

# COVID 19

## Mongolia Legal Guidebook

Key issues to consider

7 April 2020



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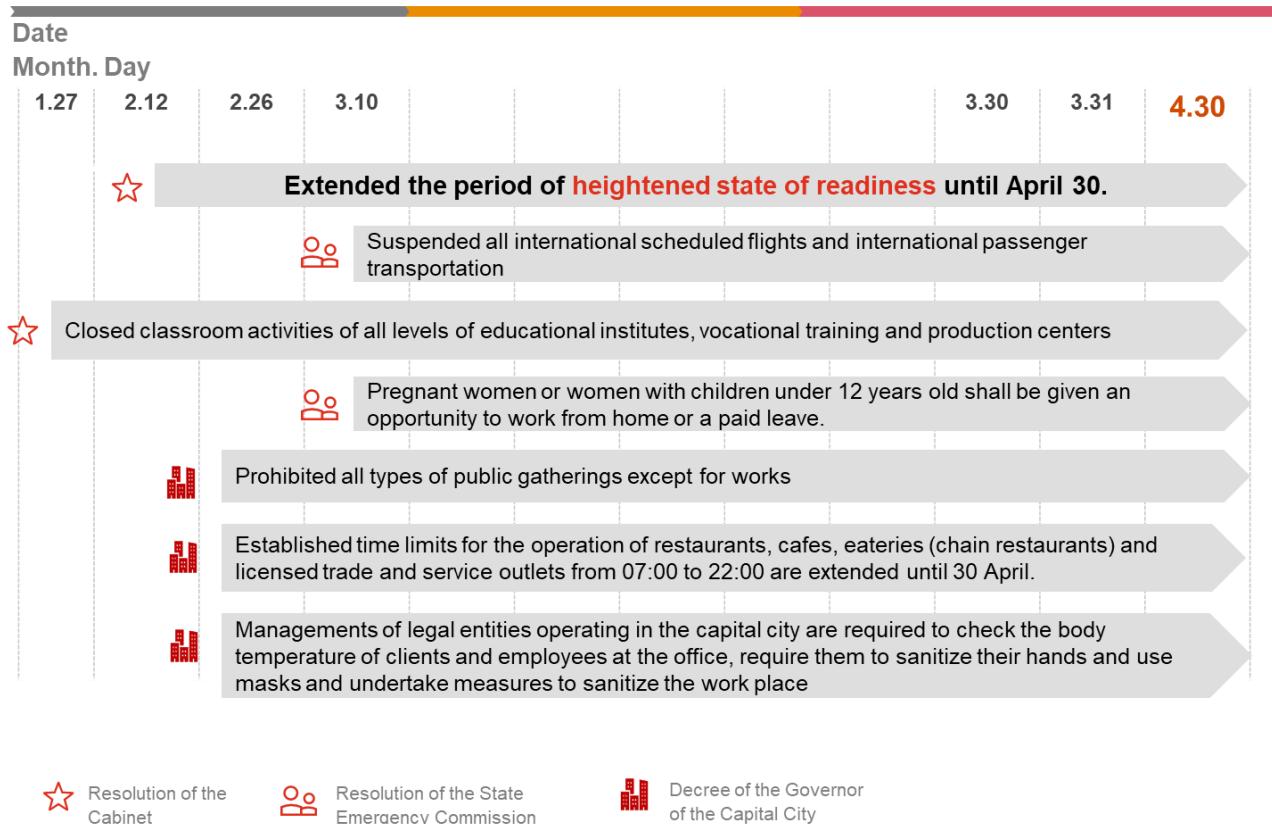
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# I. Government's actions re COVID-19

- 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



★ Resolution of the Cabinet

○ Resolution of the State Emergency Commission

■ Decree of the Governor of the Capital City

**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:

	<b>Employer's obligations in relation to health and safety</b> <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>
	<b>Organizational working arrangements</b> <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>
	<b>Salary related matters</b> <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>
	<b>Additional preventive measure</b> <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 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.

