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**THE LAW ON LAND-USE RIGHTS AND
OBLIGATIONS OF ECONOMIC ORGANISATIONS**

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FOREWORD

1. The necessity of the research

Land has a vital role in the production and business activities of economic organizations; this is because land is an indispensable input of the production processes. The institution of rights and obligations of economic organizations in using land is a major content of land law. However, in practice, the enforcement of land law reveals that there still have been many problems regarding the land-use rights and obligations of economic organizations. Hence, it is necessary to perform a systematic research of both theoretic and practical aspects of the institution of land-use rights and obligations of economic organizations. This helps to support the enforcement of the Land Law 2013 as well as to supplement and to complete the theoretical foundation of land-use rights and obligations of economic organizations. For this purpose, I have decided to choose the topic "*The law on land-use rights and obligations of economic organisations*" to be the main theme for my Ph.D. thesis in law.

2. The purpose of research paper

This thesis aims at achieving the following main purposes:

- Supplement and complete both theoretical and practical foundation of the institution of rights and obligations of economic organizations in using land in Vietnam.
- Offer solutions to complete and to improve the validity and enforcement of the institution of rights and obligations of economic organizations in using land in Vietnam.

3. Research tasks

This paper has the following tasks:

- Analyze and identify the nature of the following definitions: economic organizations; land-use rights and the obligations; land-use organizations in general and land-use economic organizations in particular; etc.
- Interpret the theoretical foundation and practical foundation of continuously improving the institution of land-use rights and obligations of economic organizations.

- Generally evaluate the origin and development of the institution of land-use rights and obligations of economic organizations in Vietnam. This aims to point out improvements in developing provisions on rights and obligations of economic organizations in using land.

- Legal provisions on the land use of economic organizations in Vietnam.

- Study the legal provisions and experiences of China in developing the institution of rights and obligations of economic organizations in using land - The lessons for Vietnam.

- Analyze the contents of the institution of rights and obligations of economic organizations in using land.

- Evaluate the enforcement of the institution of rights and obligations of economic organizations in using land in order to point out its successes and drawbacks as well as the reasons for such drawbacks.

- Analyze and offer solutions in order to complete and improve the validity and enforcement of the institution of rights and obligations of economic organizations in using land in Vietnam.

4. The objects and scope of the research

4.1. Objects

The objects of this thesis include:

- Provisions of laws on land, particularly Land Law 2013 and its guidance on rights and obligations of economic organizations in using land.

- Standpoints and directions of the Communist Party, and also policies of the Vietnamese government about land use and land management in general and about the institution of rights and obligations of economic organizations in using land in particular.

- The mechanism of enforcement of land law in Vietnam from Doi Moi (1986) to date.

- The enforcement of Land Law 2013 in general and of the institution of land-use rights and obligations of economic organizations in particular.

- The implementation of Land Law 2003 in general and the institution of rights and obligations of economic organizations in using land in particular.

- The experience of China about land law; particularly the institution of rights and obligations of economic organizations in using land.

- Some specific cases about the enforcement of the institution of rights and obligations of economic organizations in using land.

4.2. Research scope

"The law on land-use rights and obligations of economic organisations" has a wide research scope that relates to several laws, such as Land Law, Enterprise Law, Investment Law, Civil Code, Trade Law, and Law on Banks and Credit Institutions, etc. However, within the scope of a Ph.D. thesis, this paper will focus on the following points:

Firstly, interpret some theoretical issues about the rights and obligations of economic organizations in using land.

Secondly, conduct research of rights and obligations of economic organizations in using land in the land laws of Vietnam to clarify how this institution has been developed. Also, focus on analyzing the content of Land Law 2013 and its guidance that are related to rights and obligations of economic organizations in using land.

Thirdly, conduct research of prevailing laws and regulations about the conditions, procedure and mechanism to exercise rights and obligations of economic organizations in using land.

Fourthly, conduct research of and evaluate the enforcement of Land Laws 2013 and its guidance.

5. Research methods

This thesis is going to use the following main research methods:

- The dialectical materialism method and historical materialism method of Marxism and Leninist.

- Furthermore, this paper is going to use the following specific research methods:

(i) Analysis, evaluation, synthesis, comparison, etc. which will be used in Chapter 1 and Chapter 2 to examine the overall of research situations and to interpret the mentioned theoretical issues.

(ii) Evaluation, explanation, synthesis, etc. which will be used in Chapter 3 to examine and evaluate the situation of laws on rights and obligations of economic organizations in using land in order to clarify successes and limitations in enforcing such rights and obligations.

(iii) Commentary method, inductive method, argumentative method, etc. which will be used in Chapter 4 to orient and to offer solutions to improve laws on rights and obligations of economic organizations in using land.

