

LAW OF MONGOLIA
ON SENDING LABOUR FORCE ABROAD
AND RECEIVING LABOUR FORCE AND SPECIALISTS FROM ABROAD

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Ulaanbaatar city

(Turiin medeelel #7, 2001)

CHAPTER ONE
GENERAL PROVISIONS

Article 1. Purpose of the law

1.1. The purpose of this law shall be to govern relations concerning employment of Mongolian citizens abroad and foreign citizens in Mongolia (hereinafter referred to as "sending labor force abroad and receiving labor force and specialists from abroad") and protection of their rights and interests.

Article 2. Legislation on sending labor force abroad and receiving labor force and specialists from abroad

2.1. Legislation on sending labor force abroad and receiving labor force and specialists from abroad shall consist of the Constitution of Mongolia, the Labor Code, the Law On Legal Status Of Foreign Citizens, the Social Insurance Law, this law and other acts of legislation enacted in conformity therewith.

2.2. If an international agreement to which Mongolia is party provides otherwise than this Law, then the former shall prevail.

Article 3. Prohibition of employment abroad

3.1. Intermediation in employment abroad is prohibited in the following cases:

3.1.1. for foreign citizens, stateless persons, and persons under age of 18,

3.1.2. For jobs prohibited at international level, including those dealing with toxic chemicals, explosives and radioactive substances, biologically active substances, producing and selling of narcotics and psychotropic substances.

CHAPTER TWO

COORDINATION OF ACTIVITIES OF SENDING LABOR FORCE ABROAD AND RECEIVING LABOR FORCE AND SPECIALISTS FROM ABROAD

Article 4. Powers of the state central administrative body in charge of labor matters

4.1. The state central administrative body in charge of labor matters shall have the following powers:

4.1.1. To define and ensure implementation of policies of and areas of sending labor force abroad and receiving labor force and specialists from abroad in coherence with policies on employment and investment structure policies;

4.1.2. To issue licenses to engage in providing of intermediary services of sending labor force abroad and receiving labor force and specialists from abroad to business entities and citizens, issuing, refusing, extending and revoking employment permit to foreign citizens in Mongolia;

4.1.3. To monitor the performance of obligations regarding social protection of the persons being employed abroad and from abroad in Mongolia on the basis of a contract of employment, take measures to remedy the breaches revealed in the course of their implementation;

4.1.4. Annually fix and have approved by the Government the percentage of labor force and specialists to receive from abroad in the total number of employees taking into account the total number of employees in sectors and organizations of economic activity.

4.1.5. Coordinating activities of the state central administrative body, the government agencies and non-governmental organizations regarding sending labor force abroad and receiving labor force and specialists from abroad, concluding agreements with relevant foreign governmental and non-governmental organizations.

Article 5. General terms of agreement on sending labor force abroad

5.1. A business entity, organization or citizen (hereinafter referred to as "organization") may conclude an agreement on employment, industrial training and acquiring jobs in foreign countries for the citizens of Mongolia for purpose of upgrading knowledge, and vocational skills of a national labor force.

The agreement shall be in conformity with international legal standards, provisions of agreement concluded between two countries and national legislation thereof.

5.2. Terms of agreement on sending labor force abroad regarding labor relations and social protection of a citizen to be employed abroad must be at no lower level than standards indicated in legislation of labor force receiving country.

5.3. Agreement on sending labor force abroad must clearly set out the following terms:

5.3.1. name of the country, city and organization of employment on the basis of a contract of employment;

5.3.2. jobs and professions, titles and positions, number of labor force;

- 5.3.3. term of agreement, its expiration and termination;
- 5.3.4. minimum wage of the employees;
- 5.3.5. occupational safety and health conditions, work and holiday regime;
- 5.3.6. accommodation and social welfare issues;
- 5.3.7. methods and types of settling disputes arising from the implementation of agreement and of labor disputes;
- 5.3.8. social and health insurance, pension, benefit, other relieves;
- 5.3.9. transportation cost and terms;
- 5.3.10. possibilities of transferring wages and other legal income from certain country.

