

# DOING BUSINESS in Mongolia



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## GRATA International Law Firm in Mongolia

**GRATA International** is a global network of independent law firms with leaders in their jurisdictions and united under a single brand. **250 professionals in 19 countries** advise major international and local firms, funds, banks, insurance firms, construction companies, mining companies, airlines, light and heavy industry companies, telecoms, pharmaceuticals and others.

Clients have access to quality legal services in 8 industries and 16 practice areas. GRATA International is present in the following jurisdictions: Azerbaijan (Baku), Belarus (Minsk), Georgia (Tbilisi), Kazakhstan (Aktau, Almaty, Atyrau, Nur-Sultan and other cities), Kyrgyz Republic (Bishkek), Moldova (Chisinau), Mongolia (Ulaanbaatar), Russia (Moscow, St. Petersburg, Rostov-on-Don, Samara), Tajikistan (Dushanbe), Turkmenistan (Ashgabat), Ukraine (Kyiv), Turkey (Istanbul) and Uzbekistan (Tashkent). In addition to its offices, GRATA International has representatives in the UK (London), Germany (Frankfurt), the US (New York), China (Beijing, Hong Kong), UAE (Dubai), Russia (Kazan), Switzerland (Zurich).

Clients can gain access to the entire network by enquiring at one of offices or representatives of GRATA International. The opportunity to utilize resources without regional boundaries enables us to increase the cost-effectiveness and the efficiency of services provided. GRATA International has been recognized by leading international ratings: The Legal 500, Chambers Global, Chambers Asia-Pacific, IFLR1000, Who's Who legal, Asia law Profiles.

On 13 October 2017 Absolute Advocates has signed Memorandum of Understanding and Cooperation with GRATA International.

Absolute Advocates Law firm is a relatively young fast growing law firm which provides full legal service to its local and foreign clients in Mongolia.

In keeping with the GRATA International standards of excellence, Absolute Advocates is providing legal services in the following industries and areas of law:

Industry sectors:

• Banking & Finance	• Industry and Trade	• Mining
• Construction Infrastructure and	• Oil & Gas	• Pharmaceuticals & Healthcare
• Technology, Media & Telecommunications	• Transport	

## Practice Areas:

Since its establishment we have gained unique expertise in the following areas of practice:

- Competition law;
- Contracts;
- Corporate;
- Data Protection & Privacy;
- Intellectual property;
- Employment;
- Finance and Securities;
- Dispute resolution.
- Licenses and permits;
- Subsoil use;
- Real estate;
- Taxation;
- International trade, customs and WTO;
- Restructuring and insolvency;
- Project Finance & Public-Private Partnership (PPP).

## Collaboration:

Having established a reputation as the most reliable partner in the region, GRATA International is proud of its outstanding experience in dealing with important regional projects implemented in cooperation with various international law firms. If a particular deal touches upon legislation of several countries or work coordination is required anywhere in the world, we can manage the deal through our reliable partners that are leading international law firms. For these firms GRATA International is number one choice in the Euro-Asian region.

## Reputation:

Our reputation is based on ideal combination of our operational capacity spread on the whole region, developed network of branches and representative offices, professionalism and the highest qualification of lawyers, who render legal services in accordance with international standards, and flexible fee system. We have commercial awareness, we are creative and we adhere to a flexible, open and reasonable approach in everything.

## Team:

Our team, that is responsible for projects related to Mongolian law and trans-boundary projects with participation of Mongolian and foreign inventors, comprises the following attorneys:

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## Business Climate

Tremendous mineral reserves, agricultural endowments, and proximity to Asia's vast markets make Mongolia an attractive destination for medium to long-term foreign direct investment (FDI). The Gross Domestic Product (GDP) in Mongolia was worth 16.20 billion US dollars in 2020. The GDP value of Mongolia represents 0.02 percent of the world economy. GDP in Mongolia averaged 4.44 USD Billion from 1981 until 2018, reaching an all the time high of 13.01 USD Billion in 2018 and a record low of 0.77 USD Billion in 1993.

