

MONGOLIA
INVESTMENT CLIMATE
STATEMENT
2016

Executive Summary

Mongolia's tremendous mineral reserves, agricultural endowments, and proximity to the vast Asia market make it an attractive foreign direct investment (FDI) destination in the medium to long term. However, depressed global commodities markets, limited infrastructure, and the Government of Mongolia's (GOM) love-hate-love track record with regard to foreign investors and FDI in recent years make caution advisable in the short term. FDI to Mongolia continues a dramatic decline from USD 4.7 billion in 2011 to USD 232 million in 2015, a drop of 95 percent. On the other hand, Mongolia has never missed a payment on its considerable foreign debt.

Since December 2014, Prime Minister Saikhanbileg has committed his coalition government to restoring Mongolia's battered economy. He has made renewed FDI and economic diversification the center of these efforts. Some developments are encouraging: the May 2015 signing of the *Oyu Tolgoi Underground Mine Development and Financing Plan*; the December 2015 Oyu Tolgoi USD 12 billion project financing agreement; and the March 2016 settlement on appeal of the USD 104 million GOM-Khan Resources Company (Canada) arbitration award.

U.S. and other foreign investors will grade the GOM that emerges from June 2016 parliamentary elections on its commitment to taking pragmatic steps to create and nurture a business-enabling environment. Any inventory of these pragmatic steps should include: (1) rooting out and destroying the virulent corruption that threatens the foundational institutions of the modern Mongolian state; (2) creating in reality the judicial independence the Mongolian constitution establishes in principle; (3) facilitating the emergence of private-sector small and medium size enterprises as the primary engine of the economic diversification; (4) more deeply establishing a fair and transparent system of taxation; (5) putting in place a more inclusive and more effective rule-making methodology for use in implementing business legislation; (6) establishing and maintaining a professional civil service; (7) modernizing traditional Mongolian business sectors such as agriculture and gold-mining; and (8) vastly improving Mongolia's physical infrastructure.

Notwithstanding this backdrop of immediate challenges, we continue to see significant longer term upside to the Mongolian investment climate. Recent legislation creates institutional frameworks for the ministries of industry and agriculture to support large-scale development of the domestic agriculture sector, the second largest contributor to GDP and employer after mining. Agriculture and animal husbandry, along with renewable energy, are sectors in which Mongolia has native advantages and which provide promise for economic diversification. While challenges exist, so too do significant opportunities for U.S. exporters of goods, services and technology.

1. Openness To, and Restrictions Upon, Foreign Investment

Attitude toward Foreign Direct Investment

Foreign Direct Investment (FDI) coming into Mongolia declined by 95 percent from its 2011 peak of USD 4.7 billion to USD 232 million in 2015. Declining global prices for copper and coal – two commodity mainstays of the Mongolian economy – explain some of the investment nosedive, but GOM executive, legislative, and judicial missteps also discouraged foreign investment. Senior GOM leaders recently have publicly pledged to correct the FDI-related mistakes of past GOMs and the incumbent GOM has achieved a significant measure of remediation by adopting FDI-friendlier legislation, confirming respect for the 2009 investment agreement that established the Oyu Tolgoi copper/gold mega-mine project, decriminalizing some business tax disputes and consequently reducing the use of prosecutorial "exit bans" against foreign business executives, and acknowledging an obligation to honor international commercial arbitration awards.

U.S. investors welcome these positive steps but question whether they portend broader and more permanent progress. They are concerned that the Office of the Prosecutor General retains un-appealable authority to indefinitely bar foreign nationals from leaving Mongolia. More fundamentally, they point to stalled GOM negotiations over construction of a fifth electricity generation plant as leaving in doubt Mongolia's ability to provide business-enabling infrastructure. They also cite depressed global commodity prices as a disincentive to invest in Mongolia's mining sector and other sectors (construction, real estate, IT, etc.) that depend on mining sector activity for profitability.

International financial institutions make Mongolia a more attractive destination for FDI through their extensive activities. The European Bank for Reconstruction and Development (EBRD) has invested nearly USD two billion in Mongolia, mostly in projects designed to facilitate private sector growth in the mining, energy, financial, agri-business, and retail sectors. The Asian Development Bank's USD 700 million project portfolio largely complements EBRD efforts in its focus on the transportation, energy, urban utilities and services, education, and health sectors. The International Finance Corporation and the World Bank have committed several hundred million dollars to projects that support infrastructure development, employment generation, economic diversification as well as the institutional strengthening of the mining sector. Other UN agencies and NGOs also make significant contributions to making Mongolia more accommodating to FDI either as their primary missions or as secondary aspects of their programming.

Other Investment Policy Reviews

The GOM conducted an investment policy review through the United Nations Conference on Trade and Development (UNCTAD) in 2013 and a trade policy review with the World Trade Organization (WTO) in 2014. Although the Organization for Economic Cooperation and Development (OECD) has not conducted a comprehensive investment policy review of Mongolia in the past three years, it has completed economic studies on specific aspects of investment and development in Mongolia.

For UNCTAD Mongolia investment policy review:

<http://unctad.org/en/pages/PublicationWebflyer.aspx?publicationid=758>.

For WTO Mongolia investment policy review in the context of a Trade Policy Review:

http://www.wto.org/english/tratop_e/tpr_e/tp245_e.htm.

For OECD Mongolia reports: <http://www.oecd.org/countries/mongolia>.

Laws/Regulations on Foreign Direct Investment (FDI)

In October 2013, parliament passed the Investment Law of Mongolia (IL) to replace the short-lived, FDI-discouraging Strategic Entities Foreign Investment Law (SEFIL), which had made private company business decisions in certain sectors (including mining, banking, and insurance) subject to GOM review. IL specifies more reasonable rights and obligations of investors in Mongolia, provides for a more stable tax environment, establishes the powers and responsibilities of the agency that regulates investment, and provides tax and other incentives to investment. Foreign investors receive the same protections as domestic investors under IL and investor residence determines whether an investor is foreign or domestic rather than nationality. Accordingly, most investments by private foreign individuals residing in Mongolia or firms need only be registered with the General Authority for Registration and Statistics (GARS). U.S. investors arguably also qualify for Mongolian national treatment under the terms of the 1994 U.S.-Mongolia Bilateral Investment Treaty (BIT). For information on the Investment Law of Mongolia: www.investmongolia.gov.mn; and for the BIT: <http://www.state.gov/e/eb/afd/bit/117402.htm>.

IL offers tax incentives in the form of transferrable tax stabilization certificates which give investors in qualifying projects favorable tax treatment for up to 27 years. Affected taxes may include corporate income tax, customs duties, value-added tax, and mineral resource royalties. The criteria for participation in the tax stabilization program are transparent and include the amount of investment, the sector involved, and the geographic area involved. (For information on tax stabilization certification: www.investmongolia.gov.mn).

Business Registration

All enterprises must register with the GARS at www.burtgel.gov.mn. The registrant obtains form UB 03-II and other required documents from the website and can submit completed documents by email. GARS aims at a two-day turnaround for the review and approval process, but investors report that complex cases can take several weeks to three months. Once approved by GARS, a company must register with the Mongolian General Authority for Customs and Taxation (GACT). Upon hiring its first employees, a company must register with the Social Insurance Agency. GARS reports that notarization is not required for its registration process. (For information on registration of companies: www.burtgel.gov.mn and www.investmongolia.gov.mn.)

Under the IL, the Invest Mongolia Agency (IMA), which reports to the Office of the Prime

Minister, assists investors with all aspects of establishing businesses in Mongolia. IMA is also authorized to issue tax stabilization certificates. IMA services are available to all foreigners and domestic investors who plan to invest USD 100,000 or more in a registered business. To contact IMA go to www.investmongolia.com. Investors indicate that these formalized, statutory processes have eased and brought some predictability to the registration and certification processes. The World Bank's 2016 *Ranking on the Ease of Doing Business in Mongolia* documents this and other improvements in Mongolia's business environment over the last year (<http://www.doingbusiness.org/data/exploreeconomies/mongolia/>).

