



МОНГОЛЫН ҮНДЭСНИЙ ХУДАЛДАА
АЖ ҮЙЛДВЭРИЙН ТАНХИМ

COVID-19 AND LEGAL ISSUES IN BUSINESS

FOR SMALL AND MEDIUM-SIZED ENTERPRISES

QUESTION AND ANSWER PAPER

ABOUT THIS PUBLICATION

The European Bank for Reconstruction and Development (“EBRD”) launched the initiative “*COVID-19 Crisis Response - Provision of Emergency Legal Advice to Small and Medium Enterprises in Mongolia*” to enable small and medium-sized enterprises (“SMEs”) in Mongolia to mitigate the deepening impact of the coronavirus pandemic. This initiative organised a series of three webinars, funded by the European Union and implemented in collaboration with KhanLex Partners (“**KhanLex**” or “**Consultant**”).

During the webinars, KhanLex provided free legal information and advice aimed at supporting COVID-19 responses by SMEs in Mongolia. All webinars are available to watch at:

Webinar 1:

“Emergency support applications and legal effect.

Credit/loan agreements in emergency (payment deferral, debt restructuring, new security arrangements, new finance etc.), dispute resolution and prevention.”

<https://www.youtube.com/watch?v=hLVANo1ikAQ>

Conducted on 15 December 2020

Webinar 2:

“Online trading – key legal aspects. Rent payments deferral and reduction. Insolvency legal duties and preventive steps.”

<https://www.youtube.com/watch?v=cAPZ3YqYEa0>

Conducted on 21 December 2020

Webinar 3:

“Other contractual issues (force majeure, supply and sale terms renegotiation, contracts for provision of services, signing agreements online and e-signature etc.). Labour relationships, tax relief.”

<https://www.youtube.com/watch?v=vezuhOH3gxc>

Conducted on 25 December 2020

The purpose of this “Question and Answer Paper” (the “**Q&A Paper**”) is to summarise the content of the three webinars as well as to answer the questions raised by participants during the webinars.

On behalf of the webinar participants, KhanLex would like to thank the **European Union** for funding this critical project and the **EBRD** for developing and implementing it. We would also like to acknowledge two supporting organisations of the project – the Mongolian National Chamber of Commerce and Industry and the Mongolian Small and Medium Industry Office of Government of Mongolia.

Unless otherwise indicated in this Q&A paper, the cut-off date for the data used herein is 31 January 2021.

CONTENTS

I. GOVERNMENT'S EMERGENCY MEASURES, LOAN RESTRUCTURING, AND DISPUTE RESOLUTION	4
SUBTOPIC 1.1: Emergency support application and legal effects	4
SUBTOPIC 1.2: Credit/loan agreement in emergency	6
SUBTOPIC 1.3: Dispute resolution	8
II. ONLINE TRADING, DEFERRAL OF RENT AND INSOLVENCY.....	13
SUBTOPIC 2.1: Online trading: key legal aspects	13
SUBTOPIC 2.2: Rent payments: deferral and reduction	17
SUBTOPIC 2.3: Insolvency: legal duties and preventive steps	17
III. FORCE MAJEURE AND OTHER SELECTED CONTRACTUAL ISSUES, LABOUR RELATIONS, TAX RELIEF.....	20
SUBTOPIC 3.1: Other contractual issues – force majeure, renegotiation of supply and sale, contract for provision of services, e-signature	20
SUBTOPIC 3.2: Labour relationship	24
SUBTOPIC 3.3: Tax relief	27

I. GOVERNMENT'S EMERGENCY MEASURES, LOAN RESTRUCTURING, AND DISPUTE RESOLUTION

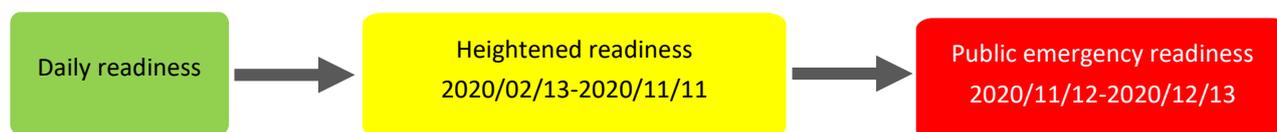
SUBTOPIC 1.1: EMERGENCY SUPPORT APPLICATION AND LEGAL EFFECTS

Question 1: What are the primary obligations of Mongolian businesses during the emergency period?

The primary obligations of Mongolian businesses during an emergency period such as a pandemic (e.g., COVID-19) are governed by the following two main laws.

First, the Law of Mongolia on Disaster Protection enacted on 2 February 2020 (the “**Disaster Protection Law**”) imposes stringent requirements on the daily activities of citizens and businesses during emergency situations, including quarantine, public disease outbreak, earthquake, flood, fire, pandemic, and other natural disasters¹. This law, among others, aims to organise emergency management, reduce the risks borne by a disaster, determine its level, regulate the emergency regime, as well as set up the governmental management and structure, the governmental powers and the obligations of individuals and businesses.

According to the Disaster Protection Law, the levels of a disaster are as follows:



Following the confirmation of first COVID-19 cases in the People's Republic of China, the Government of Mongolia announced the “heightened readiness” level on 13 February 2020.

The Government of Mongolia subsequently transferred to the next level - “public emergency readiness”, after the first local transmission of COVID-19 was registered in Mongolia on 12 November 2020. As of 17 February 2021, the quarantine regime is the highest and the Government of Mongolia has closed all business activity in Mongolia, except for essential sectors (medical services, gas stations, food retail and production, power, media, courts, police etc.).

The most important obligation that businesses must observe under the above-mentioned Law is to comply with the obligations and decisions of the Government, such as closing during the quarantine (lockdown) period.

In addition, businesses have the following obligations under the Disaster Protection Law:

- ❖ Adopt and implement a “plan for protection from disaster”, also called as “organisational plan related to the emergency situation” (§34.2.1);
- ❖ Conduct the risk assessment, reduce the risk, acquire relevant insurance (§34.2.5)²;
- ❖ Refrain from creating artificial food and other shortages or inflating the price of goods and services (§34.2.9); and
- ❖ Carry identification papers, license and other similar documents at all times (§37.2.8).

The other law is the Law of Mongolia on Prevention of Spread of the Coronavirus and Mitigation of the Socio-Economic Impact, enacted in 2020 (the “**Prevention of Spread of the Coronavirus Law**”). Unlike the Disaster Protection Law, the Prevention of Spread of the Coronavirus Law is dedicated to COVID-19 only. As such, its specific objectives are to protect public health, impose certain restrictions on the daily

¹ Available at <https://www.legalinfo.mn/law/details/12458>.

² The risk assessment means assessment of a disaster risk and planning and mitigating disaster risk based on a preliminary assessment of a potential disaster. The risk assessment is conducted by a separate legal entity licensed by the National Emergency Management Agency of Mongolia and is hired by the business. Upon the assessment, the legal entity produces and submits to the business, a disaster risk assessment report which identifies risks of the business. Please note that the risk assessment must be conducted by all entities (including SMEs) **every three years**.

activities of citizens and businesses, and make relevant public or Government decisions promptly during the COVID-19 pandemic.³

Some of the important obligations of the employers and businesses under the Prevention of Spread of the Coronavirus Law are:

- ❖ Prepare the “anti-COVID-19 reserve fund” (§13.2.2)⁴;
- ❖ Keep jobs of an employee(s) who is under quarantine, or movement restriction or in isolation (§13.2.5);
- ❖ Provide employees with an opportunity to perform their jobs digitally (remotely) (§13.2.7); and
- ❖ Refrain from increasing the rent, inflating the price of goods and services or creating artificial shortage of goods and services (§13.2.8).

Question 2: What is an “organisational plan related to the emergency situation” as required by emergency laws of Mongolia? How to develop such document?

According to Article 34.2.1 of the Disaster Protection Law, a business must adopt a “plan for protection from disaster”. Such plan must be developed and adopted as soon as feasible after the establishment of the business, i.e., before an emergency occurs, so that the business is ready to respond. Please note the term “disaster/emergency” does not refer to the COVID-19 pandemic only. It also includes other events such as earthquake, drought, harsh winter, large-scale industrial accident, leakage of radioactive or chemical toxic substance. The business should plan accordingly on how to continue/resume its activities, how to budget for its response measures, how to manage the employees’ working schedule in the event of a disaster. These are the issues that need to be addressed in the “plan for protection from disaster”.

! NOTE:

The “plan for protection from disaster” is the organisational plan related to the emergency situation. Instructions on how to develop such plan have been published by Order No. 120 dated 7 December 2018 approved by the Deputy Prime Minister of Mongolia. This Order contains a sample plan. In order to review the Order and the sample plan, please follow the link: <https://khanLex.mn/webinar/5>.

According to Article 5.13.4 of the Law of Mongolia on Infringement, a failure to develop and adopt a “plan for protection from disaster” is subject to a monetary fine of MTN 1,0 million (approx. USD 400).

Question 3: What are the main supportive measures taken by the government with regard to the SMEs?

