

## LEGISLATIVE UPDATE: MONGOLIA ADOPTS NEW PERMIT LAW



On 17 June 2022, the Parliament of Mongolia adopted the Law of Mongolia on Permits (“**Permit Law**”). The Permit Law will become effective on 1 January 2023. With the entry into force of the Permit Law, the Law of Mongolia on Licensing of Business Activities (“**Licensing Law**”) will be repealed. The Permit Law combines the draft of the Permit Law proposed by the Government to the Parliament on 30 April 2019 and the revised Licensing Law initiated and proposed by 22 members of the Parliament on 29 March 2019.

Overall, the Permit Law was adopted with the aim of reducing the number of licenses and permits that are currently provided for in the Licensing Law and sector specific legislation, extending the term of permits and setting time limits for granting and extending permits. It also aims to improve overall transparency in the process for granting and extending permits.

Below we provide brief information on some of the key changes introduced by the Permit Law.

For the purposes of this alert, unless otherwise provided, we use the term “permit” to refer to both the licenses that are currently provided in the Licensing Law and the permits provided under the Permit Law as there will no longer be a separate concept of “licenses” under the Licensing Law.

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### 1. KEY REGULATIONS OF THE PERMIT LAW

#### 1.1 Types and Number of Permits

Currently, the Licensing Law provides for 103 general types of licenses, divided into 210 subtypes of licenses in 18 different sectors. In addition to the Licensing Law, there are over 100 sector specific laws and regulations that provide for licenses and/or permits. According to a survey conducted in 2016, 54 entities were issuing more than 914 different permits.<sup>1</sup>

The Permit Law aims to reduce this number and prohibits the creation of new permits outside the Permit Law. Under the Permit Law, depending on the purpose, the issuance requirements, the nature/specifics of the activity and the risk levels, permits are classified as:

- (a) special permits (i.e. currently licenses provided under the Licensing Law); and
- (b) ordinary permits.

Special permits are to be granted for: (1) activities that may potentially put national security, public interest, public health, environment and financial stability at risk; (2) for professional activities to be carried out subject to satisfaction of special conditions and requirements; or

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<sup>1</sup> Permit Law Concept Paper available at <https://forum.parliament.mn/projects/11132>

(3) the limited use of natural resources and state public property for profit and industrial purposes.

Ordinary permits are to be granted for one-off activities, or additional activities to be carried out based on special permits, or the limited use of natural resources and state public properties for domestic purposes.

The Permit Law provides for 249 special permits in 14 different sectors and 114 ordinary permits in 12 different sectors. In total, 54 officials and government entities are authorized to grant special permits and 33 officials and government entities are authorized to grant ordinary permits ("**Authorised Person**").

The law prohibits adding, expanding, dividing or separating the scope of permits, and also the adoption of administrative regulations related to the issuance, extension, suspension, reinstatement and revocation of permits.

In addition, in order to introduce a new permit, research, monitoring and evaluation should be conducted in accordance with methodologies approved by the Government to determine whether the new permit needs to be regulated by the state, whether the permit is an appropriate regulatory tool and whether the permit is socially and economically viable. In conducting research, international approaches and standards will be taken into account.

## 1.2 **Term of Permits**

Currently the Licensing Law provides for a minimum term of three years for licenses, unless otherwise provided in law. However, the Permit Law increases this period by stating that unless otherwise provided in law, special permits can be granted for at least five years and ordinary permits can be granted for at least three years. Further, if provided in law, permits can be granted indefinitely. However, a permit for the limited use of natural resources and state public property must be issued for a fixed period.

Permits can be extended for a period equal to the original term if the permit holder applied for renewal, did not breach applicable legislation, and satisfied the conditions and requirements set out by law. The Permit Law also provides for the possibility of extending the term of a permit for double the length of the original term if the permit holder has no tax debts, and has carried out permanent and stable operations.

## 1.3 **Process for Applying and Granting Permits**

An applicant must satisfy the following general conditions in order to obtain permits:

- (a) have full civil legal capacity;
- (b) if required by law, have passed the professional and qualification examinations and obtained the relevant conclusions; and
- (c) be registered as a taxpayer.

