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## Two land registration systems. The land law of Vietnam and of Sweden

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**ĐẶNG ANH QUÂN**

**TWO LAND REGISTRATION SYSTEMS**

—

**THE LAND LAW OF VIỆT NAM  
AND OF SWEDEN**

Swedish Supervisor  
Prof. Hans-Heinrich Vogel

Vietnamese Supervisor  
Pr. Phạm Hữu Nghị

*Field of study*  
Comparative Law

2011

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Đặng Anh Quân

## **LIST OF ABBREVIATIONS**

UN-ECE	United Nations Economic Commission for Europe
FIG	International Federation of Surveyors
SEMLA	A joint program between V <sup>iet</sup> Nam and Sweden on Strengthening Environmental Management and Land Administration
DONRE	Department of Natural Resources and Environment
PC	People's Committee
LURRO	Land Use Right Registration Office
LURC	Land Use Right Certificate

# CHAPTER 1

## INTRODUCTION

### 1.1. Background

Based on the implementation of the “open-door” policy and the concurrent acceptance of the market economy, Việt Nam has in recent years achieved much both in terms of joining the world market and in improving social life. Under the impact of the process of industrialization and modernization, there has been a major change in the use of major resources such as capital, land and labour with the focus being on industry and services.

The open-door policy was implemented by the Communist Party and the Vietnamese State at the end of 1986 in accordance with the Communist Party’s guidelines as laid down in the 6<sup>th</sup> nationwide representatives’ assembly<sup>1</sup>. At this assembly, besides the recognition of mistakes and defects in earlier guidelines and policies, the Communist Party made an innovative change in its economic thinking. It established entirely new guidelines for developing a multi-sector commodity-based economy coupled with an extension of international cooperation. Some typical quotes are: “...regarding the economy with its multi-sector structure as a special characteristic of the transitional period”, “...The direction for renewing the mechanism of economic management was by way of the abolition of the system based on administrative subsidies”, “...needed to have policies on extending the exchange of goods and abolishing both the closed-door policy and the partition of the market”, “...enlarging and enhancing the effects of the international economy”, “...trying to establish economic relations with developed countries, international organizations and foreign individuals”, “...encouraging foreign investments..., need to have policies and methods in order to create favourable conditions for foreigners and overseas Vietnamese doing business in Việt Nam”<sup>2</sup>. This opened a period of renewal in Vietnamese history.

On July 28, 1995, Việt Nam officially became the seventh member of the Association of South-East Asian Nations (ASEAN). At the beginning of March, 1996, Việt Nam participated in the Asia – Europe Meetings (ASEM) from their establishment. On November 14, 1998, Việt Nam took part in the Asia – Pacific Economic Cooperation (APEC). And on November 7<sup>th</sup>, 2006, the General Council of the World Trade Organization (WTO) approved the Protocol (WT/ACC/VNM/48) on the Accession of Việt Nam by way of a unanimous vote of all 149 members of WTO, finishing the eleven-year process of negotiation regarding Việt Nam’s accession. On November 29, 2006, the National Assembly of Việt Nam ratified the Protocol<sup>3</sup>.

Living conditions have improved. The average per capita income increased from below 200 USD/person in 1990 to 1024 USD/person in 2008. The number of poor households (according to the national standard) decreased from over 60% in 1990 to 13,8% in 2008<sup>4</sup>.

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<sup>1</sup> The 6<sup>th</sup> nationwide representative’s assembly of the Communist Party took place between the 15th and the 18th, December, 1986.

<sup>2</sup> Cited from the Documents of the 6<sup>th</sup> nationwide representative’s assembly.

<sup>3</sup> The Resolution No.71/2006/QH11 of the National Assembly dated November 29, 2006 on ratifying the Protocol of Việt Nam’s Accession to WTO.

<sup>4</sup> The Government’s Periodic Report on the implementation of human rights in Việt Nam, Information Portal of the Vietnamese Government, dated April 24, 2009, [http://www.chinhphu.vn/pls/portal/docs/PAGE/VIETNAM\\_GOVERNMENT\\_PORTAL/NEWS\\_REP/HD\\_CUACHINHPHU/NAM2009/THANG04/BAO%20CAO%20NHAN%20QUYEN.HTM](http://www.chinhphu.vn/pls/portal/docs/PAGE/VIETNAM_GOVERNMENT_PORTAL/NEWS_REP/HD_CUACHINHPHU/NAM2009/THANG04/BAO%20CAO%20NHAN%20QUYEN.HTM). Retrieved [20101018 20:11].

The rules that relate to land have, after a series of amendments, become crucial to the above process. Land users now have greater rights to land. Land use rights and the properties attached to land have become a huge source of capital that the State and the people use for investing, developing businesses, enlarging co-operative relationships and attracting foreign investment to Việt Nam.

However, as the State has had not much experience in managing this new market, the real estate market in general and the market in land use rights in particular has developed spontaneously and outside the State's control, leading to some negative impacts on the socio-economic situation. Many changes are occurring, but the State has not properly regulated them yet.

Within no more than fifteen years, the real estate market, especially the undeveloped land and residential housing markets, passed through three waves of "boom" (the price of land and residential housing increased continuously; many transactions were engaged in, pushing land prices higher and higher in a way that the State could not control) and relative "slump" (the real estate market became quiet even though land and residential housing prices did not decrease) : "boom" from the end of 1993 to 1996, from the end of 2000 to 2004 and from the end of 2006 to 2008; "slump" from 1997 to 1999, from the end of 2004 to 2006 and from 2008 up to the present, this last being mainly due to the world economic crisis.

Although real estate transactions take place all over the country, most of them are illegal, thus creating an unofficial market that is outside the State's control. This is for many reasons, including the following: the documentation relating to most real properties is lacking so dealings with them cannot be brought within the scope of lawful transactions (the simplest case being the lack of a certificate of land use right); the capacity of the competent authorities regarding land management remains weak and full of shortcomings, while there is also an overlap in competence between the various agencies which leads to evasion of responsibility and the relaxation of both discipline and management; land use planning – a management tool as well as a source of information that affects the development of the real estate market – is patchy and lacks both viability and stability; finally, although it is not publicly admitted, there are many opportunities for such negative phenomena as corruption and speculation in land. Moreover, financial policies regarding land prices and the financial obligations of land users have not shown yet their effects on regulating and supporting the development of the real estate market. In general, the development of the real estate market has not met yet the demands of society, especially the demand for residential homes for low-income people.

All of the above has created a confused real property market in Việt Nam. Though it is close to its inception, this has already led to much inequality and to disorder in the life of the people and in economic development as a whole. In this context, the problem of how to manage the real estate market and effectively exploit real property and correctly orientate its development has become a pressing one.

A number of solutions had been put forward by the Communist Party and the State in their guidelines and policies with the following fundamental ideas as key:

*“...Setting up a public, united and transparent mechanism and process of real estate registration in order to create conditions for cleaning up and giving legal safety to real estate transactions; on that basis, it can positively impact business and investment...”<sup>5</sup>;*

*“... Continuing to improve the legal system, mechanism and policies for the circulation of rights to use land and other real estate in the market regime in order that they can really become a capital resource for production and business... Modernizing the system of management of cadastral files and real properties. Developing synchronously the services of legal consultants and notaries and the organization of assessments, auctions and registration of land transactions... in order to create a safe and convenient environment for transactions in the real estate market in general and the land use right market in particular”<sup>6</sup>.*

One of the tools used is land registration, and one thing which needs to be done is the modernization of the system of land registration and land/real estate information supply in general.

Improving land registration and the issue of land use right certificates in particular will ensure that land and other real properties become lawful and officially sanctioned commodities which can be the subject of transactions in the real estate market. Successful establishment of the land registration system and the provision of a system of real estate information supply on the basis of the application of information technology will play an important role in simplifying administrative procedures; making the real estate market more and more transparent with full, clear information on real properties; guaranteeing legal safety for parties in transactions; limiting disputes regarding land and real estate; and assisting the State in both managing the real estate market and preventing loss of tax.

The policies of the Communist Party and the Vietnamese Government have led to a number of attempts at reform and modernization of the land registration system based on the use of information technology, better updating changes in land use and supply of land information in some localities: the state can treat these experiences as the basic for wider and more general reform.

Certainly, the amendment of the law governing the establishment and operation of the land registration system is an important problem which needs to be resolved. A number of regulations have been promulgated relating to the adjustment of the organization, functions and obligations of the land registration machinery together with the establishment of the land use right registration office; the unification

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<sup>5</sup> Cited from the Resolution No.16/2007/NQ-CP of the Government dated February 27, 2007 on promulgating action programs of the Government in order to implement the Resolution enacted by the 10<sup>th</sup> Central Committee of the Communist Party at the fourth Assembly about some main guidelines and policies for the quick and stable development of economy after Vietnam becomes a member of WTO.

<sup>6</sup> Cited from Section II.2 and II.3, Resolution No.21-NQ/TW dated January 31, 2008 of the 10<sup>th</sup> Central Committee of the Communist Party at the sixth Assembly on continuing to improve the market economy system according to the socialist orientation.

of the certificate evidencing the rights to use land and to own a residential home or other assets attached to land; the digitalization of cadastral data which is currently archived in a paper form which will be linked to new processes relating to registration and the update of changes in land use; finally, a draft law on real estate registration which will unify the registration requirements for all types of real property has also been prepared.

However, these changes have not really shown their effects yet. Some regulations were drafted or promulgated with a view to certain purely local benefits, not to the general benefit of the State and the people. The existence of many legal provisions leading to different orders and procedures in land registration activity - precisely because of the lack of united regulations - leads to overlaps, contradictions and the separation of the managerial competences of the various authorized agencies, together with incoherence and a lack of completeness in the land/real estate information system. The registration of land and other real properties involves records being archived at three administrative levels which makes the land registration machinery even more cumbersome, while many essential elements which need to be registered have not yet even been regulated (for example, a mechanism for the registration of easements is still entirely lacking). There is a lack of information about land use planning, land prices and the definition of the true legal status of land and real properties; as well as of regulations on the specific process of setting up the land information system, dealing with and updating registered data and managing, digitalising and providing access to real estate information.

These problems show there are still many shortcomings in the Vietnamese land registration system because the law regulating has still not fully dealt with them.

In order to reform and modernize the land registration system pursuant to the Communist Party's policies, research on and appraisal of the current situation of the land registration system needs to be engaged so that one can truly grasp the shortcomings of the system. Once this is done, solutions can be enacted and implemented.

Many research projects have been carried out. However, most of them focus on technical solutions regarding the computerization of the management and operation of land registration activity. Some researches on legal aspects aim at the real estate market as a whole with little focus on land registration. Such research as does concentrate on the registration system mainly pays attention to the problem of real property ownership in general and does not focus on the fact that land management should be a foundation for the management of all other types of real property. Further, they do not determine the essential factors of a land registration system with a view to setting up an effective system, especially so far as concerns information supply.

What I choose to focus on is evaluating the Vietnamese land registration system and determining the factors indispensable for its working. In doing this, I examine useful examples in other registration systems and the Swedish system in

particular is studied for reasons which will be explained later in this chapter. The title of my research is thus *“Two land registration systems – The land law of Việt Nam and of Sweden”*.

## **1.2. Purpose**

Bearing in mind the demand for the modernization of the land registration and the real estate information system with a view to assisting the State in managing and making the real estate market more and more transparent, this research has two aims.

First, it defines the fundamental issues of any land registration system, highlights the benefits of an effective system and the requirements for it, as well as the factors which can be considered as its indispensable pillars. Legislators should pay attention to these issues when reforming the land registration system.

Secondly, the research evaluates the current situation of the Vietnamese land registration system by way of an analysis of the legal provisions regulating it and their implementation. This will allow me, and perhaps other researchers, to make some recommendations and generally create a body of opinion in favour of the modernization of the land registration system.

Under this second head, the research intends to: (i) expand knowledge of the land registration system, its necessity and benefits; (ii) determine the requirements and key factors and the relationship between these factors when setting up a land registration system; (iii) give an overview of the existing land registration system in Việt Nam, its achievements and the shortcomings that need to be overcome; (iv) study foreign examples and compare them with the Vietnamese situation; (v) draw lessons and recommendations for the reform of the land registration system that Việt Nam is aiming to implement.

## **1.3. Delimitation**

In this research, land registration is treated as being divided into two main areas of activity: one is the cadastre with its concomitant technical features and the other is title registration (or land registration) with its more legally oriented characteristics. Both involve professional activities implemented manually or through processing software on the basis of the specific processes and files, maps, drawings and registers produced in various ways.

However, the research will not focus on technical aspects relating to the operation of the land registration system. It aims to analyse the legal provisions regulating the system and excludes from its scope the norms, process and procedures guiding more specialized agencies when carrying out their specific obligations and functions. It focuses instead on analysis of the scattered regulations on the organization of the land registration machinery; on the conditions and procedures of registration; and the management of registered information; as well as on the legal foundations for digitalization of cadastral files.

My research cannot, however, avoid the issues of the management of registered data, the updating of changes in land use and the supply of land information, because these are activities indispensable to this system. The analysis of the legal provisions regulating the issue of setting up the land information system is therefore also considered. As well as considering cadastral information recorded from land registration activity and the cadastral activity of the agencies responsible for land management – all of which is presented in the analysis of the organization and activities of the land registration machinery – the research will look at regulations on land use planning, the issue of land use right certificates and the State's determination of land prices. The results of these activities should prove to be an extremely valuable data source for the land information system and indispensable to issues relating to the establishment of the land registration system as a whole.

In brief, my study concentrates on analyzing four aspects of the land registration system, each of which has a legal aspect. They are the cadastre, legality, use and value.

Moreover, as the existing technical conditions of the Vietnamese land registration system are inadequate for the computerization of registration and the digitalization of land data or files; and as the law has not anticipated the many problems which need to be regulated in the process of preparing and implementing such modernization of the system, a part of the research will touch on the experiences of a country which has established an electronic system for land registration in order to evaluate them and draw lessons that can be applied in Việt Nam.

The chosen country is Sweden. The research mainly focuses on the Swedish land registration system as it is one of the most modern and effective systems in the world, especially in technical respects, which Sweden has established successfully. Việt Nam can study and learn from the promulgation, implementation and content of the legal provisions affecting the operation of the Swedish land registration system. Besides that, there is a close connection between the registration systems of these two different countries. With Swedish support and guidance, some localities in Việt Nam are testing out software and other applications of information technology in registration management, the updating of changes in land use and the supply of land information all prior to using these technical methods on a large scale.

Thus, the scope of this research is limited to the regulations on the organization and operation of the land registration machinery; the regulations concerning the establishment of a registered information system and the factors which are indispensable to the land registration system. Although the Swedish land registration system is mainly focus on here, for some issues I also touch on the experiences of various other countries. There are, too, many no less important issues concerning land registration such as land disputes and effective land registration systems other than Sweden's could be studied. However, due to time limitations, I

neither can nor aspire to treat of all these matters in one thesis. Instead, I focus on my narrower scope with the hope that I will achieve the ends I have mentioned.

#### **1.4. Method**

My research aims at defining the fundamental issues affecting any land registration system, establishing the current state of the land registration system and giving recommendations for the establishment of an effective digitalized information system in Việt Nam. The method used in my research is a combination of legal dogmatics, comparison and the methodology of dialectical and historical materialism. Depending on the topic, each method will be used either in an appropriate combination with the others or by taking the key role in the study of a topic.

##### ***1.4.1. Legal dogmatics***

Việt Nam understands legal dogmatics differently from the way it is understood in western countries. Legal dogmatics is a method that is used in legal research in many countries, but when translated into Vietnamese, its name sounds rather strange. This method tends to analyse, explain and appraise the provisions of a defined legal system with a view to making recommendations for their development or improvement. With this meaning made explicit, legal dogmatics is no novelty to Vietnamese researchers. It is really a rather general name covering the activities of analysis, evaluation, synthesis, and systematization, each of which is undertaken in research and is more often called by its separate name. I shall however tend to combine the more specific methods under the one heading.

Thus, using legal dogmatics, I aim to synthesize the current legal provisions which remain rather scattered. I describe the Vietnamese land registration system, from the framework of the organization to the procedures for land registration, the establishment of the land information system, and other related activities. On that basis, I will analyse and assess the implementation of the provisions in practice and show that the shortcomings of the law have caused many problems, including conflict between various agencies in which registration activities are carried out by separate and different procedures; the dispersal of land and real estate information; disputes on managing issues; and the consequent public discontent with the system as a whole.

This method also helps me to review the Swedish land registration system and provide an overview of its development and framework and of the important reforms that Sweden has implemented.

Legal dogmatics is mainly used in Chapters 3 and 4 when I study the land registration systems of Việt Nam and Sweden respectively, providing the background for my recommendations in Chapter 5. It is also applied in Chapter 2 and in Chapter 5 itself when I study the definition, factors, requirements and benefits of any land registration system and give my recommendations.

### *1.4.2. Comparison*

Việt Nam has only been engaged in the making of modern law for forty years – in contrast to other countries which may have had hundreds of year of legislative activity – and its information technology systems suffer from poor foundation and a lack of equipment. Thus, Việt Nam is always happy to learn of the experiences of other countries with a view to following measures appropriate for being applied to Vietnamese situations. Accordingly, the study of Vietnamese laws is always combined with comparisons to the laws of other countries.

Moreover, in the current period of globalization, Việt Nam has been taking part in many international playing-fields. As a result, law has to be made and promulgated in accordance with international rules in order to better prepare for the integration of Việt Nam into the world system. For this reason, one cannot reach comprehensive results if one merely evaluates Vietnamese laws apart from any consideration of other legal systems. A comparative method is therefore also used in my research.

In Chapter 2, the concepts of land registration, title registration and cadastre are reviewed by way of analysis and comparison of the definitions used in many other countries or international organizations in order to achieve a sound overview. Comparison is also used when studying the benefits of and requirements for a land registration system. This allows me to understand and evaluate the general requirements of a land registration system and to determine the specific needs of the Vietnamese system.

In Chapter 4, a comparison is made between the Vietnamese legal provisions and their implementation in reality. Based on this, the achievements of the Vietnamese land registration system and the shortcomings that have to be overcome can be clearly seen. This also allows us to see what is needed if we are to achieve the digitalization of registered data and the general modernization of the land information system.

This method is of special importance in Chapter 5 where I compare the land registration systems of Việt Nam and Sweden, the natural, economic and social conditions influencing the operation of the registration machinery and, finally, the establishment, management and supply of land information. The experiences of certain other countries regarding the computerization of the land registration system are also touched on. From all of this, many useful lessons for reform of the Vietnamese land registration system can be drawn. The research brings out issues that Việt Nam should anticipate having to deal with and some recommendations for dealing with the shortcomings in the system.

It can be said that this method brings many advantages and allows me to have a deeper awareness of many relevant issues.

### ***1.4.3. Methodology of dialectical and historical materialism***

Dialectical materialism is a popular method used in scientific study – especially social sciences and matters relating to legal field – in countries such as Việt Nam which follow Marxist ideology. The substance and usage of this method, however, does not differ between scientific researchers of any political viewpoint.

In order to comprehend an issue, researchers cannot simply place it within one particular time and one specific context. No thing or phenomenon exists independently and immutably in society. It always has relationships with other social factors or phenomena and acts and changes incessantly. Therefore, when appraising a thing or phenomenon, a researcher should put it in relationship with other phenomena and connect it to its specific historical conditions in order to recognize its nature, movement and developmental tendency<sup>7</sup>. This is the viewpoint of dialectical and historical materialism.

In legal science, law derives from the demand for regulating social relationships which already exist or anticipating relationships which will take shape based always on their current tendencies. Social relationships will change under the impact of social and economic conditions. Thus, the study of the Law should be linked to the political and economic foundation within which the law exists and develops, as well as to the historical process and social requirements for the formation of the law in general. Accordingly, a researcher should have a dialectical awareness when researching the land registration system.

In Chapter 2, although two separate aspects of land registration activity are review, namely “cadastre” and “title registration”, on the basis of the relationship between these activities and social demands (or the requirements of the State and the people) and the study of the development of each activity, I conclude that they constitute two unified activities which must both be implemented in any land registration system in order to supply useful information on the legal characteristics of the objects registered. Moreover, I also recognize that, for effective operation, especially for the supply of information, besides the cadastral and legal factors, a system of land registration should necessarily also cover the factors of land use and land value.

In Chapter 4, again using this methodology, I can more clearly analyse the development of the Vietnamese land registration system during each historical period and in the specific conditions and situation of Việt Nam . On that basis, I explain the reasons for the achievements and shortcomings of the system and can make appropriate recommendations. The study of the condition, situation and development of the Swedish land registration system is effected in a similar way in Chapter 3.

Using a dialectical viewpoint, I realize that the recommendations in Chapter 5 must be based on Vietnamese conditions and situations. One cannot immediately

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<sup>7</sup> The Ministry of Education and Training, “Giáo trình ~~nh~~ng nguyên lý c ở bản của chủ nghĩa Mác-Lênin”, the National Political Publishing House, Hà Nội 2009, pp. 73–74.

apply the successful experiences of other countries to Vietnam when the developmental level between Vietnam and these countries is unequal. An electronic land registration and land information system obviously cannot be established overnight. It will be a long steady process made up of the many conditions which are appropriate to the changes called for. And the law, with its role in regulating and creating a legal framework for the interplay of social relationships, should foresee those changes and focus on regulating the process of conversion from the existing system to a more modern registration one.

### **1.5. Materials**

The author met with some difficulties in finding reference materials.

With regard to the land registration system, most of the documents focus on the technical side and the application of information technology software to the registration system. Legal sources are few: apart from the regulations issued by the Government, the author could only find a few published books and a small number of articles in professional magazines and newspapers and on the internet.

For studying the land registration system in Vietnam, the regulations issued by way of laws, decrees and circulars must be essential. However, as Vietnamese courts usually do not follow legal precedent established by other courts, the results of any specific cases are very limited. Further, the documents in a lawsuit and the decision of the court are stored in the court alone and in some cases, obtaining a copy is very difficult, if not impossible.

Therefore, when analysing the current state of the land registration system, the disputes, claims and lawsuits which the author mentions are based mainly on information in the newspapers and the internet, or from the conclusion of the relevant authorities (such as the National Assembly, the Government and the Ministry of Natural Resources and Environment...etc.) through their reports.

In addition, the legal cultures in Vietnam and in Sweden differ.

Even the Vietnamese people disagree with the operation of the land registration system and the behaviours of land officers, but they are not familiar with the Courts and may be afraid that litigation will damage their relationships with others. So, the numbers of claims tends to be small. They are often reflected by mass communications.

Even in Sweden the number of court claims and cases is small. The reason is that the Swedish law is well settled after a hundred years of development. On this basis, the public awareness and observance of law is rather high. In addition, with its well-organized machinery, the land registration system effectively registers results and supplies information and the public has confidence in these services. There is, thus, almost no potential for litigation in which key issues of law arise.

While studying the experience of Sweden, I collected most of the regulations used in the land registration system as well as articles, analyses and assessments

relating to it from the internet and certain books. However, there is still a limit on the amount of materials which is to be used.

Firstly, I studied material translated into English only so important information relating to the land registration system which is only in Swedish might have been missed.

Secondly, the study of legal precedents relating to the Swedish land registration system was not as useful as expected. I consider that the successful experiences of Sweden are technical in nature with reform tied to the successful computerization of the land registration system. As stated above, disputes are uncommon. A study of how adjustments are made to the regulations would be very important and useful.

## **1.6. Outline**

Apart from this introductory chapter, my general conclusions, the annex and the list of reference materials, the contents of my research will be presented in my four main chapters.

Chapter 2 analyses certain basic issues relating to any land registration system in order to highlight the importance of such a system. The overall system requirements are also reviewed.

In Chapter 3, there will be an introduction to the land registration system in Sweden. This aims to allow the comparison with Việt Nam and the eventual assessment of the two systems.

The land registration system in Việt Nam will be studied in Chapter 4. A general description of the system is given in terms of both its historical development and its organization, the activity of registration and the use of the information it contains. As well as this general overview of the system come analyses and assessments of the controlling law and current situation of the Vietnamese land registration system. This Chapter also reviews problems in the registration system and other relevant activities.

In Chapter 5, the Swedish and Vietnamese land registration systems will be compared to each other. I then consider those experiences from which Việt Nam can learn when computerizing its land registration system with a view to reducing any risks involved. This comparison also allows the author to make some recommendations for the reform of the Vietnamese land registration system.

## CHAPTER 2

### INTRODUCTION TO LAND REGISTRATION

#### 2.1. The need for a land registration system

Land is a, if not the, key natural resource, the most important part of the environment, that on which the fauna and flora depend, the source of the natural products which nature gives to humankind. Our existence and development must always be closely connected to the land.

In its economic aspect, Marx described the central significance of land, as follows: “*Land is the mother; labour is the father that creates property*”<sup>8</sup>. This means that if there is no land and no labour, no property can be born. Since the establishment of the production process, humanity has always regarded land as a special means of production that cannot be replaced.

Together with its role in social development, land has been used not only for cultivation and animal breeding but also in the expansion of other fields and professions such as industry and service. The more human activities diversify, the wider the land’s role as a material base. Based on the labour of humanity, land is no longer a mere gift of nature; it becomes the property of each individual and country.

Using land, people can produce food to satisfy the need to eat; create living space to satisfy the need for residences; and create an infrastructure to satisfy their demands to move, act and be entertained. All of these are essential needs. Along with these benefits, land comes to be regarded as property with a very high value. People can exchange, sell and buy land as a commodity and use it to generate capital. The issue of protecting the right to own land or the right to enjoy the profits of land thus becomes an important problem that needs to be resolved.

Any country, once established is always closely connected with a defined territory. The first properties of each country are its land, the natural resources contained in it and the other assets directly attached to land. No matter what the nature of its social development or its scientific and technical breakthroughs and the other properties which make their life rich, land and other real properties attached to land are still the most important properties of any state and are the foundation for creating all its other assets.

Following economic experts’ calculations, one-half of the assets of developed countries are immovable while in developing ones, this ratio amounts to three fourths<sup>9</sup>. At least 20% of the GDP of most countries derives from land and other real properties such as residential homes and construction work<sup>10</sup>. This shows that land

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<sup>8</sup> “K. Marx – F.Engels, Tuyển tập”, Volume 23, the Truth Publishing House, Hà Nội, 1979, p. 189.

<sup>9</sup> Đặng Đức Đạm, “Đổi mới quản lý đất đai để thúc đẩy sự phát triển của thị trường bất động sản ở Việt Nam” reported in the conference “Phát triển và quản lý thị trường bất động sản” on September, 2003. He was quoting this figure from the book “The secret of Capital” of Hernande de Soto.

<sup>10</sup> Economic Commission for Europe, “Land Administration in the UNECE region – Development trends and main principles”, United Nations, New York and Geneva, 2005, p. 18,

is not just a natural resource; if it knows how to manage and exploit it effectively, each nation will find itself in possession of a rich “internal” capital usable for improving the economy and stabilizing society. Indeed, every government knows how to take advantage of this capital by regulating and collecting tax from land and thus generate a consistent source of revenue for its budget.

So, in its economic aspect, land is a source of prosperity and sustainable development.

In its political and social aspect, in the relationships between countries, land is crucial for constituting the territory and thus the sovereignty of a state. The territory of a country is a defined part of the earth, including lands, waters and airspace that belong to it and is under its full sovereignty. Territory is the material basis for a country’s existence and development. State power and influence is in the first instance bounded by a defined community of inhabitants and is then a foundation of the international legal order. Protecting land amounts to protecting national territory and sovereignty. Although this is not identical to its economic function, land still has an important significance in politics because it is an essential factor that the people of a country have established, protected and preserved throughout many generations.

Within a country, land issues and policies are always among the main concerns of a government because they have a strong influence on the political and social situation as well as on economic development. If an appropriate land policy is promulgated, it not only guarantees political stability but also creates conditions favouring economic development; if an inappropriate policy is promulgated, it will inhibit development. Consequently, land policy is always a key issue for any State.

The land’s importance can also be seen in cultural life. Land, together with other factors such as climate, terrain and natural conditions influences the lifestyle and characteristics of its inhabitants. Differences in cultural traditions and customs between continents and countries and even between regions within a country offer evidence of this.

In general, in all fields of society, from the economy and politics to culture, the role and importance of land cannot be denied. As a result, the exploitation of land should reflect community interests. Nobody should be able to use land entirely according to his own desire and benefit if this is not appropriate to the interests of society as a whole. The government must therefore unify land administration and establish an effective land management system to ensure sustainable development of the land’s resources and thus of society as a whole. Good land management also fosters economic improvement because it will protect ownership and the interests of the landowner and thus encourage investment activities. The government machinery is

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<http://unece.org/env/documents/2005/wpla/ECE-HBP-140-e.pdf>, or available online at <http://www.unece.org/hlm/documents/Publications/Landadmin.devt.trends.e.pdf>. Retrieved [20101020 08:36].

also of value in itself because it supports the public budget by allowing for the collection of taxes relating to land.

According to the definition of the Economic Commission for Europe (UN-ECE, 1996), land management is a process of determining, recording and disseminating information about the ownership, the value and the use of land when implementing land management policies<sup>11</sup>. Specifically, the object of land management includes three basic elements:

(i) Land ownership: recognizing and protecting the rights of land owners/users; boundaries of land parcels; buying, selling, leasing and managing the land, settling land disputes;

(ii) Evaluation of land prices: determining the value of land and properties on land, collecting land taxes;

(iii) Land use: managing the use of land through land use plans.

These factors are defined and controlled in many different ways in land management, but there is a connection between all three factors. As none of them can develop without solid foundation of a comprehensive land information system. In order to have good land management, it is important to ensure that information about the land is clear and detailed and also easy to access. Crucial in achieving this is the method of organizing the land information system. In the first place, any land information system is the sum of the results collected from land registration activities, and so, creating an effective system of land registration is a necessary starting point for most countries.

## **2.2. The central concept and important elements of a system of land registration**

### ***2.2.1. The concept of a system of land registration***

The system of land registration is an important part of the overall system of land management, as it contains and provides information related to land, including but not limited to information on land rights (ownership, the right to use, exploit and share the benefits of land), the owners of these rights and other attributes of land. This information is registered and stored in various ways depending on the purpose they are intended for. Systems of land registration are normally referred to by the names “*land registration*” or “*cadastre*”.

#### *Land registration*

Land registration is one of the names for a system of land registration and according to the UN-ECE definition<sup>12</sup>, it is a process of setting up and formally

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<sup>11</sup> Economic Commission for Europe, “Land Administration Guidelines – With Special Reference to Countries in Transition”, United Nations, New York and Geneva, ECE/HBP/96, United Nations Publication, Sales No E.96. II.E.7, ISBN 92-1-116644-6, p. 15, <http://www.ica.coop/house/part-2-chapt4-ece-landadmin.pdf>. Retrieved [20101020 08:53].

<sup>12</sup> Economic Commission for Europe, “Guideline on Real Property Units and Identifiers”, United Nations – New York and Geneva, 2004, ECE/HBP/135, p. 2,

recording rights in land whether in the form of a register of deeds and other documents associated with the ownership of the land rights or in the form of a register of titles to land. The results of the registration process is expressed in a register (which may be a paper record or electronically digitalized) with information about the owner/user, ownership, or changes in ownership of determined land units.

Based on that information, the system of land registration has the function of providing a stable support for the possession, use and disposition of land. It guarantees ownership and other rights in a parcel of land and supports the dynamics of the land and credit markets. With clear information about land ownership available, investors are more likely to feel safe when their capital is spent on investing in land. At the same time, the risks of conflicts or disputes over rights and benefits are reduced. Moreover, land registration also provides the public budget with a major source of revenue by way of the fees collected from the registering and supply of information and also by helping organize the taxation of land. Although land registration aims at protecting the interests of the land owner, it is also one of the tools of the public management system consisting of state regional local authorities which are co-operating with the aim to support economic development. Thus, according to FIG<sup>13</sup>, although there are different kinds of land registration in use throughout the world, each system aims to satisfy essentially the same requirements regarding land information and the details of land transactions while minimizing costs.

It is believed that much of the prosperity and sustainable development of a country is derived from the land and its good management and land registration is an important tool in that regard. The report of the UN-ECE on the economic and social benefits of effective management of land asserted: “Nations wanting to find prosperity require effective land registration as this promotes an active land market and productive land use, while ensuring the ownership and development of capital markets that are resources for the economy”<sup>14</sup>.

Based on what is registered and managed, it can be seen that in all countries there is one of two types of land registration, deed registration or title registration.

Deed registration is a kind of land registration in which the objects registered are transactional documents for land and estates in land recording the content of the dealings in question. Registration proves a transaction has been completed; two or more parties have voluntarily participated in a consensual agreement. But it is not necessarily sufficient for confirming whether the underlying claims of ownership are valid. Therefore, to protect their interests, buyers must investigate the past and determine the basis of the ownership of the land they are dealing with. This kind of

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<http://www.unece.org/hlm/documents/Publications/guidelines.real.property.e.pdf>. Retrieved [20101020 09:31].

<sup>13</sup> International Federation of Surveyors, “FIG Statement on the Cadastre”, [http://www.fig.net/commission7/reports/cadastre/statement\\_on\\_cadastre.html](http://www.fig.net/commission7/reports/cadastre/statement_on_cadastre.html). Retrieved [20102010 09:41].

<sup>14</sup> Economic Commission for Europe, *ibid.* supra note 12.

system has been used since the 19<sup>th</sup> century in most US states, Italy, Japan, France and other countries affected by French law<sup>15</sup>.

In contrast, the objects registered in a system of title registration are information about the owners/land users; their rights and interests and the limitations on their rights to land; and information about land parcels, i.e. the legal relationships between land and land owners. In other words, if deed registration is the registration of legal events (transactions), title registration is the registration of the legal consequences of those events. In a title registration system, land is divided into land units (or land parcels) which are clearly defined on cadastral maps. The owners/users and their ownership to land (rights, benefits, obligations and limitations to rights) are then recorded in the register. The land owners/users may change, but the rights and benefits over land will in general remain when the land parcel is transferred. In the event of transferring only a part of a land parcel, there must be a subdivision, a new registration and a change to the cadastral dossiers accounting for all changes in rights and benefits of the new land parcel. All these procedures can only be valid when executed by the competent authorities. Thus, the recorded information regarding ownership is guaranteed by the State and can be used officially without any investigations into the past history of the ownership rights. Title registration is applied in Australia (Torrens system), England, Germany and Scotland<sup>16</sup>.

Title registration was first introduced in Australia in 1858 by Robert Torrens. In Torrens's opinion, a land register did not merely provide evidence of ownership. It should show the actual state of this right. Accordingly, the government would guarantee all registered rights recorded in the land register. Then, Torrens introduced the concept of title registration in Australia<sup>17</sup>.

Each kind of registration has its own strong and weak points. Deed registration, according to those who favour it, is executed faster at lower cost due to the fact that it does not require as much time or expense to establish and operate the offices needed as do those for the registration of title<sup>18</sup>. Conversely, those who favour title registration claim that deed registration cannot ensure that information on ownership is exact or clear, so this increases the overall cost of verifying ownership. Moreover, because there is no guarantee of ownership, the information from deed registration does not encourage investment in land and limits the development of credit and capital markets. Further it does not assist governments so well in settling land disputes, in making land use plans and in determining land taxes.

Nowadays, many countries have amended or added to their land registration systems so as to satisfy the call for effective and reliable information. For example, in the United States, deed registration is associated with an insurance service system

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<sup>15</sup> Economic Commission for Europe, *ibid.* supra note 10, p. 32.

<sup>16</sup> Economic Commission for Europe, *ibid.* supra note 10, p. 34.

<sup>17</sup> Tim Hanstad, "Designing land registration systems for developing countries", *American University International Law Review*, Volume 13, No. 3, 1998, p. 651, <http://www.auilr.org/pdf/13/13-3-2.pdf>. Retrieved [20101020 09:46].

<sup>18</sup> Alec McEwen, "The Significance of Land Title Registration: A Global Perspective", <http://people.ucalgary.ca/~amcewen/SLltr.PDF>. Retrieved [20101020 09:52].

supplied by private title companies which provides the guarantee for ownership, a factor that the deed registration system itself cannot express clearly<sup>19</sup>. The Netherlands has added some important elements of a title registration system, such as cadastral maps and land parcel boundaries, into the system of deed registration so as to attain similar effects to those of a pure title registration<sup>20</sup>.

With computerization and the development of modern land information systems, the distinction between forms of land registration has become of less importance.

### *Cadastral*

In many countries, there is another kind of land registration system – the “*cadastral*”.

According to FIG’s statement<sup>21</sup>, a *cadastral* is a form of land information system containing a record of interests in land (e.g. rights, restrictions and responsibilities). It is based on land units, which are often land parcels. It usually includes a geometric description of land parcels linked to other records describing the nature of the interests, the ownership or control of those interests, and often the value of the parcel and its improvements.

The *cadastral* can thus be understood in two ways. First, it is a kind of land information system containing continually updated information recording not only the ownership, value and use of land but also the geometric characteristics of land parcels (e.g. co – ordinates, maps, location, and size, etc); assets on land (houses, or constructions, etc...); and other data relating to the environment, economy and society (population, taxes on land and real estates, etc..). This information may be related to each land parcel or may cover a number of land parcels within a specified area.

The initial purpose of establishing *cadastral* information is to support the public land tax collection and control of land use. It is called as *fiscal cadastral*. Bearing in mind the needs of land owners in the private sector, *cadastral* information is also used as an important tool to protect the ownership/land use rights of land owners/users and is known as *legal cadastral*. Nowadays, *cadastral* information is also used to guarantee the stable exploitation of the land, and to assist public management activities in many fields such as the protection of the environment and agriculture, forests and seas in particular, land use planning and other public purposes. As a result, the *cadastral* can be also briefly defined as a methodically arranged public inventory of data concerning rights and restrictions on land within a specified country or region based on measuring and determining geographical boundaries<sup>22</sup>. It can be called a *space cadastral*, a kind of multi-purposes *cadastral*.

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<sup>19</sup> Economic Commission for Europe, *ibid.* supra note 10, p. 32.

<sup>20</sup> Economic Commission for Europe, *ibid.* supra note 10, p. 33.

<sup>21</sup> International Federation of Surveyors, *ibid.* supra note 13.

<sup>22</sup> Jürg Kaufmann and Daniel Steudler, “*Cadastral 2014 – A Vision for A Future Cadastral System*”, with the Working Group 1 of FIG Commission 7, FIG Publication, July 1998, p. 15,

Secondly, a cadastre is not only an information system but also a system for determining land units or land parcels.<sup>23</sup> It has the aim of clearly defining the location, size and boundaries of land units or land parcels. These land parcels are identified by formal or informal boundaries marking the extent of lands held for exclusive use by individuals and specific groups of individuals (e.g. families, corporations, and communal groups). Each parcel, after boundary determination by survey or aerial photography, is given a unique code or parcel identifier including addresses, co-ordinates, or parcel numbers which are then shown on a survey plan or cadastral map expressing the corresponding locations of all land parcels in the same area. By using the unique code, a person who needs to do so can access information about the characteristics of a land parcel, the value of land and land ownership. Thus, the cadastre becomes an important part of the land information system. Due to the complexity of cadastral activities, the cadastre is usually carried out and managed by state organizations often with sub-units at the local or regional level or on a whole country basis.

In general, although bearing different names, both the land registration and the cadastre are activities of establishing, recording and disseminating land information. In the land registration system, the focus is on recording rights relating to land and, generally, the legal aspects of land, while cadastral activities relate more to the geometric and geographical characteristics of land, land use and land value, reflecting its physical and financial aspects. Because land registration establishes ownership of land, it is linked to a right and there is not necessarily any obligation on the land owner/user, except some countries such as England, it is compulsory. Registration can also be applied for in the case of each separate land parcel. On the other hand, cadastral activities provide information for determining the value of land, and establishing boundaries for tax and other purposes. They are activities which have to be implemented by the state.

As society became more developed, the volume of land transactions increased and the demand for information as well as the need to confirm and protect land ownership/land use rights become more urgent; the land registration system establishing land ownership was then established. It thus supplements and improves the information already contained in the cadastre.

In Viet Nam the regulations on the land registration system and the way of organizing registration show this very clearly. There is not even a distinction between “land registration” and “cadastre”. It is just stipulated that there are two types of land registration called “registration for the initial time” and “registration for changes”. Registration for the initial time shall be carried out when a person receives a land use right from the State. Registration for any changes in a land use right shall be carried out when a person using a parcel of land has been issued with a certificate of land use right but

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<http://www.fig.net/cadastre2014/translation/c2014-english.pdf>. Retrieved [20101020 09:54].

<sup>23</sup> International Federation of Surveyors, *ibid.* supra note 13.

there are changes in the land use such as transferring the land use right, changing land use purpose and changing the restrictions on the rights of the land user<sup>24</sup>.

In some countries such as Finland and Sweden, real property formation, land subdivision or consolidation together with other activities such as the production of cadastral maps, the registration of ownership and other legal rights, real property valuation and taxation are all combined within one cadastral system or system of land registration. In some other countries, for example Germany and Spain, these functions are separated. Cadastral activities are mainly conducted to support land taxation and should be treated as part of the financial sector, while title registration is a legal procedure under the responsibility of the judiciary<sup>25</sup> or similar public authorities.

In the present era, when land information is used for not only the purpose of land tax collection and the protection of land ownership, but also for other purposes (e.g. environmental protection and land use plans), the need to unify land information has been raised and is a concern in many countries. Therefore, to fully understand both “title registration” and the “cadastre”, we need to analyze them as parts of a unified system of land registration. One might then say that the system of land registration includes two important activities which are the land registration itself and the cadastre. The unified data collected within this system is an essential source for building any system of land information.

However, it is noted that the combination between the two activities exists or not depending on conditions and regulations of each country. In many countries, such as Austria, Germany, the Netherlands, Sweden and Switzerland, cadastral activity predated and influenced the development of land registration activity, then created a unified system of land registration. In some countries, for example New Zealand and several Australian states, land registration was first developed and later improved with cadastral surveys and maps in the land register. In other countries, including Greece, Italy, Norway and Spain, the link between land registration and cadastre is weak or non-existent<sup>26</sup>.

### ***2.2.2. Important elements of a system of land registration***

The system of land registration establishes and records four basic aspects concerning land namely, the geometrical factor, the legal factor, the value factor and the use factor.

#### *The geometrical factor*

The geometric factor expresses the formation and boundary determination of each land parcel/unit or all land parcels/units in a certain area through cadastral activities like surveying, measuring, making various kinds of land maps and the like. Due to their technical nature, these activities must be carried out by people who are professionally trained and experienced. At the same time because of the complexity involved and the need for accuracy, it is necessary to have the support of appropriate

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<sup>24</sup> Stipulated by Article 38 of the Decree No.181/2004/NĐ-CP of Vietnamese Government dated October 29, 2004 on implementing the 2003 Land Law.

<sup>25</sup> Economic Commission for Europe, *ibid.* supra note 10, p. 19.

<sup>26</sup> Tim Hanstad, *ibid.* supra note 17, p. 652.

facilities and high cost technical equipment; as everything will be executed on a large scale, cadastral activities are usually organised by the government. Usually surveyors in principle are public officials, but if there is lack of capacity, private enterprises may be mandated to act on behalf of the public authority. The cadastral book (or the register) or the cadastral maps which are the product of cadastral activities will contain information about the geometrical and physical characteristics of land parcels (such as topography, location, size, area, co-ordinates on the map, and so on). Each land parcel will be marked by way of a system of numbering and co-ordinates to assist those who need to search the data.

Surveying and determining land boundaries are activities that have been carried out for a long time, deriving from the need to identify the national territory and its boundaries and mark the administrative borders of each local area, all in support of the demands of tax management and evaluation. To begin with, surveying was thus not related to the legal ownership of land. The land area would be determined but the issue of who was the owner or who had rights to it was not considered. This is now the second main pillar of the land registration system – the legal factor.

#### *The legal factor*

The legal factor expresses the establishment and recognition of the ownership of one or a number of land parcels/units by individuals or organizations. This ownership means the right to own and enjoy the benefits of land, but may exclude actual physical possession as the land owners can lease the land: the tenant is then the lawful occupier. When an economy develops and the demand for exchanges and sales of land increases, the need for the parties entering into such transactions and investors to be protected in their ownership becomes more and more significant. The government needs to provide protection and guarantees this through a clear legal system regulating the rights and obligations of all subjects. And to be so recognized and protected by law, land owners/users must have the responsibility of registering and thus declaring their ownership or other rights to registered land areas.

Registration may be conducted when a land parcel/unit is formed, or may be carried out when there are changes of ownership or to the rights to and benefits of the parcel/unit (such as subdivision, re-allotment, amalgamation, partition, transfer, lease or mortgage of land/land use right, etc.). The purpose of registration is not only to protect the rights of land owners/users but also to help the government obtain information about the current situation and any changes of land use, and generally to supplement the information that the government has already collected from cadastral activities, thereby further supporting public management. Depending on each nation, region or period, title registration can be a voluntary or compulsory activity. Its end result is that land ownership/land use rights (whether of individuals, organizations or co-owners), other rights to land (including the right to erect constructions on land) and

restrictions on land use (lease, limitation of land use purposes, easements, etc.) in a certain area are recorded and information about them can be disseminated.

With reference to its legal aspect, land is considered as a part of the earth that includes not only the land surface but also, when it is regarded from the vertical dimension, the atmosphere above and the space below. On land, there might be houses, buildings and other constructions, infrastructures, or other assets attached to land. Under land, there might be underground works such as subway system and underground car-parks or mining. So, rights to land can be of many kinds. They can include the ownership or right to use the land, the ownership of constructions on land that itself belongs to another owner. These rights may be limited for the benefits of other parties when the owners/users lease or mortgage their land/real estate, or transfer land by way of purchase/sale. There can also be utility easements and restrictions in using adjacent real estates for joint facilities on land parcels, including but not limited to the use of electricity, water, sewerage pipes or the gas system. It can be the rights and benefits of the community that leads to the limitation of the rights of land owners/users regarding permitted land use or the construction of buildings which are then subject to land use plans. These rights can be registered by the owners/users or by the public authorities and can be recorded in many kinds of dossiers, documents and maps. However, they all have the same purpose, namely to give a legal guarantee of these rights and provide information on the land parcels/units in the land registration system.

#### *The value factor*

The value factor is the third important factor that needs to be recorded in a land information system. It expresses the value aspect of a registered land parcel and supplements all the other information. The evaluation can be applied to each land parcel as well as to assets attached to land. The administration, evaluation and recording of land value in the system of land registration is an important part of cadastral activities and is the responsibility of public officials, its main purpose being to support the public taxation system. Using its investigations, surveys and measurements to capture the characteristics of a parcel of land or a land unit, the government can determine and apply different tax rates which correspond to the value of each land area. Information on land value also plays an important role in compensating land owners when their lands are expropriated by the government; compensation will normally be in accordance with the expropriated land value.

Land evaluation is also a market activity. Land must be given a value if parties are to negotiate with each other when purchasing, selling, leasing or mortgaging it. This value may also be used for the purpose of insurance and for compensating damage. Besides the results of self-evaluation and negotiation, each party may consult specialists or use the land value that is provided by the government. It is normally not compulsory to register any land valuation.

The results of land evaluation may thus be recorded in the land registration system and expressed by way of information on the value of land parcels and/or the value of assets on land; and on how the tax rates are determined for land units and/or real estates on land. If one considers this land evaluation activity as determining the profitability of a defined land area in comparison with other areas, it can be seen that this must be linked to the geometric and legal factors affecting land. The reason is that the profitability of land or the land value is affected by a variety of factors such as the natural (soil quality, location, climate, topography, irrigation conditions,), the economic and social (level of urbanisation, street types, types of location and position, economic development in and around the area), the environmental (the degree of pollution in and around the area), special assets in wildlife or national preservation areas and even the impact of human beings. Land evaluation thus needs to rely on such information which will have already been registered and recorded as part of the information regarding the geometrical and legal status of the land.

#### *The use factor*

Another important factor that affects any valuation is the use of land because this decides its economic value. A change in land use will lead to a change in its market value, and possibly a change in the revenue arising from land tax. This is the fourth important pillar of a land information system. Land is used in many ways to serve the diversified demands of human beings: these include residences, construction of infrastructure for commercial and industrial activities, services, construction of public facilities (schools, hospitals, parks, etc.) and other public utilities (roads, sewage systems, gas etc). It is often very difficult for the land owners/land users themselves to determine a specific use of a land parcel/unit that they own as being in accordance with its nature; or, if a use is determined, this may be just a subjective decision arising from the perceived benefits. If the government does not control matters and lets land owners/user use land according to their own needs and as they see fit, certain land resources will not be exploited and used effectively, causing damage to the economy and all aspects of social life perhaps even the environment. To attain the maximum effective exploitation and best use of land and to ensure sustainable development, the government must exploit land use planning to direct the activities of land owners/users.

Accordingly, the government has to allocate permitted land use in a way that is specific and reasonable both in quantity, quality and location bearing in mind the socio-economic goals of the country as a whole and of each locality. It is a task for which both the central government and local authorities are responsible although there is a clear division of works and responsibilities in the implementation of new policies such as urbanization, improving conditions of local infrastructure, improving living conditions, resettlement, attracting investment to develop the economy, creating more jobs for workers, etc. All this requires a variety of activities, from collecting and handling information about land use needs in each sector; investigating and surveying the conditions of land and environmental factors in each area; determining guidelines

and policies for the development of the country and each locality in order to achieve a balance and allocate land use appropriately while still seeking the opinion of the people concerned. The result of all these activities may be a change in land use, including the division or amalgamation of defined land areas, which could lead to a change in the geometric characteristics of the land or in land use. This would have a major impact on the land/land use and land right markets because a change of land use (say from agricultural land to non-agricultural land for business and residential property) will lead to a change in land value, and following this change, land value is often greatly increased. This is a result that changes to the geometric attributes of land will generally not give rise to or only in an insignificant way.

Achieving good results will require the close collaboration of all public agencies involved in all phases of the planning process, from collecting information, making land use plans, seeking opinions and public approval of any plan, to publicly announcing and implementing land use plans through the legal procedures and legal institutions that are clearly and strictly stipulated. These include provisions on land appropriation and compensation for the owner/user and those affected by the plan and on complaints and how to resolve them.

It is noted that although land use planning is to direct the land use activity and cannot be formulated base on the will of each land user, it is still influenced by the common demand and will of the majority of the people. Land use planning must have social acceptability, namely it has to be accepted by many people. Despite in most cases, the government may use its public coercive power to guarantee for its planning implementation, the government cannot ignore opinions of the majority.

Therefore, besides the close collaboration of public agencies in the palnning process, it cannot help paying attention to a harmonious balance of the legal, economic and political relation among the three parties: central government, local government and the people, especially persons influenced by the planning. The implementation of land use planning will face difficulties or even have to be cancelled if its benefits are inappropriate to the people's demand and expectation. In this case, the coerciveness of the land use planning will be shaky.

The people's discontentment via opinions and petitions of several members of the National Assembly with the impetuous formulation of land use planning for golf ground project in many localities in Việt Nam is an example. Up to December 2008, there have been 166 golf ground projects with a total of 52.739 hectares in 41/63 provinces and cities directly under the central authority. Among them, within less than two years (from July 1<sup>st</sup>, 2006 to June 4<sup>th</sup>, 2008), there were 128 projects which were approved by local government. It is noted that to carry out these projects, 10.546 hectares of agricultural land, including about 3.000 hectare land for rice cultivation thereof, would be lost. Most of such projects mainly disguise the purpose of real estate business because the land planned for golf ground is only 16.850 hectares (about 31,95%) and the other (68,09%) for urban construction, tourist areas, eco-tourism areas and commercial center<sup>27</sup>.

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<sup>27</sup> The Report No.120/BTNMT-PC dated May 31, 2010 of the Ministry of Natural Resources and Environment on the result of answering the questions of the National Assembly members and the suggestions of electors in the 6<sup>th</sup> Congress of the XII National Assembly.

It is obvious that these plannings are inappropriate to benefits and expectations of the people. The reason is that up to now, there have been only about 5.000 golf players. Among them, about 2.000 persons can play golf frequently<sup>28</sup>. It is, really, a reasonless wastage as losing more than 50.000 hectares to serve the demand of 5.000 players (averagely, 10 hectares used for serving one person) in a poor agricultural country with large people, narrow land while thousands of household farmers would have to lose their cultivated land and no jobs, the environment would be destroyed, and the income for public budget from such a project has been unremarkable.

Due to the imbalance of benefits generating from land use planning for golf ground projects and the benefits for the people, the State and society, on the basis of the people's strongly discontented responses, the central government has to carry out the inspection of such plannings. As a result, a series of golf ground projects have been cancelled. The Prime Minister had to approve a separate plan for golf grounds in Việt Nam up to 2020 with a limit of not more than 89 golf grounds, including 19 golf grounds have been operating<sup>29</sup>.

Similarly, but facing escalating violence, the "Stuttgart 21" in Stuttgart city, Baden-Württemberg, German has been a controversial project. As an urban development and transport project, Stuttgart 21 aims to build an underground replacing the city's main train station, Stuttgart Hauptbahnhof. It was approved on July 19, 2007 with the investment budget from the Federal Government, the State of Baden-Württemberg and Deutsche Bahn, the German national railway company<sup>30</sup>.

On October 2007, public demonstrations against this project supported by the Green Party and environmental organizations were taken place, and a petition containing 67.000 signatures was sent to the government to ask for a local referendum. According to the public, implementation of this project is a quite waste when the government is on a tight budget. Instead of this, a renovation of the current train station, including construction of some new railways but respecting cultural and natural heritages, should be considered. However, it is not only decided by the Stuttgart government. It, therefore, has generated political wrangling among citizens, politicians, parties, state government and federal government. When waiting for decision of the Federal Parliament, public demonstrations have continued to be occurred under a escalating violence. On October 11, 2008, about 4.000 Stuttgart's citizens demonstrated against the project. There have been weekly demonstrations on Monday evenings since the fall of 2009. On September 30, 2010, under the police's suppression against protesters, there were more than 100 persons injured<sup>31</sup>. The wave of indignation from citizens has been increased. The biggest protest so far took place with an estimated 100.000 people taking part in the demonstration against the project<sup>32</sup>. Stuttgart has become an area of incessantly demonstrations.

It is obvious that the referendum for land use planning should be considered. Under the protest of the majority of people against the plan, although the government can use its power to suppress

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<sup>28</sup> Hoàng Vân, "Ồ ạt lập dự án sân golf: Cứ 10 ha đất phục vụ... 01 người chơi", Pháp Luật HCM city online, dated May 6<sup>th</sup>, 2009, [http://www.phapluattp.vn/news/chinh-tri/view.aspx?news\\_id=252552](http://www.phapluattp.vn/news/chinh-tri/view.aspx?news_id=252552). Retrieved [20101020 09:57].

<sup>29</sup> The Decision No.1946/QĐ-TTg dated November 26, 2009 of the Prime Minister on approving the Planning up to 2020 for golf ground in Việt Nam.

<sup>30</sup> Wikipedia, "Stuttgart 21", [http://en.wikipedia.org/wiki/Stuttgart\\_21](http://en.wikipedia.org/wiki/Stuttgart_21). Retrieved [20101020 09:58].

<sup>31</sup> David Gordon Smith and Josie Le Blond, "Germany shocked by "Disproportionate" Police action in Stuttgart", Spiegel online, dated October 1<sup>st</sup>, 2010, <http://www.spiegel.de/international/germany/0,1518,720735,00.html>. Retrieved [20101019 7:00].

<sup>32</sup> Derek Scally, "Protest threatens to derail Merkel's election plans", The Irish Times online, dated October 5<sup>th</sup>, 2010, <http://www.irishtimes.com/newspaper/world/2010/1005/1224280400563.html>. Retrieved [20101019 7:10].

protesters, it may only receive a converse result. Not only the land use planning is unable to be implemented, but also the public indignation and protestation against such a plan are increased.

Once a land use plan is established and approved, all land use must be conducted in accordance with it, so there are restrictions on what the land owner/user can do. Without the permission of the public authorities, land owners/users cannot intentionally change the use of their lands. Information about such restrictions on land use is not reflected in the information obtained from purely cadastral activities or the registration of land ownership though it is clearly linked to evaluation.

Thus, it can be seen that the geometric, legal, value and use characteristics of land must be the four key factors that need to be registered and recorded in any system of land registration. Due to the different nature of each factor, they could be under the jurisdiction of separate authorized agencies, and could even be regulated by different laws. The geometric identifiers of the land are determined through the cadastral activities performed by the land management agencies (cadastral authorities or the authorities regarding natural resources and the environment). Title registration and records of land ownership are enforced by land owners/users in the courts. Land valuation is mainly the concern of the tax agencies. And making land use plans is the responsibility of both central government and local authorities. In spite of this, all these parties must continually interact.

Information on the geometric factors of land (such as location, size, area and boundaries), and its legality (to whom does the ownership and other rights and interests in the land belong, are these rights lawful or not?), together with land use and restrictions on it (land use plans) will help to determine the profitability of a land area or parcel. Information on land value, conversely, supports the land use plan and helps the state in considering and calculating the results of any changes. At the same time, it also contributes to ensuring the implementation of any plan by determining appropriate compensation for those entitled to it. Land value information also affects land owners/users who seek to value their land areas/parcels when engaging in land transactions (sale, transfer, lease, mortgage) or exercising their land use rights.

On the legal side, any land owner/user would also like to know precisely the scope of their rights with respect to land that they possess. The government too would like this information so that it can guarantee rights in land and limit land disputes. The registration of land records and protects the rights of the land owner/user, but it also needs to be linked to other information that has already been stored so as, for example, clearly to define the geometrical scope of these rights, which information derives from cadastral activities. Moreover, it also links to the land use issue, allowing a clear statement of permitted land use and any limitations (the right to go through adjacent real estate, the right to use public utilities, limiting construction on land, etc.). With all this, owners/users are in a position where they can decide on the most effective exploitation and use of their land. In addition, the connection between the legal factor and land use cannot be ignored. Whoever owns land or the right to use it

needs to be able to determine the value of their land so as to avoid loss when participating in land transactions, and calculate any amount that must be paid to the government during its exploitation and use. This information is often the result of the activity of land valuation.

When a land use plan comes into force, it may lead to changes in the geometrical characteristics of the land because of the subdivision and/or amalgamation of land parcels/units or to changes to rights and interests in land, including a change of land owners/users (if there is an acquisition). Such changes may increase or decrease the value of land. However, to be able to set up and implement land use plans, the authorities must have access to cadastral activities and cadastral data in the area and to details of current land use and other social data so that they can allocate land suitably, expand the space available for some activity or increase the efficiency of land use. At the same time, they need information about land prices and ownership of land so that they can plan any compensation they will have to pay if they carry out the land use plan.

Thus, interaction between the four factors is essential. Information and/or activities defining one factor will be the basis for implementing and supporting the activities of the three others. Land use plans depend on cadastral activities identifying the geometric characteristics of the land in question and information on the value and ownership of land. Land value is determined by considering aspects of its geometrical characteristics (whether the location is convenient or not, the size of land area, etc), legal characteristics (whether the ownership is legal or not, the scope of rights and benefits in land, etc) and land use (which use will create the best result and how will the land value change after changing the purpose of land use, etc. ..), not to forget any limits on ownership/land use (such as easements, the right to use public utilities, etc. ). All these elements are needed to create a system of land information that fully meets the land information needs of the state, local authorities, land owners/users and other interested parties. Because of this link, many countries nowadays intend to build a unified system of land registration and have been gradually establishing links between all these land-related elements and activities, the whole being placed under the responsibility of a unified authority in order to facilitate the public management, simplify registration procedures and contribute to administrative reforms.

For example, in Sweden, the management of land registration was handed over from the district courts to the National Land Survey in charge of cadastral activities. In many European countries, the system of land registration initially paid most attention to land surveys and other cadastral activities to determine land value for tax purposes and this was only later linked to ownership registration. In Australia, there is a close link between the registration of ownership and land valuation<sup>33</sup>. In Việt Nam,

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<sup>33</sup> Lisa Ting and Ian P. Williamson, "Cadastral Trends – A Synthesis", *The Australian Surveyor*, Vol. 4, No. 1, 46–54 (1999), <http://www.geom.unimelb.edu.au/research/publications/IPW/CadastralTrendsSynthesis.html>. Retrieved [20101020 10:06].

the Agency of Natural Resources and Environment responsible for the land registration system is also assigned to take over the land evaluation duty in order to create conveniences for the unification and use of land information.

### **2.3. The benefits of a system of land registration**

How to set up a system of land registration is a matter for each country to decide on its own and depends upon how it wants to resolve land issues and encourage sustainable development. The choice depends, however, on its economic, cultural, social and historical conditions and, to some extent, on the attitudes of its people. Systems of land registration will differ from country to country although each may learn from the other, and there is no system which can be regarded as the best<sup>34</sup>. All share the same purpose though, namely that the system will bring benefits to the government, society and the people.

Evaluating the benefits that can be obtained from a system of land registration, UN-ECE asserted that a modern land registration system is not only a matter of collecting general data about land, but also one of providing specific information on each land parcel which can then serve the needs of individuals as well as society as a whole. And the benefits are linked to some or all the following: real property management; ease of conveyances; credit security; development control; emergency planning and management; environmental impact assessments; aiding housing transactions and land market analysis; record of land and property ownership; land and property taxation; land reform; monitoring statistical data; physical planning; property portfolio management; public communication; site location; site management and protection. Although land records are expensive to compile and to keep up to date, a good land administration system should produce benefits, many of which cannot in practice be quantified in cash terms<sup>35</sup>.

In a study of the situation in Nigeria, the authors enumerate the benefits of a land registration system in order to justify supporting its construction. According to them, a system of land registration is necessary for defining, recording and disseminating information about ownership, values and the use of land. It contributes to the effectiveness of land management (helping the government increase its ability actually to manage land policy; adjusting the real estate and land market; protecting the rights of land owners/users and domestic and foreign investors, bringing a large source of revenue into the budget, etc...), and reduces poverty<sup>36</sup>.

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<sup>34</sup> Paul van der Molen, "Benchmarking the Cadastre in the Netherlands – Some General Considerations and the Case", in "Benchmarking Cadastral System", compiled and edited by Daniel Steudler and Jürg Kaufmann, FIG-Commission 7 – Cadastre and Land Management, Working Group 1998–2002 – Reforming the Cadastre, April 2002, published by International Federation of Surveyors FIG, Denmark, p. 44, <http://www.fig.net/pub/compub/FIG2002-BenchmarkingCadastralSystems.pdf>. Retrieved [20101020 10:07].

<sup>35</sup> Economic Commission for Europe, *ibid.* supra note 12, p. 5.

<sup>36</sup> Bob Arnot and John Meadows, "Reforming the Land Registration Process in Nigeria", Promoting Land Administration and Good Governance, 5th FIG Regional Conference, Accra, Ghana, March 8–11, 2006, p. 3, [http://www.fig.net/pub/accra/papers/ts14/ts14\\_02\\_arnot\\_meadows.pdf](http://www.fig.net/pub/accra/papers/ts14/ts14_02_arnot_meadows.pdf). Retrieved [20101020 10:09].

In a similar study concerning the Netherlands, five benefits will be derived from the system, which are: (i) improving land tenure security; (ii) regulating land markets; (iii) implementing urban and rural land use planning, development and maintenance; (iv) providing a base for land taxation; (v) management of environmental resources<sup>37</sup>.

Thus, depending on the purpose of the system of land registration, and depending also on the criteria used to study it, its benefits can be determined. There are benefits that can be identified clearly, but there are others that may not be measurable. There are benefits having a direct impact on individuals relating to each case and each land area/parcel, but there are also benefits which indirectly influence society over a long period. In this thesis, the benefits of a land registration system include benefits to individual beneficiaries, including land owners/users as well as the state and society as a whole.

### ***2.3.1. For the land owner/user and related subjects***

The first and foremost benefit is the protection of ownership and other rights to land of the land owner/user. The combination of data on the geometric characteristics of land and on land ownership provides an accurate and clear description of the status of any land parcel that helps the owner/user identify their land and their rights and clearly defines their position when involved in a transaction relating to the land. If the registered data show ownership in just one person, this person can dispose of the ownership/right to use it and the other benefits attached to it. These rights will be guaranteed by the government in case of any violation.

Land registration also provides a suitable protection for all those connected in any way to the land parcel. In other words, beside land ownership, any other rights that exist on a certain area are also recorded and protected. The registered land owner/user may have certain rights to the use of adjacent real property (for pathways; for the use of public utilities such as electricity, water, sewage); conversely, their registered rights to land parcels/units may also be limited by the rights of the other owners/users of adjacent land parcels/units. Their rights may also be restricted by the rights of communities as whole such as limitations on land use, restrictions on construction on the land and the like.

In the conflict between the increased demand for land arising from population growth, its limited supply and the diversity of its possible uses and the many different types of rights that can co-exist, the clear identification of the location, boundaries and ownership of a land parcel is a very important matter which the system of land registration can provide thus protecting land ownership and minimizing land disputes. Once their rights and their scope and extent are clearly determined, land owners/users will feel more secure in engaging in the exploitation of land; concurrently they will, to some extent, respect the rights of other owners and other interests of the community.

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<sup>37</sup> Paul van der Molen, *ibid.* supra note 34.

Moreover, land and assets attached to land are considered as properties with higher value than other assets. When land ownership or land use right is guaranteed and has enough legal conditions, the owner or users can bring it into transaction or use for further investment. On that basis, a huge capital is generated for not only the owner itself but also the society to improve economic development.

### ***2.3.2. For the State***

Any state also needs to have land information that is reliable and constantly updated. First of all, as well as resolving the issue of who owns the land (the state itself being possibly one of the owners of land or indeed the sole owner), land is also a valuable natural resource which the government has to manage and maintain. Data provided by the land registration system about the geographical and geometric characteristics of the land and the prevailing land ownership/right to use structure has an important influence on the census, the provision of public services (such as health, education, electricity, water, etc); on promoting the development of agriculture; and the management of urban development and environmental protection. Through its support for and guarantee of the market in land and other real property rights, the system of land registration contributes to promoting the activities and economic policies that the government has implemented, and increasing the contribution to the public budget by way of taxation (land tax and real estate tax, other types of tax revenue and related fees), thereby reducing unemployment and poverty. Clear information and a guarantee of registered ownership/land use rights along with convenient access to information in the system of land registration also appeals to both domestic and foreign investors who may stimulate economic development both locally and nationwide. All this helps the government to achieve the goal of the sustainable development of the economy.

Information from the land registration system supports also planning for land use in both urban and rural areas. For developing countries where the demand for industrialization and modernization is great and where urbanization and the consequent heavy pressure on infrastructure constantly increases how to distribute and use land effectively must be resolved urgently. For making land use plans, it is not lack of information about the characteristics of the land and the status of land use. And for implementing land use plans; changing land use; allotting and re-allotting, subdividing and consolidating defined land areas as well as land acquisition and compensation, specific and accurate information on existing land rights and land values are crucial.

Indeed, many land use plans which have been set up in developing countries have not and cannot be implemented. They have to be adjusted or changed because they are not based on solid land information, or because the available land information is incomplete due to shortcomings of the system of land registration. This shows that, if the government wants to manage land in accordance with its land use plans and both direct positive activities while restricting those which have a bad

impact on the environment, it must know the current situation of the land which it can always do with a good recording system. This is the practical benefit that a system of land registration can give to the government's land management.

In addition, the system of land registration also provides important benefits in supporting and securing revenue source for the public budget. Information from the system sets up an effective and just grounding for the evaluation and collection of taxes related to land and real properties attached to land (not to forget also the fees for services involved in recording and supplying land information). It is unlikely that the government could collect taxes, if land value cannot be determined, or more specifically, the land owner/user or the land use cannot be identified. This is a problem with which almost all countries are concerned, even from very early dates, because it is one of the most important sources of revenue for the public budget.

In about 3000 BC, the earliest records of land ownership were compiled and kept in the Royal Registry of Ancient Egypt. While in China in about 700 AD, a taxation system was established that was based on crop yields and land survey records. In 300 AD, the Romans carried out a survey to create a register of what lands they controlled with a view to using it as a basis for fiscal records<sup>38</sup>.

In the present time, in Netherlands, the land registration system supplies land information for local authorities to allow them to value land and collect taxes. Tax revenue based on landownership and land use is about \$7000 million. Compared with the costs of the Cadastre (\$200 million) and the municipal costs for valuation and levying (\$100 million) this is not a bad return on investment<sup>39</sup>.

In Sweden, the tax revenue from real estate in 2006 was 25 billion SEK<sup>40</sup>, and amounted to 26 billion SEK in 2007<sup>41</sup>. The National Land Survey responsible for the land registration system, through the supply of its services, gained a total revenue reaching 1.784 million SEK in 2007, amounting to 1.870 million SEK in 2008<sup>42</sup>, and continuing to increase to 2.055,9 million SEK in 2009<sup>43</sup>.

### **2.3.3. For society**

Land is a form of property with a potentially high economic value so when land ownership and other rights and benefits relating to land are not well-defined, conflicts arise that often cannot be solved by the parties themselves. The settlement of land disputes, whatever the results, also costs both the government and the parties taking part time and money. If a land dispute is not quickly resolved, the outcome is not just a breakdown of relationship between the disputing parties, but may also cause

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<sup>38</sup> Lisa Ting and Ian P. Williamson, *ibid.* supra note 33.

<sup>39</sup> Paul van der Molen, *ibid.* supra note 34, pp. 45–46.

<sup>40</sup> The Swedish Tax Agency, "Taxes in Sweden 2008", An English Summary of Tax Statistical Yearbook of Sweden, <http://www.skatteverket.se/download/18.233f91f71260075abe8800097301/10409.pdf>. Retrieved [20101020 10:11].

<sup>41</sup> The Swedish Tax Agency, "Taxes in Sweden 2009", An English Summary of Tax Statistical Yearbook of Sweden, <http://www.skatteverket.se/download/18.233f91f71260075abe8800021511/10410.pdf>. Retrieved [20101020 10:12].

<sup>42</sup> The National Land Survey, "The 2008 Annual Report", [http://www.lantmateriet.se/upload/filer/om\\_lantmateriet/arsredovisning\\_2008\\_EN.pdf](http://www.lantmateriet.se/upload/filer/om_lantmateriet/arsredovisning_2008_EN.pdf). Retrieved [20101020 10:14].

<sup>43</sup> The National Land Survey, "The 2009 Annual Report", [http://www.lantmateriet.se/upload/filer/om\\_lantmateriet/arsredovisning\\_2009\\_EN.pdf#search='report'](http://www.lantmateriet.se/upload/filer/om_lantmateriet/arsredovisning_2009_EN.pdf#search='report'). Retrieved [20101020 10:15].

disorder in social life due to the prevalence of interminable complaints and disputes, not to mention the waste of land resources which may not be being used while the dispute rages. When information about the rights to land and the scope of these rights has been registered and recorded and when the system of land registration is reliable, the competent agencies and courts can easily resolve land disputes. But an even more important result is that it tends to prevent disputes occurring in the first place as owners are able to recognize their rights, their range and the limits to their power of exploitation and will thus use their land in a way which respects the rights of others. All this ensures the stability of society.

Once the ownership of land is recorded and guaranteed, besides limiting land disputes and stabilizing society, the development of real estate market is promoted. An effective system of land registration provides a guarantee of ownership and also reduces both time taken and costs thus enabling land transactions to take place more safely and quickly. In addition, this guarantee of land ownership also stimulates the development of credit markets. Land owners/users can mortgage their land for loans so as to find capital for business activities. Creditors can be completely assured of the safety of their loans when the land parcel or other mortgaged real estate and the relevant mortgages have been registered and guaranteed by state authorities. Looking at the matter more broadly, the development of the land/real estate market and capital markets will then encourage the development of the labor market and the construction market and so on, thereby creating more jobs for laborers, resolving unemployment, promoting economic development and reducing poverty.

In addition, the system of land registration also helps to ensure that economic development is in a sustainable relationship with environmental protection. Land data information can be used as an important tool in assessing the impact of development on the environment and in monitoring changes to environmental conditions. The government can make appropriate policies (and here one of the most effective tools is land use plans) to affect the use of land and restrict or prevent activities causing environmental pollution.

#### **2.4. The requirements of a system of land registration**

In the light of the above, building an effective system of land registration is something almost all countries can expect to do or want to do. And the basic requirements of and key criteria for the construction of a system of land registration can now be listed.

In a book concerning land law and registration, the author listed seven criteria he felt were both the state and the parties taking part in them: (i) security; (ii) simplicity; (iii) accuracy; (iv) expedition; (v) cheapness; (vi) suitability to its circumstances; and (vii) completeness of the records<sup>44</sup>.

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<sup>44</sup> S. Rowton Simpson, "Land Law and Registration", CBE, MA (Cantab), Cambridge University Press, 1976, p. 17, ISBN 0 521 20628 6.

After evaluating the effectiveness of land registration systems, FIG also listed seven criteria, namely: (i) security; (ii) clarity and simplicity; (iii) timeliness; (iv) fairness; (v) accessibility; (vi) low cost and (vii) sustainability<sup>45</sup>.

Depending on its specific conditions and circumstances, a country may have further specific requirements but, in general, a system of land registration should always meet the following criteria:

#### ***2.4.1. Accuracy and security***

Accuracy and security are essential requirements for any system of land registration. Accuracy requires that all registration activities be conducted in accordance with procedures in order to record information on the true owners and their true rights and obligations with a view to establishing complete archives. Accuracy depends heavily on compliance with the technical standards used to identify information. Besides the information on ownership provided by the land owner/user, information about the geometric characteristics of the land parcel is no less important.

For example, information about the land in question is the prerequisite for determining the extent and degree of rights and obligations relating to it. It may be derived from a survey, direct measurement in the field, or from the map, using in all cases the tools and methods appropriate for that purpose. The land parcel will also first need to be positioned by the use of relevant coordinates. The dimensions of a land parcel are not mere numbers but also have a role in increasing the accuracy of the determination of the area of the land parcel, its boundaries and its ownership. All these items of data have a close connection to each other, and all depend on the capacity and professional level of the surveyors, their methods and their tools of survey, including the expense allowed and incurred.

The level of accuracy has an important influence on the security given by a land registration system. Does it not only protect the rights of the land owner/user, but also clearly define the scope and the level of these rights? If so, it will help everyone who participates in land transactions (e.g. purchase, transfer, lease or mortgage etc) to have confidence in what they are doing. The rights of the owners/users of adjacent land/real estate must also be determined and clearly recorded.

A security requirement must also be included in the system of land registration itself. It will be necessary to save data with at least two copies in order to be able to recover lost information (whether due to fire, damage or lost records or documents). Moreover, because registered information will be available publicly and people can easily access it, the original information must be managed in a secure way. People must not be able to change it or cause any damage to the data source. This requirement is set up to guarantee the stability of the system of land registration.

Accuracy and security are the two requirements that the Vietnamese land registration system has not met yet. Due to historical conditions, changes in land use

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<sup>45</sup> International Federation of Surveyors, *ibid.* supra note 13.

and land information have not registered and updated consecutively<sup>46</sup>. It is, accordingly, difficult to determine the origin of land use. Therefore, in many cases, even land users registered and were granted land use right certificates, when land disputes occurs in fact, their land use right are not guaranteed.

#### ***2.4.2. Clarity and simplicity***

Clarity and simplicity are requirements that are difficult to meet because, as seen above, the system of land registration covers four basic components including the geometry, legality, value and use of land. They are under the control of different authorities with diverse methods, tools and facilities. There are some technical activities that require specialist skills, but others are legal in nature. Some are mandatory activities that must be implemented by the government, but others are optional ones implemented by the land owner/user. However, all these activities are interrelated. As a result, they contribute to give a complete picture. Therefore, clarity and simplicity may not be required for each activity, but are a prerequisite for the way the results of each activity are shown and in the construction of the system of land registration as a whole. The registration forms must be unified. The registration procedure must not be too complicated. Registration time should be fast and the working style of officials has to be professional and dedicated so as to encourage and be convenient for service users. In addition, registered information must be recorded, made and expressed in a way that is understandable, accessible and easy to use by all who need to use it.

Clarity and simplicity is not only needed if the operation of the system is to be effective, but also if it is to be accepted and used. It may also allow for cost reduction.

#### ***2.4.3. Timeliness***

All cases of using land and all changes in land use must be recorded in an accurate and timely manner as soon as the use starts or the change in land use happens. This requires the government and its agencies actively to participate in many related activities such as: survey and measurement, valuation of land/real estate, completion of land use plans to control the use of land and any fluctuations in land use. Each area or land parcel must be recorded in cadastral dossiers and corresponding types of maps must be made to correctly reflect the land use situation. Land data registered in the system must be complete with regard to the local area in general and each land parcel in particular. This is a requirement which may be hard to meet, depending on the conditions and historical circumstances of each country.

For example, Viet Nam was unified only about 30 years ago after long years of war, so there were delays in preparing the cadastral dossiers and maps to cover all the land areas and land parcels in the country. The government temporarily applied several different methods of survey such as drawing cadastral maps which were based on correcting and editing the cadastral coordinates of the old

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<sup>46</sup> See infra Chapter 4.

cadastral maps<sup>47</sup>, measuring and drawing simple cadastral maps to cover overall land use, or direct surveying in the field. Because there were not enough cadastral dossiers, many land areas have not been registered yet and many changes in land use have not been recorded in a timely manner, causing difficulties in the government's land management. It shows that, to date, the Vietnamese system of land registration has not met the timeliness and related completeness requirements and the system needs to be improved in these regards.

Once the requirement of timeliness has been met, and full information on land use and any changes in the use of land are recorded and regularly updated, the continuing accuracy of the system of land registration is to a large extent guaranteed. Confidence in the system will be strengthened, and the effectiveness of public land management will be improved.

#### ***2.4.4. Fairness and accessibility***

The requirements of fairness and accessibility relate to the use of information derived from the system of land registration, because this information has a great influence on the rights of the land owner/user on land value, on the stability of the real estate market and indeed on public management, especially regarding information related to land use plans. In developing countries such as Viet Nam, industrialization and modernization are being implemented very hastily and the speed of urbanization is very great. Making, changing or adjusting land use plans and changing land uses happen frequently, so those who have access to accurate land information, may have opportunities for speculation. This has a negative impact on economic development, social justice and the faith of the people in the State. As a part of the system of land management, the land registration system should be independent, with its own regulations and operations; its results must be disseminated publicly and fairly so that everyone who needs to can access information quickly.

The requirements of fairness and accessibility are linked to the requirement of clarity and simplicity. In order to establish a land registration system which can meet all these requirements, many countries have been focusing on computerizing their registration systems which might both overcome the delays inherent in slow procedures and human processing, and create a convenient and simple way of registering, accessing and using information.

#### ***2.4.5. Low cost or cheapness***

The mentioned costs include the cost that the government invests in the land registration system and the fee for which the users have to pay when using services from the system. Both the government and the users desire to spend a low cost on the land registration system. However, for the government as the builder of this system, it is a difficult matter.

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<sup>47</sup> These old cadastral maps were made according to the Directive No. 299/TTg of the Prime Minister dated January 10, 1980. Because they were established such a long time ago, most of them could not be adapted to the changes in current land use.

Whether or not the system of land registration can be built, operated and maintained at an appropriate cost level that can hopefully be reduced and/or recovered from its users. This is a problem that many governments face. Although aware of the important role of a land registration system, as there are many more essential demands and activities that the state must engage in, the cost of building and operating a land registration system is not normally a highest priority issue, especially for countries which are suffering from adverse circumstances, such as low levels of development, economic crises, inflation and poverty.

Moreover, it is not easy to make a comparison between the measurable investment costs for the land registration system with future benefits which is undetermined in investing time from the system. Certainly, investment for the land registration system is a long-term process. Besides the initial cost for the system establishment, it requires a frequent and permanent cost for the system operation and maintenance of the register. Benefits, conversely, cannot be gained immediately. Even one is not sure if the benefits can be achieved or not.

However, one should consider that if investment in a land registration system is expensive, but the cost which the government has to spend on dealing with consequences arising from lacking of such a system, for example ownership disputes, delayed or lost investment opportunities, shortage of capital for economic development and social unstableness, may be more expensive. When establishing the land registration system, one can see that the government's costs will be reduced gradually on the developing process of the system. Furthermore, the results of land registration are important resources of information which many persons want to use. Through information services, the system can earn a source of revenue for both of its maintenance and operation and the public budget. Not to mention that it supports land valuation and taxation. Establishment of this system, therefore, is still a necessary and good choice. One of important issues to which the government should pay attention is how to invest and use investment costs effectively and reasonably.

The low cost requirement does not mean that the government pushes all the burden of the expenses onto the land owner/user by increasing registration fees, or the fees for using the information. It can also be satisfied by establishing a system of land registration that is simple, accurate, clear and easy to access so that it can both meet the needs of the state and the land owner/user and create revenue by its activities. When land information is accessed very frequently, even if the fees are not high, they still bring in significant revenue.

Satisfying this requirement does not mean that the application of new information technology is excluded as long as its application is appropriate and efficient. Many countries are currently implementing this. Changing from manual registration and data management in paper form to electronic management where information is digitalized and recorded in computerization systems takes a long time and involves significant use of manpower and costs even though it will simplify

storage, access, and administrative procedures, streamlines the use of manpower and time, ensure open and fair access and above all lower costs. Many countries, such as Sweden, have enjoyed favourable results once the change has been effected steady development.

#### ***2.4.6. Sustainability***

Sustainability is also a requirement for the operation of any land registration system. It requires establishing suitable controls over the apparatus, manpower and the procedures as well as the technology used in it. The time for the registration process, for the completion of cadastral dossiers and for updating land information must all be clearly stipulated. The structure of the land registration organization must be organized scientifically. Human resources should be professionally trained up to the appropriate level; and the technologies, facilities and equipments used should correspond to the scale and extent of the system. All these factors contribute to ensure the stable operation of the system of land registration.

The Vietnamese land registration system, to some extent, has not satisfied this requirement. There has not been still steady guarantee for unification in registration of land and assets attached to land. The authority responsible for land registration is organized unstably with frequent changes in organization, functions and duties. Thus, it does not have enough necessary conditions to focus on its development<sup>48</sup>.

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<sup>48</sup> See *infra* Chapter 4.

## SUMMARY

Land always plays an important role in all fields of social life, from the economy, and politics, to culture. It is one of the most precious natural resources and the highest valuable property. Good management of land and a sound system of land information are essential conditions for fostering economic development. To deal with this, an effective land registration system needs to be set up.

Depending on the conditions and situations in each country, a land registration system can be designed in one of several forms, but mainly there are two very popular types, namely “land registration” and “cadastre”. Land registration tries to define the rights and benefit relating to land and will include two types of registration which can be applied independently or linked to each other called: deed registration and title registration. The cadastre focuses on the geometric characteristics of real property units known as land parcels/units. The purpose of any kind of land registration is the protection of the right to own or use land and engage in other real estate transactions. Land registration is usually executed voluntarily by the land owner/user or other concerned parties. The primary purpose of the cadastre is setting up a system of land information to serve the tax collection purposes and only after that it is used in defining the legality of landholdings. This activity is implemented by the public authorities.

If land registration and the cadastre are combined in a land registration system, it is very easy to have a complete and effective land information system which is what most of the countries desire. In such a system, the key factors of any land unit will be covered including: (i) the geometry, relating to its physical features and border; (ii) the legality which specifies the rights and legal benefits attaching to it; (iii) the value which shows the profitability of the land; and (iv) the use which shows the way in which land is being exploited.

The four above factors have an interactive relationship with each other and are indispensable to any effective land registration system. If a land registration system contains them, the benefits generated from the system will be immeasurable. For land owners/users and other concerned parties, their rights to and interests in land will be guaranteed. They can use them to generate capital for investment and improvement of their economic condition. For the government, this system can supply important information allowing it to set up development policies and serve other management activities such as land use planning, urban development, environmental protection and control of the development of the real estate market. In addition, the system can support the public taxation system and, incidentally yield a high income by way of its information services. For society, a clear system of land information will limit disputes, stabilize society and guarantee the transparency and speed up the development of the real estate market. This will lead to the development of the economy and a decrease in poverty.

