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ATA GLOBAL LEGAL LIMITED COMPANY ATA LEGAL SERVICES



**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 3: THE STRICT REGULATIONS IN THE PROCESS OF DETERMINING LAND PRICES

Land prices are directly related to the financial obligations of land users to the State; therefore, from an overall perspective, both the State and land users need a "reasonable" land price. The State needs a "reasonable" land price to ensure state budget revenue, avoid losses, waste, and negative consequences; while land users need a "reasonable" land price so that it does not exceed their financial capacity, allowing them to feel secure in their operations and business activities. Thus, land prices are one of the issues of great concern when lawmakers are drafting the Land Law of 2024. The contents related to land prices have undergone fundamental adjustments to address the issues and limitations present in the Land Law of 2013. To help you understand and apply the provisions of the Land Law of 2024 in your work and life, ATA will continue to analyze the key regulations in the Land Law of 2024 that govern land prices, including: the timing of determination; principles, bases, and methods of determination; the Land Price Table, and specific land prices. ATA's analysis and evaluation in this topic will also include projections regarding the latest contents of the draft Decree guiding the implementation of the Land Law of 2024 on land prices ("*Draft Land Price Decree*").

1. Timing of Land Valuation

1.1. The determination of land prices must coincide with the calculation of land use fees/land rent.

In essence, land valuation and the determination of land use fees/land rent are obligations and responsibilities of the competent state authorities when allocating/leasing land. However, Article 108 of the Land Law 2013 only stipulates the timing for calculating land use fees and does not specify the timing for land valuation. As a result, in practice, there have been many cases where state authorities have issued decisions to allocate/lease land but have not yet determined the land price, making it impossible to determine the land use fees/land rent. This has caused land users to wait for a very long time just to fulfill the "payment obligation" before they can proceed with legal procedures or exercise their rights as land users according to regulations. Therefore, the Land Law 2024 has adjusted this by stipulating that the calculation of land use fees/land rent must be carried out simultaneously with the determination of land prices at the same time.

1.2. The timing of land valuation coincides with the timing of land allocation/lease.

Specifically, the Land Law 2024 defines the timings for land valuation and the calculation of land use fees/land rent as follows:

No.	Specific cases	Timing of land valuation
1	The State allocates land, leases land, permits the change of land use purpose, extends land use duration, adjusts land use duration, and changes the form of land use.	it is the time when the State issues the decision to allocate land, lease land, permit the change of land use purpose, extend land use duration, adjust land use duration, or change the form of land use (except in cases where an economic organization with foreign investment acquires a real estate project according to regulations)
2	The State recognizes land use rights	it is the time when the land user, the owner of the property attached to the land, or the representative of the land user or the owner of the property attached to the land submits all required documents in accordance with the law;
3	The competent state authority adjusts the decision on land allocation or land lease, which changes the land area, land use purpose, or land use duration.	it is the time when the competent state authority adjusts the decision on land allocation or land lease

4	The competent state authority decides to adjust the detailed planning according to construction law regulations, requiring the land price to be re-determined.	is the time when the competent state agency decides to adjust the detailed planning
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Thus, the Law on Land 2024 clearly stipulates that the time for determining land prices is associated with the time the competent State agency issues documents recording the events of land allocation/lease/recognition of land use rights or Adjustment events lead to changes in factors affecting land prices. This will help minimize the prolongation of land valuation time, affecting the progress of implementing investment projects like this.

2. Principles, grounds and methods of land valuation

2.1. Principles and grounds of land valuation

The Land on Law 2013 stipulates the principles of land valuation without stipulating the basis for land valuation, moreover, the principles of land valuation under the Law on Land 2013 focuses on clarifying the content of land valuation methods without clarifying the principles when applied, implementation of land valuation methods. The Law on Land 2024 stipulates the above issues in the direction of:

a. Adjusting the principles of land valuation: clarify the nature of land valuation including market principles; correct methods, order and procedures for land valuation; honesty, objectivity, publicity and transparency; ensure independence between parties involved in land valuation (land valuation consulting organizations, appraisal councils, persons competent to decide land prices) and harmonize interests between the State, land users and investors.

b. Specifying the grounds for land valuation: in which it is clearly defined, the land valuation must be based on input information for land valuation, factors affecting land prices and relevant laws at the time of land valuation.

