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Thailand

Navigating Change: A Comprehensive Overview of New Minimum Wage Rate in 2024 (Thailand)

本年 1 月 1 日からタイ全土において各県の最低賃金が引き上げられた。最低賃金については、県毎の基準額に加えて職能毎の基準額が定められているほか、外国人についても、就労許可取得のために充たすべき最低賃金額が存在する。タイ政府は、県毎の最低賃金をさらに引き上げる方針を示しており、今後の状況に注視が必要である。

On 1 January 2024, the Wages Committee implemented an increase in the minimum wage rate ranging from an additional THB 2 to 16 per day, with variations based on the provinces of the workplace. The highest minimum wage rate in Thailand continues to be provided to employees working in Phuket province at THB 370 per day; while 3 provinces in the southern part of Thailand have the lowest minimum wage rate at THB 330 per day.

This new minimum wage rate is announced in the Notification of Wages Committee re: Minimum Wage Rate (No. 12) dated 8 December 2023 and took effect from 1 January 2024.

Comparison of minimum wage rate in key provinces in Thailand

*Based on the average exchange rate at USD 1 = THB 35

Provinces	Former minimum wage rate (THB/day)	Present minimum wage rate (THB/day) (effective on 1 January 2024)
Phuket	354 (equivalent to USD 10.11)	370 (equivalent to USD 10.57)
Bangkok, Nakhon Pathom, Nonthaburi, Pathum Thani, Samut Prakan, Samut Sakhon	353 (equivalent to USD 10.09)	363 (equivalent to USD 10.37)
Chon Buri, Rayong	354 (equivalent to USD 10.11)	361 (equivalent to USD 10.31)

Chachoengsao	345 (equivalent to USD 9.86)	350 (equivalent to USD 10.00)
Phra Nakhon Si Ayutthaya	343 (equivalent to USD 9.80)	350 (equivalent to USD 10.00)
Chiang Mai, Prachin Buri, Saraburi	340 (equivalent to USD 9.71)	350 (equivalent to USD 10.00)

Any employer who pays the employees less than the new minimum wage rate, regardless of newly hired or existing employees, needs to increase the wage accordingly.

Minimum Wage Rate for Skilled Employees in Certain Occupations

In Thailand, the minimum wage rate is applicable to every employee. However, for employees in certain types of work or occupations, they may be eligible to the higher wage rate, provided that such employees pass the measurement of workmanship skill, knowledge and ability, so-called National Skill Standard Test, arranged by certified organizations under Skill Development Promotion Act of 2002. Upon obtaining the National Skill Standard Assessment Certificate from the employee, the employer shall have a duty to increase wage rate.

On 13 September 2023, the Wages Committee passed a resolution to improve the minimum wage rate according to the national skill standards for 54 occupations out of 129 occupations to be suitable for the present situation. The minimum wage rate varies based on professional branches and level of proficiency which can be classified into 3 levels.

This updated minimum wage rate has been announced in the Notification of Wages Committee re: Wage Rate According to Skills Standards (No. 13) dated 29 September 2023 and will be effective from 18 March 2024.

Summary of Wage Rate According to National Skill Standards

*Based on the average exchange rate at USD 1 = THB 35

Occupations	Minimum Wage Rate (THB/day)
1. Construction Group	410-690 (equivalent to USD 11.71-19.71)
2. Industrial Mechanic Group	405-855 (equivalent to USD 11.57-24.43)
3. Mechanic Group	400-680 (equivalent to USD 11.43-19.43)
4. Electricity, Electronic and Computer Group	400-695 (equivalent to USD 11.43-19.86)
5. Industrial Artist Group	370-825 (equivalent to USD 10.57-23.57)

6. Service Sector Group	400-900 (equivalent to USD 11.43-25.71)
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Minimum Wage Rate for Expatriates

Even though the minimum wage rate announced by the Wages Committee is applicable to every employee whether Thai or foreigner without discrimination, an employer who wishes to employ expatriates for its business may be required to pay a higher salary to the expatriate than the minimum wage rate. This requirement is not set out by the Wages Committee under the labour protection law, but is a consequence of business/working visa (so-called, Non-Immigrant Visa Category B: Non-B) requirement under the immigration law.

To clarify, the expatriate shall be granted a work permit if they stay in Thailand with a certain visa as prescribed under the immigration law. In this regard, Non-B (business/working) is the visa type mostly obtained by expatriates for working in Thailand.