The Permit Law provides for the following procedures for granting permits:

- (a) An Authorized Person is to notify the receipt of the permit application to the applicant and register the application;
- (b) An Authorized Person is to check the completeness of the application within two working days of receiving the application and undertake one of the following measures:
  - (i) commence review of the application if the application documents are complete;

- (ii) notify the applicant if the application does not meet the requirements or is incomplete, and require that the relevant information be submitted; or
  - (iii) transfer the application to relevant authorities.
- (c) In the event of 1.3(b)(i) above, the review of applications should be completed within ten working days for special permits and five working days for ordinary permits. This time period may be extended for another five working days if the Authorized Person requires additional information, letters of reference, conclusions or opinions from other government entities.
- (d) In the event of 1.3(b)(ii) above, the applicant must provide the necessary documents within 30 days and if not supplied, the application would be considered as not submitted.
- (e) The decision on whether to grant a permit is to be made within five working days of completion of the review period.
- (f) The decision to grant a permit is to be communicated to the applicant within two working days.

In total, special permits are to be granted within 24 working days of submission of an application and ordinary permits are to be granted within 19 working days.

The law provides that if an Authorized Person refuses to issue a permit, the applicant shall not be entitled to submit an application in the same sector for six months.

If an Authorized Person has not provided a response to the application for an ordinary permit within the above time period, the ordinary permit is deemed to be granted and the Authorized Person is under an obligation to grant the ordinary permit within three working days of the end of statutory time period.

The law does not contain the same requirement for special permits. However, the law provides for the same regulation in terms of renewing ordinary and special permits such that if an Authorized Person fails to provide a response within the statutory time period, the permit is considered to be extended for the original term.

#### 1.4 **Grounds for Suspending and Revoking Permits**

The Permit Law provides for the following grounds for suspension of a permit for up to three months:

- (a) it has been determined by the decision of a competent authority that the permit holder no longer meets the conditions and requirements of the permit;
- (b) the permit holder failed to provide information or reports set out by law on time or provided wrong information or reports; or
- (c) no activities were carried out for two years following the issuance of the permit or the permit holder's activity is discontinued.

The Permit Law provides for the following grounds for revocation of a permit:

- (a) at the request of the permit holder;
- (b) a breach has not been remedied during the period of suspension of the permit and no request to reinstate the permit has been made;
- (c) the permit holder has caused harm and significant damage to public interest, public health, safety, environment and national security;

- (d) the permit holder has breached the conditions and requirements of the permit two or more times;
- (e) permits and documents certifying it were sold, gifted, pledged or transferred in other forms except as provided by law;
- (f) it has been proven that application documents have been forged at the time of obtaining the permit;
- (g) if a permit holder is an individual, it is determined that he/she lacks legal capacity, or if the permit holder is a legal entity, it has become insolvent or has been liquidated; or
- (h) other circumstances provided in law.

An Authorized Person must notify the permit holder in advance of grounds to revoke the permit and the permit holder may submit explanations and relevant documents to the Authorized Person within 30 days of receiving the notification. If the relevant explanations and documents have not been submitted to the Authorized Person, the issue of revoking the permit shall be resolved within 10 days after the expiry of the 30 day period.

If a special permit is revoked, the permit holder may not re-apply for six months.

### 1.5 **Auction and Selection Process for Permits**

The Permit Law provides for the possibility of granting 21 special permits through an auction or selection process. These are:

- (a) special permit to export endangered animals alive;
- (b) special permit to collect rare living animals;
- (c) special permit to export, import and transit living modified organisms;
- (d) special permit to use specially protected areas;
- (e) special permit to export plants;
- (f) special permit to engage in activities of general waste collection center and waste recycling, disposal and burial activities;
- (g) special permit to hunt or capture hunting animals for special purposes;
- (h) special permit to hunt or capture hunting animals for industrial purposes;
- (i) special permit to use 50-100 cubic meters of water per day;
- (j) special permit to use more than 100 cubic meters of water per day;
- (k) special permit to construct railway infrastructure;
- (l) special permit to use subsoil for burial of toxic substances that have significant impact on human health, livestock, animals and environment;
- (m) special permit to mine minerals;
- (n) special permit to mine radioactive minerals;
- (o) special permit to import, export, transport radioactive minerals and bury waste;

- (p) special permit to possess, use and sell nuclear substances;
- (q) special permit to import, export and transport nuclear substances and bury the country's radioactive waste;
- (r) special permit to use subsoil for purposes other than mineral extraction;
- (s) special permit to mine common minerals;
- (t) special permit to provide radio and television network services; and
- (u) special permit to engage in private security activities.