#### **\*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.

#### **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 ?

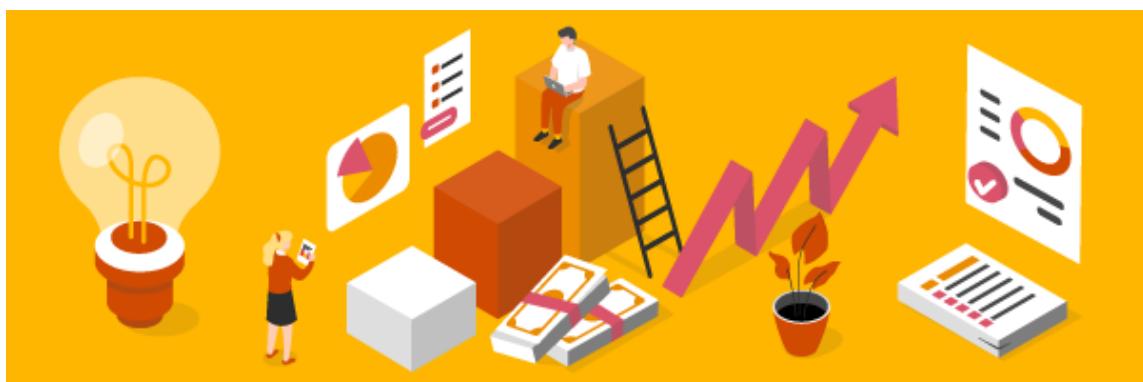
A term established by law or by an administrative authority shall be restored, if it is elapsed because of the events beyond a person's control (e.g. force majeure, quarantine, illness, other excusable cause). If, subject to certain preconditions, the event arising out of COVID-19 is deemed to be force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

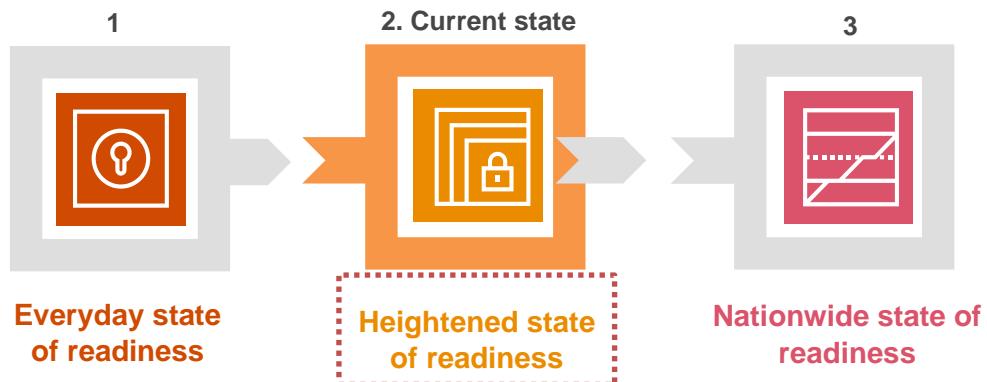
- A procedural time limit can be established by law or by the court.
- The court may extend the time limit set by it on its own initiative or at the reasonable request of the party. Further, the court may restore the time limit prescribed by law for the performance of a certain procedural action, if 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 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.

