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Law Monitoring: Amendments to “China’s Land Management Law”, 2019



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I General introduction

The Standing Committee of the 13th National People's Congress of the PRC has passed the draft amendment to the "Land Management Law of China" (the third iteration of the draft) in their 12th meeting on August 26, 2019, which will be effective by Jan 1st, 2020. The law was passed in 1986 and has now been amended four times in 1988, 1998, 2004, and now 2019. This time, there has been 35 changes and amendments, made into the 2004 version of the law.

II Main highlights

1. *Changes in the definition of farmland:* "basic farmland" in the previous version was amended to "permanent basic farmland", which might reflect China's desire to keep the current level of cropland from further exploitation. "Land administration department" changed into "Natural resource administration department", which has been made due to administrative changes in the Chinese government's bureaucracy.

2. *Changes in the contract period:* In the newly established article 13, "The contract period for household contracted farmland is 30 years, the contract period for grassland is 30 to 50 years, the contract period for forest land is 30 to 70 years, and the period for contracting farmland is extended for another 30 years. After the expiration of the grassland and forest land contract period, it shall be extended accordingly".

3. *Regulations of land conversion:* Article 34, 35, 44, 55 outlines strict protection measures against land conversion of permanent basic farmland into urban & industrial construction land, which might reflect China's determination to control farmland conversion and to ensure food security. Article 33 explicitly states that at least 80% of farmland should be reserved for permanent basic farmland in each administrative region.

4. *Compensation for land conversion:* Article 46, 47, 48 and 55 would provide new rules and a legal basis for the compensation of conversion of permanent basic farmland into other commercially developed land (for non-agricultural purposes) for farmers, which has been a pressing social issue addressed for some time. These new regulations will fill gaps in China's legal system and would alleviate societal tensions. Article 55 states that 30% of the compensation for land conversion should come from the central government and 70% should come from the respective local governments.

5. *Changes in authority:* The newly established natural resource administration will have the authority regarding land management issues, that were previously carried out by the land administration (which is now a dismantled administration).

III Detailed summary and translation of the amendments

This summary is developed from the official document, which is provided by the Ministry of Natural Resources of the People's Republic of China.

1. **Article 6**, a new article shall be added, as "Institutions authorized by the State Council shall inspect the land use and land management situation of the people's governments of provinces, autonomous regions, and municipalities, directly under the Central Government, as determined by the State Council".

2. Article 11, 12 and 13 shall be merged into **Article 12**, "The registration of the ownership and use rights of land shall be carried out in accordance with the laws and administrative regulations concerning the registration of immovable property. The ownership and use rights of land registered according to the law are protected by the law and no unit or individual may infringe upon it."

3. Article 14 and 15 shall be merged into **Article 13**, "The farmer collective ownership and the arable land, forest land, grassland and other land used by the farmers according to the law shall be contracted by the household responsibility contracting (Chengbao) method within the rural collective economic organization, and this shall not be adopted in the barren hills, barren valleys and wasteland, and these can be contracted by means of bidding, auction, public consultation, etc., for crop plantation, forestry, animal husbandry and fishery. The contract period for household contracted farmland is 30 years, the contract period for grassland is 30 to 50 years, the contract period for forest land is 30 to 70 years, and the period for contracting farmland is extended for another 30 years. After the expiration of the grassland and forestland contract period, it shall be extended accordingly".

"All land used by the state for agriculture can be contracted and operated by units or individuals and engaged in crop production, forestry, animal husbandry, and fishery production."

"The contract provider and the contractor shall conclude a contract in accordance with the law and stipulate the rights and obligations of both parties. The units and individuals contracting the land shall have the obligation to protect and rational use the land in accordance with the purposes agreed in the contract."

4. Article 19 shall be changed to **article 17** and amended as follows: "The overall land use plans shall be prepared in accordance with the following principles:

- (1) Implementing the requirements for the development and protection of land and space, and strictly controlling land use;
- (2) Strictly protect permanent basic farmland and strictly control the occupation of agricultural land by non-agricultural construction;
- (3) Improve the level of land conservation and intensive use;
- (4) Coordinating the urban and rural production, living and ecological land use, meeting the reasonable needs of rural industrial and infrastructure land, and promoting the integration of urban and rural development;

(5) Protecting and improving the ecological environment and ensuring the sustainable use of land;

(6) The amount of cultivated land occupied, and the amount of cultivated land reclaimed is balanced with quality”.

