

## The Minimum Wage Law, 2012

( The Pyidaungsu Hluttaw Law No. / 2012)

The Waxing/Waning Day of 1373 M.E.

( th , 2012)

### Preamble

To meet with the essential needs of the workers, and their family, who are working at the commercial, production and service, agricultural and livestock breeding businesses and to increase capacity of the workers and for the development of competitiveness, the Pyidaungsu Hluttaw hereby enacts this Law.

### Chapter I

#### Title and Definitions

1. This Law shall be called **the Minimum Wage Law, 2012**.
2. The expressions contained in this Law shall have the meanings given hereunder:
  - (a) **Worker** means a person who earns living by wage obtained by carrying out the work of permanent work, temporary work or piece-work using his physical or intellectual power by conclusion of employment agreement with the employer to work at any commercial, production and service, agricultural and livestock breeding business. This expression includes apprentices and trainees, clerks and staff, outside workers, house maids and drivers, security men, guards and sanitary workers, decoration workers. However, it does not include the following workers and staff:
    - (i) wife, husband, children, parents and blood brothers and sisters who are the members of employer and doing the work of employer by depending upon and living with the employer;
    - (ii) civil service personnel under the Union Government and the Government departments and organizations under it;
    - (iii) civil service personnel under the Region Governments, State Governments and the Government departments and organization under it;
    - (iv) seafarers.
  - (b) **Employer** means a person who is responsible to pay such worker after employing one or more workers under the employment agreement at the commercial, production and service, agricultural and livestock breeding business. The expression includes the following persons as the employer:
    - (i) administrative representative of the employer;

- (ii) the person who is responsible, on behalf of the employer, to manage or pay remuneration to the worker;
- (iii) heir, successor or legal representative of the employer when he is deceased.

**Explanation:**

- (i) if it is a partnership firm, each or all partners or the person who is delegated by the partnership firm to manage the work is the employer;
  - (ii) if it is a company established under the Myanmar Companies Act, Board of Directors or directors or the person who is delegated by the company to manage the work in accord with law, is the employer;
  - (iii) if it is a cooperative society formed under the Cooperative Society Law, members of the executive committee or directors of the cooperative society are the employers.
- (c) **Commercial business, production business and service** means any commercial, production and service, commercial and industrial business, service or business related to such works, stipulated under section 6 of this Law, by notification, by the National Committee;
- (d) **Agricultural and livestock breeding business** means a business of plowing in any paddy land, farm land, garden land, vacant land and virgin land; land preparing, planting, nursing, caring, preparing or reaping, picking up the agricultural product crops and vegetables; livestock breeding of domestic animals including breeding of chicken, duck, quail, bird and bee, animal breeding including the breeding of buffalo, cow, elephant, horse, mule, ass, sheep, goat and pig; aquaculture, manufacturing dairy products and any service related to any of such works;
- (e) **Wage** means the fee, wage or salary entitled to be obtained by the worker for carrying out of hourly work, daily work, weekly work, monthly work or any other part-time work or any piece-work of the employer. This expression includes over-time fee or bonus given by the employer for the good work or character, or other remunerations or benefits which may be determined as income. However, it does not include the followings:
- (i) travelling allowances;
  - (ii) pension salary and gratuity for service;
  - (iii) social security cash benefits;
  - (iv) allowances for accommodation and meal, electricity charges, water service charges and, duties and taxes;
  - (v) medical treatment allowances and recreation allowances;
  - (vi) damages for dismissal from work and gratuities;

- (vii) other fees stipulated by the Ministry of Labour, by notification, with the approval of the Union Government that it does not apply by the wage contained in this Law.
- (f) **Organization** means a labour organization or employer organization formed under any existing law;
- (g) **Representatives of worker and employer** means the representatives representing the labour organizations and employer organizations, or if there is no labour organization, the representatives representing the workers; or if there is no employer organization, the representatives representing the employers;
- (h) **National Committee** means the National Committee for Determining the Minimum Wage formed under this Law;
- (i) **Region Committee or State Committee** means the Committee for Determining Minimum Wage formed according to region or state;
- (j) **Ministry** means the Ministry of Labour of the Union Government;
- (k) **Department** means a department assigned duty by the Ministry to carry any function and duty contained in this Law;
- (l) **Inspector** means any officer assigned duty under this Law to inspect a commercial, production and service, agricultural and livestock breeding business whether or not it complies and carries out in conformity with this Law and rules, minimum wage notifications, orders, directives and procedures issued under this Law.