Accordingly, the provisions on principles and bases for land valuation of the Law on Land 2024 are not out of the purpose of ensuring the "closest" land valuation to the market price, ensuring the objectivity of the land valuation.

2.2. Land valuation methods

The Law on Land 2024 stipulates four methods of land valuation: comparison, income, surplus and land price adjustment coefficient. Before the effective date of the Law on Land 2024, the Government has issued Decree 12/2024/ND-CP dated February 5, 2024 amending and supplementing a number of articles of Decree 44/2014/ND-CP to update and immediately institutionalize a number of provisions of the Law on Land 2024 on principles and conditions, order and content of land valuation methods. ATA has researched, analyzed and updated the new regulations of Decree 12/2024/ND-CP compared to the provisions of Circular No. 36/2014/TT-BTNMT of the Ministry of Natural Resources and Environment detailing land valuation methods; formulate and adjust land price lists; specific land valuation and land price determination advice.

In general, the provisions of the Draft Decree on Land Price inherit and continue to stipulate the contents of issues prescribed in Decree 12/2024/ND-CP on the order and implementation content of land valuation methods. This is appropriate, in order to ensure the stability of legal regulations, avoid changing regulations and guidelines that may be detrimental to the operation of state agencies and land users in the process of implementing regulations. To better understand the content of land valuation methods, customers can refer to the content that has been ATA here.

3. Land Price List

3.1. The role of Land Price List

The Law on Land 2024 officially removes regulations on Land Price Bracket; this can be seen as the "untying" of "land prices". The Law on Land 2013 stipulates that Land Price Bracket and Land Price List are promulgated, applicable for 05 years, and at the same time, Land Price List are "forced" within the limits of the Land Price Bracket. This makes land prices unable to accurately reflect the value of the market, inconsistent with the volatile characteristics of the market; leading to many "chain" consequences such as land prices for site clearance compensation when the State recovers land that does not reflect the market properly - the rights of people whose land is recovered are not guaranteed, or do not "calculate correctly and sufficiently" the land price to collect the budget.

The shortcomings of the Law on Land 2013 have been removed by the Law on Land 2024 by only stipulating Land Price List with the mechanism of issuing annually and allowing adjustments during the year depending on market fluctuations.

3.2. Expanding the scope of application of Land Price Lists

The Law on Land 2013 stipulates the application of Land Price List to apply to the following cases:

- Calculating land use fees when the State recognizes residential land use rights of households and individuals for the area within the limit; allow the change of land use purposes from agricultural land or non-agricultural land other than residential land to residential land for the area within the limit of residential land allocation for households and individuals;
- Calculating land use tax;
- Charging fees and charges in land management and use;
- Calculating fines for administrative violations in the field of land;
- Calculating compensation to the State for causing damage in land management and use;

- Calculating the value of land use rights to pay to persons who voluntarily return land to the State, in case the returned land is land allocated by the State with land use levy collection, recognition of land use rights with land use levy collected, leased land pays land rent once for the whole lease period.

The Law on Land 2024 is more expansive to the following cases:

- Calculating land rent when the State leases land to collect annual land rent;
- Calculating land use levy and land rent when the State recognizes land use rights in the form of land allocation with land use levy collection, land lease collecting land rent once for the whole lease period for households and individuals. This is understood to mean that in case "a person voluntarily returns land to the State, in case the returned land is land allocated by the State with land use levy" stipulated in the Law on Land 2013, the land price used to calculate the value of land use rights will be applied according to the land price at the time of land allocation/lease to pay one-time rent;
- Calculating income tax from land use right transfer for households and individuals;
- Calculating the starting price for auction of land use rights when the State allocates or leases land in case the land parcel or land area has been invested in technical infrastructure according to the detailed construction planning;
- Calculating land use levy in case of land allocation not through auction of land use rights to households or individuals;
- Charging land use fees in case of sale of state-owned housing to tenants.