The 2009 Law on Small and Medium-Sized Enterprises (LSME) recognizes four categories of SME: manufacturing, wholesale, retail, and services. Companies qualifying as SMEs under LSME have gross annual revenues of less than USD 750,000 with manufacturing and retail sector SMEs having fewer than 200 employees, wholesale sector SMEs having fewer than 150 employees, and service sector SMEs having fewer than 50 employees. Effective in 2016, an LSME amendment brings micro-enterprises within the law's mandate in the manufacturing sector (fewer than 20 employees and less than USD 125,000 in sales) and service sectors (fewer than ten employees and less than USD 25,000 in sales). All SMEs and micro-enterprises qualify for preferential terms for financial leasing of equipment and soft loans from the Ministry of Industry-administered SME Development Fund and for low interest loans from Mongolian commercial banks. Because the LSME makes no mention of foreign entities, the eligibility of SMEs owned by non-resident foreigners for these benefits is open to question.

Industrial Strategy

The Ministry of Industry (MOI) is responsible for creating and implementing an industrial policy for Mongolia aimed at promoting value-added production in non-agricultural sectors, including but not limited to minerals and metals processing, construction materials production, plastic and chemical production, and hydrocarbon refining. The Ministry of Food and Agriculture is responsible for value-added production in the food production and livestock sectors.

MOI officials describe the ministry's goal as import substitution, to be accomplished by employing state funds, tax preferences for domestic production, and import tariffs for inputs used in producing domestic agricultural products, constructing domestic energy infrastructure, supporting domestic SMEs, and developing domestic technologies. Parliament adopted specific tax and tariff measures in 2015 – including the waiving of both the five percent import tax and the 10 percent value-added tax (VAT) – which foreign and domestic investors alike can apply to IL-qualified investments. However the process for obtaining these tax waivers has not yet been clarified. (For MOFA and MOI policies go to <http://mi.gov.mn/>, and <http://www.mofa.gov.mn/>).

Limits on Foreign Control and Right to Private Ownership and Establishment

Generally, foreign and domestic entities can establish and own all forms of legal businesses and engage in all forms of remunerative activity on an equal footing. Foreign private entities

or individuals may not own or sell land but can own and sell all other forms of real property. The 1994 U.S.-Mongolia Bilateral Investment Treaty (BIT) expressly extends to U.S. investors the benefits of national treatment in Mongolia, excepting the banking and real estate sectors. (BIT: <http://www.state.gov/e/eb/ift/bit/117402.htm>) (For information on the IL see 1.3.)

Although Mongolia imposes no general legal restrictions on foreign project financing or the formation of joint ventures or other business partnerships, the GOM sometimes imposes specific restrictions on an ad hoc, project-by-project basis. Legal experts and U.S. investors allege that the system by which the GOM decides upon and implements such restrictions lacks clear statutory basis and transparent, predictable regulatory procedures. Mandatory GOM equity interests or other explicitly restrictive covenants may be imposed on projects the GOM determines to be of national strategic interest. For example, the 2014 Amended Mining Law of Mongolia requires private entities to allow the GOM to assume equity positions of up to 50 percent in (non-uranium) mining projects at its discretion. Under the Nuclear Energy Law, the GOM is to hold all uranium mining licenses and to control any uranium processing facilities, although private entities may own up to 49 percent of these state-owned enterprises (SOEs).

U.S. and other foreign investors recall that "foreigner bashing" became part and parcel of the 2012 parliamentary election campaign season in Mongolia and led directly to the adoption of the FDI-d discouraging SEFIL (See Chapter 1.3.) Although there has been no indication of a SEFIL-like draft coming before parliament in the 2016 campaign season, Speaker Z Enkhbold raised several foreign eyebrows during an April 5 speech inaugurating the spring legislative session when he defended parliamentary obstruction last session of the Tavan Tolgoi coal mega-mine project by alleging that the project might otherwise have been taken over by "foreign companies."

Although the GOM actively seeks to establish an effective public-private partnership (PPP) framework and describes on various websites more than 50 PPPs as theoretically open for FDI, these PPPs are still in the planning stages. The GOM and USG are negotiating a second Millennium Challenge Corporation compact that may include one or more PPPs.

Privatization Program

In late 2015, parliament authorized the dissolution of the State Property Committee (SPC), which had held and operated numerous SOEs in mining, and also the Mongolian Stock Exchange (MSE), the national air carrier MIAT, and the Mongol Post Office. These assets have begun to be auctioned-off. Most notably, 30 percent of the post office was offered to private buyers through an initial public offering on the MSE. However, while stating that it welcomes foreign participation in privatization efforts, the GOM has yet to clarify a tendering process for the privatization of state assets that are not to be sold via the MSE. Most SPC assets have been placed under the stewardship or actual ownership of relevant GOM entities. For example, the Ministry of Finance now owns and operates the MSE, and Erdenes Mongol, the state-owned mining asset holding company, now possesses most of the SPC mining assets, particularly those in the coal sector. Further confusing matters, the GOM

has been creating new state-owned SMEs in spite of its commitment to privatizing larger SOEs.

Screening of FDI

Mongolia has no formal system for screening investments as such, although U.S. investors and legal commentators report that processes are sometimes cobbled together by GOM officials of variable authority levels and that these ad hoc processes may include obstructions, ranging widely from the slow-rolling of registrations to unreasonable tax levies and even criminal prosecutions. Mongolia's National Security Council (comprising the president, prime minister and speaker of parliament) has assumed authority to review particular investments at its discretion on national security grounds. Although some U.S. investors and business entities contend that the NSC lacks constitutional or other legal grounds for assuming this authority, no effective appeal was available to them in 2010 when the NSC declared a moratorium on the issuance of mining licenses. That moratorium remained in effect until revoked in 2014 by parliament, the highest organ of state authority per the Mongolian Constitution.

Competition Law

Mongolia's Agency for Fair Competition and Consumer Protection (AFCCP) reviews domestic transactions for competition-related concerns. For a description of the AFCCP and its legal and regulatory powers see http://unctad.org/en/PublicationsLibrary/ditcelp2012d2_Mongolia_en.pdf. or <http://www.afccp.gov.mn/>.

2. Conversion and Transfer Policies

Foreign Exchange

The Mongolian government employs a liberal regime for controlling foreign exchange for investment remittances. Foreign and domestic businesses report no problems converting or transferring investment funds, profits and revenues, loan repayments, or lease payments into whatever currency they wish aside from occasional, market-driven shortages of foreign reserves. Mongolia's national currency, the tugrik (MNT), is fully convertible into a wide array of international currencies with its relative value fluctuating freely (mostly falling in recent years against the USD) in response to economic trends. Mongolia's central bank, the Bank of Mongolia (BOM), regularly intervenes in currency markets to limit MNT volatility.

The 2009 Currency Law of Mongolia requires all domestic transactions be conducted in MNT except as expressly excepted by the BOM. BOM regulation prohibits the listing in Mongolia of wholesale or retail prices in any fashion (including as an internal accounting practice) that effectively denominates or otherwise indexes those prices to currencies other than the MNT. Given the nearly 50 percent devaluation of the MNT over the past few years, this BOM edict has adversely impacted businesses that pay for imported goods in USD or other hard currency and sell them in MNT. Businesses caught adjusting MNT prices in exact

or nearly exact proportion to currency fluctuations can face stiff penalties up to the full market value of the involved goods.

Remittance Policies

Businesses report no delays in remitting investment returns or receiving in-bound funds. Most transfers are completed within a few days to a week. However, in response to occasional currency shortages, most often of U.S. dollars, commercial banks can temporally limit the amounts they exchange daily, transmit abroad, or allow to be withdrawn. Remittances sent abroad are subject to a ten percent withholding tax to cover any potential profit, income, or value-added tax liabilities.

Ease of transfer aside, BOM regulation compels lenders to issue written warnings to borrowers seeking dollar-denominated loans to the effect that the steady depreciation of the MNT in recent years has translated to very significant increases in the real costs of servicing dollar loans. Hedging forward mechanisms available elsewhere to mitigate exchange rate risk for many national currencies are generally unavailable in small-market Mongolia. Letters of credit remain difficult to obtain, and the GOM sometimes resorts to paying for goods and services with promissory notes that cannot be directly exchanged into other currencies.

After a 2014 Financial Action Task Force (FATF) warning that Mongolia was at risk of blacklisting or gray listing, parliament and the Financial Intelligence Unit of BOM's Financial Information Service drafted and adopted anti-money laundering and anti-terrorist activity financing (AML/CTF) legislation. However, the GOM has yet to mount a major prosecution under authority of this legislation.