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# 2019 冠状病毒病 蒙古国法律指南

关键问题聚焦

2020 年 4 月 7 日



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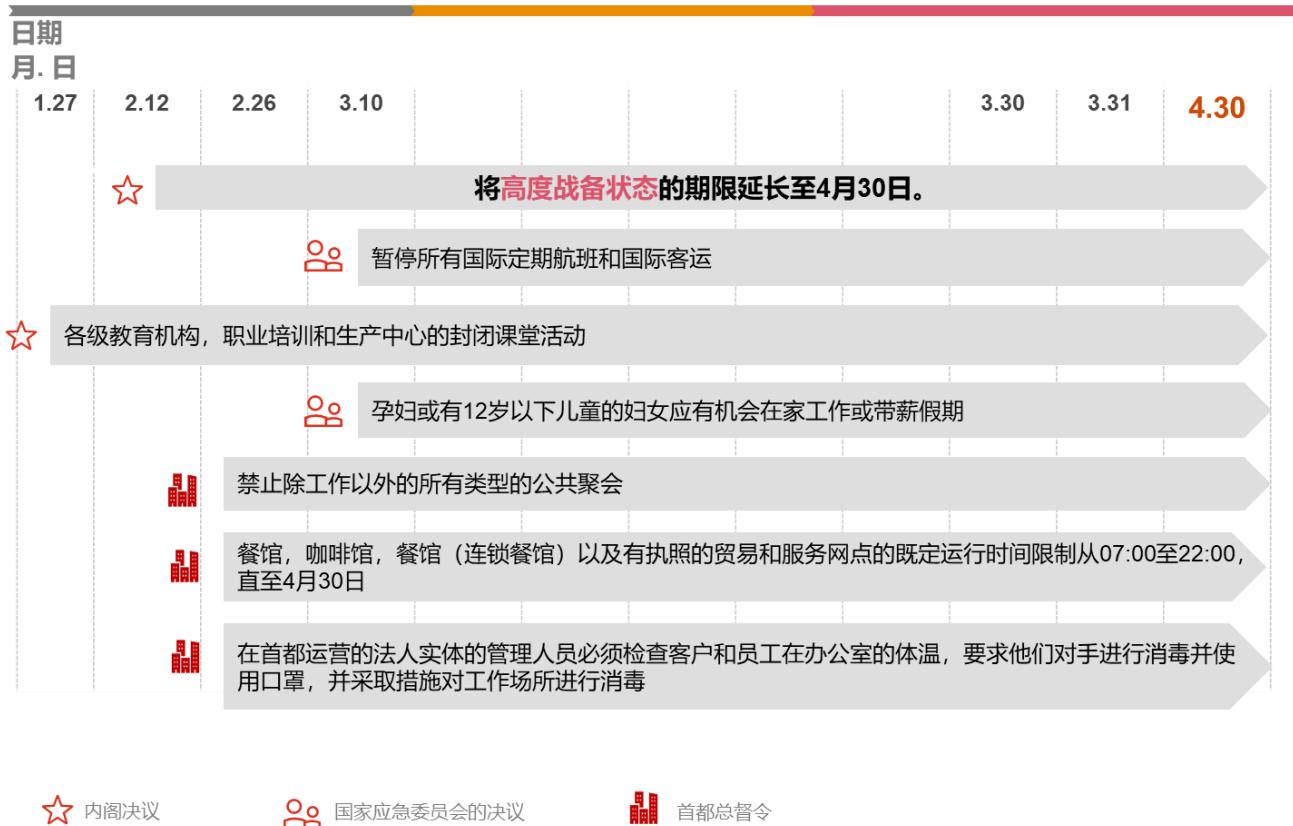
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# I. 政府关于2019冠状病毒病采取的措施

- 蒙古政府于2020年2月12日宣布加强国家高度战备状态、预计将持续到4月底。
- 2020年3月11日、世界卫生组织宣布2019冠状病毒病大流行。

在蒙古有效的主要限制有哪些？

## 蒙古国现状



对于违反隔离或自我隔离规则的制裁？

- 对于不遵守法律规定的义务和授权机构设定的法律要求的罚款、对于法人实体将为500、000至3、000、000蒙图。
- 故意将可威胁生命的传染病或免疫缺陷病毒传播给他人、应限制其旅行权1至5年或给予1至5年监禁。

## 政府刺激经济的措施:

- 2月19日、内阁发布了第68号决议、该决议将进口大米、小麦、鸡蛋、糖和植物油的增值税和关税推迟最多两个月支付、以防止粮食短缺和价格上涨。

此外、内阁宣布了一项关于免税法律草案的提案、该法律草案旨在向议会进口所有类型的大米、小麦、鸡蛋、糖和植物油。

- 2月28日、内阁发布了第78号决议、其中指派有关部长制定一项提案、以解决以下主要措施、待议会的批准：

1. 将在高度战备状态阶段下免除纳税人的一次性罚款和相关利息的法律草案。
2. 将在高度战备状态阶段下、因违反延迟的社会保险金而免除个人/法律实体的一次性罚款和相关利益的法律草案。
3. 如果出租人在高度战备状态阶段下降低了租金、则将免除房东/出租人/贸易和服务中心/的相关税款的法律草案。