3.3. The content of the land price list is developed in detail to each land parcel

The Law on Land 2013 and Decree 44/2014/ND-CP stipulate in principle that land price list is built according to land location. However, the Law on Land 2024 and the Draft Land Price Decree stipulate that the development of a land price list must be detailed to the land location and to each land parcel on the basis of value zones and standard land parcels.

a. For Land Price List by Land Location

The Draft Land Price Decree details criteria for determining land location, including:

- For agricultural land groups: land location is determined based on: productivity, output of crops and animals; infrastructure conditions; advantages for production and business; distance from the place of residence of the land user to the place of production; distance from the place of production to the market for concentrated consumption of products; characteristics of land use.
- For non-agricultural land groups: the land location is determined in association with each road, road segment, street segment and based on: conditions of technical infrastructure, social infrastructure, advantages for production and business; distance to the political, economic, commercial center in the region.

The land price of the Land Price List by location is determined by the arithmetic average of the price of the land parcels investigated and surveyed at each land location; for land locations without information on market land prices, based on the land price in the current Land Price List, the price of the land locations has been determined, applying the direct comparison method to determine the price of the remaining land locations.

b. For Land Price List to each land parcel on the basis of value zones and standard land parcels

Two important criteria for building a land price list in this case are the value zone and the standard land parcel.

* Criteria for determining the value area are specified as follows:

- For agricultural land groups: value zones are determined based on: productivity, output of crops and animals; infrastructure conditions; advantages for production and business; distance from the place of residence of the land user to the place of production; distance from the place of production to the market for concentrated consumption of products; characteristics of land use.

- For non-agricultural land groups: value zones are determined in association with each road, road segment, street segment and based on: conditions of technical infrastructure, social infrastructure, advantages for production and business; distance to political, economic, commercial centers.

* Standard land parcel selection criteria shall be analyzed and selected separately for each project area to ensure the representativeness of the value area and stability of the land parcel; specifically, including: analyzing and evaluating the characteristics of area scale, shape and size for land parcels in each value zone; and selection of standard land parcels representing each type of land according to each value zone on the basis of characteristics of area size, shape and size representing land parcels in the area.

The construction of the Land Price List is based on the calculation of the price of a specific land parcel. Accordingly, based on the characteristics of the land parcel and the price of the standard land parcel, apply the rate in the land price comparison rate table to calculate the price of each specific land parcel for each type of land in each land group (agricultural land, non-agricultural land).

Thus, the Law on Land 2024 enhances the role of land price lists, becoming an important legal basis and basis for determining the financial obligations of land users to the State. From the above important role, the Law on Land 2024 tightens the issuance of land price lists in the direction that land price lists must be as detailed as possible to each location and each land parcel; ensure similarly located areas are similarly priced; and more importantly: the land price according to the Land Price List must be closest to the market price, at the same time, it must also ensure flexibility, reflect correctly and promptly market developments.

4. Specific Land Prices

If the Land Price List stipulates the land price applicable to many objects, within a specified geographical area or with pieces or parcels with certain common characteristics, the Specific Land Price determines the land price for a single subject object, within the scope of an investment project or land parcel because that entity

is the owner of land use rights. The practice of applying the Law on Land 2013 shows that investors of investment projects using land are the main subjects who must determine financial obligations to the State according to the method of determining specific land prices.

Specific Land Prices are directly related to the financial obligations of each specific entity to the State, therefore, the Law on Land 2024 has stipulated adjustments in the direction of overcoming the inadequacies of the Law on Land 2013, aiming to ensure that Specific Land Prices are objective, close to the market price and there is a balance of interests between land users and the state.

4.1. Adjust cases where Specific Land Prices must be applied in a way that is more in line with the practices and needs of land users

(i) The Law on Land 2024 abolishes the case of application of Land Price, namely calculating land use fees when the State recognizes the land use rights of households and individuals for the portion of residential land area exceeding the limit; allow the change of land use purposes from agricultural land, non-agricultural land other than residential land to residential land for the area exceeding the limit of residential land allocation for households and individuals; calculate land rent for agricultural land exceeding the land allocation limit, exceeding the limit for receiving transfer of agricultural land use rights of households and individuals. Accordingly, these cases as described above will fall under the application of the Land Price List.

