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PROPERTY RIGHTS
AND LAND POLICIES

Edited by Gregory K. Ingram and Yu-Hung Hong

Property Rights and Land Policies

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Gregory K. Ingram and Yu-Hung Hong

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Developing Land Markets Within the Constraint of State Ownership in Vietnam

Stephen B. Butler

In 2003 Vietnam adopted its Law on Land (LOL), a comprehensive framework law on allocation and use of land.¹ The law introduced a number of new concepts to land relations that had been developing gradually over the prior 10 to 15 years. It became effective as of 1 January 2004, but implementation continues today. Vietnam is one of a handful of emerging markets that maintains exclusive state ownership of land, and a main objective of the LOL was to approximate the dynamics and efficiency of a true land market within the constraint of state ownership. The idea was to facilitate access to and turnover of land, maximize its use and value, and enhance economic development.²

This chapter arises from work performed under a joint project of the Foreign Investment Advisory Service (FIAS), a division of the International Finance Corporation (IFC) and a member of the World Bank Group; the Mekong Private Sector Development Facility (MPDF), a division of the IFC located in Hanoi; and

1. Law on Land (2003); see also Decree No. 181/2004/ND-CP (2004) on implementation of the LOL.

2. Prior to the start of the work described in this chapter, the objectives of the LOL were determined by analysis of the law and its legislative history and by interviews with government officials and private sector stakeholders. The law, of course, has multiple objectives, not the least of which was to enhance government revenues from land resources.

the Vietnam Ministry of Natural Resources and the Environment (MoNRE).³ The work was supported by FIAS and the Australian Agency for International Development (AusAID 2000a, 2000b). Main objectives of the work were to use the techniques of survey research and in-depth interviews to assess the impact of the LOL on business access to land, to determine the extent to which the objectives of the LOL are being achieved, and to recommend possible approaches to addressing any shortcomings in the law and its implementation. The work also assessed the main administrative procedures established in the LOL and accompanying regulations for allocating state-owned land to businesses and registering land rights and transactions. It attempted to elicit the views and perceptions of public officials, small and medium-sized enterprises (SMEs), and land market intermediaries (LMIs) regarding laws and policies on land user rights, land use planning, security of land rights, and other issues relevant to investment in land. A main area of inquiry was the cause and effect of the presumed large number of land transactions in the informal sector.

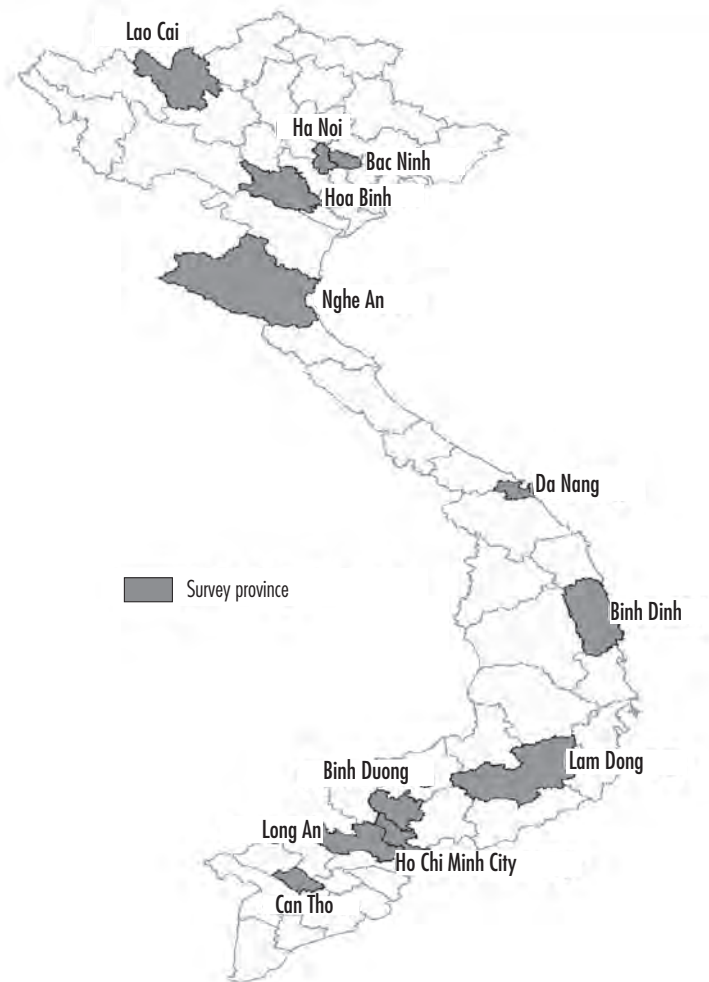
The major part of the work underlying this chapter, which focused on improvement of public administration and assessment of the efficiency of administrative procedures for allocating and transferring land to businesses, is not discussed here. The focus of this chapter is rather on the experiences and perceptions of SMEs in acquiring and transacting land rights. After briefly describing the research methodology, the chapter provides general background on the legal and regulatory framework for land relations in Vietnam today and an overview of the primary (state) and secondary land markets. The perceptions and experiences of SMEs in the land markets are discussed, with particular attention to issues such as informality, security of land rights, and investment.

Research Methodology

The research was carried out in 12 provinces, ranging from Ho Chi Minh City, with a population of over 6 million and a population density of 2,560 per square kilometer, to Lao Cai province, with a population of 550,000 and a density of

3. The underlying research was undertaken with the advice and assistance of many individuals and organizations, including many representatives of the government of Vietnam and private businesses who generously gave their time and the benefit of their expertise. Major contributions were made by Frederique Goy, Ivan Nimac, and Russell Muir of the IFC; the Vietnam Ministry of Natural Resources and the Environment; Trung Tran Nhu of the Joint Stock Company of Consultancy Service and Technology Development for Natural Resources and Environment (TECOS); the staff of the Mekong Private Sector Development Facility, in particular Lan Van Nguyen and Trung Thanh Duong; the “Strengthening Environmental Management and Land Administration” project (SEMLA) funded by the Swedish International Development Agency and the Asian Development Bank; and Professor John Gillespie of Monash University, who shared his work and advice on issues of law and business regulation in Vietnam. Any errors of fact, or opinions, or conclusions expressed in this report are solely those of the author.

Figure 6.1
Interview Regions



only 88 persons per square kilometer. The selected provinces are shown in figure 6.1. The 665 SMEs interviewed included registered firms, household enterprises, and individual entrepreneurs with recent experience in the land markets, but did not include unregistered or “informal” businesses or large firms and foreign or state-owned enterprises (SOEs), both of which also tend to be large. The fact that most respondents had already registered their businesses demonstrates a willing-

ness to play by the rules and perhaps a perception that registration offers benefits. This may not be true of many unregistered or informal businesses. Accordingly, the study does not draw conclusions about the prevalence of informality in land markets generally. The exclusion of large, foreign, and state-owned enterprises is attributable solely to the fact that this was a project focusing on SMEs. Other work has suggested that large, foreign, and state-owned firms have different experiences in land markets than do small and medium-sized domestic firms, a suggestion that is supported somewhat by some of the findings of this study, such as the finding that firm size is related to location in state-sponsored industrial parks and receipt of investment subsidies.⁴

Almost half of the SMEs characterized themselves as being involved in trade, and a quarter in manufacturing. Sixty-six and a half percent had 20 or fewer employees, and only 6.2 percent had more than 100 employees. Forty-four percent had total annual revenues of less than approximately US\$133,000, and only 12 percent had revenues in excess of approximately US\$1.3 million.

The sample was selected to assure representation of businesses that held registered land rights and those that did not, and to assure an adequate representation of enterprises that obtained land from the state as well as in the secondary market. In this sense, the sample was not randomly selected or designed to produce statistically robust results. The survey instruments included over 130 questions, many with multiple parts, on topics that included, among others, landholdings and tenure; land use planning; experiences with land transactions, including costs, time, disputes, and interactions with public officials; attitudes toward security and informality; and perceived problems in the market.

Interviews were also conducted with public officials in the 12 provincial Departments of Natural Resources and the Environment (DoNREs) using uniform templates describing the main land transaction procedures. The interviews were open and in-depth, allowing for expression of opinions and recommendations. The survey instrument was designed to isolate and bring into focus those elements of the current administrative procedures that are considered to be most problematic from the point of view of administrators, providing a focus for management action.

The third component of the study consisted of in-depth interviews with 65 land market intermediaries (LMIs), which were defined as individuals or firms that receive compensation for providing advice and assistance to others in the acquisition of land rights and development of properties. Given the relatively recent emergence of business land markets in Vietnam, this definition encompassed a variety of firms and professionals, including land brokers, lawyers, engineers, and construction firms. As in many emerging markets, some had present or former relationships with public agencies, but they did not include government-affiliated “one-stop shops” or state-sponsored industrial/economic zone developers.

4. See, for example, Foreign Investment Advisory Service (2001).

The Legal Framework for Land Relations

All land in Vietnam is owned by the state, and much of the LOL can be characterized as an attempt to achieve the benefits of a true land market within the constraint of state ownership. Citizens and legal entities of all stripes have rights only to use the land for either defined or unlimited terms. The land use right is not a civil property right, but rather a unique form of civil right regulated in part by the Civil Code, but mostly by the LOL. The attributes of the land use right may depend on various factors, including the characteristics of the right holder, the nature of the land use, and whether the right was acquired under current or prior law. Not all forms of land rights are available to all persons or types of business organizations.

The first tier of land rights is made up of grants to users directly from the state or its agencies and arises in what is typically referred to as the primary market. Important among these rights are grants in state-sponsored industrial zones (IZs), a major element of Vietnamese land policy, about which more below. For these primary rights, the basic distinction is between a lease and an allocated right of land use (referred to herein as a “right of use”), a form of property right commonly found in current or former socialist countries. The right of use can be either for a defined term or perpetual, the perpetual form being referred to as the right of “long-term and stable use” (LTSU). The LTSU has an unlimited duration and is almost the equivalent of freehold ownership. It may be alienated, and it will retain its characteristics in the hands of the transferee, even if the transferee—for example, a foreign company—could not have obtained the right directly from the state. Although there is no right of private land ownership, a basic distinction in Vietnamese parlance is between purchase and lease, with the term *purchase* frequently used to refer to the LTSU right.

Acquiring land in the primary market in most cases requires payment of a single land use fee to the state. The major exceptions are the small plots of land, now approximately 300 square meters, to which each citizen is entitled for subsistence agriculture, and land granted to social institutions and other types of nonprofit organizations. All other uses, including residential land and amounts of agricultural land exceeding the basic subsistence grant, usually require payment. Leases always entail payment of rent to the state, either by a single payment at commencement of the term or annually. However, while all types of users may lease land from the state, only foreign investors and legal organizations, including the so-called overseas Vietnamese (OVN), may have prepaid leases.

