

Mongolia's 100 day plan: Legal developments

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2014

Mongolia's 100 day plan: Legal developments

1. Introduction

On 8 May 2014, the Parliament of Mongolia issued a resolution to approve guidelines for certain actions to stimulate the economy. Pursuant to this guideline, the Cabinet prepared and implemented a 100 day plan to stimulate the economy (the "**100 Day Plan**"). The 100 Day Plan came to an end in August 2014.

Under the 100 Day Plan, and with the primary objective of reinvigorating the Mongolian economy, the Government set itself the following tasks in six principal sectors:

- (a) **to encourage entrepreneurs:** by cutting red tape, simplifying the process for the grant of licences, and stimulating trading on the Mongolian Stock Exchange;
- (b) **to increase production of the mining sector:** by amending the Minerals Law and lifting the moratorium on the grant of exploration licences, accelerating the development of Oyu Tolgoi underground mine and providing government policy support for the same, and by removing obstacles to businesses in the uranium sector;
- (c) **to stimulate the construction, manufacturing and infrastructure sectors:** by expediting the Gashuun-Sukhait and Tavantolgoi railroad projects, improving the energy sector investment environment and cooperation with neighbouring countries, including facilitating negotiations on trans-Mongolia railway and road projects;
- (d) **to stimulate regional economic and infrastructure development:** by commencing construction of regional thermal power stations, obtaining international accreditation for the Gashuun Sukhait and Shiveehuren land ports and, furthering the "1,000 apartments" projects in the regions;
- (e) **to increase foreign investment:** by improving tourism sector infrastructure and introducing free trade zones, accelerating the implementation of the Law on Investment Funds, and simplifying the foreign investor visa regime; and
- (f) **to revise fiscal and monetary policy:** by ensuring transparency of budget expenditure, reducing total

expenditure by 20 per cent, and revising the medium-term programme for stabilising the price of essential household items/staples.

During the 100 days, Parliament has passed a raft of amendments to, and wholesale revisions of, existing Mongolian laws. Whilst not all of these amendments and revised laws were connected with the objectives of the 100 Day Plan, we set out below a summary of those amendments and revised laws which we consider most relevant.

2. Introduction of the draft law on amendments to the Company Law

2.1 General Amendments

The Draft Law on Amendments to the Company Law made several minor amendments to the terminology used in the Law of Mongolia on Companies (the "**Company Law**") in order to be consistent with the provisions of the *Law of Mongolia on Regulation of Public and Private Interests in Public Service and Prevention of Conflict of Interests*, the *Law of Mongolia on the Securities Market*, and other relevant laws. In addition, and as further set out below, the provisions of the Company Law relating to controlling blocks of shareholders were amended.

2.2 Controlling Blocks

Under the Company Law, a person who alone or in conjunction with its affiliated persons acquires (in the aggregate) one-third or more of shares of a company (a "**controlling block**") is obliged to make an offer within a certain period of time to the company's other shareholders to acquire the shares held by them. However, several matters relating to these provisions, such as how to determine who holds a controlling block of a company, were not clearly regulated under the Company Law.

Accordingly, for clarification purposes the following amendments were made to Articles 57 and 58 of the Company Law in respect of the holder of a controlling block:

- (a) a person who has not made the relevant offer shall have no right to vote on the following matters:
 - (i) consideration and approval of annual operational reports and financial statements;
 - (ii) approval of major and conflict-of-interest transactions;

- (iii) approval of any company share redemptions;
 - (iv) decisions on directors' remuneration;
 - (v) decisions on retained profits; and
 - (vi) other matters submitted to the meeting by the board of directors or as provided in the Company Law or the company's charter.
- (b) It is now clear that the regulator to whom controlling block holders must declare themselves as such is the Financial Regulatory Commission, who has the right to demand that controlling block holders make an offer to the remaining shareholders.

Although not clear, based on references in the Company Law it would appear that whilst the definition of a controlling block applies to publicly-listed and private companies equally, the obligation to purchase remaining shares only applies to Mongolian publicly-listed companies.

3. Amendments to the Corporate Income Tax Law

The *Law of Mongolia on Amendments to the Corporate Income Tax* was adopted on 26 June 2014.

The law added (with immediate effect) a new Article 17.2.10 to the *Law of Mongolia on Corporate Income Tax*, which provides that where Mongolian bank bonds which are traded on a foreign or domestic stock exchange are held by a legal or natural person who is non-Mongolian resident for tax purposes, then any interest earned on such bonds shall be subject to tax at a rate of 10 per cent. The tax treatment of such payments had previously not been expressly provided for under Mongolian law.

It is not stated in the law how this tax is to be collected, but we presume it will have to be withheld by the banks at source.

4. Amendments to the Civil Code

On 15 May 2014, regulations in relation to the concept of merchandising agreements were introduced under Article 338 of the Civil Code.

Under such merchandising agreements, licensors will be able to grant licensees rights to use their name, image, voice, literature, artwork etc. for products and services in return for payment.

5. The Revised Law on Cultural Heritage

On 15 May 2014, the Parliament of Mongolia approved an amended version of the Cultural Heritage Protection Law (the "**RCH Law**"). The RCH Law replaced the former Cultural Heritage Law, enacted on 8 June 2001.

