

COVID 19

Mongolia Legal Guidebook

Key issues to consider

7 April 2020



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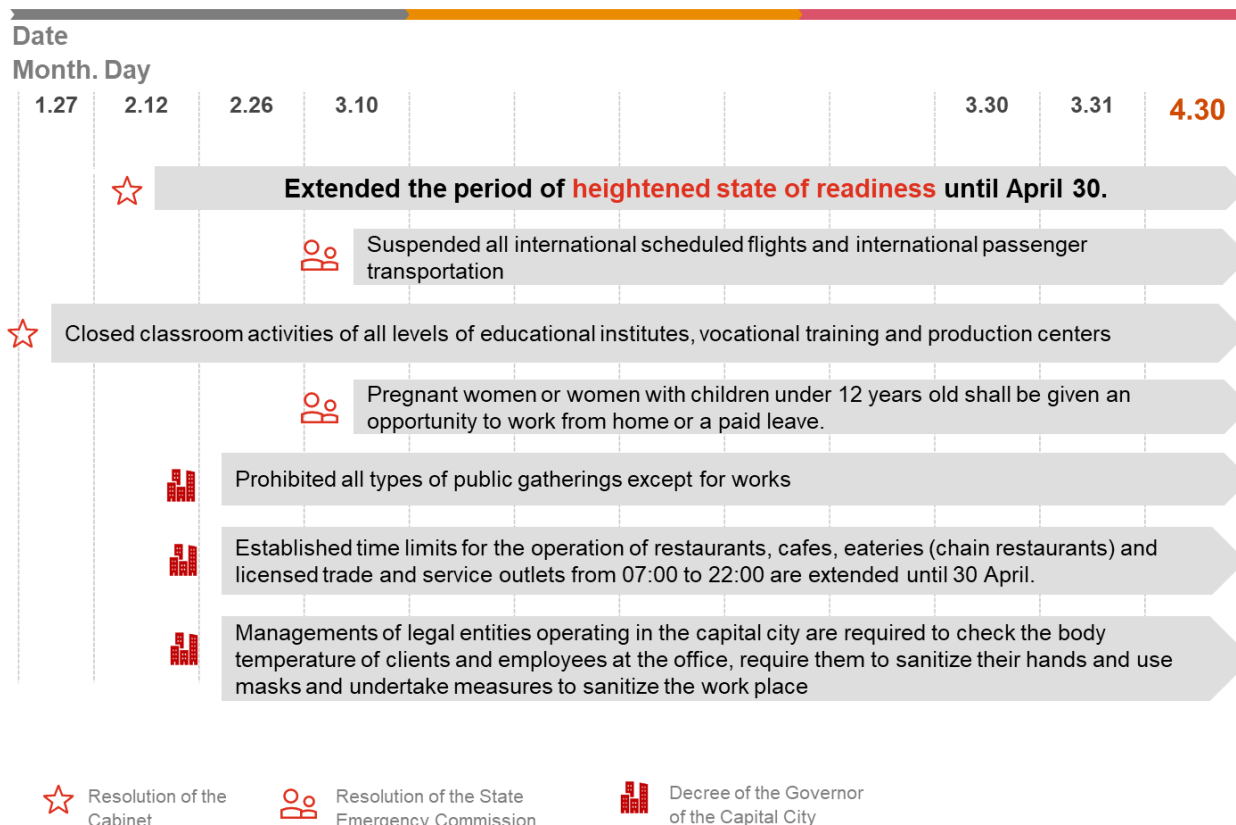
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I. Government's actions re COVID-19

- The Government of Mongolia declared the heightened state readiness on 12 February 2020 which is expected to last until end of April.
- On 11 March 2020 the World Health Organization declared COVID-19 to be pandemic.

What are the key restrictions effective in Mongolia?

Current situation in Mongolia



What sanctions apply for breach of Quarantine or Self-Isolation rules ?

