

Vietnam Land Administration - The Past, Recent and for The Future

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SUMMARY

Vietnam has a total land area of 32.924.064 ha (9.345.346 ha of agriculture land, 11.575.429 ha of forestry land, 1.532.843 ha of special used land, 443.147 ha residential land, 10.027.265 ha un-used land). It is estimated that there are 13 million households in rural areas and 3 million households in urban areas. The bulk of the country's agricultural land is located in the major deltas (the Red river Delta in the North and the Mekong River Delta in the South) and in the narrow central coastal plain. There are estimated to be between 70 - 100 million land parcels in the country, where in the urban areas there is usually one land parcel per household, in the rural areas one household could be using from 3-15 land parcels. Vietnam is administered through a hierarchy consisting of the authorities at the central level, provincial level (61 provinces) district level (>500 districts) and communal level (>10.000 communes).

In 1986 the State of Vietnam for the first time adopted the renovation policy named as "DOI MOI" leads to the switch from centralized command economy to a market oriented multi-sector economy. Land is the property of the entire people and it subject to exclusive administration by the state, and state is also the owner's representative to allocate land to all institutions, organizations households and individuals for stable and long term use. Land is the property of entire people, but building erected in the land can be privately owned. So that individual title over the land upon which a building has been erected is acknowledge by law, as the right of land use, and the land user being granted a legal title: the certificate of land use right. In the field of Agriculture, the product- base contractual quota system to every household has been applied to replace the direct centralized management of all economic activities in rural areas by the cooperatives. The peasant household is considered as a self-governing basic economic unit, to which is entrusted a portion of land for long term use and the right to decide on his own business. It has brought about a series of great socio-economic changes in rural areas: land use, social division of labour, production organization etc...

The first Land law was the first legislative document to be passed in 1980. In general terms, the Land law has put in order the administration of land performed by the State, and with other policies along the “DOI MOI” process, it has encourage production mainly thanks to the liberation of the productive force and has gradually settle the use of land for economic development. However a few years after it was passed, the Land law was already out of date, being over taken by the speeding up to the renovation process. The Law was ambiguous and vague, with broad statement of principle leaving "tough issue" to be resolved by subsidiary regulation. Yet, subsequent administrative degrees meant to supplement and classify the Land Law were issued to be lately or not at all, as a result, the potential for inconsistent or conflicting provisions reduced the reliability of the Land Law.

In 1992, the fourth constitution was adopted so called as the constitution of "DOI MOI". As the result of the 1992 constitution, a new Land Law was passed (July 1993) to implement and specify the constitutional provisions on Land Law and policies. Major changes brought on by the 1993 Land Law are: (i) creation of an urban land rural residential category of land; (ii) State guarantee to the land user of his right in respect of land allocated to him and his legal interests in that land (a “land use right”); (iii) right for an individual who is allocated land by the state to exchange, transfer, lease, inherit, and mortgage the land use right subject to the Land Law and its regulations; (iv) land valuation for taxation of land use and land transference of land use rights, assessment of property values as the land is allocated, and compensation for land damages; (v) Land is allocated for the stable and long term use (20 years for annual crops and aqua culture, 50 years for perennial crops). In order to make the law suitable to the practical socio-economic development of the country, in 1998, 2001 the some articles in the Land Law was amended in orientation to make the Land Law suitable to the market economy development.

After 10 years of Land Law 1993 execution, the management over land has made significant progress: (i) more than 9 million ha of agriculture land has been allocated to 12 million households, individuals and organizations, 11.5 million Land Use Certificates have been issued; (ii) 59 provinces, 223 districts, 3579 communes have been approved with their Land Use Planning for the period 2001-2010; land recovery and compensation for tens of thousands of households, covering more than 66,000 ha serving 11,000 construction sites; (iii) almost communes, towns have their own cadastral staff; (iv) all provinces have their own Land Price. Some remains in land policies and land management are: (i) making and approving the land use planning are in slow process, especially in districts and communes, and the feasibility of land use planning is not so high (about only 60%); (ii) issuance of Land Use Certificates and Building Ownership certificates is still in low number (about 30%), and black transaction of land use and house is frequent which result in revenue loss; (iii) un-economical land use (40,000 cases in which land allocated but not used, 80% of these cases are state organizations); (iv) violations in land use have not been strictly treated, land disputes and complains have been settled slowly; (v) there are many obstacles in land recovery, land compensation, which cause many public claims and discontents.