5. **Article 18** shall be amended to read as follows: “The State establishes a land and space planning system. The preparation of land and space planning should adhere to ecological priority, green and sustainable development, scientifically and orderly arrange ecological, agricultural, urban and other functional spaces, optimize the spatial structure and layout of the national land, and enhance the development and protection of the national space, quality and efficiency.”

“The land space planning approved by law is the basis for all types of development, protection and construction activities. If land space planning has already been conducted, the overall land use planning and urban and rural planning shall not be enacted again.”

6. Article 24 shall be changed into **article 23**. The second clause reads “The annual land use plan is prepared according to the national economic and social development plan, the national industrial policy, the overall land use plan, and the actual conditions of construction land and land use. The annual plan for land use should be collectively managed under Article 63 of this law and reasonable arrangements shall be made for the construction land. The procedures for the preparation and approval of the annual plan for land use are the same as the procedures for the preparation and approval of the overall land use plan. Once approved, they must be strictly implemented.”

7. Article 29 shall be changed into **article 28**, the second and third clause shall be amended to read as follows: “Statistical agencies and natural resources departments of the people's governments at or above the county level shall conduct land surveys according to law and regularly publish land statistics. The landowners or users shall provide relevant materials, may not refuse to report or delay reporting, and shall not provide untrue or incomplete information.”

“Statistical information on land area jointly issued by statistical agencies and natural resources authorities is the basis for the compilation of overall land use planning by the people’s governments at all levels.”

8. Article 33 shall be changed into **article 32**, amended as follows: “The people's governments of provinces, autonomous regions and municipalities directly under the Central Government shall strictly implement the overall plan for land use and the annual plan for land use, and take measures to ensure that the total amount of cultivated land in the administrative region and its quality is not reduced.

If the total amount of cultivated land is reduced, the State Council shall order, the cultivated land with the same quantity and quality should be cultivated within the time limit; if the quality of cultivated land is reduced, the State Council shall order the organization of rectification within the prescribed time limit. The cultivated land, newly

reclaimed and rectified, shall be examined and accepted by the competent Department of Natural Resources of the State Council in conjunction with the competent agricultural and rural authorities”.

"In some provinces and municipalities, directly under the Central Government, due to lack of land reserve resources, after the newly built construction land, the number of newly cultivated land is insufficient to compensate the amount of occupied cultivated lands. This must be reported to the State Council for approval of exemption in reducing the cultivated land in the administrative area and opening up of farmland with the same quantity and quality."

9. The first and second clause of article 34 shall be changed into **article 33** and amended as follows: “The state implements a permanent basic farmland protection system. The following cultivated land should be classified as permanent basic farmland according to the overall land use plan, and strict protection should be implemented:

(1) Cultivated land in the production basis of important agricultural products such as grain, cotton, oil and sugar, approved by the competent agricultural and rural departments of the State Council or the local people's governments at or above the county level;

(2) Cultivated land with good water conservancy and soil and water conservation facilities, and implementation of improvement plans and transformable medium and low-yield fields and already built high-standard farmland;

(3) Vegetable production base;

(4) Agricultural research and teaching experimental fields;

(5) Other cultivated land, that the State Council stipulates, should be classified as permanent basic farmland.”

“Permanent basic farmland delineated by provinces, autonomous regions and municipalities directly under the Central Government shall generally account for more than 80% of the cultivated land within the administrative region. The specific proportion shall be stipulated by the State Council according to the actual conditions of cultivated land in each province, autonomous region or municipality, directly under the Central Government.”