Land rents are based on the normative land values, or prices. The basic land rent is equal to 0.5 percent of the normative value, but this can be lowered in some zones, mostly rural and underdeveloped, and raised in others, particularly urban areas. The maximum rent cannot exceed four times the basic rent, or 2 percent of the normative value. Because they are based on the normative values, the absolute value of rents varies depending on land use designation and other valuation factors.

Land rents are promulgated annually in a schedule by the provincial People's Committee, in the same way as the normative values and land use fees. Rents are fixed for periods of five years, at which time there is an adjustment or "mark to market" based on the then-current land valuations, followed by another five-year fixed period. If a lessee chooses a prepaid lease, the rent sum is calculated on the basis of the current normative land rent multiplied by the number of years in the lease. All first-year costs incurred by the lessee, in particular land recovery compensation and official infrastructure development fees, are deductible from the land rent. In addition, land rent concessions are specifically recognized as allowable incentives to economic development.

The duration of rights of land use for a defined term depends on the use. Agricultural uses may range from 20 to 50 years. Nonagricultural rights are typically limited to 50 years, but can be as long as 70 years in targeted geographic or economic areas characterized by low rates of return on investment. In most respects, a right of land use for a defined term is the same as a lease, and in most respects, a lease in Vietnam resembles a lease in other common and civil law systems. The state is legally obligated to renew leases for certain purposes, primarily agricultural production by individuals and household enterprises, if the lessee has complied with the rules of the LOL and the use still conforms to the current land use plan. However, the state agrees only to consider renewal of all other leases, and the law and regulations offer little guidance on the conditions under which such consideration will be given or the lease renewed, a source of some consternation to business interests. The forms of land tenure and their eligible recipients are described in table 6.1.

A distinctive feature of primary land rights, again common in most socialist systems, is that all new grants are subject to a covenant to actually develop and use the land for the permitted purpose within a specified time period. Purposeless landholdings are not permitted, and speculation is reserved to the state. With respect to citizens and households with small holdings and to SOEs, it appears that the rules on making productive use of the land are not often enforced. However, if a start-up business receives a grant from the state today and fails to meet its development obligation, the land right may be terminated, and this appears to happen with enough frequency to be a consideration.

As in many other emerging socialist systems, Vietnamese law distinguishes between land rights and rights to other real property. There is no legal presumption that the rights to objects attached to the land in a permanent way are accessories and follow the rights to the land. Buildings or portions of buildings (for example, apartments) and other facilities attached to land can be owned as property and are freely alienable, and buildings can be mortgaged or sold apart from the land right. Objects built on the land must be separately registered.

LAND TITLE REGISTRATION

Under the LOL, all current land users must formalize their rights by registering and obtaining land use right certificates (LURCs). Issuance of an LURC is often a legal

Table 6.1
Forms of Land Tenure

Landholder	Form of Tenure
Household and individual subsistence farmers, agricultural cooperatives, community-wide agricultural enterprises, various forms of state and nonprofit institutions and organizations, and religious organizations	Allocated long-term stable land use right, without payment of land use fee
Household and individual citizen	Allocated long-term stable land use right, with payment of land use fee, for residential and business land Allocated land use right for a defined term, with payment of land use fee Prepaid lease (if prior to 2004) Lease with annual rent
Domestic legal organization (including SOEs)	Allocated land use right for a defined term, with payment of land use fee Prepaid lease (if prior to 2004) Lease with annual rent
"Overseas Vietnamese" investors	Allocated land use right with payment of land use fee (conversion from lease upon completion of investment) Prepaid or annual lease
Other foreign investors (legal entities or individuals)	Prepaid or annual lease
All individuals, households, and legal organizations	Allocated long-term stable land use right if acquired from a legal holder of such right in a market transaction, with or without payment of land use fee

entitlement and not a discretionary act of land allocation by the state since the law recognizes many preexisting land rights of individuals, households, and enterprises established under valid prior laws, albeit often upon payment of land fees.

Vietnam has a variation of the Torrens title registration system. Registration is a state function and is mandatory, or constitutive of the right, in the sense that an unregistered property right may be considered to be a legal nullity by the state and also has no legal effect on third parties dealing with the property. The LURC is a physical document that must be amended, delivered, canceled, and reissued from time to time to reflect transactions. The land title is, in theory, dispositive of the right, establishing a very strong legal presumption of accuracy and validity, though the present Vietnamese law does not address that issue in any significant detail. This paper-based certificate of title system is arguably outmoded in the electronic age; a comprehensive system-wide review is under way now, and changes may be forthcoming.

Like all registration systems of its kind, the system distinguishes between first registration, which enters a property object into the system for the first time, and registration of subsequent transactions. First registration results in issuance of the initial LURC, which establishes the chain of title and relies to a significant extent on cadastral assessment of the property. Completing first registration can be a lengthy process, but that is true in many systems. Registration of all secondary transactions is expected to be quicker, and regulations require completion in a period of seven to ten days. By law, mortgages must be registered within five business days, and a simple assignment of land rights must be completed in nine working days. These times are mostly aspirational and are not often met in practice.

The LOL establishes what would be called a unified cadastre, in which all real property objects and rights to them are registered in a single cadastral file by a single agency. However, as has been the experience in many transitional socialist systems, this aspect of the law has not been implemented pending resolution of a bureaucratic battle to control the cash cow of registration. Today buildings and apartments are registered separately from the land by an entirely different government ministry, which issues a separate title certificate for constructed property.⁵ In Vietnam, as in other transitional socialist states, divided registration systems are hangovers from the past or arose primarily because of the need to register rights to privatized housing quickly when the more complex land registration systems were not fully functional. In a number of cases, they have proven difficult to dismantle because of vested bureaucratic interests.

SECONDARY MARKET TRANSACTIONS

Most forms of secondary market transactions with land rights are permitted if the holder has an LURC or is entitled to issuance of an LURC, if the land right is not subject to a dispute or to an attachment for execution of judgment, if the term of the right has not expired, and if all land use fees owed to the state are paid currently or legally deferred.

Only fully paid rights may be alienated. A curious rule has been that holders of annual rent leases may not mortgage or alienate their land rights *per se*, though they are free to alienate any structure on the land. In practice, this limitation has turned out to be of questionable utility and was under review when this chapter was prepared. Not the least of the problems was that domestic enterprises may not hold prepaid leases and few other investors are interested in prepaying a lease, having better things to do with their money.⁶ The rule apparently arose in part

5. Most developed countries with a legal concept of accessory rights to constructed objects do not register buildings or building rights at all. If they do, it is as a cadastre practice, for purposes of land information or taxation, not to establish property rights.

6. In the case of land rights acquired directly from the state, particularly in economic and industrial zones, many land users are actually prepaying the lease rents regardless of whether

from fear of speculative activity. It is questionable (though perhaps not impossible) whether much speculative value can be built up in a lease that is subject to periodic rent increases calculated under a system in the state's sole control and under the threat of termination for failure to develop the land within a strict time schedule.

Restrictions on alienation have had practical implications in only a few limited cases, one of which is an annual rent leasehold on vacant land. For example, even though a lessee under an annual lease cannot assign or mortgage his land rights per se, he can assign or mortgage his rights to the buildings he constructs on the land. The obvious question has been, what happens to the land rights if the building is sold or mortgaged? The law does not say, but the clear implication is that the land rights will follow the rights to the buildings. Most creditors act accordingly, reporting that they have no problem granting loans on the security of buildings constructed on leaseholds even without a pledge of the lease.

A variation on this theme is that SOEs, often large landholders, may not alienate their land, including through subleasing, if the funds with which the land was acquired came from the public budget. Accordingly, most SOEs are not legally permitted to sublease their land or facilities. Despite this restriction, there is widespread belief that SOEs are one of the primary sources of land and facilities in the secondary market, a point only partially supported by the work underlying this chapter. Nevertheless, the issue of SOE land is high on the government's land policy agenda; as in most transitional socialist countries, SOEs hold some of the most valuable land—well located, well serviced, and frequently underutilized.

COLLATERAL

Land rights and real property may be mortgaged. Some banks have relatively large and growing residential loan portfolios, and they are aggressively staking out positions in the residential mortgage market as a main pillar of their retail loan portfolios.⁷ Few personal loans today are unsecured, and real property is the banks' preferred form of security. Many banks are performing their own prop-

the lease itself is characterized as prepaid, but are not getting credit for the prepayment. These users are required to pay compensation to recover the land from its present holders as well as substantial infrastructure connection charges. All these payments are made in year one and are deductible from rents payable in the future. In addition, landholders in economic zones may have received extended free rent periods. In effect, rents may not actually be payable in many economic zones for 20 years after incentives and deduction of year one costs.

7. In 2006 there was some concern in the government of Vietnam that some banks were overexposed in residential mortgage lending in light of a dramatic downturn in the residential property market, which some alleged was caused by new rules prohibiting developers from selling off the plan and using proceeds to finance construction. The Central Bank dismissed the possibility of real risk to the financial system from the alleged overexposure, but nevertheless urged housing developers to lower prices and clear the market, and banks to exercise more caution in residential lending. See *Viet Nam News* (2006).

erty valuations using specialized in-house valuation departments, and some are developing sophisticated geographic information system (GIS)-based electronic valuation databases. The positive growth in mortgage lending and a trend toward longer loan maturities, higher loan-to-value ratios, and decreasing interest rates suggest that creditors feel a certain level of security in their rights and are not affected by the complexity of land rights. However, relatively few loan transactions are secured with nonresidential land rights.

The Vietnamese mortgage is a relatively modern legal device, and its main principles are set out in a handful of provisions in the Civil Code.⁸ To become legally effective, the mortgage document must be written, notarized, and registered in the land registry. Typical of practice under Torrens title registration systems, secured creditors are required to take physical possession of the borrower's LURC. (Whether actual possession of the LURC or registration of the mortgage is sufficient to perfect the creditor's mortgage lien is unclear.) Creditors' priorities to the mortgaged property are established in accordance with the date and time of registration of the mortgage. With the exception of agricultural loans, a mortgage of a building or other constructed property is presumed to include all additions and fixtures attached to the property. The mortgage encumbers all insurance proceeds paid upon damage or destruction of the property, and the proceeds are payable directly to the creditor. A creditor has the right to expect proper maintenance of the property and to perform occasional inspections.