- 3月18日、中央银行和财政部与金融稳定理事会共同决定、如果借款人未能偿还一个月的消费贷款、也不会在信用信息系统中降低其信用等级。

在同一日期、金融稳定理事会通过了一项决议要求商业银行针对2019冠状病毒病采取以下措施：

- 将公民的消费贷款和相关利息的还款延迟90-120天。该措施应自2020年1月27日起执行。
- 3月25日、政府修订并批准了“中小企业发展基金的优惠贷款、选择、再贷款、转贷、监控”的规定。根据该规定、政府修改了从中小企业发展基金发放贷款的程序、以反映对微型、中小型企业的贷款额的变化、优惠贷款程序、减少对转贷款商业银行的要求、增加了发放区域贷款金额、及建立、偿还和监督中小企业贷款数据库的机制。
- 3月27日、政府宣布实施以下与2019冠状病毒病有关经济措施：
  1. 自2020年4月1日至2020年10月1日、免除支付公司和个人社会保险。
  2. 自2020年4月1日至2020年10月1日个人免征个人所得税、为期六个月。
  3. 自2020年4月1日至2020年10月1日期间的六个月内、上一个纳税年度应纳税所得额少于15亿蒙图的纳税人将免征企业所得税（不包括在勘探、采矿、开采、运输、矿物、放射性矿物、烟酒种植、烟草的生产和进口、石油产品的生产、各种燃料的进口、批发和零售贸易、石油勘探、采矿和销售）。
  4. 由于2019冠状病毒病而业务绩效有所下降、但仍保留其劳动力的私营实体的每个雇员、将在三个月内获得每月现金200、000蒙图的补贴。
  5. 在羊绒收获季节临近之际、总额为3000亿蒙图的基金将以3%的利率作为贷款给羊绒购买者和加工者、以支持牧民。
  6. 向每个18岁以下的孩子提供的每月儿童津贴将增加10、000蒙图。
  7. 2020年4月15日起、将采取措施将汽油和燃料价格每升降低300蒙图以上。

为了执行上述措施、内阁将无权提出、修改、打折、免税和取消税收、因此将向议会提出法律草案供批准。

上述经济刺激措施总共需要5.1兆蒙图。



## II. 关键就业事项

当涉及2019冠状病毒感染时、蒙古被认为是高风险地区。监管机构强烈建议组织机构采取预防性的健康和安全措施、同时要求他们采取消毒措施。下面提供了一些要点：

	<h3>雇主在健康和安全方面的义务</h3> <p>除了提供符合一般健康和安全要求的工作条件的义务外、雇主还必须采取“特殊工作制度”和执行国家官员建议/要求这种高度战备状态其他措施。</p>
	<h3>机构工作安排</h3> <p>由于新冠疫情、许多公司正在减少工作时间或暂停运营、甚至需要减少劳动力。应根据适用的法律对工作制度和劳动力结构变化进行适当规划。蒙古劳动法和法院在就业问题上的做法比较有利于雇员。因此、雇主应该对个案进行全面评估、实施劳动力安排。</p>
	<h3>工资相关事项</h3> <p>不仅是感染新冠疫情的员工、还有许多被当局隔离或要求自我隔离的员工无法来办公室或履行其就业职责。此外、由于蒙古关闭了边境、许多人包括外籍人士都无法进入蒙古。因此、雇主会有疑问是否需要向因不同情况而无法工作的员工支付工资。在大多数情况下、雇主必须进行支付。但是、根据每个雇员的个体情况不同、工资数额会发生变化。</p>
	<h3>附加预防措施</h3> <p>适当的雇佣关系文件有助于雇主在当局面前为自己维护权益。若发生雇佣纠纷、举证责任将由雇主承担。由于正式手续文件在蒙古国的相关国家机构中发挥着重要作用、因此当雇主对于雇员作出艰难决定时、必须需要所有必要的文件和其他材料进行辅助。</p>

## 雇主在健康和安全方面的主要义务是什么？

根据《劳动法》、雇主有义务为雇员提供健康和安全的工作条件。这意味着要采取合理的措施来消除或最小化危害工作场所健康和安全的风险。

此外、根据《防灾法》、雇主必须采取必要措施、预防/最大程度地减少流行病的影响。

对于2019冠状病毒病病毒、建议雇主采取符合国家紧急事务委员会和劳动和社会福利部提供的指导健康和安全措施、包括：

- 采纳和实施特殊工作制度
- 合理进行“在家工作”的安排
- 为需要在办公室工作的人安排轮班
- 提供安全/健康的工作条件、包括预防病毒和增强必需在办公室工作的员工的免疫系统能力
- 采取必要措施监督或控制在家工作的员工
- 任命负责控制或监督工作制度实施的监督人员
- 采取措施防止员工之间感染的蔓延、例如要求每个人都戴防护口罩、为员工提供必要的健康支持补充剂以及组织定期的办公室消毒