We would like to highlight the following key measures taken by the authorities to support the SMEs:

- **Tax breaks:** Several tax breaks are available. A lessor who reduces the rent between 1 February 2020 and 1 July 2021 is eligible for corresponding reduction of its tax on the total rent income. Also, social insurance fees (taxes) have been reduced to 10,5% for both the employer and the employee between 1 October 2020 and 1 July 2021. Next, small and medium businesses with revenues below MNT 1,5 billion were exempt from income tax between 1 April 2020 and 31 December 2020, the exemption can be claimed by SMEs retroactively. Finally, VAT and customs duties have been eliminated for imports of essential food items, such as rice, oil etc.
- **SME financing programmes:** There are a few programmes in Mongolia which provide low-cost financing to SMEs, led by both the Government of Mongolia and donor agencies. Some of the most notable are the Government-run SME Development Fund and the Employment Promotion Fund (operated jointly by the Ministry of Labour and Social Welfare and the World Bank). In addition, the

³Available at <https://www.legalinfo.mn/law/details/15312?lawid=15312>.

⁴The “anti-COVID19 reserve fund” means a business must establish and maintain a monetary fund dedicated to prevention or tackling of COVID-19 to be used as necessary by the business. It is a savings instrument, for example, to be used to buy essential products at any time as needed.

⁵ Available at <http://nema.gov.mn/wp-content/uploads/2018/02/>.

MongolBank has recently issued up to MNT 250 billion under the long-term repo financing⁶ to support SMEs and non-mining exports in Q1 of 2021. Finally, Credit Guarantee Fund of Mongolia has been helping viable SMEs, but with no collateral, obtain financing from banks and non-bank financial institutions by issuing guarantees.

The above tax incentives and financing schemes are described in detail further in this Paper.

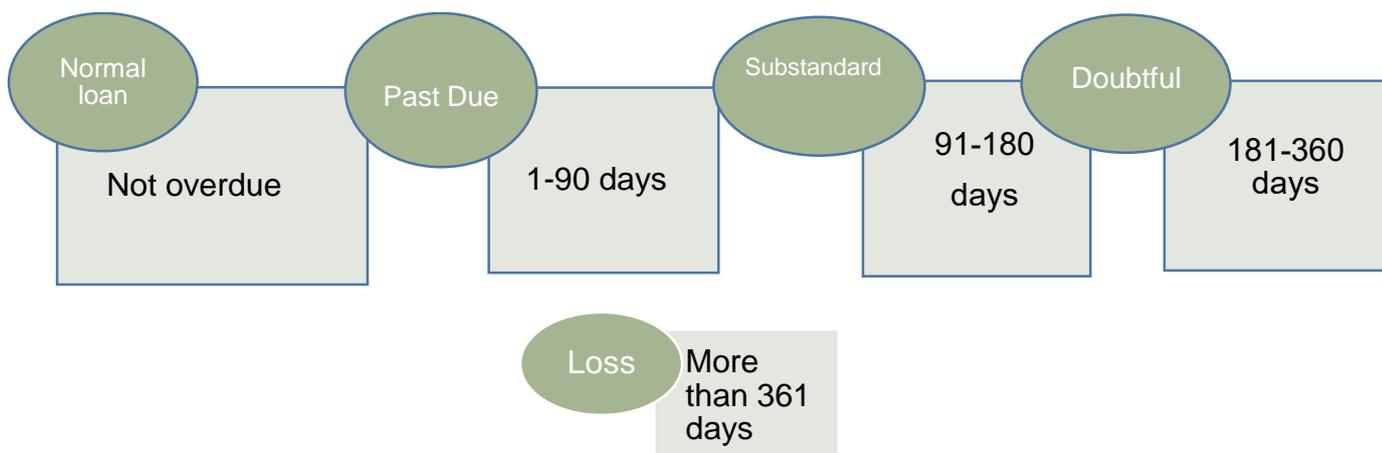
SUBTOPIC 1.2: CREDIT/LOAN AGREEMENT IN EMERGENCY

Question 4: Can a non-performing loan classification be waived during the pandemic? If so, does this waiver apply to all types of loans, including business loans?

The MongolBank (in case of commercial banks) and the Financial Regulatory Commission of Mongolia (in case of non-bank financial institutions) adopted guidelines which enable the banks or non-bank financial institutions to waive classification of non-performing loans during the pandemic until 1 July 2021.

This waiver applies to all types of loans, including business loans. Please note that the waiver is not automatic – i.e., loans will not be automatically granted classification waiver. Technically, the waiver is an option granted to banks (by the MongolBank) and non-bank financial institutions (by the Financial Regulatory Commission of Mongolia). The lender may choose, at its sole discretion, to waive re-classification of a loan which has become non-performing. Please note such waiver can be issued until 1 July 2021 only. From our observation, however, both banks and non-bank financial institutions have actively chosen to waive reclassification of non-performing loans and, by extension, protect their borrowers and credit history.

! NOTE:



Question 5: When inviting online requests for restructuring the existing loans, some banks appear to ask the applicants to choose one of the following two options on their websites – one is “*extension of the loan term*” and the other is “*postponing principal of a loan*”. What is the difference between these two options?

Both “*extension of the loan term*” and “*postponement of loan principal*” result in extending the existing term of a loan/debt agreement. “*Extension of a loan term*” is more of a general concept - it can take various forms, one of which is “*postponement of principal payment*”. Other forms of an extension of the loan term may include postponement of interest payment, or reduction of principal/interest, or combination thereof, or modifications to a loan agreement etc. In the Mongolian banking practice, “*postponement of loan principal*” appears to be prevailing form of “*extension of the loan term*”.

⁶ A Central Bank repo financing is an open market activity in which a commercial bank repurchases security held by the MongolBank at a pre-agreed price at the end of the agreed period. In another words, repo financing is a process by which commercial banks provide collateral for their securities. It is a type of financing provided by commercial banks to SMEs within the limits of their financing.

Question 6: Do banks or non-bank financial institutions have a legal obligation to comply with and implement the “*directions*” issued by the regulator (MongolBank or Financial Regulatory Commission of Mongolia) such as restructuring of business loans or waiver/deferral of classification as a non-performing loan? What legal consequences (liability) are there for those banks or non-banks which fail to comply with and implement these “*directions*”?

The short answer is no.

“*Directions*” issued by the regulators in respect of restructuring business loans or waiver/deferral of classifying as a non-performing loan are not mandatory norms, which must be observed and complied with. These “*directions*” encourage both lenders (banks and non-bank financial institutions) and borrowers to re-negotiate terms of their agreement in the spirit of cooperation, mutual support and loss- and risk-sharing during these difficult times. As such, in our view, no legal liability is to be imposed on banks or non-bank financial institutions which refuse to re-negotiate existing loan agreements. Of course, both parties, including banks and non-bank financial institutions, are expected by everyone, including their customers and the regulators, to act reasonably and fairly in renegotiating the existing loan agreements and share the risks and losses caused by the COVID-19 pandemic. If, however, the lender’s loan officer is being unreasonable and unfair in renegotiating existing loans, the officer’s supervisor can be approached (such as department manager). Also, it is possible to approach the regulator if the lender is deemed as unreasonable and unfair. For instance, the Financial Regulatory Commission of Mongolia has been operating a hotline dedicated to COVID-19 (tell: 26-26-08).

! NOTE:

If a borrower requests the bank to restructure its debt, the parties (both lender and borrower) would need to negotiate and amend the terms of the loan agreement.

- Banks will accept borrower requests by 31 January 2021,
- Amendments to a loan agreement can run until 1 July 2021.

! NOTE:

The Financial Regulatory Commission of Mongolia's hotline:



51-262608



www

<http://www.frc.mn/i/Feedback>

Question 7: What is debt restructuring by banks?

If repayment of a loan becomes problematic, the loan may be restructured. There are several types of restructuring – for instance, deferral of principal, reduction of interest rate, reduction of interest amount, elimination of interest over certain period, refinancing, deferral of interest payment etc.



Out of the above forms of debt restructuring, deferral of principal and refinancing appear to be prevailing in our banking industry. Also, we note that in deferring principal, accruing of interest does not stop – i.e., it keeps accumulating during the deferral. In order to find out the details, please speak to the lender as deferral of principal varies from bank to bank.

Question 8: How to file a request to the bank/non-bank financial institution asking for debt restructuring?

As mentioned above, debt restructuring requirements and procedures vary from bank to bank. Due to the lockdown, banks collect petitions for loan restructuring online.

! Note:

The loan restructuring request should be filed to one of the four largest banks in Mongolia online. Please note that if a deferral of the loan for more than 3 months is sought, evidence of revenue reduction is required by most banks.

- Golomt Bank: <https://zeel.golomtbank.com>
- Khan Bank: <https://www.khanbank.com/mn/personal/online-loan>
- Xac Bank: https://www.xacbank.mn/?open_form=true
- TDB: <https://www.cardcentre.mn/loanreq/>.

SUBTOPIC 1.3: DISPUTE RESOLUTION

Question 9: I plan to file a claim with the court of Mongolia. Unfortunately, due to the COVID-19 pandemic, I cannot. How does the court operate during the pandemic? How should I submit my claim to the court?

The General Council of Courts of Mongolia adopted the “Regulation on Measures to be Implemented for the Period of the Heightened Readiness Regime and the Public Emergency Readiness Regime” (dated 24 November 2020)⁷.

This Regulation is specifically dedicated to management and operations of the courts in the event of a disaster, such as COVID-19 pandemic. If there is a need to file a claim, petition, or other papers with the court, it can be sent by e-mail to the e-mail address listed on the official website of the particular court (*please see the list of websites for all courts of Mongolia at <http://www.supremecourt.mn/news/120>*). As for

⁷ Available at http://103.11.195.37/san/hr/table3_full/116.

the originals of the documents, they will then be delivered to the court via post service, arranged by the claimant.

The court will confirm the receipt of the claim, petition, etc., by phone or by return mail to the official address indicated in the papers.

