

# Access to land for small and medium-sized enterprises - Issues raised in improving land policy

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Resolution No. 18-NQ/TW dated 16<sup>th</sup> June 2022 on “Continuing to renew and improve institutions and policies to strengthen the effectiveness, and efficiency of land management and land use, creating motivation for Vietnam to become a developed country and high-income” has commented, “administrative reform in land management is still slow and does not meet practical requirements; access to land for enterprises, especially small and medium-sized enterprises (SMEs), is still difficult...”

## 1. INTRODUCTION

In the world, SMEs play a very important role in implementing socio-economic development goals. In recent decades, this business system has been a central target of policies to support the economic development of countries. Research on “Land Tenure and Rights for Improved Land Management and Sustainable Development” by Emmanuel Kasimbazi (2017) stated that “Access to land, security of land use and land management rights are all important for livelihoods, development, reducing land degradation and investing in sustainable land management...” In Vietnam, in order to concretize the provisions of the Constitution 2013 to ensure that all entities in different economic sectors are equal and shall cooperate and compete with one another in accordance with Law (Article 51), the Party and State have developed and issued Resolution No. 35/NQ-CP dated 16<sup>th</sup> May 2016 on supporting and developing enterprises until 2020, Resolution No. 19-2016/NQ-CP dated 28<sup>th</sup> April 2016 of the Government issued with the main tasks and solutions to improve the business environment, enhance national competitiveness in 2016 - 2017 with an orientation to 2020 and especially, the Law on Support for SMEs issued on 12<sup>th</sup> June 2017.

In Resolution No. 35/NQ-CP, the Ministry of Natural Resources and Environment (MONRE) shall assume the prime responsibility for, and coordinate with relevant Ministries and agencies to carry out the task: “Research and propose policy mechanisms to support enterprises to access production land in industrial parks and industrial clusters and allow flexible land rental payment terms to suit the needs of SMEs” to create a favorable environment to support start-up and innovative enterprises.

In Resolution No. 19-2016/NQ-CP, the Government assigned the responsibility to the MONRE: “Complete amendments to regulations on administrative procedures in registration... Propose solutions to publicize funds for unused land, unleased land, and subleased land in industrial parks, industrial clusters, export processing

zones, economic zones, and land allocated and leased by the State but slowly put land into use. Create favorable conditions for enterprises, especially SMEs to access land”.

The Law on Support for SMEs stipulates: “Exemption and reduction of land use fees for a limited period according to the provisions of land legislation” (Clause 2, Article 16). Article 15 of the Law on Investment 2020 stipulates the form of investment incentives, including incentives for “exemption and reduction of land use fees, land rent, and land use tax” for those eligible for investment incentives including: “Investment in the business of product distribution chains of SMEs; investment in the business of technical facilities to support SMEs and incubate SMEs; investment in the business of a common working area to support innovative start-up SMEs in accordance with the legislation on supporting SMEs” (Clause 2, Article 15). Thus, the viewpoints and policy orientations of the Party and State have paid attention to the issue of access to land for SMEs. The right to access land for SMEs requires ensuring the right to fairness and equality in land exploitation and use compared to entities of all economic sectors.

## 2. ACCESS TO LAND FOR SMES IN VIETNAM CURRENTLY

“Access to land” is not a completely new term, however, there is no complete concept or definition of “access to land”. The terms “access to land” or “access to land use rights” are not currently recorded in land legal documents. However, “access to land and stability in land use” is one of 10 indexes for VCCI to evaluate the competitiveness of localities in attracting investment through the Provincial Competitiveness Index (PCI). The PCI uses the index “access to land and stability in land use” to measure two aspects of the land problem that enterprises face: Whether it is easy to access land and whether enterprises feel secure and assured of stability when they have business premises.



Article 3 of the Civil Code states the basic principle that “all individuals and legal entities are equal, must not use any reason to discriminate, and are equally protected by Law in terms of personal and financial rights”. Thus, all land users need to be guaranteed the same rights. Article 27 of the Land Law 2013 defines: “Enterprise is one of the objects belonging to the group of economic organizations”. However, the current land policy does not clearly demonstrate and delineate land use regulations for land users who are SMEs.

According to statistics from the Ministry of Planning and Investment in the “Vietnam SME White Paper 2014”, the proportion of SMEs with land is relatively high compared to large enterprises, the proportion of SMEs with land and ownership of certificate of land use rights is relatively low compared to large enterprises. On average, 87% of SMEs have land, specifically 93% of micro-enterprises, 83% of small enterprises and 63% of medium-sized enterprises have land, production, and business premises (possibly originating from assets of individuals, families, or the State allocates land with land use fees, enterprises receive transfer of land use rights, lease land from the State or sublease from individuals...). However, for enterprises with land of the above origin, only 54% of micro-enterprises, 56% of small enterprises, and 71% of medium-sized enterprises have certificates of land use rights; as for large-scale enterprises, up to 87% have certificates of land use rights. These figures partly explain that SMEs’ access to bank capital is significantly lower than that of large-scale enterprises. On average, 40% of micro-enterprises, 62% of small enterprises, and 74% of medium-sized enterprises have loans from banks; this figure for large-scale enterprises is up to 81%. About 90% of SMEs said they must have mortgaged assets when borrowing money from banks, significantly higher than the rate of large enterprises (82%).

On the other hand, the stability of the business premises of enterprises is relatively low compared to large-scale enterprises. Only 22% of the micro-enterprises, 24% of small enterprises, and 29% of medium-sized enterprises said that the level of stability of their business premises (measured by the assessment that the risk of land acquisition is low) is high or very high; this rate of large-scale enterprises is 31%. Assessing the ability to receive adequate compensation for business premises if it is recovered, 29% of the micro-enterprises, 31% of small enterprises, and 32% of medium-sized enterprises said they are likely to or always receive adequate compensation, this figure for large-scale enterprises is 37%.

