The Curious Case of Privatization

Property Rights in Urban Land Transformation

Ho Chi Minh City Case Study

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The Curious Case of Privatization Property Rights in Urban Land Transformation-Ho Chi Minh City Case Study

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Abstract

Introduction: Ho Chi Minh City planning is under the transition to market economy process. Socialist market economy is the key point to analyze the transformation in land use. Therefore, this study is examining the impact of redevelopment on imperfect property rights to understand the integrating between property rights and urban land redevelopment.

Research question: How land use rights change hand of the HCMC under the privatization property rights process?

Design: Land redevelopment project case studies based on framework highlights the role of the institutional change and balance of different stakeholder in affecting spatial output.

Method: Case studies about private household development projects, large-scale project and in-depth interview with land user.

Main findings: Weak demand management develops because the balance of developer’s interest structures state actions. Lack of detail planning is hence a major barrier. However, privatization land use rights and building ownership are the important mechanism for land use transformation.

Comments and limitations: The study suggests that the plan is a negotiation process with respected to property rights, it will improve the success of planning implementation. Even study highlights the important of institutions but there is less emphasis on politic.

Keywords

Property Rights, Urban Transformation, multi-ownership
1 Introduction

Deininger (2003) and Hare (2008) agreed that Vietnam's land law of 2003 set the stage for increased efficiency and market orientation in the country's real estate sector. Investors' great security of use rights to their land and its enhanced transferability are expected to have the effects of encouraging investment in land, increasing the efficiency of land allocation. While there are well-researched studies dedicated to study the economic consequences of Vietnam’s transition to the capitalist market system, few are written about the Vietnam's privatization of land control. The study fills the gap by examining the land market mechanism arising from land use rights reform in Ho Chi Minh City (Figure 1-1 Location of Ho Chi Minh City, which has important implications for real estate development in Vietnam as a whole.

Figure 1-1 Location of Ho Chi Minh City
Ho Chi Minh City (HCMC was known as Sai Gon city) is the commercial city in Vietnam with seven millions populations living in a surface area of total 2,095 km2 (2012). It consists of 19 urban districts and 5 suburban districts (Table 1). The city situated by the Saigon River in the center of Cuu Long Delta, it is also the connection of SEA and East Asia.

**Table 1-1 District of Ho Chi Minh City**

<table>
<thead>
<tr>
<th>Area Type</th>
<th>Districts</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Inner Core</strong></td>
<td>Districts 1, 3, 5 and 6</td>
<td>The origin of HCMC</td>
</tr>
<tr>
<td>(Existing Inner Districts)</td>
<td>Districts 4, 8,10 and 11, and Binh Thanh and Phu Nhuan Districts</td>
<td>Area outside of the above</td>
</tr>
<tr>
<td></td>
<td>Go Vap, Tan Binh and Tan Phu Districts</td>
<td>Outermost area of the inner core</td>
</tr>
<tr>
<td><strong>Suburban Area</strong></td>
<td>Districts 2, 7, 9 and 12, and Thu Duc and Binh Tan Districts</td>
<td>Area now rapidly expanding from the Inner Core</td>
</tr>
<tr>
<td>(Peripheral Area)</td>
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<tr>
<td>(Expanded Urban Area)</td>
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<td>(New Urban Area)</td>
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<tr>
<td>(New Inner Districts)</td>
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<tr>
<td><strong>Rural Area</strong></td>
<td>Hoc Mon, Binh Chanh and Nha Be Districts</td>
<td>The outer suburbs</td>
</tr>
<tr>
<td>(Suburban Districts)</td>
<td></td>
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</tr>
<tr>
<td></td>
<td>Cu Chi and Can Gio Districts</td>
<td>Outermost area in the north and the south of HCMC</td>
</tr>
</tbody>
</table>

*Source: Nikken Seihe, 2008*

Vietnam united the World Trade Organization (WTO) on January 11th, 2007, as its 150th member. It has been almost 25 years of 'Doi Moi" since 1986 and Vietnam urban has been developing in a very fast pace recently. To study redevelopment, we take advantages of construction activities in Ho Chi Minh City that followed the land market reforms of the early 1990's. The reforms coincided with the end of twenty years of socialist planning and the re-emergence of Ho Chi Minh City as a business and financial service center of the country.
Thought project development and change hand stories, we explored what are the impacts of imperfect property rights on land use rights in Vietnam?

