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## LEGISLATIVE UPDATE: LABOR LAW


### REVISIONS TO THE MONGOLIAN LABOR LAW EFFECTIVE 1 JANUARY 2022

After long discussion and debate since the submission of its initial draft on 26 March 2018, a revised Labor Law (the "**Revised Labor Law**") was adopted by the Parliament of Mongolia on 2 July 2021, which will come into force and effect on 1 January 2022, only a few weeks from now.

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The Revised Labor Law was expected to advance the local labor framework to reflect internationally recognized principles, trends and standards and to address the current key issues of labor relations. The revision could have achieved this goal, but at the same time it does not reflect drastic change to employment relations requiring a new starting point. Instead, it has incorporated many long-acknowledged principles observed by the Mongolian courts as well addressing a number of practical issues.

In addition to the specific changes and new concepts introduced, the Revised Labor Law does achieve a balancing and broadening of rights and obligations of employers and employees in terms of establishing appropriate relations among employers, employees and trade unions, as emphasized by one of the lawmakers, and providing more specific regulations applicable to trade unions' involvement in the labor relations. However, it is uncertain whether it provides the degree of flexibility in employee relations that many private sector businesses are hoping for.

This briefing does not address all aspects of the developments but focuses on some select changes of interest to employers and businesses operating in the private sector.

### 1. CHANGES IN TYPES AND TERMS OF EMPLOYMENT AGREEMENTS

#### 1.1 New Employment Arrangements

The Revised Labor Law provides for seven types of employment agreement, the characteristics of which are specifically defined. Reflecting modern employment trends and global health and emergency situations, the Revised Labor Law introduced various employment arrangements including (i) working from home, (ii) teleworking, (iii) part-time working, and (iv) internship, where employment agreements must be concluded in addition to the previously recognized employment concepts of probationary periods, employment "contracts" and apprenticeships.

Although the current Labor Law had already in principle allowed a natural person to be an employer, the Revised Labor Law also explicitly codifies employment agreements between individuals, the termination of which are subject to limited grounds by law.

#### 1.2 Terms and Conditions of Employment Agreements

The Revised Labor Law retains the general principle of an indefinite term for an employment agreement, unless otherwise allowed by the law. In this regard, it added only internship and employment for project work (which generally have limited funds and duration) to the currently recognized options for fixed-term employment agreements. However, given the lack of detailed regulations in the Revised Labor Law, we understand that the option to enter into a fixed-term employment agreement would still be subject to certain conditions as required by the courts in

practice, for example, the reason and need for a fixed-term job or position should be agreed by the parties and clearly specified in the employment agreement beforehand.

Except for apprenticeship, internship and probationary period employment agreements, the duration of fixed-term employment agreements is two years in total, including the initial term and subsequent extensions.

Upon expiry of the two-year period, fixed-term employment agreements will be considered as indefinite employment agreements which then impose further restrictions and require legal grounds for an employer to terminate the agreement.

## 2. KEY CHANGES TO EMPLOYMENT TERMINATION AT THE EMPLOYER'S INITIATIVE

### 2.1 Grounds for employment termination

Grounds to terminate employment at employer's initiative under the Revised Labor Law remain substantially same except for the following two points:

#### (a) Retirement is not a termination ground

Retirement of an employee is no longer a ground to terminate employment. However, the Revised Labor Law to some extent recognizes and provides for severance pay in the event of termination for the purpose of applying for a retirement pension, and this potentially raises some confusion over the current practice of applying for a retirement pension that unambiguously requires an employee to resign from the job beforehand.

Hence, we expect that either termination for the purpose of applying for retirement pension would be at the discretion of an employee, or the current requirement of employment termination should be revoked if an employee wishes to continue his or her employment.

#### (b) Forging documents

The Revised Labor Law introduced a new ground to terminate employment at the employer's initiative which is providing forged documents regarding an employee's education, profession and qualifications at the time of commencing the employment.

### 2.2 Prior notice of termination

#### (a) Prior notice period

In general, the Revised Labor Law keeps the current minimum thirty-day prior notice for termination at an employer's initiative, for, among others, dissolution of a company, abolition of a job position, reduction in the number of employees (save for mass redundancy), performance issues, and health reasons.[1] In addition to these circumstances, termination of a formerly known employment "contract" which now is defined as a special condition employment agreement due to the employer having transferred its ownership rights[2] was subject to two month's prior notice but has now been reduced to 30 days' prior notice

#### (b) Payment in lieu of prior notice

A new development with respect to prior notice of termination has been made under the Revised Labor Law, which now expressly allows "pay in lieu of notice", while the current law did not, resulting in disputes or concerns over this issue in practice.

[1] Articles 40.1.1, 40.1.2, and 40.1.3 of the current Labor Law
[2] Article 65.4.3 of the Revised Labor Law.

2.3 **Severance pay**

Both the current and the Revised Labor Law recognize severance pay for termination at the employer's initiative, in circumstances where the termination is subject to prior notice. The current law universally provides for severance pay of 1 month's average salary or more at the employer's discretion, whereas the new law provides for different amounts of severance pay based on length of employment, as follows:

| **The Current Labor Law** | **The Revised Labor Law** |
|---|---|
| One month salary or more | 6 months to 2 years of employment – more than 1 month's base salary;<br><br>2 to 5 years of employment - more than two months' base salary;<br><br>5 to 10 years of employment – more than three months' base salary; and<br><br>More than 10 years of employment - more than four months' base salary |

In the case of mass redundancy, severance pay can be agreed with a trade union provided that it should not be less than the above amount.