The law appears to give the creditor the right to sell the property through judicial procedures or in a private-sale transaction if such is agreed in the mortgage contract. Commonly referred to as a "power of sale," the right of private sale is the approach recommended by most legal commentators in emerging markets, but it is not often adopted in emerging socialist markets.⁹ Even in Vietnam, there are conflicting views on whether this is the rule. Some creditors contend that enforcement of the mortgage is possible only through court action. In fact, there have been very few mortgage loan enforcement actions by banks, and banks interviewed reported default and delinquency ratios in the range of 0.1 percent of portfolio value, not unusual for emerging markets in which loan underwriting is carefully done and timely repayment of debts is a strong social value.

LAND USE PLANNING

The survey questionnaire included a module on land use planning issues, including perceptions of and participation in planning processes and incidence of illegal construction, most of which is beyond the scope of this chapter. Some commentary on the planning system (Gaston 2005; Sharpe and Quang 2004) reviewed in preparation for the project concluded that it suffers from poorly

8. Articles 342 et seq.

9. See, for example, Butler (2003).

defined objectives for planning activity; inadequate resources and training at the local level; poor participatory procedures, both for lower-level officials in preparing higher-level plans and for citizens and landholders; excessive detail, particularly with respect to detailed land use plans; and inflexible planning, leading to local circumventions of planning requirements in the name of expediency and economic development.

The SME Land Market

The primary land market is divided into several distinct segments. Outside of industrial zones, primary rights to land can be directly acquired only from provincial and local governments or through an occasional public auction conducted by state actors. Land rights also may be acquired from intermediaries that are designated to develop and market land in IZs by the national or sub-national governments, and creation of IZs is arguably the major component of state land policy today.

Reflecting the importance of the IZ in national land policy, some IZs are designated directly by the Prime Minister's office, and there is an IZ Management Authority within the Prime Minister's office that exercises oversight nationally. Provincial People's Committees authorize creation of some IZs and must approve any transaction within an IZ. A sub-provincial authority may create a de facto IZ, called an "industrial cluster" or IC, by designating in the local master plan an area for conversion of agricultural land to business or industrial use.

Provincial land development agencies and industrial zone management boards, which are unincorporated public entities, are typically responsible for supervising and implementing IZ projects. However, responsibilities may be delegated by lease or equivalent concession to a wide variety of project management units (PMUs). The job of the land development fund agency or the PMU is to install infrastructure in the designated area and to market land to investors. PMUs may take a number of legal forms, including public corporations, public-private ventures, and wholly private entities. The Asian Development Bank (2005) noted complex interlocking corporate structures engaged in IZ development having various degrees of public and private participation. In a small but growing number of cases, state land may be acquired from private companies that have acquired rights to develop IZs and sublease land to businesses. While playing the same role as a state IZ, these are essentially private operations, in the nature of concessions, and subleases from such an entity are considered to be secondary, not primary, market transactions.

Prior to commencement of this work, research undertaken by the Asian Development Bank (2005) suggested that the primary land market, in particular IZs, serves a very small portion of SMEs. This point was confirmed; few of the SMEs participating in this survey acquired land in an IZ. Small and medium-sized businesses cannot afford the rents, particularly the infrastructure charges, in IZs, which tend to focus on large, custom-built, owner-occupied structures. In

addition, provincial governments are authorized by regulation to establish minimum investment ratios to evaluate requests for land in IZs. Even though they are directed by law to assure that the ratios are practical under the circumstances and anticipate different types of projects and the needs of different geographic areas, it is widely conceded that the ratios typically restrict access to IZs to the largest and most capital-intensive businesses.¹⁰ SMEs, therefore, typically turn to the secondary market.

IZs were relevant to the work of this investigation, which primarily focused on the needs of SMEs, mostly because of what they say about state land policy. Emphasizing IZs, the government of Vietnam chose not just a policy that assured greater state control over land allocation and development, but also an emphasis on the needs of larger, often export-oriented businesses, including direct foreign investment. Whether this is the appropriate emphasis can be debated. There is evidence that indigenous small business development is likely to be a powerful engine of employment growth in Vietnam and other emerging markets. At the same time, direct foreign investment and large businesses are as likely to be sources of long-term technical development and export earnings. It is perhaps arguable that emphasis on the needs of larger investors may rightly acknowledge the difficulties of assembling and servicing larger land parcels in transitional economies and the fact that SMEs appear to be getting along well in the secondary market. Larger investors may in fact need more help.

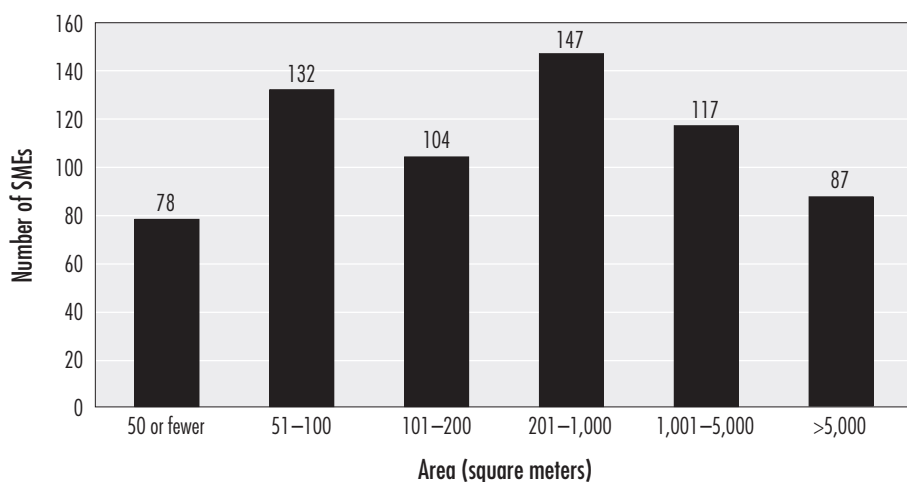
The LOL and its regulations appear to require that land be auctioned in many circumstances.¹¹ A narrow reading of the law would suggest that practically all land offered by the state for commercial housing production and all land offered to private developers for industrial zone concessions must be offered by auction.¹² Inquiries during project preparation revealed that auctions were occurring in only three cities—Hanoi, Ho Chi Minh City, and Da Nang—and primarily for residential land. Available research suggests that very few business users acquire land through auction, and none of the SMEs interviewed in this survey obtained land by public auction.

10. The investment ratio is defined as the amount of the proposed investment divided by the size of land area to be allocated.

11. Exceptions include transactions involving investment incentives or where there is a change of land use; land used for construction of public works for business purposes; land for housing for low-income people; and land that must be cleared of current occupants and compensation made. This last category or exception to the auction requirement, expropriation of occupied land, may apply to a significant portion of the state land that is made available to businesses.

12. By way of comparison, Russian law was amended in 2006 to provide that all land offered for housing production be offered only by auction, a reaction to perceived sweetheart deals between local officials and favored housing developers, in particular state-owned construction companies, that resulted in some developers' monopolizing the market for residential land and driving up housing prices.

Figure 6.2
Size of Most Recently Acquired Plot



Number of respondents: 665.

LANDHOLDINGS

Landholdings of SMEs are typically small. Slightly more than half of the SMEs interviewed held only one land parcel, and only 6.5 percent held four or more. As shown in figure 6.2, 47 percent of respondents reported that their most recently acquired land plot was 200 square meters or less. More than half of all respondents claimed to hold less than 500 square meters of land (1/20th of a hectare), and only 12.3 percent held a hectare or more. This finding reflects the preponderance of trade establishments in the survey; other types of businesses held larger amounts of land.

The primary market is the main source of large land parcels, which is to be expected as private landholdings are small and assembling a significant parcel could be a difficult task, though some SMEs clearly do manage to acquire and consolidate multiple small parcels. Almost 90 percent of SMEs that acquired land in the secondary market held less than 1,000 square meters, while 73 percent of those that received land directly from the provincial or local governments or in state-sponsored industrial zones held more than 1,000 square meters. Fifty-seven percent of grants in state-sponsored industrial zones exceeded 5,000 square meters, compared to only 4 percent of secondary market acquisitions.

FORMS OF TENURE

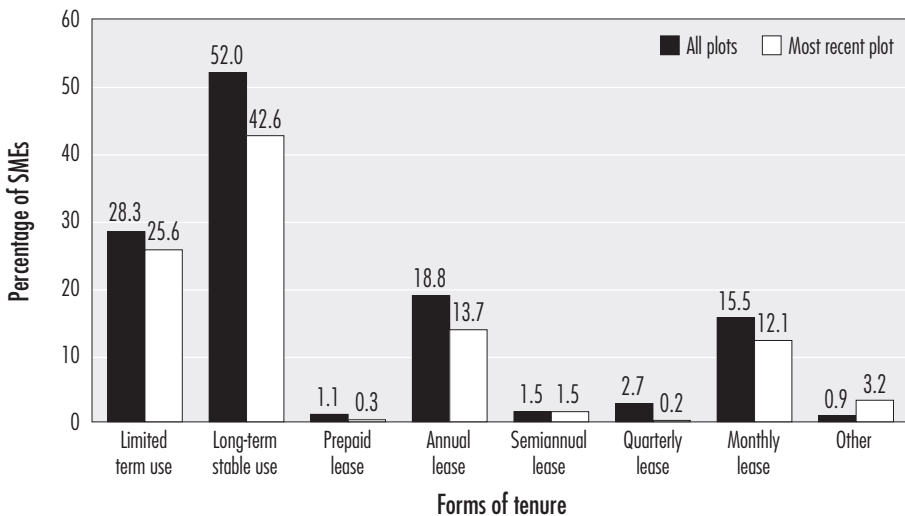
There is a choice among various forms of land tenure in the current market, and all forms of tenure except the so-called prepaid leases are found in significant

numbers. Three-quarters of the SMEs claimed to have chosen the form of tenure on their most recently acquired land parcel, and many of those that did not exercise choice inherited their land rights. Whether this means they could have obtained a different form of land right from the transferor, or a different land parcel, the implication was clear that there is choice and that purchasers weigh tenure options based on a variety of factors. As would be expected, more than three-fourths of holders of LTSU cited long duration as the main benefit of their form of tenure, and 61 percent of those holding annual rent leases cited the benefits of lower land acquisition costs.

The SMEs held a variety of land rights, and multiple parcel holders held different rights on different parcels. The largest single category was the LTSU, held by 52 percent of the respondents on at least one parcel. The preponderance of LTSU rights among SMEs was to be expected, since so many SMEs hold property zoned for mixed residential-business use, which is typically LTSU, and so many are household enterprises or individual entrepreneurs, the primary recipients of LTSU rights. About 40 percent held some form of lease or sublease. Figure 6.3 shows the distribution of forms of tenure among the sample.