In order to get these benefits, when establishing a land registration system, each country needs to ensure that its system can, in principle, meet the requirements of accuracy and security, clarity and simplicity, timeliness, fairness and accessibility, low cost and sustainability. The last things which may help decide the success or failure each country will enjoy when establishing such a system are a good knowledge and understanding of its current conditions and situations, and research into the experiences of other countries.

## **CHAPTER 3**

### **THE SYSTEM OF LAND REGISTRATION IN SWEDEN**

#### **– RESEARCH AND EVALUATION –**

Sweden is a constitutional monarchy in northern Europe with an area of approximately 450,000 km<sup>2</sup> and a population of approximately 9 million people. Population density is low: approximately 22 persons/km<sup>2</sup> and about 80% of the population lives in urban areas<sup>49</sup>. Sweden is a unitary state with one central government and parliament. In the state apparatus, the king has no political power.

During the two world wars, Sweden maintained a neutral position, providing both belligerent parties with steel, ball bearings, wood pulp and matches. With its industry thus intact, Sweden continued to support the European countries as they sought to overcome the destruction and rebuild in the decades after the war. As a result, the Swedish economy developed very strongly during the 50s and 60s. This prosperity allowed Sweden to apply social welfare policies, thus creating one of the main characteristics of modern Sweden, namely a strong welfare state<sup>50</sup>.

For administrative purposes, the country is divided into 21 counties and 280 municipalities. The County is the administrative and political unit at the regional level. In each county, there is a county administrative board appointed by the Government, which is in charge of implementing the combination of management activities with political objectives at the local level. There is also a directly elected county council which has the right to collect taxes and is responsible mainly for health care. In addition, a number of public agencies which manage the fields of security, labor and social insurance, among others<sup>51</sup> are established at the county level.

Administrative units below the county level are the municipalities, which have a common form, and are responsible for matters of social welfare and land use planning.

Under the Swedish Land Code (1970:994), land is divided into land/property units. There are approximately 3,2 million units registered with a total value of approximately 3,600 billion Swedish kronor<sup>52</sup>. Each property unit may include one or more land parcels (including water parcels). All the land parcels (about 8 million) have been surveyed and registered. The concept of real estate is thus understood as land, which may be land units as such or a combination of a land unit with assets

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<sup>49</sup> Cadastral Template, <http://www.cadastraltemplate.org/countrydata/se.htm>. Retrieved [20101021 20:39].

<sup>50</sup> Wikipedia, "Industrialization of Sweden", [http://en.wikipedia.org/wiki/Industrialization\\_of\\_Sweden](http://en.wikipedia.org/wiki/Industrialization_of_Sweden), retrieved [20101021 20:43]; and Silvia Rossinelli, "The Swedish Cadastral System", ETH Zurich, Cadastral System, WS 2006/07, <http://www.geo21.ch/ethz/2006-07/essays/E1-Schweden.pdf>, retrieved [20101021 20:45].

<sup>51</sup> Cadastral Template, *ibid.* supra note 49.

<sup>52</sup> The National Land Survey, "About property", [http://www.lantmateriet.se/templates/LMV\\_Page.aspx?id=2694](http://www.lantmateriet.se/templates/LMV_Page.aspx?id=2694). Retrieved [20101021 20:48].

attached to the land (such as buildings, utilities, fences and other facilities constructed within the property unit, standing trees and other vegetation for permanent use) that is delimited either horizontally or both horizontally and vertically<sup>53</sup>.

With the aim of promoting and controlling sustainable and efficient land use as well as managing and providing full information on the land for the protection of land owners, land use planning, land taxation, environmental control and business development<sup>54</sup>, a land registration system has long been established in Sweden. It is regulated by many legal provisions and processes such as the Land Code (1970:994), the Real Property Formation Act (1970:988), the Real Property Register Ordinance (1974:1059), the Land Register Act (1973:98) and the provisions on cadastral survey processes. Although the current Land Code (1970:994) and Real Property Formation Act (1970:998) was promulgated in 1970s, its structure and content are still in accordance with the needs of modern society (only some of its articles needed to be amended and supplemented), and set out the basic legal guidelines for the activities of the cadastral surveyors. Together with the Planning and Building Act (1987:10) and the Environment Code (1998:808), they are the legal tools that the Government needs to fulfil its land policies effectively. Although the Swedish land registration system is quite different to other systems around the world, it is regarded as a well functioning, straightforward, efficient and secure system for all parties concerned. Based on this system, the Swedish Government has achieved much in its effective management of the land.

So, while there are many differences in the land ownership systems of Sweden and Việt Nam, it would be of interest to review the Swedish experience in organizing and managing the activities of the authorities responsible for land registration, especially in registration activities as such and the establishment of a land information system. On the basis of Swedish successes, some useful lessons can be found and chosen for improving the system of land registration agencies and the registering of land in Việt Nam.

### **3.1. Outline of the system of land registration in Sweden**

#### ***3.1.1. The process of setting up the system of land registration***

The modern cadastre has deep roots in Sweden. It rests on old traditions and rules dating from the 13th century, the time of the oldest written codes. The laws in those days viewed land as an asset belonging to a family rather than an individual, this with the aim of preventing people from buying and selling land. During the 15th and 16th centuries, Sweden became a centralized state that needed information about land for tax purposes. Real property needed to be registered because the number of sales and mortgages increased and needed to be recorded in written form. As a result, the

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<sup>53</sup> Stipulated by Section 1 and 1a Chapter 1, Section 1 Chapter 2 of the Land Code (1970:994).

<sup>54</sup> Cadastral Template, *ibid.* supra note 49.

first cadastral system was created in the 16th century<sup>55</sup>. It was based on cadastral books established by the king for taxation purposes from 1530 onwards. In those books, real property was registered, recorded and listed as a property unit on a village by village basis and given a number. This numbering system is still used for the designation of real property<sup>56</sup>. Land titles have also been registered since this time. Land registration quickly became a part of the procedures tied to real estate purchases and mortgages<sup>57</sup>. The registered and recorded information consisted of an evaluation for tax purposes and the name of the land owner. No property maps were included<sup>58</sup>.

To further improve the system of land taxation and to make it more just and equitable by way of a survey and evaluation of each land unit, the National Land Survey was established in 1628 as a governmental organization with the task of surveying and producing maps of the whole of Sweden<sup>59</sup>. The initial duties of this organization were to make large scale maps of villages and cities for planning purposes and for the determination of the national boundaries<sup>60</sup>. In addition, there was a demand for maps on smaller scales to allow for the identification of land owners, the size of land area and land use purpose for land taxation. The making of small scale cadastral maps was implemented throughout the 17th century and the early 18th century. Topographical maps, land-use maps of counties and parishes, maps of road networks, rivers and lakes were also created<sup>61</sup>. The cadastral maps, which showed all real property units or land parcels in each village, were eventually completed. They complemented the cadastral books which had long helped the government in its management of the land.

In the early years of the 20th century, all these data were used to set up the official cadastre that surveyed the land units/parcels in each parish and led to a clear identification of land area, land use purpose, land origin including any subdivisions or amalgamations, and other reference information relating to transactions together with

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<sup>55</sup> Ulf Jensen, "Computerized Registration of Real Estate in Sweden", in the book "Land Law in Action", a collection of contributions by participants in the seminar on the theme Land Reform including Land Legislation and Land Registration in Stockholm on 16–17 June 1996, published by The Ministry for Foreign Affairs and The Royal Institute of Technology Stockholm, ISBN 91-7496-098-9, p. 60.

<sup>56</sup> Cadastral Template, *ibid.* supra note 49.

<sup>57</sup> Ulf Jensen, *ibid.* supra note 55.

<sup>58</sup> Gerhard Larsson, "Property and Land Information System", in the book "Land Law in Action", supra note 55, p. 70.

<sup>59</sup> Stig Jonsson, "Building integrated Land Information Systems and Development of NSDI" – Integrating Generations FIG Working Week 2008, Stockholm, Sweden 14–19 June 2008, [https://www.fig.net/pub/fig2008/papers/ps03/ps03\\_03\\_jonsson\\_3101.pdf](https://www.fig.net/pub/fig2008/papers/ps03/ps03_03_jonsson_3101.pdf), retrieved [20101021 20:55]; and the National Land Survey, "Introduction to Historical maps", [http://www.lantmateriet.se/templates/LMV\\_Page.aspx?id=12505](http://www.lantmateriet.se/templates/LMV_Page.aspx?id=12505), retrieved [20101021 20:57]. On April 4, 1628, King Gustav II Adolf appointed Anders Bure, a mathematician and cartographer, as its first head to establish a state agency with the task of employing and educating staff and creating a systematic survey and map of the entire country.

<sup>60</sup> Kristin Karlsson, "A future legal coordinated cadastre for Sweden", International Symposium and Exhibition on Geoinformation 2005, Penang, Malaysia, 27–29 September 2005, <http://lup.lub.lu.se/luur/download?func=downloadFile&recordId=1027737&fileId=1027748>, retrieved [20101021 20:59]; and Silvia Rossinelli, *ibid.* supra note 50.

<sup>61</sup> Stig Jonsson, *ibid.* supra note 59.

maps of the land units<sup>62</sup>. The data thus recorded by the National Land Survey provided an identification and description of the geometric characteristics and value of the land. Today, the original maps and cadastral books containing this information relating to the land are stored in the National Land Survey and can easily be searched over the Internet.

From the start of the process in the 17th century, in addition to recording information about real estate and land, the original cadastral books were also used to record details about the population such as birth, death and place of residence. A first royal decree regarding population registration in church records came in 1608. Another decree promulgated in 1631 required that the names of those born and died be recorded in church books. Population data that is basically complete is available from the 18th century onwards. This kind of registration has been maintained and improved. In 1947, the assignment of a personal identity number was introduced and implemented by the Swedish Tax Agency as part of the population registration system. Accordingly, all persons registered in Sweden will be assigned a personal identity number that does not change throughout their life, whether they stay in Sweden or not<sup>63</sup>.

The personal identity number consists of 10 digits. The first six digits correspond to the date, month and year of birth in the order YYMMDD. They are followed by a hyphen or a plus sign (used for persons over 100 years old). The seventh through ninth numbers compose a serial number with the ninth being odd for a male and even for a female. The last digit (the tenth) is computed from the first nine digits according to a defined checksum algorithm. The system of personal identity number with these ten digits was introduced in 1967 when the issue of computerization first emerged and was replaced by the current system in 1990<sup>64</sup>.

Today, the information recorded in the population registration system covers not only birth, death and residential address, but also the person's name, personal identity number, nationality, family status, real properties at the place of registration, and even their foreign address (if any).

Information on all persons who reside in Sweden and associated with a real property unit can thus be continuously updated. Up to now, this system of population registration has been maintained, used and managed by the tax agency. It is one of the most important tools that the State uses in its management and planning of land use, as well as a most useful source for genealogical research<sup>65</sup>. At the same time, since it links to the information in the land registration system, people can use the name of a land owner and his/her personal identity number to search for land data regarding him or her.

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<sup>62</sup> Gerhard Larsson, *ibid.* supra note 58.

<sup>63</sup> Wikipedia, "Population registration in Sweden", [http://en.wikipedia.org/wiki/Population\\_registration\\_in\\_Sweden](http://en.wikipedia.org/wiki/Population_registration_in_Sweden), retrieved [20101021 21:01]; and The Swedish Tax Agency, "Population registration in Sweden– SKV 717B", Edition 4, <http://www.skatteverket.se/blanketterbroschyrer/broschyr/info/717b.4.39f16f103821c58f680008017.html>. Retrieved [20101021 21:04].

<sup>64</sup> Wikipedia, "Personal Identity Number in Sweden", [http://en.wikipedia.org/wiki/Personal\\_identity\\_number\\_\(Sweden\)](http://en.wikipedia.org/wiki/Personal_identity_number_(Sweden)). Retrieved [20101021 21:05].

<sup>65</sup> Cadastral Template, *ibid.* supra note 49; and Silvia Rossinelli, *ibid.* supra note 50.

Based on written records dating from the 16th century, a title registration system was established in 1875. Alongside the cadastral activities with information being recorded in the cadastral books and maps of the National Land Survey, land registration or title registration was carried out and recorded at the local court, in order to confirm and announce that registered real property had changed ownership. Through a registration procedure, a parcel/unit of real estate would be identified and registered and would form a real property unit. Between 1910 and 1930, the registration of all real estate in Sweden was completed<sup>66</sup>. It was now possible to alter the provisions of land law as needed to suit changes in society. The lawmakers had already tried to modify the old rules in the direction of modernization by way of a proposed new land code which was first considered in 1909, but for many reasons, it could be adopted until 1970<sup>67</sup>.

In the 1930s, work was undertaken to establish a comprehensive and coherent national map in one national geodetic system. Administrative boundaries in the previous cadastral maps of the villages were replaced by the new system using primarily photographic representations of the boundaries and comparison with the old maps. The new maps, namely economic maps, were produced with scales from 1/5.000 to 1/20.000, and were mainly based on aerial photography, photo mosaics and later orthophotos. This mapping program was finished in 1978 and is now maintained and linked to land use planning, other regulation and other important aspects of land use rights<sup>68</sup>.

Registration activities combined with the support of the mapping system allows for the determination of each land unit/parcel or real estate unit together with any feature that enhances its value. From very early times, the registration of land has been successfully handled and developed in Sweden. Since the promulgation of the Land Code in 1970, the State has been able to give a guarantee regarding registered land ownership<sup>69</sup>.

However, the registration data was initially mainly stored in the cadastral books and other types of paper records. The management and dissemination of information was also preformed manually, which took time, manpower, and much physical recordkeeping. This could not carry on indefinitely and involved the risk of documents being lost, torn and damaged. So, in the 1960s, Sweden looked for solutions that would enable it to modernize the system of land registration and re-use the old cadastral books. The result was a proposal for the computerization of all registered data, in order to combine information about real estate with population data and provide a clear foundation for all data regarding real properties. Based on this, it would be possible to engage in land use planning with high efficiency, and avoid waste. For this purpose, each real property was assigned a coordinate in the national

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<sup>66</sup> Cadastral Template, *ibid.* supra note 49.

<sup>67</sup> Ulf Jensen, *ibid.* supra note 55.

<sup>68</sup> Cadastral Template, *ibid.* supra note 49.

<sup>69</sup> Gerhard Larsson, *ibid.* supra note 58.

system of maps. Each piece of real estate was, thus, assigned coordinates in a system covering the whole country, as a preliminary to the computerization of the cadastral registration system carried out in 1968, and of the title registration system in 1970. The handling of registered information by computers developed smoothly and acquired legal force in 1975. Economic maps with cadastral information about land parcels/units were digitalized into computer databases, their name being changed to real estate maps. The survey results for each land parcel/unit and the cadastral map of each land parcel/unit were converted into the basic databases that provided the land information system. Local survey systems were linked to establish a single national system. By 1995, computerization for the whole territory of Sweden was complete<sup>70</sup>.

The system of land registration in Sweden has thus a long historical development and key reforms took place in an atmosphere of peace and stability. It inherits past successes and continues to improve in the direction of becoming as simple and effective a system as possible. The system of land registration in Sweden is based on the registering of real estate ownership so as to establish a clear legal status for each registered land unit. There are close links between cadastral activities, including mapping, and land registration, as well as other systems of other sectors. Today, the entire territory of Sweden is divided into about 5 million units of real estate, expressed in more than 200.000 maps that have been created over several centuries. Land data information has been effectively digitalized and can easily be found in libraries or through the website of the National Land Survey, <http://www.lantmateriet.se>. By using the identification details of a land unit, registered land information can be easily combined with other data on tax, population, planning, building and land transaction price. A land data bank system has been established on the foundation of the legally registered land units. This system has proven its use, not only for the managerial activities of the government, but also for those business operations and others who have need of it. Data from the system can be obtained from tens of thousands of information ports and at thousands of offices in banks, survey offices, insurance companies and other main users of the information<sup>71</sup>.

### ***3.1.2. Important reforms to the system of land registration in Sweden***

#### ***3.1.2.1. Land amalgamation to overcome land fragmentation***

In Sweden, agriculture and forestry are still the main economic activities for many households. For many centuries, agricultural land belonged to farmers and was regarded as a basic property unit. Little by little, self-subdivision and inheritance over multiple generations made land ownership more fragmented with very complex ownership situations over large areas. The fragmentation of land was detrimental to both agriculture and forestry as such and to the development of better living

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<sup>70</sup> Cadastral Template, *ibid.* supra note 49.

<sup>71</sup> Gerhard Larsson, *ibid.* supra note 58.

conditions<sup>72</sup>. An extensive programme of land consolidation, thus, took place in rural areas during the 18th and 19th centuries, and to an extent in urban ones in the first half of the 20th century<sup>73</sup>. Depending on various factors, two measures were applied to land consolidation, namely, voluntary and coercive ones. Where land was only moderately sub-divided, voluntary measures of land consolidation would be applied. Conversely, in regions where land fragmentation became serious and reaching a more unified ownership was regarded as crucial, coercive measures were applied.

To ensure the success of land consolidation, the Swedish Government attached special importance to education so as to raise the awareness of the land owners in particular and the whole community in general about the effectiveness of and benefits to be achieved from land consolidation. The owners of fragmented land areas were convinced that it was beneficial to them to agree to the proposed land consolidation procedure. The clear results of the implementation of this reform were that the number of fragmented real estate units decreased significantly. The status of ownership increased and subdivision of real estate into new smaller property units no longer happened so easily. Land continued to be developed and improved. The management costs incurred by the state and the cost of investing in agricultural and forestry activities decreased, while tax revenue increased. The collection, processing and recording of information were carried out quickly. The natural and cultural environment enjoyed protection. Boundaries were set and clear and simple conditions of ownership evolved<sup>74</sup>. All of the above were the important benefits that the reform brought to society and to the real estate business.

In this reform which took over a century and gave the land a new face, the role of surveyors was very important. They carried out the procedures, issued the necessary decisions, and were responsible for the entire process of land consolidation and subdivision (including the combination of information, investigation, and evaluation, proposing solutions, organizing the negotiations, getting opinions and issuing decisions). In rural areas, with their great influence and heavy responsibilities, surveyors are still respected by many people, even today. Beyond that, the cadastral procedures not only provided support for the cadastral activities of the surveyors, they also avoided abuses of power and were a tool for ensuring the cadastre's democratic approach. All the procedures of consolidation, subdivision and formation of real estate have been consolidated and are now conveniently to be found in a single law, the Real Property Formation Act (1970:988).

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<sup>72</sup> Mats Backman, "Rural Development by Land Consolidation in Sweden", FIG XXII International Congress, Washington, D.C. USA, April 19–26 2002, [http://www.fig.net/pub/fig\\_2002/TS7-16/TS7\\_16\\_backman.pdf](http://www.fig.net/pub/fig_2002/TS7-16/TS7_16_backman.pdf). Retrieved [20101021 21:10].

<sup>73</sup> Olle Millgard, "Methods for changing Property Subdivision", in the book "Land Law in Action", supra note 55, p. 36.

<sup>74</sup> Mats Backman, *ibid.* supra note 72.

### *3.1.2.2. Computerization and other new technologies in the system of land registration*

Over the past 30 years, while carrying out major reforms of the land registration system, Sweden has also linked it to the processing and computerization of the registered data and it quickly became one of leading countries in this field. Previously, the registration of land was done manually, recorded in the cadastral books and disseminated publicly to the community, but in the late 60's and early 70s, a plan for the computerization of all registration activities had been outlined. Even the issue of combining the data from this system with other state data such as census results and information from taxation was discussed. As early as 1968, the Central Board for Real Estate Data had been established by the Government for the following purposes<sup>75</sup>:

(i) To develop a common register that combined the registration of real estate in both rural and urban areas based on a unified system of parcel identification;

(ii) Gradually to expand the contents of the register in order to serve other diverse and official needs;

(iii) To identify each land parcel by one or a number of characteristics defined by geodetic coordinates;

(iv) To establish a new register based on a public information system that was computerized.

The Board set up its headquarters in Gävle, and carried out a project in Uppsala, known as the "Uppsala Experiment" or "Data Bank Experiment". This project created a new register that combined land information from cadastral activities and title registration activities. This common register came into effect in Uppsala in 1974 and it was expanded to gradually apply to the whole country. On this basis, a system of land data banks was set up and completed by 1995, when it was placed under the management of the Central Board for Real Estate Data. It created the foundation for the modern information system. In 1996, the Board was merged with the National Land Survey, transferring the responsibilities of managing, maintaining and operating the now computerized land data bank system to the National Land Survey. Information from cadastre and title registration is to be connected on-line to the central main computer managed by the National Land Survey. Information data is entered into the system of land registration in this manner<sup>76</sup>. All records such as mortgage instruments, title documents are retrieved and sent from the National Land Survey and must pay the registration fee and stamp duty<sup>77</sup>.

In order to rationalize the process of the daily updating of data and improve the quality of information in general, the National Land Survey has built up a web-

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<sup>75</sup> Helner Wallner, "The Land Data Bank of Sweden", Appendix D in the book "Land Law and Registration", S. Rowton Simpson, supra note 44, p. 433.

<sup>76</sup> Ulf Jensen, *ibid.* supra note 55.

<sup>77</sup> Ulf Jensen, *ibid.* supra note 55, p. 64.

based updating system on the internet covering buildings, addresses, localities, maps, and communications. Based on this, after paying the fees, anyone can access the central data store and receive information on all registered real estate units, including land registration. In this high technology environment, map data is digitalized and information from one registration will be combined with others in an effective way, helping users who need to be able to find information regarding a larger area. The National Land Survey, local authorities, the Swedish Post and the Swedish Tax Agency are responsible for coordinating activities so as to complete the registration of all locations and addresses at the site: <http://www.lantmateriet.se>. Organizations and individuals can order and purchase land information from the public land registration system. Registration procedures can also be requested; queries can be answered by online experts. These services are supplied by the National Land Survey at any time and without any time limit on their use<sup>78</sup>.

With the successful implementation of the computerization of the land registration system and the advantages of access to the information through the internet, the Swedish Land Code (1970:994) was modified on July 01, 2000. On the same day, a new law, the Real Property Register Act (2000:224), also came into effect to protect and prevent the violation of personal data regarding registered real estate/land. New rules stipulated clearly that registered land information can be found and referred to but third parties cannot change the registered content nor override limitations on information which cannot be provided nor introduce restrictions on access (relating to such matters as mortgages and the marital status of the owner/land use). The National Land Survey is responsible for making decisions relating to the supply of real estate information, ensuring that personal data can only be used for purposes in accordance with these laws.

So that land data information can be exchanged uniformly between the cadastral authorities in the centre and the localities, the National Land Survey has applied new technical tools in its registration activities, such as Interface 2000 (regulating the model of information, the transmission of data, rules on management and data storage) and Arc Cadastre (a new tool used to handle different types of data derived from survey and calculation activities. It creates, orders, maintains and displays the data in a digital or similar form). Although the construction and application of a system of software data such as Arc Cadastre in the operation of cadastral information costs a great deal, it can be used long-term and easily improved and upgraded in accordance with any changes in science and technology. Today, not only Sweden but many agencies and organizations in other countries also enjoy the many benefits of this software system.

A further improvement to the Swedish registration system is that all property boundaries and the more important landscape elements will be digitized by graphical or numerical methods and their coordinates included in databases. This will afford

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<sup>78</sup> For further information, see the website of the National Land Survey, <http://www.lantmateriet.se>.

many possibilities for computerized map production and for producing maps with various contents and scales all being adapted to the users' needs<sup>79</sup>.

In addition, the development of techniques for handling three-dimensional space has allowed for a method of portraying real estates both on paper and on the computer in three-dimensional terms. This is linked to the need clearly to divide ownership between different owners in the same building. Accordingly, each person may own different parts, or own a delimited part of the space below the buildings and use them for different activities that are completely unrelated to the use of the space above as well as the parts owned by others. For example, a part of the building can be used for commercial activities, another part may be used for residential purposes and the basement can be used for storing goods, vehicles etc. And deeply under the foundation of the building, there can be a tunnel for an underground transportation system. Thus it will be important to depict real estate in a three-dimensional setting, delimiting both the horizontal and the vertical boundaries of real property units.

The National Land Survey is also making improvements to application routines. Instead of paper applications, applicants can access the network system and apply for land registration electronically. The relevant authority will handle the requirement and implement all procedures without the need of any paperwork. The decision will be recorded directly onto the computer with a digital signature and all records and documents are then stored electronically. Information can thus be registered in the place it relates to. Electronic applications required a change in the law so that documents could be signed with an electronic signature, while taking into account the protection of personal data.

Having legislation that accepts electronic signatures is one of the preconditions for building a system of electronic conveyance while still maintaining security. It will be harder to falsify deeds of transfer when people can always check from whom the documents are sent. The computerized system can collect information from the electronic document instead of from a manual registration; the registration authorities can resolve an application after checking the information in the network. All this will lower the costs of carrying out the procedures while everything will be faster. An applicant can send his files directly from his home to the registration agency system over the internet<sup>80</sup>.

With these improvements, the Swedish land data bank system is regarded as one of the most secure, effective and advanced land information systems in the world.

At present, many countries such as Germany, Australia and Switzerland are also trying to establish a complete modern high quality cadastre with a system of title registration based on the division of land into property units. On the other hand, the

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<sup>79</sup> Gerhard Larsson, *ibid*, supra note 58, p. 71.

<sup>80</sup> Monica Johansson, "Land register in Sweden – Present and Future", FIG 22<sup>th</sup> International Congress, Washington, D.C. USA, April 19–26, 2002, [http://www.fig.net/pub/fig\\_2002/Ts7-12/TS7\\_12\\_johansson.pdf](http://www.fig.net/pub/fig_2002/Ts7-12/TS7_12_johansson.pdf). Retrieved [20101021 21:13].

systems of land registration in the Mediterranean and Eastern European countries have not been so improved or updated by modern technology. The development of the land registration system in the UK presents some differences too. Until the 19th century, the UK did not have any cadastral authorities nor any system of land registration. At the start of the 20th century, a system for registering property rights was tested in several provinces. A buyer had to register his/her ownership of real estate and each new transaction that took place after that also had to be registered. On this basis, the land registration system has expanded and now applies throughout the territory of the UK. Today, data regarding more than 80% of all UK real estate is managed and controlled by the land registry<sup>81</sup>.

### ***3.1.2.3. Unification of the authority managing the system of land registration***

In Sweden, the activities of the land registration system primarily consist of cadastre and title registration. Before June 1<sup>st</sup>, 2008, these activities were the responsibilities of two separate authorities: the National Land Survey responsible for cadastral activities, and the Administration Court responsible for land registration. The registered information deriving from these two is the main source of data for the land information system as managed by the National Land Survey. To simplify the apparatus and unify the management of land information, the Swedish Government has long sought to modify the structure and organization of the land registration authority so as to transfer responsibility for the registration of the ownership of land from the Court to the National Land Survey. One aspect of this activity is to reduce the number of agencies responsible for registration and this has gone down from approximately 90 agencies to 7 in 2001<sup>82</sup>. These seven authorities were situated within district courts but their own activities were independent and under the supervision of the Administration Court.

In 2005, the Swedish Parliament decided to approve the proposal of the former government that land registration should be transferred to the National Land Survey. The reason for the decision was that it was considered that land registration would gain from being concentrated within one government administration. Land registration and land information could be effectively coordinated, creating conditions for the management and supervision of the system of land registration and the activities of the land registration authorities in a new and better organization. This change also ensured that the court could shed the burden of those tasks that should probably belong to administrative agencies, more focused on such activities and already possessing the required expertise.

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<sup>81</sup> Gerhard Larsson, *ibid.* supra note 58, p. 72.

<sup>82</sup> "The new Swedish Land Registration", <http://www.landregistry.ie/uploadedfiles/conference20071/papers/s2p1.pdf>, retrieved [20101021 21:15], and Bengt Kjellson, "Renewal of Land Registration in Sweden", Joint Meeting of the Euro Geographics Expert Group on Cadastre and Land Registry and the Permanent Committee on the Cadastre in the European Union, [http://www.eurocadastre.org/pdf/310107\\_Sweden.pdf](http://www.eurocadastre.org/pdf/310107_Sweden.pdf), retrieved [20101021 21:16].

However, many complex issues have arisen relating to the differences in the operations and legal culture of the courts and the National Land Survey. These include changing staff and the leading cadres, changing procedures and regulations and organising the services provided to customers and their care. The process of unification cannot happen in a day and the Government had to proceed by way of a series of well-prepared steps. During 2007, both the National Land Survey and the Court collaborated closely in carrying out the work needed to prepare for the transfer of responsibility<sup>83</sup>. Seven title registration agencies were still in their old locations in the court buildings. Officially, from June 1<sup>st</sup>, 2008, the National Land Survey undertook all operations relating to title registration<sup>84</sup>. Although this is a new responsibility, based on the receipt of 200 experienced staff members from the land registration authorities of the courts<sup>85</sup> and experience in united management of land information system, just about one year the National Land Survey could stabilize its organization to implement its works.

## **3.2. The organization of the system of land registration in Sweden**

### ***3.2.1. The machinery and the staff***

#### ***3.2.1.1. The machinery***

In Sweden, as mentioned above, land is divided into property units and all units must be registered. The activities of land registration include the cadastre (the formation and registration of a parcel of real estate) and title registration (registration of ownership and other rights to land and its encumbrances). These operations have been carried over from the previous system of land registration with the changes needed to fit modern society. They are primarily carried out by the National Land Survey.

The National Land Survey is an organization belonging to the Ministry of Environment, with a staff of about 2.400 personnel working in 90 offices across Sweden<sup>86</sup>. It is responsible for the whole country under three aspects: mapping, cadastre and land registration and operates through four divisions: cadastral services, land registration, land and geographic information, and metria<sup>87</sup>.

The Cadastral Services Division is responsible for cadastral activities and procedures including the creation of new property units, changes to existing property boundaries, joint property units, easements and utility easements and joint facilities. This division has approximately 860 personnel working at 80 offices throughout Sweden.

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<sup>83</sup> The National Land Survey, "The 2007 Annual Report", [http://www.lantmateriet.se/upload/filer/om\\_lantmateriet/arsredovisning\\_2007\\_eng.pdf](http://www.lantmateriet.se/upload/filer/om_lantmateriet/arsredovisning_2007_eng.pdf). Retrieved [20080620 20:10].

<sup>84</sup> Stig Jonsson, *ibid.* supra note 59.

<sup>85</sup> The National Land Survey, *ibid.* supra note 43.

<sup>86</sup> The National Land Survey, *ibid.* supra note 43.

<sup>87</sup> The National Land Survey, "Organization of the National Land Survey", [http://www.lantmateriet.se/templates/LMV\\_Entrance.aspx?id=276](http://www.lantmateriet.se/templates/LMV_Entrance.aspx?id=276). Retrieved [20101021 21:25].

The Land Registration Division is responsible for checking registration applications with regard to ownerships, mortgages and other rights and registering them in the Land Register section of the Real Property Register<sup>88</sup>. It is a new division established when the land registration competence was transferred to the National Land Survey. Its main office in Gävle is responsible for leading and co-ordinating registration activities. There are seven local offices in Eksjö, Härnösand, Hässleholm, Mora, Norrtälje, Skellefteå and Uddevalla. This division has approximately 200 personnel.

The Land and Geographic Information Division is responsible for constructing, managing, developing and providing information on geography and land. Information consists of the digital cadastral index map, registered land ownership and information and details relating to registered land such as buildings; apartments; addresses; mortgage certificates and real property prices (including the prices of land and the properties on land). Geographic information comprises the basic geographic data such as co-ordinates, terrain elevation data, aerial photographs, vegetation cover data and place names. In addition, this division also has the responsibility for standardizing, developing and applying the techniques for registration, mapping and building the geographic information system (GIS). With all this information available, important customers of the Division of Land and Geographic Information are unsurprisingly mainly credit institutions and banks, management agencies of the State, real estate agents and other property management companies<sup>89</sup>. This division has a staff of 550 working at offices in Gävle, Karlskrona, Kiruna and Luleå.

The Metria Division carries out a broad programme of primarily fee-charging services including consultancy related to field surveys, mapping, remote sensing and geographic information techniques but it also produces basic landscape information for the Division of Land and Geographic Information. Metria is also responsible for publishing a series of national maps and other map products, as well as implementing cartographic work under contract. It produces all kinds of maps including maps of Sweden (scale of 1/1.000.000; 1/20.000.000...etc); general maps (1/250.000); property maps (1/12.500, 1/10.000); topographical maps (1/50.000); road map (1/100.000), and a number of maps and charts with smaller scales such as aeronautical charts, economic maps, national digital terrain models, forestry maps and urban maps. All topographical maps are used for both civil and military purposes. The property maps are now fully digitalized. The total personnel of Metria is approximately 425 people, working at 40 offices throughout Sweden.

With the aid of these divisions, the National Land Survey has a responsibility to ensure that real estate, land and water resources are used effectively and sustainably and to determine and provide the value of real estates to the Central

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<sup>88</sup> See *infra* Part 3.2.3.

<sup>89</sup> Tommy Ljunggren, "The use of the Cadastre in Sweden", Land National Survey, Sweden, <http://www.eurocadastre.org/pdf/ljunggreningles.pdf>, pp. 232–233. Retrieved [20101021 21:27].

Land Tax Board. It is responsible for all cadastral activities from the survey and formation of real estate parcels to the final stages of registering and disseminating real estate information; from simple subdivisions to complicated procedures that affect many properties and large areas with a view to the exploitation of land by way of projects involving essential infrastructures. The implementation of these diverse registration processes requires the system of land registration to operate actively and effectively. Moreover, the National Land Survey is now responsible for land registration, including the registration of ownership, site leasehold grants, encumbrances (such as mortgages, easements and utility easements and joint facilities), rights of use, or the source of land and the likes. It also has the duty to provide information about land ownership and rights for all sectors in society that need such information. For this reason, it set up the online Land Data Bank System and users can directly access the network both for the purpose of registration and in search of information.

The land registration offices maintain and keep the original papers of transfer and mortgage and keep copies of all certificates of ownership in the register in areas which have not yet been computerized. In areas which have been computerized, the offices transmit information data directly into the central computer within the Central Board for Real Estate Data where computerized titles are kept. All legal issues relevant to a unit of land are thus recorded and most information can be found through the Land Data Bank System.

Beside the cadastre and land register, there is the Swedish Tax Agency which is directly under the Ministry of Finance and runs a part of the financial management of land (land taxation), with approximately 100 units all over the country. This tax agency is responsible for managing population registration and real property taxation registration, so it needs close links with the land information system<sup>90</sup>.

Sweden does not have a notarial or similar system<sup>91</sup>. Nor are there any plans to introduce such a system. This seems as unnecessary because the simplification and formalization of papers and documents is at such a high level. Most transactions are carried out on standard forms supplied by the banks or brokers or bought by the parties in a bookstore. This imposes responsibilities on the parties concerned. For example, when loaning money and taking a mortgage, banks have to do their own check to protect their interests<sup>92</sup>. The registration officials only make a purely formal check of any documents so as to be sure that they comply with formal legal requirements.

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<sup>90</sup> Cadastral Template, *ibid.* supra note 49.

<sup>91</sup> Monica Johansson, *ibid.* supra note 80.

<sup>92</sup> Bengt Kjellson, *ibid.* supra note 82.

### *3.2.1.2. The staff*

Cadastral surveyor and land administrator are the two main titles of those who carry out activities of land registration in Sweden.

The cadastral surveyors lead and are responsible for the whole process from application to conclusion of a cadastral procedure. Based on coordinating information after examination, verification, proposing solutions and holding negotiations between the parties involved, they will make decisions that are important for the legal situation and the economy. The cadastral surveyors are completely independent and their decisions could even be regarded as a first instance decision of the court.

Over the years, there have been changes in the demands made on the skill level and ability of cadastral surveyor. To begin with, in early modern times, the specialized skills of the cadastral surveyor were surveying and mapping. The land consolidation reform required them to be able to make plans for forming new land units, which were suitable for agriculture and forestry and generally overcome land fragmentation by amalgamating dispersed land areas belonging to different owners into one or a small number of parcels. To do this, cadastral surveyors had to master the relevant land laws and regulations. They needed legal knowledge and the ability to value land so as to determine appropriate prices in connection with land recovery and re-distribution. These two requirements became more and more important for cadastral surveyors when, in the 20th century, the activities of subdividing, redistributing and consolidating land into property units were further encouraged by giving them the right to make their own decisions.

Having gained this expertise, cadastral surveyors could undertake the responsibility of implementing policies on the provision of housing and land in their locality. This broader responsibility arose and became important after a large social housing program began in about 1970 at the time when the Land Code was adopted. So along with the skills needed for making land use plans in the areas of agriculture and forestry, a high level of expertise in urban planning for development was also called for.

Since 1932, with the establishment of a Surveying School at the Royal Institute of Technology, cadastral surveyors in Sweden were trained to university degree level in the two fields of geodesy and real estate.

Further optional specialties were the fields of agricultural hydrotechnics, (later renamed land and water resources), photogrammetry, real estate economics, land law and GIS-technology<sup>93</sup>.

Today, the training program for land surveyors or cadastral surveyors is diverse and broad, though focused on three main areas:

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<sup>93</sup> Hans Mattsson, "The Education and Profession of Land Surveyors in Western Europe", <http://www.fig.net/tf/mut-recog/delft/mattsson.pdf>. Retrieved [20101021 21:32].

(i) Technical cadastral surveyor: training skills relate to geodesy, measurement and mapping, including GIS techniques. Also generally included is training in legal knowledge and sometimes even in planning and development;

(ii) Land management surveyor: focused on acquiring legal knowledge, planning management and construction, skill in land evaluation, especially for compensation cases. Cadastral skills are also taught but without great depth.

(iii) Real estate economics surveyor: concentrating on training at the highest level in the economics of real estate. Legal factors are also important. This program aims to equip the surveyor with knowledge of the economics and management of real estate<sup>94</sup>.

However, the requirements on the amount and level of expertise needed are not fixed. They can change according to changes in social demands.

In Sweden, the National Land Survey carries out about 80% of cadastral activities. The rest is done by the municipalities, without the participation of private sectors. The private sector can only be involved as consultants or advisors to a client in particular cases<sup>95</sup>.

As a result of the computerization of the system of land registration, personnel working in the land registration authorities are not required to have a legal degree. They just need to have experience in organizing registration activities. Currently therefore, no qualification requirements for the license system and the cadastral surveys have been set. Requirements as to professional capacity and level are only imposed on the head of the cadastral office, who must have a master's degree and at least two years experience in activities relating to land surveying, land management or real estate economics<sup>96</sup>. A degree in the above fields can be obtained at the Royal Technical University in Stockholm (about 70 people per year) or the Technical University in Lund (about 30 people per year). In addition, students can get a bachelor of science degree at the University College of Trollhättan (about 20 people per year) and Gävle (about 30 people per year)<sup>97</sup>.

With a long history of reform and development, land registration officials in Sweden can draw on significant knowledge and experience in the field. The personnel are always in the vanguard of developing and applying modern technology to the operations of surveying and registration in order to benefit the economy and bring social progress. They play an important role in building and operating a system of land registration and land information that is both simple but effective.

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<sup>94</sup> Hans Mattsson, *ibid.* supra note 93.

<sup>95</sup> I.P. Williamson, "Lessons from the Swedish Land Data Bank System", *The Australian Surveyor*, December 1987, Vol. 33, No.8, <http://eprints.unimelb.edu.au/archive/00001342/01/SwedishLIS.htm> or <http://www.geom.unimelb.edu.au/research/publications/IPW/SwedishLIS.htm>, retrieved [20101021 21:36], and Cadastral Template, *ibid.* supra not 49.

<sup>96</sup> Cadastral Template, *ibid.* supra note 49.

<sup>97</sup> Cadastral Template, *ibid.* supra note 49; and Silvia Rossinelli, *ibid.* supra note 50.

### *3.2.2. The procedures for land registration*

As mentioned above, in Sweden, real estate covers land, including properties attached to land (such as buildings, utilities, standing trees and other facilities constructed within the property unit for permanent use) which has been delimited either horizontally or both horizontally and vertically by authorized officers following approved procedures. Unofficial parceling of land is null and void<sup>98</sup>.

Each property unit must be registered and constitutes a register unit in a defined register area. Each municipality constitutes a register area of the same name as itself. A register area is divided into many smaller areas called districts, each of which consists of one or more register units that are given a name (the district name). Property units in the same district are divided into blocks, including one or more units, with numerical symbols assigned according to the regulations. The property units in each block are also allotted numbers (unit numbers)<sup>99</sup>.

The register designation of a property unit must include the name of the register area, the name of the district and a register number. The register number is to consist of the block number and the unit number, separated by a colon. Each property unit registered shall have a separate unit name, not duplicating the name of any other unit<sup>100</sup>.

For example Burlöv Åkarp 17:9 (namely, “Burlöv”, a municipality in Skåne County, is the register area. “Åkarp”, a locality situated in Burlöv municipality, is the district name. “17” is the block number in Åkarp And “9” is the unit number, one of units in the block 17). In some urban areas, the block number is excluded, for instance Vänersborg Taggsvampen 1<sup>101</sup>.

The original formation of and all later changes to a property unit will be registered, recorded and numbered as above. Everything usually starts with an application to the registration authority by those who have rights to the property unit (such as the owner of the property, the buyer or persons who have rights relating to this unit). The law or regulations covering the procedure are mainly to be found in the Land Code (1970:994), the Real Property Formation Act (1970:988), the Real Property Register Act (2000:224), the Land Register Act (1973:98) and some by-laws.

The procedures for registering land, based on these regulations, fall into two kinds: cadastral and title registration.

Cadastral procedures are activities<sup>102</sup> such as:

(i) Subdivision: an area of land is separated from a property unit to form a new property unit;

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<sup>98</sup> Stipulated by Section 1 Chapter 1 and Section 1 Chapter 2 of the Land Code (1970:994).

<sup>99</sup> Stipulated by Section 6 to Section 14 of the Real Property Register Ordinance (2000:308).

<sup>100</sup> Stipulated by Section 14 of the Real Property Register Ordinance (2000:308).

<sup>101</sup> Kristin Karlsson, *ibid.* supra note 60.

<sup>102</sup> Stipulated by The Real Property Formation Act (1970:988), the Utility Easements Act (1973:1144) and the Joint Facilities Act (1973:1149).

(ii) Re-allotment: a piece of land is transferred from one property unit to another. An easement is created, changed or annulled;

(iii) Amalgamation: two or more property units are merged to form a new property unit;

(iv) Partition: A property unit, which is owned by two or more persons, is divided so that each owner gets his or her share as a new unit;

(v) Property definition: If there is uncertainty as to where the boundaries or markers of a property unit are located, it is possible to have the boundary defined;

(vi) Transfer or detachment of fixtures to real property: the transfer of buildings or other fixtures that belong to one real property to another. It is also possible to detach fixtures;

(vii) Establishment of joint facilities such as private roads, garages, water and sewerage pipes etc needed for the benefit of more than one property unit; and

(viii) Utility easement procedures: the owner of utilities that are used for the common good can acquire the land needed for this purpose.

These activities are known in general as acts of real property formation<sup>103</sup>. The formation of real estate will only be allowed if the creation and change of property unit is in accordance with its use purpose, connects with those infrastructure elements and facilities outside and around the area of the new property unit which are needed for the land use. If the land use change is not consistent with the overall use plan, then the formation of the real estate cannot be accepted<sup>104</sup>. Real estate formation procedure is handled by a cadastral authority<sup>105</sup> and a cadastral surveyor is in charge of it. If necessary, the cadastral surveyor or an interested party has the right to request the participation of trustees, who have experience of urban conditions or possess knowledge of agricultural or forestry matters (but they will not take part in the performance of technical tasks). The number of trustees is decided by the County Administrative Board<sup>106</sup>.

Application for property formation shall be made in writing to the cadastral authority. The applicant shall indicate the measure that he desires and shall indicate the property unit or units which he represents, including other issues such as other property units which the matter affects, as well as the names and mailing addresses of the property owners and the holders of easements, rights of user or electrical power rights which can be affected by the measure insofar as it is deemed reasonable for the applicant to obtain these particulars or such particulars are available to him in any case. The application document shall be signed personally by the applicant or his legal representative. The applicant shall append to the application document the originals or

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<sup>103</sup> Stipulated by Section 1 Chapter 2 of the Real Property Formation Act (1970:988).

<sup>104</sup> Stipulated by Section 1 and 2 Chapter 3 of the Real Property Formation Act (1970:988).

<sup>105</sup> Stipulated by Section 2 Chapter 2 of the Real Property Formation Act (1970:988).

<sup>106</sup> Stipulated by Section 1 and 2 Chapter 4 of the Real Property Formation Act (1970:988).

authenticated copies of the written documents in his possession which are material to the matter<sup>107</sup>.

After receiving the application, the cadastral authority has to investigate the nature of the property formation and conditions generally, and determines which persons, as owners of a property unit or otherwise, are interested parties. If there are conflicts of interest between interested parties and there is an impediment to the property formation applied for, the cadastral authority shall hold a meeting of the interested parties to encourage them to find the best solution for all of them. The cadastral surveyor must help the parties to negotiate in compliance with relevant provisions of law, land policy and may also consult with the municipality, the County Administration Board and other agencies in related sectors such as the national road agency. When the parties negotiate successfully and the results of verification show that a new property unit can be formed, the cadastral authority must draft the property formation plan and attend to the tasks of a technical nature and the evaluations which are needed for the implementation of the measure. In the event of a difference of opinion between cadastral officers, the opinion of two of them shall count as the order of the cadastral authority. In case of disagreement between cadastral officers, the opinion of the cadastral surveyor shall apply. In matters concerning money or other things constituting a certain quantity, however, the opinion shall prevail which refers to the second largest quantity<sup>108</sup>.

After the measures prescribed above have been taken, the cadastral authority is to make a property formation order. This order shall indicate how the division into property units is amended, what easement measures are taken and which buildings or other facilities are transferred to another property unit. The order shall also contain directions on matters immediately connected with the property formation. A boundary resulting from the property formation shall be set out and marked to the necessary extent. The course of such a boundary shall agree with the property formation order and may be effected after the conclusion of the cadastral procedure<sup>109</sup>.

In addition, the cadastral authority has the responsibility for registering real property. An entry concerning property formation or property definition shall be made in the general section of the Real Property Register at the earliest possible opportunity after the cadastral procedure has been concluded<sup>110</sup>.

Thus, various cadastral procedures all relating to the formation of real estate in Sweden are implemented uniformly at the hands of the parties interested in the matter and the cadastral surveyors. The process includes both administrative procedures and technical works such as verification of existing conditions, checking the legality of the request, contacting the relevant persons and local authorities;

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<sup>107</sup> Stipulated by Section 1, 2 and 8 Chapter 4 of the Real Property Formation Act (1970:988).

<sup>108</sup> Stipulated by Section 11, 14, 15, 17 and 25 Chapter 4 of the Real Property Formation Act (1970:988).

<sup>109</sup> Stipulated by Section 25 and 27 Chapter 4 of the Real Property Formation Act (1970:988).

<sup>110</sup> Stipulated by Section 1 to Section 6 Chapter 19 of the Real Property Formation Act (1970:988).

surveying land; making and planning a cadastral survey; further the issue of documents and decisions related to any change to the property (for example, on the structure, rights and benefits, compensation), and finally registering and recording these changes in the real property register and producing the cadastral maps. All decisions and maps will be stored as legal documents. The originals are kept at the county cadastral offices. Copies are delivered to the applicant. If the results of verification show that the real estate formation cannot be carried out, the cadastral surveyor has to issue a decision rejecting the application, and clearly explaining his or her reasons. The applicant can appeal the decisions of the cadastral authority. Depending on the points at issue, appeals can be made within three to four weeks of the date that a decision is issued<sup>111</sup>. If the applicant does not agree with the cadastral authority, appeals lie to the Land Court, then to the Court of Appeal and after that to the Supreme Court<sup>112</sup>.

After a decision takes effect, information about the changes in real estate will be disseminated publicly by the real estate registration authorities. Land or title registration can also take place at this time. Data on title registration will be associated with data entered by the cadastral authorities on any change to real property that is registered and transferred. They will create detailed files on all real estate in the register.

Title registration is effected through the following acts<sup>113</sup>:

(i) Registration of ownership: applied for by a party having acquired real property with freehold title;

(ii) Registration of mortgage: done to protect the credit organizations;

(iii) Title registration of a site leasehold grant: is the case where land is owned by the state or local government and leased for a long-term period. Tenants conduct the registration of site leasehold grants in a similar way to the registration of ownership;

(iv) Title registration of site leasehold right: If a site leasehold passes to a new lessee, the latter shall apply for title registration of his acquisition;

(v) Title registration of a right of user: if the holder of a right of user granted by agreement, other than a site leasehold of an easement or a right to electrical power granted by agreement wishes to apply for title registration, he shall submit the document on which the right is founded. The property owner may also apply for title registration;

(vi) Registration of restrictions on land: such as easements, public utilities;  
and

(vii) Registration of assets attached to land.

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<sup>111</sup> Stipulated by Section 2 and 3 Chapter 15 of the Real Property Formation Act (1970:988).

<sup>112</sup> Stipulated by Chapter 16 to Chapter 18 of the Real Property Formation Act (1970:988).

<sup>113</sup> Stipulated by Section 2 Chapter 19 of the Land Code (1970:994).

A title registration transaction is handled by the land registration offices every weekday, except on public holidays, Midsummer's Eve, Christmas Eve or New Year's Eve. It shall be concluded by 12 noon. An application received after this time shall be deemed to have been made on the next following title registration day. The application must be in writing. The Government or the authority appointed by the Government may issue prescriptions allowing a title registration application to be made in the form of an electronic document. The contents of the application must comprise particulars of the applicant's name, national registration number and postal address and the applicant's residential or workplace telephone number<sup>114</sup>. The registration of ownership and registration of a site leasehold grant must be applied for within three months of the document verifying the right being created. If registration of ownership is not applied for within the prescribed time, the land registration authority may impose a fine before completing the registration of ownership<sup>115</sup>.

The land registration authority is to keep a journal of title registration transactions handled by it (a transaction journal), and assemble the documents in title registration transactions into dossiers. The Government or the authority appointed by the Government may issue prescriptions to the effect that the dossiers, if in electronic form, are to constitute part of the transaction journal<sup>116</sup>. Registration data will also be recorded in the Real Property Register.

A decision by a land registration authority in a title registration transaction may be appealed in the court of appeal by the party affected by the decision, if the decision has gone against him or her. An appeal shall be in writing and submitted to the land registration authority within three or four weeks of the day on which notification or a certificate of the decision was made available to the applicant<sup>117</sup>.

After a relatively long period of working out how best to construct a land information system and digitalize cadastral maps, Sweden unified the cadastral and title registration procedures. Cadastral activities start with an inspection of the data on the real estate and the maps in the network database, where information is continuously updated, which contains legal documents along with all decisions and earlier cadastral maps. When the survey and formation of real estate come into effect, new data from these activities can be added to the network database by a quick and simple operation. The cost and time taken are both small.

### ***3.2.3. Model and content of registered land information in Sweden***

To maintain and disseminate information and data relating to registered property units, an official unified storage system has been established in Sweden. This has the support of an automatic handling process through an electronic register named the Real Property Register whose operation is controlled by the Real Property

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<sup>114</sup> Stipulated by Section 3 to Section 6 and Section 10, 11 Chapter 19 of the Land Code (1970:994).

<sup>115</sup> Stipulated by Section 2 and 3 Chapter 20 and Section 1 Chapter 21 of the Land Code (1970:994).

<sup>116</sup> Stipulated by Section 6, 8 and 9 Chapter 19 of the Land Code (1970:994).

<sup>117</sup> Stipulated by Section 32 and 34 Chapter 19 of the Land Code (1970:994).

Register Act (2000:224). The management and operation of the Real Property Register are the responsibility of the National Land Survey. Registered information is divided into five basic sections, namely<sup>118</sup>:

- (1) The general section;
- (2) The land register section;
- (3) The address section;
- (4) The building section; and
- (5) The tax assessment data section.

In addition, the register may also contain other information connected with information included in one or other section of the register, this being called supplementary information. It shall be entered separately from the sections of the register. The Government may promulgate further rules concerning the content of the different sections of the Real Property Register and supplementary information.

The General Section records information on property units and joint property units; coordinates; plans; precincts (which is only shown upon the request of municipalities); joint facilities and cadastral index maps. There are two types of cadastral index map: one, which is compiled manually by competent authorities, is not included in the Real Property Register; the other is recorded in the General Section and compiled by means of automatic processing. The entry or deletion of particulars in this Section is handled by the cadastral authority<sup>119</sup>.

The Land Register Section contains detailed information on registered ownership, site leasehold grants, site leasehold possession, mortgages, notes and earlier conditions. In addition, for the territory of each land registration authority, an entry is made showing the date of the last title registration day for which all decisions and notes have been entered in the register (the current date). The handling of data relating to the Land Register and included in the Real Property Register is the responsibility of the land registration authorities, unless otherwise prescribed. The National Land Survey is also entitled to enter and delete detailed data in this section in specific cases (such as changing the name and address of a credit organization or insurance company, or deleting the notes about ownership relating to a mortgage)<sup>120</sup>.

The Address Section can contain detailed data on the addresses in a municipality made pursuant to a decision of the National Land Survey. Such a decision may be made only if the municipality has requested it and has pledged itself to present the data in the address section. The address data of each property unit shall include: the designation of an accounting unit (the name of the municipality, the name of the address area and the designation of the address location, even the name of a sub-municipal district); a property unit of joint property unit located at the address.

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<sup>118</sup> Stipulated by Section 1 and 3 of the Real Property Register Act (2000:224).

<sup>119</sup> Stipulated by Section 3 and 4 of the Real Property Register Ordinance (2000:308).

<sup>120</sup> Stipulated by Section 42, 43, 53 and 54 of the Real Property Register Ordinance (2000:308).

Particulars of postcode and postal district may also be entered. The particulars of a municipality or part of a municipality shall be entered by the National Land Survey in the Address Section of the Real Property Register for the first time on the basis of an address list or other documents transmitted by the municipality responsible for the particulars. Accordingly, only two organizations have the right to enter or remove particulars in this Section namely the municipality concerned and the National Land Survey<sup>121</sup>.

For the Building Section, similar to the Address Section, the National Land Survey also decides whether to keep this part of the Real Property Register on the basis of the municipality's proposals and commitments to present the relevant data. The Section consists of the designation of an accounting unit (the register designation of the property unit or joint property unit where the building is situated, with the addition of one serial number for each building); address (if the record has been entered in the Address Section); and location particulars. In addition, particulars established in the course of property taxation assessment may also be entered. The two authorized organizations which have the right to enter or remove particulars in this Section are again the municipality and the National Land Survey<sup>122</sup>.

The Tax Assessment Data Section gives an account of particulars from the taxation database pursuant to the National Tax Board. The information shall comprise assessed value, property owners or site lessees and owners of houses on non-freehold land, with particulars of national or corporate registration number, name and mailing address. The National Land Survey may enter and remove particulars in the Tax Assessment Data Section<sup>123</sup>.

After the relevant information is reported or transferred to it, the National Land Survey is responsible for its registration and ensures the validity of the registration. On any day, information from a land registration authority must be handled before information from a cadastral authority. Information transmitted by the Swedish Tax Agency about land evaluation and registration population data shall be entered by the National Land Survey in the Real Property Register at the earliest possible opportunity. The National Land Survey must notify the land registration authority and the National Tax Board of any change in the General Section of the Real Property Register relating to the division of a property unit or entailing a new property designation<sup>124</sup>.

Any person dealing in the course of their duty with information furnished by the National Land Survey pursuant to this Ordinance and having causes to suppose that the information is incorrect shall immediately report this to the authority. If the National Land Survey, a cadastral authority or a land registration authority finds an item of information in the Real Property Register to contain an error which cannot be

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<sup>121</sup> Stipulated by Section 55 to Section 59 of the Real Property Register Ordinance (2000:308).

<sup>122</sup> Stipulated by Section 60 to Section 63 of the Real Property Register Ordinance (2000:308).

<sup>123</sup> Stipulated by Section 64 and Section 65 of the Real Property Register Ordinance (2000:308).

<sup>124</sup> Stipulated by Section 72, 74 and 75 of the Real Property Register Ordinance (2000:308).

rectified immediately and which jeopardizes the reliability of the register or otherwise occasions uncertainty regarding the legal position, a note concerning this matter shall be entered in the register without delay. Any such note shall be removed from the Real Property Register as soon as the question of rectification has been determined<sup>125</sup>. A party suffering losses in consequence of a technical fault or clerical error in the process of entering and recording has the right to request and receive compensation from the government for their losses<sup>126</sup>.

Although the system of Real Property Register is operated and managed by the National Land Survey, the various sources of information available derive from the different agencies responsible for providing them. The information on identifiers, description or formation of real estate, including cadastral maps, is supplied by the National Land Survey. But the registration and recording of this information is the responsibility of cadastral authorities at local level throughout the country. The main duty of the National Land Survey is to maintain registration activities and monitor the activities of the cadastral authorities. Information on ownership is registered and updated by the seven local land registration offices. These offices are to be managed and controlled by the National Land Survey. The Swedish Tax Agency is responsible for data on land evaluation for taxation. It transmits this information annually to the National Land Survey for it to update the Tax Assessment Data Section of the Real Property Register.

With all this information and data, it can be claimed that the Real Property Register of Sweden is a unified register of data including information on ownership and rights; on real estate and the value of each property unit. It is thus an effective and unified system of land/real property information in Sweden<sup>127</sup>, with complete information about each of the factors covered by registration: geometry, values, legality and the use of land/real estate. The State is happy to provide a guarantee of the correctness of the information in the system.

The computerized land data bank system contains information is open and can easily be accessed through the internet. To access the data on a property unit, a user is able to use different identifiers such as the property designation (municipality, village, block and unit), the address of the property unit (name of municipality and street, and address number)<sup>128</sup>, technical identifier, archive reference for easements and for land use planning and regulation. However, the data extracted is not the entire registered and recorded information relating to a property unit. To protect legal personal data, the National Land Survey does not freely make available or provide

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<sup>125</sup> Stipulated by Section 79 of the Real Property Register Ordinance (2000:308).

<sup>126</sup> Stipulated by Section 5 Chapter 19 of the Real Property Formation Act (1970:988) and Section 37 and 38 Chapter 19 of the Land Code (1970:994).

<sup>127</sup> Stig Jonsson, *ibid.* supra note 59.

<sup>128</sup> The National Land Survey, "The 2009 Annual Report", the full Swedish version, [http://www.lantmateriet.se/upload/filer/om\\_lantmateriet/arsredovisning\\_2009\\_full.pdf](http://www.lantmateriet.se/upload/filer/om_lantmateriet/arsredovisning_2009_full.pdf). Retrieved [20101021 21:41]. At the end of 2009, there were about 96% residential housings with address which had been registered

any information about who owns a property or about the mortgages on a property unit. Moreover, an information extract cannot be used as evidence in legal proceedings unless it is supplied directly by a land registration authority.

People who want to find out land information can access the website of the National Land Survey by way of a contract or license signed and granted by the National Land Survey, after due payment of fees. The registration fee is 1500SEK with a further monthly cost of 100SEK. Then people can also order information extracts from the land data bank system at lower cost. For some examples, tax assessment, 27 SEK; owner and address, 23 SEK; building information, 23 SEK; and property map, 20 SEK... etc<sup>129</sup>.

With a multi-functional information system, which is maintained and regularly updated, the Land Data Bank system in Sweden supports both State management activities and the private economy. As to the private sector, data from the system is mainly used by banks, financial institutions, real estate agents and insurance companies and this gives rise to about 50% of total demand. In the public sector, central and local governmental organizations make up less than 20% of total demand. Finally, the demand for information for activities relating to land use planning and the sustainable management of land and water and other natural resources is constantly increasing<sup>130</sup>.

With modern technologies, the cost of operating, maintaining and updating a land information system becomes more and more negligible. In Sweden, approximately 30% of the cost of the system is provided by the Government and the rest is collected from supplying land information through the internet and other services (such as providing cadastral techniques, etc). Government grants should continue to decrease and the system should become more and more self-financing.

Within 2007–2009, the level of government grants to the National Land Survey was less than 30%, namely 21,1% in 2007; 23,2% in 2008<sup>131</sup> and 26,2% in 2009<sup>132</sup>. There was a little increase each year due to the fact that the National Land Survey took over responsibility for land registration, which was a totally grant financed activity.

### **3.3. Evaluation of the system of land registration in Sweden**

Owing to efforts continuously maintained over many years, Sweden has been successful in its management of land. An effective and reliable system of land registration has been established which has brought many economic benefits. Registration, through the simplicity of the procedures involved, can be carried out electronically over the internet. This not only simplifies administrative procedures and facilitates the applicant but also helps to reduce the costs, time and personnel needed.

With its own land information data (containing different kinds of maps, particulars on each land parcel including full data on geometrical characteristics,

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<sup>129</sup> For more detailed information, see online at [http://www.metria.se/upload/filer/Vara\\_Produkter/06\\_karttjanster\\_programvaror/Dokument/Prislista\\_F Sok\\_from\\_20100101.pdf](http://www.metria.se/upload/filer/Vara_Produkter/06_karttjanster_programvaror/Dokument/Prislista_F Sok_from_20100101.pdf). Retrieved [20101021 21:43].

<sup>130</sup> Bengt Kjellson, *ibid.* supra note 82.

<sup>131</sup> The National Land Survey, *ibid.* supra note 42.

<sup>132</sup> The National Land Survey, *ibid.* supra note 43.

value, legality and use as well as clear identification of boundaries and protection of ownership for each property unit under the guarantee of the State), the land registration system has an important role to play in promoting the development of society. The simplicity and accessibility of the system are almost preconditions for building an effective housing policy and developing the information system overall. For the less well off, being identified as the owner of an officially registered property unit will help them find credit with which they can try to improve their situation. A clear identification of the ownership of registered property also contributes to limit land disputes and thus stabilize society.

The system of land registration meets the needs of many different fields and areas in social life. Through the supply of information and other services, it also receives a not small annual source of income. This income is fairly stable and ensures the maintenance and operation of the system with the approximately 90 offices throughout Sweden and a staff of approximately 2.400 people.

Total revenue of the National Land Survey in 2007 amounted to 1.784 million SEK, compared to 1.679 million SEK in 2006. Earnings from the export of products and services continue to increase too and amounted to 59.9 million SEK in 2007, an increase of 30% compared to 2006<sup>133</sup>. The total revenue in 2008 amounted to 1.870 million SEK<sup>134</sup> and continued to have an increase of nearly 10% in 2009, about 2.056 million SEK. In the Swedish Quality Index annual measurement of customer satisfaction on all major government authorities, the National Land Survey, in the second consecutive year (2008–2009), took second place in the top of the list, after the Swedish Tax Agency<sup>135</sup>,

However, despite these encouraging results, the system of land registration in Sweden is still not completely modernised. Many regulations have not been changed along with the changes in organizational structure and the application of new techniques to registration activities. Computerization has only been completed for registered information and only a few registration activities are conducted electronically. Most of the requirements and records are still stored on paper<sup>136</sup>. The system's operation also seems to fail to meet the needs of customers.

According to a survey of customer satisfaction in 2007, the level of customer dissatisfaction with costs in relation to product quality was 41%. This figure was primarily mainly from customers who purchased maps in the national map series, with about 57% dissatisfied with the price and 38% considering that prices for cadastral procedures were too high<sup>137</sup>.

According to this survey, based on the average grades on a scale of 1-100 given for accessibility, handling times, product information, knowledge and competence, exchange of knowledge and co-operation, the customer satisfaction index for each year was mostly showing no change, for example, the year 2004: 72 and from 2005 to 2007: still 71<sup>138</sup>. In the two next years (2008-2009), this

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<sup>133</sup> The National Land Survey, *ibid.* supra note 83.

<sup>134</sup> The National Land Survey, *ibid.* supra note 42.

<sup>135</sup> The National Land Survey, *ibid.* supra note 43.

<sup>136</sup> Monica Johansson, *ibid.* supra note 80.

<sup>137</sup> The National Land Survey, *ibid.* supra note 83.

<sup>138</sup> The National Land Survey, *ibid.* supra note 83.

index increased to 72<sup>139</sup>. Although it is just a little increase, it is still the grade that many authorities, including private companies trying to satisfy their customers in a competitive environment, want to reach. This is a good sign, but it still shows that the number of those who are satisfied with the products and services of the system of land registration is still not large enough.

In addition, this survey also indicated that the customer dissatisfaction tended to application processing time.

A decision can take between one and several days on the basis of the size of workload and the type and complexity of the application, not including public holidays. In several cases, there may be queues, such as at periods of high activity on the property market. Although the land registration system has been computerized with the land data bank system has been established successfully since 1995, reducing registration time from a few weeks to a few days<sup>140</sup>, it has, to some extent, not meet customers' demand. In real estate transactions, such as transfer and mortgage, customers may not receive registered results and information during the day to make timely decision for their transactions. The reason is that according to the law, as mentioned, registration time shall be concluded by 12 noon, and an application received after this time shall be made on the next following registration day. The queue time, therefore, can occur, especially for applications on Fridays. For example, an application received on Friday after 12 noon shall be handled in next week, and for many above bases, extended several later days. In the 2009 report of the National Land Survey, the average queue time during 2009 was ten days<sup>141</sup> when the demand of customers on registration without delay is very high.

As mentioned above, Sweden does not have a notarial system, real estate transactions are implemented by parties through written contract with assistance of a broker or a banker, then registered at the land registration office. Without title registration, it is impossible for owners to exploit their real properties, for example mortgages, in order to create a big capital for their bussiness. If in Sweden, before 2005, there were about 140.000 real properties changed owners<sup>142</sup> annually, up to 2009, 950.000 transactions were applied for registration at the land registration offices during this year, of which 865.000 registered in the Real Property Register. Most of them were mortgages and ownership registration<sup>143</sup>. The mortgage, one of the most active parts of real estate market, has a total mortgage value of more than 3.495 billion SEK<sup>144</sup>. Not to mention that during 2009, the National Land Survey had to carry out just over 17.000 cadastral procedures and still had a backlog of applications following the 2008 re-organisation that needed to be solved<sup>145</sup>.

The queue time, thus, creates obstacles for the circulation of the huge capital from real properties in society in order to support economic development, not including waste of time and cost of the applicants.

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<sup>139</sup> The National Land Survey, *ibid.* supra note 42 and 43.

<sup>140</sup> Bengt Kjellson, *ibid.* supra note 82.

<sup>141</sup> The National Land Survey, *ibid.* supra note 43. See the Figure 7 of Appendix A to know specific queue time in each registration office.

<sup>142</sup> Kristin Karlsson, *ibid.* supra note 60.

<sup>143</sup> The National Land Survey, *ibid.* supra note 43.

<sup>144</sup> The National Land Survey,

[http://www.lantmateriet.se/templates/LMV\\_Page.aspx?id=2012&lang=SV](http://www.lantmateriet.se/templates/LMV_Page.aspx?id=2012&lang=SV). Retrieved [20101021 21:46].

<sup>145</sup> The National Land Survey, *ibid.* supra note 43.

According to the Swedish Tax Agency, the total value of real estate for tax base in Sweden in 2006 was 2.837 billion SEK with a tax revenue of 22.691 million SEK<sup>146</sup>. In 2007, the total value of real estate for tax base was 3.033 billion SEK and the tax revenue amounted to 24.032 million SEK<sup>147</sup>.

The queue time also makes the dissatisfaction of customers who always want to be received a fast and qualitative service, in which their applications can be registered and the certificates (if any, for example in mortgage registration) can be decided and issued on that very day, instead of queue time, in order to exploit lawfully their properties as soon as possible.

This means that the National Land Survey needs to continue improving its operations and the provision of its services; being interested in and predicting the needs of the customer; focusing on building a courteous attitude and being professional in communicating with people using the system; making the maximum effort to provide an information system that is clear and easy to understand at the lowest cost possible.

In today's conditions too, many new problems are arising that have an impact on the operation of the system of land registration.

The unified management of cadastre and title registration through the absorption of the land registration authority by the National Land Survey, effective June 1st, 2008 has established a new division, the Land Registration Division, directly under the National Land Survey. Although this has been done without, so far, changing the structure of the organization, recruiting a number of key personnel who will lead the new operations has to be considered. This re-organisation also sets up a need for adjustment of several legal provisions in the Swedish Land Code relating to land registration procedures in order to make convenience for land registration activity and the management of the National Land Survey. In addition, in the Cadastral Services Division, experienced personnel are being lost. Many employees have reached retirement age, while the recruiting and training of new employees cannot keep pace with demand because this is a field with demanding requirements, especially where past experience is concerned. This causes difficulties in maintaining and guaranteeing acceptable delivery times for cadastral procedures<sup>148</sup>.

The accuracy of the digital cadastral map is also a problem which needs to be concerned, especially in determining boundaries of a real property unit. Much of boundary data in the digital cadastral map is made on the basis of a combination of different kinds of paper maps and small-scale aerial photography. While some paper maps are done as results of activities of cadastral surveys and staking landmark in the field, others only are shown as very rough pictures. To combine them with aerial photography, various adjustment techniques have been used to obtain geometrical

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<sup>146</sup> The Swedish Tax Agency, *ibid.* supra note 40.

<sup>147</sup> The Swedish Tax Agency, *ibid.* supra note 41.

<sup>148</sup> The National Land Survey, "Lantmateriet's – Strategic Plan 2006 – 2010", [http://www.lantmateriet.se/upload/filer/om\\_lantmateriet/strategiskaplanen\\_engelska.pdf](http://www.lantmateriet.se/upload/filer/om_lantmateriet/strategiskaplanen_engelska.pdf). Retrieved [20101021 21:48].

boundaries without loose ends. The accuracy, thus, is reduced. In areas where new surveys have been carried out, the accuracy of digital cadastral map varies between less than one centimeter and well over 20 meters. In the rural areas, a normal discrepancy is that of around four or five meters<sup>149</sup>.

This proves that the digital cadastral map is not yet the best evidence for determining the legal location of real estate unit boundaries. It can cause problems to the users. In the current computerized information system with accessibility to users, more and more people trust the digital cadastral maps. They do not know or do not pay attention to a matter that such a map at present only gives a rough picture of how the land is divided into properties. They also forget that in order to determine the accurate boundary locations, they still have to look into the cadastral survey plans and trace boundary marks on the ground. This may lead to mistakes when putting up fences, planting or felling trees, or doing the likes. Sooner or later, such mistakes can cause disagreements or disputes among the neighbours. Naturally, although the annual number of boundary disputes is about ten per million property units<sup>150</sup>, the trust of the users in the National Land Survey and its services, such as the digital cadastral maps, may not be fully satisfied.

Today, all mobile networks and laptops can support a positioning function, leading to the greater use of geographic data. The provision of this service needs to maintain its accuracy levels and it is also facing competition. In addition, environmental issues in the relationship with sustainable development are also becoming ever more important. To manage and monitor the environment, geographical data must be of good quality and high precision. For the National Land Survey, this issue affects the supply of all of the services of the land registration system, especially in the face of competition arising from globalisation<sup>151</sup>.

However, as the Swedish National Assembly had affirmed: “The general goal of the National Land Survey is to achieve an increased social utility. The National Land Survey does not exist for its own sake but to make a positive contribution to society”. It has also to satisfy society’s basic need for geographic information and property information even at times of severe social strain<sup>152</sup>.

Being aware of its role in modern society as well as the difficulties of managing, maintaining and operating the system, the National Land Survey has made many improvements and frequently applies new techniques.

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<sup>149</sup> Kristin Karlsson, *ibid.* supra note 60.

<sup>150</sup> Kristin Karlsson, *ibid.* supra note 60.

<sup>151</sup> The National Land Survey, *ibid.* supra note 148. There are now some effective systems of geographic information such as INSPIRE (Infrastructure for Spatial Information in Europe), GPS (Global Positioning System – an American system for satellite positioning) and Galileo (a European system for satellite positioning). They can affect and compete with the services of the Swedish National Land Survey.

<sup>152</sup> The National Land Survey, *ibid.* supra note 148.

Human resources are reinforced. The recruitment of new staff has continued to balance the number of old staff member who are reaching retirement age. There were 204 persons recruited in 2008<sup>153</sup>, and 122 persons in 2009<sup>154</sup>. The Cadastral Service Division, through its training and development programme for cadastral surveyors, recruited 87 persons in 2008 and 45 persons in 2009.

On the 26th January, 2008 the National Land Survey changed the official national co-ordinate reference system from RT90 to Sweref 99. The new system has been adapted to European standards and is accurate to a centimeter. It is an important platform for surveying activities and for map production and provides the tools which support all positioning activities. The change provides for new sets of coordinates in the Real Property Register and the geographic databases. In addition, the coordinate systems for the property maps, topographical maps, road maps, general maps and mountain maps will also change and take on a new appearance<sup>155</sup>.

During the summer of 2006, to meet the demands for improved geographical data, the Government gave the National Land Survey, in collaboration with various high level consulting groups established by it, the task of building a national geodata strategy, with the aim of increasing the use of geographic data, enhancing quality and convenience in combining data from different sources. This began to be implemented in March 2007 and is to be updated regularly with an annual report on its achievements and a description of activities planned for the following year. The implementation of this strategy affected not only the public but also the private sector, as it supports the activities of certain interested parties by: (i) developing the market for value added products and services by helping market parties to evaluate their market potential, thus reducing risk in investment activities; and (ii) bringing registered data to market more easily<sup>156</sup>.

In addition, the Government also handed the National Land Survey the task of setting up a national apartments register for the whole country. During 2007, an intensive program of activities regarding the work was carried out and the collection of information was started in January 2008. The owners of apartment blocks have been requested to provide information on the apartments within their buildings, including data on the number of rooms, floor areas and types of apartments. A numbering system is also proposed which will apply to apartments. This register creates favorable conditions for the National Tax Board to register apartment dwellers by apartment instead of by the block as a whole. It also helps statistical analysis of the overall number of households and housing. These statistics can be used for research, planning and monitoring social welfare policies. The owner of an apartment will be able to transfer his or her own data through the Internet<sup>157</sup>.

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<sup>153</sup> The National Land Survey, *ibid.* supra note 42.

<sup>154</sup> The National Land Survey, *ibid.* supra note 43.

<sup>155</sup> The National Land Survey, *ibid.* supra note 83.

<sup>156</sup> The National Land Survey, *ibid.* supra note 83, and Stig Jonsson, *ibid.* supra note 59.

<sup>157</sup> The National Land Survey, *ibid.* supra note 83.

Digitizing the large quantity of maps and other documents in the archives is a huge task has been made in the 21 cadastral authorities and at the National Land Survey. In total the archives consist of more than 2.5 million individual documents with a total of over 50 million pages and maps. Each year, more than 200,000 documents are used in the property formation process<sup>158</sup>. To digitize them requires a great effort and a big investment capital from the National Land Survey. New cadastral surveys need to be implemented in order to adjust and re-determine the accurate and unified coordinates of boundaries of more than 3,2 million registered properties throughout Sweden. Although this is difficult, the National Land Survey still has to carry out as the digitalization of the archives and the setting up of efficient access tools will create further cost savings within the field of cadastral activities. The intent is to meet the needs of professionals and of the community, while reducing the costs of storage and maintenance, and improving the trust of customers in activity effect of the National Land Survey and its services. Today, the whole of the National Land Survey's archive containing maps and dossiers can be accessed on-line<sup>159</sup>. However, Swedish law determines how data that includes personal information can be used. Public access is, therefore, restricted for any database which includes personal information concerning persons currently alive. For this reason, only archives such as maps created before 1928 can be accessed<sup>160</sup>.

Since the autumn of 2008, the Land Registration Division has initiated a project called "one way" to develop uniform process for handling land registration at all land registration offices. Based on this, the land registration offices can not only save time but also be easier to move staff among offices when temporary staff shortages occur. Another advantage is that registration cases can be handled and accessed in a similar way irrespective of which registration offices deal with the case<sup>161</sup>. It will create the background for the National Land Survey, as it hopes, possible to introduce electronic handling of applications in 2011<sup>162</sup>.

With its long history and its development record, it can be seen that the system of land registration in Sweden remains flexible and will make efforts to keep up with changes of society and use the achievements of science and technology. The present aim is to achieve the important targets that the system of land registration has indicated. They are specifically expressed in the strategic plan of the National Land Survey as the following<sup>163</sup>: (i) building a system of registration that is popular, widely used and earns the trust of the people using it while bringing benefits to the whole of society; (ii) building a working environment that is attractive and friendly based on

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<sup>158</sup> Stig Jonsson, *ibid.* supra note 59.

<sup>159</sup> The National Land Survey, *ibid.* supra note 43.

<sup>160</sup> The National Land Survey, [http://www.lantmateriet.se/templates/LMV\\_Page.aspx?id=1581](http://www.lantmateriet.se/templates/LMV_Page.aspx?id=1581). Retrieved [20101021 21:50].

<sup>161</sup> The National Land Survey, *ibid.* supra note 42.

<sup>162</sup> The National Land Survey, *ibid.* supra note 43.

<sup>163</sup> Stig Jonsson, *ibid.* supra note 59.

the professional ability, experience and dedication of the staff; and (iii) building an information system that leads in providing services<sup>164</sup>.

In addition, Sweden is also interested in linking the benefits of the system of land registration with the interests of other industries and sectors within the country and in ensuring the registration system is compatible with those of other countries in the European Union.

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<sup>164</sup> The system of land registration in Sweden already has all the preconditions for performing the leading role in developing e-government in the near future through its pioneering role in reforms of the land registration system, and the early implementation of computerization.

## **SUMMARY**

The land registration system in Sweden has a long history. Cadastral activity was implemented first for tax purposes. This activity was then coordinated with the registration of ownership and developed in a stable manner in a peaceful environment and has regularly been considered to be completed. Many innovations have been made over a long period (such as the land amalgamation to overcome land fragmentation, the unification of the authority responsible for land registration, and above all the introduction of computerization into land registration activities) and these have led to the establishment of an effective land registration system which can supply full land information for various kinds of users. The success of these reforms makes the Swedish land registration system one of the most effective digital systems in the world.

The National Land Survey, with its four professional division (the Cadastral Services Division, the Land Registration Division, the Land and Geographic Information Division, and the Metria Division), takes the main responsibility for registration throughout the country, including both cadastre and land registration. Most Swedish land units have now been registered and the relevant information fully stated in the Real Property Register which is operated and managed by the National Land Survey. Besides the cadastral and title information recorded by the National Land Survey, information about land use planning and land evaluation is also maintained by the authorities and this is updated frequently in the Real Property Register. With this as background, a land data bank system in Sweden has been set up and successfully digitalized. Anyone can seek land information over the internet easily, quickly and conveniently. Applicants can feel comfortable with the simplified administrative procedures and general convenience of the system. Many products and services supplied by the Swedish land registration system meet the demand locally and throughout the world.

With the rapid development of technology, the National Land Survey frequently tries to set new targets for its future development and to determine its weak points with a view to ensuring the Swedish land registration system has always to catch up with social demand. And this makes for the success and effectiveness of the system, an end result which many countries want to emulate.

## **CHAPTER 4**

### **THE LAND REGISTRATION SYSTEM AND ITS RELATION TO THE LAND LAW OF VIỆT NAM**

Việt Nam is a developing country in the Indo-Chinese Peninsula with an area of approximately 331.051 km<sup>2</sup> and a population of over 86 million people. Population density is high: approximately 260 persons/km<sup>2</sup> <sup>165</sup>. About 25% of the population lives in urban areas and about 75% in rural ones<sup>166</sup>. Most provinces in Việt Nam are rapidly tending towards urbanization.

Vietnamese development entailed a long process defending the nation against invasions by a series of foreign powers in succession. After over 1000 years of domination by Chinese feudalism (from the 2<sup>nd</sup> century BC to the year 938 AD), Việt Nam gained its independence and started to establish a feudal system of its own. However, civil wars that led to the nation being partitioned occurred frequently, especially during the 16<sup>th</sup> century. In the beginning of the 19<sup>th</sup> century, when capitalism took on its imperialist form and executed aggressive wars in order to expand markets, Việt Nam was annexed by France and became a semi-feudal colonial nation from 1858 to 1945. In spite of winning a war of resistance against the French colonialists in 1954<sup>167</sup>, intervention, first diplomatic and then military, by the United States led to Việt Nam being divided into two regions – the North and the South<sup>168</sup> - which lasted for more than twenty years. With the victory of the struggle for independence and unification of the country in April 30<sup>th</sup>, 1975, Việt Nam started into an era of peace, unification and development of the country<sup>169</sup>.

With about 35 years of peace, Việt Nam has made a great effort to overcome the damage caused by war and has improved the country in many ways, especially in the field of agricultural economy. Moreover, the Government paid special attention to land management in order to use this huge internal capital in its development of the economy. As part of this, establishing a united system of land registration has become an issue that attracted much interest in recent years. This issue gained prominence because the land registration system has not yet been used to support the most effective way to administer and exploit the land for development purposes.

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<sup>165</sup> The Vietnamese General Statistics Office, “Dân số và mật độ dân số năm 2009 phân theo địa phương”, <http://www.gso.gov.vn/default.aspx?tabid=387&idmid=3&ItemID=9865>. Retrieved [20101021 21:59].

<sup>166</sup> The Vietnamese Ministry of Foreign Affairs, “Dân tộc và ngôn ngữ”, dated January 5<sup>th</sup>, 2010, [http://www.mofa.gov.vn/vi/tt\\_vietnam/nr040810154926/](http://www.mofa.gov.vn/vi/tt_vietnam/nr040810154926/). Retrieved [20101021 22:03].

<sup>167</sup> The “Điện Biên Phủ” Victory in May, 1954 marked Vietnamese success in the resistance war against the French colonialists. The belligerent parties signed the 1954 Geneva Cease-fire Agreements in July, 1954.

<sup>168</sup> The North of Việt Nam secured independence in 1945 and chose to establish a socialist nation. The South of Việt Nam was governed by the United States from 1954 to 1975.

<sup>169</sup> The Ministry of Foreign Affairs, “Vài nét về quá trình phát triển của dân tộc Việt Nam”, dated January 5<sup>th</sup>, 2010, [http://www.mofa.gov.vn/vi/tt\\_vietnam/history/](http://www.mofa.gov.vn/vi/tt_vietnam/history/). Retrieved [20101021 22:06].

To attain an appreciation as a preparation for further analysis, it is necessary to study the historical foundation of the land registration system in Việt Nam.

#### **4.1. Outline of land registration system in Việt Nam**

Land is a gift that nature gives to humanity, so one could argue that everybody has the right to receive the benefits of the land. It is unreasonable for benefits to belong to a minority alone. Based on this, anyone who wants to exploit and profit from land has an obligation to pay a part of the profits to the State through a form of taxation. Through this, the State will get means to serve society by supplying social welfare or constructing infrastructure (one cannot exclude cases where the State uses it for the purposes of the government apparatus itself). To determine suitable levels of taxation, the State must engage in cadastral activities to know about the land situations in its physical, legal and use aspects. This calls for an organization, which helps the State in these activities.

As a result State management agencies over land and registration (in the form of cadastre) were established some years ago.

##### ***4.1.1. Land registration in the former regimes in Việt Nam***

###### ***4.1.1.1. In feudal periods***

After escaping from the domination of Chinese feudalism, a problem of establishment and protection of national independence became an urgent need for Vietnamese feudal dynasties from the 11<sup>th</sup> century to the 15<sup>th</sup> century. In order to recruit for the army and labour, the census and report of village inhabitants were conducted strictly by the State, especially under the Ly dynasty<sup>170</sup>.

With a firm grasp on population, particularly people within labour age, the State in the reign of Lý-Trần held in their hand a stable source of revenue. The reason was that in this period, the village community was a fundamental administrative – economic unit of the nation. It was assigned to manage most of public fields and distribute to village inhabitants for farm work, then collect and pay sufficiently tax for the State. However, the State had not intervened directly in land survey activity. Cadastral book was not made. There were not any materials in this time which mentioned the concept of cadastral book<sup>171</sup>. It seemed that the State under Lý-Trần dynasties used, for knowing about land to collect tax and grant a reward to deserved persons, some rudimental forms of management, without organizing land survey periodically.

For example, when showing location of rice fields, people used to write clearly about east, west, south, and north boundaries in documents and map<sup>172</sup>. Or in

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<sup>170</sup> Trương Hữu Quýnh, “Chế độ ruộng đất Việt Nam thế kỷ XI–XVIII”, The National Political Publishing House, Hà Nội, 2004, p. 83.