In fact, with the above provisions, transactions of households and individuals that need to determine specific land prices arise a lot. Meanwhile, the process of determining Specific Land Prices is often time-consuming, so the application of specific land prices costs time, effort and material both for state agencies and households and individuals. Therefore, it is very appropriate for the Law on Land 2024 not to apply specific land prices but to change to apply land price lists for this case, especially when the land price list is built in a detailed, strict and close to market fluctuations as described above.

(ii) The Law on Land 2024 clarifies the case in which investors implementing the project will be applied Specific Land Prices: Specific Land Prices are applied to *"calculating land use levies for organizations when the State allocates land with land use levy collection without auctioning land use rights, failing to bid for selection of investors to execute land-use projects, allocate land with land use levy to winning investors or economic organizations established by winning investors to implement land-use projects, recognize land use rights, etc allow the change of land use purpose for which land use levy must be paid"*.

Previously, the Law on Land 2013 only stipulated that in case of application, the specific land price is to calculate land use levy when the State allocates land with land use levy collection not through the form of auction of land use rights. The fact that the Law clearly recognizes cases of application of specific land prices will facilitate and ensure a legal basis for agencies and enterprises in the process of applying to the operation of projects.

The Law on Land 2024 stipulates that specific land prices are only determined to calculate land rent when the State leases land to collect land rent once for the whole lease period, except through land auctions. In case of calculating land rent, annual land rent will be determined according to the Land Price List. This is a completely new regulation compared to the 2013 Law. Previously, all cases of land lease by the State not through the auction of land use rights (including land lease paying land rent once for both the lease period and land lease paying annual land rent) had to determine the specific land price. The land price for calculating land rent to pay annual land rent is determined for a period of every 5 years; Therefore, every 5 years, land users must carry out procedures for redetermining specific land prices. This takes time and effort for both management agencies and businesses and cannot properly reflect the market price. The determination of land rent collected annually according to the land price list with the mechanism issued annually and adjustable during the year becomes more appropriate, at the same time, reducing troubles for businesses.

(iii) In addition, issues of determining the starting price for auctioning land use rights when the State allocates land, leases land, and calculates land use levy, land rent when extending land use, adjusting land use term, adjusting detailed construction plannings; allow the change of land use forms prescribed by documents under the law and guidance on the implementation of the Land Law 2013 to apply according to the specific land valuation process. The 2024 Land Law officially recognizes that the above two issues will apply a specific land valuation process, and the above provision will ensure the uniformity and effectiveness of legal documents.

4.2. Adjusting and detailing the process of determining specific land prices

a. Decentralize districts to determine specific land prices and emphasize the roles and responsibilities of the Chairman of the People's Committee when deciding on specific land prices

The process of determining Specific Land Prices is a lengthy process, requiring a lot of time and effort of state agencies, consulting organizations, relevant units and individuals and land users; Meanwhile, the subjects of application are somewhat diverse (not all cases where specific land prices must be determined are large-scale investment projects, large investment capital, investors with good financial capacity ...). Therefore, in order to save time and effort of entities related to specific land valuations, instead of focusing entirely on provincial-level People's Committees, the Law on Land 2024 stipulates that specific land valuations are given to district-level agencies according to the principle: whichever level People's Committee has the authority to manage land, the People's Committee of that level shall decide on specific land prices. This provision is reasonable in principle (when the competent state agency manages, it will manage all relevant issues, the "division" of authority may lead to the "extruding" of responsibility).

The authority to approve specific land prices is clearly defined by the Chairman of the People's Committee instead of the People's Committee as before. This regulation aims to enhance the responsibilities of heads of local state management agencies in land price issues. In practice, the valuation of specific land prices has many

shortcomings, in which the phenomenon that the specific land price is lower than the market price, causing loss of the state budget is arising; however, the determination of responsibility and handling is difficult because this issue is decided by the People's Committee - a collective body. Therefore, the determination of specific responsibilities of competent individuals will contribute to improving the responsibility of the head, thereby promoting efficiency and shortening the time of the process of reviewing and approving specific land prices.

b. Detail the process of determining Specific Land Prices

The determination of Specific Land Prices according to the Law on Land 2013 is guided by Decree 44/2014/ND-CP and amended and supplemented by Decree 12/2024/ND-CP. The draft Land Price Decree basically inherits and retains the provisions of Decree 12/2024/ND-CP. This is suitable to ensure the succession and stability of legal provisions, avoiding the adjustment of legal provisions that affect the operation of state agencies and the interests of land users.