6. New points discussed in the thesis

On the basis of receiving and inheriting from published scientific works, this thesis has some major new points as below:

- Contribute to the theoretical system about rights and obligations of economic organization in using land as well as laws on rights and obligations of economic organizations in using land in Vietnam.

- Decode the meanings of some concepts, such as rights and obligations, land-use rights and obligations, economic organizations and rights and obligations of economic organizations in using land.

- Analyze the concepts and traits of laws on rights and obligations of economic organizations in using land.

- Identify limitations of law on rights and obligations of economic organizations in using land and the reasons for such limitations via assessing the current situation of that law in Vietnam.

- Offer solutions for improving and enhancing the validity and enforcement of the institution of rights and obligations of economic organizations in using land in Vietnam.

7. Structure of the thesis

Apart from the preface, conclusions and list of references, the contents of this thesis includes four chapters and ten lessons.

Chapter 1

OVERVIEW OF EXISTING RESEARCHES AND THE THEORY FOUNDATION OF THIS THESIS

1.1. Overview of existing researches

1.1.1. Domestic researches

In this section, the author has referenced the research works within the country on the rights and obligations of economic organizations in land-use with regards to the followings:

1.1.1.1. Researches on institutions of land-use in Vietnam

1.1.1.2. Researches on land-use rights

1.1.1.3. Researches on rights and obligations of economic organizations in using land

1.1.1.4. General evaluation of the outcomes of previous studies

In terms of the contents directly related to the thesis, these researches have solved some basic theoretical issues as follow:

Firstly, resolved some basic theoretical issues of land-use rights in general.

Secondly, examined the specific rights of land-use organizations in general and of land-use economic organizations in particular under both theoretical and practical views.

Thirdly, analyzed the current status of laws on rights and obligations of land users (including land-use economic organizations) and proposed solutions to complete these institutions.

However, the outcomes of these studies have not yet provided a systematic and comprehensive analysis on rights and obligations of economic organizations in using land under both theoretical and practical views.

1.1.2. Researches of foreign scholars

In this section, the author has referenced the research works of foreign scholars on rights and obligations of economic organizations in using land with regards to the followings:

1.1.2.1. Researches on land laws

1.1.2.2. Researches on land-use rights of enterprises

1.1.2.3. General evaluation of the outcomes of previous studies

With a different approach to domestic scholars, foreign scholars examined Vietnamese land laws and rights and obligations of land-use enterprises by comparing land-use rights - as a right of private owners in using land - against rights and obligations of land-use enterprises in Vietnam which incur on the basis of people's ownership of land.

These researches have analyzed land laws in general and regulations on rights and obligations of enterprises using land in Vietnam in particular, pointing out possible shortcomings and limitations; at the same time,

recommending several solutions to overcome such limitations based on the principles of fairness, equality, openness, transparency and responsibility of state agencies in providing consultations and explanations.

1.2. The theoretical basis of the thesis

1.2.1. Research theory

Research theory means views and/or doctrines on the variations of land ownership in the market economy; the theory of the development of real estate markets and the dialectical relationship between law and economic relations, especially on the role of law in developing and adjusting economic relations, of which, land relations are vital components.

1.2.2. The research hypothesis

- Economic organizations, especially enterprises, are facing problems in their production and business operations due to people's ownership of land.

- Rights and obligations of economic organizations in the use of land have their own characteristics that prevailing laws need to pay special attention to so that these subjects can enjoy a favorable, equal, transparent business environment and sustainable development opportunities, thus efficiently contributing to the development of the whole economy.

- Completing prevailing law on rights and obligations of economic organizations in using land should ensure compliance with laws of market economy in general and that of real estate markets in particular in order to enable their enforcement in practice and to meet the requirements of international integration.

1.2.3. Research questions

- What issues are related to rights and obligations in terms of the nature of the concept of economic organization as land users? When compared with rights and obligations of other land users, what do the land-use rights and obligations of economic organizations have in common?

- How did the characteristics of economic organizations in using land affect the institutions on development of land-use rights and obligations?

- Did prevailing regulations on rights and obligations of economic organizations in using land have positive or negative impacts on the business environment of economic organizations? What is the cause of these negative impacts?

- What requirements of the market economy and the real estate market should be met when developing law on rights and obligations of economic organizations in using land?

- What are the directions and solutions to improve regulations on rights and obligations of economic organizations in using land provided the people's ownership of land, the development of market economy and the deepening of international integration of Vietnam?

1.2.4. Approaches of the thesis

- This thesis's approaches are to analyze and evaluate comprehensively all issues ranging from social systems and institutions to actual performance of economic organizations in using land.

