

IMPORTING FOREIGN WORKFORCE AND ITS RELATED CERTAIN ISSUES

The Law on Export and Import of Workforce which had been regulating the process of importing and exporting workforce in Mongolia for over 20 years was replaced by the “*Law on Migration of Workforce*” on 24 December 2021 which came into effect starting from 1 July 2022. In comparison with the previous law, this Law on Migration of Workforce is special in terms of its broad regulations and legislating certain matters which used to be regulated by rules under the previous law. Furthermore, the new law has legislated certain new requirements with regards to importing foreign workforce such as restricting permission to invite foreign workers, cancelling the employer’s permission to employ foreign workers, search for local workers prior to bringing in foreign workers, and enabling the right to invite foreign workers for employment after being unable to find local workers within 14 days of search, and specifying the types and categories of jobs for foreign workers to be working in Mongolia.

Quota for importing foreign workforce and workplace payment

The Government of Mongolia issues a resolution and determines a quota of foreign workers to be working in Mongolia by each industry of economic activity no later than 1 October of each year.¹ This quota is calculated proportionally to the number of domestic employees employed by an inviting organization in Mongolia which is planning to hire foreign workers. In addition to the quota restrictions, a workplace payment must be paid for foreign workers each month and a monthly workplace payment to be paid by an inviting organization for each foreign worker equals to twice the minimum wage per month which is currently MNT840,000 (MNT420,000*2), and it will increase to MNT1,100,000 (MNT550,000*2) from on 1 January 2023.

However, in cases of inability to supply the workforce from the local for the projects and programs implemented with intergovernmental foreign loans, grants and donations, you may import foreign workforce without quota or workplace payment or with reduced workplace payment based on the relevant Government resolution². There are certain grounds for exemption of a workplace payment such as experts and employees working under intergovernmental agreements, or investors, shareholders and up to 3 members of the management team of foreign-invested entities based on a reference letter from the state authority in charge of investment matters, and etc.³

In other words, an inviting organization can be exempted from the quota and workplace payments by submitting its request to the Government prior to its issuance of a resolution on this matter each year if the grounds of exemption stipulated under the relevant law are satisfied. By doing so, you can import foreign workers without quota restrictions and workplace payment.

Furthermore, according to the “*New Recovery Policy*”⁴, enterprises and organizations are exempted from the quota limitations and the workplace payment is reduced in 50% with regards to the foreign workforce coming to Mongolia in 2022. It aims to stimulate and accelerate major development projects.

Prior work permit/invitation

An inviting organization which must be a legal entity registered in Mongolia is required to obtain a prior work permit (also known as invitation) for foreign workers, who are required to obtain a work permit upon entering into Mongolia, from the relevant General Department of Labor and Social Welfare

¹ Article 22.1 of the Law on Migration of Workforce;

² Articles 22.6 and 32.4 of the Law on Migration of Workforce;

³ Articles 3.1.4 and 3.2 of the “Regulation on Workplace Payment and its Reduction and Exemption” adopted by the Government Resolution No.41 of 2015;

⁴ Passed by the Resolution No.106 of the Parliament of Mongolia dated 30 December 2021;

prior to their arrival. It is important because a visa is issued to foreign workers based on this prior work permit. The inviting organization must submit its request along with the supporting documents to obtain a prior work permit for the foreign workers to the General Department of Labor and Social Welfare a month in advance to their arrival.⁵ This prior work permit is valid for 3 months and the foreign workers are required to enter into Mongolia and obtain their work permit during the validity period of their prior work permit.