<sup>171</sup> Trương Hữu Quýnh, *ibid.* supra note 170, pp. 85 and 87.

<sup>172</sup> Trương Hữu Quýnh, *ibid.* supra note 170, pp. 85 and 133.

order to guarantee for the right to land possession of a grantee, the king issued “an announcement card” to this person as evidence<sup>173</sup>.

In the reign of Lý, land transactions were regulated and taken into order with requirement of contract between a seller and a buyer: “*if a plot of waste field or mortgaged field was sold through a contract, it would not be redeemed any more*”<sup>174</sup>. In the reign of Trần, due to the development of land transactions and land disputes, in 1227, the State had to stipulate about signing by pressing fingerprint on a contract. Even how to fingerprint was also provided specifically in 1237: “*When making a testament or a contract, if it related to land documents or loan contract, the witness had to fingerprint at three previous lines and the seller had to fingerprint at four lines after*”<sup>175</sup>.

At the end of the 14<sup>th</sup> century, after coming into power, on July 1397, the king Hồ Quý Ly issued a policy on land limit to cut down private fields. To implement this policy, in 1398, he commanded persons who owned private land to declare their fields and set a stake with a card writing full name of owners in their land parcels. He also assigned local mandarins to do land survey and make land book<sup>176</sup>.

As a result, it could be seen that land registration in Vietnam had been implemented in long time ago by the Lý-Trần dynasties in the first years of independence, especially for public land in village community and private fields in order to serve State needs. However, a systematic survey of land on a national scale had not been carried out. Establishment of cadastral book was not interested in. Therefore, there were hardly any official materials to prove the land registration activities which were taken place in this period (from the 11<sup>th</sup> century to the 14<sup>th</sup> century). The main materials discovered were historical documents and remained evidences which were recorded in some family annals, epitaphs or on temple bells engraved or cast in this time.

At the end of the 14<sup>th</sup> century and in the beginning of the 15<sup>th</sup> century, taking advantage of confused situations that the reign of Hồ Quý Ly was isolated and not to be advocated by the people, the Minh dynasty of Chinese feudalism invaded again. Struggle movement for national liberation once again continued to break out and develop widely. It attained resounding victory in 1427 through the Lam Sơn rising under Lê Lợi’s leadership after ten years of enduring struggle. In the beginning of 1428, the Le dynasty was officially set up. Just right in this year, the king ordered

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<sup>173</sup> Trương Hữu Quýnh, *ibid.* supra note 170, p. 119; and “Đại Việt sử ký toàn thư”, Volume II (the second edition), The Social Sciences Publishing House, Hà Nội, 1971, p. 124.

<sup>174</sup> Trương Hữu Quýnh, *ibid.* supra note 170, p. 126.

<sup>175</sup> Trương Hữu Quýnh, *ibid.* supra note 170, p. 127; and “Đại Việt sử ký toàn thư”, *ibid.* supra note 173, p. 8.

<sup>176</sup> Trương Hữu Quýnh, *ibid.* supra note 170, p. 168.

local villages to reckon up cultivated land, verify and make land book on the whole country<sup>177</sup>.

Under the reign of King Lê Thánh Tông, land administration was officially provided for in the first Vietnamese code – the Hồng Đức Code<sup>178</sup>. Ownership of public land and private land was strictly protected<sup>179</sup>. Mandarins at local level had responsibility for surveying and making out a cadastral book. Landowners or land users had the obligation to declare exactly the land that they owned or were permitted to use by the State.

The chapter “Real property” of Hồng Đức Code with 32 articles defined clearly specific punishments which were applied to persons who encroached on or illegally occupied State land or personal land, or declared real estate deceitfully to evade taxation. It also stipulated the responsibility of local mandarins in surveying, allocating land and making cadastral book. Every four years, the cadastral book would be updated<sup>180</sup>.

It was the first time a system of cadastral book or land register<sup>181</sup> was created for land management and tax collection or any purposes. Regulations on land transactions with contract were issued in 1471: “*Purchasing or selling land had to be done through written contract. Mandarins or literates had to write family name and sign in the contract. If one was illiterate, one had to sign by pressing one’s fingerprint on the contract. Contract or testament would not come into force unless the witness of an over-thirty-year-old mandarin*”<sup>182</sup>.

In 1486, the Lê dynasty continued to stipulate that local government had to make boundary marks for cultivated land: “*Local mandarins, on the basis of cadastral book and meeting with village mayor, as well as old persons in village, had to define and stake boundary mark for land plot*”<sup>183</sup>. National maps<sup>184</sup> were also produced after surveying the land and these were used for demarcating administrative boundaries in 1490<sup>185</sup>.

With activities of surveying land and making land map and cadastral book, the Lê dynasty could manage real property in the whole country, especially cultivated land, for purposes of administration and tax collection. These activities were carried out from the first time of establishment of the Lê reign in order to affirm the supreme ownership of the State to land which was being dispersed in war period; create

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<sup>177</sup> Trương Hữu Quýnh, *ibid.* supra note 170, pp. 182, 183 and 204.

<sup>178</sup> Hồng Đức Code (or “Quốc triều hình luật”) is the most Vietnamese oldest code that is kept completely in Việt Nam. It was promulgated under the Lê dynasty. It included 6 volumes with 13 chapters and 722 articles.

<sup>179</sup> Đỗ Hậu and Nguyễn Đình Bồng, “Quản lý đất đai và bất động sản đô thị”, The Construction Publisher, 2005, p. 75.

<sup>180</sup> “Quốc triều Hình Luật”, The National Political Publishing House, Hà Nội, 1995, the “Điền sản” chapter, pp. 129–137.

<sup>181</sup> The cadastral book was named after the Hồng Đức Code: Hồng Đức cadastral book.

<sup>182</sup> Trương Hữu Quýnh, *ibid.* supra note 170, p. 235.

<sup>183</sup> Trương Hữu Quýnh, *ibid.* supra note 170, p. 245; and “Đại Việt sử ký toàn thư”, Volume III, The Social Sciences Publishing House, Hà Nội, 1968, pp. 123 and 294.

<sup>184</sup> The national map was also named after the Hồng Đức Code: Hồng Đức map.

<sup>185</sup> Dương Chí Công, “Quản lý đất đai ở Việt Nam qua các giai đoạn lịch sử”, Cadastral Magazine No.12, December 2000; and Trương Hữu Quýnh, *ibid.* supra note 170, p. 35.

condition for policy on land allocation or remuneration of the king; as well as quickly bring a large number of uncultivated land into production to improve economic development.

Entering the 16<sup>th</sup> century, the Lê dynasty started to weaken gradually and then was collapsed due to struggles for power of several feudal influences who ruled each a region as his feud. The country was divided into two regions in a long time: the South under the Nguyễn lord's domination and the North under the rule of the Lê kings and the Trịnh lords. Until at the end of the 18<sup>th</sup> century, with the Tây Sơn peasantry movement led by Nguyễn Huệ, the country became united.

During three centuries with complicated changes of politics, the interest in land problem was decreased. There is no historical event having enough influence to make changes of land relations. Land registration activities were performed mainly on the basis of inheritance of the Lê dynasty's foundation. They were just some small changes, if any, for state management in some determined areas according to new situations.

For example, in the North in 1711, the Trịnh lord issued a policy on land allocation for servicemen based on previous provisions of Lê Đức times, with supplement of beneficiaries<sup>186</sup>. Or in the South in 1770, the Nguyễn lord gave an order to update cadastral book in Thuận Hóa province for tax collection. However, due to the reason that the land was so extensive, as well as in order to encourage people in land reclamation, the State did not pay attention to do land survey and management<sup>187</sup>. Under Tây Sơn reign, in 1788, the king Nguyễn Huệ ordered some localities to update cadastral book. Nevertheless, for regions where could not update in time, the previous cadastral book of the Lê dynasty was still applied<sup>188</sup>.

Not until the first half of the 19<sup>th</sup> century was land registration activity renewed.

During the reign of king Gia Long, which began in 1805, an extensive survey of land was performed and the cadastral book was re-established in the villages, the unit of measurement that was used was being the hectare. In 1836, under the rule of king Minh Mạng, the land survey in the South of Việt Nam was finished, the total of agricultural land recorded being 4.063.892 hectares, including 17% of public agricultural land<sup>189</sup>. There were three copies of the cadastral books: one at central headquarters<sup>190</sup>, one at provincial headquarters and the last at the village. They were corrected and edited every year. Then after each of five years, there was a large amendment.

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<sup>186</sup> Trương Hữu Quýnh, *ibid.* supra note 170, pp. 369 and 372.

<sup>187</sup> Trương Hữu Quýnh, *ibid.* supra note 170, p. 428.

<sup>188</sup> Trương Hữu Quýnh, *ibid.* supra note 170, p. 449.

<sup>189</sup> Dương Chí Công, *ibid.* supra note 185.

<sup>190</sup> It was in charge of tax at central government and was the same as Ministry of Finance.

However, the cadastral book under Minh Mạng reign was more progressive with stricter provisions being used in its establishment than that of Gia Long's. The making of the cadastral book was implemented by a land survey witnessed by the village dignitaries, the Canton and District Chiefs and the landowner. It clearly recorded information on land area, land use purpose and the landowner. In the cadastral book, in order to show land parcels, there was a descriptive map which had been prepared by the village dignitaries and approved by the signatures of a mandarin and a district office clerk. Amendments were carried out based on landowners' application (in case of inheriting, donating, selling or giving up ownership). The district Chief had to examine any changes without delay and then submit them to the provincial Chief for approval. Finally, the change was recorded in the cadastral book<sup>191</sup>.

Unlike the Minh Mạng cadastral book, the Gia Long cadastral book was difficult to use and correct because there was no descriptive map and units of measurement used in land survey were different in each locality.

Although the performance of cadastral activities and the making of a cadastral book in feudal period started very early, nearly five centuries ago, what was done remained good evidence, the Gia Long cadastral book in parts of the North and the Minh Mạng cadastral book in the South of Việt Nam.

#### ***4.1.1.2. In the French colonial period***

During the nearly one hundred years of French domination, the French brought new cadastral techniques to Việt Nam. The French law system replaced the Gia Long law system.

First came a change in the land management agencies.

In 1867, the French established a Cadastral Department in Sài Gòn<sup>192</sup> and changed its name to the South Cadastral Department in 1869. It was managed by a French administrative inspector and then, from 1896 by the Governor of the South.

In Central Việt Nam, the Farmstead Preservation Department was established in 1930, but changed its name to the Cadastral Administrative Department in 1939. It was in charge of the land survey and the making of the land register.

In the North, a Cadastral Department was set up in 1906<sup>193</sup>.

Cadastral activity also changed. The cadastral map was renewed and land title deeds were used in place of *the* cadastral book in urban areas. However,

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<sup>191</sup> Lê Đình Thắng and Đỗ Đức Đới, "Giáo trình Đăng ký – Thống kê đất đai", The University of National Economy, Department of Economy and Cadastral Administration, The National Political Publishing House, 2000, pp. 22–23.

<sup>192</sup> Sài Gòn is now Hồ Chí Minh city.

<sup>193</sup> Dương Chí Công, *ibid.* supra note 185.

depending on the policies in place, the French applied different modes of land registration in different regions<sup>194</sup>.

In the South, there were two types of land registration: one for Vietnamese people and the other for French and French nationals. The cadastral administrative system was used to manage land of the Vietnamese from the end of the 19<sup>th</sup> century. It based on amendments to the Minh Mạng cadastral book but was further improved after 1911. More information was recorded in cadastral book such as deeds of land transfer and court orders if any as well as maps of the land parcels covered. Landowners were given a copy of the cadastral book. For land belonging to French and French nationals, there was another type of land registration that was carried out by the Provincial Cadastral Department and then shown in the land register.

To unify the land administration, the French government issued a decree dated July 21<sup>st</sup>, 1925 which provided a unified system of land registration for the South and some French territorial concessions in Hà Nội city, Hải Phòng city and Đà Nẵng city. Under this, land parcel maps were to be treated in the most modern way available at the time. Each land parcel was shown on one page of the register which also contained further information about the landowner, area, location, border and other relevant rights. After registering, a landowner was granted a land title deed. This was regarded as the best system during the French colonial period. However, widespread application of this system was slow, so the old cadastral book was still primarily used.

In central Việt Nam, land registration started in the 1930s with the documents created including: land parcel map, land register, landowner and lenders on land records. Cadastral official and a board for demarcating and placing boundary marks would do the land survey, draw the land sketch map, and compare this with ownership documents presented by landowners. The Cadastral Administrative Department produced a land parcel map on the 1:2000 scale, which numbered and calculated areas for each land parcel. The cadastral file had to be approved by the French Resident or President Superior and publicized within two months. The Cadastral Administrative Department thus created a full-fledged land register.

In the North, land survey was begun in 1889, but merely measured land boundaries. In 1920, the colonial government started to measure more precisely and to create a land register. Land registration was regulated by a decree dated March 29<sup>th</sup>, 1939. Based on whether land was fragmented or not, there were two forms of land survey applied: complex<sup>195</sup> and simple form<sup>196</sup>. The cadastral file that was created

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<sup>194</sup> Lê Đình Thắng and Đỗ Đức Đôi, *ibid.* supra note 191, pp. 22–27.

<sup>195</sup> The land survey was performed in an elaborate manner with a view to creating an accurate map of the land parcel. The map was approved by the French Resident or President Superior and managed by the Head of Provincial Cadastral Service.

<sup>196</sup> The land survey was performed simply by village or commune officials resulting in a simple sketch map useful for temporary administration over land only. The village land registrar had the responsibility for managing the map and reporting to the Provincial Cadastral Service every two months.

after land registration included: land parcel maps, land registers, landowner records, an index of land parcel and landowner name, and a record of changes.

#### ***4.1.1.3. In the South of Việt Nam from 1954 to 1975***

After 1954, Việt Nam was partitioned. An government under the support of the United States governed the South. In October 5<sup>th</sup>, 1954, it established the “Nam Việt”<sup>197</sup> Cadastral Bureau controlled by members of the Government. Each province had a Cadastral Service. In Central Việt Nam, Cadastral Bureaus were also set up at the ancient capital of Huế and at Đà Lạt city in 1955<sup>198</sup>.

Although the government carried out some land innovations, the land registration system used was mainly that inherited from the French. In 1962, it issued Decree No. 124-CTNT to provide for land surveys and administration of areas which had still not applied the 1925 French Decree. Accordingly, in the South, two regimes of land registration applied concurrently<sup>199</sup>:

The first was a renewal of the 1925 Decree on land registration. It was advantageous to land management because it provided specific and effective information. It was intended to gradually replace other forms. However, this system also had weaknesses in that many documents and records needed to be created at the same time and the large size of the project made it very difficult to use and maintain.

The documents and records that were issued under the renewal of the 1925 Decree had to have: a precise map of the land parcel, a land register based on the land parcel, an index record based on the landowner’s name containing number signs for all land parcels, reference notes to landowner names in alphabetical order and a system of real estate records was thus to be set up for each land title deed. There are two copies of documents and records: one was kept at the Provincial Cadastral Service and the other at the village or commune. A landowner (who could own one or more than one land parcels) was granted a land title deed.

As a result, until the revolution, this way was only implemented over about one million hectares, mainly in the Mekong River Delta.

The second was similar to that applied to the North in French colonial times. It was a temporary solution established to satisfy the demand for land management in areas which had still not implemented the 1925 Decree. Simple to implement, after ten years, it had been set up in almost the territories of the South controlled by the government.

In general, from the feudal regime to the government under American support, each government always paid attention to land registration for purposes of land management, land tax collection and the protection of land ownership. It also inherited achievements and accomplishments of previous regimes. However, based on conditions and policies, in each period there were different ways of implementing and setting up cadastral files suitable for each areas.

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<sup>197</sup> “Nam Việt” means the South of Việt Nam.

<sup>198</sup> Dương Chí Công, *ibid.* supra note 185.

<sup>199</sup> Lê Đình Thắng and Đỗ Đức Đôi, *ibid.* supra note 191, pp. 28–29.

Excluding the political factor, all governments were directed toward to the long-term aim of establishing a unified system of land registration and cadastral files, which would be ever more precise with respect to the details of land ownership. Due to the original primitive techniques and the complexity of actual land use, they tried to make the cadastral file more and more detailed and specific although this was always difficult to do. However, the end result was that there were two groups of documents and records, which were easy to refer to: one based on number of land parcel and the other based on landowner name in alphabetical order.

#### ***4.1.2. Land registration established by revolutionary power (since 1945 in the North and from 1975 in the whole)***

##### ***4.1.2.1. Before 1980***

After The August Revolution in 1945, one of the most important issues for the revolutionary power was agricultural land and the position of the peasants. The Government gradually promulgated many common policies and decrees on land in order to give land to farmers.

Some of the decrees were Decree No. 27-B/SL dated March 2<sup>nd</sup>, 1947 and Decree No. 90-SL dated May 22<sup>nd</sup>, 1950 on exploiting fallow land; Decree No. 120-SL dated July 11<sup>th</sup>, 1950 on granting land temporarily; Decree No. 25-SL dated February 12<sup>th</sup>, 1952 on using land without a landowner; Decree No. 87-SL dated March 5<sup>th</sup>, 1952 on exploiting public land; and Decree No. 149-SL dated April 12<sup>th</sup>, 1953 on releasing rent.

After the launch of a land reform movement in 1953 and the later promulgation of Land Reform Law<sup>200</sup>, the feudal and colonial system of land ownership was abolished and land was given back to the peasant. About 810.000 hectare was given to more than 2,1 million peasants<sup>201</sup>.

On December 1960, the co-operative movement which began in the North 1950s was in the main completed. About 85% of farmer households occupying more than 90% of agricultural land joined in co-operatives.

Under the co-operative movement, farmer households were encouraged to contribute the means of production, including land, and to form co-operatives to joint cultivation and the sharing of products. This movement aimed to mobilize material and labour resources for agricultural production. At that time when the North had to not only reinforce government but also concentrate material and human resources on the war in the South for unification of the land, individual farmer households did not have enough labour for their agricultural activities, so land ownership was changed from private to collective.

There had thus been much change in the land regime. However, these changes had not been registered or recorded.

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<sup>200</sup> The Land Reform Law was enacted on December 14<sup>th</sup>, 1953 by the National Assembly of Democratic Republic of Việt Nam. Its main content focused on the lands of feudal and colonial owners seized and to be shared among the peasants.

<sup>201</sup> Hoàng Việt, “Vấn đề sở hữu ruộng đất trong nền kinh tế hàng hóa nhiều thành phần ở Việt Nam”, The National Political Publishing House, 1999, p. 45.

To help with the land reform, the public administrative agency over land was reformed. In 1958, the Cadastral Department was set up under the Ministry of Finance. In 1959, the Department of Survey and Cartography was established under the Government Office. On December 9<sup>th</sup>, 1960, the Government decided to transfer responsibility for cadastral activity from the Ministry of Finance to the Ministry of Agriculture<sup>202</sup>. However, the Ministry of Agriculture was restricted to agricultural land. Depending on the land use, land was administered by different ministries such as the Ministry of Forestry or the Ministry of Construction. To unify the situation, the General Department of Land Administration was established in 1979<sup>203</sup>. It had the responsibility for the management of land throughout the country to protect it and the environment, stimulate production and effectively exploit all kinds of land.

In this period, the organization of the cadastral branch had not been completed and land registration was not paid much attention because of the war for the liberation of the South. The Northern Government had to concentrate on supplying armed forces and material to the South. There were not any formal legal documents setting up the foundations of a land registration system. The activities that were performed were quick investigations of agricultural land with food production in mind and development of co-operatives and production teams. The only registered records were the land parcel map (surveyed by measuring tape or by adjusting old maps) and the index record of agricultural land statistics. Land information reflected the actual situation of land by only covering land area, land use and landowner. There were no procedures for investigating the legal grounds of claims and no history of land use and ownership existed.

Under the impact of time and continuing changes, the cadastral files of the old regimes were not updated and ceased to be used<sup>204</sup>.

#### **4.1.2.2. From 1980 to 1988**

After unifying the North and the South and the establishment and reinforcement of the government, the issue of land registration was taken up again after 1980.

In 1980, two legal documents relating to land registration were enacted. They were: Decision No.201-CP dated July 1<sup>st</sup>, 1980 of the Government on unifying and intensifying land administration in the whole country; and Direction No.299-TTg dated November 10<sup>th</sup>, 1980 of the Prime Minister on the mission of land survey, land

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<sup>202</sup> This transfer was provided for by Decree No.70/CP dated December 9<sup>th</sup>, 1960 of the Government. The Decree stipulated the duty of Agricultural Ministry to broaden and improve agricultural land; and to manage land where there was a land register.

<sup>203</sup> Based on approval of the establishment of The General Department of Land Administration by Resolution No.548/NQ-QH dated May 24<sup>th</sup>, 1979 of the Standing Committee of the National Assembly, the Government enacted Decree No.404/NĐ-CP dated November 9<sup>th</sup>, 1979 regulating issues on the function, responsibility and organization of the General Department of Land Administration.

<sup>204</sup> Lê Đình Thắng and Đỗ Đức Đôi, *ibid.* supra note 191, pp. 30–31; and Đỗ Hậu and Nguyễn Đình Bồng, *ibid.* supra note 179, pp. 76 and 77.

classification, land statistics and land registration activities in country as a whole (No.299-TTg).

Based on the instructions of the Government, the General Department of Land Administration issued Decision No.56/ĐKTK dated November 5<sup>th</sup>, 1981 providing procedures for land registration and the gathering of statistics throughout the country.

Accordingly, land registration was to be based on a precise process. In each commune, there was to be a Council of land registration and statistics. It was responsible for defining the administrative boundary of the commune, checking applications for land registration and making the commune's cadastral file to be based on 14 forms. Land registration was officially finished when the People's Committee at district level approved the cadastral file.

The commune's cadastral file included: minute defining an administrative boundary; minute of detailed results of the land survey for each parcel; land parcel note; application for land registration; declaration of co-operative land; statistical table of illegal land use; land register; index record of land statistics; synthetic table of residential land; cadastral map; land changing record...etc.

Nevertheless, in the face of many difficulties during the postwar period and as it was necessary to manage and exploit land promptly in the light of the need for economic development, some unnecessary formalities were cut out. As a result, the cadastral file, which was mainly a land parcel map, a land register and an index record of land statistics, was restricted to the commune and district level. The land information it contained was only about the landowner, the boundary of the land parcel, the land area, the land use, the conformation of status and the origin of the use. There was no common method of land survey; what was done depended on the means of each commune. It could be an amendment of old land parcel maps based on the actual situation of land use. Or it could be a temporary measurement made using rudimentary tools or simply recording the landowner's declaration in those rural areas where even a land parcel map was not available. Here it was difficult to define land ownership in any other way<sup>205</sup>.

At this stage, land registration merely involved the inventorying of land and the acknowledgement of actual land use. Because of perfunctory performance, there were errors to be found in a high percentage of the cadastral files, from over 10% to more than 30% of material gathered. For this reason, certificates of land ownership were still not granted. At the end of 1988, land registration had only been carried out in 6.500 communes or villages and still with rather poor results<sup>206</sup>.

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<sup>205</sup> Đỗ Hậu and Nguyễn Đình Bông, *ibid.* supra note 179, p. 77.

<sup>206</sup> Lê Đình Thắng and Đỗ Đức Đôi, *ibid.* supra note 191, p. 33.

#### ***4.1.2.3. From 1988 up to the present***

When the first Land Law was promulgated in 1987 and came into effect in 1988<sup>207</sup>, land registration, the establishment of the cadastral file and issues concerning the land use right certificate were now laid down officially as part of the State's administration of land<sup>208</sup> and compliance became a compulsory matter that central government had to direct local governments to implement.

Based on previous attempts at land registration, the General Department of Land Administration enacted Decision No.201/ĐKTK dated July 14<sup>th</sup>, 1989 (Decision No.201/ĐKTK) containing regulations on the grant of the land use right certificate; and Circular No.302/ĐKTK dated October 28<sup>th</sup>, 1989 guided the implementation of Decision No.201/ĐKTK. A change of land registration occurred when these provisions were applied at local level too from 1990. Above all, the land use right certificate had to be issued according to the form defined in Decision No.201/ĐKTK. When a land user registered, he would be granted a land use right certificate for his registered land parcel. At the same time, this registration would be recorded in the cadastral map and the land register<sup>209</sup>.

Nevertheless, the performance of these land registration tasks was effected by adjustment of the old cadastral files. The only new procedure was the grant of the land use right certificate. Furthermore, because previous cadastral files contained many errors, and as there had been many changes of land policy, it was not easy to effect land registration in this period. There were limits on the results achievable.

Land policies in this period underwent important changes. First was a change in land ownership. The 1980 Constitution came into effect on December 18<sup>th</sup>, 1980 and Article 18 provided that land fell under the ownership of the entire people. So, if before this time, there were many forms of State, co-operative and private ownership of land, after that the only form was ownership by the entire people with the State as the unique representative owner. Consequently, in Việt Nam, land users do not have land ownership. They just have the right to use land and to receive a land use right certificate granted by the State.

Secondly, the failure in applying the co-operative movement in the South after national unification made the Vietnamese Communist Party and then Government change their mind on the policy for agricultural land. From the experimental policy of giving agricultural land for households or individuals to cultivate independently according to the Communist Party Direction No.100-CT/TW dated January 31<sup>st</sup>, 1981 to the full fledged policy on land allocation for a stable and long term period based on the Vietnamese Politburo Resolution No.10 dated April 5<sup>th</sup>, 1988 on innovating the administration of the agricultural economy, the land use situation was disordered once again. Most land previously owned by farmers and then brought into co-operative ownership, becoming a collective asset, was now given back to individual farmer households on an equal partition basis. It made alteration of land boundary and area.

In the North and Central coastal provinces, a rapid turnover of agricultural land occurred. Because of lack of administrative capacity, the process of granting land use right certificates took place slowed down. By the end of 1993, only about 1,6 million farmer households (40% of the total) in about 1.500 communes, mainly in the

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<sup>207</sup> The 1988 Land Law was enacted by the 7<sup>th</sup> National Assembly on December 29<sup>th</sup>, 1987 and came into effect on January 8<sup>th</sup>, 1988.

<sup>208</sup> Stipulated by Article 9 of the 1988 Land Law.

<sup>209</sup> Stipulated by Section II.2 of Regulations on the grant of land use right enclosed Decision No.201/ĐKTK.

Mekong River Delta, had been granted land use right certificates. 14 provinces had issued their own temporary certificates because the by-laws guiding the policies of central government had not been extended in a timely manner.

By the end of 1993, about 911.000 temporary certificate of land use right had been granted. Up to 1995, when further grants were stopped, the total number of temporary certificates amounted to 1.050.000<sup>210</sup>.

The 1993 Land Law<sup>211</sup> contained provisions on land prices and land use right transactions and the real estate and land use right market in detail were accepted officially. The demands for effective land registration and the grant of land use right certificates became more and more urgent. The provisions on land registration contained in Decision No.201/ĐKTK were not helpful because they supported one aspect of the public administration of land only. They did not pay attention to recognizing and protecting the land use right of a land user as property that could be brought in market.

Under the post-1980 Constitution system of land ownership by the entire people, land users did not have the right to own land, but only the right to use land given by the State on behalf of the people. In the period of the 1988 Land Law, under the influence of socialist views and the system of budget subsidies, land was not accepted as goods. It was considered as a kind of welfare that the State gave to land users without collecting land rent. Thus, in the Land Law of 1988, there were no provisions on land prices and the land user was prohibited from transferring land use right. Under the 1993 Land Law, these two issues were dealt with. Article 12 of the 1993 Land Law stated that land had its price and the State would regulate land prices so as to determine land rents due from land users.

Furthermore, Article 3 of this Law stipulated that the land user, whether a household or an individual had five transaction rights attached to their land use right: the rights to exchange, assign, lease, bequeath and mortgage the land use right. As a result, the land use right was considered as a property right or a property of the land user<sup>212</sup>.

Consequently, the system of land registration needed to be changed again.

In 1994, the General Department of Cadastre was set up with the functions of land administration, geodesy and cartography<sup>213</sup>. At the same time, the function of administering residential housing and residential land in urban areas was given to the Ministry of Construction<sup>214</sup>. Accordingly, there were two parallel systems of land

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<sup>210</sup> Lê Đình Thắng and Đỗ Đức Đôi, *ibid*, supra note 191, p.35.

<sup>211</sup> The Land Law of 1993 was promulgated by the 9<sup>th</sup> National Assembly and came into effect on October 15<sup>th</sup>, 1993. It replaced the 1988 Land Law.

<sup>212</sup> According to Article 172 of the 1995 Civil Code (which was enacted by the 9<sup>th</sup> National Assembly on October 28, 1995 and came into effect on July 1<sup>st</sup>, 1996. It was replaced by the 2005 Civil Code, which was promulgated on June 14<sup>th</sup>, 2005 and came into effect on January 1<sup>st</sup>, 2006), property comprises objects, money, valuable papers and property rights.

<sup>213</sup> The General Department of Cadastre was established by a merger of the General Department of Land Administration and the Department of Geodesy and Cartography in accordance with Decree No.12/1994/NĐ-CP dated February 22<sup>nd</sup>, 1994 of the Government.

<sup>214</sup> On July 5<sup>th</sup>, 1994, the Government enacted Decree No.60/1994/NĐ-CP regulating the right to own residential homes and rights to use residential land in urban areas. Accordingly, the Ministry of Construction and local agencies on construction administered and issued certificates of ownership of residential homes and of residential land use right for persons who were both owners of residential home and residential land users.

registration: one for land use rights and the other for ownership of residential homes and the right to use residential land.

In order to simplify the procedures for land registration and the cadastral files and promote the activity of granting land use right certificates, the General Department of Cadastre has, in recent years, promulgated many provisions guiding local activities, sometimes even permitting local cadastral agencies to rely on local conditions if they could effect land registration activity more quickly.

In 1998, Circular No.346/1998/TT-TCĐC was enacted on March 16<sup>th</sup>, 1998 to unify the procedures of land registration and replace old regulations. In 2001, it was replaced by Circular No.1990/2001/TT-TCĐC dated November 30<sup>th</sup>, 2001 which allowed local cadastre agencies to apply land registering procedures flexibly based on local conditions.

In the process of implementing industrialization and modernization, Vietnamese economic structure has undergone, in recent years, a transition from reliance on agriculture to that on industry and services. For this reason, there were changes in the use of the labour force, technology, land and other natural resources as well as perceivable effects on the environment. This entailed that land and natural resources be under a common administration; stable development should combine with environmental protection. One again, the cadastral system and land registration activity were reorganized through the establishment of the Ministry of Natural Resources and the Environment<sup>215</sup>. In particular, under the 2003 Land Law<sup>216</sup>, land registration was to be effected at a registration office for land use rights<sup>217</sup> which is a new organ belonging to the administrative system of natural resources and environment. Moreover, a standard form of land use right certificate has to be issued to land users uniformly for all categories of land including properties attached to land<sup>218</sup>. Matters such as the gradual conversion of cadastral files to digital system for computerized management<sup>219</sup> and supply of services relating to land information<sup>220</sup> are also covered. It is thus now necessary to computerize the land registration system and publicize land information. Although the content of these provisions mainly relate to the higher administrative aspect and may not end up being executed immediately in all local areas, where the thinking of many administrators is still rather conservative,

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<sup>215</sup> At the First Session of the 11<sup>th</sup> National Assembly dated August 5<sup>th</sup>, 2002, Resolution No.02/2002/QH11 was enacted. It established the Ministry of Natural Resources and Environment based on a merger of the General Department of Cadastre, the General Department of Hydrometeorology, the Environmental Department (of Ministry of Science, Technology and Environment), the Department and Institute of Geology and Mineral (of Ministry of Industry), and The Division of Water Resources Administration (of Ministry of Agriculture and Rural Development). The Government then promulgated Decree No.91/2002/NĐ-CP dated November 11<sup>th</sup>, 2002 regulating the functions, obligations, powers and organization of the Ministry of Natural Resources and Environment (Decree No.91/2002/NĐ-CP).

<sup>216</sup> The 2003 Land Law was approved by the 11<sup>th</sup> National Assembly on November 26<sup>th</sup>, 2003 and came into effect from July 1<sup>st</sup>, 2004. It replaces the 1993 Land Law. It is applying now.

<sup>217</sup> Stipulated by Article 46 of the 2003 Land Law.

<sup>218</sup> Stipulated by Article 48 of the 2003 Land Law.

<sup>219</sup> See Section 5 Article 40 of Decree No.181/2004/NĐ-CP of Government dated October 29<sup>th</sup>, 2004 providing for the implementation of the Land Law (Decree No.181/2004/NĐ-CP).

<sup>220</sup> Stipulated by Article 67 of Decree No.181/2004/NĐ-CP.

there will be a solid foundation to the land registration system of Việt Nam based on progressive reforms.

In summary, the system of land registration in Việt Nam had been in existence for more than five centuries. It was modified by the various old regimes in turn to suit their administrative purposes but a fairly scientific system of land registration was built up. However, because of war and the partition of the country, land registration systems differed by region and State regime. Furthermore, after national unification and the broad changes in land ownership, land registration was interrupted. Old cadastral files were not only damaged but became unsuitable for the new system based on land ownership by the entire people. Land registration had to be started almost from the beginning with further changes following development of the country. Although there have been some achievements in land registration in recent years, this system has not been so effective in supporting land administration and exploitation or in supplying timely and accurate information services to the real estate market.

Consequently, Việt Nam continues to making efforts to improve its land registration system.

## **4.2. Organizing the system of land registration**

### ***4.2.1. The machinery and the staff***

#### ***4.2.1.1. The machinery***

##### *Administrative authority for land*

According to the 1992 Constitution<sup>221</sup>, the administration of the State is the function of the system of administrative authorities with the Government at the centre and Peoples' committees at the local level<sup>222</sup>. These authorities cover all fields of society at their respective levels. Needless to say, land is one of the objects to be managed.

The administrative units of the Socialist Republic of Viet Nam are organized in a hierarchy as follows<sup>223</sup>:

The country is divided into provinces and cities directly under the central authority;

Provinces are divided into districts, provincial cities and municipalities; cities directly under the central authority are divided into precincts or districts and municipalities;

Districts are divided into communes and townships; provincial cities and municipalities are respectively divided into wards and communes; districts are divided into wards.

Article 7 of the 2003 Land Law provides that the Government shall engage in the uniform administration of land throughout the entire country; Peoples' committees at all levels shall exercise the rights of the representative owner of land

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<sup>221</sup> The 1992 Constitution was enacted by the eighth National Assembly and came into effect on April 15<sup>th</sup>, 1992. It replaces the 1980 Constitution.

<sup>222</sup> Stipulated by Articles 109 and 123 of the 1992 Constitution.

<sup>223</sup> Stipulated by Article 118 of the 1992 Constitution.

and be responsible for the administration of land in their respective localities. Because there are too many fields for the administrative authorities to manage alone, they are obliged to establish professional agencies in each field to assist them in carrying out their functions.

So a uniform system for the organization of administrative authorities concerned with land has been established and extends from the central to the grass-roots level. The administrative agency at any level shall be a subsidiary of the general public administrative authority at the same level. It will perform all functions related to national resources such as land, water and mineral: geology, environment, hydrometeorology, geodesy and cartography; general administration of seas and islands; and the supply of public services in these fields<sup>224</sup>. The Ministry of Natural Resources and Environment which is directly under the Government is controlled by the minister and by vice-ministers in each field. The Provincial Department of Natural Resources and Environment which comes under the Provincial Peoples' Committees is run by a director and not more than three or four vice-directors<sup>225</sup>. At district level, the District Department of Natural Resources and Environment, which is overseen by the District People's Committees, is managed by a manager and not more than three assistants<sup>226</sup>. At the commune level, it is not necessary to have a separate administrative agency for land. Land administration is under the cadastral official<sup>227</sup>. There are often one or two cadastral administrators<sup>228</sup>.

The administrative agencies for land at the central and provincial level are entitled to establish departments, offices and public service organizations to fulfill their administrative activities and assist them in land administration.

The Ministry of Natural Resources and Environment is divided into state administrative offices, public service organizations and state enterprises<sup>229</sup>.

State administrative offices are consultative units that assist the Minister in carrying out public administrative functions. There are eighteen administrative units. Among them, the General Department of Land Administration, the Department of

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<sup>224</sup> Stipulated by Article 1 of Decree No.25/2008/NĐ-CP of the Government dated March 4<sup>th</sup>, 2008 regulating the functions, obligations, powers and organization of the Ministry of Natural Resources and Environment (Decree No.25/2008/NĐ-CP) which replaces Decree No.91/2002/NĐ-CP.

<sup>225</sup> According to Article 6 of Decree No.13/2008/NĐ-CP of the Government dated February 4<sup>th</sup>, 2008 on organizing professional authorities that belong to the Peoples' Committees at the provincial level, the number of vice-Directors shall be not more than three, except in Hà Nội and Hồ Chí Minh city where it can be not more than four.

<sup>226</sup> Stipulated by Article 5 of Decree No.14/2008/NĐ-CP of the Government dated February 4<sup>th</sup>, 2008 on organizing the professional authorities that belong to the Peoples' Committees at district level.

<sup>227</sup> Article 65 of the 2003 Land Law stipulates that there shall be land administration officials at commune levels. Then, in Part V of the Ministry of Natural Resources and Environment Decision No.07/2008/QĐ-BTNMT dated October 6<sup>th</sup>, 2008 providing professional standards for each scale of officials in the Agency of Natural Resources and Environment (Decision No.07/2008/QĐ-BTNMT), the land administration official is called a cadastral official.

<sup>228</sup> There are no legal provisions that limit the number of cadastral officials. In many commune level units (such as wards or townships), the number of cadastral officials may be two or more due to complex changes in land use,.

<sup>229</sup> Stipulated by Article 3 of Decree No.25/2008/NĐ-CP.

Geodesy and Cartography, and the Department of Information Technology are in charge of land administration. Thirteen public service units serve the administrative functions of the Ministry or perform some important public services<sup>230</sup>. The Ministry also has enterprises which supply services in the fields of cadastre, meteorology, geodesy, cartography and the environment<sup>231</sup>.

At the provincial level, in addition to units that must be established according to law (such as the Office and Department of Inspection), the directors of the Provincial Department of Natural Resources and Environment and the Department of Home Affairs must combine to submit decisions to the Peoples' Committees at provincial level regarding the establishment and the name of the administrative units which come under the Provincial Department of Natural Resources and Environment. But there is a limit on the number of units that may not be more than six in Hà Nội and Hồ Chí Minh city and not more than five in the other provinces<sup>232</sup>. Beside the Centre of Information Technology and the Office of Land Use Right Registration which must be established, other public service units can be set up depending on local requirements<sup>233</sup>.

At the district and commune level, because of the limited area and workload and the use of simplified administrative procedures, it is not necessary to have separate subsidiary units. Land administrative activities are carried out by public officials who are employed in accordance with general legal provisions and local needs. However, at the district level, there can be the Office of Land Use Right Registration.

Agencies in the Natural Resources and Environment sector are organized on the principles of two-dimensional dependence and reporting to superiors. The head of each agency at any level shall be liable and report to the state administrative authority of the same level. Further, the principle of two-dimension dependence means that this agency is not only horizontally dependent on the direction and management of the state administrative authority at the same level; but is also vertically dependent on the guidance of and inspection by the directly superior agency in this sector.

The reporting to superiors regime is manifested by the Minister of Natural Resources and Environment being responsible for all work and reporting directly to the Government. The director of the Provincial Department of Natural Resources and

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<sup>230</sup> Article 3 of Decree No.25/2008/NĐ-CP provides there are only six public service units in the Ministry of Natural Resources and Environment. However, based on administrative requirements, the Minister has the right to propose that the Prime Minister add other public service units to the list. The number of public service units in the Ministry of Natural Resources and Environment is currently thirteen.

<sup>231</sup> See Figure 2 of Appendix A.

<sup>232</sup> Stipulated by Section III.b, Part I Circular No.03/2008/TTLT-BTNMT-BNV of the Ministry of Home Affairs and the Ministry of Natural Resources and Environment dated July 15<sup>th</sup>, 2008 providing guidance on the functions, obligations, powers and organization of professional departments of the Natural Resources and Environment that belong to Peoples' committees at the local level (Circular No.03/2008/TTLT-BTNMT-BNV).

<sup>233</sup> Stipulated by Section III.c, Part I, Circular No.03/2008/TTLT-BTNMT-BNV.

Environment is responsible for all work at his level and reports to the Provincial Peoples' Committees and Ministry of Natural Resources and Environment. The head of the District Department is liable for his work and reports to the District Peoples' Committees and the Provincial Department. Similarly, the cadastral official reports to the Communal Peoples' Committees and the District Department.

*The Agency which is in charge of land registration (or land use right registration)*

As stated above, in Viet Nam, all land belongs to the entire people with the State as the representative owner. People just have the right to use land, not to own it. So, the term that is used in land registration is "land use right registration", not "land registration" alone. However, in general, most registration activities fulfilled come to the same. The distinction between land ownership and land use right is a fine one and in what follows I shall uniformly use the term "land registration".

Land registration is regarded as one of the State's administrative activities regarding land<sup>234</sup>. It is to be carried out by the agency of natural resources and environment. Specifically, the Land Use Right Registration Office is to perform this activity. The Office of Land Use Right Registration is a public service unit with the function of organizing and conducting the registration of land use rights, changes in land use and the management of cadastral records, and providing assistance to the agency in charge of natural resources and environment at the same level in implementing administrative procedures relating to land use and administration<sup>235</sup>.

The Peoples' Committees of provinces and cities under central authority are to make decisions on the establishment of a land use right registration office under the Provincial Department of Natural Resources and Environment and on the establishment of branches of such office where necessary. The Peoples' Committees of districts, provincial cities, municipalities and cities directly under the central authority, depending on the need for registration of land use right in their areas, make their own decisions on the establishment of land use right registration offices under the District Department of Natural Resources and Environment. The organization, staff and duties of any such office shall be provided for by the agency of natural resources and environment at the same level<sup>236</sup>.

Peoples' Committees at provincial level, prior to July 1<sup>st</sup>, 2005, have to complete the establishment of a land use right registration office which has adequate capacity to carry out the duties provided for by law<sup>237</sup>.

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<sup>234</sup> Stipulated by Section 2.e, Article 6 of the 2003 Land Law.

<sup>235</sup> Stipulated by Section 1.1.1, Part I Circular No.38/2004/TTLT-BTNMT-BNV of the Ministry of Home Affair and the Ministry of Natural Resources and Environment dated December 31<sup>st</sup>, 2004 providing guidance on the functions, obligations, powers and organization of The Office of Land Use Right Registration and The Organization of Land Fund Development (Circular No.38/2004/TTLT-BTNMT-BNV).

<sup>236</sup> Stipulated by Article 9, Decree No.181/2004/NĐ-CP, and the implementing Sections 1.1.2 and 1.1.3, of Part I of the Circular No.38/2004/TTLT-BTNMT-BNV.

<sup>237</sup> Stipulated by Article 185 of the Decree No.181/2004/NĐ-CP.

These provisions mean that the office of land use right registration must be established at provincial level, but it is not compulsory at district level. If there is no such office at district level, the District Department of Natural Resources and Environment shall be directly in charge of the functions of the land use right registration office. As already noted, at communal level, there is no land use right registration office.

A land use right registration office is managed by a director and one or two vice-directors. The number of staff is decided by the Provincial People's Committees<sup>238</sup>.

Thus, in Việt Nam, land administration is the responsibility of the Agency of Natural Resources and Environment, with a system that is organized throughout the country. The activities of land registration and the management of cadastral documents are mainly implemented at the Offices of Land Use Right Registration which have been established since the provisions of the 2003 Land Law came into effect.

For certain special rights attached to land, the administrative duty is given to other professional agencies.

The administration of residential homes and construction work is the function of the Construction Agency which is also organized throughout the country as the Natural Resources and Environment Agency<sup>239</sup>. At the central level, the Ministry of Construction comes under the Government. At local, provincial/district levels, the Department of Construction belongs to the Peoples' Committees at provincial/ district level, and a construction official manages construction activities at communal level.

The administration of both natural and cultivated forests (the State allocates forestry land to land users for cultivating forests) is the function of the Agency of Agriculture and Rural Development<sup>240</sup>.

The registration for residential homes and assets attached to land was organized by the above agencies. But since December 10<sup>th</sup>, 2009, on the basis of the unification of land use right registration certificate<sup>241</sup>, this responsibility belonged to the natural resources and environment agency and its land use right registration office. When dealing with registration applications that need to be verified about assets

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<sup>238</sup> Stipulated by Section 3, Part I, Circular No.38/2004/TTLT-BTNMT-BNV.

<sup>239</sup> Stipulated by the Decree No.95/2005/NĐ-CP of the Government dated July 15<sup>th</sup>, 2005 on the issue of certificates of residential housing ownership or ownership of construction works (Decree No.95/2005/NĐ-CP), and the Decree No.90/2006/NĐ-CP of the Government dated September 6<sup>th</sup>, 2006 providing detailed regulations and guidelines for implementation of the Law on Residential Housing (Decree N0.90/2006/NĐ-CP).

<sup>240</sup> Stipulated by Section 6, Article 2, of the Decree No.01/2008/NĐ-CP of the Government dated January 3<sup>rd</sup>, 2008 giving guidance on on the functions, obligations, powers and organization of the Ministry of Agriculture and Rural Development.

<sup>241</sup> See infra 4.4.2.

attached to land, the land use right registration office can contact to get information from the concerned agencies.

In Vietnamese land registration system, the administration of land finance and the determination of taxes for land/real properties are functions of financial agencies, including the Ministry of Finance at the central and Provincial/District Departments of Finance at the local level. Land use planning is made and implemented by the administrative authorities (Government and People's Committees) with the assistance of the natural resources and environment agency.

So a system of land registration, ensuring there will be information about each real estate unit in Viet Nam, has been erected by the State by way of appropriate legal provisions and the assignment of duties to professional authorities. The evaluation of land prices was on December 1<sup>st</sup>, 2008 transferred from the Ministry of Finance to the Ministry of Natural Resources and Environment<sup>242</sup>.

#### **4.2.1.2. The staff**

With the change in organizational structure and the need to strengthen administrative capabilities, the Ministry of Natural Resources and Environment has devoted many efforts to reorganizing its machinery and stabilizing its staff. Staff training has been focused on.

Until 2007, the number of staff in the Ministry of Natural Resources and Environment was about 8.500, with a high ratio of young people. Professionally trained officials are more likely to be found in the field of land administration than in other fields. In state administrative units, the majority of cadres are highly qualified, but their specialized knowledge does not necessarily conform to their administrative tasks. In public service units, 36% of personnel are not trained in the field of natural resources and environment<sup>243</sup>.

At the local level, because the staff of the natural resources and environment agency is managed by the local government and rotates frequently, it has been difficult to gather statistics on manpower<sup>244</sup>. However, it seems that local staff is young with about 75% being aged less than 45. Nearly half the communal cadastral officials are under 35. As to their professional skills, the majority of the staff are

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<sup>242</sup> Stipulated by the Decision No.1735/2008/QĐ-TTg of the Prime Minister dated December 1<sup>st</sup>, 2008 on transferring the duties and power regarding the valuation of land, as well as the documents, records, department and officials in charge of the evaluation from the Financial Ministry to the Ministry of Natural Resources and Environment.

<sup>243</sup> SEMLA, "Chiến lược khung phát triển nguồn nhân lực ngành tài nguyên và môi trường – Giai đoạn 2007–2010", a joint program on "Strengthening the Capacity of the Land and Environment Administration" between Việt Nam and Sweden, January 2007. According to Section 1.4 Part 1 of this material, the total number of staff is 8395. The proportion of officials over 55 years old is 11,6%; between 46 and 54 years old is 23%; between 36 and 45 years old is 28% and 28,3% is under 35.

<sup>244</sup> SEMLA, "Báo cáo hiện trạng, kế hoạch, nhu cầu phát triển thông tin đất đai và môi trường (ELIS)". According to Section 1.2.3 Part I of this material, up to the year 2005, the number of officials in Natural Resources and Environment bodies at local is around 16.700, including 3.100 officials at the provincial level, 3.100 ones at the district level and 10.500 ones at communal levels.

trained in the land field. There is a problem in that most of the communal officials have not been trained (19,35%) or have been trained inadequately (about 51,8%)<sup>245</sup>.

Land registration is implemented by cadastral officials, one kind of officials in the natural resources and environment agencies, who are in charge of land use planning, the cadastral survey, land registration, the grant of land use right certificates, land inventory and statistics, drawing maps of land use status<sup>246</sup>, evaluation and the classification of land<sup>247</sup>.

According to the Ministry of Home Affairs Decision No.01/2008/QĐ-BNV dated August 4<sup>th</sup>, 2008 providing the titles and scale codes of natural resources and environment officials, staff concerned with natural resources and environment shall include the following titles: geodetic and cartographic officer, cadastral officer, investigator, hydro-meteorological forecasting officer, controlling officer, and monitoring officer.

There are four ranks for cadastral officials, from low to high in accordance with professional skills and seniority, embracing the intermediate cadastral official, junior cadastral official, cadastral official and senior cadastral official.

Beside having to know about how to use computers, it is required that an intermediate cadastral official shall graduate from the primary college of land and cadastral administration; a junior cadastral official shall graduate from the junior college of land and cadastral administration or other colleges at an equivalent level; while a bachelor's degree in land and cadastral administration or other related fields is needed by cadastral or senior cadastral officials. Further, a senior cadastral official shall have at least nine years' experience of work in the cadastral cadre or its equivalent, and shall preside over or take part in at least one project or scientific research work at ministry level which has been checked and approved or effectively applied in practice.

The requirements ensure that cadastral officials are capable of performing their assigned tasks, and include: knowing about land law provisions; having a thorough grasp of the specialized regulations, processes, technical standards and norms in professional work; and having an effective knowledge of land administration and conditions relating to socio-economic development. The higher up the scale a cadastral official is, the deeper his knowledge and professional skills must be. It is required that the senior cadastral official, have the capacity to organize, arrange and complete projects and technical activities relating to surveying, land registration and land use planning; shall have the ability to engage in research and find solutions assigned problems; and have capacity in compiling training materials and taking part

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<sup>245</sup> SEMLA, *ibid.* supra 243. According to Section 1.4.2, Part 1, at provincial levels about 31,4% of land administrators have a bachelor degree and 21,8% a master's degree. Similarly, at district levels, approximately 53,8% of land officials have a bachelor degree and 21,6% a master's. The proportion of communal cadastral officials trained in the land field is 66%.

<sup>246</sup> According to Section 17, Article 4 of the 2003 Land Law, the map of land use status is a map which shows the distribution of types of land at a defined time and is drawn up on the basis of administrative units.

<sup>247</sup> Stipulated from Part V to Part VIII of the Decision No.07/2008/QĐ-BTNMT.

in training and cultivating the technical knowledge of cadastral officials at lower scales<sup>248</sup>.

Generally, the cadastral official is a public official who is primarily responsible for technical and professional activities in the field of land registration and related activities. Depending on the level of administrative unit and the rank, there are requirements as to professional standards which become more demanding as the level increase. However, whether an official really satisfies all these requirements depends on the actual situation and the staff already employed at the level in question.

#### ***4.2.2. Land registration procedures***

##### ***4.2.2.1. Registration unit***

In Viet Nam, immovable property comprises land and other properties attached to land.

According to Article 174 of the 2005 Civil Code, immovable property comprises the following types of property: (i) land; (ii) houses and structures attached to land, including property attached to such houses and structures; (iii) other property attached to land; and (iv) other property so provided for by law.

A specific item of immovable property is to be defined and protected by state authorities through legal procedures. In principle, the unofficial parceling out of land – the most basic real estate – is null and void. Land must be legally registered and established as a fundamental unit called a land parcel/unit for registration by the land administration to be allowable.

A parcel/unit of land is a portion of land whose boundary is determined on site or described in cadastral files<sup>249</sup>. It is formed when the State grants land use right to land users via the allocation of land, the leasing of land, and the recognition of land use rights for persons currently using the land in a stable manner<sup>250</sup>, or by land partition or amalgamation.

According to Item 6.3.c, Section 6 Part I of the Circular No.09/2007/TT-BTNMT of the Ministry of Natural Resources and Environment dated August 2<sup>nd</sup>, 2007 on guiding the formulation, amendment and management of cadastral files (Circular No.09/2007/TT-BTNMT), a land partition occurs when a land parcel/unit is divided into a number of new determined parcels/units of land; and land amalgamation means a number of parcels/units of land are merged to form a new land parcel/unit whether as a result of administration requirements or at the request of the land user which request is consistent with the law on land.

Each land parcel/unit is determined by a land parcel/unit code (in Vietnamese, signed as “MT”) including three numbers which are separated by a dot. The first number is the code for the communal administrative unit (signed as

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<sup>248</sup> Stipulated by the Decision No.07/2008/QĐ-BTNMT.

<sup>249</sup> Stipulated by Section 11, Article 4 of the 2003 Land Law.

<sup>250</sup> Stipulated by Section 4, Article 5 of the 2003 Land Law.

“MX”<sup>251</sup>. The second is the ordinal of the sheet of the cadastral map (signed as “SB”) showing the land parcels/units of the communal administrative unit. SB is numbered uninterruptedly from 01 up according to the following principles for cadastral maps of the same scale: (i) from small scale to larger scale; (ii) from left to right; and (iii) from top to bottom. The last one is the number of the land parcel/unit (signed as “ST”) on the relevant sheet of the cadastral map. ST is also numbered uninterruptedly from 01 up according to two principles: (i) from left to right; and (ii) from top to bottom. When a new parcel of land is formed, its ordinal number will be the natural number one above the highest number currently being used as the ST on the sheet of the cadastral map containing this new land parcel/unit<sup>252</sup>.

The change or formation of a land parcel/unit is to be registered, recorded and numbered as above (signed as “MT=MX.SB.ST”). These procedures are mainly regulated by the 2003 Land Law and related provisions of the Government, as well as those of the Ministry of Natural Resources and Environment covering professional skills for land registration.

#### ***4.2.2.2. Circumstances for land use right registration and persons responsible to register land use right***

Land registration or land use right registration in Viet Nam means the recording of a lawful land use right with respect to a defined parcel/unit of land in the cadastral file aimed at creating and stating the rights and obligations of the land user<sup>253</sup>. One sees both the registration of a land use right for the first time and registration of any later changes in it<sup>254</sup>.

Registration of a land use right for the first time is to be carried out in the following cases: (i) when the State allocates or leases land for use; and (ii) when a person is currently using a parcel/unit of land in respect of which a certificate of land use right has not yet been issued. After being registered, the land user is to be granted a land use right certificate for the land parcel/unit and to have his lawful rights and benefits protected by the State in disputes with regard to the land.

As noted, land in Viet Nam belongs to the people as a whole with the State as the representative owner. However, the State does not use land directly. Land is used by land users based on land allocation or the grant of leases by the State. Consequently, the right to use land is created when the State gives a land user a decision on land allocation or lease or on the recognition of a land use right for a person currently using land in a stable manner coupled with the issue of a land use right certificate to such land user. Once this is done, the land user has legal rights and obligations relating to the land use. Nevertheless, to perform transactions relating to land use rights, the land user then after must register the land and be granted a land use right certificate. Information about the defined land parcel/unit and the land user’s right to use it shall also be recorded at the same time in the cadastral

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<sup>251</sup> The code of communal administrative units is determined by The Catalogue of Administrative Names and Code of Administrative Units in Viet Nam. This catalogue is provided for by the Decision No.124/2004/QĐ-TTg of the Prime Minister dated July 8<sup>th</sup>, 2004.

<sup>252</sup> Stipulated by Item 6.4, Section 6, Part I, Circular No.09/2007/TT-BTNMT.

<sup>253</sup> Stipulated by Section 19, Article 4 of the 2003 Land Law.

<sup>254</sup> Stipulated by Section 1, Article 38 of the Decree No.181/2004/NĐ-CP.

files. This helps the State in land administration. After registering a land use right and receiving a land use right certificate, the land user has adequate documentations to engage in land use right transactions.

Registration of any changes in a land use right shall be carried out when a land user has been issued with a certificate of land use right and there are changes in the land use. After registration, the land use right certificate and cadastral file recording the land parcel/unit shall be revised and a new certificate of land use right issued which is in accordance with that change.

Changes in land use shall be registered in the following cases: (i) the land user exercises the right to exchange, assign, lease, sub-lease, bequeath or donate the land use right, or to mortgage, guarantee and contribute capital using a land use right; (ii) the land user is permitted to change its name; (iii) there are changes in the shape, dimensions or area of the land parcel/unit; (iv) the land use purpose is changed; (v) the land use term is changed; (vi) there is conversion from the form of a land lease granted by the State to a land allocation by the State coupled with collection of land use fees; (vii) there are changes to the restrictions on the rights of the land user; and (viii) the State recovers the land<sup>255</sup>.

The persons responsible for register land use right are land users<sup>256</sup> and the heads of the organizations assigned to manage certain particular kinds of land<sup>257</sup> (such as public facilities; land with water surfaces coming from large rivers and land with water surfaces for special use; recovered land pursuant to a decision of a competent public authority; land which has not yet been allocated or leased; and unused land on uninhabited islands). They may however authorize another person to conduct the registration<sup>258</sup>.

#### ***4.2.2.3. General procedures for land registration***<sup>259</sup>

##### *Application for land registration*

Land registration shall be uniformly applied by the Office of Land Use Right Registration<sup>260</sup> following the “one-stop” procedure. There is a separation of competence between the district office and the provincial office based on the type of the land user.

The “one-stop” procedure was introduced in September 4<sup>th</sup>, 2003. People now have to submit their applications or requests at one administrative agency only. This agency will receive applications and return the results to applicants. It is liable for dealing with other authorities where this is needed so the people do not have to go to each of the related authorities to have their requests settled. In order to put the “one-stop” procedure into practice, administrative procedures must be simple, clear

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<sup>255</sup> Stipulated by Section 3, Article 38 of the Decree No.181/2004/NĐ-CP.

<sup>256</sup> Who shall be land users is determined by Article 9 of the 2003 Land Law and Article 2 of the Decree No.181/2004/NĐ-CP.

<sup>257</sup> Organizations that are assigned to manage some particular kinds of land are laid out in Article 3 the of Decree No.181/2004/NĐ-CP.

<sup>258</sup> Stipulated by Section 2, Article 39 of the Decree No.181/2004/NĐ-CP.

<sup>259</sup> The content of this part is based on the general legal provisions on land registration procedures for each case. Specific legal provisions and diagrams are to be found in Figure 6 of Appendix A.

<sup>260</sup> Stipulated by Article 46 of the 2003 Land Law.

and public. Beside that, the authorities should be closely coordinated to ensure that people's applications or requests are quickly<sup>261</sup>.

A separation of competence based on types of land user was provided for in the Law on Amendment of and Addition to A Number of Articles of the 1993 Land Law. Even after the 2003 Land Law, which introduced significant changes, such as Article 37 (authority to allocate land, to lease land and to permit conversion of land use purpose), Article 44 (authority to recover land) and Article 52 (authority to issue certificates of land use right), the above principle has still been maintained. It can be considered as a principle for the determination of general competences in land management between provincial and district bodies. Specifically, People's Committee at district level is responsible for all issues related to land use of individuals and households, while People's Committee at provincial level is in charge of those related to domestic organizations, Vietnamese residing overseas, foreign organizations and individuals.

Accordingly, the Office of Land Use Right Registration at provincial levels is liable for carrying out procedures relating to land registration, adjustment in land use changes, and issue of land use right certificate for domestic organizations, religious establishments, Vietnamese residing overseas (except those who purchase residential housing attached to residential land), foreign organizations and individuals. The Office of Land Use Right Registration at district levels is responsible for domestic households and individuals, communities of citizens, and Vietnamese residing overseas who are permitted to purchase residential homes attached to the right to use residential land. For domestic households and individuals in rural areas, applications can be submitted to the Peoples' Committees at commune level to be delivered to the Land Use Right Registration Office<sup>262</sup>.

By law, Vietnamese residing overseas are entitled to own residential homes and have the right to use residential land for themselves and their family living in Việt Nam if they reside in Việt Nam for three months or more and fall into one of the following categories:

(i) Persons who have retained Vietnamese citizenship;

(ii) Persons originating from Việt Nam who have lost Vietnamese citizenship but, returns home to make a direct investment pursuant to the laws on investment; persons whose work has contributed to the country; persons working in Việt Nam such as cultural activists, scientists and experts in special fields needed by domestic organizations and authorities; and persons married to a Vietnamese citizen residing in Việt Nam.

Vietnamese persons residing overseas not covered by the above cases but residing in Việt Nam for a duration of three months or more and having an exemption from visas requirements shall be entitled to own one individual residential home or one apartment<sup>263</sup>.

Similarly, since January 1<sup>st</sup>, 2009, a foreign individual can become entitled to own one apartment in a project of commercial residential housing if this person is residing in Việt Nam for a permitted duration of one year or more, does not enjoy diplomatic status and also falls into the one of

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<sup>261</sup> According to the Decision No.181/2003/QĐ-TTg of the Prime Minister on issuing Regulations applying the "one-stop" procedure in State administrative authorities at the local level. This Decision has now been replaced by the Decision No.93/2007/QĐ-TTg dated June 22, 2007.

<sup>262</sup> Specific provisions on the separation of competence and duties between the Office of Land Use Right Registration at provincial level and the Offices at district levels are provided for in Section 2, Part I, Circular No.38/2004/TTLT-BTNMT-BNV.

<sup>263</sup> Stipulated by Article 1, Law on Amendment of and Addition to Article 126 of the Law on Residential Housing and Article 121 of the Law on Land which was passed by the 12<sup>th</sup> National Assembly on June 18, 2009 and came into effect on September 1<sup>st</sup>, 2009.

following types: (i) persons who make direct investments in Việt Nam according to the laws on investment, or employed as a manager by an enterprise doing business in Việt Nam pursuant to the laws on enterprise; (ii) persons whose work has contributed to Việt Nam and have been awarded a medallion by the President of Việt Nam or as decided by the Prime Minister; (iii) persons working in socio-economic fields with a bachelor degree or higher, or person with special knowledge or skills that Việt Nam needs; and (iv) persons married to a Vietnamese citizen<sup>264</sup>.

In general, in Việt Nam, the possibility for Vietnamese residing overseas and foreigners to own residential homes has been rather limited. However, they do have the right to use land for investment activities. In this case, they must establish an enterprise in accordance with the laws on investment and enterprise. As a result, a certificate of land use right will be granted to the enterprise. The right to use land is then recognized as their individual capital contribution to the enterprise. They themselves are not land users: the land user is the enterprise. Apart from that, the owner of residential homes attached to residential land must be a household or an individual.

Based on the principle of the separation of competence and duties, the Land Use Right Office at the district level is responsible for registration of a Vietnamese residing overseas owning a residential home ownership attached to residential land, while the provincial Office is in charge of registering the right to use land by such person's investment enterprises.

There are some cases of land registration where the land user can submit an application directly to the administrative authorities assigned by law, for example, to the Departments of Natural Resources and Environment when seeking (i) registration for a change in land use purpose where permission is required<sup>265</sup>, (ii) registration for extension of the land use term (except agricultural land of households or individuals allocated by the State)<sup>266</sup>, (iii) registration of a land partition or amalgamation<sup>267</sup>, and (iv) registration of a voluntary return of land from land user to the State<sup>268</sup>. One can also apply to the management committee of the high-tech zone or economic zone when seeking registration of an extension of land use term in this area<sup>269</sup>.

For registration of changes in land use when land users engage in land use right transactions, it is required that the contract or document of transactions be notarized by a public or private notary or certified by the Peoples' Committees at communal levels or the management committees of the industrial, high-tech or economic zone where the land is situated. Further requirements are that: (i) in the case where one of the parties is a households or an individual, there must be notarization by the notary or certification by the people's committees; (ii) where both parties are domestic organizations, Vietnamese residing overseas or foreign organizations or foreign individuals, there must be notarization by the notary; and (iii) for land use

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<sup>264</sup> Stipulated by Article 2 and Article 3 of the Resolution No.19/2009/NQ-QH12 of the 12<sup>th</sup> National Assembly dated June 3<sup>rd</sup>, 2009 on permission for foreign individuals to purchase and own apartment in Việt Nam.

<sup>265</sup> Stipulated by Section 1, Article 36 and Article 125 of the 2003 Land Law and Article 134 of the Decree No.181/2004/NĐ-CP.

<sup>266</sup> Stipulated by Article 141 of the Decree No.181/2004/NĐ-CP.

<sup>267</sup> Stipulated by Article 145 of the Decree No.181/2004/NĐ-CP.

<sup>268</sup> Stipulated by Article 131 of the Decree No.181/2004/NĐ-CP.

<sup>269</sup> Stipulated by Article 142 of the Decree No.181/2004/NĐ-CP.

right transactions in an industrial, high-tech or economic zone, there must be certification by the management committees of those zone<sup>270</sup>.

*The order of land registration*<sup>271</sup>

After receiving an application, the land registration office is responsible for verifying the files and determining the legal conditions for registration or for taking seeking the assistance of the Communal Peoples' Committees, in case of individuals and households, regarding the land use situation, the origin and time the land use started, state of land disputes, if any and the like. The office is to certify the application for registration or issue a land use right certificate if all conditions for registration are satisfied, or to provide a recommendation in the case where all conditions are not satisfied.

Where the conditions are satisfied, the land use right registration office is to make an extract of the cadastral map or the cadastral measurements of the land parcel/unit with respect to areas where there is no cadastral map and send the cadastral data to the tax authority to determine the financial obligations in the case that the land user is required to discharge any financial obligations in accordance with law; and shall send any tax notification received from the tax authority to the applicant. He is also to send copies of these files together with the extracts of the cadastral map and extracts of the cadastral files to the Department of Natural Resources and Environment at the same level whether the conditions are satisfied or not.

For some cases such as a lease or sub-lease of the land use right, the office of land use right registration is responsible for directly registering the lease etc on the cadastral file and for amending the issued certificate of land use right or for conducting procedures for issuing a new certificate where necessary and then returning the results to the applicant.

The Department of Natural Resources and Environment is responsible for inspecting the files based on the certification of the land use right registration office, and forwarding a submission to the People's Committee at the same level for signing decisions on registration or issuing a new certificate of land use right.

When the application has been resolved and the decisions and/or land use right certificate from the authorized people's committee have been signed and/or issued, the Department of Natural Resources and Environment is to inform the land use changes to the authorities that manage the cadastral files, sign a land lease contract in the case of a land lease and deliver such decisions or certificate to the

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<sup>270</sup> Stipulated by Section 10 Article 2 of the Decree No.17/2006/NĐ-CP of the Government dated January 27, 2006 on amendment of and addition to a number of Decrees implementing the law on land and to the Government Decree No.187/2004/NĐ-CP dated November 16, 2004 on conversion of State owned companies into shareholding companies.

<sup>271</sup> Stipulated by from Articles 122 to Article 158 of the Decree No.181/2004/NĐ-CP.

authority where the applicant submitted the file for transmission to the applicant after the satisfaction of any financial obligations.

As a result, the land user only has to submit applications and receive results at the one authority assigned, in most cases the Office of Land Use Right Registration. The land use right registration office is in charge of verifying the files and coordinating with concerned authorities to resolve any issues. Within three working days from the date of receipt of signed decisions and/or the land use right certificate, the land use right registration office (or other authority) shall deliver or return them to the land user/applicant<sup>272</sup>.

The time for land registration is linked to the administrative working day.

Each land registration case has a specific time-limit for its resolution, excluding the time for delivery of the files to any authorities concerned and discharge of any financial obligations by land users. The Peoples' Committees of provinces and cities under central authority and the Peoples' Committees of districts, towns and provincial cities have the right to stipulate shorter time-limits. Time-limits for implementation of procedures may also be extended, but by no more than fifteen days in the case of island, remote and mountainous areas, or by no more than twenty days in the case where it is necessary to produce cadastral measurements of an area of land because there is no cadastral map<sup>273</sup>.

The results of land registration are to be updated and recorded in the cadastral file managed by the appropriate authorities. The State can thus control land use situations and land use changes. A new or revised certificate of land use right is also to be granted to the land user. It expresses the recognition by the State and its guarantee of protection of the lawful rights and benefits of the land user.

If an error is discovered in the contents of a land use right certificate, the Department of Natural Resources and Environment shall correct the error of the certificate issued by the Peoples' Committees at the same level<sup>274</sup>.

Certificates of land use right shall be taken back by the Department of Natural Resources and Environment in the following cases: (i) a changed certificate of land use right is issued; (ii) there is a natural landslide of the whole parcel of land; (iii) there is a change in boundaries necessitating issue of a new certificate of land use right; and (iv) land is recovered on the basis of approved land use plans<sup>275</sup>. Where a land use right certificate has been granted to a person using land in a stable manner with a land use right which has been recognized by the State, such certificate shall

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<sup>272</sup> Stipulated by Article 122 of the Decree No.181/2004/NĐ-CP and Article 11 of the Decree No.88/2009/NĐ-CP of the Government dated October 19, 2009 on the issue of the certificate of land use right, residential housing ownership and ownership of other assets attached to land (Decree No.88/2009/NĐ-CP).

<sup>273</sup> Stipulated by Article 121 of the Decree No.181/2004/NĐ-CP and Article 12 of the Decree No.88/2009/NĐ-CP.

<sup>274</sup> Stipulated by Section 1, Article 25 of the Decree No.88/2009/NĐ-CP.

<sup>275</sup> Stipulated by Section 2, Article 42 of the Decree No.181/2004/NĐ-CP.

only be taken back if there has been a judgment or decision of a People's Court to that effect<sup>276</sup>.

Any organization or individual discovering that a public employee or officer for land administration is in breach of the provisions on order, procedures or time-limits for land registration shall have the right to lodge a recommendation to the People's Committee or the Department of Natural Resources and Environment at the same level. Within a time-limit of fifteen working days from the date of receipt of a recommendation, the chairman of the People's Committee or the head of the Department of Natural Resources and Environment shall be responsible for considering the recommendation, resolving it, and notify the person making the recommendation<sup>277</sup>.

Any administrator who abuses his/her position or power to breach the provisions of the laws with respect to land registration, or who does not exercise adequate responsibility during administration leading to a breach of the laws on land or conducts other acts causing damage to land resources or rights and obligations of land users shall, depending on the nature and seriousness of the breach, be subject to disciplinary action or criminal prosecution in accordance with the law<sup>278</sup>.

For assets attached to land, as mentioned above, the registration procedures are implemented in the same way and by the same agency as land use right registration. After being registered, these assets are also recorded and shown in the unified form of land use right certificate.

#### ***4.2.3. Construction and management of land information after land registration***

##### ***4.2.3.1. Contents of land information***<sup>279</sup>

After registration, any land information obtained is to be included in the cadastral file serving the public land administration. The cadastral file includes a cadastral database and copies of all land use right certificates (the original certificate having been issued to the land user after registration). It is thus the result of the original cadastral measurements and land registration.

The cadastral database which contains the data on the cadastral maps, the cadastral attribute data and the note is archived and managed in digital form at the provincial and district level, and printed out for use at the communal level.

The cadastral map, the special map used by the land administration, is to be formulated in accordance with the uniform technical standards of the public system of map co-ordinates by map surveyors with practicing certificates or by those registered

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<sup>276</sup> Stipulated by Section 3, Article 42 of the Decree No.181/2004/NĐ-CP.

<sup>277</sup> Stipulated by Article 144 of the 2003 Land Law.

<sup>278</sup> Stipulated by Article 141 of the 2003 Land Law.

<sup>279</sup> The content of this part is presented on the basis of legal provisions of the Circular No.09/2007/TT-BTNMT.

to practice as map surveyors<sup>280</sup>. It is drawn up on the basis of the existing administrative units namely communes, wards, or townships. It shows all parcels/units of land and related geographical features. It must be certified by a competent authority<sup>281</sup>.

The cadastral map contains data on the followings: (i) land parcel/unit (location, shape, size, co-ordinates of the peak of land parcel/unit, its number sign, areas and land type symbol); (ii) hydro-graphic system (rivers, canals, channels, ditches and streams); (iii) irrigation system (dyke embankments, water supply and water discharge); (iv) any traffic routes; unused land parcels without closed boundaries; location and co-ordinates of boundary markers and administrative boundaries at all levels; markers and boundaries of land use planning zones; markers and boundaries of safety corridors surrounding construction works; cadastral co-ordinates; and place names and explanatory notes.

The cadastral map is to be formulated in accordance with land use status before organizing the registration of land use rights and shall be completed after the Provincial Department of Natural Resources and Environment has checked and accepted it. Localities lacking the conditions for preparing a cadastral map before engaging in land registration can be permitted to use existing maps or outlines or to take an extract from the cadastral measurement of the land parcel/unit for land registration purposes and the issue of land use right certificates.

The cadastral attribute data shall be shown by way of the following documents formed in the course of land registration activity:

(i) Cadastral register: a register which is opened for each commune, ward or township for the purpose of recording land users and information on their land use<sup>282</sup>;

(ii) Register of land inventory: a register which is opened for each commune, ward or township for the purpose of recording parcels/units of land and information on such land parcels/units<sup>283</sup>; and

(iii) Register of land change monitoring: a register which is opened for the purpose of monitoring changes in land use, comprising changes of size and shape of land parcels/units, land users, land use purposes, duration of land use, rights and obligations of land users<sup>284</sup>.

The cadastral attribute data which is the result of land registration activities contains geometric, legal and financial information as well as information on land use for each land parcel/unit as follows:

(i) Land parcel/unit: its number sign or land parcel/unit code, its area (the unit of measurement is square meter; the area must be described as “the individual

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<sup>280</sup> Stipulated by Section 4, Article 40 of the Decree No.181/2004/NĐ-CP.

<sup>281</sup> Stipulated by Section 13, Article 4 of the 2003 Land Law.

<sup>282</sup> Stipulated by Section 14, Article 4 of the 2003 Land Law.

<sup>283</sup> Stipulated by Section 15, Article 4 of the 2003 Land Law.

<sup>284</sup> Stipulated by Section 16, Article 4 of the 2003 Land Law.

used section” or “the commonly used section”), measured situation and the name of the surveying unit;

(ii) Land user and/or owner of assets attached to land<sup>285</sup>: the land user or the owner code (including the code for types of land user or owner of assets attached to land and the code for possession status (household, individual, domestic enterprise, joint venture enterprise, and foreign enterprise); full name, address and other information about the land user and/or the owner of assets attached to land;

For example:

The code for types of land user or owner of assets attached to land is stipulated as the following: “GDC” for household and individual; “TKT” for domestic economic organization; “TLD” for joint venture enterprise; and “TVN” for foreign enterprise...etc.

The code for possession status which is written right after the code for types of land user or asset owner is “-SD” for the land user; “-SH” for the owner of assets attached to land; and “-SDSH” for the land user who is also the owner of assets attached to land.

(iii) Land administrator: domestic organizations (such as peoples’ committees at communal level and land fund development organization) and a community of citizens assigned to manage some special kinds of land;

(iv) The form of common use or individual use of the land parcel/unit;

(v) Land use purpose: shown by uniform codes in the system of cadastral database. Each category of land shall have its own code as provided by law<sup>286</sup>;

(vi) The origin of land use right: shown by a uniform code for each type of source of a land use right;

(vii) Land use term: long term or definite period (the date of expiration is to be specifically recorded);

According to the land law of Viet Nam, the concept of “long term” means that the duration of land use is indefinite. The land user in such cases can thus use the land until the right is recovered by the State by way of any of the cases of land recovery stipulated by law<sup>287</sup>.

(viii) Financial obligations on land use: any financial obligations (land use fees or land rent) and the residual land use fees debt;

In cases where the land user is unable to pay land use fees to the State, the amount of such debt is recorded on the land use right certificate. This provision can only be applied to households and individuals in the cases stipulated by law.

(ix) Limitation on land use right: land is zoned for recovery or safety corridors surrounding construction works or any limitation on area for construction.

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<sup>285</sup> Stipulated by Article 32 of the Circular No.17/2009/TT-BTNMT of the Ministry of Natural Resources and Environment dated October 21, 2009 providing for regulations on the certificate of land use right, residential housing ownership and ownership of other assets attached to land (Circular No.17/2009/TT-BTNMT).

<sup>286</sup> The code of land use for each land category is provided for in detail by the Circular No.09/2007/TT-BTNMT.

<sup>287</sup> Land use rights can be recovered by the State in the cases provided for by Article 38 of the 2003 Land Law.

(x) Land price (or the price of land use right): the land price that is stipulated by the Peoples' Committees at provincial level and is publicly proclaimed on 1<sup>st</sup> January each year, or the land price which is defined by organizations providing consultancy services relating to land prices, or the land price determined by auctions of land use rights;

(xi) Assets attached to land<sup>288</sup>: types of assets (such as residential homes, construction works or other buildings, forest trees or perennial crops attached to land). In cases where the owner of assets attached to land is determined, information about this owner shall be recorded as above;

(xii) Land use right certificate: its issue number and its number in the register of land use right certificates;

(xiii) Changes in land use: date of registration of changes in land use, types of land use change, and indicators used in the file of land use changes.

The indicators used in the file are determined in a uniform way for the whole country and for all types of land use change. Its format is a set of four codes adjoining each other and separating by a dot as in the following example: CS = MX.ST.MB.MC.

Therein,

- MX is the code of the administrative unit at communal level;

- ST is the ordinal number of the land use change file that is registered and recorded. It comprises six numbers from 000001 and up used for all categories of land use change within the management area of the body in charge of revising land use right certificates;

- MB is the code of each type of change in land use such as lease or sub-lease of land use right, mortgage of land use right or assets attached to land, contribution of capital towards the use of land use right and so on.

- MC is the code of the competent body in charge of revising land use right certificates, for example, XA – the Peoples' Committees at communal level; VP – the Office of Land Use Right Registration at district level; VS – the Office of Land Use Right Registration at provincial level; and PH or SO – the Department of Natural Resources and Environment at district or provincial level.

An actual example could be “26869.000961.TC.VS”, with “26869” is the code of Ward 15 of Gò Vấp district in Hồ Chí Minh city; “000961” means that the ordinal number of this file is 961; “TC” means “mortgage”, a type of land use change; and “VS” shows that the Office of Land Use Right Registration at provincial level is the competent agency who corrected this file.

(xiv) Land not part of any land parcel/unit: examples are traffic routes and irrigation systems.

The note in the cadastral attribute data rewrites the notes which are recorded in the land use right certificate<sup>289</sup>

With all of the above information, when the land information system has been completely established, it will contain most of the important features on the geometric, legal, financial fields and land use of each land parcel/unit. A land user can

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<sup>288</sup> Stipulated by Article 33 of the Circular No.17/2009/TT-BTNMT.

<sup>289</sup> Stipulated by Article 33 of the Circular No.17/2009/TT-BTNMT.

seek out information from a cadastral database regarding different types of data such as land user (full name, permanent address), land parcel/unit, location of land parcel/unit, and ordinal number of land use right certificate and so on or any one of these.

The State calls for the establishment of an effective cadastral database because this serves the purposes of land administration and exploitation. Thus land registration activities and the land registration system as a whole need to be reinforced and improved. The Government, through the Ministry of Natural Resources and Environment, has proposed the creation of a plan aiming at the improvement of the cadastral database throughout the country as follows: (i) for wards and townships, this is to be formulated before 2010; (ii) for communes at delta and midland areas, this is to be formulated before 2015; and (iii) for communes on mountainous, island or remote areas in difficult conditions, it is to be formulated after the communes, wards and townships in other areas have been completed.

#### ***4.2.3.2. Land information management<sup>290</sup>***

Cadastral files with information on land parcels/units are to be formulated in detail in respect of each parcel/unit of land in the administrative units of communes, wards and townships. The contents of the cadastral files must provide full, exact and uniform information in comparison with land use right certificates and land use status. They must be regularly and promptly revised in order to record any changes in land use. Before being taken into use, the cadastral file must be checked and accepted by the Department of Natural Resources and Environment and the Office of Land Use Right Registration at provincial level.

The Provincial Department of Natural Resources and Environment is to be in charge of checking, accepting and certifying cadastral maps, the cadastral register and the register of land inventory, and putting cadastral map data into the cadastral database. The Provincial Office of Land Use Right Registration has to check the process of inputting cadastral attribute data to the cadastral database and the quality of the extracts on land parcels/units<sup>291</sup>.

Within a time-limit of five working days after the application is registered, the land use right registration office has to revise and update cadastral files, and notify the revisions to the Peoples' Committees at communal level for updating. Within a time-limit of seven working days from the date of receipt of the notification from the land use right registration office, the cadastral official is responsible for updating cadastral files managed at communal level.

In areas where there are no complete cadastral database and network, the land use right registration office must also at the same time deliver the notice and revised data to the offices at other administrative levels concerned with updating

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<sup>290</sup> The content of this part is presented on the basis of legal provisions of Part V, Circular No.09/2007/TT-BTNMT.

<sup>291</sup> Stipulated by Section 7, Part III, Circular No.09/2007/TT-BTNMT.

cadastral files. In cases where cadastral databases have been established and provincial units and district units are linked through networks, all changes in land use shall be recorded and updated by the data management software after one working day,

The land use right registration office must implement a daily check on information that has been revised and put into the cadastral database on that very day. It also has the right to organize yearly, periodic or unscheduled inspections of activities relating to the update of cadastral files at communal level.

Cadastral files shall comprise one original set, which is archived in the provincial office of land use right registration, and two copies of which one is archived in the District Office of Land Use Right Registration and the other with the Peoples' Committees at communal level. Except for certain informational documents (such as the notice on satisfying or not satisfying the conditions for issue of a land use right certificate or a notice on cadastral file that has been revised and updated) which have a five-year duration of preservation, other documents and registers in the cadastral files (such as cadastral maps, the cadastral register, the land inventory register, copies of land use right certificates, files applying for land use right certificates and registration of changes in land use) shall be preserved indefinitely.

The Provincial Office of Land Use Right Registration is to be liable for reporting the results of any revision or update of the cadastral files and any issue of a land use right certificate to the Provincial Department of Natural Resources and Environment. Then, once every six months, the Department of Natural Resources and Environment at provincial level must submit a report to the Ministry of Natural Resources and Environment. With this decentralized approach, detailed information on each land parcel is to be managed and kept at the local level. The land database at the centre contains only global information such as data on land use planning for the whole country and at provincial level, and data on inventories and statistics of land.

Currently, the natural resources and environment agencies have been trying to convert the cadastral files from paper form to digital form. Peoples' Committees of provinces and cities under central authority are responsible for investing in the computerization of their cadastral files. The Ministry of Natural Resources and Environment is to provide the procedures, technical standards and economic norms applicable to the formulation of cadastral files in paper form and to the digital system. It will provide guidance on the formulation, revision and management of the cadastral files in both of the above forms. It will also issue the schedule for the replacement of the cadastral files, especially the cadastral maps. All this is the duty of the natural resources and environment agencies, but it also requires support and assistance of other administrative authorities.

For residential homes, after being registered, residential housing information is also recorded and archived in residential housing files which are managed by the provincial or district agency for residential housing. A residential housing file is to be

formulated in respect of each residential home in the relevant administrative unit; these are divided into rural and urban areas. Each unit contains all the documents in the application file for the issue of the residential housing ownership certificate, the register of the residential housing ownership registration, the planning map and a map of the infrastructure of the area where the residential home is located (if any).

Each quarter, the Peoples' Committees at district level are to submit a report on the issue of residential housing ownership certificates to the Provincial Department of Construction. Then, the Department of Construction at provincial level reports to the people's committees. Finally, once every six months, the Department of Construction or the Peoples' Committees at provincial level must submit a report to the Ministry of Construction for submission to the Prime Minister. The issue of making and managing of residential housing files digitally has also arisen<sup>292</sup>.

In general, although the management of residential housing files are provided for by separate legal provisions, this kind of registration has still not been implemented specifically in comparison with that of land use right. What is at issue is that there are two separate public administrative agencies for residential land and residential homes. These may be two different kinds of real estate property but it is very difficult to separate them. This confused situation will be considered in Part 4.3 below.

