

VIET NAM

HO CHI MINH-VILLE – SALE OF LAND-USE RIGHTS

LAND VALUE
CAPTURE

Leasing of land-use rights [Thuê quyền sử dụng đất]

DESCRIPTION

- Land-use rights of public land belonging to the municipal and state authorities are transferred against payment for a fixed period, between 50 and 70 years, to investors (private / public or local / foreign). The lease of these user fees constitutes a substantial income for the municipality, which also collects annually a royalty on the land concerned.
- These rights can be awarded after simple negotiation ("OTC" agreement) or auctioned [Bán đấu giá quyền sử dụng đất]. Within a period of about two years, investors are required to value the land obtained by carrying out the planned real estate or industrial projects, otherwise their rights are recovered by the authorities and offered to other investors.

LEVEL OF GOVERNMENT INVOLVED

Ho Chi Minh City People's Committee [Ủy ban Nhân dân Thành phố Hồ Chí Minh]

INSTITUTIONAL AND FINANCIAL FRAMEWORK

- Since the adoption of economic reforms (đổi mới) in the 1980s, the sphere of responsibilities of the provinces and cities-provinces (such as Ho Chi Minh City) has grown steadily, even though these entities already had some autonomy vis-à-vis the central State - in particular in the interpretation and implementation of certain regulations.
- To ensure the development of the country's economic infrastructure, and due to a lack of public funding, local governments were encouraged by the central government to diversify sources of investment to finance the local facilities they are responsible for carrying out.
- In addition, on the advice (and pressure) of international donors (World Bank, Asian Development Bank, UNDP, etc.), the Central Government has launched a policy of modernizing its administration, focusing in particular on the decentralization of certain powers to local authorities. This has resulted in a transfer of skills to improve locally the management of land resources and tax returns.

INSTITUTIONAL AND FINANCIAL FRAMEWORK

- The recognition of land use rights in the framework of the land law of 1993 (and the possibility of renting, mortgaging or transferring them) on the one hand, and the modernization of local taxation in 2003 with the promulgation of a new law on the other hand, allowed the provinces, and in particular the provincial cities with a "special status" like Ho Chi Minh City, to collect new tax revenues based on land yield and land transactions («land and housing tax», «land rent», «land use right transfer tax», «registration fee», «land use levies»).
- Although revenues from the lease of public land use rights are not dedicated to a particular objective, these funds contribute to the municipal budget and are indirectly reinjected into the realization of urban (economic or social) infrastructures.

TRACK RECORD OF THE USE OF THIS INSTRUMENT

Prior to the promulgation of the land law of 1993, land was allocated (free of charge) to public enterprises, based on the decision made by the authorities, in order to carry out the planned constructions.

The promulgation of the Land Law of 1993 opened up the possibility for public sector companies, as well as for the private sector, to lease rights to use public land to develop real estate (residential, commercial, tourist) in compliance with the land use and construction plans and for a fixed period. The lease of these rights is determined after negotiation and on the basis of an arrangement (which is not expressly advertised) between the public authorities and the investor / promoter. The law also allows the latter to use the land-use rights that it owns as collateral to obtain a loan from a state bank or a local commercial bank.

The 1993 legislation liberalizing the land market, combined with the first law on foreign investment of 1987, also made it possible to involve foreign private capital in the production of cities. At that time, foreign investors were invited to form joint ventures (JVs) with Vietnamese public enterprises for the realization of a real estate or industrial investment project. In this type of assembly, land plays a central role, since the Vietnamese partner brings land use rights (which is the capital injected by the local partner).

With the promulgation of the land law of 2003, foreign investors were able to have direct access to the lease of land-use rights, without necessarily being obliged to form a joint venture with a local partner. But the cost of access to land is high and the location of land is often of little interest to foreign investors. This new law retains the previous legal arrangements on leasing land-use rights, ie those between public authorities and investors / promoters (private / public - local / foreign) which nevertheless leads to abuse and misappropriation. On the other hand, it introduces the creation of a land development centers. The one in Ho Chi Minh City, created at the end of 2003, is one of the first ones in Viet Nam. Its mission is to acquire land plots on behalf of the municipality, to indemnify their occupants and to obtain land-use rights and then to lease them (by arrangement or by auctioning) to investors / promoters.

OUTCOMES

As of 2004, with the application of the decree on the collection of taxes and charges on land resources (No. 198/2004 / ND-CP - "land use money" [tiền sử dụng đất]), The share of revenues perceived from the management of the municipality's land has steadily increased. In 2010, land revenues accounted for 28% of Ho Chi Minh City's total income (about \$ 510 million).

