

# BUSINESS ISSUES BULLETIN

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## ACCESS TO LAND: Issues faced by Private Sector

Each year, a significant number of private enterprises are being established in a wide range of sectors and business activities throughout the country. As a result of this rapid growth, there has been a significant increase in demand by private firms for suitable industrial and commercial land upon which to locate their factories, warehouses, offices and retail outlets. Finding land at an affordable price is difficult for private Vietnamese firms of all sizes. This bulletin discusses a number of constraints, in terms of both policy and implementation, faced by private firms in locating, acquiring and using land for commercial activities.

### Limited supply of land

In many surveys with private firms, the lack of supply of commercial land and the resulting high prices, as well as security of land tenure, are viewed as major constraints to business growth. Many firms express their wish to acquire land rights directly from the state (through provincial authorities) in order ensure that their piece of land is included under the provincial land use plan and they are secure to invest in factory, warehouse and other commercial facilities. However, the amount of land made available by public authorities (through direct allocation or leasing by People's Committees) is primarily accessible only by larger firms that need large plots of land (many of which are foreign-invested) and not to smaller firms. A recent IFC-FIAS survey<sup>1</sup> suggests that fewer than one in four SMEs are able to acquire land rights directly from government sources, and that among firms experiencing recent growth, almost 75% viewed the lack of available land as a major or severe impediment to growth of their businesses.

### Lack of information on land markets

The Real Estate Transparency Index 2006 (developed by Jones Lang LaSalle) ranks Vietnam, along with Venezuela and Egypt, as having the least transparent real estate markets. The index suggests that Vietnam continues to have substantial issues relating to property rights issues and poor information flow within the market. Over half the respondents from the 2006 Provincial Competitiveness Index survey said that they rely on their staff resources and personal contacts to identify suitable production facilities - essentially providing in-house brokerage services. The recent IFC-FIAS survey of SMEs revealed that over 50% of the firms believe that simply locating available land is the most difficult aspect of the current secondary market, and that 66% of the SMEs who located land did so through word of mouth or personal

contacts. These findings suggest that some attention to market information infrastructure may have positive impacts on the information asymmetry. These include: establishing a legal and regulatory environment supportive of private land-brokerage activities; improving facilitation of identifying and tracking each piece of land and the land rights attached to it; increasing local government efforts to create better land inventories and make information more widely available to the public; and improving physical planning regimes, which permit sellers and buyers to accurately determine the current and likely long term permitted uses of the land.

### Low security and marketability of land use rights

Access to land without secure land tenure is of little use to investors. One threat to land rights facing investors - particularly small investors outside of industrial zones - is often unpredictability of changes in land-use planning, which can result in a sudden loss of land rights. Private firms that are unable to afford land rights in industrial zones or to acquire long-term use rights to a sufficient amount of land often resort to leasing land from private sector land holders or unauthorized leasing from state-owned enterprises (SOEs). Leasing from private sector land holders, however, is viewed as insecure due to the weak protection of the rights of both the primary land holders and the lessees. Those lease agreements are typically short-term, discouraging investment in improvements. No legal framework facilitating the sub-lease of state owned enterprise (SOE) land also puts the rights of private firms at risk.

In addition, there are disadvantages to leasing state land for private domestic firms as state land can only be leased on an annual payment basis. With this type of lease, firms have no rights on the land (apart from using it for the specific commercial activity), and they can neither sell their right nor offer it as collateral.

Instead they only have the right to mortgage the property constructed on the land. This creates some ambiguity regarding the rights of land holders and creditors since having security on buildings without having security over the accompanying land-use right is less valuable for creditors.