- The thesis has used dialectical materialism, historical materialism, materialistic dialectic methods to study the origin and nature of subjects provided those subjects' development and changes. The main theme for this thesis is to research, to study and to develop a legal system on land that is democratic, open, transparent and highly accountable provided people's ownership of land; this is on the one hand to ensure the true ownership of land users (including land-use economic organizations) which can meet requirements of the market economy, while on the other hand, to create a strong legal foundation so that the State could manage land effectively and avoid corruption in land management. Another important outcome is to promote the importance of law on rights and obligations of economic organizations in using land.

Chapter 2

SOME THEORETICAL ISSUES ON RIGHTS AND OBLIGATIONS OF ECONOMIC ORGANIZATIONS IN USING LAND

2.1. People's ownership of land and land-use rights of economic organizations

2.1.1. People's ownership of land from the perspective of the market economy and international integration

2.1.1.1. People's ownership of land from the perspective of the market economy

The economic management mechanism focuses on governing the rights and obligations of economic organizations in using land. Since our country

transitioned into a market economy, there have been changes in economic relations in general and land relations in particular. Market mechanisms facilitated the release of all production capacity for economic sectors and promoted the initiative and creativity of employees in land-use economic organizations.

2.1.1.2. People's ownership of land from the perspective of international integration

- The State realizes its role of a land-owner representative by land allocation, land lease and certification of land-use rights.

- Land-use rights in general and land-use rights of economic organizations in particular are protected by law.

- The possibility of land confiscation should be minimized. Law should recognize and encourage economic organizations accessing land in line with market mechanism.

2.1.2. Economic organizations and land-use rights from the perspective of the development of enterprises in the market economy and international integration

Enterprises should be enabled to access land in the principles of equality and non-discrimination.

2.2. Theory about land-use economic organizations

2.2.1. The concept of land-use economic organizations

2.2.1.1. The concept of economic organizations

Based on the interpretation of the Law Dictionary and the content of the legal provisions on economic organization, the author suggests that the term "economic organizations" should be understood as follows: *i) An economic organization is a legal person established under the provisions of the law; II) which has the function of production-business services; III) and is established in the form of enterprises, companies, cooperatives, etc.*

2.2.1.2. Land-use economic organizations

Through analysis, the author of the thesis proposes a definition of land-use economic organizations as follows: Land-use economic organizations are legal persons under the rules of civil law, to whom the State allocates land, leases land, recognizes land-use rights, receives land-use rights in accordance

with Land Law for use in production, doing businesses and provision of services.

2.2.2. Rights and obligations of economic organizations in using land

2.2.2.1. The basis of formation and cessation of rights and obligations of economic organizations in using land

- The basis of forming the rights and obligations of organizations includes: the State performing land allocation, land leases, recognizing land-use rights, transferring land-use rights and confiscating land.

- The basis for termination of the rights and obligations of economic organizations included: The State confiscating land and economic organizations making deals on land use.

2.2.2.2. The land use form of economic organization from the required macro and micro development

- Land-use right primary markets: This is the market in which land-use rights incurred between the State and economic organizations via land allocation and land leases.

- Land-use right secondary markets: This is the market in which land-use rights are established through transactions with other land-use economic organizations, households and individuals. The secondary market for land use forms after the primary market. However, the number of land-use rights of economic organizations incurred in the secondary market is still modest.

2.2.2.3. The nature of rights and obligations of economic organizations in using land and requirements for institutionalize those rights and obligations

I) *The concept of rights of economic organizations in using land:* The rights of economic organizations in using land can be interpreted in two aspects. Subjectively: Be the rights of exploitation of properties and usages of land in production, business activities and provision of service for the purpose of generating profits; Objectively: Be an institution of land law which includes general legal regulations issued by the State to regulate social relations arising in the process of land-use of economic organizations;

II) *The concept of obligations of economic organizations in the use of land:* Obligations of economic organizations in using land include:

Obligations in compliance with the order of land management; obligations to exercise financial obligations in the process of land use;

III) The request need to institutionalize the rights and obligations of the Organization in the economic use of land, including: ensuring impartiality, equality of rights and obligations of every organization in the economic use of land; ensure the transparency; to ensure uniformity, synchronization; ensure the feasibility in practice; ensure the computer is simple, easy to understand content.

2.2.2.4. The issue of land confiscation from the perspective of facilitating business environment of economic organizations

- Land confiscation is a method to occupy land for production, business activities and provisions of services.

- The confiscation of land of economic organizations should only be done where necessary and should comply with the prevailing regulations of the Constitution and law on land.

2.2.3. The purposes of land use and how land is used will govern the rights and obligations of the economic organizations in using land

- Based on each land-use purpose and depending on different land types, laws on rights and obligations are not the same for all land-use economic organizations.

- Based on the methods of land use, laws stipulate various rights and obligations for land-use economic organizations.

2.2.4. Comparing rights and obligations of economic organizations in using land before and after the presence of people's ownership of land in Vietnam

- Before the Constitution was enacted in 1980, in our country there existed different types of land ownership: State ownership, collective ownership and private property.