3. Expropriation and Compensation

Mongolia generally respects property rights, although there have been significant departures from this norm. Investors have expressed concern over GOM direct and indirect expropriations of some property rights. Most such GOM actions have been associated with extractive industries and have involved the cancelation, suspension, or modification of legally-issued mining licenses. The Mongolian constitution recognizes private real property rights and derivative rights, and Mongolian law specifically bars the GOM from expropriating such assets without payment of adequate market-based compensation. Many of the cases alleging GOM failure to fulfill these commitments have involved foreign nationals. Investors have complained about court expropriations after criminal trials in which the investors were compelled to appear as "civil defendants" but were not allowed to fully participate. In one 2013 criminal case, a GOM official was convicted of corruption and sentenced to prison, and the trial court in that case caused 106 mining licenses the convicted official had issued or facilitated to be revoked. Several of these licenses were revoked notwithstanding an absence of evidence their issuance was derived from corruption.

The Mongolian government may exercise eminent domain in the national interest. Mongolian state entities at all levels are authorized to confiscate or modify land use rights for

purposes of economic development, national security, historical preservation, or environmental protection. Investors express little disagreement with such takings in principle, but worry that a lack of clear lines of authority among the central, provincial, and municipal levels of government creates redundant occasions for loss of property rights. For example, the 2006 Minerals Law (amended in 2014) provides no clear division of local, regional, and national jurisdictions for issuances of land-use permits and special use rights. Faced with unclear lines of authority and frequent differences in practices and interpretation of rules and regulations by different levels of government, investors can find themselves unable to fully exercise duly conferred property rights. The GOM has acknowledged this, but has taken no effective steps to remedy it.

The U.S.-Mongolia Bilateral Investment Treaty (BIT) entered into force in 1997 (BIT: <http://www.state.gov/e/eb/afd/bit/117402.htm>). Under this BIT, Mongolia and the U.S. have agreed to respect international legal standards for state-facilitated property expropriation and compensation matters involving nationals of either country. The BIT effectively provides an extra measure of protection against financial loss for U.S. nationals doing business in Mongolia. In at least one expropriation case, however, the GOM restored a mining license it had unilaterally modified years previously but declined to pay compensation for undisputed financial loss as required by the BIT and independently required by the domestic law specifically cited in rendering the modification. Under the BIT, such uncompensated expropriation is appealable in arbitration proceedings. However, the cost of arbitration can make it impractical for aggrieved parties, especially after the financial effects of expropriation without compensation.

4. Dispute Settlement

Legal System, Specialized Courts, Judicial Independence, Judgments of Foreign Courts

Mongolia has adopted a hybrid Civil Law-Common Law system of jurisprudence. Trial judges may take notice of prior rulings in cases similar to those that come before them but are not obliged to respect legal precedent as such. Mongolian laws, and even their implementing regulations, very commonly lack the specificity needed for consistent interpretation and application. Experienced and dedicated judges make do and deliver at least rough justice in routine matters. However, this statutory and regulatory vagueness invites corruption within the underfinanced and understaffed judicial system, especially in cases where much money is at stake, or where large foreign corporations are in court against domestic government agencies or well-connected private Mongolian citizens.

The General Executive Agency for Court Decisions (GEACD) appears to give low priority to the implementation of court judgments related to commerce, particularly creditor claims. Foreign judgments are in principle enforceable in Mongolia, though the weak enforcement system can be especially problematic for foreign litigants.

Mongolia has in place several specialized administrative courts authorized to adjudicate cases brought by citizens against official administrative acts of GOM agencies. Decisions of these specialized courts are appealable to higher trial courts.

The Mongolian constitution specifies that non-judicial elements of the GOM "shall not interfere with the discharge of judicial duties" by the judicial branch. The Judicial General Council (JGC) is charged with the constitutional duty of ensuring the impartiality of judges and independence of the judiciary and is comprised of many respected jurists. However, the council lacks express authority to investigate allegations of judicial misconduct or to impose disciplinary measures on judges or other judicial sector personnel. (Mongolian law recently required judges to maintain membership in the Mongolian Bar Association (MBA), but judges actively oppose that requirement with the result that the MBA is no better positioned than the JGC to police the judiciary.)

In early 2016, the legislative branch interfered directly with the judicial branch when Mongolia's Constitutional Court ruled that four provisions of a subsidized residential mortgage program were unconstitutional. The program was suspended. Parliament Speaker Z Enkhbold issued a statement that "the Parliament will annul the decision of the Constitutional Court and restore the original law with the same provisions as before." Parliament thereupon voted in special session to dismiss the presiding justice of the Constitutional Court, paving the way for the re-adoption of the original legislation and the re-establishment of the mortgage subsidy program. Legal experts believe parliament had no authority to dismiss the presiding justice. Even MPs who supported his ouster did so to keep the very popular program in place and readily admit that the speaker had affectively engineered an assault on the court's independence.

Legal experts believe that Mongolian substantive law invites judicial corruption by allowing inconsistent and subjective interpretations, and weak distinctions between the branches of the GOM invite unconstitutional over-reaching. The thinly staffed GEACD is charged with all aspects of implementing the decisions and verdicts of Mongolia's civil and criminal courts. So GEACD is responsible for operating prisons, garnishing wages, impounding moveable property, and much more. But GEACD personnel do not report to the JGC or directly to the courts but to the Ministry of Justice (an element of the executive branch). The GEACD works closely on a functional level with the Office of the Prosecutor General, an independent agency run by presidential appointees. However, its funding is provided by parliament. The strong influence of Mongolian prosecutors on Mongolian courts is well documented. (Mongolian courts, for example, rarely dismiss charges over the objection of the prosecution or otherwise enter defense verdicts even after trial.) As a result of this defuse chain-of-command, the GEACD can function as a conduit of potentially overreaching communications to the judiciary from most any interested corner of the GOM.

Bankruptcy

Mongolian law mandates the registration of mortgages and other debt instruments backed by real estate, immovable collateral (mining and exploration licenses and other use rights), and, by the last quarter of calendar year 2016, movable property (cars, equipment, livestock, receivables, and other items of value). However, even though the law allows for securitizing movable and unmovable assets, local law firms hold that the bankruptcy process itself remains too vague, onerous, and time consuming to make it a practical step towards the winding up of business affairs. Mongolia's constitution and current statute only allow

contested foreclosure and bankruptcy through judicial rather than administrative proceedings. Local business and legal advisors report that proceedings usually require no less than 18 months, with 36 months not uncommon. Investors and legal advisors state that an endless appeals process and perceived corruption and government interference can create years of delay. Moreover, while in court, creditors face suspended interest payments and limited access to the asset. Although Mongolia does not criminalize bankruptcy, the World Bank reports that Mongolia has not improved how it resolves insolvency (<http://www.doingbusiness.org/data/exploreeconomies/mongolia/>).

Investment Disputes

There are no hard figures for the number of investment disputes involving foreigners in Mongolia. Fearing to jeopardize future opportunities in Mongolia, some U.S. and other foreign investors only quietly pursue or even abandon particular projects, especially those involving a GOM interest. Investors report that various GOM entities have solicited bribes in order to pre-empt or resolve particular investment disputes with foreign interests.

In cases in which the government is involved in a dispute, investors report government interference in the dispute resolution process, both administrative and judicial. Foreign investors describe three general categories of disputes that invite such interference. The first category comprises disputes between private parties before a GOM administrative tribunal. In these cases, a Mongolian private party may exploit contacts in government, the judiciary, law enforcement, or prosecutor's office to coerce a foreign private party to accede to some demand. The second category involves disputes between investors and the GOM directly. In these cases, the GOM may claim a sovereign right to intervene in the business venture, often because the GOM itself is operating a competing SOE or because particular officials have undisclosed business interests. The third category involves a Mongolian tax official or prosecutor levying highly inflated tax assessments against a foreign entity and demanding immediate payment, sometimes in concert with imposition of exit bans on particular company executives or even the filing of criminal charges.

International Arbitration

Although investors voice concern that the GOM may choose to ignore international arbitration decisions, the GOM has consistently declared it will honor resulting arbitral awards. In March 2016, the GOM and Canadian uranium mining company Khan Resources tentatively settled on appeal their high profile license-expropriation dispute after an arbitration panel awarded USD 104 million to the Canadians. Money has not yet changed hands (as of May 2016) in litigation that has lasted to date more than four and one-half years.