Leases predominate among SMEs receiving land directly from local or provincial governments (77.8 percent) or in industrial zones (94.3 percent). Only 19 percent of SMEs that obtained land in primary market transactions hold an LTSU,

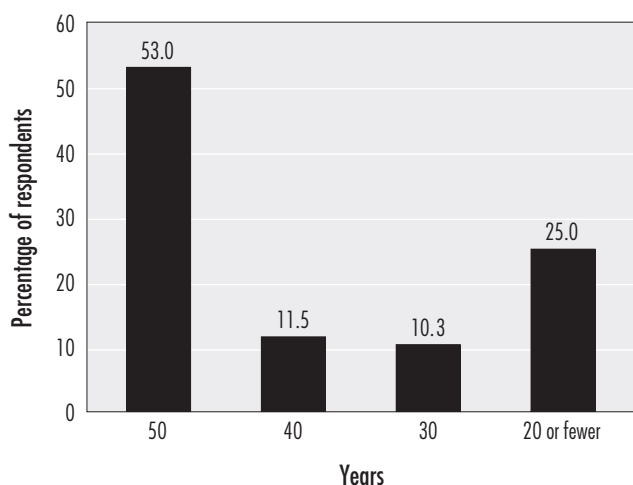
Figure 6.3
Forms of Land Tenure



Number of respondents: 665.

Note: The total percentage of "all plots" do not add to 100 because of firms that hold multiple plots in different forms of tenure.

Figure 6.4
Duration of State-IZ Leases



Number of respondents: 156.

and by law these would be household enterprises or individual entrepreneurs. More than 70 percent of the SMEs holding leases were tenants or sublessees of primary right holders.

As shown in figure 6.4, more than half of the leases granted by provincial and local governments and in IZs had durations of 50 years, the legal maximum in most areas. Eleven percent were in the range of 40 years; 10 percent were for 30 years; and 25 percent were for 20 years or less. Not shown in figure 6.4 is that 50-year leases are more common in IZs, in which they were held by 65.7 percent of firms, and that only 11.8 percent of IZ leases were for terms of less than 20 years. The survey did not gather data on duration of secondary market leases and subleases, but similar research carried out by the World Bank (2005) suggests that typical leases average from 19 to 25 years for SMEs.

ACQUIRING LAND RIGHTS

About 70 percent of the SMEs interviewed obtained land in the secondary market, suggesting the emergence of a robust private market in land rights. Though this was not a random distribution, based on the experience of selecting the sample, there were good reasons to believe that the number of SMEs that obtained their land rights in the secondary market would be even higher than 70 percent in a random sampling. Of the remainder, 23 percent obtained land directly from the provincial or local government; 4 percent acquired land from an industrial zone; and about 3 percent of respondents leased land from an SOE.

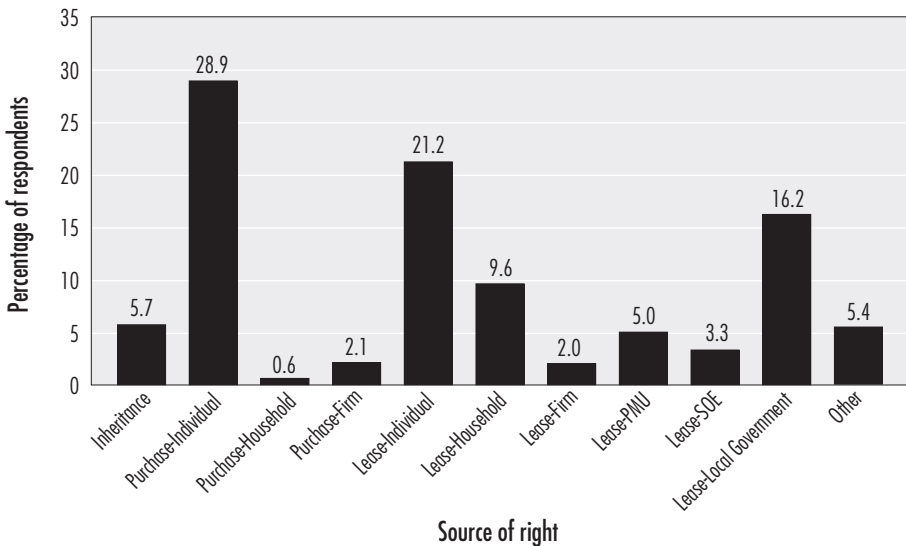
Of the firms holding an LURC that obtained land in the secondary market, about 16 percent had first unsuccessfully tried to obtain land from the state. Of those, 35 percent said they did not complete the primary market process because of long and complicated procedures; 16 percent had their applications rejected; and others indicated that the government land price was too high (9 percent), no suitable state-owned land parcel was available (7 percent), and land parcels available in the secondary market were more suitable for their needs (7 percent).

Eighty-five percent of those who acquired rights in the primary market requested specific sites, and 98 percent of them received the sites they requested. Of the small number who did not receive the sites they requested, about half were dissatisfied with the sites they were offered. Only 12 percent of the respondents who ultimately obtained land in the primary market had at least one request for land completely denied.

As shown in figure 6.5, the largest segment of the SME sample, 28.9 percent, acquired land rights through outright purchase of an LTSU from another holder in a secondary market transaction, followed by a segment of 21.2 percent that obtained rights by leasing from other individual right holders.

As was expected, only a small portion of SMEs obtained land in an IZ. Many more obtained land outside of IZs directly from provincial and local governments,

Figure 6.5
Sources of Land Rights



Number of respondents: 665.

which appear to be serving a broader segment of the SME market. Larger SMEs (more than 20 employees) were about six times more likely than smaller ones (fewer than 20 employees) to receive land directly from provincial or local governments, but fifteen times more likely to receive land in an IZ. Thirty-seven percent of the SMEs receiving land directly from provincial and local governments had fewer than 20 employees, compared to only 14.5 percent of firms locating in IZs.

LAND MARKET INTERMEDIARIES

The story of land market intermediaries was interesting for the insights it provides into development of land market infrastructure, but most of that discussion is beyond the scope of this chapter. It was usually difficult to identify LMIs working with business clients. While a large and growing number of real estate brokerages exist in the larger cities, very few firms or individuals can be characterized as LMIs in the more rural provinces.¹³ Even in the larger cities, most intermediaries are engaged in residential transactions, and a much smaller number with business property per se. (To the extent that much SME property is mixed residential-business use in the urban areas, there may be some overlap.) Seventy percent of the LMIs interviewed did more than 70 percent of their work with residential property, and only 12 percent were exclusively business land brokers. More than three-quarters of the LMIs operated in only one province, and almost half worked exclusively in urban areas. Only 12 percent worked in smaller towns and villages, and such work was generally a small portion of their business.

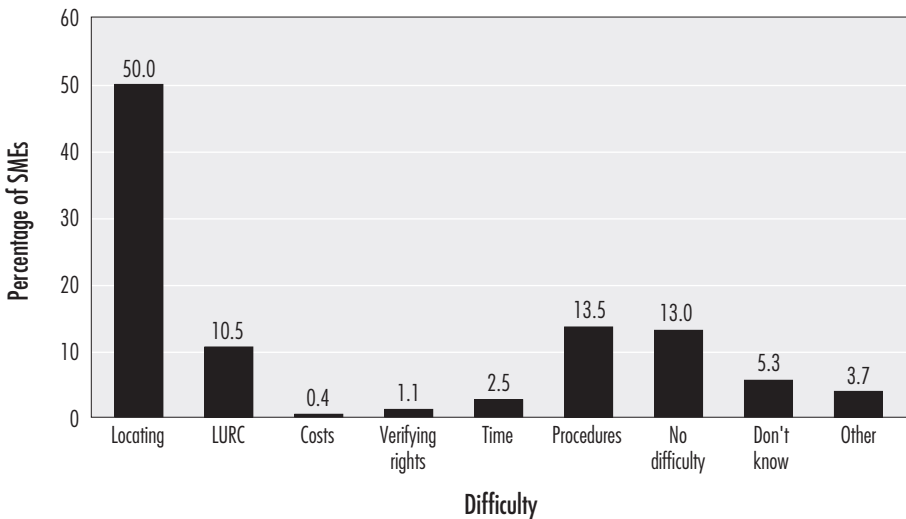
Two-thirds of the SMEs that obtained land in the secondary market located the land through word of mouth and family and friends; 12.4 percent did so through advertisements; and only 2.5 percent used the services of LMIs. The highest incidence was in the urban areas, but even in Ho Chi Minh City, only one in five used the services of an LMI. Half the LMIs believed that their clients' most important source of information about available land was word of mouth, and 29 percent said it was direct contacts with government officials.

MARKET EXPERIENCES

SMEs that acquired land in a secondary market transaction were asked to identify the most problematic aspect of the transaction, and half said simply locating the land was the major issue, exceeding other issues such as administrative procedures and obtaining LURCs by a factor of three. There are many reasons, including shortage of serviced land zoned for business in good locations, but it also appears that market mechanisms for locating business land are undeveloped.

13. Review of business registrations in preparation of the survey revealed well over 4,000 firms licensed for real estate-related activities.

Figure 6.6
Most Difficult Aspect of Acquiring Land in the Secondary Market



Number of respondents: 449.

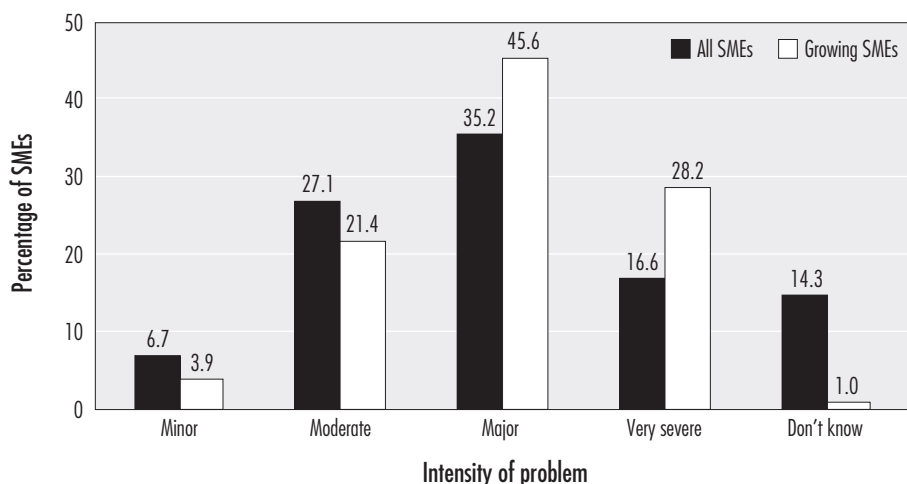
Figures 6.6 and 6.7, respectively, summarize the responses of SMEs regarding difficulties experienced in acquiring land and the effects on their businesses.