- The Constitution 1980 regulated that land was owned by the State on behalf of entire people. Then, the Land Law 1987 and the Land Law 1993 regulated that the State allocated land, leased land to economic organizations, households, individuals for their usage in the long run and enabled those land

users to transfer their land-use rights during the period of land use. As such, these regulations have separated land-use rights from land ownership; however, the two types of rights are still closely related.

Chapter 3

THE LEGAL STATUS OF RIGHTS AND OBLIGATIONS OF ECONOMIC ORGANIZATIONS IN THE USE OF LAND

3.1. Land-use methods applicable to economic organizations in prevailing law

3.1.1. The provisions of law on land-use methods applicable to economic organizations

3.1.1.1. Land-use methods applicable for State-owned enterprises

-State-owned enterprises acquired land in the land-use right primary market via land allocation, land lease, certification of land-use rights, etc. by the State.

-State-owned enterprises acquired land to use in production, business activities and provision of services in the land-use right secondary market via transfer of land-use rights, lease, re-lease and receipt of capital contribution in the form of land from land users.

3.1.1.2. Land-use methods applicable to foreign invested enterprises

-Foreign invested enterprises could access to land lease from the provincial people's Committee.

-Foreign invested enterprises could access to land allocation from the provincial people's Committee at a charge to use land for investment projects to develop civil buildings for sale or both for sale and for rent.

-Foreign invested enterprises could access to land in the land-use right secondary market via land lease, re-lease in industrial zones, or mergers and acquisitions of state-owned enterprises in accordance with investment laws.

3.1.1.3. Land-use methods applicable to other types of enterprises

- Although methods of land use applicable to other types of enterprises that are stipulated in law appear to be nothing other than those applicable to State-

owned enterprises, in fact there are many difficulties for other types of enterprises in accessing land for their needs of production and business activities. They have not been treated equally when compared to state-owned enterprises.

3.1.1.4. Land-use methods applicable to collective economic organizations

- Collective economic organizations access to land for the purpose of production and business activities on the land-use right primary market via land allocation at a charge and land lease from the State.

- Collective economic organizations use land through transactions of giving and donating, receiving, re-leasing and receiving capital contribution on the form of land from land users.

- Collective economic organizations use land when the State recognizes their long-term land-use rights.

3.1.2. Evaluating the implementation of the provisions of law on land-use methods applicable for economic organizations

- The land law has not yet allowed businesses with foreign investment to re-lease land from domestic economic organizations, households and individuals.

- For newly registered private enterprises which are established under amended Law on Enterprises, the lease of land is still very complicated, especially in the large urban areas such as the capital city of Hanoi and Ho Chi Minh City.

- When comparing between the content of law on land-use methods applicable to economic organizations with their enforcement in practice, the author found several incompatibilities and inadequacies.

3.2. Rights and obligations of economic organizations in using land

3.2.1. Regulations on rights and obligations of economic organizations in using land

3.2.1.1. Regulations on rights and obligations of economic organizations who lease land and pay annual rental fees

- Economic organizations that are leasing land from the State and paying annual rental fees are entitled to perform civil transactions of their own assets located on the leased land.

- Economic organizations that are using land leased from other organizations, households and individuals outside of industrial zones, groups of industrial zones, export processing zones, industrial clusters have the rights and obligations under the provisions of civil legislation.

3.2.1.2. Regulations on rights and obligations of economic organizations receiving the transfer of land-use rights and changes in land use purposes

- Economic organizations receiving the transfer of land-use rights has the same rights and obligations as economic organizations to whom the State allocates land at a charge or leases land and collects one-off lease payments for the whole lease duration.

- Economic organizations who receive the transfer of rights to use agricultural land under the provisions of law have the following rights and obligations: In case of land-use right transfer without changes in the purpose of land use, economic organizations shall have the rights and obligations of organizations to whom the State allocates land at a charge or leases land subject to one-off lease payments for the whole lease term. In case of land-use right transfer along with changes in the purpose of land use provided that the State allocates land at a charge or leases land subject to one-off lease payments for the whole lease term, economic organizations shall have the rights and obligations of organizations to whom the State allocates land at a charge or leases land subject to one-off lease payments for the whole lease term. In case of land-use right transfer along with changes in the purposes of land use provided that the State leases land subject to annual rental payments, economic organizations shall have the rights and obligations of organizations to whom the State leases land subject to annual rental payments.

- Rights and obligations of land-use economic organizations to whom authorized State agencies allow to changes the purposes of land use from non-charge land allocation to charged land allocation or land lease: In case of charged land allocation or land lease subject to one-off lease payments for the whole lease term, economic organizations shall have the rights and obligations of organizations to whom the State allocates land at a charge or leases land subject to one-off lease payments for the whole lease term; In case of land lease

subject to annual rental payments, economic organizations shall have the rights and obligations of economic organizations, public administrative organizations to whom the State leases land subject to annual rental payments.