![Diagram of Property Rights and Urban Spatial Transformation](image)

*Figure 1-2 Research frameworks: Relationship of Privatization Property Rights and Land Use Change in Vietnam*

2 Review of Privatization Property Rights

Under the globalization, socialist ideologies get closer and closer to the capitalist ideology. In old socialist countries, there is a trend of privatization mean of production include land. However, this process transformed is lowly to find effective environment called "socialist market economy". According to institutional approach, two important notions are property rights and transaction cost. It also provides a theory of social dynamics. A term like "ambiguous property rights", which is mentioned in the China urban study, is used to name the interesting interactions among actors: land users, developers and governors (Xuan 2006). From
large literature on the impact of property rights on efficient resource use and the development of markets (McMillan 2003), there is a question on what the impact of property rights on urban land redevelopment in transitional socialist countries. How do urban redevelopments perform in the context of private property rights, formalization in Vietnam cities?

2.1 Privatization land rights

Since 1989, numbers of former communist countries have made the conversion to market-based democracies. Instituting a private property regime was a key aspect of this transition, as property privatization had been impressive signaling power about the country’s commitment to the transition, both within the country and externally. Land restitution in these countries was thus a high-profile event, and was expected to dramatically affect the distribution of land ownership. As case studies of contrasting approaches to land restitution in a transitioning property regime, this study provide the insight stories of a land development process and understanding land rights in socialist countries.

Figure 2-1 Transitional Economic Countries

Source: Kim, 2004
Privatization property rights have effects on urban spatial development differently from country to country. In Russia during 1990s, the issues of lack of transparency and well-defined property rights caused urban slow transformation, which is often preferred as “the anti-common” or overuse urban resource called “the common”. With many developing countries transformation to a market growth model, the understanding of property as institution is being reassessed (Kim 2007). In Shanghai, urban development purpose clarification of property rights is the goal for further institutional changes (Zhu 2004).

2.2 Property Rights and the Commons
Hardin (1968) gave out the ideas of the Tragedy of the Commons by case study of Russia. The over use the natural resource caused the bad effects to the other interests will prevent the development of the community in different levels.

Government failure to implement influx monitoring and land-management control measures is failure to enforce basic property rights and legitimacy of its own nature. The failure to grant private rights to specific parcels of land in the commons subsequently destroys the social design map of efficient resource use of common-pool areas (Brubaker 1995). Encroachment and abuse of commons areas set the tone of acceptable behavior in commons areas and effectively destroy the basis of a secure property rights structure. Renewed competition between rivals in the commons, the increase of encroaching parties, and the continuation of rent-seeking behavior inevitably lead to government inaction (Deinlenger and Binswanger 1999).

Abel and Bonin (1990) found that in many European transitional economies, government tried to promote rent-seeking activities. At these countries, the commom problem appeared the
public good were overuse without the responsibility because of poorly and undefined property rights. However, Guadagni (2001) thought that well-defined property rights were only one part of the equation when dealing with the whole encompassing nature of the subject. He suggested that strengthening property rights involved increased junction between legal specificity and physical enforcement while encompassing systems of some transparent nature.

Still, Guadagni (2001) explained that this puzzlement of rights would cause the bad externality when the using parties fell that they did not certain about long term ownership. Then, the different parties will try to occupy and self negotiate each others to maximize explore the property because the laws are still not exist to solve the problems. The inefficient outcome happened when the government could not find solutions to prevent the problems getting worse.

In the context of avoiding over-exploitation of common resources, Hardin concluded by restating private individuals over Hegel maxim (which was actually written Engels), "Freedom is the recognition of requirement". Hardin suggested that "Freedom is the freedom", if interpreted narrowly as simply the freedom to do as one pleases, completes the tragedy of the commons. By recognizing property as commons in the first place and recognizing that, as such, they need administration, Hardin acknowledged as true "we can conserve and nurture other and more precious freedoms."

2.3 The Tragedy of Anticommons

In difference, Heller (1998) has examined "The Tragedy of the Anticommons" particularly looked upon poor lesson with efforts to alter from Marxist to market institutions in Russia. In another view, Heller proposed that the recognized economic model of the anticommons has not been developed. He analyzed the anticommons problem in which resources are inefficiently underutilized rather than over utilized, as in the familiar commons setting. The two problems
are revealed to be symmetrical in other respects. Buchanan and Yoon (2000) presented an algebraic and geometric illustration and extended the discussion to several applications. Of greater importance, they suggested that the construction is useful in thoughtful the sources of major value consumption in modern regulatory bureaucracy.