Fifty-nine percent of respondents who obtained land from provincial and local government obtained it in less than three months, and 22 percent in more than six months. The mean duration for obtaining land from the state was 184 days, and the median was between 80 and 90 days. This is much longer than the average time to complete a transaction in the secondary market, which is typically measured in days or weeks: 72 percent of transactions in the secondary market were completed in one week, and about 28 percent took more than 30 days.

Fifty-one percent of the SMEs believed unavailability of land was an obstacle to growth, with a slightly higher percentage for firms experiencing growth in employment in the past year. As shown in figure 6.7, 51.8 percent of SMEs that believed unavailability of land was an obstacle to growth saw the problem as major or very severe, and that increased to 73.8 percent among the SMEs that experienced growth in the prior year.

Of the SMEs that received land directly from a provincial or local government or in an IZ, only 9 percent obtained an investment incentive that reduced land costs. Of those, about 60 percent received incentives that reduced their land

Figure 6.7
Intensity of Problem Caused by Availability of Land: SMEs



Number of respondents: 665.

costs by 30 percent or less, and one-third received incentives that eliminated their land charges entirely. As would be expected, 35 percent of the firms receiving incentives had 100 or more employees, while only 6 percent of the firms in the entire sample were that large. More than 75 percent of the firms receiving incentives had more than 20 employees, but only 34 percent of the firms in the entire sample were that large.

Of the SMEs that obtained land directly from government, 71 percent believed that land was more expensive in the private sector, and only 6 percent thought that state land was more expensive. Slightly over 10 percent thought prices in the primary and secondary markets were about the same. Fifty-eight percent of these SMEs thought that the primary market land prices were about right, 16.5 percent that they were too high, and 16.5 percent that they were a bargain. The largest proportion, 36.2 percent, believed that the real cost of state land rents would increase in the future. Twenty-seven percent thought that rents would remain the same in real terms, and 17 percent said they would decrease.

SMEs that worked with the state to obtain land sites had different experiences and opinions. Of the 188 that obtained land from the state, 68 percent were offered a choice of sites, and 20 percent were not. Forty-seven percent received assistance from public officials in locating a land parcel, but 30 percent did not. Fifty-eight percent believed that government land officials were helpful and cooperative, but about 19 percent disagreed. Of the SMEs that obtained land from the state, 52 percent had no problem with the land sites offered to them.

The most frequent complaints about the land offered were size (19.7 percent) and location (11.7 percent). Utility services and the need for land recovery were only minor considerations.

Investment Approval and Access to Land ---

In Vietnam an investor may be required to obtain an investment license as a condition of acquiring land in both the primary and secondary markets.¹⁴ Land allocation in Vietnam is viewed as a process of allocating a scarce state resource, and new land is rationed, in theory, on the basis of how well the investment proposal conforms to economic planning priorities and the investor's financial capability to carry out the plan. The evaluation and approval are done by agencies other than those that deal regularly with land matters, primarily the local Departments of Planning and Investment, but also by political organs, including the People's Committees at commune, district, and provincial levels.

The requirement of investment approval cut across all types and sizes of businesses, and it was required of 96.5 percent of all SMEs interviewed. However, the research for this chapter was completed prior to complete implementation of the new investment law, under which smaller businesses and those of a less sensitive nature may be exempted from business licensing or subjected to simplified licensing requirements. The investment evaluation standards of the new law are very broadly drawn. As indicated in table 6.2, if the investment is not made in an economic sphere deemed conditional by the law, investments of less than approximately US\$1 million by domestic investors will not require a license. This covers many SMEs. Somewhat larger investments by domestic investors, up to approximately US\$20 million, would be required to register the investment with the provincial investment agency in a simplified procedure in which the agency is required to issue or deny an investment certificate within 15 days of receiving a complete application. A foreign investor is required to obtain an investment license for any unconditional investment below US\$20 million, and both domestic and foreign investors are required to obtain licenses for investments over that amount.

Most conditional investments pertain to sectors in which SMEs are unlikely to invest, such as banking, finance, and any real estate business.¹⁵ Investments that are deemed to be conditional, or that are over US\$20 million, are subject to

14. The procedures for investment licensing are described in the new Law on Investment, which took effect on 1 July 2006.

15. What comprises real estate business is not defined in the law, but the draft regulations suggest that it includes only investment in property for rent or sale, such as development of industrial parks or speculative commercial space. Moreover, any real estate investment in excess of VND 800 billion (approximately US\$50 million) must be licensed by the prime minister's office.

Table 6.2
Investment Licensing Procedures

	Unconditional Investment (million)			Conditional Investment (million)	
	<US\$1	>US\$1 and <US\$20	>US\$20	<US\$20	>US\$20
Domestic Investor	Investment certificate not required	Registration, simple form; certificate issued in 15 days	Registration and evaluation Basic evaluation of financial ability and environmental issues	Registration and evaluation Basic evaluation of financial ability and environmental issues	Registration and evaluation Enhanced form of evaluation
Foreign Investor	Registration Proof of financial ability Submission of joint venture contract (if any) Certificate issued in 15 days		Certificate issued in 30–45 days	Certificate issued in 30–45 days	Certificate issued in 30–45 days

licensing and an enhanced form of project evaluation. Even so, the law requires issuing or denying the investment license within 30 days of completion of the application, or 45 days in exceptional circumstances.

In its simplified form, evaluation of the investment application seems to be primarily informational. The more elaborate form of evaluation appears to focus on financial capability, conformity with economic planning objectives, and environmental protection. Assessment of financial capability is not unusual in systems that allocate state-owned land to investors, as there is a concern that once begun, projects should be completed. Incomplete projects tie up valuable land sites and can cloud titles. The enhanced evaluation may also require the investor to prepare detailed environmental assessments, but that work might be required in any significant development project.

A problematic aspect of the current law is that it seems to assume that the land for an investment has already been identified, while at the same time the land allocation regulations assume that the investment license has already been granted when the land allocation application is submitted. In other words, each process requires the other to have been completed. Among the SMEs interviewed, 64.5 percent applied for an investment license before requesting land; 20.4 percent sought the land first; and only 11.8 percent began the processes simultaneously. Clarification of the relationship between these processes was under development as this chapter was prepared.

Conceivably, investment approval could be a cause of delay in land transactions as well as an opportunity for local officials to discriminate against some investors, protect local industry against competition, or engage in unauthorized economic planning. This does not appear to be the case in Vietnam. While investment approval does add time and costs to the process of land acquisition,

Table 6.3
Time to Obtain Investment Approval

Weeks	Number	Percent	Cumulative Percent
1 or less	177	27.5	27.5
1–2	83	12.9	40.4
2–3	154	23.9	64.3
3–4	98	15.2	79.5
4+	131	20.4	100*
Total	643	100*	

*These totals do not add up to 100 because of rounding.

it does not seem to be a major burden on businesses at this time. Asked to rate the difficulty of various steps of the land acquisition process, about 13 percent of the SMEs and 32 percent of the LMIs characterized investment licensing as a difficult process. About 40 percent of all SMEs interviewed reported obtaining the approval within two weeks, and 79.5 percent in a month or less. Table 6.3 shows time for investment approval for the entire sample. At the same time, as discussed further below, the limited amount of information acquired on unofficial payments to public officials suggests that investment approval is the stage at which such payments are likely to be made.

Interestingly, government officials characterized investment approval, along with site selection and evaluating the land request, as the most difficult aspects of the state land allocation process. Local land officials often noted the difficulty of evaluating investments as part of the land allocation process, stating that too many agencies were involved, their activities were not coordinated, financial data prepared by applicants were unreliable and difficult to verify, standards for evaluating investments and for connecting land needs with different types of investments were lacking or inadequate, and staff responsible for evaluating investments was inadequate or poorly trained.

Informality

In Vietnam registration of land rights and land transactions is required by law, and an unregistered right or transaction may be considered informal and even illegal in the sense that, under some circumstances, it may not be recognized by the state.¹⁶ Accordingly, informality is sometimes defined as the failure to register

16. While registration is characterized as mandatory, the Civil Code provides that an unregistered right is not really void as a matter of law, but only voidable if it is not registered within two years of demand by a court or other authority. Presumably, this rule would not affect third parties damaged by the landholder's failure to register.

a land right or transaction and obtain or amend the LURC. In fact, as in many other countries that require registration of titles, characterization of an unregistered right as illegal or even informal is questionable, and in the absence of a superior claim from someone damaged by the right holder's failure to register, an unregistered right based on valid legal papers probably would not be disturbed in Vietnam.

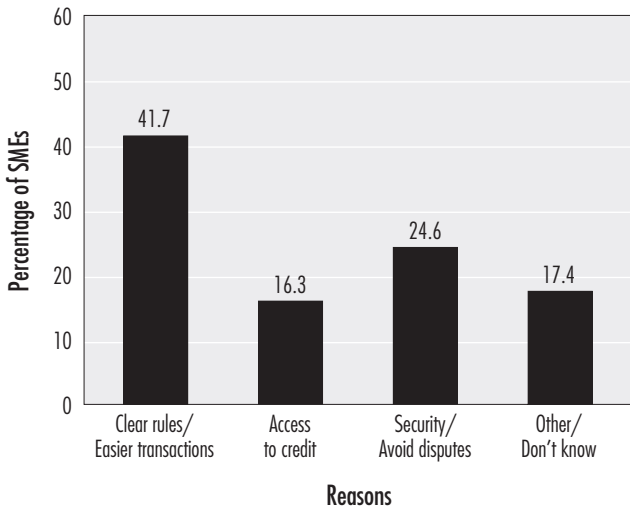
In this inquiry, questions on registration were directed only to those that obtained land rights in the secondary market; in preparing the sample of respondents, a deliberate attempt was made to assure representation of SMEs that did and did not hold registered rights. Fifty-eight percent of the SMEs either possessed or were in the process of obtaining an LURC for their land parcel, and of those 32 percent took the initiative to register the land for the first time.¹⁷ Almost all (96.3 percent) of the SMEs that obtained an LTSU right in the secondary market held or were applying for an LURC, but only 5.4 percent of those that leased or subleased land. This was not surprising, since under current law a tenant or sublessee of a primary right holder is not entitled to receive an LURC, regardless of the duration of the lease. The high level of formality among the landowners, however, was somewhat surprising.

As shown in figure 6.8, among the SMEs that held LURCs, the main reasons for registering rights were clearer rules (41.7 percent), security or avoidance of disputes (24.6 percent), and access to credit (16.3 percent). Asked for the main reasons their clients registered rights and transactions, the LMIs whose responses are shown in figure 6.9 cited security and avoidance of disputes (50.8 percent), clearer rules and easier transactions (30.8 percent), and greater access to credit (12.3 percent). Regarding which types of clients would be more likely to obtain LURCs, 20 percent of the LMIs identified those seeking some sort of privilege, such as bank credit, construction permit, or investment license, with an emphasis on obtaining credit and capital infusion from outside investors.