### Complicated administrative procedures

A GTZ survey affirms that finding and acquiring state-owned land for production is the most complicated, time consuming and expensive step in establishing a business.<sup>2</sup> The survey found that it can take approximately 230 days to finish all of these land-related administrative procedures with the process involving a variety of state bodies. The IFC-FIAS survey of SMEs suggests that acquiring actual possession of land in the private secondary market, where most SMEs carry out transactions, can be completed in far less time - often in less than 7 days - but that registering the transaction and obtaining the land-use right certificate (LURC) can be a significant problem and take far longer. Recently, the establishment of land registries in main cities and in each provincial center has helped reduce some of bureaucratic procedures but has not had a great impact on improving the speed with which LURCs or leases are granted. Among firms surveyed in the IFC-FIAS study, there is still a relatively high level of dissatisfaction with the LURC process, with most firms citing the duration of the process as the major issue. Only about 50% claim to have completed the process in less than one month, which is essentially the time limit provided in the regulations.



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The "Business Issues Bulletin" provides those interested in business issues with a short summary and analysis of a particular topic affecting the business environment in Vietnam, and exposure to different opinions held by various stakeholders on the topic.

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(1) This survey is jointly conducted by the Mekong Private Sector Development Facility (MPDF) and Foreign Investment Advisory Service (FIAS) of the International Finance Corporation (IFC).

(2) From Business Ideas to Reality: Still a Long and Costly Journey, GTZ/CIEM, Hanoi, 2005. The seven steps are: 1) Communicate with the local authorities with regards to the land; 2) Apply for preliminary approval to the competent authority; 3) Formulate an investment project and plan for making compensation; 4) Approve the investment project and plan for making compensation; 5) Make land clearance; 6) Hand-over land and conclude the land-leasing contract or issue the decision on granting of land use; 7) Issue the certificate of the land-use rights.

## Limited supply of land



● SMEs can rarely find access to land in good locations, nor is there adequate availability of large-sized plots. Also, since SMEs are generally not environmentally conscious as they expand their business, the State prefers to locate them in industrial parks and zones. Enterprises in certain specific industries must be located in industrial parks and zones to control environmental pollution. However, those businesses that do not pollute or harm the environment should be permitted to establish their premises wherever they can, including residential areas.

Land planning and zoning still needs a lot of work. Land-use and zoning plans must be made available to enterprises so that they can proactively and freely adapt their usage in accordance with the land zoning plan. The recall of SOEs' unused land is necessary in principle, but is not easy to implement in practice. This can only be regarded as a support measure, rather than a key solution, for increasing the land supply.

The leasing of private land is deemed as a civil contract transaction, so the State does not intervene except in cases where the law is violated. The legal framework to regulate private land transactions is relatively complete. However, due to ambiguous land zoning, local governments are sometimes reluctant to permit the conversion of land use.

*Mr. Dao Trung Chinh, Deputy Director of the Land Department, Ministry of Natural Resources and Environment*

● With the increasing modernization and industrialization of the nation, land demand for purposes of manufacturing, urban development, trade and services has presented the administration with an urgent challenge of how to rationally and economically utilize the nation's limited land reserve. Therefore, it is necessary to re-evaluate the efficiency of land use, especially with regard to publicly-managed land. The immediate task calls for an audit of land in every province - particularly land used by government agencies, state enterprises, and socio-political organizations - and a subsequent recall and reallocation of idle or misused land for more efficient use. In addition, the land lease rate for SOEs must be restructured to better match current market rates. Following these measures, private firms would be on a more equal footing when seeking access to leased land or state-allocated land.

*Mr. Do Duc Doi, Deputy Director of the Land Statistics and Registration Department, Ministry of Natural Resources and Environment*



● According to current regulations, businesses can seek access to land in one of three ways: 1) enter industrial zones - but prices are too high; 2) sub-lease from land supply development centers which are yet to be established in all provinces and where they do exist there is a scarcity of cleared land readily available; 3) sub-lease on the basis of voluntary negotiation but prices are also high. In Hanoi a land supply development center was established early, but the limited supply of "cleared land reserve" was only enough for a few public facility projects and a few auctions to generate revenue for the city budget. Land for private sector business and production purposes is not available.

Private businesses in need of land usually have to sub-lease unused land from SOEs for a high price and on non-secured terms, as the lessor can sometimes break a lease agreement if it gets a better offer. Private sector land holders rarely have land to sub-lease, and if they do, the plots tend to be small and unsuitable for factories that employ hundreds of workers.