Mongolian businesses partnered with foreign investors often will accept international arbitration, as do GOM agencies that contract business with foreign investors, rather than avail themselves of the Mongolian Arbitration Bureau operated by the Mongolian National Chamber of Commerce and Industry. Foreign investors tell us that they prefer international arbitration, because they perceive domestic arbitrators as too politicized, too unfamiliar with commercial practices, and too self-interested to render fair decisions.

The U.S.-Mongolia Bilateral Investment Treaty (BIT) entitles both U.S. and Mongolian investors to seek international arbitration in the case of investor-state disputes (BIT: <http://www.state.gov/e/eb/afd/bit/117402.htm>).

ICSID Convention and New York Convention

Mongolia ratified the Washington Convention and has joined the International Centre for Settlement of Investment Disputes (ICSID). It also signed and ratified the New York Convention. To our knowledge, the government of Mongolia has accepted international arbitration in several disputes. However, Mongolia, because it treats treaties and international agreements as self-executing under Mongolian law, has passed no specific domestic legislation providing for enforcement under the 1958 New York Convention and for the enforcement of awards under the ICSID Convention.

Duration of Dispute Resolution

It is hard to say how long it “typically” takes to resolve an investment dispute in Mongolia. Some cases have been settled within a week through quiet discussion among the parties, while others, particularly in the mining sector, have yet to be settled after six years. For disputes arising through loan default or bankruptcy, waits of up to 36 months for final liquidations and settlement of security are not uncommon.

Although arbitration is widely accepted among business people and elements of the government, support for binding international arbitration has not penetrated local Mongolian agencies responsible for executing judgments. Investors routinely report that the most common problem preventing resolution of debt-driven disputes is that the GEACD often resists executing collection orders and court-ordered foreclosures.

5. Performance Requirements and Investment Incentives

WTO/TRIMS

There have been no documented reports or claims that Mongolia employs measures inconsistent with World Trade Organization Trade Related Investment Measures (TRIMS) requirements; nor has the GOM notified the WTO of any measures inconsistent with the requirements of Mongolia’s TRIMS obligations.

Investment Incentives

The GOM generally offers the same tax preferences to both foreign and domestic investors. The GOM occasionally grants tax exemptions for imports of essential fuel and food products; or for imports in certain sectors targeted for growth, such as the agriculture or energy sectors. Such exemptions can apply to both import duties and Mongolia’s value-added tax (VAT). In addition, the GOM occasionally extends a ten percent tax credit on a case-by-case basis to investments in such key sectors as mining, agriculture, and infrastructure. Under the IL,

foreign-invested companies properly registered and paying taxes in Mongolia are considered domestic Mongolian entities, thus qualifying for investment incentive packages that, among other incentives, include tax stabilization for a period of years. (For details on the IL see Chapter 1.) In 2014 Parliament authorized the BOM to waive 7.5 percent of the ten percent royalty payments that gold miners must pay when selling gold to the BOM and Mongolian commercial banks through 2017. Qualifying transactions must be conducted in MNT.

Research and Development

The Government of Mongolia has limited budgets for research activities, and is quite open to foreign participation, especially in the mining, construction, and agricultural sectors. The 2015 Manufacturing Law of Mongolia allows for up to 75 percent reimbursement of research costs for technologies that lead to domestic manufacturing and import substitution.

Performance Requirements

Foreign investors currently need not use local goods, services, or equity; or engage in substitution of imports. The government applies the same geographical restrictions to both foreign and domestic investors. Existing restrictions involve border security, environmental concerns, or local use rights. There are no onerous or discriminatory visas, residence, or work permits requirements imposed on U.S. investors. Neither foreign nor domestic businesses need purchase from local sources or export a certain percentage of output; or require foreign exchange to cover their exports.

The GOM strongly encourages but does not compel domestic sourcing and material inputs in Mongolia, especially for firms engaged in natural resource extraction. The 2014 Amendments to the 2006 Minerals Law of Mongolia state that holders of exploration and mining licenses should preferentially supply extracted minerals to Mongolian processing facilities and should procure goods and services and hire subcontractors from business entities registered in Mongolia. Although there are no formal enforcement procedures to ensure local sourcing – because there is no absolute legal requirement to source locally – investors occasionally report that central, provincial, or municipal governments slow down permitting and licensing until domestic and foreign enterprises make some effort to source locally. With regard to labor, the GOM's encouraging of the hiring of Mongolian employees becomes essentially a legal requirement when combined with GOM requirements that individual employers seeking work visas for foreign employees MUST demonstrate that their workforces comprise the same percentages of domestic hires that are suggested in Mongolia's procurement law. (A long-pending draft labor law, if adopted, would clarify the extent to which these target percentages are mandatory.)

Pressure to source locally notwithstanding, foreign investors generally set their own export and production targets without concern for government imposed targets or requirements. There is no requirement to transfer technology. The government generally imposes no offset requirements for major procurements. Certain tenders and projects on strategic mineral deposits may require specific levels of local employment, procurement, or commitments to fund certain facilities or training opportunities as a condition of the tender or project; but

such conditions are not the norm. Investors, not the Mongolian government, make arrangements regarding technology, intellectual property, and similar resources and may generally finance as they see fit. Except for a currently unenforced provision of the amended Minerals Law of Mongolia requiring mining companies to list ten percent of the shares of the Mongolian mining company on the Mongolian Stock Exchange, foreign-invested businesses currently need sell no shares to Mongolian nationals. Equity stakes are generally at the complete discretion of investors, Mongolian or foreign.

The GOM sometimes restricts the sort of financing that foreign investors may obtain and with whom investors might partner or to whom they might sell shares or equity stakes. These restrictive covenants will most likely be imposed in certain sectors where the investment is determined to have national impact or national security concerns, i.e., the mining sector. Investors and local legal experts note that the system by which the GOM regulates these transactions lacks a clear statutory basis and transparent, predictable regulatory procedures.

Investors can locate and hire workers without using hiring agencies as long as hiring practices follow Mongolian Law on Labor law. Mongolian law requires companies to employ Mongolian workers in certain labor categories whenever a Mongolian can perform the task as well as a foreigner. This law generally applies to unskilled labor categories and not areas in which a high degree of technical expertise not existing in Mongolia is required.

Data Storage

The GOM has no forced localization policy for data storage; no legal requirements for IT providers to turn over source code or to provide access for surveillance; and no rules or mechanisms for maintaining a certain amount of data storage at facilities within the territory of Mongolia.

6. Protection of Property Rights

Real Property

The Mongolian Constitution provides that "the State shall recognize any forms of public and private properties." The Constitution limits the right to privately own land to citizens of Mongolia, though that limitation does not apply to "subsoil," a term that is not expressly defined in the Constitution. Although no formal law exists vesting Mongolia's pastoral nomadic herders with exclusive rights of pasturage and control of water and land rights as such, rural municipalities administering these resources unofficially recognize that traditional, customary access to these resources by pastoralists must be taken into account before, during, and after other non-resident users, particularly but not exclusively those in the mining sector, exercise their use and ownership rights. That aside, one can sell, transfer, or securitize structures, shares, use-rights, companies, and movable property, subject to relevant legislation and related regulation controlling such activities. Mongolian law does allow creditors to recover debts by seizing and disposing of property offered as collateral.

Mongolian law protects creditors but that protection is unevenly applied, and as noted in Chapter 4, some judges, whether out of ignorance or partiality for Mongolian disputants over foreigners, fail to strictly uphold these protections. The legal system also requires judicial foreclosure for any contested foreclosure action. Because all contested foreclosure actions require court review and are subject to appeals up to the Supreme Court of Mongolia, final resolution can take up to 36 months. In addition, creditors report inconsistent enforcement of court orders. Foreign and domestic investors routinely claim that the GEACD regularly fails to execute its responsibilities. In addition, nascent systems for determining title and liens and for collecting on debts make lending on local collateral risky. Although a system exists to register immovable property – structures and real estate – for the purpose of confirming ownership, it does not record existing liens. Consequently, creditors risk lending on collateral that debtors may not actually own or which may have already been offered as security for other debts.