Article 6. Sending labor force abroad

6.1. Activities of sending labor force abroad must be dealt with the business entities, organizations and citizens holding permit to deal with intermediary activities for foreign employment (hereinafter referred to as "mediation permit") by the state central administrative body in charge of labor matters.

6.2 Mediation permit shall be issued by Government member in charge of labor matters. Certificate of mediation permit is an official document with specific sign and number and signed by the Government member. The certificate indicates name of an organization and of labor force receiving country, number of decision of granting mediation permit and enforcement length of a permit.

6.3 Organization submits application requesting mediation permit of sending Mongolian citizen for employment abroad to a state central administrative body and encloses the following documents to the application upon concluding agreement on sending labor force abroad with foreign organization:

6.3.1. agreement on sending labor force abroad concluded with foreign organization;

6.3.2. a notarized copy of the state registration certificate of the business entity;

6.3.3. a certification from tax authority on whether the given organization is able to meet requirements set forth by relevant legislation of Mongolia and operate normally;

6.3.4. an official letter from given organization specifying the purpose and areas of mediation services, obligations, responsibilities of and requirements upon a citizen to work abroad;

6.3.5. procedure of selection of the citizens to work abroad, draft agreement to be concluded between them and the intermediary organization, and decision made regarding the amount of mediation fees;

6.3.6. a certification from relevant bank on financial capability of the organization;

6.3.7. If the case necessary, identification from embassy, diplomatic representative offices in certain country and other relevant organization.

6.4. Mediation permit is issued for up to three year period on the basis of agreement on sending labor force abroad and may be extended at the organization's

request, activity report and results. Decision to extend the mediation permit is made by a Government member in charge of labor matters.

6.5. In the case of sending labor force to the countries other than those specified in the mediation permit, Government member in charge of labor matters makes decision on making amendments to mediation permit on the basis of agreement concluded with business entities and organizations of a certain country.

6.6. In the case an agreement on sending labor force abroad is in breach of legislation of Mongolia, and fails to meet the requirements set forth in Articles 5.3 and 6.3 of this law, a response to refuse to issue, extend or amend the mediation permit shall be given in writing within 15 days from receipt of the application and relevant documents from the given organization.

6.7. A decision by the state central administrative body in charge of labor matters is taken each time the organization sends labor force abroad on the basis of a contract of employment.

6.8. The state central administrative body in charge of labor matters submits name list of persons sent abroad for employment, and each copy of agreement and relevant documents to Embassy, consular and representative offices of Mongolia in the given country .

6.9. In the case an organization issued a mediation permit for employment abroad seriously violated citizens' rights by losing labor safety, social and health security, sending labor force to the countries other than those permitted, and setting unjustified fees for purpose of making high profits from mediation activity, the Government member in charge of labor matters makes a decision to cancel the mediation permit.

6.10. In the case if a citizen of Mongolia loses life or becomes disabled due to an industrial accident, acute poisoning or occupational diseases, the organization which was issued a mediation permit shall compensate the harm and, if the family request so, bears expenses of bringing the body of the deceased to Mongolia.

6.11. The organization, along with indicating in the agreement the provisions on social and health insurance coverage in the receiving country, ensures coverage in insurance in accordance with Social Insurance Law of Mongolia and concludes an agreement with social insurance agency, if the citizen requests. The amount of income from which insurance premium is to be paid must be no lower than the minimum wage.

6.12. Payment imposed for granting mediation permit is regulated in accordance with the relevant law of Mongolia.

Article 7. General terms of agreement on receiving labor force and specialists from abroad

7.1. A business entity, organization or citizen (hereinafter referred to as "the organization") may conclude an agreement with foreign legal entities to receive labor force and specialists from abroad for occupations and professions requiring high

professional skills for the purpose of introducing advanced techniques and technologies in science, education and industry, introducing new production and services, assembling, maintaining equipment and implementing projects.