Zhu, Sim et al. (2007) gave out an interesting Singapore case of anticommonts. During the renovate the old apartment-condominium; the developers met issues in land acquisition, because the last few home owners denied to move out with any compensation price. Moreover, they demand the unreasonable reimbursement amount. Therefore, the Singapore Land Authority (SLA) passes the Land Acquisition Act. If 80% (or 15% for the very old area) of the residents agree to sell their house, the rest of the households must also move out without any reason. Somehow, this way could be done in the monopoly government like Singapore or socialist countries and compact cities, but it is not very democratic policy in human rights viewpoint.

Support for Heller’ neologism, to describe coordination failures arising from insufficient rights holders, come from two papers by Krabben 2009. He examined Holland urban planning and retail distribution to pointed out that too many property rights could lead to less innovation. He proposed a solution how to overcome bad externality by relaxing the regulatory (zoning) to promote the dynamic of the property user. Because the zoning model of England, America is not always work efficiently even in the old western countries. It may be half capitalize and a half socialist model such as socialist market form. Krabben concluded from his analysis that a tripartite partnership among the state, market and stakeholders may have to replace the bipartite one between the state and market.
3 Ho Chi Minh City Redevelopment - Renovation policy in land 1993

The Land Law only officially established the residential property market in Vietnam as recently as 1993, and its legal existence was reinforced through amendments in 1998, 2001 and 2012. Nevertheless, its foundation was based on a long time existing system of informal exchanges (Phe 2002). What the newest Land Law of 2003 did for the development of the property market is to recognize that land use is a special asset and goods to be sold in the market place. It laid down the mechanism to unloose potential value of property. One of the property rights issued emerged in a consequence of continued urbanization and economic growth is increasing of private housing and land use rights. Land Law 1993, 2003 have greatly contributed to support the country's socio-economic development, especially in urban areas (Storch and Downes 2011; Thien Thu and Perera 2011). Vietnam changed its legal structure in order that people could be the owner of property on land. While only the state managed land, a private person can also own “use rights” to a parcel of land for long period. In 1994 the state introduced the pink certificate' for reconditioned houses in urban areas, officially known as the Building Ownership and Land Use Certificate which combines home ownership with the land use right into one legal document (Figure 3-1 Vietnamese Land Use Rights and Housing Ownership Certificate (Red Paper,“So Hong” in Vietnamese). The users have more power on the real estate.
25 years after property rights renovation (Land Law, 1993), HCMC authority recognized the master plans for the city in 1993, 1998, 2005 were outdated, the right targets, but lack of mechanism. Because of not considering the contribution of the non-state sector, the plan was not successful in implementation. In the practice the FDI capital and the private investment play an important role in changing the image of whole city in period 1992-2007 (Figure 3-2 Residential Projects in HCMC not following the government master plan 2005. The rights of the real estate investor are more and more powerful in deciding the development; its trend is out of the zoning.
The role of investment value and rent price enhanced level of buildings. The new Centre Area Master plan will be released in the end of 2012. However, Ho Chi Minh City's land and property market emerged because it did not wait for plan. Rather, despite a lack of development in the planning and zoning, there were alternative stabilizing and property rights enforcement institutions to enable redevelopment. The majority of projects in the city were negotiated the volume of construction with different department at city level and district officials, by nearby similar size building in the same block. So, in effect one got approve if neighborhood projects are the same.

Figure 3-2 Residential Projects in HCMC

Source: unknown 2009
With these bureaucrats, large connection with authority would assist in negotiating one's development right which helps explaining our empirical results. That is, 100% foreign investors alone can be a form of real estate investment. Also, private domestic investor is superior to make investment this time. However, having join venture is even better because it could combine the power of the capital, clear site and maximum land development rights.

4 Self-redevelopment: Case Study, House 240 Le Thanh Ton, Ben Thanh Ward, district 1, Ho Chi Minh City

Ho Chi Minh City has many small parcels where owners have maximised income from real estate for rent by making as high as they can. The case study illustrate how small investor acquire land, tube house, which is the main shelter in the HCMC. This private landed house (240 Le Thanh Ton st, district 1) is located in district 1, closed to an oldest market of HCMC called the Ben Thanh (since 1860). South orientation, cool climate all year and in crowd business location are the strengths oft his property. The house was originally a two storey shop house (Figure 4.1). There are 8 houses in block. In the land-survey map, it can be found in field number: BK251 and map number: 04 zone A, area: 76m2 (Figure 4-2 The location of the parcel of the house.)
4.1 Privatization land use rights and housing ownership

Before 1955 the French colonized the government institution, then it became the Republic of Vietnam (1954-1975). Originally, the owner of the house and land was an Indian family. There...
is one Hindu temple close to the block as an evidence of the Indian culture of the area in the past. The tenant was a Chinese who rented the house for hairdressers and paid monthly rental.

