

REPORT ON LAND ACCESSIBILITY OF SMEs IN HUNG YEN PROVINCE

Nguyen Hung Quang
Local consultant

This Report is made based on interviews and investigation between the local consultant and enterprises in Hung Yen in April, June, October, November and December 2007, including representatives from Hung Yen Businesses Association, Department of Planning and Investment, Department of Natural Resources and Environment, Department of Construction, Department of Industry and Department of Transportation. Most of such meetings were arranged by Hung Yen Businesses Association and some of the meetings and discussions with enterprises whose headquarters located in Hung Yen province were arranged by local consultant.

The Report is based following legal grounds:

- Law on Cooperatives No. 18/2003/QH11 of the National Assembly of the Socialist Republic of Vietnam dated 26/11/2003 (***“Law on Cooperatives”***);
- Law on Investment No. 59/2005/QH11 of the National Assembly of the Socialist Republic of Vietnam dated 29/11/2005 and its implementation guidance documents (***“Law on Investment”***);
- Law on Enterprises No. 60/2005/QH11 of the National Assembly of the Socialist Republic of Vietnam dated 29/11/2005 and its implementation guidance documents (***“Law on Enterprises”***);
- Law on Land No. 13/2003/QH11 of the National Assembly of the Socialist Republic of Vietnam dated 26/11/2003 (***“Law on Land”***);
- Decree No.181/2004/ND-CP of the Government dated 29/10/2004 regarding the implementation of Law on Land (***“Decree 181”***);
- Decree No. 177/2004/ND-CP of the Government dated 12/10/2004 providing in details the provisions on implementation of a number of Articles of the Law on Cooperatives 2003 (***“Decree 177”***);
- Decree No. 88/2003/ND-CP of the Government dated 30/07/2003 providing the organization, operation and management of an association (***“Decree 88”***);
- Decree No. 90/2001/ND-CP of the Government dated 23/11/2001 on support for SMEs’ development (***“Decree 90”***);
- Decree No. 84/2007/ND-CP of the Government dated 25/05/2007 providing additional provisions on procedures of issuance of land-use-right certificates, land confiscation, implementation of land-use-rights, procedures for compensation,

- assistance for resettlement for land areas where the State occupies and settle complaints on land issues (**“Decree 84”**);
- Resolution No. 31/2007/NQ-CP of the Government on checking the adjustment of land use scheme in five years (2006 – 2010) of Hung Yen Province (**“Resolution 31”**);
 - Instruction No. 40/2005/CT-TTg of the Prime Minister dated 16/12/2005 on fostering assistance work for the development of SMEs (**“Instruction 40”**);
 - Decision No. 236/2006/QD-TTg of the Prime Minister dated 23/10/2006 providing approval of development plan for enterprises (**“Decision 236”**);
 - Official Letter No. 1011/TTg-NN of the Prime Minister dated 25/7/2007 with regard to continuing the implementation of projects using land fund to create capital for infrastructure construction in Hung Yen Province (**“Official Letter 1011”**);
 - Circular No. 01/2004/TT-BNV of the Ministry of Home Affairs dated 15/01/2004 providing guidance on the implementation of a number of Articles of Decree No. 88/2003/ND-CP dated 30/07/2003 of the Government regulating organization, operation and management of association (**“Circular 01/2004/TT-BNV”**);
 - Circular No. 01/2005/TT-BTNMT of the Ministry of Natural Resources and Environment providing guidance on the implementation of a number of Articles of Decree No. 181/2004/ND-CP dated 29/10/2004 of the Government regarding to the implementation of the Law on Land (**“Circular 01/2005/TT-BTNMT”**);
 - Circular No. 01/2006/TT-BKH of the Ministry of Planning and Investment dated 19/11/2006 guiding the assessment and classification criteria for Cooperatives (**“Circular 01/2006/TT-BKH”**);
 - Decision No. 31/2007/QD-BCN of the Industrial Ministry dated 20/07/2007 approving industrial development scheme of Northern Focal economic zone upto 2015, with the vision towards 2020 (**“Decision 31”**);
 - Decision No. 558/QD-NHNN of the Governor of the State Bank of Vietnam dated 03/06/2002 regarding the promulgation of Regulations on operation and organization of Management Unit of Project sponsoring SMEs (**“Decision 558”**);
 - Decision No. 12/2003/QD-UB of the People’s Committee of Hung Yen Province dated 18/03/2003 promulgating Regulation on receipt and management of foreign and domestic direct investment activities within Hung Yen Province (**“Decision 12”**);
 - Decision No. 13/2003/QD-UB of the People’s Committee of Hung Yen Province dated 18/03/2003 promulgating Regulation on foreign and domestic investment incentives into Hung Yen Province (**“Decision 13”**);
 - Decision No. 47/2005/QD-UB of the People’s Committee of Hung Yen Province dated 20/06/2005 promulgating the procedures for land allocation, land lease and transfer of land use purpose and land occupation in the province (**“Decision 47”**);
 - Decision No. 2586/2004/QD-UB of the People’s Committee of Hung Yen Province dated 27/10/2004 permitting the establishment of Enterprise Association of Hung Yen Province (**“Decision 2586”**);