- Fines for non-compliance with the obligations sets forth in the legislation and the legal requirements set by the authorized body will be MNT 500,000 to 3,000,000 for legal entities.
- Intentional transmission of a life-threatening infectious disease or immunodeficiency virus to others shall be punishable by restriction of the right to travel for a period of 1 to 5 years or imprisonment for a term of 1 to 5 years.

GOVERNMENT'S MEASURES FOR STIMULATING THE ECONOMY:

- On 19 February, the Cabinet issued a Resolution #68 which deferred payment of VAT and Customs duty up to 2 months on imported rice, wheat, eggs, sugar and vegetable oil in order to prevent a food shortage and price rising.

Moreover, the Cabinet's announced a proposal on a draft law on tax exemptions for importing all types of rice, wheat, eggs, sugar and vegetable oil to the Parliament.

- On 28 February, the Cabinet issued a Resolution #78 which assigned the relevant Ministers to develop a proposal addressing the following key measures for the approval of the Parliament:
 1. a draft law which will release taxpayers from one-off penalty and relevant interests for a breach for delayed tax payment during the heightened state of readiness period.
 2. a draft law which will release individuals/legal entities from one-off penalty and relevant interests for a breach for delayed social insurance contributions during the heightened state of readiness period.
 3. A draft law which will exempt landlords/lessors /trade and service centers/ from the applicable taxes once if the lessors reduced rental fees during the heightened state of readiness period
- On 18 March, The Central Bank and the Ministry of Finance jointly with the Financial Stability Council decided that if the borrowers failed to repay consumer loan for one month, their credit classification will not be downgraded in the credit information system.
- At the same date, the Financial Stability Council made a resolution which requests commercial banks to make the following measures in response to the COVID-19:
 - to defer repayments of consumer loans and applicable interests by citizens for 90-120 days. Such measure shall be applied from 27 January.
- On March 25, the Government revised and approved the regulation on "Concessional lending, selection, sub-lending, repayment and monitoring from the Small and Medium Enterprise Development Fund". By that Regulation, the Government amended the procedure for issuing loans from the SME Development Fund, reflecting changes to the amount of loans for micro, small and medium enterprises, concessional loan procedure, reducing requirements for sub-lending commercial banks, increasing the amount of regional loans issued, and mechanism for the creation, repayment and monitoring of the SME loan database.
- On March 27, the Government announced to implement the following measures to stimulate the economy in relation to COVID 19:
 1. Companies and individual insurers will be exempted from social insurance contributions for a period of six months from 1 April to 1 October 2020.
 2. PIT will not be levied on salary income of employees for a period of six months from 1 April to 1 October 2020.
 3. Taxpayers with taxable income of less than MNT 1.5 billion in the previous tax year will be exempted from CIT for a six months period during 1 April and 1 October 2020 (excludes taxpayers operating in sectors such as exploration, mining, exploitation, transportation, sale of minerals, radioactive minerals, planting of alcohol and tobacco, production and import of tobacco, production of petroleum products, import of all types of fuel, wholesale and retail trade, oil exploration, mining and sales).
 4. A monthly cash allowance, MNT 200,000 will be provided to each employee of the private entities that have retained their workforces, despite their declining business due to the COVID-19, for three months period.

5. Total MNT 300 billion fund will be available as loans with 3% interest to cashmere purchasers and processors to support the livelihoods of herders as the cashmere harvesting season is approaching.
6. A monthly child allowance which is provided to every child up to 18 years old will be increased by MNT 10,000.
7. From 15 April 2020, measures will be taken to reduce gasoline and fuel price by MNT 300 or more per litre.

In order to implement the above measures, the Cabinet will propose draft laws to the Parliament for approval since the Cabinet does not have capacity to introduce, amend, discount, exempt and cancel taxes.

Total of MNT 5.1 trillion will be required for the above economic stimulus measures.