Intellectual Property Rights

Mongolia supports intellectual property rights (IPR) in general. A member of the World Intellectual Property Organization (WIPO), Mongolia has signed and ratified most relevant treaties and conventions, including the World Trade Organization Agreement on Trade Related Aspects of Intellectual Property Rights (WTO TRIPS). Mongolia's parliament has yet to ratify the WIPO internet treaties. (WIPO: <http://www.wipo.int/directory/en/>). Despite this, the Mongolian government and its intellectual property rights enforcer, the Intellectual Property Office of Mongolia (IPOM: <http://www.ipom.mn/>), make a good faith effort to comply with these agreements.

Under TRIPS and Mongolian law, the Mongolian Customs Authority (MCA) and the Economic Crimes Unit of the National Police (ECU) also have an obligation to protect IPR. MCA can seize shipments at the border. The ECU has the exclusive power to conduct criminal investigations and bring criminal charges against IPR pirates. The IPOM has the administrative authority to investigate and seize pirated goods administratively. Of these agencies, the IPOM makes the most consistent efforts to fulfill Mongolia's treaty commitments. The IPOM generally has an excellent record of protecting U.S. trademarks and copyrights; however, tight resources limit the IPOM's ability to act. In most cases, when a rights holder files a complaint, the IPOM quickly investigates. If it judges that an abuse has occurred, it will (and has in every case so far) seize the pirated products, under administrative powers granted under Mongolian law.

We note two areas where enforcement lags. Legitimate software products remain rare in Mongolia, with the IPOM estimating that 95 percent of the market uses pirated software. The IPOM enforces the law where it can but the scale of the problem dwarfs its capacity to deal with it. Pirated optical media are also readily available and subject to spotty anti-piracy enforcement. The growth of online downloads of pirated digital media by individuals, local Mongolian TV stations, radio broadcasters playing pirated music, and cellular service providers offering pirated ringtones has eclipsed local production and imports of fake CDs, videos, and DVDs. The IPOM acknowledges that most local public and privately held TV stations, some 184 at latest count, regularly broadcast pirated materials; however, the IPOM

hesitates to move on these broadcasters, most of which are connected to major government or political figures. The IPOM will act on specific complaints, but will rarely initiate action. For additional information about treaty obligations and points of contact at local IP offices, please see WIPO's country profiles at <http://www.wipo.int/directory/en>.

U.S. IPR rights holders affected by Mongolian piracy may also reach out to the American Chamber of Commerce Mongolia (AmCham Mongolia). AmCham Mongolia has established an Intellectual Property Rights Committee to advocate for policy reforms and improved enforcement from IPOM and other relevant GOM agencies. For more information go to: <http://amcham.mn/>.

There is no information suggesting that the production and/or sale of counterfeit goods in Mongolia presents a higher risk of labor rights violations, including child labor, forced labor, and dangerous working conditions.

Resources for Rights Holders

Contact at the U.S. Embassy in Ulaanbaatar: <http://mongolia.usembassy.gov/>; Economic and Commercial Section; +976-7007-6001; Ulaanbaatar-Econ-Comm@state.gov. For additional resources on protecting IPR in Mongolia, reach out to the American Chamber of Commerce in Mongolia at <http://amcham.mn/>. The U.S. Embassy also provides a list of attorneys at http://mongolia.usembassy.gov/lawyer_list.html.

7. Transparency of the Regulatory System

In 2011 parliament passed the Law on Information Transparency and the Right to Information (LIT). LIT sets out which government, legislative, and non-governmental organizations must provide information to the public – both in terms of what information entities should disseminate and how these respective organizations should respond to requests for information by citizens and legal entities residing in Mongolia. The LIT requires that state policies, some legislative acts, and administrative decisions be posted on the appropriate government websites for no less than 30 days for comment and review prior to enactment. In addition, government entities must post public hiring processes, concessions, procurement, and budget and finance information. The LIT specifically exempts the armed services, border protection, and intelligence organizations from its provisions. Ongoing citizen complaints and petitions are not subject to the LIT's provisions; nor does the law apply to intellectual property information, proprietary business information, or personal information. To implement the LIT, the cabinet requires ministries to post proposed regulatory changes on ministerial websites for comment and review at least 30 days before approval. Neither the LIT nor the cabinet has set a standard process for collecting and acting on public comment and review.

In addition to the LIT, the Law on Making Laws (LML) requires (or requests in the case of parliament) those drafting and submitting laws to parliament – termed lawmakers in the LML – to subject their legislative acts to comment and review. Specifically, the president and the ministries must submit legislation for review and comment. Parliament may solicit comment

and review but is not required to do so. The LML does not specify who is to be consulted; how they are to be consulted; when or where; and what is to be done with these critiques of legislation.

Most ministerial initiatives go unpublished until the draft passes out of a given ministry to the full cabinet. Typically, the full cabinet discusses and passes bills on to parliament, without public input or consultation. Parliament itself neither issues a formal calendar nor routinely announces or opens its standing committees or full chamber hearings to the public. While parliament at the beginning of each session announces a list of bills to be considered during the session, this list is very general and often amended. New legislation is commonly introduced, discussed, and passed without public announcement or consideration, often rather hastily.

Mongolian publically listed companies adhere to the International Financial Reporting Standards (IFRS). As with statutory requirements for transparent law making, regulations for accounting, legal, and regulatory procedures also require transparent processes for consistent implementation, and are sometimes but not always consistent with international norms and best practices. The business community and legal experts have criticized legal, regulatory, and accounting practices that are non-transparent, vague or poorly worded in Mongolian and English translations, and inconsistently enforced. Domestic and foreign investors claim these domestic practices are largely aimed at extracting revenue for both the government and individuals, and occasionally to injure a company that may be competing against a state-owned or influential private entity. Consequently, investors conclude that currently the Mongolian government does not use transparent laws and regulations to create a level playing field for either foreign or domestic competitors.

The GOM consults with NGOs and industry associations on laws and regulations affecting the business environment. For the most part, Mongolia's industry and business organizations are quite open to foreign membership and participation in group activities. However, while foreign investors are often invited by government agencies, NGOs, and industry associations to consult on an ad hoc basis on proposed laws and regulations affecting investments, they are generally strongly encouraged by their organizations to avoid public roles in such consultations. While this approach may avoid some of the controversies attending public comment by foreign investors, it also makes delivery of their advice less transparent and effectively unofficial, allowing the advice to be ignored by Mongolian officials, NGOs and industry associations.

In September 2013, the United States and Mongolia signed an Agreement on Transparency in Matters Related to International Trade and Investment (TA). The agreement marks an important step in developing and broadening the economic relationship between Mongolia and the United States. The goal of the TA is to make it easier for American and Mongolian firms to do business by guaranteeing transparency in the formation of trade-related laws and regulations, the conduct of fair administrative proceedings, and measures to address bribery and corruption. In addition, it provides for commercial laws and regulations to be published in English, making it easier for all international investors to operate in Mongolia. Although parliament ratified the TA in December 2014, the TA has not yet entered into force as

Mongolia still needs to bring certain laws into compliance with the terms of the TA. The U.S. Embassy in Ulaanbaatar, USTR, and the GOM continue to work toward finalization and implementation of the Transparency Agreement.

8. Efficient Capital Markets and Portfolio Investment

Mongolia is developing the experience and expertise needed to sustain portfolio investments and active capital markets. In 2013 parliament passed the Revised Securities Market Law (RSML), which most investors believe creates a sufficient regulatory apparatus for these activities. The GOM imposes few restrictions on the flow of capital in any of its markets. Multilateral institutions, particularly the International Monetary Fund (IMF), have found the regime too loose, especially in the banking sector.

Money and Banking System, Hostile Takeovers

Despite the weakened economy and corresponding rise in non-performing loans from 5.5 percent in February 2015 to 7.8 percent as of February 2016, the International Monetary Fund and the International Finance Corporation consider the Mongolian banking sector relatively healthy, noting the improvements in banks' corporate governance. Moreover, the BOM, Mongolia's central bank, has begun imposing more stringent capital standards on banks. As of January 2016, Mongolia's 14 banks (13 commercial banks and one state-owned bank) had combined assets of about USD 10.3 billion. For more details on the banking sector, go to the Bank of Mongolia at <http://www.mongolbank.mn/eng/default.aspx>.

