

Annex: Land Management Mechanism in the 1908s

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ANNEX:

LAND AND AGRICULTURAL LAND MANAGEMENT IN VIETNAM

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1. LAND MANAGEMENT MECHANISM IN THE 1980S

1.1 The 1980 Constitution

It is stipulated in the 1980 Constitution that “land, mountains, forests, mines and natural resources in the earth, on sea areas and the continental shelf, etc. all belong to all people” (Article 19). “The State runs uniform land management in line with overall planning to ensure the rational and economic use of land. Those cooperatives and individuals who are using lands are entitled to continue to use them according to the stipulations of law... Land reserved for agriculture and forestry should not be used for other purposes except when permitted by State competent authorities...” (Article 20).

By these two fundamental stipulations, the Vietnamese government confirmed that from that moment, land would not belong to private, individual or collective ownership. Land belongs to all people under the State uniform management. It is, however, also affirmed that “Those collectives and individuals that are using lands are entitled to continue to use them according to the stipulations of law” to ensure continual and stable use of land and that no changes adverse to production and social life occur.

The 1980 Constitution marks a basic and important change in the Vietnamese Party and State’s policy on land since land reform and agricultural collectivization.

1.2 The Communist Party of Viet Nam Secretariat’s Directive 100

The Party Secretariat’s Directive 100, issued on January 13, 1981 on ‘Improving contractual work and expanding the piece work system to groups and laborers in agricultural cooperatives’ stipulates:

- ... Those agricultural cooperatives must strictly manage and effectively use the means of production, first of all the land, hauling power, fertilizer and the collectives’ instruments and material and technical bases...

- ... Satisfactory organization of the assignment of field acreage to production teams, groups and laborers for achieving the contracted output and avoiding the parceling partition of the fields. When a rational distribution of areas to laborers is made, it must be kept for several years so that co-op members can rest assured while making intensive farming on these areas...
- ... Those agricultural cooperatives should strictly manage and effectively use land and transfer collectivized and centrally run land to the product-based contractual quotas system for production teams. The assignment of land under the product-based contractual quotas system should be applied not only to teams, but also to groups (usually families) and each laborer for use. The duration for assignment of land according to the product-based contractual quotas system will not be based on each cropping season, but will be stable for several continual years.

In implementing the Party Secretariat's Directive 100, the South of Vietnam has boldly applied the product-based contractual quotas system on the present state of middle peasants' old fields. The application has brought about obvious results and has involved middle peasants in collective farming. The Party's fifth national congress in March 1982 confirmed the judiciousness of Directive 100.

The Party Secretariat's Directive 35 promulgated on January 18, 1984 has outlined important stipulations to encourage development of peasants' household economy:

- Regarding land, it permits peasants' households to make use of all land resources that have not yet been fully tapped by cooperatives, State farm and forest plantations so as to put them into production.
- Regarding tax, the State does not impose production and business tax on the household economy and only applies to slaughtering tax, and exempts taxation on arable and reclaimed land for five years.
- Regarding marketing, peasants' households are allowed to sell their products.

Concerning the mountainous areas, the Party Secretariat has issued two important directives: Directive 29 dated 21 November 21 1983 and Directive 56 dated 29 January 1985 on the assignment of lands and forests to peasants' households and consolidation of production relations in the mountainous areas. It was remarked by the Party Central Committee in these two directives that due to the drawbacks of the old managerial mechanism, the advantages of the mountainous areas were not brought into play, the forests' natural resources became increasingly exhausted and the peasants' life remained poor and backward...

To overcome this situation, the Party Central Committee advocated the assignment of land to each peasants' household, and linking rights and responsibilities to interests and to encourage peasants to make afforestation on clear land and bare hills; and granting peasants the right to inherit properties on forest land and long-term industrial crops, etc. The Committee also urged the flexible application of all forms of the cooperative economy - from low to high levels; for the highlands it is not necessarily to organize cooperatives but it can develop a household economy and establish the State - peasant relations in communes and the product-based contractual quotas system can be applied to co-op members' households (Ton Gia Huyen *et. al.* [2000: 179-180]).

For agriculture in the South of Vietnam , the Party secretariat issued directive number 19 dated 3 May 1983 “on about completing land adjustment, encourage socialism reforms in the agricultural sector”, the Government advocated:

- ... Supporting poor peasants who have just been granted land to enable them to use land effectively for production development and raising their living standards...
- ... Combining the building of production groups with application of the product-based contractual quotas system in localities where land adjustment has been made, but unevenness in land distribution still remains among peasants... ..
- ... Inspecting the collectivization of land and other means of production in production groups with a view to improving further the collective ownership, chiefly with regards to those groups that have not effected land re-adjustment...
- Not much has been done in combining the readjustment of land with that of population distribution and migrating people from regions with little farmland to those regions with an abundance of land ... Provinces and cities should work out suitable plans to readjust land in regions with low cultivable land average per capita to regions that abound in arable land, make redistribution of labor division among regions in order to better use labor and land in the whole district, province and region...