! NOTE:

To hand-deliver the claim, petition, complaint, or request to the court, a court clerk should be notified in advance. Otherwise, there is a risk the court may turn down the claim.

Question 10: Our company has receivables in the amount of MNT 10,0 million (approx. USD 5,000) from another company. This debt has been due and payable for 3 years. Is it possible to resort to a court or a mediation?

According to the Civil Code of Mongolia, civil claims related to a contractual obligation have the statutory limitations of three (3) years. If a party to a dispute does not file a claim with court within these 3 years, the payer (obligor) has the right to refuse the payment. Therefore, it is important to determine the exact date on which the statutory limitations started running. For instance, if the parties extended the payment schedule, the statutory limitations would run from such extension date. If one found out later that the payer is unable to pay, the statutory limitations would start from the date on which the payee so found out. Thus, it is necessary to check and determine when exactly the payee found out that the payment is not being paid. If the claim is filed within 3 years period, the payee has a right to resort to the court or mediation. If one files the claim with the court or mediation, the statute of limitations would be suspended during the dispute resolution process. If the mediation cannot reach a successful outcome, the statute of limitations would resume. If it does, the claim must be filed with the court immediately.

Mediation is a way to resolve a dispute quickly and in a more informal setting, bypassing courts, in a presence of a licensed court-appointed mediator. Advantages of mediation as an alternative dispute resolution method are as follows:

- ❖ Parties have the right to choose the mediator(s);
- ❖ The dispute is resolved in one stage (i.e. no review by the Appellate Court or the Supreme Court);
- ❖ Faster than court procedure;
- ❖ Mediation award is final;
- ❖ If a party does not fulfil the mediation award, the award is enforced by the court bailiff (similar to a court decision);
- ❖ If mediation fails, the parties have still a right to file the claim with the court of Mongolia; and
- ❖ Stamp duty is cheaper than the court stamp duty.

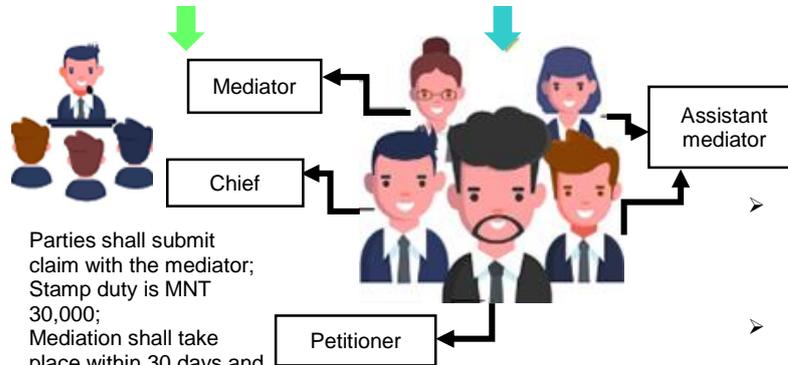
Since a mediator is appointed by court, a party to a dispute should approach the court of jurisdiction where the defendant resides for mediation services (*please see the list of websites for all courts of Mongolia at <http://www.supremecourt.mn/news/120>*). Also, please see a template application for mediation at <https://bayangol.civilcourt.gov.mn/evleruulen.html>.

Please see the procedure of mediation below:



Only the following categories of disputes:

- Between family members;
- Credit/Loan dispute;
- Apartment rent dispute;
- Dispute between neighbors;
- Labor dispute.



- Parties shall submit claim with the mediator; Stamp duty is MNT 30,000;
- Mediation shall take place within 30 days and can be extended once for 30 days, if the parties requested so;
- Prior to the submission, one can get brief information about the mediation procedure from the court's information specialist or mediator.

- Participants of mediation procedure: Mediator, petitioner (parties), chief, assistants of mediator, advocates (if parties have requested), family members, psychologist, friends;
- Mediation is proposed to find a solution consistent with the interests of parties and to resolve a conflict or dispute between the parties in an amicable, fast and cost-effective way.

- If successful, a Settlement Contract shall be signed reflecting intentions of the parties;
- The competent court shall ratify the Settlement Contract upon which it shall become as valid and enforceable as a court judgment;
- If mediation failed, the parties have a right to file the claim with the court of Mongolia.



Question 11: How is a court trial held during the COVID-19?

During the COVID-19 pandemic, the trials are being conducted online or in person. An online trial is held via zoom-based video in a specially prepared courtroom. Announcement of the trial is available on the court's official website www.live.shuukh.mn.

The trial must be conducted in person if the dispute is related to the state secret, or individual or an organisational secret. If a party to dispute is going to attend a trial in person, the party will need to notify the court three hours in advance of the trial start, bring a face mask, gloves, and outerwear bag, and keep a distance of at least 2 meters.



Question 12: We were told that a court hearing related to confidential information of company should be held in person and be closed to the public. Does it mean that the list of confidential information should be approved by the company and disclosed to the court?

Yes. It is the company’s obligation to adopt a list of its confidential information (as set out in Article 4.2 of the Law of Mongolia on Organisational Confidentiality). However, please note the foregoing does not mean that anything can be included by the company in the list of protected information. For instance, the following information cannot be categorised as confidential information of the organisation:

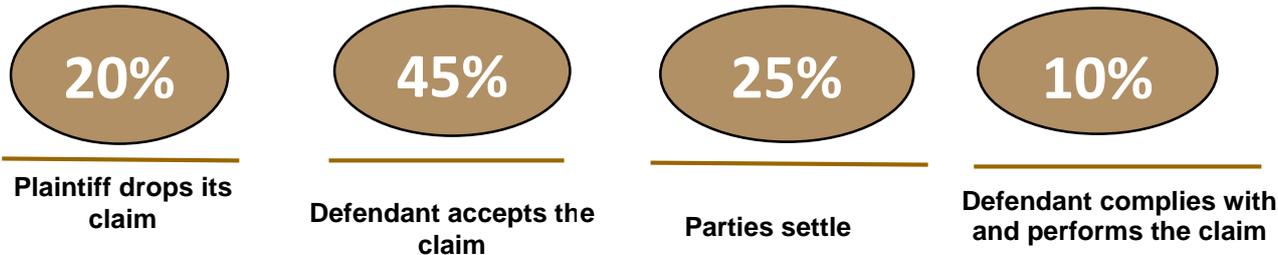
- ❖ Information which may impact public health and environment result from the operation, manufacturing, service or use of technology;
- ❖ Information about the harm of toxic and radioactive substances which may affect the public health and environment due to a breach of storage and protection procedure; and
- ❖ Information related to crime or information required by law to be disclosed to the public.

In addition, according to Article 3.1.2 of Law of Mongolia on Organisation’s Confidentiality, the “organisational confidentiality” means information, document and tangible things considered confidential by law in order to protect the legitimate interests of the organisation, human rights and reputation”. Thus, a company should adopt a list of confidential information based on the definition above⁸.

If it is necessary to disclose confidential information at the court, a party to the dispute may request the court to hold the session, fully or partially, closed and in person (i.e., *not online*). It is prohibited for the judge, court’s clerk and other participants of a closed trial to disclose the confidential information (as set out in the Civil Procedure Code of Mongolia). If confidential information has been disclosed by any of the persons above, they shall be subject to criminal liability under laws of Mongolia.

Question 13: How can the disputes be resolved quickly and cost-effectively in court and out of court?

If a party to a dispute wishes for the dispute to be resolved quickly and cost-effectively in the court, such party may request a simplified procedure. Any civil dispute may be resolved via a simplified procedure if any of the following four conditions exists – 1) the plaintiff agrees to drop its claim, 2) the defendant agrees to accept the claim, 3) parties agree to settle, and 4) the defendant accepts and performs the claim. In 2020, for example, simplified procedures have stemmed from the following conditions:



The advantage of a simplified dispute resolution is that it saves time and money - the stamp duty payable is reduced by 50% in simplified procedure. Also, a review of a court ruling following the simplified procedure by the Appellate Court and/or the Supreme Court is not possible. Also, if the defendant fails to comply the court decision of a simplified procedure, the court decision will be enforced by the bailiff office of Mongolia. A disadvantage is that a party does not have a right to appeal or file a new claim with respect of the case.

Another way to resolve a dispute quickly, bypassing courts, is arbitration. Advantages of arbitration are as follows:

- ❖ Parties themselves shall appoint the arbitrator(s);
- ❖ The dispute shall be resolved in one stage (i.e., no review by the Appellate Court of the Supreme Court);
- ❖ Parties themselves shall set the arbitration procedures, venue, language, governing law and schedule etc.;
- ❖ Faster than court procedure;

⁸ Available at <https://www.legalinfo.mn/law/details/102>.

- ❖ Arbitration award is final;
- ❖ Arbitration award shall be recognized and enforced in 170 countries around the world (i.e., parties to the 1958 NY Convention).

The arbitration procedure is as follows:



Model arbitration provision of contract:

“All disputes arising out of or in connection with this contract or related to its violation, termination or nullity shall be finally settled in the Mongolian International Arbitration Center at the Mongolian National Chamber of Commerce and Industry in Mongolia under its Rules on Arbitration in Mongolia”

- 1) Name, address, phone number of plaintiff and defendant;
- 2) Contract and other evidence documents;
- 3) Receipt of payment of arbitration expenses;
- 4) Original claim and its attachments or notarized copy thereof. All documents should be in five copies, including original.

- 1) Parties shall appoint the arbitrator(s) within 30 days after commencement of the arbitration procedure;
- 2) If the arbitrator(s) has not been appointed within the period above, the chairman of arbitration shall appoint the arbitrator(s).