PREAMBLE:

GTZ is supporting Hung Yen Government to create a better environment for LED. The dialogue on land access has advanced and the first public-private dialogue on land access was organized on July 7, 2007. In the workshop, many questions and concerns of SMEs received satisfying answers and supportive behavior from line departments. On the other hand, some issues could not be solved within the workshop but need follow-up dialogues and actions.

From the preparation activities to the July 7 workshop, problems of land access as seen by SMEs were listed. However, the workshop could not come up with a consensus on measures to overcome the problems. A assignment for following up the public-private dialogue is supported to discover possible solutions for better land access to SMEs in Hung Yen.

This report contains 5 parts. First 3 parts will analyse most burning problems listed in the Annex of TOR and provide most burning problems that SMEs want to have solved. The 4th part will list priorities for resolving such burning problems and what feasible to Hung Yen Government and the 5th part will propose the measures to solve three top priorities.

I. PLANNING ON LAND USE IN THE PROVINCE

1. Planning on land use is not completed and unstable. It impacts to business and investment plans of enterprises:

This issue is true as complained by most of interviewed enterprises. Several enterprises said that because there were no concrete plan on land use, administrative procedures for land allocation or lease were more cumbersome. The enterprises must apply for getting planning opinions on their application. This issue also increase risks for the "beg and give" (xin-cho) mechanism.

Another problem of the uncompleted planning of land use is that the time length of land procedures is longer, especially for land outside of the industrial parks or clusters.

Representatives from Department of National Resources and Environment, Department of Industry said that the province is being in developing progress. Its detail planning cannot completed and published, however, the master plan has been completed (according to the Resolution 31). Enterprises can access this master plan at the Official Gazette or other published legal news sources of the Government.

Representatives of the line departments also raised their opinions that in case the enterprises wish to rent the land with big size, the legal requirements are to evaluate the investment projects or business plans to be suitability with the provincial plans of land use from master plan to detail plans. Therefore the time length of procedures will be long due to consultation between various provincial departments. In case the enterprises wish to rent the land with small size, they can rent land from infrastructred industrial parks or clusters.

- 2. SMEs cannot get the land or have to rent the land in the far industrial parks or clusters which are not convenient to organize the business. Or if a SME wishes to rent a land out of the industrial park or cluster, it must have an investment project with 10 million USD or more.***

A mostly concerned expectation of the interviewed enterprises is to rent a land closing to their current business office or factories or investment area for convenience of their business.

However, this concerned expectation is not easy to meet because the Law on Land requests that all lands to lease or allocate to the businesses must be suitable with the plans of land use and performed via bidding or auction activities¹.

The interviewed enterprises and representative of provincial department agreed that lease of scattered land plot in the past caused some problems of planning, especially for environmental protection. However the interviewees shared a view that a model for receiving land and sub-lease to SMEs should be drafted. This model will be guaranteed for mutual benefits of the State and enterprises.

