

LAND MARKET FOR PRIVATE ENTERPRISES

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Summary: Land is one of the inputs of production. Establishing and developing a market-driven land market is one of the most important contents of developing a socialist-oriented market economy. With the transition from a planned economy to a market economy, land is officially recognized as a commodity. The State has reformed land policies towards gradually eliminating land subsidies for all economic sectors and shifting to land use right auctions. The land law regulates equality and equal obligations between land users. These reforms create an equally competitive environment and access to land use rights for private enterprises.

Keywords: Enterprises, private sector, land market.

1. Overview of legal framework for land market for private business development:

Establishing and developing a market mechanism of land operating under the market mechanism are considered an important tool and help to allocate and use this resource effectively. In our country, in general, the legal framework for land is increasingly improved in terms of land use rights, land users. Rights of land allocation and use are becoming more and more equal and competitive among economic sectors, and the process of land allocation and lease is becoming more and more transparent. These reforms have contributed to promoting development of the land market and improving the socialist-oriented market economy.

The number of land use rights is constantly being supplemented, contributing to the variable of land use rights as an asset, thereby promoting

the process of redistributing land as a production resource to more productive places under market mechanism. On the basis of the 1993 Land Law, the 2003 Land Law inherits and supplements nine basic rights to land use rights. In the 2003–2013 period, the 2013 Land Law continued to improve land use rights. However, the right to mortgage with land use rights is recognized by the law with credit institutions with legal status in Vietnam only, and has not been exercised by foreign credit institutions.

The Land Law has added land users, contributing to increasing the coverage of local and foreign groups of people and socio-economic organizations. The 2003 Land Law supplemented the object of Vietnamese residing abroad; foreign organizations and individuals investing in Vietnam in accordance with the Law on Investment. The Land Law 2013 supplemented a group of land users,

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including foreign-invested enterprises, such as enterprises with 100% foreign capital, joint-venture enterprises, and vietnamese enterprises with which foreign investors buy shares, merge, or acquire in accordance with the Law on Investment. The addition of land users is meaningful in increasing the participation of entities in the land market, especially the real estate market. Allocating land to foreigners will help create a more competitive business environment, thereby contributing to making land use more efficient.

The Land Law (2003 and 2013) allows land users to choose to allocate land with collection of land use fees or land lease. The land users have the right to choose the form of one-time or multiple-time rent payment. The introduction of these options is to create favorable conditions to encourage entities to participate in the land market. The 2013 Land Law continues the trend of narrowing cases of land allocation by the State without land use levy, land allocation with land use levy, basically converting to the form of land lease; implement land use right auction mechanism when allocating land with land use levy or land lease.

The fulfillment of obligations to land use rights is equal among land users being domestic and foreign enterprises. The 2013 Land Law allows both domestic and foreign businesses to rent land on an annual or lump sum payment. The Law also allows overseas vietnamese and foreign-invested enterprises to trade in real estate, thereby creating a competitive business environment while ensuring more efficient land use.

A progressive point in the 2013 Land Law is the institutionalization of the principle of granting land use right certificates (Article 98), assets attached

to land, protecting the rights of people with land use rights when transacting' land. The Land Law 2013 does not specify the time for resolution of each administrative procedure on land, but supplements the provision on publicizing administrative procedures on land. This makes it convenient for people and businesses to know the process, time and responsibilities of agencies in handling each type of administrative procedure.

The level of State intervention in the land market has also improved in the direction of operating according to market principles. Land Law 2003 and 2013 gradually applied the pricing mechanism based on the principle of close to market prices. The land price bracket and land pricing method are issued annually by the government. The mechanism of forming land price frames has been referenced with the free market price and the scope of application of the land price frame has also narrowed, contributing to expanding the influence of market mechanisms on different types of land transactions.

In addition to reforming the Land Law, related laws such as the Housing Law, the Law on Real Estate Business, the Law on Enterprises, the Law on Investment, and the bylaws are legal corridors that have also been amended and amended for the development of the land market, regulating the real estate market, including creation, transactions, ownership setting, management of exploitation, using of real estate products, and management of market participants.

2. All kinds of land for Market of production and business of enterprises

- Change of land use structure: Since the 2003 Land Law was adopted, Vietnam has witnessed the rapid development of

the land market through land use planning and conversion. Industrialization and urbanization have led to the rapidly increasing demand for conversion of land use purposes. In 1993, Vietnam had 32% of unused land (equivalent to 10,498.3 thousand hectares). This figure decreased to 26.9% in 2003, 8.9% in 2013, and 6.4% in 2018. The structure of agricultural land increased from 62.3% in 1993 to 66.6% in 2003, 79.7% in 2013 and 82.3% in 2018. The size of land transferred to non-agricultural activities also increased rapidly. As of 2013, the proportion of non-agricultural land increased to 11.41%, equivalent to about 3.78 million hectares (an increase of 1.65 million hectares compared to 2003). In 2018, these respective figures were 3.75 million hectares and 11.3%.

