthening. This should be done by relevant authorities, drawing from income generated through enterprise ownership transformation, public service unit transfers, state capital transfers, and differences in owner's equity exceeding charter capital.



Develop provisions for merging and consolidating state-owned forestry companies within the same province or centrally-governed city. This should adhere to the relevant laws on establishing, restructuring, converting ownership, and transferring owners' representation rights in 100% state-owned companies. Following the merger and consolidation, forestry companies must continue to restructure, transform, and enhance their operations as stipulated by laws on restructuring, innovation, and performance improvement in forestry companies.



Implement a mechanism to grant exemption or to reduce land lease fees for forest land, ensuring long-term stability and continuity for land allocated to households, individuals, communities, and plantation forests.

In practice, most forestry companies are located in economically and socially challenging areas, including areas with special investment incentives, and engage in businesses listed in the special investment incentive category under investment laws (such as forest seedling production, afforestation, forest nurturing, protection, and development). Therefore, after the National Assembly passes the Land Law (amended), the Government will specify the mechanism for granting exemption or reducing land lease fees for land areas of forestry companies allocated for long-term, stable land use by households, individuals, communities, and plantation forests. This guidance will be included in the Decree guiding the implementation of the Land Law (amended) regarding land use and land lease fees.

3.3. Recommendations to the National Assembly

It is proposed that the National Assembly allows for the amendment and addition of several laws or the issuance of related resolutions to address financial support mechanisms for forestry companies undergoing restructuring and transformation in the following ways:

- *Use the State budget to support state-owned forestry companies that are insolvent, clearing their debts owed to the State budget and complying with legal obligations to repay their debts.*

According to Article 207 (2) of the Enterprise Law 2020, "Enterprises can only be dissolved after settling all debts and other property obligations;" furthermore, the 2015 State Budget Law does not contain provisions for using the State budget to support insolvent state-owned forestry companies. The 2010 Law on Credit Institutions and the Law Amending and Supplementing Some Articles of the Law on Credit Institutions in 2017 also lack regulations on debt relief for credit institutions. The issuance of mechanisms and policies allowing the use of state budget funds to support insolvent state-owned forestry companies is the prerogative of the National Assembly. As a result, local authorities cannot allocate funds or lack a legal basis to address financial issues for insolvent forestry companies, which is why 12 companies in this situation remain unresolved (category 6, Table 2).

- *Supplementing Charter Capital for 100% State-Owned One-Member Limited Liability Forestry Companies:*

Nationwide, there are currently 69 agricultural and forestry companies that fall into the category of maintaining the single-member limited liability company model with 100% state-owned charter capital. This is a situation that requires additional charter capital because most of these companies face specific challenges, including:

- Insufficient capital has resulted in their inability to fulfil certain state-assigned tasks. According to statistics, the average equity of these companies is 29.6 billion VND each, with 33 companies having equity below 20 billion VND and 18 companies having equity below 10 billion VND.
- The primary actors responsible for carrying out public-interest tasks related to forest management and protection are one-member limited liability forestry companies (64 out of 69 companies, accounting for 92.8%). These companies manage extensive land areas, primarily in remote, border, and minority ethnic areas, which have challenging socioeconomic conditions. Generally, they organise production and business activities with low efficiency.

- Additionally, some regions have not been able to implement a mechanism for placing orders and assigning public-interest tasks but have only been able to partially support the funds for forest management and protection. Some companies even have to pay fees for forest leases in natural forests during the time of forest closures, with no source of income to meet their obligations to the State.

Therefore, many of these companies do not meet the conditions for “effective operation” as required to receive additional charter capital under Article 13, Point a, Clause 2 of Law No. 69/2014/QH13 regarding the management and use of state investment capital in enterprises. Nonetheless, these companies still need to be maintained and improved as they play important roles to economic development, national defence and security (particularly in border areas, such as the Northwest, the Central Highlands, and regions with ethnic minorities) while protecting watershed forests, natural forests, biodiversity conservation and providing public services. Therefore, they should be provided with additional charter capital, similar to companies operating in the defence and security sector, as stipulated by Law No. 69/2014/QH13.



CONCLUSION

- The Party's orientation and the legal policies of the State are always firm and consistent in the direction of restructuring and innovation of forestry companies to bring economic, social, environmental, and biodiversity benefits to large areas and regions with a high diversity of ethnic groups, and in remote and border areas.
- Legal documents are developed and issued with the participation of relevant ministries, departments, organisations, individuals, experts, and professional social organisations to guide the implementation of restructuring and innovation suitable for each forestry company's production and business model.
- During these transformative processes, subjective and objective factors have emerged, including some mechanisms and policies that are not truly suitable for the specific operational characteristics of forestry companies. There are also subjective factors, such as a lack of thorough assessment of the actual situation of forestry businesses and a lack of concentration of resources for reviewing, restructuring, and resolving issues, leading to a high rate of incomplete restructuring in some localities. In actuality, some companies have not innovated their business management sufficiently, resulting in low production and business efficiency.
- In the near future, policies need to prioritise key areas, emphasising forest and forestry land area as an essential factor to ensure that the State retains control of rights to mobilise investment, technology, and business management resources from economic components. Specific financial support mechanisms and policies should be installed to resolve difficulties and obstacles in restructuring and innovation in a timely fashion.
- There are some difficulties and obstacles in the financial mechanism, and the solution to these issues exceeds the Government's jurisdiction. Therefore, legislative agencies, such as the National Assembly, should allow amendments to some existing relevant laws or the issuance of resolutions related to specific financial mechanisms to support the restructuring, innovation, and development to enhance the efficiency of forestry companies, including agricultural companies.
- The Government issued Decree No.04/2024/NĐ-CP on 12/01/2024 on the amendment of some articles of Decree 118/2014/NĐ-CP. It is expected that the Ministry of Finance, and concerned sectoral ministries and local authorities will subsequently request the Government to propose the National Assembly to provide regulations related to financial incentives to timely remove difficulties, facilitate effective operation of forest companies.



Background

The amendment of the Decree has been informed by assessments that have been carried out in the frame of the project “Upscaling of Sustainable Forest Management and Forest Certification in Viet Nam,” funded by the Federal Ministry for Economic Cooperation and Development of Germany (BMZ) and jointly implemented by the Management Board of Forestry Projects (MBFP) and Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH in collaboration with the Department of Forestry and other relevant partners. The impact of the implementation of the Decree until now has been assessed. Thereafter, recommendations for the amendment of the Decree have been developed through a consultative process.

Document of reference

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