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**PROPOSALS TO AMEND THE LAW ON LAND PRICES IN
VIETNAM TODAY**

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Abstract

In this article we focus on the analysis of the current legal provisions on land prices in Vietnam, including the main content on the principles of pricing, pricing methods, the range of land prices, price tables and specific land prices. This study uses analytical, interpretative and statistical methods to clarify the content of the current legal provisions on land prices in Vietnam and their practical implementation. In general, the state has tried to establish land prices in line with market trends according to the Land Law of 2013. At the same time, land prices issued by the state could not develop in parallel with market changes. As a result, prices are indicated in the price list issued by the government and the provincial people's committee with fixed land prices far below market prices. Low land prices have the following undesirable consequences: first, the loss of government revenue; second, it is impossible to capitalize agricultural land and not to contribute to the development of the agricultural land use rights market; third, it is impossible to initiate complex and facilitate illegal actions such as bribery and corruption. This has led to a negative impact on the stability and socio-economic development of the state budget revenues, land capitalization and corruption, and complex complaints. We have identified shortcomings and problems with the current legal provisions on land prices and proposed some changes to facilitate the establishment of prices issued by the state according to the market price.

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1. Introduction

According to the provisions of the 2013 Constitution and the 2013 Land Law, land in Vietnam belongs to the people. Under this ownership regime, the State acts as a representative of the owner of all land. One of the rights and obligations of the owner is to assess the land. In addition to the land prices issued by the State, there is also a market price for land formed by individuals and organizations negotiating with each other in land use transactions such as transfer of land use rights, contribution to the capital in the form of land use rights, etc. The state determines the value of land on the basis of the following legal provisions:

1.1. Firstly, the principles and methods of land valuation

For land valuation principles under section 112 (1) of the Land Law 2013:

Firstly, land valuation is carried out according to the legal purpose of land use. This is a new principle established in the Land Act 2013 to ensure that the types of land are correctly assessed under section 10 of the Land Act 2013 and that they are consistent with the purpose of the land use, avoiding cases of arbitrary change in the purpose of land use in order to increase land prices (e.g. arbitrary change of agricultural land to non-agricultural land).

Secondly, land valuation takes place according to the duration of the land use. It is also a new principle established in the Land Act 2013 to determine the value of land in accordance with the types of land with long and defined terms of use. In particular, for land types with a land use term, the land use term for the assessment is the remaining land use term.

Thirdly, land valuation is consistent with the prevailing market price for land types of the same purpose of use for which the right to use land has been transferred, the auction price for the sale of the right to use land within the framework of this type of auction or income from land use to ensure that the difference between the prices of the land plots being valued and the market price of land is small.

At the same time, adjacent land plots for the same purpose of use, profitability and income from land use have the same price level to ensure that land valuation takes place evenly and fairly.

With regard to land valuation methods, in accordance with Articles 4 and 5 of the SRV Government Resolution No. 44/2014/ND-CP of 15 May 2014 on land price (BTNMT, 2014), land valuation methods include:

Firstly, the method of direct comparison is a method of land valuation based on the analysis of prices for land plots similar in such characteristics as purpose of use, location, profitability, condition of infrastructure, area, form, legality of the transferred land use right in the market and winning the land use right auctions for the purpose of comparing and determining the price of the land plot to be evaluated. This method is used for land valuation when there are comparable land plots on the market, the right of use of which has been transferred and which have won at the land use right auction.

Secondly, the depreciation method, being the method of land plot valuation with assets attached to land, by excluding the value of assets attached to land from the total value of real estate (including the value of land and the value of assets attached to land). This method is used to estimate a plot of land with assets attached to the land when there is sufficient information on the prices of real estate (including land

and assets attached to the land), as well as to estimate a plot of land, the right of use of which has been transferred to the market and which won at auctions for the sale of land use rights.

Thirdly, the income method is a method of land valuation calculated using a coefficient between the average annual net income per unit of land area compared to the average annual savings rate until the land is valued at 12-month GNI deposits with the highest savings rates in the province. This method is used to estimate the land from which income and expenditure can be derived.

Fourthly, the Residual Method is a method of estimating land plots with development potential for land use planning, construction, or the possibility of changing the purpose of land use for better land use by excluding the estimated total value from the estimated total income from real estate development. This method is used to estimate a land plot with development potential due to changes in planning or land use purpose, while total estimated development income and total estimated expenditure are determined.

In the information-based assessment process, conditions exist for applying land valuation techniques to select the appropriate method. If necessary, a combination of direct comparison, depreciation, income, and residuals methods can be used to check, compare, and determine land prices.

The method of land price adjustment is a method of land valuation using land prices and a land price adjustment factor in the land price list issued by the provincial People's Committee. In accordance with Article 3 of Government Decision No. 01/2017 / ND-CP of January 6, 2017 on amendments and additions to a number of Decrees detailing the implementation of the Land Law, this method is applied in cases where land users fulfil such financial obligations to the State as: calculation of land use fees in the event that the State allocates land with the collection of land use fees without bidding; with the recognition of land use rights, with permission to change the purpose of land use for the organization.

