

DETAILED INTRODUCTION

Regarding the Draft of the Law on Addenda and Amendments
to the General Law on Social Insurance:

The draft law on Addenda and Amendments to the General Law on Social Insurance¹ has been prepared with four provisions. This marks the second amendment to the law.

1. The first Section of Article 1 in the draft proposes to amend Article 19 of the General Law on Social Insurance, titled "Components of Income Subject to Social Insurance Premium," by adding Section 19.5, which states: "The maximum monthly salary and equivalent income on which the employer pays social insurance premiums shall be equal to ten times the prevailing monthly minimum wage at the time."

The Social Insurance Law, enacted by the State Great Khural of Mongolia in 1994, did not establish an upper limit for wages or equivalent income used for paying premiums or determining pensions and benefits, allowing insured individuals to artificially inflate their wages before pension calculation while businesses and organizations encouraged this practice, which was believed to create tangible conditions for artificially increasing the burden on the Social Insurance Fund.² In accordance with the State Great Khural of Mongolia's tasking of the Government by its Resolution No. 10 in 1996³, titled "Certain Measures for the Implementation of the Law on Addenda and Amendments to the Social Insurance Laws," to set the maximum wage and equivalent income for 1996, Government Resolution No. 80 of 1996⁴, titled "Establishing the Maximum Monthly Wage and Equivalent Income for Social Insurance Premiums and Pension Benefits," was approved, setting the upper limit of the monthly wage and equivalent income for the insured's social insurance premium payment at MNT 80,000.

Subsequently, by Government Resolution No. 92 of June 10, 1998, the upper limit of the monthly wage and equivalent income for social insurance premium payments by the insured was set at an amount equal to ten times the minimum wage

¹ The General Law of Mongolia on Social Insurance, approved on July 7, 2023, came into effect on January 1, 2024. Link: <https://legalinfo.mn/mn/detail?lawId=16760148379551>

² Resolution No. 02 of the Constitutional Court of Mongolia, dated December 4, 2005, finalized the dispute regarding whether certain provisions of Government Resolution No. 22, issued on February 2, 2005, violated relevant provisions of the Constitution of Mongolia. In this dispute, explanations were provided by the authorized representatives of the Government of Mongolia: Deputy Minister of Justice and Internal Affairs Ts. Sukhbaatar, Director of the Social Protection Policy and Regulation Department of the Ministry of Social Protection and Labor Ch. Dagvadorj, and Head of the Strategic Planning Division of the General Authority for Social Insurance Ts. Dashdondog. <https://legalinfo.mn/mn/detail?lawId=1028>

³ <https://legalinfo.mn/mn/detail?lawId=6379>

⁴ <https://legalinfo.mn/mn/detail?lawId=3312>

at the time⁵, and since then, the upper limit of income for social insurance premium payments by the insured has consistently been maintained at ten times the minimum wage, as reflected in the current General Law on Social Insurance⁶.

As mentioned above, the upper limit on the monthly wage and equivalent income for social insurance premium payments was set to prevent insured individuals who paid higher premiums for only a few months from securing higher pensions than those who paid social insurance premiums consistently and uninterruptedly for many years.

Yet, the absence of an upper limit on the monthly wage fund and equivalent income for social insurance premium payments by employers, while basing it on the insured's total monthly wages and equivalent income, is unfair and imposes a significant burden on employers, enterprises, and business owners. This is because the upper limit set for the insured's monthly wage and equivalent income for premium payments is directly tied to the amount of pensions and benefits provided by the Social Insurance Fund. However, employers pay premiums based on the insured's total wages and equivalent income, which has no effect on the pensions and benefits the insured receives from the Social Insurance Fund.

Therefore, the draft law includes a provision to set the upper limit of the employer's monthly wage and equivalent income for social insurance premium payments to be equal to ten times the minimum monthly wage in effect at the time, similar to that of the insured.

2. Regarding a new paragraph to be added as Paragraph 24.1.7 in Section 1 of Article 24 of the General Law on Social Insurance, titled "The Reimbursement of Social Insurance Premiums," specifying a new ground for reimbursement: "if the employer's violation of Section 41.3 of the Labor Law⁷ is determined by the decision of a court, an authority resolving labor disputes, or a state labor inspector."