*Mr. Vu Duy Thai, Chairman of Hanoi Trade and Industry Association*

● From a micro-economic perspective, individual reforms at local levels cannot create significant improvement in the land supply. The conversion of agricultural land into manufacturing land must be in line with the

industrialization and development process, so that redundant labor from agriculture can be employed in these newly created industrial zones.

On the other hand, land supply in industrial zones remains abundant, but not all SMEs in Vietnam have the capacity or the long-term vision to utilize the large area of land that suits the requirements of industrial zones. Therefore, most of them opt for utilizing land from household ownership or subleasing land from other private entities. This results in various constraints when considering production and capacity expansion for business development.

We could learn from the example of Korea in establishing public-private corporations mandated with developing the land supply. These corporations negotiate to buy land from current occupants on the basis of market price, and are also authorized to enforce compulsory measures on resistant occupants. However, Korea's success can be attributed to its well-established mechanism of land pricing, which is stable and universally applied throughout the country. Eventually, it is these corporations that provide and moderate the supply of land to the market (businesses and construction projects).

*Mr. Tran Nhu Trung, Deputy Director of the Technology and Environment Consulting Service Company (TECOS)*



● Currently, my business has to sub-lease land from a household for an average rate of over VND 20 million per year (for a 300 m<sup>2</sup> area), renewable every two years. Due to the short-term nature of the contract and the small area of the land, I could only set up a temporary establishment for manufacturing and could not hire more workers; hence my production capacity is limited. Moreover, because my factory is next to a residential area, the living environment of neighboring inhabitants is affected. My business currently needs as much as 3000m<sup>2</sup> of land on a long-term lease. Hopefully we can lease from the state at a lower rate - usually the state's official rate is only one-fourth that of private rates.

*Ms. Nguyen Thi Chuyen, Chairwoman of Minh Tam Pottery and Lacquer Cooperative*

● Private firms seeking access to industrial zones usually have sound development strategies and adhere to environment and waste processing regulations. However, industrial zones (IZs) are not for everyone. IZs are not suitable for very small businesses, as firms must have production capacity that extends over at least one to five hectares of land to qualify for access.

*Mr. Truong Thai Son, Deputy Director General, Hoang Quan Real Estate Company*

● An accurate assessment of the amount of land actually available for business use today in comparison to similar indicators in developed and emerging markets would be useful but is not possible because the data is lacking. If the SME perception of scarcity is borne out, efforts should be made to increase supply by a multi-faceted program which could include such diverse initiatives as improvements to local physical planning capabilities and rezoning of lands; resolution of the issue of SOE-held land; tax-based or other incentives to induce conversion of more private land rights to higher and better uses; and reconsideration of the role of government in pricing lands and intermediating between willing investors and current right holders.

*Mr. Steve Butler, IFC-FIAS consultant on land*

● The problem is that currently many private Vietnamese developers have the right to develop land and are unable to transfer their projects to other developers. At the same time, the Government is hesitant to recall the land from such users. Most Vietnamese land users do not lease land from the State or other Vietnamese entities. They prefer to "buy" the land directly. It is foreign investors that are constrained as they can only lease land from the State or enter into joint ventures with local partners that have land to contribute as equity or pay a current land user compensation to return the land to the State which will then lease the land to the investor. The

Government should change the law to allow foreign investors to lease land from private organizations and individuals. I think this is currently not permitted because the Government is concerned about improper use of land. However, to the extent each investor must obtain an Investment Certificate,

whether the use is proper can also be determined by the licensing authority.

*Ms. Dao Nguyen, Partner,  
Johnson Stokes & Master Vietnam & Chair of the Vietnam Business  
Forum Working Group on Land Issues*

## Lack of information on land markets



- Currently the land use rights (LURs) certificate (red book) and the house/premise ownership certificate (pink book) are issued by two different government offices, which continues to cause problems for real estate administration and management. There is an urgent need for an integrated and unified database for real estate management, which would encompass all data on land and house registration together with administrative land maps, and which would be updated regularly.