II. Key employment matters

Mongolia is considered a high-risk territory when it comes to COVID-19 infection. Regulators are strongly recommending organizations to take preventive health and safety measures while requiring them to take disinfection measures. The below provides for key points to take:

	<p>Employer's obligations in relation to health and safety</p> <p>Apart from general obligation to provide with working condition that meets general health and safety requirements, employers are required to adopt and implement a "special work regime" and other measures which are being advised/mandated by the authorized state officials during this Heightened state of readiness.</p>
	<p>Organizational working arrangements</p> <p>Due to COVID-19, many companies are reducing working hours or are suspending operations that in turn creates need to reduce the workforce. Proper planning of working regime and workforce structural changes should be implemented in accordance with the applicable law. Mongolian Labour Law and the court practice on the employment matters have a reputation of being employees' friendly. Therefore, employers should assess case-by-case thoroughly to implement the workforce structuring decisions.</p>
	<p>Salary related matters</p> <p>Not only employees infected with COVID-19, but there are many employees who are quarantined or requested to self-isolate by the authority are unable come to the office or perform their employment duties. Moreover, many individuals including expats are unable to come to Mongolia as the country has shut down its border. Thus, employers are asking whether they are required to pay employees who are unable to work due to many different circumstances. For the most of cases, employers are required to pay. However, the amount of the pay is different depending on an employee's situation.</p>
	<p>Additional preventive measure</p> <p>Proper documentation of employment relations always helps the employer to defend themselves before the authorities. Burden of proof is on employer in case there is an employment dispute. Since the formality plays important role with authorities in Mongolia, it is important to have all the necessary documents and supporting materials when employers make difficult decisions with their employees.</p>

What are Employers' Key Obligations in Relation to Health and Safety

In accordance with the Labour Law, employers have duty to provide healthy and safe working conditions to their employees. This implies taking reasonable steps to eliminate or minimise hazards and risks to health and safety in the workplace.

Moreover, employers are required to take required measures to prevent/minimize impact of epidemics under Law on Prevention of Disasters.

In relation to the COVID 19 virus, it is advisable for employers to take health and safety measures that are in line with the guidance provided by the **National Emergency Commission** and the **Ministry of Labour and Social Welfare**, including the following:

- To adopt and implement a special work regime
- To arrange "work from home" arrangement to reasonable extent
- To arrange work shifts for those who need to work at the office
- To provide safe/healthy working conditions including necessary tools for preventing viruses and boosting immunity system of employees who are necessary to work at the office.
- To take necessary measures to supervise or control employees who are working from home
- To appoint a supervisory staff who controls or supervises implementation of the work regime.
- To take measures to prevent the spread of infection among employees such as requiring everyone to wear protective masks, providing employees with necessary health supporting supplements and organizing scheduled office disinfection

Is it a temporary disability if an employee is infected with COVID 19?

Yes, an employee who is infected with COVID 19 is to be deemed as having a temporary disability.

- Under the Mongolian law, temporary disability may last 66 calendar days in general.
- Medical certificate confirming a temporary disability of an employee and the applicable duration must be provided to the employer.
- During the temporary disability, an employee is entitled to receive monetary support from an employer for first 5 days that usually equals to the monthly salary. Starting from the day 6, the allowance for temporary disability will be provided from the Social welfare fund.
- Therefore, in relation to any employee that is infected with COVID 19:
 - Job position of affected employee must be maintained
 - Medical certificate shall be issued
 - The employer is required to pay salary for the employee for first 5 days unless internal labor manual of the employer provides more favorable conditions to employees

Is an employer under duty to pay a salary to a person in quarantine or self-isolation?

Yes, quarantine or self-isolation is deemed as an excusable ground for no performing duties by the employees under the Labour Law of Mongolia. Therefore, the employer is required:

- to pay salary equal to not less than 50% of employee's base salary during the quarantine or self-isolation period.
- Job position of the affected employee must be maintained.