In five years of carrying out the Party Secretariat's Directive 100 and other directives and resolutions of the Party Central Committee on agricultural transformation and management, Vietnam's agriculture sector made substantial steps forward in spite of innumerable difficulties in investment capital and the supply of technical input to farm production (in the 1981 - 1985 period, investment from State budget and the supply of technical materials only equaled 41.5 and 58 percent respectively those of the 1976 - 1980 period). During the 1981 - 1985 period, the food value in paddy equivalence increased 27

percent; rice production, 23.8 percent; annual industrial crop acreage, 62.1 percent; the cow population, 32.2 percent; and the pig stock, 22.1 percent, etc. The annual average agricultural growth rate in this period was far higher than previous periods (Ton Gia Huyen *et. al.* [2000: 181]).

However, directive 100, once fully implemented, revealed its drawbacks. The cooperative model is still fundamentally based on collective ownership, centrally run management and the uniform distribution of products based on workdays. The actual situation of cooperative management has eliminated co-op members' motive force for enthusiastic production, increased peasants' debts, made peasants undertake less land assigned to them on the contractual system and reduced the food contribution to the State. Partly caused by a natural disaster in 1987, the people who suffered from food shortages numbered in the millions during 1987 - 1988 (Ton Gia Huyen *et. al.* [2000: 181]).

1.3. Land law– an important turning point

The Land Law, endorsed by the National Assembly on December 29, 1987 and promulgated by the State President on 8 January 1988 (therefore still called the 1988 Land Law), is an important code in the initial step of the country's all-round socio-economic renewal.

It came into being at a time when the country's national economy was changing from a subsidized, centrally-run economy to a State-run, socialist oriented economy operating by a market mechanism.

It was written in the Law's preface that "... (The Law aims) at upholding the responsibilities of all organizations and individuals in protecting and using land, protecting environment, formulating strict regulations for the management and use of land, making rational and effective exploitation of land potential, thoroughly practicing land saving, contributing to the socialist transformation, ensuring social equity, step by step bringing farm and forest production to large-scale production and serving the construction and defense of a socialist Vietnamese motherland."

The following are the especially important points of the Law:

Article 1: "Land belongs to all people under the State's uniform management. The State assigns land to State farms, forest plantations, agricultural and forestry co-operatives and production groups, State enterprises, people's armed forces units, State agencies, social organizations and individuals, etc. for long-term and stable use. The State still

assigns land for use for a fixed period or temporarily. Those who are using land legally are entitled to continue using it in compliance with the stipulation of this Law.”

Article 3: “The State ensures land users’ enjoyment of the legal rights on the assigned land including the right to transfer, concede and sell the fruit of their labor and the results of investment in the assigned land when they no longer use it and when it is handed over to other people for use in accordance with the procedures stipulated by law.”

Article 5: “The trading and seizing of land, renting land and getting land rents under various forms, receiving the assigned land without using it, using land not congruent to its purpose, and using agricultural and forest land for other purposes that results in its destruction, are prohibited.”

Article 16: “The transfer of the land use right will be carried out only in the following cases:

- When peasants’ households join or withdraw from agricultural or forestry cooperatives or production groups.
- When agricultural cooperatives, production groups or individuals agree on a mutual exchange of land.
- When a person who was assigned land moves to other localities or dies and members of his/her family still farm that land...”

Article 27: “Land for the household economy is stipulated as follows: ... The People’s Councils of provinces or centrally-run cities and the equivalent administrative units will stipulate the level of agricultural and forest land assigned to each household in their localities. The allotment to each person will not exceed 10 percent of the average agricultural and forest land per capita in the commune.”

Article 28: “Farm land for individual peasants is stipulated as follows: The State will assign land to individual peasants’ households for a stable and long-term use in service of agricultural and forestry production on the basis of the land currently used. The assignment will be based on the average agricultural and forest land per capita in each commune.”

Article 29: “In places where there is unused land, the People’s Committee of districts, precincts, district towns and provincially-run cities may assign this land to organizations or household members of cooperatives; agricultural, forestry, small industry, handicraft, fishing, salt-making production groups; State farms and forest plantations; agricultural and forestry stations; and workers, public employees and people for farming and afforestation.

Clear land, land on bare hills and exhausted forest land will be assigned in line with the policy for assigning land and forests for cultivation and livestock breeding.

Assignment of land to organizations and individuals will be based on their use capacity, without restriction of areas.”

Article 30: “The State encourages every organization and individual belonging to all economic sectors to invest capital in using land for agricultural and forestry production in areas that abound in unused land or whose use efficiency of land use is still low.”

However, the above articles and other articles in the 1988 Land Law were in fact already mentioned in the previous directives and resolutions issued by the Communist Party of Vietnam. Furthermore, it should be said that at the time of the promulgation of this Law, the Party Political Bureau’s Resolution 10 on “renewing agricultural management” was not widely known. Therefore, Vietnam’s land policy still dealt with cooperatives and production groups as collective units for receiving and managing land and land was not directly assigned to peasants’ households and co-op members.

Despite this, the Land Law based on the resolutions of the Communist Party of Vietnam’s sixth congress put forth important documents on a land policy vis-à-vis various economic sectors and organizations, at the same time it has strengthened the State’s uniform management of land in spite of the fact that at that time, land disputes had broken out in many localities and the management of land at the grassroots level was still very poor.