If the provision mandating individuals working under contract for work, contract for remuneration⁸, or similar contracts as specified in the Civil Code⁹ to be compulsorily enrolled in social insurance is invalidated, there is a consistent explanation that

⁵ Annex 17 of the State Great Khural of Mongolia's Resolution No. 38 of 1999, titled "Approval of the Main Guidelines for State Pension Reform Policy Until 2021," stipulates that "It is appropriate to establish upper and lower limits for wages and equivalent income subject to pension insurance premiums, and this principle should be aligned with the policy of determining the upper and lower limits of pensions."

⁶ Section 19.4 of the General Law on Social Insurance states: "The upper limit of the monthly wage and equivalent income used for calculating social insurance premiums and determining pensions and benefits shall be equal to ten times the minimum monthly wage in effect at the time for mandatory insured persons and seven times the minimum monthly wage for voluntary insured persons."

⁷ Labor Law of Mongolia, approved on July 01, 2021, and with its subsequent addenda and amendments. Link: <https://legalinfo.mn/mn/detail?lawId=16230709635751>

⁸ **Translator's Note:** The terms "contract for work" and "contract for remuneration" are translated in the unofficial translation of Mongolian laws as "work performance contract" and "contract for hire" or "hired work contract," respectively. Additionally, "contract for remuneration" is commonly translated as "service agreement" or "service contract." For consistency, the translator has used "contract for work" and "contract for remuneration" in this translation.

⁹ The Civil Code of Mongolia, approved on January 10, 2002, and with its subsequent addenda and amendments. Link: <https://legalinfo.mn/mn/detail/299>

employers may opt to enter into a contract for work, contract for remuneration, or similar contracts instead of employment contracts, thereby avoiding the payment of social insurance premiums, which leads to adverse consequences.

Section 41.3 of the Labor Law states, "If the relationship between the employer and the employee exhibits the characteristics of an employment relationship as defined in Paragraph 4.1.15 of this law, it is prohibited to conclude any type of contract other than an employment contract. If a contract other than an employment contract is concluded but the relationship exhibits characteristics of employment, it shall be deemed as an employment contract." According to this provision, employers are prohibited from entering into other types of contracts for relationships that exhibit the characteristics of employment, and if this is violated, the contract shall be deemed an employment contract regardless of its name or type.

If the employer has not committed such a violation, the employee in question becomes subject to compulsory social insurance, and the employer is required to enroll the individual in social insurance and pay the relevant premiums at the prescribed rates. On the contrary, if such a violation is discovered later, it raises an issue to reimburse the social insurance premiums that should have been paid during the relevant period. Therefore, while Paragraph 24.1.1 of Article 21 of the General Law on Social Insurance provides that "if the employer conceals or intentionally reduces the wage fund or equivalent income subject to social insurance premiums," the premiums shall be reimbursed, the draft law proposes to add Paragraph 24.1.7 to Article 24 to more explicitly regulate cases where employers avoid paying social insurance premiums by concluding other types of contracts instead of employment contracts, specifying that "if the employer's violation of Section 41.3 of the Labor Law is determined by the decision of a court, an authority resolving labor disputes, or a state labor inspector," the premiums must be reimbursed.

An employer's "unlawful act" of concluding a different type of contract for a relationship exhibiting characteristics of employment can be established through an effective decision (penalty notice) issued by a state labor inspector following an inspection and identification of the violation under the Law on Infringement¹⁰, or through a binding decision by a labor dispute settlement commission, the tripartite labor dispute resolution committee of a soum or district, or a court decision resulting from a dispute between the employee and the employer. Therefore, there is a full legal basis for state labor inspectors and social insurance inspectors to coordinate their efforts, conduct effective inspections, prevent such infringements, and ensure that the social insurance premiums for the relevant period are recovered when such infringements are identified.

3. Regarding Section 1 of Article 2 in the draft, proposing to amend Paragraph 19.1.2 of Article 19 of the General Law on Social Insurance.