Visa type

Mongolian visa grants a permission for foreigners to enter into Mongolia through its borders and to stay in Mongolia for a certain period of time. The Immigration Agency of Mongolia is the authority in charge of issuing visas. The Government of Mongolia has revised the “*Regulation on Issuing Visas of Mongolia*”⁶ in 2021 according to which visas are issued to foreigners in 9 different categories. Thereof, diplomatic and official, investment, employment and short-term visit visa categories are the most commonly used by foreigners coming to Mongolia to develop projects and programs. For instance:

- “A3” visa can be requested by the inviting organization for a foreigner coming through intergovernmental, state and local self-governing organizations or international organizations, and a foreigner can work and reside in Mongolia with this visa;
- “C1” visa can be requested by the inviting organization for foreign workers coming to work in construction, road, bridge and development sector, and the foreign workers can work and reside in Mongolia with this visa;
- “K1” or “K2” visas are suitable for a foreigner coming for business purposes such as to have meetings and to conduct negotiations with others to develop their projects and programs, however it should be noted that they cannot work or reside in Mongolia with this visa.

The Immigration Agency of Mongolia issues a code as an approval of visa based on which a foreigner must apply for a visa at the embassy or consulate of Mongolia in their residing country or if there is none, at certain borders of Mongolia, such as Khushigiin Khundii border, upon arrival in Mongolia within 60 days following the issuance of such code.

Please note that if a foreigner changes her/his visa category whilst in Mongolia, that foreigner must exit and re-enter into Mongolia. However, this requirement is temporarily waived for the Russian citizens arriving to Mongolia due to the conflicts between Russia and Ukraine.⁷ In other words, currently Russian citizens can apply for change in their visa type in Mongolia without having to leave the country.

Employment and residence in Mongolia

In order to legally work and live in Mongolia, a foreign worker must obtain a work permit and a residence permit from the relevant authorities. The inviting organization should obtain a work permit for its foreign worker upon advance payment of a workplace payment⁸ to the General Department of Labor and Social Welfare within 10 business days⁹ after arrival of the foreign worker in Mongolia. A

⁵ Article 3.7 of the “Regulations for the Service of work permits for Foreign citizens” approved by the joint order No. A/108/149 of the Minister of Labor and Social Protection and the Minister of Finance of 2015;

⁶ Adopted by Resolution No. 192 dated 7 July 2021 of the Government of Mongolia;

⁷ The Immigration Agency of Mongolia, <https://immigration.gov.mn/mn/articles/202/>;

⁸ The “Regulation on Workplace Payment and its Reduction and Exemption” adopted by the Government Resolution No.41 of 2015;

⁹ Article 3.7 of the “Regulations for the Service of work permits for Foreign citizens” approved by the joint order No. A/108/149 of the Minister of Labor and Social Protection and the Minister of Finance of 2015;

work permit is issued for up to 1 year.¹⁰ If the inviting organization is exempted from paying a workplace payment as explained in the first section, a work permit can be obtained without paying the workplace payment.

With regards to a residence permit, it is issued by the Immigration Agency of Mongolia and a foreign worker must request for it in person providing with supporting documents defined under the “*Regulation on Registration of Foreigners Residing in Mongolia*”¹¹ within 21 days from the date of entry into Mongolia.¹²

Foreign workers must undergo health examination examined by a health center of the relevant district according to the “*Health Examination Form for Foreign Workers Working in Mongolia*” adopted by the joint order of the Minister of Health and the Minister of Labor and Social Protection in order to obtain a work and residence permit in Mongolia. However, please note that examination and test results conducted outside of Mongolia are not acceptable for the relevant authorities.

From the end of 2021, The General Department of Labor and Social Welfare and the Immigration Agency of Mongolia have been receiving most of the above mentioned permits and visa applications online which saves time for foreigners and organizations inviting them as well as aims to bring all the information into a unified system.

Labor relations

Foreign workers are subject to the same protections and regulations as local employees under the Labor Law of Mongolia and all requirements for entering into an employment relationship with Mongolian employees also apply to the employment relationship with foreign workers. In addition, an employer is required at its own cost to provide foreign workers who are first time in Mongolia with an employment orientation training which aims to provide them with special information necessary for employment.¹³

For further information and legal service, please feel free to contact us.

¹⁰ Article 24.4 of the Law on Migration of Workforce;

¹¹ Adopted by the Resolution No. 194 of 2021 of the Government of Mongolia;

¹² Articles 27.5 and 32.3 of the Law on the Legal Status of Foreign Nationals;

¹³ Article 31 of the Law on Migration of Workforce.