



LEGAL NEWSLETTER

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New points of Decree no. 88/2024/ND-CP

On July 15, 2024, the Government issued Decree No. 88/2024/ND-CP detailing compensation, support, and resettlement upon land expropriation by the state (effective from August 1, 2024) ("**Decree 88**"). Decree 88 is an important legal document detailing compensation, support and resettlement related to investment projects that renovate and rebuild apartment buildings that comply with the provisions of the law on housing.

1. New points of Decree 88

Compensation with land of a different purpose or compensation with housing upon land expropriation by the state as prescribed in Clause 1, Article 96, Clause 1, Article 98, Clause 1, Article 99 of the Land Law;

Other case eligible for land compensation and the conditions for land compensation stipulated in Clause 3, Article 95 of the Land Law; and

Compensation upon land expropriation by the state in cases where the actual measured area is different from the area recorded on the land use right documents.

It can be seen that the main contents of Decree 88 have adjusted important issues in compensation, support, and resettlement upon land expropriation by the state. These are sensitive issues and need a legal framework to ensure the legitimate rights of land users when the State implements investment projects to renovate and rebuild apartment buildings.



New points of Decree no. 88/2024/ND-CP

2. Compensation with land of a different purpose, or compensation with housing upon land expropriation by the state as prescribed in Clause 1, Article 96, Clause 1, Article 98, Clause 1, Article 99 of the Land Law 2024

According to regulations, the land price for calculating land fees when compensation with land of a different purpose or housing for households, individuals, and overseas Vietnamese who have been continuously using residential land or owning housing attached to land use rights in Vietnam shall be the land price determined according to the land price schedule at the time of approval of the compensation plan.

.If the land is compensated through a lease arrangement, and the rent is paid in whole sum for the entire lease period, the land value used to determine the rent is the specific price set by the competent People's Committee at the time the compensation plan is approved.

The land price used to calculate land use fees and land lease fees for compensation in the form of land with a different purpose of use than the expropriated land, for economic organizations whose residential land is expropriated, shall be the specific land price determined by the competent People's Committee at the time of approval of the compensation, support, and resettlement plan.

If there is a difference in value between the compensation amount and the land levy, land rent or house purchase amount when the expropriated land user is compensated with land of a different purpose or housing, the difference shall be addressed as follows:

- If the compensation amount is greater than the land levy, land rent or house purchase amount, the expropriated land user is entitled to difference;
- If the compensation amount is less than the land levy, land rent or house purchase amount, the expropriated land user must pay the difference;
- The Province People's Committee shall, based on the land fund, housing fund and actual situation in the province, prescribe the conversion rate and requirements for compensation with land of a different purpose or housing to compensate the expropriated land user as prescribed in this Article.

From the above contents, it can be seen that Decree 88's additional provisions in Clause 1, Article 96, Clause 1, Article 98, Clause 1, Article 99 of the Land Law 2024 have created a favorable legal framework, facilitated and supported for the principles of compensation, support, and resettlement when the State reclaims land, ensuring democracy, objectivity, fairness, publicity, transparency, timeliness and compliance with the provisions of law.

New points of Decree no. 88/2024/ND-CP

3. Other case eligible for land compensation and the conditions for land compensation stipulated in Clause 3, Article 95 of the Land Law

In addition to the cases of compensation by land with a different purpose than the type of collected land or by housing when the State collects land as prescribed in Clause 1, Article 96, Clause 1, Article 98, Clause 1, Article 99 of the Land Law 2024. Other cases of land compensation and conditions for land compensation as prescribed in Clause 3, Article 95 of the Land Law 2024 include:

Households and individuals are still entitled to land compensation although they have no land use rights documents provided that they are eligible for a Certificate of land use rights and ownership of property on land (hereinafter referred to as a Certificate of land use rights) as stipulated in Clauses 1, 2, 3, 4, 5 and 6 of Article 138 of the Land Law.

Households and individuals are still entitled to land compensation although they have violated land laws before July 1, 2014, provided that they have continued to use the land stably since then (hereinafter referred to as use the land stably), and fall into cases eligible for a Certificate of land use rights as stipulated in Clause 1, Point a and Point c, Clause 2, Clause 3, Clause 4, Article 139 of the Land Law 2024.

