

Mongolia Introduces Law on Glass Accounts January 2015

On 1 July 2014, the Parliament of Mongolia adopted the *Law of Mongolia on Glass Accounts ("Accounts Law")* in an attempt to ensure the efficient and proper use of state and local government funds, the transparency of decisions and actions concerning budget management and public overview of the same. The Accounts Law entered into force on 1 January 2015.

The key feature of the Accounts Law is that it obliges all government agencies and legal entities with state involvement to make information on budgets and financial matters, including the utilisation of financing and other government indebtedness, available to the public. It should be noted that many of the reporting obligations imposed on government agencies under the Accounts Law were already in existence and reflected in the *Law of Mongolia on Transparency of Information and the Right to Receive Information* and the *Law of Mongolia on the State Budget*.

However, the Accounts Law introduces a number of new measures:

- (a) it provides the details of what type of information must be provided;
- (b) it broadens the type and number of organisations subject to reporting obligations;
- (c) it identifies those officials who are responsible for ensuring the disclosure of information;
- (d) it consolidates the different timeframes for disclosure; and
- (e) it provides that the main performance indicator of an entity or official shall be its compliance with the Accounts Law.

The Accounts Law aimed to address the criticism that information concerning the funds raised by the government through the issuance of securities and the use of those funds was not publicly available and accordingly, there was limited accountability to the public. The Accounts Law prescribes that debentures and other financial instruments, foreign and domestic loans and grant aid, public and private partnerships, concessions and guarantees which create budgetary payables and receivables will only become effective upon being disclosed to the public by placing them on the central "glass account" website¹.

1. ENTITIES AND OFFICIALS SUBJECT TO THE ACCOUNTS LAW

The Accounts Law applies to the following entities and the officials who have the authority to contractually bind those entities:

- (a) legal entities with state or local government ownership such as ministries, agencies, local governors' offices and all other entities established by the government;
- (b) state-owned enterprises;
- (c) companies where one-third or more of the shares therein are held by the state, local government or their affiliated parties;
- (d) business entities and organisations making investments and implementing projects and programmes, activities, work and services with state and/or local funds; and
- (e) entities implementing state functions pursuant to law or contract.

2. TYPE OF FINANCIAL INFORMATION SUBJECT TO THE ACCOUNTS LAW

The Accounts Law applies to the planning, spending and reporting of the following budgets and/or financial activities:

- (a) state and local budgets, and the budgets of the Social Insurance Fund and the Human Development Fund;
- (b) local development funds;
- (c) specialised government funds;
- (d) procurement of goods, work and services with state and local funds;
- (e) grant aid given to, and foreign and domestic loans, debentures and other financial instruments entered into by, central and local government;
- (f) public and private partnerships and concessions; and
- (g) guarantees given by the government and local governments and other acts which create budgetary payables and receivables.

¹ The Glass Account Law provides that the Government will determine the date upon which the central "glass account" website becomes active and the date should be no later than 30 June 2016.

3. DISCLOSURE OBLIGATIONS

The Accounts Law prescribes that the Ministry of Finance shall maintain a central "glass account" website and all other subject entities must provide ancillary information on their individual websites through a dedicated section on accounts and financial information.

The Accounts Law also specifies the type of information which must be disclosed and the relevant timeframe for disclosure. For example, legal entities with state or local government ownership and state-owned enterprises must publish their annual budgets and procurement plans by 10 January each year, annual financial reports by 25 April each year and any budget deficits or surpluses must be reported every quarter.

Further, such entities must issue a public notice in relation to the following with a week of any such occurrence:

- (a) in respect of government tenders, tender documents, tender regulations and criteria imposed on bidders. Where a bidder has been selected, a brief introduction of the selected bidder and those who were not selected and the reason/rationale for such decisions;
- (b) details of procured goods, work and services with a value of more than MNT 5 million (approximately US\$ 2,700) including the contract value and the name and address of the supplier and/or contractor; and
- (c) the entry into of any bonds, loans, debentures, guarantees and other forms of financial indebtedness, public and private partnership agreements, concessions, any decision concerning budgets, properties, assets, expenditures and budget receivables and payables.

Further, the Ministry of Finance must publish the state budget twice annually and on quarterly basis publish a report on the use of debt and aid, in particular any debt raised by way of the issue of government securities. Similar reporting obligations are imposed on companies where one-third or more of the shares therein are held by the state or local governments or their affiliated parties to the extent that such information relates to state or local government budgets/funds.

4. ROLE OF CITIZENS

The law prescribes that its implementation shall be monitored by citizens' parliaments (whose representatives are elected from local citizens) and the state auditing authority.

The Accounts Law also provides that citizens may monitor the implementation of the Accounts Law by submitting a

complaint to the respective entity or official regarding the implementation of the Accounts Law or any potential infringements. If such complaint is not addressed, then citizens or legal entities may submit a complaint directly to the state auditing authority and request an audit to be undertaken. The state auditing authority must undertake relevant measures and notify the concerned citizen and the public in writing of the outcome.

5. SANCTIONS FOR NON-COMPLIANCE

The Accounts Law imposes disciplinary actions as well as fines for breaches of the law. Depending on the type of violation, disciplinary action includes warnings, reductions in pay by up to 20 per cent for six months or dismissal from public office with a prohibition on taking public office for a period of one year.

Fines ranging from MNT 9,600,000 (approximately US\$ 5,189) to MNT 19,200,000 (approximately US\$ 10,378) may be imposed on executive management of private entities and public officials which fail to comply with the provisions of the Accounts Law. The level of these fines is relatively high compared with sanctions imposed in similar laws.

6. CONCLUSION

Mongolia has enacted the Accounts Law in an effort to improve financial accountability and make information on government budgets and finances easily understandable and accessible to the public.

The enactment of the Accounts Law should be positively received by both foreign and domestic investors as it obliges government agencies and their affiliated entities to make information on their budgets and procurement accessible to the public in a timely manner. Nevertheless the effectiveness of the Accounts Law will depend on how its provisions are applied in practice.

Anthony Woolley, Senior Associate
anthony.woolley@hoganlovells.com
+976 7012 8904

Bolormaa Gulguu, Associate
bolormaa.gulguu@hoganlovells.com
+976 7012 8908

If you would like further information on any aspect of this note please contact a person mentioned below or the person with whom you usually deal:

Chris Melville, Partner
chris.melville@hoganlovells.com
+976 7012 8910