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Legal Alert: Amendment to the law of Mongolia on banking

The State Great Khural (the Parliament) of Mongolia approved a draft of a law on amendment to the Law on Banking on its regular meeting on 28 January 2021. The law includes the following key changes.

TYPE OF THE BANK

Study shows that shareholding of banks operating in Mongolia is concentrated in the hands of one to three shareholders, ownership-control is unbalanced, risk of liabilities for banks is higher due to conflict of interest, and in some cases, these lead to insolvency of banks and cause harm to the State and public. Therefore, it is stipulated that banks shall be in the form of an "OPEN JOINT-STOCK" company.

SHAREHOLDERS OF THE BANK

In connection with the requirement to conduct banking activities in the form of a joint-stock company, the amount of shares to be held by a Shareholder is restricted to as follows:

- ▶ The amount of bank shares and securities related to the shares held by any person individually or jointly with its related party shall not exceed twenty percent/20%/ of the total issued shares of the bank.
- ▶ The restriction is not applicable to the following cases:
 - In the case of banks established by the Government /Cabinet/, and special purpose national banks;
 - In the case of state ownership in banks recapitalized by the State in accordance with the Banking Sector Stability Law.

It also imposes restrictions on shareholder's activities and sets criteria for influential shareholders. For instance:

- ▶ Individuals and legal entities shall not indirectly own bank shares in the name of others.
- ▶ An influential shareholder of a bank and its related parties shall not be influential shareholders of another bank.
- ▶ It is prohibited to issue loans to influential shareholders of a bank within one year after the start of the bank's operations.
- ▶ An influential shareholder of a bank shall meet the following criteria:
 - An influential shareholder shall not be a respondent of a bankruptcy case, or an authorized officer of the respondent legal entity;
 - An influential shareholder shall not have criminal records with respect to corruption and crimes against economics, property rights, public safety and interest, national and humankind security, and peace;
 - An influential shareholder shall be financially capable;
 - If the influential shareholder is a legal entity, it shall have a structure that can be inspected by the Bank of Mongolia (the Mongolbank);

- The ultimate beneficial owner of the shares shall be disclosed sufficiently;
- An influential shareholder, or its related party and the ultimate beneficial owner shall not be the President of Mongolia, a member of the State Great Khural (the Parliament), a member of the Cabinet, or a political official in the high-ranking government position.

BOARD OF DIRECTORS OF THE BANK

The Board of the Directors (the board) of the bank shall have nine (9) or more members and at least one third of the Board shall be independent members. Unlike ordinary joint-stock companies, the resolution of Shareholders meeting on the election of the Board members shall become valid upon approval by the Mongolbank. Moreover, the Chairman and Members of the Board are obliged to put the interest of not only the bank but also the bank's customers above their personal or their nominator's interest.

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Note:

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