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Legal summary of Law on Workforce migration

GRATA International Mongolia

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The Law on Workforce migration was adopted to determine the relationship, management and organization of workforce migration from Mongolia to foreign country and from foreign country to Mongolia on basis of national labor market data, in a unified and comprehensive manner in order to protect human rights and legitimate interests. The implementation of labor migration policies and regulations will have positive social and economic consequences, including increased employment, sustainable population growth, family stability and more specialized and skilled human resources.

I. Employment mediation for Mongolian citizens in foreign countries

A license is required to provide employment mediation services for working and having internship services for Mongolian citizens in foreign country and hire employees from foreign country.

The following legal entities or persons are prohibited to run employment mediation services:

- legal entity engaged in tourism and airline ticket services;
- a person or legal entity identified by the competent authorities to have committed an offence by deception, misleading, fraud or other misconduct when sending an employee to a foreign country;
- civil servants;
- foreign-invested legal entities;
- non-licensed legal entity;
- foreign citizens, stateless persons, legal entities of foreign countries;
- non-governmental organizations;
- religious organizations;
- others stated in legislation.

License

The license shall be issued for a period of 3 years to legal entities that meet the following conditions and requirements:

- have a valid agreement to send employees abroad;
- the member, founder, managing and executive officer of the managing board of legal entities shall not have committed any crime on human trafficking, against ownership title and economic or committed any violation stated in Law of Violation and shall not have any debt which determined by court decision;
- the legal entity has not committed a crime, has not committed a violation specified in the Law on Violations, and has no debt determined by a court decision;
- meet the standards and requirements of employment service organizations with permanent staff for employment mediation services;

- The amount of equity of legal entities shall not be less than MNT 100,000,000;
- Preliminary warranty. A license is required to provide employment mediation services and a preliminary warranty is required to obtain a license.

Preliminary warranty means a document confirming that the applicant has complied with the terms and conditions of the license provided by law, except for the agreement to send an employee abroad to provide employment and internship services abroad. The validity period of the preliminary warranty is one year.

The following documents shall be submitted for getting the preliminary warranty:

- information on the management and executive officers and human resources of the legal entity;
- information of the board of directors and founders of the legal entity;
- financial sources, its guarantees and financial audited statements;
- the court decision confirmed the absence of debt ;
- the document confirmed that there is no tax debt;
- guarantee /notarized by the board of directors and management at all levels on compensation for damages/;
- state registration certificate of legal entity, charter;
- other documents specified in the legislation.

Attached to a member of the Government in charge of employment, a non-permanent council shall be engaged to provide professional opinion and advice on the issuance of preliminary warranty to the legal entity, the decision shall be based on the above documents.

The state administration body in charge of employment may set a limit on the number of mediators, taking into account the legislation of the receiving country and the economic and social conditions.

License extension

The licensee shall submit the application for license extension with the following documents at least 20 working days prior to the expiration of the license to the state administration body in charge of employment:

- document on the validity of the agreement to send an employee abroad;
- financial audited report /no payment or tax liability determined by court decision/;
- report on compliance status of legal and agreement obligations during the license period.

The license will be extended for a period of 3 years, taking into account the implementation of the agreement for sending employees abroad, performance results and compliance with the legislation. In the event of an unjustified delay in the renewal of the license within the validity of the license, the request will not be accepted and the license will be terminated.

License suspension

License will be suspended for up to 3 months in the following cases:

- on basis of the license holder's request;
- breached the terms and conditions of mediation services;
- no reports, false reports, or no activities for six months;
- the state labor inspector has issued a report that human rights and legitimate interests have been harmed.

As soon as the above situation arises, the state administration body in charge of employment shall issue a notice to the license holder about the suspension of the license and to undertake corrective remedy on the violation. Within 20 working days after receiving the notification, the license holder shall submit an explanation on whether the violation has been remedied with the relevant evidence.