In October 2023, the Immigration Bureau announced the Order of Immigration Bureau No. 242/2566 re: Permission for Alien to Have a Temporary Stay in the Kingdom of Thailand dated 27 September 2023 to update the criteria and conditions for visa issuance. One of the conditions updated is the income condition that expatriates who would like to apply for Non-B visa must comply with as follows:

Minimum Income of Expatriate Applying for Non-B Visa

* Based on the average exchange rate at USD 1 = THB 35

Nationality	Minimum income (THB/month)
1. Countries in Europe (except Russia) and countries in Australia, Canada, Japan and the United States of America	50,000 (equivalent to USD 1,428.57)
2. South Korea, Singapore, Taiwan, and Hong Kong	45,000 (equivalent to USD 1,285.71)
3. Countries in Asia (except Japan, South Korea, Singapore, Taiwan, Hong Kong, Cambodia, Myanmar, Laos, and Vietnam) and countries in South America, countries in Eastern Europe, countries in Central America, Mexico, Russia, and South Africa	35,000 (equivalent to USD 1,000)
4. Countries in Africa (except South Africa), Cambodia, Myanmar, Laos, and Vietnam	25,000 (equivalent to USD 714.29)

Thus, in principle, the employer who would like to hire the expatriate may need to pay expatriates not less than those required for Non-B visa unless it is stipulated otherwise by specific laws, regulations, official's orders or resolutions or such expatriates stay or will stay in Thailand with other types of visa. For instance, expatriates who stay in Thailand with a Non-Immigrant Visa Category O issued for Thai spouse, a Non-Immigrant Visa Category L-A (MOU) issued for workers from the countries with which Thailand has signed a memorandum, such as Cambodia, Myanmar and Laos PDR or the executives or skilled workers employed to work in Thailand through an approval of Board of Investment of Thailand (BOI) or Industrial Estate Authority of Thailand (IEAT), shall not be subject to this minimum income requirement.

Conclusion

While the recent increase in the minimum wage rate effective from 1 January 2024 marks a significant development, this adjustment is not intended to be permanent. The Thai government has set its goal to increase

the minimum wage to THB 600 per day by 2027. To facilitate this goal, an ad-hoc committee was appointed on 17 January 2024 to analyze and adjust the calculation method of the minimum wage rate. Although the precise timeframe of the new rate is unpredictable, the government anticipates that the Wages Committee will approve the second round of increase in the minimum wage rate this year, tentatively by March 2024.

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Vietnam

New Land Law 2024

NO&T Asia Legal Review 60 号でご紹介したとおり、ベトナムでは約 10 年ぶりとなる土地法の改正が検討されていたが、2024 年 1 月、新しい土地法が成立した。同法は 2025 年 1 月 1 日に施行される。本稿では、不動産開発実務に影響を及ぼすことが予想される点に焦点を当て、新しい土地法の主要なポイントをご紹介します。

Introduction

In January 2024, the National Assembly of Vietnam passed a new Land Law, which will take effect from 1 January 2025 (“**New Law**”).

The New Law, which will replace the current Land Law 2013 (“**Current Law**”), is the 5th enactment of land law of Vietnam. The previous land laws (including the Current Law) were enacted in 1987, 1993, 2003 and 2013.

Generally, the New Law retains the basic fundamental concepts and principles of the Current Law that land in Vietnam belongs to the entire people of Vietnam and the State acts as a representative of the land owner; accordingly, the State leases or allocates land to land users and in some circumstances, the State may recover such land from existing land users to lease or allocate such land to other land users.

Below we discuss some major changes introduced by the New Law affecting the business community (especially foreign investment) in comparison to the Current Law.

Land price table to be published yearly

Under the New Law, the land pricing system will comprise of “land price table” and “specific land price” instead of three types of land price as prescribed under the Current Law. The “land price bracket”, which is promulgated by the Government as a basis for the provincial People’s Council¹ to produce the “land price table”, will no longer be part of the land pricing system, and the land price table will be published on a yearly basis. According to the Current Law, the land price bracket (applicable to certain regions in the country) and the land price table (applicable to certain areas in a province) are published on a five-year basis, whereas the specific land price is determined and approved by the People’s Committee (“**PC**”) on a case-by-case basis. The abolition of the land price bracket and annual publication of the annual land price table are expected to give certain flexibility to the PCs in determining the land price in their provinces.

