

**ARTICLE**

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VISA ISSUES FOR FOREIGN BUSINESS

Several immigration issues have been prevalent over the course of 2018 as a result of various factors which are impacting both on foreign invested major projects, including Oyu Tolgoi, and now trickling down to impact on smaller businesses.

The issue appears to have originated with the treatment of highly specialized foreign workers who were being used on a short-term basis to provide operation and maintenance services on high-tech mining equipment. It would seem that this has led to something of a clampdown across the board which has the potential to impacting on much smaller businesses and projects.

The Government sets an annual quota for the percentage of foreign employees that can be employed by Mongolian companies or businesses, in each case in accordance with the type of business being undertaken. The baseline quota is set at 5% for foreign employees, meaning that for every 20 workers employed by a business, one can be a foreign citizen and obtain an "HG" employment visa. On top of this requirement, it is also possible for foreign senior management of a company or investors (or their representatives) in a foreign-invested company to obtain one or two investor visas (known as T-visas).

As mentioned, the quota of employees does rise depending on the nature of the business concerned. Highly labour-intensive businesses, such as mining, can obtain a quota of up to 30 per cent of the overall workforce. Any variation from the quota requires either a specific agreement with the Ministry of Labour or seeking an alternative solution such as employment through subcontractors or other similar arrangement>/

This is all fine as far as it goes, and is consistent with the entirely reasonable policy of supporting Mongolian labour and ongoing training of Mongolian employees.

That said, an employment contract in Mongolia under the current Labour Law is typically concluded on a permanent and full-time basis, and therefore with the expectation that the employee concerned would be resident and a taxpayer in Mongolia. Therefore, HG visas are allocated by businesses to this type of individual who is based full-time on the ground.

The recent issues arise from the use of specialised personnel who operate on a fly-in fly-out basis, perhaps working on

various projects for affiliated companies of a foreign-invested business for several weeks or less than three months per year, but who are not and do not intend to work in Mongolia on a full-time basis. In these cases, an HG employment visa is not really appropriate and does not meet the practical requirements for this type of non-resident specialist worker from a Mongolian company's perspective.

In addition, recent experience, perhaps exacerbated by the introduction of the Law on Minor Offences from 1 January 2018, shows that the immigration authorities now consider as a matter of policy that 'B' type Business visas do not support this type of short-term activity, but that only an HG employment visa would be sufficient. This is the case even for individuals who may be in Mongolia for specific and highly specialised operation and maintenance services for two to four weeks per year.

A material side effect of this is that Business Visa holders undertaking for example, short-term specialised activity at a mining site on a fly-in fly-out basis can be, and in many cases, have been, given a deportation order and banned from re-entering the country for a period of 3 years. This has impacted on a significant number of specialised personnel used for annual maintenance of equipment at Oyu Tolgoi

For supply companies who support major' projects with limited personnel, this can be a very significant issue if their contracted specialists from affiliated companies are prohibited from entering Mongolia for three years.

Anecdotally, there is evidence that the Immigration authorities have clamped down hard on the issuance of Business visas and there is considerable scrutiny over their issuance, even for smaller businesses.

In short, there needs to be a reasonable solution to these visa issues based on the practicalities of how businesses operate in Mongolia. One solution would be to introduce a further specific type of visa category that addresses this type of short-term business activity, another would be a reasonable relaxation of quota requirements. In addition, there needs to be appropriate compliance with Mongolian tax requirements so that these types of arrangements are not abused by Mongolian incorporated businesses to the detriment of the economy.