In implementation of the resolutions of the Communist Party of Vietnam’s sixth congress, following the promulgation of the Land Law, the Party Political Bureau issued Resolution 10 on 5 April 1988 on “renewing agricultural management”. The Resolution pointed out that the difficult situation was caused mainly by seven shortcomings committed by the leadership and guidance, among them some of the most important points are as follows:

“Concerning reorganization of production and socialist transformation of agriculture, there has been a realization of socialism and the first stage of the transitional period; and a failure to grasp the law of the relations of productions that should necessarily be congruent with the characteristics and level of development of the production forces, to grasp the natural and socio-economic characteristics of each region and the principle of volunteer, mutual benefit and democratic management. There has appeared subjectivity and impatience in transformation, constrain of peasants into joining cooperatives and production groups, advancing cooperatives to a large scale and a high level, thoroughly collectivization of the means of production while conditions have not matured, and mechanical application of similar forms of management to different regions, cooperatives and production groups...”

“... *In cooperatives and production groups*, the fields have been divided in into parcels, the marking of workdays and remuneration points was uncontrolled and inflated, food was equally distributed and income was leveled, and co-op members had to shoulder too many social and overpriced subsidies...”

Concerning re-adjustment of cooperative organization, the Resolution decided that

“... Well-performed cooperatives on a commune level must be consolidated and strengthened. The too large scale of a number of cooperatives in the low- and mid-land in the north and the littoral regions in central Vietnam and the Central Highlands whose production was sluggish; management, poor; and if requested by co-op members, must be re-adjusted into cooperatives with a suitable scope...”

Regarding contractual system, labor division and income distribution within cooperatives and production groups, the Resolution stipulated that: “... To continue perfecting the product-based contractual quotas system to co-op groups and households, laborers as well as production groups and teams according to the specific trade and crafts of each locality, and to link production plans with distribution plans from the outset. In cultivation, the contractual system is applied to households and groups of co-op households...”

“... In the cultivation sector, the areas assigned under the contractual system must be readjusted and the state of parceling division of land should be overcome and contractors should be ensured that they would cultivate on areas with a suitable and stable scope for a period of about 15 years. Classification of types of land should be correctly made, quotas and unit prices be truly defined for each type of farming work and for each type of land, which will serve as a basis for assigning land according to the contractual system and keeping the quotas stable for 5 years. Changes of quotas will be made when the material-technical conditions have changed. Depending on the concrete situation, cooperatives and production groups will decide which farming activities will be undertaken by the cooperatives and which ones to be contracted to cooperative households (it is not necessary that the cooperatives will undertake all five types of cultivation work and co-op households, three once). Contracted cooperative households must be ensured that they will obtain approximately 40 percent of the contracted output upward, depending on the number types of cultivation works undertaken by them...”

“... Where conditions permit, those who excel in other sectors such as: trades, handicraft and others must be encouraged to pursue their trades and hand back land to cooperatives and production groups; this land will additionally assigned on a contractual basis to cultivators. Compensations will be made to those who hand back their land for

the value of the products grown on that land and their energy and labor spent to increase the fertility of land as well as other production conditions compared with the state of the land when it was first received from the collective...”

With regard to private and individual economy, the Directive dictated that

“... In regions that abound in unexploited land and water surface, the State, depending on the concrete situation, may rent, or assign the right to use, some field, forest land and water surface to private and individual households for their organization of production and business in line with law. For forest and long-term industrial crop growing land, the right of use may be assigned for 1-2 business cycles. For water surface and food and annual industrial crop planting land, this duration may be 15-20 years. During this period, those whom farm the land are granted the inheritance and right of use to their offspring, and if shifted to other trades, they will be permitted by the administration to transfer the right of use to other owners. Private households and companies are entitled to hire laborers according to the requirement for production development and the Labor Code...”

Concerning State economic units, the Directive ascertained that

“... The scale of State farms and forest plantations must be readjusted in line with the current material and technical basis and the managerial level. The land and forest areas left in excess after readjusting the scale must be given back to the local administration so as to assign them to cooperatives, households or individuals for farming business. Land run by State establishments that is unused (after readjustment) must also be lent to peasants for production. Seizure of peasants’ exploited land for establishing State farms is prohibited. In special cases where a State farm needs a stretch of land for business purposes, it must make appropriate compensation for those peasants who have land in that stretch and ensure that they have new land for farming or create conditions for them to carry on living normally...”

1.4 Contract 10

Noteworthy is the fact that in southern Vietnam, from 1975 to the time of the promulgation of the Land Law and the Party Political Bureau’s Resolution 10 (Apr. 5, 1988), “the settlement of the land issue was carried out in parallel with the co-operativisation with a view to shortening the gap in production conditions, mainly the land, between the strata of peasants so as to eliminate and restrict inequity” (Ton Gia Huyen *et. al.* [2000: 185]). This did not stimulate production and made agricultural growth in rural areas in the south sluggish for a long time.