10. Third clause of article 34 shall be changed into **article 34** and amended as follows:

“Permanent basic farmland demarcation shall be carried out in units of townships (towns), and shall be organized and implemented by the competent Department of Natural Resources of the people's government (county-level) in conjunction with the competent agricultural and rural administrative departments at the same level. Permanent farmland shall be implemented in the land parcels and incorporated into the national permanent basic farmland database and should be strictly managed.

The township (town) people's government shall publicize the location and scope of permanent basic farmland to the public and establish a protection mark."

11. A new **article 35** shall be added as follows: ""After the permanent basic farmland has been demarcated according to law, no unit or individual may occupy or change its use

without authorization. In the case of the selection of key construction projects such as national energy, transportation, water conservancy and military facilities is indeed difficult to avoid permanent basic farmland, involving the conversion of agricultural land or land acquisition. This must be approved by the State Council.”

“It is forbidden to evade the approval of permanent basic farmland conversion or land acquisition by arbitrarily adjusting the county-level land use master plan and township (town) land use master plan.”

12. Article 35 shall be changed into **article 36**, amended as follows: "People's governments at all levels shall take measures to guide the rotation of fallows according to local conditions, improve soil, improve soil fertility, maintain irrigation and drainage facilities, and prevent land desertification, salinization, soil erosion and soil pollution."

13. Article 37 shall be changed into **article 38**, the third clause shall be deleted.

14. Article 43 shall be deleted.

15. The second, third and fourth clause of **article 44** shall be amended as follows: “If permanent farmland is converted to construction land, it shall be approved by the State Council.

"In the scope of the construction scale of cities, villages and towns, determined by the overall land use planning plan, if the agricultural land other than permanent basic farmland is converted into construction land for the implementation of the plan, the annual plan for land use shall be divided into batches according to the regulations of the State Council. The original approval of the general plan for land use or its authorized authority shall be approved. Within the scope of the approved conversion of agricultural land, the land for the specific construction project may be approved by the municipal and county people's governments.

"After the scale of urban and village construction and land use determined by the overall land use planning plan, the conversion of agricultural land other than permanent basic farmland into construction land shall be approved by the State Council or the people's government of the province, autonomous region or municipality directly under the Central Government authorized by the State Council."

16. New **article 45** shall be added: “In order to meet the needs of the public interest, one of the following circumstances may require the collection of land, collectively owned by the peasants.

(1) Land for military and diplomatic needs;

(2) Land required for the construction of infrastructure such as energy, transportation, water conservancy, communications, postal services, etc., which is organized by the government;

(3) Land needed for public utilities such as science and technology, education, culture, health, sports, ecological environment and resource protection, disaster prevention and

mitigation, cultural relics protection, community comprehensive services, social welfare, municipal public welfare, special care and placement, and heroic protection;

(4) The need for land for poverty alleviation and relocation and construction of affordable housing projects implemented by the government;

(5) Land use required within the scope of urban construction and development, land determined by the overall land use planning, the land development and construction organized by the local people's government at or above the county level, approved by the people's government at or above the provincial level;

(6) The law stipulates, that other circumstances in which the collectively owned land of the peasants can be levied are required for the public interest.

The construction activities stipulated in the preceding paragraph shall be in line with the national economic and social development plan, the overall land use plan, the urban and rural plan and the special plan; the construction activities stipulated in items (4) and (5) shall also be incorporated into the national economy and the annual plan for social development; the incorporation as stipulated in item (5) shall comply with the standards, set by the competent department of natural resources under the State Council."

17. Article 45 shall be changed into **article 46**, and "report to the State Council for filing" shall be deleted.

18. Article 46 and 48 shall be merged into **article 47** and amended as follows: "After the state levies land, it shall be announced and organized by the local people's government at or above the county level after approval according to legal procedures.

"If the local people's government at or above the county level intends to apply for land acquisition, it shall carry out the investigation of the current situation of the proposed land acquisition and the social stability risk assessment, and levy the land in the proposed land acquisition scope, land status, collection purpose, compensation standard, resettlement method and social security. Announced within the scope of the township (town) and villages and villagers' groups for at least 30 days to listen to the opinions of the rural collective economic organizations and their members, villagers' committees and other interested parties.

