



**SPECIALIZED LEGAL ARTICLES SERIES:
ANALYSIS AND EVALUATION OF DIFFERENCES ON SPECIFIC ISSUES BETWEEN
THE LAW ON LAND 2013 AND THE LAW ON LAND 2024**

**TOPIC 1: DIFFERENCES IN FORMS OF LAND ALLOCATION AND LEASING BETWEEN THE
LAW ON LAND 2013 AND THE LAW ON LAND 2024**

Before the Land Law 2024 officially took effect, many clients, especially real estate project businesses and credit institutions, had "ordered" ATA systematic analyses on the fundamental differences of specific matters between the two versions of Land Law for application. Although we had published a quite comprehensive and complete analysis of outstanding new points of the Land Law 2024 after it was promulgated, the needs of Clients and Readers still push ATA to step into the process of preparing a series of Legal Articles on "*Analyzing and evaluating differences on specific issues between the Law on Land 2013 and the Law on Land 2024*". These Legal Articles shall be published weekly along with the Weekly Legal Updates that has been being updated regularly.

In this week, we would like to provide the first topic: "**DIFFERENCES IN FORMS OF LAND ALLOCATION AND LEASING BETWEEN THE LAW ON LAND 2013 AND THE LAW ON LAND 2024**". According to ATA's assessment, the Land Law 2024 has limited cases of land allocation and land lease through auctions of land use rights and investor selection bidding, and at the same time, has regulated towards specifying each case, creating favorable conditions for determining the applicable subjects for each respective form.

1. Regarding land allocation and land lease through auction of land use rights:

The Land Law 2013 identifies cases of land allocation and land lease through auction of land use rights according to land use purposes. According to Clause 1, Article 118 of the Land Law 2013, there are 8 cases of land to be allocated or leased by the State through auction of land use rights, including:

- Investing in housing construction for sale, lease or lease-purchase;
- Investing in infrastructure construction for transfer or lease;
- Using land fund to create capital for investment in infrastructure construction;
- Using commercial and service land; non-agricultural infrastructure land;
- Leasing land belonging to the agricultural land fund for public purposes for agricultural production, forestry, aquaculture, and salt making;

- Allocating and leasing land recovered by the State due to rearrangement and disposal of workplaces, non-business establishments, production and business establishments of which the assets attached are owned by the State;
- Allocating residential land in urban and rural areas to households and individuals;
- Allocating and leasing land for cases where land use fees and land rents are reduced.

Meanwhile, the Land Law 2024 defines cases of auction of land use rights according to the land origin and land users. Clause 1, Article 125 of the Land Law 2024 regulates the auction of land use rights in the following cases:

- For investment projects, it only applies to land funds that have yet been allocated/leased, or have been allocated for management.
- For individuals, it only applies to residential land allocation.

In addition, the Land Law 2024 also specifies and tightens the conditions for a land area/plot of land to be subject to the auction, specifically as follows:

- Land having the recovery, compensation, support, and resettlement completed or not subject to compensation, support, or resettlement; within the project area having the transport infrastructure connected;
- Included in the approved district-level annual land use plan for the purpose of auctioning land use rights, except in the case of auctioning land use rights for land specified in Point e, Clause 1, Article 217 (Land is recovered by the State and assigned to land fund development organizations for management).
- Having a 1/500 detailed plan organized and approved by the competent state agency for housing construction investment projects;
- Having a plan to auction land use rights approved by the competent authority.

Compared to the Land Law 2013, the new Law provide additional conditions such as "the land is located in a project area having its transportation infrastructure connected", "there is a 1/500 detailed plan approved by the competent authority", "approval for housing construction investment projects". According to ATA's assessment, this regulation is intended to create more conditions for land users to put land into use immediately after winning the auction, ensuring the true meaning of "clean" for the plot/land area put up for auction.

In addition, the Law also clearly defines that in the case of auctioning land use rights for projects, participating investors must ensure they have sufficient capacity and experience in project development and other relevant conditions.

With the new, stricter conditions of the Law on Land 2024, it can be seen that the auction of land use rights will be more limited and narrowed.