Is an employer under duty to pay if activities of a project or certain parts of the company is suspended in relation to COVID 19?

Yes, an employer must pay salary no less than 60% of the base salary of the affected employees, if the employer suspends employment activities on a ground which is not attributable to the employee. Such suspension is deemed as **downtime** under the Labour Law.

In accordance with the Labour Law, employers have two options in relation to downtime. One is to transfer employees to a different job, or to temporary suspend employees' work without transferring. The following points should to be considered by the employer:

- In case of transferring employees to another job, the employee's consent should be obtained. In such case, employee shall be paid same salary he/she used to be paid;

- In case the employment of an employee is suspended, the affected employee is entitled to be paid no less than 60% of his/her base salary;
- However, those who refused to work for a different duty without excusable ground will lose his/her salary entitlements during the downtime.

May an Employer terminate an employment contract on the grounds related to COVID 19?

- Due to COVID-19 many companies are reducing working hours or are suspending operations that in turn creates need to reduce the workforce.
- The Labour Law of Mongolia exhaustively lists the grounds for termination of the employment contract. Epidemic is not within the listed grounds and therefore an employer may not terminate employment relations with reference to epidemic.
- Termination of the employment contract is generally viewed as the last resort, and therefore the employers are advised to take all measures not to terminate the agreements. **In this respect it is advisable to first talk to employees, review the employment arrangements, working hours, compensation, offer employees to use their paid and unpaid leaves, etc.**
- in the event an employer does not have other options, the employer may have right to terminate the employment agreement. In the context of COVID-19, the termination ground for an employment contract may be “**reduction/elimination of a position**” or “**organizational change**” or “**closing of a branch or unit**” as provided under the Labour Law. The employer shall assess on case-by-case which of these grounds are applicable to their specific case as there are specific restrictions for applying under the Labour Law.
- Moreover, employees must be notified 30-45 calendar days before the termination and provided with a severance pay.
- In the event employers terminate employment contract based upon the above grounds, those positions which were eliminated/reduced should not be re-created within 3 months period.

III. Performance of Contractual Obligations

1. Is COVID-19 considered a Force Majeure event?

Mongolian laws contain several provisions regulating performance of contractual obligations in case of Force Majeure, however, there is no definitive terminology as to exactly what should be considered such.

In accordance with the general principle of freedom in the Civil Law, contracting parties are allowed to define and choose to include more specific provisions regulating the events of Force Majeure, which is common practice in contractual relation in Mongolia.

However general legal principles relative to Force Majeure events still may apply to COVID-19. By that, when and if any dispute shall arise due to suspension or cancellation of performance of contractual obligation or a contract, courts may deem such non-performance as reasonable while requiring full performance or reasonable performance of obligation when such events end, unless parties have reasonable grounds to terminate the contract.

In consideration of the above, COVID-19 or circumstances arising from it, may be regarded as Force Majeure since COVID-19 is a situation that was unpredictable at the time of concluding a contract, or the situation is beyond the control of the contracting parties and cannot be overcome due to heavy regulation by the regulators.

2. What are the legal consequences for contracting parties if COVID-19 or circumstances arising from it are regarded as Force Majeure?

A) Performance obligations is impossible-General provisions of law

- In accordance with the Civil Law, parties may withdraw from the contract or contractual obligation on reasonable grounds.
- Mongolian laws consider an event of state of emergency or Force Majeure that is causing it to be not possible to demand the extension or continuity of the contract.
- The contract may be terminated **within a reasonable period of time after becoming aware of the grounds for termination** or Force Majeure event.
- If one of the parties terminates the contract in accordance with the law or the contract, the parties are obliged to return to each other the performance of the contract in kind, as well as the profits from the performance of the contract.

