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Why We Need to Revise Current Land Law?

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Abstract

Our current Land Law has made contributions to allocation of land resources and infrastructures for ecnomic development and establishment of the real estate market. But ther are still shortcomings ad this study summarized. The study shows recommendations such as: On the issue of site clearance, he suggested the City People's Committee coordinate with relevant agencies and units to solve and remove difficulties and obstacles to ensure progress so that the investor can hand over the land to investors soon. Also, the City requires investors implement projects following schedule, get priority for high tech project and investors.

Keywords: Current Land Law, Recommendations, Shortcomings, Revisions.

1. Introduction

In reality, practical enforcement of the Land Law over the last 10 years has showed certain shortcomings of legal provisions, which affects management and use of this important natural resource.

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Next, compensation for land recovery is not effective and protecting rights and interests of the people

Under the Land Law, the State shall compensate for land users eligible for compensation for land recovery. Subject to land availability, local authorities might make decision on compensation in land having the same land use purpose or in money calculated according to the specific land price of the type of recovered land. These provisions do not meet demands of people whose land is recovered. At the same time, compensation options are limited, especially in localities where land fund is abundant but without land having the same land use purpose of recovered land.

Hence we conduct this study to indentify shortcomings and propose recommendations Research questions:

Question 1: Why we need to revise current Land Law?

Question 2: What recommendations the authors propose?

Next we see below table:

Table 1- Summary of Related Studies

Authors	Year	Content, results
Mcpherson	2012	Land policy is crucial to Vietnam's socioeconomic development. Yet, land policy in
		Vietnam often is short-sighted, resulting in inequities and a form of commons tragedy.
		In this essay, the author reviews the evolving land policy in the Socialist Republic of
		Vietnam, pointing out inconsistencies and shortcomings. The essay concludes with
		recommendations to improve policy and the long-term well-being of Vietnam and its
		people; specifically, several events should occur for Vietnam to achieve middle-income
		status by 2020, as the government of Vietnam intends. Rapid industrialization and
		modernization should continue; land currently used for agriculture (particularly rice)
		need to be converted to industrial parks; residential areas, and infrastructure; and all
		land should be used in ways that yields the highest social returns. Public investment
		should help boost agricultural (and land) productivity; and environmental (and land)
		management should ensure that the institutions and incentives support environmental
		sustainability.
Falcke	1999	In this context, industrial estates are viewed as important instruments of local industrial
		development. By clustering into industrial parks, small, medium and even large
		enterprises can take advantage of public infrastructures, economise on construction and

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		common facilities, and gain access to nearby skilled labour markets, research and
		educational facilities and other critical inputs. This paper examines the origin, nature,
		size and type of organisation of industrial estates, their distinguishing features, their
		common elements, the benefits that can derived from them and the negative impacts
		they may have on the environment. It also describes UNIDO's role in fostering
		industrial development in the underprivileged regions of the world conceptually and at
		the level of concrete projects
Wu et al	2015	Specifically, in economically advanced cities, industrial land is becoming increasingly
		scarce as land costs increase. Owing to the vigorous development of the service
		industry in urban areas, the space utilised by the manufacturing industry is constantly
		being squeezed, and old industrial areas require renewal and restructuring. As the
		contradiction between land supply and demand becomes more prominent, the
		incremental land-for-development approach is becoming difficult to sustain
Liu et al	2022	The concept of 'Industry's Going Upstairs (IGU)' represents an innovative usage of
		industrial land that transfers the enterprises' production to high-rise industrial
		buildings. It is emerging in the developed areas of eastern China. This study discusses
		IGU policies to promote local economic development and conducts an empirical test
		using Guangdong city-level data and a difference-in-differences model. Theoretical
		analysis shows that IGU can broaden the development space of enterprises and realise
		industrial and labour agglomeration under supporting policies provided by local
		governments. The empirical results demonstrate that IGU can improve land-use
		efficiency and promote local industrial development. IGU is a feasible approach for
		addressing the current shortage of industrial land in China and is worthy of promotion
		and replication in other regions.

(Source: author synthesis)

Beside, according to the political advantages of rice self-sufficiency are indisputable. While Vietnam remains rice self-sufficient, the government will never face problems of food insecurity as it defines the term. Nonetheless, as a national food security strategy, rice self-sufficiency is inefficient, ineffective, and inequitable. It is inefficient because it locks land and other resources (labor, physical capital, and finance) into a low - value use.

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2. Method

Authors make analysis of the current situation of implementation of the Land Law 2013 and recommendations for revisions and amendments are based on results of a comprehensive desk study of reports on the implementation of the Land Law and recommendations for revisions and amendments submitted by provinces to the Steering Committee on review of the implementation of the Resolution No. 19-NQ/TW. In addition, relevant legal normative documents, research papers, articles published on journals and newspapers, and reports on land resource management and use in Vietnam over the past few years are also studied.

Authors has used learn experiences and lessons. And proposes recommendations on improvement of provisions of the Land Law.