GENERAL ASSESSMENT OF THE IMPACTS OF LAND PRICE REGULATIONS IN THE LAW ON LAND 2024 ON THE REAL ESTATE MARKET

With the regulation of land price management in a way that is both flexible and strict, bringing land prices gradually closer to market prices, we assess that the new points of the Law on Land 2024 can create changes in a more favorable direction for the real estate market. As follows:

First, reduce the situation of "buying and selling land at two prices".

The new regulations remove the land price bracket to establish a land price list close to the market and require regular adjustments to the land price list in the Law on Land 2024 as above, in our judgment, these regulations although do not prevent the situation of low price declaration when transacting land, however, it has also shown the State's efforts in bringing the land price list closer to the market price, helping to minimize the difference between the declared land use right transfer price and the

actual land use right transfer price, contributing to significantly minimizing the loss of the State budget.

Second, limit real estate "speculation".

When the land price list is close to the market, it can cause many taxes and land management fees to be paid when transferring land use rights (such as personal income tax, registration fee, fee for issuance of land use right certificate) increase. This regulation is expected to help limit "speculation" to "inflate" real estate prices stemming from reducing the economic efficiency brought about by real estate speculation, thereby contributing to stabilizing the real estate market, creating opportunities to access housing at more reasonable prices for those in need.

Third, contributing to speeding up the implementation of investment projects.

Currently, one of the biggest problems directly affecting the implementation progress of investment projects using land is the issue of site clearance compensation and in fact, the problems in site clearance compensation mostly come from the compensation price that does not guarantee the interests of the compensated person. The Law on Land 2024 introduces a mechanism to determine land prices close to market prices, which will make land prices more satisfactory, compensation recipients will easily approve land allocation, reduce protracted complaints, thereby helping the project implementation progress to be accelerated.

On the other hand, this regulation also poses additional challenges and burdens for investors when it can significantly increase input costs on site clearance compensation of the project, requiring investors to build effective investment and business plans and have sufficient financial resources to pursue the project. However, looking at the general picture, this regulation will eliminate weak real estate businesses and investors in the market.

In addition to the positive aspects, the Law on Land 2024 and the Draft Land Price Decree also have a number of issues that have not been clearly and fully stipulated, causing disadvantages to enterprises and project investors such as:

- + Regarding the total investment cost of the project, the lawmakers have not mentioned and calculated a number of reasonable expenses that investors have to pay in the first stage of project implementation to have land to implement the project such as: land use levy and loan interest;
- + Regarding the profit of the project, the regulation that only calculates profit on land development costs but not on the total project development costs is disadvantageous to investors;
- + The Law does not have clear regulations and guidelines on grounds and grounds for proposing or adjusting land prices when the market fluctuates, especially in situations where the market is calm without transactions for a long time or when the market shows signs of virtual fever...

CONCLUSION

With the above new regulations, we believe that the Law on Land 2024 has built a fairly strict legal basis and ensured the determination of land prices with the goal of bringing the land price determined by the State gradually closer to the market price and overcoming many shortcomings, problems in the process, procedures and competence to determine land prices during the past time. However, with the fact that real estate transactions on the market have a 2-price mechanism (specifically, except for contracts, transactions of buying and selling project real estate, the contracts, land purchase and sale transactions of households and individuals that are publicized and used as a basis for tax calculation mostly do not reflect the actual value), The database of land prices in a short time will not be able to update the "real price". Accordingly, even after the Law comes into effect, it will certainly take more time to accumulate more information and data into the database, and at the same time, there should be clearer regulations on how to determine to ensure that sources of information and data are accurate and appropriate.

ABOUT US

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