“In the course of implementing the Land Law and the Party Political Bureau’s Resolution 10, disputes of land occurred across the country from 1987 to 1988 in various forms. A certain complication developed in the rural areas in the north, especially in the mid-land and the mountainous areas, but these disputes were generally resolved smoothly, did not cause considerable disturbances as they lasted only a short time. The disputes often broke out in localities where native ethnic minorities lived when migrants from other areas came to reclaim land, State farms made land invasions, ethnic minority people came to settle in the low-land and complicated land relations remained unsettled before cooperatives were formed...” (Ton Gia Huyen *et. al.* [2000: 186]).

In the south, complicated land disputes took place for a long time. Most of them involved land that had been readjusted, land taken away for those who already had very little, land that had been curtailed and the cultivation of which was undertaken by others than owners when applying the contractual system, land the tillers who came from other villages and were taken off their land, land under the management of State farms, forest plantations and army units but was not used up and which included peasants’ exploited land and land seized by officials and Party members for their own interests, etc. In addition, there were disputes between rice-growing and shrimp-raising land, between rubber-, coffee-, pepper- and cashew- planting land and between cult-portion and dwelling land. The situation has at times and in places developed into an acute problem, demonstrations and rallies broke out as people came to Ho Chi Minh City and the central bodies demanding settlement (Ton Gia Huyen *et. al.* [2000: 186]).

According to the data from the Party Central Committee’s Agricultural Commission at that time, from January to August, 1988, the south alone recorded 59.505 peasants’ written petitions claiming land that had been readjusted through drives for co-operativisation and application of the contractual system from 1978 to 1984 and due to the situation of cultivation of land being undertaken not by its owners, “land leveling” and land invasion. A classification of these petitions showed that 25 percent of them claimed back the land that had been readjusted through co-operativisation and contractual system application drives in 1978 - 1979; 65 percent claimed back former land that had been readjusted in 1983 - 1984 according to the Party Secretariat’s Directive 19/CT/TU dated 3 May 1983. The rest included only 5 percent from owners whose land in other villages was taken away and 5 percent relating to other cases. (Ton Gia Huyen *et. al.* [2000: 186]).

In regards to this situation, the Party Political Bureau issued Directive number 47 guiding the resolution of land disputes in southern provinces.

Regarding the reasons, directive 47 pointed out: “...Firstly, in the Party Secretariat’s Directive 19/CT-TU dated 3 May 1983 on completing land readjustment and stepping up the socialist transformation of agriculture in southern provinces, a number of incorrect points were laid down such as: advocating the distribution and granting of land to those households that had no land or a lack land according to the commune’s average land per capita; combining the building of production groups with application of the product-based contractual quotas system in localities where land adjustment has been made but more or less unevenness in land distribution still remains among peasants for the continued resolution of this difference...” This line has led to the situation of cultivation of land being undertaken by people other than its owners, “leveling of land” in rural areas caused great confusion in regards to land for many peasants’ households. The policy to distribute land to those households that engaged in trading or other crafts and occupations without taking into consideration each household’s capability for agricultural production has made many peasants’ households short of land for production.

This is the main cause for the widespread, tense, fierce and prolonged land disputes that resulted in bloodshed in places, with all types of complicated developments. Directive 47 also pointed out that the above-said incorrect things of Directive 19 has made commodity agricultural production in the southern rural area that had previously made a step towards development, has declined. As such, the land dispute in the south at that time, or rather correctly, the peasants’ struggle for resolution of the land issue in strict accordance with Resolution 10 was inevitably necessary and in line with the objective economic law.

However, in some places, a number of reactionary landlords and rich peasants took advantage of the situation to rise up claim land or take back their old land. In reality at grassroots units, according to communal, precinct, district and provincial leaders, the most difficult matter that confronted leaders and local administration in settling land disputes was a number of inconsistencies between the Party’s resolutions, the Land Law and the Council of Minister’s resolution guiding implementation of the Party’s resolutions. Most notable was whether “the private ownership of the old land” was recognized so as to return the adjusted land to its former owner (Ton Gia Huyen *et. al.* [2000: 187]).

However, Directive 47 confirmed that “the settlement of land issues should be based on the people and on democratic and open discussion with peasants.” It was this flexible and judicious principle that led to different resolution by localities:

- In places where most of the peasants were former middle peasants whose great amount of land was adjusted, they petitioned that their old land must be returned

to them as it belonged to them - it was either left by their ancestors, previously reclaimed or bought by them.

- In places where the situation was the reverse - most of the peasants were landless or poor ones, or war invalids, fallen combatants' families and demobilized soldiers, that accounted for a large number, who had no land or a very little land additionally adjusted in the previous cooperativization and contractual system drives. Naturally, the majority of them did not want to give back land to its former owners for the reason that land belonged to the whole people's ownership and consequently its should be equally distributed and adjusted according to the average level per capita in communes as stipulated by the Land Law.

Directive 47 entitled "Some Urgent Issues Concerning Land in Southern Vietnam" also clearly stated that "Each locality, each agricultural production establishment has different specific characteristics, circumstances and conditions, which are very diverse and complicated. Therefore, guidance (for settlement) must be practically based on each concrete case and each locality in the rural areas."