CURRENT REGULATION	VERSION IN THE DRAFT
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¹⁰ Law of Mongolia on Infringement, approved on May 11, 2017, and with its subsequent addenda and amendments. Link: <https://legalinfo.mn/mn/detail/12695>

<p>19.1. The following salaries and equivalent incomes shall be included in the components of income of the insured and the employer that are subject to social insurance premium:</p> <p>19.1.2. Salaries agreed on the contract for work, contract for remuneration and similar contracts specified in Articles 343 and 359 of the Civil Code;</p>	<p>To amend as follows: “19.1.2. The agreed salary and allowance specified in the contract concluded with the person subject to compulsory insurance under Paragraphs 7.2.2 and 7.2.3 of this Law”</p>
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The following persons are subject to compulsory social insurance, regardless of the type of contract concluded with the employer¹¹: (a) employees working in foreign-invested legal entities operating in the territory of Mongolia, foreign enterprises and organizations, their branches and representative offices, foreign enterprises operating through their representative offices not located in Mongolia, and foreign enterprises and representative offices earning income originating from Mongolia (Paragraph 7.2.2 of the General Law on Social Insurance); and (b) unless otherwise stipulated in an international treaty of Mongolia, employees working in diplomatic missions or consulates of foreign countries in Mongolia, international organizations, projects or program units, branches, representative offices, or agencies implemented with foreign loans and assistance (Paragraph 7.2.3 of the General Law on Social Insurance). To ensure uniform understanding and implementation of the law and to prevent ambiguities, the draft law proposes amending Paragraph 19.1.2 of Article 19 of the General Law on Social Insurance.

4. Regarding amendment, as specified in Section 2 of Article 2 of the draft, of Paragraph 32.2.1 of Article 32 of the General Law on Social Insurance as follows:

CURRENT REGULATION	VERSION IN THE DRAFT
<p>32.2. The employer undertakes the following obligations:</p> <p>32.2.1. compulsory insurance of the employee with social insurance starting from the date of signing the employment contract, contract for work, contract for remuneration, or similar contract;</p>	<p>To amend as follows: "32.2.1. To enroll persons who are subject to compulsory social insurance under this law in social insurance from the date of their employment or the date a contract is concluded with them;"</p>

This amendment pertains to the regulation of excluding persons working under "contract for work, contract for remuneration, and similar/equivalent contracts" with legal entities and individuals of all forms of ownership from compulsory enrollment in

¹¹ There is a practice for project implementation units to employ staff under “contracts for remuneration” and ensure their mandatory enrollment in social insurance, in accordance with the “Procedure for Using Foreign Loan Funds of the Government, Implementing, Organizing, Financing, Monitoring, and Evaluating Projects and Activities Financed by These Funds,” approved by Annex 4 of the Minister of Finance’s Order No. 4 dated January 11, 2021.

social insurance. It is related to the proposed amendments in Paragraph 19.1.2 of Article 19 of the General Law on Social Insurance, which will be amended by Article 2 of the draft law, as well as the amendments to Paragraph 7.3.4, outlined in Article 3 of the draft law, and the amendments to Sections 7.4.10 and 7.10, outlined in Article 4 of the draft law, which are to be null and void.

5. Regarding the proposal to omit the phrase “foreign-invested legal entities” from Paragraph 7.2.2 of Article 7 of the General Law on Social Insurance as specified in Article 3 of the draft law:

Paragraph 3.1.5 of Article 3 of the Law on Investment¹² defines a “foreign-invested business entity” as a business entity incorporated in accordance with the laws of Mongolia and not less than 25 percent of the total share capital is held by a foreign investor, and the investment amount by each foreign investor equals or more than USD 100,000 or its equivalent in Mongolian togrogs. According to this definition, a foreign-invested business entity means a business entity of Mongolia which is incorporated and registered in accordance with the laws of Mongolia.¹³

Paragraph 7.2.1 of Article 7 of the General Law on Social Insurance states that “employees working under employment contracts with legal entities and individuals of all forms of ownership” are subject to compulsory social insurance. This clearly includes employees working under employment contracts with foreign-invested business entities. Therefore, there is no need to separately specify “foreign-invested business entities” again under Paragraph 7.2.2 of Article 7 of the law.

Moreover, by keeping this regulation in place, although Mongolia aims to create a favorable investment environment, it would lead to a situation where foreign-invested enterprises are separated and distinguished from Mongolian enterprises and legal entities, creating an unclear and ambiguous situation, thus the draft law includes the omission of “foreign-invested legal entity” in Paragraph 7.2.2 of Article 7 of the General Law on Social Insurance.

6. Regarding the omission, as stated in Article 3 of the draft law, of the provision “contract, contract for work, contract for remuneration, and those equivalent to them,” “food, transportation, and housing usage fees, and if he/she lives in an accommodation or ger without public heating, allowances granted in cash for the purchase of fuel” from Paragraph 4.1.17 of Article 4 of the General Law on Social Insurance, the provision “contract, contract for work, contract for remuneration, and those equivalent to them” from Paragraph 7.3.4 of Article 7, and the provision “food, transportation, firewood, coal price discount, housing usage fee, and other equivalent income” from Paragraph 19.1.3 of Article 19.