After April 1975, puppet regime was changed to revolution power. The owner of the land returned to India and the next user migrated to a foreign country. As the result, after April 30th 1975, liberation day, no one occupied the house until it was taken over by the state. On September 22nd, 1975 the president of Saigon-Giadinh Taking Over Committee made provisional registration document for the temporary using house number 611/BNC to the local state agency in order to manage empty houses in the city. On 19th September 1978 Departments of Land officially issued a precarious land use certificate number 726/SND-QHPP for Ho Chi Minh City University of Architecture to utilize it.

**Figure 4-3 History Development of the Private House**

- According to this decision, Housing Management Company of Ho Chi Minh City has rights to make a rent contract and collect the house rental. At that time, land user fee did not appear. On 5th October 1978 HCMC University of Architecture made a decision to allocate this house to two of their lecturers to accommodate and pay the low annual leasing:
• Professor Nguyen Cao Thang, lived in the ground floor
• Professor Dang Quy, his colleague, lived in the second floor

During the 1980s land policy in Vietnam defined that the land belonged to all people and was managed by the government, therefore, the state could not collect the land lease. In this particular circumstance, each household after being allocated the house, they must pay rental which a mount to 11.2 VND monthly, knowing that their average salary was 80 VND per month and gold value in the free market was 20 VND/”chi”. Rental time lasted paid until 1997. For the period of 20 years of renting, the State Housing Company did not upgrade the house, so that the users had to maintain themselves in case it has some small damage, no comprehensive upgrading program at all. As the result, the house quality went down quickly because of the lack of good maintenances like most of the other renting state houses in the city.

Most of those houses were built in the 1940s with the light structure so it was used up for a long time. In the post-war period, the economy of the country was slowed down gradually from 1976-1988. Even though, the government had the solutions by changing money currency in 1978 and 1985 to rescue economic crisis. Nonetheless, the economic recession degraded the urban infrastructure and housing structure heavily, increased unemployment and inflation rate.
4.2 Economic Renovation Period, Land Law & The Emergence of Decree 61: Selling State-Rent House

In 1986, Vietnam government made a decision to change the economic system from plan economic to socialist market economy with five participants: state, public element, private element, join-venture element and 100% foreign ownership element. Most of peoples, including the government supported this new economic model.

A series of new policies attracting investment in the Vietnam real estate market were established from between 2003 and 2008 such as investment law (2005), real estate business law (2005), housing law (2005), planning law (2008) and soon. These legislation systems allow transferring state land rights to other economic actors in order to reduce the pressure in urban infrastructure: housing, traffic, social. On 5th July 1994 one of the most significant decrees was emerged, decree 61. The main content is the guidelines sell all the state houses to existing tenants along with the equalization policy state companies aimed to bail out loss-
making enterprises. A large number of old state houses were transferred to the existing user with the subsidy price in district 1, illustrate by figure 4

Adopting the mentioned new policy, the owner of 240 Le Thanh Ton St house applied for buying the renting house in 1997. Housing Business Company of District 1 approved to sell this house to two exist tenant with at a very low rate, 50% lower in comparison to market prices. According to the two selling contracts (number: 739/97/HD-MBNO-1 and number: 250/97/HD-MBNO) dated 30th December 1997, the home buyers must pay for the followings items:

- House (2 storey, type 4: very low quality)
- Land use rights (Buying the rights to use not to own the land)

After a quick process of buying and selling, which applied decree 61, on 1st April, 1998 HCMC People Committee granted 1st land use rights and housing ownership certificate number (pink paper) 462/18 to the basement tenant and after that 2nd certificate number 10167/97 for the second floor one. At last, the basement owner bought “the land use rights and housing ownership” of the second floor owner (a selling contract number 0499/HD_MBN dated 21th
January 1998). That means it was a transferring process from multi-ownership house to single ownership of the property. This trend is widely recognized the greatest opportunity for the government officers to have houses without long time saving, especially with the value front-street property like the 240 Le Thanh Ton st. case. Actually, the true story was an evidence of a self-investment rather than self-improving living condition. The basement renter wanted to invest on this piece of land because he found out the potential profit of the real estate development soon. However, the second-floor possessor owned the roof top space (air space). The multi renting land use rights status prevented basement lord from building the house. Therefore, the basement holder must buy the property of the 2nd floor title-holder by initial informal negotiation between two families. Subsequently, they did formal transaction with the state to privatization house ownership and land use rights. That mean the developer must acquire the land and space by themselves not involve to the state policy. All the payment to the state of the second floor owner to buy the house was paid by the money of the basement owner. The second owner also took another amount of money (negotiate compensation by market price) to accept to move out. Remarkably, this was the unexpected impact of the decree 61 that the policy maker could not anticipate in advance.
4.3 Using and Developing Private Property