## Chapter II

### Forming the National Committee for Determining the Minimum Wage, Powers and Duties Thereof

#### 3. The Union Government:

- (a) shall form the National Committee, by notification, in order to prescribe the minimum wage for the workers with representatives of the relevant Government departments and organizations, representatives of labour organizations or workers, representatives of employer organizations and a minimum of 15 to a maximum of 21 of other persons who are expert in minimum wage matters and who would carry out fairly;
- (b) in forming under sub-section (a), the Chairman and Secretary shall be determined simultaneously. If it is necessary, Vice-chairman and Joint-secretary may be determined;

- (c) the term of the National Committee determined under sub-section (a) shall be three years, and if it is necessary, it may be reorganized by substituting the members.

4. In forming the National Committee:

- (a) the representatives of the Government departments and organizations shall be the persons who would carry out for the interest of the people and the responsible persons relating to labour affairs, agriculture, livestock breeding, economics, commerce, production and social affairs;
- (b) the representatives of the worker and employer:
  - (i) shall be the persons who are desirous to carry out for the interest of relevant organization or, for the interest of employer and workers;
  - (ii) shall be in equal number and the right to express the desire of such representatives shall also be equal.
- (c) one or more persons who are expert in minimum wage affairs may be included and formed and he shall have experience in the relevant commerce, production and service, agriculture and livestock breeding business and he shall be the person who used to carry out fairly between the worker and employer.

5. The functions and powers of the National Committee are as follows:

- (a) laying down national level policies relating to the facts which should be based for determining minimum wage under this Law;
- (b) forming Region committees and State committees comprising the representatives of the Government departments and organizations, representatives of worker and employer, and experts to enable to submit suggestions, after making study, assessment and calculation on the research work and assessment papers, for determining minimum wage, and determining the functions and duties;
- (c) guiding the Region committees and State committees in accord with the adopted national level policies relating to submission of suggestions after making study, assessment and calculation on the research work and assessment papers for determining the minimum wage;
- (d) doing research relating to the facts which should be based in determining the minimum wage, scrutinizing and calculating after collecting accounts assessments, adopting plans and programmes;

- (e) to publish, by notification, for the public notice, the proposed rates of minimum wage which should be prescribed in conformity with the provisions contained in chapter 6 of this Law after studying and scrutinizing the suggestions of the Region committees and State committees for the determination of minimum wage in the whole country or, according to Region or State, commercial, production and service, agricultural and livestock breeding business, and issuing and determining the rates of minimum wage with the approval of the Union Government;
- (f) in the proposed rates of minimum wage to be published by notification under subsection (e), prescribing wage per an hour, a day, a week or a month according to the skill; or rate of minimum wage for any other part-time work or piece-work after studying and scrutinizing the potential of occupational risk;
- (g) if there is any objection on the proposed rate of minimum wage of the National Committee, causing to negotiate by the tripartite representatives of the relevant Region committee and State committee and determining the suitable rate of minimum wage after scrutinizing the proposed rate of minimum wage by the tripartite representatives of the National Committee;
- (h) declaring the amending notification, **on the stipulated rate of minimum wage, at a minimum of once in two years,** with the approval of the Union Government, after scrutinizing from time to time, in conformity with the various changing situations by classifying the employment skill and occupational risk according to category of commercial, production and service, agricultural and livestock breeding business or according to region;
- (i) forming necessary work committees relating to determination of minimum wage and review, and prescribing functions and duties thereof;
- (j) holding regular and special meetings of the National Committee in accord with the stipulations;
- (k) submitting the work performances of the National Committee to the Union Government from time to time.

### Chapter III

#### Determining the Categories of Work

6. The National Committee:

- (a) shall determine, by notification, commercial, production and service, agricultural and livestock breeding business which shall be applied by the provisions relating to minimum wage contained in this Law, in the whole country or relevant Region or State;
- (b) commercial, production and service, agricultural and livestock breeding business determined under sub-section (a) may be amended in conformity with the changing situation.

7. The commercial, production and service, agricultural and livestock breeding business determined under 6 by notification shall be applied by the provisions relating to minimum wage contained in this Law.