Another assessment also shows that SMEs have difficulty accessing land in localities compared to large-scale enterprises. 27% of SMEs said they did not encounter difficulty in accessing or expanding production and business premises. However, for large-scale enterprises, this rate is 35%. For some localities, there is a policy of relocating production and processing facilities out of

urban areas to avoid pollution, and ensure fire and explosion safety... also making it difficult for SMEs to find a place to relocate when they cannot enter industrial parks and clusters because of high land rents.

Currently, the number of SMEs with land located in industrial parks/clusters is very low, less than 3% of the micro-enterprises and 8% of small enterprises have land located in industrial parks and clusters. For medium-sized enterprises, this figure is nearly 19%, this rate is lower than the figure of 35% for large-scale enterprises. While the demand for land rental in industrial parks and clusters of SMEs is very large, the State needs to have uniform policies on rental prices, as well as planning, labor, and infrastructure to create more favorable conditions for SMEs in accessing land in industrial parks/clusters.

### 3. ISSUES IN COMPLETING LAND POLICY TO IMPROVE ACCESS TO LAND FOR SMES

Access to and registration of land for enterprises in Vietnam have gone through many stages of amending and improving policies. However, there are still many difficulties and inadequacies, especially for SMEs in production, business, trade, and services. Some reasons can be stated as follows:

*Firstly*, provinces/cities have almost no separate policies for SMEs, and have mainly devoted resources to large projects and FDI enterprises.

*Secondly*, production premises for SMEs are very difficult, and the proportion of SMEs accessing land in industrial clusters is very low (medium - sized enterprises account for 19%, small enterprises account for 8%, and micro-enterprises account for 3%). Most SMEs are still taking advantage of land in residential areas, renting houses as production and business premises. In fact, subleasing in industrial parks and clusters by SMEs is still limited because the scale of leased land according to detailed construction planning of industrial parks and clusters is often not consistent with the ability of SMEs to pay. This leads to a situation where some investment projects subject to land acquisition have to wait for the State to spend large costs to carry out land acquisition, site clearance, and create a clean land fund to allocate and lease land to investors; while small investors are not economically qualified to receive free land use rights on



the market. According to Clause 8, Article 168 of the Draft Land Law (amended) has also researched and supplemented provisions on land for industrial parks, export processing zones, and industrial clusters, stipulating: “Investors of industrial park infrastructure are responsible for setting aside industrial land funds with invested infrastructure for the Provincial People’s Committee to lease land to SMEs...”, however, there should be guiding provisions for the Law to come into practice.

*Thirdly*, land use planning does not meet the development needs of enterprises, many plots of land are far from infrastructure, next to polluted areas, or too close to residential areas. Overlapping between types of planning, adjusting planning, and not fully disclosing information about planning options has made it difficult for enterprises to access land. It is very difficult for SMEs to access land when access to planning information is still difficult, enterprises are likely to face risks when land is recovered, especially SMEs are not able to keep up with the State’s land planning adjustments.

Access to land information is also not transparent, making it difficult for SMEs to find land to locate their headquarters, most of them have to sublease. Besides, issues of site clearance and land prices... also always make enterprises worried. Every year, a large number of new SMEs are established, increasing the demand for land for industrial and commercial purposes to build factories, and offices... Access to information to obtain land and register land to ensure full land rights of SMEs always needs the attention of the Government to promote the development of the country’s economy.

*Fourthly*, administrative procedures for SMEs are still troublesome and complicated. Many SMEs have assets but do not have enough valid documents to carry out mortgage procedures, such as: Enterprises are allocated land for use but have not been issued documents proving land ownership or enterprises have land lease contracts with annual payments but are not allowed to mortgage the land to borrow capital from banks... Easy access to land and land registration will create opportunities for SMEs to access credit more easily through mortgaged assets such as land. Holding a certificate of land use rights helps ensure property rights and creates peace of mind for enterprises and investors about long-term investment prospects. Not having land use rights means that enterprises lack mortgaged assets to access credit and borrow capital from banks.

#### 4. SOME SOLUTIONS TO IMPROVE ACCESS TO LAND FOR SMES

*Firstly*, Propaganda and encourage localities to develop mechanisms and policies to support SMEs in accessing land; strengthen the application of information technology so that the business community can easily access information channels that ensure openness, transparency, and continuous updates.

*Secondly*, continue to implement solutions to simplify and reduce the time for handling administrative procedures in the land sector, creating favorable conditions for SMEs to access land.

*Thirdly*, promptly publicize land use planning and plans; land price, and provisional land price (with adjustment coefficient). Regularly review investment projects, and projects that have been granted Investment Registration Certificates, and carry out procedures for receiving and handing over land and paying land rent to ensure convenience, speed, and compliance with regulations.

*Fourthly*, promptly remove difficulties and obstacles for localities in site clearance, land allocation, land lease, and change of land use purpose for enterprises, ensuring legal rights and interests of people whose land and assets are recovered.

*Fifthly*, strengthen discipline and improve public service ethics. Inspect and supervise the handling of administrative procedures by civil servants and public employees to reduce harassment and inconvenience for enterprises.

#### 5. CONCLUSION

Land legislation has a great influence on socio-economic life, regulating complex social relationships, directly related to the important national resources, which are also valuable assets for individuals and enterprises. To promote land resources in socio-economic development, there should be breakthrough changes in land policy to create favorable conditions for SMEs to easily access land, contributing to economic growth ■

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