- Market of agricultural land: Currently, there are 11.95 million households nationwide using agricultural land. It is estimated that the area of agricultural land included in the purchase and sale transactions is 808 hectares and 1,818 hectares, respectively. This figure is still low compared to the area of agricultural land being used. The cause of this problem is the current low rate of certificates of land use rights (COLUR), especially for forestry and aquaculture land. In particular, the combination of all plots into a COLUR should make it difficult for households to sell or transfer any of the allocated plots. If the transaction is conducted, the owner will have to cancel the COLUR and apply for a reissue, which is costly, while this is a cumbersome, time-consuming procedure.

- Land leasing market in industrial zones: Implementing policies to encourage and attract investment, the real

estate market for industrial production has begun to form with the advent of investment companies. Since 1991, the number of industrial zones established has increased rapidly. Since the establishment of the first Industrial Park - Tan Thuan Industrial Park in 1991, the country had 326 industrial parks with a total natural land area of 94,900 hectares, with the industrial land area for rent being 64,000 hectares as of 2018. Besides industrial zones, Vietnam has a system of industrial clusters established by provincial People's Committees to serve small- and medium-sized domestic enterprises. So far, there have been 650 industrial clusters with a total area of 28,000 hectares. Although the area of industrial park land has increased, the area of rentable land and the leased area are still low. In 2018, the occupancy rate of industrial parks reached about 73%, according to the Economic Zone Management Department under the Ministry of Planning and Investment. With the low occupancy rates of industrial zones, in general, the supply exceeds the demand.

- Real estate market: Since 2000, Vietnam has witnessed the explosion of the real estate market, especially urban land. The area of urban construction land has increased rapidly. On average, about 66,027.1 thousand m² of residential land is provided annually, of which individual housing area is about 63,164.3 thousand m² and apartment housing area is about 2,862.9 thousand m², according to the Statistical Yearbook by the General Statistics Office. The real estate market is forecast to continue to grow on the basis of the planning of 1,000 urban centers with a total land area of about 2,000,000 hectares by 2020.

3. Access to land of private enterprises

Land is an important resource that can be used as collateral for bank loans. Therefore, without the ability to access land with reasonable costs and procedures, the unqualified use rights will be a big disadvantage for enterprises, especially private enterprises. Despite improvements, private enterprises still face difficulties in accessing land.

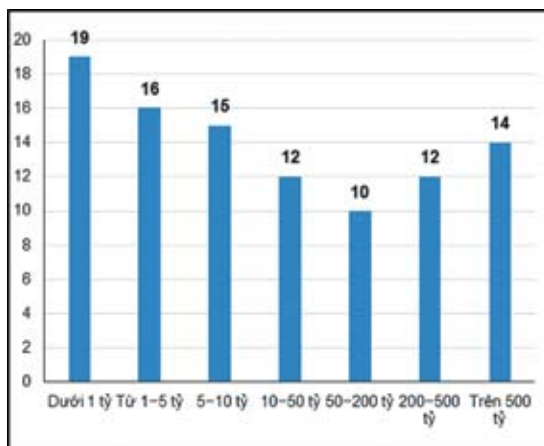
- Access to land use information and planning: In terms of access to land planning, many private enterprises struggle to find land planning items. According to the Report on Provincial Governance and Public Administration Performance Index (PAPI), in 2018, less than 25% of respondents knew regional land use planning. Less than 30% said that they had the opportunity to contribute ideas for the land use plan. According to a report by Jones Lang LaSalle (JLL), Vietnam currently ranks the 61 among 109 countries

on transparency in the real estate market.

The first difficulty that enterprises have to overcome is having access to information on land fund, land use planning, land use plans and local projects. The absence of a land use plan further increases administrative procedures (because planning guidelines are required) and increases the risk of the “ask-give” mechanism.

- Situation of land access by private enterprises: According to the survey results of the ‘PCI Provincial Competitiveness Index Report 2018’, enterprises faced many difficulties in accessing land, and expanding business space. Up to 16% of the surveyed enterprises said that it was difficult to find suitable land and business premises. In particular, small private enterprises, especially small and medium-sized enterprises, and fledglings have difficulty in accessing land at a higher rate (Figure 1 and Figure 2).