B) Performance of obligations is impossible-Contractual provisions

- Civil Law is based on contractual freedom principle, which implies that contracting parties may choose Force Majeure provision when concluding a contract.
- Thus, it is important to understand and look at specific provisions related to Force Majeure, if any, in the given contract in relation to performance of contractual obligation.
- The performance of contractual obligation may provide for right to demand full or partial performance depending on the provision.

C) Performance of obligation is overdue and needs to be extended

In relation to the party that has an obligation of contractual performance, delay or overdue in the delivery of performance shall not be considered overdue or delayed if, the circumstances that led to the overdue or delay are not the fault of the obligated party.

However, above provision will not grant the obliged party of non-performance. This only implies that if any overdue or delay in performance occurs due to COVID-19, the party undertaking such obligation will not be held liable for additional performance or compensation apart from original performance.

Also, please note that provisions in a certain contract dictates its implementation, so if it is provided otherwise in the contract then the contract provisions should prevail.

3. Proof of Force Majeure event or Hardship

Although specific regulations or definitive approach of Mongolian laws to Force Majeure and Hardship is still grey, contracting parties may take additional measures to prove non-performance is caused by Force Majeure or hardships that are arisen due to it. Mongolian National Chamber of Commerce (the “MNCCI”) provides a service to issue proof of such events, if you need any official proof in order to terminate, extend and/or suspend performance of contractual obligation.

Limitations, prohibitions, epidemics and quarantines are considered a Force Majeure event in accordance with the MNCCI’s Procedure for issuing a proof of Force Majeure and Hardship.

In order to obtain a certificate, the following documents must be submitted to the MNCCI:

1. A letter requesting a certificate
2. A notarized copy of the contract (Mongolian translation if the contract is executed in foreign language)
3. A notarized copy of the incorporation certificate of the company
4. Other supporting documents evidencing that force majeure and hardship situation.

4. Recommended steps in-house counsel should take during Covid -19 in relation to contracts

1. **Identify contracts that can be affected** by the COVID-19 pandemic and the obligations that cannot be performed.
2. **Analyze the clauses that reference force majeure**, and clauses referring to assuming the risk for such events.
3. **Gather required documents** to confirm force majeure events.
4. **Notify the counterparty** of the event. Keep in mind that there may be specific deadlines in the contracts to do so. Keep close track of these deadlines.
5. **Renegotiate** contractual clauses to avoid litigation.
6. **Keep records/evidence** of situations causing concern to prepare for potential disputes.
7. **Consider measures to mitigate** the potential damage resulting from COVID-19 and alternative ways to fulfil obligations.

IV. Time limits in administrative and legal proceedings

The issue of limitation periods or time arises when a person intends to file a claim to the court or when a person is involved in administrative or legal proceedings. Failure to meet the statutory time frames may extinguish person's right to make claim or to take certain procedural actions.

Is it possible to suspend running of a statutory limitation period?

- Under the Civil code, if a competent authority, due to emergency or force majeure was unable to refer to court within six months prior to the termination of the statutory limitation period, or if court was unable to run its regular operation, then – for a period, until such situation elapses, statutory limitation period shall be suspended.
- If, subject to certain preconditions, the event arising out of COVID-19 is deemed to be Force Majeure, the running of limitation period shall be suspended.

Is it possible to restore a term in administrative proceedings ?

A term established by law or by an administrative authority shall be restored, if it is elapsed because of the events beyond a person's control (e.g. force majeure, quarantine, illness, other excusable cause). If, subject to certain preconditions, the event arising out of COVID-19 is deemed to be force majeure, an interested party may request the administrative authority to restore the elapsed term.

For example:

- When a participant who participates in administrative decision making process exceed the time period hereof in presenting an explanation and/or comments, for credible reason, the administrative authority may allow resumption of the time period.
- Person shall lodge an appeal against an administrative act with the administrative authority that will rule on the appeal, within 30 days of notifying of the act. If above-mentioned statutory limitation period has been exceeded for an excusable cause, the administrative authority that will rule on appeal will restore the time within 3 months of the exceedance.