Regarding to the policy of 10 million USD (approximately 170 billion Vietnam Dong) or more for lease of land outside the industrial parks or clusters, the interviewees said that it is a policy of the provincial Communist Party Committee. This policy is not a legal regulation. So far, the People's Committee and People's Council have not issued any legal document to legalize this policy. But this policy is being "referred" by the provincial departments. Therefore, its legal value is high practically.

- 3. Development of industrial clusters for SMEs: police of development, implementation and conditions***

According to the industrial development policy of Hung Yen province in accordance with the Decision No 2032/QĐ-UBND dated 07 November 2007 of the Chairman of People's Committee, "development of industrial zones to 2010, the province will have 14 industrial parks: industrial land area in the province will be planned for 2,330 ha, leasing for 1,445 ha, in which completion of 3- 5 industrial parks and all industrial clusters in the professional villages and use all planned areas and expand some industrial clusters in the districts of An Thi, Phu Cu, Tien Lu and Kim Dong"

However, so far, Hung Yen has only two industrial clusters for SMEs. According to the interviewees from enterprises and provincial departments, the organizational structure of industrial clusters for SMEs in Hung Yen were not developed successfully. The

¹ Law on Land, Article 58; Decree 181, Article 61 and 62

enterprises and representative of provincial departments wish to find a model for guaranteeing the mutual benefits between the State and enterprises.

Current models of organization managing industrial cluster in Hung Yen are:

1. A company who leases land and develops infrastructure then sub-lease to other enterprises, such as Pho Noi A Industrial Park, Pho Noi B Industrial Park, Textile and Garment Industrial Park...
2. A cooperative with other enterprises who need land for business as its members. The cooperative leases land and develops infrastructure then sub-leases to corporate members or non-members.
3. District People's Committee who receives land and develops infrastructure then leases to the enterprises in its areas.

However, these above models are not suitable for SMEs as complained by the interviewed enterprises because the infrastructured land for sub-leasing is too high for SMEs, the distribution of land is also not transparent and reasonable for enterprises therefore they do not want to rent.

Some representatives of the line departments said that these models are developing in other provinces but they do not know why these models could not develop in Hung Yen.

II. DOCUMENTARY ISSUES

- *Issues of publicized criteria for evaluation of investment projects for land lease, questions of some enterprises can lease numerous plots but do not use while some "real investors" cannot lease any plot for business use.*

Actually, Hung Yen People's Committee issues the Decision No 12/2003/QĐ-UB dated 18/3/2003 providing regulations on receipt and management of foreign and domestic investment in Hung Yen province. This Decision mentioned some criteria and procedures for approval of investment in Hung Yen province. Moreover, the Law on Land and Law on Investment also provide general criteria. In general, these criteria provided in the laws are not detail. Provinces can provide guidelines for these criteria based on its practical context and plans for land use.

However, Hung Yen has not a guideline for the Law on Investment and Law on Land. Many enterprises are leasing a big size land plot but do not use and leave it vacant. Some enterprises lease land for a specific purpose but use for sub-lease or change the purpose. The interviewed enterprises do not want to mention specifically names of such enterprises. The representatives of the line departments agreed these violations but they are not easy to sanction because the violators usually have sound reasons.

However, some interviewed enterprises and representatives of the line departments agreed that these violations are arisen from the projects which were approved some years ago. Presently, the conditions for leasing a land plot outside industrial parks are higher (e.g. 10million USD condition). They reduce similar violations.

- ***Issues of unpublicized requirements of application documents, officers are lacking of enthusiasm for advising, lacking forms and guidelines for application procedures. Receiving the application, officers only give oral confirmation without written version causing irresponsibility.***

Law on Land² and Decree 181³ provide concrete regulations on application for land allocation and lease. Decision 12 and Decision 47 set out procedures for investment and land allocation and lease and transfer of using purpose in the Hung Yen province.

However, the interviewed enterprises complained that these provisions are not clear and concrete. Many enterprises complete all documentary requirements and procedures but do not lease any land from Hung Yen People's Committee.

Representatives of the line departments of Hung Yen argued that the SMEs in this province mostly developed from small business households and farming households therefore they are lack of knowledge for preparing documents as required. They complain because they cannot do by themselves feasibility studies for their projects therefore they request a detail guideline for knowing how to do. The representatives said that if they could not do these documents they would not operate their projects well and make profitable for the land use.

