



## LEGAL NEWSLETTER

### MARCH 2023

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## SOME OF THE HIGHLIGHT POINTS IN LAND LAW 2024

*Passed by the National Assembly on January 18, 2024, Land Law 2024 marks a significant step in the reform and adjustment of real estate management policies in Vietnam. Set to take effect from January 1, 2025, it carries substantial hopes and expectations from the community, politicians, and businesses. This article highlights the notable aspects of the Land Law 2024 and its impact on land management in Vietnam.*

### 1. Amendments to the regulations on land users

Clause 6 of Article 5 of the Land Law 2013 stipulates land users who can be allocated land by the state, leased land, recognized land use rights, and receive transferred land use rights, which includes Vietnamese citizens residing abroad as regulated by nationality laws.

Clause 3 and Clause 6 of Article 4 of the Land Law 2024 not only extend the scope that land users allocated or leased land by the state, recognized for land use rights; who are using land stably and meet the conditions for being issued a Certificate of Land Use Rights, ownership of property attached to land but have not yet been issued by the state a Certificate of Land Use Rights, a Certificate of Ownership of Houses and Residential Land Use Rights, a Certificate of Land Use Rights and Ownership of Houses and Other Properties Attached to Land, a Certificate of Land Use Rights and Ownership of Property Attached to Land; receiving land use rights; subleasing land under this Law, but also extend the scope of land users, include domestic individuals, Vietnamese citizens residing abroad (referred to as individuals); and people of Vietnamese origin residing abroad.

The Land Law 2024 has clarified that land users who are Vietnamese residing abroad include both Vietnamese citizens residing abroad and people of Vietnamese origin living overseas, along with the provisions facilitating these individuals to directly participate in real estate transactions in Vietnam... This solves a former issue where Vietnamese living abroad had to rely on relatives in Vietnam to conduct land use rights transactions on their behalf, which often led to disputes arising from the management of land use rights and property transfers.

## SOME OF THE HIGHLIGHT POINTS IN LAND LAW 2024

### 2. The land price frame is replaced by the annual land price list

Previously, under Article 114 of Land Law 2013, the Land Price List was established for a period of five years and publicly announced on the first day of the first year in the cycle. During the validity period, if the Government adjusted the land price framework or if there were fluctuations in the market prices, the Provincial People's Committee was responsible for adjusting the Land Price List accordingly to reflect these changes.

However, in practice, there had been very few adjustments to the land price list during its application, thus, the land price list does not accurately reflect the actual market prices.

With Article 159 of the Land Law 2024, the Provincial People's Committees will develop and submit to the Provincial People's Councils for decision, the initial Land Price List to be announced and applied from January 1, 2026. This Land Price List will be developed based on areas and locations. For areas with digital cadastral maps and land price databases, the Land Price List will be developed for each land plot based on value zones and standard plots. Annually, the Provincial People's Committees are responsible for submitting adjustments, amendments, and supplements to the Land Price List to the Provincial People's Councils for decision, to be announced and applied from the first day of the following year.

Land Law 2024 has adjusted the development of the Land Price List in a more flexible and timely manner, better reflecting the local reality. This aims to reduce disputes and the exploitation of land prices, facilitating a fairer and more efficient market, while also promoting sustainable development in localities.



## SOME OF THE HIGHLIGHT POINTS IN LAND LAW 2024

### 3. Regulations on compensation for land acquisition for economic and social development

The compensation for those whose land is acquired is specified in Clause 2 of Article 91 of the Land Law 2024. Compensation for land shall be made by allocating land of the same use purpose as the land being acquired. If there is no such land available, monetary compensation shall be provided based on the specific land price of the type of land being acquired, as decided by the competent People's Committee at the time the compensation, support, and resettlement plan is approved. If the land users whose land is acquired prefer monetary compensation over receiving land or housing, they shall be compensated in cash according to their registered request when the compensation, support, and resettlement plan is formulated. Moreover, if there is a demand and local conditions allow in terms of land and housing funds, they may be considered for compensation with the land of a different use purpose than the land being acquired or with housing.

