

## LEGISLATIVE UPDATE: MONGOLIA REVISES ITS LAW ON THE STATE REGISTRATION OF LEGAL ENTITIES

May 2015

On 29 January 2015, the Mongolian Parliament adopted the Revised Law on the State Registration of Legal Entities ("**Revised Law**") which entered into force on 1 March 2015. The relevant ancillary regulations were adopted on 27 February 2015 by the Ministry of Justice ("**MoJ**") and the State Registration Office ("**SRO**").

### Previous regime and need for change

Before the adoption of the new *Law on Investment* on 3 October 2013 ("**Investment Law**") and the November 2013 move to a revised registration system, there was a three step system for registration of foreign-invested legal entities: first, registration at the Foreign Investment Registration and Regulation Department, followed by registration with the Legal Entities Registration Office under the State Registration Office ("**LERO**"), and finally registration with the relevant tax authority. Upon adoption of the Investment Law, the Foreign Investment Registration and Regulation Department was incorporated into LERO, removing one step from the process.

However, according to official sources, there was further need for revision to the registration system due, among other things, to the fact that on average LERO receives 220 applications per day relating to new registrations or amendments to the registered details of existing entities.

### I. THE REVISED LAW

Unlike its predecessor, the Revised Law sets out specifically the types of legal entities that are subject to the law. Save for a few entities such as political parties (which are to be registered by the courts) and other bodies which do not assume the rights of legal entities, all other corporate entities, such as companies,

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partnerships and non-governmental organisations must register with LERO. The law does not apply to inter-governmental organisations, but does apply to the representative offices of foreign-incorporated entities.

Previously, any changes to the principal details of a company were required to be registered within 10 days. However, changes to a company's charter were required to be registered within three days –thus, the practice was not consistent. The Revised Law requires that changes to registered details must be notified to LERO within 15 working days of the change and in the event of a failure to register such change, a fine equivalent to 1-3 times the minimum monthly wage (approximately US\$ 100-300) may be imposed. Subsequent material breaches of state registration legislation may lead the authorities to seek a court order for the liquidation of the legal entity.

#### 1.1 Simplified registration process

Registration documents may now be submitted online. However, regardless of this, originals of the name reservation sheet, the application form and the founding documents (the shareholders' resolution, and the charter and in some cases, a shareholders' agreement) must be physically submitted to LERO within 5 days of electronic submission.

The statutory processing time for registration has been reduced for domestic legal entities to not more than 2 working days. For foreign-invested legal entities, applications will take 10 days, as they do currently. Decisions in relation to registration will now be issued both in writing and electronically.

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## 1.2 Electronic registration certificates and accessibility of registration information

Registration certificates, which are the principal form of evidence of incorporation of a legal entity, will now be available both online and in printed form.

All information relating to state registration, save for that which is confidential, is to be made publicly available on the official website of LERO. Initial monitoring indicates that such searches require the unique registration numbers of the relevant legal entities in order to obtain a limited amount of information. Detailed information, such as information in relation to company shareholders and copies of company charters, is not available electronically.

Reference letters relating to state registration, which are generally relied upon in Mongolia in due diligence exercises, may now be obtained electronically and in printed format. Such reference letters are to be issued within 3 days of application. Unlike a hard copy request for a reference letter, a power of attorney is not required.

## 1.3 Information exchange between government agencies

The Revised Law also envisages that information sharing among state authorities will be digitalised in order to avoid unnecessary paperwork and travel.

## II. THE REGULATIONS

Following the adoption of the Revised Law, the MoJ adopted the following regulations on 27 February 2015: *Regulations on Reservation of Legal Entities Names (Order A/41)*, *Regulations for Registration of Representative Offices of Foreign Legal Entities (Order A/40)*, and *Regulations for Management of State Registration of Legal Entities (Order A/39)* (the "Regulations").

## 2.1 Name Reservation

Name reservation for legal entities is the first step in the incorporation process. The Regulations allow applications for reservation of a legal entity's name to be lodged electronically. A maximum of three names may be reserved for each application.