#### ***4.2.3.3. Land information supply***<sup>293</sup>

Any organization or individual can ask to be supplied with information in the cadastral files, except for information covered by the state secret list. The forms of information that can be sought include: consultation; extract of cadastral map, cadastral register or land inventory register of any land parcel or land user; collective information; and information in a form which can be copied to a computer (organizations only).

The person seeking information must make a written request or sign a contract (in the case of asking for collective information) for the provision of information and submit it to the authorities, namely the appropriate office of land use right registration or Peoples' Committees at communal level. The Peoples' Committees at communal level are permitted to supply land information in the form of consultation. The District Office of Land Use Right Registration is permitted to provide land information under any form, other than one which can be copied to a computer. The Provincial Office of Land Use Right Registration is permitted to provide land information in any form.

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<sup>292</sup> Stipulated by Article 66 of the Law on Residential Housing, Article 76 of the Decree No.71/2010/NĐ-CP of the Government dated June 23, 2010 on detailing and guiding the implementation of the Law on Housing (Decree No.71/2010/NĐ-CP).

<sup>293</sup> The content of this part is presented on the basis of legal provisions of Part VI, Circular No.09/2007/TT-BTNMT.

The agency managing cadastral files is obliged to provide land information on the day of receipt of a request for a consultation; within two days where an extract from a cadastral map, a cadastral file or electronic files are in question; or within the duration agreed in any contract for the supply of land collective information.

Private persons seeking information must pay a fee for land information utilization and supply to the agency managing the cadastral files but public authorities, political organizations and socio-political organizations do not have to pay. The fee rates are laid down by the Peoples' Committees at provincial level.

In Hồ Chí Minh city, the fee for an extract of the cadastral map is 10.000 VND for individuals or 20.000 VND for organizations<sup>294</sup>. In Ha Noi, the fee for both individuals and organizations is 10.000 VND<sup>295</sup>.

The Peoples' Committees at communal level have the right to include any fees collected into their budget. The land use right registration office must pay fees it collects into the public budget, but it does have the right to retain fees collected for the supply of land information.

For residential homes, on the written request of any organization or individual, the agencies managing the residential housing files are also to be in charge of providing residential housing information relating to the legal status of residential homes or residential land contained in the residential housing files. The information may be supplied in the form of a response in writing, via an electronic network, or in the form of a photocopy or extract from a file. A fee is again required<sup>296</sup>.

Information transfer through the internet has not yet been implemented yet as there are no networks links between the various administrative and agencies. Persons seeking information must, therefore, approach all relevant authorities managing the cadastral files or residential housing files in person even if they are seeking land information in different localities. Moreover, because the databases of land and residential homes in each local area have not yet been completed, information on many land parcels is deficient, inexact or inadequate. The need for improvements to the land registration and land information systems is becoming more and more necessary.

### **4.3. Evaluation of the Vietnamese land registration system**

#### ***4.3.1. The machinery***

##### ***4.3.1.1. An agency with unstable unification***

As land belongs to the people as a whole, any land use right granted to land users has to be allocated, leased or recognized by the State – the assigned representative of the people – by the administrative authorities in charge of land. It

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<sup>294</sup> Stipulated by the Decision No.63/2008/QĐ-UBND of the People's Committee of Hồ Chí Minh city dated July 18, 2008 providing the cadastral fee rates in Hồ Chí Minh city.

<sup>295</sup> Stipulated by the Decision No.10/2009/QĐ-UBND of the People's Committee of Hà Nội city dated November 9<sup>th</sup>, 2009 providing the cadastral fee rates in Hà Nội city.

<sup>296</sup> Stipulated by Article 76 of the Decree No.71/2010/NĐ-CP.

may therefore be appropriate for these authorities to be in charge of land registration, because the State can thus manage land policy more easily.

However, when one looks at the foundation and development of the land registration agencies, one sees that their organization or structure is often changed.

Because of the separation of functions or mergers within its organizational framework, or because of changes to its name, functions and obligations, the stability which is necessary for any administrative authority to perform its tasks tends not to exist. In principle, to have an effectively administrative apparatus, the first thing needed is to clearly define its functions and obligations, and the relations among its parts. In fact, the establishment of totally disorganised machinery is what often happens. This can be observed more and more clearly in the land law system in Viet Nam, where land, land use rights and the assets attached to land, although closely connected, are managed by separate administrative authorities. So the management of assets attached to land falls under administrative authorities other than the land administration agency, so there is “*a tendency to be apart from land management system and become another independent management system*”<sup>297</sup>.

In a paper relating to the real estate registration system in Việt Nam, the author, Dr. Nguyễn Ngọc Điện, drew the conclusion cited above. According to Dr. Điện, basing himself on the Roman legal principle – *superficies solo cedit* – land ownership should entail the ownership of properties attached to land, it should be assumed that the land owner is also the owner of assets attached to land unless anyone can prove the contrary. Dr. Điện also thought that the denial of this principle in administrative activities in Việt Nam led to the establishment of a registration system which neither unifies registration activities nor determines their legal meaning.

For instance, land is used for different purposes, but the law merely provides that the Ministry of Natural Resources and Environment shall be in charge of public land administration<sup>298</sup>. In some specific cases, the management of assets attached to land as well as the land itself is assigned to other agencies, such as the Ministry of Construction responsible for residential homes and construction works, or the agency of agriculture and urban development liable for forests. Separate systems which manage land and properties attached to land arise this way. With their local competence and interests, the co-operation between these agencies is usually poor. For one reason or another, “*such administrative agencies are set up in order to serve the requirements of public authorities rather than helping people exercise their property rights*”<sup>299</sup>.

Consequently, just one year ago, there were situations like the following:

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<sup>297</sup> Nguyễn Ngọc Điện, “Quản lý nhà nước về đăng ký bất động sản và giải pháp hoàn thiện hệ thống đăng ký bất động sản”, VIB online, dated December 8<sup>th</sup>, 2008, <http://www.vibonline.com.vn/vi-VN/Forum/TopicDetail.aspx?TopicID=2207>. Retrieved [20101020 22:39].

<sup>298</sup> Stipulated by Section 2 Article 7 of the 2003 Land Law.

<sup>299</sup> Nguyễn Ngọc Điện, “Xây dựng dự luật đăng ký bất động sản: lúng túng từ mục tiêu ban đầu”, VIB online, dated October 14, 2008, <http://www.vibonline.com.vn/vi-VN/Forum/TopicDetail.aspx?TopicID=2136>. Retrieved [20101020 22:46].

Land or land use rights was registered at the land use right registration office and led to the grant of a red land use right certificate (the “red certificate” or “red paper”);

Residential land together with residential homes attached on such land were registered at the administrative agency for residential housing and led to the grant of a pink certificate of residential housing ownership and residential land use right (hereafter called the “pink certificate” or “pink paper”);

Where a residential home owner was not a residential land user, both the residential home owner and the residential land user had to register their respective rights with the appropriate agencies. In this case, the two types of certificate were issued by separate administrative agencies: the pink certificate for the owner of residential home and the red certificate for the residential land user.

The law on residential housing just provides that where an owner of a residential home was also the user of the residential land, a certificate of residential housing ownership and residential land use right would be issued; and where an owner of a residential home was not the residential land user, a certificate of residential housing ownership (the same as the pink certificate) would be issued<sup>300</sup>. So in the second case, the residential land user had to register his/her residential land use right and was granted a land use right certificate. This division stems from a dispute on administrative competence between the Ministry of Construction and the Ministry of Natural Resources and Environment that took place over several years<sup>301</sup>.

Not to mention other assets attached to land, the land use right registration office also records information on such assets as land use right certificates and the cadastral files, even though these are registered and managed by other administrative agencies particularly.

The existence of separate systems has not proved it either assists the land administration or helps guarantee the right to own or use real property but the problems it gives rise to are fairly clear.

Firstly, it creates a complex system of administrative procedures with a large number of relevant provisions and a variety of administrative agencies to which people must turn for the registration of the right to use land or to own a residential home or other assets attached to land. A change in land use may give rise to a change in the authorities assigned to manage registration activities and changes in certificate types.

For example, assume a person using a parcel of agricultural land wishes to separate out part of the parcel and change the land use purpose of the new parcel from agricultural to residential so that he can build a house on it. These activities all being conducted in accordance with the law and land use planning rules, then the following procedures need to be carried out: (i) registration of the original parcel of agricultural land will already have been done at the land use right registration office and a red certificate issued; (ii) the new residential land parcel separated from the agricultural land parcel and the house built on it will need to be registered at the administrative agency for residential housing and a pink certificate granted; finally (iii) registration of the reduced agricultural land parcel post separation

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<sup>300</sup> Stipulated by Article 11 of the Law on Residential Housing.

<sup>301</sup> See *infra* 4.4.2.

(registration for changes in land use) has to be implemented at the land use right registration office and a revised red certificate issued.

If there were only one agency, say the land use right registration office, in charge of the registration of land user's right, there would be just one registration process for all changes in land use, and only the original cadastral file would then need to be revised and updated. But because of the separate systems, administrative procedures must be implemented in two places and two types of certificate issued.

When people are confused by the number of procedures and the many kinds of documents required for each registration activity, things will not go smoothly. Land user's interests may thus be damaged, especially in cases where investors want to mortgage their assets for business. Indeed, many people, tired of the complex administrative procedures, have still not registered changes in their land use. All this provides an obstacle to the protection of land use rights and to the management and revision of the cadastral files of the natural resources administrative agency or the residential housing files of the construction administrative agency. This is a barrier to the development of a competitive, sound and lawful real estate market. As a result, a majority of land use right transactions, as well as transactions in other kinds of real property are falling outside the registration system and state control in general.

Secondly, the existence of different systems of registration leads to the functional separation of organizational agencies and to failures in the information system. For various reasons, local registration agencies seldom inform each other when there has been any change in the use of real properties managed by them. This causes difficulties for public management as land and assets attached to land are united in fact, but information about them is administered separately. In order to get information and determine the legal status of a parcel/unit of real property is, thus, a complex and difficult matter. Accordingly, land or housing disputes will easily arise, especially in cases where the residential housing owner is not the residential land user. State efforts towards the establishment of a uniform system of real estate information which would improve the transparency of the real estate market in Việt Nam thus face grave problems.

Thirdly, this overlapping system wastes the time and the money of both the State and the people. Instead of concentrating on a uniform registration system, the State must have spent nearly twice as much in resources, both human and financial, on equipping a number of registration systems, especially the two systems of registration for land and residential homes, not to mention the waste of resources due to the failure to unify the real estate information system. Similarly, people have to pay multiple fees regarding different types of registration file and it takes time to apply to the relevant authorities. People need to be patient and resigned if they are to get anywhere.

Because of these inadequacies, since the middle of 2009, the Government implemented the first reform on unifying the form of the land use right certificate. On this basis, the responsibility for registration of land use right and assets attached to

land was assigned to the agency of natural resources and environment and the land use right registration office. Although this reform was carried out a little late and just for registration procedures, when the management responsibility for assets attached to land has been still come under other professional agencies, it has shown a good signal. However, it is obvious that to overcome all above problems which have been existed in a long time and get the trust of the people back is an issue which the Natural Resources and Environment Agency cannot resolve advantageously overnight.

#### ***4.3.1.2. An unstable organization for the implementation of land registration activity***

Although many specific regulations regarding the land use right registration office have been enacted and come into effect, there are still many inadequacies.

The office of land use right registration is liable for several tasks, namely, the supply of services relating to land registration, the management of cadastral files and the assistance of the agency of natural resources and environment in the performance of various administrative procedures connected to land management. Because the time allowed for establishing the land use right registration office was only one year (from July 1st, 2004 to July 1<sup>st</sup>, 2005)<sup>302</sup>, many localities could not finish on time. If some areas could establish their office in time, it was likely to be by way of a temporary solution based on the reorganization of existing public service units.

For example, the land use right registration office of Thái Bình province was established one month late<sup>303</sup>, the office of Hải Phòng province was three months late<sup>304</sup>. In some provinces, the office was formed on time, but it was often just a makeshift remedy as, for example, the land use right registration office of Hà Nội city was a mere modification of the existing Centre of Information Archives and Land-Housing Service of the Department of Natural Resources and Environment<sup>305</sup>, and the office of Đà Nẵng city was just the existing Centre of Natural Resources and Environment Information<sup>306</sup>.

As a result, with uncertain machinery and staff, the land use right registration office has not yet undertaken its assigned obligations and tasks. It will take time to train, rotate and reorganize the human resources in conformity with work demands. Even the cadastral file information managed by the land use right registration office in several localities remains inadequate. Information on security transactions is what has mainly been recorded by the previous information archives centre. One of the reasons for these shortcomings is the difficulty in extracting or

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<sup>302</sup> Stipulated by Article 185 of the Government Decree No.181/2004/NĐ-CP.

<sup>303</sup> Stipulated by the Decision No.53/2005/QĐ-UB of the Peoples' committees of Thái Bình province dated August 19, 2005.

<sup>304</sup> Stipulated by the Decision No.2405/2005/QĐ-UB of the Peoples' committees of Hải Phòng province dated October 19, 2005.

<sup>305</sup> Stipulated by the Decision No.129/2004/QĐ-UB of the Peoples' committees of Hà Nội city dated September 1<sup>st</sup>, 2004.

<sup>306</sup> Stipulated by the Decision No.13/2005/QĐ-UB of the Peoples' committees of Đà Nẵng province dated January 28, 2005.

copying cadastral files managed by the agency of natural resources and environment in paper form and delivering them to the land use right registration office.

Moreover, it is only the office of land use right registration at provincial level which must by law be established. So, in many administrative units, there is no such office at district level. This is because local governments are not aware of the benefits of the establishment of a land use right registration office while many administrators do not want to change their missions or lose any benefits by sharing work.

At the end of the year 2007, there were still 309 municipalities without a land use right registration office and 19 provinces with no such office<sup>307</sup>.

In such a case, the District Department of the Natural Resources and Environment is to undertake the functions of the land use right registration office. The administrative procedures that households and individuals are subject to in areas without a land use right registration office at district level have, thus, not followed the provisions on the “one-stop” regime. Land users, both households and individuals, must still submit applications to a number of authorities, from the People’s Committee at communal level to the Department of Natural Resources and Environment and the Peoples’ Committees at district level. Even in areas where there is a land use right registration office at district level (such as in H Chí Minh city), before applying to this office, households or individuals must still submit an application to the communal People’s Committee in order to be confirmed in their land use status, particularly where residential land and residential homes are concerned, although, according to law, land users only have to submit their files to the land use right registration office, and this office shall be liable for dealing with other relevant authorities when handling the files of applicants.

These situations show that the system of land use right registration office responsible for operation of land registration has not been completed and is not yet performing adequately. This needs to be improved.

Apart from the organization, the connections between the administrative agency for land management, the land use right registration office and the communal cadastral officials are neither well organized nor timely. The transfer of land information between these units after registration and updating is usually late. So the cadastral files managed by each authority may not coincide.

Most communal cadastral officials do not receive useful legal documents on land law or the professional guidance of superior units. The supervision of lower level administrative agencies by higher ones, of district land use right registration offices by the provincial office, and of communal cadastral officers by the district land use right registration offices on matters relating to land registration and the making of cadastral

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<sup>307</sup> According to Appendix 2, the Report No.63/BC-UBTVQH12 of the Standing Committee of the National Assembly dated November 2<sup>nd</sup>, 2007 on supervising the implementation of the Law on issue of land use right certificate.

files tends to be loose and sloppily carried out. If carried out at all, work is done superficially by casual examinations of the reports of junior units. Therefore, most such reports are inadequate. They merely focus on work achievements.

Lack of guidance and supervision by higher authorities is one of the reasons that many mistakes are made by land officials when engaged in land administration as well as when making land registration files. These mistakes are not corrected or are only corrected in an inadequate way. This will be analyzed in more detail in part 4.3.2 below.

#### **4.3.2. The staff**

As well as the changes in organisation, the Natural Resources and Environment Agency based on its existing personnel and new hires has, in recent years, built up a force capable of satisfying the requirements of its responsibilities and functions that are becoming more and more complex. Experience and professional ability in cadastral activities are paid more and more attention to. With the current need to be able to apply science and technology to land administration and registration, the number of land officials able to use computers or speak foreign languages has increased.

Most officers in the state administrative units at the central level meet the standards regarding computer and foreign language ability. At the local level, only about 25,1% of officials have a certificate in a foreign language while 56,9% have a certificate in computer skills<sup>308</sup>.

However, it is necessary to acknowledge the actual situation; there have been problems which need to be considered.

It was not without cause that Vietnamese public officials were assessed as “*the most pedantic and obstructive staff*” in Asia. An assessment, according to Dr. Nguyễn Sĩ Dũng, means “*being well known is the same as being disreputable*”.

This was from the 2004 risk report<sup>309</sup> of the Political and Economic Risk Consultancy (PERC), a consulting firm established in 1976, with its head office in Hong Kong. PERC coordinates a team of researchers and analysts in the Asian countries, China and South Korea in order to analyze and supply strategic business information for companies doing business in the countries there. One of PERC’s services is a yearly risk reports on the countries of Asia, paying special attention to critical socio-political variables like corruption, intellectual property right risks, labor quality, and other systemic strengths and weakness of the individual countries. Some of the world’s leading corporation and financial institutions regularly use PERC’s services to assess key trends and critical issues shaping the region, to identify growth opportunities, and to develop effective strategies for capitalizing on these opportunities<sup>310</sup>.

In a later article<sup>311</sup>, Dr. Nguyễn Sĩ Dũng gave reasons justifying his evaluation, therein the above conclusion.

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<sup>308</sup> SEMLA, *ibid.* supra note 243.

<sup>309</sup> “Tuổi Trẻ Chủ Nhật” weekly magazine, No.13-2004, dated April 4<sup>th</sup>, 2004, p. 9.

<sup>310</sup> More information about PERC can be found at the website <http://www.asiarisk.com>.

<sup>311</sup> “Pháp luật TP. Hồ Chí Minh” magazine dated April 7<sup>th</sup>, 2004.

Additionally, it was also shown not to be groundless by the Corruption Perceptions Index (CPI) 2010 of the Transparency International Organization (TI). Among 178 countries, Việt Nam was ranked at 116/178, a low position with an index of 2,7/10<sup>312</sup>.

TI, a politically non-partisan organization leading the fight of global civil society against corruption, was founded in 1993, with its head office in Berlin, Germany. TI seeks to provide reliable quantitative diagnostic tools regarding levels of transparency and corruption, both at global and local levels. One of the best known of TI's tools is the annual CPI, first released in 1995. CPI indicates the degree of public sector corruption as perceived by business people and country analysts, and ranges between 10 (highly clean) and 0 (highly corrupt)<sup>313</sup>.

In comparison with the CPI of previous years, the CPI of Việt Nam showed some improvement, though its extent was unremarkable. Specifically, the CPI of Việt Nam from 2004 to 2007 was 2,6/10 with a ranking of 102 out of 146 countries in 2004; 107 out of 159 in 2005; 111 out of 163 in 2006; and 123 out of 179 in 2007. From 2008 to 2009, its CPI was 2,7/10 with a ranking of 121 in 2008 and 120 in 2009 out of 180 countries.

By contrast, the CPI of Sweden is always more than 9,0 indicating a very clean area. From 2004 to 2006 and from 2009 to 2010, its CPI was 9,2/10 while it was 9,3/10 from 2007 to 2008<sup>314</sup>.

It can be said that the epidemic of corruption in Việt Nam takes place in most fields and at most administrative levels, from the lowest to the highest level. In all public administrative fields, corruption in the land administrative field, indeed, has the highest rate of 20,8%. Other administrative areas with high rates are traffic with 11,3%, public administration with 10%, construction with 7,1%, education with 5,4%, and banking and finance with 4,9%<sup>315</sup>.

Up to September 2009, there were 326 cases discovered with 816 corrupt officials. 163 cases were prosecuted with 391 arrestees. The total of corrupt money and properties which was seized was 39,97 billion VND<sup>316</sup>

This may be the consequence of failures in the employment of officers, the requirements regarding professional capacity and character and/or training activity. If each part in the production of public officials is analysed, several problems can be seen.

First of all, authoritarian and obstructive behavior together with neglect on the part of officials is linked to the fact that neither the people's influence nor the State's supervision of public officials is very significant.

In a democratic society, public officials are persons employed by the State in order to carry out administrative responsibilities and serve the people. They are paid

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<sup>312</sup> See CPI 2010 at website

[http://www.transparency.org/policy\\_research/surveys\\_indices/cpi/2010/results](http://www.transparency.org/policy_research/surveys_indices/cpi/2010/results). Retrieved [20101027 23:25].

<sup>313</sup> For more information about TI see the website <http://www.transparency.org>.

<sup>314</sup> For more information on the annual CPI see the website [http://www.transparency.org/policy\\_research/surveys\\_indices/cpi](http://www.transparency.org/policy_research/surveys_indices/cpi).

<sup>315</sup> Bửu Lân, "Tham nhũng trong lĩnh vực đất đai chiếm tỉ lệ cao nhất", Tin mới online, dated May, 7<sup>th</sup>, 2009, <http://tinmoi.vn/Tham-nhung-trong-linh-vuc-dat-dai-chiem-ty-le-cao-nhat-0518012.html>. Retrieved [20101020 23:05]. These figures were presented at the conference "Cải cách hành chính cấp tỉnh – Hiện trạng và khuyến nghị" organized by the Vietnamese Fatherland Front at Đà Nẵng city on May 7<sup>th</sup>, 2009.

<sup>316</sup> The Report No.176/BC-CP of the Government dated October 19, 2009 on the 2009 socio-economic situation and the 2010 governmental duty.

from taxes this, in the true sense of the word; they originate from the people, exist by way of the people and serve the people. However, the issues of employment, appointment, dismissal, reward and/or discipline are not under the peoples' direct influence. They are decided by the higher authorities.

In reality, many public officials do little more than try to satisfy their superiors. If they make mistakes at a level that is not too serious, they will be subject to little or no discipline or just moved. Moreover, too many Vietnamese people are very reserved, irresolute and resigned and do not complain that the work routines of public officials are irresponsible and tardy. Some people do not know the administrative procedures and do not know where and how to lodge a complaint. Some are afraid that taking part in a complaint or denunciation with its intricate procedure, will not only not solve their problems, but may also serve to increase the time-taken to deal with their applications. Only when they are really harassed by administrative procedures will people raise their voice against public officials. Some people, though, do get help from the press.

A typical example is the case on the issuing of a pink certificate to Mr. Nguyễn Trọng Hiệp, a man 77 years old, who resides at No. 8, Lê Đại Hành street, Lê Đại Hành ward, Hai Bà Trưng district, Hà Nội city. To try and obtain the certification that there were no disputes relating to his residential land and home, he went to the People's Committee of Lê Đại Hành ward twenty-eight times, but still getting no result. A cadastral officer gave various reasons and requested numerous amendments of Mr. Hiệp's file in order to postpone the grant of the needed confirmation. On running out of patience, he got help from the press as well as by way of submitting a complaint to the local authority. This case was reported on by "Lao Động" Magazine. Only when the Chairman of the People's Committee of Hà Nội city went to ask the district and ward government about the case was Mr. Hiệp's file confirmed<sup>317</sup>.

The relationships between public officials constitute another reason why people's complaints are answered late or not at all. Sometimes the persons liable for dealing with the breaches or mistakes of public officials have to "*hold aloof, hit softly*" because of the connections between them. Although the recruitment of public cadres is implemented through competitive examinations, the exams at most localities are not organized transparently. In a number of cases, the candidates, "soliciting for position and for power", bribe the examiner. Many administrative authorities have employed staff by way of labour contracts, and then let them take the regular examinations. This kind of employment tends to be based on internal acquaintanceship and/or recommendations. Even if these employees fail the exam, they return to their previous position and just wait for the next examination. Outsiders really satisfying the professional standards and conditions thus have less and less opportunities of becoming a public official. Even if they pass the exam, it is difficult for them to have the opportunity of working in positions appropriate to their professional skills as these are "planned" for somebody else. As a result, although the recruitment examination is competitive and open, people as a whole have not been

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<sup>317</sup> Kiều Minh, "Kỷ lục hành dân: 28 lần không xin nổi một chữ ký", Vietnamnet online, dated May 17, 2005, <http://vietnamnet.vn/chinhtri/doinoi/2005/05/430471/>, and Kiều Hưng, "Ông Nguyễn Trọng Hiệp đã được chứng nhận hồ sơ", Việt báo online, dated June 2<sup>nd</sup>, 2005, <http://vietbao.vn/Xa-hoi/Ong-Nguyen-Trong-Hiep-da-duoc-chung-nhan-ho-so/40081582/157/>. Retrieved [20101021 00:55].

interested in taking part in such exam. The number of outside candidates in each exam is often very small.

Public official recruitment through competitive examination was launched at the end of 1998<sup>318</sup>. Every citizen from 18 to 40 years old, in good health and not subject to criminal prosecution, would have the right to register and take part in the competitive examinations of the public authorities. Only successful candidates were to be employed as regular officials of public authorities. Accordingly, since 1999, the localities have organized the recruitment of cadres in this way.

In Bắc Kạn province, the 2003 competitive examination for public official recruitment, with a quota of 204 employees, was held on 24 and 25 May, 2003. There were 501 candidates taking part in the written exam and 499 candidates in the oral exam. After this exam, public opinion was aroused about the problem of bribery with from 10 million VND to 30 million VND being paid for positions in each public authority. The Chairman of the People's Committee of Bắc Kạn province had to establish a interdisciplinary inspective mission (by Decision No.318/2004/QĐ-UB dated March 11, 2004) in order to inspect the exam results. After this inspection, the mission discovered that the mark of 32 out of 501 written exam papers and 43 out of 499 oral exam papers had to be changed. This led to some successful candidates failing and, conversely, some failed candidates passing<sup>319</sup>. But without the influence of public opinion and the use of inspectors, how would the strictness of the public competitive examination and the quality of employed officials be maintained?

In Hồ Chí Minh city, though competitive examinations were established in 1999, the guidelines on organizing a competitive and open exam, that is one with no preferences for candidates who have or have not worked in public authorities before, only started in 2003. The first truly competitive examination for recruitment of public officials in the true sense of the word was organized on May 28, 2009 with the attendance of 1.347 candidates. However, the number of outside candidates was still only about 100 persons<sup>320</sup>.

It can thus be seen why public officials, especially those working in sensitive fields such as land administration, are not totally dedicated to their assigned tasks and their responsibility to serve the people.

Second, the professional standards of land officials are often not appropriate to their responsibilities and obligations so they cannot work efficiently even if they wanted.

Although the professional standards of public officers at cadastral scale are provided by law, they are in practice often difficult to determine. There are requirements, such as “having a thorough grasp”, “or “having a thorough knowledge of the guidelines and policies on socio-economic development; of the law, especially land law; of surveying, land use planning, land registration or land administration; and

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<sup>318</sup> Stipulated by the Decree No.95/1998/NĐ-CP of the Government dated November 17, 1998 on recruitment, utilization and management of State officials. This Decree was replaced by the Government Decree No.117/2003/NĐ-CP dated October 10, 2003 on recruitment, utilization and management of State officials in State authorities.

<sup>319</sup> “Thi tuyển công chức ở Bắc Kạn chỉ là hình thức”, Vietnamnet online, dated May 20, 2005, <http://www.vnexpress.net/GL/Xa-hoi/2005/05/3B9DE699/>, and T. Nguyễn, “Vụ tuyển công chức ở Bắc Kạn – Cảnh cáo 5 quan chức”, dated July 5<sup>th</sup>, 2005, <http://vietnamnet.vn/xahoi/doi-song/2005/07/465565>. Retrieved [20101021 01:06].

<sup>320</sup> Thu Hằng, “Lần đầu thi tuyển công chức cạnh tranh”, Tuổi trẻ online, dated May 28, 2009, <http://www.tuoitre.com.vn/Tianyon/Index.aspx?ArticleID=318553&ChannelID=3>. Retrieved [20101021 01:21].

of socio-economic situations<sup>321</sup>. Are these requirements all suitably defined at the time of recruitment and for each scale of cadastral official?

Nor is there compliance with the demand for a certain academic level. Though land officials are liable for land administration and many related technical activities, they are not required to be trained at an academy for land administration or in the cadastral field and get a professional degree. It is acceptable for a cadastral official to have a degree at the same level but in another field. For example, how can such persons have a thorough grasp of the administrative procedures and the professional skills needed for land registration when doing their work? Moreover within a non-computerized system of land registration, staffs have to deal with their assigned tasks involving a number of complex cadastral files and registers in paper form together with separate documents varying by locality and based on local situations that are not covered by the law. How can success be anticipated ?

Moreover, land administrators need to know about several fields including the following: (i) they need to have a thorough grasp of land law and the law on natural resources and environment; (ii) they need to have the professional skills in land administration which will allow them to implement the technical professional procedures, standards, norms, and regulations relating to land use planning, surveys, land registration, the issue of land use right certificate, making cadastral maps and other maps in land management and land evaluation; (iii) they need to have a good grasp of the guidelines and policies relating to socio-economic development, and the actual state of society, the economy and technological improvement in the administrative field.

Therefore, if a lack of professional knowledge and real experience in any of the above fields exists, some work will be carried out ineffectively by land or cadastral officials. It will be not easy for, say, a cadastral officer trained in just one professional field, even it was in land or cadastral administration to handle the work

For instance, a cadastral officer, who is not trained in law and does not even have a moderate knowledge of law, will have difficulty in understanding and applying in an appropriate and timely way the guidelines and policies of the Vietnamese Communist Party, and of the numerous land law provisions promulgated by the State. In fact, many officials are often confused when reading or putting legal provisions into practice. They are likely to rely on procedures and requirements not provided for by law in order to make their administrative activities easier and push problems back to the applicants. They may try to lengthen time-limits or pass the buck altogether by submitting matters to higher authorities for their guidance or seeking answers to inappropriate problems. They then seek to act according to the guidance or answers they receive.

Additionally, although a cadastral official has a technical professional title, the requirements are more attuned to administrative aspects, and not so much attention

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<sup>321</sup> Stipulated by the Decision No.07/2008/QĐ-BTNMT.

is paid to technical or professional matters, certainly not professional standards in land registration. Once employed, such officials need to be trained or else they just carry out their work following the administrative procedures they have been instructed in. All this reduces the effectiveness of land administrative activities and land registration.

This is part of an explanation why most land administrators at the local, especially communal level, remain responsible for land administration and land registration, even though they are not trained or are trained in an unsuitable way or in a different field. Not to mention that Vietnam is starting to apply science and technology to land management, land registration and the establishment of a digital system of land information, as well as opening the door to exchanges and to learning from the experiences of other countries. But there are still severe limits on cadastral officials' levels of training and ability in computers and foreign languages. The demand that the official learns a foreign language only applies at the primary level in Việt Nam, and there is no demand for any higher international standard (such as TOFL or IELTS). The only requirement in informatics is that the official knows how to use a computer for his assignments. In spite of the low level called for, many public officials have not even met these requirements. As mentioned above, the percentage of public officials at provincial and district levels having an acceptable degree in foreign language is 25,1% and in computers is 56,9%<sup>322</sup>.

The third cause is the retrograde approach of land officials and their lack of virtue.

Having both responsibilities and powers regarding land registration and related activities such as land use planning, the cadastral survey, land inventory and statistics, the price evaluation of land use rights and the issue of land use right certificates, several land officials have fallen back into an old attitude which dates back to past times and retains a tenacious hold even now: they are the administrators with public power and the people are merely subjects to be administered, not served. They forget or are not aware that their work and responsibilities are intended to serve the people and guarantee the necessary order of society, allowing people to feel secure.

In the 2003 Land Law, for example, some obligations and responsibilities of public officials are drafted as competences like “authority to allocate land, to lease land and to permit conversion of land use purpose”<sup>323</sup> and “authority to issue land use right certificate”<sup>324</sup>. But such authority does not mean that the person authorized may act or not act as he sees fit. But land administrators have used them to harass applicants and not a few officials have an imperious and authoritarian attitude when dealing with applications.

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<sup>322</sup> SEMLA, *ibid.* supra note 243.

<sup>323</sup> Stipulated by Article 37 of the 2003 Land Law.

<sup>324</sup> Stipulated by Article 52 of the 2003 Land Law.

While defects in professional knowledge are an objective problem that can be overcome, an imperious and authoritarian attitude is, on the contrary, a serious fault in the mind of public officials that is difficult to redress. If both of such these faults exist in public cadres, the consequences will be grave. Moreover, in a market economy in a developing country, coupled with the low salaries of public officials often inadequate to cover living expenses, the attraction of the large benefits which can be derived from land has a strong impact on public officials and corrupted many of them. Knowing clearly that the complex history of land administration and registration has left the cadastral files incomplete with a lack of data in almost every land parcel/unit, many land officials have taken advantage of this situation to ask applicants for bribes when confirming the origin of the land use in question and/or the time of its commencement.

Public opinion is now very disturbed by the fact that land cadastral officials ask for money whenever people make applications relating to land registration. If unsatisfied, the cadastral official will find reasons allowing him postpone to grant the applications.

Many such cases have been discovered and dealt with. For example, in Quang Ngai province, there were more than five land officials, including the chairman of the Communal People's Committee, who abused their position of power and took bribes. Such persons were discovered in 2007 at Tinh Binh commune (Son Tinh municipality), Phong Quang commune (Đức Phổ municipality) and Đức Phong commune (Mộ Đức municipality). As an example of their crimes, they would give a backdated confirmation that land use commenced before 15 October, 1993 in order that the land user/applicant be exempted from land use fees or have them reduced. They thus took bribes from the applicants or even took a share of the exempted/reduced land use fees. This also created a loss of revenue for the State<sup>325</sup>.

In the same year, at Tam Đảo municipality of Vĩnh Phúc province, four leading officials, namely the chairman and the party committee secretary of Hợp Châu commune and the manager of the municipal department for agriculture and rural development and his deputy, took advantage of their positions to allocate land use rights to their relatives among other inappropriate actions<sup>326</sup>.

Also in 2007, in Ninh Thuận province, it was discovered that two cadastral officials of Phước Dân township, Ninh Phước municipality delayed delivery of 547 red certificates to land users and asked for money to release them. They made applicants pass backwards and forwards many times to get the certificate if they would not give a bribe. They also appropriated the cadastral fees on the issue of land use right certificate without paying them to the public budget<sup>327</sup>.

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<sup>325</sup> Minh Hạnh, "Khi quyền lực...nhỏ" bị tha hóa", the Government Inspectorate's Information Portal online, dated September 19, 2007, [http://www.thanhtra.gov.vn/Desktop.aspx/Tin-tuc/Phong-chong-tham-nhung/Quang\\_Ngai\\_Nhieu\\_quan\\_tham\\_tra\\_tay\\_vao\\_cong\\_Khi\\_quyen\\_luc\\_nho\\_bi\\_tha\\_hoa/](http://www.thanhtra.gov.vn/Desktop.aspx/Tin-tuc/Phong-chong-tham-nhung/Quang_Ngai_Nhieu_quan_tham_tra_tay_vao_cong_Khi_quyen_luc_nho_bi_tha_hoa/), and Nguyễn Ngọc Phó, "Lại thêm những quan địa chính có tài...chạy số đỏ", dated September 24, 2007, [http://www.thanhtra.gov.vn/Desktop.aspx/Tin-tuc/Phong-chong-tham-nhung/Quang\\_Ngai-Lai\\_them\\_nhung\\_quan\\_dia\\_chinh\\_co\\_tai\\_chay\\_so\\_do/](http://www.thanhtra.gov.vn/Desktop.aspx/Tin-tuc/Phong-chong-tham-nhung/Quang_Ngai-Lai_them_nhung_quan_dia_chinh_co_tai_chay_so_do/). Retrieved [20101021 01:35].

<sup>326</sup> P. Thảo, "Vụ tham nhũng đất đai tại Tam Đảo: 2 bị cáo nhận án tù giam", the Government Inspectorate's Information Portal online, dated September 25, 2007, [http://www.thanhtra.gov.vn/Desktop.aspx/Tin-tuc/Phong-chong-tham-nhung/Vu\\_tham\\_nhung\\_dat\\_tai\\_Tam\\_Dao\\_2\\_bi\\_cao\\_nhan\\_an\\_tu\\_giam/](http://www.thanhtra.gov.vn/Desktop.aspx/Tin-tuc/Phong-chong-tham-nhung/Vu_tham_nhung_dat_tai_Tam_Dao_2_bi_cao_nhan_an_tu_giam/). Retrieved [20101021 01:40].

<sup>327</sup> "Xử lý nghiêm những cán bộ địa chính có hành vi tiêu cực", Lao động online, dated February 12, 2007, <http://www.laodong.com.vn/Home/Xu-ly-nghiem-nhung-can-bo-dia-chinh-co-hanh-vi-tieu-cuc/20072/23685.laodong>. Retrieved [20101021 01:46].

And in 2008, at Đồng Tháp province, after dealing with 135 denunciations complaining about demands for money made by cadastral officials carrying out land survey activities or the issuing of land use right certificate, the People's Committee of Đồng Tháp province restored land user rights and gave back to land users about 03 billions VND, 206 parcels of residential land (approximately 11.530 m<sup>2</sup> of residential land) and nearly 90.000 m<sup>2</sup> of land for other purposes, and recovered over 150 million VND for the public budget<sup>328</sup>.

The abuse of position or power to breach the law is not an individual problem but a collective issue, involving several administrative levels and related authorities, and may even include working with outsiders.

In Hải Phòng province, on the inspection of land use right certificates issued in three communes and one township of Thuận Nguyên municipality, inspectors discovered that local governments had instituted some fees which were not provided for by law, and forced land users to give between 06 millions and 25 million VND. This was done between 2004 and 2007. After this was discovered and dealt with, an amount of 25,6 billion VND was recovered, with about 3,24 billions VND coming from Đường Thủy commune; over 12,3 billions VND from Hồ Bình commune, and over 10,1 billions VND from Núi Đèo township<sup>329</sup>.

In Hồ Chí Minh city, there were several large scale cases of corruption in the land field that gave rise to much discontent.

The first was the land corruption case at Gò Vấp district which was prosecuted in December 2004. In this case, Tân Kim Long, the chairman of the People's Committee, and Dương Công Hiệp, the deputy of the Urban Management Department of Gò Vấp district got in contact with Lê Minh Châu, the director and Hồ Tùng Lâm, the deputy director of Gò Môn Real Estate Company and Phạm Thị Tuyết Lan, a land broker for the purpose of unlawfully permitting the implementation of land use right transfer contracts on over 11 hectares of agricultural land thereby gaining illicit benefits of more than 06 billions VND. Once detected, they bribed various persons, including Nguyễn Văn Tính, the party committee secretary of Gò Vấp district with the intention of suppressing information. This case was heard at first instance<sup>330</sup>. But at the appeal hearing, the council of Adjudicators with appellate jurisdiction set aside the judgment of the first instance court and transferred the case file to the court with original jurisdiction for a new investigation and trial<sup>331</sup>. After a long time re-investigating, the case was re-heard in 2010<sup>332</sup>.

The second was the land corruption case at Hóc Môn municipality which was prosecuted at the end of 2007. The accused were authorized persons, comprising Nguyễn Văn Khoa, the chairman of the People's Committee of Hóc Môn municipality; Trần Văn Tè, the chairman of the People's Committee of Đông Thạnh commune and the manager of the Planning and Financial Department of Hóc Môn municipality, who lent a hand to the director and deputy director of Thành Phát Housing Construction and Business Limited Company, allowing this business to make illegal files regarding changing the land use purpose of more than 18 hectares from agricultural to residential land. Although

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<sup>328</sup> Ái Mai, "Đồng Tháp tiếp nhận 135 đơn tố cáo về tham nhũng", Sài Gòn giải phóng online, dated December 20, 2008, <http://www.sggp.org.vn/thongtincanuc/2008/12/175805/>. Retrieved [20101021 01:50].

<sup>329</sup> "Thu tiền "ung hộ" khi cấp sổ đỏ cho dân trên 25 tỉ đồng", the Government Inspectorate's Information Portal online, dated May 21, 2009, [http://www.thanhtra.gov.vn/Desktop.aspx/Tintuc/Phap-luat/Thu\\_tien\\_ung\\_ho\\_khi\\_cap\\_so\\_do\\_cho\\_dan\\_tren\\_25\\_ti\\_dong/](http://www.thanhtra.gov.vn/Desktop.aspx/Tintuc/Phap-luat/Thu_tien_ung_ho_khi_cap_so_do_cho_dan_tren_25_ti_dong/). Retrieved [20101021 01:54].

<sup>330</sup> The first instance criminal judgment No.164/2007/HSST of Hồ Chí Minh City People's Court on February 6<sup>th</sup>, 2007.

<sup>331</sup> The appellate criminal judgment No.1095/2007/HSPT of the Appellate Court of the Supreme People's Court in Hồ Chí Minh city on August 8<sup>th</sup>, 2007.

<sup>332</sup> The first instance criminal judgment No.158/2010/HSST of Hồ Chí Minh City People's Court on June 22, 2010.

the implementation was unlawful, the application files and land use right transfer contracts of Thành Phát Company were still confirmed by these three authorized persons. The managers of Thành Phát Company had given a bribe of over 10,5 billions VND to these officials. The case was heard at first instance in 2010<sup>333</sup>.

All this has decreased people's trust in government and the land policy. It also has made land users hostile to the carrying out of land registration procedures, thereby creating an obstacle to the improvement of land registration activity which the State has been trying to finish.

As said above, public officials originate from the people, are recruited and assigned responsibilities and powers by the State and are maintained from people's tax payment. So it cannot be accepted when they engage in activities contrary to the best interests of the people and the State. Although, among the millions of public officials, the number of such retrograde officials is not so large, or at least they have not been uncovered, most localities do contain such officials under various disguises.

Finally, something needs to be said about the training of the land staff, especially of the cadastral officials at communal levels.

Nowhere can people receive academic training in all areas of the administration of land. Each university or college only offers a few related fields, or focuses on one aspect such as land administration or cadastral techniques.

As an example, the Law University of Hồ Chí Minh city offers courses in law in general, including land law. In the Agricultural and Forest University of Hồ Chí Minh city, there is a Faculty of Land and Real Estate management. The University of Natural Sciences has a Geology Faculty. The National Economy University of Hà Nội has a Real Estate and Cadastral Faculty; and Hà Nội University of Mining and Geology has a Faculty of Surveying and Mapping. Additionally, there are three Colleges of Natural Resources and Environment (in Hà Nội city, Hồ Chí Minh city and Thanh Hóa province) which train intermediate cadastral officials destined for the provinces.

Accordingly, after graduating, trainees may have professional knowledge in one field. But if recruited as regular public officials, they have to be in charge of very complex affairs requiring both administrative skills and professional and technical competence in several fields which requires more than they possess.

Moreover, training programs in most academies only pay attention to theory, so there is a gulf between this knowledge and practice. Many graduates lack practical skills and do not know how to deal with the actual work problems assigned to them. Consequently, they need the experience practice gives as well as their superiors' guidance. In many cases, their ability to carry out assignments is poor, and bad results are often ensued.

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<sup>333</sup> The first instance criminal judgment No.223/2010/HSST of Hồ Chí Minh City People's Court on August 20, 2010.

At the local level, the Provincial Departments of Natural Resources and Environment are interested in staff training. However, they cannot take the initiative in making training plans because of the decentralized administration and the cost of training. In some provinces, the local government has agreed with some academies to send officials for training, but this only happens when absolutely necessary to meet local demands and there is always a limit on the number of officials involved. Furthermore, this is only suitable for localities with funds for training and where available staff already have appropriate certain professional level. For communes at mountainous, island and remote areas, the existing cadastral officials are often not sufficiently educated to make it worth retraining them, the majority of them having just graduated from high school or lower. Further, after being retrained, the retrainees are usually appointed to work at higher levels, so the lower level body where these retrainees had worked has to start looking for new officials. The end result is a shortage of capable officials, especially at communal levels.

In a general assessment on staff training in its branches, the Ministry of Natural Resources and Environment noted many shortcomings, namely: (i) the training academies of the Natural Resources and Environment Agency remained inactive in the design of training programs, the organization of training courses and the application of new teaching methods; (ii) the material facilities and teaching equipment are too obsolete to be able to cope with technological development. Teaching methods are slowly being renewed but do not encourage students to study (iii) as a consequence, the quality training is low with program contents being too inclined toward theory rather than practice and technical skills; (iv) the impact of the training is poor, and has barely met the demands on staff in administrative units at provincial and district levels; there are still too many communal cadastral officials who have not been trained or have trained in inappropriate fields; and there is an imbalance between land administrators and cadastral officials because the majority tends to focus on administrative work<sup>334</sup>.

Nowadays, as the establishment and management of digital cadastral databases is common in land administration, the issues of staff training and the application of modern technology become more and more pressing. The Agency of Natural Resources and Environment has to strive to overcome its shortcomings, and create specific strategies for the step by step improvement of its staff leaving them with enough capacity to be able to handle complex assignments in new modern conditions.

### ***4.3.3. Land registration procedures and land information***

#### ***4.3.3.1. General procedures for land registration***

Firstly, according to law, land registration is carried out at the office of land use right registration. It is a form of state public service.

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<sup>334</sup> SEMLA, *ibid.* supra note 243.

However, after analyzing the provisions on the registration of a land use right for the first time and registration of any changes in a land use right, it can be seen that the registration function has not been yet clearly separated from the administrative function. Administrative authorities still have a key role in the process of land registration. The land use right registration office just plays the role of the assistant liable for managing and recording cadastral files; receiving applications for land registration; checking and comparing documents of the applications with the cadastral database; giving its certification and delivering the files to the appropriate administrative units at the same level. The administrative authorities still hold the right to make the decision on the issue of a new or revised certificate of land use right. Based on this decision, the land use right registration office then records the registered information in the cadastral files. Even in cases of changes in land use (where the land use right did receive its initial registration, was thus recognized by administrative authorities and shown in the archived cadastral files), whether the changes will be registered or not depends on the decisions of the administrative authorities. Further as the land use right registration office lacks the right to decide on land registration issues, land registration procedures are prolonged. The people then think that land registration activities are administrative ones, and they become reluctant to take part in registration.

Secondly, land registration procedures are provided for each type of land registration, but the officials just concentrate on the recognition, recording and updating of land use rights and on changes of land use right transactions. Much important information on the use of land and other real estate is not registered and recorded. This includes land use rights attached in order to guarantee execution of a judgment; and easements over adjoining immovable properties (regarding access, supply and drainage water and natural gas, electricity transmission cables, communication cables and the like). Land users, thus, may not be aware of their rights while land users with land parcels/units limited by easements deliberate create obstacles for those entitled to exploit them.

There have been several cases where owners of immovable properties surrounded by the real estate of other owners had difficulties, which the local government could not resolve. Such cases even happened in Hà Nội, the capital and political centre of Việt Nam.

Mr. Nguyễn Duy Năng and Mr. Nguyễn Trọng Thủy, reside at alley 22b, Phương Liên ward, Đống Đa district. Their access to the street was restricted by a wall built by their neighbours in 1990. Although there were a number of official documents from higher authorities (such as Notice No.61/TB-UB dated December 1<sup>st</sup>, 2006; and Notice No.45/TB-UBND dated June 14, 2007 of the People's Committee of Đống Đa district; Notice No.69/ TB/QU of the Communist Party of Đống Đa district dated August 27, 2007 and Decision No.222/QĐ-UBND of the People's Committee of Hà Nội city) and a direction of the People's Committee of Phương Liên ward that the wall which unlawfully infringed the easements of Mr. Năng and Mr. Thủy be torn down, as of May 2009, this has not

happened. It is remarkable that this case has thus lasted more than 19 years despite being in Hà Nội city<sup>335</sup>.

Also in Hà Nội, Mr. Trần Đức Tiến's family, which resides at alley 121/39/31, Thanh Lương ward, Hai Bà Trưng district, was denied access to the street by a wall built unlawfully by his neighbour in September 14, 2005. Though the district and ward governments intervened by organizing a mediation between the parties concerned and then ordering a solution, the case has still not been resolved. The tearing down of the illegally built wall, called for by an official document of the Office of the Government dated January 24, 2006 which suggested that the People's Committee of Hà Nội city should be able to deal with the case, quickly did not happen. For more than seven months, Mr. Tiến had to use a ladder for climbing over the wall to another neighbour's yard, if he wanted to go outside<sup>336</sup>.

That an owner of real estate which is surrounded by the real estate of other owners has easements over the adjoining real estates, or the right to request one of the owners of adjoining real estate to provide him with a passage to a public road was laid down in Article 273 (Easements over adjoining immovable properties) and Article 275 (Right of passage through adjoining immovable properties) of the 2005 Civil Code. However, there is no provision on the registration of these rights and so no corresponding activity while land users are not fully aware of their rights and obligations. Consequently, their rights are not guaranteed by the State; indeed, many public authorities have also not taken account of the easements issue. In the above cases, the local government's intervention was indefinite and incomplete. In the case of Mr. Trần Đức Tiến, the People's Court of Hai Bà Trưng district even refused to consider the case because it felt it was outside its competence.

Similarly, registration of easements is not provided for within the system of residential housing registration. Moreover, registration of residential homes is registration for ownership and guaranteed transactions only. Changes in residential housing purposes and some other matters such as the lease or sublease of residential homes cannot be registered yet.

Thirdly, it is difficult to explain why there is a separation of responsibility between the land use right registration office at provincial levels and at district levels which is based on the type of applicant: domestic organizations or foreigners apply at the provincial level while domestic households and individuals apply at the district level. Land registration activities are carried out similarly in both cases with the aim of determining and recording lawful land use rights in cadastral files with a view to determining and protecting the land use rights of land users. The only difference lies in the kinds of documents used for defining the status of applicants or land users.

According to Dr. Nguyễn Ngọc Điện, in a paper concerning the real estate registration system, to explain this separation it may be helpful to refer to the traditional way of organizing competences in the Vietnamese administrative system:

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<sup>335</sup> Vũ Văn Tiến, "Bị hàng xóm bịt cổng suốt 19 năm giữa thủ đô", Dân trí online, dated May 7<sup>th</sup>, 2009, <http://dantri.com.vn/c20/s20-323410/bi-hang-xom-bit-cong-suot-19-nam-giua-thu-do.htm>, Retrieved [20102211 23:23].

<sup>336</sup> Hoàng Anh, "Hà Nội: Một gia đình bị hàng xóm bịt cổng ra vào", Vietnamnet online, dated September 25, 2005, <http://vietnamnet.vn/xahoi/doi-song/2005/09/493161/>, and Quang Duẩn, "Bị "nhốt" suốt 7 tháng trời vì hàng xóm bịt lối đi", Việt báo online, dated April 12, 2006, <http://vietbao.vn/Xa-hoi/Bi-nhot-suot-7-thang-troi-vi-hang-xom-bit-loi-di/45190791/157/>, and T. Phùng, "Năm tháng, lối đi vẫn bị bít", Tuổi trẻ online, dated February 18, 2006, <http://www.tuoi-tre.com.vn/Tianyon/Index.aspx/Index.aspx?ArticleID=123485&ChannelID=3>. Retrieved [20101021 02:20].

the higher the level the administrative authorities are at, the more complex and important the responsibilities and tasks they are to be in charge of by comparison with the lower units. So, implementation of land registration for domestic organizations and foreign subjects is thought to exceed the capacity of administrative authorities at district levels<sup>337</sup>.

However, whether such separation is appropriate and convenient for the administration is unclear. Even when the Government tried to cut out waste in its administrative apparatus, this separation led to the establishment of 63 land use right offices at provincial level and approximately 700 land use right offices at district level. The State administrative apparatus only became more and more swollen.

Based on figures from the General Statistics Office of Government, as of December 31, 2009, the number of administrative units at district levels was 697, with 48 provincial cities, 47 districts, 46 precincts and 556 municipalities<sup>338</sup>.

Moreover, in mountainous, island and remote areas where land use status is not complex and changes in land use are very infrequent, one can ask whether it is necessary to establish a land use right registration office in each municipality. In fact, many localities have not had such an office even at district level.

There has certainly been an increase in the financial and human resources needed to run this machinery. The formulation, management and registration of cadastral files in each level of administrative unit, with the transmission of information between authorities being so uncertain and reliant on obsolete paper-based technology, create difficulties for the public authorities and prevent the public from knowing about land information.

Complexity also arises if there is a change in nature of those seeking registration. For example, in a land use right transaction between an individual and an organization, the procedures for land registration and the issue of a land use right certificate call for a movement from district to provincial level, and then back again. A further problem will arise when easements are registered; public management will face difficulties because the organization's easements will be registered at provincial units and the individual's easements at district units.

Note also that, based on the constitutional principle that all subjects are equal before the law<sup>339</sup>, any separation of responsibility for land registration based on the nature of the applicant is inappropriate as all applicants are doing the same thing – registering of their land use rights.

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<sup>337</sup> Nguyễn Ngọc Điện, *ibid.* supra note 297.

<sup>338</sup> The General Statistics Office, “Số đơn vị hành chính có đến 31/12/2009 phân theo địa phương”, <http://www.gso.gov.vn/default.aspx?tabid=386&idmid=3&ItemID=9837>. Retrieved [20101021 02:35].

<sup>339</sup> This principle is from Article 52, Chapter V on Fundamental Rights and Obligations of Citizens, in the 1992 Constitution.

#### ***4.3.3.2. The land information system***

Despite the above problems, it can be seen that the land information system which is formed through land registration activities will give rise to a cadastral database containing important details on land parcels/units, such as their geometry, legality, value and land use. The source of land information comprises the two following fundamental types:

The first are data in digital form. They are saved electronically and even available via LAN, WAN and the internet (at central and provincial level), comprising legal documents on land law; materials, reports, inventory and statistic figures; maps (land use zoning, topography, administrative map, and traffic map);

The second are data in paper form, containing a copy in paper form of all digital and other data (cadastral register, land inventory register, and land change monitoring register).

There is a website of the central cadastral database, <http://ciren.gov.vn>, which is managed by the Information and Communication Technology Department for Natural Resource and Environment of the Ministry of Natural Resources and Environment. However, this website currently offers only an introduction and news reports. With only a few cadastral databases available, it does not yet meet the demands for land information which are in any event constantly growing.

Land information supplied at this website comprises only certain maps such as a map of national land use status, land use status maps of the economic zones with a scale of 1:250.000, a map of land use planning for the entire country with a scale of 1:1.000.000, and a map of land use planning of the economic zones with a scale of 1:250.000. Even in the map of national land use status, there have only been maps of An Giang province, Cần Thơ city, Hồ Chí Minh city, Đà Nẵng city, Hải Phòng city and Hà Nội city<sup>340</sup>.

Because of the decentralized administration, the land database archived at the centre just contains general information serving the public administration at the macroscopic level (such as information about the status of land use right certificate issuance and land use planning for the entire country or provincial levels or zones, and figures relating to the land inventory as a whole and related statistics). There is no detailed data on each land parcel/unit. Within a land information system where cadastral maps and cadastral files containing detail on the land parcels/units are managed locally, land information is dispersed and this causes obstacles for those seeking access to land information. Additionally, such land registration activities as have been performed are incomplete. No locality has produced a complete database of land information and cadastral files in paper form; even the making of land use planning and cadastral maps has been incomplete. This makes it more and more difficult to digitalize the land database.

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<sup>340</sup> See Appendix C.

For example, in Bắc Giang province, cadastral maps have only been made for about 9,47% of the natural land areas, so there is no starting point on which to record land use changes<sup>341</sup>.

In Vĩnh Phúc province, in 2007, the cadastral files consisted of some temporary land registers which were old and infrequently revised. At communal levels, there were only the land inventory register, the cadastral register and old cadastral maps made in pursuant to Decision No.299-TTg, and without any monitoring of land changes. At district and provincial levels, only 20 out of 137 communes had archived cadastral files, with only 4 out of 137 communes having complete cadastral files in digital form. Vĩnh Phúc province is trying to make complete cadastral files for the whole province by the end of 2015<sup>342</sup>.

As a consequence, though every local government at provincial level and its departments may have its own website, one cannot find land information or data from the cadastral files on these websites.

Over and above that, the sharing of information between public authorities and officials remains uncommon. Information being treated as the private asset of the units managing the databases is more likely to take place. One reason for this is that there are still no legal provisions on information sharing among the units responsible for land registration to each other, as well as between such units and those requesting information.

According to the result of a study carried out by the Ministry of Justice in Bình Định province, Long An province, Đồng Nai province and Hồ Chí Minh city on information supply (it was reviewed by Prof. Nguyễn Đăng Dung at an international conference on Law on information access in Việt Nam dated May 6<sup>th</sup>, 2009 in Hà Nội), most public officials still do not consider that providing information is their duty. When receiving an application for information, many of them have to ask their superior for a decision. As for the citizens, only a few of them know they have the right to this information<sup>343</sup>.

The supply of information in response to applications is also not carried out in conformity with the law. Many local officials just give a cursory verbal answer without any guarantee of the legal value of such information. Furthermore, the information is unlikely to be sufficient because the agency of natural resources and environment only has information about land and lacks information on the residential homes attached to land; on the other hand, the agency responsible for residential housing only has information on such houses and lacks land information. Including further a problem is that information on land prices is just that provided by the State which may not reflect the market price.

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<sup>341</sup> The Geodesy and Cartography Institute of the Ministry of Natural Resources and Environment, “Bắc Giang: Tỷ lệ đất được đo đạc bản đồ địa chính đạt thấp”, dated May 8<sup>th</sup>, 2009, <http://www.vigac.vn/modules.php?name=News&op=viewst&sid=45>. Retrieved [20101021 02:58].

<sup>342</sup> The Department of Natural Resources and Environment in Vĩnh Phúc province, “Hoàn thiện hệ thống hồ sơ địa chính – Nhiệm vụ trọng tâm của công tác quản lý đất đai trong giai đoạn từ nay đến năm 2015”, dated February 20, 2009, [http://202.151.161.78/tnmtvinhphuc/index.php?nre\\_vp=News&in=viewst&sid=1205](http://202.151.161.78/tnmtvinhphuc/index.php?nre_vp=News&in=viewst&sid=1205). Retrieved [20101021 03:10].

<sup>343</sup> Nghĩa Nhân, “Cán bộ chưa quen công khai thông tin”, Pháp luật Tp.HCM online, dated May 6<sup>th</sup>, 2009, [http://www.phapluattp.vn/news/chinh-tri/view.aspx?news\\_id=252549](http://www.phapluattp.vn/news/chinh-tri/view.aspx?news_id=252549). Retrieved [20101021 03:14].

Assessing the Vietnamese land information system was a report based on SEMLA's study program for 2007, entitled "A report on the real situation, a plan and the requirements for improvement of the environment and land information system (ELIS)".

SEMLA, a bilaterally cooperative program between Sweden and Vietnam on Strengthening Environmental Management and Land Administration (2004 – 2009), is implemented in accordance with an agreement between the Swedish and Vietnamese governments signed at the end of 2004. The purpose of this agreement was to help Vietnam to establish an effective system for the management of the environment and natural resources in order to assist in improving the country and renewing the administrative system in agreement with the tendency towards administrative reform. This program is also directed at improving the rights to use land and the supply of land services. The total budget for the program was 250 millions SEK.

The SEMLA results are derived from practical studies in many Vietnamese localities. Based on them, SEMLA has provided Viet Nam with recommendations, solutions or specific products such as legal documents; reports, technical and professional guidance, training materials, and several pilot projects<sup>344</sup>.

According to the above 2007 report, some general shortcomings in Vietnamese land information system were the following<sup>345</sup>:

As to information and data: only some types of data are available, and there are limited connections between the public authorities. The State can to some extent meet current tasks and demands, but there is insufficient data for analysis, evaluation and forecast. GIS technology is mainly applied to agriculture, forests and geology. Only a few localities have concrete plans to use GIS technology in the land database establishment. Generally, land information is neither complete nor revised frequently.

As to technical equipments: at the centre, equipment was bought in 1995–1996. This has now become old-fashioned and creates poor results revising land data. Although some public service units and state enterprises of the Ministry of Natural Resources and Environment have on their own initiative developed and used some software programmes for recording cadastral maps and files (such as FAMIS on the graphical interface MicroStation, or CADDB on FoxPro, Access), for land information management (for instance, CILIS, or PLIS on the graphical interface Geomedia, or VILIS on the graphical interface MapObject), the application of these systems is not well organised.

At the local level, technical equipment is not supplied uniformly in all areas, and is lacking in both quantity and quality. It is inadequate to ensure the requisite level of data processing or for applying the software to data management. Technical equipment at district and communal levels could not satisfy the requirements for applying new information technology in land management and registration.

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<sup>344</sup> See more information at the website for the SEMLA program in Viet Nam, <http://sempla.monre.gov.vn>.

<sup>345</sup> SEMLA, *ibid.* supra note 244, pp. 81–84.

As to the human resources: lack of appropriately professional officials. The existing staff has to face very rapid developments in society and economy and in the use of modern technical equipment, and officials at district and communal levels may not cope.

As to investment capital: in order to overcome these shortcomings, substantial investment in the land information system is called for, but the public budget cannot cover the whole system at all levels and in all localities at once. There is not even a plan regarding the effective apportionment and use of invested capital which will avoid waste and inappropriate use.

It can be seen that under the present conditions, in order to have a systematic and useful system of land information, as well as improving land registration activities, many general obstacles have to be overcome. They include both “objective obstacles” relating to technological, financial and human resources, and “subjective” obstacles relating to public officials’ lack of a sense of responsibility, as well as the need for links between the authorities managing land information. If all these problems were resolved, the transparency of the real estate market which is shown through the Real Estate Transparency Index would be improved; corruption would be limited; and Việt Nam could become an attractive area for investment leading to the development of the economy.

The Real Estate Transparency Index (RETI) is a study of real estate market transparency in countries. Started in 1999, it becomes one of the key services of Jones Lang LaSelle – a financial and professional services firm known world-wide and specializing in real estate services and investment management, with a staff of more than 30.000 people at 750 locations in 60 countries.

RETI studies are made every two years and are based on the following factors: investment index, general information about existing market, disclosure of financial and managerial information of organizations having securities listed in securities markets, law and regulations, moral standards and professionalism. RETI results are divided into five levels with scores ranging from 1 to 5, as follows: 1 – 1,49 (high); 1,5 – 2,49 (transparent); 2,5 – 3,49 (semi); 3,5 – 4,49 (low); and 4,5 – 5 (opaque)<sup>346</sup>.

According to the 2006 study, Việt Nam, with a score of 4,69, was in the fifth level with the lowest rank of the 56 countries studied<sup>347</sup>. In 2008, Việt Nam was improved its score to 4,29. It now came in the fourth level and ranked 77th out of the 81 countries surveyed<sup>348</sup>. This change is due to the improvement in administrative procedures relating to investment and business registration. If the land information system and related administrative procedures become both simpler and more open and easy to handle, the RETI of Việt Nam will continue to fall.

A comparison with Sweden, with its very transparent system of land information is revealing. Sweden is usually in the first level, scoring 1,39 and ranking 8th out of 56 countries in 2006, and 1,43 ranking 8th out of 81 countries in 2008.

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<sup>346</sup> For more information about Jones Lang LaSelle and RETI see <http://www.joneslanglasalle.com>.

<sup>347</sup> Jones Lang LaSelle, “Real Estate Transparency Index 2006”, [http://www.joneslanglasalle.com/ResearchLevel2/ResearchDocument\\_2489.pdf](http://www.joneslanglasalle.com/ResearchLevel2/ResearchDocument_2489.pdf).

<sup>348</sup> Jones Lang LaSelle, “Real Estate Transparency Index 2008”, [http://www.joneslanglasalle.com/ResearchLevel2/JLL\\_Transparency\\_Global\\_Transparency\\_Index\\_2008.pdf](http://www.joneslanglasalle.com/ResearchLevel2/JLL_Transparency_Global_Transparency_Index_2008.pdf).

Analyses of the organization, human resources, registration procedures and information system shows that although land registration activities have been regulated by the State, especially in recent time when the need to have a healthy and transparent real estate market is becoming more and more necessary, there are shortcomings in the organization and activities of the land registration agency. The professional skills and abilities of the staff are not yet adequate for the effective operation of a modern land registration system using new technology. Most cadastral files and land information databases are inadequate and still in paper form. The notification, disclosure and supply of information are still poorly handled. Vietnam must make the large efforts needed to improve the current system.

#### **4.4. Assessment of activities regarding land registration**

##### ***4.4.1. Land use planning***

As mentioned, all land in Vietnam must be registered and this involves creating a unit called a land parcel/unit. A parcel/unit of land is constituted by a state allocation of land, the leasing of land or its formation by a land user and recognition by the government. Each of these modes must conform to approved land use plans<sup>349</sup>. Thus land use planning retains its very important role, not only as the basis for the land management activities of the State, but also for the formation of land parcels/units and the initiation of the registration process. This is consistent with one of the fundamental principles of land law as contained in the 1992 Constitution: the State's unified management of all land under the law and planning controls<sup>350</sup>. Moreover, information on land use planning is an indispensable element of the information system built up on registration.

The issue of land planning must, therefore, be mentioned when assessing the Vietnamese land registration system.

Land use planning is understood as the specific, reasonable analysis and allocation of land on the bases of quantity, quality, location, and space for socio-economic objectives in the entire country and in each locality in terms of its stage of development.

Commonly understood, land use planning is the system used by the State (which must be economically, technically and legally sound) when organizing the use and management of land (all types of land being under consideration), which must be reasonable (considering natural features, location, requirements and purposes of land use), scientific (linking to scientific-technical achievements and innovative measures) and effective (to meet the interests of the economy, society and the environment), when allocating land (covering all land use purposes and industries) and organizing

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<sup>349</sup> Stipulated by Articles 31 and 50 of the 2003 Land Law.

<sup>350</sup> Stipulated by Article 18 of The 1992 Constitution.

land use (specific solutions for land use) so as to improve economic efficiency and create conditions for protecting land and the environment<sup>351</sup>.

The general aim of having Việt Nam become an industrial country by 2020 was identified in the strategy of socio-economic development in the period 2001 to 2010 drawn up by the Congress of the Vietnamese Communist Party in the 9<sup>th</sup> nationwide representatives meeting (April, 2001), entails structural changes in land and generally creates pressure on such use. Moreover, as the use of land is closely related to all industries, the manufacturing sectors, people's lives and the economic, political, and social situation as well as the overall development of the country, it can be seen that land use planning is always a serious problem for the State. This was illustrated by the broad ranges of legal document, including the Constitution, laws, and regulations, creating a legal basis for land use planning.

Following the provisions of the 2003 Land Law, land use planning in Việt Nam is carried out at four territorial levels: national, provincial, district and communal level. In particular, the planning in communes, wards and townships shall be formulated in detail on the basis of land parcels/units (referred to as detailed land use planning).

By the provisions of Article 25 and Article 26 of Land Law 2003:

Land use planning for the entire country shall be established by the Government after being decided on by the National Assembly;

Land use planning for provincial levels shall be organised by the Peoples' Committees of provinces and cities under central authority, and approved by the Government;

Land use planning for district and communal levels, except communes outside the planning areas for urban development, shall be organised by the Peoples' Committees of districts, provincial cities, precincts and municipalities, and approved by the Peoples' Committees at provincial levels;

Land use planning for a commune outside the planning areas for urban development shall be organised by the People's Committee of this commune and approved by the District People's Committee.

The Decree No.181/2004/NĐ-CP (from Article 15 to Article 23) and the Decree No.69/2009/NĐ-CP (from Article 3 to Article 10) provides in detail for the responsibility of the natural resources and environment agency in synthesizing and balancing land use demands of all fields and branches in order to formulate, evaluate and submit land use planning to the administrative authority at the same level for approval. These provisions show that although the administrative authorities are authorities assigned to organize the formulation of land use plans under the 2003 Land Law, the natural resources and environment agencies are the real agencies directly formulating such a plan.

The object of land use planning is the whole of the relevant area's natural territory. Depending on the level of the administrative division, the land use planning will have differently specific contents, and moves from central to local, from macro to

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<sup>351</sup> Institute for Land Use Planning Investigation of the General Department of Cadastre, "Cơ sở lý luận – khoa học của Quy hoạch sử dụng đất đai", Hà Nội, October 1998, p. 15. This material was used in the training conference on land use planning of the General Department of Cadastre (which now is the Ministry of Natural Resources and Environment) organized in Đà Nẵng province from October 22 to 26, 1998.

micro, from the whole to the parts, all with appropriate revisions and amendments. The periodic cycle for land use planning is to be ten years<sup>352</sup>.

During the ten years of land use planning from 2001 to 2010, there were 57/64 provincial administrative units (up 89%), 411/668 district administrative units (representing 62%) and 5.878/10.761 communal administrative units (up 55%) had done land use planning to 2010. There are four provinces (Bắc Giang, Hà Nam, Kon Tum and Bình Phước) completed their land use planning at all three administrative levels; 14 provinces (Quảng Ninh, Lạng Sơn, Cao Bằng, Thái Nguyên, Lào Cai, Bắc Ninh, Thái Bình, Nam Định, Bình Thuận, Ninh Thuận, Khánh Hòa, Đắk Lắk, Đồng Tháp and Trà Vinh) completed their planning at the provincial and district levels<sup>353</sup>.

As a result, land use planning is gradually being completed in provinces throughout the country. However, nearly 50% of the administrative units in each district and at commune level have not completed their planning tasks. Further, most land use planning at the local level was done before the passage of the 2003 Land Law, and has not been adjusted to match the new rules. Only about 27 provincial administrative units have so far completed this adjustment and submitted it for assessment by the Ministry of Natural Resources and Environment and Government's approval<sup>354</sup>. Moreover, the land use planning outlines for the entire country which would be used to guide the localities during the period 2001-2010 was only passed in June 2004<sup>355</sup>, when nearly half the period was over. Land use planning activity is not guaranteed to be a reliable basis for the management and exploitation of land, and may not provide sufficient information on land use purposes for land registration activities.

There are many reasons for this delay. Understanding these reasons will be of interests for the competent authorities to draw experiences and step into a new period of land use planning (2011–2020) with better results.

The 2003 Land Law provides principles and grounds for land use planning which are to be based on strategies and plans for socio-economic development; plans for urban and rural development; plans for development of industries and localities. They must also satisfy the requirements of environmental protection and be based on the status quo of land fund together with predictions about future land use, on scientific and technological progress relating to land use; and the whole assessment should draw on the experiences gained from the implementation of the previous planning cycle<sup>356</sup>. Accordingly, strategies and plans of a socio-economic development are considered as fundamental for the orientation of land use planning. But many

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<sup>352</sup> Stipulated by Article 24 of the 2003 Land Law.

<sup>353</sup> The Report No.66/BC-CP of the Government dated May 9<sup>th</sup>, 2006 on the implementing status of land use planning according to the 2003 Land Law, presented in the 9<sup>th</sup> Congress of the 11<sup>th</sup> National Assembly (from May 16, 2006 to June 29, 2006).

<sup>354</sup> The Government Report No.66/BC-CP, *ibid.* supra note 353.

<sup>355</sup> This was decided by the Resolution No.29/2004/QH11 of the XI National Assembly dated June 15, 2004.

<sup>356</sup> Stipulated by Articles 21 and 22 of the 2003 Land Law.

localities, especially at the communal levels, where there is little or no relevant material, often have to base themselves on, or even directly use the plans at the provincial or district level.

However, the goals of socio-economic development planned at each locality are often adjusted or amended after each new five-year plan under Congress Resolutions of the local Communist Party and the People's Councils. The time for land use planning is then correspondingly prolonged, causing delay.

Article 16 of Decree No.181/2004/ND-CP only provides that the time needed for implementing procedures on the establishment and adjustment of land use planning throughout the country is to be from eight months to one year; and there are no specific regulations on the time allowed for setting up land use planning in the localities. Two sources of data consider this issue.

According to the SEMLA program research, it took one year for the land use planning at provincial level to be prepared and approved by the government; from two to four years for the district level; and from four to six years for the communal level<sup>357</sup>. According to Dr. Nguyễn Đình Bồng, in his study concerning the land use planning for 2001–2010, the time needed for preparing land use planning and gaining approval at provincial level was from two to three years; at district level from one to two years; and at communal levels from six months to one year<sup>358</sup>.

Thus, if one considers the overall four-level system, both studies take the view that organising land use planning at the commune level took nearly half of the ten-year planning period.

Any approved planning must then be adjusted to fit any change to the master plan for socio-economic development and such adjustment might be little different from making a whole new land use plan. This then leads to more delay.

From the indispensable relationships mentioned above, it can be seen that land use planning is an activity of synthesis and cannot proceed without relatively complete information on the economy, society, environment and land use needs of each sector or industry. The more society develops, the more complex the gathering and processing of the information needed for land use planning, and the greater the amount of work called for, especially in urban areas.

The 2001–2010 land use planning in Hà Nội<sup>359</sup> involved tens of thousands of documents, comprising 145 documents from industry and the city; about 250 documents and maps at the district level, and thousands of land use projects with maps and diagrams linked to each household and plot of land<sup>360</sup>. Moreover, the current administrative boundaries of Hà Nội were expanded by the merger of Hà Tây<sup>361</sup>, and if the land use planning is amended to cover the next 10 years, the amount of information needed will certainly increase.

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<sup>357</sup> SEMLA, “Đánh giá chính sách và quản lý (MPR) cho quy hoạch sử dụng đất và đề xuất kế hoạch hành động”, August 2006, p. 20.

<sup>358</sup> Nguyễn Đình Bồng, “Đẩy mạnh công tác quy hoạch, kế hoạch sử dụng đất trong giai đoạn 2001-2010”, “Địa chính” magazine No.05, May 2002, p. 4.

<sup>359</sup> Stipulated by Resolution No.10/2001/NQ-HĐ of the People’s Councils of Hà Nội city dated January 4<sup>th</sup>, 2001.

<sup>360</sup> Nguyễn Sĩ Dũng and Vũ Đình Chuyên, “Nghiên cứu, phân tích hệ thống thông tin đất đai phục vụ quản lý bất động sản và quy hoạch sử dụng đất ở khu vực đô thị”, “Địa chính” magazine No. 01, January 2002, p. 14.

<sup>361</sup> Hà Tây province was merged into Hà Nội city by the 12<sup>th</sup> National Assembly’s Resolution No.15/2008/NQ-QH12 dated May 29<sup>th</sup>, 2008 on changing the administrative border of Hà Nội city and some related provinces.

The complexity, diversity and difficulty of collecting and processing the information necessary for land use planning, as well as of predicting changes of information, is one of the causes lengthening the time need to prepare the land use plan. This limits land use planning implementation, and reduces the practical and scientific value of the plan. Moreover, any lack of necessary information is also an obstacle.

For instance, take the issue of cadastral maps. Section 2 Article 20 of the 2003 Land Law stipulates that maps of land use planning, particularly at communal levels, shall be drawn on the basis of cadastral maps. But as mentioned<sup>362</sup>, this is a source of data which in many localities throughout the country has not been established or at least completed. So old maps which had not been updated to take account of changes in land use were used. This usage does not augur well for the correctness of land use planning. Further, several localities did not prepare themselves for the registration of the land use needs of organizations and individuals; or did not investigate all information sources; indeed, the review of the results obtained in implementing the previous planning cycle was carried out superficially, so it is unsurprising the land use planning did not reflect the true situation with respect to land use changes.

And although aware of the importance of land use planning to socio-economic development, the staff of the land and cadastral management at all levels, but above all the communal and district ones, lacked the professional qualifications, ability, time, and resources to handle the task well.

In Hồ Chí Minh City, the Institute of Construction and Planning, under the Department of Planning and Architecture, responsible for city planning, has nearly 100 staff members, who are in charge of both adjusting the general planning at district level and participating in planning schemes with scales of 1/2000 and 1/500 for larger projects. Furthermore, because of the poor skills of personnel at district level, many planning documents do not reach enough standards and quality required and have to be sent to the Institute of Construction and Planning to be edited. According to the Director of Planning and Architecture Department, Nguyễn Trọng Hòa (in his report to and answering questions of the Economy and Budget Department of the People's Council of Hồ Chí Minh city on the real situation of city planning and management of the city planning in the morning of July 31, 2008), big cities like Hồ Chí Minh City need to have about 1000 officials if the planning assignment is to be implemented. Less than 30% of the detailed planning at the scale of 1/2000 was approved<sup>363</sup>.

However, the real issue arises is whether the problem is weak professional skills or the low number of persons involved in the planning work? According to a SEMLA's survey, most land use planning is in fact done by consulting firms. The fees for foreign consultants are very high, while those for domestic consultants are low<sup>364</sup>. So, are the capabilities and expertise of the local experts being taken full advantage of or not?

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<sup>362</sup> See supra Part 4.3.3.2.

<sup>363</sup> The Planning and Architecture Department in Hồ Chí Minh city, "Tình hình quy hoạch và quản lý quy hoạch trên địa bàn thành phố", the Information Centre for City Planning, dated August 12, 2008, <http://planic.org.vn/news.php?act=detail&id=9> and "TP.HCM: Chất lượng quy hoạch đô thị thấp", Pháp luật Tp.HCM online, dated July 31, 2008, [http://www.phapluattp.vn/news/xa-hoi/view.aspx?news\\_id=222853](http://www.phapluattp.vn/news/xa-hoi/view.aspx?news_id=222853). Retrieved [20101021 04:54].

<sup>364</sup> SEMLA, *ibid.* supra note 357, pp. 20 and 24.

In the end, in many localities, land use planning is not helpful for land use needs. It is only a sketch of the land use activities actually taking place, recognizing what exists but not demarcating future land activities. There is little or no consideration of any impact on the environment and society as a whole. Land use planning primarily reflects existing statistics and focuses on land classification rather than analyzing the needs of land users or comprehensively orienting future land use development.

By September 2000, there still had not been any land use planning at any level in Hồ Chí Minh City. All that had been done was a rearrangement and a reclassification whereby developed areas were designated populated areas, industrial zones or public areas. This activity was then classes as the formulation of land use planning<sup>365</sup>. Indeed, in recent years, in areas with no land use planning, investors were often required to set up the 1/2000 scale detailed land planning itself based on the general orientation of city development, for the Government's approval, in order to implement investment projects. But then, once they had been approved, the investors, especially where residential housing projects were concerned, did not implement their construction projects in accordance with the plan. They just waited for a rise in land prices and then sold the vacant plots. This then gave rise to unlawful construction activities. In other residential areas, the focus was only on meeting the needs arising from the population explosion and migration to urban areas, regardless of infrastructure, and this eventually gave rise to many problems such as traffic jams, environmental pollution and flooding.

Another obstacle to effective land use planning is that awareness of such activities does not extend to all branches, levels, organizations and individuals involved with land use. They tend instead to consider the matter as the responsibility of the natural resources and environment agency alone to formulate and put into practice. The feedback from many other agencies to requests for information about their land use demands from the natural resources and environment agency are often much too general. Some agencies even have their own plans and do official plans to guide their development activities, even if their plans conflict with the land use planning. This is especially the case with regard to urban development and the construction agency. This not only makes the process of land use orientation more complex, but also makes land-use planning inconsistent with other types of planning (such as the plans for the development of industries, transportation planning, planning for urban technical infrastructure, and planning for detailed architecture.), and wastes human resource as planning activities are so split up in each sector and field.

At the provincial level, a further problem is that most land use planning work is done by way of contracts with external consultancy organizations. As a result, officials have little practical experience and cannot even evaluate the quality and relevance of the work of the consultants. At the district level, as well as underestimating the significance of land use planning, the staff has limited capacity so the responsibility for formulation of land use planning tends to revert to the provincial

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<sup>365</sup> Hồ Phương, “Quy hoạch sử dụng đất sao cho hợp lý và hiệu quả nhất”, used in the Conference on Training and Scientific Study for the Land Management Sector organized by University of Agriculture and Forest of Hồ Chí Minh city, dated December 29, 2000, p. 166; and Department of Cadastre and Housing, “Chiến lược phát triển ngành Địa chính – Nhà đất TP. Hồ Chí Minh đến năm 2010”, June 2002, p. 44.

level. Many district-level officers do not have a copy of the land use plan for their respective localities. At the communal level, cadastral officials have almost no awareness of the process of planning land use and are not trained in planning activities; thus, the extent of land use planning at the commune level is extremely problematic. Most communal cadastral officials feature more as suppliers of information about land use status rather than as planners<sup>366</sup>. Most localities, especially cities, are thus faced with a lack of cohesion between overall land use planning, the plan for urban construction and that for rural residential areas.

In the light of all above, one can see that land use planning is of low quality, and cannot be used to predict the exact needs of the land fund. This leads to both shortfalls and excesses in the land funds for various purposes, and land use planning often has to be adjusted. Planning activities tend to classify land pursuant to the purpose of administrative management and do not calculate the socio-economic and environmental effects of their planning in such a way as to ensure sustainable development in and promote the highest potential of the land. In particular, the issues of the strictly protected agricultural land fund, especially land for rice cultivation, natural forest land, and land containing historical or cultural sites and places of scenic beauty are not properly focused on.

Land use planning is essential and indispensable for the development of the country, but if it is to be of any use efficiencies, it must be done appropriately and in a timely way. Conversely, if land use planning is delayed and only approved after development has happened, the consequences will be unpredictable and unacceptable. The problems of traffic jams and floods in some cities under central authorities such as Hồ Chí Minh City and Hà Nội are clear evidence of this. This is becoming common in the urban development of the major cities of Việt Nam.

However, the limitations of the system appear not only here but also in other problems involving its implementation. The most typical example relates to land use planning suspension, i.e. the planned use was approved long ago but has not been implemented. This may be due to land use planning which is impractical or inappropriate but has not been adjusted or replaced.

According to the Ministry of Natural Resources and Environment, as of 2007, there were 1.649 regions with a total area of 344.665 hectares with planning approval which were in fact subject to planning suspension. Of these, 24.740 hectares were intended for public construction works; 266.114 hectares for non-agricultural production and business; and about 50.730 hectares for improvement and development of urban areas and rural residential areas. In addition, there were a further 1.206 suspended projects (which had been allocated land by the State to use on the basis of approved land use plans, but not to be implemented) with a total area of 132.463 hectares<sup>367</sup>.

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<sup>366</sup> SEMLA, *ibid.* supra note 357, p. 24.

<sup>367</sup> The Report No.50/BC-BTNMT of the Ministry of Natural Resources and Environment dated March 29, 2007 answering the questions of members of the National Assembly at the 11<sup>th</sup> Congress of the XI National Assembly.

Until at the end of 2009, on the basis of adjustment or cancellation of some suspended plans or projects, the total of such plans and projects was reduced 1.763 cases with a total area of 110.477 hectares in 53/63 provinces and city directly under the central authority<sup>368</sup>

Under such conditions, people have to live in a state of uncertainty with limited land use rights and where they do not know when their land will be taken away from them. They are not licensed to build or repair their houses; mortgage them for loans, even of low value; or transfer the land use right because no one will buy a land parcel or a house located in an area at risk of site clearance. Whether the land use planning will indeed be implemented or not and when to proceed are questions left unanswered. Any loss eventually falls on the land users.

This also relates to public participation in the process of formulating land use planning. During the formulation of detailed land use planning at the communal level, the organizing authority must solicit the opinions of citizens<sup>369</sup>. But in fact, such solicitation is only conducted at the district and provincial levels, and the only people who are asked for their opinions are representatives of a range of authorized departments and agencies related to transportation, agriculture, and construction<sup>370</sup>. The public as a whole are unlikely to know whether their living areas have been planned or not. Sometimes, people may know about a land use planning project because of a leak of information, but they still do not know how to get their opinions on record. Even the authorized agencies responsible for the solicitation of people's opinions may be not sure how to do this. Such questions arise as: When will the solicitation of people's opinions be conducted? How will this be done? What kinds of issues will be asked about? How are we to process popular opinion? The reason is that although the law has mentioned this issue, there is no specific guidance on its implementation.

Further, land use planning is a complicated, professional and technical issue. It will, therefore, be difficult for people to understand the purpose, meaning and significance of land use planning and to see its practical benefits for themselves. It is hard for them to sacrifice their self interest in aid of the public interest when this is still far-away and only described in theoretical papers or maps which are incomprehensible to them. How can people give their opinions when they cannot clearly understand the point of land use planning? And there may be an issue as to whether people's comments are objective and worth listening to or not. This depends on implementation in each locality.

In fact, people often do not even know about the formulation stage of land use planning. Even after it is approved, and there is information available about it, people still may not be able to understand it.