In 2003, the National Assembly adopted the new Land Law which was oriented to speed up the country's industrialization and modernization process. The Land Law 2003 almost created

a complete renovation of the Vietnam land legislation system. First of all, the whole people ownership of land is concretized with the detailed regulations on the rights and responsibilities of land authorities of the State, on the rights and obligations of land-users, based on the principle that the land use right of land allocated by the State with land-use fee payment is considered as the property of land-user. Second, there are also detailed regulations on settling the historical complicated land relations between land-users, in which there is a regulation: land that the State borrowed or rented from the past is considered to return it to the legal land-user. Third, the land price set by the State must be suitable to the market price of land, which means the new land financial system was established on the principle of “market-based price of land”. Fourth, the economic organizations having the land use rights as their property are allowed to perform land transactions in the market. Fifth, the equity in the rights and obligations on land between domestic and foreign investors is improved. Sixth, the compulsory land conversion measure regulated in the previous land legislation is now restrained to only the cases where land is used for national, public purposes and some important economic investment projects (such as construction of industrial zones, economical areas, high-tech parks, urban and rural infrastructures, and those projects in the largest funding investment group); other cases must follow the voluntary land conversion measure based on negotiations between investors and current land-users to make land transfer/land lease/land contribution as capital. Seventh, there are the detailed regulations on the determination of land compensation value, the live conditions of resettlement locations for the cases the compulsory land conversion measure is to be applied. Eighth, the land administration procedures system is established based on the principles of detail, simplicity, inexpensiveness, transparency and publicity. Ninth, the supervising role of people in the land legislation implementation is enhanced. Tenth, the settlement of land disputes, complaints and denouncements is renovated on the principles to improve responsibilities of the local people's committees and to essentially shift the settling works from the administrative system to the court system.

In 2007, the Government of Vietnam promulgated a new decree (Decree No. 84/2007/ND-CP dated 25 May 2007 with additional provisions on issuance of land use right certificate, land recovery, land use right, procedures on land compensation, support and resettlement upon State's recovery of land, and settlement of land complaints) focusing in three main ideas: the first is to issue the legal criteria for recognizing the land use right to current land-users those have no any legal documents of land use; the second is to permit foreign investors to carrying out houses building projects in commercial purpose with the rights and obligations similar to domestic investors; the third is to specifically stipulate the publicized and transparent procedures to perform the compulsory land conversion measure, which guarantees the benefits of affected land-users.

Drastic innovation of the land legislation system has created driving force for development of industrial and service economy. The number of investment projects and investment funds are increased remarkably, especially from the non-State and foreign economic sectors. According to the data issued by the State Statistics Office of Vietnam, a graphic chart can be formulated to point out how fast the investment process increased with the participation of all economic sectors.

The State of Vietnam has decided the road map of development that Vietnam will become an industrialized country in 2020. The land management tasks in the period from now to 2020 would be focused on: (i) completion of national land information system which is a component of the National Spatial Data Infrastructure to serve land administration works and people's needs; (ii) issuance of Land Use Right Certificate associated with attached properties ownership right for every land parcel to ensure the people's rights on land development; (iii) improvement of land use planning system to essentially ensure the social sustainability, environmental protection, and economic development; (iv) development of an effective land financial system including the land valuation system and the land use taxation system to make good land development in the real estate market; (v) approval of good policies to organize the process of compulsory land acquisition and voluntary land conversion based on application of good solutions for the involuntary land compensation and resettlement; (vi) decrease of the number of land disputes and land complaints on the basis of dialogs between local governments and people; (vii) establishment of a Land Code with stable provisions for very long term application.

Hopefully, in the coming 10 years, the land management shall closely approach to the market mechanism through policies on land registration, land valuation, land tax, land use planning and land compensation if recovery for development aims.

BIOGRAPHICAL NOTES

TON GIA HUYEN (born 1936)

Mr. Ton Gia Huyen holds pedology engineer degree in 1958 at the South China Agricultural University. In 1978, he holds the Post graduation degree on "Ecosystem management and environmental protection at the Technical University of Dresden.

In 1958 he started to work for Ministry of Agriculture and Forestry as a technical official. Since 1974 he provided works in the field of soil and agro-chemistry analysis in the Autonomous North-East Region and Autonomous Ethnic Thai-Meo Region of Vietnam.

In 1978, he was promoted to the post of Deputy Director of the Department of Land Management (belongs to Ministry of Agriculture). In the period 1983-1996, he was appointed by Prime Ministry of Vietnam to the post of General Director of the General Department of Land Administration (belongs to Government of Vietnam). From 1996 to 2000, he was worked as a Senior Advisor for Vietnam Government, and he has retired in 2000.

In current time, he works as a member of the central committee of the Association for Soil Science and as a Senior Researcher of the Institute for Urban Studies and Infrastructure Development.

TRAN THI MINH HA (born 1959)

Mrs. Tran Thi Minh Ha holds the Bachelor's degree in 1982 at the Hanoi University of Teachers' Training, and the Bachelor of Law degree in 1996 at the Hanoi National University. In 2003, she holds the Master of Law degree at the Hanoi National University.

In the period 1983 - 1994, she worked as official for the Department of Science and International Cooperation, General Department of Land Administration. In 1994, she was promoted to the post of Deputy Director of the Department of Science and International Cooperation. When the Ministry of Natural Resources and Environment was established, she has been appointed to the post of Director of Department of International Cooperation of this Ministry.

Mrs. Tran Thi Minh Ha is a member of The Vietnam Lawyers' Association and a member of The Association for Soil Science.

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