The compensation for those affected by land acquisition under the Land Law 2024 is diverse. As of now, individuals whose land is acquired can only be compensated with land of the same use purpose or in cash. With this new provision, individuals may also be compensated with land of a different use purpose, adding a form of land-for-land compensation without limitations on the use purpose.

### 4. New regulations for transfers to individuals not directly engaged in agriculture

As per Clause 3 of Article 91 of the Land Law 2013, households and individuals not engaged directly in agricultural production were not allowed to receive land use rights transfers or gifts for rice cultivation land. Moreover, under Point b, Clause 4 of Article 142, if land is allocated without a land use fee to households and individuals not directly engaged in agriculture, forestry, aquaculture, or salt production, it must be converted to a land lease after expiration.

However, the Land Law 2024, specifically Clause 7 of Article 45, allows individuals not directly engaged in agricultural production to receive transfers or gifts of rice cultivation land but not exceed the limit prescribed in Article 176. However, they must establish an economic organization and have a land use plan for rice cultivation including contents as regulated in Clause 6 of this Article, which must be approved by the District People's Committee, except in cases where the recipient of the gift is an heir.

These are the highlights of the Land Law 2024. The adoption of the Land Law 2024 marks a significant step forward in improving and adjusting the legal framework related to land management in Vietnam. Land Law 2024 promises to bring positive effects to the real estate market as well as social life.

## Decree No. 24/2024/ND-CP detailing some articles & measures for the implementation of the Bidding Law regarding contractor selection

On February 27, 2024, the Government issued Decree No. 24/2024/ND-CP detailing some articles and measures for the implementation of the Bidding Law regarding contractor selection ("**Decree 24**"). Accordingly, Decree 24 has detailed some articles and measures for the implementation of the Bidding Law regarding contractor selection and is effective from the date of signing.

### 1. The measures for the implementation of the Bidding Law regarding contractor selection include:

- (i) Registration on the Vietnam E-procurement System (VNEPS) (Article 21 of Decree 24);
- (ii) The timeline for organizing contractor selection (Article 16 of Decree 24);
- (iii) The authority to decide on procurement for the procurement budget (Article 91 of Decree 24);
- (iv) Transparency in bidding activities (Articles 17, 18, and 20 of Decree 24);
- (v) Contractor management (Article 132 of Decree 24).

### 2. Costs in contractor selection

#### (i) General principles for determining costs

For international bidding, based on the scale and nature of the bid package, the investor decides the fee contractors must pay to purchase the electronic version of the tender documents or request documents when submitting bids or proposals, in accordance with international bidding practices.

For bid packages using the state budget, the money from selling electronic tender documents or request documents is submitted to the state budget in accordance with the State Budget Law. For the packages not using the state budget, the money from selling electronic tender documents or request documents is the investor's revenue and is managed and used according to the financial mechanism of the investor.

#### (ii) Costs for preparation and evaluation of documents

The cost of preparing the expression of interest documents or prequalification documents is calculated at 0.1% of the package price but at least 2,000,000 dong and not more than 30,000,000 dong; The cost of appraising the expression of interest documents or prequalification documents is calculated at 0.06% of the package price but at least 2,000,000 dong and not more than 30,000,000 dong; The cost of preparing the tender documents or request documents is calculated at 0.2% of the package price but at least 3,000,000 dong and not more than 60,000,000 dong; The cost of appraising the tender documents or request documents is calculated at 0.1% of the package price but at least 2,000,000 dong and not more than 60,000,000 dong.

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### (iii) Evaluation costs of documents

The cost for evaluating expressions of interest and prequalification documents is calculated at 0.1% of the package price, but at least 2,000,000 dong and not more than 30,000,000 dong; The cost for evaluating bid submissions and proposals is calculated at 0.2% of the package price, but at least 3,000,000 dong and not more than 60,000,000 dong.

(iv) The cost of appraising the contractor selection results, including cases where no contractor is selected, is calculated at 0.1% of the package price, but at least 3,000,000 dong and not more than 60,000,000 dong.