Nowadays, advanced countries no longer need to issue ownership certificates to real estate users and owners, since their database of real estate registration and administrative land maps is well established, with real-time entries and updates, and therefore provides sufficient information to serve as the legal basis for all transactions.

*Ms. Nguyen Thi Cam Van,  
Head of the Planning and Administration Division, Ho Chi Minh City  
Department of Natural Resources, and Environment*

- In Bat Trang there are currently vast tracts of idle land, but the land zoning plan has yet to be completed and uncertainty still remains. Therefore, each time I tried to request an allocation or the right to lease land from the commune authority, I was either denied or the processing of my request was delayed because a land zoning plan was not available. Information on land zoning is nowhere to be found. In Bat Trang a mere 20% of businesses have succeeded in leasing land from the commune authority.

*Ms. Nguyen Thi Chuyen, Chairwoman  
of Minh Tam Pottery and Lacquer Cooperative*

- To assist real estate firms, particularly firms that specialize in industrial zone developments like Hoang Quan, the government needs to promptly issue implementation guidelines for the Real Estate Law and other related laws. To enable businesses to acquire adequate production facilities and promote the development of industrial zones, local governments need to support infrastructure firms and manufacturing firms in industrial zones by accelerating the land clearance and compensation process.

*Mr. Truong Thai Son, Deputy Director General,  
Hoang Quan Real Estate Company*

- Facilitating secondary land market transactions might have the most positive impact for SMEs. About half of the small firms interviewed in the recent IFC-FIAS survey believed that the most difficult aspect of secondary market transactions is simply finding the land. This non-transparent market may be preferred by some small land holders for various reasons, including perhaps avoidance of fees and taxes, but it may also reflect undeveloped market infrastructure. The recently adopted law on Real Estate Trading may facilitate transactions by encouraging more professional and competitive market intermediation. In areas where it is unlikely that private sector market intermediation initiatives are likely to arise in the short run, provincial and local government assistance with creation of simple listing and trading facilities for local small holders might be useful.

The importance of further development of the local cadastre and title registration systems to market transparency and facilitating transactions

cannot be overemphasized. In addition, provincial and local governments were the direct source of land rights for about 20% of the SMEs interviewed, and appear to serve a broader segment of the business market than the industrial zones. One step that could be taken to improve market transparency would be the creation and wider dissemination of better inventories of public lands available for investment, perhaps using web-based technologies. Some localities in transitional economies (e.g. St. Petersburg in Russia) have made exceptional use of this technique for investment promotion. In addition, provincial and local industrial zones might serve a broader segment of the business market by permitting more speculative development of multi-tenanted "flexible" buildings for smaller businesses, rather than the emphasis today on larger owner-occupiers.

*Mr. Steve Butler, IFC-FIAS consultant on land*



- The quality of the land zoning process is not good, due to lack of basic information and lack of a registration system (information on socio-economic situation and natural resources, development forecast, etc.) to support the decision making process. Land zoning decisions are often made top-down. And since bottom-up reporting is inaccurate, this results in zoning plans that do not match reality, lag behind actual demand of businesses, and need to be frequently changed or modified. Moreover, land zoning is carried out with little consultation from

the business community and citizens.

In Viet Nam, demand for broker services related to manufacturing land does exist, but the market size is not big enough to spawn professional service providers. A firm in search of manufacturing land often thinks first of investment officials in the local government, submitting the project proposal and finding ways to lease land from the state or arranging for the land to be allocated. We see absolutely no demand for broker services here. Currently, some provinces have started to develop good practices in land supply development, with regard to both land clearance and land allocation. Good examples are the land investment firms/centers in Da Nang and the Land Supply Development Center under the People's Committee of Da Nang City.