2. For land allocation and land lease through investor selection bidding:

Bidding to select investors for investment projects using land is an issue regulated by the Law on Land 2003 and guided in Decree 181/2004/ND-CP. The Law on Land 2013 does not have direct regulations on bidding to select investors for investment projects using land, but this issue is regulated in the Law on Bidding and guided in Decree 30/2015/ND-CP; It should be added that Decree 30/2015/ND-CP provides general guidance on both types of projects, namely public-private partnership investment projects ("**PPP Projects**") and other investment projects according to regulations of the Investment Law, so in practice many difficulties have been encountered during the implementation process. The issue of bidding to select investors for investment projects using land is then detailed in Decree 25/2020/ND-CP (amended and supplemented by Decree 31/2021/ND-CP and Decree 35/2021/ND-CP) (Hereinafter collectively referred to as "**Decree 25**"). Most recently, the Government issued Decree 23/2024/ND-CP with new regulations in accordance with the Land Law 2024 to guide the issue of bidding to select investors for projects with land use, replacing the corresponding contents in Decree 25/2020/ND-CP.

According to Decree 25, bidding to select investors to implement projects will be applied to investment projects that use land to build urban areas; Construction of civil works with one or more functions including: commercial housing; headquarters, office; commercial and service projects.

The Law on Land 2024 narrows and specifies the project subjects using land that must apply bidding to select investors, including:

- Urban area construction investment projects and rural residential area projects are decided by the Provincial People's Council on land allocation and land lease through bidding to select investors;
- Investment projects using land are subject to land recovery by the State and do not fall into the above cases but must organize bidding to select investors according to the provisions of law on industry and field management, including:
 - i. International soccer betting business project;
 - ii. Investment project to build domestic solid waste treatment works;
 - iii. Dredging projects in seaport waters and inland waterways combined with product recovery;
 - iv. Projects for specialized aviation services at airports and aerodromes, except for aviation operations centers of domestic airlines at airports and aerodromes;
 - v. Specialized road traffic service projects include mixed-function areas serving public and commercial purposes;
 - vi. Investment projects to renovate and rebuild apartment buildings;
 - vii. Investment projects to build water supply projects, investment projects to build water supply systems;
 - viii. Projects subject to bidding must be held when there are 02 or more interested investors registering for implementation, including: projects in the fields of education, vocational training, health care, culture, and sports and environment according to the provisions of law on encouraging socialization; horse and greyhound racing investment projects, including business activities of betting on horse racing and greyhound racing according to legal regulations on business of betting on horse racing, greyhound racing and international football; investment projects to build social housing according to the provisions of housing law.

Thus, according to the spirit of Law 2024, not all commercial and service projects using land must go through bidding. Accordingly, in addition to urban and residential area projects, it can be seen that commercial and service projects subject to bidding are all projects with the following characteristics:

- These are projects with large scale and impact on the country's socio-economy;
- These are projects that require strict qualifications and capacity of the investor;
- These are projects that require strict management by the State because they belong to areas where investment is restricted or encouraged.

Limiting and narrowing the above bidding cases will contribute to reducing obligations and administrative procedures for investors when investing or participating in projects.

3. For land allocation and land lease not through the above mentioned forms (no auction of land use rights and no bidding to select investors)

Due to the change in the method of determining cases of land allocation and land lease through auction of land use rights and the narrowing of the scope of land use projects that must be through bidding to select investors, this has led to the expansion of cases of land allocation and land lease not through auctions and bidding.

Just like the regulations on cases through bidding, Law 2024 regulates in detail cases of land allocation and land lease that are not through auction or bidding, specifically as follows:

(i) Allocating land without collecting land use fees:

- Individuals directly involved in agricultural production are allocated agricultural land within a limit.
- Land to build headquarters of the Communist Party of Vietnam, state agencies, Vietnam Fatherland Front, socio-political organizations; socio-political-professional organizations, socio-professional organizations, social organizations, and other organizations established in accordance with the law

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and assigned tasks and supported by the State with regular operating expenses piercing; defense and security land; land used for public purposes not for business purposes; Cemetery land, funeral homes, cremation facilities, land for storing ashes; religious land to compensate for cases where the State recovers religious land.

- Users of special-use forest land, protective forest land, and production forest land.
- Public service units use land to build public works.
- Residential communities using agricultural land; Religious organizations and affiliated religious organizations use land.
- Agencies and organizations use land to implement investment projects to build official housing according to the provisions of housing law.
- Ethnic minorities are not individuals directly engaged in agricultural production but are subject to land allocation without collection of land use fees according to the policies prescribed by the Land Law 2024.
- Organize land use to build housing for resettlement according to State projects.