Households or individuals are still entitled to land compensation although the land was allocated without valid authorization under real estate law at the time of allocation, or the land was acquired through the purchase, liquidation, Government valuation, or distribution of housing and construction works on land not in accordance with the law before July 1, 2014, provided that they have been stably using the land since then.

Those who received land allocations without valid authorization between July 1, 2014 and the effective of the Land Law are still entitled to land compensation if they can provide proof of payment for the land use.

Households or individuals whose land use right certificates indicate a land classification that differs from the classification stipulated in Article 9 of the Land Law or the actual land use, shall be compensated based on the reclassified land type as prescribed in Clause 2 of Article 10 of the Land Law 2024.

Households or individuals are still entitled to land compensation although they were not issued with a Certificate of land use rights provided that they directly engaged in agricultural production and have been stably using the agricultural land before July 1, 2004.

Decree 88 provides more detailed regulations on households and individuals using land without land documents, or land allocated without proper authority, etc. to clarify which cases fall under which conditions to determine the scope of land compensation.

New points of Decree no. 88/2024/ND-CP

4. Compensation upon land expropriation by the state in cases where the actual measured area is different from the area recorded on the land use right documents

According to the provisions of Article 6 of Decree 88/2024/ND-CP, for households or individuals whose land is being expropriated by the state, if the actual measured area differs from the area stated on the land use right certificate, the housing and land use right certificate, the land use right certificate, the house ownership and other property on land certificate, or the land use right certificate and other property on land certificate (hereinafter referred to as "certificate") or the document stipulated in Article 137 of the Land Law, land compensation shall be made as follows:

If the actual measured area is smaller than the area stated on the land use right certificate or the document stipulated in Article 137 of the Land Law 2024, land compensation shall be based on the actual measured area as prescribed in Clause 6 of Article 135 of the Land Law 2024.

In cases where the actual measurement for land expropriation has been completed but subsequently, due to natural disasters, landslides or subsidence, the area of the measured plot of land has changed at the time of formulating the compensation plan, the measured data shall be used to formulate the compensation plan.

In cases where the actual measured area is larger than the area stated on the land use right certificate or the document stipulated in Article 137 of the Land Law 2024, and there is no dispute with neighboring land users, the compensation area shall be determined based on the actual measured area as prescribed in Clause 6 of Article 135 of the Land Law 2024.

If the location and coordinates specified in the land use right certificate or the document stipulated in Article 137 of the Land Law 2024 are incorrect, the compensation shall be determined based on the correct location and coordinates as established through actual measurement.

In fact, in the process of compensation settlement when collecting land, there are often many problems when there is a difference between the actual measured land area and the area recorded in the land use right documents, causing frustration for the people and directly affecting their legitimate rights. Now Decree 88 has specific regulations to resolve these problems. These are progressive regulations and contribute to ensuring the people's legitimate rights.

The issuance of Decree 88 to provide detailed guidance for Land Law 2024 shows the Government's great efforts and determination to avoid legal gaps. This will contribute to ensuring the rights of people whose land is collected, avoiding unnecessary complaints and lawsuits.

Key highlights of decree No. 71/2024/NĐ-CP detailing on land price

On June 25, 2024, the Government issued Decree No. 71/2024/NĐ-CP, effective from August 1, 2024 ("**Decree 71**"), which details on land price to ensure transparency and reflect market-based land values. This decree replaces previous regulations and introduces several important new points aimed at improving the efficiency of land management and protecting the legitimate interests of stakeholders.

1. Diverse and detailed valuation methods

Decree No. 71/2024/NĐ-CP outlines four basic land valuation methods, including:

Comparison method:

Survey and collect information on the land parcel's use purpose and factors affecting its price.

Gather information on comparable land parcels, including market transaction prices and auction prices after fulfilling financial obligations.

Choose comparable land parcels based on the following priorities: (i) the latest information until the valuation date, (ii) similarity in factors affecting land prices, and (iii) the shortest distance to the parcel being valued, without administrative boundaries limitations.