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<sup>368</sup> The Report No.120/BTNMT-PC dated May 31, 2010 of the Ministry of Natural Resources and Environment on the result of answering the questions of the National Assembly members and the suggestions of electors in the 6<sup>th</sup> Congress of the XII National Assembly.

<sup>369</sup> Stipulated by Section 5, Article 25 of the 2003 Land Law.

<sup>370</sup> SEMLA, *ibid.* supra note 357, p. 26.

It is stipulated that the Peoples' Committees at communal levels and the administrative agencies for land at all levels must within thirty working days of the date of any decision or approval of land use planning by the competent state authority, make full details publicly available at their offices or in the mass media throughout the period of its validity<sup>371</sup>. This would clearly be of benefit to people who are affected by the planning, or must comply with and follow it up. However, the law does not stipulate exactly how this public announcement is to be made. Thus, each locality has its own way of doing so: either publicly announcing it in the mass media; or putting up drawings in its office or at the area in question. Nevertheless, as said above, many people lack knowledge of planning and even if information is publicly available, it still may not be understood.

In any event, some localities do not comply with the law. They do not announce matters publicly, or delay their announcements, and/or give incomplete information on the approved planning of land use. All this makes people in the relevant areas uncertain. Further, information on land use planning approvals may be leaked in advance, creating opportunities for land brokers to take advantage by purchasing or transferring land use rights or houses and waiting for implementation of the approval. This causes land-housing fevers, pushing up the prices of residential homes and land. Those with really urgent need of residential housing have to continue living in the slums, while their dream of improving their lodgings or buying a proper house becomes more and more far-away and difficult to reach. On the other hand, speculators who only plan to buy and wait for a price increase, with no actual need of a residence, leave many apartments or multiple land areas abandoned, creating artificial scarcity in the real estate market.

Both the Vietnamese Constitution and the laws provide that the State is to manage land according to an overall plan and in conformity with the law. This shows the very important role that land use planning has. However, based on the actual making and implementing of land use planning, it can be seen that, to date, it has been difficult for the State to manage the land in a sound way, and ensure its appropriate and effective use. Only after nearly half the planning period 2001–2010 had gone, was land use planning for the entire country decided on by the National Assembly. Many localities have not completed the planning of local land use, especially at the commune level. The approved planning of land use has been subject to an overall lack of quality or strategic vision and it has been inappropriate and inconsistent with the planning of industries and other areas of the economy. Most land use planning has a patchy and “closed” nature, creating advantages for a few only. There is also too much suspended planning which adversely affects both the people and the land management activities of the State, as land use planning is the foundation enabling the State to implement any land redistribution and adjustment.

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<sup>371</sup> Stipulated by Article 28 of the 2003 Land Law.

These limitations also cause problems for land registration and the establishment of the land information system that the State is attempting to introduce. When land use purposes and limitations in land use have still not been clearly and specifically identified and oriented, the value of the land information which is registered, recognized and recorded is not at all certain.

#### ***4.4.2. Issue of land use right certificates***

The final phase in the procedure for land registration as well as for land use distribution and adjustment is the issue of a land use right certificate, which is evidence that the land parcel in question has been fully registered and recorded in the cadastral files. It shows that the lawful land use right of the land user is officially recognized and protected by the State. Thus, land registration and the land use right certificate have a close relationship. Although one is a public service activity and the other is an activity of administrative management, the results of granting land use right certificates will show the effectiveness of land registration activities.

According to the law, the certificate of land use right is a legal deed establishing the legal relationship between the government and the land user. Since August 1<sup>st</sup>, 2009, it is issued under a unified form which is applied to all kinds of land, residential houses and other assets attached to land. Its full name is the certificate of land use right, residential housing ownership and land-attached asset ownership<sup>372</sup> (hereafter called the land use right certificate).

The first concept of the land use right certificate was provided by Decision No.201/QĐ/ĐKTK on July 14, 1989 of the General Department of Land Management (now the Ministry of Natural Resources and Environment) which promulgated the Regulations on the issue of land use right certificates (Decision No.201/QĐ/ĐKTK). It showed that the legal right of the land user was shown by the State through the grant of a land use right certificate.

Section 20, Article 4 of the 2003 Land Law and thereafter Section 1, Article 4 of the Law on amendment of and addition to a number of articles of the laws concerning capital investment and construction also defined the concept of a land use right certificate as the certificate issued by a competent agency to a land user in order to protect the lawful rights and obligations of such land user.

Both provisions state that the land use right certificate is a tool allowing the State to protect the legitimate interests of the land user. However, here, the author prefers the notion outlined in Decision 201/QĐ/ĐKTK on account of its simple and clear meaning to that outlined in the 2003 Land Law. To some extent, it expresses parity between the government and the land user which is in accordance with the nature of the land relationship – considered ultimately as a property relationship. In spite of its being the landowner, the State does not directly implement land use and exploitation. Land is used by land users through the State's land allocation and its recognition of land users. The benefits from land to which the State is entitled derive from the activities of land users and their contributions to the public budget. Accordingly, to benefit from land, the State must first ensure land users are entitled to some rights and interests in the land that they are exploiting. And the right of one party becomes the obligation of the other. Being granted a certificates of land use right is the right of a

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<sup>372</sup> Stipulated by Section 1, Article 4 of the Law on amendment of and addition to a number of articles of the laws concerning capital investment and construction. This law was promulgated on June 19, 2009 and came into effect on August 1<sup>st</sup>, 2009. All provisions concerning land use right certificate of other laws were replaced since August 2009 by provisions of this Law.

land user and the obligation and responsibility of the State. It is one of the key obligations which the State must undertake to ensure the rights of land users.

Considered in this respect, it can be seen that the idea of the certificate of land use right as defined by the 2003 Land Law is still not exact. It was influenced by the “asking-permitting” mechanism. It has not clearly shown the responsibility of the State in its relation to land users.

The land use right certificate is important to both the State and land users. The State’s land management activities will be enhanced when every plot of land throughout the country is granted a certificate of land use right, and, more specifically, information on all land parcels is fully recorded.

According to provisions on the form of the land use right certificate provided for in Circular No.17/2009/TT-BTNMT, a certificate of land use right shows the following basic information about the land parcel/unit: the authorized agency issuing the land use right certificate; the land user and/or the owner of assets attached to land (full name, date of birth, ID number, place of issuing ID, permanent address); the land parcel/unit (the ordinal number of the land parcel/unit, the ordinal number of the sheet of the cadastral map, the location of the land parcel/unit, the form of land use, land use purpose, duration of land use, and land use origin); residential house and assets attached to land; any notes (such as limitations on land use or construction) and the map of land parcel/unit, residential house and assets attached to land.

In order to be able to include such information on the certificate of land use right, land registration must be completed.

On that basis, the State will be able to trace the exploitation of land, land use and changes in such use. It will have grounds for resolving land disputes or complaints and compensating any land recovery. Thus, the issue of land use right certificates is an obligation of the State which not only benefits land users but also assists its management activities.

As a legal deed recognizing the rights of the land user, the land use right certificate is the basic tool for protecting the legitimate interests of land users and allowing them to exercise their rights, especially transaction rights<sup>373</sup>.

Based on the work of land registration and the issue of land use right certificates, the system of cadastral files can be set up. It is the main database of the land information system. Connecting this system with other relevant systems (such as planning, land finance, environment, construction, and transportation) and the information systems of the financial institutions in a global information network will be convenient not only for public management activities and protecting the rights and interests of land users, but also for society, as it would improve the development of the real estate market, promote capital exploitation of land, and help prevent the corruption that is so common in the land market.

Understanding the importance of the project, the Government has made efforts to promote the issue of land use right certificates at local level. Every year, the

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<sup>373</sup> In the application files for implementation of land use right transactions, contained from Articles 126 to Article 131 of the 2003 Land Law, the land use right certificate is one of the documents that is always required

Government sets goals and directs local governments to fulfill assignments in this area.

For example, on February 9<sup>th</sup>, 2004, the Prime Minister issued Directive No.05/2004/CT-TTg on implementation of the Land Law 2003, directing the provincial People's Committee to speed up the grant of land use right certificates in 2005. In 2006, with Directive No.05/2006/CT-TTg dated February 22, 2006 on overcoming weaknesses and errors, and continuing to step up the implementation of the 2003 Land Law, the Prime Minister again directed local governments to complete the issue of land use right certificates for all land users during the year, combining the grant of land use right certificates with the improvement of cadastral files.

However, the results achieved have been less than hoped for, especially for residential land in urban areas, construction land and forest land.

By September 30, 2007, of the 64 provinces and cities under central authority, only 13 had a rate of over 90% in land use right certificate issuance; 14 provinces achieved from 80% to 90%; ten provinces achieved 70% to 80%; and 27 other provinces had under 70% of the area with certificates granted for the main types of land concerned (such as land for agricultural production in rural and residential land in urban areas).

About 82,1% of the land used for agricultural production; 62,1% of forest land, 68,3% of aquaculture land; 62,2% areas of residential land in urban areas; 76,5% areas of residential land in rural areas; 37,4% of the specialized land; and 35,7% of the land of religious establishments were granted land use right certificates<sup>374</sup>.

Up to the end of 2008, progress in the issue of land use right certificates had not significantly improved with 62,5% of the specialized land areas, 34,6% of residential land in urban areas, 34,4% of forest land, and 20% of residential land in rural areas had not been issued certificates of land use right<sup>375</sup>.

There are many reasons for this.

Firstly, large fluctuations in the structure of land holding in a variety of different historical periods makes land use status become more and more complex. Because of past relaxation of public management over land, breaches of land law (such as illegal land encroachment or occupancy, unlicensed conversion of land use purpose, failure to use land or use of land for an incorrect purpose) took place over a long period, and have still not been dealt with. Cadastral files and maps were incomplete, lacking much information on each land parcel, having discrepancies in the data on land area and land use purposes. Officials thus have to take time to verify application files for the issue of land use right certificates. Land use planning has still not covered all areas, or it has changed frequently, or been suspended, and the work of granting land use right certificates has also been disrupted.

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<sup>374</sup> The Report No.93/BC-CP of the Government dated October 19, 2007 on the situation regarding the grant of land use right certificates presented at the Second Congress of the XII National Assembly (from October 22, 2007 to November 21, 2007).

<sup>375</sup> The Directive No.02/2008/CT-BTNMT of the Ministry of Natural Resources and Environment dated December 4<sup>th</sup>, 2008 on implementing some obligations and solutions in order to finish the issue of land use right certificates and the making of cadastral files.

Before the 2003 Land Law came into effect, in order to speed up the process of issuing land use right certificates where there were no cadastral files and maps, or out of date ones, the Government directed that local government could determine and draw cadastral maps by setting up landmarks to define land boundaries<sup>376</sup>, or permit land users to provide their own details and take responsibility for their existing land parcel areas<sup>377</sup>. In time, the correct measurement and revision of such cadastral files and maps would be implemented in order to introduce official data and allow for the amendment of land use right certificates. Accordingly, such informal procedures were used, but in the end, the localities did not have enough resources or staff to check and adjust. So, along with major fluctuations in land use, the old recorded data is faultier than the data collected now, causing difficulties in delimiting the true boundaries of land use rights.

Related to this, Section 1, Article 48 of Decree No.181/2004/NĐ-CP and Article 14 of Decree No.84/2007/NĐ-CP provides that a household or individual who is currently using land in an area planned for recovery by the state is still to be granted a land use right certificate if the following conditions are satisfied: (i) the land has been used stably; (ii) the land is not subject to dispute; and (iii) the land was in use prior to the time of approval of the land use planning; and there has not been any decision on land recovery by the competent authority. However, in many localities, authorized officials often refuse applications for the issue of certificates for such land use rights on the ground that these land use rights conflict with the approved land use planning, even though the land use plan has not been implemented and there are no decisions on land recovery. The staff is afraid that granting such certificates to and recognizing the right to use such land by such land users will create obstacles to land acquisition when implementing the land use planning.

Secondly, land users are not aware of the importance of land use right certificates. They feel secure in their situation and are not planning any land use right transactions, so they feel they do not need land use right certificates. In many cases, people do pay attention to the issue of land registration, but they can not cope with the requirements for the grant of land use right certificates because of their reluctance to engage with the administration and their fear of the financial obligations they will have to pay to the State. Indeed, depending on the facts of the case, when being granted a land use right certificate, land users will have to pay some of the following:

(i) Land use fees<sup>378</sup> or land rent<sup>379</sup>: which land users must pay when the State allocates land to them or leases land with a rent obligation. Land prices are determined on the basis of the land price framework issued by Provincial People's Committee;

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<sup>376</sup> Stipulated by the Directive No.10/1998/CT-TTg of the Prime Minister dated February 20, 1998 on promoting and completing the allocation of agricultural land and issue of certificates of agricultural land use right.

<sup>377</sup> Stipulated by the Directive No.18/1999/CT-TTg of the Prime Minister dated July 1<sup>st</sup>, 1999 providing some solutions to promote and finish the issue of land use right certificates for agricultural land, forest land, and residential land in rural areas in the year 2000.

<sup>378</sup> Stipulated by the Decree No.198/2004/NĐ-CP of the Government dated December 3<sup>rd</sup>, 2004 on collecting land use fees (Decree No.198/2004/NĐ-CP), and the Decree No.44/2008/NĐ-CP of the Government dated April 9<sup>th</sup>, 2008 on amending some articles of the Decree No.198/2004/NĐ-CP.

<sup>379</sup> Stipulated by the Decree No.142/2005/NĐ-CP of the Government dated November 14, 2005 on collecting land rents.

(ii) Tax on income from real property transfers<sup>380</sup>: which land users must submit to the State when they transfer their land use rights or real properties, with the tax rate depending on the way of calculation but either 25% or 2% for individuals, and 25% for enterprises;

For individual, taxable income from a real property transfer shall be fixed as equal to the price at which the real property was transferred on each occasion of a transfer, less the purchase price of the real property plus relevant expenses. In this case, the tax rate shall be 25%.

In case where it is not possible to fix the purchase price plus expenses related to a transfer, taxable income shall be fixed as the transfer price and the tax rate shall be 2%.

(iii) Registration fee<sup>381</sup>: which land users must pay for the registration of land use rights or real estate ownership, at a rate of 0,5%;

(iv) Cadastral fees<sup>382</sup>: which land users must pay for the service of land registration and issue of land use right certificates. The fee depends on the type of work involved and the class of land user and ranges, from 10.000 VND to 100.000 VND); and

(v) Fees for land parcel or housing drawings;

Not including amounts that land users may have to pay staff to “lubricate” the proceedings.

Due to changes in the state land price pursuant to the 2003 Land Law, some financial obligations of land users were increased many times. As a result, many people, because of insufficient financial capacity, could not be granted or receive their land use right certificates even though these certificates had already been signed.

Under the 2003 Land Law, the state valuation of land must comply with the principle of staying close to actual market price when assigning land use rights in normal circumstances<sup>383</sup>. This is a new principle. Accordingly, all localities reissued their land price framework with significant increases in land price sometimes by a multiple of several times.

For example, the land price framework of Hồ Chí Minh city changed pursuant to the 2003 Land Law, as implemented by the Decision No.316/2004/QĐ-UB of the People Committees of Hồ Chí Minh city dated December 24, 2004, and the land price in most areas was increased by a factor of five over the old land price framework under the Decision No.05/1995/QĐ-UB of the People Committees of Hồ Chí Minh city dated April 1<sup>st</sup>, 1995. As a result, the financial obligations of land users also increased. Specifically, for a house with an area of 50m<sup>2</sup> in Lý Tuệ street, Tân Quý Ward, Tân Phú district, Hồ Chí Minh city, the amount of land use fees that had to be paid under the old land price framework was only 10 million VND; with the increased land prices according to the new decision the

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<sup>380</sup> Stipulated by the Law on Personal Income Tax on November 21, 2007, applied to households and individuals, and the Law on Corporate Income Tax on June 3<sup>rd</sup>, 2008, applied to enterprises. Both were passed by Legislature XII of the National Assembly and came into effect on January 1<sup>st</sup>, 2009.

<sup>381</sup> Stipulated by the Decree No.176/1999/NĐ-CP of the Government dated December 21, 1999 on registration fees, and amended some articles by the Decree No.47/2003/NĐ-CP of the Government dated May 12, 2003 and the Decree No. 80/2008/NĐ-CP dated July 29, 2008

<sup>382</sup> Stipulated by the Circular No.93/2002/TT-BTC of the Ministry of Finance dated October 21, 2002 on providing the regime of collecting and managing cadastral fees.

<sup>383</sup> Stipulated by Section 1 Article 56 of the 2003 Land Law.

rate was 2,7 million VND/m<sup>2</sup>, and the amount of land use fees came to 135 million VND, a more than 13-fold increase<sup>384</sup>.

Meanwhile, in the new regulations on the collection of land use fees according to the Land Law of 2003, which replaced the old regulations<sup>385</sup>, the discount mechanism for land use fees in some poor cases, or the reduction of land use fees for land users, was not mentioned, and localities stopped these provisions (covered before the passage of the 2003 Land Law by Section 2 and Section 3 of Article 14 of the Decree No.38/2000/NĐ-CP of the Government on the collection of land use fees dated August 23, 2000). Accordingly, the granting of land use right certificates was also suspended, Hà Nội, for example, having 65,000 such cases while in Bình Dương province, about 2,45% of household land users had not received their certificates of land use right<sup>386</sup>.

Thirdly, land management agencies have not kept up with the requirements imposed on them. Many units at district level had not even established an office of land use right registration, while even if there were such offices at the provincial and district levels, these were faced with difficulties operating because of the lack of professional staff and equipment.

On average, there are about 15 officials in a provincial office for land use right registration and five officials at the district level. Many land registration offices at the district level that were established recently were only allocated three officials however. The technical equipments needed such as measuring machines, photocopiers and A3 printers are often not available even at the district level. There is only one cadastral officer in each commune. Most of them are not even trained in land management but they are required to be in charge of many other tasks (such as statistics, irrigation and transportation) and are often moved around<sup>387</sup>.

In the face of such constraints, local officials can only focus on performing urgent tasks such as compensation, site clearance and the settlement of disputes and complaints regarding land. The core tasks of granting land use right certificates and maintaining cadastral records are not well executed.

In addition, some public officials are prone to harass people and make unreasonable demands not provided for in the law; asking for bribes is still popular. With the complex procedures involved in land registration, the time needed for the granting of land use right certificates tends to increase which leaves the people discontented with and cautious regarding administrative procedures in general.

Linked to the shortcomings mentioned above is the fact that errors in the process of granting land use right certificates arise frequently.

According to the Report No.764/TT-CP-V.I dated April 18, 2007 of the Government Inspectorate on the results of the inspection of the granting of land use right certificates and housing ownership in 2006, after an inspection of 4.559.964 application files for the issue of a land use right certificate, it was discovered that 678.185 files contained errors (14,87%). Of these, delays in the deadline for granting land use right certificates constituted 79,64%, procedural errors constituted

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<sup>384</sup> “Pháp luật TP. Hồ Chí Minh” magazine, dated January 7<sup>th</sup>, 2005.

<sup>385</sup> Stipulated by the Decree No.198/2004/NĐ-CP of the Government dated December 3<sup>rd</sup>, 2004 on collection of land use fees, replacing the Decree No.38/2000/NĐ-CP of the Government dated August 23, 2000.

<sup>386</sup> The Standing Committee Report No.63/BC-UBTVQH12 of the 12<sup>th</sup> National Assembly dated November 2<sup>nd</sup>, 2007 on reporting the supervision of the implementation of legal provisions on the issue of land use right certificates to the National Assembly.

<sup>387</sup> The Government Report No.93/BC-CP, *ibid.* supra note 374.

8,38%; errors in fees paid charged constituted 2,74%; errors in the person being granted a certificate constituted 1,39% while errors in the land area in the certificates constituted 0,6%<sup>388</sup>.

Further, the grant of land use right certificates was not effected at the same time as the establishment of the cadastral files, and adjustments resulting from changes in land use or discrepancies between the records of the agencies which manage cadastral files has led to inconsistency and the reduction of the reliability of cadastral records and the land information that has been registered and archived. All this causes and will cause difficulties in the grant of new or adjusted certificates of land use right both now and in the future.

Another equally important problem is linked to delays in guiding the implementation of laws and inconsistencies between the regulations governing the grant of land use right certificates.

According to the Law on the Promulgation of Legal Documents, legal documents must be set out in such a way that when they take effect, implementation can be immediate. In cases where the issue to be regulated does not have high importance, it may be acceptable for authorized state agencies to offer further guidance. Legal documents governing implementation must be issued at the same time as the legal document or articles they regulate<sup>389</sup>. However, this is often not done properly. In the field of land management, if one considers the regulations on land registration and the granting of land use right certificates, one sees that the legal documents guiding the implementation of the law in detail are often issued late with delays ranging from a few months to several years.

In particular, the 2003 Land Law was promulgated on November 26, 2003, and came into effect on July 1, 2004. But the legal documents guiding its implementation were the Decree No.181/2004/ND-CP which was issued nearly four months later<sup>390</sup>; the Circular No.01/2005/TT-BTNMT on the implementation of the Decree No.181/2004/ND-CP was promulgated more than nine months later<sup>391</sup>; guidance on financial obligations such as the collection of land use fees became effective after five months<sup>392</sup>, the collection of land rent was treated more than 16 months later<sup>393</sup>; guidance on the formulation and revision of the cadastral files and the issue of land use right certificates was issued more than four months later<sup>394</sup>; and

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<sup>388</sup> The Government Report No.93/BC-CP, *ibid.* supra note 374.

<sup>389</sup> Stipulated by Article 8 of the Law on Promulgation of legal documents which was passed by the National Assembly on June 3<sup>rd</sup>, 2008 and came into effect on January 1<sup>st</sup>, 2009.

<sup>390</sup> The Decree No.181/2004/ND-CP of the Government on the implementation of the 2003 Land Law was issued on October 29, 2004.

<sup>391</sup> The Circular No.01/2005/TT-BTNMT of the Ministry of Natural Resources and Environment on guiding the implementation of some articles of the Decree No. 181/2004/ND-CP was promulgated on April 13, 2005.

<sup>392</sup> The Decree No.198/2004/ND-CP of the Government on collection of land use fees was issued on December 3<sup>rd</sup>, 2004.

<sup>393</sup> The Decree No.142/2005/ND-CP of the Government on collection of land rent was issued on November 14, 2005.

<sup>394</sup> Both the Circular No.29/2004/TT-BTNMT on guiding the formulation and revision of cadastral files and the Decision No.24/2004/QĐ-BTNMT on providing the regulation of issue of land use right

finally, specific regulations on the economic-technical norms relating to the registration of land use rights, the establishment of cadastral files and the issue of land use right certificates were only enacted 32 months later<sup>395</sup>.

For the issue of land use right certificate, although the law stipulated that the unified form of land use right certificate had to be granted to land users since August 1<sup>st</sup>, 2009, nearly three months later, on October 19, 2009 the Government promulgated the Decree No.88/2009/NĐ-CP detailing the procedures for grant of the new certificate. And then on October 21, 2009, the Ministry of Natural Resources and Environment issued the Circular No.17/2009/TT-BTNMT providing for and issuing the certificate form. But until December 10, 2009, these provisions came into effect and the new unified form of land use right certificate was granted to land users.

These delays complicated the implementation of the land law and the issue of land use right certificates. While waiting for guidelines, many land users' application files were suspended, as local officials were too nervous to apply the new regulations, although this had been clearly mandated.

The collection of land use fees when granting land use right certificates is an example. The 2003 Land Law states that households and individuals, who have used land consistently before October 15, 1993, who have a confirmation from the People's Committee at commune, ward or township level stating that the land is not the subject of dispute, and whose use is consistent with the approved land use planning with respect to areas where land use planning is available, shall be issued a certificate of land use right and shall not be required to pay any land use fees<sup>396</sup>.

In comparison to the old regulations, the new regulations indeed benefit land users. As mentioned above, all this happened a long time since the 1980 Constitution (effective December 18, 1980) stipulated that land belonged to the entire people, as a result of which, the State did not recognize land as goods and did not fix land prices. Land was regarded as a welfare matter and was allocated to land users free of charge. In the 1987 Land Law, land users were indeed allocated land without having to pay any land use fees. The issue of the land price and the collection of land use fees when the State allocated or leased land to land users was covered by the 1993 Land Law (effective on October 15th, 1993). Further guidance came in the Government Decree No.38/2000/NĐ-CP of August 23, 2000 on the collection of land use fees (Decree No.38/2000/NĐ-CP) which stipulated that the collection of land use fees should be implemented according to the period of the land use: if the land has been used prior to December 18, 1980, no payment of land use fees; if the land has been used after December 18, 1980 but prior to October 15, 1993, payment of 20% of the land use

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certificates of the Ministry of Natural Resources and Environment were promulgated on November 1<sup>st</sup>, 2004.

<sup>395</sup> The Decision No.07/2007/QĐ-BTNMT of the Ministry of Natural Resources and Environment on providing the economic-technical norms of land use right registration, the cadastral file formulation and land use right certificate issue was enacted on February 27, 2007.

<sup>396</sup> Stipulated by Section 4 Article 50 of the 2003 Land Law.

fees; and if the land has been used after October 15, 1993, payment in full of the land use fees<sup>397</sup>. The regulation that land users who had used land between December 18, 1980 and October 15, 1993 had to pay 20% of the amount of land use fees before being granted certificates of land use right was unreasonable because, during that period, the law stated that land users were to be allocated land without paying any land use fees, and there were also no regulations on land prices.

However, while waiting for the Decree No.198/2004/NĐ-CP to be issued, many localities had not applied this new rule despite its fairly obvious content. They suspended application files, or, in some places, continued to follow the former regulations on the collection of land use fees, and then reimbursed the land users!

Another example was the record of debt of land use fees when granting land use right certificates to households and individuals who could not pay the land use fees. It was also delayed for a long time. This meant many certificates of land use right did not reach land users though even though they had been prepared. The Decree No.198/2004/NĐ-CP did not provide for the debt record of land use fees. In January 27, 2006 when the Government issued the Decree No.17/2006/NĐ-CP (to amend and supplement certain provisions of the Decrees guiding the implementation of the Land Law) a record of land use fees indebtedness was indeed added<sup>398</sup>, but no specific guidelines on the procedures for implementation existed. The localities were confused and did not implement the Decree. In cases where land users requested this be done, their applications were delayed and they had to wait for further guidance. The record of land use fees indebtedness was officially dealt with only when the Circular No.70/2006/TT-BTC of the Ministry of Finance dated August 2<sup>nd</sup>, 2006 was issued to deal with the problem.

A remarkable thing here is the debt record was not a new problem. Previously, the procedure for recording land use fees debt of land users had been provided for in the Decree No.38/2000/NĐ-CP and its guidelines, and was applied in the localities. Thus, although the Decree No.17/2006/NĐ-CP had no specific ancillary regulations, if the localities had abandoned their rigid way of thinking and not just waited for the requisite decrees and circulars as well as eliminated the stereotype of avoiding responsibility, they could have executed the law in a flexible manner allowing them to process applications for the grant of land use right certificates of land users.

The grant of new certificate of land use right was in the same situation. When waiting for decree of the Government and circular of the Ministry of Natural Resources and Environment on the form of and procedures for the grant of land use right certificate, many localities fell into dispute over the question that whether or not they should stop or continue to grant the previous-form certificates to applicants. There were different ways implemented in each locality, despite before August 1<sup>st</sup>,

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<sup>397</sup> Stipulated by Section 1 Article 7 of the Decree No.38/2000/NĐ-CP.

<sup>398</sup> Stipulated by Section 4 Article 5 of the Decree No.17/2006/NĐ-CP.

2009, the central government had issued directions on continuing to receive and deal with applications for land use right certificate issue, not to make a tie-up for applicants only because of the wait for new provisions and new certificate form<sup>399</sup>.

In Hồ Chí Minh city, the City Department of Natural Resources and Environment proposed that the grant of previous-form certificate should be stopped to wait for the new form; the previous-form certificates which were issued since August 1<sup>st</sup>, 2009 should be taken back; and the land use right transactions which were implemented with such a certificate should not be confirmed. But in some districts of Hồ Chí Minh city, such as Bình Tân, Tân Phú, and District 11, the grant of previous-form certificate was still taken place, when in the others, it was stopped<sup>400</sup>. In Hà Nội, although the land use right registration offices still received applications for land use right certificates, they did not set time for grant of the certificates because of the wait for new form. In Cần Thơ city, the grant of land use right certificate was still occurred normally<sup>401</sup>.

Until September 9<sup>th</sup>, 2009, this question was officially settled down when the Prime Minister promulgated the Official Document No.1602/TTg-KTN directing in detail that when waiting for new legal provisions on guiding the implementation of grant of the new certificate, the Prime Minister agreed for local governments to continue to grant the previous-form certificate. This direction meant that if the grant of previous-form certificate was a breach of law, the local governments were still free from liability. It also showed that the hesitance of local authorities in granting land use right certificate did not originate from the benefit of the people. Therefore, they forgot a simple thing that the land use right certificate only is a symbolic evidence of the guarantee of the State for the rights of the people to use land and/or to own residential houses and assets attached to land which had been established and recognized before. In spite of any form of the certificates, in order to get them, a number of legal procedures under a strict control of the competent authorities had to be implemented. Namely, these competent authorities themselves had affirmed the legality of the above rights and even registered in the cadastral file before granting the land use right certificate. Despite any form of the certificates, they are not made by the people. These certificates are issued and granted to the people by the competent authorities under the law. Despite any form of the certificate, they still have the same legal effect and value. These certificates are only different from the form and date of

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<sup>399</sup> Some directions were issued by the central government such as the Official Document No.1297/TTg-KTN dated July 29, 2009 of the Prime Minister on the grant of certificate of land use right, residential housing ownership and land-attached asset ownership; and the Official Document No.2752/BTNMT-TCQLĐĐ dated July 31, 2009 of the Ministry of Natural Resources and Environment on the preparation for granting the new unified certificate.

<sup>400</sup> Ngọc Hà and Phúc Huy, “Cấp giấy chứng nhận nhà đất: Lại lúng túng, rồi ren”, Tuổi trẻ online, dated August 7<sup>th</sup>, 2009, <http://diaoc.tuoiitre.vn/Index.aspx?ArticleID=330516&ChannelID=204>. Retrieved [20101021 05:04].

<sup>401</sup> Ngọc Hà and Phúc Huy, “Cấp giấy chứng nhận nhà đất: Tiếp tục tạm ngưng”, Thanh niên online, dated August 8<sup>th</sup>, 2009, <http://www.thanhvien.com.vn/news/Pages/200932/20090808124237.aspx>. Retrieved [20101021 05:31].

issue. Thus, is it necessary to have a hesitance and discrimination in granting what kinds of land use right certificate? There is no reason why the competent authorities are also in doubt about the legality of the certificates which its forms are provided for and issued by themselves. If so, can the people believe in the certificate granted to them? A lot of legal transactions on land use rights and/or residential houses came to a deadlock within nearly two months. And the loss, first and foremost, was incurred by the people.

However, despite slow implementation, effective provisions of the law have finally taken shape. And if the rules are consistent, any difficulties can be solved. These do arise when the law is applied; contradictions in the regulations do exist, and these do form obstacles to the development. The problems of the form of the land use right certificates and the authorized agencies which are to grant certificates are typical examples.

Certificates of land use right were first issued in 1989 by the General Department of Land Administration (now the Ministry of Natural Resources and Environment) based on the Decision No.201-QĐ/ĐKTK of July 14, 1989. The certificates had a red cover (known as the “red paper”) and applied uniformly to all land users. However, the red paper certificates did not show the property on the land, particularly residential homes in urban areas, this because the housing management function was under the Ministry of Construction. To meet the demands of management, from 1994, certificates of residential housing ownership and residential land use right were issued by the Ministry of Construction under the Government Decree No.60/1994/NĐ-CP of July 5, 1994 on residential housing ownership and residential land use right in urban areas. These certificates had a light pink cover (often called the “pink paper”), and applied to the owners of residential homes and residential land in urban areas. In addition, certificates of rights to manage and use public head offices were issued by the Ministry of Finance in 1999 based on the Ministry of Finance Decision No.20/1999/QĐ-BTC of February 25, 1999 provided for the regulation on management of public land, housing and head offices of administrative authorities. These certificates had violet covers (known as the “purple paper”).

So, before November, 2004, there existed three procedures for land registration and three types of land use right certificate which were managed and issued by three different systems, including: two types relating to properties of land users with the red paper belonging to the Agency of Natural Resources and Environment, and the pink paper belonging to the Agency of Construction; the certificate relating to state assets, the purple paper one belonged to the Agency of Finance. Not to mention that in some big cities (such as Hà Nội and Hồ Chí Minh), during the period when the pink paper had not been issued, local government had issued temporary certificate forms (called the “white paper” – persons who had the white paper have been considered as valid land users; their land use rights have been

recognized, and there are procedures for changing from white paper to red or pink paper) to land users.

Due to the separate jurisdictions which caused difficulty for the management of real estate (land and houses attached to land being inextricably tied), in some cities under central authority (Hà Nội, Đà Nẵng and Hồ Chí Minh city), the Cadastral Department responsible for land administration and the Department of Residential Land and Housing responsible for the management of residential land and housing merged to become the Department of Cadastre and Residential Land Housing. This department was to be in charge of managing and granting both types of land use right certificates to land users: the red and the pink.

According to the 2003 Land Law, land use right certificates would be issued for each land parcel/unit and to all land users in a standard form which would be uniform throughout the country and for all types of land. Where there were assets attached to land, such assets would be acknowledged in the certificate of land use right, and the owner of such assets had to register ownership in accordance with the provisions of the laws on registration of immovable assets<sup>402</sup>. On that basis, the Ministry of Natural Resources and Environment had issued regulations and a new form of land use right certificate (with red cover, called the new red paper) in November 2004.

At the time when the 2003 Land Law came into effect, it could be said that this was a progressive regulation, simplifying administrative procedures, facilitating land users, and unifying the management of land and assets attached to land which had previously been separated and subject to different procedures and management agencies. The old red and pink papers were replaced by a new certificate of land use right. However, some unclear terms in the legal provisions triggered a dispute about administrative competence. Residential homes and construction works associated with the land would receive a red paper certificate through a recognition procedure based on the land users' requirements. In cases where land users made a request, the assets attached to land would be acknowledged in the land use right certificate with informational relevant details, such as, for residential homes – type of house, the number of floors and construction area; or for forest or perennial crops – the area. If the owner of such assets had been lawfully identified, his/her name would be recorded<sup>403</sup>.

An issue was raised about the legal value of this acknowledgement. It was whether this acknowledgement actually extended the State's protection to land users, or merely showed the existence and presence of such properties on land. In any event, the acknowledgement was unenforceable. It was based on land users' request. In cases where land users did not declare assets on land, a further issue was whether the State

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<sup>402</sup> Stipulated by Article 48 of the 2003 Land Law.

<sup>403</sup> Stipulated by Section 3 Article 4 of the Ministry of Natural Resources and Environment Decision No.08/2006/QĐ-BTNMT dated July 21, 2006 on providing regulations on the issue of land use right certificates replacing Decision No.24/2004/QĐ-BTNMT.

was able to manage real estate situations and resolve property disputes when they occurred or not? A further complication was that the management of residential housing registration and the granting of residential housing ownership certificates which had been under the control of the construction agencies had now to be switched to the natural resources and environment agencies. This gave rise to a dispute on jurisdiction between the Ministry of Natural Resources and Environment and the Ministry of Construction in a long time since the 2003 Land Law took effect.

Due to the vagueness of the status of ownership of assets attached to land, about one year after the 2003 Land Law took effect, the Ministry of Construction issued a certificate of residential housing ownership and certificate of construction works ownership (according to the Government Decree No.95/2005/NĐ-CP dated July 15, 2005 on the issue of the certificate of residential housing ownership or construction works ownership) with a pink cover in order to evidence and protect the ownership of residential homes and the construction works of their owners. As a result, for a land parcel with a residential home built on it, instead of the issue of one certificate based on previous provisions (the old pink paper certificate of residential housing ownership and residential land use right upon the Decree No.60/1994/NĐ-CP or the new red paper – the land use right certificate in which an asset, e.g. a residential home, attached to land was acknowledged based on the 2003 Land Law), there now needed to be two types of certificate: one for the residential land use right (as mentioned, the new red paper) and the other for the residential housing ownership (the new pink paper followed the Decree No.95/2005/NĐ-CP); the two separate procedures on registration would need to be implemented at two different authorized agencies as well.

Even though the law provided that the owner of an asset attached to land had to register its ownership according to the laws on the registration of immovable properties, the Ministry of Justice also took part in the dispute on the form of the land use right certificate through drafting the Law on real estate registration.

According to Article 29 of the seventh draft of the Law on real estate registration, persons who registered their ownership of real properties would be issued a certificate of land use right and ownership of assets attached to land. The new certificates were to gradually replace the existing red paper and pink paper ones. This provision had not been enacted, but it showed a desire to unify administrative procedures and real estate management, by way of unifying the issue of land use right certificates. What is less clear is whether it benefited the people or the local administration. This may be just known by the competent authorities themselves.

However, with this conflict between the land administration agency and the housing administration agency, the problems that land users had to face could easily be imagined. One year later, this problem was resolved by the National Assembly through promulgation of the Law on Residential Housing. Article 11 of this Law provided that for residential land with a residential home attached, there should be

only one type of certificate called the certificate of residential housing ownership and residential land use right. This certificate was issued by the Ministry of Construction based on the Government Decree No.90/2006/NĐ-CP dated September 6, 2006 providing the detail and guiding the implementation of the Law on Residential Housing. It continued to have a pink cover (and was called the new pink paper).

During this period, the expenses falling on the State were seemingly not reduced - despite the lack of statistics - as they included the costs of printing or replacing the old red paper and the old pink paper, of designing, printing and granting the new red paper and the new pink paper; and of drafting and promulgating legal provisions. In addition, there were social costs as land users were confused by the inconsistent provisions of the public authorities. Although much time, effort and human and financial resources were used, the problem has still not been dealt with.

Even with the new pink paper in accordance with the Law on Residential Housing, there were still problems. In comparison with the old form, the new one had no place for recording information on mortgages and similar rights. Article 60 of the Decree No.90/2006/NĐ-CP just provides that immediately upon signing a mortgage contract, the mortgagee shall be responsible for giving written notification of the mortgage to the administrative body for residential housing of the locality in which the residential home is located. This causes risks as the mortgagee faces difficulty to evaluate the mortgagor's position; and it causes difficulty in defining the order of priority of payment in debt recovery, as well as any limitations on the future use of real properties. The relationship between administrative authorities and mortgagees is not close, and the record and revision of data that had to be implemented manually were still much too slow. Thus, in some localities like Chi Minh city, local government permitted the administrative agency for residential housing to use an additional page for recording information of mortgages into the new pink paper. This guidance was well suited to the situation, but was not in accordance with legal provisions.

With the determination of the Government to make a reform on administrative procedures, finally, the unification of the land use right certificate form which is managed by only one agency – the natural resources and environment agency, is completed. As mentioned above, under the Law on amendment of and addition to a number of articles of the laws concerning capital investment and construction, since August 1<sup>st</sup> 2009, the unified form of certificate for land use right, residential housing ownership and land-attached asset ownership is stipulated and issued officially on December 10, 2009. This new certificate has a cover with pink colour as the colour of lotus flower. It replaces all kinds of previous certificates. Accordingly, the registration is also unified under common procedures.

This is one of efforts of the Government to simplify administrative procedures in real estate management and establish a uniform land information system. However, it is mere the first step. There are still a number of difficulties that

need to be overcome. How to have harmonious co-ordination and support among competent agencies responsible for real estate management is one of the important things.

#### ***4.4.3. Determination of land prices***

Determination of land prices involves estimating the monetary value of land based on the land use purpose in place at a specific time<sup>404</sup>. It is an indispensable part of land management. It supports such public activities as the collection of land or real estate taxes, the computation of any compensation due to land recovery by the State, and the consideration of changes in land use plans. It also allows land users to determine their financial obligations to the public budget as well as the market value of their real properties in future transactions. Land price information thus plays an important role in the whole land information system.

In the Vietnamese land information system, the results of land price determination are shown by data on financial obligations and land prices.

According to Section 23, Article 4 of the 2003 Land Law, the land price (or price of a land use right) is the amount of money needed to acquire a land area unit prescribed by the State or formed in a transaction relating to land use rights. So it can be considered that the determination of land prices is an activity helpful not only to the State in its administrative purposes but also to the market and its transactions. Consequently, there are two parallel types of land price: one is the land price stipulated by the State and used in various cases mainly relating to the financial obligations of land users; and the other is the land price formed by agreement in transactions in the market.

Article 55 of the 2003 Land Law recognizes the existence of two types of land price by listing some ways in which land prices can be determined, including: (i) stipulations made by the Provincial Peoples' Committees or by cities under central authority; (ii) by auctions of land use rights and for tendering for projects using land; and (iii) from agreements reached between land users with other persons concerned when exercising the right to assign, lease or sub-lease their land use right, or to contribute capital by way of the land use rights.

In the second case, although a starting price may be defined, the final price is attained by way of the calculations of the parties concerned. It can be seen as an agreement reached among many people under the control of the authority organizing the auction or tender.

For the land price stipulated by the State, the Government shall, according to Section 2 and Section 3, Article 56 of the 2003 Land Law, provide a price framework for all types of land in each area from time to time. Based on this land price framework, the Peoples' Committees at the provincial level shall establish specific land prices within their localities. State land prices thus also fall into two classes.

Firstly, the land price is provided by the Government by way of a framework for each land type with a maximum and minimum price being fixed.

Secondly, the prices of specific types of land are determined by the Provincial Peoples' Committees based on the Government framework of land price and the actual prices for assignment of

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<sup>404</sup> Đỗ Hậu and Nguyễn Đình Bông, *ibid.* supra note 179, p. 88.

land use rights in their respective localities. In fact, they have some flexibility regarding the authorized limits and the maximum may be increased by up to 20% while the minimum price may be decreased by up to the same amount. The land price list that provides specific land prices in each location of each specific type of land is to be publicly proclaimed on 1<sup>st</sup> January each year in the locality. It is then to be used as the basis for calculating land use taxes and the tax payable on assignment of land use rights; calculating land use fees and the rent linked to the allocation or leasing of land where there is no auction of land use rights or tender for projects which will use land; calculating the value of land use rights for allocation of land without collection of land use fees, registration fees, or compensation when the State recovers land; and calculating compensation payable by persons in breach of the laws causing damage to land.

The growing differences between the state land price and the market land price reflect the stability and development of economy, the transparency of the real estate market and of the real value of land as well as the effectiveness of State management of land.

Before the 2003 Land Law took effect, there were two real estate bubbles, leading to sudden increases in land prices. The first occurred when the 1993 Land Law came into effect on October 15, 1993 bringing with it the formal recognition of land as goods, allowing the very development of a real estate market. Once allowed, land use right transactions were frantically exercised, causing the first land bubble which lasted from the end of 1993 to 1996. The price of land and residential homes became higher and higher. In 1997, the Vietnamese real estate market collapsed under the general influence of a general financial crisis in Asia itself caused by the collapse of their real estate markets. Since 1999, the State has been extending the rights of land users (land use right transactions were given to domestic economic organizations, and land users were permitted to contribute capital by using their land use rights<sup>405</sup>); providing specific procedures on land use right transactions in order to provide for the development of the real estate market<sup>406</sup>; permitting more persons to take part in the real estate market by giving preferential treatments to investment projects for the construction of residential homes for sale or lease<sup>407</sup> and giving Vietnamese residing overseas the right to own residential homes<sup>408</sup>; enlarging the competence of local governments to create their own initiatives in land administration, such as the Provincial Peoples' Committees could allocate or lease land to land users without limit on the number of land areas<sup>409</sup>. All this, coupled with the remarkable increase in people's income due to overall economic development, allowed the real estate market to, gradually became more active while a number of real estate enterprises were established and there were also improvements in real estate brokering activities. Land

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<sup>405</sup> Stipulated by the Law on Amendment of and Addition to a number of Articles of the 1993 Land Law which was enacted on December 2<sup>nd</sup>, 1998 and came into effect on January 1<sup>st</sup>, 1999.

<sup>406</sup> Stipulated by the Decree No.17/1999/NĐ-CP of the Government dated March 29, 1999 on providing rules and procedures for exchanging, assigning, leasing, sub-leasing, bequeathing land use rights, mortgaging and contributing capital using land use rights.

<sup>407</sup> Stipulated by the Government Decree No.71/2001/NĐ-CP dated October 5<sup>th</sup>, 2001.

<sup>408</sup> Stipulated by the Government Decree No.81/2001/NĐ-CP dated November 5<sup>th</sup>, 2001.

<sup>409</sup> Stipulated by Section 5 and Section 6 Article 1 of the Law on Amendment of and Addition to a number of Articles of the 1993 Land Law which was enacted on June 29, 2001 and came into effect on October 1<sup>st</sup>, 2001.

prices once again started to increase, creating another bubble, mainly in land and residential homes, which lasted from 2000 to 2003, especially in the urban and urbanizing areas. The State had difficulty controlling this.

The promulgation of the 2003 Land Law and its guidelines, with a strict prohibition of assigning land use rights in the form of the sale of land parcels/units on which residential housing in housing projects had not yet been constructed<sup>410</sup>; and provisions for economic development projects in which the investors have to come to an agreement with land users if they are to be assigned or leased land use rights, or receive capital contributions by way of land use rights without relaying on the state procedures for land recovery<sup>411</sup>, had an impact on the development of real estate market, making land use right transactions slow down.

However, it was remarkable that after each boom and bust in the real estate market, the new static level of land price was ever higher. Although real estate transactions might halt temporarily as the real estate market slowed down, land prices did not decrease over all. This tendency to increase could become feverish, pushing land prices in the Vietnamese market to a very high level that exceeded its real value, as Việt Nam is still a developing country and the people's average income is also low.

In 2008, the per capita average income in Việt Nam was 1.024 USD per year<sup>412</sup> (one USD at this time was equal 16.000 VND). With this income, to buy an average apartment with a price of 550 million VND in District Two or District Seven of Hồ Chí Minh city, the buyer had to pay nearly 150 million VND in advance, and then pay for the remainder by monthly installments spread out over five years. This would amount to paying from four to five million VND, so the buyer's income would need to be at least eight million VND per month. It was thus not easy for many people to buy a residential home. With the above average income (well under two million VND per year), it would take a person more than 30 years without eating, dressing, shopping or any other expenses to save enough money to own that apartment.

As a result of all this, the land price stipulated by the State could not match the quick increase of land prices in the market. To reduce the distance between the two, some new regulations on land price were introduced by the 2003 Land Law and its guidelines. These included the principles that state valuations of land should be close to actual market prices for assignments of land use rights<sup>413</sup>; provisions defining a number of land price determination methods (e.g. direct comparison method, income method, deduction method and surplus method)<sup>414</sup>; and provisions stipulating that the list of specific land prices issued by the Provincial Peoples' Committees should be publicly proclaimed on 1<sup>st</sup> January each year<sup>415</sup>. These regulations created a

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<sup>410</sup> Stipulated by Article 101 of the Decree No.181/2004/NĐ-CP.

<sup>411</sup> Stipulated by Article 40 of the 2003 Land Law and Article 36 of the Decree No.181/2004/NĐ-CP.

<sup>412</sup> The Government Periodic Report on the implementation of human rights in Việt Nam, *ibid.* supra note 4.

<sup>413</sup> Stipulated by Section 1 Article 56 of the 2003 Land Law.

<sup>414</sup> Stipulated by Article 4 of the Decree No.188/2004/NĐ-CP of the Government dated November 16, 2004 on price determination methods and price frameworks for all types of land (Decree No.188/2004/NĐ-CP), and Section 3 Article 1 of the Decree No.123/2007/NĐ-CP of the Government dated July 27, 2007 on amendments to the Decree No.188/2004/NĐ-CP.

<sup>415</sup> Stipulated by Section 4 Article 56 of the 2003 Land Law.

tendency whereby most local governments would significantly increase their announced land prices.

Following an assessment by the Ministry of Natural Resources and Environment, not included in previous years, the 2009 lists of land prices proclaimed by local governments were in accordance with the laws, more specific and closer to actual prices than before<sup>416</sup>. Nevertheless, compared with the market land prices posted on real estate trading floors and at real estate broking enterprises, there was still quite a distance between the two types of land prices. This is natural, because there had not previously been any body responsible for land price determination at both the central and the local level. It was difficult for government to track actual changes in land prices in the market when setting its estimate of the appropriate price for all types of land.

At the local level, to create a list of specific land prices and determine the price for each type of land in each of location, takes plenty of time involving various agencies and procedures. There needs to be co-ordination between the competent agencies such as the financial, tax, construction and natural resources and environment agencies in surveying and collecting information on land prices; comparing and analysing the information gathered; rejecting speculative factors; adjusting and decreasing disparity factors; and in determining specific prices for each of land type according to each price determination method used. In addition, each type of land will have varying values, so the land price determination must also be based on a classification of land regions, land classes, streets and locations of land<sup>417</sup>.

To determine the price of non-agricultural land, the People's Committee of H Chí Minh city has to categorize land in streets into ten types on the basis of three criteria: profitability; infrastructure conditions favourable for residence, production, trade or services and distance to the centre. Land in lanes is divided into four classes on the basis of lane breadth and structure, while there are also factors linking land prices to lane locations and ranks<sup>418</sup>.

Each step in the process of land price determination has its own complexity, requiring the participation of professional staffs mobilized from different agencies. After its completion, the Provincial People's Committees must submit the list of specific land prices for each type of land in each type of street and location to the People's Council at provincial level for their comments.

Accordingly, at the start, the officials in charge of price determination must survey and make a list of specific land prices pursuant to actual prices in market. However, with the long time needed to process the data, one can ask whether the land prices issued and proclaimed are appropriate and close to actual market prices or not.

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<sup>416</sup> Thu Phuong and Nhật Tân, "Bộ Tài nguyên và Môi trường cơ bản hoàn tất việc tiếp nhận công tác định giá đất", the Ministry of Natural Resources and Environment, dated April 13, 2009, <http://www.monre.gov.vn/monreNet/default.aspx?tabid=213&ItemID=%2063005>. Retrieved [20101021 05:20].

<sup>417</sup> Stipulated by Article 13 of the Decree No.188/2004/NĐ-CP.

<sup>418</sup> Stipulated by the People's Committee of H Chí Minh city Decision No.227/2005/QĐ -UB dated December 27, 2005.

It is certain that land prices in the market do not stand still, especially in urban or urbanizing areas or areas with favourable conditions for socio-economic development. They will change frequently with a normal to increase. They may even change monthly, weekly or daily.

Moreover, as an adjustment to land prices already issued and proclaimed, the Provincial-level Peoples' Committees must do the following: where the actual market prices for assignment of land use rights in normal conditions in their respective localities with respect to certain types of land or locations of land have changed constantly during a period of 60 days or more causing a significant divergence amounting to their being lower by 10% or more or greater by 20% or more compared with the prices determined, the latter prices shall be reduced or increased, but the percentage adjustment to the prices shall not exceed 20% of the maximum price contained in the price framework stipulated by the Government<sup>419</sup>. The result of this adjustment of land prices is also proclaimed on 1<sup>st</sup> January each year.

All this proves that the specific land valuation stipulated by local governments cannot be done overnight. There will be a long time during which the state land price is stable, while the market land price is much more flexible. So it is difficult for the state land price to be a real approach to the market land price. It is often lower than it and does not keep up with changes of land price in the market.

Further, in contrast to other types of property, land is irreplaceable with limits as to its area and location, though not on time of use, diversification of use purposes and varying profitability. Accordingly, land price is affected by a number of different factors ranging from the economic, political, social and legal to the environmental and even people's mentality, customs or geomancy. There are many factors of a subjective nature which impact powerfully on land price, and the State cannot take account of them all as factors in land price determination. As a result, the determination of land prices is only an estimate of the relative value of land. It cannot be priced as accurately as normal assets. Thus, the disparity between state and market land prices is natural and unsurprising.

A problem arising when applying the land price stipulated by the State for the rights and obligations of land users is the following: land users usually claim that they are put at a disadvantage when the State reclaims their land and determines the amount of compensation by reference to the state land price that does not in fact reflect the actual land price in the market. (According to the law, the land prices determined by the Peoples' Committees at provincial level are to be used as the basis for calculation of the compensation when the State reclaims land for reasons of national defense and security, national interest or public interest and economic development<sup>420</sup>).

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<sup>419</sup> Stipulated by Article 15 of the Decree No.188/2004/NĐ-CP.

<sup>420</sup> Stipulated by Article 9 of the Decree No.197/2004/NĐ-CP of the Government dated December 3<sup>rd</sup>, 2004 on recovery, assistance and resettlement when the State recovers land.

In 2005, in Hồ Chí Minh city, the specific land prices determined by the Decision No.316/2004/QĐ-UB of the People's Committee in 2004 were five times higher than the old prices under the 1995 Decision No.05/1995/QĐ-UB, but they were still lower than the actual market land price when used for compensation in cases involving state reclaim of land.

As an example, in the project upgrading and extending Nam Kỳ Khởi Nghĩa and Nguyễn Văn Trỗi streets, in the section Nam Kỳ Khởi Nghĩa – Hoàng Văn Thụ in Phú Nhuận district, Hồ Chí Minh city, the state land price was 12,5 million VND per square meter, the price for land compensation purposes was about 30 million VND per one square meter. However, this price was only about 41% of the actual market land price.

Or in construction of Phú Mỹ bridge in District Seven, Hồ Chí Minh city, the basis of the land price stipulated for Nguyễn Văn Quỳ street was about 3,5 million VND per square meter but the land price applied to land compensation was about 6,5 million VND per square meter. This was still only about 54% of the actual market land price<sup>421</sup>.

Moreover, according to law, the State shall seize land in order to use it for the purpose of economic development only in the following important cases: (i) use of land for investment and construction in an industrial zone, in a high-tech zone, or in an economic zone; (ii) use of land in order to implement an investment project funded by Official Development Aid (ODA); (iii) use of land in order to implement a one hundred per cent foreign invested project which has been approved by the competent state body or in respect of which permission has been granted for such investment in an industrial zone, high-tech zone, or economic zone but the project is unable to be so invested; (iv) use of land in order to implement important national projects for which the National Assembly decides the investment policy; (v) use of land in order to implement important projects for which the Prime Minister approves the investment policy; and (vi) use of land in order to implement projects for residential areas (including residential area infrastructure projects and housing projects), commercial centres and high class hotels<sup>422</sup>.

For other projects using land for developments outside the above categories, the State shall not seize land. Investors in these cases have to come to agreements with the relevant owners if they are to receive assignments of or lease land use rights or receive land use rights as capital contributions from the land users<sup>423</sup>. Neither the Peoples' Committees at any level nor any other public authority may issue land recovery decisions or take unlawful measures interfering in negotiations between investors and land users with respect to land not in the category which the State must recover<sup>424</sup>.

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<sup>421</sup> “Pháp luật TP. Hồ Chí Minh” magazine, dated May 2<sup>nd</sup>, 2005.

<sup>422</sup> Stipulated Section 1 Article 40 of the 2003 Land Law; Section 2 Article 36 of the Government Decree No.181/2004/NĐ-CP; and Article 34 of the Decree No.84/2007/NĐ-CP of the Government dated May 25, 2007 providing additional provisions on the issue of land use right certificates; on land recovery; on the exercise of land use rights; on orders and procedures for compensation, assistance and resettlement when the State recovers land; and on the resolution of complaints about land (Decree No.84/2007/NĐ-CP).

<sup>423</sup> Stipulated by Section 2 Article 40 of the 2003 Land Law.

<sup>424</sup> Stipulated by Section 2 Article 41 of the Decree No.84/2007/NĐ-CP.

Accordingly, it is unavoidable that there will be a disparity in the compensation paid in public interest projects and in purely economic development projects; and within economic development projects between enterprises with good financial potential and those with less money.

In 2005, while the land price used to calculate the compensation for a state public interest project implemented in Bình An ward, District Two, Hồ Chí Minh city was about one million VND per square meter, the same price in an economic project carried out in the same area amounted to 8,9 million VND per square meter<sup>425</sup>.

Land users whose land was seized by the State, will make a comparison between the prices and will claim the higher price, causing problems for the whole process of compensation, site clearance and project implementation. The growth of private projects continues to be the reason pushing the compensation price upwards, as this makes the state prices fall far behind.

In the Thủ Thiêm new urban zone project at District Two, Hồ Chí Minh city, (whose land use planning was approved by the Prime Minister in 1996<sup>426</sup>, its detailed land use planning at the scale of 1/2000 being approved and proclaimed in 1998<sup>427</sup>), land recovery has been being implemented since 2002<sup>428</sup>. At this time, the land prices varied between 2,5 and 3,6 millions VND per square meter<sup>429</sup>.

In 2006, monetary assistance to be paid land users who managed to find a new place to live without receiving resettlement apartments was stipulated specifically<sup>430</sup> as the following: (i) the amount for an apartment sold in accordance with the sale price for resettlement was four million VND per square meter; (ii) the amount for an apartment sold in accordance with the sale price for non-business was two million VND per square meter; (iii) the amount land lots sold in accordance with the price for resettlement was three million VND per square meter.

By 2009, these amounts had to be multiplied by a factor of three to four times<sup>431</sup>, namely: (i) the amount for an apartment sold in accordance with the sale price for resettlement was 16 million VND per square meter; (ii) the amount for price of apartment sold in accordance with the sale price for non-business was eight million VND per square meter; and (iii) the amount land lots sold in accordance with the sale price for resettlement was twelve million VND per square meter.

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<sup>425</sup> “Pháp luật Hồ Chí Minh city” magazine, dated August 26, 2005.

<sup>426</sup> According to the Prime Minister’s Decision No.367/TTg dated June 4<sup>th</sup>, 1996 on approval of planning for construction of the Thủ Thiêm new urban zone, Hồ Chí Minh city.

<sup>427</sup> According to the Decision No.13585/KTST-QH of the Head Architect of Hồ Chí Minh city (now is the Head of Department for Planning and Architecture) dated September 16, 1998.

<sup>428</sup> Stipulated by the Decision No.1997/QĐ-UB dated May 10, 2002 on recovery and allocation of land in order to construct the Thủ Thiêm new urban zone; and the Decision No.3917/QĐ-UB dated September 4<sup>th</sup>, 2002 on recovery of land for construction of the resettlement zone in the An Phú ward, District 2 in order to provide for compensation and site clearance for implementation of the Thủ Thiêm new urban zone of the People’s Committee of Hồ Chí Minh city.

<sup>429</sup> Stipulated by Section 2a Article 3 of the People’s Committee of Hồ Chí Minh city Decision No.135/2002/QĐ-UB dated November 21, 2002 issuing regulations on compensation, assistance for damage and resettlement in planned areas for construction of the Thủ Thiêm new urban zone and resettlement zones in District 2, Hồ Chí Minh city (Decision No.135/2002/QĐ-UB).

<sup>430</sup> Stipulated by Section 1.3 Article 2 of the People’s Committee of Hồ Chí Minh city Decision No.123/2006/QĐ-UB dated August 16, 2006 on amendment of and addition to the Decision No.135/2002/QĐ-UB (Decision 123/2006/QĐ-UB).

<sup>431</sup> Stipulated by Section 1 Article 1 of the People’s Committee of Hồ Chí Minh city Decision No.06/2009/QĐ-UB dated January 1<sup>st</sup>, 2009 on amendment of and addition to some of the contents of regulations issued by the Decision No.135/2002/QĐ-UB and the Decision No.123/2006/QĐ-UB.

So in order to guarantee the benefits owing land users whose land has been recovered, and to reduce problems in the land compensation procedure which impede project progress, the State needs to bring its land prices closer to actual market prices; though it is not clear whether the State can do this in the present conditions or not.

On the other hand, it should be noted that the land users, when paying financial obligations based on the land price stipulated by the State, may also claim that this price is so high that the financial obligations could become a burden to them when they apply for land use right certificates. If this is so, their benefits cannot be guaranteed.

When a stipulated price level is applied to the calculation of compensation for seized land, it will be considered to be too low, but when used for calculating the financial obligations of land users, it will be regarded as too high. This may be an unsolvable problem!

Although there have been two decrees on land price determination with their ancillary guidelines<sup>432</sup>, this could not solve all problems. Many shortcomings in the task of land price determination have not been overcome, including the following: (i) there is no single professional agency responsible for the determination of land prices; (ii) there are no regulations that fully cover the orders, procedures and contents of the establishment and promulgation of the list of specific land prices (there are just regulations on price determination methods and some steps in the categorization of land for the purposes of evaluation); and (iii) the staff in charge of land price determination at the local level hold more than one role, mainly undertake land price determinations as a temporary task, and lack both numbers and professional skills<sup>433</sup>.

Therefore, when re-establishing the functions, obligations, powers and organization of the Ministry of Natural Resources and Environment, the Government assigned to it the extra task of determination of land prices which was previously under the Ministry of Finance<sup>434</sup>. The obligations and powers related to the determination of land price; the old files and documents and the staffs responsible for determination of land prices were officially handed over from the financial agency to the natural resources and environment agency in December 1<sup>st</sup>, 2008 based on the Prime Minister's Decision No.1735/QĐ-TTg. This is an effort by the Government to

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<sup>432</sup> They were the Government Decree No.188/2004/NĐ-CP dated November 16, 2004 on price determination methods and price frameworks for all types of land; the Decree No.123/2007/NĐ-CP dated July 27, 2007 on amendments to the Government Decree No.188/2004/NĐ-CP and the Circular No.145/2007/TT-BTC of the Ministry of Finance dated December 6<sup>th</sup>, 2007 providing guidance on the implementation of the Decree No.188/2004/NĐ-CP and the Decree No.123/2007/NĐ-CP.

<sup>433</sup> Thanh Như, "Bộ Tài nguyên và Môi trường tiếp tục hoàn thiện cơ chế, chính sách, pháp luật về giá đất", Ministry of Natural Resources and Environment, dated April 22, 2009, <http://www.monre.gov.vn/monreNet/default.aspx?tabid=213&ItemID=%2063547>. Retrieved [20101021 05:23].

<sup>434</sup> Stipulated by Section 5c Article 2 of the Government Decree No.25/2008/NĐ-CP dated March 4<sup>th</sup>, 2008 providing functions, obligations, powers and organization of the Ministry of Natural Resources and Environment.

overcome the shortcomings presented above and guarantee that the land price determined by the State is close to the actual market land price.

In addition, according to an explanation given by Mr. Đỗ Đức Đôi, the deputy director of the Department of Land Registration and Statistics under the Ministry of Natural Resources and Environment, this change also aimed at preventing a situation of “blowing the whistle while playing football”: the Ministry of Finance should not determine both land prices and land taxes. This was indeed a problem considered when the Ministry of Natural Resources and Environment was first established. However, at that time, because the organization of the ministry and the number of its functions was not fixed, the Government provisionally assigned land price determination to the Ministry of Finance. The Ministry of Natural Resources and Environment has now been improved, and its obligations regarding management of land database have been better spelled out; it would be more appropriate and effective if it also handled the task of land price determination<sup>435</sup>.

This change makes the obligations of the natural resources and environment agency will become heavier and heavier. It requires the Ministry of Natural Resources and Environment quickly to improve the agency responsible for the determination of land prices, and provide guidelines on the implementation of this task by amending faulty regulations and ending other existing shortcomings.

Considering the relationship between the indispensable factors of the land registration system, the determination of land prices cannot be regarded separately from cadastral, legal and land use information. Comparing the current situation of each activity and the overall non-completion of the land database and the land registration system, it can be seen that the efforts which the Agency of Natural Resources and Environment will have to take will not only cover land price determination but also a number of different fields. The final aim is still to establish an effective system of land registration and a comprehensive information system serving the demands of all sectors and industries in a timely manner.

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<sup>435</sup> Tư Giang, “Thành lập Tổng cục Quản lý đất đai: có lệnh mạnh được giá đất?”, Tuổi trẻ online, dated March 11, 2008, <http://diaoc.tuoitre.vn/Index.aspx?ArticleID=246856&ChannelID=204>. Retrieved [20101021 05:44].

## SUMMARY

The land registration in Việt Nam has had a relatively long history. Due to changes in the political regime, society, policy and land law, the current land registration system now has to be rebuilt in conformity with the existing situation.

Land registration is an administrative matter linked to the government management of land<sup>436</sup>. With only about 35 years of stability, much remains unfinished although the Government is expending considerable effort in trying to construct a complete system of land registration.

The organization and implementation of land registration activities has only been unified for about one year; so there are many complicated matters which still need to be overcome. The registration machinery as a whole needs improvement and staff tend to lack professional skills.

Both the legal provisions promulgated and the implementation of registration activity focus on the registration of land use rights and a system of land use right registration offices has been created. Land registration has been carried out throughout the country with mainly good results. The registration of the ownership of assets attached to land has only been performed for residential homes, and mostly in urban areas, but even still, only limited results have been achieved. Although there has been unification of the land use right certificate form and land registration procedures, the land registration machinery itself, which is organized in such a way that there is separate competence based on the type of land user is still very cumbersome and ineffective. The technology used for registration and land change management has not been unified and several different management software systems are in use. Registration documents containing many errors have been distributed and archived and they may also lack some necessary information, such as cadastral maps and land use right certificates. Furthermore, due to the non-completion of the establishment of a digital database and network connection, the provision of archived land information remains limited and unresponsive to the demands for land information by both the State and land users.

Activities linked to land registration have also been implemented albeit, again, with a number of shortcomings. Legal provisions which serve as the basis for registration activity, still contain contradictions and overlaps. There is a lack of many of the regulations needed for the operation of the land registration system. These shortcomings are mentioned in the land registration machinery and in each activity of land registration.

Land using planning has not yet been completed throughout the country while the new stage of planning, for 2011–2020, is coming. There has been no effective connection between the land use plan and the overall plan of social-economic development and the same holds at field and branch level, especially where

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<sup>436</sup> Stipulated by Section 2e Article 6 of the 2003 Land Law.

the construction plan and the urban development plan are concerned. The comments of citizen are not paid attention to and the promulgation of planning information does not happen. Land using planning is not yet an effective tool for supporting the Government in land management, and orienting land use activities. It is also not able to supply complete and correct information to the land registration system.

Land evaluation, despite being performed every year at local level, still has many shortcomings. This leads to embarrassment of the Government as it is unable to reduce the difference between the land price approved by the State and market price. Recently, some effort has been made to ensure that the state valuation of land is closer to actual market prices and the responsibility for land determination has been handed over from the financial agency to the natural resources and environment agency. However, to narrow this gap is not easy even in the developed countries. Despite many changes, Việt Nam is still faced with an unsolvable problem as the defined land price applied to compensation for land users whose land has been compulsorily acquired is supposed to be close to market price but it also regarded as low when used for calculating the financial obligations of land users. As a result, the land value information in the land registration system is failing to help the Government and other persons exploit land appropriately and derive the full economic benefits.

The issue of land use right certificate, the last stage in the land registration procedures, is in the same situation. Reform has not been concluded for many reasons, such as the long dispute between the agencies concerned; the change in the certificate form; the complication of the various procedures for the issue of different kinds of land use right certificate; the late implementation of the law; and the changes in and lack of cadastral files. As a result, the legality of many land parcels/units has not yet been ensured which cannot then become lawful properties in the real estate market. A huge source of capital is, as a result, stagnant. On another aspect, the land use right certificate plays a role as an important factor in the cadastral files and the cadastral database, so the failure to issue such certificates is also one of the reasons that make the land registration system unable to improve its information supply effectively.

All the above mentioned situations show that a number of different things have to be done in order to establish a functioning system of land registration in Việt Nam, which will both serve the State's managerial purposes while guaranteeing the rights of land users and promoting the development of the real estate market. These include not only resolving the problems linked to registration, but also hastening the issue of land use right certificates, completing land use planning, adjusting the level of state land price and finishing the formulation of the cadastral files and maps. These activities should be considered as indispensable if the system of land registration is to be improved.

## CHAPTER 5

### **HOW VIỆT NAM CAN IMPROVE ITS LAND REGISTRATION SYSTEM BY STUDYING AND THEN COMPARING ITSELF TO THE SWEDISH LAND REGISTRATION SYSTEM**

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#### **5.1. The comparison of land registration system between Vietnamese and Swedish legal frameworks**

Registration of land is an activity that every country needs to carry out. Although the land ownership regime and the form of registration differ between countries, they all have the same aim namely, how to ensure that the land registration system can work effectively, benefiting not only the government but also society as a whole and the public. The land registration system must provide all land information data promptly and accurately for those who want to know it; ensure and protect the rights of land owners or users; create favorable conditions for the development of the real estate market; limit land disputes and help the government manage and use land, a precious national resource, in the best way.

It is obvious that there are many differences between the land registration systems established in Việt Nam and in Sweden. These derive from differences in land ownership regime and overall situation.

#### *Area and population*

Việt Nam has the smaller area, two-third that of Sweden, but its population is about ten times greater (with more than 85 million inhabitants in comparison with only 9 million Swedes). The population has grown very rapidly, causing changes in the exploitation, use and redistribution of land. Over the generations, land has become more and more dispersed. This requires the activity of land registration to be updated frequently. If it halts, the work of land management and the verification of land use origin will quickly fall behind. Thus, though the area of Việt Nam is not as large as that of Sweden, land registration there is more complicated.

A further element of complexity lies in the establishment and development of the land registration system in each country. The two systems resemble each other in that they were built up over several centuries, and in each historical period of development, they were supplemented and adjusted by the Government for the purposes of then-current State needs. Both systems were set up on the basis of the registration of land ownership or land use rights being tied to cadastral activities.

However, if the Swedish land registration system developed in mainly peaceful conditions, adjustments and reforms being in accordance with the development of science and technology and the requirements of modern society; in Việt Nam, because of wars and partition, the land registration system depended more heavily on the specific characteristics of each region and each government. Moreover, registration activities were also interrupted by changes in the land ownership regime.

So after the unification of the country, the organization of the land registration system almost had to be restarted, this including the cadastral files and registers. In spite of its long history, the Vietnamese land registration system has really only had less than forty years for stabilizing and improving itself.

In addition, after the collapse of the socialist regimes in the USSR and Eastern Europe, with similar land ownership systems, Viet Nam had difficulties studying and drawing experiences from other free countries when reforming its system of land registration. In contrast, based on its stable development and the resemblance of its land ownership system to those of other countries in European Community and elsewhere, Sweden had favorable conditions for acquiring experience from outside, and also had enough time to improve and modernise its land registration system. All this led to differences in organizing the land registration machinery in Viet Nam and in Sweden.

#### *Land registration machinery*

In its administrative aspect, the separation of responsibilities for managing the registration system in Sweden was based on the inherent characteristics of different activities. Cadastral activities were implemented by the National Land Survey of the Environmental Ministry while the activities of title registration, guaranteeing the rights of the owners/users of real properties and other concerned parties were carried out by the courts. However, since the end of 2008, both activities were assigned to the Ministry of Environment which, with the National Land Survey will be in charge of all aspects of the registration of land and real properties.

In Viet Nam, responsibility for the management of the land registration system is determined on the basis of administrative function and the object of registration. This caused much dispersion and the participation of several different bodies in registration activities. Thus, the Ministry of Natural Resources and Environment was responsible for the cadastre and registration of land use rights; the Ministry of Construction was liable for the survey and registration of ownership of residential homes and construction works; and the Ministry of Agriculture and Rural Development was in charge of the registration of ownership of cultivated forests and the right to use natural forests. This was the origin of overlapping and complication in the procedures of land registration and was the underlying reason for disputes over competence among and the evasion of responsibility by authorized agencies. It also led to the creation of an information system which was inconsistent, unclear, opaque and inadequate.

A similar development occurred when the responsibility for organizing registration of housing ownership came under the administrative agency for housing management within the construction agency, while the responsibility for the registration of land use rights belonged to the land use right registration office of the natural resources and environment agency. Further dispersal of information took place when the competence of the agencies at provincial and district levels depended on

whether applicants were domestic individuals, households or domestic organizations, and foreigners. Beyond that, the establishment of an office of land registration in each administrative unit at both the provincial and district level caused other problems related to this enlargement of registration machinery, such as the shortage of human resources and the cost of operating all the machinery.

Conversely, in Sweden, besides managing and implementing registration activities within the National Land Survey, the work of title registration throughout the country is organized at only seven municipality court buildings, and the cadastral task is mainly carried out by the provincial-level cadastral authority. This body will however set up branches or offices in the municipality. There is no separation of administrative competence, and no classification of registration applicants. Land registration is managed by one authorized body. The registration machinery is streamlined and gets effective results in the ordering of the real estate information after registering and recording.

This is experience which has to be taken into account. One can ask whether it is necessary to separate registration objects and assign different bodies to manage them, when land and other real properties are connected so closely. What benefits can be attained from a distribution of work in which households and individuals have to register at the authorized district-level body while organizations and foreign subjects have to apply to the authorized provincial-level body, when the nature of registration is to proclaim and protect the rights and benefits of all real estate owners or users without discrimination of category?

The independence, autonomy and responsibility of the land registration machinery should also be concerned. In Sweden, the staffs liable for land registration are not dependent on and under the influence of higher authorities or outside influence. They can perform their tasks independently under the law and are responsible for their performance and decisions. The manner of dealing with officials who abuse their position or power to breach the law is laid down in a firm and strict manner.

Meanwhile, in Việt Nam, the registration function is not separated from the function of administrative management. The agency managing registration activity is subject to a dependency principle: although the registration staff is in charge of implementing land registration activities, in practice their powers are limited to consultancy, assistance, verification and update of registered information, without the power to make decisions. The competence to make decisions on such important issues as the formation, partition and amalgamation of land parcels/units and the recognition of the right to own or use real properties or land belongs to the public administrative authorities, which are responsible for the general management of all fields of society, including land. As a result, a large workload which could be resolved on site by the agencies managing and implementing land registration piles on to the public

administrative authorities, causing delay and complication. It also serves to reduce the independence and sense of responsibility of registration officials.

#### *Land information system*

Both Việt Nam and Sweden aim to set up a complete system of information with all data on the cadastre including the value and use of land. Cadastral files and documents need to be updated frequently and should also form a digitalized information system which is more convenient for management, record purposes and access. This requires not only time, money and good quality human resource, but also high-tech equipments. Here there are differences between Sweden and Việt Nam.

The Swedish land registration system is supported by modern technological equipment, as the end result of a long-term process of investment with specific and clear targets. Though it costs a great deal to begin with, its usefulness has become clearer and clearer and it is also a source of income which has increased to such an extent that it can to some extent cover the costs. Most land units throughout the country have been completely registered. Combined data relating to planning, cadastral maps and land value has also been made available. With the work of computerization, a land data bank system also was established. All information about the rights to real estate and any changes, as well as all types of maps relating to land, land use planning and real property prices are recorded, updated and managed in the land data bank system through a system of host computers at the centre which connect the network with the localities. The system is accessible through the website of the National Land Survey. Users can access real estate information through the internet, assisting those taking part in the real estate market. All this helps to reduce the time and human resources necessary both for management activities and the registration of land, as well making these tasks simpler. Moreover, with a public, easy to use and accessible information system available through the data bank network, there is little or no harassment of the staff managing and implementing land registration activities.

Việt Nam is trying to reach the same level, but in the present conditions, this will be fairly difficult. The history of changes in land policies and laws has led to the inadequacy of the existing land information which also contains many errors and omissions. Land has not been adequately protected due to delay in the issue of land use right certificates. Land use planning has been often changing too frequently or just not attempted. The state determinations of land and real estate prices have been poorly done and the agency responsible for land price determination keeps being changed. Most cadastral maps are behind the times, reflecting imperfectly the real status of land use. Real estate information has been mainly managed and archived in paper form. The digitalization of land data has not been completed, so it is difficult to access or provide information in an adequate way.

Although the application of modern technology and the computerization of land management and registration activities have been tried out in some localities, it is not easy to go further due to the lack of investment capital. It is impossible to change

all the backward equipment in all localities. Furthermore, the competent authorities have not even chosen uniform software for data record and processing. At the moment, the complicated and diversified activities in the cadastral field can only be implemented by the professional staff. However, because of the limits to the use of modern technology and computers by land officials, most land registration activities are carried out manually. As a result, the more complicated the tasks needing to be done, the greater the number of staff responsible for managing and implementing land registration. Where there is a lack of professional officials, the work will come to a standstill. Even the time needed to deal with regular registration applications is increased, as the exactitude of the land information needs to be checked. By contrast, in Sweden, land information can be checked immediately through the land data bank network.

*Link to requirements of the land registration system*

It can be seen that the Swedish land registration system almost meets the requirements. Each real estate unit, after being registered, is recorded completely its characteristics of geometry, legality, value and use. Real estate information is open and accessible easily through internet so that everybody can know exactly about the real property they want to find. The digitalization which has been implemented makes convenient for information archive and restoration. The information security is guaranteed by strict regulations on the agencies responsible for information process, update and adjustment, as well as regulations on kinds of supplied information.

The clarity and simplicity of the Swedish land registration system are shown through the unification of registration form and process with simply procedures and the model of the Real Property Register which can contain and integrate real estate information supplied from different sources with various forms. The officials can carry out their work at and applications can be submitted to any land registration office without difference. Almost land use is registered and changes in land use are updated frequently and timely into the land registration and land information system so that the system can reflect appropriately the real situation.

With the digitalized land data bank system, access to land information becomes easy and equitable for the users. The Government is not yet to worry about the budget for the land registration system. The National Land Survey, via the income earned from its supply of services and information, is able to manage, operate and maintain the system activity. Although the fees that users have to pay for using information are not high, with a huge demand on information for real estate transactions and the like every day, the total revenue of the National Land Survey is remarkable. It is enough to cover both the land registration machinery and the investment for system development.

Based on the machinery unification, the simplicity of registration procedures, the stable operation and incessantly improvement to meet demands for its

development, the Swedish land registration system is considered as one of effective registration system all over the world.

On the other hand, the Vietnamese land registration system is trying to satisfy these requirements. Its machinery is not really stable and uniform to concentrate on its development. Accordingly, the complication of registration procedures, files and registered data has still existed. Due to lack of the clarity and simplicity, the officials often make harassment for money when the applicants do not know how to do and what need to be prepared. The registration becomes a troublesome administrative procedure that most people are shy of.

The management and establishment of real estate information face to difficulties because many land use activities which have been taken place in a long time are not registered, together with the incapacity of the registration staff and the incompleteness of cadastral files. As a result, the registered information is inexact. Although the land use right certificate had been granted, namely the registration had been completed, the legal security of land use right and/or ownership to assets attached to land has not still been guaranteed yet. When land disputes occur, there may be an investigation back to the past into the land use origination. This may cause a change in the registered result. Moreover, due to the reason that most cadastral files are in papers and not to be open, so the access to land information is not easy and often takes the users' time. Although the fees paid for information service are not high, the users, to get real estate information, usually have to use their connections and pay a higher fee which is not stipulated.

These prove that in order to improve the land registration system and establish a complete land information system, Government has to overcome many obstacles with efforts and a big budget.

From the organization and operation of the land registration machinery in Việt Nam and Sweden, it can be seen that, despite their both having the desire to set up and improve an effective system of land registration; establish an adequate legal regime where the fundamental unit is the land parcel, and organize the registration and updating of information through a well organized system of agencies at both central and local levels, there are several major differences between the two systems.

With only a few stable decades for establishing and developing not only the land registration system but also for organizing all areas of society (including the economy, politics, and culture), it is unsurprising that the Vietnamese land registration system has many shortcomings. By contrast, with hundreds of years of stability, accompanied by adequate conditions and all the potential of a developed country with a well developed welfare system, the Swedish land registration system is known and regarded as one of the few such systems that are effective, safe, reliable and simple and it is continually copied and studied by other countries.

With these differences in minds, is it appropriate to make a comparison between the land registration systems of Viet Nam and Swede? What benefits can be

attained? What experiences of the Swedish experience can be followed? Is the application of those experiences to Vietnam feasible when there are many differences in the political, economic conditions and living standards of the two countries?

These questions are not unreasonable. But they are not the main reason for hesitating. Though historical circumstances have created obstacles for Vietnam's development, there are a number of problems that are more important than the issue of the improvement of the land registration system. They need to be overcome but this cannot be done overnight; Vietnam cannot come to a standstill and blame everything on the war. There are many shortcomings linked to other factors which, with determination, Vietnam could overcome. Moreover, in order to develop the country, Vietnam also needs to open its doors and draw on the experiences of other countries, both developing countries in more or less the same condition as Vietnam and the developed countries. This will help to minimize errors and hasten the development process in the country.

Therefore, despite the many gaps, much can still be drawn from the Swedish land registration system on the basis of a comparison between the two systems. Furthermore, the core to the success of the Swedish land registration system is the technical and technological issue, and the use of modern technology and computerization. Needless to say, Sweden also spent hundreds of years on designing and building up its infrastructure, as well as tens of years on applying modern technology to the registration system before the system reached its present level. Obviously, Vietnam cannot just copy and apply these experiences in a young country in a few short years. However, Vietnam can study the laws supporting the process and the computerized model used in Sweden; compare with other advanced systems of land registration and then select a technical model which is appropriate to Vietnam's specific conditions.

Based on the existing legal provisions regulating the land registration system, it can be seen that Vietnam is trying to computerize the land registration system in order to establish a modern, electronic, simple and effective system. This is the way that Sweden had gone. Therefore, the study of Swedish experience should supply some useful suggestions to Vietnam when it is establishing and improving its land registration system.

## **5.2. Some recommendations for improving the Vietnamese land registration system**

### ***5.2.1. A general recommendation***

Any developing country might wish to have in place an effective system of land registration serving land management and the exploitation of the land with a view to promoting economic development is unsurprising. However, not every country can rapidly design and establish a useful and stable system appropriate for its resources and development level. Some countries just pay attention to the needs of

management and disregard those of land users. Others, because they are unaware that land registration is a uniform process of title registration and cadastre, separate these two activities.

The experiences of Sweden and countries successful in the establishment of a land registration system show that an effective system of land registration must cover the mentioned requirements, including the accuracy and security, the clarity and simplicity, the timeliness, the fairness and accessibility, the low cost and sustainability<sup>437</sup>. Therefore, the Vietnamese land registration system needs to be organized uniformly under only one scientific agency without the separation of registration competence. The registration procedures have to be simply and convenient for applicants. The land registration system must be an effective tool for the State to manage real properties and real estate market as well as other concerned activities like land use planning and taxation. It can guarantee the stability for society through the protection of lawful rights and benefits of land users, land-attached asset owners and other relevant subjects. Through the supply of legal protection for real estate transactions, it makes the real estate market become more and more transparent. It also meets timely the demand on real estate information for all subjects and all fields.

However, in order to have a land registration system which can supply the above guarantees, it must first be made clear that the system should not simply copy the advanced systems that some countries have successfully created and Vietnam would like; more important it that it be appropriate for Vietnamese conditions and the requirements of both the State and the people. Therefore, the current state of the Vietnamese land registration system and the factors that can influence the process of establishing such a system need to be clearly understood.

Based on the assessment of the current state of the Vietnamese land registration system, it can be seen it does have some strengths: the unification of registration and cadastral activity under the management of the Ministry of Natural Resources and Environment.; effective regulation by Law with specific orders and procedures creating a legal background for the carrying out of land registration activity. An important factor is that the State actually pays attention to the work of land registration through the promulgation of policies and methods, changes to the legal provisions and the rearrangement of the machinery responsible for land registration so as to improve and speed up the registration process together with a bias in favour of computerization.

Of course, these advantages cannot mask the existing difficulties which cannot be resolved overnight. With such difficulties, many problems will emerge that need to be anticipated and faced during the process of improving and modernizing the land registration system in Việt Nam.

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<sup>437</sup> See supra 2.4.

Firstly, it is difficult to estimate accurately the real cost of establishing a land registration system. In most projects which have been carried out in many countries wishing to invest in the registration system, at the start, the expected results are not achieved, but the cost spent tends to exceed estimated expenditure.

In the project of reforming and computerizing the national cadastral system of Canada performed in Québec in 1985, the anticipated expense was 55 millions USD, with 23 millions USD used for cadastral activity and the remainder for geodesy and cartography. Six years later, about 85 percent of the estimated cost had been spent, but the reform had only been effected with respect to little more than 5 percent of the 3,5 millions real properties in Québec. In order to finish the project, the re-estimated budget amounted to 328 millions USD. The project had to be suspended until 1992<sup>438</sup>.