7.2. Agreement to receive labor force and specialists from abroad shall include the following general terms:

7.2.1. name of the organization to employ the foreign citizen and his/her job responsibilities;

7.2.2. profession and name of workplace of the foreign citizen, number of foreign citizens to be employed;

7.2.3. health requirements for foreign citizen;

7.2.4. conditions of mutual recognition of documents certifying professional and educational level;

7.2.5 term of agreement and termination;

7.2.6. amount of compensation;

7.2.7. occupational safety and hygiene, working conditions, regime of work and rest;

7.2.8. accommodation and utility matters;

7.2.9. social insurance matters;

7.2.10. methods and forms of resolution of disputes arising in connection with performance of agreement and of labour disputes.

7.3. In the case domestic labor force is not available for implementing major nationwide programs and projects, construction works and for eliminating the consequences of natural disasters, labor force may be received from abroad on the basis of a Government decision.

7.4. In the case a foreign citizen lost his/her life due to natural disasters, fire or flood, the Government of Mongolia shall provide support same as in the case of a Mongolian citizen.

7.5. In the case of losing life or becoming disabled due to an industrial accident, acute poisoning or occupational diseases, an organization employing a foreign citizen shall fully perform its relevant contractual obligations.

Article 8. Receiving labor force or specialists from abroad

8.1. Prior to receiving labor force and specialists from abroad organizations shall obtain a permit from the state central administrative body in charge of labor matters or agencies authorized by the former (hereinafter referred to as "competent authority").

8.2. Organizations shall compile the following documents to obtain the permit specified in 8.1 of this law:

8.2.1. an official letter specifying in detail the need for labor force or specialists from abroad, amount and duration of job or services to perform, industrial specifics, location, profession, work experience and skills of a foreign citizen;

8.2.2. a notarized copy of state registration certificate of the business entity, organization and foreign-invested business entity certificate;

8.2.3. an agreement concluded with a foreign legal entity to receive labor

force or specialists from abroad;

8.2.4. a copy of passport of the foreign citizen;

8.2.5. a copy of professional certificate and diploma of the foreign citizen;

8.2.6. a reference letter from the sectoral ministry or agency to employ the foreign citizen;

8.2.7. an opinion of the authority in charge of foreign nationals and citizenship matters regarding the foreign citizen and his/her family members;

8.2.8. comments by the local employment agency regarding the needs and demand for labor force or specialists from abroad at the given organization.

8.3. Upon receiving and examining relevant documents the competent authority issues permits for employment in Mongolia within the percentages set by the Government.

8.4. Permit of employment is valid for up to one year and can be extended in accordance with 8.2 and 8.3 of this law upon receiving and examining the organization's request, results of performed job or service, and grounds for extension.

8.5. Organizations receiving foreign citizens in Mongolia under permit of employment shall register with the agency in charge of foreign nationals and citizenship matters.

8.6. In the case a foreign citizen holding a permit of employment terminates a contract of employment concluded with an organization, the competent authority makes a decision of granting permit in accordance with the relevant procedure on the basis of reference of the organization such foreign citizen was employed at and grounds for the termination of the contract of employment.

8.7. In the case a foreign citizen granted holding a permit of employment in Mongolia fails to perform his/her obligations under the contract of employment concluded with a specific organization, breaches terms of the contract, or moves to work with another organization or to another location without permission, the permit of employment the competent authority cancels the permit on the basis of certification of the organization and notifies of the fact the agency in charge of foreign nationals and citizenship matters.

8.8. Duration of permit of employment for foreign citizens is counted starting from the date of submission of the request in the form of an official letter specified in 8.2.1 of this law.

8.9. Government members in charge of labor and financial matters shall jointly approve the procedure of granting permit of employment to foreign citizen and the amount of service fees.