Regarding to the steps of procedures for land lease or allocation, the laws and sub-laws provide in detail. However, the interviewed enterprises said that the line department of Hung Yen did not follow the laws. The applicants never received any response from the line department within the time limit. However the applicants will not be easy to complain because the officers ignored to issue the written confirmations that the applications were received. The applicants have not any evidence to demonstrate that they submitted the applications. The applications are much depend on personal behaviors of the officers. All interviewed enterprises request to provide a regulation for limiting this action.

Representatives of line departments refused this action inside their offices. They request the enterprises to cooperate with them for limiting this action by informing to the leaders if the enterprises discovered the similar action.

Although the written receipt is not provided in any law document, however, it is a compulsory actions of competent authorities to confirm the applications' receipt. But

² Law on Land, Chapter V from Article 122 to Article 131.

³ Decree 181, Article 126.

time limits provided in the regulations of central level and local level on land lease procedures are short therefore the receivers refuse to issue the written receipts.

The interviewed enterprises complained that the land lease procedures is influenced “beg-give” mechanism therefore the applicants feel difficulty to request the receivers to issue written receipts because they worry it may impact to the evaluation of their application. They request to have a appropriate solution for reducing this problem, such as camera surveillance at the reception areas in the line departments.

Although the procedures for land lease provided in the Decree 181 and Circular 01/2005/TT-BTNMT, actual land lease procedures in Hung Yen are applied regulations of Decision 47/2005/QĐ-UB dated 20/06/2005 issued by Hung Yen People’s Committee. However, website of provincial People’s Committee still publishes guidelines for the procedures in 2001, the interviewed enterprises complained that it makes them to confuse the procedures.

III. LAND CLEARANCE

- ***Enterprises are being requested to perform all steps of the lease process for getting a land plot. Demand of enterprises is to have “cleared land”. Experiences of Mitsubishi’s project recently is a good case study where the Vice-Chairman of People’s Committee acts as a chairman of the compensation council. All procedures are performed quickly. Why the provincial People’s Committee and the line departments do not use this experience for other cases?***

Opinions of the interviewed enterprises and the line departments are different. Some enterprises wish all procedures will be taken in “one-stop shop”. Others worry about “one-stop shop” because they allege that this “shop” may be a middle level and this “shop” may not be enthusiasm to get opinions from other line departments for the applicants.

Most enterprises wish to have “*cleared land*”. It means that the enterprises will not negotiate the land compensation with the farmers and be sole responsible for land clearance. They expect the local government will help them to do.

In fact, most interviewed enterprises complained difficulties in land clearance with land holders, especially compensation amounts. The interviewed enterprises expect the People’s Committee to have a suitable mechanism for helping them to get the “*cleared land*”. Nonetheless this mechanism must convince all officers from provincial levels to communal level such as Mitsubishi’s project where the Vice Chairman of People’s Committee took a role. If Mitsubishi’s project had not a serious direction and supervision from the People’s Committee, the lower line agencies would not seriously involve to the land clearance process.

- ***May the People’s Committee may establish a specialized body in charge of land clearance?.***

The interviewed enterprises request the People’s Committee and line departments to assist them in land clearance and cut down the steps of the cumbersome procedure.

The establishment of specialized body for compensation and land clearance under a model which is developed in Da Nang should be supported by the enterprises and line departments. Presently, Hung Yen Department of Construction has a division, Land Clearance Division, to help enterprises to do this work.

Some enterprises said that every districts should establish land clearance division inside of district People’s Committee. This model is consistent with the laws and local context.

The enterprises wish the land clearance division will not be a middle agency which may increase the expenses for land lease procedures.

- ***Issues of infrastructure outside the fence, such as land allocated to the enterprises without connection to the routes and/or electricity lines causes problem for performance of the project. While the law requests that “after one year of land allocation, if the project could not performed, it will be withdrawn the licence”***

Through interviews and investigation, many problems for land allocation have been told by the enterprises. The enterprises are not only worry about land confiscation but also capital stuck due to impossibility of performance of the investment project.