Revocation of license

The state administration body in charge of employment can revoke the license on the following grounds, in addition to those provided for by the Law on Licensing:

- the agreement for sending employees abroad is terminated and not renewed during the validity of the license;
- conducted activities prohibited by law;
- the authority determined that the decision to issue the license is illegal;
- no activity or activity has ceased for 1 year after the issuance of the license;
- no request for an expired license extension, late request for extension;
- failed to comply with license terms and conditions;
- the license was transferred to others in any form without the consent of the state administration body in charge of employment;
- in violation of the laws, regulations on the provision of employment mediation services and agreement obligations, license holders were found to have caused harm, defrauded, illegally charged, or employees are under the age of 18;
- unjustified refusal to assist the migrant worker and failure to comply with the obligations of the mediator specified in the agreement;
- mediated the migrant worker in workplaces that are internationally prohibited and do not comply with occupational safety and health requirements, such as the work with toxic chemicals, explosives, radiation substances and biologically active substances and the production and sale of drugs and medicines;
- The terms of the license suspension were not removed or no explanation or evidence was provided.

If the agreement or memorandum of understanding between the state administration in charge of employment and foreign authorities have executed, the state administration body in charge of

employment may provide employment mediation services, and the decision will be made on basis of the agreement and official invitation of the host institution for the internship of the student.

Pre-employment training in foreign countries

Training for employment in a foreign country shall have the following content:

- information on the host country /laws and policy documents of the sender and host country, collective agreements, cultural, customs, political, social and economic status, language and common considerations/;
- information about the employment conditions of the host country, the proposed workplaces, occupational safety, opportunities for unions, representative organizations of employees and non-governmental organizations;
- information about health, social insurance and social protection measures;
- potential risks and protective measures;
- rights, duties and responsibilities of mediators;
- information about relevant authorities, if required;
- measures to support employees in Mongolia after return;
- other relevant information.

The training will be organized by the licensed legal entity and the implementation will be supervised by the state administration body in charge of employment.

II. Foreign citizen employment in Mongolia

The following categories and types of workplace for foreign citizens in Mongolia are available. These include:

Workplace Category	Workplace type
Permanent workplace at specialized management level	Founder of foreign investment company, foreign investor
	Chairman of the board of Directors of the Joint Stock Company, member, executive management, executive management of the bank
Management and executive level workplaces operating in accordance with agreements between Government and government agencies.	Managing and executive specialist to work in accordance with international agreements in Mongolia
	Specialist in government agencies in the fields of science, education, health and sports
	Specialists defined by the Government of Mongolia
International organizations workplace, volunteers	Employees of international organizations and other similar organizational associations established at the national and intergovernmental level.
	Specialists to conduct free medical diagnosis, consultation, surgery, or equivalent non-permanent workplaces
Permanent workplace with a high degree and highly specialized executive level	Specialist in consulting services with a master's degree or higher, a researcher in a research institution, a teacher in a university or college
	Specialized engineers and equivalent workplace from abroad to work in Mongolia, in accordance with the investment and development agreement

	term. Teachers and staff of the secondary schools and kindergartens with bachelor or higher education degree Professional teachers, coaches, specialists and teachers for training centers to work in cultural and sports organizations
Permanent workplace for skilled, qualified technical and assistant	Employee with a certificate, diploma or professional certificate from a state authority or a state authority of a country recognized in Mongolia to prove that he/she has received professional education
Temporary workplace in Mongolia for seasonal work to up to 6 months	Employees with high qualification skills designed to resolve technical or technological defects or equivalent for up to 1 month Seasonal employee for up to six months

In the event of the disaster risk, foreign personnel may be recruited from foreign countries for a period of time until disaster relief, regardless of the quantity determined based on the opinion of the member of the government in charge of Emergency Management.

License to hire employees from abroad

Employers shall submit information about vacancies and requirements for vacancies to aimag and district employment agencies and request for an employee. The employment agencies shall upload the workplace information submitted by the employer to the unified database and immediately make it public. The Employers have the right to apply for license to hire employees from foreign countries if they have not been able to hire domestic employees within 14 days after placing a position vacancy in the unified database and actively searching for an employee.

The Employer's request to hire an employee from a foreign country shall be submitted to the state administration body in charge of employment with the following documents:

- a work plan with description of the categories, types, lists, locations and employment duration for foreign employees;
- state registration certificate, license if applicable for a licensed work or service;
- a document confirming the skills and qualifications of a foreign employee/certified by a recognized by the state authority of the foreign country/;
- information and description of the right to apply for a license to hire an employee from a foreign country;
- receipt of payment of service fee;
- others.