Mongolia has four generally well-regarded banks owned by both Mongolian and foreign interests. These four banks – Golomt, Khas, Trade and Development Bank, and Khan Bank – collectively hold approximately 80 percent of all banking assets. They generally follow international standards for prudent capital reserve requirements, have conservative lending policies, up-to-date banking technology, seem generally well-managed, and are open to foreigners opening bank accounts under the same terms as Mongolian nationals. In addition, foreign investors, including the International Finance Corporation and Goldman Sachs, have sizable equity stakes in several banks.

In 2015, to consolidate weaker, less capitalized banks into larger, better funded institutions, the BOM ordered all commercial banks to increase their minimum paid-in-capital from the current minimum of USD eight million to USD 25 million by December 2017. While the BOM and Mongolia's financial system have endured insolvencies over time, it is notable that each failed bank had shown clear signs of distress before the BOM moved to safeguard depositors and the banking system. As with many issues in Mongolia, the problem is not lack of laws or procedures for dealing with troubled banks, but rather, some lack of capacity and an apparent reluctance on the part of BOM banking overseers to aggressively enforce regulations related to capital reserve requirements, bank management and corporate governance, and non-performing loans.

9. Competition from State-Owned Enterprises

Mongolia has SOEs in banking and finance, energy production, mining, and transport. Investors have been allowed to conduct activities in these sectors, although in some cases an opaque regulatory framework limits both competition and investor penetration. Indeed, both foreign and domestic private investors believe that the current GOM approach to regulating SOEs favors Mongolian SOEs over private enterprises and foreign SOEs. Although many private companies have been created or registered in Mongolia in recent years, including foreign private companies, so too has the GOM created many dozen SOEs, particularly small and medium-sized SOEs, over the same period.

In 2010, Mongolia passed and implemented the Law of Mongolia on Competition applying to private enterprises and SOEs active in Mongolia. Prior to passage of this law, competition between state-owned and private businesses had been declining for the simple reason that many parastatals had been privatized. Currently, firms from Mongolia, China, Japan, Europe, Canada, and the United States have sought opportunities for renewable and traditional power generation, a sector still under state control in Mongolia. However, few want to invest in the power generation field until the regulatory and statutory framework for private power generation firms up and tariffs reflect commercial best practices and true cost recovery.

Mongolia has no plans to privatize its existing railroad jointly held with the government of Russia, but current law does allow private firms to build, operate, and transfer new railroads to the state.

The 2006 Minerals Law of Mongolia (amended in 2014) and the 2009 Nuclear Energy Law keep the state in the mining business. Under both laws, the GOM grants itself the right to acquire equity stakes ranging from 34 percent up to 100 percent of certain uranium and rare earth deposits deemed strategic for the nation. Once acquired, these assets are vested with two state-owned holding companies: Erdenes MGL, for non-uranium mining assets, and MonAtom, for uranium resources. Mongolia requires these companies to use proceeds from their activities to “benefit the Mongolian people.”

The role of the state as an equity owner in management of revenues and operation of mines remains unclear. Investors question the GOM’s capacity to deal with conflicts of interest arising from its position as both regulator and owner-operator. Specifically, they worry that the GOM’s desire to maximize local procurement, employment, and revenues may compromise the long-term commercial viability of mining projects. Investors also question the GOM’s capacity to execute its fiduciary responsibilities as both owner and operator of mines. Observers are also concerned that the GOM waives legal and regulatory requirements for state-owned mining companies that it imposes on all others. Generally, approval for relevant environmental and operating permits for private coal mines in Mongolia takes at least two years. However, there are indications that the GOM has exempted Erdenes Tavan Tolgoi (ETT) mining operations from regulatory requirements imposed on other operations. Preferential treatment for SOEs creates the appearance that the GOM has one standard for its SOEs and another for foreign-invested and private domestic invested companies; and also

provides SOEs with substantial cost advantages via a more lenient interpretation or outright waiver of legal requirements.

Mongolian SOEs will source from foreign firms only when inputs are not available locally or cannot be produced competitively in Mongolia. SOEs and private enterprises are under political pressure to source locally as much as possible; and often resort to creating local Mongolian shell companies to act as a domestic storefront for foreign-sourced goods. This unofficial requirement adds inefficiency and cost to serving the Mongolian market. Finally, Mongolia is not yet a party to the World Trade Organization Procurement Agreement, although it has expressed a desire to join.

OECD Guidelines on Corporate Governance of SOEs

SOEs are technically required to submit to the same international best practices on disclosure, accounting, and reporting as imposed on private companies. When SOEs seek international investment and financing, they tend to follow these rules. Many international best practices are not institutionalized in Mongolian law, and SOEs tend to follow existing Mongolian rules. At the same time, foreign-invested firms follow the international rules, causing inconsistencies in corporate governance, management, disclosure, and accounting.

The SOE corporate governance structure is clear on paper. There is an independent management answering to an independent board of directors, who now, with the dissolution of the State Property Committee (SPC), report to a line minister, and ultimately to the prime minister and parliament. In reality, government officials tell us that management and board of director operations and appointments are subject to political interference to an almost crippling extent. Some of the professional managers of these SOEs have expressed hope that 2015 amendments to the Law on the Human Development Fund formally allowing independent, professional management of SOEs will curtail such interference. This will require GOM officials and politicians to avoid interference. In support of this effort to professionalize operations and management at Mongolia's SOEs, the Asian Development Bank is funding a USD 35 million corporate governance strengthening project for Erdenes Mongol, an SOE holding key copper and coal mining assets.

Bottom line: Mongolian SOEs do not adhere to OECD Corporate Governance Guidelines for SOEs: www.oecd.org/daf/ca/oecdguidelinesoncorporategovernanceofstate-ownedenterprises.htm.

Sovereign Wealth Funds

In 2008, parliament established the Human Development Fund (HDF), ostensibly Mongolia's first sovereign wealth fund. However, it does not currently function as a sovereign wealth fund. The stated purpose of the fund was to fulfill campaign promises to provide every citizen with cash payments in excess of USD 1,000 so that the public could benefit from Mongolia's mineral wealth. The HDF is to be funded from the profits, taxes, and royalties generated by the mining industry as a whole, including large, medium and small-scale projects. The HDF basically serves as an instrument to distribute mining revenues to the

citizens of Mongolia in the form of social benefits: payments for pension and health insurance premiums; mortgage support and other loan guarantees; and payments for health and education services. The GOM has no plans to use the HDF as a conduit for Mongolian investments abroad or for FDI into Mongolia. In that sense, we find no conflict between the HDF and private sector investment.

10. Responsible Business Conduct

Responsible business conduct (RBC) is still in its infancy in Mongolia. Most reputable international companies make good faith efforts to work with local communities. The larger such firms tend to follow accepted international RBC practices and underwrite a full range of RBC activities across Mongolia; however, the smaller ones, lacking sufficient resources, often limit their RBC actions to the locales in which they work. A few large Mongolian firms regularly undertake RBC actions, with small- to medium-sized enterprises generally (but not always) hindered by limited resources. Generally, firms that pursue RBC are perceived favorably, at least within the communities in which they operate. Nationally, responses range from praise from politicians to cynical condemnation by certain civil society groups of RBC as nothing more than an attempt to buy public approval. Awareness of RBC amongst the public remains low, with only a few NGOs involved in RBC promotion or monitoring, and those concentrated on large projects such as Oyu Tolgoi. Such groups operate freely. (For RBC in Mongolia refer to USAID sponsored Business Plus Initiative's web site: <http://www.bpi.mn/>. For information on the U.S. government approach to RBC - related issues see U.S. Government Approach on Business and Human Rights: <http://www.humanrights.gov/2013/05/01/u-s-government-approach-on-business-and-human-rights/>).

Mongolia has no statutory requirement for RBC covering all companies active in Mongolia. However, the 2014 Amendments to the 2006 Minerals Law require minerals exploration and mining companies to develop local development plans with the soum (county) in which they operate. Ministry of Mining officials explain that the GOM will eventually codify and standardize how companies should work with soums on local development issues. The Ministry of Mining has presented a model agreement laying out specific, mandatory obligations that companies and municipalities would assume toward one another and the specific projects that companies would be able to undertake in the municipalities in which they operate.

OECD Guidelines for Multinational Enterprises

GOM encourages companies to adopt RBC practices, echoing admonitions of local NGOs and international institutions. However, these exhortations are not based upon OECD principles set forth in the Guidelines for Multinational Enterprises or the United Nations Guiding Principles on Business and Human Rights (OECD: <http://mneguidelines.oecd.org/ncps/>; UN Principles: http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf).