Under the concept of the draft law not to impose social insurance premiums on “payment agreed upon in a contract for work, contract for remuneration, or contracts equivalent to them,” “food, transportation, and housing usage fees, and if he/she lives in an accommodation or ger without public heating, allowances granted in cash for the

¹² Law of Mongolia on Investment, approved on October 03, 2023, and with its subsequent addenda and amendments. Link: <https://legalinfo.mn/mn/detail/9491>

¹³ Judgment No. 227 dated June 12, 2017, of the Chamber of Administrative Cases of the Supreme Court. Link: <https://legaldata.mn/shiidver/zahirgaa/view/882>

purchase of fuel," Paragraph 7.4.10 and Section 7.10 of Article 7, as well as the related contents and words from Paragraph 4.1.17 of Article 4, Paragraph 7.3.4 of Article 7, Paragraph 19.1.3 of Article 19, and Paragraph 32.2.1 of Article 32, are proposed to be nullified.

In the concept of the Law on Amendments to the Social Insurance Law approved by the State Great Khural of Mongolia on May 8, 2008, it is stated that "... if the insurance holder receives compensation for transportation and food expenses, housing, firewood, and coal price discounts exceeding the amount established by labor and collective agreements, negotiations, internal regulations of organizations, and similar decisions, only the excess amount will be included, and changes will be made to the relevant provisions of the law, which will reduce the burden of premiums on employers to a certain extent," but this regulation was not reflected in its draft law, and instead, social insurance premiums are imposed on the compensation for transportation, food expenses, housing, firewood, and coal price discounts provided to employees, and following the approval of the amendment, this regulation was incorporated into the law at first and has been in effect to present.

According to Section 101.1 of Article 101 of the Labor Law, "Wages consist of basic salary, bonuses, additional pay, vacation pay, and rewards," whereas meal and transportation expenses, as well as fuel and coal subsidies, are not included in the components of wages. Meal and transportation allowances, fuel, and coal subsidies are intended by the employer to assist the employee with daily needs and alleviate financial strain and social risks. Therefore, the draft law proposes omitting regulations that impose social insurance premiums on "food, transportation, and housing usage fees, and if the employee lives in accommodation or a ger without public heating, allowances granted in cash for the purchase of fuel."

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COMPARISON OF THE PROVISIONS OF THE DRAFT LAW ON THE ADDENDA AND AMENDMENTS TO THE GENERAL LAW ON SOCIAL INSURANCE WITH THE RELEVANT PROVISIONS OF THE GENERAL LAW ON SOCIAL INSURANCE

CURRENT REGULATIONS	DRAFT VERSION
To add	
<p>Article 19. Components of income to be imposed social insurance premium</p>	<p>To add the following section in Article 19: "19.5. The maximum amount of the employer's social insurance premium for a month's wages and equivalent income shall be equal to 10 times the prevailing minimum monthly wage."</p>
<p>24.1. Social insurance premiums shall be reimbursed in the following cases:</p> <p>24.1.1. if the employer conceals or intentionally reduces the wage fund or equivalent income subject to social insurance premiums;</p> <p>24.1.2. if the employer has not paid within the period stipulated in section 21.1 of this Law or has paid incompletely;</p> <p>24.1.3. if it is not paid within the period agreed upon by the voluntary insurance contract;</p> <p>24.1.4. if a court decision on illegal dismissal is issued;</p> <p>24.1.5. if a court decision is issued regarding prosecuted for a false charge or serving a prison sentence for a false charge.</p> <p>24.1.6. If stipulated in the Law on Herders</p>	<p>To add the following paragraph in Section 24.1 of Article 24: "24.1.7. if the employer's violation of Section 41.3 of the Labor Law is determined by the decision of a court, an authority resolving labor disputes, or a state labor inspector."</p>
To amend	
<p>19.1. The following salaries and equivalent incomes shall be included in the components of income of the insured and the employer that are subject to social insurance premium:</p> <p>19.1.2. Salaries agreed on the contract for work, contract for remuneration and similar contracts specified in Articles 343 and 359 of the Civil Code;</p>	<p>To amend Paragraph 19.1.2 of Article 19 as follows: "The salary, wages, and allowances agreed upon in the contract with the person subject to the compulsory insurance specified in Paragraphs 7.2.2 and 7.2.3 of this law;</p>

DRAFT - A VERSION TO COLLECT PROPOSALS FROM CITIZENS AND THE PUBLIC
BEFORE THE SUBMISSION.