A conference to review the implementation of Directive 47 in southern Can Tho and Thu Dau Mot cities in November 1989 acknowledged that more than 90 percent of land disputes had been settled up to that time, which temporarily stabilized the land situation in the south by the end of 1989. However, over 1,400 incidents of land disputes still existed until April 1990 in Ho Chi Minh City's suburban districts (Ton Gia Huyen *et. al.* [2000: 188]).

The scientists' circle has organized a number of workshops (held by the Ho Chi Minh City's Academy of Social Sciences) on the land issue in the south, which offered many different opinions such as: the viewpoint of the Land Law was a judicious one as it confirmed that land should belong to the whole people's ownership while others held that the Law should be revised to recognize the private ownership of land. Another view was that there must be a solution "to diversify the regime of ownership, including a co-ownership of the State and peasants". The fourth viewpoint demanded no clear statement, no discrimination and no change of the use right into ownership, provided that in specific policies, it should ensure that peasants must become the true masters in all respects of the plots of land they are farming. The fifth viewpoint was a synthesis of the above-said four viewpoints that carried many ideas similar to them.

After Directive 100 was issued, until the promulgation of the 1988 Land Law and during the implementation of the Party Political Bureau's Resolution 10, a special concern has arisen all over the rural areas of the country about the land issue. The extent

to which peasants' attitude was manifested regarding the land ownership or land use right differed with each concrete area as it was governed by the natural, economic and social conditions and was partly due to the history of land relations left thereof.

It can be said that the decade of the 1980's in Vietnam was a period seething with the definition of the peasants' right to master land. The 1988 Land Law and the Party Political Bureau's Resolution 10 have made fundamental decisions on the land policy towards peasants. It was thanks to a judicious policy for land management that agricultural production and the rural society saw a basic change-over: a major turning point has been made in food production - in 1987, the country produced 17.5 million tons of food; in 1988, 19.58 million tons and the figure in 1989 was 20.5 million tons. Major commodity food areas have formed in the quadrilateral of Long Xuyen, Dong Thap Muoi, Tien Giang and Hau Giang provinces in the south. Six provinces have obtained a food output of over 1 million tons a year. From a country running short of food supply for years on end, Vietnam has become one of the major rice exporters in the world. Food supply for the whole society was rather stable and the country has got an ever-larger food reserve. Agricultural potential in some areas has initially been brought into play. The material and technical basis in agriculture has been enhanced and peasants' living conditions have been markedly improved (Ton Gia Huyen *et. al.* [2000: 188]).

2. LAND MANAGEMENT MECHANISM IN THE 1990S AND BEYOND

2.1 Resolutions of the Communist Party in early 1990s

Regarding the land issue, delegates to the seventh national congress of the Communist Party of Vietnam held in June 1991, after a discussion, agreed to put in its documents that "Land belongs to all people and the long-term use of it is assigned to peasants (other issues such as transfer of the use right, inheritance and mortgage will be stipulated by the State)".

The second Plenum of the Communist Party of Vietnam's Central Committee (8th tenure) held in March 1992 decided that "The transfer, concession, lease, mortgage and inheritance of the land use right must be stipulated in details by law in the hope of encouraging peasants to reassuringly make investments and do their farming, raising the efficiency of land use, creating conditions for the gradual accumulation of land within a rational limit for commodity development in tandem with the expansion, division and distribution of labor and in association with the industrialization process.'

However, the Vietnamese Government also laid down specific stipulations for transferring the land use rights to prevent the situation where people living by farming have no land or people buy the land use right not for cultivation but for renting land and getting land rents. The Government also put forth stipulations on the maximum limit, according to each area and each type of land, on how much land one household may have (Ton Gia Huyen *et. al.* [2000: 189]).

Article 17 and 18 of the 1992 Constitution once again affirmed the fundamental decisions made by the seventh national congress of the Communist Party of Vietnam and the Party Central Committee on the relations of land in the new situation.

The fifth Plenum of the Communist Party of Vietnam's Central Committee (seventh tenure) held in June 1993 on "continuing with the renewal and vigorous development of the socio-economic aspect in the rural area" decided to "perseveringly and consistently carry out a policy for the development of a multi-sectoral economy operating by a market mechanism..." and "... renewing the cooperative economy and promoting the autonomy of the household economy..." The Plenum affirmed that land belonged to all the people; put forth stipulations on the reasonable duration for the use of land with regards to short-term and perennial plants. When terms expire, if land users require and meet conditions, they will be entitled to continue using it...; and urged the State to work out a policy to combine immediate with long-term interests in exploiting and using clear land, bare hills and reclaimed land, etc.

1.2 The 1993 Land Law

The Land Law promulgated in September 1993, based on the new Constitution in 1992 and the Party Central Committee and Government's guiding thought, has set forth the following concrete stipulations on land management:

The ultimate principle for land management is "land belongs to all people under the State's uniform management."

Article 1: "... The State still rents land to organizations, households and individuals... The State rents land to foreign organizations and individuals."

Article 2: "Users of land on a stable basis, that are certified by communal, ward or township People's Committees, will be considered and granted land use certificates by a competent State authority... The State does not recognize the claiming back of land that has been handed to other people for use in the course of implementing the land policy of the State of the Democratic Republic of Vietnam, the Provisional Revolutionary

Government of the Republic of South Vietnam and the State of the Socialist Republic of Vietnam...”