Mongolia has been compliant with the Extractive Industries Transparency Initiative (EITI) since 2010.

11. Political Violence

Mongolia is both peaceful and stable; political violence is rare. Mongolia has held 11 successful presidential and parliamentary elections in the past 20 years, though a brief but violent outbreak of civil unrest followed the disputed parliamentary elections in July 2008. During that unrest, five people were killed and a political party's headquarters was burned. The violence was quickly contained and order restored, and no repeat of that level of civil unrest has occurred since. Indeed, Mongolia held peaceful presidential elections less than a year later in May 2009, in which the incumbent president was defeated and conceded the next day; power smoothly transitioned to the winner. Mongolia will hold its next parliamentary elections on June 29, 2016; presidential elections are next scheduled for June 2017.

A more resource-nationalist tone in politics has become evident in recent years. Media and observer reports suggest a rising anti-foreigner sentiment among a few elements of the public, mostly based on the desire to have Mongolian resources developed in an environmentally sound, culturally sensitive way by Mongolians for the benefit of Mongolians. However, this nationalist sentiment has not led to any known incidents of anti-Americanism or politically motivated damage to American projects or installations since Mongolia established relations with the United States in 1987. However, some commentators over the last three years have described a rising level of hostility to Chinese, Vietnamese, and South and North Korean nationals in Mongolia. This hostility has led to some instances of improper seizure of Chinese and Korean property, and in even more limited cases to acts of physical violence against the persons and property of Chinese, and to a lesser extent Korean and Vietnamese, nationals resident in Mongolia.

12. Corruption

Multiple reviews of corruption in Mongolia have found that opportunities for corruption have increased at both the "petty" or administrative and "grand" or elite levels. Both types of corruption should concern Mongolians and investors alike, but grand corruption should be considered the more serious threat because it solidifies linkages between economic and political power that could negatively affect or ultimately derail or delay democracy and development. (See The Asia Foundation surveys on corruption in Mongolia: <http://asiafoundation.org/news/2015/06/the-asia-foundation-releases-findings-of-annual-survey-on-perceptions-and-knowledge-of-corruption-speak>; or the U.S. Embassy's 2014 Mongolian Human Rights Reports (MHHR) at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>.)

Current Anti-Corruption Law

In 2006 parliament passed the Anti-Corruption Law (ACL), a significant milestone in Mongolia's efforts against corruption. The U.S. Department of State's 2015 Mongolia

Human Rights Report (MHRR) reports that ACL sets criminal penalties for official corruption but that the GOM does not always implement the law effectively, and corruption has continued at all levels of government. Some officials engage in corrupt practices with apparent impunity. Factors contributing to corruption include conflicts of interest, lack of transparency, lack of access to information, an inadequate civil service system, and weak government control of key institutions.

The law proscribes the soliciting and the acceptance of bribes by government officials and provides for fines and imprisonment of up to five years. The law also criminalizes the offering of bribes to officials. NGOs previously alleged that the threat of prosecution of both individuals offering bribes and officials involved gave neither guilty party motivation to report the episodes after the fact and so resulted in significant underreporting. After the government began granting limited immunity for those paying smaller bribes, the reporting of bribes increased. Members of parliament are immune from prosecution during their tenure, and this immunity can preclude litigation of allegations of corruption. (MHRR: <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#section4>)

The Independent Authority Against Corruption (IAAC) is the principal agency responsible for investigating corruption cases, although the Organized Crime Department of the National Police Agency also investigates corruption cases and often assists in IAAC investigations. The IAAC is responsible for investigating complaints against police, prosecutors, and judges. Although questions about the IAAC's political impartiality have persisted (the President appoints the Head of the IAAC), the public views the agency as increasingly effective. In response to complaints that it was not making the results of its investigations and subsequent court proceedings public, the IAAC has held periodic press conferences about its activities. In addition, the IAAC increased its public awareness and prevention efforts through activities such as distributing educational materials for children and conducting outreach trips to the provinces.

UN Anticorruption Convention, OECD Convention on Combatting Bribery

Mongolia is a State Party to the United Nations Convention Against Corruption (UNCAC), but not the Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions (the Anti-Bribery Convention). (UNCAC: www.unodc.org/unodc/en/treaties/CAC/signatories.html; Anti-Bribery Convention: www.oecd.org/daf/anti-bribery/countryreportsonteimplementationoftheoecdanti-briberyconvention.htm)

Resources to Report Corruption

Contact at Independent Agency Against Corruption (IAAC)

ADDRESS

District 5, Seoul Street 41
Ulaanbaatar, Mongolia 14250

TELEPHONE NUMBER

Telephone: +976-70110251; 976-11-311919

Fax: +976-7011-2458

EMAIL ADDRESS: contact@iaac.mn

Contact at Transparency International Mongolia

NAME: Tur-Od Lkhagvajav, Chairman of the Mongolian National Chapter

ADDRESS

Zorig Foundation, 2nd floor

Peace Avenue 17,

Sukhbaatar District,

Ulaanbaatar, Mongolia

TELEPHONE NUMBER

Telephone: +976 9919 1007; +976 9511 4777; +976 95599714

Fax: +976 7015 4250

EMAIL ADDRESS: lturod@gmail.com

13. Bilateral Investment Agreements

Mongolia and the United States have no bilateral tax or free-trade agreements, but we have signed and ratified a Bilateral Investment Treaty. For the BIT:

<http://www.state.gov/e/eb/afd/bit/117402.htm>.

Bilateral Taxation Treaties

For a list of Bilateral Taxation Treaties Mongolia has signed with other nations go to UNCTD: <http://investmentpolicyhub.unctad.org/IIA/CountryBits/139#iiaInnerMenu>. In February 2015, Mongolia and Japan signed an Economic Partnership Agreement (EPA) which has been ratified by the Mongolian Parliament. For more details on the EPA, go to <http://www.mofa.go.jp/policy/economy/fta/mongolia.html>.

14. OPIC and Other Investment Insurance Programs

The United States Overseas Private Investment Corporation (OPIC: www.opic.gov) offers loans and political risk insurance to American investors involved in most sectors of the Mongolian economy. In addition, OPIC and Mongolia have signed an Investment Incentive Agreement that requires the GOM to extend national treatment to OPIC-financed projects in Mongolia. (See http://photos.state.gov/libraries/mongolia/5/business/1990_OPIC-Investment-Incentive-Agreement-with-Mongolia.pdf). For example, under this agreement mining licenses of firms receiving an OPIC loan may be pledged as collateral to OPIC, a right not normally bestowed on foreign financial entities. (For an interactive map showing where OPIC has agreements: <http://www.opic.gov/opic-action/interactive-map-overview>.)

The U.S. Export Import Bank (EXIM: www.exim.gov) offers programs in Mongolia for short-, medium-, and long-term transactions in the public sector and for short- and medium-term transactions in the private sector. Mongolia is a member of the Multilateral Investment Guarantee Agency (MIGA: www.miga.org).

15. Labor

The Mongolian labor pool of nearly two million workers is generally educated, young, and adaptable. The General Agency for Registration and Statistics (GARS) reports official unemployment at 33,000 as of December 2015, with youth unemployment (15-34 year olds) hovering around 61 percent of total unemployed. Foreign workers officially registered with the GOM number 6779, with two-thirds of this total involved in construction, mining and manufacturing. As of the first quarter of 2016, GARS reported overall unemployment had risen to 11.6 percent from 7.4 percent in the same period in 2015. (Source GARS: <http://www.nso.gov.mn/>; and Ministry of Labor: <http://www.mol.gov.mn/>) Unskilled labor is sufficient, but shortages exist in most professional categories requiring advanced degrees or vocational training; and include all types of engineers and professional trades in the construction, mining, and services sectors. Foreign-invested companies deal with these shortages by providing in-country training to their staff, raising salaries to retain employees, or hiring expatriate workers with skills and expertise unavailable in Mongolia. (For labor needs: <http://www.mca.mn/document/LMSReportMNG.pdf>.)