- Diversified and growing market exists in Mongolia;
- Technology Innovation Hub;
- Large mineral resource base that can be leveraged for value added processing;
- Developing Industry and Infrastructure;
- A bridge between the two economic powerhouses of Russia and China;
- Young, well-educated population;
- Private Sector & Privatization /privatize major state assets, list Mongolian conglomerates and exploration license aggregators on MSE/;
- PPP & Modernizing Infrastructure;
- Rule of law & Regulatory Quality & Transparency;
- Ensuring guarantee for investors /tax & nontax/;
- Promising mega projects; and
- Thriving Telecoms & IT sector.

International framework: Mongolia is persistently discussing to enter bilateral and multilateral agreements and actively participates in the process of regional integration. Till to this day, Mongolia has established Foreign Investment Protection and Promotion Agreement with 43 countries and Double Taxation treaties with 26 countries. Moreover, Mongolia is the member of the Seoul Convention establishing the Multilateral Investment Guarantee Agency and Washington convention on the Settlement of Investment Disputes. Consequently, in April, 2014, Mongolia has introduced its investment policy and the law to UN Conference on Trade and Development /UNCTAD/.

Analyzing the overall performance of Mongolia on a global level, international indexes of different type have shown following results:

- According to Forbes magazine's "Ease of doing business report", Mongolia ranked 84 out of 152 economies;
- According to the 2018 Doing business report by the World bank, Mongolia ranked 62 out of 189 economies; and
- According to "Index of Economic Freedom 2018" by Heritage Foundation organization, Mongolia has gained overall score of 55.7 percent, losing in the categories such as property rights and government integrity.

Law on Investment /2013/: In 2013, the Government of Mongolia passed a new law on investment, which replaced both the old Investment law of 1993 and the Law on Strategic

sectors. The new Investment law enables as open as possible investment environment for investors focusing on:

- No approval needed to enter into market and buy a local company;
- No discrimination between foreign and local investors;
- Fast registration process;
- Stability guarantees- Provision of Tax stabilization certificate; and
- Flexibility and friendly conditions for investors.

Investment types:

- Joint Ventures, Consortium;
- Mergers and Acquisition;
- Concession (PPP), Product sharing, management contract;
- Bond, Securities and other assets;
- Financial leasing, Franchising; and
- Other investment types.

### **Legal forms for doing business in Mongolia**

Despite the fact that Mongolian legislation provides for a wide range of legal forms of commercial entities (limited liability company or LLC, joint-stock company or JSC and joint venture), in practice, private businessmen and foreign investors mostly prefer with foreign invested LLC. Representative office of foreign legal entities is also common.

#### ***Limited Liability Company (LLC) with a foreign investment***

According to the law, a foreign investor is defined as “a business entity with an overall equity of US\$100,000 or more (or MNT equivalent), where not less than 25% must be owned by (a) foreign investor(s)”. Investments into Mongolia can be made in the following ways:

By establishing a solely or jointly owned business entity;

- through the purchase of a Mongolian companies' shares, bonds, and other types of securities;
- through merging or wholly acquiring Mongolian and foreign companies;
- through the establishment of franchises or financial leasing; and
- in other ways acceptable and not prohibited by law.

If two or more investors are planning to incorporate a foreign invested LLC in Mongolia, each investor must invest 100,000 USD or MNT equivalent.

An LLC is the most frequently used form of a legal entity established by one or more individuals or legal entities – founder/s/ or investor/s/ – who are not liable for its obligations while bearing the risk of losses related to the company's activity to the extent of their personal contributions (participatory interests). The liability of the company is limited to its assets.

The bodies of a limited liability company are:

a) the supreme body of a company shall be the Meeting of Shareholders(MoS).

The MoS, which is held not less than once a year, as the supreme management body of an 6

LLC has exclusive powers with respect to the issues covering business, finance, management, and structure of the company.

b) The executive body of a company (individual or collective).

The day-to-day management of the company is performed by the Director (individual executive body) or Board of Directors (collective executive body), who are elected at the MoS. Under charter of the company, power of management or management team shall be defined clearly. The authorities entrusted to the Board of Directors shall be specified in the charter of the company. The company may also have a Supervisory Board, which is, however, not mandatory.

Any amendment on Charter such as change of shareholder, address or business activity is required to be registered at the State Registration authority per relevant laws.

The state registration certificate of the LLC with foreign investment has a term of 1 or 2 years. Prior to expiry date of the state registration certificate, the representative of the LLC with foreign investment shall apply for extension.