OUTCOMES

However, these revenues are based on the health of the land and real estate markets, the number of transactions, and the value of goods in the market. In 2012, due to a slowdown in the construction market and a decline in land and real estate prices, the municipality recorded a significant decline in land revenues, while at the same time the intergovernmental transfers from the central government were dwindling. This decline in tax revenue is only the translation on the ground of the stop of a number of major real estate projects such as the construction of the "Saigon One Tower" in 2012, that was located on land considered a "prime lease plot" that could constitute a significant rent for the municipality.

Income from land is far from sufficient for the city to be able to finance by itself the construction of its economic and social infrastructure. In addition to state subsidies, Official Development Aid and more recently public-private partnership arrangements are the main sources of financing for urban infrastructure.

STAKEHOLDERS INVOLVED

Within the Ho Chi Minh City services, three stakeholders are directly involved: DONRE (Department of Natural Resources and Environment) responsible for drawing up land use plans and granting land use rights; The Department of Finance (DOF) responsible for collecting taxes and royalties; And the Land Development Center (under the direct supervision of the DONRE).

The latter's role is to develop the land recovery program (identified by the DONRE) for land that is not yet allocated to the investment projects, and to acquire the land in question. To date, this Land Development Center does not have a real estate park yet, has no financing capacity to constitute land reserves, and has no right to negotiate the cost of land charges with the owners, as negotiations are being conducted by the municipality. Its functioning is still imperfect (or even blocked), since its financial resources to acquire land are limited. Some of the parcels acquired by this center are used for public purposes, the remainder being auctioned to contribute to the municipal budget.

Local and mainly public or semi-public investors are privileged actors. Being close to municipal services (at least to some agents) they have access to strategic information, and they can acquire well-located land while negotiating the amount of land-use rights. Although foreign investors / developers can lease land use rights with the same terms and conditions as local investors (ie over a period of 70 years since the promulgation of the new land law in 2013), they prefer to set up joint ventures with local partners to facilitate their relations with the administration and override the « red tape ».

"Buyers" (individuals buying recently-built real estate) constitute a major group of stakeholders. They are the ones who pay the taxes on transactions when buying real estate and pay annually a real estate / property tax. The amounts of these taxes are often underestimated because the selling prices of real estate products are also underestimated (the transactions declared before a notary are underestimated in relation to market prices; the role of the notary is currently limited to validating the transaction and the notarial deed does not constitute a binding document).

The municipality is the main beneficiary of this tool, yet its implementation has a cost: 1 / forced use of the land resource (it is a finite resource which gradually diminishes and the rent of land-use rights leads to a high consumption of this resource); 2 / high acquisition costs (Ho Chi Minh City still has "cheap land" reserves, ie agricultural land that the municipality can still acquire, but these reserves are not ideally located as they are not connected to Infrastructure). The municipality may acquire land already serviced or occupied (by housing or economic activities) but commit in these cases to conduct compensation procedures (compensation and rehousing) which can be very expensive if the occupants can prove the legitimacy of their use of the said land.

PUBLIC MANAGEMENT AND ACCOUNTABILITY

As it stands, this system lacks transparency: (i) real difficulties in obtaining recent figures on income received by the municipality from land resources; (ii) the proceeds from auctions of land organized by the Land Development Center are difficult to trace; (iii) no information on the use of the land receipts collected (what share is retained by the municipality, what share is remitted to the Ministry of Finance?).

ANALYSIS AND ASSESSMENT OF THE TOOL

A fragile tool on many aspects:

- The duality of land prices: a dual system of land prices (administered price and market price) persists in Viet Nam and Ho Chi Minh City. Despite recent moves made to adjust prices, this dual system of land prices is being discussed in Vietnamese institutions (local and central).

Depending on the project, the stakeholders, the fees payable, the administered price grid is still being used, whereas in other circumstances market prices serve as a reference. The use of this dual price system is strongly contested by the inhabitants who occupy land to be acquired and valued by real estate developers. The latter are often compensated on the basis of administered prices and not on the basis of market prices. Despite the use of sworn property assessment specialists by the Ministry of Finance to assess the value of the property to be acquired and to determine the amount of compensation to be paid, the primary occupants almost systematically express their opposition to this type of (private) project. There is a greater "compliance" of land occupants to cede their user rights for projects of public interest, intended for public and shared use (such as transportation infrastructure, public hospital) as well as for projects of economic and private use (high-end real estate development for example).

- Over-assessment of land assets used as collateral with banks: Property (and real estate) belonging to enterprises (private or public) are often over-assessed in order to access large volumes of borrowing. These practices weaken the local banking system and increase the number of "bad debts" in circulation in the country.

The long-term lease of land use rights appears to be a (currently) imperfect tool because of the lack of transparency and the duality of the land price system. The main prerequisite for its implementation is a legislative framework that allows for the implementation of a decentralized property tax system, extended by a greater "fairness" of the compensation and compensation procedures for occupants who have to transfer their land-use rights for to the deployment of real estate projects.