Mongolian labor laws are not particularly restrictive. Investors can locate and hire workers without using hiring agencies—as long as hiring practices are consistent with Mongolian labor law. However, Mongolian law requires companies to employ Mongolian workers in all labor categories whenever a Mongolian can perform the task as well as a foreigner. This law generally applies to unskilled labor categories. However, if an employer seeks to hire a non-Mongolian laborer and cannot obtain a waiver from the Ministry of Labor for that employee, the employer can pay a monthly waiver fee. Depending on a project's importance, the Ministry of Labor can exempt employers from 50 percent of the waiver fees per worker. However, employers report difficulty in obtaining waivers, in part because of public concerns that foreign and domestic companies refuse to hire Mongolians at an appropriate level.

Because Mongolia's long, cold winters limit outdoor operations in the infrastructure development, commercial and residential construction, and mining exploration sectors, employers tend to use a higher degree of temporary contract labor than companies that can operate year-round. Current law allows employers and employees to enter these short-term contracts.

Employers have expressed concern over the package of proposed amendments to the labor law currently under consideration in the parliament. The amendment proposes that employers, the government, and the Confederation of Mongolian Trade Unions (CMTU) form a committee to set actual work hours and conditions, rather than allowing employers and employees to contract directly based on actual labor needs. Foreign and Mongolian employers have advocated against this and other proposed changes to the current labor law, noting that it would restrict their ability to respond to fluctuating market conditions.

The labor law entitles workers to form or join independent unions and professional organizations of their choosing and protects rights to strike and to collective bargaining. However, some legal provisions restrict these rights for foreign workers, certain public servants, and workers without formal employment contracts, though all groups have the right to organize. The law protects the right of workers to participate in trade union activities without discrimination, and the government has protected this right in general. The law provides for reinstatement of workers fired for union activity, but the CMTU stated that this provision is not always enforced. According to the CMTU, some employees faced obstacles to forming or joining unions, and some employers took steps to weaken existing unions. For example, some companies would use the portion of employees' salaries deducted for union dues for other purposes, not forwarding the monies to the unions. Some employers prohibited workers from participating in union activities during working hours, even though by law workers have the right to do so. There have also been some violations of collective bargaining rights, as some employers refused to conclude collective bargaining agreements in contracts.

The law on collective bargaining regulates relations among employers, employees, trade unions, and the government. Wages and other conditions of employment are set between employers (whether public or private) and employees, with trade union input in some cases. Laws protecting the rights to collective bargaining and freedom of association are generally enforced. The Tripartite Labor Dispute Settlement Committees (TC) resolve the majority of disputes between workers and management and consist of representatives from Mongolia's CMTU, employers, and the government. However, management and legal sector contacts state that TCs are not compliant either with the existing labor law or the 2013 Law on Mediation.) Cases that cannot be resolved by TCs are referred to the courts. (For Mongolian labor laws as they relate to union activity, refer to Mongolia Country Reports on Human Rights Practices for 2014 at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#section7> .)

Current labor law allows employers to fire or lay off workers for cause; however, depending on the circumstances, severance may be required; and workers can always seek judicial review of their separation. The statutory severance package requires employers to pay laid off workers one month of the contracted salary; fired workers receive no severance. Laid off or fired workers are entitled to three months of unemployment insurance from the Social Insurance Agency.

The International Labor Organization (ILO) has expressed concern about child labor practices at variance with Mongolian law and international labor standards. Authorities report that employers often do not follow the law, requiring minors to work in excess of the statutory permitted hours per week and paying them less than the minimum wage. The General Agency for State Inspections (GASI) enforces all labor regulations, and its 1,250 inspectors are responsible for all inspections. Inspectors have the authority to compel immediate compliance with labor statutes, but the small number of labor inspectors combined with the growing number of privately owned enterprises limits enforcement. (For ILO conventions ratified by Mongolia:

http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103142; or <http://www.ilo.org/beijing/countries-covered/mongolia/lang--en/index.htm>)

16. Foreign Trade Zones/Free Ports/Trade Facilitation

The Mongolian government launched its free trade zone (FTZ) program in 2004. Two FTZ areas are located along the Mongolia spur of the trans-Siberian highway: one in the north at the Russia-Mongolia border town of Altanbulag; the other in the south at the Chinese-Mongolia border at the town of Zamyn-Uud. Both FTZs are relatively inactive, with development pending at either site. A third FTZ is located at the port of entry of Tsagaan Nuur in the far western province of Bayan Olgii bordering Russia. Mongolian officials also suggest that the New Ulaanbaatar International Airport (NUBIA), expected to commence operations in spring 2017, may host an FTZ. As first noted in the April 2004 USAID sponsored Economic Policy Reform and Competitiveness Project, benchmarking Mongolia's FTZ program against current successful international practices shows deficiencies in the legal and regulatory framework as well as in the process being followed to establish FTZs in the country. In addition, FTZs lack implementing regulations to require key international best practices. Further, a process of due diligence, including a cost-benefit analysis, has never been completed for the FTZs. Moreover, sufficient funding has never been mobilized for on-site infrastructure requirements for the FTZ sites. Finally, deviations from international best practices in the process of implementing FTZs repeats mistakes made in other countries and may lead to "hidden costs" or the provision of subsidies that the government of Mongolia did not foresee and which may have been granted at the expense of higher priorities.

17. Foreign Direct Investment and Foreign Portfolio Investment Statistics

Table 1: Key Macroeconomic Data, U.S. FDI in Host Country/Economy

Economic Data	Host Country Statistical source*		USG or international statistical source		USG or International Source of Data: BEA; IMF; Eurostat; UNCTAD, Other
	Year	Amount	Year	Amount	
Mongolia Gross Domestic Product (GDP) (USD M USD)	2014	USD 12.02	2014	USD 12.02	www.worldbank.org/en/country
Foreign Direct Investment	Host Country Statistical source*	USG or international statistical source	USG or international Source of data: BEA; IMF; Eurostat; UNCTAD, Other		

U.S. FDI in Mongolia (USD M USD, stock)	2012	USD 62.6	2014	USD 31.0	BEA data available at http://bea.gov/international/direct_investment_multinational_companies_comprehensive_data.htm
Mongolia FDI in the United States (USD M USD, stock positions)	NA	NA	NA	NA	BEA data available at http://bea.gov/international/direct_investment_multinational_companies_comprehensive_data.htm
Total inbound stock of FDI as % Mongolia GDP	NA	NA	2014	13%	http://www.tradingeconomics.com/mongolia/foreign-direct-investment

Mongolia Host Country Data: National Statistical Office, Mongolian Statistical Year Book, 2013: www.nso.mn

Table 2: Sources and Destination of FDI

The Invest Mongolia Agency (IMA) stopped annually tracking FDI in 2012 and has never tracked where the beneficial ownership of a given investment actually terminates, but only where the company claims its domicile. We are aware of numerous cases where foreign entities active in Mongolia do not incorporate in their countries of origin but in third countries, largely for tax purposes. Consequently, although Mongolia's data and the IMF's respectively suggests that much of Mongolia's investment originates from such places as the Netherlands or Singapore, much of that investment actually comes from other jurisdictions.

Direct Investment from/in Counterpart Economy Data

From Top Five Sources/To Top Five Destinations (U.S. Dollars, Millions)

Inward Direct Investment			Outward Direct Investment		
Total Inward	16,693	100%	Total Outward	NA	100%
Netherlands	8,649	52%	NA	NA	NA
Singapore	1,393	8%	NA	NA	NA
Hong Kong SAR	1,318	8%	NA	NA	NA
United Kingdom	1,264	8%	NA	NA	NA
P.R. China: Mainland	1,027	6%	NA	NA	NA

"0" reflects amounts rounded to +/- USD 500,000.

Source: IMF Coordinated Direct Investment Survey

Table 4: Sources of Portfolio Investment

Portfolio Investment Assets

Top Five Partners (Millions, U.S. Dollars)

Total			Equity Securities			Total Debt Securities		
All Countries	28	100%	All Countries	20	100%	All Countries	7	100%
Hong Kong	97	35%	PR China	80	39%	PR China	3	49%
PR China	40	14%	Australia	33	16%	Singapore	1	23%
Australia	34	12%	United States	30	15%	Hong Kong	1	22%
Singapore	33	12%	Singapore	16	8%	United States	2	3%
United States	32	11%	Canada	15	8%	United Kingdom	1	2%

Source: IMF Coordinated Portfolio Investment Survey

18. Contact for More Information

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