As the land price is used for various transactions between the land user and the State, the New Law will continue the current regime that the land price table will often be set to be lower than the specific land price (although the New Law stipulates that the fixing of land price (land price table and specific land price) must follow market principles. This regime is aimed at allowing the land users to pay less to the State in some special cases and pay full in other cases. In particular, the land price table and the specific land price will be used for the following different purposes:

Types of land price	Purposes
Land price table	<ul style="list-style-type: none"> ● monetary penalties (due to breach of law) ● land rent payable to the State on an annual basis ● land use fee/land rent payable to the State by individuals and family households (not organizations)

¹ The People’s Council is like a local parliament of a province, while the People’s Committee is like a local government of the province.

	<ul style="list-style-type: none"> ● starting price for land auction (for land having infrastructures built in accordance with the master plan)
Specific land price	<ul style="list-style-type: none"> ● land use fee/land rent payable to the State fully upfront (in lump sum) by organizations (in cases of exemption from land auction/project tendering, or extension of land use term or conversion of land use purposes) ● compensation for land clearance by the State ● starting price for land auction (for land having no infrastructures)

Limitation on lump sum payment of land rent

Under the Current Law, a user of land leased from the State may choose to pay land rent either annually (annual payment) or fully upfront (lump sum payment), and in the case of annual payment, the land user may apply for a permission from the competent authority to convert to the lump sum payment. In respect of the annual payment, land rent is fixed for a period of five years and thereafter, the relevant authority shall adjust the land rent in accordance with the applicable regulations. The New Law will continue with this regime of five years stability however the cases eligible for making a lump sum payment will be limited to the following categories:

- using land to implement investment projects on agricultural production, forestry, aquaculture, salt production;
- using industrial zone land, industrial cluster land, export processing zone land, or high-tech zone land (including the purpose of construction of dormitory for workers);
- using commercial and service land for tourism activities and office leasing/selling business;
- using public land for business purposes; and
- using land for construction of social housing for lease.

The lump sum payment of land use fee (applicable to land allocated for residential development) will remain unchanged.

Clearer regime on extension of land use term

The New Law continues the principle for determining land use term as set out under the Current Law. The land use term is based on the operational duration of the project as approved by the competent authority. In any event, the land use term may not exceed 50 years; however, if the project requires a substantial amount of investment capital and needs a longer time to pay back, or otherwise is located in a location with difficult social-economic conditions, a longer land use term of up to 70 years may be granted.

Notably, the New Law, makes clear that the extension of land use term may be considered in the last year of the land use term provided the land user must submit an application for extension at least 6 months before the expiry. The New Law also indicates that the enterprises may be permitted to adjust their land use term before the expiry of the term as long as they obtain an approval for amendment of the operational duration of the project in accordance with the applicable law on investment (probably means amendment of investment policy approval (“IPA”) and/or investment registration certificate (“IRC”)). Additionally, the adjustment must be consistent with the land use planning and zoning of the relevant district and must satisfy the environmental conditions in accordance with the applicable law on environment protection. This new regulation is likely to be good news to those who wish to upgrade their factories but the remaining land use term is not long enough to pay back the upgrading costs and generating a reasonable profit.

Clearer regime for land auction and project tendering

Under the New Law, an investor may acquire land for his investment project by one of the following four methods:

- (i) land allocation or lease without land auction/project tendering,
- (ii) land auction,
- (iii) project tendering, or
- (iv) agreement with existing land user.

Compared to the Current Law, the New Law specifies conditions and procedures for each method, especially the land auction method and project tendering method. In respect of land auction, the New Law contemplates that the land must have been fully cleared and in respect of a housing development project, a 1/500 master plan covering the land must have been issued by the competent authority.

For project tendering, the land may not need to be fully cleared but the project must fall into the category where land recovery by the State is permitted by law and has a 1/2000 master plan. The relevant authority is required to complete land clearance within 36 months from the approval of the successful tendering.

The key conditions and typical cases of the four methods are summarized as follows:

Methods	Key conditions	Typical cases ²
Land allocation /lease without auction or project tendering	<ul style="list-style-type: none"> ● Not specified 	<ul style="list-style-type: none"> ● Using land for public investment project or public-private partnership project ● Using land for a mining project ● Using land for offices of foreign organizations with diplomatic function
Land auction	<ul style="list-style-type: none"> ● Land is fully cleared ● In respect of housing projects, having a 1/500 master plan in place ● Land is covered under the district's approved land use planning 	<ul style="list-style-type: none"> ● Using land with lump sum payment of land use fee/land rent ● Using land of State land fund for projects (which appear to be no limitation to the type of projects)
Project tendering	<ul style="list-style-type: none"> ● Falling into the cases where the State takes charge of land clearance ● Having a 1/2000 master plan in place ● Belong to the list of land parcels approved by the People's Council from time to time 	<ul style="list-style-type: none"> ● Using land for township project, commercial housing project and rural residential project ● Using land for other special cases that are eligible for land clearance by the State

² The New Law lists out many cases; however, we select certain typical cases only.