- 1) Arbitration clause;
- 2) Jurisdiction;
- 3) Arbitration venue;
- 4) Governing law;
- 5) Arbitration language;
- 6) Main and additional expenses;
- 7) Resolve requests by parties (witness, expert, evidence documents etc.);
- 8) Resolve whether the session shall be closed or open;
- 9) Schedule the arbitration session.

Decisions shall be made in accordance with the procedures agreed among the parties and in accordance with the Arbitration Law and the Arbitration Rules

More information about arbitration services available in Mongolia can be found at <http://www.arbitr.mn/>.

II. ONLINE TRADING, DEFERRAL OF RENT AND INSOLVENCY

SUBTOPIC 2.1: ONLINE TRADING: KEY LEGAL ASPECTS

Question 14: Is it necessary to obtain a license in order to conduct online trade?

There is no specific legal provision which requires licensing for online trading in Mongolia. However, according to the Prevention of Spread of the Coronavirus Law, a special regulation on the online trading will be approved by the Government of Mongolia. We note, as of today, such regulation on the online trading is yet to be produced and approved.

However, it does not mean that licensing is not necessary. In other words, it is required to obtain a license depending on the traded items (per the Law of Mongolia on Licensing, enacted in 2001⁹. For instance, in order to engage in the following trade, it is required to obtain a relevant license from the following governmental agencies:



Question 15: Is it possible to sell alcoholic beverages or tobacco online in Mongolia? If yes, is it necessary to obtain a trade licence from each of the Eight District Local Governors of Ulaanbaatar city?

In order to engage in online trading of alcoholic beverage or tobacco products, the seller must obtain the licence on trade of alcoholic beverages or on trade of tobacco from the Ulaanbaatar City's Local Governor or a respective District's Local Governor (as set out in Articles 16.2.5 and 16.3.4 of the Law of Mongolia on Licensing). Since the licence on trade of alcoholic beverages is granted for trading within the entire territory of Ulaanbaatar (i.e., including Ulaanbaatar's districts), it is not necessary for the applicant to apply for and obtain a license from each of the Ulaanbaatar districts. In contrast, for online trading of tobacco, the licence is granted only for trading in a particular Ulaanbaatar district as permitted under the licence. Thus, it is not allowed to conduct online selling and delivery of tobacco products in other districts of Ulaanbaatar unless the licence is obtained for each district separately.

⁹ Available at <https://www.legalinfo.mn/law/details/34>.

Question 16: What are the main obligations of an online trader?

An online trader must comply with the following main obligations under the Law of Mongolia on Protection of Consumer Rights, enacted in 2003¹⁰:

- ❖ Comply with appropriate requirements on safety, quantity, quality, timing and purpose;
- ❖ Provide accurate information to consumers;
- ❖ Eliminate defects (replace, discount, repair, refund, reimburse the cost etc.); and
- ❖ Compensate for damages to health, life, asset, intangible asset and the environment.

! NOTE:

If a person violates any of the obligations above, that person will be subject to a fine in the amount of MNT 500,000 for an individual (approx. USD 200) and MNT 5,000,000 for a legal entity (approx. USD 2000) under the Mongolian Law on Infringement, enacted in 2017.

On 30 November 2020, the Specialised Inspection Agency of Ulaanbaatar city imposed on the businesses which engage in online trading and delivery of goods the following hygiene and infection control measures:

- ❖ Drivers, deliverymen and loaders of delivery should wear face masks and disposable gloves;
- ❖ Drivers, deliverymen and loaders of delivery should not touch delivery items without gloves and should always carry a hand-sanitizer;
- ❖ Disinfect the surface of a delivery item by spraying with an alcohol-based solution and cover by a plastic bag;
- ❖ Do not place the delivery item on dirty surface;
- ❖ Carry the ancillary documents and other related documents in a special bag;
- ❖ Contact an e-consumer via phone and keep distance of at least 1.5 meters when handing over the goods;
- ❖ Provide the instructions for use, assembly and placement of goods via e-mail and telephone;
- ❖ Receive payment electronically and do not accept cash payments.

! NOTE:

In case of a breach of any of the requirements above, a monetary penalty in the amount of MNT 250,000 is to be imposed on an individual (approx. USD 90) or MNT 2,500,000 on a legal entity (approx. USD 900) under Articles 15.2.1.1 and 15.13 of the Law of Mongolia on Infringement.

Question 17: Is it allowed to conclude a loan agreement and a pledge agreement online? Can the pledge registration office register such agreements online?

According to Articles 43.2.3 and 196.1.8 of the Civil Code of Mongolia, it is allowed to sign loan agreements and pledge agreements online¹¹. Signing financing agreements online is possible since the pledge agreement is a type of an agreement which must be signed in writing, but which does not require notarization.

If the security asset is a “movable asset” or an “intangible asset”, registration of the pledge agreement can be completed in the online pledge registration system of Mongolia¹² through uploading the registration notice (as set out in the Law of Mongolia on Pledge of Movable and Intangible Assets). In this case, neither loan agreement nor pledge agreement needs to be attached to the registration notice. The registration notice and the detailed description of the security asset are sufficient for online registration.

¹⁰ Available at <https://www.legalinfo.mn/law/details/551>.

¹¹ “Sign online” usually means a type of electronic signature issued by a licensed company to a business – it involves a private key which is used to encrypt the document and the information in it (in order to prevent forgery or alteration).

¹² Available at <https://mpr.gov.mn>.

However, if the security asset is an immovable asset, original documents have to be delivered to the registration office in person, *not online*. The reason is it is necessary for a registration officer to review the original documents related to the immovable asset (e.g., the loan agreement, pledge agreement and registration certificate of immovable asset).

! NOTE:

Please note that during the COVID-19 pandemic, a lending bank collects and then delivers the required documents for registration of a loan agreement and a pledge agreement to the registration office of Mongolia on behalf of its borrowers/pledgers. Thus, there is no need to deliver to the registration offices the registration documents in person.

Question 18: Will I be required to provide the customer with the bill in case of online trading? If yes, how should I provide the bill?

Yes. The seller engaged in the online trading business must provide the trade bill and e-bill of VAT to the customer – similar to regular trading (Articles 4.1.14 and 17.3.2 of the Law of Mongolia on Value Added Tax).

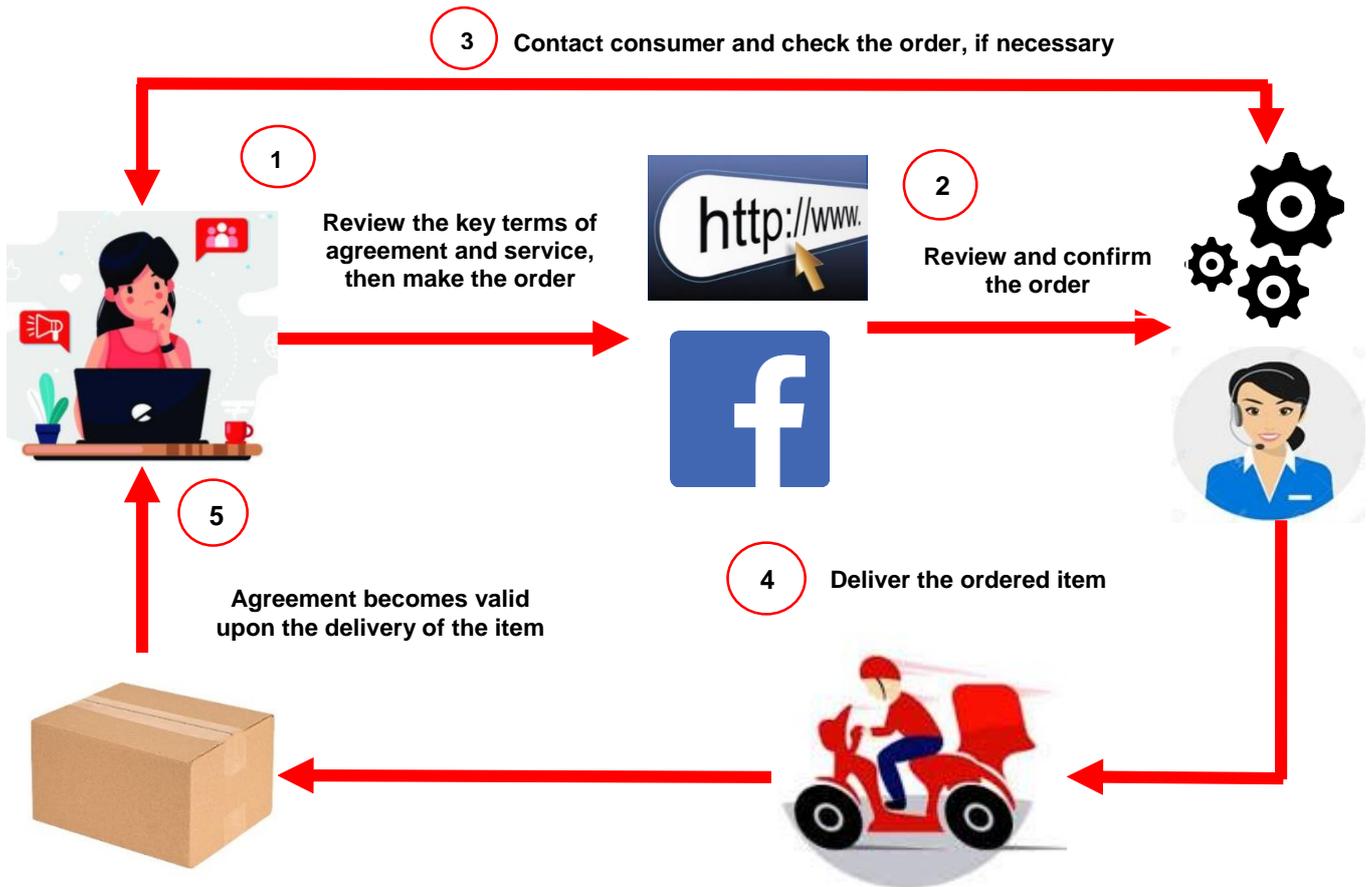
! NOTE:

E-bill of VAT can be provided to the customers via (i) e-mail and/or (ii) mobile message, when the company's account is created by logging in the website www.ebarimt.mn.

