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Pushing the ELC envelope

Fri, 3 May 2013 Phak Seangly and Shane Worrell



Three companies accused of illegal logging in Ratanakkiri province are in possession of a combined 30,000 hectares of economic land concessions (ELCs) that are likely illegal because they are owned by the same parent firm.

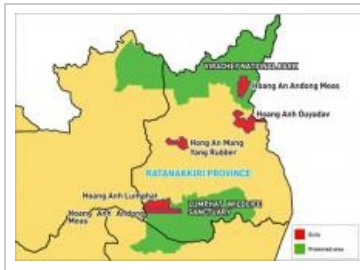
Hoang Anh Andong Meas, Hoang

Anh Lumphat and Hoang Anh Ouyadav are all subsidiaries of HAGL, according to the company's 2012 annual report.

Hoang Anh Andong Meas and Hoang Anh Lumphat's concessions lie inside the Lumphat Wildlife Sanctuary, which rights groups have said is being decimated by illegal loggers who then bring the wood onto company land.

Very similarly named companies - including one called Hoang Anh Andong Meas, which has a 9,775-hectare concession inside Virachey National Park - operate elsewhere in the province.

Article 59 of the Land Law stipulates individuals or legal entities controlled by the same person cannot hold more than 10,000 hectares of ELCs, even if it is spread over multiple concessions.



Matthew Rendall, a partner with law firm Sciaroni & Associates, said that for a parent company to be in possession of more than 10,000 hectares of ELCs, each of its subsidiaries would have to be structured differently.

"For it to be legal, they would have to have different

shareholding structures and directors," he said. "You could argue, though, that the companies would have to be linked at some point."

NGOs have repeatedly spoken of a culture in which businessmen register their companies in other people's names as a way of flouting this law.

In the case of the Hoang Anh companies, however, they take no pains to hide their links.

Seng Mony, a representative of Hoang Anh Andong Meas, said his company, as well as Hoang Anh Lumphat and a fifth company, Hoang Anh Daun Penh, shared an owner.

"The companies are under one big firm, though I can't tell you more about this because it is not my work," he said.

The combined size of Hoang Anh Andong Meas and Hoang Anh Lumphat is about 18,000 hectares.

HAGL, which deals in rubber plantations, property, mining and hydropower, carries the company slogan "unity is power" and is headed by chairman Doan Nguyen Duc.

Multiple calls to its head office in Vietnam over the course of the week resulted in no comment, and the Post received no response to

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an emailed query.

Adhoc provincial co-ordinator Chhay Thy told the Post again this week that an estimated 16,000 trees had been illegally logged in Lumphat Wildlife Sanctuary.

A commune chief in the area last week accused Hoang Anh Andong Meas of being behind the area's logging.

A company official denied this claim by blaming part of the forest's devastation on Hoang Anh Lumphat.

Luxury timber was allegedly found inside Hoang Anh Ouyadav last month.

A lawyer with experience in business law in Cambodia told the Post yesterday that the law relating to ELCs was difficult to enforce.

It was hard to determine, he said, to what extent individuals with concessions were controlled by other individuals or how much a parent company controlled a subsidiary.

Furthermore, individuals could easily sign concessions over to others or transfer shares, said the lawyer, who did not want to be named.

In the case of the HAGL companies, it appears that they are under a single head, said Nicolas Agostini, a technical assistant at rights group Adhoc.

"[This] seems to be one and the same company, which is forbidden," he said.

"We assume that the different legal entities are actually [headed by] the same person and make up one company.

"If one natural person has shares in several companies holding more than 10,000 hectares of ELC land in total, then that is illegal, because the same person benefits from each."

The government was unwilling to clear up the matter of whether the concessions granted to HAGL in any way contravened the law.

Beng Hong Socheat Khemaro, a representative for the Ministry of Land Management, declined to comment and referred questions to the Ministry of Agriculture.

Chan Tong Yves, secretary of state at that ministry, and It Nody, a Ministry of Agriculture undersecretary of state, declined to comment.

Another Ministry of Agriculture official, who spoke on condition of anonymity, said authorities did not care if individual firms were owned by a single parent company.

"That's OK, as long as each small company does not get more than 10,000 hectares of ELCs," he said.

Eang Vuthy, director of NGO Equitable Cambodia, said there were increasing instances of companies creating smaller, supposedly individual companies, to exploit the law.

"At the moment, many companies own three, four or five times the legal limit," he said. "The way they are doing it is by creating small companies, owned by the same person."

Vuthy said he was unaware of the circumstances surrounding HAGL, but urged the government to review all concessions.

"The same thing is happening in Oddar Meanchey, where a Thai firm owns three companies," he said. "Each is 7,000 or more hectares. One concession is owned by the director, one by the manager and so on. It's basically the same company."

From a business standpoint, however, it's hardly surprising that such circumvention might occur.

"It's not really a commercially viable law. Ten thousand hectares makes it difficult," said Sciaroni & Associates's Rendall.

The law had been designed to protect families, but "if land is occupied, it shouldn't be offered anyway", he said.

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