3. Discussion

3.1 Shortcomings in Enforcement of the Current Land Law

These shortcomings are reflected in complaints from businesses in the period from 2016-2019, mainly focusing on access to land, allocation and use of land.

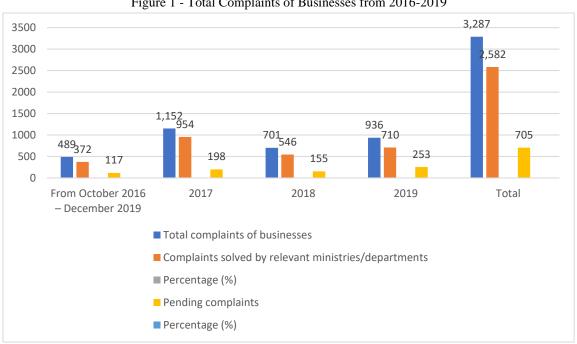


Figure 1 - Total Complaints of Businesses from 2016-2019

(Source: Vietnam Chamber of Commerce and Industry - VCCI, Report No. 0036/PTM-KHTH dated 8 January 2020 on review of settlement of complaints of businesses for the period from 2016-2019)

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120.00% 100.00% 17.60% 21.50% 22.10% 23.90% 24.10% 80.00% 60.00% 40.00% 20.00% 0.00% 2018 2019 From October 2017 Total 2016 - December 2019 ■ Pending complaints (% total complaint) ■ Complaints solved by relevant ministries/departments (% total)

Figure 2 - Complaints by Percentage from 2016-2019

Relating to the Law on Investment, provisions on timing of identifying demand for land use in application for approval of investment guidelines and application for demand for land use are inconsistent. Under the Law on Investment, timing of appraising demand for land use is timing of appraising application for investment. However, the Land Law provides for establishment of appraisal documents based on land allocation, land lease and change of land-use purpose. Time limit for appraisal in legal documents guiding the implementation of the Law on Investment is 15 days while in those of the Land Law is 30 days. Moreover, provisions on land use regime in industrial parks are in consistent. The Land Law provides for the planning and construction of housing areas and public facilities outside the industrial parks or export processing zones to serve the life of workers in industrial parks or export processing zones (Article 149). Meanwhile, the Law on Investment does not specify whether the housing areas are located inside or outside the industrial parks.

Relating to termination of investment projects and recovery of related land, the Law on Investment provides for termination of projects if investors do not implement or are not able to implement such projects after 12 months. Meanwhile, the Land Law allows extension of land use for 24 months if the investors pay for land use and rental for the delayed period, etc.

Relating to the Civil Code, the right to sublease land use rights in Article 175 of the Land Law does not include the right to sublease assets attached to land with annual rental payment. The Land Law

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does not provide for rights nor prohibits organizations and individuals to sublease assets in this case.

However, Article 19 of Decree No. 102/2014/ND-CP of the Government on fines against land-related

administrative violations provides for "Pecuniary penalty ranging from VND 10,000,000 to VND

20,000,000 for violations of willful lease of real property attached to the land leased by the State for

the receipt of annual land rents that economic institutions or public non-business organizations

commits". This provision is inconsistent with provisions on the right to lease property in the Civil Code.

3.2 Shortcomings in Management and Use of Land in Industrial Parks

Firstly, According to data reported by the Hanoi Department of Industry and Trade, in 2021,

Hanoi has assigned a plan to start construction of technical infrastructure for 43 industrial clusters.

However, only Dai Thang craft village industrial cluster and Phu Tuc craft village industrial cluster

(Phu Xuyen district) have just started construction, most of the rest have not yet completed site

clearance.

Secondly, Regarding the criteria for the formation of rental land prices, the cost of

compensation, site clearance and resettlement accounts for a high proportion. The reason is that when

there is information on the planning of the industrial zone, people often build illegal houses, cope,

separate households, etc., which greatly affects the cost of compensation for site clearance,

resettlement, and increases the rental price.

In Clause 2, Article 51 of the Government's Decree No. 43/2014/ND-CP dated May 15, 2014

detailing the implementation of a number of articles of the Land Law, self-financed public non-business

units are entitled to If the competent authority assigns the task of building and trading infrastructure of

industrial zones and industrial zones, if the State leases land to invest in the construction and business

of infrastructure of industrial zones and clusters, the land may be sub-leased after the investment is

completed. Infrastructure. In case the Industrial Park Infrastructure Development Company is a

non-business unit that is not yet financially self-sufficient in renting land from the State to sublease the

land, specific instructions have not been given.

(source: baotainguyenmoitruong.vn)

Thirdly, Tan Thuan Export Processing Zone was born in 1991, marking the first start for EPZ -

Industrial Park projects in the city. HCM. In 1992, the Management Board of EPZs and Industrial Parks

of Ho Chi Minh City. Ho Chi Minh City (Hepza) was established to help the city realize 5 economic

goals of the Government to attract domestic and foreign investment capital: create jobs; accumulated

science and technology and advanced management experience; increase export capacity, create foreign

currency supply and contribute to promoting socio-economic development following the trend of industrialization - modernization; urbanization of suburban areas. Currently, the land fund of EPZs and industrial zones in the city is gradually shrinking, but many projects under construction show signs of being abandoned due to legal problems and ground clearance.