(ii) Allocating land with collection of land use fees and exempting land use fees, leasing land and exempting land rent, except in cases where the law governing the industry or field stipulates that the number of investors must be determined. care about;

(iii) Allocating or leasing land to implement projects in cases where the State recovers land in one of the following cases:

- Using public investment capital;
- Investment project according to the public-private partnership method.

(iv) Land allocation with collection of land use fees, land lease in the following cases:

- Allocating residential land to officials, civil servants, civil servants, active duty officers, professional soldiers, defense civil servants, defense workers

and employees, officers, non-commissioned officers, police workers, people working in cipher work and other people working in cipher organizations receive salaries from the state budget but have not been allocated land or housing;

- Allocating residential land to individuals who are teachers and medical staff working in border communes, islands in areas with difficult socio-economic conditions, areas with special socio-economic conditions Difficult but do not have land or housing at the place of work or have not received housing support policies according to the provisions of housing law;
- Allocating residential land to individuals permanently residing in the commune who do not have residential land and have not been allocated residential land by the State or have not received housing support policies according to the provisions of housing law;
- Allocating residential land to individuals permanently residing in towns in areas with difficult socio-economic conditions, areas with extremely difficult socio-economic conditions that do not have residential land and have not been allocated land by the State live;
- Leasing land for production and business premises to people who were leased land by the State with annual land rent but had to relocate from the old location due to environmental pollution according to the provisions of law; Support for land leasing to continue production and business in cases of land recovery for non-agricultural production establishments from current users;
- Land lease to individuals who need to use agricultural land areas exceeding the assigned limit according to regulations; land lease to ethnic minority individuals according to regulations; and in case there is no more or lack of agricultural land, they will be allocated agricultural land within the limit without collecting fees or lease non-agricultural land other than residential land for production and business and be exempted or reduced in land rent.
- Land lease for public service units that choose the form of land lease;
- Land lease for foreign organizations with diplomatic functions to use land to build headquarters;

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- Land lease to people's armed units using land for agricultural production, forestry, aquaculture, salt making or agricultural production, forestry, aquaculture, salt making in combination with national defense and security tasks;
- Leasing land for mineral activities;
- Allocate and lease land to organizations, households, individuals, and people of Vietnamese origin residing abroad due to land compensation and resettlement support according to regulations;
- Allocating or leasing land to land users whose land is recovered for production and business but at the time of land recovery still has a land use term and the land user needs to use land in another location for continue production and business;
- Land allocation and land lease for small, narrow plots of land located side by side;
- Land allocation and land lease according to effective decisions on resolving land disputes and land complaints of competent authorities;
- Other cases decided by the Prime Minister.

(v) Land users change land use purposes in prescribed cases.

(vi) Allocating or leasing land to implement projects in cases where the State recovers land according to regulations without using public investment capital in cases where there is an interested investor but only one investor. Investors who meet the conditions for inviting interest in the project must determine the number of interested investors according to the provisions of the law on bidding and the law on industry and field management.

(vii) In case the land is auctioned for land use rights twice but fails or there are no participants. The time for land allocation and land lease in this case is only carried out within 12 months from the date of the second unsuccessful auction.

(viii) Economic organizations with foreign investment capital receive transfer of real estate projects according to the provisions of law on real estate business.

Clear and specific regulations on land allocation and land lease will help land users and investors who want to invest/participate in investing to quickly be aware of their obligations, their legal status, grasp relevant regulations and processes and prepare the necessary conditions before officially implementing the project. This also helps make land management more transparent and convenient.

ABOUT US

ATA Global Legal Limited Company (**ATA Legal Services**) is established and operated by acknowledged and experienced lawyers. Our operational goal is to become a law firm providing flexible and comprehensive legal services to both organizations and individuals, and both local and international clients. Of which, one of our core service is in-depth corporate consultancy.

All partners, lawyers, advisors, consultants, and even paralegals of ATA Legal Services are well-trained and have years of experience in the areas they are in charge of. In particular, the partners of ATA Legal Services have all consulted for and worked with renowned economic groups, banks or securities companies such as Vingroup, FLC, DNP, Tasco, Techcombank, SHB, SHS, VPS, etc.

With a serious and professional working attitude along with the dedication of the team always trying to put ourselves in the position of clients to understand their needs and aspirations, we are committed to bringing the most effective and appropriate services for Valued Clients.



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