## 如果员工感染了2019冠状病毒病、是否是暂时性的残疾？

是的、被2019冠状病毒病感染的员工将被视为暂时性残疾。

- 根据蒙古法律、暂时性残疾通常可以持续66个日历日。
- 必须向雇主提供确认雇员暂时残疾和期限的医疗证明。
- 在临时残疾期间、雇员有权在头5天内从雇主获得资金支持、这通常等于月薪。从第6天开始、临时残障津贴将由社会福利基金来提供。
- 因此、对于任何感染2019冠状病毒病的员工：
  - 必须保留受影响员工的职位
  - 须出具医生证明
  - 除非雇主的内部劳工手册为雇员提供了更有利的条件、否则雇主必须为雇员支付前五天的薪水

## 雇主是否有责任向隔离或自我隔离的人支付工资？

是的、根据蒙古《劳动法》、隔离或自我隔离被视为雇员不履行职责的可辩解理由。因此、要求雇主：

- 在隔离或自我隔离期间支付的工资不少于雇员基本工资的50%。
- 必须保留受影响员工的职位。

## 如果某个项目或公司某些业务因2019冠状病毒病而被暂停、雇主是否有义务付款？

是的、如果雇主以与雇员无关的理由中止雇佣活动、则雇主必须支付受影响雇员不低于基本工资的60%。根据《劳动法》、此类中止被视为停工时间。

根据《劳动法》、雇主在停工方面有两种选择。一种是将雇员转移到另一份工作、或暂时中止雇员的工作而不转移。雇主应考虑以下几点：

- 如果将员工转移到另一份工作、则应得员工的同意。在这种情况下、应向雇员支付与以前同样的工资；
- 如果中止雇员的工作、受影响的雇员有权获得不少于其基本工资的60%的报酬；
- 但是、那些在没有可辩解理由的情况下拒绝履行其他职责的人、将在停工期间失去其工资及待遇。

## 雇主可以基于2019冠状病毒病的理由终止雇佣合同吗？

- 由于2019冠状病毒病、许多公司都在减少工作时间或暂停运营、从而减少了劳动力需求。
- 蒙古《劳动法》详尽列出了终止劳动合同的理由。流行病不在所列范围之内、因此、雇主不得参照流行病终止雇佣关系。
- 终止雇用合同通常被视为万不得已、因此、建议雇主采取一切措施不终止协议。**为此、建议先与员工交谈、审查就业安排、工作时间、薪酬、为员工提供带薪和无薪休假等。**
- 如果雇主没有其他选择、则雇主有权终止雇佣协议。就2019冠状病毒病而言、雇佣合同的终止依据可以是《劳动法》规定的“**减少/取消职位**”或“**组织变更**”或“**关闭分支机构或单位**”。雇主应根据具体情况评估这些理由中的哪些理由适用于他们的具体情况根据《劳动法》规定的限制。
- 另外、必须在解雇其前30-45个日历日通知雇员并提供遣散费。
- 如果雇主根据上述理由终止了劳动合同、被淘汰/减少的职位不应在3个月内重新建立。

### III. 履行合同义务

#### 1. 2019冠状病毒病是否被视为不可抗力事件?

蒙古法律对于不可抗力情况下合同义务的履行包含一些规定、但是、对于确切应考虑的内容、并没有明确的术语进行阐述。

根据民法中的自由原则、允许缔约各方定义和选择更具体的规定来确定不可抗力事件、这在蒙古国的合同关系中很普遍。

但是、与不可抗力事件有关的一般法律原则仍可能适用于2019冠状病毒病。这样、如果当中止或取消履行合同义务或合同本身而引起任何争议时、法院可以认为这种不履行是合理的、而在此类事件结束时则要求全面履行或合理履行义务、除非当事方合理的理由终止合同。

考虑到上述情况、2019冠状病毒病或由此引起的情况可能被视为不可抗力、因为2019冠状病毒病是在订立合同时无法预测的情况、或者该情况超出了缔约方的控制范围并且由于监管机构的严格监管而无法克服。

#### 2. 如果将2019冠状病毒病或由此产生的情况视为不可抗力、对缔约方有何法律后果?

##### A) 无法履行义务-一般法律条款

- 根据民法、当事方可以以合理的理由撤消合同或合同义务。
- 蒙古法律认为紧急状态或不可抗力事件导致无法要求延长或延续合同。
- 意识到终止或不可抗力事件的理由后、可以在合理的时间内终止合同。
- 如果当事方之一依法或根据合同终止合同、则当事方有义务将实物合同的履行以及合同履行的收益相互退还。