Article 3: “... Those households and individuals that are assigned land by the State will have the right to transfer, concede, rent, inherit or mortgage it. The above-mentioned rights will be exercised only during the duration the land is assigned and in conformity with the purpose of the assigned land in line with the stipulations of this Law and other stipulations of law...”

Article 4: “Land users are responsible for protecting, transforming, enriching and using land rationally and effectively and fulfilling obligations towards the State.”

Article 5: “The State encourages the satisfactory protection, exploitation, enriching and using of land so as to bring ever higher economic efficiency and to strictly protect the agricultural and forestry production land fund.”

Article 6: “Land invasion, illegal transfer of the land use right, using land contrary to its purposes and destruction of land are strictly prohibited.”

Articles 8, 9, 10 and 11: The State will make classification of land, division of land management, and devolve the managing authority of land at various levels. This will serve as a basis for stipulating a system for management and use of land in general and of each type of land in particular.

Article 12: The State will define the prices of all types land to calculate tax on the transfer of the land use right, to collect money when assigning or leasing land, to fix the value of property when assigning land, and to make compensation for the loss of land when retrieving it. The Government will stipulate a price for various kinds of land for each region and each period.

Article 20 stipulates the land use term as follows: “... The duration of land assignment for stable and long-term use for growing annual crops and aquaculture is 20 years, and for growing perennial plants is 50 years...”

2.3 Resolutions of the Communist Party toward formulation of 1998 Land Law

The fourth Plenum and the sixth Plenums of the Party Central Committee (eighth tenure) and the Political Bureau’s Resolution 06 issued in November 1998. It was written in the resolution of the Party Central Committee’s fourth Plenum (eighth tenure) in December 1997 as follows: “... Carrying out a land policy compatible with the commodity agricultural development and restructuring the rural economy... Encouraging the effective use of land through the accumulation in places where conditions permit by a specifically stipulated policy on the limitation of cultivable land area so as to protect the peasants’

legitimate right to have land for farming, to ensure that they are not impoverished and to prohibit the trading in land for profits...The farm economy under various forms of ownership (the State, collective and private) is developed mainly for growing long-term crops, livestock breeding in places that abound in land, and encouraging reclamation of virgin land for this purpose..." As such, the farm economy was recognized for the first time in the above mentioned sense

The Party Political Bureau presented the following view in the sixth Plenum (first round) of the Central Committee (eighth tenure) in October 1998: "... The Land Law, after five years of implementation, besides its positive aspects, has revealed a number of points that are not really congruent and not concrete to deal with recently arisen issues, chiefly in transferring the land use right, which complicated the land relations in society not only in economic respects, but also in social stability..."

In November 1998, the Party Political Bureau issued Resolution 06 on "Some Issues on Agriculture and the Rural Area" which pointed out that "... Concerning land accumulation; the transfer of the rights of use, accumulation and concentration of land will take place in the process of agricultural development to a large-scale production... The accumulation and concentration of land should come under the State's strict control and management... so that it should not occur spontaneously which will make peasants forfeit land, become jobless and impoverished..."

For landless peasants, particularly in the Mekong Delta, it is necessary to make specific classification and settle in conformity with the situation in each locality according to the Party Political Bureau's Resolution 23 dated 29 November 1997 on carrying out hunger eradication and poverty alleviation... With regard to the allocation of land, limitation of cultivable land area, land lease and the duration of land assignments: ... Keeping intact the limits of cultivable land area (according to region) as stipulated in the 1993 Land Law, but further study should be made for more specific stipulations according to region and types of land, with attention paid to the Central Highlands and the eastern part of South Vietnam.

Peasants will be assigned land by the State for production (free of charge) within the limited areas in places where conditions permit. The State will rent out the rights of use of clear land, bare hills and mountains, alluvial land on seashores and fallow land to those who are not peasants for investing in agricultural, forestry and fishing development on areas suitable to each region in accordance with the stipulations of the law.

Based on the current actual situation, it is necessary to increase the duration of assigning agricultural land to households and individuals so that peasants may rest assured in carrying on production... The execution of the 1993 Land Law will be

reviewed and on that basis, preparations will be made for building up a comprehensive, revised Land Law later on...”

2.4 The Revised Land Law in 1998

The Revised 1998 Land Law aimed to supplement some articles of the Land Law endorsed by the 10th National Assembly in its 4th session in December 1998, revised five Articles (1, 3, 19, 20 and 22) and supplemented nine Articles (22a, 22b, 22c, 78a, 78b, 78c, 78d, 78ñ and 78e) of the 1993 Land Law with a view to legally perfecting it one step further, responding to the new situation and meeting the demand of the country, raising the judicial character of the Law’s institutions, first of all those relating to the insurance of the legitimate rights and obligations of organizations, households and individuals using land. Following are some concrete contents:

Article 1, with supplementation, clarifies further the legal basis of the forms of land assignment without charges and with charges, land rent, and receiving the land use right from other people. These contents are the foundation for amending and supplementing the subsequent articles.

