

PROBLEMS ARISING FROM GOVERNMENT CONTROL OVER THE HCMC REAL ESTATE MARKET

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1. Reality of the HCMC real estate market

There is now a market for land use right in HCMC although not all necessary conditions for its existence and operation are in place and its legal infrastructure is still imperfect. That is why the official market controls only part of transactions while land authorities couldn't control the black market one. According to the 2001 Land Law, the land user enjoy seven rights: transferring, exchanging, inheriting, mortgaging, leasing, giving guarantee and using land as equity capital. These rights have helped with formation and development of the real estate market, and led to transfer of agricultural land. In the past few years, many pieces of land for agricultural purposes have been mortgaged to banks in HCMC and most of them need permit to change its purposes with the result that banks met with difficulties in selling these mortgaged assets. In addition, the mechanism for granting the land use certificate contains irrational regulations. For example, private companies can get long-term land use certificates while many state-owned companies can only get short-term leases and they can't ask banks to accept the land rental they paid as allowed by Decree 178. Until recently, state-owned companies in the Tân Bình IP have been allowed by the HCMC government to get permanent land use certificates after paying the land rental, so they can mortgage this certificate to banks easily.

As for urban residents, most of them have no land use certificate and title-deed. Moreover, title-deed is very different because it is granted under different policies, and in some cases it doesn't include exact information about area or location of the property. At present, only 10% of houses in HCMC are granted title-deed according to Decree 60/CP/1994. This situation affects badly the money market.

The current value of the land use right isn't stable because of effects



caused by unpredictable changes in the town development plans. In addition, prices of land set by the HCMC land authorities is much lower than the market prices, which made it difficult for banks to estimate the prices of real estates mortgaged and for land user to get bank loans. The mechanism for evaluating mortgaged assets, especially real estates, is obsolete and inappropriate causing bad effects on the banking service.

The Directive 08 dated April 22, 2002 on the government control over the HCMC market for real estate stipulates that the land after being granted can be taken back if it remains undeveloped within 12 months. This regulation helps prevent speculation in real estate but it also poses problems for banks when mortgagors, for some reason or another, fail to develop the piece of land on time with the result that banks can't settle the mortgaged assets because no authority is responsible for decide whether and on what conditions such assets are sold.

The real estate market in HCMC is just in its first stage of development and banking institutions started to look for profit from this

market, including ACB, HCMC Housing Development Bank and Saigon Bank for Commerce. They offer loans to those who want to buy, build or revamp their houses, and invest in housing development companies. In recent years, the demand for such loans has increased. To get bank loans, however, customers must mortgage some assets. For most local residents, their biggest assets are usually houses or land. But they meet with a lot of difficulties in proving their legal ownership because in many case the assets related to sensitive problems (they are jointly owned by the whole family or heritage that couldn't be sold, etc.)

Since 1993, the HCMC government has promulgated 127 documents, including 42 Decisions, 17 Directives and 68 Official Letters relating to land management, but most of them produced only slight effects on the socioeconomic life. The most remarkable is the fact the town planning and compensation policy is changeable and inconsistent. Town planning authorities lack a long-term vision, which produces bad effect on the economic development and reasonable urbanization. The

compensation policy isn't applied consistently (land is evaluated according to agreements with developers in this district, or according to the price list set by the land authorities), which raises a lot of protest from the public. Illegal construction and speculation in real estate have gone unnoticed and unpunished partly due to poor management and partly to the large bulk of law documents that makes it difficult to implement them correctly. It's worth noting that some 80% of complaints from the public related to land and compensation. All of these facts give birth to a wrong concept that considers land as an ordinary commodity to trade and results in the land fever in late 2001 and early 2002 in HCMC. And as a result, the stock of land is used wastefully and hinders the flow of foreign investment and the economic growth.

2. Measures to beef up the government control over the real estate market

Entering the 21st century, Vietnam started to integrate actively into the world market and accept many international practices relating to international trade, investment, cooperation, and financial and banking service. In 2001, the Land Law was amended providing the land user with more rights. Generally, the land policy has helped promote the economic growth and tap the existing resource of land. However, the land policy still contains many inadequacies. That is why we need reasonable solutions to meet demands posed by the economic development process. We want to suggest here some measures to perfect the land policy.

Firstly, relations around land will become more complex and diverse during the industrialization and modernization period, and the mechanism for controlling trade in land and housing must be perfected. The land is both a means of production and an asset that requires uniform management. The VCP 7th Central Conference still affirms that the land belongs to the people and it is under the State control as a special commodity although the legitimate rights of the land user are ensured. This means that relations around the land must be considered as both economic and administrative ones. The Land Law and other related laws must share this viewpoint.

Secondly, the State had better control the master plan to use land, price of all kinds of land, taxes on

land use and public land. All disputes about the land and housing will be handled by courts. The land management must be applied more flexibly and it isn't necessary to handle pieces of land for the same purposes in the same manner. For example, the land for agricultural use zoned for town development could be seen as the reserve of land and different from the agricultural land. The Land Law must take traditions and customs into consideration in order to make the Law more realistic. The Land Law, in addition, must clarify such concepts as: kinds of land, purposes of each kind, public land, intentional violation and long-term use of land, etc. In my opinion, the Land Law must pay attention to the follow-



ing problem:

- In the Article 2 of the 2001 Land Law, a regulation about the land use certificate for land which is used for worshipping ancestors (this kind of land has long existed before 1975) must be added.

- The section 3 of Article 2 that states "the Government ensures land for peasants who engage in sea, crop farming and/or afforestation" must be amended because the Government is now encouraging changes in the structure of farm products.

- More details must be added to the Article 37 because violations of land control regulations are widespread now. The main reason for this situation is the fact that regulations are not clear and the law enforcement isn't strong enough.

- The Article 75 that reads, "individuals engaging in the afforestation

are allowed to transfer the land use right when they (1) move to other district; or (2) take another occupation; or (lose the ability to do the job," must be amended because the Article doesn't stipulate how many times the land could be transferred, which leads to speculation in land for growing forests. In addition, local land authorities find it difficult to determine whether a certain case of land transfer is regulated by this Article or not.

Thirdly, the land use rights will produce great effects on the socioeconomic life under laws of the market economy. So the Government should develop the legal infrastructure for the real estate market according to these laws. In addition, banking in-

stitutions could be allowed to engage in this market (the current Banking Institutions Law doesn't allow them to do it.)

- Right and duties in controlling the land could be delegated to local authorities on condition that these rights and duties are made clear. The land management requires both expertise in controlling land resources (investigating, measuring, mapping, producing statistics, etc.) and administrative skills, that is why the cooperation between related governmental bodies is much needed. Procedures relating to land transfer, land use certificate, land lease, etc. must be reformed. The land authorities must limit themselves to the role of supervision and law enforcement and refrain from unnecessary intervention in land transfer between private persons. ■