##### B) 无法履行义务-合同条款

- 民法基于合同自由原则、这意味着缔约各方在订立合同时可以选择不可抗力条款。
- 因此、需要了解并查看合同中对于合同义务履行与不可抗力有关的特定规定（如果有）。
- 履行合同义务可以规定要求完全或部分履行的权利、具体取决于合同条款。

##### C) 履行义务已逾期而需要延长

对于有合同履约义务的当事方、如果导致逾期或拖延的情况不是义务方的过错、则不应认为履约交付的延误或逾期。

但是、以上规定不会使义务方不履行义务。这仅意味着、如果由于2019冠状病毒病而导致任何逾期或延迟履行、承担该义务方将不承担除原始履行外的额外履行或赔偿责任。

另外、请注意、某些合同中的条款决定了合同的执行、因此、如果合同中另有规定、则应以合同条款为准。

#### \*不可抗力事件或艰难情形证明

尽管蒙古法律对不可抗力和艰难情形的具体规定或确定的方法仍然是不清楚、但缔约各方可以采取其他措施、以证明不可履行是由于不可抗力或因不可抗力而引起的困难。如果您需要任何官方证明以终止、延长和/或中止履行合同义务、蒙古国家商会（“ MNCCI ”）会提供发布此类事件的证明的服务。

根据MNCCI颁发不可抗力和艰难情形条件证明的程序、限制、禁止、流行病和隔离被视为不可抗力事件。

为了获得证明、须将以下文件提交给MNCCI：

1. 证明申请信
2. 合同的公证书（如果合同是用外语签发的、须翻译成蒙古文）
3. 公司注册证书的公证书
4. 其他证明不可抗力和艰难情形的文件。

#### **2019冠状病毒病疫情期间内部法律顾问应针对合同采取的建议步骤**

1. 确定可能受2019冠状病毒病大流行影响的合同以及无法履行的义务。
2. 分析涉及不可抗力的条款以及提及承担此类事件风险的条款。
3. 收集所需的文件以证明不可抗力事件。
4. 告知合同对方 请记住、合同中可能有特定的截止日期。密切跟踪这些截止日期。
5. 重新协商合同条款以避免诉讼。
6. 保留记录/证据、以应对潜在纠纷。
7. 商讨措施以减轻因2019冠状病毒病造成的潜在损害以及履行义务的替代办法

## IV. 行政和法律程序的时限

当一个人打算向法院提出索赔、或参与行政或法律程序时、就会面临时限或期限问题。不遵守法定时限可能会削弱个人提出索赔或采取某些程序性行动时的权利。

### 是否可以暂停执行法定时效期限？

- 根据《民法》、如果由于紧急或不可抗力而导致的主管当局在法定时效期限终止前六个月内无法将案件提交法院、或者法院无法正常进行诉讼、那么、一段时间后、直到这种情况消失为止、法定时效期限可被暂停。
- 如果在某些前提条件下、因2019冠状病毒病引起的事件被认为是不可抗力、则限制时限的运行将被暂停。

### 是否可以在行政诉讼中恢复期限？

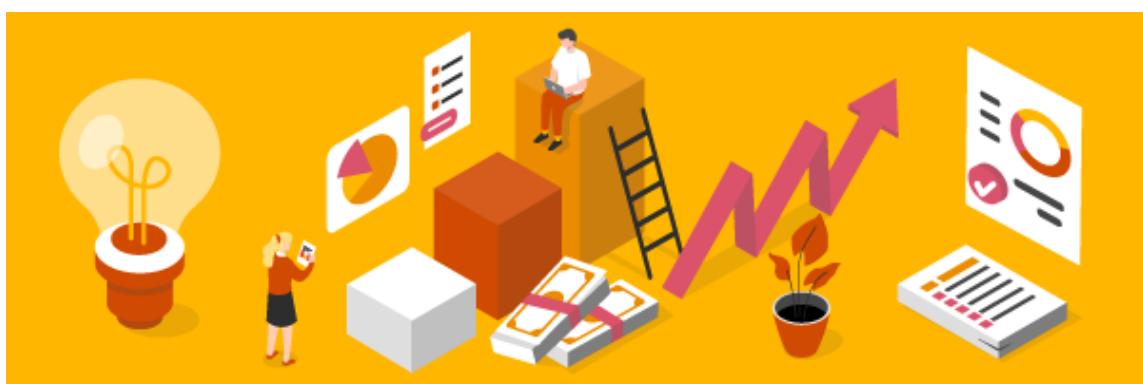
如果由于人无法控制的事件（例如不可抗力、检疫、疾病、其他可辩解的原因）而失效、则应恢复法律或行政机关规定的期限。如果在某些前提下、由2019冠状病毒病引起的事件被认为是不可抗力、利害关系方可请求行政机关恢复已过去的期限。