### ***Joint-Stock Companies (JSC)***

A JSC is a legal entity, which issues shares in order to raise capital for its activities. The types of JSC shall be open or closed. An "open JSC" is a company whose capital invested by the shareholders is divided into shares, which are registered at the securities trading organization and which may be freely traded by the public. A "closed JSC" is a company whose capital invested by the shareholders is divided into shares, which are registered at the securities depositing organization, and which are traded in the market in a closed extent outside of the securities trading organization.

The open JSC may have an unlimited number of shareholders. Shareholders are not liable for the obligations of the JSC, but bear the risks of losses within the value of their shares. A JSC has assets separated from the assets of its shareholders, and shall not be responsible for their obligations.

The JSC is managed by the Meeting of Shareholders (MoS), Board of Directors, and Executive Body. The MoS is the supreme management body of a JSC, which decides upon the most priority issues such as the company's management, administration, business policy, corporate structure, financial aspects, elections and some other issues.

The Board of Directors performs overall management of a JSC covering lower priority issues such as finances, policies development and implementation, etc., except for the issues referred by the Law and the Charter to the exclusive competence of the MoS.

The management of current activities shall be performed by the Executive Body. The Executive body may be collective or individual. The Executive Body shall have the right to take decisions on the issues relating to the company's activities, which are not considered by the laws/legislative of Mongolia and the company's charter as being the competence of other bodies and officials of the company.

### ***Representative Office***

Representative offices of foreign legal entities are not deemed to be legal entities, but represent the interests of foreign companies in Mongolia. Being a subdivision of a foreign 7



legal entity, a representative office is not entitled to conduct business activity, which would result in income generation in Mongolia. As a subdivision of a foreign legal entity, a branch may fulfill all or a part of the functions of its parent company.

A representative office operates according to its Charter and is managed by an individual authorized by the parent company under a power of attorney. Representative offices are formed in essentially the same manner as legal entities.

The term of state registration certificate of the Representative office is granted for 1 to 2 years. Prior to expiry date of the state registration certificate, the representative office shall apply for extension of state registration certificate term.

### ***State Registration***

1. To establish an LLC or JSC in Mongolia, the founder(s) shall take the following steps in accordance with the relevant laws and regulations:

a) Obtaining a company name: The founder(s) or an authorized representative acting under the Power of Attorney shall obtain the name of a LLC from the State Registration Authority.

The company name shall meet the following requirements:

- not duplicate other companies' name; and
- be in Cyrillic letters.

When an LLC obtains its name, the founders shall establish the company within 30 days. Otherwise, the verification sheet on the company name will expire in 30 days.

b) Setting up temporary account of the company: Along with obtaining a company name, the founder shall get forms of opening current temporary account(s) for a new company with any commercial bank of Mongolia. This temporary current account is required to deposit for the paid capital of 100, 000 USD or MNT equivalent of a foreign invested company to develop one of the required documents referred to in section (c) below. Once the company is incorporated, with assistance of the founder or appointed Executive Director or any other representative, who is first signatory, the deposited amount can be withdrawn.

c) Development of the documents required for establishment: Pursuant to the Law on State Registration of a Legal Entity, the founder(s) of the foreign invested limited liability company with foreign investments shall prepare the following documents. They are:

- Application form (UB-03 form);
- Verification sheet on the company name;
- Original decision for setting up a foreign invested company with official Mongolian translation;
  - founders' resolution;
  - if the founder is a foreign legal entity, it shall issue a separate resolution.
- Charter and shareholders agreement of the company: charter - 2 copies in Mongolian and 1 copy of translation, shareholders agreement - 1 copy with official translation;
  - if a company consists of one investor, only the charter is required;
  - if a company consists of two or more investors, both charter and shareholders

agreement are required and shall be drafted in Mongolian and any other foreign language chosen by investor, then printed in 2 copies each, where each copy of the shareholder agreement shall be notarized;

- If the founder is a legal entity, a copy of the company incorporation/ registration certificate, charter and a brief company profile is required;
- Bank remittance receipt/Start-up investment threshold, which is 100, 000 USD for each foreign investor;
- Copy of the office lease agreement to confirm the company's address;
- Copy of the Executive Director's passport;
- Receipt of payment of the state stamp duty for establishment of a foreign invested LLC, which is 750,000 MNT or approximately 275USD;
- Power of attorney (if applicable).