(Source: vcci.com.vn)

Fourthly, lack of transparency in evaluation of land price for compensation and assessment of needs of land use for economic development

Article 113 of the Land Law provides for adjustment of land price frames by the Government. Specifically, "during the implementation of land price frames, if the popular price in the market increases 20% or more over the maximum price or reduces 20% or more below the minimum price prescribed in land price frames, the Government shall adjust land price frames accordingly". It is difficult to decide the accurate popular price in the market as this depends mostly on experiences and subjective judgment of evaluators. Most businesses are using rented land. Auction procedures are often bypassed when land-use purpose is changed to urban land. Meanwhile, value of land use right is not strictly based on the popular price in the market. In practice, many state-owned enterprises are allocated a large area of land without strict management of competent state management agencies. Consequently, in some cases, public land is transferred into private land.

Fifthly, lack of clear guidance on newly established real estate and legal framework on land use rights of these types of real estate

Presently, tourism and resort real estate (such as condotel, officetel, shophouse, etc.) are rapidly growing in some provinces. However, the Land Law 2013 does not provide for land use regime of these types of real estate, making it difficult for state management and trading. Tourism villas, resort villas, resort apartments as "residential land that does not form a dwelling unit" are also increasing in Khanh Hoa and other provinces (Quang Nam, Ba Ria Vung Tau, Kien Giang, Da Nang city, etc.). These types of real estate have positive effects such as attracting investment capital from the society, promoting tourism, services, and urbanization, creating jobs, making contribution to state budget increase. However, there are shortcomings in practice. As the current laws do not provide for "residential land that does not form a dwelling unit" within tourism area, large-scale disputes and lawsuits might arise on issues relating to duration of property and land-use right ownership of secondary investors who have received ownership transfer, issuance of certificate of property ownership and land use rights, rights to residence, etc. These issues are governed by various laws including the Land Law, the Law on Investment, the Law on Planning, the Law on Construction, the Law on Housing, the Law on Real Estate Trading, the Law on Tourism, the Law on Residence, and other relevant laws. Therefore, it is

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important to find a consistent solution. Beach resort villas and condotel apartments are both residential

apartments and resort hotels and villas. Residential houses and apartments are governed by the Law on

Housing while resort hotels and villas are governed by the Law on Tourism. Meanwhile, residential

houses in certain residential areas comply with the Law on Construction. As tourism villas and

apartments are new types of real estate in Vietnam, there is no legal document providing for definitions,

specific regulations, and applicable standards. Thus, it is difficult to make decision on approval of

investment, investment guidelines, calculation of impacts of projects on technical and social

infrastructures. Definitions, regulations, standards, prices and use values of tourism villas, apartments,

and houses within tourism areas are not clearly and fully specified in any legal document. Provisions

of the Land Law and relevant laws do not define residential land within tourism and commercial areas.

Definition of "condotel tourism real estate" is not provided for in any law. Therefore, "residential land

that does not form a dwelling unit", which is used to define types of real estate arising in practice such

as tourism villas, resort villas, condotel, etc., is not defined in any legal document. Consequently, local

authorities have discretion in regulating financial obligations, orders of land allocation, issuance of land

use right certificates, transfer, recovery, compensation, support for resettlement, etc., which results in

corruption and interest groups (Ngo Trung Hoa, 2018).

4. Recommendations

Firstly, In order to solve the remaining problems, the leaders of Hanoi have come up with

specific solutions to help remove difficulties and obstacles in the implementation of investment and

construction of industrial clusters.

Specifically, on March 16, 2022, the Hanoi People's Committee issued Plan No. 85/KH-UBND

on management, investment and development of industrial clusters in Hanoi in 2022. The set goal is

creating a strong breakthrough in the development of industrial clusters in the city, thereby fulfilling

the targets in Program No. 04-CTr/TU of the Hanoi Party Committee (term XVII) on "Promoting the

effective implementation of the program National target process of building a new countryside in

association with restructuring the agriculture sector and developing the rural economy, improving the

material and spiritual life of farmers in the 2021-2025 period. Along with that, on March 17, 2022, the

Hanoi People's Committee continued to issue Plan No. 89/KH-UBND on overcoming limitations and

shortcomings in infrastructure investment in industrial clusters that were behind schedule in the

locality.

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Secondly, On the issue of site clearance, the City People's Committee coordinate with relevant agencies and units to solve and remove difficulties and obstacles to ensure progress so that the investor

can hand over the land to investors soon.

Thirdly, the City requires investors implement projects following schedule, get priority for high

tech project and investors.

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Conflicts of Interest

There is no conflict of interest.

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