Québec is a Canadian province with a population of 7,4 million inhabitants and a total area of 1.667.926 sq. km. The land registration system was created in 1840 and was initially based on the names of land owners. With the implementation of the cadastre in 1860, the registration system was improved and changed from a name-oriented system into a parcel-oriented one. Land parcel information recorded through the cadastre and registration activities remained unchanged in form for more than a century, with about 700.000 original parcels shown on 1.450 original maps. Subsequent subdivisions of the original parcels were, once registered, shown on 350.000 parcel maps that were never transferred to an overall map, creating a number of deficiencies in the cadastral system. For this reason, a reform of cadastral system was carried out in Québec in 1985<sup>439</sup>.

Similarly, in the national cadastral project of Greece (known as the Hellenic Cadastre) which was launched in 1994, the initial budget was 1,1 billion USD. Six years after the approval of the project, although 47 percent of the budget had been spent, the cadastre was essentially unaffected. No land parcels had been registered or recorded in the cadastral system. The re-estimated budget for the project amounted to 2,1 billion USD<sup>440</sup>.

Greece is a nation with a population of 11 millions inhabitants and a total area of 131.940 sq. km. A system of registration by deeds began in 1853. In spite of several attempts over the years, the cadastre itself was never implemented. Consequently, the cadastral system was to be entirely renewed in the 1994 project<sup>441</sup>.

Việt Nam also has experiences in this issue because the computerization project used to be implemented. With a project on computerization for public administrative management in the period of 2001–2005, the total approved budget was about 3.800 billion VND. After five-year implementation, with nearly 1.200 billion VND had been used, the information system serving the public administrative management was not yet fixed clearly, only used for exchange of internal information

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<sup>438</sup> Don Grant and Daniel Roberge, “Success key factors to be considered in Benchmarking Cadastral Project – Based on the experience of Two large-scale land Projects”, in the book “Benchmarking Cadastral System”, *ibid.* supra note 34, p. 31.

<sup>439</sup> Don Grant and Daniel Roberge, *ibid.* supra note 438, pp. 29–30.

<sup>440</sup> Don Grant and Daniel Roberge, *ibid.* supra note 438, p. 31.

<sup>441</sup> Don Grant and Daniel Roberge, *ibid.* supra note 438, p. 29.

of each agency itself<sup>442</sup>. If the Prime Minister did not decide to stop the project timely, the total used budget would certainly be higher.

With a desire to establish an electronic information system serving administrative management, improving executive capacity of administrative authorities and computerizing all procedures and process in public fields, on July 25, 2001, the Prime Minister issued the Decision No.112/2001/QĐ-TTg approving the project on “Computerization for public administrative management in the period 2001–2005” (hereafter called “the 112 project”). The 112 project was managed by a governing agency established by the Prime Minister through the Decision No.137/2001/QĐ-TTg dated September 17, 2001. Most of the project budget was from the public budget.

With the tight budget of a developing country, Việt Nam needs to consider carefully what to do. The experience of Sweden and the other countries discussed above indicates that, in the initial period, it is necessary to be clear that the budget for the establishment and reform of the land registration system cannot be based solely on a self-financing fund originating from the fees for using the information and services provided by the registration system and paid by the users. This does come in time and then it is no small financial resource as the number of real estate transactions and the demands for real estate information will rise considerably. This is not to mention the other benefit supplied by the registration system, namely that it will create confidence in the people using it.

The public budget, together perhaps with outside aid (as in the Greek project, costs were shared with the EU paying 75% and the Greek Government 25%<sup>443</sup>), must support the project in the initial period, but it will not need to do so forever. If not, the managing agency of the project often loses its control, uses the budget for wrong purposes, remains passive attitude and relies on the public budget. This budget need not be considered as a fund to be constantly relied on. This is not, of course, easy to see in the initial years of establishing the system. This is one of the main reasons for the failure of the Vietnamese 112 project.

Secondly, it is not easy to get unanimous support for the establishment of a land registration system. The reason is that most aspects of a registration system, particularly the products or services of the cadastre, have a technical character calling for professional work. But on the other hand, the benefit that each member of the public hopes to get from the system is not corresponding to this. So, awareness of the land registration system varies between the authorized agencies reliable for the system (registration and cadastre agencies), system users (other public agencies, organizations, the owners or users of real properties, and those seeking information from the system), and social opinion in general. Accordingly, the support for the improvement of the land registration system varies. The six-year standstill of the Greek project is a typical example demonstrating that unanimous support for the reform and improvement of the cadastral and registration system is indispensable.

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<sup>442</sup> The Vietnamese State Audit, “Báo cáo kiểm toán việc quản lý và sử dụng kinh phí Đề án Tin học hóa quản lý hành chính nhà nước giao đoạn 2001–2005 (Đề án 112)”, proclaimed on October 30, 2007.

<sup>443</sup> Don Grant and Daniel Roberge, *ibid.* supra note 438, p. 31.

In Việt Nam's conditions, where there still have been many shortcomings in the land registration system, the issue of how to spread information about the benefits of an effective registration system and garner widespread support for improving the existing system is an important issue that needs to be resolved during the process of establishing the system. If it cannot be resolved, the reform of the land registration system will just become the work or responsibility of the cadastral agency or the natural resources and environment agency. The success or failure of the establishment of the land registration system depends heavily on this.

There is still the experience from the 112 project in Việt Nam. The computerization for all administrative system had a very large scope, related to all ministries and localities with hundreds of process and procedures and different software being used that needed to be linked. However, the Governing Agency of the 112 project had no relation to the Ministry of Post and Telecom. The project was also implemented independently without any connection with other projects on applying information technology which were being carried out by other ministries in other fields. At that time, there were about 14 projects on applying information technology in administration carried out in some fields such as banking, finance and customs<sup>444</sup>. Moreover, the computerization was not yet interested by some leaders in several ministries and localities. The localities also had no connection each other and co-ordination with the central authorities in the process of project implementation. They only paid attention to set up local projects with a large scale to get a higher budget distribution<sup>445</sup>. Lack of the uniform management was one of the main reasons for the failure of the 112 project.

Thirdly, it is difficult to have a single authorized agency responsible both for the registration of land and real properties, as well as for the control and monitoring of the whole process of reforming the registration system.

The management of land/real estates and related information belongs to a number of public competent agencies, whereas the responsibility for managing and operating the registration system itself belongs to one agency. The effectiveness of the land registration system, therefore, depends greatly on the relationship between the agencies concerned. However, because of the localism and self-interest of each agency, this relationship is often problematic.

Another problem is the lack of control and monitoring of the reform process. Because the subordinate agencies often neglect to report or report in a very formal way to the superiors, stressing their achievements, it is usually difficult to discover problems. Even when these are uncovered, they are difficult to troubleshoot, and serious consequences may result. The failures in the initial period of the Québec project originated because no body took the chief responsibility for the reform or monitored and handled problems arising in the implementation process. In the Hellenic cadastre, the monitoring was also carried out ineffectively. Little information and few important documents were reported to the authorities concerned at any level,

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<sup>444</sup> Vũ Văn Nhiêm, “Đề án 112: Đôi điều suy nghĩ”, Hồ Chí Minh University of Law, dated December 12, 2008, [http://www.hcmulaw.edu.vn/hcmulaw/index.php?option=com\\_content&view=article&id=344:a12sn&catid=119:ctc20076&Itemid=110](http://www.hcmulaw.edu.vn/hcmulaw/index.php?option=com_content&view=article&id=344:a12sn&catid=119:ctc20076&Itemid=110). Retrieved [20101021 09:27].

<sup>445</sup> The Vietnamese State Audit, *ibid.* supra note 442.

whether the Greek Government, or the EU itself<sup>446</sup>. The failure of the 112 project in Việt Nam derived from the weakness and lack of responsibility of the Project Governing Agency. Responsible for a national project covering all over the country, but this agency had no function and knowledge in information technology. Most members of the Project Governing Agency held more than one office and took part in several other projects. Most project activities and works were directed and managed directly by the Secretary Group, an assistant agency of the Project Governing Agency. Therefore, many mistakes had been occurred in the process of project implementation causing it cancelled.

An important part of the success of the Swedish project was the unification of the agency responsible for the land registration system – the National Land Survey. Although title registration belonged to the court, all information had to be delivered and managed by the National Land Survey. Based on modern techniques and successful computerization, the registration function was finally transferred to the National Land Survey, creating for a unified system covering the cadastre, registration and land/real estate information.

This is an issue that Việt Nam is facing and it needs to overcome it in order to succeed in its reform of its land registration system. There should not be so large a number of authorized agencies having the same powers and responsibilities for land/real estate registration; and there should be a clear responsibility and relationship among them. In addition, it is indispensable to continually supervise and monitor the process of reform and improvement so that one can troubleshoot effectively.

In the reform of the land registration systems of certain Asian countries such as Thailand, Indonesia and Laos, the coordination of the cadastre and the registration function by way of a single united agency was also effected. In these countries, the Land Department is thus in charge of the cadastre, registration, geodesy and cartography. This united model, in general, brings more benefits than a model involving a number of separated bodies. Monitoring is also carried out more conveniently and easily<sup>447</sup>.

In summary, based on an assessment of existing difficulties, it seems that in order to improve and modernize the Vietnamese land registration system, time is needed and there must be plans for each step in the process. Some solutions, once applied, may create long-term changes. But others may be only short term. The important thing is that, besides the Government supporting and being determined to implement the reform, legal provisions also need to be adjusted in order to create an appropriate legal foundation for the renewal. These changes do not merely relate to technical aspects of the land registration system, but also impact on the human resources in the system.

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<sup>446</sup> Don Grant and Daniel Roberge, *ibid.* supra note 438, p. 32

<sup>447</sup> The World bank, “Agriculture investment sourcebook: agriculture and rural development”, ISBN 082136085X, Washington, DC, 2005.

## *5.2.2. Some recommendations for improvement of the land registration system*

### *5.2.2.1. For the administrative machinery*

First of all, it is necessary to remember that land registration in Việt Nam is not the establishment of the right to land as such, so it is not the function of the judicial body.

Under a system where land belongs to the people as whole with the State as the representative owner, the right to use land is established by the public administrative authorities via the allocation of land or leases of land. On this basis, land registration is merely the recognition of the grounds of establishment, change, limitation, or termination of the right to land/ real properties by the administrative authorities. Indeed, the land registration machinery in the natural resources and environment agency and the offices of land use right registration is set up by the administrative authorities in order to assist them in the work of recognizing and recording the establishment and changes of the rights to land/real estate. So, the administrative authority needs enough competence to manage and control the establishment and circulation of land use rights. The function of the registration of land should belong to the administrative authorities to assist in the improvement of the land registration system, avoiding the disputes which used to happen between the administrative and the judicial authorities before the drafting of the law on real property registration.

This is also the current approach of the Swedish registration system when the function of title registration of the court was formally transferred to the National Land Survey, unifying the management and operation of the system.

However, one still needs to consider the relationship between the natural resources and environment agency and other administrative authorities, as well as the obvious delimitation between the registration function and the general administrative function.

It can be seen that the natural resources and environment agency is a high level agency with components responsible for various industries or fields. Its activities may need to be controlled by an administrative authority at the same level but this does not mean that the general administration has the right to intervene in the activities of the professional agency.

In principle, the controlling administrative authority just needs to review and decide on general policies and guidelines. Then the professional arm has the work of organizing the implementation and shall be responsible for the results. At present, most activities relating to land management (such as survey, measurement, evaluation and classification of land, land inventories and statistics, drawing of cadastral maps, and land use planning and allocation, leases of land, the issue of land use right certificates, land registration and the resolution of land disputes) from start to end, are carried out by the land management agency itself. The administrative authority in

charge just reviews and signs off on the decisions or the results of these activities. And this is in fact an unnecessary step, causing delay in implementing land procedures.

So, in order to reinforce the natural resources and environment agency, the administrative authority should decentralize and change the powers, functions and responsibilities of the land management agency from being a consultative agency to becoming the agency actually managing matters, leaving the natural resources and environment agency free to deal with all professional issues, and responsible for the implementation of assigned tasks unencumbered by the administrative authority at the same level.

Besides that, there should be a clear demarcation between the land registration function of the land use right registration office and the administrative function of the natural resources and environment agency. On account of its management of the cadastral files and land information, the land use right registration office cannot be no more than a place for receiving applications passing them on to the land management agency and updating the changes pursuant to the decisions of the administrative authority. The responsibilities of the land use right registration office include the organization of the implementation of land registration activity, the establishment and management of the land information system, and the supply of information to those requesting it. The natural resources and environment agency is to be in charge of the implementation of the cadastre and administrative procedures in the land field, as well as responsible for reconciling, monitoring and checking the registration activities. It does not directly carry out the registration.

With decentralization, the responsibility and self-discipline of those responsible for the management and registration of land will be reinforced; and objectivity in the cadastral activities will be ensured. Moreover, this will allow the Ministry of Natural Resources and Environment to strengthen its organization and allow the staff to keep pace with their responsibilities and tasks.

Secondly, in the organization of the land registration system, the unification of the land and other estates attached to land should be interested so as to set up a united system of registration for these properties.

The separation of competence with different registration systems for different real properties, especially the registration system for land use right and the registration system for ownership of residential homes and construction works, must be considered as a chronic disease that needs to be cured. The existence of these separate registration systems has caused problems for information management, causing a waste of human and financial resources of both the State and the people.

For political reasons and to avoid too sudden a change, the existing function of real estate management should be maintained, but the registration of land/real properties should be carried out by a single registration system. At the moment, Việt Nam is implementing this via the unification of the land right certificates (providing

only one type of certificate for both land use rights and assets attached to land) and the unification of registration procedures for all types of real properties carried out by the land use right registration office.

However, the path from a law to its implementation requires goodwill and coordination between the agencies concerned. The law should strictly define who is responsible for what, dealing with breaches of responsibility and erecting clear time-limits for the transfer of the functions of registration and the issuing of certificates to the land use right registration office, ensuring that it will improve its functions quickly, and be able to deal with the data and materials previously managed by other agencies.

In addition, the land use right registration office's functions include not only the recording of recognized rights to land and other real properties, but also the receipt of applications for registration of changes in land use. But they also need to be extended to the registration of limitations on land use rights (such as easements over or rights of passage through adjoining immovable properties) and registration of security transactions in order to increase the convenience of land users, real estate owners and other concerned parties.

In the long term, the legislators should consider whether to promulgate policies and laws which will allow the gradual unification of both the organization managing land registration, and those with the management of all kinds of real properties.

Thirdly, one can ask whether it is reasonable to maintain the separation of responsibility for land registration between the land use right registration offices at district and provincial levels on the basis of category of applicants. This is the more significant because, in many localities, there is still no district-level office of land use right registration and the Peoples' Committees at communal levels, together with the Departments of Natural Resources and Environment at district levels have to take the place of and implement the tasks falling on the land use right registration office. This separation is why the natural resources and environment agency wants quickly to establish land use right registration offices at all district levels.

This may be appropriate in some cases but it might present disadvantages as the following: (i) a separation of cadastral files; (ii) the sharing of investment resources for the registration system at both administrative levels; (iii) the slow transfer of information; and (iv) the complexity and risks involved in the connection, delivery and updating of land information between the two administrative levels, especially for transactions relating to two types of subject managed by two different managerial levels.

In a legal environment where all subject are equal to each other, what reasons can there be to explain why one subject has to register his rights at a lower administrative level, when the other has to do it at a higher administrative level?

With the growing tendency to computerize the land database system and the cadastral files, in the future, land information can be unified and managed by one authorized agency. The role of administrative borders in the management of land information will become blurred. The existence of a land use right registration office at each district-level unit will become unnecessary. Instead of continuing to spend human and financial resources on the establishment of land use right registration offices at district level (which will not be finished in a year or two even with adequate equipment and staff), it should plan for and make tests regarding the organization of land use right registration offices at one administrative level only.

The Swedish experience in having registration in the provinces and some municipalities has proved its value.

In the current Vietnamese conditions where the real estate market has developed and there are more and more transactions in land use rights and real properties, as well as more and more demand for registration and the updating of land information, the unification of registration activity at one administrative level with no distinctions drawn between subjects is appropriate. Which administrative level will be used will depend on administrative ability at each level and the state of the real estate market in the locality.

In fact, the managerial ability of most district and communal units in Hanoi is limited. That responsibility for implementation of land registration activity would be assigned to the provincial-level land use right registration office is more suitable. Moreover, it is also in harmony with the provisions of the 2003 Land Law (which might have been anticipated by the legislators) where the establishment of the land use right registration office at provincial levels was compulsory, while at district levels it was merely encouraged. For localities where there are many changes in land use or where it is convenient for the people and where registration via internet is not possible, it may still be necessary to have a land use right registration office set up at the district or inter-district level, with the local staff under the support of the provincial office.

#### ***5.2.2.2. For the staff***

For the effective operation of the land registration system, the human resource must also be interested. Although the law has provided the specific standards required for cadastral officials, there has not been a clear differentiation in the requirements for an official in charge of cadastral work – a professional activity of land management, and one responsible for registration – an activity of supplying a public service. An official, before implementing land registration in the land use right registration office, is often employed to work for the natural resources and environment agency. The professional ability of such official may not be adequate, especially when the use of computers and modern software is becoming more and more common. Moreover, besides the quality issue, the integrity and sense of

responsibility of officials also need to be attended to. To improve the quality of the staff in the land registration system, the following should be considered:

Firstly, although the requirements for cadastral officials have been provided, the standards for officials responsible for land registration also need to be defined. When the land database system is completely computerized, with most activities carried out via computer and involving complex software, registration officials will have to be able to use computers and a decent command of a foreign language may also be needed. The current staff of the land registration system has too many limitations. In addition to the organization of training and refresher courses, the Government could supply financial assistance to land registration staff attempting to improve their professional skills. They can be tested and assessed and the results used when promotion and raises of salary are in issue, as well as a condition for them to be assigned future tasks.

Secondly, the activity of staff recruitment needs to be reorganised, paying attention to the differentiation between the functions of an administrative official (responsible for land management) and a professional official (responsible for cadastre and land registration).

At the present time, most recruitment of staff in Viet Nam is carried out by competitive examinations. However, this takes place in too formalistic a way. There is not a fair competition between candidates who have already worked for the public authorities via the contract regime (they are just waiting for the recruitment examination to become a regular member of the personnel) and outside candidates who are not working as such employees. The exam is organized by a provincial-level council for official recruitment. The authorities which have demand on recruitment do not take part directly this council, so the exam contents is often inappropriate to evaluate exactly capacity of the candidates.

Even after passing, successful candidates may be assigned work which is not corresponding to their professional skills. They may also face obstacles in being promoted to a higher position because appointments have already been implemented on the following basis: the chief officer recommends certain staff, seeks the opinions of the party executive committee and then organizes a collective discussion ending with a vote by the leadership of the competent authority.

Still, the leadership does get to know the appointed staff, and democratization in staff appointment (albeit linked to some overriding from the collective) is guaranteed to some extent. But there are limits to the criteria with which staff assessment is measured and this democracy is within a fixed group. As a result, it cannot avoid the influence of subjective prejudices, and there is always the risk that an official will be promoted on the grounds of his long-term work despite any incapability. Lobbying and offering bribes for promotion also still occurs. All this will discourage staff from improving their professional skills and will dishearten officials,

especially the competent younger ones, who really would like to dedicate themselves to the State's service.

To minimize this, the publicly competitive examination is still one of the best ways, but its organization needs changes. The time for taking exams must be stated openly and frequently by means of mass information media, with specific information being given about the conditions, requirements and standards for each position that needs to be recruited. Whether people have worked for the public authorities or not, as long as they have the appropriate professional knowledge, they can take the exam. Besides the board of examiners, there should be a supervisory unit of the people including representatives of the People's Council, the people's local unions and local press agencies in order to monitor the publicity, transparency and objectivity of each phase in the examining process. Successful candidates must be appointed to the positions for which they had registered.

This requires that the agency responsible for exam organization should clearly state demand for recruitment at each administrative level, industry and office. Candidates, who are working at public authorities, will not be reappointed if they fail the exam. A positive result can be considered as entailing reappointment at the end of a tenure and/or promotion to a higher position.

Thirdly, enhancing the sense of responsibility and good character of the land registration system staff.

In recent times, after discovering and bringing a number of important cases to trial, the involvement of some officials is often discovered; or at least, errors and breaches by staff are always to be found. Many officials have been disciplined by way of reprimands, warnings, removal from office and even by being subjected to criminal prosecution. However, this only happens to matters that have been found out. But many cases and many corrupt officials still lie undiscovered. Further, people become discontented in the face of the indifferent and bureaucratic attitude, authoritarian behavior and tendency to harass of the less competent officials in many fields especially in the land area. This shows there is still a big gap in the sense of responsibility and virtuous character of the competent officials. It is a matter that cannot be accepted, especially among the land officials who are assigned to manage an asset that relates to all aspects of the society and should benefit both the State and the people.

Enhancement of the sense of responsibility may be an issue that is discussed much more than it is dealt with. In reality, wrongs here are rarely exposed. Dealing with breaches of responsibility, if it happens at all, is also neither strict nor clearly determined so it lacks deterrent effect. Rare are officials who acknowledge their error. Therefore, the State should focus much more on disciplining staff and correcting their style of work; people should not be reappointed indefinitely and even before their term of office, expires, officials with passive attitudes or who breach their duties should be removed from office. The leadership of public authorities should organize

periodic meetings of the people to listen to and record public opinion on the staff. Superiors should organize frequent periodic or unscheduled inspections of their juniors' implementation of their assignments so they can issue timely guidance which will help to deal with any problems.

Official responsibility is both a duty imposed by the Communist Party, the State and the people, and a legal liability provided for by law their work is carried out. This responsibility is not shown by way of fluent but vain speeches or promises before the people, or through the way they deal with breaches, but also needs to be shown by the way that the officials carry out and use their functions, powers and tasks which the State and the people have entrusted them with, as well as by their self-awareness and responsibility when they cannot fulfill their assignments. However, not every official can be completely live up to this.

Similarly, a virtuous character cannot be imposed by stuffing officials with theoretical lessons. Still, it can be aroused by good examples, public regimes and policies should provide staff with good living conditions as well as strict discipline. Salaries and bonuses should be appropriate to the tasks and responsibilities which the officials are in charge of; correspond to the expenses that they must make to cover their family expenses in the market economy. If so, the officials can feel secure and will keep their mind on their work. They will hold fast to their virtuous character even in the face of temptation.

Fourthly, there is a task of improving the professional quality of the staff in the land registration system.

In order to ensure the independence of the staff responsible for cadastre and registration, the Ministry of Natural Resources and Environment needs to take initiatives in managing its system. It does control resources and payments for cadastral officials. In the future, the land use right registration office will be self-sufficient and staff will receive their salary out of the fees earned from its information supply. In addition, the Department of Natural Resources and Environment at provincial level, can take the initiative in providing training so as to improve the professional level of cadastral and registration officials. The Provincial-level Department should make plans to coordinate with professional institutes or colleges and open retraining courses for cadastral officials, seeking to ensure that 100% of communal cadastral officials have at least an intermediate level of cadastral professional knowledge and meet all legal requirements.

Establishing a good information system between the land management agencies and the land use right registration offices and their staff is also a recommended reform. There must be frequent supervision and cross-reporting on land situation between the agencies for land management at district and provincial levels and the communal cadastral official or the land use right registration office. At least once a year, the Provincial-level Department of Natural Resources and Environment has to organize a training course to propagate new elements of land law, land policies

or professional knowledge needed for officials of cadastre and registration. The cadastral officials at communal level must be provided with sufficient legal documents relating to land as well as professional documents and magazines in the field of natural resources and environment to keep them up to date.

Holding frequent inspections is one way preventing and dealing with negative phenomena as land officials implement their assignments. Moreover, this can also help to discover and eliminate shortcomings in the professional knowledge of cadastral officials, as well as determine who the officials ripe for promotion are.

In addition, the Ministry of Natural Resources and Environment should pay attention to training cadastral staff in particular and land management officials in general by way of the reform of its training programs and their contents, which will serve to overcoming the existing limitations in the training area.

The training program should be focused on the basis of the demands imposed by the renewal of the land registration system, and the need for high quality staff as the system changes from the control of input quality to the management of output quality. The trainees will not improve from inconsistent training activities. These activities should encourage the unification of skills so as to produce competent individuals who will be encouraged to use their abilities to fulfill their assignment effectively. Further, with the development of modern information technology, they also need training in foreign languages and computers. The former because it will help facilitate a change from education to self-education; staff ought to be able to familiarize themselves with and learn to use modern technical equipment s.

However, to promote awareness of the renewal and modernization of the land registration system at all levels is not an easy problem. First of all, one can focus on change and enhancement of the quality of the staff at grassroots level. At this level, staffs deal directly with the requirements of land users and they can easily see the benefits of improvements to land registration work. Moreover, they are mostly young officials who have been recruited recently with limited competence. Therefore, they can be led to accept reform at the same time as they seek to improve their professional knowledge and skill.

Similarly, the policy of modernizing the land registration system can receive the support of central officials. The reason is that these officials are the persons who form and lay out the details of the reform policy after careful study and consideration of its benefits and the general need to strengthen the machinery. They will thus also be good examples and encourage the more junior staff.

The last and most difficult step is the reorganization of middle-level staff. These officials are hard to change because of peculiarities of their work. They contact the people only indirectly. They are afraid of losing the rights and benefits they are

enjoying after having worked for them for working years. Consequently, it is not easy for such officials to accept change<sup>448</sup>.

To reorganize and improve the quality of the human resources, the natural resources and environment agency needs to formulate long-term strategies. In each period of the development, it should make plans with specific steps appropriate to the changes at each level with a view to creating a simultaneous change throughout the system.

### ***5.2.2.3. Computerizing the land database and land information system***

The improvement of the real estate market, the need to have a competitive position in the Asian area and attract domestic and foreign investment in an open economy, as well as the negative influences of the world economic crisis have been putting pressure on the Vietnamese land registration system for some time. For the effective operation of this system, creating public confidence, and meeting the demand for transparency in the real estate market, it is necessary for the registration system database to be fully completed, unified and continually updated. Moreover, in order to keep up with the transactions in the real estate market, the application of information technology to an electronic database system based on digitalized registration is needed as it is now being applied in many other countries. Vietnam should grasp the opportunity to catch up with this tendency. This requires appropriate policies and plans for the conversion of the land registration system database from paper to digital form.

In Sweden, as mentioned above, land is divided into units within a clearly defined legal system. Most information about a unit of land is fully shown in a database network on the basis of a system of complete maps covering the whole country. As a result, the registration of real estate and the supply of real estate information can be implemented conveniently, easily and quickly, ensuring the effective operation of the land registration system.

Similarly, the Vietnamese system is based on the division of land into units called land parcels/units, which are set up in and shown via cadastral files, including cadastral database (cadastral maps and the various types of land register) and copies of land use right certificate (white certificates). However, because of the incomplete nature of the cadastral files throughout the country and the lack of cadastral maps in many localities, information on many land parcels/units is still unclear and nonspecific. The situation becomes more and more complex after changes in land use, causing further difficulties for the work of land management and registration.

Thus, it is necessary to investigate and re-assess the situation and gather information about the whole cadastral files as a whole first; ensuring that each land parcel/unit which had its cadastral file with a white certificate updated and archived at the land use right registration office and a cadastral map showing the land parcel/unit.

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<sup>448</sup> SEMLA, *ibid.* supra note 243, p. 22.

The shortcomings of the existing cadastral files and maps have to be eliminated through an investment in correcting, editing and updating files, to begin with at communal and district levels. The database need to be standardized when putting maps and cadastre into digital form. And it is also necessary to apply software to the land information system (at the present time, VILIS is the software being studied and subjected to pilot studies by the Ministry of Natural Resources and Environment).

The Ministry of Natural Resources and Environment should provides specific guidance on the process of updating and revising cadastral files in the localities.

Some specific matters of interest are the following:

Firstly, as for the land use right certificate, besides the original copy issued to the land user (the red certificate), there is still another copy which is archived in the land use right registration office (the white certificate) for public management. However, in most localities, the management tends to rely on the red certificate kept by land users. The issue and storage of copy certificates has been neglected. For example in ~~Đ~~Đng Nai province, because of worry about delays in the issue of red certificates, the authorized agencies granted red certificates to land users before making white copies for the cadastral files and land information database, or announcing relevant changes to concerned parties. In some cases, the copy of the land use right certificate is not signed by the People's Committee as provided for by the law. These activities become of secondary importance and are only carried out if the registration official has time<sup>449</sup>.

Although the lawful recognition of rights to land and assets attached to land has to be based on the white copy of land use right certificate, the importance of this copy certificate has not been fully recognized by registration officials. If it is lacking, as the original certificate will have been issued to the land user, the land use right registration office will have to use another type of cadastral files, called the cadastral register, in order to record information about land users and their land use.

The natural resources and environment agency and the registration officials of the land use right registration office should try to ensure that the white copy of the original certificate of land use right is made, recorded and updated in cadastral files before the red certificate is granted to the land user. On this basis, the cadastral register in the cadastral will not be needed and the burden of updating the database and record of cadastral files in the land registration process will be simplified.

Apart from these issues, it can be seen that in Việt Nam, the issue of land use right certificate is resolved. Apart from dealing properly with the white copy of land use right certificate for land management, the Ministry of Natural Resources and Environment should focus on the work of land registration and on constituting and

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<sup>449</sup> SEMLA, "Chiến lược và hướng dẫn hoàn thiện hệ thống đăng ký đất đai của Chương trình SEMLA", Section 2.2, February, 2007, p. 15.

improving cadastral database in all areas in order to create foundations for the establishment of a computerized system of land registration.

In addition to cadastral maps, there are some further categories of land register in the cadastral database, such as the cadastral register, the register of land inventory and the register of land change monitoring. The formulation, maintenance and copying of these registers is done separately at each administrative level which is rather cost-ineffective. So, to simplify registration activity, the Ministry of Natural Resources and Environment should consider cutting down on unnecessary registers such as the cadastral register; applying information technology; and initiating a united model electronic database which can contain all information about land users, land parcels, rights and benefits on land, together with changes in land use. In this way the updating of registered data can be implemented uniformly and at one time, though there will still have to be access at every administrative unit. The Ministry can also take a model as the Swedish Register of real estate registration which contains full information on real estate units, including data components supplied by a variety of agencies to go in a uniform form managed by the National Land Survey. This will help save human and financial resources while also supporting the making of white copies of land use right certificates in the land use right registration office.

Maybe in present conditions, such a unified model of electronic data cannot easily be applied at the local level. Still, it could be tested in some localities. Others will have to keep to the existing system of registers, though the content of these registers will still need to be adjusted to fit the unified form for the electronic database.

Secondly, in order to prepare for the choice and establishment of a digital system of land registration, the system should start using bar codes when archiving the cadastral files which have been recorded in paper form. It should also consider applying those techniques which support file management via scanning or photography which will assist when finally archiving the files in computer form. These could make it convenient for subsequently transforming paper into digital data. Even under Vietnamese conditions, bar-coded printers and scanners are available and would be appropriate for this work.

Thirdly, gathering and determining the equipments and software suitable for an electronic land registration system. To begin with, this electronic model should be constructed at the Ministry of Natural Resources and Environment in order that the central leadership can assess the model chosen. On that basis, they will on appropriate rightful policies and specific investment strategies both for pilot studies and for extending the computerized land registration system to the localities.

The recent application of information technology in land management, especially at the communal level, has helped cadastral officials so much in the following work: (i) inventorying and preparing statistics on land; (ii) looking up and reporting on changes in land use in their respective localities; (iii) discovering and

correcting errors in land registration implemented manually (such as giving the same identity card number to different land users, the same number to different land parcels, or the same number to land use right certificates emanating from the register of land use right certificate issuance); and (iv) lessening work pressure and improves productivity and quality.

It clearly proves the effectiveness of applying information technology in land management. It is also concrete evidence motivating competent officials and the authorized agencies to aim at the reform and establishment of an entirely modern land registration system.

Fourthly, besides the efforts towards the completion of cadastral files and the initial localized pilot application of information technology in land registration, the concept of setting up a system of land information database should also be considered, because the choice of the land information model has a close connection with the registration of land. One of the results of land registration activity is to store the data recorded from land registration and supply land information to those requesting it. The effectiveness of the land registration system will be reflected in the effectiveness and quality of the land database system.

As most land databases need a large capacity (especially for data on maps and land use planning) and information will be supplied by different agencies with different data patterns (e.g. cadastre, rights on land, land use planning and land prices), this requires that the land information system must have the possibility of integrating and standardizing land data in a united form which can contain, manage and guarantee data safety. In addition, this system must have the capacity to connect, exchange, update and supply information to other systems in industries and at the localities. It must be simple and convenient to teach about and apply at the local level, and be easy to use, with many types of information supplied many categories of information exchange (whether by internet access or by way of legal documents supplied directly in paper form). It should mesh with the technical infrastructure of data communication network, but still allow system upgrading and the extension of its functions. The system database must itself be upgraded frequently, to reflect changes in land use in a timely manner.

In order to guarantee these requirements, besides considering data-form standardization, the Ministry of Natural Resources and Environment should design an appropriate data communication network which can rapidly link central and local levels and be easy for users to access. This will be a difficult issue bearing in mind current limitations regarding information technology and equipment. So it will be necessary and useful to study and acquire the modern technology of countries such as Sweden that have already successfully established a computerized land information system.

It is still feasible for Vệt Nam to choose a data communication network suitable for its information system requirements. But it would be overoptimistic to

design and set up a data bank system capable of containing specific information about every parcel/unit of land throughout the country, which is situated at the centre and managed by the Ministry of Natural Resources and Environment as is done in the Swedish system. The integrated database could still be general and contain macroscopic information on land of the whole country. But because of the level of decentralization in Việt Nam, each locality will be managing the detailed database of each land parcel/unit pursuant to the united form; synthesizing reports and deliver data to the central system. When the data communication network is connected throughout the country, the Ministry of Natural Resources and Environment can aim at establishing and managing a host system at the centre which can receive information directly from localities and other relevant agencies thus shaping a single united land information network for the whole country. Users will only need to access this network to receive specific information about any parcel of land or land unit they are interested in.

Fifthly, as frequent changes in land use always lead to appearance of new types of information, the land information system must be updated and upgraded regularly. So, for systems operation, the human factor is very important. It requires, besides managerial staff, officials trained in information technology who are experts in the operation of the system and data administration. Based on their responsibility for the operation of the land information system, even if few in number, these officials must be trained in information technology, above all in the administration of information systems and databases; in using software on a geographical information system (GIS); in methods of map digitization; in editing and displaying digital maps; and in the method of processing a digital maps database.

Sixthly, another technical aspect relating both to the establishment of the land database and the land information supply and one which needs to be resolved is the identification of the fundamental land unit – the land parcel. The criteria which clearly define a registered unit of real property and allow information regarding it to be easily located is a issue that each system of land registration must resolve in a way that suits the technical requirements of the land registration system in operation.

In many countries (for example Sweden, Greece, Finland and Austria)<sup>450</sup>, beside Việt Nam, the fundamental property unit is identified via cadastral signs on the basis of a system of code numbers for real properties, including administrative-unit codes, area codes, subdivision codes and parcel numbers. Identifying and retrieving information about a real estate unit can be based on its code number system, the name or ID number of the owners/users of real property, or the location and address of the real property unit.

In Sweden, information about a registered land/real estate unit can be searched via many types of identification symbol as above. However, in Việt Nam, as well as the lack of information about each parcel of land or real property unit, there

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<sup>450</sup> Economic Commission for Europe, *ibid.* supra note 12, p. 34.

have been changes in such typical identification symbols as the address, name of street, or in its owners or users. If we are to establish a land registration system, we should pay attention to the identification of registered units on the basis of cadastral information. In the short term, general information about land users or real property owners, or the number of a land use right certificate which has been correctly recorded can be used for search purposes. The law should define clearly what should identify the registration unit, with a specific determination on scope of the right to use in both the horizontal and vertical direction, including the upper and lower surface of the used area and what any rights to real properties attached to land which are recognized as rights relating to the land. GIS technology and the techniques of three-dimensional spatial coordinates could be used to identify the geographical locus of real property, and then used in the search for data.

At present, local government should guarantee the stability of the determination of a real property location based on street name and real estate address even though these factors are often changed. Unification entails using fixed land identification symbols for the purposes of registration and data access.

Finally, it should be noted that information technology or computerization is just a tool supporting the reform process of the land registration and land information system. The question that how many computers, software or high-speed network will be invested is not the most important thing which needs to be implemented first. The simplification of administrative procedures for registration and changes in realization and professional knowledge of the officials are issues which should be given priority for implementation in order that the activities of management, registration and supply of land information can be done better and better, meeting the people's demands. When the administrative procedures become more and more simpler, the computerization will be implemented more easily and information technology will be an effective tool for administrative activities. If these issues cannot be taken place, the computerization will not be successful.

### ***5.2.3. Reorganizing some activities relating to land registration***

#### ***5.2.3.1. Promulgation of the Law on registration of land use rights and ownership of real property***

The effective operation of the land registration system calls for the enhancement of the land registration machinery and the application of information technology if Việt Nam is to modernize and set up an electronic land registration system. But there must also be specific legal provisions which regulate and encourage the implementation of these activities. It is a shortcoming in Việt Nam that, to date, there has been no uniform law on real estate registration. The result, as already shown, is the existence of many legal provisions regarding the registration of different real properties each managed by separate competent agencies. At present, there are only such uniform regulations regarding the form of the certificate for land use right,

residential housing ownership and ownership of other assets attached to land and the procedures for the issue of such certificates<sup>451</sup>.

Therefore, systematizing the legal provisions relating to land/real estate registration and land information management and supply by rejecting contradictory, overlapping and impractical provisions is the first priority. On that basis, it would help to form a system of legal documents on land registration that is itself uniform, simple and effective and supplement it with regulations on matters that have not yet been provided for.

Due to the reorganization of the land registration machinery and the transfer of functions and powers relating to the registration work, legal documents at the level of ordinance or decree should be promulgated first as they can quickly meet the demand for regulation of the legal structure. Then, legislators should review and study the implementation of these documents and only then draft and enact a unified stable law on land registration.

The National Assembly should be the one to do this and then promulgate a law on real estate registration which covers the following main content: (i) the registration procedure for both land use rights and assets attached to land; (ii) the content and scope of registration to include easements over adjoining immovable properties (such as access, supply and drainage of water, electricity transmission cables and communication cables) which have not yet been provided for; (iii) and just one competent body responsible for real estate registration, noting that the agency of natural resources and environment and the land use right registration office are assigned to manage this field under current laws, all this to ensure the stable operation of the registration system and avoid unnecessary competence disputes between the bodies involved.

Besides that, it will also be necessary to promulgate laws on information management and supply and prevent land information from being used for inappropriate purposes that damage the owners or users of real properties when access to information become easier within a complete information system.

There has to be specific regulations on the responsibility of and breaches by the agencies responsible for supplying different types of information to the land registration system, and by the agency liable for managing the registration system and providing information services to those requesting it; further regulations on the legal value for information in accordance with each type of information supply; regulations on the protection of information and security matters generally with information being classified as accessible, accessible subject to limitations, or secure when this is needed to guarantee the rights of the users or owners of real property; and, finally, regulations who has access to information at what level.

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<sup>451</sup> Stipulated by the Decree No.88/2009/NĐ-CP.

At first, there should be clear provisions regarding the duty to exchange land information and transfer land data to the registration system and these provisions should cover both the natural resources and environment agency and other agencies managing such data. It is necessary to specify a process for transferring, recording and updating information/datum with a time-limit and a prioritized ordering process. With such a process, Sweden has succeeded in being sure that the land information system is updated frequently; assigning appropriate responsibility to each competent body; and ensuring information is gathered and used completely and effectively.

The key factor to bear in mind when drafting and promulgating new laws is that, once enacted they must be strictly obeyed. The law should be but as brief as possible so that, when it takes effect, it can be implemented immediately, without waiting for detailed guidance (such as decrees or circulars). If it is necessary to have such detailed guidance the relevant ancillary documents must be drafted, enacted and proclaimed at the same time as the law comes into effect. If the agencies responsible for drafting legal guidance are late, they must be disciplined and made aware of their clear duty.

In addition, the reform of the land registration system will have legal connections to many fields, especially the fields of planning and land/real estate price determination. The legal provisions regulating these field have different backgrounds, so when enacting the laws on land registration, the legislators should carefully consider any such overlap so as to ensure that the totality of the legal provisions are unified and consistent. The specific regulations on the organization of the registration agency, the orders and procedures for registration and the supply of registered information and cadastral services need to be promulgated soon. At the same time the State should invest in the material facilities that will be needed, the database and the information system together with the completion of the issuing of land use right certificates and the stabilization and completion of land use planning and cadastral files.

Finally, the dissemination of public information about the laws, especially in the field of land registration, should be speeded up so the people can be clearly conscious of the benefits of registration and spontaneously seek for registration to protect their rights. This legal education should take many forms, such as holding conferences, training courses and examinations regarding the laws on land registration; popularizing the contents on the laws by means of mass media; putting laws in both Vietnamese and foreign languages (such as English, if available) on the internet for easy access and downloading; and writing a book in question and answer form, which is practical and easy to remember.

This is not only the duty of the land officials, but also the common responsibility of local government, its agencies and the people's unions. The coordination of all these agencies will be a factor that will help breathe life into the laws concerning land registration.

### ***5.2.3.2. Land use planning***

Land use planning is designed to assist the general development of society for the benefit of all of the people. This requirement shows that land use planning should allow for public participation especially that of the residents of the region subject to planning.

Assuring the reasonableness of land use planning requires unity among planners (from the central to the local level, from the country as a whole to each province, district and commune) in the process of the planning. Among departments at the same level, there is also need for collaboration in the supply of the needed information on land use so detailed calculation can be made for each target in the land use planning project.

The Swedish experience of land use planning can again serve as an example. Planning is the responsibility of local government outside the cities and of the larger municipalities where most of the professional planners are. Not all authorities at all levels need to participate and one should use the staff with the greatest expertise. For any level of authority to make and approve a plan wastes money and will be ineffective.

The feasibility of land use planning is not only based on the linking of both general and detailed planning but the making of the plan must also be able to predict the long term development. Land use planning must be made on the basis of and be itself the basis of other plans like that for economic and social development, the planning of agricultural and rural development, of urban construction, of industrial zones, especially when these also involve urban planning and residential land planning for workers. Land use planning is essentially linked to the industrialization and urbanization of the country and the protection of agricultural land and the environment. Once approved, all offices, organizations and individuals must follow and go with the plan.

Some provisions of the 2003 Land Law concerning land use planning need to be adjusted or corrected.

Firstly, Section 3, Article 29 of the 2003 Land Law states:

*“Where a land area is marked out in land use planning for recovery for the implementation of project works or conversion to other use purposes but the recovery or conversion is not conducted within three years in accordance with the plan, the State agency which is authorized to approve the land use planning must adjust or rescind the plan and proclaim this”.*

Most people hope that this regulation will settle the situation of suspended planning which is so nerve-racking and uncertain for residents. When planning a project, everything relating to it such as investment capital, land compensation and site clearance must be calculated correctly so the work can proceed. If there are any problems, the authority must promptly find reasonable solutions to them. In case of failure, changes to the plan or its cancellation must be done without delay which can

cause so much damage. Three years as set down in the Law is for the maximum allowable for settling all issues.

However, even with this regulation, what will happen when a planning issue cannot be solved also needs to be considered. Any changes or cancellations here are for the purpose of implementing the land use plan while the plan remains in force; it is not necessarily a question of another plan replacing the one that needs to be adjusted or cancelled. And if there are new following plans and these are still unfeasible, more damages will come to the land users than before.

The above regulation is actually for maintaining a plan schedule, not for settling the situation of suspended land use planning and protecting the right of the land users. It is important to stabilise their life, not letting them feel too worried or anxious while waiting for the implementation of the land use plan.

In addition, once the land use planning is approved, its term will be ten years but every five or ten years, all three administrative levels might have made changes or redone the plan. The cost of this is wasteful. So, the key factor is strengthening the responsibility of the planners to ensure the feasibility of any planning which is approved.

In Sweden, land use planning once approved must be strictly applied and not changed for any reason or interference except for special cases involving the national interest where the Government decides to make adjustments. So, the planners need to be aware of their important responsibilities and should work carefully when planning, not leaving matters in such a state that they need continuous change delay.

Secondly, the date for submitting land use planning also needs to be reconsidered. As per Article 22 of the 2003 Land Law, one of the foundations behind the land plan is the planning of the economic and social development of the government. This shows that the planning of economic and social development has to be done first if there is to be a basis for the land use planning. However, Section 7, Article 25 conflicts with this requirement as it provides land use planning must be submitted at the same time as the planning of economic and social development. Practically, the annual planning of economic and social development is usually dealt with by the end of the year or the first quarter of the following year. But the time for land use planning is always before the time of the determination of the investment planning for economic and social targets. So, it is difficult to base oneself on any economic and social development plan or even to be sure of the financing available for planned projects or the land use planning in general. And of course, the feasibility and stability of land use planning are never guaranteed in any event.

Thirdly, Section 1 Article 31 of the 2003 Land Law stipulates one of the grounds for issue a decision on land allocation, land lease or land use purpose conversion is land use planning or urban construction plans which have been approved by the competent authority. To some extent, this provision creates conditions where land management activities can be carried out even in case there is

only one of two types of the planning. However, in reality, it makes the competent embarrassed when the two plannings exist in the same area, especially in urban area, but they are contrary.

Moreover, a further issue is that the way land use planning is currently undertaken is very complicated. The time for the approval and issue of a plan as well as the procedure for adjusting it in conformity with new conditions and situations are usually long. These issues make land use planning in some cases fall behind the development plans in some other fields, especially urban planning and construction planning. When considering the relationship between the approved land use planning and general urban development planning, if there are differences, overlaps or conflicts because of this delay, it is very difficult to change things. This is because some contents of the general development planning of urban may have already been executed: roads may have been built or residential areas formed. As a result, land use planning does not fulfil its role of the assessment of land use and changes in it. One may have to ignore the land use planning in places where there has already been urban planning and development.

Land use planning is supposed to orient land use towards the future but, to date, land use planning has been in reality nothing more than the legalisation or adjustment of changes in land use that have already happened in reality. An example of this is the submission of land use planning for 2010 for the country which was sent to National Assembly in May 2004. At the same time, the land use plan for the 5 years from 2001 to 2005 was also submitted at this time even though there was only one year left before finishing the term. The relevant authorities and planners need to use a professional team if they are to complete the land use planning as scheduled.

Land use planning is the major task of the natural resources and environment agency, but due to its generality and broad nature, other agencies also have some relevant responsibilities. A project involving land cannot be completed without general information on the economy, society, the environment and the land, as well as the demands relating to land use. Therefore, the law must define the various responsibilities and deal with breaches of these by any of the agencies involved. This will need full information on the time requirements of the planner.

The management of land use planning involves not only making, completing and submitting a plan for approval but also the execution of the plan once approved. The responsibility for the management of this aspect should be clearly stated and connected with the management and land use responsibility of each administrative unit level from the commune to the province. Note that, the lower the level of a unit, the clearer, more detailed and more complicated the works will be. The responsibility for management at this unit is heavier too so it needs accurate and detailed regulation.

To prevent the planning in a region being effectively made by investors which happens when the authority relies too heavily on their report, it is necessary to establish a unit of local residents to follow and supervise the implementation of land

use planning. This unit will also update all information relating to the planning, the implementation of the schedule, any amendment and the like. Based on this, if any speculators take advantage of the planning to seek unfair profits or if any organizations or individuals do not obey the planning or transgress the land plan and spoil the plan, or delay the schedule; countermeasures and sanctions must be clearly stated, in full detail and then strictly implemented. Meanwhile, the responsibility of the People's Committee of the commune or ward must be strengthened in the treatment of all breaches of land law especially the illegal building of houses on agricultural land or on land approved for urban development.

The guarantee of the right of the people to have access to information and give their opinions on land use planning should also be considered and this is a big challenge due to the planners' dislike of making and implementing land use planning in the presence of local residents. Many officials do not understand the purpose of their presence and, in many cases, they think that getting the residents' opinion is difficult, takes time, may appear contradictory and will not help solve difficulties. So, the importance of collecting the comments of residents which may well lead to changing planners' mind must be emphasized. These issues are close to the life of the residents whose daily activities depend on the land. Although the land use planning is formulated by government with public coercive power, it may be implemented hard or even cancelled if the government is not interested in the balance of benefits from the planning and benefits of the majority of people based on consideration for the people's opinions and responses.

It is necessary to ensure that a project of land use planning has been commented on by residents before submitting it for approval to the relevant authority and also that it be discussed with the public after the receipt of approval. Collecting the comments of the residents must be seen as mandatory for land use planning at all administrative levels and not only for the detailed land use planning at the communal level.

To make sure that all the opinions on land use planning are worthwhile and appreciated, and to help people understand about the planning, the regulations need to be as detailed as possible and lay down a clear process for collecting the opinions, determine the costs of getting comments on the draft of the land use plan, strengthen public awareness of the role and purpose of land use planning, allowing it to express an opinion.

It must be remembered that most of the drawings are too difficult for the residents to understand. Therefore, when displaying the land use planning, to encourage the resident to give their comments on the contents, a detailed explanation should be used. On collecting peoples' opinions, there should be a professional staff in attendance who can explain and answer all the questions of the residents and popularise the ways and policies of the State and the purpose, significance and effect of land use planning projects. When receiving comments of the residents, the officials

should class them as acceptable or not and offer clear feedback. This makes for trust between the people contributing and the official and will lead to the improvement of the democracy. Full and open understanding of land use planning will be one of the best ways of providing effective supervision which will contribute to prevent land speculation by anyone who wishes to take advantage of the situation for his or her own benefit.

The authority responsible for land use planning can use the data and all the other facilities of the land information system in its activities and will thus save time, cost and labour when collecting and processing land information and it will be able to guarantee the accuracy and feasibility of the land use planning.

### ***5.2.3.3. Issue of land use right certificates***

As to the current situation regarding the form of the land use right certificate and the problems relating to the issue of such certificates, some following comments can be offered.

First, the hope inspired by the administrative reforms on the issue of land use right certificates cannot be rejected. To move from red, pink and other certificates issued at various stages to become a single certificate will be a good and useful thing. Assigning the issue of this to the natural resources and environment agency as decided by the legislative authority was a good thing to do. Since land is fixed, it cannot be moved though right over it can be the basis of a land transaction. As to houses and other constructions, though attached to land, they can to some extent be moved and definitely can be changed from time to time as the owner wishes. A land plot with trees can have a house built on it. A construction can become a completed building in several months. The range of things that can go on land is large and diverse. The State can not manage it on a “one size fits all” basis so that both the authorities and the people must follow the procedures for adjusting the certificate after every change to the property. But this land management should be based on a stable foundation on which the competent authorities can easily mark any changes. The opinion consideration that land, specifically the land parcel/unit is the starting point for managing the whole situation is correct and appropriate.

In addition, as the State owns the land, the right to use land is always based on decision by the competent authority allocating land or granting a lease. With the support of the natural resources and environment agency, the land use right certificate is merely recording and setting out in a more detailed way the rights defined by the above decisions. That is why the assignment of the responsibility for this issue to this agency is very suitable. When dealing with property on land, the owner only registers the relevant information without needing a new certificate.

The important thing is that the competent authorities specify the target of the reform so making for easier management and a satisfaction of the public’s needs. This also prevents disputes over competence between the agencies concerned. The matter is now proceeding and the new regulations need to be popularised. The Government

now needs to have a sound policy regarding the work and the staff of the Ministry of Construction and of the Ministry of Natural Resources and Environment as there must be good coordination between these two agencies, especially when the issuing of land use right certificates and the management of information about assets attached to land passes from the Ministry of Construction to the Ministry of Natural Resources and Environment so as to prevent any internal power struggles.

Secondly, it is noted that the main reason for the incompleteness of the land use right certificate issue project is that the form of certificate is still undecided which leads to many disputes. But solving the question of the certificate's form and determining the agency responsible for certificate issue and land management are only two parts of the bigger problem. What information should go in the form is as important and essential.

It is clear that although the Government proposes annual quotas regarding the issue of land use right certificates and many reforms have been enacted, not all the provinces can fulfill the plan. The reason is that, to issue a land use right certificate, the use of land must fit the approved land use planning and there must be a cadastral map. However, both detailed land use planning and the cadastral map in many localities have not been completed and do not cover all of the regions. Some of them are out of date or contain many mistakes. In other places, they are too brief or even non-existent. As a result, the local authority can not issue land use right certificates for everyone in the region and it usually takes a good deal of time to check and measure the land once more.

The State and local governments, thus, should now concentrate on completing the cadastral map system and perfecting land use planning as this will create the background within which the issue of land use right certificate can proceed smoothly.

Moreover, to land users, the certificate of land use right or housing ownership is only a paper that they like to have so that they can feel safe about their rights or asset ownership and be sure that they confirmed and protected by the State. But the land user without a land use right certificate is not illegally using land. The legal relationship to the land already existed and the State still recognized the land users' right even before they received the land use right certificate. It derived from a decision on land allocation or a land lease or from a transfer of rights to the current user from others. Issuing the land use right certificate is only crucial for procedural reasons.

Lastly, to support the reform, the modernisation of the land registration system and the building of complete and sound land information data, the natural resources and environment body and the land use right registration office need to guarantee that all of the information in the certificate to be issued will be stored and updated into the cadastral files before the land use right certificate is handed over to the land user. They also need to have a full set of copies of all land use right

certificate issued previously which they can add to the cadastral files. This will be combined with the scanning of both old and new certificates once archiving is done in digital form.

#### ***5.2.3.4. Determination of land price***

*In the relationship between the land price issued by the State and actual land prices in the market*

One can easily see that with existing regulations, the procedure is weak and the land price assessment poorly managed. Few officials have the responsibility for the work and many offices do the same work without any clear and detailed advice as to who is to do what. There is very few experienced and professional staff familiar with land price assessment and its management. As a result, the land price issued by the State is far from the market price and its grounds are dubious.

Currently, land price determination has also been handed over to the Ministry of Natural Resources and Environment. So there needs to be a single land assessing office to help the Government keep up with the land price situation in the market. This will allow the Government to adjust the state land prices in a reasonable way. It may also be necessary to encourage enterprises and individuals to help in the assessment of land prices provided they belong to a suitable professional organisation. Training staff so that they can meet the requirements of the State must also be attended to.

However, we note that, in practice, when we have a land plot and a property attached to it, a transaction normally defines a common price for the whole ensemble and not separate out the price of each element. But the Ministry of Natural Resources and Environment is only responsible for pure land prices. The assessment of the price of other types of real estate belongs to the Ministry of Finance. So, to unify the overall price assessment of real estate as well as the supply of information on real estate price to the land database, the Ministry of Natural Resources and Environment and the Ministry of Finance need to have their respective rights and responsibilities defined in detail by the law and they will further need to support each other in a coherent manner. Each agency should want to promote a successful land registration and information/ real estate system.

*In the relationship between the land price issued by the State and the rights and financial obligations of the land user*

The land users often have a tendency to ask for a high price when land recovery is in issue but low prices and correspondingly low payment of tax when executing their duty to the Government. In order to solve this question, one should have a general view of all matters involving the State land price.

As stated in Section 4, Article 56, the 2003 Land Law, the land price determined by the Provincial Peoples' Committee will be used to calculate:

- (i) Land use tax;
- (ii) Income tax payable on assignment of land use rights or other real property;
- (iii) Land use fees and land rent with respect to allocation or leasing of land without an auction of land use right or other tendering for projects which will use land;
- (iv) The value of a land use right for the allocation of land without the collection of land use fees;
- (v) Registration fees;
- (vi) Compensation payable by persons in breach of the laws on land causing any damage to the State;
- (vii) Compensation when the State recovers land

Most of the cases related to the land price issued by the State have a connection to the land users' financial obligations. The only other case their right to receive compensation when their land is recovered by the State. So, bearing these two cases in mind, should they expect the State to fix the land price high or low, close to or far from the market price?

If the State were to fix the land price close to the market price, land users could not afford any of the obligations duties mentioned above. As a result, their right to be granted a land use right certificate, especially in the case of the poor, would not be of any real value to them.

It is obvious that the above financial obligations of land users are applied all over the country in all cases where there is use of land, but the issue of recovery and the need to offer compensation for land taken in those major projects where the Government find it is necessary to develop so as to benefit large sectors of society only affects a few people. So is it reasonable to favour those who seek compensation but forget all of the land users who must then face large financial obligations?

Guaranteeing compensation for those who lose their land but a high level of compensation can not be accepted in all cases as this will have an impact on all the financial obligations of land users in general and the State itself. Many projects in which the State has invested cannot proceed on time because of a lack of capital for compensation and land clearance. The important thing is stabilising the land users' life after recovering their land which will involve resettlement, creating jobs, supporting production and the like. There thus needs to be a resettlement area, a detailed plan for changing peoples' careers, making the lives stable and creating jobs before paying the compensation and clearing the land. Most projects go in the opposite direction which makes life more difficult.

When land users lose the land where they have lived for a long time and have to move to another place, it means that they must change their accommodation,

their work, their familiar environment and other aspects of their old life. Even though a state price close to the market price would ensure adequate compensation, the land users themselves would still have to face all difficulties and changes which the Government and the investors can not provide for and of course, their sorrow affecting anyone who has their land recovered. On account of that, most land users whose land is recovered usually feel at a disadvantage. Consequently, it is unavoidable that they often try to claim high compensation and create obstacles for the project.

The State's determination of the land price, in particular the price for compensation when recovering land, must be considered carefully so as to see the impact on all the relevant rights and duties of land users. If land users only focus on one purpose, they may get a negative end result. The State also needs to consider every case involving the application of the land price. One price applied to all cases cannot be reasonable and troubles will arise without some flexibility.

*In the relationship between the state land price and the land registration system*

Although the land data is the key element of the land registration system, the data must be based on the available data from the cadastre and land use planning. All issues concerning land use purpose, type of street, location of land plot, land border and so on which affect land prices must first be defined on the cadastral files and land management maps (such as the land use planning map, the administrative map, and especially the cadastral map). The accuracy of any determination of land price depends on the exactness of the above information which requires that the agency responsible for land price determination carefully and regularly update any changes in land use in the cadastral information system.

Currently, most of the cadastral files are in paper form and derive from old maps with old coordinates. Each agency at each administrative level has different and incomplete ways of storing cadastral files. As a result, when using this information for land assessment, the natural resources and environment agency needs to compare it with the new maps made by modern digital technology and the information in reality to ensure accuracy in the land price determination.

All these amendments, the completion of land use planning and the cadastral map and the modernisation of the land information system by way of digital technology must all be implemented at the same time.

In addition, the professional determination of the land price as such involves many difficulties and various methods of calculation. Once the digitalization of the land database will be successful in the near future, , it is necessary to find a way in which information technology can be applied to determining the land price assessment which would shorten the time, needed, reduce the cost of this activity and ensure that the State land price will keep up with the fluctuations in the market price. The Ministry of Natural Resources and Environment, with its responsibility for

establishing and managing the land information system and the cadastral database, should be able to link an electronic model of land price determination with the system of land registration and information. This would use data from the system in the price determination and then feed the land price data back into the system itself.

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## CONCLUSION

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The Vietnamese Government has in recent years made many efforts to improve the land registration system and promote an electronic system for land registration and information. The reason is that it has acknowledged the importance of land registration for the transparency of the real estate market, for aiding the capital mobilisation needed to speed up economic development, stabilise social life, and limit the too-frequent land disputes. In addition, the Government has also received supports for this project from several countries. Based on this, the application of information technology, the use of land registration management software and the spread of computerised updating of changes in land use have been tested in certain regions. For example, the SEMLA programme sponsored by the Swedish Government was implemented in Vũng Tàu, Đồng Nai and Hà Giang among others. An assessment of these efforts will help the Government adjust them before extending them to the whole country. Meanwhile, changes to the law will be the first step in creating a foundation for the modernisation of the land registration system.

The research in my **“TWO LAND REGISTRATION SYSTEMS – THE LAND LAW OF VIỆT NAM AND OF SWEDEN ”** attempts to analyse the laws currently governing land registration in Vietnam and their application to the organisation and operation of the system.

An understanding of land registration and the factors needed in any registration and information system are what my research seeks to clarify. After reviewing the system generally, it can be seen that any land registration system involves both “cadastre” and “land registration” (or “title registration”). In a registration system, there are four basic elements making up a registered object, the parcel of land, which all countries expect to use namely, geometry (physical information), land rights (legal information), land use purpose (shown via land use planning) and land value. And of course, to ensure the effective operation of the land registration system, many further requirements are called for, such as accuracy and security; clarity and simplicity; timeliness; fairness and accessibility, low cost and sustainability.

Acknowledgement of these basic issues gives an overall idea of any system of land registration and indicates the initial targets which must orientate any reform of the Vietnamese system.

After considering of the development of the land registration system and its operation in practice, it can be seen that despite its achievements, there are still many problems with the Vietnamese system, namely:

(i) The organisation of the registration machinery is not yet sufficiently stable and needs to establish a clear overall view of its structure, obligations and function;

(ii) Many members of the staff of the registration system still lack professional knowledge, above all regarding information technology. Further, there is unequal capacity between staff at different administrative levels. Many are incapable of operating a modern computerised system. Further, some officials still behave in a dishonourable and corrupt manner;

(iii) Technical equipment is out of date and inappropriate for the application of modern information technology and software to the management of land registration and the updating of changes;

(iv) Internal communications are not strong enough to meet the demands imposed by both registration and the supply of electronic and digital information;

(v) Operation methods have been performed manually in the past. Cadastral files have been archived in paper form and contain many errors. There has been overlap and differences in cadastral data have been archived at agencies at different levels which causes further difficulties and will increase the time needed for digitalizing;

(vi) Much necessary information is still lacking such as the cadastral map, land use planning and land price data as these activities have been incompletely implemented;

(vii) The budget supporting the reform of the system and the application of information technology is very low. As a result, work cannot be done simultaneously on the whole of land registration system in all localities.

The above mentioned difficulties and limitations have reduced the effectiveness of the land registration system, obstructed the transparency of the real estate market and the protection of land users' rights and finally, hindered the use of the land's potential for assisting in the growth of the economy. With the current focus on constructing an e-government system including computerization of the land registration and information system, it is obvious that, without reform, the Vietnamese land registration system will not be able to achieve this.

Beside analysing and assessing the current situation of the registration system, a review of the experience of some other countries, especially those where a land registration system have been built successfully, is also done. This will help in selecting suitable measures for the improvement of the land registration system in Việt Nam. The research tends to lean on the Swedish experience, as this is a country with a land registration and data system which is considered as one of the most effective in the world. Many ideas occur to one when looking at the machinery, organisation and operation of land registration activity and the application of information technology in Sweden. And with the help and sponsorship of Sweden, some of these solutions have been used in pilot studies in certain regions of Việt Nam.

Obviously, besides the technical issues, it is necessary to change the laws and reorganise the structure of the registration machinery and registration activities.

These changes are also needed to support the effective application of information technology to the land registration system of Việt Nam.

After a comparison of the two land registration systems, acknowledging the existence of the advantages and disadvantages of the Vietnamese one, some recommendations which may contribute to the reform of the land registration system are suggested.

General recommendations are given first. They focus on the purposes and requirements of the Vietnamese land registration system and consider that the system has to contribute effectively to the management of the public administrative sector, especially in the field of real estate and the regulation of the real estate market. The system also guarantees the ownership and use of land and other benefits to all relevant subjects; as well as ensuring the transparent operation of the real estate market and social stability. If one wants to improve the land registration system, issues relating to the source of investment budget, the support system establishment, and the responsibility for system management and operation which can be drawn from the execution of projects in many countries and in Việt Nam itself, should also be considered. A comprehensive and complete evaluation of current Vietnamese conditions and situations, especially the registration machinery and activity, should also be engaged in.

After this, some more detailed recommendations are given.

For the registration agency, it is essential to strengthen the organisation of the land registration machinery through the unification of the agency responsible for registration of land and assets attached to land and the agency liable for real estate management. The rights, responsibility and independence of the agency responsible for land registration should be reinforced in order to limit unnecessary interference by the administrative authorities in. The registration function and the function of administrative management and cadastral activity implementation should be clearly demarcated. The land registration agency should be organized on the basis of regional competence, not the types of land user: this would streamline the registration machinery, reduce and simplify administrative procedures, and ensure equity and convenience for applicants.

For the staff of the land registration system, it is essential to change their attitude, and improve their professional abilities and ethics through regulations on standards and knowledge; reorganization of training and recruitment; and good benefits couple with on inspection and strict and clear sanctions.

For the system of land information, the core project has to be to unify, complete and digitalize the database. It is important to note that the administrative procedures and registration process have to be simplified, while the registration machinery also has to be reinforced so that it has enough capacity to meet the demands of operating the computerized system. When that is in place, digitalization

and the computer will become effective tool for the establishment and operation of a modern land information system.

All incomplete data in the cadastral files, such as cadastral maps and other information, need to be completed. The digitalization of cadastral files should be organized properly. The software suitable for information integration and appropriate models of land information should be chosen. And this issue should not be implemented in a hurry and, to begin with, on a large scale. The Government does not have enough budgetary means to distribute resources so as to be able to install facilities in all localities at the same time. It should be implemented in a few chosen localities allowing for the drawing of experiences and the choice of the best methods, after which the results can be applied all over the country.

Obviously, the responsibility for establishment, management, operation and maintenance of the land registration and land information system needs to be assigned uniformly to one professional agency which seems to have enough capacity. The Agency of Natural Resources and Environment and its Land Use Right Registration Offices have been established for this purpose and seem to be operating rather effectively. It is also important to regulate the co-ordination of all concerned agencies in harmoniously supporting its management activities and supplying real estate information to it in a timely way so that the land registration and land information system can be set up successfully.

All these requirements can only be guaranteed through enforceable regulation by laws. Accordingly, the legal provisions on land and real estate registration must be amended and adjusted appropriately. The systematization of the regulations on real estate registration should be done first precisely in order to set up a unified legal background for land registration activity. There must be regulations on responsibility for information delivery and transmission between the relevant agencies; regulations on data processing and update; regulations on the information supply and its protection; and an expansion of registration's scope. Further, all of these should come to effect at the same time on the basis of providing comprehensiveness and unification without overlap and contradiction.

All activities related to the land registration system must also be improved.

The link between land use planning and other plans such as the socio-economic development plan, the construction plan and the urban development plan, should be considered. The right to information and the participation of the people in the land use planning process also needs to be paid attention to.

For the land use right certificate, the administrative procedures for the issue of these certificates need to be improved and simplified to speed up the process and ensure that the legality of each land parcel/unit will be guaranteed. This will be on the basis of the unified form for both the land use right and the assets attached to land which has been in force since August 1<sup>st</sup>, 2009. Improvement here will consolidate the

cadastral files and increase the number of lawful real properties into the real estate market.

Land evaluation needs to be improved by the establishment of a land evaluation agency and the finding of solutions to overcome the gap between market price and state land price. However, this should be considered carefully since it is very difficult for the Government to make sure the stipulated land price keeps up with the market price. The important thing which needs to be done first is a clear determination on the cases to which the state land price should be applied.

Any result achieved in the fields of land use planning, land use right certificate issue and land evaluation must be regularly and continuously updated in the land registration system to ensure the continuing completeness of the information.

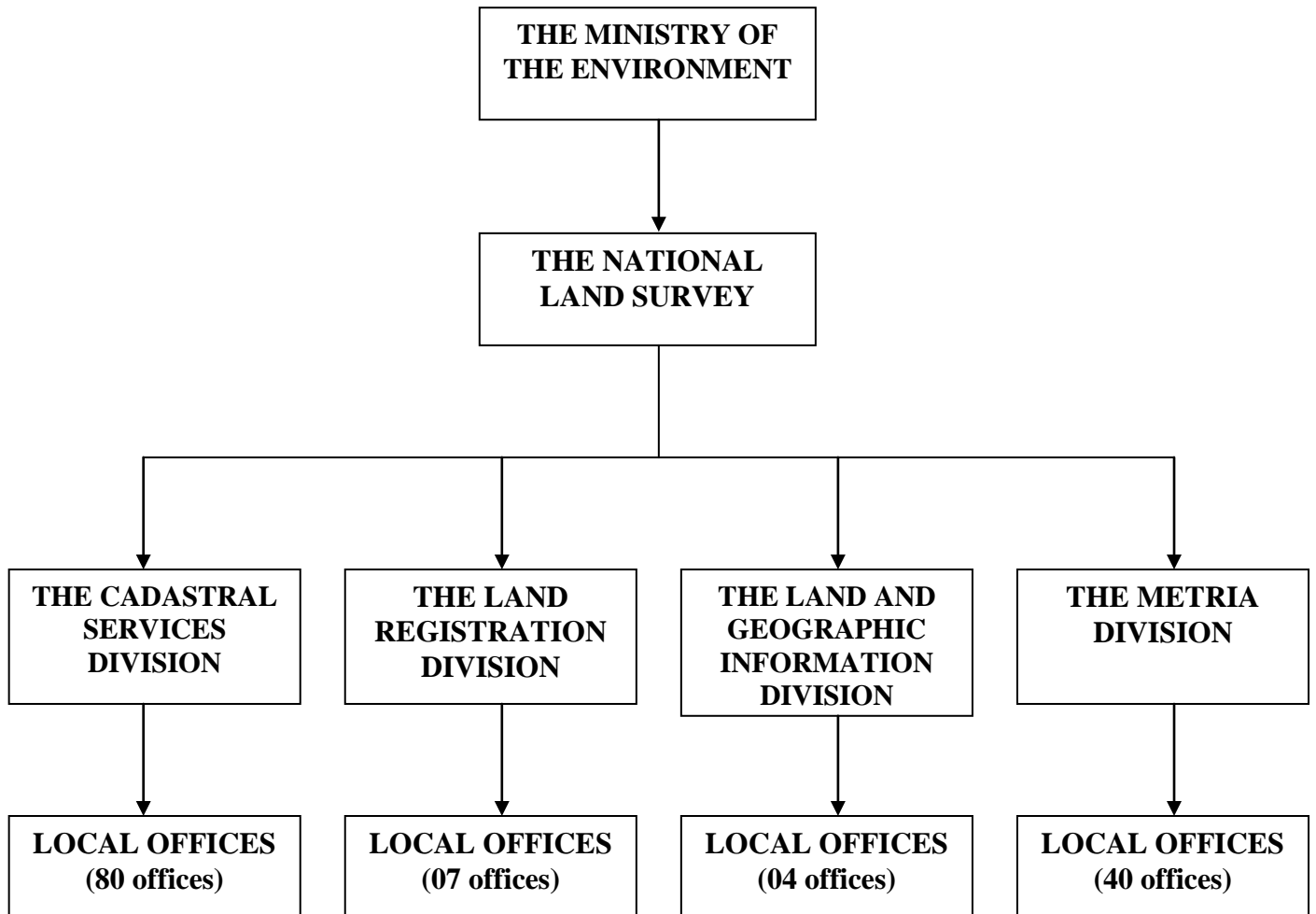
These recommendations touched on many fields which have an impact on each other and thus the changes need to be implemented synchronously. Reform cannot be undertaken in a day but needs time and effort at all levels of authority, the key role being held by the Agency of Natural Resources and Environment though acting in concert with other relevant agencies and the public.

With limited time available, the author is not able to study or suggest improvements to all aspects of the land registration system. My research will, therefore, almost certainly contain mistakes or shortcomings. The author would be happy to receive comments, from scholars and anyone else. The overall purpose is to contribute to the modernisation of the Vietnamese land registration system on the basis of the application of information technology and the building of a stable organisation with staff having enough intellectual capacity to operate the system. Success in establishing an electronic land registration system will be an important factor which will help the Government and the land user develop the potential of land as much as possible and achieve the many benefits that will arise from this.

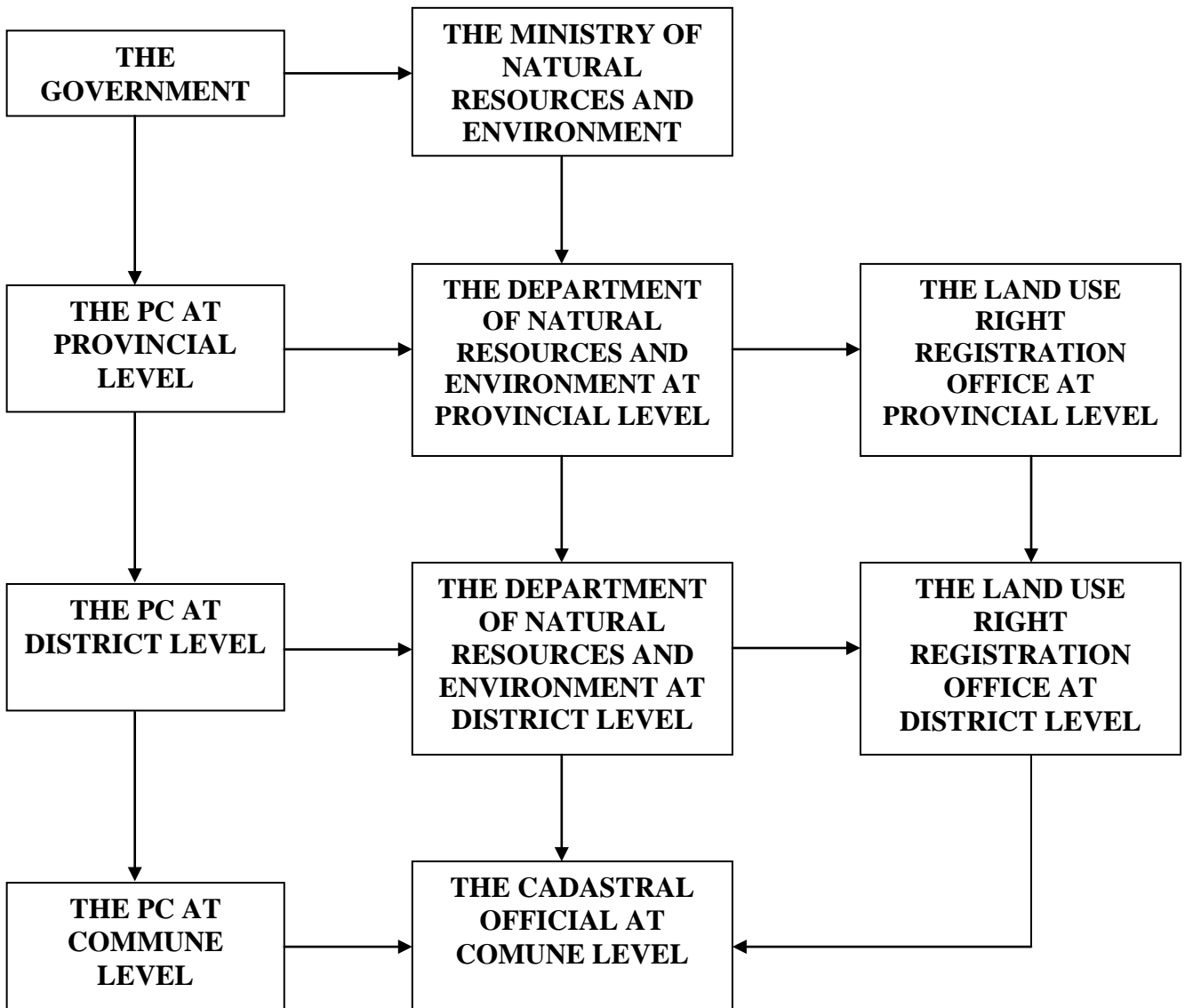
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**APPENDIX A**  
**LIST OF FIGURES**

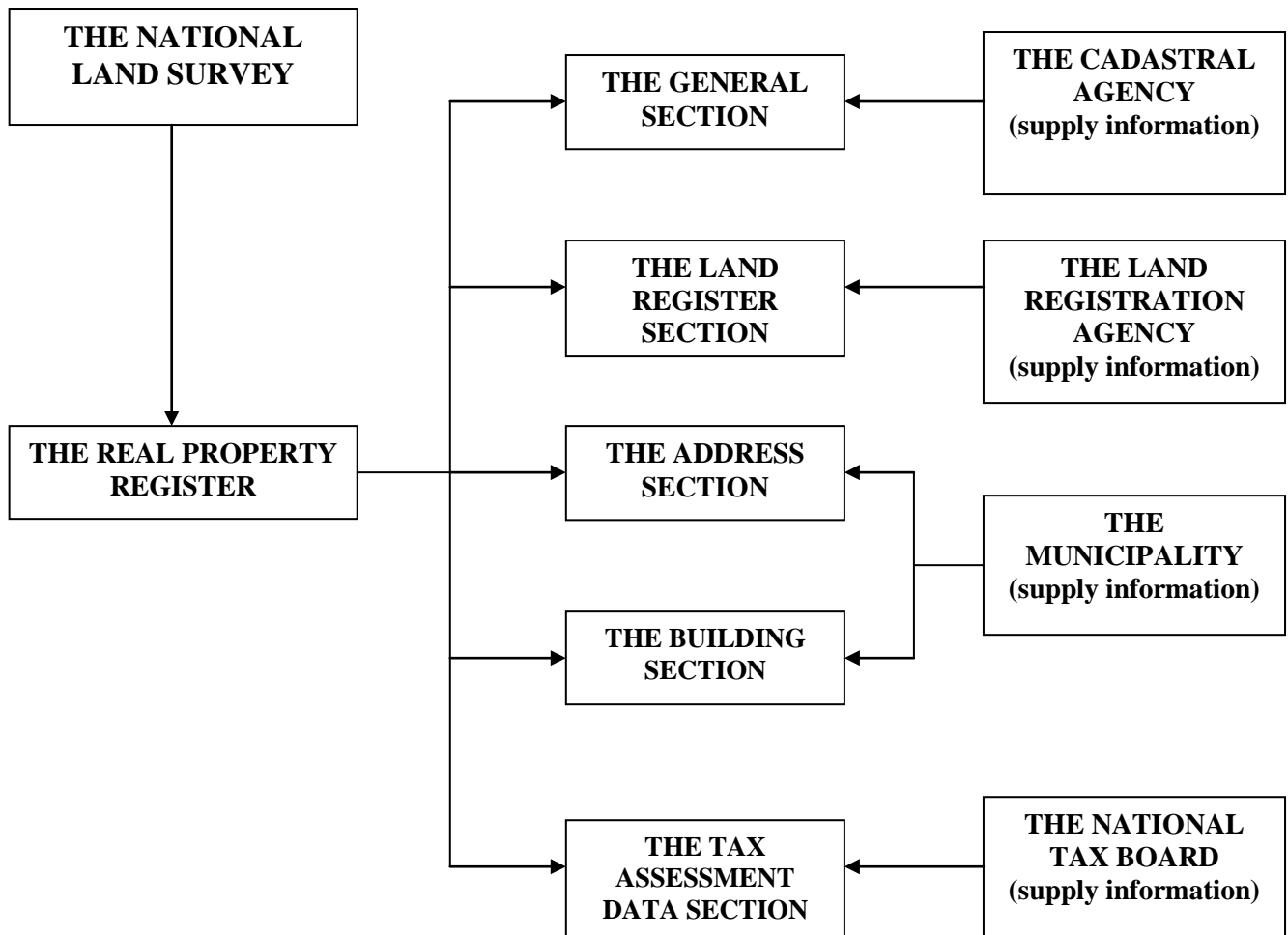
**FIGURE 1. THE MACHINERY OF LAND REGISTRATION SYSTEM IN SWEDEN**



**FIGURE 2. THE MACHINERY OF LAND REGISTRATION SYSTEM  
IN VIỆT NAM**



**FIGURE 3. THE FIGURE OF THE REAL PROPERTY REGISTER IN SWEDEN**



## FIGURE 4. MODEL OF REAL ESTATE INFORMATION IN SWEDEN

### 4.1. GENERAL INFORMATION ON REAL ESTATE

Allmän fastighetsinformation (General information on real estate)

05 June 2008 (Date of extract)

<b>Fastighet (Real estate)</b>			
<b>Beteckning (Designation)</b>	<b>Senaste ändringen i allmänna delen (Latest change in the general part)</b>	<b>Senaste ändringen i inskrivningsdelen (Latest change in the land register part)</b>	<b>Aktualitetsdatum i inskrivningsdelen (Land register updated until)</b>
Lund Winstrup 6 Nyckel (Key): 120067783	1999-02-04	1998-12-21	2008-06-03
<b>Församling (Parish)</b> Lunds Domkyrkoförsamling			
<b>Adresser (Addresses)</b>			
Address <a href="javascript:toggleAdressKoord()">javascript:toggleAdressKoord()</a>			[+]
Sankt Petri Kyrkogata 7 222 21 Lund			
Winstrupsgatan 11 222 22 Lund			
<b>Läge, karta (Situation, map)</b>			
<b>Område (Parcel)</b>	<b>N</b> (SWEREF 99 TM) <b>E</b> (SWEREF 99 TM) <b>N</b> (Lokalt: L) <b>E</b> (Lokalt: L)	<b>Registerkarta (Register Index map)</b>	
1 6174868.1	386340.5 75288.9	77097.7	LUND
Anmärkning (Note): Primärkarta (Primary map): 355 19			
<b>Areal (Area)</b>			
<b>Område (Parcel)</b>	<b>Totalareal (Total area)</b>	<b>Därav landareal (Land area)</b>	<b>Därav vattenareal (Water area)</b>
Totalt (Total)	678 kvm (678 square metres)	678 kvm	
<b>Lagfart (Title)</b>			
<b>Ägare (Owner)</b>	<b>Andel (Share)</b>	<b>Inskrivningsdag (Date of registration)</b>	<b>Akt (Archive number)</b>
556212-1912 Aug Lundbergs Entreprenad O Förvalt AB Mårtenstorget 10 223 51 Lund	1/1	1991-06-03	10148
Köp (Buy): 1991-03-08			
Köpeskilling (Purchase price): 10.000.000 SEK, avser hela fastigheten (refer to the entire property).			
<b>Anteckningar (Notes)</b>			
<b>Innehåll (Contents)</b>	<b>Inskrivningsdag (Date of registration)</b>	<b>Akt (Archive number)</b>	
556049-3750 AB calcaneus, konkurs	1991-01-15	1006	
<b>Inteckningar (Mortgages)</b>			
Totalt antal inteckningar (Total mortgages): 13			
Totalt belopp (Total amount):			20.900.000 SEK
<b>Nr (No.)</b>	<b>Belopp (Amount)</b>	<b>Inskrivningsdag (Date of registration)</b>	<b>Akt (Archive number)</b>
1	1.500.000 SEK	1982-11-03	11178
2	300.000 SEK	1982-11-03	11180
3	200.000 SEK	1982-11-03	11182
4	500.000 SEK	1982-11-03	11184
5	500.000 SEK	1982-11-03	11186
6	1.000.000 SEK	1982-11-03	11188
7	500.000 SEK	1986-11-05	26928A
8	1.500.000 SEK	1986-11-05	26928B
Anmärkning (Remark): Utbyte (Exchange) 93/3843			

Nr (No.)	Belopp (Amount)	Inskrivningsdag (Date of registration)	Akt (Archive number)
9	8.000.000 SEK Anmärkning: Utbyte 93/3843	1989-03-02	4469A
10	4.500.000 SEK Anmärkning: Utbyte 93/3600	1989-03-02	4469B
11	300.000 SEK Anmärkning: Utbyte 93/3600	1990-03-02	2323A
12	1.200.000 SEK Anmärkning: Utbyte 92/13090	1990-03-02	2323B
13	900.000 SEK Anmärkning: Utbyte 92/13090	1992-10-07	13093

### Inskrivningar (Registrations)

Nr	Inskrivningar (Registration)	Inskrivningsdag	Akt
14	Servitut källarutrymme, värmeväxlare mm	1998-12-21	10545

### Rättigheter (Rights)

Redovisning av rättigheter kan vara ofullständig (Expression of right may be incomplete)

Ändamål (Purpose)	Rättsförhållande (Right relationship)	Rättighetstyp (Right type) (concerning)	Rättighetsbeteckning (Right designation)
Källarutrymme, Last e, värmeväxlare mm	Avtalsservitut	berörkrets <a href="javascript:showRattigheter('120067783','null')">javascript:showRattigheter('120067783','null')</a>	12-IM3-98/10545.1

### Planer, bestämmelser och fornlämningar

#### (Plans, Regulations and Ancient monuments)

Planer (Plans)	Datum (Date)	Akt (Archive number)
Tomtindelning (Subdivision): Gråbröder	1878-08-10	1281K-C2010:KB
Detaljplan (Detailed plan): Winstrup	1989-06-15	1281K-505:B1238
	Genomf. start: 1989-07-18 (Implemented. Start)	
	Genomf. slut: 1994-07-17 (Implemented. End)	

#### Fornlämningar (Ancient monuments)

Fornlämning (Ancient monument)		1298:0073:0001
		10129800730001
	N (SWEREF 99 TM)	E (SWEREF 99 TM)
	6174562.4	386441.9
	N (Lokalt: L)	E (Lokalt: L)
	74985.3	77205.5

### Taxeringsuppgifter (Tax assessment information)

#### Taxeringsenhet (Tax assessment unit)

Hyreshusenhet, bostäder och lokaler (Apartment, commercial and residential premises) (321) 253634-7  
Omfattar hel registerfastighet (Comprises the entire registered property)

Taxeringsvärde (Tax assessment value)	därav byggnadsvärde (Building value)	därav markvärde (Land value)	Uppgiftsår (Year of taxation)
24.690.000 SEK	20.183.000 SEK	4.507.000 SEK	2007
Taxerad ägare (Taxed owner)	Andel (Share)	Juridisk form (Legal form)	Ägandetyp (Types of ownership)
556212-1912 Fru Görvel AB Mårtensstorget 10 223 51 Lund	1/1	Övriga aktiebolag (Other companies)	Lagfart (Title)

### Åtgärd (Actions)

Fastighetsrättsliga åtgärder (Legal actions)	Datum (Date)	Akt (Archive number)
Tomtmätning (Land measurement)	1919-11-14	1281K-3125
Tomtmätning	1930-06-14	1281K-3707

### Tidigare beteckning (Former designation)

**Beteckning (Designation)****Omregistreringsdatum  
(Date of new registration)****Akt (Archive number)**

Lund Gråbröder 6

1984-09-05

1281K-438:B1179

M-Lund Gråbröder 6

1983-03-01

1281K-8282

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## 4.2. TAX INFORMATION

Taxeringsinformation (Tax information)  
05 June 2008 (Date of extract)

### Fastighet (Real estate)

#### Beteckning (Designation)

Lund Winstrup 6

Nyckel (Key): 120067783

### Taxeringsuppgifter (Tax assessment information)

Taxeringsenhet (Tax assessment unit)	Uppgiftsår (Year of taxation)	Taxeringsår (Year of assessment)
---	----------------------------------	-------------------------------------

Hyreshusenhet, bostäder och lokaler (321) 253634-7  
(Apartment, commercial and residential premises)

2007

2007

Omfattar hel registerfastighet

(Comprises the entire registered property)

Taxeringsvärde (Tax assessment value)	därav byggnadsvärde (Building value)	därav markvärde (Land value)
--	---	---------------------------------

24.690.000 SEK

20.183.000 SEK

4.507.000 SEK

Taxerad ägare

Andel

Juridisk form

Ägandetyper (Types  
of ownership)

(Taxed owner)

(Share)

(Legal form)

Lagfart

556212-1912

1/1

Övriga aktiebolag

(Title)

Fru Görvel AB

(Other companies)

Mårtenstorget 10

223 51

Lund

Värderingsenhet bostadsmark (Valuation unit, land for dwellings) 008128256.