Article 3, makes more specific stipulations on protecting land users’ legitimate rights and interests.

Article 19, stipulates the bases for deciding land the planning and use of it has been approved by State competent authorities and the requirements for the use of which have been specified in the economic and technical arguments approved by State competent authorities or in applications for land assignment.

Article 20, stipulates that the term for land rent will be defined by the projects approved by State competent authorities but should not exceed 50 years. For those projects that need longer terms for land rent, a decision on the duration will be based on the National Assembly Standing Committee and the Government’s stipulations on the terms of land rent for these projects, but the duration should not go beyond 70 years.

Article 22, clarifies cases of assignment of land by the State without charging land use fees.

Article 22a, define cases of assignment of land by the State with charges on land use fees.

Article 22b, defines cases of assignment of land by the State. They are: economic organizations using land for production and business according to projects approved by State competent authorities; and households and individuals having the requirements for land use for production and business.

Article 22c, clearly defines the scope of exemption and reduction of land use fees or land rentals.

Article 78

a, stipulates two cases where households and individuals are entitled to rentland by the State.

b, stipulates the rights of those organizations that are assigned land by the State without charging land use fees according the purposes assigned, and the rights of economic organizations using land for agricultural and forestry production, aquaculture and salt making...

c, stipulates the right of economic organizations who are assigned land by the State with charges on land use fees.

d, makes additional stipulations on two cases of entitlement to land rent by the State: annual land rentals have been paid and the land rentals for the whole rented duration have been paid; and land rentals have been paid in advance for a number of years and the remaining duration for the paid land rent is at least five years.

e, stipulates that organizations, households and individuals should clear the procedures for executing the rights stipulated in the above-said supplementary points at competent State authorities in accordance with law.

f, stipulates two cases where economic organizations create land fund for use: having received the concession of the legal land use right from other people or having been assigned land by the State with charges on land use fees and the money paying these charges do not come from the State budget; and receiving the concession of agricultural and forestry land use rights together with the transfer of land use purposes permitted by State competent authorities.

The land policies in Vietnam have been more centrally legalized in more than two decades from early 1980s. Beginning with the 1980 Constitution, followed by the 1988 Land Law, then the 1993 Land Law and most recently the 2004 Land Law. The last one has perfected further the land management mechanism in Vietnam on the basis of supplementation and the amendment of a number of articles of the 1993 Land Law. According to this new Land Law in 2004, land has initially been considered as a commodity that will be openly traded in market. However, it is a special commodity and special stipulations will be worked out for this market. Nevertheless, it is an especially important step forward to help Vietnam develop a rational market mechanism, spurring a healthy socio-economic development, especially in rural areas, and particularly in the mountainous regions that abound in land potential, but the inhabitants are the poorest.

3. LAND LAW DECREE

Implementing the Decree on the Land Law, Decree 181/2004/ND-CP ("Decree 181") was issued by the Government on 29 October 2004. Decree 181 contains 186 articles and covers a wide range of land issues. It repeals nine Decrees and partly repeals certain other legal instruments. Decree 181, which had been expected to be issued prior to 1 July 2004 (which was the effective date of the Land Law), deals with the planning of land use, allocation of land, lease of land, change of purposes of using land, land resumption and land requisition, land use right certificates, the real estate market, rights and obligations of land users, procedures for exchanges, transfers, leases, mortgages and inheritances of land and regulations on the settlement of claims and disputes in respect to land. The Decree came into effect on 16 November 2004.

3.1 Real Estate Market

The Decree recognizes the "real estate market" and describes land as a "special commodity". The types of land titles recognized by Decree 181 include:

- Agricultural land and forestry land that is allocated by the State to family households or individuals without obligation to pay land use fees.
- Agricultural land used by family households or individuals for the purposes of agriculture, forestry, aquaculture or salt production, with land use rights to be recognized by the State. Agricultural land allocated by the State to economic organizations or overseas Vietnamese with payment of land use fees.
- Agricultural land leased by the State to overseas Vietnamese or foreign individuals and organizations for which land rental is paid in advance for the entire term of use.
- Residential land allocated by the State to family households or individuals for their use to build residential houses; residential land allocated by the State to economic organizations and overseas Vietnamese for their investment in property construction and business and residential land leased by the State to overseas Vietnamese, foreign organizations or foreign individuals for their investment in property construction and business for which the land rental is paid in advance for the entire term of use.

- Residential land used by family households or individuals for the purpose of constructing residential dwellings, with land use rights to be recognized by the State.
- Land for non-agricultural production and business and land to be used for public services for which the land user is entitled to receive fees for such public services with land fee to economic organizations, family households, individuals or overseas Vietnamese.
- Land for non-agricultural production and business, land to be used for public purposes with business purpose leased by the State to overseas Vietnamese, foreign organizations or individuals for which the land rental has been paid for the entire term.
- Land for non-agricultural production and business and land to be used by family households, individuals and economic organizations for public services where the land user is entitled to receive fees for such public services with land use rights to be recognized by the State.