Representative of the line departments argued that these examples are not common. Many enterprises may resolve these problems with the government. Several representatives have opinion that when the enterprises make a proposal for investment project license, they know about policy of making routes and electricity lines. In case, the State cannot build the routes and electricity lines as planned, the enterprises can make an agreement with the People’s Committee for infrastructure development. The enterprise will pay in advance for this development and get the money return from State budge later.

IV. THE PRIORITIES AND ITS FEASIBILITY TO HUNG YEN GOVERNMENT

The interviewees mostly agree the priority order from top to down, as follows:

1. Planning On Land Use In The Province

- i Model selection for land arrangement for SMEs*

Both interviewed enterprises and representatives of the line departments said that Hung Yen should have a new appropriate model for managing and operating industrial clusters for SMEs, the organization may be selected from following models:

- Hung Yen Business Association; or
- A Professional association at district level; or
- A cooperative in which the enterprises who wish to rent land are members;
- A joint stock company in which the enterprises who wish to rent land are members.

The Part IV will analyse more details of model for leasing, developing infrastructure and sub-leasing in an industrial cluster for SMEs.

ii Publication of planning of land use

Demand of SMEs for publication of planning of land use is huge and proper. As interviewees' comments, it will be a priority for urgently satisfying. The planning is a legal regulation therefore it must be published promptly. Expenses for this publication is not remarkably.

iii Removing the condition of 10million USD for allocating land plot out of industrial parks.

The removal of this condition may be enforced because it is not compliant with any regulation. However, this is a difficult job because it is an internal regulation of provincial communist party. It has not legal value but has enforceability. Even some interviewees answered that this is a unwritten instruction. Therefore, it is difficult to request for removing promptly. Except for the new model of organization who will receive land for SMEs will operate effectively, the provincial communist party will remove this regulation.

iv Land availability in industrial parks for SMEs

According to the interviewees, Hung Yen People's Committee has a policy for making favourable conditions for SMEs accessing production land in the occupational villages' industrial parks and clusters. The main issue is effectiveness of land use.

2. Documentary Issues

i Written receipt of application

In series of documentary issues, requirement of written receipt is mostly imperative. Satisfaction of this requirement will impact the behavior of officers in the

administrative mechanism. It can be practical because all interviewed high ranking officers agreed it should be performed in their offices. Moreover, it will not cause heavy financial burden for state budgets of the state agencies in Hung Yen.

ii Publicized criteria for evaluation of investment projects for land lease

Elaboration of criteria for evaluation on investment projects which are necessary to lease land would be conducted. However, this task is requested the determination of Hung Yen People's Committee.

iii Improving the enthusiasm of officers who receive and evaluate the application for land lease

Behaviors of the officers who receive application for land lease or investment will be impacted if the criteria and procedures would be published. Moreover, the provincial People's Committee can supervise the behavior by man-kind or information technology in order to improve such behavior.

III. Land clearance

i Formulating a new mechanism for land clearance.

To formulate a new and effective mechanism for land clearance in Hung Yen province. In fact, Hung Yen People's Committee and other departments have some experience in this task, such as recent Mitsubishi project. Or Hung Yen People's Committee can learn experience from other provinces such as Da Nang regarding to this issue.

ii Infrastructure support to outside the fence

To resolve this issue, Hung Yen government should publish the construction plans in its area for SMEs to know and make their own investment plans. Moreover, the provincial government should keep their promises in the investment licences and/or decisions.

V. MEASURES TO SOLVE THREE TOP PRIORITIES.

a. Publication of planning of land use

Therefore, the solution for this issue is that the People's Committee of Hung Yen should publish this Resolution with the map of the plan for land use to 2010, ratio of

1/25,000 made by the People's Committee on 18 December 2006 in its own provincial Official Gazette and its official website.

b. Written receipt

To resolve this problem, there are two measures which have been discussed with the interviewees:

- Provincial People's Committee or departments will issue their own instructions to request all officers who are in charge of receiving applications to issue written receipts to the applicants; or
- Provincial People's Committee or departments will publish their own written process for receiving and processing on the applications. This process must request the receivers to issue written receipts to the applicants.

c. Model selection for land arrangement for SMEs

As mentioned above, in order to arrange land for SMEs, the interviewed enterprises and representatives of the line departments agreed that first priority for settlement of SMEs' complains on production land is to find a suitable model for receiving and allocating land to SMEs because two above mentioned priorities are feasibly implement by the concerned authorities.