The state administration body in charge of employment shall issue a 3-month permit to hire a foreign employee to the Employer. If the Employer has not obtained the permit with strong justification, the term can be extended for another 3 months.

The state administration body in charge of employment shall issue a work permit card in Mongolia containing the full name, nationality, name of the legal entity to be employed, location of employment, and duration of the permit.

The work permit in Mongolia for a foreign employee shall be granted for a period of up to 1 year which depends upon the duration of the employment agreement.

Restrictions on hiring foreign employees

The state administration body in charge of employment shall restrict the right of the following employers to hire foreign employees for a period of 2 years:

- foreign nationals and stateless persons were employed without a work permit in Mongolia;
- non-payment of wages or caused a loss to foreign employees who were previously employed;
- It was found that employer did not obtained the license to hire employees from abroad and falsified reports.

Cancellation of the employer's license for foreign employees

The state administration body in charge of employment shall cancel the employer's license to hire a foreign employee on the following grounds:

- the authorized person determined that the decision to issue the license was illegal;
- unjustified refusal to hire a Mongolian citizen who meets the relevant qualifications and skills to perform the work;
- non-compliance or breached the terms of the agreement, such as wages and salaries, work conditions, and work and rest arrangements, agreed upon in the employment agreement prior to the arrival of the foreign employee;
- the employer is found as it violated Mongolian labor and occupational safety and hygiene laws and is unable to hire foreign employees in Mongolia;
- foreign employees have not had a training, medical examinations, and personal documents, wages and salaries of foreign employees are pledged;
- violation of the terms and conditions of the work permit (purpose, location, or workplace duties other than specified in the permit of a foreign employee) /false documents/ false information provided upon obtaining the permit.

An employer whose work permit has been revoked may transfer a foreign employee to another eligible employer, and the state administration body in charge of employment shall decide whether to provide employment in this regard. If it is decided that a foreign employee cannot be transferred to another eligible employer, then the employer shall deport the foreign employee within 10 days and notify it the state administration body in charge of employment.

Extension of foreign employee work permit

The term of a foreign employee's work permit may be extended based on the employer's request, employee's performance, employment agreement, workplace category, reasonable reasons for future employment and compliance with legal obligations.

Unless otherwise stated in law, the total term of a foreign employee's continuous work permit in Mongolia shall be not more than 5 years.

Transfer and employment of foreign employees

A foreign employee with a work permit may apply to move to another organizations in the following reasons:

- the employee has been notified about the termination of the employment agreement for reasons beyond his/her control or the non-renewal of the employment agreement after the expiration of the employment agreement;
- In Mongolia, agreement work has been completed prior to the work permit deadline, contractual duty has ceased without control of the employee, legal entity has been liquidated and the employer has violated the employment agreement and is unable to continue to work.

Revocation of the work permit of a foreign employee

The state administration body in charge of employment shall revoke the work permit of a foreign employee in the following cases:

- termination of the employment agreement due to the fault of a foreign employee is determined by the decision of the competent authority or the termination of the employment agreement;
- a medical examination has revealed that he / she is medically unfit to perform the work;
- the employee left the workplace voluntarily;
- moved to another employer without the consent of the state administration body in charge of employment;
- registration of foreign employees in the database by false documents;
- found guilty of committing a crime or offence;
- employee incapacitated.

Employment orientation training for foreign employees

The employer shall, at its own expense, provide employment guidance training to foreign employees who visit Mongolia for the first time, providing them with general information on relevant Mongolian laws and customs and special information required for employment.

Employment payment for foreign employees

Unless otherwise stated in the law, the monthly workplace payment shall be equal to twice the minimum monthly wage per month, and the employer shall pay the workplace payment in advance based on the number of foreign employee and duration of employment.

Based on the proposal of the Cabinet member in charge of labor, the Government may decide to reduce the workplace payment for foreign employees in some sectors by up to 50%.

Resources:

<https://lawforum.parliament.mn/draft/39/> - Law on Workforce migration of Mongolia

For more information or any queries, please feel free to contact Bolormaa.V, Partner by bvolodya@gratanet.com and G.Solongo, Junior Associate of GRATA International Law Firm by sgansukh@gratanet.com or +976 70155031.

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