Question 19: How can I conclude a contract without a face-to-face meeting?

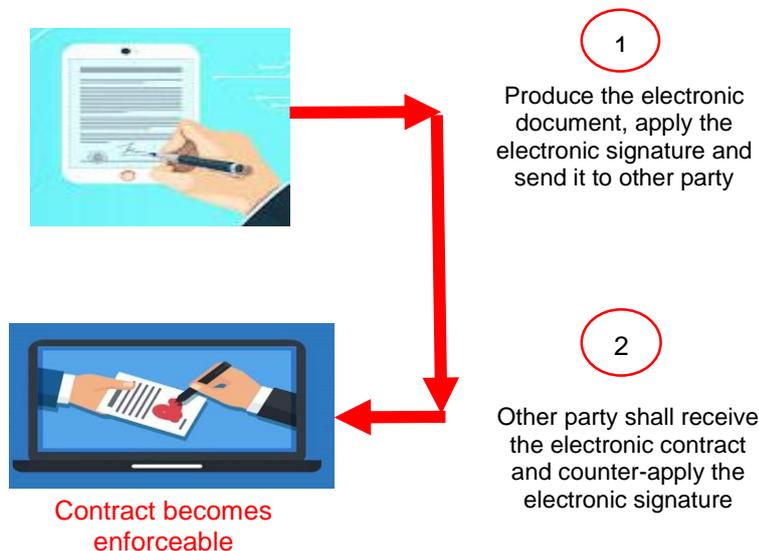
The sale and purchase contract is a type of contract that becomes valid and enforceable upon the transfer of the purchase item to the buyer (i.e., without a written contract). Most importantly, key terms of the contract and the conditions of delivery service of the goods must be communicated to the buyer/consumer in advance. For instance, such information as product name, price, quantity, size, packaging, instructions, ancillary documents, and the terms of order should be clearly provided to the buyer/consumer.

Please see the process flowchart:



Another option for concluding a contract without a face-to-face meeting is to sign such contract online. As explained under Question 17, “signing online” means a type of electronic signature issued by a licensed company to a business – it involves a private key which is used to encrypt the document and the information in it (in order to prevent forgery or alteration). The contract becomes valid and enforceable upon online signing. The following contracts – a sale and purchase contract, a financial lease contract and a regular sale and purchase contract - can be entered into in an electronic form. Similarly, an amendment to an electronic contract can be done by using an online signature.

An electronic contracting process is as follows:



SUBTOPIC 2.2: RENT PAYMENTS: DEFERRAL AND REDUCTION

Question 20: How to address issues related to a rent contract during the COVID-19 pandemic?

A rent (or any other business contract, for that matter) is a reflection of the parties' commercial intentions and will. Lawyers call it the "freedom of contract" principle. In line with this principle, parties to a rent (lessor and lessee) are to negotiate or re-negotiate terms of the rent, including amendments related to the effects of COVID-19 pandemic. Therefore, the parties should first check and review their rent contract, including various rights and obligations of the parties as well as provisions, if any, related to force majeure circumstances.

Rent is a type of contract which may have many forms and types, depending on its objectives, parties or rent objects. Also, depending on circumstances, clauses of a rent contract would vary. Some rent contracts contain clauses related to "force majeure" circumstances. A force majeure is a legal ground used to excuse one or both parties from executing their obligations under a contract due to events beyond a party's or parties' control. A pandemic such as COVID-19 may be considered a force majeure event, depending on circumstances such as its impact and severity, or it may be a "hardship", which is different from "force majeure". For discussion of impact of COVID-19 as force majeure on rent, please refer to Sub-topic 3.1 of this Paper.

We also note that, unlike with loans or taxes, there have been no relief measures by the authorities for business lessees, except for reduction of the income tax generated from the rent – by the amount of the rent reduction (please see Question 3).

Question 21: Is it possible to reduce or defer the payment of rent?

According to Section 319.2 of the Mongolia's Civil Code, "***If quality of the rented asset deteriorates due to unexpected circumstances or force majeure, parties may terminate the rent contract by mutual agreement***". In this clause, the phrase "***If quality of the rented asset deteriorates***" usually refers to circumstances when the use of the rented asset has become impossible. Thus, if, as a direct result of the COVID-19 pandemic, it is not feasible to use the rented asset such as office space, marketplace, shop, warehouse etc., the circumstances and consequences under Section 319.2 of Civil Code come into action. So, a reduction or other relief under the rent contract can be sought.

In order to reduce or defer the payment of rent, follow the following steps:

1. Notify the landlord (lessor) of occurrence of a force majeure event in writing;
2. In the notification, cite the relevant sections of the rent contract and/or the Mongolian law (above) and suggest a meeting to discuss and negotiate the rent reduction; and
3. If and when agreed, ask the landlord to issue a written decision/letter to reduce the rent or amend the rent agreement.

SUBTOPIC 2.3: INSOLVENCY: LEGAL DUTIES AND PREVENTIVE STEPS

Question 22: What actions can be undertaken if one cannot pay its debt when due?

If an SME cannot pay its debt when overdue, insolvency is one option the company may consider.

According to the Law of Mongolia on Bankruptcy 1997, a company is considered insolvent when it is unable to fulfil its debt obligations to the amount equal or higher than 10 per cent of equity. If this threshold is met, the SME can file to court for insolvency proceedings. By launching insolvency proceedings, the SME can seek rehabilitation of the company – rehabilitation has the objective of helping the company avoid bankruptcy (and ensuing liquidation) and instead re-organise and re-launch the company.

In order to seek rehabilitation, the debtor should come up with a rehabilitation plan demonstrating that it is more beneficial to the creditors to restructure the debtor compared to filing for bankruptcy and liquidation. In particular, rehabilitation must result in payments to the creditors higher than what would have been paid to them under liquidation. If the rehabilitation plan meets this requirement and is approved by the creditors and the court, the debtor itself has the right to carry out rehabilitation, under supervision of the court-appointed administrator.

Question 23: What should one pay attention to when filing with court a request for company's insolvency (i.e., bankruptcy)?

The "request" may be submitted to the court by either the debtor company itself (i.e., voluntarily filing for insolvency) or a creditor. If the following issues are clearly and in detail specified in the petition, it would be easier for the judge to form and issue the decision:

- ❖ Reasons for insolvency (for instance, revenue decreased due to the pandemic, market disruption, not viable business model etc.);
- ❖ The company's own opinion whether to liquidate or to restructure and rehabilitate;
- ❖ Company's equity vis-a-vis liability ratio. *It is important to describe that the company is not eligible to pay its liability equal to no less than ten per cent (10%) of its equity – which is the technical definition of insolvency under Mongolian law;*
- ❖ Name and address of petitioners who have claims against the company, the amount of payment payable to each petitioner and the court decision, if applicable; and
- ❖ Name and address of payers obliged to pay the company and the payment amount.

When submitting the request to the court, one should attach the original or notarized copies of the following documents:

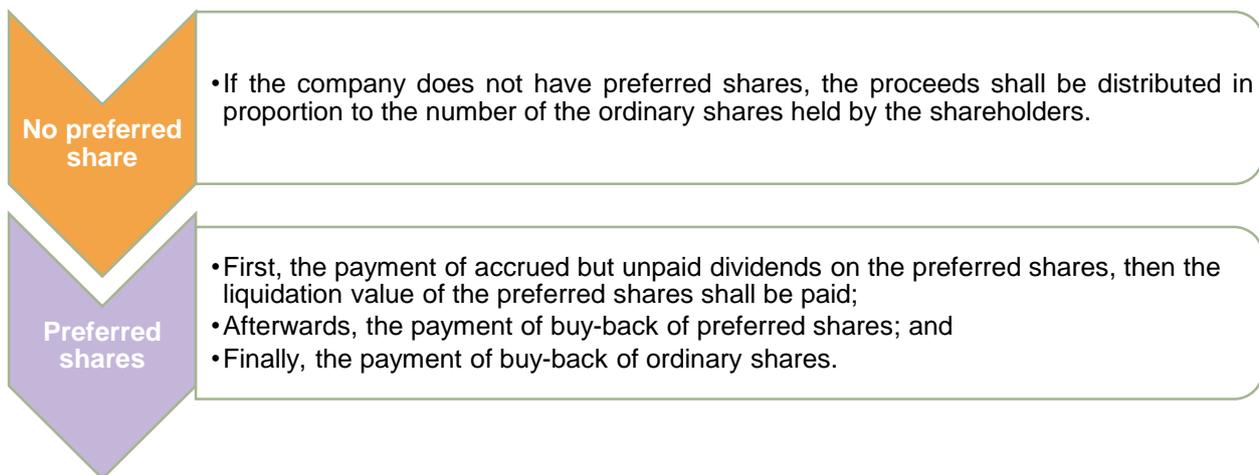
- ❖ State registration certificate and Charter of the company;
- ❖ Financial statement for the last three (3) years;
- ❖ List of assets and evaluation thereof by an external auditor;
- ❖ Court decision and/or arbitration award, if any;
- ❖ Contracts related to the payment and debt;
- ❖ List of petitioners against the company;
- ❖ List of payers obliged to pay the company;
- ❖ Tax and payment acts; and
- ❖ Evidence of payment of stamp duty (MNT 70,200).