3.2.1.3. Regulations on rights and obligations of economic organizations receiving capital contribution in the form of land-use rights; land-use rights of economic organizations at dissolution, bankruptcy

- Economic organizations who receive capital contribution in the form of land-use rights from households, individuals, other economic organizations shall have the rights and obligations of organizations to whom the State allocates land at a charge, or leases land subject to one-off lease payments for the whole lease term.

- Land-use rights of the cooperative when dissolved, bankrupt include: For land that the State allocates free of charge or allocates at a charge or leases, or land that is acquired via purchases of assets located on land or transfer of legal land-use rights from other persons provided that land-use charges, land-lease payments, payments for asset purchases, payments for transfer of land-use rights are sourced from the State Budget, the State is entitled to confiscate those land; For land that the State allocates at a charge, leases subject to one-off lease payments for the whole lease term; or land that is acquired via purchases of assets located on land or transfer of legal land-use rights from other persons provided that land-use charges, land-lease payments, payments for asset purchases, payments for transfer of land-use rights are not sourced from the State Budget, or land that members contribute their land-use rights to cooperatives, the State shall not confiscate those land, related land-use rights shall be owned by cooperatives and be settled in accordance with the cooperatives' charters and resolutions of members' meetings.

- Land-use rights of enterprises at dissolution or bankruptcy shall be addressed in accordance with laws.

3.2.1.4. Regulations on rights and obligations of economic organizations who acquire land lease to develop underground construction sites

- In case of land lease subject to one-off lease payments for the whole lease term, economic organizations shall have the rights and obligations of

organizations to whom the State allocates land at a charge, leases land subject to one-off lease payments for the whole lease term; or organizations to whom the State allocates land at a charge, leases land subject to one-off lease payments for the whole lease term but are exempted from land-use charges or land lease payments or are subject to deductions to land-use charges or land lease payments.

3.2.2. Assessing the implementation of the provisions on the rights and obligations of economic organizations in using land

3.2.2.1. About the legislature

In the Constitution 2013, there have been some positive changes in economic organization's rights to use the land; specifically: the land was considered as important resources for the development of the country and was managed according to law; organizations and individuals not only were entitled to receive land allocation, land lease from the State but also were subject to the State's certification of land-use rights and land-use rights were protected by law; land users were entitled to transfer their land-use rights and to perform their rights and obligations in accordance with law. Although land was still subject to people's ownership, to some certain extent, land-use rights were treated as users' assets, thus be free to transfer and be protected by law. This has been the most important change which resulted from the implementation of the Constitution 1992 and land law in Vietnam, creating a solid foundation for the development of land-use rights market.

3.2.2.2. Difficulties and challenges

- Land-use rights of economic organizations must be certified by authorized state agencies by issuing a certificate of land-use rights. However, the issuance of land-use right certificates nationwide has not been complete, resulting in difficulties for land-use economic organizations in exercising their rights in accordance with Land Law 2013.

- The fact that law has not permitted land-use economic organizations to mortgage land-use rights with foreign banks has limited their abilities to approach funds to finance their production and business activities.

3.2.3. Regulations on rights and obligations of foreign invested enterprises in using land

3.2.3.1. Regulations on rights and obligations of foreign invested enterprises in using land to develop investment projects in Vietnam

- Foreign invested enterprises to whom the State leases land subject to annual rental payments are entitled to mortgage their own assets located on leased land with financial institutions who are entitled to operate in Vietnam; and are entitled to make capital contribution by their own assets located on leased land, then the recipients of capital contribution are entitled to lease land from the State with predetermined purposes of land use for the rest of lease term.

- Foreign invested enterprises to whom the State leases land subject to one-off lease payments for the whole lease term; foreign invested enterprises to whom the State allocates land at a charge to develop projects that are subject to transfer of land-use rights, assets of their own located on land during the land-use term; lease, release of land-use rights, assets of their own located on land during the land-use term; mortgages by land-use rights, assets of their own located on land with financial institutions who are entitled to operate in Vietnam.

3.2.3.2. Regulations on rights and obligations of joint ventures in using land that are acquired via capital contribution in the form of land-use rights; 100% foreign owned enterprises that are transitioned from joint ventures

- Joint ventures between foreign organizations, foreign individuals, Vietnamese who settle down overseas and economic organizations who make capital contribution in the form of land-use rights, shall have the rights and obligations of organizations to whom the State allocates land at a charge or leases land subject to one-off lease payments for the whole lease term.

- State-owned enterprises to whom the State leased land before 01/07/2004 and who were entitled to exercise land-use rights as if they were funded by the State Budget without re-payments and contribute those land-use rights to joint ventures with foreign organizations, foreign individuals, shall have the rights and obligations of organizations to whom the State allocates land at a charge or leases land subject to one-off lease payments for the whole lease term.