Names may be reserved at the time of the registration of a new legal entity, in relation to the reorganisation of an already registered legal entity, or when a legal entity elects to change its name.

However, neither the Revised Law nor the revised name reservation procedures in the Regulations set out exactly how the electronic name reservation system will operate, nor whether the person reserving the name will need to follow up the online reservation by attending LERO in person.

Once a name is reserved, the applicant should apply for registration of the legal entity within 10 days, otherwise the reservation will be invalidated, and the applicant will need to reapply. In practice, in the light of requirements for legalisation (notarisation and apostillation) of documents executed abroad as well as logistical requirements, this time frame may be difficult to meet for foreign-invested companies.

Neither the Revised Law nor the name reservation procedures stipulate a time period by which the authorities should confirm reservation of the desired name. Under the previous system, although names could only be reserved by attending in person, it was a process which could be completed within a single day and had some degree of certainty.

One matter that has been clarified under the revised name reservation procedures is that a legal entity's name that is already registered may be used for affiliates of such legal entities. Thus, a company holding the name "Tumur" (iron) could reserve names for its affiliates such as "Tumur Holdings", "Tumur

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*Group*", and "*Tumur Corporation*", but no other entity will be able to reserve such names.

## **2.2 Regulations for the registration of representative offices of foreign legal entities**

The representative offices of foreign legal entities ("**Representative Offices**") will be registered for 2 years and such term may be extended once for the same period as was initially granted. This is understood to mean that Representative Offices can only be registered for a maximum of 4 years. It is not clear whether this limitation on period of existence will retroactively apply to existing Representative Offices.

The grounds on which a Representative Office may be deregistered includes a failure to submit a request for an extension of its registration certificate within ten days of the expiry of the same.

### **III. UNCERTAINTIES AROUND THE REVISED LAW AND THE RELATED REGULATIONS**

In relation to changes to the corporate registration, there had been an informal practice at LERO whereby it required documentation in relation to the transfer of rights (separate and in addition to the share purchase and sale agreement) be executed and supplied in order to register a transfer of ownership of shares. The Revised Law rephrased the terminology relating to share transfers from "changes to founding documents" to "change by way of rights transfer". As such it appears that the aforementioned practice has been formalised.

LERO has another practice whereby a company wishing to incorporate needs to submit a lease agreement as evidence of the registered address of the legal entity, creating a "catch 22" situation as a legal entity can not take a lease in its name until it has come into existence. This is resolved by the management of the company taking a lease in an individual capacity and thereafter transferring the lease to the newly-

incorporated entity. The new Regulations do not change this practice.

There is no reference in the revised legislation as to whether documents executed abroad need to be notarised and apostilled (or their translations notarised) and whether copies of documents (such as parent entity's registration certificate) will require legalisation. The revised legislation, however, does provide that documents in foreign languages must be accompanied by an official Mongolian language translation.

Finally, currently Mongolian law does not provide any concept of a "general purpose" company, and the specific scope of activities of a company must be stipulated in the charter. However, licensed or permit-based activities may not be included in the charter as licences can only be granted to legal entities after they are incorporated. As such, companies register certain activities that may not be relevant to them (i.e. management consultancy or foreign trade) and then subsequently amend their charters if and when they obtain the relevant licence. The new Regulations have retained this practice.

### **IV. CONCLUSION**

In 2014, Hogan Lovells collaborated with the American Chamber of Commerce in Mongolia in preparing their Policy Circular Series on "Eight Simple Steps to Make Business Set-up Easier" (please see the [link](#)), in which issues surrounding the state registration of legal entities including the uncertainties explained above were raised. Some of those issues have now been addressed.

Although the real functionality of the electronic system, as well as its impact on the current system, is yet to be tested and some uncertainties remain, we see the adoption of the Revised Law and the Regulations as an important step towards the creation of more investor-friendly environment.

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It is hoped that with the successful implementation of the revised system, the registration authorities' workload will lessen and quality of the services will improve.

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