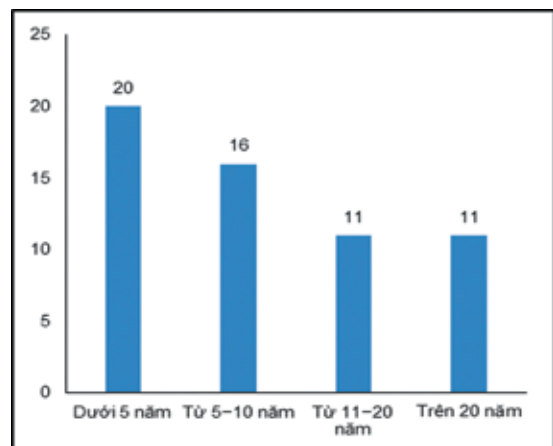
Figure 1: Difficulties encountered by of enterprise size



Source: 2018 PCI Report

Enterprises reported that after receiving the transfer of land use rights, they encountered many troubles in site clearance, compensation for people or other

Figure 2: Difficulties by the number years of operation of the enterprise



Source: 2018 PCI Report

provincial regulations (44% of businesses responded). About one third of enterprises assessed that the provincial land planning did not meet the development needs of

enterprises. One in four businesses said that they faced information on unfavorable land, lack of clean land, slow site clearance, and high land prices.

In general, state-owned enterprises (SOEs) often have easier access to land and production and business premises; 70% of current business premises in the economy are under the management and use of SOEs. In fact, there are still cases where state companies have been given priority by competent authorities to access land or to land at a price lower than the market price. Besides SOEs, FDI enterprises also have easier access to land than domestic private enterprises, especially in large projects. Local governments often give priority to the acquisition and allocation of land for FDI projects because for local authorities, attracting FDI is their top priority due to the growth potential of those projects. FDI enterprises are also exempted from land rent for 3 to 15 years after the completion of the factory building (depending on the field and area). FDI enterprises are also exempted or reduced land use fees from 30% to 70%, according to the Ministry of Planning and Investment in 2017. According to the Provincial Competitiveness Index (PCI) 2018 by the Vietnam Chamber of Commerce and Industry (VCCI), 32.4% of enterprises said that provinces still prioritize prefer state-owned enterprises and foreign direct investment (FDI) enterprises to private enterprises. The figure was 41.2% in 2017.

- Time, procedures and costs for access to land by private enterprises: Land procedures are one of the most complicated administrative procedures in all types of administrative procedures. As a result, more than 30% of businesses reported paying unofficial expenses to speed up land procedures. However,

“massive corruption” has shown signs of abating. The figure was 32% last year. In 2018, 48.4% of businesses agreed with the statement “Paying ‘commission’ is necessary to have a chance to win the bid”. In 2017, it was 54.9% according to the Provincial Competitiveness Index - PCI 2018.

According to a survey by the Central Institute for Economic Management and the Small and Medium Enterprise Support, a program implemented by the GTZ, it takes a vietnamese business an average of 230 days to complete seven procedures to obtain a certificate of land use rights. This is too long for businesses to obtain the certificates. Therefore, enterprises often use land for production and business without having a land use right certificate. In addition, land planning is announced, but not implemented for a long time, and many land plans are not made transparent, affecting the psychology and stable operation of production and business enterprises.

4. Conclusion and policy recommendations

The private sector and enterprises in the private sector have been increasingly confirmed to play an important role in Vietnam’s economy. However, in the process of operating the business, the private sector has still faced many difficulties, especially in accessing land. In order to facilitate the development of private enterprises, the settlement of land needed for this area should focus on the following issues: transparency in land planning and capital assistance. It is also important to pay attention to and take appropriate care from all levels of government in order to access land equitably and sustainably./.

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THỊ TRƯỜNG ĐẤT ĐAI ĐỐI VỚI DOANH NGHIỆP KHU VỰC TƯ NHÂN

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Đất đai là một trong những đầu vào của sản xuất; hình thành và phát triển thị trường đất đai vận hành theo cơ chế thị trường là một trong những nội dung quan trọng của phát triển nền kinh tế thị trường định hướng xã hội chủ nghĩa. Với việc chuyển đổi từ nền kinh tế kế hoạch hóa sang nền kinh tế thị trường, đất đai được chính thức thừa nhận là hàng hóa. Cùng với đó, Nhà nước tiến hành cải cách các chính sách về đất đai theo hướng từng bước xóa bỏ bao cấp về đất đai cho các thành phần kinh tế và chuyển sang đầu giá quyền sử dụng đất. Pháp luật về đất đai cũng có những điều chỉnh về quyền và nghĩa vụ bình đẳng giữa các đối tượng sử dụng đất. Những cải cách này tạo ra môi trường cạnh tranh bình đẳng hơn và điều kiện tiếp cận quyền sử dụng đất đối với doanh nghiệp khu vực tư nhân.

Từ khóa: Doanh nghiệp, doanh nghiệp khu vực tư nhân, thị trường đất đai.

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