(v) For bid packages with similar contents within the same project, procurement estimates of the same investor, or bid packages that must reorganize the contractor selection process, the costs for preparing and appraising expressions of interest, prequalification documents; preparing and appraising tender documents, request documents are calculated at a maximum of 50% of the specified cost rate; in cases where a part of the bid package needs to be rebid (for divided packages), the cost is calculated at a maximum of 50% of the estimated cost of the part to be rebid.

In cases of reorganizing the contractor selection process, it is necessary to calculate and supplement the contractor selection costs into the project, procurement estimate by the actual situation of the bid package. In the case of international bidding, document translation costs are calculated following market prices, ensuring the effectiveness of the bid package.

(vi) Costs for the department of the Petition Resolution Advisory Council (hereinafter referred to as the Advisory Council) on the election results are calculated as a percentage of the appealed contractor's bid price as follows: For bid prices below 50 billion dong, the rate is 0.03% but not less than 5 million dong; for bid prices from 50 billion dong to under 100 billion dong, the rate is 0.025% but not less than 15 million dong; for bid prices from 100 billion dong to under 200 billion dong, the rate is 0.02% but not less than 25 million dong; for bid prices of 200 billion dong and above, the rate is 0.015% but not less than 40 million dong and not more than 60 million dong.

(vii) Refund of costs for resolving complaints: If the contractor's appeal is concluded to be correct, the related organizations and individuals are responsible for reimbursing the appealing contractor the amount equal to the cost of handling the appeal that the contractor had paid. If the contractor's appeal is concluded to be incorrect, the contractor is not entitled to a refund of the appeal handling cost.

## Decree No. 24/2024/ND-CP detailing some articles & measures for the Implementation of the Bidding Law regarding contractor selection



### 3. Regulations for addressing challenges and issues in healthcare sector bidding

(i) Article 89 of Decree 24 allows for the selection of multiple awarding contractors, where if the higher-ranked contractor refuses to sign the contract, the purchasing entity or the centralized purchasing unit can sign a contract with the next-ranked contractor.

(ii) Paragraph 2 of Article 16 of Decree 24 stipulates regarding the bid package price, in cases where there are two or more quotations, the investor is allowed to select the highest quotation that fits within financial capabilities and technical requirements. For other sectors, the average value of the quotations shall be taken as the bid package price.

(iii) Paragraph 4 of Article 19 of Decree 24 specifies that if the investor does not have personnel meeting the requirements or cannot select a consultancy contractor to form a specialized team or appraisal group, they are entitled to mobilize and assign tasks to personnel such as doctors, pharmacists, administrative staff, or invite officials from the Department of Health, the Ministry of Health, and experts in the healthcare field to participate in the specialized team or appraisal group to carry out procurement activities.

Additionally, Decree 24 also specifies the procedures for handling violations in bidding activities, guidelines for managing various scenarios, the content of the overall contractor selection plan for a project, and guidance for the appraisal and approval of the overall plan for contractor selection for a project. It is evident that Decree 24 has resolved many difficulties and obstacles in the process of implementing bidding and procurement activities using state capital, especially in the procurement of medicines, medical supplies, and equipment; while also continuing to simplify the procedures for contractor selection in bidding, reducing costs for businesses through bidding activities.



## Case no. 55/2022/AL on recognizing the validity of the Contract that violated the form condition

*In civil transactions, due to objective or subjective reasons, there may be a case that the parties in the transaction cannot abide by the provisions of the formality or the requirements on notarization or authentication, and this could lead to a situation where the contract is null and void. The Civil Code 2015 had a provision recognizing the validity of such transactions. However, applying the rules in real-life cases can be somewhat difficult. Case Law No. 55/2022/AL on recognizing the validity of the contract that violated the form condition ("Case Law No. 55") was, in part, interpreting how the rules should be applied.*

### 1. Case summary

a) In 2009, Mr. Doan C and Mrs. Tran Thi L ("**Defendant**") had a Land use right transfer agreement with Mr. Vo Si M and Mrs. Phung Thi N ("**Claimant**") in a hand-written document. The area to transfer the land use rights was Plot B (self-select) in a portion of the land of Defendant when the State allocated the land to Defendant for the amount of 90.000.000 VND. The Claimant had paid 90.000.000 VND to the Defendant. The State did not hand over the real estate to the Defendant, hence the Defendant could not give the land use right to the Claimant.