"In the case of multiple members of the rural collective economic organizations whose land has been requisitioned, believe that the compensation and resettlement plan for land acquisition does not comply with the provisions of laws and regulations, the local people's governments at or above the county level shall organize hearings and revise the plan according to the provisions of laws and regulations and the circumstances of the hearings.

The owner and user of the land to be expropriated shall handle the compensation registration within the time limit stipulated in the announcement, and the local people's government at or above the county level shall organize the relevant departments to calculate and implement the relevant expenses to ensure that the full amount is in place. The owner and the right holder of the proposed land will sign an agreement on

compensation and resettlement; if it is very difficult for an individual to reach an agreement, it shall be truthfully stated when applying for land acquisition.

"After the relevant preliminary work is completed, the local people's government at or above the county level may apply for land acquisition."

19. Article 47 shall be changed into **article 48**, amended as follows: "The land acquisition shall be given a fair and reasonable compensation to ensure that the original living standards of the land-expropriated farmers are not reduced, and the long-term livelihood is guaranteed."

"The land acquisition shall pay land compensation fees, resettlement subsidies, compensation fees for rural villagers' houses, other ground attachments and young crops in full and on time and arrange social security expenses for the land-expropriated farmers."

"The standards for land compensation fees and resettlement subsidies for agricultural land acquisition shall be determined by the provinces, autonomous regions and municipalities, directly under the Central Government through the formulation and publication of comprehensive land prices. The comprehensive land price for the development of the zone shall take into account the original land use, land resource conditions, land output value, soil location. Factors such as land supply and demand, population and economic and social development levels are adjusted or re-announced at least every three years.

"Compensation standards for land, ground attachments and young crops other than agricultural land shall be formulated by the province, autonomous region or municipality, directly under the Central Government. The rural villagers' houses shall be respected in accordance with the principle of first compensation, relocation and improvement of living conditions and they shall be provided fair and reasonable compensation for resettlement of house sites, provision of resettlement houses or monetary compensation, compensation for relocation and temporary resettlement caused by expropriation, and protection of the rights of rural villagers and legal housing property rights.

The local people's government at or above the county level shall include the land-expropriated farmers in the corresponding social security system such as retirement pensions. The social security expenses of the land-expropriated farmers are mainly used for subsidies for social insurance contributions such as endowment insurance for eligible land-expropriated farmers. The methods for raising, managing and using the guarantee fees shall be formulated by the provinces, autonomous regions and municipalities directly under the Central Government."

20. The second clause of **article 55** shall be amended as follows: "From the date of the implementation of this law, the land compensation for new construction land will be paid ,30% will be turned over to the central government and 70% will be reserved for the local people's government. The specific use management measures will be coordinated by the financial department of the State Council. The department has formulated it and submitted it to the State Council for approval."

21. **Article 58** shall be amended as follows: "In any of the following circumstances, the state-owned land use right may be recovered by the people's government of the relevant people's government's natural resources competent authority, by reporting the original approved land to the people's government with the approval right:

(1) For the implementation of urban planning for the reconstruction of old urban areas and other public interest needs it is necessary to use the land;

(2) The term of use agreed upon in the paid use contract (for example land transfer) expires and the land user has not applied for renewal, or the application for renewal has not been approved;

(3) Cessation of the use of the originally allocated state-owned land due to reasons such as the cancellation or relocation of the unit;

(4) Highways, railways, airports, mines, etc. have been approved for scrapping or dismantling.

"If the state-owned land use right is recovered in accordance with the provisions of Item (1) of the preceding paragraph, the land use right holder shall be given appropriate compensation."

22. The second, third and fourth clause of **article 62** shall be amended as follows: "If the basis of per capita land is small, and is unable to ensure housing, the county-level people's government can take measures to ensure that rural villagers can achieve housing in accordance with the standards set by the provinces, autonomous regions, and municipalities directly under the central government.

"Rural villagers should build houses in accordance with the township (town) overall land use planning and village planning, and should not occupy permanent basic farmland, and try to use the original house site and the idle land in the village. The township (town) land use master plan and village master plan shall be coordinated and rationally arrange land for homesteads and improve the living environment and conditions of rural villagers.