*Mr. Tran Nhu Trung, Deputy Director  
of the Technology and Environment Consulting Service Company (TECOS)*



- While the Land Law contain some key changes in theory such as a comprehensive localized Land Registry where information on land is to be readily available, in practice the implementation of this system has been low. Currently, unless requested by the land owner to the Department of Natural Resources and Environment, such information is not available to third parties. Moreover, it is unclear what type of information will be provided.

*Ms. Dao Nguyen, Partner,  
Johnson Stokes & Master Vietnam & Chair  
of the Vietnam Business Forum Working Group on Land Issues*

## Low security and marketability of land use rights

- Currently, to find access to land, businesses have to spend a large sum to buy the LURs on a negotiated price, arrange their own compensation for clearance, and yet at the same time they have to follow the whole procedure as if applying for land allocation from the State. The average time needed for this procedure usually spans from 18 months to two years, and can cost 5-6 times as much as the official costs, as well as multiple times the official value of the land as determined by the State. These costs include LURs purchase (transfer

cost), compensation for crops and other establishments on the land, assistance in vocational training for agricultural workers whose land is being transferred, contributions to the local community (nearly the amount paid to land occupants), payment of transfer tax, land-use-conversion tax, and sales tax equivalent to 1% of the land value. That does not include costs for "oiling the machine" and opportunity costs for the business' time and efforts. It is ironic that after the whole procedure and all these costs, what businesses get in the

► end is the land and the “red book” that reads “land leased from the state, rent paid annually”. So the whole outlay of money to “buy” the LURs, to compensate occupants, to prepare the ground and install necessary infrastructure, and so on, still does not entitle the holder to the land as a business’ asset and can not be used as collateral to obtain financing from the bank.

*Mr. Vu Duy Thai, Chairman of Hanoi Trade and Industry Association*

● It stands to reason that there is a close relationship between the perception of security of land rights and the level of investment in business facilities and land improvements. Viet Nam is among only a handful of countries (e.g. China, Tanzania) that have not permitted a significant amount of land ownership or ownership-equivalent rights in the commercial sector to co-exist alongside the state land sector. The IFC-FIAS survey suggests that leases, both state and secondary market, are perceived as more insecure than other forms of tenure and that among SMEs holders of rights of long term land use are more likely to invest more in land improvements than holders of leases. This finding may reflect as much the issue of lease durations as the security of the right. But as Vietnam is developing one of the small number of lease hold land economies in the world today, clarification and assurances of protection of the rights of lessees in both the primary and secondary markets should be a priority. Moreover, creation of a larger and more dynamic secondary market in land rights, which might entail creation of more ownership-equivalent rights of

long term use for the commercial sector, or at least longer term leases which are freely transferable and have clearly defined and guaranteed rights of renewal, may have beneficial effects on levels of investment.

*Mr. Steve Butler, IFC-FIAS consultant on land*

● The new government decree<sup>3</sup> has made certain efforts to establish equal access to land and land rights for both domestic and foreign enterprises. Currently, domestic enterprises leasing land (with annual rent payments) cannot use that piece of land as collateral to apply for a bank loan, partly because the State has yet to install a mechanism limiting the risk that banks may bear in case the firm goes bankrupt. In other countries, loans based on the collateral of future properties are popular. Long-term leased land (even on annual-rent-payment terms) and attached properties can be used as collateral for commercial loans. The current Project of the Ministry of Natural Resources and Environment on finalizing and modernizing the land management system, which is now prepared to debut its first stage in nine provinces, will allow enterprises and individuals to access a database of land registrations (at the level of land plot and land use history) to facilitate citizen and enterprise access to capital, while exercising land-related rights.

