

Labour Migration Law effective from 01 July 2022

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On 24 December 2021, the Parliament of Mongolia passed the *Labour Migration Law* (the “LML”) effective from 01 July 2022. The LML, once effective, its preceding law, the *Law on Sending Labour Force Abroad and Receiving Labour Force and Specialists From Abroad* (12 April, 2001) shall no longer be in force.

In accordance with the concept of “Private Employment Agencies” Convention, No.181 of the International Labour Organisation, to which Mongolia is a party, the legal basis for employment agency service of Mongolian citizens abroad, has been updated. In this tax and legal alert, we highlight the key aspects of the LML.



Application of the law

This law shall apply to the following:

- relations concerning employment or apprenticeship of Mongolian citizens abroad, protection of their rights and legitimate interests;
- procedure for granting work permits to foreign citizens and stateless persons to work in Mongolia.

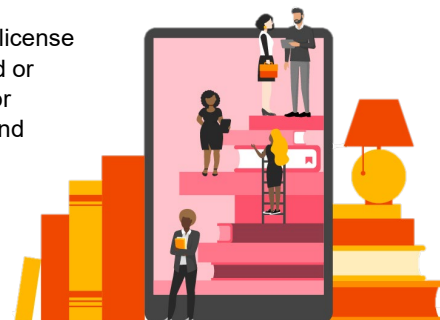
Foreign nationals who work in Mongolia with employment visas are required to obtain work permits and are bound by the LML.

- The LML expressly states that employment relations concerning the work performed and services provided by foreign citizens and stateless persons in the territory of Mongolia shall be regulated by the **Labour Law of Mongolia**.
- Relations concerning visas and residence permits issued to foreign nationals with a work permit shall be regulated by the Law of Mongolia on Legal Status of Foreign Citizens.
- Procedure for granting a license for labour supply activities shall be regulated by the Law of Mongolia on Licensing Business Activities.



Some new definitions

1. **Who is a foreign employee?**
 - a foreign citizen or stateless person who works or is an apprentice in Mongolia.
2. **What is a labour agency?**
 - A for-profit legal entity licensed to provide labour supply services.
3. **What is labour supply services?**
 - employment services provided on the basis of a license related to supplying of Mongolian citizens abroad or foreign employees in Mongolia for employment or apprenticeship purposes, and protecting rights and legitimate interests of agency workers.
4. **Who is an agency worker?**
 - a Mongolian citizen, a foreign citizen or a stateless person who has reached the age of 18 and is receiving labour supply services.



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Job positions for foreign employees in Mongolia are classified into, of management, executive and assistant categories for the first time

- Types of positions for foreign employees in Mongolia shall be classified into categories of **management, executive and assistant**.



Management position

- a general director and/or a CEO of a foreign invested company and a foreign investor or representative of a foreign investor;
- a chairman, a director of a board and/or a CEO of a legal entity; or
- a management position of branches and or representative offices of international and or foreign non-governmental organisations.

Executive position

- employees and volunteers of branches and or representative offices of international and foreign non-governmental organisations;
- specialists to work in science, education, health, culture and sports organisations in accordance with the agreements between Governments and state organisations;
- experts of specialised fields as defined by the Government of Mongolia;
- medical specialist to provide health care and medical services;
- engineers of specialised fields and or equivalent employees from abroad to work in Mongolia, only for the period specified in the investment or development agreements;
- employees of scientific and research organisations, teachers to work at all levels of educational institutions holding a bachelor's degree or higher;
- professional trainers, coaches and specialists to work for cultural and sports organisations.

Assistant position

- employees with technical and vocational education as certified by a competent authority of the respective country through a certificate, diploma or professional license recognised in Mongolia;
- employees to perform seasonal work in Mongolia for a period of up to 6 months.



Inviting foreign employees to work in Mongolia

- For management and executive positions **numbered 1-8 as above**, an employer submits a request a permit to invite a foreign employee, to the General Agency for Labour and Social Welfare Services ("**Labour Authority**").
- For **job positions numbered 9-12 as above**, an employer is entitled to request a permit to invite a foreign employee if the employer assumes that there is no suitable local candidate after 14 working days of posting a job advertisement in the employment registry database for recruitment.
- The permit to invite a foreign employee confirms that the employer is entitled to employ a foreign employee for the advertised role.
- Labour Authority issues a permit to invite a foreign employee, to the employer, for a period of **3 months** if there is no grounds for rejection. The permit can be extended **once for up to 3 months** subject to conditions specified in the LML.
- Labour Authority **may use the electronic system** to provide services related to granting a permit to invite foreign citizens and work permits for foreign nationals working in Mongolia.