1.2. Second, the range of land prices

According to Article 113 of the Land Law of 2013, the range of land prices is introduced by the Government every 5 years for each type of land by region. During the implementation of the land price range, if the total market price of land increases by 20 % or more or decreases by 20 % or more compared to the minimum price in the range of land prices, the Government shall adjust the range accordingly.

1.3. Thirdly, the land price list and specific land prices

First of all, the price list for the ground:

According to article 114, paragraph 1, of the Land Law of 2013, the Provincial People's Committees are required to establish a land price list and submit it to the same level of People's Councils for approval prior to its promulgation, based on the principles and methods for evaluating land prices and the range of land prices. The land price list is prepared every 5 years and is published on 1 January of the first year. During the preparation of the land price list, when the Government adjusts the range of land prices and the total price of land in the fluctuating market, the Provincial People's Committees adjust the land price list accordingly. The land price list is used as the basis for the following cases: calculation of land use fees when the State recognises the right of use of household or privately owned residential land for the areas within the limit; permission to change land use purposes from residential (agricultural or non-agricultural land) to non-residential real estate for the areas within the limit of allocation of

residential land to households and individuals; calculation of fees and other land use charges; calculation of fees and charges for the management of the area; calculation of fees and charges for the management of the area for the area of land us (Luan, 2018).

Secondly, specific land prices

According to section 114, paragraph 3, of the Land Law 2013, the Provincial People's Committee is the body that determines the specific prices of land. Provincial land administration bodies are responsible for supporting the Provincial People's Committee in setting specific land prices. Specific land prices are to be used as the basis in the following cases: calculation of land use fees when the State recognizes the right of households or individuals to use residential land for areas exceeding the limit; permission to change land use purposes from residential (agricultural or non-agricultural land) to non-residential real estate for areas exceeding the limit of allocation of residential land to households and individuals, ...

1.4. Fourthly, consultation on land price estimation

Land price consultation is a step forward for the Land Law of 2013 compared to previous Land Laws, with the aim of ensuring that specific land prices can be determined more objectively and in line with market prices for land. Land price consultation is applied in a number of cases such as (1) developing and adjusting the range of land prices; developing and adjusting the land price list and determining specific land prices at the request of the competent state authorities; (2) resolving a land price complaint at the request of the competent state authorities, the relevant parties; (3) entering into civil transactions related to specific land prices at the request of the relevant parties.

2. Problem Statement

In general, the State has tried to establish land prices in accordance with market prices for land under the Land Law of 2013. However, land prices issued by the State could not keep pace with market changes. As a result, land prices are specified in the government's land price range, in the price list of land prices issued by the Provincial People's Committee, and in specific land prices far below market prices. According to the General Directorate of Land Management of the Ministry of Natural Resources and Environment, "The national land price range is only about 20 % of the market price. Similarly, the provincial land price range is only 30 to 60 % of the local market land price" (Ministry of Planning and Investment, 2018). Low land prices lead to the following undesirable consequences

First, the loss of government revenue.

Second, it is impossible to capitalize agricultural land and not to contribute to the development of the agricultural land use rights market.

Third, the initiation of a complex and prolonged complaint status and the facilitation of negative actions such as bribery and corruption.

3. Research Questions

1. How are land prices determined in accordance with current Vietnamese legislation?

2. Have land prices been determined as realistic?
3. For what reasons have land prices not been determined according to reality?
4. What content of the current legislation needs to be changed and supplemented in order to determine land prices in line with reality?

4. Purpose of the Study

The objectives of the study are

Analysis and clarification of land prices in accordance with the current legal provisions of the Vietnamese legislation.

The conclusion on land prices issued by the State does not correspond to the market price of land and their negative impact on stability and socio-economic development in Vietnam today.

Indication of the reasons why the current legal provisions on land prices have not yet achieved their objectives and have not been amended or supplemented in order to eliminate the shortcomings of the current legal provisions on land prices (Le DucThinh, 2017).

5. Research Methods

This study uses analytical, interpretative and statistical methods to clarify the content of current legal provisions on land prices in Vietnam and their practical implementation.

6. Findings

To address reality, current Vietnamese legislation should be amended and supplemented with the following land prices:

Firstly, a change in the provision on the principles of land valuation on the "common market price of land".

Although Article 3, paragraph 3 of the Government Resolution No. 44/2014/ ND-CP of 15 May 2014 on land prices provides that the total market price of land is the most common price level in transactions with land where the right to use land has been transferred to the market (ND-CP, 2014), in the results of an auction for the sale of land use rights or in the determination of land prices based on the costs and revenues of land plots with the same purpose of using the same region for a certain period of time. However, determining the overall market price of land is considered to be too complicated, because based on the most common land price level of transactions with land where the right to use land has been transferred to the market (this is the most common basis), this particular price will not correspond to the actual land price. The main reason is that the current legislation on personal income tax for real estate transfer is defined as follows: personal income tax = transfer price x 2 % tax rate. The transfer price is the price specified in the transfer agreement at the time of transfer. At the same time, the difference between the actual prices of land transferred by the parties and the land prices set by the Provincial People's Committee at the time of transfer is extremely large. This has resulted in the transferors often setting transfer prices, which are much lower than the actual prices in order to avoid tax liabilities.