### Chapter IV

#### The Facts to be Based in Determining Minimum Wage

8. The following facts shall be based and considered in suggesting by the Region committees and State committees after making study, scrutiny and calculation or, in determining minimum wage by the National Committee relating to the determination of minimum wage:

- (a) the needs of workers and their families;
- (b) existing salaries;
- (c) social security benefits;
- (d) living cost and changes of such living cost;
- (e) compatible living standard;
- (f) employment opportunities in conformity with the needs for State's economy and development of production;
- (g) gross domestic production value of the State and per capita income;
- (h) other facts stipulated by the Ministry with the approval of the Union Government.

### Chapter V

### Issuing the Notification which Determines Minimum Wage

9. The relevant Region and State Committee shall submit suggestions on the rates which should be prescribed, after studying the facts to be based in determining minimum wage and the facts to be included and considered, to the National Committee in conformity with the stipulated manners.

10. Relating to the determination of minimum wage for the workers of the special economic zones:

- (a) the relevant special economic zone management committee shall submit the proposed rates of minimum wage which should be prescribed for the workers and staff according to the category of investment in the special economic zone, to the National Committee;
- (b) the National Committee shall prescribe, with the approval of the Union Government, after carrying out in accord with the provisions contained in this Law, on the submission made under sub-section (a) relating to the determination of minimum wage.

11. The National Committee:

- (a) shall, after considering the suggestion made under section 9 and section 10, assign duty to the Department to publish the proposed notification for determining the minimum wage in the State's gazette and newspapers in advance of a minimum of 60 days, to enable to know it by the public and to object, if any;
- (b) if there is no objection on the rate of minimum wage, shall determine the rate of minimum wage after obtaining the approval of the Union Government;
- (c) shall cause the Region committee or State committee to renegotiate and submit proposal relating to the objection, in case of objection on the proposed rate of minimum wage;
- (d) shall cause the tripartite representatives to scrutinize and decide on the suitable rate of minimum wage after scrutinizing the rate of minimum wage re-proposed and resubmitted by the relevant Region committee or State committee under sub-section (c) and determine the rate of minimum wage after obtaining the approval of the Union Government;



- (e) shall assign duty to the Department to publish and inform the rate of minimum wage stipulated under sub-section (b) or (d) to be known by the public in accord with sub-section (a), and to be known by the relevant organizations, employer and workers.

12. The person who is dissatisfied with the rate of minimum wage stipulated by the National Committee under sections 10 and 11 may apply to the Supreme Court of the Union to issue any writ and amend in accord with the Constitution of the Republic of the Union of Myanmar and the Union Judiciary Law.

## Chapter VI

### The Duties of the Employer

13. The employer:

- (a) shall not pay wage to the worker less than the minimum wage stipulated under this Law;
- (b) may pay more than the minimum wage stipulated under this Law;
- (c) shall not have the right to deduct any other wage except the wage for which it has the right to deduct as stipulated in the notification issued under this Law;
- (d) pay the minimum wage to the workers working in the commercial, production business and service in cash. Moreover, if the specific benefits, interests or opportunities are to be paid, it may be paid in cash or partly in cash and partly in property, benefit jointly according to the desire of the worker;
- (e) in paying minimum wage to the workers working in the agricultural and livestock breeding business, some cash and some property benefit may be paid jointly according to local custom or desire of the majority of workers or collective agreement. Such payment shall be for any personal use and benefit of the worker and his family and the value shall also be considerable and fair.



14. The employer:

- (a) shall inform the workers the rates of minimum wage relating to the business among the rates of minimum wage stipulated under this Law and advertise it at the workplace to enable to be seen by the relevant workers;
- (b) shall prepare and maintain the lists, schedules, documents and wages of the workers correctly;
- (c) shall report the lists, schedules and documents prepared and maintained under subsection (b) to the relevant department in accord with the stipulations;
- (d) shall accept the inspection when summoned by the inspection officer. Moreover, he shall produce the said lists and documents when required;
- (e) shall allow the entry and inspection of the inspection officer to the commercial, production and service, agricultural and livestock breeding workplaces and give necessary assistances;
- (f) if the workers cannot work due to sickness, shall give them holiday for medical treatment in accord with the stipulations;
- (g) if the funeral matter of the member of the family of worker or his parent occurs, shall give holiday without deducting from the minimum wage, in accord with the stipulations.