Article 9. Workplace fees and its amount

9.1 Business entities, organizations and a citizens shall pay workplace fees in the amount set forth in 9.2 of this law for providing a foreign citizen with workplace and engaging in job or service with remuneration.

9.2. Monthly workplace fees shall be equal to 2 times of the minimum wage approved by Government of Mongolia per foreign citizen.

9.3. In case if the mineral resources exploitation license holder employs more percentage of foreign employees than it is allowed by in the article 43.1 of the Law on Mineral resources, he or she shall pay the per month payment stipulated in the article 43.2 of this law.

9.4. Workplace fees if it is not provided otherwise by in the law shall be accumulated in the employment promotion fund and used for the actions to create workplaces and reduce unemployment.

9.5. The fees specified in this article shall not apply to the foreign citizens employed in foreign diplomatic representative and consular offices, resident representative offices of international organizations, specialists and employees employed under contracts in the education and science sector, and in the cases provided in the intergovernmental agreement, to the foreign specialists and employees employed under such agreements.

9.6. The Government shall approve the procedure for charging workplace fees and providing reductions thereof.

CHAPTER THREE MISCELLANEOUS

Article 10. Responsibilities of the organization and diplomatic representative offices in foreign countries

10.1 The organization shall quarterly prepare on established forms report and statistics of performance of contracts to send labor force abroad and/or receive labor force or specialists from abroad, citizens being employed abroad, labor force or specialists received. Information on the terminated and extended contracts shall be prepared for each such contract and submitted officially to the state central administrative body in charge of labour matters or a competent agency authorized by the former.

10.2 The organization shall be obliged to take actions to send back Mongolian citizens being employed abroad and labor force or specialists received from abroad upon expiration of the contract of employment.

10.3 Embassies, consular and representative offices in the respective countries have the following obligations regarding Mongolian citizens being employed and undergoing industrial training abroad and foreign citizens being employed in Mongolia:

10.3.1. monitor the performance of agreement regarding employment of citizens of Mongolia abroad;

10.3.2. keep registry of and information on Mongolian citizens being employed under contracts of employment and submit to the state central administrative body in charge of labour matters on quarterly basis;

10.3.3. study on the location working conditions, the state of wages and social welfare, and where necessary, provide support and assistance to Mongolian citizens by addressing competent authorities of the given country;

10.3.4. oversee whether contracts to receive labor force and specialists and employment permits are issued prior to the issuing of entry visas for Mongolia, and provide relevant consultation;

Article 11. Monitoring the implementation of the legislation

11.1. The state central administrative body in charge of labour matters and authorized by it competent agencies, offices of the aimag, capital City and district Governors and relevant law enforcement and inspection authorities shall exercise control over the implementation of this law.

Article 12. Liability for the breaches of legislation

12.1. Unless breaches of the legislation on sending labor force abroad and receiving labor force or specialists from abroad is subject to criminal liability, the state labor inspector or judge shall impose the following administrative sanctions:

12.1.1. a fine of 30,000-60,000 togrogs on an official and of 150,000-250,000 togrogs on a business entity or organization for receiving labor force and specialists from abroad or sending labor force abroad in breach of 6.1 and 8.1 of this law, with the obligation to compensate the damage caused;

12.1.2. a fine of 150,000-250,000 togrogs on a business entity or organization for the failure to pay the fees set forth in 9.1 of this law, and repayment of the fees due;

12.1.3. a fine of 5,000-25,000 togrogs on an official and of 50,000-100,000 togrogs on a business entity or organization for the repeated failure to submitting the reports and information in breach of 10.1 of this law;

12.1.4. a fine of 50,000-100,000 togrogs on an official and of 500,000-1,000,000 togrogs on an organization for the avoiding from sending back the citizens specified in 10.2 of this law and creating possibilities to be employed without permit.

Article 13. Entry into force

This law shall come into force on 1 June 2001.

VICE-CHAIRMAN OF
THE STATE IKH KHURAL

J. BYAMBADORJ