On 13th July 1998 the new owner (existing owner after require land) of the house 240 Le Thanh Ton St wanted to change function of the property from residential to commercial purpose to explore it. They applied a permission to state to allow renting the house to foreigner, and approved by the permission certificate number 211/GPCT.DB from Department of Land Survey. After getting the rent guarantees, the owner continued applying another permission for construction to demolish the old two storey house and build up the new 5-storey-one. Later they had the permission number 211/ GPXD from District 1 People Committee. The new house was built in 2 years from 1999-2000. Because the owners used their own saving money to build the new house, beside that they had to borrow a large of
amount of money from relatives of close friends to cover the unexpected. Totally, it cost 80 “cay vang” (amount of gold equal to US$ 120’000, exchange rate in 1999) to finish the project. It means that people in HCMC usually borrow money from relatives than loan money from a bank for real estate investment. Therefore, the mortgage market in Vietnam at that time was very weak.

After the new house was built (Figure 4-6 Commercialized building-Tokyo Deli Restaurant since 2009, it contributed changing the image of the street in the proximity area. The value of the house also increased many times in a few years, compared with the old house, which was managed by the government authority. As well as the price before buying in 1997 from state was 300 “cay”, it became 2000 “cay” in 2008 (1 “cay”=US$1000 at 2008 exchange rate or ~$2000 in year 2011). In addition from 1999, it started to earn profit to recover the investment cost. Immediately value of the renting contract keeps increasing since 2000 to 2011, from US$ 1200/month, $1500/month,$2300/month to US$5000/month.

From a little amount of the rent fee than the authorities could collect 18% of the above renting as tax for city revenue. Compared with before privatization period, both parties have a much higher return.
4.4 Lesson learn 1

Because of a special history, there were many formal and informal land transactions in the pre and post war in HCMC. It is the special fact in the property transaction literature could not find in other stability politic countries. In Vietnam, due to lack of professional in the real estate industry, the private sector is more flexible than the state. They self realized the potential return of holding property and respond quickly to the demand of the market.

The privatization property rights of Vietnam favour the actors in the market. From this study, a different comparison with the reform in China can be meet. During the transformation in other transitional economic cities, the role of government is vital for strengthening the legal basis for enforcing property rights but in Vietnam the rights of the users and developers are very strong.
Redevelopment projects are not a whole block, usually it is only on small slots of the block; Vietnamese government needs to release the land value to speed up the changing of the city image to attract investment from the non-state sectors, especially foreigner direct investment by recognize the foreigner property ownership.

Figure 4-8 Ownership Changing Process of the Private Houses Le Thanh Ton street

5 Case study 2: Ambiguous Property Rights Lock the Land Redevelopment: Kumho Plaza

In the last section 4, we have seen the self-improvement in the property rights changing. Besides, that real estate market of HCMC attracts a lot of international developers come from many countries (earlier paper#1). Early developers hold the good location land while the law and construction regulation is not completed. Therefore, how the developers accept risk of incomplete property right situation to make investment?
For more sensitive projects, obtaining “approval in principle” of the development concept by the MPI as well as the HCMC People’s Committee is also of great vitality before proceeding further. A developer usually meets with local lawyers, accountants, property consultants and other business people to obtain a feel for market conditions and general market practices. The suggestion is the developer should establish good and beneficial relationships with local authorities to avoid the limitation of the incomplete property rights in VN. This example below will be evidence for the discussion.

In 1996 Kumho-Saigon Joint Venture (Korean-Vietnam Company) got the license to make an investment in the project at 39 Le Duan Boulevard, District 1, which include a luxury apartment building, a five-star hotel and retail stores (Figure 5-1 Kumho Plaza location. The investment proposal hoped to be completed in 2000 but the 1997 ASEAN regional financial crisis forced the venture to put it on hold. At that time, many foreign investors have expressed...
interest in this project but could not make investment because of the locking of the existing user land rights.