3.2.3.3. Regulations on rights and obligations of foreign invested enterprises using land in industrial zones, groups of industrial zones, export processing zones, high-tech zones and economic zones

- In case of land-lease payments, one-off land re-lease for the whole lease term, land-release, foreign invested enterprises are entitled to have the rights and obligations of organizations to whom the State allocates land at a charge, leases land subject to one-off lease payments for the whole lease term.

- In case of land-lease payments, annual land re-lease, foreign invested enterprises shall have the rights and obligations of organizations using leased land subject to annual rental payments.

3.2.3.4. Regulations on rights and obligations of foreign invested enterprises who acquire land lease to develop underground construction sites

- In case of land lease subject to one-off lease payments for the whole lease term, foreign invested enterprises shall have the rights and obligations of foreign invested enterprises to whole the State leases land subject to one-off lease payments for the whole lease term.

- In case of land lease subject to annual rental payments, foreign invested enterprises shall have the rights and obligations of foreign invested enterprises to whole the State leases land subject to annual rental payments; foreign invested enterprises using land to develop investment projects in Vietnam are entitled to receive land allocation, land leases subject to one-off lease payments for the whole lease term but are exempted from or are subject to deductions in land-use charges, land lease payments.

3.2.4. Evaluating the implementation of rights and obligations of foreign invested enterprises using land in Vietnam

- Land Law 2013 has removed inequalities in approaching land between domestic organizations and foreign invested enterprises.

- Amendments and supplements of law have enabled no restrictions on the purposes of mortgage of land-use rights owned by land-use economic organizations.

- However, actual implementation of rights and obligations of foreign invested enterprises in using land has revealed discrepancies among laws about the concept of foreign invested enterprises.

3.3. Merger, dissolution of land-use economic organizations and land acquisition

Although in practice, many enterprises and cooperatives could be dissolved, go bankrupt or be merged due to failed business operations and prolonged loss-making, it appears that laws on land have not comprehensively and synchronously covered how to handle land owned by those economic organizations.

3.4. Rights and obligations to land of state-owned enterprises being equitized

3.4.1. Regulations on how to handle land-use rights of equitized enterprises

- Once equitized, state-owned enterprises, to whom the State allocates or leases land, could receive land allocation and pay land-using fees in accordance with Item 2 and Item 4 of Article 55 of Laws on Land 2013; or could enter into land lease agreements that regulate either annual lease payments or one-off payments for the whole lease terms in accordance with Article 56 of Laws on Land 2013.

- How to determine the value of land-use rights when enterprises are equitized would be subject to the Government's regulations on equitization; however, it should also be guaranteed that the value of land-use rights must be a specific price predetermined by provincial People's Committees in accordance with Item 3 and Point d, Item 4 of Article 114 of Laws on Land 2013.

3.4.2. The state of implementing regulations on land-use rights after the equitization of state-owned enterprises

3.4.2.1. The state of applying regulations on determining the land proportion in the value of equitized state-owned enterprises

- Do not measure sufficiently and precisely the square meters being allocated or leased, leading to loss of the State's capitalization as well as loss of the State Budget.

- Uncompleted before-equitization land procedures could have impact on the value of enterprises.

- There have been many issues arising from not adding the value of land-use rights to the value of enterprises.

3.4.2.2. The state of implementing regulations on land management after the equitization of state-owned enterprises

- Joint-stock companies do not use land in line with predetermined purposes; this was mainly because they can obtain land leases at low prices, thus, they can re-lease land to earn a surplus. This happened in various provinces nationwide.
- Joint-stock companies transfer their land-use rights illegally after their equitization.

Chapter 4

SOLUTIONS TO CREATE RECOMMENDED REGULATORY CHANGES TO RIGHTS AND OBLIGATIONS OF ECONOMIC ORGANIZATIONS IN USING LAND

4.1. Views on necessary regulatory changes to rights and obligations of economic organizations in using land

- Any changes in laws on rights and obligations of economic organizations in using land must be based on the *jus ad rem* theory.
- Any changes in laws on rights and obligations of economic organizations in using land must meet the requirements of international integration.
- Any changes in laws on rights and obligations of economic organizations in using land must aim to "unbutton" certain disadvantages of existing social and political conditions so that markets for land-use rights could be established and operated normally.