The RCH Law was introduced to ensure that Mongolian law is consistent with the concepts of the *1972 World Cultural and*

Natural Heritage Convention, the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, the 2003 Convention on Intangible Cultural Heritage and the 2005 Convention on the Promotion and Protection of the Diversity of Cultural Expressions.

The RCH Law consists of 13 chapters and 61 articles. The law governs all matters relating to cultural heritage.

Under Article 27.8 of the RCH Law, a person intending to undertake infrastructure or mining works is required to commission a survey from an institution with expertise in paleontological, archaeological and ethnographical matters (a "**PAE Institution**"). It is not clear if this report must then be submitted to any state authorities. If the PAE Institution identifies in its report that the proposed activity has the potential to damage or destroy a cultural heritage item(s), this may constitute grounds for suspension of the works (to the extent such works have commenced). Further, if such survey is not obtained prior to commencing the infrastructure or mining work, the relevant land rights held may be revoked. Again, it is not clear if this right of revocation relates to all land rights held by such person, or only those in relation to the area in which the proposed works are sited.

The following are prohibited under the RCH Law:

- (a) undertaking civil works, industrial, mining and/or agricultural activities on historical and cultural monuments and the surrounding areas of the same;
- (b) granting land rights for the carrying out of infrastructure and mining works without having first obtained a report from a PAE Institution;
- (c) transferring and moving historical and cultural heritage items without obtaining the owner's permission (save as provided by law); and
- (d) placing advertising boards and signs on immovable cultural heritage or changing the design of the same.

Further, if a person or a legal entity did not take any action to protect and notify the relevant authorities in respect of a



discovery of a cultural heritage item, then a person may be fined up to MNT 5,000,000 (approximately US\$ 2,660 as of August 2014) and a legal entity MNT 20,000,000 (approximately US\$ 10,640 as of August 2014) and may also have any relevant licences revoked.

6. Amendments to the Minerals Law

The *Law of Mongolia on Amendments to the Minerals Law* was adopted on 15 May 2014. Please see Hogan Lovells' comprehensive note on this law issued on 26 August 2014.

According to this amendment, mining surveying, exploration and extraction is prohibited without obtaining a report from a PAE Institution and the prior approval of the state authorities.

7. Amendments to the Construction law, the Roads Law and the Land Law

Laws on amendments to the Construction Law, the Roads Law and the Land Law were adopted on 15 May 2014.

These again impose a requirement to obtain a report from a PAE Institution and the prior approval of the state authorities before carrying out infrastructure and mining works.

Further, if a person fails to comply with these requirements or those set out in an environmental impact assessment, then such person's land rights may be revoked.

8. Amendments to the Law on Licensing for Business Activities

On 15 May 2014, Parliament adopted an amendment to the *Law of Mongolia on Licensing for Business Activities*. Pursuant to the amendment, the restoration of cultural heritage and paleontological and archaeological excavations and surveys has been included as an activity requiring a licence.

9. Amendments to the Law on the Relations between the State and Religious Institutions

Again on 15 May 2014, Parliament adopted an amendment to the *Law of Mongolia on State and Religious Institutions Relations* (the "**RI Law**"). Pursuant the amendment, religious institutions and bodies ("**RIs**") are now required to register such immovable historical and cultural heritage property as they have in their possession with the State Registration Authority. Further, under Article 11.2 of the RI Law, RIs are now required to register information related to such heritage with the State Cultural Heritage Registration and Information Centre in accordance with the procedure set out in the RCH Law.

10. Amendments to the Regulation on Setting and Monitoring Prudential Ratios to Banking Operations

The Governor of the Bank of Mongolia issued Order #A-122 on 30 July 2014 (the "**Order**") in relation to amendments to the Regulation on Setting and Monitoring Prudential Ratios to Banking Operations approved by Order #460 of the Governor of the Bank of Mongolia in 2010 (the "**Regulation**").

According to this Order:

- (a) Articles 2.6.2 and 2.6.3 (regarding Tiers 1 and 2 and subordinated debt amounts) have been added to the Regulation;
- (b) the risk weighting of certain loans (Article 10 of the Regulation) have been changed as follows:
 - (i) the risk weighting of domestic currency mortgage loans has been changed to 50%;
 - (ii) the risk weighting of foreign currency mortgage loans has been changed to 100%;
 - (iii) the risk weighting of other foreign currency loans made to individuals and legal entities exposed to currency risk has been changed to 120%;
 - (iv) the risk weighting of deposit backed loans has been changed to 0%; and
 - (v) the risk weighting of other loans has been changed to 100%;
- (c) A definition of "entities hedged against currency risk" has been introduced; and
- (d) Going forward, a bank's receivables from the Bank of Mongolia under long-term swap contracts with the Bank of Mongolia shall be treated as an "other contingent liability" for accounting purposes until the exercise date of the swap contract.

11. Conclusion

The resolution to stimulate the economy is a laudable step by the Mongolian government to accelerate its attempts to reverse recent economic difficulties and to preserve its high GDP economic growth.

Some analysts suggest that the Cabinet's 100 Day Plan showed promise by improving collaboration between the Government and the private sector and by recognising a number of issues currently faced by the private sector and seeking to resolve these through improvements to the legal environment.

However, the effectiveness of these measures will take some time to filter through in order to assess the overall success of the 100 Day Plan.

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