例如：

- 当参加行政决策过程的参与者出于合理原因超过提出解释和/或评论的时间范围时、行政机关可以允许恢复该时间范围。
- 该人应在通知该行为的30天内、向决定该上诉的行政机关对行政行为提出上诉。如果出于可辩解的原因超过了上述法定时效期限、则对上诉作出裁定的行政机关将在超过该期限后的三个月内恢复该时间。

### 是否可以延长或恢复程序时限？

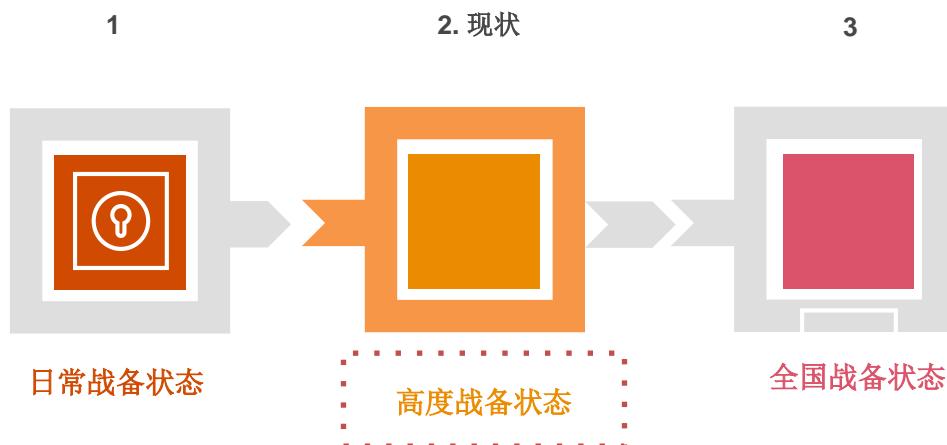
- 程序时限可以由法律或法院确定。
- 法院可以主动或应当事方的合理要求延长其设定的时限。此外、如果法院发现由于可辩解的原因未执行诉讼程序、则法院可以恢复法律规定的执行特定诉讼程序的期限。
- 根据行政法和民事诉讼法、当事方、第三方、其法定代表人或律师可以在收到法官的命令或法院判决后的14天内提出上诉。当事方、第三人、其代表或律师因可辩解的原因而超过期限的、应当提出恢复期限的请求、并附有相关证据。
- 因此、如果遵守法律规定的某些先决条件、法院可以延长或恢复法律规定的时限。



## V. 如果2019冠状病毒病的疫情恶化将会怎样？

- 蒙古政府于2020年2月12日宣布加强国家战备状态、预计将持续到4月底。
- 根据《防灾法》、如果情况变得更糟、那么2019冠状病毒病大流行可能是全国范围内的准备状态。
- 此外、如有必要、议会可宣布进入国家紧急状态。

在全国战备状态下、法人可以采取什么行动？



在全国战备状态下、应采取以下措施：

- 在一段时间内、限制全国和本地通讯、能源、公用事业、加油站和战略组织以外的行业及服务组织的活动。
- 灾害保护组织和部门的主管部门、其工作人员、救援单位、小组、分支机构和专门单位以及各自的行政区域单位、应充分执行计划中的从灾难及其缓解中救助民众的措施。
- 如果直接转移到全国范围内的准备水平、应在增加准备水平期间进行的活动应与其他活动同时进行。

法人在紧急状态下可以采取什么行动？

根据《蒙古国宪法》、在下列特殊情况下、议会可宣布进入紧急状态、以消除其后果并恢复人口和社会的正常生活：

- 1) 发生了自然灾害或其他不可预见的危险、威胁或可能直接威胁到居住在该国整个或部分领土人口的生命、健康、福祉和安全时。
- 2) 国家当局在法律范围内无法应对由任何组织或群体造成的有组织、暴力、非法行为威胁到宪法秩序和合法社会制度的存在而引起的公共秩序混乱。

在紧急状态期间、议会可以限制《蒙古国宪法》所保障的各种宪法权利。

法人实体有义务向实施紧急状态的州当局提供一切可能的支持和协助、并严格遵守所给出的决定和任务。

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