Question 24: What is restructuring and when can one use it?

- By launching insolvency proceedings, an SME can seek rehabilitation of the company. Rehabilitation has the objective of helping the company avoid bankruptcy (and liquidation) and instead re-organise and re-launch the company. If rehabilitation of the debtor and continuation of its operations is considered to better meet the requirements of the claims (of creditors) as compared to liquidation, the creditor or appointed administrator may submit to the court a request for rehabilitation.
- In order to seek rehabilitation, the debtor should come up with a rehabilitation plan demonstrating that it is more beneficial to the creditors to restructure the debtor compared to filing for bankruptcy and liquidation. The court shall decide whether to approve the rehabilitation plan at the meeting of creditors. If the rehabilitation plan meets this requirement and is approved by the creditors and the court, the debtor itself has the right to carry out rehabilitation, under supervision of the court-appointed administrator.
- The creditors' liabilities are allocated as according to the rehabilitation plan.

Question 25: How is the asset of a company which is being liquidated distributed?

If an asset(s) remains available after the repayment of company's debts, the remaining asset(s) shall be sold by the liquidation commission and the proceeds shall be distributed to the shareholders of the company. Such distribution shall be made in accordance with the following principles:



Question 26: How to liquidate a company which has no debt or liability to others? What should one pay attention to when making a liquidation decision?

A company which has no debt and liability to others should be liquidated as follows:

- ❖ Call the shareholders' meeting and approve the shareholders' resolution on liquidation of the company. The resolution should specify the reason of liquidation, appointment of liquidation commission and resignation of executive director. *A sample of shareholder's meeting resolution can be downloaded from <https://khanLex.mn/webinar/>.*
- ❖ Prepare the company's liquidation plan. The liquidation commission shall draft the company's liquidation plan. The liquidation plan should set out the liquidation period, procedure, distribution of assets, announcement to public and registration of liquidation with the registration office. The shareholders' meeting shall approve the liquidation plan.
- ❖ Publish the company's liquidation decision in the national daily newspapers. *Please note that the company's name, registration number and liquidation should be specified in the newspaper announcement and such announcement should be attached to the liquidation documents to be registered with the registration office.*
- ❖ Prepare the "liquidation balance sheet", aka "the ending financial statement" and submit it to the district/soum financial department.
- ❖ Remove the company from the registry of tax payers and obtain the removal confirmation.
- ❖ Return the company's stamp (chop) back to the registration office and obtain the reference letter.
- ❖ Obtain the reference letter which states that the company has no debt and liabilities. *The bailiff office of Mongolia provides this reference letter.*
- ❖ Register the company's liquidation with the registration office of Mongolia. *The following documents are required - the shareholders' resolution, ending financial statement, newspaper announcement, confirmation of removal from the tax payer's registry, company's registration certificate, reference letter issued by the bailiff office of Mongolia, reference letter confirming the return of stamp (chop), stamp duty receipt in the amount of MNT 10,000, filled UB-06 Form.*
- ❖ Registration Office of Mongolia announces to the public that the company has been liquidated.

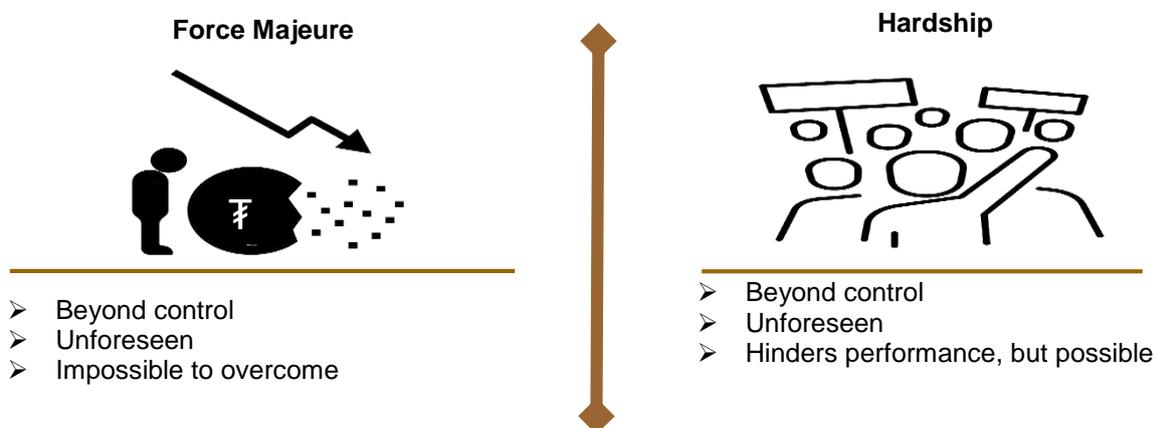
III. FORCE MAJEURE AND OTHER SELECTED CONTRACTUAL ISSUES, LABOUR RELATIONS, TAX RELIEF

SUBTOPIC 3.1: OTHER CONTRACTUAL ISSUES – FORCE MAJEURE, RENEGOTIATION OF SUPPLY AND SALE, CONTRACT FOR PROVISION OF SERVICES, E-SIGNATURE

Question 27: What is force majeure? Is COVID-19 force majeure?

Force majeure is a legal ground used to excuse one or both parties from executing its/their obligations under a contract due to events beyond a party's or parties' control. Various circumstances call for various force majeure clauses.

In addition to force majeure, there is also the concept of "hardship". Hardship means a condition that causes difficulty. It is defined as an event whether **legal, economic, political or financial** occurring after the conclusion of the contract, which was unforeseeable at the time the contract had been concluded, despite using the utmost care, which leads to hindering the performance of the obligations but still possible to perform.



The force majeure and the hardship are two different conditions, but usually result in similar consequences according to the Mongolian business and judicial practices.

The COVID-19 pandemic can in general constitute a force majeure event. The key criteria are: is (i) the event is beyond the control of the party or parties, (ii) inability of a party (tenant, borrower etc.) to perform its obligations is directly caused by the event, (iii) the party is unable to avoid or overcome the event and its consequences. If all of the foregoing three features are present, then COVID-19 can be declared a force majeure event. For example, if a seller has become unable to deliver a purchased item due to the closure of the border as part of the COVID-19 lockdown.

Typical events or circumstances which constitute force majeure: war, revolt, uprising, pandemic, quarantine, public disease outbreak, earthquake, flood, fire, other natural disasters.

Also, it should be noted that oftentimes, in order to be exempt from an obligation due to a force majeure, the affected party must notify the other party by means of a written notification.

In the event of a dispute, it is the court which makes the final determination that a certain event, such as COVID19 is or is not a force majeure.

Question 28: How should one remind the other party of its contractual obligations? Also, what legal mechanism can be used in order to enforce a contract, especially if there is an ongoing dispute or a breached obligation under such contract?

The appropriate form of communications under a contract, including a reminder of contractual obligations, is sometimes spelled out in that contract. If it is not, typically a notice is served by one party to the other reminding the latter of its contractual obligation. Preferably, such notice should be in writing, preferably in the form of a letter.

As for legal mechanisms for enforcement of a contract, Civil Code of Mongolia¹³ prescribes several mechanisms for enforcing a contract – pledge, guarantee, performance bond, transfer of ownership, penalty etc. The most appropriate depends on a variety of factors. For instance, in a contract whereby monetary payment is required to be made, a monetary fine may be better suited to support enforcement of a contractual obligation. Taking a collateral in the form of an asset may be helpful too. Therefore, the exact mechanism of enforcement of a contract would be determined based on a qualified advice from professionals such as a lawyer.

Also, one should consider the nature of the particular breach of a contract and which party is in the breach. Depending on the circumstances, the relevant legal regulation and consequences may differ.

Question 29: What measures can parties take under force majeure circumstances? What are the step-by-step measures?

In the event of force majeure, overall, the parties have two main options:

1. Modify or terminate the contract;
2. If unable to modify or terminate the contract, submit the resolution to court/arbitration.

The following relief measures can be taken:

- ❖ Exemption from penalties;
- ❖ Deferral of contractual term;
- ❖ Exemption from damages;
- ❖ Termination of contract (exemption from underlying obligation); and
- ❖ Suspension of statute of limitations.

A party who finds itself unable to comply with contractual obligations because of COVID-19 should take the following steps:

1. The affected party serves a notice to the other party in a way prescribed by the contract. If the contract is silent as to how the affected party should serve a notice to the other party, it may do so by email or postal service.
2. The parties discuss – whether face-to-face or online/email – whether to treat COVID-19 as force majeure or hardship,
3. If parties agree, the contract is modified – this can be done via a simple letter/email,
4. If parties cannot agree, the dispute is submitted to court/arbitration,
5. Also, if the parties cannot agree, they have an option to terminate the agreement.

¹³ Available at <https://www.legalinfo.mn/law/details/299>.

Question 30: What should one consider in drafting/agreeing to a clause on force majeure?