The value of the land parcel is determined by subtracting the value of attached assets from the comparable parcel's value and dividing by the comparable parcel's area.



Key highlights of decree No. 71/2024/NĐ-CP detailing on land price

Income method: The content is regulated in Article 5 of Decree 71/2024/ND-CP as follows:

Survey and collect information about income from the land plot that needs to be valued, as well as information about the costs of the plot as follows:

- For non-agricultural land, survey and collect information from land leases and rental agreements during the following periods:
 - For 3 consecutive years (from January 1 to December 31) before the valuation date of the plot that needs valuation;
 - For 1 year before the valuation date of 3 plots of land that are closest to the plot that needs to be valued for comparison;
 - In the absence of specific data, information shall be collected from financial statements over a continuous period of 3 years or for 1 consecutive year from 3 land plots located closest to the land plot or area that requires valuation.
- For agricultural land, survey and collect information from agricultural land usage at statistical, tax, and rural development authorities as follows:
 - For annual crop land, aquaculture land, salt production land, and other agricultural land, information about actual income needs to be collected over a continuous period of 3 years prior to the valuation date.
 - For perennial crop land, information should be gathered from at least 3 consecutive harvests before the valuation date.
 - For production forest land, information must be collected over one exploitation cycle before the valuation date.
 - If there are no data available from statistical, tax, or agricultural authorities, it is necessary to collect information about typical actual income from 3 plots of land that are closest to the plot needing valuation.

Determine the average annual net income by subtracting the average costs from the average income.

Determine the value of the land use rights of the valued plot based on net income and average savings interest rate.

Determine the land price of the plot to be valued.

The value of land use rights calculated by this method is based on the average annual net income per unit area of land divided by the average savings interest rate of a 12-month term deposit in Vietnamese Dong at state-owned commercial banks.

Key highlights of decree No. 71/2024/ND-CP detailing on land price



Residual method: According to Article 6 of Decree 71/2024/ND-CP, the residual method calculates land value by subtracting total development costs from total estimated revenues based on the highest and best use approved in the land-use plan.

Land Price adjustment coefficient method: This method is used in cases where land already has a market price but needs to be adjusted according to fluctuations. The determination is carried out as follows:

Survey and collect information about the plots of land needing valuation, including the land prices for each location and area.

Determine the market land price for each location and area.

The land price adjustment coefficient is determined for each type of land, land position, and area by dividing the market land price by the land price in the land price table for that location and area.

The value of the plot that needs to be valued will equal the land price in the land price table for that plot multiplied by the land price adjustment coefficient.

Each method is detailed further, allowing for flexible application and accurate reflection of land value in each specific case. These methods not only help determine the value of land use rights accurately but also contribute to the effective construction, adjustment, amendment, and supplementation of land price tables. The diversity and detail in these methods reflect the flexibility and accuracy in adjusting land price tables, ensuring that real factors and market fluctuations are fully considered, helping to mitigate significant discrepancies between state land prices and market land prices.

Key highlights of decree No. 71/2024/ND-CP detailing on land price

2. Positive impacts of Decree 71

One of the prominent new points of Decree 71 is the application of the national land price database. This is a system for managing land price data nationwide, developed to support the valuation process, making it more transparent and accurate. Information about land prices will be publicly available, enabling stakeholders to easily look up and utilize it in transaction activities, compensation, and land use rights transfer. Utilizing this system will also help authorities grasp the market land value, thereby adjusting policies appropriately.

In this regard, Decree 71 establishes principles for determining land prices by the market. During the valuation process, authorities must take into account fluctuations in the land market as well as related economic and social factors. The aim of this regulation is to ensure that the state-issued land prices will closely align with actual market values, avoiding situations where land prices are too low or too high, which may cause public concern, especially in cases of compensation for land clearance.

The implementation of Decree 71/2024/ND-CP not only improves the land valuation process but also positively impacts the real estate market. When land prices are determined based on market prices, land transaction activities will be conducted in a more transparent and efficient manner. This will minimize land speculation and difficulties in compensation for land clearance. Additionally, applying the national land price database will enhance competition in the real estate market, thereby promoting the sustainable development of this sector.