b) By 2011, the state had delineated the land allocation to the Defendant as three adjacent plots at the front. Defendant and Mr. Doan Tan L1 –Defendant's son, requested an additional 30,000,000 VND from Claimant due to the higher value of the frontage land. Claimant agreed to pay an additional 20.000.000 VND. The remaining 10.000.000 VND was to be paid upon completion of the transfer procedures. The Defendant had shown the location and boundary markers of the plot of land to be transferred to the Claimant.

c) While waiting for the land use right transfer procedures, on June 5, 2014, Ms. M1 agreed with Claimant to rent the land to open a shop, with annual payments.



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d) It was not until October 2016 that the state issued the Land Use Right Certificate to the Defendant. However, Defendant and Mr. Doan Tan L1 only provided the Land Use Right Certificate for plot number 877 on map sheet number 24 of P commune ("**Plot 877**") to Claimant but did not proceed with the transfer formalities. Currently, the Claimant has constructed a foundation on plot 877. The Claimant filed a lawsuit against the Defendant.

e) The first-instance civil Judgment No. 22/2017/DS-ST dated September 21, 2017, by the People's Court of Duc Pho District, ruled: Recognizing the land use right transfer contract dated August 10, 2009, and ordering the Defendant to carry out the transfer procedures for plot 877 to the Claimant.

f) On October 2, 2017, the Defendant and interested parties, including Doan Tan L1, Doan Tan N1, Doan Thi Thu V, and Doan Thi My N2, filed an appeal requesting the appellate court to annul the first-instance judgment for reevaluation. At the appellate hearing, the appellants altered the content of their appeal, asking the appellate panel to amend the first-instance judgment by declaring the land use right transfer contract dated August 10, 2009, as void and resolving the consequences of the void contract.

g) The appellate civil Judgment No. 24/2018/DS-PT dated February 1, 2018, by the People's Court of Quang Ngai Province ruled: Amending the first-instance civil judgment No. 22/2017/DS-ST dated September 21, 2017, of the People's Court of Duc Pho District; rejecting the Claimant's claim and accepting the Defendant's counterclaim.

h) On September 19, 2018, the Chief Judge of the High People's Court in Da Nang issued the cassation appeal decision No. 68/2018/KN-DS: Proposing the annulment of the appellate civil judgment No. 24/2018/DS-PT dated February 1, 2018, by the People's Court of Quang Ngai Province, and remanding the case to the People's Court of Quang Ngai Province for re-trial in accordance with appellate procedures.

i) The cassation decision No. 93/2018/DS-GDT dated November 29, 2018, by the Judges' Council of the High People's Court in Da Nang ruled: Accepting the cassation appeal decision No. 68/2018/KN-DS dated September 19, 2018, by the Chief Judge of the High People's Court in Da Nang; annulling the entire appellate civil judgment No. 24/2018/DS-PT dated February 1, 2018, by the People's Court of Quang Ngai Province, and remanding the case to the People's Court of Quang Ngai Province for re-trial in accordance with appellate procedures.

## Case no. 55/2022/AL on recognizing the validity of the Contract that violated the form condition

### 2. The court's opinion

a) Based on the testimonies of Mr. L1 and the Defendant, the People's Court of Quang Ngai Province (**"the Court"**) concluded that although the Land Use Right Certificate had not been issued yet, the Defendant was aware of the location of the resettlement land plots allocated by the State. The actual use of plot 877, the testimony of the tenant Ms. Nguyen Thi M1, the "Land Lease Agreement," and the statement of Mr. Doan C taken on July 25, 2017, indicate that Defendant had handed over plot 877 and the Land Use Right Certificate for this plot to the Claimant.

