

SOME SOLUTIONS TO IMPROVE THE LEGAL FRAMEWORK ON LAND USE BY STATE-OWNED ENTERPRISES AFTER EQUITIZATION

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ABSTRACT

The shift of economic development from an extensive to an intensive model is an inevitable trend at present. The equitization of state-owned enterprises (SOEs) follows this trend, aiming to reorganize SOEs toward being leaner, more proactive, autonomous and efficient. At present, the equitization process of SOEs has received attention and is regulated in many legal documents; however, many provisions remain unsuitable, causing wastage of public land, land used for improper purposes and inappropriate valuation of land use rights, leading to loss of state assets. This paper aims to propose a number of solutions to improve the legal framework on land use by SOEs after equitization, in order to overcome existing shortcomings and contribute to enhancing the efficiency of land use by SOEs during and after equitization.

Keyword: *state-owned enterprise, equitization, improvement of laws on land use by state-owned enterprises during equitization*

1. INTRODUCTION

Equitization of SOEs can be understood as the conversion of enterprises with a single owner (the State) into enterprises with multiple owners. To equitize an SOE, it is necessary first to value the enterprise's assets. Among an enterprise's assets, land use rights play an important role in production and business activities. Over recent years, the National Assembly, the Government and other state agencies have issued numerous legal documents to carry out the equitization of SOEs and to remove obstacles and difficulties in the equitization process, such as Decree No. 126/2017/ND-CP dated 16 November 2017; Circular No. 127/2014/TT-BTC dated 5 September 2014; Circular No. 21/2019/TT-BTC dated 11 April 2019; Decree No. 140/2020/ND-CP dated 30 November 2020 on amending and supplementing certain provisions of Decree No. 126/2017/ND-CP dated 16 November 2017 on converting SOEs and single-member limited liability companies wholly owned by the State into joint-stock companies; Decree No. 91/2015/ND-CP dated 13 January 2015 on state capital investment in enterprises and management and use of capital and assets in enterprises; and Decree No. 32/2018/ND-CP dated 8 March 2018 amending and supplementing certain provisions

of Decree No. 91/2015/ND-CP, ... and most recently the Land Law 2024. During the equitization process, many inadequacies and violations related to land use have resulted in wastefulness, loss of public land and delays in the equitization of SOEs. This paper examines and evaluates the current legal provisions on land use in the equitization of SOEs and then proposes a number of solutions to contribute to perfecting the legal framework on land use after SOE equitization, thereby producing positive changes in land management activities during the equitization of SOEs. This article is the result of a grassroots-level scientific research project entitled "Research on the Law on Land Use after the Equitization of State-Owned Enterprises and Its Implementation in Vietnam", Project code: 2025.TDHHN.07.04. The research contents presented here form an important part of that project.

2. CURRENT SITUATION OF LEGAL PROVISIONS ON LAND USE BY STATE-OWNED ENTERPRISES AFTER EQUITIZATION

First, management of land use after equitization of state-owned enterprises

– *Management of land use in accordance with approved purpose:*

Like other enterprises, after equitization a state-owned enterprise becomes a joint-stock company that must use land in accordance with the purpose approved by the State under Clause 1, Article 31 of the Land Law 2024. If an enterprise needs to change the land use purpose, it must obtain permission from the competent state authority in accordance with legal provisions. Specifically, Article 127(2) of the Land Law 2024 provides for allowing enterprises that already hold land use rights to reach an agreement to use land for implementing socio-economic development projects. Under this provision, land that has been allocated or leased by the State may be used to implement socio-economic development projects without the need to carry out a public auction for land use rights.

This provision concretizes the policy intent to facilitate SOEs, after equitization, to convert land use from factory/production purposes to commercial or business use, even if that differs from the originally approved land-use plan. In other words, the enterprise after equitization does not have to return the land to the State nor participate in a public auction to change the land's use from the initially approved plan. Instead, when the enterprise implements a socio-economic development project, the State will proceed to allocate or lease land to the enterprise. On the one hand, this rule helps avoid conflicts between the State and enterprises and saves State time and human resources because land recovery procedures are not required. Thus, enterprises can use land for purposes consistent with their business activities, reducing abandonment of land and unauthorized changes of land use.

However, this provision may also lead to a surge of enterprises pursuing socio-economic development projects, producing oversupply and may incentivize investors to take part in equitization mainly to obtain land use rights on "prime" (so-called "golden") large land plots.