Preliminary research for the project suggested that availability of mortgage finance would be an inducement to register land rights, but among the SMEs interviewed, mortgage finance per se appears to be of only moderate importance at this time. Its significance may be greater in residential property markets. However, when combined with SME responses that suggested that the LURC was important for attracting outside capital investment, presumably including informal credit and equity investment as well as formal bank credit, the general concept of attracting investment may become a more important factor in explaining a preference for formality. It is also possible that the responses of clearer procedural rules and easier transactions get at the issue of credit from another direction.

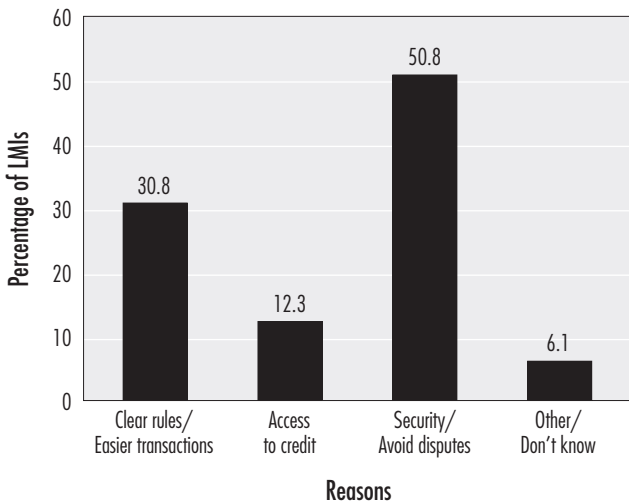
17. The incidence of registered land parcels could have been much higher, as the survey sought to determine only whether the occupant held an LURC. Since many respondents were lessees or sublessees, the primary right holder may have held an LURC while the tenant did not. Tenants mostly did not know whether their landlords held a registered right.

Figure 6.8
Main Reasons for SMEs Obtaining LURC



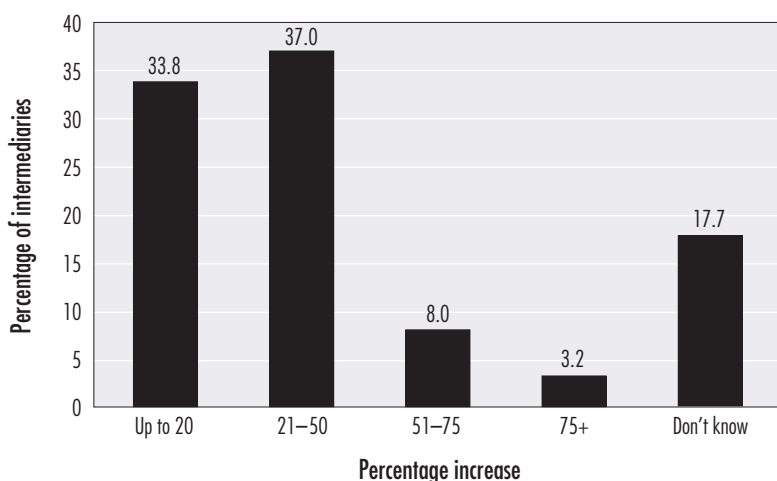
Number of respondents: 388.

Figure 6.9
Main Reasons for LMI's Clients Obtaining LURC



Number of respondents: 65.

Figure 6.10
Perceived Increase in Land Value from LURC: LMIs



Number of respondents: 65.

Seventy percent of the SMEs said the main reason for failure to register was that they were prohibited from doing so by their landlord. The sense that property rights were secure without registration was the second most frequently cited reason, occurring in about a third of the responses. A significant number of respondents simply believed that registration was not worth the effort. Asked why clients do not register, over 40 percent of the LMIs referred to costs of one sort or another; 18 percent cited marginal security benefits from registration; and 12 percent the complex registration procedures.

About 27 percent of the LMIs suggested that clients seek out unregistered land because it is cheaper, which supports the finding that over 30 percent of secondary market purchasers initiate first registration after acquisition. As shown in figure 6.10, practically all LMIs believed that the LURC increases the value of the land, with 34 percent estimating an increase up to 20 percent, 37 percent up to 50 percent, and 11 percent even greater than 50 percent. Premiums of this size on registration might reflect not only the fact that the land use fee will have been paid to the state, but also the amount of effort and inconvenience experienced by participants in the registration process. Almost one in four LURC holders was dissatisfied with the process. Most of them cited long and complex procedures, and completing registration was cited as the second most difficult administrative procedure facing landholders. However, the perception of price premiums on registered property is directly at odds with the empirical findings of Kim (2004) that in the residential property markets of Ho Chi Minh City, apparently including

many apartments, registration of the property had about as much effect on price as an upgraded toilet. It is possible to agree that registration of land rights is not a major consideration in residential markets in major cities and at the same time to distinguish this from markets for business and developable land. Whether there in fact is a difference in the residential and commercial property markets or whether other factors are at work here would have to be determined.

Respondents cited various fees and costs as disincentives to registration, but the land use fee, which usually must be paid at first registration of any property, was not as much of a factor as the 4 percent transfer tax and 1 percent stamp duty imposed on transactions. At this time, legal entities are subject to income taxation on transfer of land rights starting at 28 percent and increasing progressively, but there is no personal income tax on transfer of land rights or on income from land leasing. Presently under consideration is a proposal to impose a significant personal income tax on transfer of land rights and income from leases, which might discourage sale or lease of rights by smallholders as well as registration of sale and lease transactions.

Many transactions still occur with unregistered rights. Most LMIs offered opinions on what types of legal documents were sufficient to complete a transaction in the absence of registration. The leading categories in order of importance were sales agreements, either certified by a local official or uncertified; tax documents and payment receipts; official unregistered land allocation decisions; pre-socialist land papers and documents; inheritance papers; and cadastral registration of the land parcel (as opposed to legal registration of the right).¹⁸ A small number noted that no other document was a good substitute for the LURC, though transactions would proceed nevertheless. Almost 40 percent of the LMIs claimed that a government official—usually a commune-level official—is involved even in informal transactions. The primary role of such officials is certification of the transfer document or the transaction as a substitute for a notary, which is permitted by law, but many such certifications appear also to provide the information that there is no pending dispute with regard to the possession of the land, which is in effect an informal title report.

Tenev et al. (2003) suggest that excessive informality and avoidance of the rules by some businesses in Vietnam place those that obey the rules at a competitive disadvantage, which is plausible, but an issue that the current work did not address. Avoidance of registration may also be causing problems for government, including avoidance of taxes and transfer fees and the hindering of development of cadastral information. The findings of this survey suggest that informality in the real property sector may be a function of several factors, including costs (land use fees, transfer and other taxes, avoidance of higher land prices, and so on)

18. In many places, cadastral records also contain a title history, even though that information is not given legal effect, but it is not unusual for property to trade on the basis of these records.

and a sense that land rights are sufficiently protected without formal registration. There are not a great many disadvantages to avoiding registration at this time, as evidenced by the facts that even unregistered rights appear to be well documented and frequently sanctioned or certified by a local official, there are few land-related disputes, and transactions with unregistered land rights remain possible. At the same time, many business land users believe that registration provides greater transparency and enhances security, facilitates transactions, and increases land value. It should be noted that the registered businesses included in this survey had already demonstrated willingness to play by the rules. Results likely would have been different if unregistered businesses were included in the survey.

Security of Property Rights

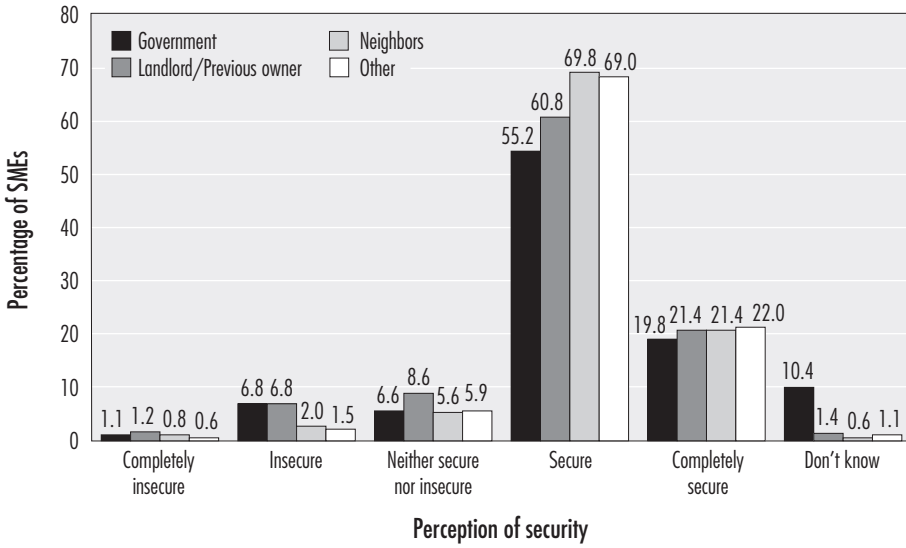
In Vietnam most landholders consider their rights to be secure. About 75 percent of the SMEs interviewed believed their rights are either secure or completely secure against the government, and 80 to 90 percent felt secure against other parties, including landlords, previous owners, and neighbors.

Supporting this perception, only 21 of 665 respondents (3.2 percent) claimed to have been involved in disputes concerning land. There were too few responses to connect the incidence of disputes to informality or to any particular form of tenure, and the incidence of disputes among different forms of tenure was almost equal. The very small number of land disputes essentially made the remaining questions regarding the nature of land-related disputes and the process of dispute resolution uninteresting, but the most frequent type of dispute was land boundaries, and after that compensation. Less than a quarter of the disputes were settled through court action, and almost half through negotiations or intervention of other, nonjudicial local authorities. Most disputants (66.7 percent) considered nonjudicial approaches to be the most effective way to resolve disputes, with only 19 percent preferring court action.

Though the government is considered to be the most significant threat to land rights, it is not by a wide margin. As shown in figure 6.11, about one in four landholders did not feel secure against the government, but a significant fraction were uncertain. In a large number of cases, respondents did not know where they stood with respect to government claims. This may reflect the fact of government land recovery operations for economic development purposes at compensation levels with which many respondents disagree, as well as inadequate communication of land use planning information.