The 13,600 square meter site is in the very middle of HCMC and surrounded by Le Duan, Hai Ba Trung, Nguyen Du and Le Van Huu streets. In 2000, the joint venture that owned the land leased out the site for the construction of a retail unit called Saigon Square.

Building in 2008 named Kumho Plaza

220 million dollars were invested in the Asiana Plaza projects were invested, located on the most beautiful road of district 1 in Hochiminh City. The investor got the license in 1996 but some other people in city authority at that time want to auction land use rights to foreigner developers to earn the personal profit instead of the normal land allocation.

5.1.1 Land acquisition
Foreign investment enterprises can acquire land use rights (LURs) in 2 ways:

- Land lease from the state or from other legitimate organizations holding a land use right for a maximum of 50 years (70 years for national development projects like road system, public
infrastructure and facilities)

- Through a Vietnamese partner that contributes right to use the land as part of its capital contribution to the joint venture

Usually foreign developers choose to joint venture with local developers. Joint venture pairs foreign and local companies sharing capital profits. In property joint venture, one party will provide the land and other (or others) will provide the finance and development expertise (Stevenson et al, 1994). Normally, the contribution of the local company to the JV frequently consists solely of LURs.

If the foreigners take a part in the joint of venture relationship, the foreign investors can only take at most 80% of the company share. Many developers find Joint-Venture (JV) attractive since it is convenient from the assistance of an established Vietnamese firm in dealing with bureaucratic and governmental procedures. They also provide foreign investor access to land that may or else be hard to secure. The case Kumho in this part will illustrate JV way.

There are actually two keys of government agencies that developers should look out for, which are Ministry of Planning & Investment (MPI) and HCMC People’s Committee. These local authorities will give developers ideas of strategic locations for the projects, how many licenses for similar projects that have been granted and whether there are too many development applications and projects in a particular area. Thus, it is essential for foreign developer and its local partner to make more than a few unofficial meetings with Government officials and potential partners as personal visits and meetings are extremely important in Vietnam like the Hong Kong Company in the Kumho case.
5.1.2 The aim of the investors

The property at 39 Le Duan Street is located a strategic location in heart of the city, but it was sold without any condition. The value of the property did not carefully think to be explored enough to get the most profit to the state.

The Asiana Plaza has 13.632 m², land is surrounded by 4 streets Le Duan st, Hai Ba Trung st, Nguyen Du st and Le Van Huu st (Figure 5-1 Kumho Plaza location). Its good location is considered the golden land of the city center. Therefore, it is highly regarded land for many foreigners and local real estate investors.

On June of 1996, the joint venture company Kumho-Saigon (J.V.C) was issued the license by Ministry of Planning and Investment (MPI) to operate the project with the investment capital up to 220 million dollars, including 62.9 millions dollar legal capital. The cooperation was a joint venture between 3 companies: Saigon Tourist (SGT), Saigon Housing Development, District 1 Company (HDSS.D1) and the Korean Construction Company (Kumho Construction & Engineering Inc). The Korean Company contributed 65% capital and the rest (35%) from the Vietnam party (Saigon Tourist and HDSC.D1) equal to the value of the land. The operation period of the project is 45 years (from the date issue the license) with the land rent at 13.6 USD/m²/year.

This was a complex project including deluxe service such as: hotel, conference center, office, high-class apartment, restaurant and entertainment. After getting the investment license, the Kumho parties quickly deployed the project by giving 15.2 million USD legal capitals to the joint venture company at the first stage year 1996-1997. That contribution is used for land acquisition and site clearance (Figure 5-4 Previous Multi State Company Ownership in the parcel from 75-97 cost 10 million USD.)
5.1.3 Starting the chaotic problems

While the compensation went to the last stage, the South East Asian financial crisis happened in 1997. The Vietnam economy was not much affected but the foreigner investment also slowed down. As a result a series of property projects were delayed such as Park Hyatt, 23-9 Park, and Saigon Center...v...v... Asiana Plaza was also forced to temporary stop the work of project.

On 18th June 1999, the joint venture company, Kumho-Saigon sent the official text to government to ask for postponed deployment the project. After that the MPI and other state agencies approved the request to restart the project in 3 years (2000). To temporary exploit the clean site, the land was temporary given for rent to Phan Thanh LTD.Co to make this area

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Full name: KUMHO ASIANA PLAZA  
**Address:** 39 Lê Duan, Dist 1, Ho Chi Minh City  
**Description:** The building offers approximately 78,281 sqm of leasable area with 3 basement parking areas.