"The land for rural villagers' houses shall be examined and approved by the township (town) people's government; where the occupation of agricultural land is involved, the examination and approval procedures shall be carried out in accordance with the provisions of Article 44 of this law.

"If rural villagers sell, rent or donate their homes, they will not be approved if they apply for a homestead."

"The rural villagers are allowed to voluntarily vacate their homestead and to change their residence into cities in accordance with the law and encourage rural collective economic organizations and their members to revitalize the use of vacated homesteads and homes."

"The competent agricultural and rural administrative department of the State Council is responsible for the reform and management of rural housing sites in the country."

23. **Article 63** shall be amended as follows: "The land use master plan, urban and rural planning is determined to be industrial, commercial and other operational purposes,

shall be registered as collectively operating construction land according to the law, the land owner can be handed over by way of transfer, lease, etc. The unit or individual shall use it and shall sign a written contract stating the land boundary, area, time limit for commencement of use, period of use, land use, planning conditions and other rights and obligations of both parties."

"The transfer or lease of collectively-operated construction land stipulated in the preceding paragraph shall be subject to the approval of more than two-thirds of the members of the villagers' collective or more than two-thirds of the village representatives."

"The right to use collectively-operated construction land acquired through transfer, etc. may be transferred, exchanged, funded, donated or mortgaged, but otherwise stipulated by laws and administrative regulations or written contracts signed by landowners and land-use holders."

"The lease of collectively-operated construction land, the transfer of the right to use collective construction land and its maximum years, transfer, exchange, capital contribution, donation, mortgage, etc., shall be implemented with reference to the state-owned construction land of the same type. The specific measures shall be formulated by the State Council."

24. A new **article 64** shall be added as follows: "Users of collective construction land should use the land strictly according to the purposes determined by the overall land use planning and urban and rural planning."

25. Article 65 shall be changed into **article 66**. The following new third clause should be added: "The right to use the collectively-operated construction land shall be recovered in accordance with the written contract signed by both parties, except if otherwise provided by laws and administrative regulations."

26. Article 66 shall be changed into **article 67**. The following new second clause should be added: "The competent agricultural and rural administrative departments of the people's governments at or above the county level shall supervise and inspect the violations of the laws and regulations governing rural housing sites, and the provisions of this Law on the supervision and inspection of the competent departments of natural resources shall apply."

27. Article 70 shall be changed into **article 71** as follows: "If the competent department of natural resources of the people's government at or above the county level finds illegal acts of state functionaries in the supervision and inspection work, it shall be given disciplinary action according to the law, and shall be dealt with according to the law; if it has no right to handle it, it shall be transferred to the supervisory organ or relevant authorities for handling according to the law. "

28. Article 74 shall be changed into **article 75** in which “land administrative department” shall be amended to “the competent department of natural resources, the competent agricultural and forestry departments, etc. according to their duties”.

29. Article 77 shall be changed into **article 78** in which “land administrative department” was amended to “agricultural and rural administrative department”.

30. Article 81 shall be changed into **article 82**, as follows: “In case of unauthorized use of land collectively owned by farmers for non-agricultural construction through transfer, or rental transfer, or in violation of the provisions of this law, the competent department of natural resources of the people's government at or above the county level shall order corrections within a time limit, confiscate the illegal income, and impose a fine.”

31. The old article 82 shall be deleted.

32. **Article 84**, “Land Administration Department” shall be amended to “Natural Resources Administration, Agricultural and Rural Administration.”

33. **Article 85** shall be amended as follows: “If a foreign-invested enterprise uses land, this law shall apply. Where otherwise provided by law, such provisions shall prevail.”

34. **Article 86** shall be amended as follows: “Before the preparation of the national land space plan in accordance with the provisions of Article 18 of this law, the overall land use planning and urban and rural planning approved by law shall continue to be implemented.”

35. “Land Administration Department” in the relevant provisions shall be amended to “Natural Resources Administration Department”, “Basic Farmland” to “Permanent Basic Farmland” and “Administrative sanctions” to “Disposition”.

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