b) The appellate court determined that at the time of the parties' agreement on the land use right transfer, Defendant had not been allocated land, so a handwritten agreement was made. However, once the land was allocated, the parties orally revised the agreement to transfer plot 877 and continued to execute the contract by paying additional money, handing over the land, and transferring the Land Use Right Certificate, which was in the Defendant's name at the time, meeting the conditions for transfer. According to Article 116, paragraph 2 of Article 129 of the Civil Code 2015, although the land use right transfer transaction between the parties did not comply with the formality requirements of paragraph 1 of Article 502 of the Civil Code 2015, since the Claimant had paid 110,000,000 VND to the Defendant, and the Defendant had transferred the land use rights to the Claimant, fulfilling more than 2/3 of the obligations in the transaction, the transaction is recognized as effective.

c) The land use rights of plot 877, being resettlement land allocated to Defendant and not to a household, means Defendant has the right to transfer. The transfer of plot 877 by Defendant does not violate any legal prohibition as presented by Defendant and other related parties; however, the first-instance court recognized the contract but did not compel Claimant to pay the remaining amount to Defendant, which was an oversight.

d) The Claimant voluntarily allows Mrs. Nguyen Thi M1's beverage stall to continue its operation on the land if the Court accepts the Claimant's lawsuit claim. The Claimant is the lawful land user, thus acknowledging the Claimant's voluntary action.

e) Based on the above assessments, the Court ruled:

- Dismiss the appellate trial in part regarding the appeal decision No. 1317/QĐKNPT-VKS-DS dated October 5, 2017, by the Prosecutor of the People's Procuracy of Duc Pho District;
- Reject the appeal of the Defendant Mr. Doan C, Mrs. Tran Thi L, and other related parties, namely Mr. Doan Tan L1, Mr. Doan Tan N1, Mrs. Doan Thi Thu V, Mrs. Doan Thi My N2;
- Amend in part the first-instance civil judgment No. 22/2017/DS-ST dated September 21, 2017, of the People's Court of Duc Pho District, in a way that accepts the Claimant's lawsuit request, rejecting the Defendant's request.

## Case no. 55/2022/AL on recognizing the validity of the Contract that violated the form condition

### 3. Commentary on Case Law No. 55

Contracts regarding land use rights, as stipulated in Clause 3 of Article 167 of the Land Law 2013, must be notarized or authenticated to be considered valid. According to Clause 2 of Article 129 of the Civil Code 2015, if a civil transaction has been established in writing but violates mandatory regulations on notarization or authentication, and one or both parties have fulfilled at least two-thirds of the obligations in the transaction, upon request of one or both parties, the Court will decide to recognize the validity of that transaction. In this case, the parties do not need to perform notarization or authentication.

Thus, the conditions for a civil transaction that violates the regulations on notarization and authentication to be effective are: (i) one or both parties have fulfilled at least two-thirds of the obligations in the transaction, and (ii) there is a request from one or both parties for the transaction to be recognized.

In this case law, the Claimant and the Defendant had a written agreement for the transfer of land use rights, which was not notarized or authenticated, thus constituted a formality violation. However, the Claimant had paid 110,000,000 out of 120,000,000 VND, and the Defendant had handed over the Land Use Right Certificate for Plot 877. The Court determined that the parties had fulfilled at least two-thirds of their obligations in the contract.

However, an unfortunate point of Case Law No. 55 is that the Court did not explain how to determine in which way a party is considered to have performed two-thirds of the obligations. The Claimant has not completed the payment obligation (110,000,000/120,000,000 VND), while the Defendant has only fulfilled the obligation of handing over the Land Use Right Certificate and has not carried out the transfer of land use rights, leading to the Claimant not paying the remaining 10,000,000 VND after the transfer procedures are completed. Thus, if calculated by the number of obligations, it cannot be considered that two-thirds of the obligations have been fulfilled.

Determining what constitutes two-thirds of the obligations is very important to indicate whether a contract that has not been notarized but has been signed by the parties meets the necessary condition for the Court to recognize the validity of the contract. For such cases, will the determination of two-thirds of the obligations fulfilled be based on the quantity, the importance of the obligations, or based on the economic value of the obligations? Case Law No. 55 does not provide a satisfactory answer to this issue.

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