**Features Land Area:** 14,000m²  
Exclusive Managed by Colliers

**Specifications**  
Office: 21 Floors (31,562 sqm);  
Retail: 2 floors (6,880 sqm);  
Parking: 3 basements parking areas (40,890 sqm) with 810 car parking lots.

**Lease Details:**  
Leasable space of 200 sqm at least. Total: 31,562.00 sq.m

*Figure 5-3 Complex Center Kumho Asiana Plaza information*  
*Source: www.kumhoasianaplaza.com, 2012*
become a shopping-entertainment-food center (Figure 5-2 Land before and after construction with the light construction (2 storeys’). Unfortunately, the Kumho party had difficulty in financing at that moment because of the 1997 crisis. Therefore they reapplied for the delay and were approved to deploy in September 2002.

Before the second deadline, Kumho-Saigon Company sent another official report on September 28, 2002 to MPI and HCMC People’s Committee with content about the progress that both partners prepared for the construction to be suitable to the new condition of the economy at that time. In relation to a decision issued by the city government in year 2004, Saigon Tourist Holding Company, one of the two local partners in the project, negotiated buying a stake of Kumho to transfer the venture into a wholly Vietnamese-owned project. The city government also promised to support Kumho for involvement in other projects.

According to Vietnam Investment law, the land use rights will be revoked if it will not started in 2 years after getting land use rights certificate or 4 years after getting investment licensed. Because of long incomplete negotiations about the legal capital finally Kumho forced to transfer their capital component to two Vietnamese partners with amount equal to 90% their contribution before (around 13.6 mil USD). However, the Vietnamese partners wanted to decrease an amount to from 13.6 million USD to 10.284 million USD that equal to the compensation cost. That meant if that the negotiation is successful, Saigon Tourist and District 1 Housing Development would pay an amount equivalent to the site clearance expenses covered by Kumho.

The issues of imperfect property rights were raised at this point. Later the president of Kumho sent a response to the Vietnamese partner regarding the proposed price of US$ 10,284,019. They would consider the same and revert to local partners under mentioned conditions that
Vietnamese partners must not transfer the project to any other investors and continuous conduct the project by themselves under the name and the design of Kumho project.

There was still one thing that was not clear. On the 12th December, 2003, the HCMC People Committee received an official dispatch (Number 635/CV-TCT) to inform the Joint-venture Kumho-Saigon Company state that Kumho partners agreed to the proposal to transfer their land rights to Vietnamese partner with the price 10,284 million USD. However, the land use rights did not transfer based on the market or within institution framework.

To avoid land speculation during the negotiations between three partners in the joint-venture company, HCMC People’s Committee had to put the land into operation quickly. The city government wanted to change the foreigner partners of the project. Shangri – La Group (Head quarter is based in Hong Kong) was chosen as the potential candidate in the competition companies. There were several unofficial meetings between Sai Gon Tourist (on behalf of HCMC People Committee) to discuss the replacement for Kumho. Shangri – La Group agreed to help Sai Gon Tourist (SGT) paid 10,284 USD to Kumho to become the new partner with SGT.

Finally, this deal was not successful because Kumho did not approve. Furthermore, while new cooperation between HK and VN were not formed and the old joint-venture company was still valid, the Vietnamese partners made an official proposal (number 3279) to HCMC People Committee state that Kumho agreed to withdraw their rights in the project, and SGT wanted to bring the land to bid. At this time, the price of the real estate increased two folds over the caused five year since the project started. That was the reason why the Korean partner did not make the agreement to the deal.
With that sudden decision, HCMC People Committee organized a meeting to discuss the proposal. Most of the city agencies did not agree to auction land, while the joint-venture plan was still the choice of city. Moreover, the Korean company still had their rights with the land, so let the land go up for auction also did not pass the approvemnt of the Prime Minister legal procedure. Because this is the type A project (project has investment capital more than 220 million USD, a final decision must come from national central government in Hanoi).

The City government wanted the Kumho company operate the project as soon as possible and get the land up for rent, but the long delay made the patience of the city authority run thin after five years of waiting. This is one of the imperfect areas of the real estate legalities at that time. It not only wastes the natural resources, lost city revenue from tax but also affect to the image of the city.

Facing the situation of losing the land rights and four million USD because of the slow building process, the Korean partner looked to Korean Prime Minister for help. On April 7th-11th, 2002 South Korean Prime Minister Lee Han Dong served an official visit Vietnam to discuss Kumho project issues among other topics in his scheduled visit. In South Korea during the time of Lee, Kumho won many important construction projects because Kumho Group supported the finance for Lee in his Korean presidential campaign in the past.