Decree No. 71/2024/ND-CP represents a significant step forward in reforming the land valuation system in Vietnam. The new improvements in valuation methods, the application of the national database, and dispute resolution mechanisms not only ensure transparency and fairness but also create favorable conditions for participants in the real estate market. By strictly implementing these new regulations, Decree 71/2024/ND-CP is expected to contribute to enhancing land management efficiency and developing a sustainable real estate market in the future.

Comment on precedent no.11/2017/AL on recognition of the mortgage agreement on land use rights with property on the land not owned by the mortgagor

In business activities, it is not strange for enterprises and companies to borrow money from banks. This is a suitable option for enterprises to solve temporary financial problems. However, most loans at banks require collateral. In case the collateral is property owned by the guarantor, the handling of the property will be simpler. But in the event that part or all of the collaterals is not owned by the guarantor, how will the property be handled? The Court's opinion on this issue is expressed in Precedent No.11/2017/AL (adopted by the Council of Judges of the Supreme People's Court on December 14, 2017 and published under Decision No. 299/QĐ-CA dated December 28, 2017 of the Chief Justice of the Supreme People's Court).

I. Summary of precedent no.11/2017/AL

1. On June 16, 2008, Joint Stock Commercial Bank A ("Bank A") and B Company Limited ("**Company B**") signed Credit Contract No. 1702-LAV-200800142. Accordingly, Bank A lends Company B VND 10,000,000,000. Bank A has disbursed VND 3,066,191,933 to Company B.

The collateral for the above loan is the house and land at No. 432, Group 28, Ward E, District G, Hanoi City, owned and used by Mr. Tran Duyen H ("**Mr. H**") and Ms. Luu Thi Minh N ("**Mrs. N**") under the Contract of mortgage of land use rights and assets attached to the land dated June 11, 2008. This contract was notarized by the Notary Office 6 of Hanoi on June 11, 2008, and certified the secured transaction registration by the Department of Natural Resources and Environment of Hanoi on June 11, 2008.

As of October 5, 2011, Company B still owes principal and interest of VND 4,368,570,503.

2. On October 30, 2009, Bank A and Company B signed Credit Contract No. 1702-LAV-200900583. Accordingly, Bank A lends Company B USD 180,000. Bank A has fully disbursed USD 180,000.

The collateral for the above loan is a shipment of 19 finished product trucks with a tonnage of 1.75 tons, brand JMP new 100%, worth VND 2,778,750,000 of Company B under the Mortgage Contract No. 219/2009/EIBHBT -CC dated October 29, 2009 ("**Contract No. 219**"). This mortgage contract was registered for secured transactions at the Register of Secured Transactions in Hanoi on November 2, 2009.

At the first-instance court hearing, Bank A confirmed that Company B had fully paid off the principal debt and the remaining interest was USD 5,392.81; The collateral is 19 cars, 18 cars have been sold, only 01 car remains.

3. Since Company B did not pay all the principal and interest debts, Bank A sued Company B and requested the Court to:

Force Company B to pay the principal and interest of the Credit Contract No. 1702-LAV-200800142 which is VND 4,368,570,503; and

Force Company B to pay USD 5,392.81 of the interest debt of Credit Contract No. 1702-LAV-200900583.

Comment on precedent no.11/2017/AL on recognition of the mortgage agreement on land use rights with property on the land not owned by the mortgagor

If company B fails to pay or fails to pay in full, Bank A proposes to sell the collateral as:

House ownership and residential land use rights at No. 432, Group 28, Ward E, District G, Hanoi City are owned and used by Mr. H and Mrs. N ("House and Land No. 432");

01 finished product truck under the Mortgage Contract No. 219/2009/EIBHBT-CC.

4. At the first-instance court hearing, the parties had the following opinions:

The defendant, Company B acknowledges the amount of principal, interest and collateral, but requests the Bank to allow the debt to be repaid in installments.

Persons with related interests and obligations, Mr. H and Ms. N, admitted signing the House and Land No. 432 to secure a maximum loan of VND 3,000,000,000 from Company B. Mr. H and Ms. N request the Bank to extend the debt of Company B to arrange repayment for the Bank.