4.2. Detailed descriptions of regulatory changes to rights and obligations of economic organizations in using land

In this topic, the writer of this thesis proposed some solutions to create regulatory changes to rights and obligations of economic organizations in using land, including:

4.2.1. Improve regulations on the basis to form rights and obligations of economic organizations in using land

4.2.2. Improve regulations on transfer of land-use rights of economic organizations

4.2.3. Improve regulations on land prices, land-use fees, land lease payments, taxes and fees on land applicable to economic organizations in using land

CONCLUSION

1. Rights and obligations of land users in general and rights and obligations of economic organizations in particular are among basic regulations of laws on land. Due to the specific nature of entire people's ownership - i.e. land is owned by entire people while the State is a representative of the owner, the State implements its rights by granting land-use rights to land users (including land-use economic organizations) via land allocation, land lease, affirmation of land-use rights, definition of rights and obligations of land users, etc. Therefore, rights and obligations of land users (including land-use economic organizations) arise based on entire people's land ownership whilst the State is a representative of the owner. Although at inception, land-use rights of economic organizations derive from entire people's ownership of land, land-use rights have gradually separate from entire people's ownership of land and become a relatively independent type of rights. Its independence could be described as follows: both land users in general and land-use economic organizations in particular possess certain rights towards land, including: acquisition, management and use of land. Moreover, they are entitled to transfer their land-use rights within the period of time that land is allocated or leased to them. If we refer to the *jus ad rem* theory, we could interpret land-use rights in general and land-use rights of economic organizations in particular as limited rights in rem.

2. Regulatory literature on rights and obligations of economic organizations in using land have become more and more complete. In Laws on Land 1987, regulatory literature on this topic was very blur. Then, when Laws on Land 1993 took effective, there were certain literature on general rights and obligations of land users. Rights and obligations of institutional land users in general and rights and obligations of economic organizations in

using land were first time ever described directly and in detailed when the Ordinance on rights and obligations of domestic organizations to whom the State allocates or leases land was promulgated on 14/10/1994. Only in Laws on Land 2003, which was promulgated to replace Laws on Land 1993 and Laws on revision and supplementation of some articles of Laws on Land 1998 and 2001, there was a chapter that described rights and obligations of land users (including rights and obligations of economic organizations in using land). Based on Laws on Land 2003, Laws on Land 2013 also had a chapter to describe rights and obligations of land users, including general rights and obligations of land users and specific rights and obligations of different groups of land users (including land-use economic organizations). Regulations on rights and obligations of economic organizations in using land have been continuously improved in order to ensure equal rights between domestic economic organizations and foreign-invested enterprises in using land, which supports the requirements of international integration.

3. Regulations on rights and obligations of economic organizations in using land are subject to many factors, including: entire people's land ownership; economic management regime; purposes and methods of land use; etc.

4. Laws on Land 2013 and its guidance not only covered what have been specified in Laws on Land 2003 in terms of rights and obligations of economic organizations in using land, but also added on new issues in order to meet the requirements of the country's innovation and international integration, including: rights and obligations of economic organizations to whom land is transferred or the purposes of land-use are amended; rights and obligations of economic organizations who receive capital contribution in the form of land-use rights; land-use rights of economic organizations being dissolved or bankrupt; rights and obligations of land-use joint ventures due to its receipt of capital contribution in the form of land-use rights; rights and obligations of 100% foreign-owned enterprises being transformed from joint ventures; etc.

Laws on Land 2013 have been supplemented by many new articles, including: the State could lease land to and receive one-off lease payments for the whole lease term from economic organizations; the State could allocate land

to and receive land-use fees from foreign-invested enterprises who use land to build civil buildings either for sale or both for sale and for lease, etc. These supplements were made in order to eliminate inequalities in rights and obligations between domestic economic organizations and foreign-invested enterprises using land to initiate investment projects in Vietnam.

However, there have been many difficulties in implementing Laws on Land 2013 in terms of rights and obligations of economic organizations in using land. Examples include: in practice, different groups of economic organizations have different chances to approach land (especially small and medium enterprises); economic organizations mainly approach land in primary markets of land-use rights when the State allocates or leases land (ask-give mechanism), thus there have been high possibilities of corruption, fraud and group benefits; while it appears that secondary markets of land-use rights have not fully developed due to uncomplete and non-comprehensive legal framework.

5. Based on its assessment of the state of laws on rights and obligations of economic organizations in using land and views on necessary regulatory changes as discussed in Chapter 3 and Chapter 4, this thesis has provided some recommendations on necessary regulatory changes in rights and obligations of economic organizations in using land. These recommendations have been allocated into the following major groups:

- Group 1: Improve regulations on the basis to form rights and obligations of economic organizations in using land, including: i) Revise, replace regulations on the State's land allocation and land lease to economic organizations using "ask-give mechanism", in which, the State directly performs public bidding and auction for granting land-use rights; ii) Continue to institutionalize Article 54 of The Constitution 2013 by adding regulations to affirm that land-use rights are economic organizations' assets protected by laws; subsequently, land-use rights of economic organizations are guaranteed by the State via the following regulations: Economic organizations could receive land-use right certificates; The State only acquires land from economic organizations if it is required for the purposes of national defence

and security, social and economic development and community's benefits, provided that compensation will be paid; etc..iii) Supplement and implement regulations on developing secondary markets of land-use rights so that economic organizations with legal land-use rights (i.e. be granted with land-use right certificates) are entitled to transfer the land-use rights; simultaneously, allowing economic organizations (regardless of economic components) to receive land-use rights being transferred from other organizations, households and individuals for the purposes of business development, etc.