This final rescue had good result for Kumho. In May 2005, The HCM City government has turned down Kumho Construction & Engineering Inc.’s proposal to continue the Asiana Plaza office-building project under the pressure from the central government at the Prime Minister Office. However, they must agree losing ten years of rent (still considered to begin in 1995). This meant that the rent time now is only 35 years from 2005 (new 3rd extension license) instead of 45 years. Although now this project started later than other big projects (like Times
Square, Financial Tower, Pearl (the whole Pearl project), it finished and operated the earliest in 2009.

Figure 5-4 Previous Multi State Company Ownership in the parcel from 75-97
(Source: DPA, 1988)

Figure 5-5. 2-Storey Shopping Center From 1997-2004
(Source: DPA, 2005)
5.1.4 2nd Lessons Learn from the case Kumho Plaza: The role of the politic

Formerly, the land was to have been developed into a complex in 1996 with an investment capital of more than USD$223 million. The project was between Korea's Kumho Construction and Engineering Inc and two local parties, namely Saigon Tourist and District 1 Housing Development Co and was previously scheduled to get off the ground in October in 1997 and plan take three years for completion. However, it becomes 100% foreigner own and unfinished until 2008.

In summary, before The Kumho Saigon joint venture converted fully to 100% foreigner owned in 2006, the project was originally scheduled to start in October 1997 and be completed within three years. On the other hand, the crisis 1997 forced the venture to temporarily shelve the project. The Korean side blamed the delay on its financial difficulties. Since 2000, the venture has to rent out the project place to lessee to set up stores for the duration of a final conclusion on the fate of the project. The city government required the Vietnamese associates to capture the project in mid of 2004. Many foreign investors had expressed interest in the 13,600 square meter complex, surrounded by Le Duan, Hai Ba Trung, and Nguyen Du and Le Van Huu streets. However, the Vietnamese side finally agreed to withdraw from the ailing project as they failed to find suitable partners to continue the project. The Vietnamese sides transferred their entire stake to Kumho, aimed to turn the joint venture into a wholly foreign-owned concern with a new land use license in 49 years (from 1998). We could learn some characteristics of land development rights from the Kumho Plaza project case:

1. Slow investment makes the land use waste.
2. Foreigner has leasehold on land in 49 years, not free hold.
3. City level authority is not only the involve actor in the urban land redevelopment process.

Through the Kumho Plaza project case, we could see the 6 stages of the real estate institution development in Vietnam:

1. Spontaneous Development before land law 1993: informal development
2. Commencement Development associate with issuing series of land law and housing law from 1993 to 1996: privatization housing ownership and land use rights


5. Real estate businesses were stagnant from 2004-2006

6. Recovered period in 2007 and affected by world financial crisis from 2008-2009, professional land use redevelopment by market mechanism to perfect legal administration (Real estate business law, housing law, construction law, investment law and shelter law).

6 Conclusions
Two case studies have given 2 faces of the moving toward a more privatized system of property rights. The issuance of transferable, long-term land use rights certificate, short-term land use rights certificate is not coincident with more efficient land using in term of state revenue as predict by Demsetz (1967).

Vietnam’s economic reform, which meant to relax the strict control by the state and to introduce market instruments in economic decision-making, brought in philosophical transformations to urban change. Still, although the market forces were apparently working and shaping Ho Chi Minh’s development, research findings have shown that state control was not weakened. Rather, reform created powerful local authority that controlled state companies and succeeded in resource allocation.
This study discussed land change hand strategies and real estate investment under the risky property rights. By using HCMC as an example the paper argued that the privatization has unlocked the potential value of the land by transferring land use rights to better developers. The state, including both central and city levels, has played a medium role in decisive the economic and spatial renewal of HCMC. The central state was capable of not only preventing but also promoting the development of HCMC. The market, including both global and national, was an indispensable part in state decision-making.

The results confirm the complex relationship between the actors in real estate management. From the privatization process in Vietnam and investment in real estate Ho Chi Minh City, it has assessed out the role and the potentiality dynamics of the private sector. In general, the paper suggests market approaches as a more efficient alternative to statutory government control of the institution of land use planning in Ho Chi Minh City and a set of policy actions, which rely on voluntary transactions for property rights.

7 References


The population problem has no technical solution; it requires a fundamental extension in morality.