Force majeure is a legal ground used to excuse one party or both parties from performing its/their obligations under a contract due to events beyond a party's or parties' control. Various circumstances call for various force majeure clauses. In general, when drafting/agreeing to a force majeure clause, some of the following key issues should be addressed:

- ❖ Set out the specific obligation or obligations which are to be affected by a force majeure event,
- ❖ Ability of a party to suspend or terminate its obligation(s) due to a force majeure event,
- ❖ Issues related to liability, e.g., whether penalties set out in the contract would be exempt or not,
- ❖ Rectification period and its length, notification requirements during such rectification period,
- ❖ Obligations of a party to mitigate the impact of the force majeure event; and
- ❖ Lastly, events and circumstances which constitute "force majeure". It is preferable for the parties to agree on and include force majeure clauses in the contract addressing the above as clearly as possible.

Below is a typical force majeure clause in a Mongolian context prepared by KhanLex:

1. A force majeure event means unforeseen circumstances or events beyond parties' control, such as war, revolt, uprising, pandemic, quarantine, public disease outbreak, earthquake, flood, fire, other natural disasters. If a party is unable to perform its obligations under the contract as a direct result of these events or circumstances, that party is exempt from liability.

2. Parties may designate a document by a competent authority to be evidence of force majeure event.

! NOTE:

- "...competent authority..." refers to Mongolian Chamber of Commerce
- "...document..." refers to a certificate of force majeure issued by Mongolian Chamber of Commerce.

Question 31: What are the risks of the contract not having any force majeure clause? In particular, does this mean a party affected by such event cannot claim relief?

If the contract does not have force majeure clauses, it does not mean that a party affected by a force majeure event cannot claim relief. Even if the contract does not have such clauses, Mongolian law – in particular, the Civil Code¹⁴ and the Procedure for Certifying Force Majeure and Hardship (adopted by the Mongolian National Chamber of Commerce and Industry)¹⁵ - provides for circumstances of force majeure and their impact on the contracting parties. However, the provisions of the Mongolian law with respect to force majeure and its consequences are general and may not provide for a detailed and clear legal regime.

Therefore, it is advised for the parties to include in the contract detailed force majeure provisions which suit their respective interests and which they agree to, instead of relying on the existing provisions of the Mongolian law. This is in line with the so-called freedom of contract principle of Mongolian civil law whereby parties to a legal contract are free to negotiate and enter into a contract. Similarly, even if a contract lacks force majeure provisions, a party affected by force majeure may seek and obtain a certificate of force majeure or hardship from the Mongolian National Chamber of Commerce and Industry. (Please see more about the certificate of force majeure under Question 33 below).

Question 32: If a contract does not provide for force majeure clauses, is it possible to be exempt from liability of daily penalty (in the event of non-payment)?

¹⁴ Available at <https://www.legalinfo.mn/law/details/299>.

¹⁵ Available at

https://www.mongolchamber.mn/resource/mongolchamber/File/2020/02/13/zhnxbac3vuhv376/MNCCI_Force%20Majeure%20Rule_2020.pdf.

SUBTOPIC 3.2: LABOUR RELATIONSHIP

Question 34: Is it possible to specify the force majeure circumstances in an employment contract? If yes, how?

Yes, it is possible to specify a force majeure in an employment contract. No specific requirements or restrictions against the use of force majeure are stated in the Law of Mongolia on Labour. Therefore, the general conditions under the Civil Code of Mongolia would apply. According to the Civil Code, the parties to a contract have the right to freely determine the content of the contract. Thus, the force majeure clause can be set out by the parties in an employment contract. When drafting the force majeure clause, the following conditions should be considered:

- ❖ Definition of a force majeure event and delivery of a notice of force majeure to the other party;
- ❖ Forced absence of an employee due to force majeure;
- ❖ Retention of employee's job during force majeure;
- ❖ One-time and/or regular compensation during the force majeure leave of the employee and its size;
- ❖ Social insurance of employee during force majeure; and
- ❖ Deadline of the force majeure leave and reinstatement.

We note that the employer is obliged to pay the downtime period compensation or the payment for employee's absence period due to the acceptable reasons (i.e., any reasons due to the COVID-19 such as treatment or quarantine period) to its employees under the Labor Law. When the force majeure has been specified in the employment contract, the employer shall have an opportunity to be exempted from the obligations above. Thus, it is important to specify the force majeure circumstances in an employment contract for the employers.

! NOTE:

If one wishes to make an amendment to the employment contract, please refer to a template amendment here: <https://KhanLex.mn/webinar/>.

Question 35: Is it possible to dismiss an employee during the lockdown? What are the general obligations of the employer toward its employees during COVID-19?

According to the Prevention of Spread of the Coronavirus Law, the employer has the following obligations in relation to keeping an employee's job during the public emergency readiness:

- ❖ Regular ventilation, sterilization and disinfection of the workplace (§13.2.3);
- ❖ Depending on the disaster's level (please see the note on the levels of disaster below), retain a job of an employee who is under lockdown, quarantine, restriction of movement and isolation (§13.2.5);
- ❖ Refrain from organising events and meetings in person (§13.2.6); and
- ❖ Provide the employee with the opportunities to do the job remotely (i.e., online) (§13.2.7).

Specifically, the employer is obliged to retain the job of an employee during the lockdown under the "public emergency readiness". It is therefore permitted to dismiss an employee during the "public emergency readiness" lockdown only in the event of liquidation of an enterprise.

Also, please note that dissolution of a branch or unit of a business during the lockdown is not a legal ground for dismissal of the employees.

! NOTE:

Article 40.3 of Law of Mongolia on Labour:

An employer may not terminate a contract of employment with an employee whose job or position has been retained unless the employer's business is liquidated or its branch or unit has been dissolved.

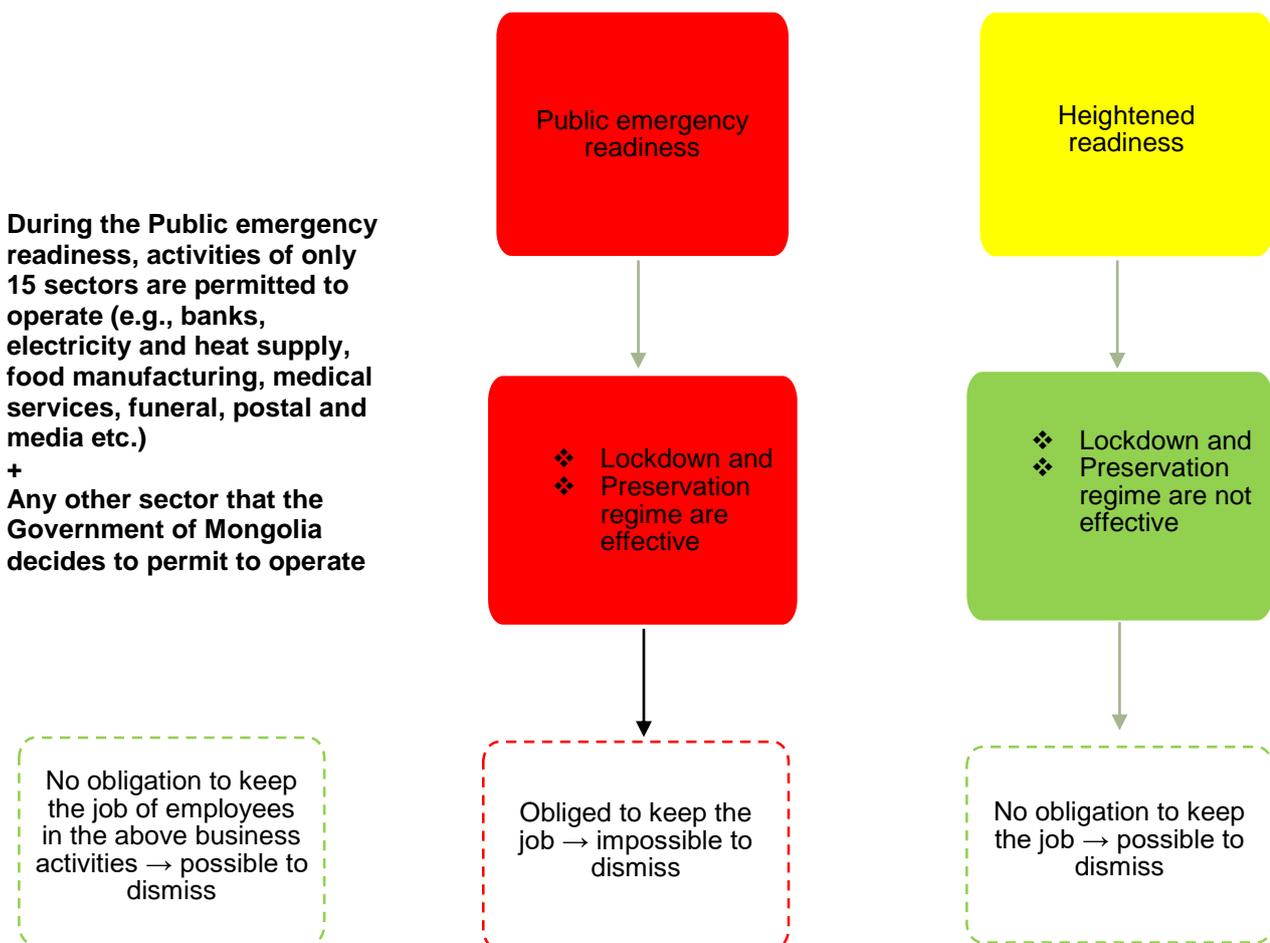
! NOTE:

Levels of disaster:

As discussed above, depending on the disaster's level, the employer can or cannot dismiss an employee. For instance, when a "public emergency readiness" level of disaster (red below) is in place, most employees are under lockdown and the employer must retain the jobs of these employees. Thus, it is impossible to dismiss the employees under Article 40.3 of the Law of Mongolia on Labour.