*Mr. Do Duc Doi, Deputy Director of Land Registration and Statistics Department, Ministry of Natural Resources and Environment*

## Complicated administrative procedures

● Upon receiving the municipal authority’s permission, in 1997 our Association developed a project to construct the South Thang Long Industrial Zone. But it took four years for the project to obtain land allocation. One more year passed until we could complete the land clearance. Progress on building roads to the IZ, a state-funded construction work outside the industrial zone, has been too slow, so we voluntarily offered to contribute investment in the form of BOT. However, authorities did not give us their permission to do so, and as it now stands, the one kilometer of road is still under construction, and is creating huge problems for enterprises in the IZ. Furthermore, there remains discrimination between foreign and domestic enterprises as to land lease terms, since foreign firms can lease the “cleared” land for a lump-sum lease fee based on the project’s lifetime, with clearance and compensation conducted by the State, while domestic enterprises have to complete the compensation and clearance process by themselves at a higher cost.

One of the main difficulties in the LURC issuance procedure, particularly for urban land, is determining the land’s origin. This is due to the fact that there are currently eight categories of land. This does not include complications added by multiple unofficial transactions and the lack of a database for transactions. Many land owners do not want to go through the process of obtaining a LURC as this would entail complicated and costly requirements such as re-measuring the land.

*Mr. Vu Duy Thai, Chairman of Hanoi Industry and Trade Association*

● To simplify the administrative procedure and facilitate domestic and foreign investors, the Ho Chi Minh City People’s Committee issued Decision No 139/2004 regulating the inter-sectoral coordination mechanism to appraise applications for land allocation, land-lease and land-use conversion. According to these new regulations, investors only have to deal with the local Department of Natural Resources and Environment (DONRE) when submitting an application and receiving appraisal results.<sup>4</sup> After three years of implementation, the “inter-sectoral single window” mechanism has shortened the appraisal process from one to two years to 20-40 days per application, generating great cost savings. Feedback from the Inter-sectoral Working Group (IWG) was given on every application, and investors were informed of the grounds for either approval or disapproval of the applications. The most important feature of this procedure is that the whole appraisal process takes place during meetings of IWG members, who have thoroughly studied the applications prior to the meeting and have consulted with their

organization’s leadership when necessary. At these meetings, all members are authorized to make decisions (except for very special cases). The meeting’s minutes provide the most essential grounds for DONRE to draft a report to the People’s Committee for the final decision. The role of DONRE is to provide investors with guidelines for completing applications, making brief reports, distributing related documentations to IWG members, and organizing working sessions of the IWG.

*Ms. Nguyen Thi Cam Van, Head of Planning and Administrative Division, Department of Natural Resources and Environment of Ho Chi Minh City*

● The LURC issuance process is currently being accelerated. The duration of the process largely depends on whether a piece of land is under legal dispute, and whether the LURs’ supporting documentation is sufficient. Issuing the “red book” is complicated when it comes to the definition of land type (residential or agricultural), and possible legal disputes related to that piece of land caused by multiple unofficial transactions in the past. The issuance of the LURC also creates a legal basis to assist in land management and future dispute settlement. The next move of LRAs will be to develop a full archive of information on land and individuals, upon which enterprises, for a service fee, may register, transfer, and perform information searches on pieces of land.

*Mr. Dao Trung Chinh, Deputy Director of Land Department, Ministry of Natural Resources and Environment*

● Despite detailed regulations on procedures of LURC issuance stipulated in the Land Law and its implementing guidelines, the practice is different in each locality. Quang Tri is the leading province in implementing the single-window mechanism, allowing its authorized land registration agencies (LRAs) to collect money from individuals and enterprises for later deposit to the Treasury. By doing so, individuals and enterprises do not have to spend time visiting various state agencies during the process. This model needs to be further streamlined and standardized and to be applied in all provinces. The application of ISO standards to LURs certificate issuance procedures, particularly the standardized maximum duration of each step involved in the process, will certainly shorten the time needed to issue certificates to citizens and force state agencies to be more responsible in their work.

*Mr. Do Duc Doi, Deputy Director of Land Registration and Statistics Department, Ministry of Natural Resources and Environment*

(3) Decree on supplement regulations on issuance of LURs certificates, land recall, exercise of LURs, compensation procedures for land clearance, occupant resettlement upon the state’s recall of land, and procedures for land-related claim settlement (draft).

(4) In the southern part of the city, single-window office is located at South Area Management Board.