<p>32.2. The employer undertakes the following obligations:</p> <p>32.2.1. compulsory insurance of the employee with social insurance starting from the date of signing the employment contract, contract for work, contract for remuneration, or similar contract;</p>	<p>To amend Paragraph 32.2.1 of Article 32 as follows: “32.2.1. To enroll persons who are subject to compulsory social insurance under this law in social insurance from the date of their employment or the date a contract is concluded with them;”</p>
<p>To omit</p>	
<p>4.1. The following terms used in this Law shall be interpreted in the following meanings:</p> <p>4.1.17. "salary and its equivalent income" means salaries, benefits, wages agreed upon in the employment <u>“contract, contract for work, contract for remuneration, and similar contracts”</u> specified in the Labor Law, Civil Service Law, and Civil Code, and awards, incentives, <u>“food, transportation, housing usage fees, and if he/ she lives in an apartment or house without public heating, allowances granted in cash for the purchase of fuel”</u> provided by the employer on a monthly, quarterly, annually basis, or in each case, in accordance with the collective contract, collective agreement and internal labor regulations, and self-declared income of the voluntarily insured;</p>	<p>To omit the following part from Paragraph 4.1.17 of Article 4: "contract, contract for work, contract for remuneration, and contracts equivalent to them" and "food, transportation, and housing usage fees, and if he/she lives in an accommodation or ger without public heating, allowances granted in cash for the purchase of fuel,"</p>
<p>7.2. The following Mongolian citizens, foreigners, stateless persons, and civil servants, unless otherwise specified by law, shall be compulsorily insured for the types of social insurance specified in Paragraphs 6.1.1, 6.1.2, 6.1.3, and 6.1.4 of this Law:</p> <p>7.2.2. an employee working in <u>“foreign-invested legal entities”</u> operating in the territory of Mongolia, foreign enterprises and organizations, their branches and representative offices, foreign enterprises operating through their representative offices not located in Mongolia, and foreign enterprises and representative offices earning income originating from Mongolia;</p>	<p>To omit the following part from Paragraph 7.2.2 of Article 7: “foreign invested legal entity,”</p>

DRAFT - A VERSION TO COLLECT PROPOSALS FROM CITIZENS AND THE PUBLIC BEFORE THE SUBMISSION.

<p>7.3. The following person shall be compulsorily insured for the types of social insurance specified in Paragraphs 6.1.1, 6.1.2, and 6.1.4 of this Law:</p> <p>7.3.4. a pensioner set and received a pension in accordance with the Law on Welfare, the Law on Pensions and Benefits of Military Servicemen Law, Law on pensions provided by the Social Insurance Fund, Law on Law on pensions, allowances and payments for industrial accidents and occupational diseases provided by the Social Insurance Fund, who works under employment contracts, <u>“contract for work, contract for remuneration or similar contracts”</u> with employers and persons.</p>	<p>To omit the following part from Paragraph 7.3.4 of Article 7: “contract, contract for work, contract for remuneration, and their equivalents”</p>
<p>19.1. The following salaries and equivalent incomes shall be included in the components of income of the insured and the employer that are subject to social insurance premium:</p> <p>19.1.3. <u>“food, transportation, firewood, coal price discount, housing usage fee, and other equivalent income”</u> provided by the employer to the insured in monetary form, rewards and incentives given based on monthly, quarterly, and annual work results;</p>	<p>To omit the following part from Paragraph 19.1.3 of Article 19: “food, transportation, firewood, coal price discount, housing usage fee, and other equivalent income”</p>
<p>To nullify</p>	
<p>7.4. The following person shall be compulsorily insured for the types of social insurance specified in Paragraphs 6.1.1 and 6.1.2 of this Law:</p> <p>7.4.10. an employee who works with legal entities and persons of all forms of ownership under contract for work, work for remuneration, or contracts similar.</p>	<p>To deem Paragraph 7.4.10 of Article 7 null and void.</p>
<p>7.10. Section 7.9 of this Law shall not apply if the insured performed work under the contract specified in Paragraph 19.1.2 of this Law during the voluntarily insured period.</p>	<p>To deem Paragraph 7.10 of Article 7 null and void.</p>