Agreement with existing land user	<ul style="list-style-type: none"> • Land use is consistent with the approved land use zoning • Land use is approved in accordance with the investment law • Land use is permitted to be converted to new purposes (if necessary) and the investor pays land use fee/land rent to the State (based on the specific land price) 	<ul style="list-style-type: none"> • Using agricultural land and/or non-agricultural land for projects (other than projects eligible for land clearance by the State, including township project and rural residential project) • Using 100% residential land for commercial housing project
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The New Law also emphasizes that, instead of obtaining the land lease or allocation from the State (under method (i) through (iii) above), the enterprise may acquire land directly from the existing land users (method (iv) above). However, the enterprise must obtain a permission from the PC to acquire land directly from the existing land users and another permission to convert the land use purpose to be one that is suitable for the project and pay the additional land use fee/land rent to the State.

Land for commercial housing project

With respect to a commercial housing project, the enterprise may not acquire land other than residential land from the existing land users for developing the project. However, if the enterprise has already acquired land (whether 100% residential land or a certain portion of project area is residential land and the remainder is other types of land) before the effective date of the New Law, it may apply for a permission to use such land for development of the commercial housing project. And if there is no residential land, the enterprise may only acquire the land by way of either land auction or project tendering (as the case may be).

The above-mentioned regime is an affirmation of the current policy under the Law on Residential Housing 2013 (as amended) and puts an end to the expectations of residential development developers that there would be a new policy in the New Law to resolve the status of hundreds of township/residential development projects in the country that have been put on hold for many years due to lack of a concrete policy (consequently, they have not been able to obtain an IPA permitting them to develop the project). The developers of these projects have acquired land from the existing land users but no portion of the acquired land is residential land. The possible options for these projects at this stage are to relinquish the land to the State with receiving certain compensation so that the State will organize a land auction or project tendering, or otherwise apply for an IPA from the PC for developing social housing (instead of commercial housing) or another non-residential project; but there is no doubt that the developers will continue to wait for the implementation regulations of the Government with a hope that there will be a feasible solution for these projects.

Land clearance by the State for socio-economic development purposes

The New Law lists out 32 groups of cases that can enjoy land recovery (land clearance by the State for socio-economic development purposes for national and public interest). Township projects and rural residential projects are included in these groups.

However, as noted above, the land clearance by the State will mean that the land must be put on public auction or project tendering, whereas under the Current Law, the State may clear the land and allocate/lease such land to the developer without needing to go through the land auction or project tendering process.

As for commercial housing project the State will not clear land for the developer unless it is part of the township project.

Mortgage and transfer of land use right and assets on land

The New Law permits domestic enterprises to mortgage land use rights and assets on land with credit institutions operating in Vietnam or other organizations or individuals; however, foreign invested enterprise may only mortgage such land use rights and assets on land with credit institutions operating in Vietnam. Currently, both domestic organizations and foreign invested enterprises may mortgage land use rights and associated assets with

credit institutions operating in Vietnam only.

In addition to the concept of transfer of “land use rights” as currently contemplated under the Current Law (i.e. land leased with lump sum payment of land rent (or allocated land with lump sum payment of land use fee)), the New Law introduces a new concept of transfer of “leasing right under land lease contract”, provided this right will be exercised together with sale of the assets on the land. To enjoy this right, the land user must have (i) completed the construction of assets on land and (ii) advanced money for the land compensation/clearance cost (which has not been fully deducted against land rent payable to the State). To some extent, the new concept appears to reduce the adverse effect from the limitation on lump sum payment of land rent (as discussed above).

Dispute settlement

The New Land makes clear that disputes arising from commercial activities relating to land may be referred to either a competent court or arbitration. Otherwise, the disputes relating to land or assets on land shall be settled in the same ways as set out under the Current Law. Currently, the dispute settlement body is subject to whether the land user has a land use right certificate (“LURC”) or not. If there is a LURC for the land, the dispute must be referred to a competent court, whereas if there is no LURC for the disputed land, a party may request either a competent court or competent PC to settle the case.

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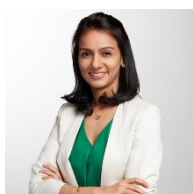


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