Taxeringsvärde (Tax assessment value)	Riktvärdeområde (Value zone)
--	---------------------------------

2.439.000 SEK

1281026

Byggrätt ovan mark

Klassificering av  
byggnadsrätt

Riktvärde byggrätt  
(Value of allowed  
construction area)

(Allow to build on ground)

(Classification of  
allowed construction area)

642 kvm

Uppgift saknas

3.800 SEK/kvm

Värderingsenhet lokalmark (Valuation unit, land for premises) 008129256.

Taxeringsvärde	Riktvärdeområde
----------------	-----------------

2.068.000 SEK

1281026

Byggrätt ovan mark

Klassificering av  
byggnadsrätt

Riktvärde byggrätt

940 kvm

Uppgift saknas

2.200 SEK/kvm

Värderingsenhet bostäder (Valuation unit, dwellings) 008126256.

Taxeringsvärde	Bostadsyta (Dwelling area)
----------------	-------------------------------

2.983.000 SEK

282 kvm

Årtal för hyresnivå

Hyra

Under byggnad

(Year for rent)

(Rent)

(Under construction)

300.000 SEK/år (SEK/year)

Nej (No)

Nybyggnadsår

Tillbyggnadsår

Värdeår

(Year of construction)

(Year of extension)

(Year used for valuation)

1929

2002

1992

Värderingsenhet lokaler (Valuation unit, premises) 008127256.

Taxeringsvärde	Lokalyta (Non-residential area)
----------------	------------------------------------

17.200.000 SEK

1 513 kvm

Årtal för hyresnivå

Hyra

Under byggnad

2.235.000 SEK/år

Nej

Nybyggnadsår

Tillbyggnadsår

Värdeår

1929

2002

1992

### 4.3. ADDRESS AND OWNERSHIP INFORMATION

Adress och ägarinformation (Address and ownership information)  
05 June 2008 (Date of extract)

#### Fastighet (Real estate)

Beteckning (Designation)	Senaste ändringen i allmänna delen (Latest change in the general part)	Senaste ändringen i inskrivningsdelen (Latest change in the land register part)	Aktualitetsdatum i inskrivningsdelen (Land register updated until)
Lund Winstrup 6 Nyckel (Key): 120067783	1999-02-04	1998-12-21	2008-06-03

#### Adresser (Addresses)

Adress [javascript:toggleAddressKoord\(\)](javascript:toggleAddressKoord()) [+]

Sankt Petri Kyrkogata 7  
222 21 Lund

Winstrupsgatan 11  
222 22 Lund

#### Lagfart (Title)

Ägare (Owner)	Andel (Share)	Inskrivningsdag (Date of registration)	Akt (Archive number)
556212-1912 Aug Lundbergs Entreprenad O Förvalt AB Mårtensstorget 10 223 51 Lund	1/1	1991-06-03	10148

Köp (Buy): 1991-03-08

Köpeskilling (Purchase price): 10.000.000 SEK, avser hela fastigheten (refer to the entire property).

#### Läge, karta (Situation, map)

Område (Parcel)	N (SWEREF 99 TM)	E (SWEREF 99 TM)	N (Lokalt: L) (Local)	E (Lokalt: L) (Local)	Registerkarta (Register Index map)
1	6174868.1	386340.5	75288.9	77097.7	LUND

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## 4.4. BUILDING INFORMATION

Byggnadsinformation (Building information)  
05 June 2008 (Date of extract)

### Fastighet (Real estate)

#### Beteckning (Designation)

Lund Winstrup 6  
Nyckel: 120067783

### Byggnad (Building) 1 (Hyreshus) (Apartment)

Nyckel (Key): 1-2947809

#### Typ av adress (Type of address)

Winstrupsgatan 11  
222 22 Lund

#### Tätort (Locality)

Lund

#### Läge, karta (Situation, Map)

N (SWEREF 99 TM)	E (SWEREF 99 TM)	N (LUND)	E (LUND)	Registerkarta (Register Index map)
6174866.124	386342.612	75287.0	77099.9	35519

#### Koordinatläge (Co-ordinate situation)

B (Byggnadens centralpunkt) (The building central point)

#### Taxeringsuppgifter (Tax assessment information)

##### Taxeringsenhet

##### (Tax assessment unit)

Hyreshusenhet, bostäder och lokaler (321) 253634-7  
(Apartment, commercial and residential premises)

Omfattar hel registerfastighet

(Comprises the entire registered property)

##### Taxeringsvärde

##### (Tax assessment value)

24.690.000 SEK

##### Taxerad ägare

##### (Taxed owner)

556212-1912  
Fru Görvel AB  
Mårtenstorget 10  
223 51  
Lund

##### därav byggnadsvärde

##### (Building value)

20.183.000 SEK

##### Andel

##### (Share)

1/1

##### Uppgiftsår

##### (Year of taxation)

2007

##### Taxeringsår

##### (Year of assessment)

2007

##### därav markvärde

##### (Land value)

4.507.000 SEK

##### Juridisk form

##### (Legal form)

Övriga aktiebolag  
(Other companies)

#### Värderingsenhet bostäder (Valuation unit, dwellings) 008126256.

##### Taxeringsvärde

##### (Tax assessment value)

2.983.000 SEK

##### Årtal för hyresnivå

##### (Year for rent)

##### Nybyggnadsår

##### (Year of construction)

1929

##### Bostadsyta

##### (Dwelling area)

282 kvm

##### Hyra

##### (Rent)

300.000 SEK/år

##### Tillbyggnadsår

##### (Year of extension)

2002

##### Under byggnad

##### (Under construction)

Nej (No)

##### Värdeår

##### (Year used for valuation)

1992

#### Värderingsenhet lokaler (Valuation unit, premises) 008127256.

##### Taxeringsvärde

##### (Tax assessment value)

17.200.000 SEK

##### Årtal för hyresnivå

##### (Year for rent)

##### Nybyggnadsår

1929

##### Lokalyta

##### (Non-residential area)

1 513 kvm

##### Hyra

##### (Rent)

2.235.000 SEK/år

##### Tillbyggnadsår

2002

##### Under byggnad

##### (Under construction)

Nej (No)

##### Värdeår

1992

## 4.5. PREVIOUS OWNER INFORMATION

Tidigare ägarinformation (Previous owner information)

05 June 2008 (Date of extract)

### Fastighet (Real estate)

#### Beteckning (Designation)

Lund Winstrup 6

Nyckel (Key): 120067783

### Tidigare ägare (Previous owner)

Tidigare ägare (Previous owner)	Tidigare ägd andel (Previously owned share)	Överlåten andel (Transferred share)	Dagboksnr (Entry number)
556049-3750	1/1	1/1	76/421A
AB Calcaneus			Ägandetyp (Type of ownership)

Köp (Buy): 1976-03-29

Ingen köpeskilling redovisad (No price reported).

Lagfaren ägare  
(Legally qualified owner)

Anmärkning (Remark): Namn (Name) 84/24995

#### Ny ägare inskrivningsdag

(New owner registration day)

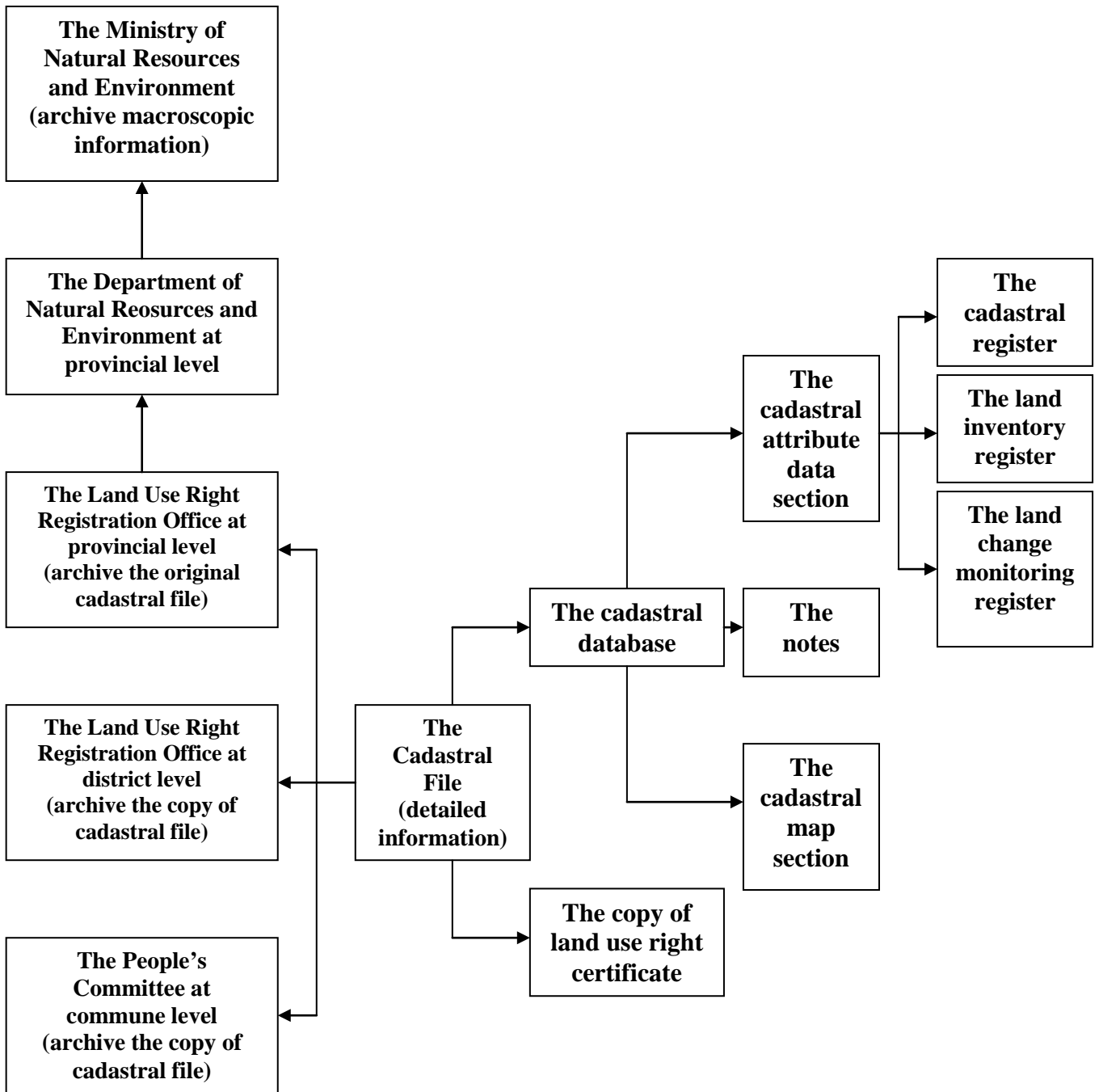
1991-06-03

Ny ägare dagboksnr  
(Entry number of new owner)

91/10148

© Lantmäteriet 2008

**FIGURE 5. THE FIGURE OF CADASTRAL INFORMATION IN VIỆT NAM**



**CỘNG HOÀ XÃ HỘI CHỦ NGHĨA VIỆT NAM**  
(SOCIALIST REPUBLIC OF VIỆT NAM)  
**Độc lập - Tự do - Hạnh phúc**  
(Independence – Liberty – Happiness)

**Mẫu số: 01/ĐK**  
**(Form No: 01/ĐK)**

**SỔ**  
**ĐỊA CHÍNH**  
(THE CADASTRAL REGISTER)

**TỈNH:**.....**Mã:**  
(PROVINCE:.....Code:)  
**HUYỆN:** .....**Mã:**  
(DISTRICT:.....Code:)  
**XÃ:**.....**Mã:**  
(COMMUNE:.....Code:)

**Quyển số (Volume No.):**


....., ngày (day)... tháng (month)... năm (year).....

**GIÁM ĐỐC**  
**VĂN PHÒNG ĐĂNG KÝ QUYỀN SỬ DỤNG ĐẤT**  
(Ký, đóng dấu)  
(The Director of The Land Use Right Registration Office –  
signed and stamped)

....., ngày (day)... tháng (month)... năm (year)....

**GIÁM ĐỐC**  
**SỞ TÀI NGUYÊN VÀ MÔI TRƯỜNG**  
(Ký, đóng dấu)  
(The Director of The Provincial Department of Natural Resources  
and Environment – signed and stamped)

(Tiếp theo trang số: .... )

(continued from page:.....)

Trang số: .....

(Page number...)

**I - NGƯỜI SỬ DỤNG ĐẤT (LAND USER)**

*Hộ ông Nguyễn Văn Hai, sinh năm 1956, sổ Hộ khẩu số 013579 cấp ngày 13/5/1995*

(The household of Mr. Nguyễn Văn Hai, born in 1956, Family Record Register No. 013579 issued dated May 13, 1995)

*Địa chỉ: Thôn Hữu Thiện, xã Mỹ Hà, Huyện Mỹ Lộc, tỉnh Nam Định.*

(Address: Hữu Thiện communal subdivision, Mỹ Hà commune, Mỹ Lộc district, Nam Định province)

**II - THỬA ĐẤT (LAND PARCEL)**

Ngày tháng năm vào sổ (Date of record)	Số thứ tự thửa đất (Ordinal number of land parcel)	Số thứ tự tờ bản đồ (Ordinal number of cadastral map sheet)	Diện tích sử dụng (m <sup>2</sup> ) (Using area)		Mục đích sử dụng (Land use purpose)	Thời hạn sử dụng (Land use term)	Nguồn gốc sử dụng (Land use origin)	Số phát hành GCN QSDĐ (Issuing number of the certificate)	Số vào sổ cấp GCN QSDĐ (archive number in the certificate issue register)
			Riêng (Private)	Chung (Joint)					
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
1-10-07	31	3	275,4		ONT	Lâu dài (long term)	CNQ	AA000157	H.00346
			125,2						
	34	3	150,2		CLN	10-2045	ĐG-KTT	AA000158	H.00347
			362,7		LUA	5-2015			
			218,1		HNK	5-2015			
12	7	7	200,9		CLN	10-2045	ĐG-KTT	AA000160	H.00349

	215	11	357,5		NTS	8-2015	DT-THN	AA000161	H.00350
	105	00		25000,0	RPH	2043	ĐG-KTT	AA000162	H.00351
15-6-08	32	3	600,3		CLN	8-2045	CNQ	AA125173	H.01701
13-5-09	312	7	130,9		CLN	10-2045	ĐG-KTT	AB001624	H.01863
10-2-10	301	3	175,4				CNQ	AB013570	H.03739
			125,2		ONT	Lâu dài (long term)			
			50,2		CLN				

**III - NHỮNG THAY ĐỔI TRONG QUÁ TRÌNH SỬ DỤNG ĐẤT VÀ GHI CHÚ**  
(CHANGES IN LAND USE AND NOTES)

Số thứ tự thửa đất (Ordinal number of land parcel)	Ngày tháng năm (Date)	Nội dung ghi chú hoặc biến động và căn cứ pháp lý (The content of note or land use change and legal foundation)
31	01-10-2007	<del>Nợ tiền sử dụng đất theo Thông báo số 035/TB-CCT ngày 25/9/2007 của Chi cục Thuế huyện</del> (Owe the land use fee according to the Notice No.035/TB-CCT date September 25, 2007 of the district tax agency)
12	01-10-2007	100 m <sup>2</sup> thuộc quy hoạch mở rộng đường theo Quyết định xét duyệt quy hoạch sử dụng đất số 385/QĐ-UB ngày 15/3/2003 của Ủy ban nhân dân huyện. (100m <sup>2</sup> in the scope of the land use planning according to the Decision No. 385/QĐ-UB dated March 15, 2003 of the district People's Committee on approval of land use planning)
34	10-01-2008	Khai báo GCNQSDĐ bị mất ngày 05/01/2005 .

34

11-3-2008

(Declared that the land use right certificate was lost on January 5<sup>th</sup>, 2005)

*Cấp lại GCN số AB125763, số vào sổ 08971 theo hồ sơ số 01235.021405.CL.VP*

(Re-issue of the land use right certificate number AB125763, the archive number in the certificate issue register 01235.021405.CL.VP)

Chuyển tiếp trang số (Transit to page number): ....

Mẫu trang mục lục người sử dụng đất (để tra cứu sổ địa chính)

(The form of the page about full name index of land users – for looking up the cadastral book/register)

Số thứ tự (Ordinal number)	Tên người sử dụng đất (Full name of land user)	Đăng ký tại sổ địa chính (Registered in the cadastral book)		Số thứ tự (Ordinal number)	Tên người sử dụng đất (Full name of land user)	Đăng ký tại sổ địa chính (Registered in the cadastral book)	
		Quyển số (Volume number)	Trang số (Page number)			Quyển số (Volume number)	Trang số (Page number)
	<b>Vân A (Syllable A)</b>						
01	<i>Đinh Thị Hồng Anh</i>	<i>B1</i>	<i>12</i>				
02	<i>Lê Đình Ái</i>	<i>B9</i>	<i>05</i>				
03	<i>Trần Văn Ân</i>	<i>B5</i>	<i>25</i>				

**CỘNG HOÀ XÃ HỘI CHỦ NGHĨA VIỆT NAM**

**(SOCIALIST REPUBLIC OF VIỆT NAM)**

**Độc lập - Tự do - Hạnh phúc**

**(Independence – Liberty – Happiness)**

**Mẫu số : 03/ĐK**

**(Form No.)**

**SỔ**  
**THEO DÕI BIẾN ĐỘNG ĐẤT ĐAI**

**(THE REGISTER OF LAND CHANGE MONITORING)**

**TỈNH:.....Mã:**  
**(PROVINCE:.....Code:)**

**HUYỆN: .....Mã:**  
**(DISTRICT:.....Code:)**

**XÃ:.....Mã:**  
**(COMMUNE:.....Code:)**

**Quyển số (Volume No.):**


Số thứ tự (Ordinal number)	Tên và địa chỉ của người đăng ký biến động (Full name and address of person who registers changes in land use)	Thời điểm đăng ký biến động (Time of registering changes in land use)	Thửa đất biến động (Changed land parcel)		Nội dung biến động (Content of land use change)
			Tờ bản đồ số (Cadastral map sheet number)	Thửa đất số (Land parcel number)	
(1)	(2)	(3)	(4)	(5)	(6)
	<b>NĂM 2005 (The year 2005)</b>				
01	The household of Mr. Lê Mạnh Hải Address: 312-Bà Triệu Hai Bà Trưng district	10.4.2005 10g 00'	04	15	Được Nhà nước giao có thu tiền 60 m <sup>2</sup> đất ở do Nhà nước thu hồi từ đất chuyên lúa nước của Ông Lê Thụy Hải (Allocated 60m <sup>2</sup> of residential land by the State with collection of land use fees based on recovery of the land for wet rice cultivation of Mr. Lê Thụy Hải)
02	Mr. Lê Hải Nam Address: 240-Bà Triệu Hai Bà Trưng district	11.4.2005 8g 30'	15	53	Khai báo mất GCN có số phát hành AA005125 (Declared that the certificate with issuing number AA005125 was lost) Đã cấp lại GCN mới có số phát hành AB301570 (Re-issued the new certificate with issuing number AB301570)
03	The household of Mr.	12.4.2005	06	79	Chuyển nhượng cho Công ty TNHH Phương Đông 120 m <sup>2</sup> đất

	Trần Văn Ân Address: 348-Bà Triệu Hai Bà Trưng district	14g25'			ở để làm đất xây dựng cơ sở sản xuất kinh doanh phi nông nghiệp (Assigned 120m <sup>2</sup> of residential land to the Phương Đông Limited company to change into non-agricultural land used for production or business purposes)
04	Ms. Triệu Thị Hạnh Address: 315-Bà Triệu Hai Bà Trưng district	12.4.2005 15g10'	4	275	Thế chấp bằng cả thửa đất với Ngân hàng Thương mại Q.Ba Đình (Mortgaged the whole land parcel with the Ba Đình commercial bank)
... 350	..... The management committee of the Thái Thành industrial zone	..... 27.12.2005 16g 00'	..... 12	..... 26	..... Cho Công ty TNHH Đông Thành thuê diện tích 300m <sup>2</sup> do Nhà nước thu hồi từ đất trồng cây hàng năm khác của các hộ gia đình (Leased 300m <sup>2</sup> to the Đông Thành Limited company)
<hr/> <p><b>NĂM 2006</b> <b>(The year 2006)</b></p>					

**CỘNG HOÀ XÃ HỘI CHỦ NGHĨA VIỆT NAM**

(SOCIALIST REPUBLIC OF VIỆT NAM)

**Độc lập - Tự do - Hạnh phúc**

(Independence – Liberty – Happiness)

**Mẫu số (Form No.): 02/ĐK**

**SỔ MỤC KÊ ĐẤT ĐAI**

(The register of land inventory)

**TỈNH:**.....**Mã:**

**(Province:.....Code:)**

**HUYỆN:** .....**Mã:**

**(District:.....Code:)**

**XÃ:**.....**Mã:**

**(Commune:.....Code:)**

**Quyển số (Volume number):**


**Lập cho các tờ bản đồ số:**

**(Established for cadastral map sheets number:)**

.....

.....

....., ngày (day)..... tháng (month)..... năm (year).....

**GIÁM ĐỐC**

**VĂN PHÒNG ĐĂNG KÝ QUYỀN SỬ DỤNG ĐẤT**

*(Ký, đóng dấu)*

(The Director of The Land Use Right Registration office – signed and stamped)

....., ngày (day).. tháng (month)... năm (year)....

**GIÁM ĐỐC**

**SỞ TÀI NGUYÊN VÀ MÔI TRƯỜNG**

*(Ký, đóng dấu)*

(The Director of the Department of  
Natural Resources and Environment – signed and stamped)

Số thứ tự tờ bản đồ: 05

Trang số: ..012 ..

(The ordinal number of the cadastral map sheet)

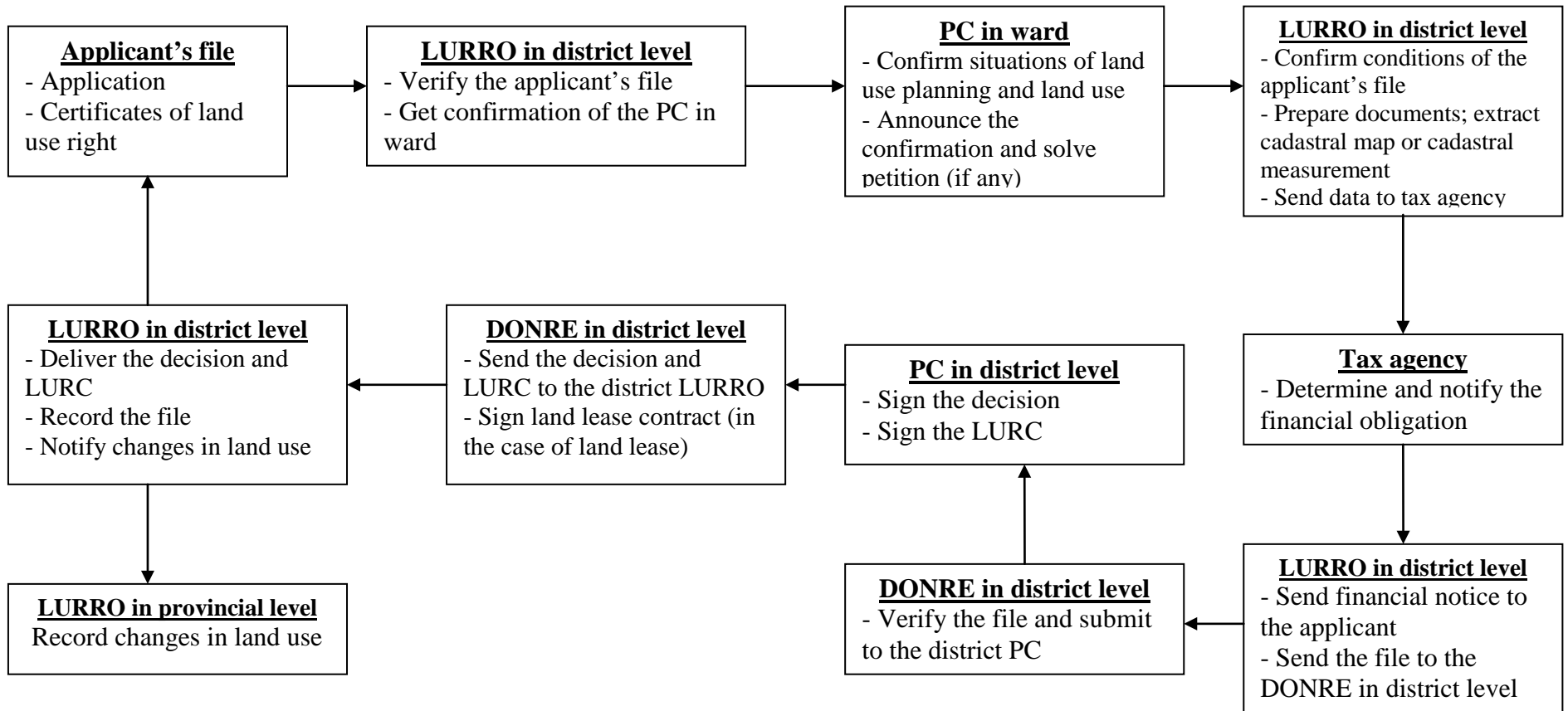
(Page number)

Số thứ tự thửa đất (Ordinal number of land parcel)	Tên người sử dụng, quản lý (Full name of land user)	Loại đối tượng (Type of land user)	Diện tích (Area) (m <sup>2</sup> )	Mục đích sử dụng (Land use purpose)				Ghi chú (Note)			
				Cấp GCN (in the certificate)	Quy hoạch (in land use planning)	Kiểm kê (in reality)	Chi tiết (Detail)	Số TT thửa (Ordinal number of land parcel)	Nội dung thay đổi (Content of changes in land use)	Số TT thửa (Ordinal number of land parcel)	Nội dung thay đổi (Content of changes in land use)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)
1	<i>The household of Mr. Nguyễn Bá Ôn</i>	GDC	1550,7	HNK	CSK	BHK		1	<i>Tách thành thửa: 557, 558</i> (Partitioned into two land parcels)		
2	<i>The household of Ms. Lê Thị Hải</i>		805,7	LUA	LUA	LUC		2			
3	<i>Ms. Nguyễn Thị Tuyết</i>	GDC	320,0 120,0 200,0	ONT* CLN*				5	<i>Chuyển quyền cho Mai Chí Thanh</i> (Assigned to Mr. Mai Chí Thanh)		
...	...	...	...	...	...	...	...				
556	<i>Mr. Phan Thanh Hải</i>	GDC	300,5	LUA NTS	LUA NTS	LUK TSN	<i>Tôm</i> (Prawn)		<i>Đất NN công ích</i> (Agricultural land for use in public)		

557	<i>The household of Mr. Nguyễn Bá Ôn</i>	GDC	1000,0	HNK	CSK	BHK			<i>interest)</i>		
558	<i>The Thanh Bình Limited company</i>	TKT	550,7	SKC	CSK	SKC					

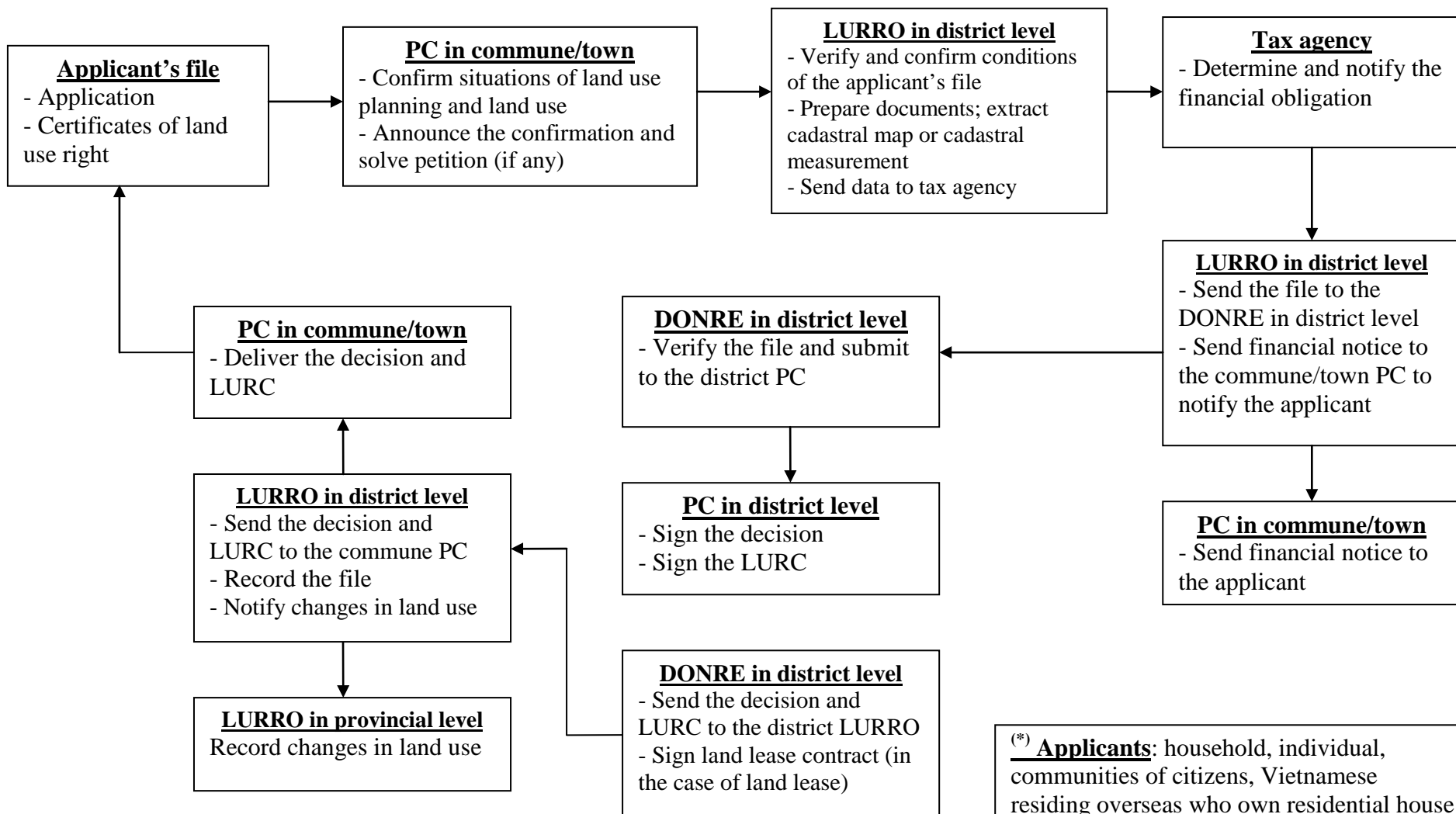
**FIGURE 6. REGISTER PROCEDURE OF ISSUE OF LAND USE RIGHT CERTIFICATE IN VIỆT NAM**

***6.1. Register procedure of issue of land use right certificate for applicants<sup>(\*)</sup> in wards who are land users, but not to be owners of assets attached to land (Article 14 Decree No.88/2009/NĐ-CP): 50 days***



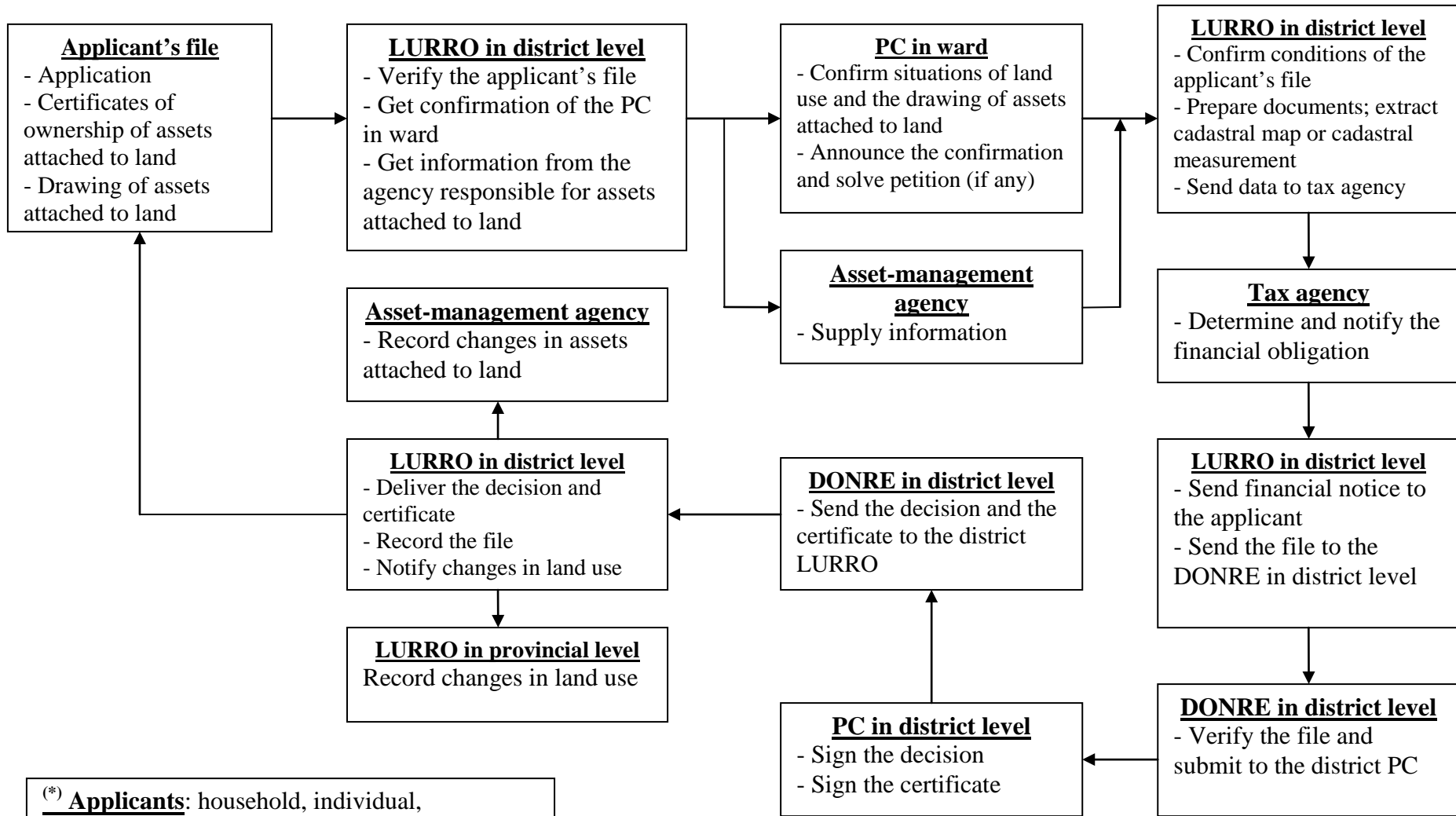
(\*) **Applicants:** household, individual, communities of citizens, Vietnamese residing overseas who own residential house in Việt Nam

**6.2. Register procedure of issue of land use right certificate for applicants<sup>(\*)</sup> in communes or towns who are land users, but not to be owners of assets attached to land (Article 14 Decree No.88/2009/NĐ-CP): 50 days**



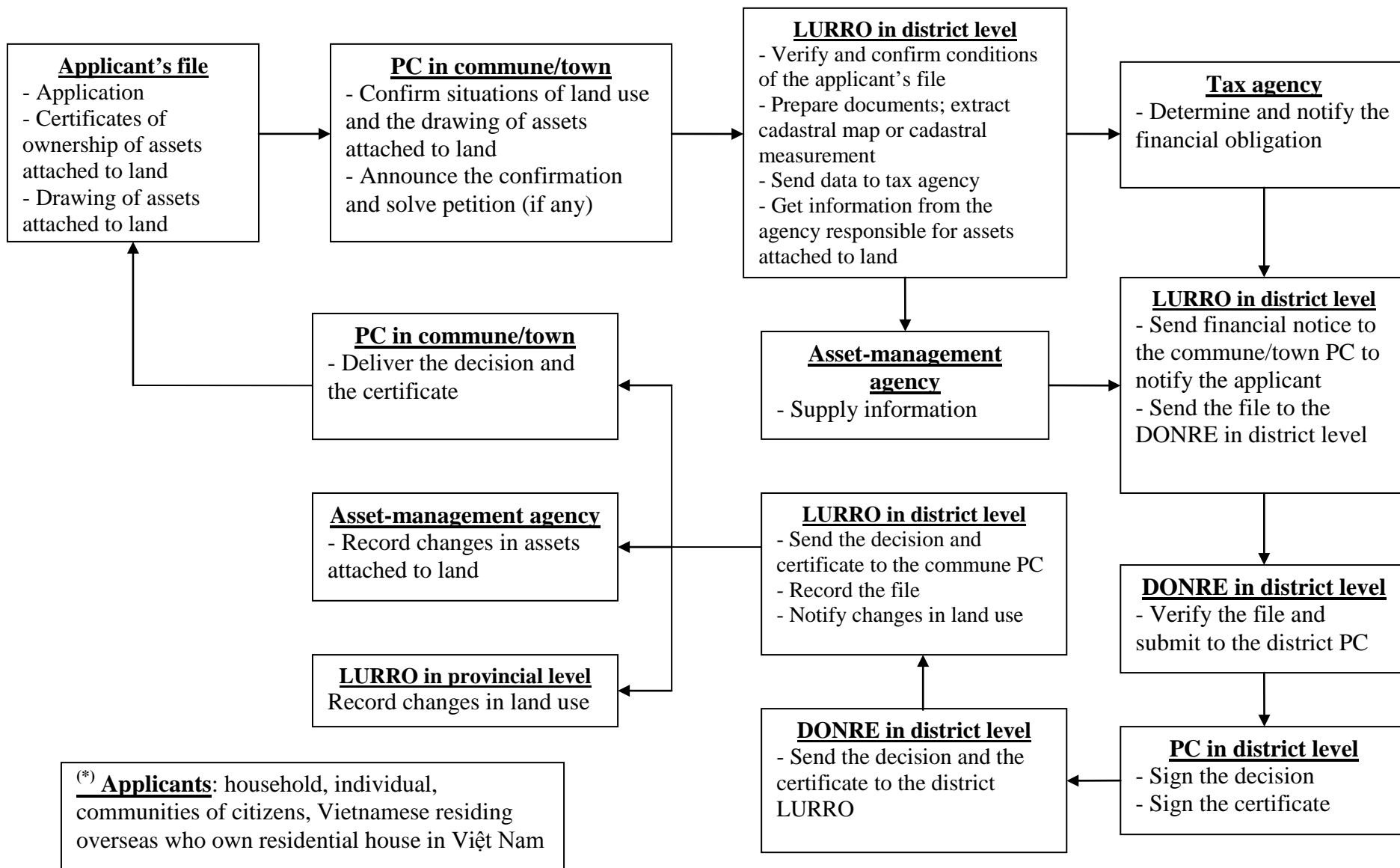
**(\*) Applicants:** household, individual, communities of citizens, Vietnamese residing overseas who own residential house in Việt Nam

**6.3. Register procedure of issue of land-attached asset ownership certificate for applicants<sup>(\*)</sup> in wards who are owners of residential houses or assets attached to land, but not to be land users (Article 15 Decree No.88/2009/NĐ-CP): 50 days**

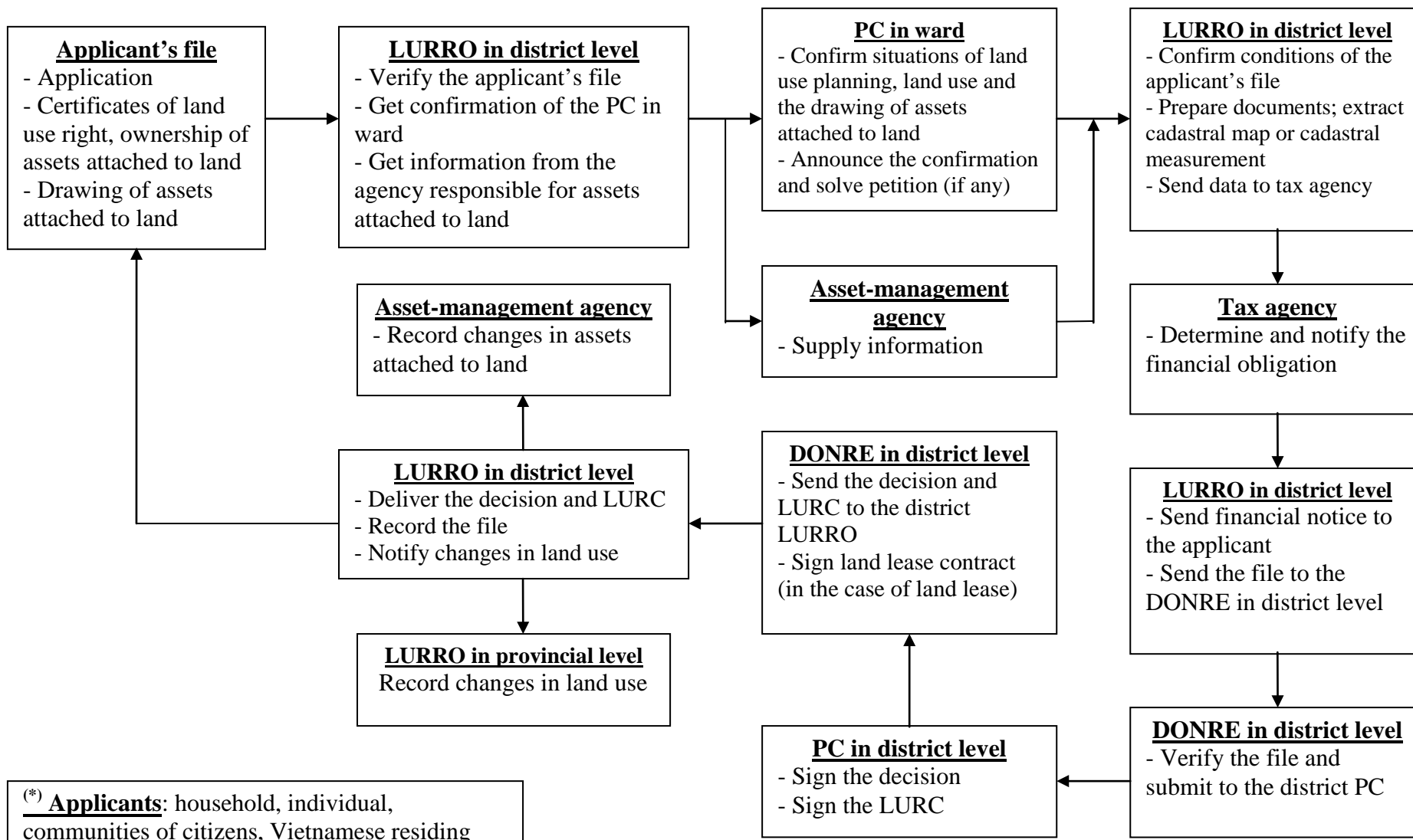


**(\*) Applicants:** household, individual, communities of citizens, Vietnamese residing overseas who own residential house in Việt Nam

**6.4. Register procedure of issue of land-attached asset ownership certificate for applicants<sup>(\*)</sup> in communes/towns who are owners of residential houses or assets attached to land, but not to be land users (Article 15 Decree No.88/2009/NĐ-CP): 50 days**

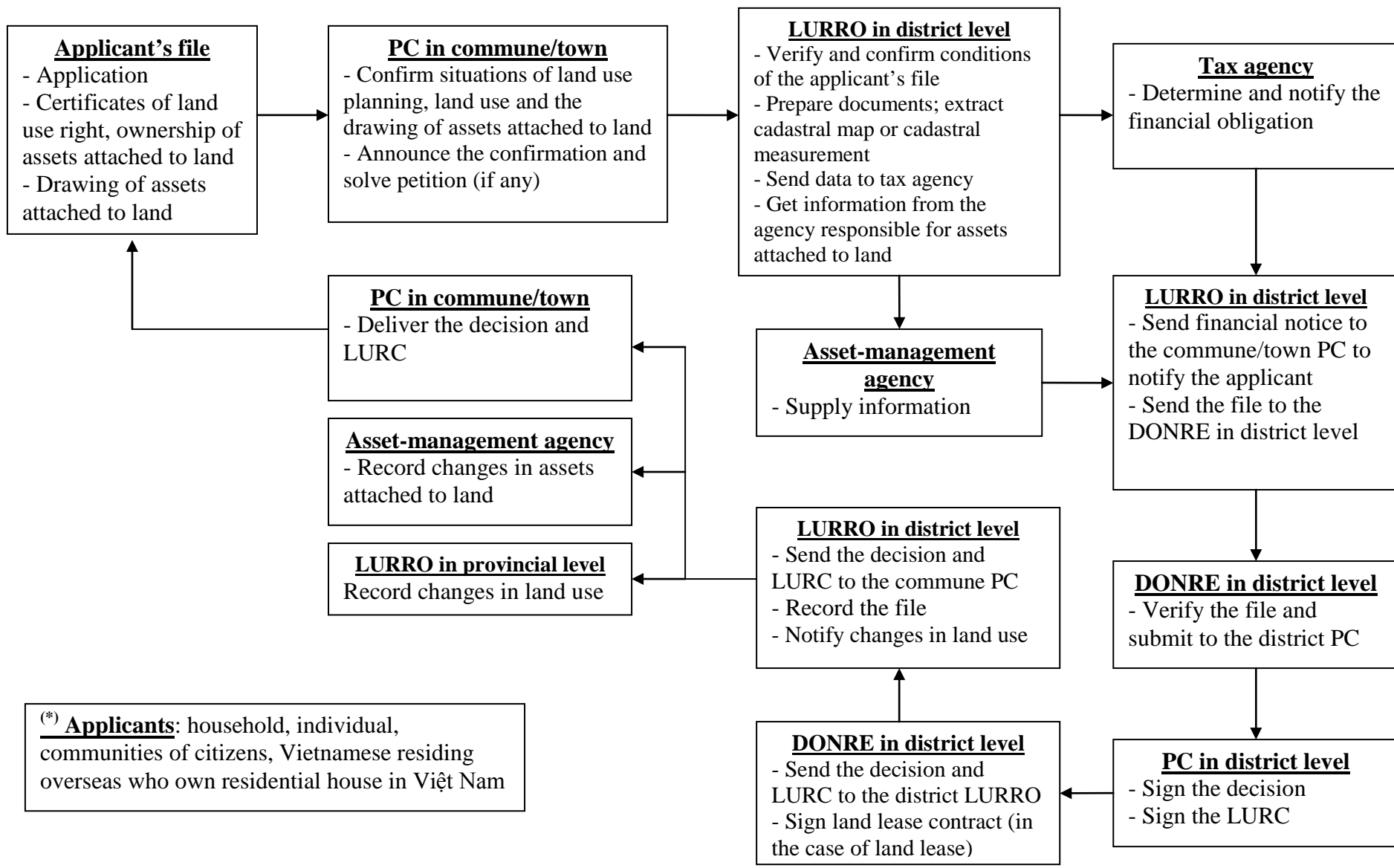


**6.5. Register procedure of issue of land use right certificate for applicants<sup>(\*)</sup> in wards who are both land users and owners of residential houses or assets attached to land (Article 16 and 17 Decree No.88/2009/NĐ-CP): 50 days**



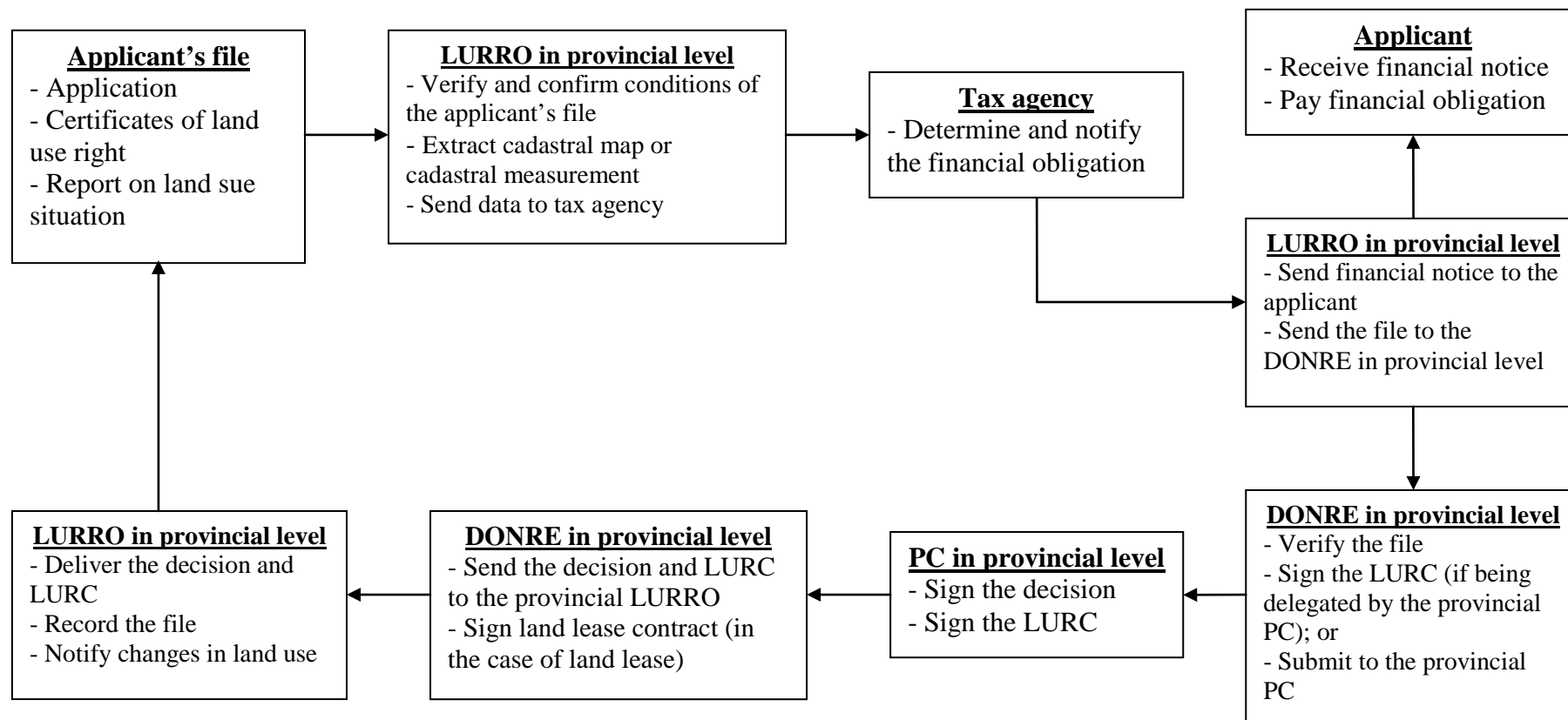
<sup>(\*)</sup> **Applicants:** household, individual, communities of citizens, Vietnamese residing overseas who own residential house in Việt Nam

**6.6. Register procedure of issue of land use right certificate for applicants<sup>(\*)</sup> in communes or towns who are both land users and owners of residential houses or assets attached to land (Article 16 and 17 Decree No.88/2009/NĐ-CP): 50 days**



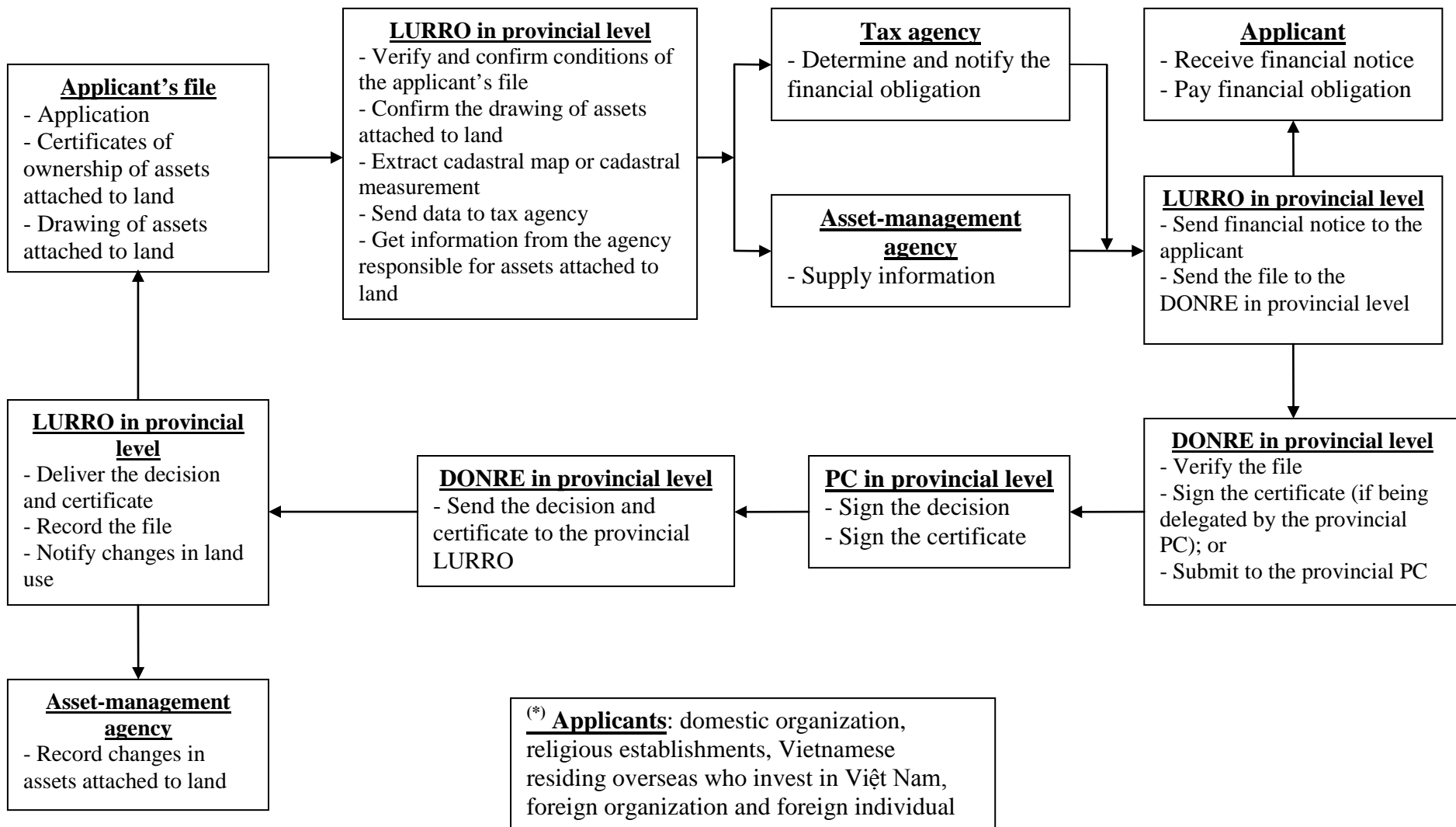
<sup>(\*)</sup> **Applicants:** household, individual, communities of citizens, Vietnamese residing overseas who own residential house in Việt Nam

**6.7. Register procedure of issue of land use right certificate for applicants<sup>(\*)</sup> in wards who are land users, but not to be owners of assets attached to land (Article 19 Decree No.88/2009/NĐ-CP): 50 days**

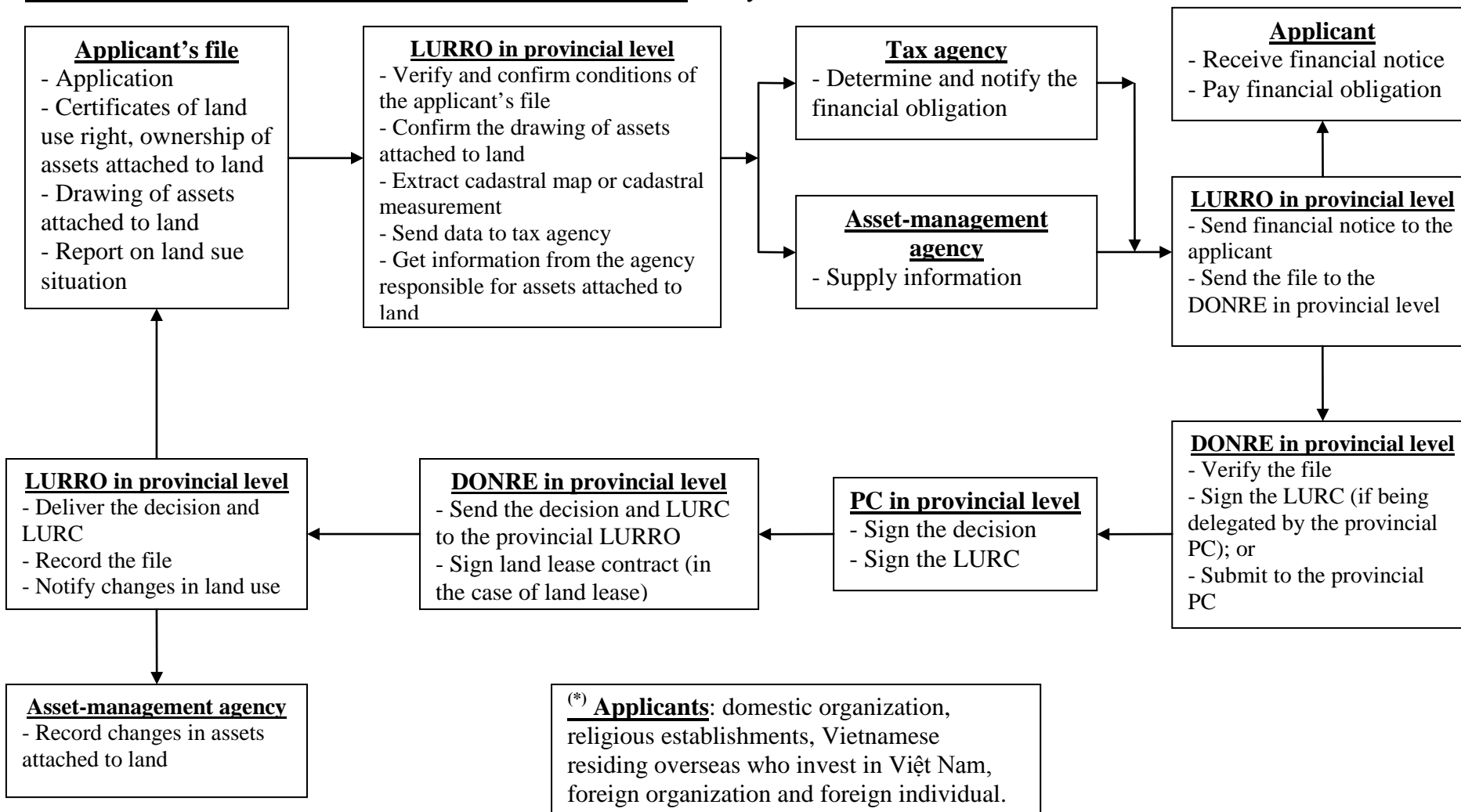


**(\*) Applicants:** domestic organization, religious establishments, Vietnamese residing overseas who invest in Việt Nam, foreign organization and foreign individual

**6.8. Register procedure of issue of land-attached asset ownership certificate for applicants<sup>(\*)</sup> in wards who are owners of residential houses or assets attached to land, but not to be land users (Article 20 Decree No.88/2009/NĐ-CP): 50 days**



**6.9. Register procedure of issue of land use right certificate for applicants<sup>(\*)</sup> who are both land users and owners of residential houses or assets attached to land (Article 21 and 22 Decree No.88/2009/NĐ-CP): 50 days**

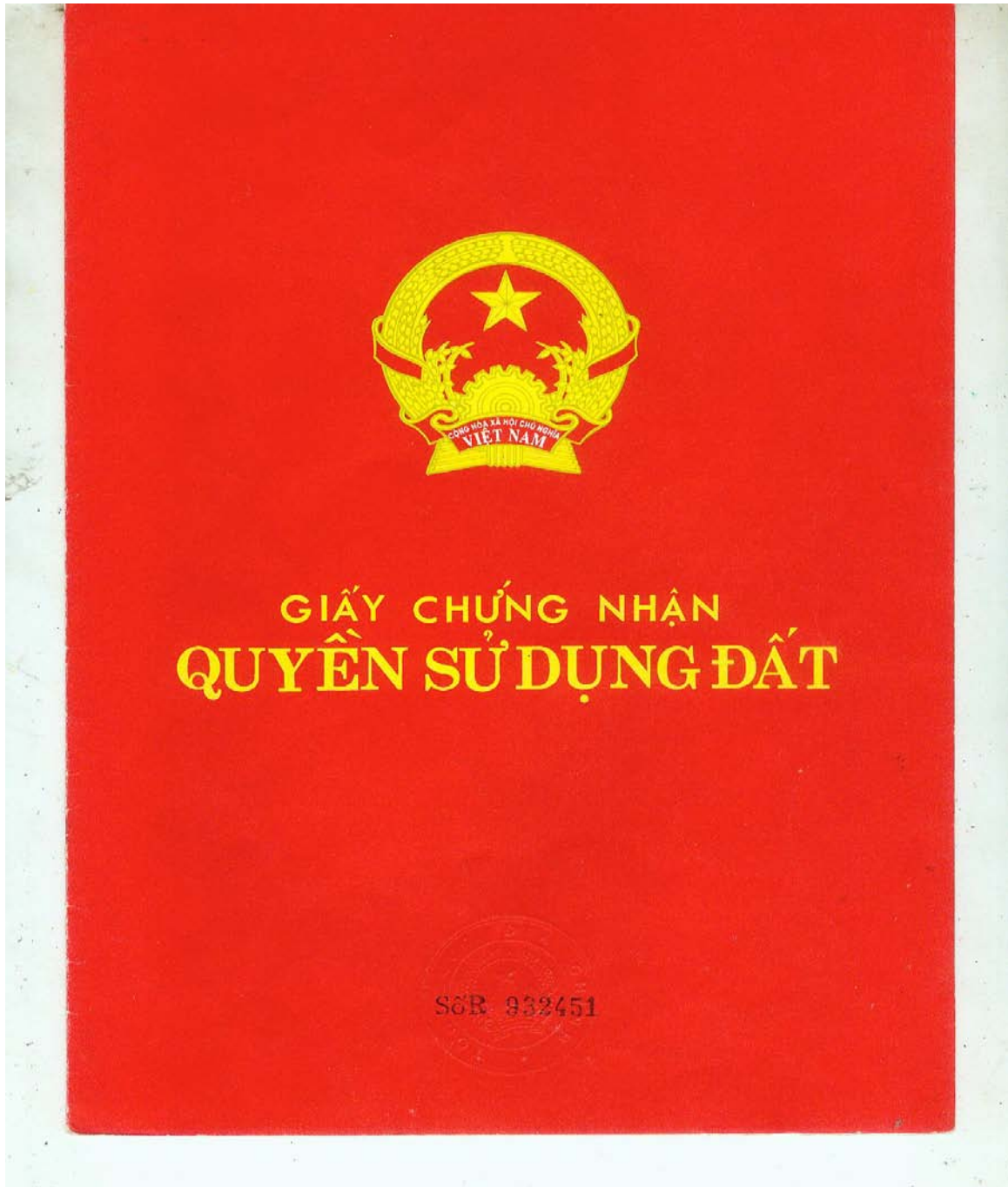


**FIGURE 7. THE AVERAGE QUEUE TIME  
IN REGISTRATION OFFICES IN SWEDEN**

<b>REGISTRATION OFFICES</b>	<b>2005 (day)</b>	<b>2006 (day)</b>	<b>2007 (day)</b>	<b>2008 (day)</b>	<b>2009 (day)</b>
Skellefteå	3	3	5	12	4
Härnösand	18	12	8	16	22
Mora	4	4	3	4	8
Norrtälje	10	8	4	7	9
Eksjö	12	11	5	6	5
Uddevalla	11	17	5	6	13
Hässleholm	7	2	2	5	11
<b>TOTAL</b>	<b>9</b>	<b>8</b>	<b>4</b>	<b>8</b>	<b>10</b>

**APPENDIX B.**  
**PHOTOGRAPH OF LAND USE RIGHT CERTIFICATE (LURC)**  
**IN VIỆT NAM**

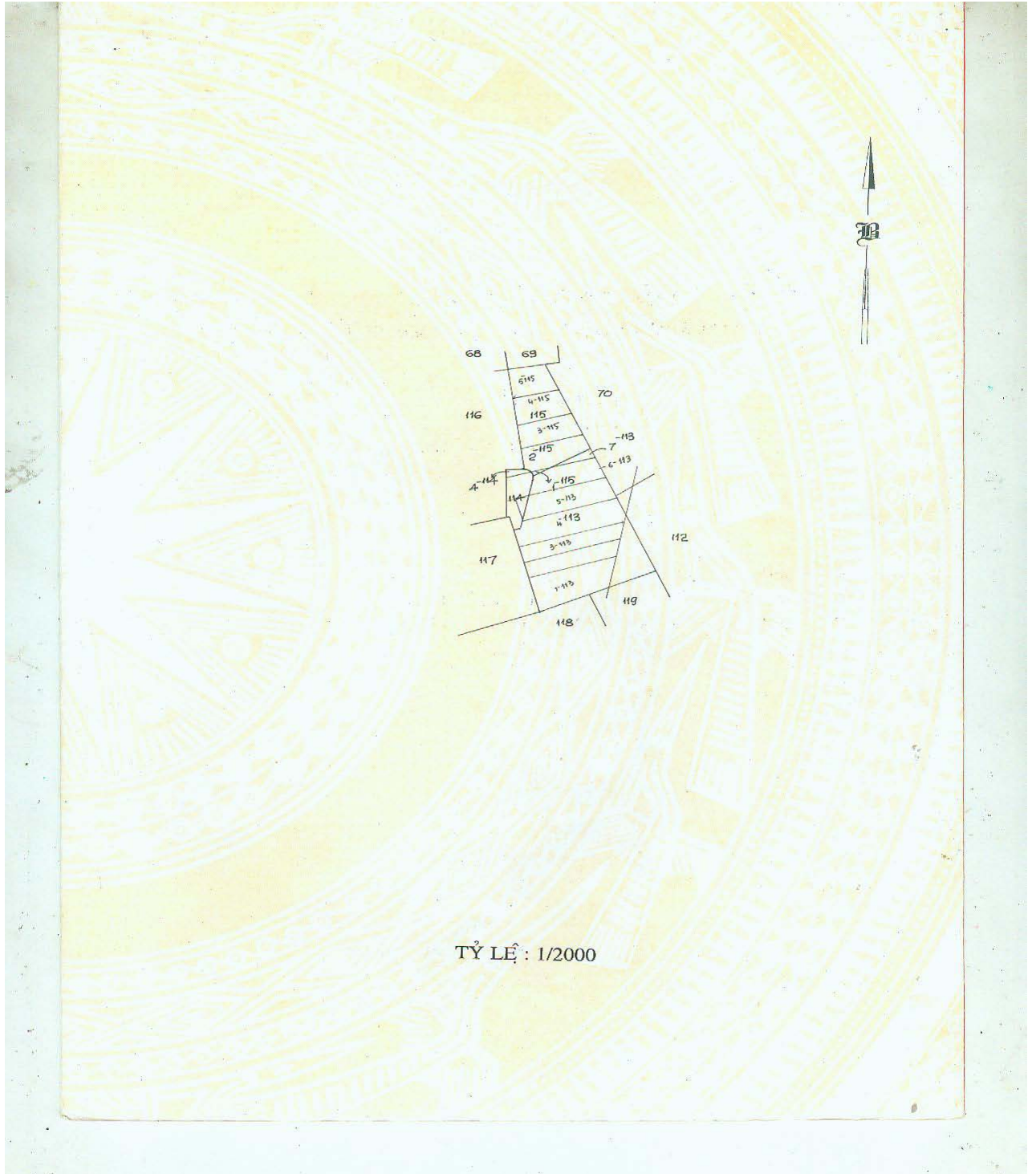
**1. THE FIRST LURC IN 1989 (the old red paper) – the first page**



**(the cover of LURC)**



**THE FIRST LURC IN 1989 (the old red paper) – the third page**



**(showing the cadastral map of the land parcel)**

**THE FIRST LURC IN 1989 (the old red paper) – the last page**

**NHỮNG THAY ĐỔI SAU KHI CẤP GIẤY CHỨNG NHẬN**

Ngày tháng năm	Số và nội dung quyết định	Xác nhận của cơ quan có thẩm quyền
	+ Chuyển nhượng 1 phần thửa 113 (1 <sup>113</sup> : 506,50 m <sup>2</sup> ) cho Dubong Thuy Dung theo hợp đồng số 505/HĐCN-2000 Ngày 21/12/2000	
	+ Chuyển nhượng 1 phần thửa 113 (2 <sup>113</sup> ) cho Ngô Thị Duyên theo hợp đồng số 1/HĐCN Ngày	
	+ Chuyển nhượng 1 phần thửa 113 (3 <sup>113</sup> : 316 m <sup>2</sup> ) cho Phạm Thị Lệ theo hợp đồng số 316/HĐCN-2000 Ngày 21/12/2000	
	+ Chuyển nhượng 1 phần thửa 113 (4 <sup>113</sup> : 546 m <sup>2</sup> ; 1 <sup>114</sup> : 16 m <sup>2</sup> ) cho Lê Linh Cường theo hợp đồng số 506/HĐCN-2000 Ngày 21/12/2000	
	+ Chuyển nhượng 1 phần thửa 113, 114 (5 <sup>113</sup> : 407 m <sup>2</sup> ; 2 <sup>114</sup> : 33 m <sup>2</sup> ) cho Hà Văn Dũng theo hợp đồng số 517/HĐCN-2000 Ngày 21/12/2000	
	+ Chuyển nhượng 1 phần thửa 114, 115 (6 <sup>114</sup> : 284 m <sup>2</sup> ; 3 <sup>115</sup> : 114 m <sup>2</sup> ; 1 <sup>115</sup> : 12 m <sup>2</sup> ) cho Nguyễn Thị Thuần theo hợp đồng số 518/HĐCN-2000 Ngày 21/12/2000	
	+ Chuyển nhượng 1 phần thửa 115 (3 <sup>115</sup> : 300 m <sup>2</sup> ) cho Nguyễn Thị Sĩ theo hợp đồng số 515/HĐCN-2000 Ngày 21/12/2000	
	+ Chuyển nhượng 1 phần thửa 115 (4 <sup>115</sup> : 264,60 m <sup>2</sup> ) cho Phan Bảo Toàn theo chuyển nhượng số 510/HĐCN-2000 Ngày 21/12/2000	
	+ Chuyển nhượng 1 phần thửa 115 (5 <sup>115</sup> : 254,40 m <sup>2</sup> ) cho Lê Hữu Đức theo hợp đồng số 508/HĐCN-2000 Ngày 21/12/2000	
	+ Chuyển nhượng 1 phần thửa 113 (1 <sup>113</sup> : 30 m <sup>2</sup> ) thửa 114 (4 <sup>114</sup> : 23 m <sup>2</sup> ) 115 (2 <sup>115</sup> : 352 m <sup>2</sup> ) theo hợp đồng	

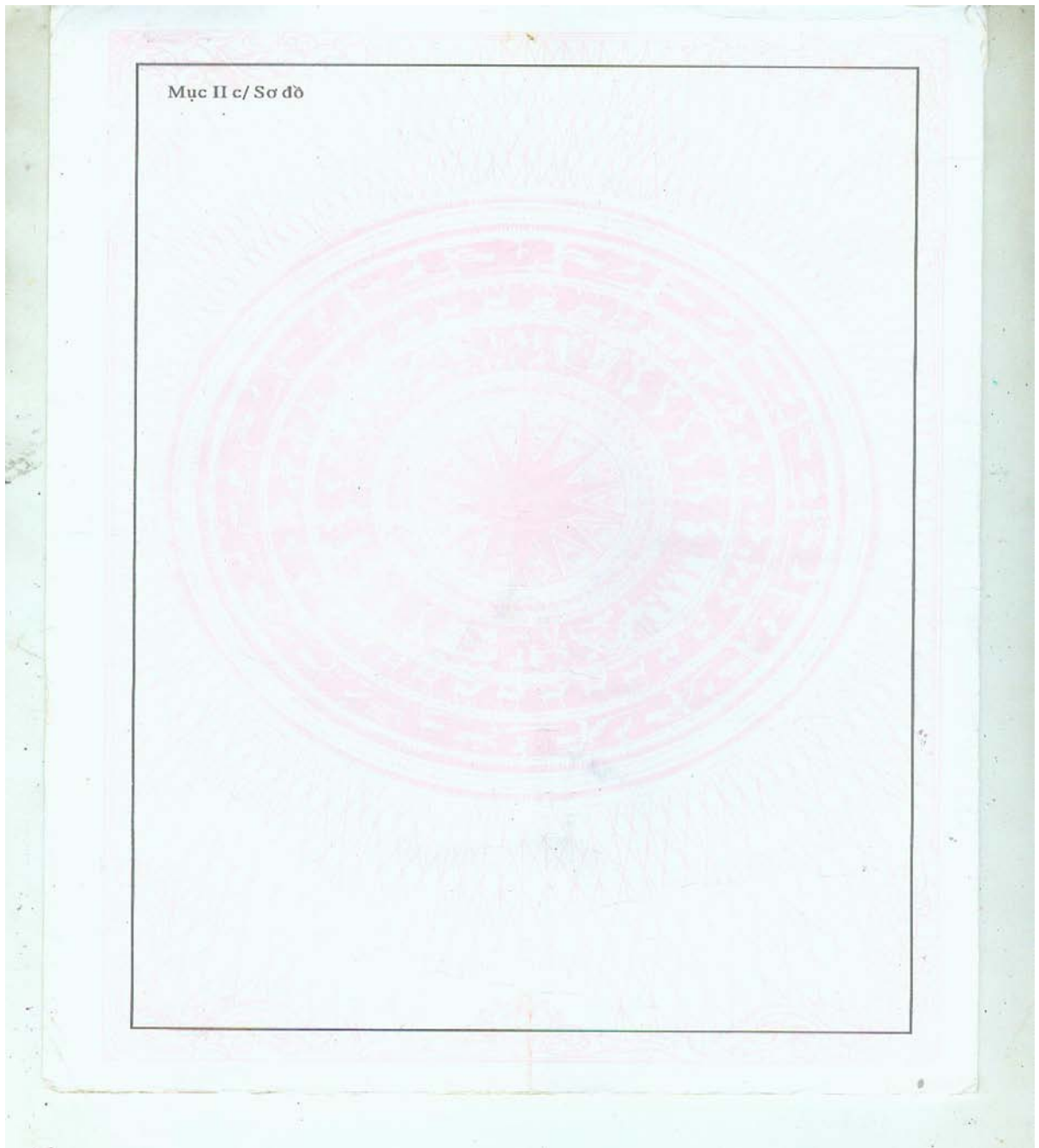
**NGƯỜI ĐƯỢC CẤP GIẤY CHỨNG NHẬN QUYỀN SỬ DỤNG ĐẤT CẦN CHÚ Ý !**

- 1- Được hưởng quyền và phải thực hiện nghĩa vụ của người sử dụng đất theo các điều 73, 74, 75, 76, 77, 78, 79 Luật Đất đai 1993.
- 2- Khi có thay đổi về hình thể, quy mô sử dụng, mục đích sử dụng và người sử dụng khu đất, phải mang giấy chứng nhận này đến đăng ký với cơ quan Nhà nước có thẩm quyền.
- 3- Không được tự ý sửa chữa, tẩy xóa bất kỳ một nội dung nào trong giấy chứng nhận. Khi bị mất hoặc làm hư hỏng giấy chứng nhận phải khai báo ngay với cơ quan cấp giấy.