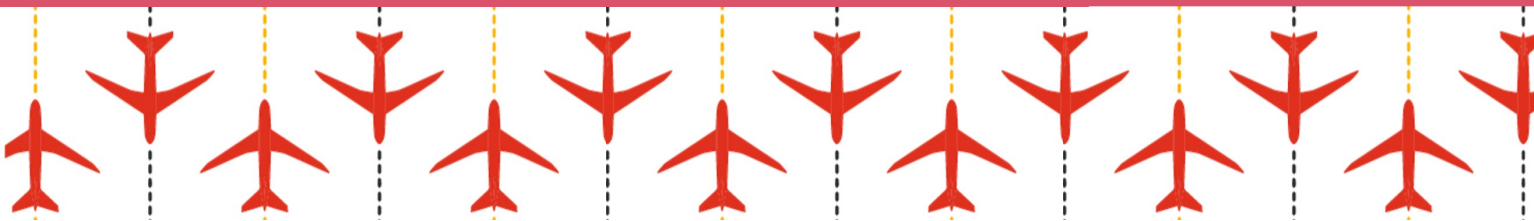


Restricting employers to invite foreign employees

Labour Authority has a right to restrict an employer to invite foreign employees for a period of **2 years** in the following cases:

- The employer had an employment relationship with a foreign employee with no work permit in Mongolia;
- The employer did not pay remuneration or caused damage to it's foreign employee;
- The employer did not take necessary measures to employ registered unemployed persons as specified in the LML;
- The employer established unreasonably high requirements for a vacant position in order to hire foreign employees or refused to hire a Mongolian citizen who met the job requirements without reasonable grounds;
- The employer did not fulfill the requirement to post a job advertisement for 14 working days before applying for a permit to invite foreign employees;
- The employer submitted false reports under the LML;
- The employer failed to register foreign citizens with the relevant authority within the period specified in the legislation or failed to fulfill the obligation to return the foreign citizens to their home country within the visa validity period or residence permit;
- a work permit of a foreign employee that was sponsored by the employer was revoked in accordance with the LML.





Work permit of a foreign employee

- ✓ **Granting work permits to foreign employees:** Employers are required to submit an application for a work permit of a foreign employee on behalf of the employee to the Labour Authority after they are permitted to invite the foreign employee. The Labour Authority issues a **work permit** to the foreign employee for up to **a year** subject to the job position and term of the employment agreement. Detailed procedure for granting work permits shall be approved by the Ministry of Labour and Social Protection.
- ✓ **Work permit** shall specify full name and nationality of the foreign employee, name of the employer, the workplace location and validity period of the work permit.
- ✓ **Extension of a work permit of a foreign employee:** A work permit granted to a foreign employee can be extended subject to applicable regulations. The continuous employment of a foreign employee in an assistant position in Mongolia shall not exceed a period of **5 years**.



Revocation of a work permit granted to a foreign employee

Labour Authority can revoke a work permit granted to a foreign employee in the following cases:

- it has been determined by the decision of the competent authority, the employment agreement was terminated due to the fault of the foreign employee, or term of the employment agreement expired;
- if a medical examination has revealed that the employee is medically unfit to perform the job;
- if the foreign employee left their workplace arbitrarily;
- If the foreign employee worked for another employer without the permission of the Labour Authority;
- if the employee is registered in the foreign employee's database with false documentations;
- if the employee has been found guilty of committing a crime or violation;
- if the foreign employee has lost his / her work ability.



*The LML provides grounds for **revoking an employer's permit to employ foreign employee**, but does not provide for the conditions for **obtaining such permit** including required documents, validity period etc., Furthermore, it is not clear that how this permit is different from a permit to invite foreign employees.*

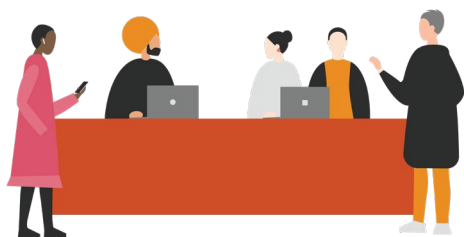



Monitoring the implementation of the LML

Labour Authority: authorised to inspect employers engaging with foreign employees **at least once a year** to ensure implementation of the LML, the employment status and working conditions of foreign employees and to provide necessary advice.

Ministry of Labour and Social Protection: provide advice, approve guidelines and directions for joint inspections, take measures to remedy violations identified during inspections and notify the relevant authorities.

Non-governmental organisations: may exercise independent monitoring on the implementation of the LML within certain activities. Upon request of the non-government organisation to exercise an independent monitoring, the Labour Authority is required to register and cooperate.



 For more in-depth discussion about the key requirements described above, non-compliance risks and any other questions you may have about the LML, please do not hesitate to contact us.

For details of the Labour Migration Law, please visit:
<https://legalinfo.mn/mn/detail?lawId=16390388880621>



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