– *Conditions for enterprises to use land after equitization:*

When equitization is carried out without conducting a public auction for land use rights and the enterprise uses land to implement a socio-economic development project via an agreement to receive land use rights, the law requires the enterprise to meet certain land-related conditions. These are the conditions on which the competent

state authority bases its decision to permit the post-equitization enterprise to use the land. Specifically, Article 127(3) of the Land Law 2024 provides that: (1) the use must be consistent with the approved and publicly announced district-level land use plan (currently commune-level); (2) the project owner must satisfy the conditions specified in Article 122 of the Land Law 2024; and (3) there must be a written approval from the provincial People's Committee allowing the agreement to receive land use rights for project implementation.

– *Management of financial obligations related to land upon equitization:*

When an SOE is equitized, the enterprise must perform its financial obligations arising from land allocation or land lease by the State. However, Article 127 of the Land Law 2024, by allowing enterprises holding land use rights to conclude agreements to use land for socio-economic projects without public auction, effectively means the enterprise after equitization does not have to return land to the State and the State will allocate or lease land to the enterprise. Besides the risk of a proliferation of socio-economic projects that mainly benefit investors, this mechanism also poses the danger that the State may lose land-related revenue, as the gap between the actual market value of the land and the amount collected through land allocation or leasing can lead to a loss of public income. Additionally, performance of post-equitization land-related financial obligations still faces many shortcomings, including: land price schedules and land price adjustment coefficients not being set in accordance with regulations; failure to establish or delayed issuance of adjustment coefficients; errors in timing or basis for calculating land use fees and land rent; enterprises failing to declare or pay land rent and land use fees on time; and tax authorities being slow to apply compulsory tax recovery measures to collect outstanding land rent and land use fees. These factors hinder recovery of amounts due.

– *Handling of houses and land after equitization:*

Pursuant to Clause 5, Article 82 of the Land Law 2024, after equitization, land areas that the enterprise no longer needs or land required for resettlement must be returned to the State. Decree No. 167/2017/ND-CP on restructuring and disposition of public assets prescribes forms of

disposal for public assets such as sale of assets on land or transfer of land use rights. Taking advantage of such regulatory gaps, some SOEs have leased land, entered into joint ventures or business cooperation and then divested their equity. At that point, land use rights are transferred to joint venture or cooperation partners, leading to loss of State assets.

Second, valuation of land use rights of state-owned enterprises at equitization

Under Decree No. 126/2017/ND-CP, to carry out equitization, SOEs must determine enterprise value, which includes the value of land use rights. This valuation forms the basis for preparing the equitization plan and for setting the starting price for share auctions. However, SOEs that are to be equitized often have large scale and extensive land holdings scattered across different localities, so arranging property and land is a complex process that commonly gives rise to many issues both during and after equitization.

(1) On inclusion of land use rights in enterprise value

Previously, under Government Decree No. 59/2011/ND-CP dated 18 July 2011 on conversion of 100%-state-owned enterprises into joint-stock companies, leased land and location advantage were not included in enterprise valuation for equitization. This rule resulted in many SOEs owning “prime” land being undervalued, causing substantial losses to the State budget. Therefore, Decree No. 126/2017/ND-CP adjusted valuation practice so that land rental value was taken into account when determining the actual enterprise value (see Article 30 of Decree 126/2017). To determine the value of land use rights to be included in enterprise valuation, the specific land price at the enterprise’s location is decided by the Provincial People’s Committee where the land is located. However, Decree No. 140/2020/ND-CP amending and supplementing Decree No. 126/2017 removed the prior detailed provision; under Decree 140/2020 the calculation of enterprise value with respect to land use rights now refers only to “the value of land use rights allocated ... at the time of enterprise valuation.” This approach remains inconsistent with practical realities and leaves several inadequacies, for example:

Many SOEs have been leased land in prime central locations with high value, but because valuation

disregarded locational advantage, enterprise values were very low, causing loss to the State budget. There is a lack of regulation on the value of rental-location advantage. Location is an important factor attracting investors; in practice the location of land gives enterprises competitive business advantages. Moreover, current law does not address land use rights that SOEs acquired by transfer prior to equitization. Such transferred land use rights may have been purchased with State budget funds, but when revalued they are not always included in enterprise value, so the State cannot recover the budget amounts expended.