(recording changes in land use)



**THE LURC IN 1994 (the certificate of residential housing ownership and residential land use right – the old pink paper) – the second page**



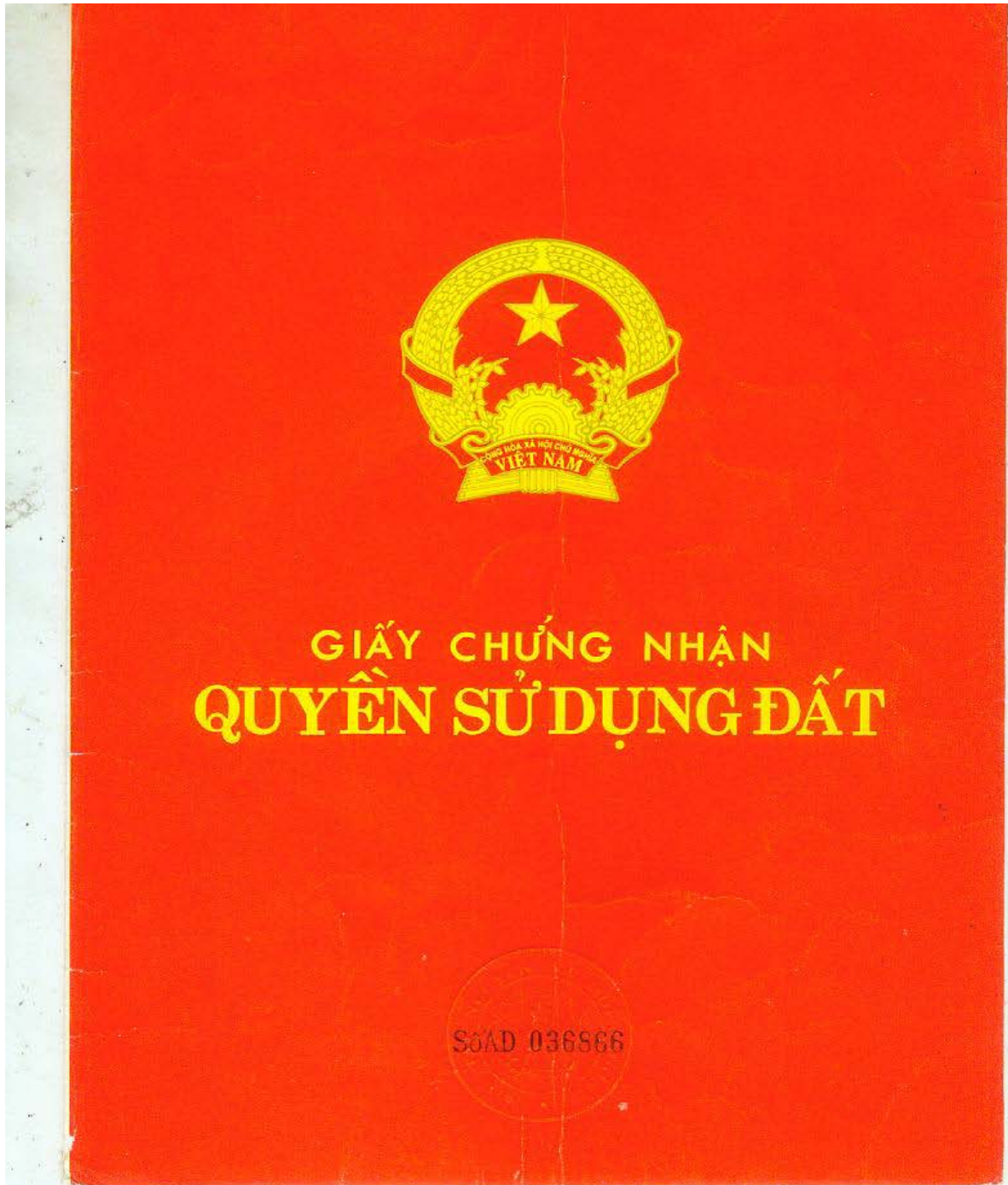
**(showing the map of residential land and house)**





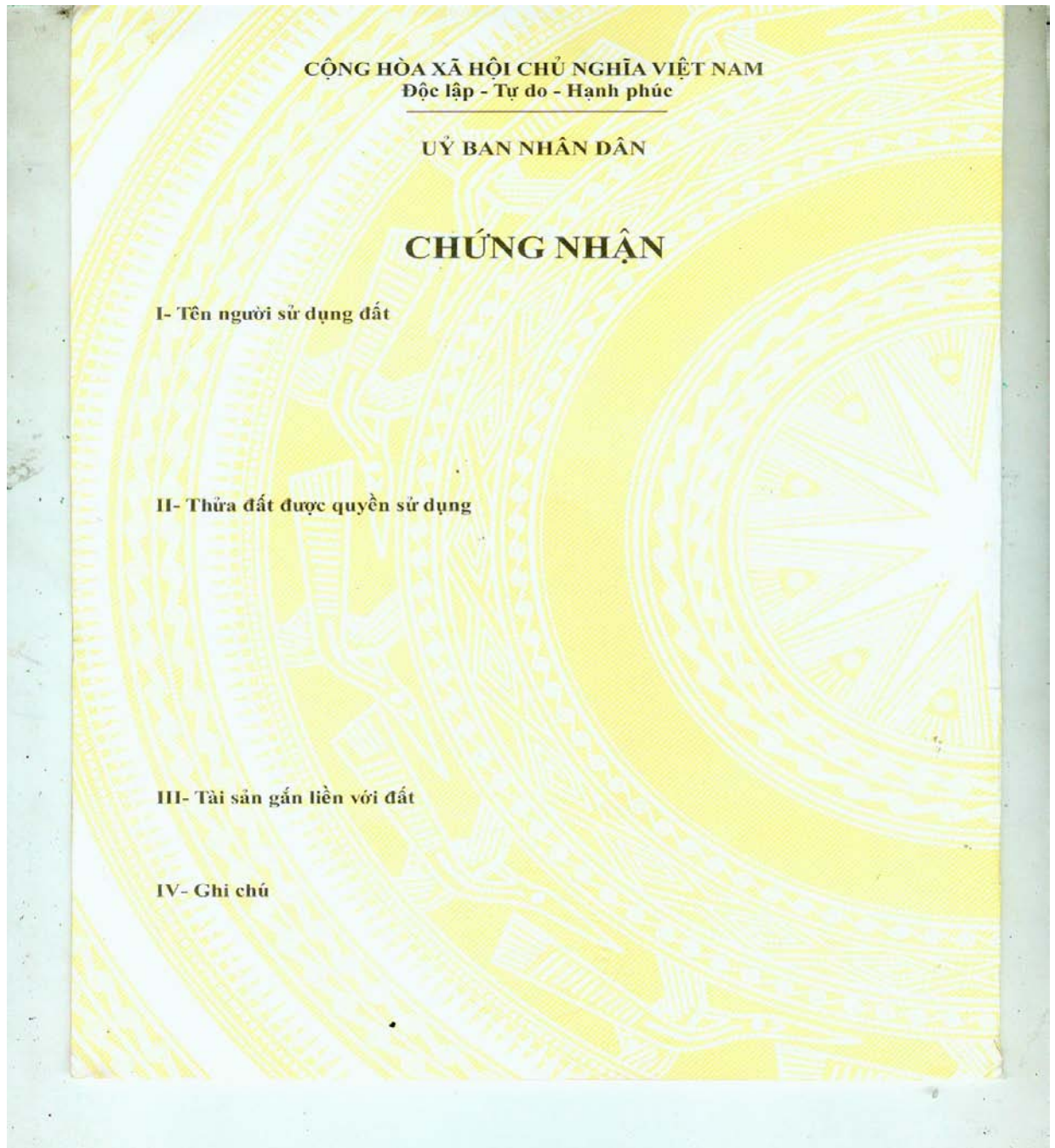
### 3. THE LURC ACCORDING TO THE 2003 LAND LAW

(the new red paper) – the first page



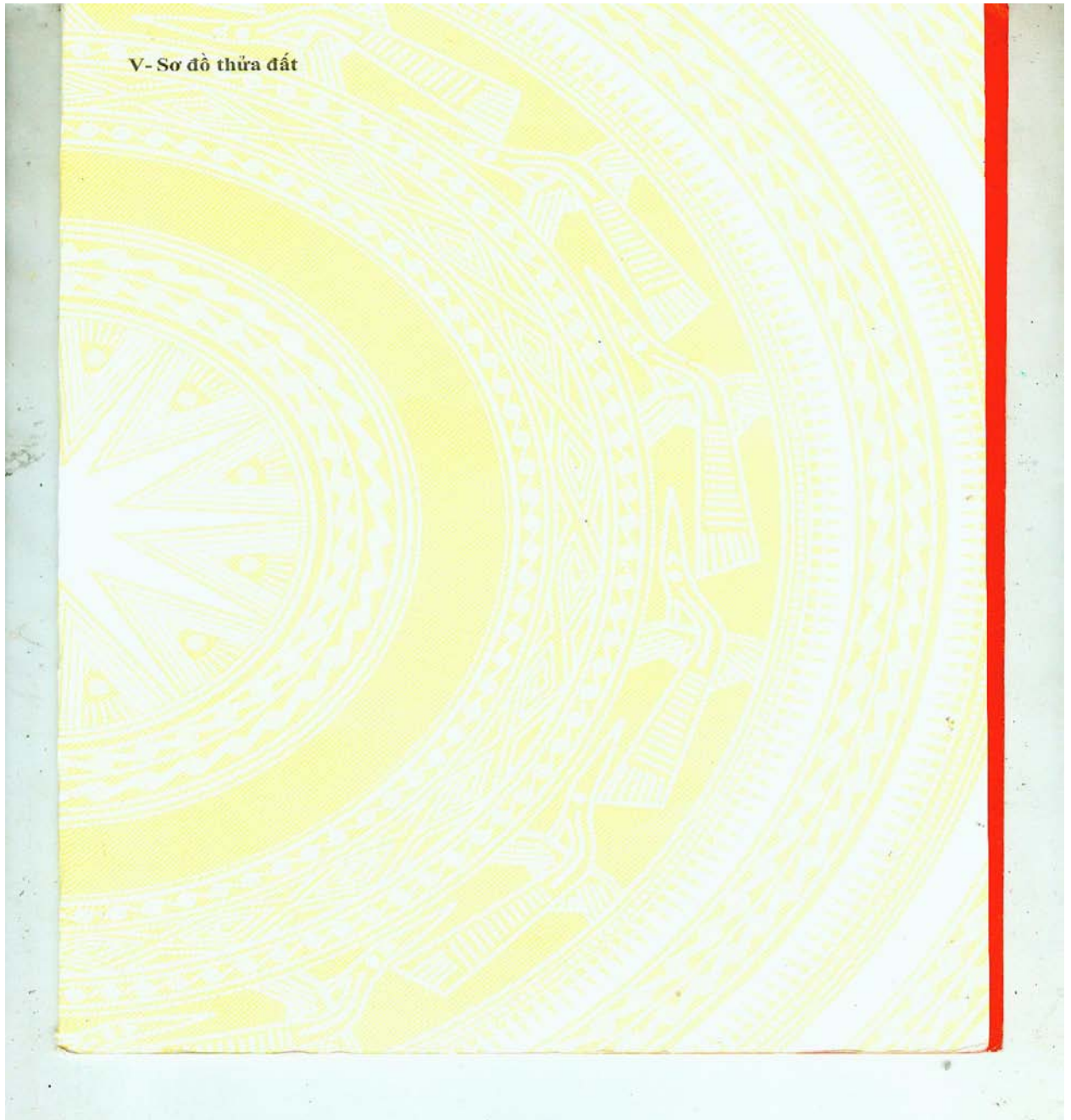
(the cover of LURC)

**THE LURC ACCORDING TO THE 2003 LAND LAW**  
**(the new red paper) – the second page**



**(recording information about land user, land parcel, asset attached to land and the notes)**

**THE LURC ACCORDING TO THE 2003 LAND LAW**  
**(the new red paper) – the third page**



**(showing the cadastral map of the land parcel)**

## THE LURC ACCORDING TO THE 2003 LAND LAW

(the new red paper) – the last page

**VI- Những thay đổi sau khi cấp giấy chứng nhận quyền sử dụng đất**

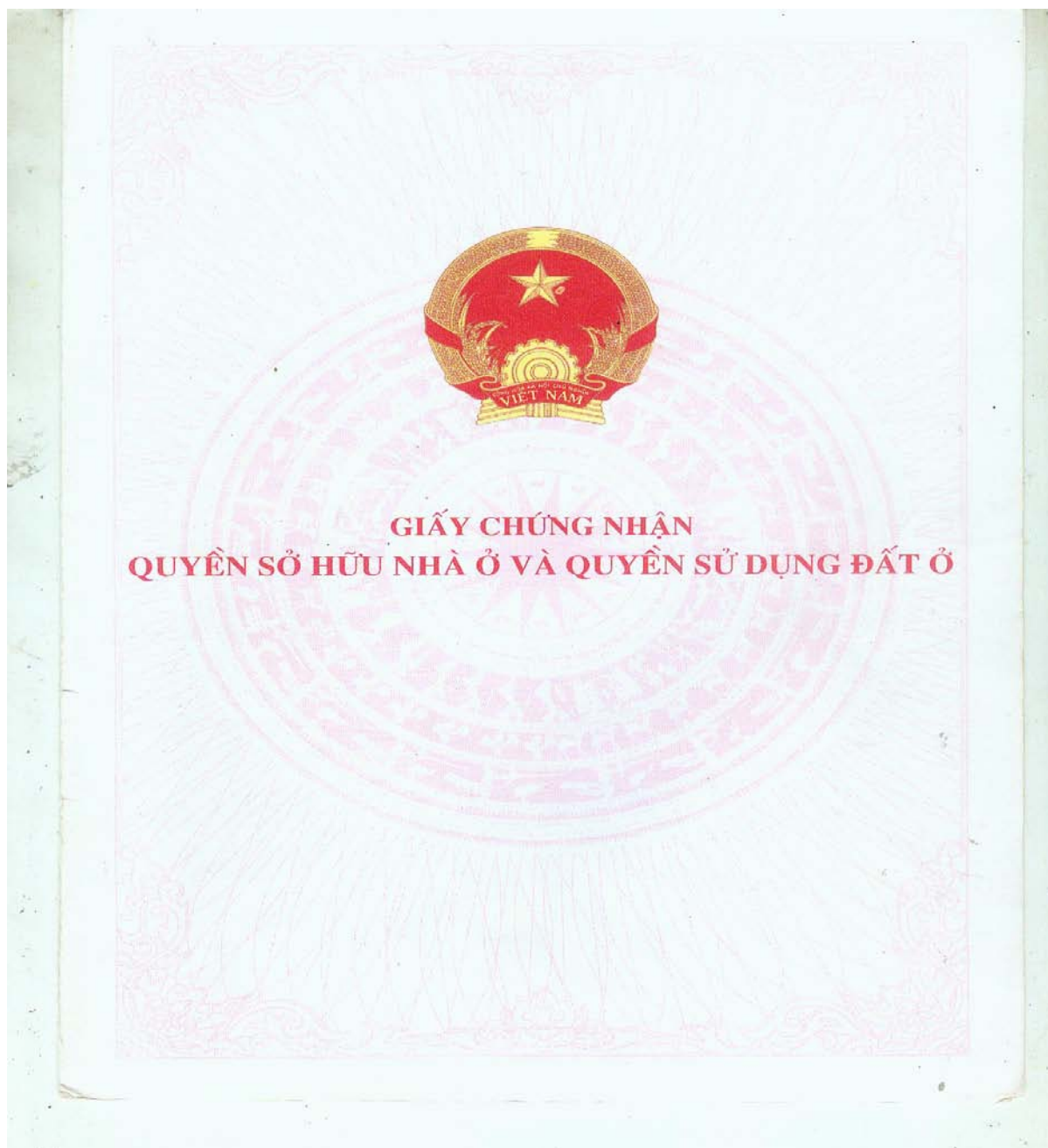
Ngày, tháng, năm	Nội dung thay đổi và cơ sở pháp lý	Xác nhận của cơ quan có thẩm quyền

**NGƯỜI ĐƯỢC CẤP GIẤY CHỨNG NHẬN QUYỀN SỬ DỤNG ĐẤT CẦN CHÚ Ý :**

- Được hưởng quyền và phải thực hiện nghĩa vụ của người sử dụng đất theo quy định của Luật Đất đai và các Nghị định hướng dẫn thi hành Luật Đất đai.
- Phải mang Giấy chứng nhận này đến đăng ký tại cơ quan có thẩm quyền khi: chuyển đổi, chuyển nhượng, cho thuê, cho thuê lại, thừa kế, tặng cho quyền sử dụng đất, thế chấp, bảo lãnh, góp vốn bằng quyền sử dụng đất; người sử dụng đất được phép đổi tên; có thay đổi về hình dạng, kích thước, diện tích thửa đất; chuyển mục đích sử dụng đất; có thay đổi thời hạn sử dụng đất; chuyển đổi từ hình thức Nhà nước cho thuê đất sang hình thức Nhà nước giao đất có thu tiền sử dụng đất; Nhà nước thu hồi đất.
- Không được tự ý sửa chữa, tẩy xóa bất kỳ nội dung nào trong Giấy chứng nhận. Khi bị mất hoặc hư hỏng Giấy chứng nhận phải khai báo ngay với cơ quan cấp giấy.
- Nếu có thắc mắc hoặc cần tìm hiểu về chính sách, pháp luật đất đai, có thể hỏi cán bộ địa chính xã, phường, thị trấn hoặc cơ quan quản lý đất đai có liên quan. Cán bộ địa chính và cơ quan quản lý đất đai có trách nhiệm giải đáp thắc mắc hoặc cung cấp thông tin về chính sách, pháp luật đất đai cho người sử dụng đất.

(record changes in land use)

**4. THE LURC ACCORDING TO THE LAW ON RESIDENTIAL HOUSING  
(the certificate of residential housing ownership and residential land use right –  
the new pink paper) – the first page**



**(the cover of the LURC)**

**THE LURC ACCORDING TO THE LAW ON RESIDENTIAL HOUSING**  
**(the certificate of residential housing ownership and residential land use right –**  
**the new pink paper) – the second page**

CỘNG HOÀ XÃ HỘI CHỦ NGHĨA VIỆT NAM  
 Độc lập - Tự do - Hạnh phúc

ỦY BAN NHÂN DÂN  
 QUẬN TÂN BÌNH - THÀNH PHỐ HỒ CHÍ MINH

77 99 7 66 66 22 76 39 79 3 6 B

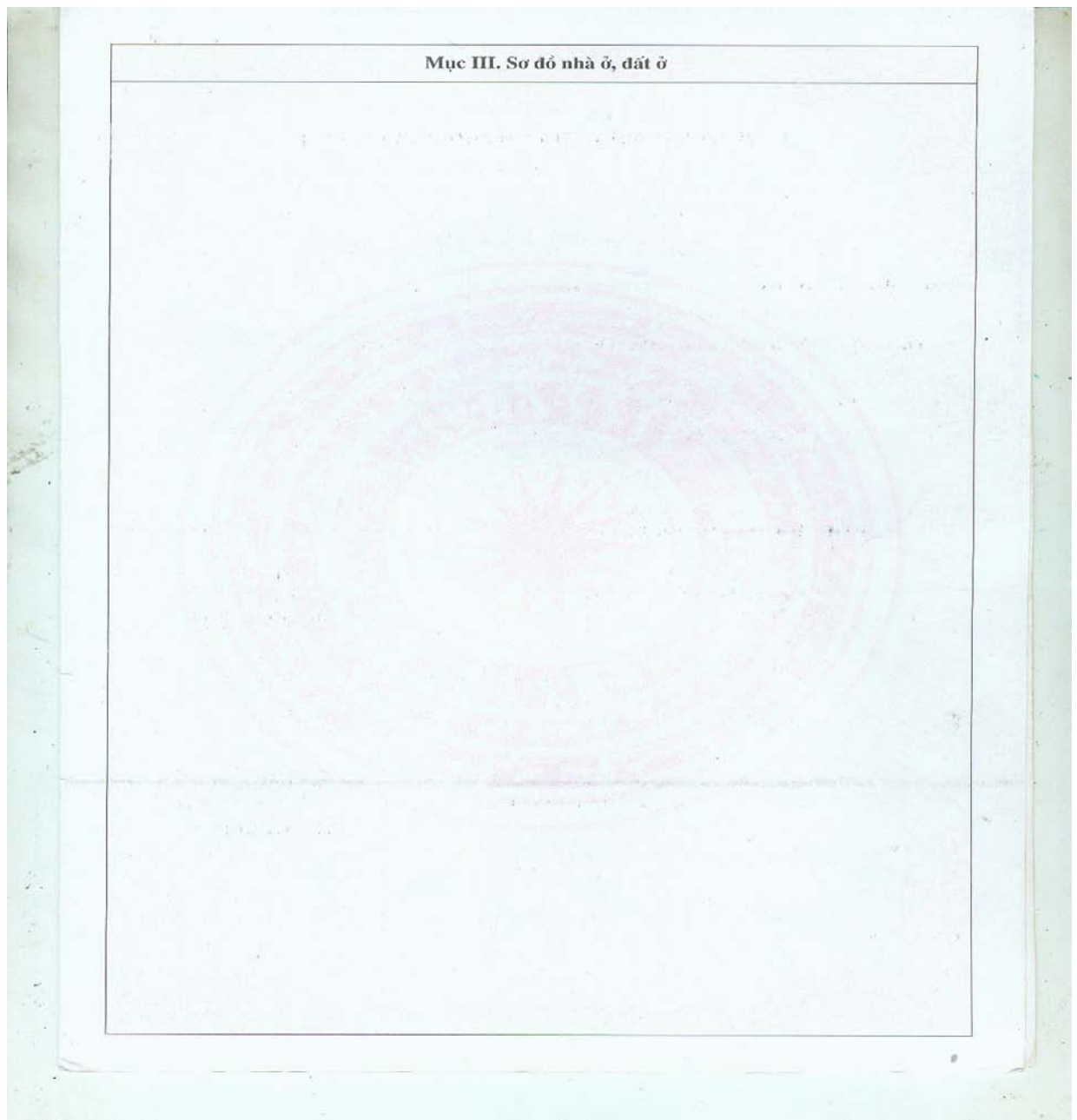
**CHỨNG NHẬN**

Mục I. Chủ sở hữu nhà ở và sử dụng đất ở	
Ông: <del>ĐƯƠNG THỊ HƯƠNG</del> <b>Bà: ĐƯƠNG THỊ LAN</b>	Năm sinh: 1955 CMND số: 022421559
Sinh năm: 1970 CMND: 023325325	cấp ngày tại
Địa chỉ thường trú: 21/22 Âu Cơ	Năm sinh: 1890 CMND số: 192030802
Bà: LÊ THỊ NGỌC	
Sinh năm: 1971 CMND: 022602876	Năm sinh: 1980 cấp ngày tại CMND số: 102020102
Địa chỉ thường trú: 21/22 Âu Cơ . P14. TB	
Mục II. Thực trạng nhà ở, đất ở	
1/ Nhà ở	2/ Đất ở
Địa chỉ: 95 <del>98</del> <del>An Tân phường Q. Tân Bình</del> <b>Đường Nguyễn Huệ, Quận Tân Bình</b>	Thửa đất số: 66 48 Tờ bản đồ số: 682 (BĐDC)
Diện tích sàn (nhà ở, căn hộ): 162 m <sup>2</sup>	Diện tích: 6884 m <sup>2</sup>
Kết cấu nhà: <b>Tường gạch, cột gạch, bê tông cốt xi măng</b>	Sử dụng riêng: 6884 m <sup>2</sup>
Cấp (hạng) nhà ở: 3	Sử dụng chung: không m <sup>2</sup>
Số tầng (tầng): 1 2	Đất được giao hoặc thuê: <b>Được chuyển nhượng</b>
Năm xây dựng: /	Hợp đồng thuê đất (số, ngày, tháng, năm):
Diện tích sàn nhà phụ (nếu có): m <sup>2</sup>	Thời gian thuê từ ngày tháng năm
Thời hạn được sở hữu: /	đến ngày tháng năm
Mục III, Mục IV ở trang sau là thành phần của giấy chứng nhận này	
Thành phố <del>Tân Bình</del> ngày tháng năm 2007	
TM. Ủy ban nhân dân <del>Quận Tân Bình</del> NH	

Hồ sơ gốc số

(recording information about land user and housing owner, land parcel, house  
 and the competent agency responsible for issue of this certificate)

**THE LURC ACCORDING TO THE LAW ON RESIDENTIAL HOUSING**  
**(the certificate of residential housing ownership and residential land use right –**  
**the new pink paper) – the third page**



**(showing the map of residential land and house)**

**THE LURC ACCORDING TO THE LAW ON RESIDENTIAL HOUSING**  
**(the certificate of residential housing ownership and residential land use right –**  
**the new pink paper) – the last page**

Mục IV. Những thay đổi sau khi cấp giấy		
Ngày, tháng, năm	Nội dung thay đổi	Xác nhận của cơ quan có thẩm quyền (Ký, đóng dấu)
(1)	(2)	(3)

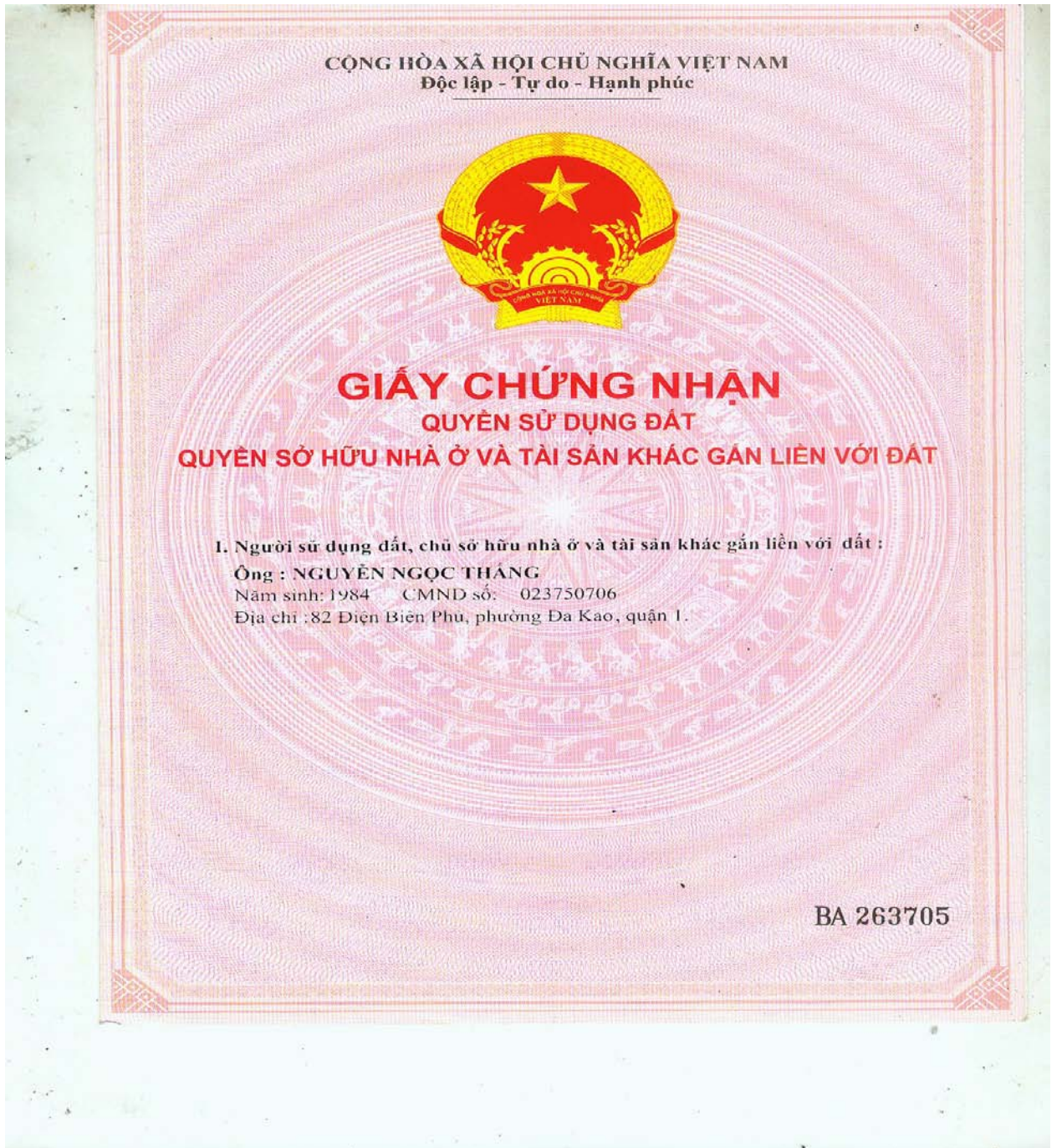
**NHỮNG VẤN ĐỀ CẦN LƯU Ý**

- Chủ sở hữu có quyền và nghĩa vụ đối với nhà ở, đất ở theo quy định của pháp luật.
- Tổ chức, cá nhân nhận chuyển nhượng, nhận thừa kế, nhận tặng cho, nhận đổi nhà ở và chuyển quyền sử dụng đất ở phải làm thủ tục theo quy định của pháp luật để được cấp giấy chứng nhận mới.
- Chủ sở hữu không được tự ý sửa chữa, tẩy xóa, viết thêm bất kỳ nội dung nào trong giấy chứng nhận.
- Chủ sở hữu có trách nhiệm:
  - Giữ gìn, bảo quản giấy chứng nhận; trường hợp mất giấy chứng nhận phải báo ngay với công an phường, xã, thị trấn nơi gắn nhất và cơ quan cấp giấy.
  - Khi giấy chứng nhận bị hư hỏng, rách nát hoặc mục IV hết chỗ ghi thì chủ sở hữu phải đến cơ quan cấp giấy chứng nhận làm thủ tục để được cấp đổi giấy mới.

**(recording changes in land use)**

## 5. THE CURRENT LURC

(the unified form of certificate for land use right, residential housing ownership and land-attached asset ownership) – the first page



(the cover – recording information about land user and asset owner)

## THE CURRENT LURC

(the unified form of certificate for land use right, residential housing ownership and land-attached asset ownership) – the second page

**II. Thừa đất, nhà ở và tài sản khác gắn liền với đất**

**1. Thừa đất:**

a) Thừa đất số: 44 , tờ bản đồ số: 18  
b) Địa chỉ: 14/11 Đường số 2, phường 11, quận Gò Vấp, quận Gò Vấp, TP.HCM.  
c) Diện tích : 26,9 m<sup>2</sup>, (bằng chữ : Hai mươi sáu phẩy chín mét vuông)  
d) Hình thức sử dụng: - Riêng: 26,9 m<sup>2</sup>, - Chung: Không  
e) Mục đích sử dụng: Đất ở tại đô thị  
f) Thời hạn sử dụng: Lâu dài  
g) Nguồn gốc sử dụng: -/-

**2. Nhà ở:**

a) Địa chỉ: 14/11 Đường số 2, phường 11, quận Gò Vấp, quận Gò Vấp, TP.HCM.  
b) Diện tích xây dựng: 26,9 m<sup>2</sup> , c) Diện tích sàn: 53,7 m<sup>2</sup>,  
d) Kết cấu: Tường gạch, cột gạch, sàn gỗ, mái tôn.  
e) Cấp (Hạng): 4 , e) Số tầng: 02  
f) Năm hoàn thành xây dựng: -/- , h) Thời hạn sở hữu: -/-

**3. Công trình xây dựng khác :** Chưa chứng nhận quyền sở hữu

**4. Rừng sản xuất là rừng trồng :** Chưa chứng nhận quyền sở hữu

**5. Cây lâu năm :** Chưa chứng nhận quyền sở hữu

**6. Ghi chú :** Không

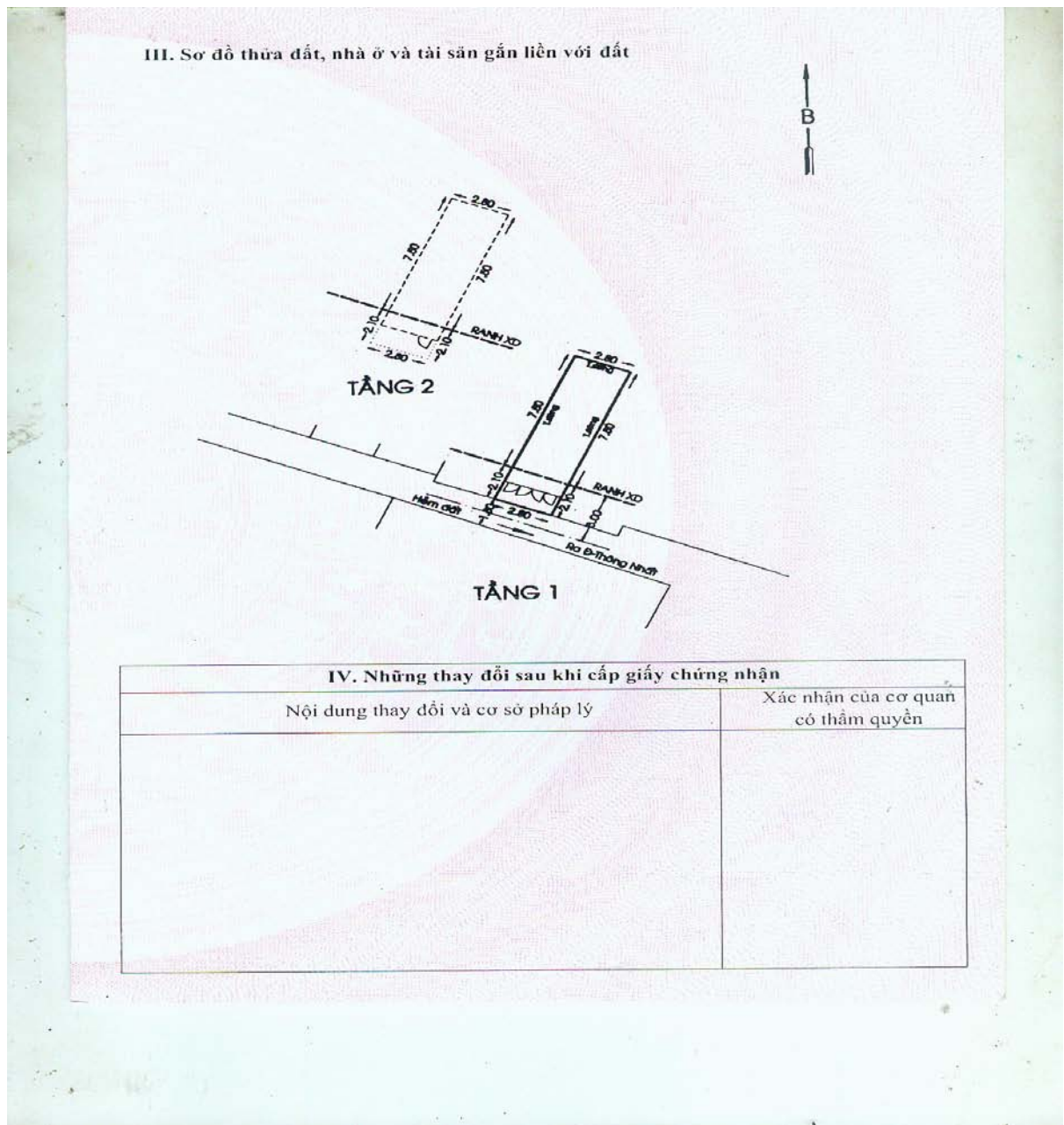
Gò Vấp, ngày tháng năm 2010  
TM.ỦY BAN NHÂN DÂN QUẬN GÒ VẤP  
KT. CHỦ TỊCH  
PHÓ CHỦ TỊCH

Số vào sổ cấp GCN: CH  
602

(recording information about the land parcel, house, other assets attached to land and the competent agency responsible for issue of this certificate)

## THE CURRENT LURC

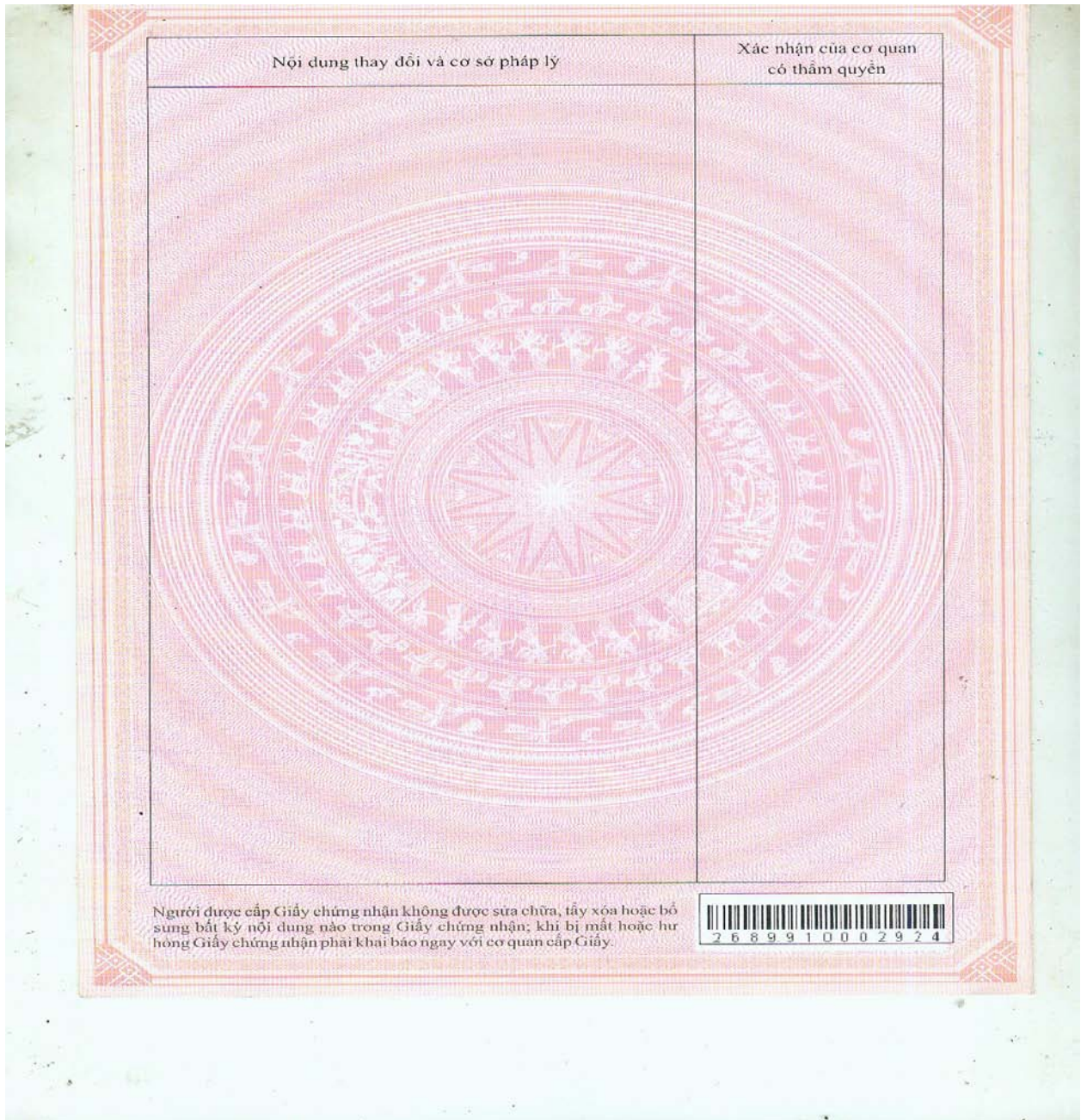
(the unified form of certificate for land use right, residential housing ownership and land-attached asset ownership) – the third page



(showing the map of residential land, house and asset attached to land and recording changes in land use)

## THE CURRENT LURC

(the unified form of certificate for land use right, residential housing ownership and land-attached asset ownership) – the last page



(recording changes in land use)

**TRANG BỔ SUNG GIẤY CHỨNG NHẬN**  
(Additional page of the land use right certificate)

Thửa đất số:  
(Land parcel number)  
number)

Tờ bản đồ số:  
(Cadastral map sheet

Số phát hành GCN:  
(Issuing number of the certificate)

Số vào sổ cấp GCN:  
(Archive number in the register of  
certificate issue)

*This additional page always has to be enclosed to the new certificate with legal value*

Nội dung thay đổi và cơ sở pháp lý (Content of changes and legal foundation)	Xác nhận của cơ quan có thẩm quyền (Confirmation of public authority)

Trang bổ sung số (Additional page number): .....

**(Mặt sau của Trang bổ sung) (The rear of additional page)**

Nội dung thay đổi và cơ sở pháp lý (Content of changes and legal foundation)	Xác nhận của cơ quan có thẩm quyền (Confirmation of public authority)
<i>(Chuyển tiếp Trang bổ sung số (Transit to additional page number): ... )</i>	

**APPENDIX C**  
**THE ONLINE INTEGRATED DATABASE OF**  
**NATURAL RESOURCES AND ENVIRONMENT (www.ciren.gov.vn)**

**(In land field, there are only some data as below)**

**Retrieved [20110102 13:38]**

**1. THE MAPS OF LAND USE STATUS QUO ALL OVER VIỆT NAM**

**(There are only the maps of An Giang province, Cần Thơ province, Hồ Chí Minh city, Đà Nẵng province, Hải Phòng province và Hà Nội capital)**

**TIN MỚI NHẤT:** [xưởng CNTT-TT Việt Nam 2010 với nhiều đổi mới](#) \* [Chính thức công bố Giải thưởng CNTT-TT Việt Nam 2010](#) \* [Cục Công nghệ thông tin \(CNTT\): 15 năm](#)

**Trang chủ**  
Tin tức  
Văn bản pháp quy  
Dịch vụ trực tuyến  
CSDL Tích hợp TNMT  
Thư viện điện tử TNMT  
Thông báo tự liệu  
Thông tin sản phẩm  
Diễn đàn kỹ thuật  
Chuyên đề ELIS  
Giới thiệu  
Webmail  
Liên hệ

**TÌM KIẾM**  
Từ khóa...

**Hệ thống E-MAIL**  
<http://mail.tnmt.vn>  
Tài nguyên & Môi trường

**CSDL TÍCH HỢP TNMT**

**Bản đồ hiện trạng sử dụng đất toàn quốc** [Quay lại](#)

- Bản đồ hiện trạng sử dụng đất An Giang
- Bản đồ hiện trạng sử dụng đất Thành phố Hồ Chí Minh
- Bản đồ hiện trạng sử dụng đất Cần Thơ
- Bản đồ hiện trạng sử dụng đất Đà Nẵng
- Bản đồ hiện trạng sử dụng đất Hải Phòng
- Bản đồ hiện trạng sử dụng đất Hà Nội

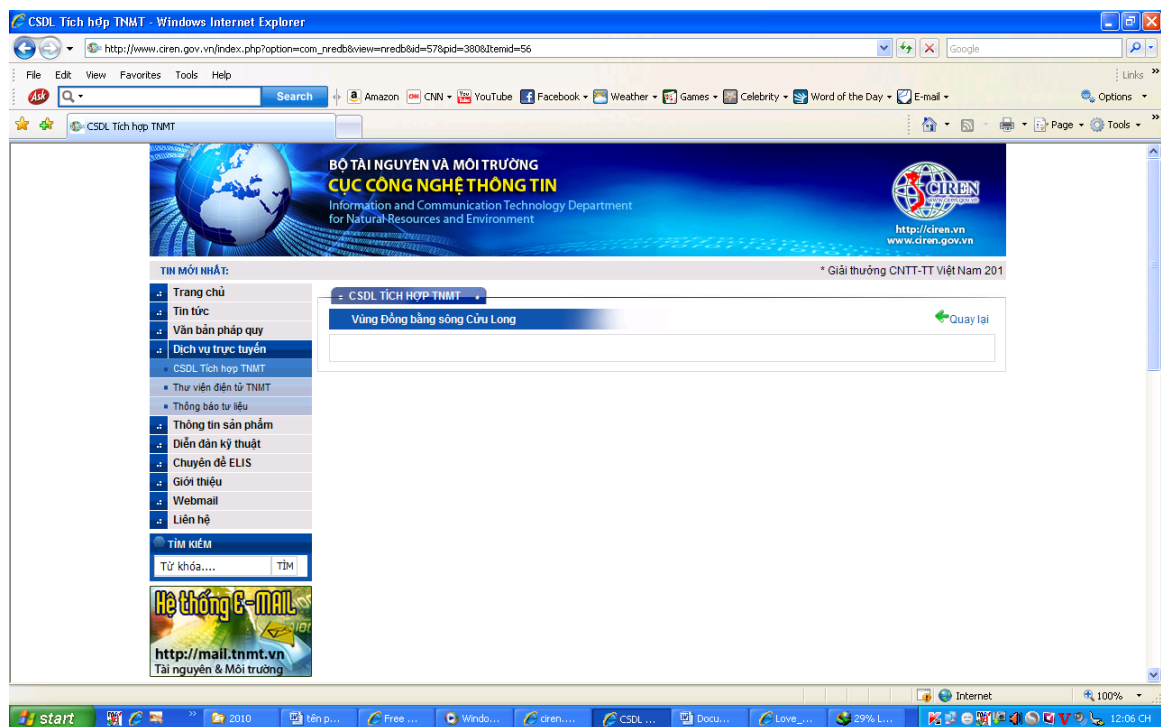
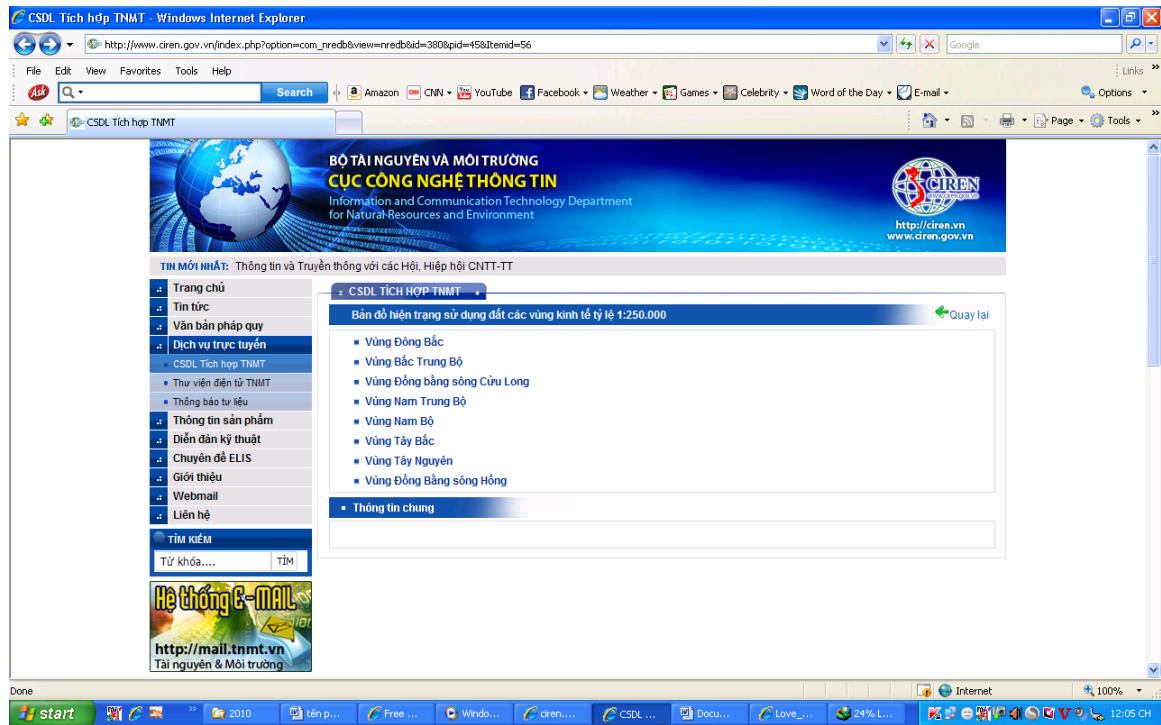
**Thông tin chung**

Bao gồm các lớp dữ liệu tương ứng với từng loại đất trên bản đồ hiện trạng

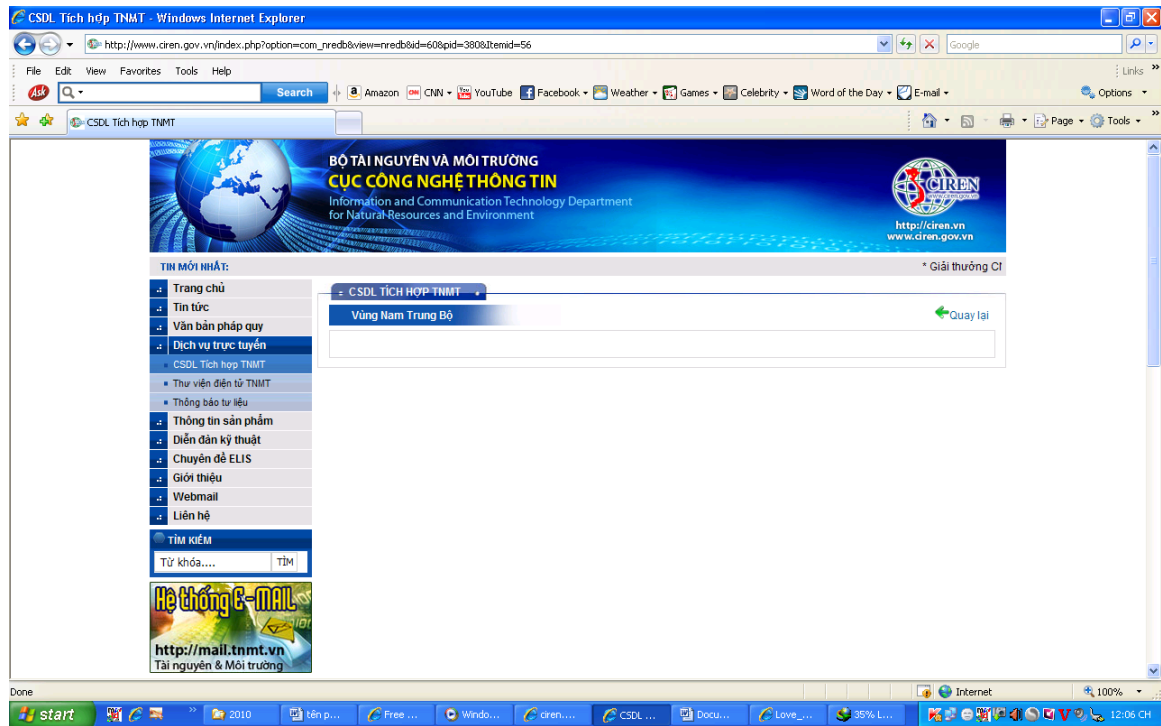
## 2. THE LAND USE STATUS QUO MAP OF ECONOMIC ZONES

SCALE 1:250.000

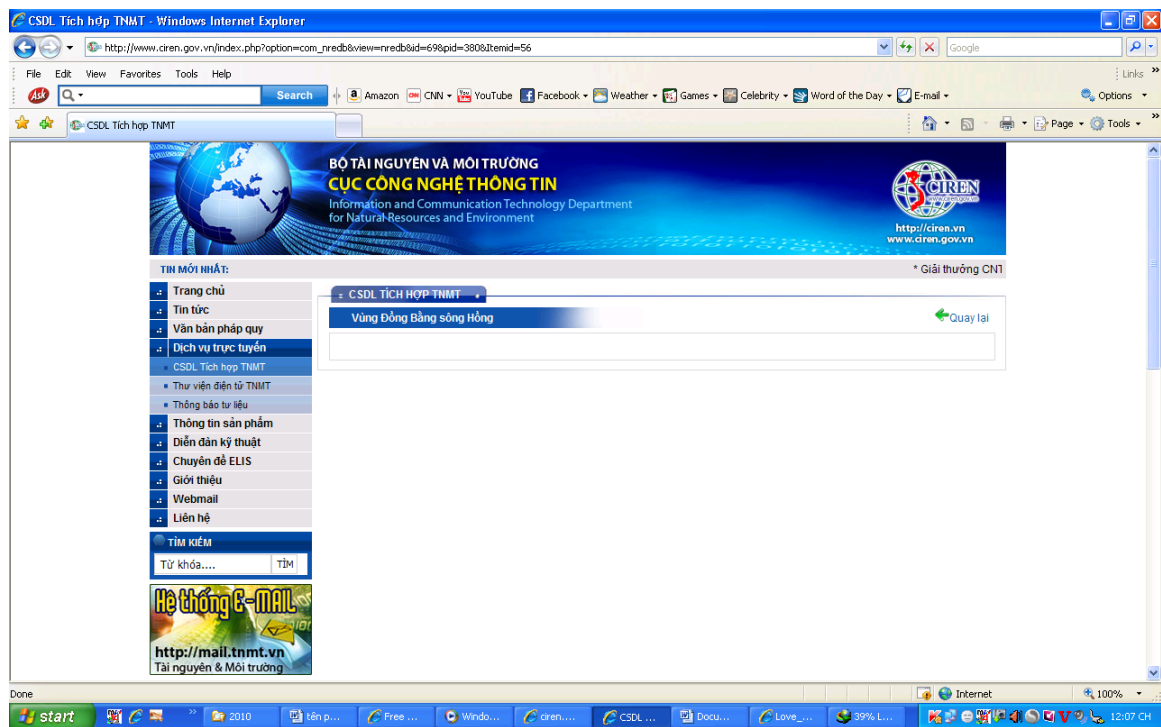
(There is only the name of economic zones, but no maps shown)



(The Mekong River Delta)

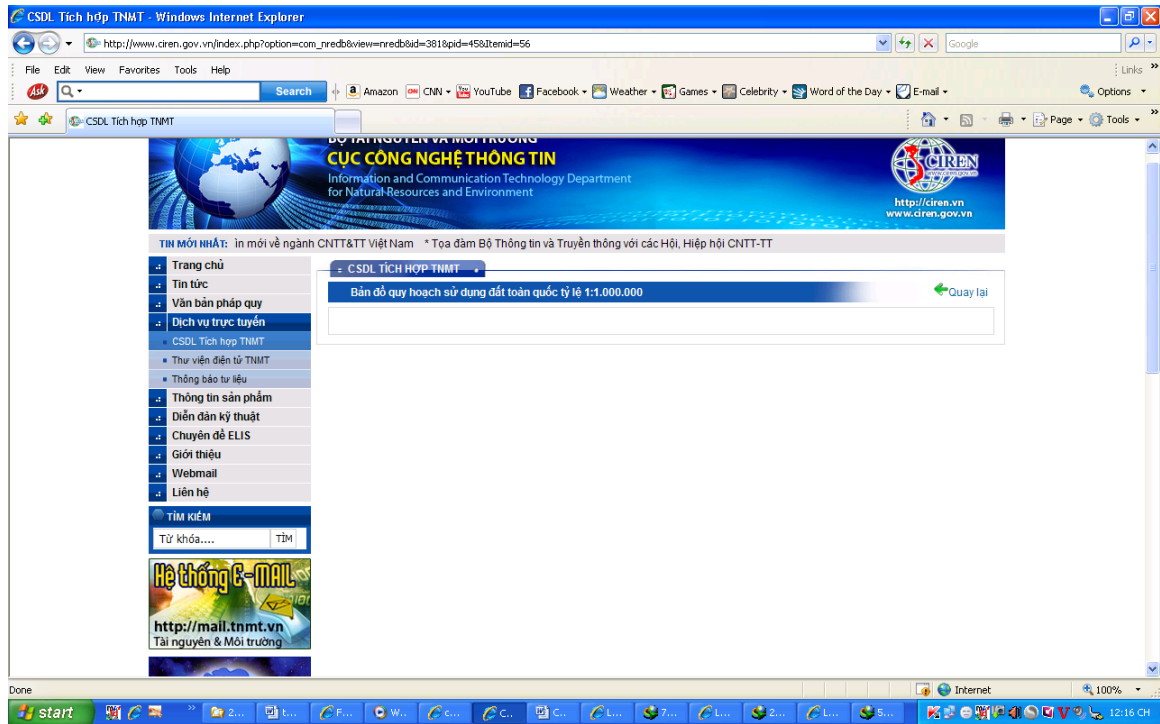


(The South Central Part of Việt Nam)

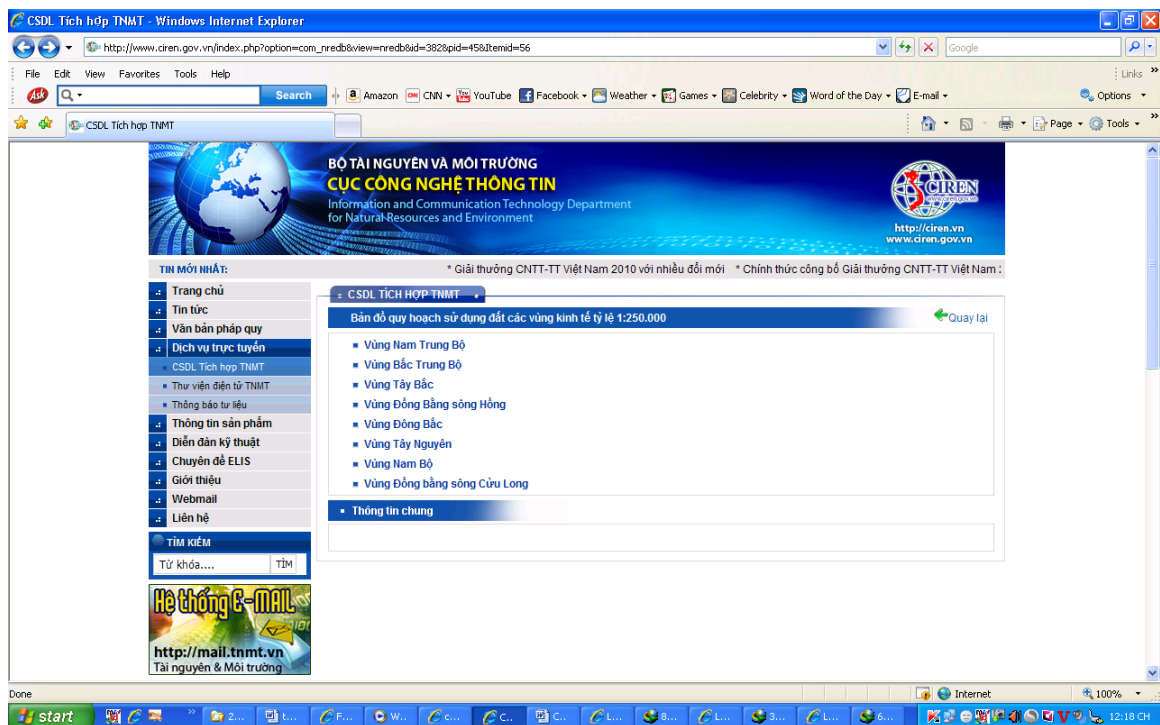


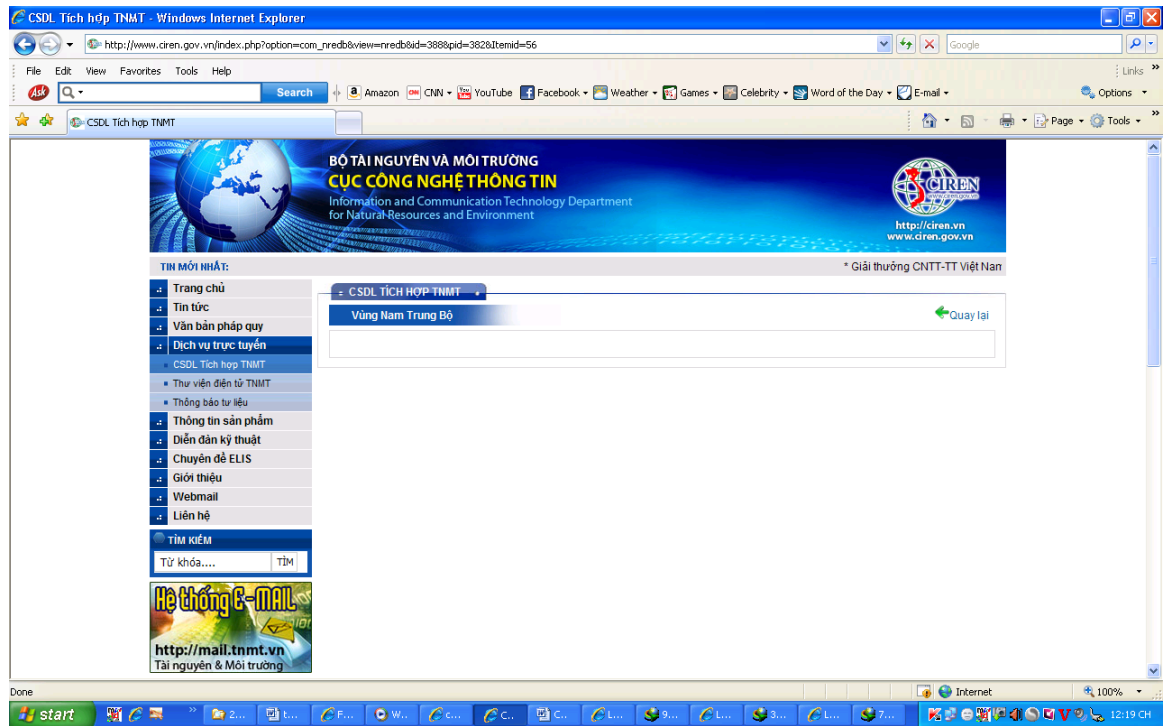
(The Red River Delta)

**3. THE MAP OF LAND USE PLANNING ALL OVER VIỆT NAM – SCALE  
1:1.000.000  
(No maps are shown)**

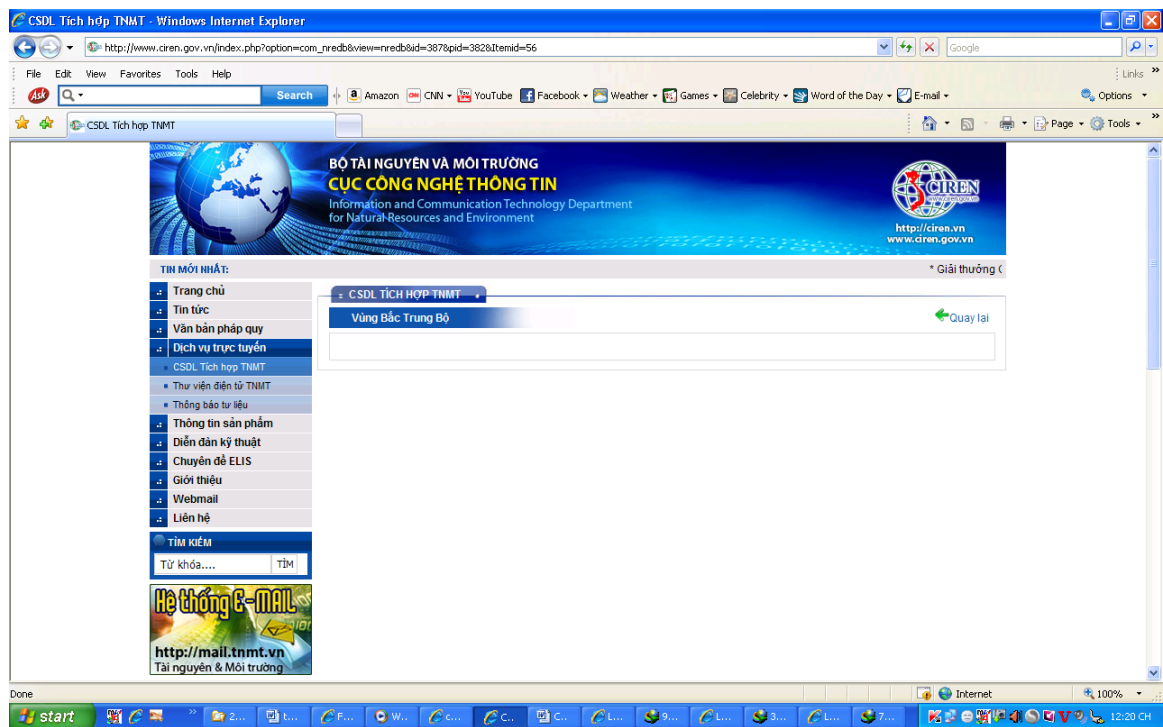


**4. THE LAND USE PLANNING MAP OF ECONOMIC ZONES – SCALE 1:250.000  
(There is only the name of economic zones, but no maps shown)**

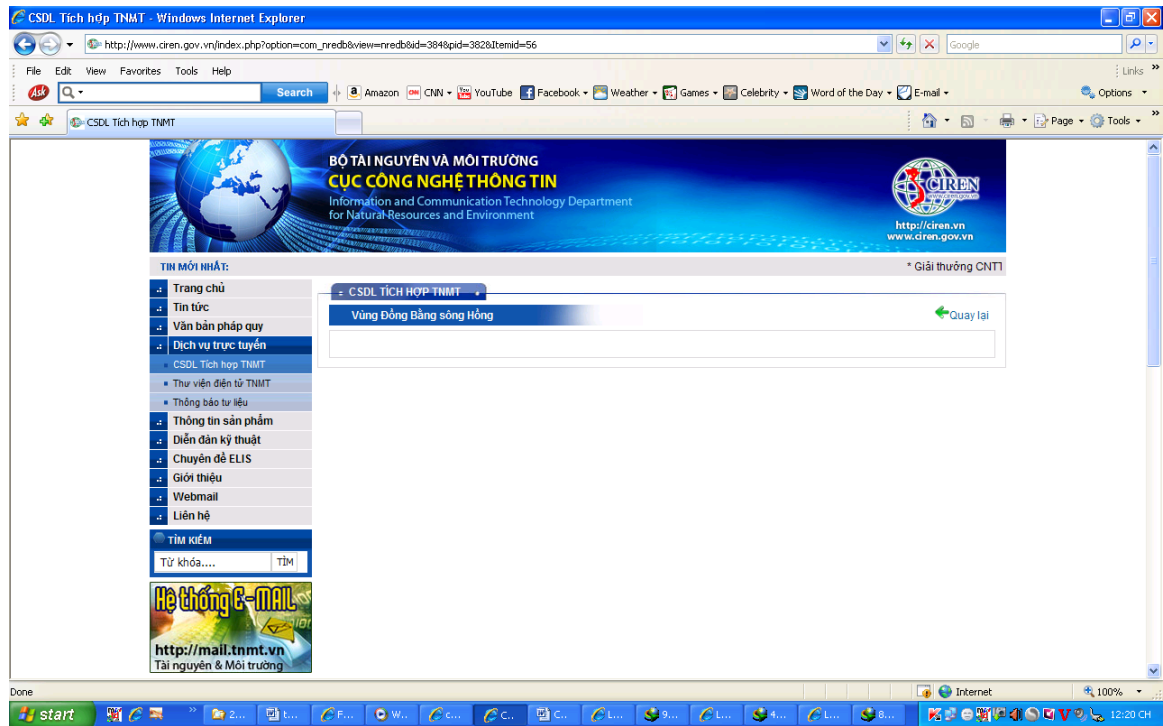




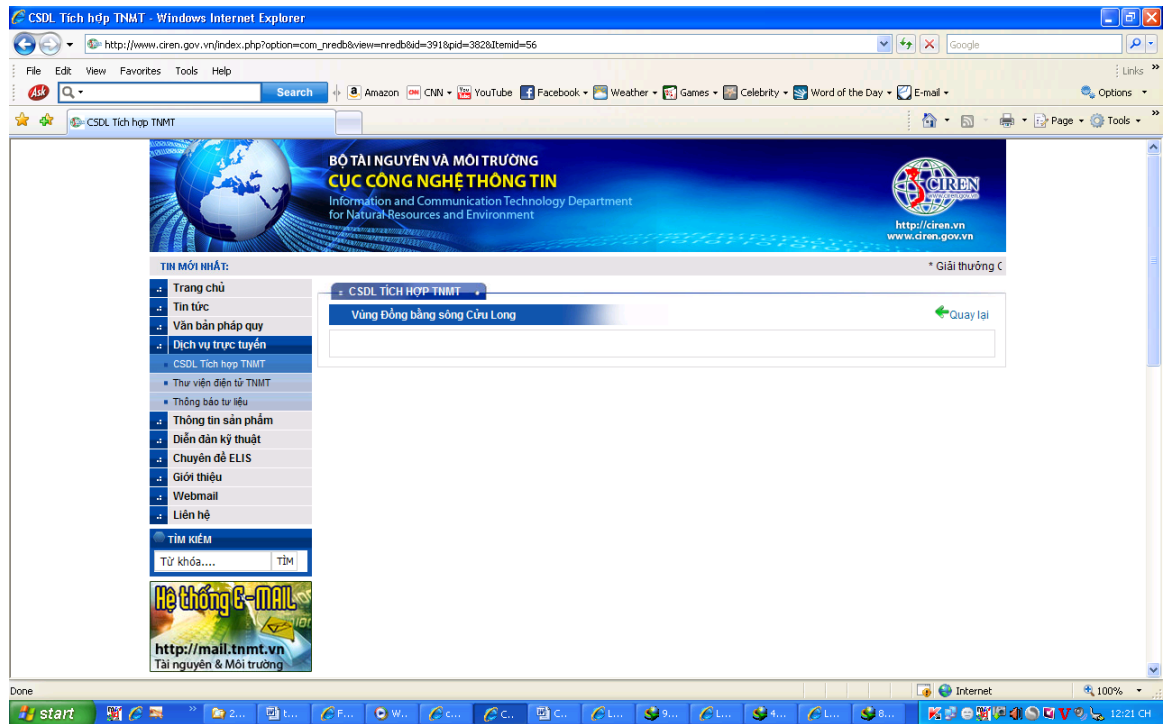
(The South Central Part of Việt Nam)



(The North Central Part of Việt Nam)



(The Red River Delta)



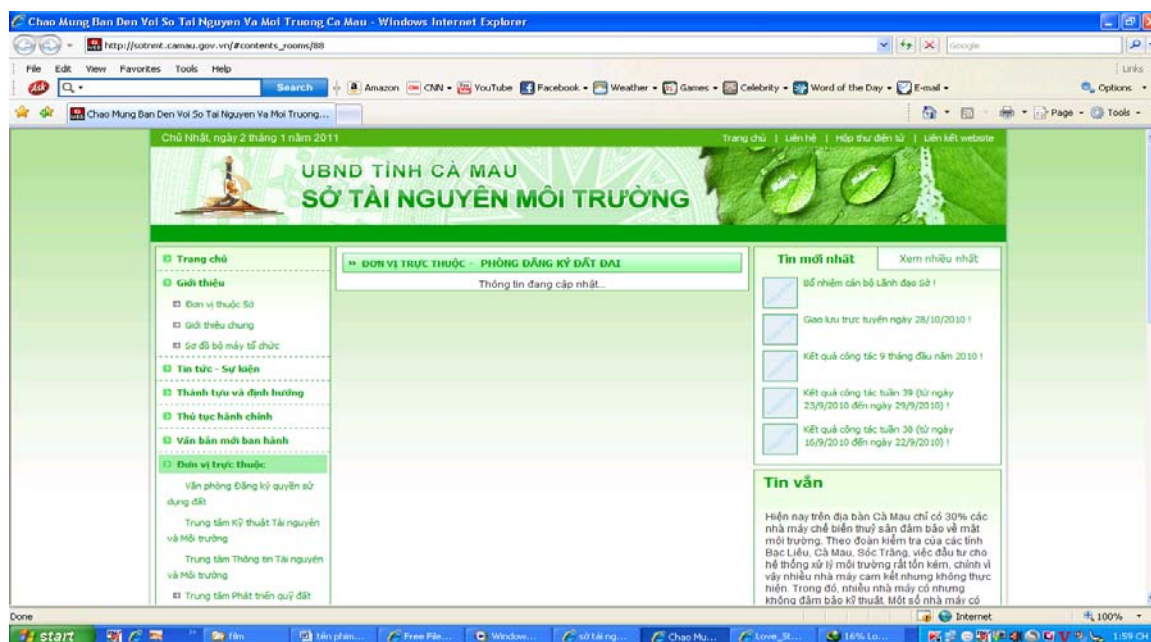
(The Mekong River Delta)

## APPENDIX D

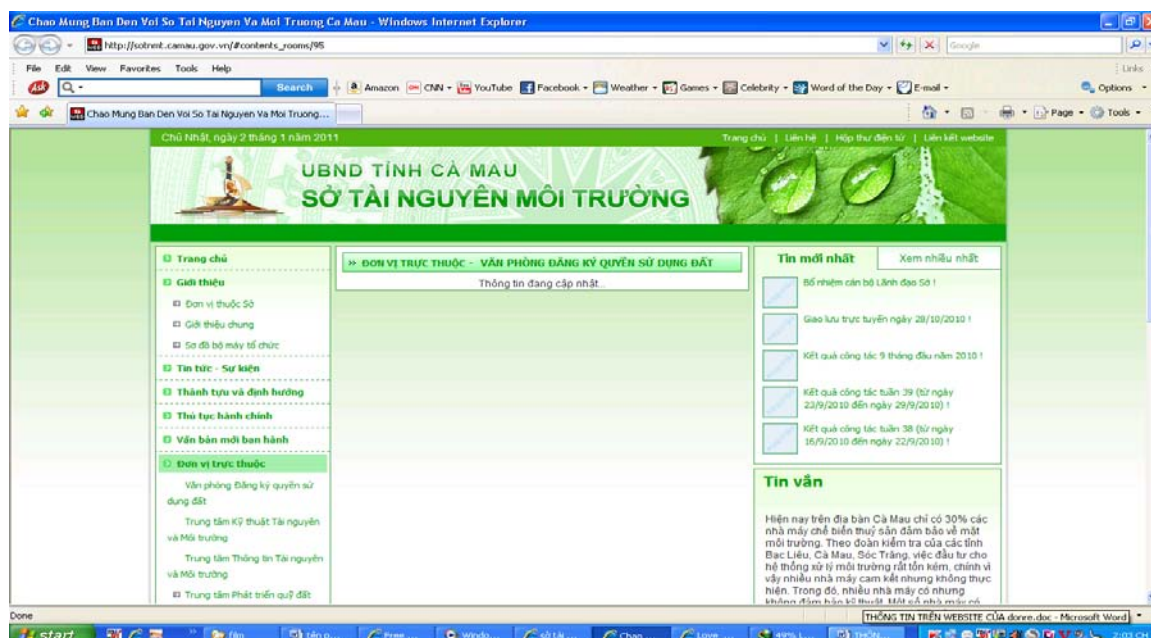
### LAND INFORMATION ONLINE OF SOME PROVINCIAL DEPARTMENTS OF NATURAL RESOURCES AND ENVIRONMENT

(Mainly focus on guiding administrative procedures. It is difficult or impossible to find cadastral database online). (Retrieved [20110102 14:01])

#### 1. The Department of Natural Resources and Environment of Cà Mau province

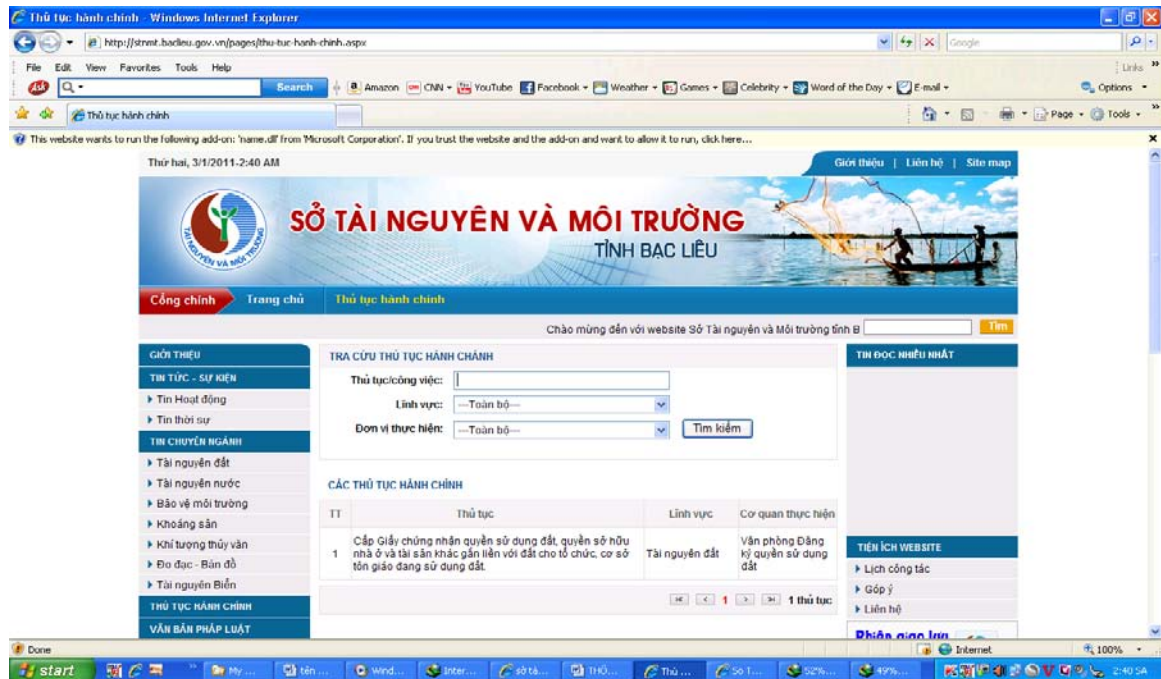


(The Land Registration Division: information is being updated)

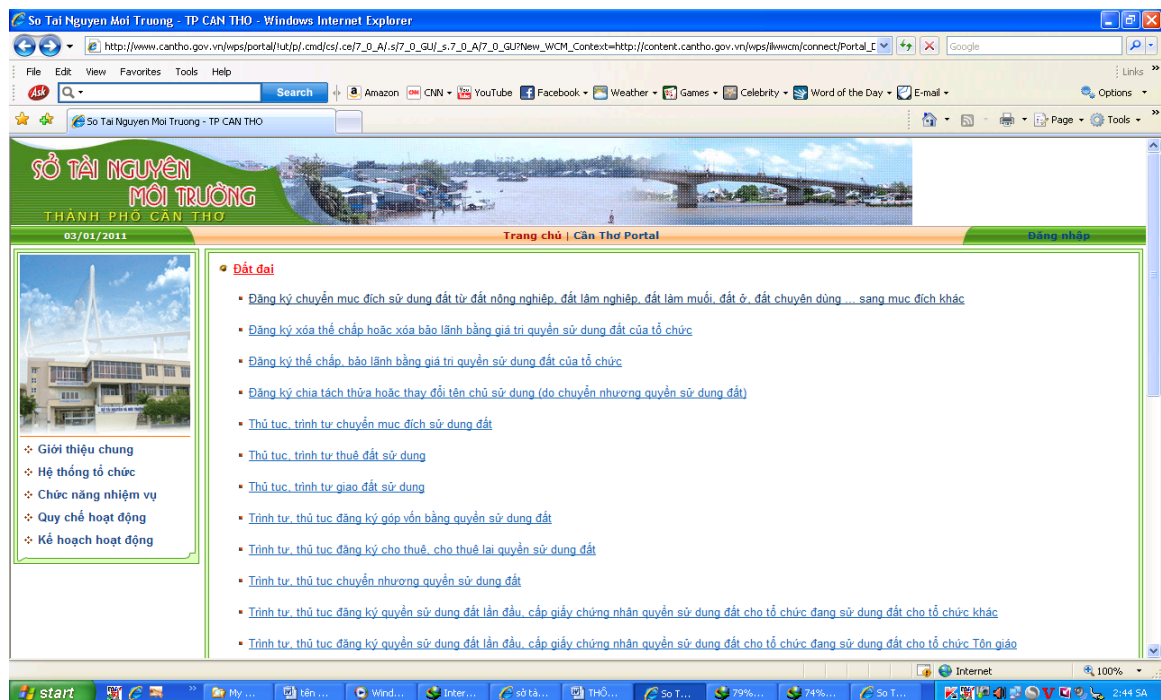


(The Land Use Right Registration Office: information is being updated)

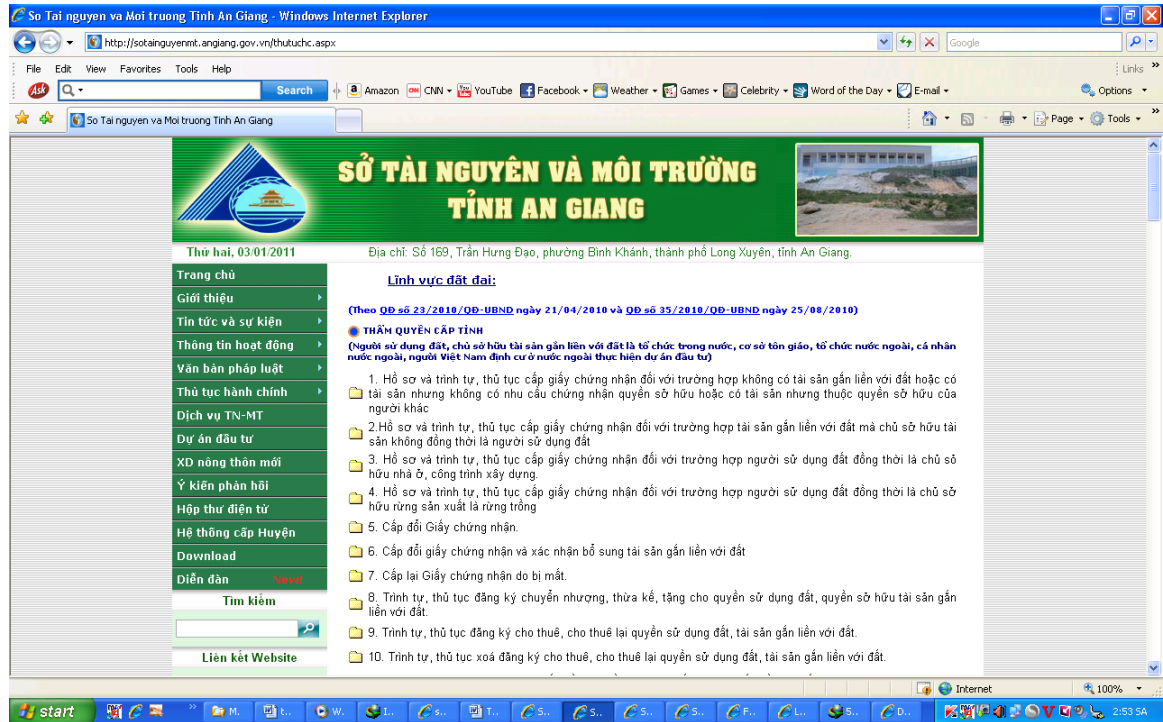
## 2. The Department of Natural Resources and Environment of Bạc Liêu province (About procedures, there is only the guideline on procedure for issue of LURC)



## 3. The Department of Natural Resources and Environment of Cần Thơ province (There are several guidelines on administrative procedures)



#### 4. The Department of Natural Resources and Environment of An Giang province



(Guidelines on administrative procedures)

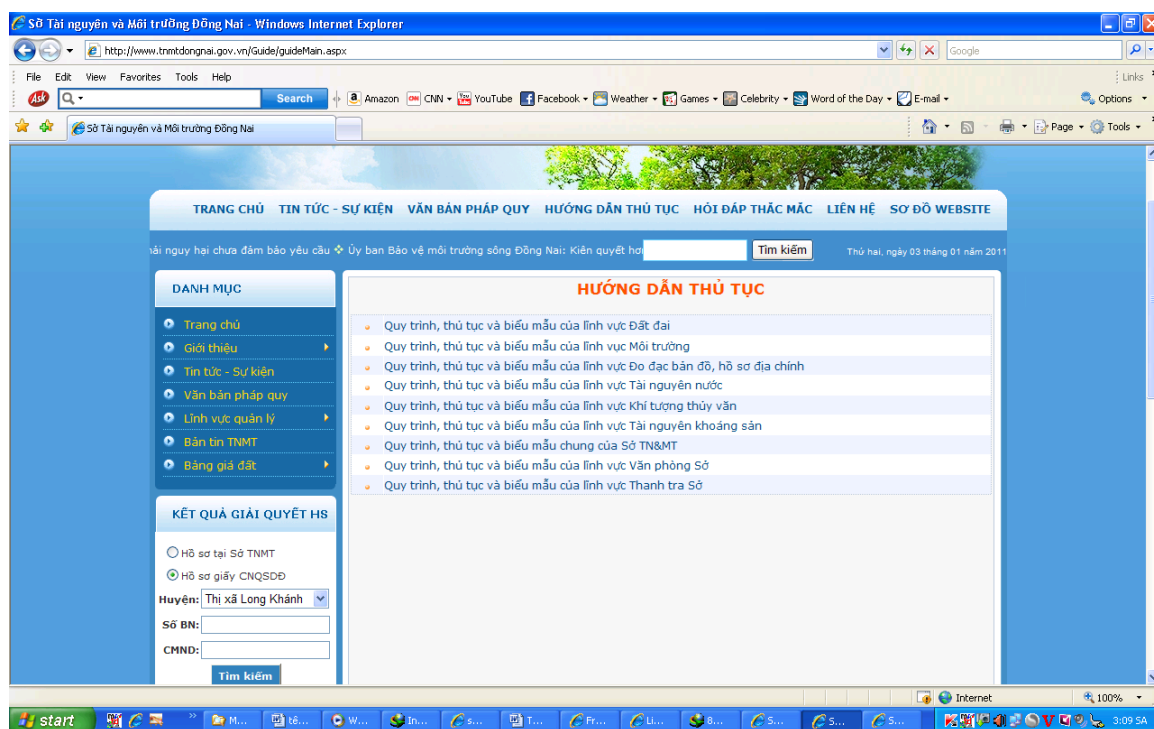


(Maps of land use planning)



(Guidelines on online registration)

5. The Department of Natural Resources and Environment of Đồng Nai province  
 (Mainly focus on guiding administrative procedures)



## 6. The Department of Natural Resources and Environment of Gia Lai province (Mainly focus on guiding administrative procedures)



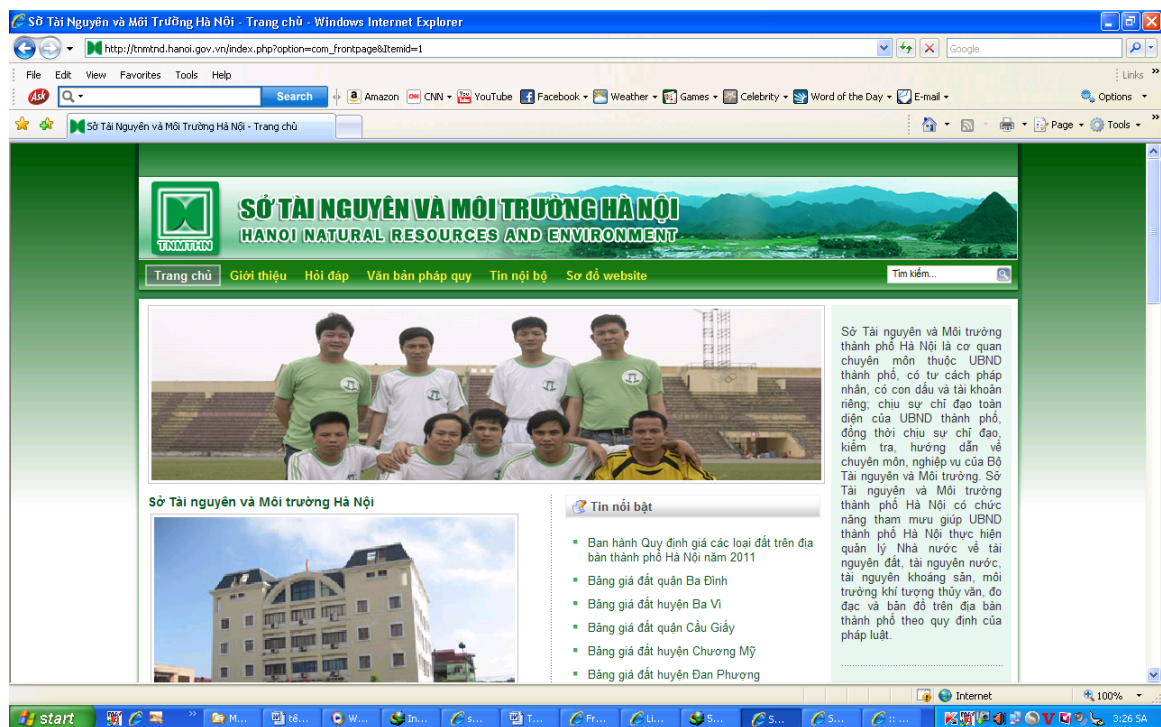
## 7. The Department of Natural Resources and Environment of Bình Định province (Mainly focus on guiding administrative procedures)



## 8. The Department of Natural Resources and Environment of Nghệ An province



## 9. The Department of Natural Resources and Environment of Hà Nội city (Mainly focus on news and information of State land price)



## 10. The Department of Natural Resources and Environment of Cao B province

(About procedure, mainly focus on issue of LURC and land use planning)



## 11. The Department of Natural Resources and Environment of Bắc Giang province

(There is an introduction about the natural resources and environment database, but it cannot be accessed)



(Introduction about the natural resources and environment database)



(Information is being updated)

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