The granting of the above special permits by auction or selection process is to be regulated by a separate law. The law is not yet adopted.

## 1.6 **E-Permit System**

The Permit Law provides for the possibility of submitting applications for permits electronically and that applications submitted electronically shall be considered the same as applications submitted in person. The law also imposes an obligation on Authorised Persons to ensure that the process for receiving, reviewing and decision-making in respect of applications for permits, and any extension, is made electronically available to the applicants and permit holders in an open and transparent manner.

The Permit Law also provides for a unified electronic database of permits whereby decisions granting, extending, suspending, reinstating, revoking permits and information on the sale, gift, pledge and other forms of transfer of permits would be maintained. The database is to be maintained by the Ministry of Economy and Development and the Ministry is to undertake measures to notify the public of relevant information.

The law also provides for the possibility of granting permits through simplified procedures if provided in law. The relevant law in this regard is yet to be approved.

## 1.7 **Permit Council**

The Permit Law provides for a ex-officio Council to monitor the activities of Authorised Persons and to make recommendations on the grounds and requirements for amendments to the Permit Law.

The Council is comprised of the Prime Minister, a secretary and 11 members consisting of representatives from government, private sector and non-governmental organizations. The specific functions of the Council are:

- (a) providing guidance to Authorized Persons;
- (b) conducting monitoring and evaluation, and providing comments and conclusions on permit issuance;
- (c) making proposals and conclusions on amendments to the Permit Law;
- (d) monitoring the issuance of permits by Authorized Persons and taking measures to remedy breaches; and
- (e) submitting proposals to competent authorities and persons to revoke decisions of government agencies and officers or administrative acts that are in breach of the Permit Law.

The Council is also mandated to undertake monitoring and evaluation every three years on whether permits and other related activities comply with the purpose, principle, conditions

and requirements of the Permit Law. Based on the findings, the Council is to make a conclusion as to whether a permit is to remain as it is, or to transfer a permit from one type to another, or to remove it from the Permit Law entirely.

## 2. CONCLUSION

It is commendable that the Permit Law has been adopted to improve the overall licensing regime and thereby ease and simplify doing business in Mongolia. The reduction in the number of permits, the extension of permit terms, the ability to apply for permits electronically, and the spirit of openness and transparency towards the issuance and extension of permits should be positively received by the business community.

In a number of areas, the Permit Law provides “unless otherwise provided in law”, and it is unclear if key sector-specific legislation will be amended in light of the Permit Law.

As it currently stands, it would appear that in certain areas, regardless of what the Permit Law provides, the regulations provided in sector-specific legislation would prevail. This could potentially negatively affect the intended purpose of the law. Further, apart from the time period for reviewing application for permits and term of the permits, there appears to be no significant difference between special permits and ordinary permits. Importantly, it is also unclear for the time being how the Permit Law will affect existing licenses, permits and registrations.

It is hoped that there will be further clarity on these points when the law becomes effective and that the enforcement of the law will contribute to the ease doing business in Mongolia.

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For further inquiries, please contact the following lawyers or those with whom you usually deal:

**Chris Melville, Managing Partner**

[chris@melvilledalai.com](mailto:chris@melvilledalai.com)

Tel: +976 70128910

**Erdenedalai Odkhuu, Partner**

[erdedenalai@melvilledalai.com](mailto:erdedenalai@melvilledalai.com)

Tel: +976 70128913

**Bolormaa Gulguu, Senior Associate**

[bolormaa@melvilledalai.com](mailto:bolormaa@melvilledalai.com)

Tel: +976 70128900

**Melville Erdenedalai LLP**

Suite 810, Shangri-La Office

Olympic street -19A

Sukhbaatar District -1

Ulaanbaatar 14241, Mongolia

T +976 7012 8900

F +976 7012 8901

[www.melvilledalai.com](http://www.melvilledalai.com)