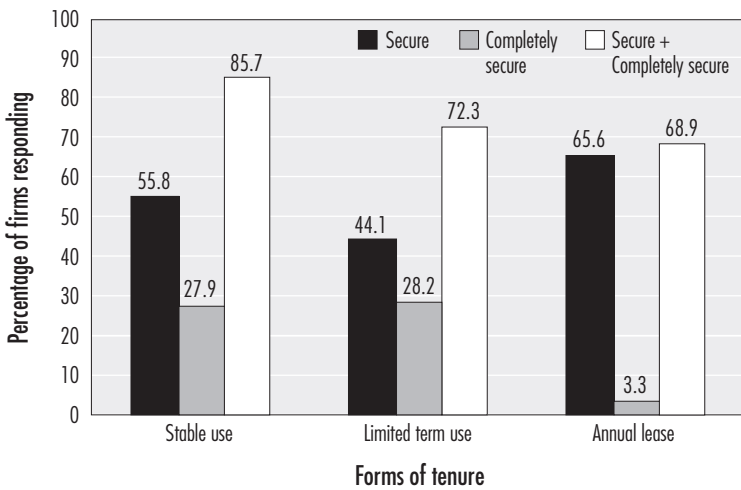
Perceptions of security differed somewhat depending on the type of land right held. As reflected in figure 6.12, 86 percent of LTSU holders felt secure or completely secure, but only about 70 percent of holders of annual rent leases. Twenty-eight percent of LTSU holders, but only 3.3 percent of annual leaseholders, felt completely secure. These differences probably arise from the perception of the LTSU as a form of land ownership and the perception of lease rights as mere contractual rights. The perception of a lease as an inferior form of property

Figure 6.11
SME Perception of Security of Land Rights Against . . .



Number of respondents: 665.

Figure 6.12
Forms of Tenure and Perceptions of Security



Number of respondents: 663.

right offering less security to the holder is probably accurate. Leases can be terminated for a variety of vague reasons—for example, violation of the land laws; they are rarely registered today; and there have been cases of abuse of leaseholder rights in a number of emerging markets. It would be incorrect to assume that emerging legal systems like Vietnam's have endowed leases with the legal protections of more developed legal systems. Moreover, contractual rights imply courts, which are not held in high esteem as forums for dispute resolution.

The source of the right—private market, government, or PMU—does not appear to have much relation to the perception of security of property rights, though respondents feel slightly more insecure in direct relationships with government than they do with PMUs or private market transactions. About 7 percent of those who acquired their land in private market transactions felt insecure or completely insecure, compared to 11 percent of those who acquired land from provincial or local government. This small difference probably reflects the fact that most grants from government are leases and rights of use, while most grants in the private market are LTSU. Uncertainties regarding state lease rents also may contribute somewhat to feelings of insecurity. Under the current system, rents are administrative normatives set annually and adjusted on existing leases every five years based on then-current normative rental schedules. Thus far, rents appear to have been reasonable; about 75 percent of the SME respondents thought that they were at about the right level or a bargain. It is as likely that the current ambiguities regarding rights to renew state leases are a cause of concern.

Land Recovery

Government frequently takes land in and around urban areas under the rules of land recovery, which is a highly regulated process of moving land from low-value to higher-value uses, or a process of moving land from poor smallholders to investors, depending on one's perspective. The process is complex and time consuming, involving practically every level of government that has some authority over land and land use. Involvement of various actors and agencies at various levels of government appears to be a means of providing some transparency and protection of smallholders, but also arguably a means of spreading the political accountability for a controversial practice.

The actual procedures of land recovery are beyond the scope of this chapter, but one aspect worth noting is the unavoidable government involvement in land pricing. Government sets the prices for confiscated land rights through a normative pricing mechanism that may be compared conceptually, but not yet in practice, to mass appraisal methodologies used in some modern property tax systems. Local governments set the valuations, and while the law requires them to approximate market prices, they often acknowledge that they lack the data or the technical capacity to do so. And, while the Ministry of Finance is responsible for supervising application of the normative pricing system, its representatives sometimes acknowledge that it lacks the resources to do so.

In addition to attracting investment by keeping land prices low, government policy seems to be concerned about the threat of serendipitous windfalls to current landholders if price controls are eliminated. That windfalls would occur in many places may be questionable, all things considered, and current policy seems to result mainly in transferring windfalls to investors. Some research suggests that the benefits that are supposed to be provided to current landholders as additional compensation, including relocation and retraining or job assistance, apparently are often not provided, or, put another way, the price of the land is distorted (Asian Development Bank 2005; Center for Rural Progress 2006; Centre of Land Investigation and Planning 2005). The upshot is a system that is now widely perceived as discriminating against poor smallholders and effecting significant transfers of wealth to wealthier investors, and that is inducing more public protests and refusals to relocate among the smallholders. Most of the government officials and 80 percent of the LMIs interviewed considered land recovery to be the most difficult aspect of the state land allocation process. Arguably, the current approach may also distort land allocation by underpricing and, at the same time, by engendering perceptions of unfairness and protests, reducing the amount of land available for conversion to higher use.

Local officials interviewed remarked that users frequently do not accept the normative prices, that negotiating pricing is the most difficult aspect of the process, and that frequently the prices paid are higher than the normative prices, in violation of the law. Some opined that the present compensation policy was irresponsible, unrealistic, and unpopular. Because the sample included relatively few SME respondents with land recovery experience (46 out of 665, or about 7 percent of the entire sample and 25 percent of those who received land in the primary market), the information obtained may not be reliable, but 25 percent believed recovery prices to be too low or lower than they should be. Of those who answered the question, eight out of ten claimed to have made illegal side payments in excess of normative prices to facilitate transactions, supporting the perception of local officials that such payments are routinely made.

Some experimentation with a flexible policy that emphasizes, in the first instance, the role of investors in seeking out their own deals and negotiating prices with current landholders may be appropriate at this stage of development of the secondary land market. In fact, this is what appears to be happening in some jurisdictions, with local officials looking the other way as side payments are made; more open support for this approach perhaps could lead to better policies. Opinions among professionals and land users are divided on how best to carry out land recovery, with some believing that private negotiations are more efficient and some supporting continued government control. Of the SMEs that were not required to participate directly in the land recovery process, 70 percent believed it was more efficient for the state to carry out the entire process, but only 52 percent of direct participants thought this. Thirty-three percent of those who actually participated in the recovery process believed direct negotiations between investors and landholders were more efficient, compared to only 10 percent of

those who did not participate. Of the 22 LMIs that assisted clients in land recovery procedures, somewhat more than half believed that it was more efficient to have the state carry out the procedure, and 41 percent believed it was more efficient for the investor to engage in direct negotiations.

One aspect of land use planning dovetailed to some extent with the issues of land recovery, and that was the risk taken by small investors when investing in land that might have been in the path of urban expansion by land recovery. When preparing the project, other research had suggested that SMEs were being damaged by poor planning processes (for example, Asian Development Bank 2005). In the survey, of the 40 percent of SMEs that were aware of the land use plan, about one in five claimed to have been damaged in some way by planning. Of those, about 6.5 percent were forced to relocate; 11.4 percent experienced the loss of some land; and about 16.5 percent claimed to have experienced financial loss, including a decrease in the value of their land.

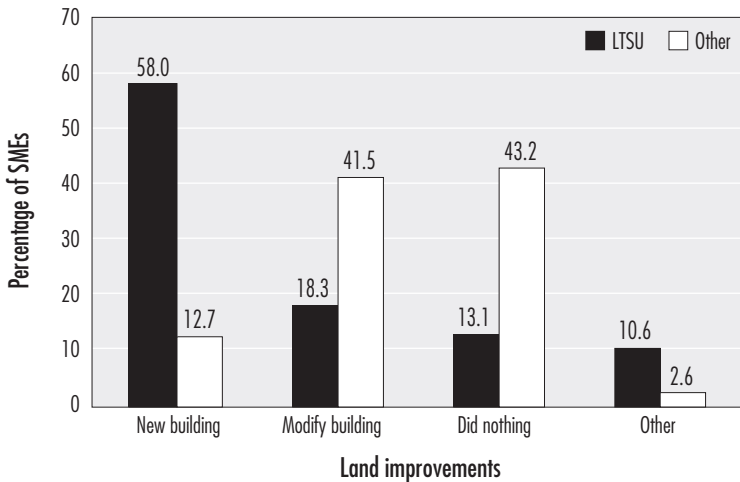
Undoubtedly, some SMEs were harmed by planning processes, dislocation, and inadequate compensation. Some of this may be a result of inadequate telegraphing of land use plans. However, as in most other countries, change of the land use plan in Vietnam does not terminate the land use rights for current holders in the absence of a separate government decision to take the land. A change in the land use plan may restrict the ability of the holder to expand or modify the present facility, which can be serious enough if the original investment was made in the expectation of future expansion. More important, change of plan can prevent renewal of a lease or right of use beyond the initial term, which could limit the amount of investment in business facilities to an amount that can be profitably amortized over the initial term. That risk may be as much related to inadequate lease durations and poorly defined rights of lease renewal as it is to the planning process.

The problem may not be planning rules and procedures, but the rapid pace of urban change and development in Vietnam. Under the circumstances, businesses in Vietnam are well advised to become familiar with land use planning and think carefully about choosing locations for significant investments. It seemed clear that government could be doing a better job of telegraphing information on land use planning and communicating in advance the possible direction of future urban development.

Investment

The level of investment in land improvements may be somewhat related to the form of tenure. As shown in figure 6.13, SMEs were asked to describe the nature of their activity on the land. Fifty-eight percent of those holding LTSUs claimed to have had constructed new buildings, compared to only 12.7 percent of those holding other forms of rights, which are of limited duration. Those holding limited duration forms of land rights were more likely to modify buildings than to construct new ones, and three times more likely to make no improvements to the

Figure 6.13
Tenure and Land Improvements



Number of respondents: 659.

land. Overall, over 80 percent of those who owned the land invested in construction or renovation, and of those about 60 percent invested in new construction. In contrast, only about 15 percent of lessees constructed new buildings.

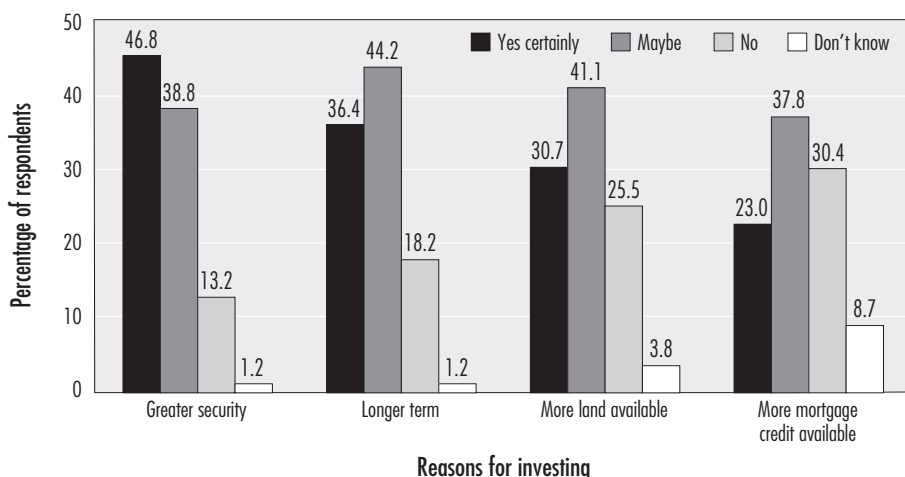
The relationship of new construction to ownership could be expected, as a significant portion of the secondary land market in Vietnam is a market for both land and existing improvements, and 41 percent of lease-holding respondents leased to use existing improvements. But in theory, many leaseholders, in particular primary leaseholders, had the option of investing more, and all other things being equal, owners tend to invest at a higher rate. This relationship may reflect the different durations of LTSU and leases and the different perceptions of security attaching to each form of tenure.