(2) On methods of calculating land use right value

Before the Land Law 2024, valuation of allocated land use rights relied on the land price table and the land price frame. However, the land price table has often been far lower than market prices, which resulted in the State not receiving appropriate revenue when SOEs were equitized. The Land Law 2024 abolished the land price frame and requires land to be valued at market value principles (see Clause 1, Article 158), which is expected to bring land valuation closer to reality and increase State revenue. The new land price table under Article 159 of the Land Law 2024 is to be determined annually (instead of every five years under the 2013 Land Law), which should better track market prices and account for plot location. The 2024 Law also removes rigid formulas requiring determination of actual land price at equitization by a single prescribed method, leaving competent state authorities discretion to select an appropriate valuation method. Actual land price for equitization is no longer based on a single adjustment coefficient framework but is calculated by specific land use categories and plot area. These changes will tend to increase the value of land use rights at equitization compared to prior practice, curb price suppression for private gain, ensure more accurate land valuation and secure more State budget revenue. A higher land use right value will increase the enterprise value at equitization and thus reduce the attractiveness of investing solely to obtain land; investors will focus more on enterprise fundamentals than on land holdings. This supports the objectives of equitization and improves enterprise performance after equitization.

Article 159(5) of the Land Law 2024 states that “the land price table shall be constructed by zone

and location. For areas with a digital cadastral map and land price database, the land price table shall be built down to each land parcel based on price zones and standard parcels ...” Although the price table is organized by location, it still does not explicitly treat “location advantage” as a specific basis for determining the specific land price at SOE equitization, so the price may fail to reflect the land’s actual value. In addition, other bases for determining land price remain ambiguous. For example, the basis “information on revenue, costs and income from land use”: it is unclear who supplies such information, what exactly constitutes valid evidence of revenue, costs and income from land use and over what time period this information should be collected. Determining market land price is also difficult because market prices fluctuate with supply-demand and economic and cultural factors. Comparing prices of similar parcels is not always appropriate: adjacent parcels may have different values and a single parcel may have different values at different transaction times. If land valuation is set too high, enterprise value increases and equitization becomes less attractive to investors, making equitization more difficult. Therefore, it is necessary to ensure that valuation of land use rights at equitization reflects actual value while remaining attractive enough to investors to facilitate successful equitization. The lack of rules on public disclosure of the bases for land value determination and on valuation methodology reduces transparency in equitization and creates opportunities for some individuals or businesses to exploit State assets.

Third, preparation of post-equitization land use plans

On responsibility for preparing land use plans at equitization:

Under Article 30(1) of Decree No. 109/2007/ND-CP, a 100%-state-owned enterprise converting to a joint-stock company is responsible for preparing a land use plan and submitting it to the competent authority for consideration and decision. Thus, the enterprise undergoing equitization has the primary responsibility to prepare the land use plan.

On conditions for the post-equitization land use plan:

Clause 1, Article 13 of Decree No. 126/2017/ND-CP requires that the land use plan for the entire

area managed and used by the equitized enterprise must be consistent with laws on rearrangement and disposal of State-owned houses and land; with local land use planning and construction planning; and with the enterprise’s development strategy. Decree No. 140/2020/ND-CP continues to regulate approval of the land use plan at equitization. The land use plan must conform to the locality’s land use planning and plans. Use of land by enterprises in general and by equitized enterprises must comply with land use plans and planning as prescribed by the Land Law and planning law.

In practice, many enterprises are equitized without an approved land use plan. The absence of an approved land use plan at equitization creates difficulties for the post-equitization enterprise when using land or requesting a change of land use purpose under the Land Law. Meanwhile, Clause m, Article 2 of Resolution No. 82/2019/QH14 dated 14 June 2019 of the National Assembly on continuing to perfect and improve the effectiveness of planning, management and use of land in urban areas provides that “...enterprises after equitization must follow the land use plan approved in the enterprise’s equitization plan. Changes in land use purpose and the arrangement, disposal of houses and land of equitized enterprises must comply with planning and meet the requisite conditions, procedures and formalities. Land shall be reclaimed in accordance with the law in cases of violation.” Thus, if the land use plan at equitization does not or has not approved conversion of land use purpose, the enterprise cannot carry out such conversion even if it meets general legal conditions for land use conversion.

