

# On the Land Use Right in Industrial Parks as Security for Bank loan

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**O**f properties used as security, the certificate of ownership of real estate (or land use right and buildings on the land) is the most common with commercial banks. If this certificate connects to a piece of land in industrial parks, it will cause some difficulties for both commercial banks and mortgagors.

Section 2, Article 11 of the 2003 Land Law that is effective as of July 1, 2004, allows companies that rent land in the IP to mortgage their properties on the rented land to get bank loans. Decree 181/2004/NĐ-CP dated Oct. 29, 2004 providing guidelines on implementation of the 2003 Land Law says nothing about the right to mortgage the land use right for the piece of land the company rents in the IP; it only says that such company is provided with a certificate of the land use right. This guideline, however, is not clear and specific enough, which leads to different ways of implementing it by local authorities causing troubles for both commercial banks that accept such a certificate as security and the companies operating in the IP.

On April 13, 2005, the Ministry of Natural Resources and Environment issued Circular 01/2005/TT-BTNMT providing guidelines on implementation of certain articles of the Decree 181/2004/NĐ-CP. Its Item 2 of Article 5 reads, "Economic concerns that rent land from the State to build infrastructure in industrial parks and similar areas in economic zones and hi-tech zones stipulated in Point d, Section 5 of Article 41 of the above Decree 181 (referred to collectively as industrial parks) and pay annual rental have the right to re-rent the land after the infrastructure is built according to regulations set in Point d, Section 1 of Article 111 of the Land Law; if the entity that is re-rented land pays rental for the whole term, it has the right to mortgage, or give guarantee by, its re-rented land and properties on the land to banking institutions operating in Vietnam. In cases when banks have to handle the land use right and ownership of properties on the land to retrieve debts, the entity that is granted the land use right and ownership of the properties on the land

has the right to use the land until the end of the rent term."

This regulation partly protects interests of the company that re-rents the land and provides a condition for commercial banks to invest in the IP. At present, however, there are obstacles to a smooth cooperation between those two parties. The following are some of them.

- If the company, after re-renting the land and paying the rental for the whole renting term, is granted a certificate of the land use right, it can mortgage this certificate for a bank loan easier than a company that can only secure a rent contract because local authorities didn't implement regulation set by the Circular 01/2005/TT-BTNMT. Moreover, most companies that had rented (or re-rented) the land and paid all rental, or received the land from the State to build the infrastructure, mortgaged their rent contracts to get bank loans. That is why local authorities couldn't provide them with new certificates of the land use right as required by law.

- The 2003 Land Law stipulates that the company that rent the land to build infrastructure should pay annual rental while the said Circular 01 allows the infrastructure-building company to re-rent the land and get rental for the whole rent term from tenants, which leads to risks for the tenants when the infrastructure company violates laws or goes bankrupt

and the land is retrieved by the State.

- The form of land rent contract is set uniformly and provides for sanctions against violations, in which the renter is allowed to retrieve the land and refuse to repay the advance, if any, when the tenants fail to pay rental for the whole rent term. This regulation causes harm to commercial banks that receive mortgage on the land use right of the rented land.

From above analyses, I think that land authorities had better work out regulations to deal with the following problems:

- + Solving difficulties in getting certificates of the rented land use right by companies that rented land in the IP.

- + When infrastructure companies go bankrupt or fail to carry out contract signed with the State, the State should ensure interests of tenants who have paid rental for the whole rent term.

- + If the tenants violate the rent contract, the renter could pay part of the paid rental.

- + When commercial banks sell properties on the rented land to retrieve the debt, the buyer must have the right to use the land until the end of the rent term without fulfilling any procedure for renting land. Such a regulation can help commercial banks handle quickly overdue debt, thereby ensuring their business performance. ■