2.4 **Mass redundancy**

The regulation of "mass redundancy" under the current law was vague, and was limited to the 45 days' prior notice period and a general requirement to enter into negotiations with representatives. The Revised Labor Law introduces new regulations with respect to mass redundancy. Mass redundancy is determined as an event where the employer, within 90 days, terminates employment agreements:

(a) by reason of:

  (i) liquidation of a company and/or an employer;

  (ii) abolition of positions; or

  (iii) reduction of the number of employees;

(b) in the ratio of:

  (i) 5 or more out of 10-50 employees;

  (ii) 10 per cent or more out of 51-499 employees; or

  (iii) 50 or more out of more than 500 employees.

In the event of mass redundancy, the employer must notify employees' representative(s) of the grounds for mass redundancy, the list of employees affected by it, and the termination date, for the purpose of negotiating the below matters, among others:

(a) reducing the number of employees to be dismissed;

(b) transferring employees to vacant positions;

(c) creating new positions;

(d) re-employment in the case of increasing the number of employees;

(e) training employees; and

(f) determining severance pay.

In addition to the negotiation obligations of an employer, the employer must re-employ qualified affected employees into new positions created within one year after the mass redundancy.

## 3. ANNUAL LEAVE

The duration of annual leave remains the same with a minimum of 15 business days for adults and 20 business days for adolescents and adults with developmental disabilities, subject to additional days depending on the total employment period as well as employment conditions.

A new concept of "annual leave for a part-time employee" has been reflected to be consistent with the new categories of employment arrangements, and this is generally to be estimated on a pro-rata basis of the total working hours.

The key changes with respect to annual leave are the following:

(a) **Eligibility period**

Previously, eligibility to take annual leave was at the employer's discretion or subject to internal corporate procedures under relevant guidelines approved by the ministry.[3] Now an employee must have worked for at least six months to be eligible, however, granting more favorable terms under an employment agreement or internal regulations will not be prohibited.

(b) **Duration of annual leave**

Both the current and the Revised Labor Law encourage employees to take annual leave in person fully or partially within the annual employment cycle. The current law does not have any requirement with respect to the duration of partial leave, whereas the Revised Law provides that the minimum number of days of partial leave should be not less than 10 consecutive business days.

(c) **Annual leave pay in lieu**

Compensation for an employee who is unable to take annual leave due to work necessities was effectively at the discretion of the employer and subject to negotiation under the current law. The Revised Labor Law sets a threshold for compensation to be at least 1.5 times higher than the estimated annual leave pay.

## 4. ROSTER WORK

A new concept of "roster work" has been introduced and defined as "long-shift work" in the mining and exploitation industry in the Revised Labor Law. Regulation of this regime has been the focus of attention of many employers and became a heated debate between mining sector employers and trade unions.

The main principle adopted by the lawmakers was that the working and resting period should be same, for example, 14 days on and 14 days off, subject to reduction upon negotiation of an employer and employees' representative.

This regime applies not only to licensed employers, but also to their subcontractors. Further, the period for departure from and arrival to a designated place (under an internal regulation) and to or from the site shall be considered as working hours.

[3] Order No.166 of Minister of Health and Social Welfare, 2000

In terms of working hours, the continuous length of a working day shall not exceed 12 hours, subject to over-time pay on the basis of an 8 hour working day. Over-time pay shall not apply to working at weekends and public holidays for roster workers, which currently is the normal practice in the market.

Other benefits for roster workers including additional pay, compensation or allowances shall be determined by collective agreements and sector-based collective bargaining agreements.

## 5. LABOUR SUPPLY SERVICE

The concept of "working under a labor supply or hire agreement" has been introduced in the Revised Labor Law. According to the Law on Supporting Employment, enacted on 17 June 2011, labor supply service is not a licensed activity, but it does require registration with the relevant government authority (presumably the General Authority of Labor and Welfare) as opposed to a general secondment arrangement. The procedure of registration and requirements imposed on the legal entities providing labor supply services is to be separately approved in regulations of the Minister of Labor and Social Welfare, which currently is not publicly available.

Generally, the host entity and the supplier enter into a labor supply and hire agreement, but the hired employee gets paid by the supplier with which he or she enters into an original employment agreement.

Under the Revised Labor Law, a labor supply or hire agreement shall only be executed in the following circumstances:

(a) for temporary jobs shorter than 6 months in duration;

(b) for temporary replacement of employees whose job must be retained as required under the law, except in case of negotiations and participation in a collective agreement, bargaining, trade union activities and strikes;

(c) for ancillary jobs and services; and

(d) for certain emergency work stipulated in the law.

The number of hired employees under a labor supply or hire agreement must not exceed 30 per cent of the total employees of the host entity, whereas there is no capped number in the event of emergency work.

The Revised Labor Law intends to protect the hired employees' rights by requiring the same or more favorable employment conditions and benefits. However, we note that it is prohibited for a supplier to restrict a hired employee from being employed by the host entity.

## 6. CONCLUSION

The Revised Labor Law is a step forward in terms of reflecting current employment trends and concepts, and in terms of clarifying certain vague provisions in the current law. With respect to all these new and amended regulations and concepts, there are also a number of changes in procedural requirements to be complied by both employees and employers that are beyond the scope of this briefing.

In order to comply with these regulations, employers have now just over a month to make efforts to review and revise the terms and conditions of their employment agreements, employment "contracts" (for example, by adding specific additional conditions[4] to the employment agreement), internal labor related policies and regulations, as well as general policies around fundamental human rights issues

[4] Subchapter 5 of Chapter 5 of the Revised Labor Law

(i.e., non-discrimination, no harassment and violence in the employment relations and environment etc), working arrangements, and salary and compensation packages and budgets.

It is generally the case that the Mongolian courts are employee-friendly when it comes to employment disputes, so it will be interesting to see how practice develops given various new dispute settlement mechanisms provided in the Revised Labor Law.

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