

## VIET NAM

### HO CHI MINH-VILLE – PUBLIC-PRIVATE JOINT DEVELOPMENT WITH INITIAL CONTROL OF LAND

LAND VALUE  
CAPTURE

#### Land for infrastructure [Đổi đất lấy hạ tầng]

##### DESCRIPTION

- Municipal or state authorities provide land (with related regularized land-use rights) to a contractor (private / public - local / foreign) in exchange for the construction of infrastructure (road, bridge, Wastewater, etc.) or public facilities (school, health center, etc.) that must be planned in the municipality socio-economic development plans. The market value of the land-use rights is assumed to be equivalent to the construction costs of the planned infrastructure or facility.
- This exchange enables local authorities to support the economic development of their territory while limiting their own contribution in capital and debt.

##### LEVEL OF GOVERNMENT INVOLVED

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

##### INSTITUTIONAL AND FINANCIAL FRAMEWORK

- The use of land transfers for the construction of infrastructures follows the following logic: (i) in relation to its socio-economic development plan, the local authority sets precise objectives concerning the development of its economic and social infrastructures ; (ii) because of a lack of capital, they were authorized (and then encouraged) by the central State to diversify their sources of financing and to find the necessary arrangements in order to achieve the objectives that were set; (iii) the province or city-province has in its possession land resources (since according to the Vietnamese constitution, the land belongs to the People, and the State is in charge of managing it) and can amend the rights attached to this land (for instance, through granting the constructibility of a parcel previously classified as agricultural) and thereby confer on it a certain market value; (iv) these are the lands on which the rights have been changed and which also have certain advantages (location in particular) that investors wish to acquire and develop in exchange for the realization of an infrastructure intended for the community.

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## INSTITUTIONAL AND FINANCIAL FRAMEWORK

The most visible examples of exchanging of land against the realization of an infrastructure take place in the transport sector, in particular for the construction of roads. These infrastructures are realized through technical-financial engineering such as Build Transfer [BT] [Xây dựng - Chuyển giao]. Until 2015, this type of installation was governed by a decree (108/2009 / ND-CP) stipulating that BT-type contracts are signed between a qualified State agency and an investor in order to build an infrastructure. At the end of the construction phase, the investor must transfer the infrastructure to the Vietnamese State. For its part, the authorities are committed to creating favorable conditions so that the investor can implement other projects in order to recover the capital invested in public investment; This arrangement is endorsed by a contract. Since 2015, these arrangements have been drawn up under new legislation (Decree 15/2015 / ND-CP), which is supposed to limit "over-the-counter" agreements as in the case of BT-type assembly and to create a context of competition between potential dealers.

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## TRACK RECORD OF THE USE OF THIS INSTRUMENT

This financing mechanism has its roots in an experiment conducted in Vũng Tàu in southern Viet Nam in the early 1990s. In exchange for the construction of a road, a local investor could benefit from land to be valued.

In Ho Chi Minh City, the first large-scale project based on this exchange system is the construction of the Nguyen Van Linh road (now equivalent to the outline of the No. 2 ring road), thanks to foreign funds (from Taiwan) in exchange for a large land concession. This is now being valued (construction of the Phu My Hung neighborhood) and is part of a broader urban development project, Saigon South.

After these first positive and fruitful experiments, a legislative framework was consolidated on the one hand with the promulgation of a decree (77/1997 / ND-CP) in 1997 on BT type assemblies, and on the other hand with the amendment of the 1998 Land Law of 1993, through which the Vietnamese government encouraged the use of the land-to-infrastructure tool. Local authorities then began to use this tool, notably by recovering agricultural land rights. It has been since then used throughout the whole country, mainly in urban areas, but also in rural areas with high tourism potential (coastal strip between Danang and Hoi An, for example).

Regarding the situation in Ho Chi Minh City in particular, this tool has been used for many types of projects (again, mainly transport infrastructure, but not exclusively). Among the 18 priority projects of the municipality for the 2012-2015 period, the authorities envisaged that 12 of these operations could be carried out in the form of a BT project involving, but not explicitly, a transfer of land against the realization of the expected infrastructures.

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## OUTCOMES

Across the country, many infrastructures and facilities have been constructed using this tool since the late 1990s. However, at the scale of Ho Chi Minh City, it is difficult to know the exact number of projects carried out in this way.

The most visible aspect of the projects realized by the exchange of land against the realization of infrastructures are those which conceived and financed through BT type mechanisms. However, there are a large number of real estate projects that have been completed and whose costs to acquire land have been reduced because of the promoters' commitment to build public facilities, such as schools and health centers. There are many reasons for this, since some facilitated primarily intended to be public equipment have been for some part "privatized".

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## STAKEHOLDERS INVOLVED

In the case of Ho Chi Minh City, the municipality remains the main stakeholder: the municipality proposes projects to potential investors and offers land in exchange. The choice of land (location), such as the projects to be carried out and the rights attached to these lands, are subject to intense negotiations between authorities and potential investors / promoters. State services, in particular those of the Ministry of Finance, may be requested to check that the price of the land chosen by the municipality is indeed equivalent to the cost of the infrastructure to be built.

Investors / builders / developers, with very few exceptions, are state-owned enterprises of public works, semi-public enterprises or vietnamese private companies. Since the 2000s, foreign companies have been interested in this type of assembly, especially South Korean Chaebols (Posco and GS). However, foreign investors appeared to have little incentive to engage in such partnerships. In fact, they consider that they lack guarantees in view of the many obstacles to be overcome in this type of operation and which are specific to the Vietnamese context (lack of institutional and financial tools, land speculation, corruption, etc.). However, in view of the increase in property values, especially in the major metropolises of Viet Nam, especially in Ho Chi Minh City, land-to-infrastructure arrangements are now becoming attractive.

The city can draw significant benefits from this tool (the construction of an expensive infrastructure—for example the construction of a road with crossing works), but there are also some counterparts. First, this implies the use of a land resource that is negotiated (between the municipality and the investor / developer) and then to realize collateral (public) developments. The development of a land (with housing project intended to accommodate high population density) by an investor implies a new (financial) commitment on the part of the public to ensure the connection between the building and public networks (water supply / drainage, electricity, roads).

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## PUBLIC MANAGEMENT AND ACCOUNTABILITY

It is very difficult to assess quantitatively the number of infrastructures and facilities realized using the "land versus infrastructure" tool. For example, for transport infrastructure, BT type contracts are considered confidential and are not publicly advertised. Similarly, the land component of these contracts (ie, the choice of land plots and its value) remains imprecise. If irregularities concerning these contracts are suspected, the relevant Ministries (Finance and Natural Resources) must carry out administrative investigations.

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## ANALYSIS AND ASSESSMENT OF THE TOOL

This tool allows without doubt municipalities to finance many infrastructures that are crucial to the socio-economic development of their territories. Yet many risks appear:

(A) Unconscionable contracts that are very advantageous for investors (choice of infrastructure to be made; negotiation of the land to be acquired; possibilities to resell the land acquired although BT type contracts do not stipulate this possibility; investors may have sufficient capital to finance the infrastructure, but are not necessarily competent to carry out this type of work, etc.);

(B) A tool that contributes to the waste of land resources (due to a possible misappraisal of land costs and embezzlement, investors can obtain far more land than the actual cost of the infrastructure to be built);

(C) A tool that may lead to urban sprawl (due to the construction of road infrastructures outside urban areas and involving the construction of new developments along these roads).