Is it possible to extend or restore a procedural time limit ?

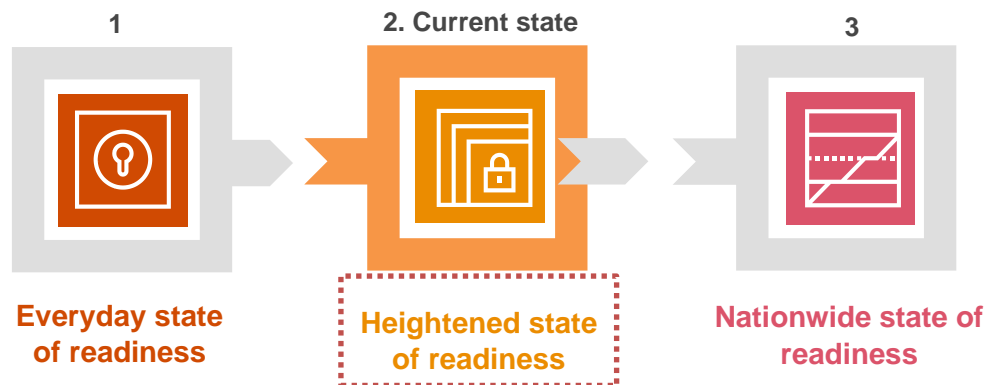
- A procedural time limit can be established by law or by the court.
- The court may extend the time limit set by it on its own initiative or at the reasonable request of the party. Further, the court may restore the time limit prescribed by law for the performance of a certain procedural action, if it finds that the procedural action was not performed due to an excusable cause.
- Under Both of Administrative and Civil Procedure law, the parties, third party, their legal representative or lawyer may appeal within 14 days after receiving the order of the judge or decision of the court. If the parties, third parties, their representatives or lawyer have exceeded the time period for excusable cause, a request to restore the time limit shall be submitted with relevant evidence.
- Hence, if subject to certain preconditions set forth in law, Court may extend or restore the time limit under law.



V. What could be next if the COVID 19 situation evolves?

- The Government of Mongolia declared the heightened state readiness on 12 February 2020 which is expected to last until end of April.
- As per the Law on Prevention of Disasters, the next level for COVID 19 pandemic could be the Nationwide state of readiness if the situation gets worse.
- Moreover, if necessary, the Parliament may declare the State of emergency.

What actions may legal entities undertake during the Nationwide state of readiness?



The following measures shall be carried out during the Nationwide state of readiness:

- Limit, for the period of time, the activities of the industry and service organizations other than nationwide and local communications, energy, public utilities, petrol stations and strategic organizations.
- Authorities of the disaster protection organizations and services, their Staff, rescue units, teams, branches and specialized units as well as respective administrative-territorial units shall fully implement the planned measures for rescue of the population from disaster and its mitigation.
- In case of shifting to Nationwide readiness level directly, the activities that should be undertaken during Heightened level of readiness shall be undertaken simultaneously with other activities.

What actions may legal entities undertake during the State of Emergency?

Pursuant to the Constitution of Mongolia, under the following extraordinary situations the Parliament may declare a state of emergency to eliminate the consequences thereof and to restore the life of the population and society to norm:

- 1) natural disasters or other unforeseen dangers which have threatened or may threaten directly the life, health, wellbeing and security of the population inhabiting in the whole or a part of the country's territory, occur.
- 2) state authorities are not able within legal limits to cope with public disorders caused by organized, violent, illegal actions of any organization or a group of people threatening the constitutional order and the existence of the legitimate social system.

During the State of Emergency, the Parliament may limit various constitutional rights as guaranteed under the Constitution of Mongolia.

Legal entities shall be obliged to provide all possible support and assistance to the state authorities implementing the state of emergency decision, and to strictly follow the decisions and tasks given.

For further discussion on how
COVID-19 may affect your
business please contact us at
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