Permitted activities in the real estate market include conversion, assignment, lease, sub-lease, mortgage, inheritance of or gifting land use rights, provision of guarantees secured by land use rights, contribution of capital by way of land use rights and investment in construction and development of residential property. However, not all land users are entitled to carry out all these activities. The activities which are allowed depend on the land users legal status, whether the land is allocated or leased by the State and the land users residual financial obligations toward the State in respect to that land (if any).

3.2 Land Use Right Certificates

A land use right certificate ("LURC") is the form of registration of "ownership" of land conferring various rights on the owner. However, most conferred rights fall short of the freehold title to land recognized in many other jurisdictions. LURCs are to be issued in a standard form for all types of land. A sample of the standard LURC is posted on the website of the Ministry of Natural Resources and Environment ("MONRE").

However, LURCs will not be issued to land users in the following cases:

- Land allocated by the State to agencies for management purposes.
- Agricultural land for public use allocated to people's committees of wards or towns for management.
- Where the land user leases or sub-leases land to another person and the land is not located in an industrial zone.

- Other types of land that fail to qualify for a LURC as provided for in the Land Law.

Decree 181 also deals with the issuance of LURCs in specific circumstances including to land users using land for construction of offices of administrative agencies and to land users using land for construction of housing developments and apartment buildings.

3.3 Overseas Vietnamese and Foreigners

Under current land laws, with the exception of overseas Vietnamese who can be allocated with land from the State, foreign organizations and individuals (including foreign invested enterprises) are permitted to lease land from the State only, except where the land is located in an industrial zone or in circumstances where the Vietnamese partner to a joint venture contributes land as capital to the joint venture company. Decree 181 has consolidated a number of legal instruments dealing with the use of land by foreign invested enterprises as well as providing new provisions.

3.4 Procedures for Allocation or Lease of Land

After obtaining the agreement of the authority on the location of the project, the foreign investor must submit an application file for allocation or lease of land to the Department of Natural Resources and Environment ("DNRE"). The DNRE then will examine the application and submit documents to the provincial people's committee for issuance of a land use right certificate. The timeframe for issuance of a land use right certificate is stated to be 20 working days from the date of receipt of appropriate documents from the investors.

The procedures for allocation or lease of land when the land which has not been cleared are similar to the procedures above, except that the investor is required to compensate the existing land users in which case the authorities are required to carry out procedures for resumption of land from the existing land users.

3.5 Projects for Construction of Residential House for Sale

Decree 181 provides more detailed provisions in respect of the construction of residential houses or apartments for sale that was expressly recognized as a right of foreign invested enterprises under the Land Law.

Purchasers of such residential property in a project developed by overseas Vietnamese or foreign invested enterprises shall be issued with separate LURCs. At the moment, only Vietnamese and overseas Vietnamese satisfying certain conditions are permitted to purchase houses or apartments. Foreign individuals and companies can only lease such property.

The developer must pay the State the difference between the land use fees and land rent already paid to the State by the investors and:

- for houses, the difference at the time of sale of the villa; and
- for apartments, the difference at the time of completion of the entire project.

Land use fees are to be calculated by the provincial people's committee at the time of payment based on the prevailing official rates for that location.

Decree 181 also stipulates that overseas Vietnamese and foreign organizations or individuals developing land for construction of houses and apartments for sale are only entitled to assign the land use right to purchasers after the construction of the project has been completed.

To discourage speculation, vacant land cannot be simply "sub-divided" and sold. The developer must construct a dwelling on the land.

3.6 Rights and Obligations of Joint Ventures in Using Land

Joint ventures between foreign organizations, foreign individuals and overseas Vietnamese with a domestic company in respect of which the Vietnamese partner contributes land use rights to the joint venture shall not be required to convert the land title to land lease in the following circumstances:

- The land of the local company contributed as capital was allocated by the State with land use fees and the land use fees have been paid from a source other than State funds; or
- The land was received by way of assignment of land use right and was not land leased by the State, and payment for the assignment of land use right was not sourced from State funds.

In such cases, joint venture companies will not be required to convert the contributed land to a "leasehold title" and will have rights and obligations similar to those of the Vietnamese company which contributed the value of land use rights to the joint venture. These regulations also apply to joint ventures to which an overseas Vietnamese who has been allocated land by the State contributes the land use rights value and has paid the land use fees to the State. In particular, such joint ventures are

entitled to assign the land use rights and infrastructure attached to the land, to lease the land use rights and infrastructure attached to the land or to contribute the land use rights to form a joint venture with Vietnamese organizations, overseas Vietnamese, foreign organizations or individuals.

Where a Vietnamese party contributes land to a joint venture and the joint venture is then converted into a 100 per cent foreign invested enterprise, the foreign invested enterprise is required to enter into a lease with the State and will have the same rights and obligations provided to foreign land users leasing land from the State.

According to Decision 181, joint venture companies leasing land from a family household or an individual and then converting the joint venture company into a 100 per cent foreign owned enterprise are entitled to continue to implement the lease. However, this provision appears to be contrary to the Land Law under which foreign invested enterprises are entitled to lease land from the State only, except for land located in an industrial zone.

REFERENCE

Ton Gia Huyen et. al., *Ly luan ve dat dai trong cac mo hinh kinh te khac nhau (Discussion on land in difference economic models)*, Science Report, Hanoi, 2000.