The person with related rights and obligations is Mr. Tran Luu H2 ("Mr. H2") on behalf of the children and grandchildren of Mr. H and Mrs. N living at home, land number 432 presented at the end of 2010, he just knows that his parents (Mr. H and Mrs. N) mortgage the family's house to secure a loan from Company B. On the land that Mr. H and Mrs. N mortgage, there is a 3.5-storey house. which Mr. H2 and Mr. Tran Minh H paid to build in 2000, currently 16 people are living in. When signing the mortgage contract, the Bank did not consult with you and the people living in this house and land. Therefore, Mr. H2 asked the Court not to recognize the mortgage contract.



Comment on precedent no.11/2017/AL on recognition of the mortgage agreement on land use rights with property on the land not owned by the mortgagor

5. In the first-instance business and commercial judgment No. 59/2013/KDTM-ST dated September 24, 2013 ("First instance judgment"), the Hanoi People's Court ("HN Court") decided:

Accepting the petition of Bank A:

- Forcing Company B to pay Bank A the outstanding amount of Credit Contract No. 1702-LAV-200800142 including principal, overdue interest, overdue interest, and late payment penalty interest with a total amount of 6,054.407,123 VND;
- Forcing Company B to pay Bank A the outstanding amount of Credit Contract No. 1702-LAV-200900583 which is USD 5,392.81

In the event that Company B fails to pay the debt or fails to pay the outstanding amount of Credit Contract No. 1702-LAV-200800142, Bank A has the right to request the Civil Judgment Enforcement Department (CJED) of Hanoi city to handle the collateral which is House and Land No. 432 and the asset is a JMP truck with a tonnage of 1.75 tons assembled by Company B under Contract No. 219

6. After the first-instance trial, the defendant and people with related interests and obligations all filed an appeal against the first-instance judgment.

7. At the Appellate Commercial and Business Judgment No. 111/2014/KDTM-PT dated 7/7/2014 ("Appellate Judgment"), the Supreme People's Court in Hanoi ("Supreme Court") decision:

Uphold the decision of the first instance judgment on the loans and money that Company B must pay to Bank A

Cancel the third party's decision on mortgage of land use rights and properties attached to land

Hand over the case dossier to the Hanoi Court to determine the part of the legal property owned by Mr. H and Mrs. N as security collateral for Company B.

8. After the appellate trial, Bank A and Hanoi Court made a written request to review the appellate judgment according to cassation procedures.

9. At the cassation appeal, the Chief Justice of the Supreme People's Court appealed against the appellate business and commercial judgment of the Court of Appeal of the Supreme People's Court in Hanoi. Proposing the Judicial Council of the Supreme People's Court to annul the appellate business and commercial judgment of the Court of Appeal of the Supreme People's Court in Hanoi and the first-instance business and commercial judgment of the People's Court of Hanoi City, hand over the case dossier to the People's Court of Hanoi for re-trial in accordance with law.

Comment on precedent no.11/2017/AL on recognition of the mortgage agreement on land use rights with property on the land not owned by the mortgagor

II. Comment of precedent no.11/2017/AL

Based on the summary precedent no.11/2017/AL, TNTP has a few comments as follows:

a) Conditions for a contract to mortgage land use rights

When mortgaging land use rights and/or assets attached to land, there are 03 cases as follows: (i) Mortgage of both land use rights and assets attached to land; (ii) Mortgage of land use rights but not mortgaged land-attached assets; (iii) Mortgage of assets attached to land but not mortgage of land use rights.

b) Mortgage of both land use rights and properties attached to the land

In case the mortgagor secures the property as both land use rights and assets attached to the land, in addition to the conditions for the transaction to be valid as prescribed in Article 117 of the Civil Code 2015, only the land use right is required. and assets attached to the land are owned by the mortgagor, the contract of mortgage of the property shall be legally valid.

Above is a comment on Precedent no.11/2017/AL of TNTP. Hopefully this article is useful to help enterprises limit the risks in drafting and resolving Contract disputes.

Sincerely,



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