As shown in figure 6.14, 56 percent of annual rent leaseholders said they would invest more if they felt greater security, while only 42.8 percent of LTSU holders would do so, implying that leaseholders may be more likely to underinvest. Similarly, and not surprisingly, 45 percent of annual rent leaseholders said they would invest more if their rights had longer duration.

INVESTMENT AND PERCEPTION OF SECURITY

Perception of security is sometimes associated with investment in land improvements. Asked for factors affecting their level of investment, a greater number of SMEs responded that they would invest more if their land rights were more secure than if they had rights of longer duration, access to more land, or greater

Figure 6.14
Factors Determining Land Investment



Number of respondents: 665.

access to credit. This was the case despite the relatively high sense of security among the sample as a whole. This anomaly may reflect the speculative nature of the question, but it also may be approaching the issue of lease durations and rights of renewal from a different direction.

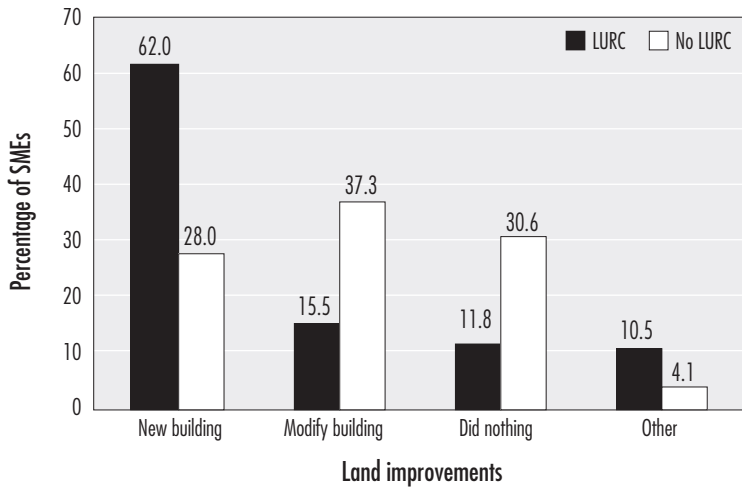
In any case, the level of investment in land improvement seems high. Of the 665 SMEs interviewed, fewer than 23 percent did not invest in the land when they acquired it, regardless of how it was acquired or the form of tenure. Over three-fourths of all respondents engaged in some construction or renovation.

INVESTMENT AND REGISTRATION

Possession of an LURC does not seem to greatly affect the intention to invest more in the business, as 45 percent of those holding LURCs said they would certainly invest more if they felt greater security, while 50 percent without LURCs said they would invest more.

There was greater investment in land improvements by those who held LURCs. However, possession of the LURC was highly correlated with possession of an LTSU right, and the long duration and ownership characteristics of the LTSU are the better explanation for the level of investment. In figure 6.15, about 62 percent of the respondents who held LURCs claimed to have constructed new buildings, as opposed to only 28 percent of those who did not hold LURCs. Those without LURCs were more likely to modify buildings, and about three

Figure 6.15
LURC and Land Improvements



Number of respondents: 687.

times more likely to make no improvements to the land, but many of those were tenants who often could be assumed to prefer tenancy and were looking for usable existing facilities.

Unofficial Payments

State control of an important resource is often seen as an opportunity for official rent seeking. SMEs and LMIs were asked about the amount of unofficial payments to public officials and the instances in which they were most often demanded and made. Among those that chose to respond to the question, unofficial payments were not perceived to be a significant problem, though these questions were not answered by many respondents. Obtaining information on the incidence of unofficial payments to public officials can be difficult, for obvious reasons, and conclusions based on the lack of responses to these questions may be doubtful. For purposes of comparison, similar questions posed to businesses in the equivalent IFC study of land markets in Russia obtained more responses and, in cases of state land allocation, revealed a substantially greater incidence of unofficial payments (Coolidge and Kisunko 2007). Whether this sort of practice is simply more prevalent in Russia, which had many of the same rules and procedures as Vietnam with respect to allocation of state-owned lands, or whether

Table 6.4
Unofficial Payments or Private Relationships to Facilitate Issuance of LURC

Response	Frequency	Percent	Cumulative Percent
Yes to both	13	25.5	25.5
Yes, unofficial fees	17	33.3	58.8
Yes, private relationship	6	11.8	70.6
No	15	29.4	100
Total	51	100	
Did not answer	337		

Russians are simply more willing to talk about such matters is a question that cannot be answered by the present work.

As might be expected, payments were likely made in connection with activities for which discretion was wide and standards were vaguely defined, such as agreeing on the location of the land site or obtaining investment approval. Of the 188 SMEs that obtained land from government or in an IZ and answered the questions, only 21 (11.2 percent) responded that they had made unofficial payments. Activities in which unofficial payments were made by SMEs included obtaining the investment license (16), obtaining the lease or land allocation agreement (14), obtaining the LURC (14), obtaining environmental permits (7), changing land use purpose (5), obtaining cadastre data (5), obtaining a land recovery and compensation plan (4), and obtaining land use fee calculations (3). Thirty-four percent of those who responded said that the total cost of unofficial payments exceeded 10 percent of transaction costs.

SMEs were asked specifically whether they used personal relationships or unofficial payments to facilitate issuance of the LURC. Table 6.4 shows that of the 388 respondents that held LURCs, only 51, or 13 percent, answered the question. Of those, 13 (25 percent) said they used both relationships and unofficial payments; 17 (33.3 percent) used unofficial payments; and 6 relied on personal relationships alone. Fifteen respondents (29.4 percent) said they used neither unofficial payments nor personal relationships.

Summary and Conclusions

According to the current Five-Year Socio-Economic Development Plan of the government of Vietnam, “Socialist-oriented market economic institutions are incomplete and immature. There have been several difficulties in building socialist-oriented market economic institutions. Financial market, real estate market, science and technology market slowly develop and fail to satisfy requirements. State management of each type of markets contains a number of shortcomings” (Vietnam Ministry of Planning and Investment 2006, 5).

The work described in this chapter generally supports that assessment. With regard to creation of an efficient land market within the constraint of state land ownership (“socialist-oriented market economic institutions”), the effort is immature, and the market fails to satisfy all participants, but it appears to be developing at a reasonable pace. Though it may be inefficient and expensive, there is an active secondary market in land rights now, but it may ultimately reach its limits unless there is an effort to put more secure, long-term, alienable, and appropriately zoned land rights into the hands of citizens and businesses. Business land users often characterize land availability and land prices as barriers to their growth. The difficulty of finding land seems to be a primary complaint of business users, who must rely on word of mouth or information from public officials, which is not always forthcoming.

The question may be not whether land markets are developing at an acceptable pace, but whether the markets that ultimately develop will ever overcome the inefficiencies inherent in the state land monopoly and the significant state interventions that follow from it. So long as land is viewed primarily as a tool of state economic planning, there is arguably the risk that inefficiencies will be introduced into the market. Practically all former socialist states of the former Soviet Union and Eastern Europe have embraced the concept of privatization, have abandoned exclusive state ownership of land, and have begun to develop private land markets alongside significant state leasing sectors. Vietnam retains the state land monopoly, and whether the benefits of state ownership are now more costly than the risks of gradual development of private ownership markets, particularly among small landholders, is a fair question.

Land allocation procedures in Vietnam, as in many present and former socialist countries, are defined by the fact that the land is rationed on the basis of factors other than ability to pay. Unlike a market economy, in which the land can be acquired in a more or less simple transaction without regard to the nature of the investment, investor, or ultimate land use, in Vietnam all matters regarding use of the land must be resolved prior to an allocation decision, including not only the nature of the proposed investment and the capabilities of the investor, but also the detailed use, plan for construction, and other technical matters. This dynamic applies in both primary and secondary markets. However, there are some indications that the secondary market may gradually approach the free-market model as some provinces eliminate consideration of the investment and investor from the processing of secondary market transactions, at least for the small transactions of SMEs. This seems also to be the intention of the new Law on Investment adopted in 2006.

In Vietnam allocation of state-owned land through the usual procedures has been as much a political process as an administrative process. In most cases, both the local officials and the LMIs interviewed believe that these political aspects of negotiating an investment, granting investment approval, and identifying a specific land site are the most problematic for a variety of reasons, including inadequate staff capabilities and lack of standards and theoretical underpinnings

for approving investments and land transactions. Ironically, perhaps because of the officials' discomfort with these procedures, the investment approval process seems to be completed relatively quickly, and SMEs do not note it as a significant problem.

Regarding the task of locating suitable land, a main complaint of SMEs, the problems are most often related to such factors as shortage of serviced and unoccupied land, poor planning documentation, and inadequate market information. Also contributing to the complexity and opacity of some types of land transactions and administrative procedures is the state land recovery process, or the movement of land from lower to higher value uses by confiscation, which has also involved the state directly in land pricing. There is a significant body of opinion that government is not doing this task well, and procedures for land recovery are among the most contentious in Vietnam, earning the distrust of smallholders whose land is taken and only mixed reviews from the investors who benefit.

SMEs already rely preponderantly on the secondary market to obtain land and facilities. To promote SME development, the highest return might therefore be associated with a multifaceted approach to facilitating and increasing the amount of land available through the secondary market, which may entail measures such as increasing the amount of land zoned for business use, encouraging entry of land rights into the market by appropriate pricing and tax policies, resolving issues concerning the alienability of SOE land rights, aggressively resolving existing land titles, encouraging more speculative development of flexible facilities in state-sponsored industrial zones, and enhancing market-making mechanisms to bring buyers and sellers together. Facilitation of secondary market transactions may entail measures such as reducing the state role in investment approvals for small businesses, reducing the time and costs of transaction registration, developing cheap and reliable official title certification capabilities, and improving land use planning documentation so that change of use may be accomplished more expeditiously in appropriate cases.

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