Furthermore, land use by SOEs after equitization is governed by multiple legal instruments, such as the Land Law, Investment Law, Housing Law, Civil Code, etc. This multiplicity of laws makes the valuation of land use rights and assets attached to land subject to many procedures and steps. Current regulations make determining land use right value complex and time-consuming. Consequently, after equitization is completed, an enterprise’s land use plan may no longer be consistent because land use planning and plans may have changed.

3. PROPOSALS TO IMPROVE THE LEGAL FRAMEWORK AND ENHANCE LAND MANAGEMENT EFFECTIVENESS OF STATE-OWNED ENTERPRISES AFTER EQUITIZATION

Improving the current legal framework related to land management by State-Owned Enterprises (SOEs) as well as regulations on the equitization of SOEs is an urgent requirement at present.

First, it is necessary to supplement Clause 4 of Decree No. 140/2020/NĐ-CP with a regulation requiring the inclusion of the value of land-use rights for land leased by the State in the enterprise's valuation during equitization. Specifically, enterprise valuation should include "the value of land-use rights that have been allocated, leased or transferred since the enterprise's establishment, along with the value of its business advantages at the time of valuation."

Second, additional guidelines should clarify the bases for determining land prices as stipulated in the 2024 Land Law. Moreover, the factor of "land location advantage" should be incorporated into the land valuation criteria to ensure that the real value of the land is accurately reflected.

Third, it is important to require SOEs to publicly disclose additional information during equitization, such as the land valuation methods applied, the organizations performing the valuation, the valuation results provided by these organizations, opinions and conclusions of the Land Valuation Council and the determined land price. This will help enhance the transparency of the equitization process.

Fourth, a regulation should be added to prohibit SOEs from contributing capital in the form of land-use rights. This would prevent situations where SOEs enter into joint ventures or business cooperation with other enterprises and then divest, resulting in the transfer of public land to private ownership. Such a regulation would help ensure accurate enterprise valuation and enable the State to recover its budgetary revenues.

Fifth, detailed guidance should be issued on determining land prices based on market value, including specific criteria and conditions for valuation. The regulations should clearly specify the grounds on which competent authorities choose a particular land valuation method, as

different methods may lead to significantly different outcomes. Therefore, it is essential to establish rules limiting the use of valuation methods that either overestimate or underestimate land prices. According to the author, regulations should define the priority order for applying valuation methods and provide criteria for replacing a chosen method when it lacks sufficient data, conditions or reliability.

Sixth, it is necessary to continue reviewing, simplifying and eliminating unnecessary procedures and paperwork in the SOE equitization process. For instance, the current requirement that enterprises must return land to the State for recovery and auction when changing land-use purposes should be replaced by allowing the State to allocate land without auction, ensuring business continuity after equitization. In addition, the responsibilities and authority of relevant agencies, units and individuals should be clearly defined, with penalties introduced for delays or violations during the equitization process. For example, valuation organizations that incorrectly determine land prices causing losses to the State or other stakeholders must compensate for damages. Likewise, members of the Land Valuation Council who violate regulations on land pricing may face disciplinary action or criminal prosecution, depending on the severity and must compensate for any resulting losses.

Seventh, competent state agencies should assist SOEs in surveying and reviewing the land areas allocated or leased to them. This includes providing and completing land-use right documentation, especially for SOEs that have not yet been granted Land Use Right Certificates (LURCs). These agencies should guide enterprises in preparing necessary documents, expedite the issuance of LURCs, support verification and declaration of on-site assets, trace land-use history and assist in defining boundary markers on maps and in practice. They should also accelerate the approval of land-use plans for equitization and the rearrangement or disposal of state-owned properties, including houses and land.

Eighth, inspection and supervision of land review and land-use compliance by SOEs should be strengthened both before and after equitization. Violations in land use during equitization must be strictly handled and land

areas used for the wrong purposes, encroached upon or left idle must be recovered promptly.

4. CONCLUSION

Land is one of the most important assets of State-Owned Enterprises (SOEs) during the equitization process. The management and use of land after SOE equitization play a crucial role, especially in the context where land is left idle, used for improper purposes or valued far below market prices, leading to losses in state budget revenue. The above comments on the current legal framework and proposed solutions for improving regulations on land use after SOE equitization contribute to enhancing efficiency and shortening the equitization process. More detailed and market-oriented regulations on land price frameworks and land management will help prevent corruption and the wasteful use of land resources, while also addressing difficulties and obstacles related to land-use rights of SOEs after equitization.

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