Conversely, if the level of disaster has been downgraded from "the public emergency readiness" to "the heightened readiness", this means the employee becomes able to return to the workplace and the employer has no longer the obligation to keep the job. Thus, the dismissal of an employee could proceed (subject to compliance with general legal requirements).

Please see the scheme below:



Question 36: What are the key issues to be considered in employment relations and common mistakes made by employers?

Employers should consider the following issues where mistakes most commonly occur:

- ❖ **Employment without a written appointment decision and/or a signed employment contract** – as set out in the Law of Mongolia on Labour, it is mandatory for the employer to issue a written appointment decision, conclude the employment contract with an employee as well as to hand over the originals of these documents to the employee. Unfortunately, the employers oftentimes breach this requirement in practice. If the employee has been employed without the appointment decision and/or the employment contract, please note the court considers that the employment is for an indefinite term (vs. definite).
- ❖ **Wrong disciplinary sanction** – The employer may impose, by law, on an employee disciplinary punishment for a breach of employment contract - for instance, reduction of the employee's salary by up to 20%, admonishment or discharge. Employers sometimes do not follow a legal requirement that a disciplinary sanction should be imposed on an employee within 6 months following the occurrence of the disciplinary breach and within 1 month following the discovery of such breach. In such case, the employer misinterprets and misapplies the provisions of law – as a result, the employer fires the employee in breach of the legal requirement. Thus, the employer should check the law prior to taking the disciplinary sanction. *Free legal service on such issues can be obtained from “Legal Compass Centre of Mongolia” via online (link: <https://www.facebook.com/BuhNiitiinErhZuinBolovsrol/>) and telephone (number 1800-1202).*
- ❖ **Term of labour contract** – According to the Law of Mongolia on Labour, the permanent labour contract must be concluded for an indefinite term (vs. definite). Unfortunately, in practice most employers make a common mistake – they conclude a labour contract for a term of one (1) year only which is a breach of law. Usually, a labour contract with a definite term (e.g., one or fixed number of years) - is to be concluded under limited circumstances. For instance, if the employee is to work until the return (i.e., reinstatement) of another employee (e.g., from maternity leave), or if the parties (i.e., employer and employee) have mutually agreed. “Mutually agreed” means a certain reason or circumstance should be agreed to between the parties and such reason or circumstance should be stated in the labour contract. Examples include seasonal jobs (e.g., miners, builders, tour guides etc.) or assignments with clear end dates (e.g., a consultancy project),

Question 37: Is it allowed to reduce the working hours of an employee and pay a salary based on hourly wage during the COVID-19 pandemic?

Yes.

According to Article 49.1 of the Law of Mongolia on Labour, “A salary can be based on an hourly wage, the results of the performed work, or other criteria.”. Thus, it is allowed to reduce the working hours of the employee and pay salary based on an hourly wage. For instance, if an employee works in the office eight (8) hours per day and his/her monthly salary is MNT 1,0 million under normal working conditions (i.e., no COVID-19), it is allowed to reduce the working hours by up to four (4) hours and pay salary in the amount of MNT 500,000 (i.e., 50% reduction) during the COVID-19 pandemic. In order to implement such reduction, a written amendment to the labour contract should be made by way of signing and annexing such amendment to the existing contract. Such amendment should indicate, among others, the rate and term of such reduction.

! ATTENTION:

Please note that in this case the employer must notify the employee 10 days in advance of such reduction of working hours and salary amount under the laws of Mongolia.

SUBTOPIC 3.3: TAX RELIEF

Question 38: What tax relief, if any, is available to individual entrepreneurs (such as sole proprietors) under personal income tax regulations?

Under the Tax Breaks Law adopted by the Parliament on 9 April 2020, the rate of personal income tax was reduced to zero percent between 10 April 2020 and 30 September 2020. This relief was, however, discontinued from 1 October 2020. As a result, the rate of personal income tax since 1 October 2020 is 10% (i.e., the pre-COVID-19 rate).

While the parliament currently discusses a set of tax regulations, some of which are intended to provide various tax relief measures, it is our understanding that no relief for personal income tax is provided for in the proposed legislation.

Example (of MNT 0,5m salary):

Personal income tax and social insurance tax		
Before COVID-19	<p>Social insurance: $500,000 * 11.5\% = 57,500$.</p> <p>Personal income tax: $(500,00 - 57,500) * 10\% = 442,500$ $* 10\% = 44,250 - 20,000 = 24,250$.</p> <p>Take-home salary: $500,00 - 57,500 - 24,250 = 418,250$.</p>	Pre-tax break: 500,000 – 418,250 = 81,750
During COVID-19: 2020/04/01 – 2020/09/30	<p>Health insurance: $500,000 * 2\% = 10,000$</p> <p>Personal income tax: 0%</p> <p>Take-home salary: $500,000 - 10,000 = 490,000$</p>	Tax break: 490,000 – 418,250 = 71,750
After expiry of tax break: 2020/10/01 – 2020/12/31	<p>Social insurance: $500,000 * 7\% = 35,000$.</p> <p>Personal income tax: $(500,000 - 35,000) * 10\% = 46,500$ $- 20,000 = 26,500$.</p> <p>Take-home salary: $500,000 - 35,000 - 26,500 = 438,500$</p>	Tax break: 438,500 – 418,500 = 20,000

Question 39: What tax relief, if any, is available to corporate SMEs under corporate income tax regulations?

As described under Question 3 above, a corporate lessor who reduces the rent between 1 February 2020 and 1 July 2021, is eligible for corresponding reduction of its tax on the total rent income. Also, social insurance taxes have been reduced to 10,5% for both the employer and the employee between 1 October 2020 and 1 July 2021. Finally, VAT and customs duties have been eliminated for imports of essential food items, such as rice, oil etc. until 1 July 2021.

Under the Tax Breaks Law adopted by the Parliament on 9 April 2020, small and medium businesses with annual sales revenues below MNT 1,5 billion were 100% exempt from income tax between 1 April 2020 and 31 December 2020. This exemption applied to the following types of income and may be claimed retroactively:

- ❖ Sales revenue (of goods and services);
- ❖ Revenue of technical, management, advisory and other services;
- ❖ Revenue for goods and services received from others for free;
- ❖ Revenue of rental or use of movable and immovable assets;

- ❖ Revenue from selling or licensing intangible and movable assets;
- ❖ Damages, default interest, penalty and other remedies received under a contract;
- ❖ Revenue from currency exchange rate;
- ❖ Revenue from trading shares, bonds and other financial instruments; and
- ❖ Other revenue similar to the above.

Example:

	Before COVID-19 (2019) (MNT)	During COVID-19 (e.g., between 1 Apr 2020 and 1 Oct 2020) (MNT)
Total sales	1200	1000
Cost of goods	1000	800
Profit	$1200 - 1000 = 200$	$1000 - 800 = 200$
Operational expenses	150	150
Pre-tax profit	$200 - 150 = 50$	$200 - 150 = 50$
Corporate income tax	$50 * 10\% = 5$	$50 * 0\% = 0$
After-tax profit	$50 - 5 = 45$	$50 - 0 = 50$

Question40: What relief is available for public social insurance?

As of 1 March 2021, the social insurance fees by both the employer and the employee are payable at reduced rates as follows:

Social insurance	Valid through 30 June 2021	
	Employer	Employee
Pension	8.5%	8.5%
Benefits	0 %	0 %
Industrial Accident	0 %	0 %
Unemployment	0 %	0 %
Health	2%	2%
TOTAL	10.5%	10.5%

Overall, the social insurance fees have ranged as follows under the Exemptions and Concessions of Social Insurance Law adopted by the Parliament on 9 April 2020:

Social insurance	Before COVID-19 (i.e., prior to 31 March 2020)		2020/04/01 – 2020/09/30		2020/10/01 – 2020/12/31		2021/01/01 – 2021/06/30	
	Employer	Employee	Employer	Employee	Employer	Employee	Employer	Employee
Pension	8.5%	8.5%	0 %	0 %	5%	5%	8.5%	8.5%
Benefits	0.8 %	0.8 %	0 %	0 %	0 %	0 %	0 %	0 %
Industrial Accident	1%	0 %	0 %	0 %	0 %	0 %	0 %	0 %
Unemployment	0.2 %	0.2 %	0 %	0 %	0 %	0 %	0 %	0 %
Health	2 %	2%	2%	2%	2%	2%	2%	2%
TOTAL	12.5%	11.5%	2%	2%	7%	7%	10.5%	10.5%

Please note that any business must pay any overdue social insurance taxes prior to 31 March 2020 in order to be eligible for the above exemptions. Also, please note that the exact amount of social insurance paid by the employer or the employee may vary from month to month. This is due to the fact that the exact monthly wage of an employee varies due to the differing working hours each month. The different monthly wage, in turn, impacts the calculation method of that month's social insurance charges.

Question 41: How to report the above exemptions under the social insurance scheme?

The calculation and reporting of social insurance exemptions are important. Monthly social insurance reports must be prepared and submitted by each SME to the district social insurance office. The following are the key steps in reporting the payment of social insurance taxes:

1. File an application with the district social insurance office for registration as “social insurance payor”;
2. The district social insurance office will issue login details for the online social insurance payment platform (www.ndaatgal.mn);
3. Log into www.ndaatgal.mn, complete the online forms ND7 and ND8 and submit online; and

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