Based on above information, measure for seleting a suitable model of organization for receiving and allocating land for SMEs is analysed belows:

c.1. Hung Yen Business Association and other professional associations

According to the laws, an association is organized and operates in accordance with its own charter which is approved by competent authority and not contrary to the law; an association is organized and operates on the principle of voluntary, self-managing, self-covering of expenditure and self-responsible before the law⁴. However, an association does not belong to subject entitled to be granted land for commercial purposes⁵.

c.2. A cooperative for industrial park infrastructure development

a. SWOT analysis of the cooperative model:

- Strength:

⁴ Clause 2, Article 3 Decree No. 88/2003/ND-CP.

⁵ Article 33, 34, 35 Law on Land.

- Eligible for land grant
 - Easily accepted operation model by local authority;
 - Free to select form of land assignment whether with land use fee or leasing with annual payment of land lease amount.
 - Eligible for borrowing state credit capital from Development Support Fund;
 - General Meeting of cooperative members shall decide the capital and assets of the cooperative which come from capital and effort contributed by cooperative members⁶.
- Weakness:
 - Sanctions applied to cooperative members are not strict enough: cooperative members are entitled to leave cooperative so it causes influence on the capital and effort contribution of cooperative members to the common goals of the cooperative;
 - Cooperative members will be returned in full their contributed capital and other rights and interests in case of being expelled (the amount refunded is equal to that contributed);
 - Opportunity:
 - This model was common in the past. Moreover the investment activities carried out in rural areas where cooperative is the major model, so local authorities deeply understand and support the application for land grant;
 - Supported by local authorities because at present, such as Department of Planning and Investment, Department of Industry. These representatives of such line departments have chances to visit Germany for understanding the cooperative model in this country.
 - Threat
 - Because the organizational structure of this model is not tightly therefore it is easy to dissolve. Consequence of the dissolution is that the allocated land may be divided or confiscated in accordance with the laws.

c.3. Joint Stock Company for industrial park infrastructure development

b. SWOT analysis of Joint Stock Company model:

- Strength:

⁶ Clause 1, Article 36 Law on Cooperatives

- Coherent organization structure, easily to mobilize a large number of shareholders to participate in;
 - Advantages in application procedure for grant of land use right certificates;
 - Binding mechanism to retain the land when shareholders are no longer in the company;
 - Shareholders must not draw their capital from the company in any form, except for cases where their shares are redeemed by the company or others, therefore, it is advantageous for land management of the company.
- Weakness:
 - Shareholders with majority of shares shall be entitled to higher vote in internal affairs;
 - When the company dissolves or falls into insolvency situation, shareholders only receive part of remaining assets in proportion to the percentage of share contributed to the company⁷, this is not attractive to shareholders to contribute capital.
 - Opportunity:
 - This model is more tightly and strong structure;
 - Benefits of shareholders are not only the rights to lease a land plot but also the value per share in the joint stock company for infrastructure development
 - Mobilizing numerous of enterprises participating in this model, not only from the enterprises who need a land but also from capital trading
 - This model is supported by the Department of Natural Resources and Environment.
 - Threat:
 - The major shareholders will mostly decide the company, the minor shareholders will feel disadvantages.

c.4. Proposed model

Among such models aforementioned, model of Joint Stock Company is the most suitable for infrastructure development and sub-lease or transfer the land.

c.5. Implementation

⁷ Clause 1, Article 79 Law on Enterprises

In order to take strength and opportunity and reduce the threats and weakness of the joint stock company model, following activities should be taken:

- Developing the business objectives of the joint stock company for management of land development of infrastructure for industrial clusters for SMEs .
- Making a charter of the company for guaranteeing the rights and benefits of minority shareholders;
- Providing clearly process of capital contribution to each stage which is suitable with financial capacity of the shareholders.
- Developing a transparent management mechanism inside the company for guaranteeing the sustainable development of the company.