Secondly, amending the provisions of land valuation methods.

For the direct comparison method, according to the provisions of Article 3, paragraph 1 of the Circular No. 36/2014/TT-BTNMT of the Ministry of Natural Resources and Environment of June 30, 2014, the survey and collection of information on at least 03 land plots with characteristics similar to those of the land plots being evaluated can facilitate the evaluation based on a small number of land plots even in settlements with underdeveloped real estate market. However, in areas with an active real estate market, such as Hanoi, Ho Chi Minh City, Danang, the number of transactions to choose from is too small. This indicates a contradiction with the principle of "in accordance with the overall market price of land" and will make it impossible to determine the actual land prices. Therefore, it is necessary to change this situation in settlements with an active real estate market. In particular, the number of land plots in these localities should be higher than in localities with underdeveloped real estate market. Meanwhile, in settlements with underdeveloped real estate market it is necessary to conduct survey and collect information on at least 5 land plots (Vietnam Government, 2013).

For the method of land price adjustment, the inadequacy of the definition of the "total market price of land", as analysed above, makes the K coefficient, which is always lower than the market price of land. It is worth noting that according to the current legal provisions, in cases of changing the purpose of land use, no auction is held, but an assessment is made to collect land use fees. The use of this method to collect land use fees will result in huge losses of the state budget. Moreover, according to the current legal regulations, the use of state assets is the use of the land fund (mainly derived from the acquisition of agricultural land) for payment to investors in the implementation of construction investment projects under the "construction – transfer" (JV) agreement. The value of the paid land fund, being a land use fee or a land lease fee paid only once for the entire lease term, is determined by the land valuation. Also, the method of land price adjustment coefficient is mainly applied in order to assist investors in using the advantages of the JV project for profit. As a result, the state budget suffered heavy losses, as shown in the statistics: "For localities in the period 2016–2020, the state budget has suffered a large amount of losses, as shown in the statistics: "For localities in the period 2016–2020. 18/63 localities registered a portfolio of PPP "public-private partnership" projects with a total of 598 projects, etc. The proposal still applies JV "construction – transfer" (256 projects), JV "construction – operation – transfer" (87 projects), JV "construction – lease – transfer" (6 projects), JV "construction – possession – operation" (1 project), JV "construction – transfer – operation" (11 projects), etc. (Ministry of Planning and Investment, 2018).

Thirdly, changes in the land price range.

Although the 2013 Land Law provides flexibly that the Government will have to adjust the land price range accordingly when the total market price of land increases by 20 % or more from the maximum price or decreases by 20 % or more from the minimum price in the five-year periodic price range of land. However, from July 1, 2014, when the Land Law 2013 entered into force until now, the Government has released only the 01 range of land prices in Decree No. 104/ND-CP of November 14, 2014, while real land prices have always fluctuated significantly in recent years in provinces and cities. Therefore, the Land Law 2013 needs to be revised in the direction of empowering the Provincial People's Committee to develop and adjust the range of land prices in line with local land price fluctuations.

Fourthly, amending the provisions of the land price consultation.

Paragraph 1a of Article 115 of the Land Law of 2013 states that "When developing and adjusting the range of land prices, it is necessary to draw up and adjust the price list for land and specific prices for land at the request of the competent state authorities. With this provision, the competent state authorities may or may not choose to consult on the determination of land prices as they wish. In addition, the development and adjustment of a range of land prices, a price list of land prices and the determination of specific land prices are particularly important for the formulation of land prices that apply in cases where the law provides for them. Therefore, in order to facilitate the determination of land prices objectively and accordingly, consultation on land price determination is required as a mandatory provision in this case. Furthermore, in accordance with Article 19, paragraph 1, of the Government Resolution No. 44/2014/ND-CP of 15 May 2014 on land prices, the organisations act as consultants on land prices in the provision of advisory services: "Strictly observe the principles, methods of land valuation, procedure and content in developing the range of land prices, price list and specific land prices. This leads to the fact that despite the independent and objective implementation of land price determination, it is not possible to determine land prices that are realistic due to the limitations of current land valuation principles and methods. Therefore, on the one hand, it is necessary to supplement the existing legal provisions on principles and methods, and on the other hand, to conduct research in order to allow organizations with an advisory function to determine land prices for land valuation in accordance with individual principles and methods based on ensuring science and compliance with the market price of land.

7. Conclusion

The provisions on land prices are particularly important and specific content of Vietnamese legislation in relation to the maintenance of land ownership by all people. Determining the prices of land issued by the State in accordance with the market price of land is the goal sought by the current legal provisions. However, this has not yet been achieved due to numerous shortcomings of the legal provisions, which need to be urgently amended and supplemented in the near future. And only when the land prices issued by the State are in line with the market price of land will the stability and socio-economic development in Vietnam be ensured.

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