## Chapter VII

### The Rights of the Workers Relating to the Minimum Wage

15. A worker working in any establishment relating to this Law:

- (a) has the right to obtain the minimum wage stipulated under this Law or, if the employer pay more than the said wage, the wage paid more;
- (b) if pay is received more than the minimum wage stipulated under this Law, before the coming into force of this Law, it has the right to continue to enjoy the pay paid more.

16. The worker contained in section 15:

- (a) shall has the right to enjoy the minimum wage stipulated under this Law if the minimum wage contained in the employment agreement is less than the minimum wage stipulated under this Law;

- (b) when working in two or more works, shall has the right to enjoy not less than the minimum wage stipulated for each work where he is working;
  - (c) shall has the right to enjoy the stipulated minimum wage for the time worked in the part-time job, hourly job or piecework;
  - (d) shall has the right to enjoy a holiday per week with pay in the salary-paid work. If he is employed in such holiday, he shall has the right to obtain over-time fee in accord to the existing law;
  - (e) if working less than the working hours per day stipulated in a daily-waged job is not due to reduced working according to the desire of the worker, or if work has to be paused due to the failure of employer to give job, the full wage shall be paid as if the work is done full-time;
  - (f) shall has the right to enjoy the stipulated minimum wage without discriminating between man and woman;
  - (g) if he is a worker working in the commercial, production work and service, he shall has the right to enjoy the minimum wage in cash. Moreover, if the specific benefits, interests or opportunities are to be paid, it may be paid in cash or partly in cash and partly in property, benefit jointly according to the desire of the worker;
  - (h) if he is a worker working in the agricultural and livestock breeding business, the minimum wage may be enjoyed in some cash and some property benefit jointly according to local custom or desire of the majority of workers or collective agreement for the worker and his family in accord with the stipulations.
17. The worker who is entitled to obtain the wage and other benefits under sections 15 and 16:
- (a) if he does not obtain all wages or other benefits entitled to be obtained, or obtains less than the stipulated minimum wage, may submit to the relevant Region committee or State committee and Department within one year from the day he is entitled to obtain such injured wages and other benefits;
  - (b) to obtain the injured wages and other benefits under sub-section (a), may submit to the relevant Region committee or State committee and institute in accord with this Law.
18. If an employer is convicted by a court for his failure to pay the minimum wages and other benefits stipulated under this Law or for the payment to worker less than such minimum wage and ordered to pay defaulted wages and other benefits to the relevant worker, and if such

worker does not obtain injured wages and other benefits which is entitled to be obtained under sections 15 and 16, it shall not affect the right to institute civil proceeding.

## Chapter VIII

### Assigning Duty to the Inspection Officer, Inspection and Taking Action

19. The Ministry shall assign duty to the officers of the relevant department in order to inspect the commercial, production and service, agricultural and livestock breeding businesses whether or not they comply with and carry out in conformity with this Law and the rules, minimum wage notifications, orders, directives and procedures issued under this Law.

20. The inspection officer:

- (a) has the right to enter into the relevant commercial, production and service workplaces, agricultural and livestock breeding workplaces and inspect whether or not they comply with and carry out in accord with this Law and the rules, notifications, orders, directives and procedures issued under this Law; whether or not the lists, schedules and documents, wages relating to the workers are prepared correctly, and whether or not such lists, schedules and documents are reported to the Department in accord with the stipulations;
- (b) may summon, inspect the relevant persons under the assignment of duty by the Department; asking for the relevant lists, schedules and documents and copy them;
- (c) if there are outside workers at the employer, has the right inspect information relating to such outside workers, their names and addresses, the right to ask for and copy lists of outside workers and documents relating to minimum wage;
- (d) in carrying out under sub-sections (a), (b) and (c) relating to inspection, if required by the employer to produce the document, shall show the civil service identity card issued by the relevant department;
- (e) report to the Department, in accord with the stipulations, relating the finding under sub-sections (a), (b) and (c) and documents and papers called for.

21. The Department shall, after submitting to the Region committee or State committee and according to its decision, claim and pay the minimum wages entitled by the worker from the

employer who fails to pay minimum wage stipulated under this Law or the employer who is in arrears to pay minimum wage.

22. The Department shall, if the employer fails to pay the minimum wage within the stipulated time even though it was claimed under section 21, assign duty to an inspection officer, with the approval of the relevant Region committee or State committee, to institute such employer at the relevant court.