- Group 2: Continue to improve regulations on transferring of economic organizations' land-use rights, including: i) The State should continue to research and consider possibilities of developing regulations to enable economic organizations to mortgage land-use rights at foreign credit institutions in order to get bank loans to finance their business operations; ii) Foreign-invested enterprises, who use land to develop investment projects in Vietnam, should be entitled either to (a) receive capital transfer in the form of land-use rights from local enterprises who are using land allocated by the State subject to land-use fees or leased by the State subject to one-off lease payments for the whole lease terms, provided that the value of land-use rights have been capitalized in the value of enterprises; or to (b) receive land-use right transfer from public financially-independent administrative organizations, households, individuals, etc.

- Group 3: Improve regulations on land prices, land-use fees, land lease payments, taxes and fees on land applicable to land-use economic organizations, including: i) The State should review, revise and supplement regulations on lease payments charged to land infrastructure in industrial zones so that there is a clear cut between the re-lease of land (rights of the State) and fees charged for using infrastructure (rights of infrastructure developers); ii) The State should supplement regulations to develop a comprehensive legal framework on establishment and operations of independent land-price consulting organizations in order to support and promote the transfer of land-use rights of economic organizations in using

land for development; iii) The State should supplement regulations to clarify the alignment between land prices announced by provincial People's Committees and current market prices so that it could be well understood and applied in practice; iv) The State should continue to enhance regulations on determination the land proportion in the value of equitized enterprises so that:

First, state-owned enterprises, whose land is allocated by the State subject to land-use fees and paid land-use fees do not source from the State Budget, are entitled to add the value of land-use rights into the value of the enterprises themselves when they get equitized.

Second, state-owned enterprises, whose land is leased by the State, are entitled to determine the value of land and the advantages of the land position for the purposes of equitization. Besides, the State should categorize land-lease state-owned enterprises (based on amount of paid lease payments or paid compensation) in order to determine the value of land-use rights when these enterprises get equitized and consider the value of land-use rights as capital contributed by the State Budget into equitized enterprises.

Third, state-owned enterprises, who are not subject to equitization, should also determine the value of land-use rights of the land they are using and should treat the value of land-use rights as capital contributed by the State. The writer of this thesis believes this would improve the responsibility of and the land and plant use effectiveness of these state-owned enterprises, avoiding possible waste land use as well as waste land.

- The State should supplement regulations to clarify Item 2, Article 19 of Laws on Land 2013 so that the State could collect additional value from land not created by land users' investments via policies on taxes, land-use fees, land lease payments, investment in infrastructure and policies on supporting land owners whose land is acquired by the State. This would help to differentiate the additional value from land not created by land users' investments from commercial prices of civil buildings so that such additional value could be contributed to the State Budget via the collection of corporate income taxes.

LIST OF ANNOUNCED RESEARCH WORKS RELATED TO THE THESIS'S THEME

1. Nguyen Ngoc Minh (2010), "Laws on real estate businesses in Vietnam in the view of foreign investment activities", *Legal Research*, 14(175), p 54-58.
2. Nguyen Ngoc Minh (2010), "Administrative procedure reform to promote the development of real estate markets", *Legal Research*, 16(177), p 37-41.
3. Nguyen Ngoc Minh - Nguyen Quang Tuyen (2010), "Laws on compensation, resettlement when the State acquire land in Singapore and China – Some ideas for Vietnam in improving laws on compensation, resettlement when the State acquires land", *Legality*, 10(125), p 60-68.
4. Nguyen Ngoc Minh - Nguyen Quang Tuyen (2012), "Improve regulations of Laws on Land 2003 on agriculture land use term", *Legality*, 09(148), p 54-60.
5. Nguyen Ngoc Minh (2012), "Academic discussion on development of laws on provision of property services in Vietnam", Monograph: *Laws on provision of property services in Vietnam*", Judicial Publishing House, Hanoi, p 9-43.
6. Nguyen Ngoc Minh (2012), "Orientation and solutions to improve laws on property services in Vietnam today", Monograph: *Laws on provision of property services in Vietnam*", Judicial Publishing House, Hanoi, p 285-320.
7. Nguyen Ngoc Minh (2014), "Basic amendments and supplements to laws on rights and obligations of land users in Laws on Land 2013", *Legality*, (Special issue on Laws on Land 2013), p 33-42.