23. The inspection officer who institutes criminal or civil proceeding at the court under the directive and assignment of duty by the Department,, may conduct the case before the court.

## Chapter IX

### Prohibitions and Penalties

24. Any employer:

- (a) shall not fail to pay the workers the minimum wage stipulated under this Law;
- (b) shall not pay to the workers less than the minimum wages and other benefits which is entitled by the worker under sections 15 and 16;
- (c) relating to the accounts, schedules, documents and lists of wage of the workers:
  - (i) shall not make false entry, deceitful recording or false and deceitful reporting;
  - (ii) shall not fail to report to the relevant department in accord with the stipulations;
  - (iii) shall not fail to produce when required by the inspection officer;
- (d) shall not fail to go and accept inspection when summoned by the inspection officer;
- (e) shall not disturb or interfere with the inspection officer who comes and inspects on duty.

25. Any employer who violates any of the prohibitions contained in section 24 shall, on conviction, be punished with imprisonment for a term not exceeding one year or with fine not exceeding 5 lakhs or with both.

26. Any employer:

- (a) shall not violate any term and condition or prohibition contained in the minimum wage notification;
- (b) shall not fail to inform the workers relating to the rates of minimum wage concerning to his workers among the rates of minimum wage stipulated under this Law and advertise at the place where the workers is enable to see it in the work centre and workplace;
- (c) if the workers cannot work due to sickness or if the work is paused due to funeral matter of the member of the family of the worker or his parent or for any other cause, it shall not deduct or reduce from the minimum wage without being in conformity with the stipulations.

27. Any employer who violates any prohibition contained in section 26 shall, on conviction, be punished with imprisonment for a term not exceeding six months or with fine not exceeding kyat three lakhs or with both.

28. The court:

- (a) shall, in sentencing a punishment under sections 25 and 27, pass the wage defaulted to pay by the employer as fine and give it to the worker;
- (b) shall recover the fines sentenced under sub-section (a) from the defaulted employer in accord with the Code of Criminal Procedure and give them to the worker.

29. Any person who violates any prohibition contained in the rules and orders issued under this Law shall, on conviction, be punished with imprisonment for a term not exceeding three months or with fine or with both.

## Chapter X

### Miscellaneous

30. The agreement relating to the minimum wage, contained in the employment agreement, employment oral contract or applied contract concluded less than the minimum wage stipulated under this Law before or after the coming into force of this Law, shall be void as far as it is contrary to this Law.

31. (a) The members of the National Committee who are not civil service personnel have the right to enjoy honorarium stipulated by the Union Government;
- (b) The members of the members of the Region committee or State committee have the right to enjoy honorarium stipulated by the relevant Region committee or State committee with the approval of the Union Government.
32. The various expenditures relating to the functions and duties of the National Committee shall be borne from budget of the Union Government.
33. The Ministry shall arrange and carry out the office works relating to the functions and duties of the National Committee.
34. The offences under this Law may be prosecuted at the relevant court only by the inspection officer assigned duty by the Department.
35. The members of the National Committee, Region committee and State committee or, person or body which is assigned specific duty under this Law as it is necessary, who are not civil service personnel, shall be presumed as the civil service personnel while they are carrying out the functions and duties under this Law.
36. No suit or prosecution shall lie against any member of the committee or inspection officer who carries out functions and duties conferred under this Law in good faith.
37. The Department shall submit the following facts relating to the minimum wage to the Ministry:
- (a) forming the mechanism for determining the minimum wage and manner of formation;
  - (b) works applied by the minimum wage and estimated number of workers;
  - (c) stipulated minimum wages;
  - (d) such matters if there are other important matters relating to the rates of minimum wage.
38. In implementing the provisions contained in this Law:

- (a) the Ministry may issue necessary rules and regulations with the approval of the Union Government;
- (b) the National Committee and the Ministry may issue necessary notifications, orders, directives and procedures and relevant department may issue necessary orders and directives.

39. The following Acts are hereby repealed:

- (a) The Minimum Wages Act, 1949 ( No. 66/49);
- (b) The Agricultural Workers Minimum Wages Act ( No. 44/48).

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I hereby sign according to the Constitution of the Republic of the Union of Myanmar.

(Sd.)

Thein Sein

President of the Union

The Republic of the Union of Myanmar