After 10 business days from submission of the above document, the state registration authority shall register a foreign invested limited liability company in Mongolia.

d) Obtaining the company seal

A foreign invested company shall provide an original copy of the company incorporation certificate to order the company seal. This is the final step of the company incorporation.

The registration of a new foreign invested company in Mongolia takes place with three agencies:

- State Registration Authority;
- District Tax Office; and
- District Social Insurance Office.

***Bank account opening:***

Accounts can be opened at any commercial bank in Mongolia. Required documents:

1. For foreign citizen

- Request to open an account;
- Passport and certificate of alien registration.

2. For company or entities

- Copy of certification of the state registration
- Formal request to open an account for Mongolian Central Securities Depository and Bank (applicable for joint stock company)
- 2 copies of decision of permission to possess the account of the Shareholders meeting (or shareholder) or Board of Directors
- Copy of account holder's ID or passport
- Certified Signature witnessed by notary
- Receipt of payment of the account opening fee

Currently, the registration with other government agencies takes place separately. The registration for a foreign invested company first goes with the State Registration Authority.

**Taxpayer registration:** When a company is registered, its representative shall register with the respective tax department within 14 days having submitted the following documents as provided for by the relevant law and regulations. They are:

- Application form;
- Original and a copy of the state registration certificate; and
- Original and a copy of the charter.

The JSC shall obtain a permit from Financial Regulatory commission, a government agency and is registered at Stock Exchange of Mongolia. The required documents for registration JSCs are similar to LLC with foreign investment. However, the registration officer of the State Registration authority may require additional documents for the registration based upon type of activity etc. In Mongolia, JSC with foreign company is not common practice.

**Documents required for registration of the representative office of a foreign company:** Pursuant to the Law on State Registration of a Legal Entity, a parent company or individual(s) shall prepare the following documents. They are:

- Application form;
- Decision of the parent company to establish the representative office and appoint the Director with certified Mongolian translation;
- Relevant permission where the parent company is required to obtain a permission from the authorized organization to establish representative office in foreign country, with certified Mongolian translation;
- Passport copy of the Director of the representative office;
- Profile and charter copy of the parent company with certified Mongolian translation;
- Copy of the state registration certificate copy of the parent company with certified Mongolian translation;
- Charter of the representative office charter (2 copies in Mongolian, 1 copy in any other chosen language);
- Receipt of payment of the state stamp duty of 1,100,000 tugrugs or about 447 USD; and
- Power of Attorney (if applicable).

The authorized representative of the representative office can order the seal on basis of the state registration certificate of the representative office and open bank accounts with a commercial bank.

## **FAQ's for Doing Business in Mongolia.**

### **What type of activities does require a license?**

Under Law on Business Licensing, the following activities are subject to a license, in particular:

In the area of securities:

- underwriting, brokerage, dealer, securities trading, securities
- payment settlement and depository entity, investment fund, investment
- management or investment consultancy related activities on the stock market;
- publicly trading of securities.

In the area of finance and economy:

- social and commercial insurance business;
- auditing;
- printing securities;
- issuing lottery;
- operating a duty-free shop;
- customs-appointed freight forwarding;
- customs brokering;
- operating a customs warehouse.

In the area of justice and home affairs:

- asset valuation;
- legal translation in court or investigation proceedings;
- advocacy [legal assistance];
- publishing laws of Mongolia (except Bulletin “State Information”);
- producing car number plates;
- bookmaking and gambling;
- manufacturing or trading firearms;
- production of seals and stamps.

In the area of environment:

- importing, selling or using ozone-splitting substances or
- products containing such substance;
- producing of toxic and dangerous chemical substances other than explosive ones;
- importing and exploitation of toxic and dangerous chemical substances;
- emitting polluting chemical substances into the atmosphere whose tolerance degree is not determined by existing standards;
- engaging in detailed environmental impact assessment.

In the area of education, culture and science:

- establishing a university, college, vocational schools;
- offering master or PhD degree academic programs;
- taking historical, cultural or other precious objects out of country;
- starting a new professional academic curriculum at a higher education institution.

In the fuel and energy field:

- Setting and operating of a source that will use atomic energy;
- Construing of and building energy sources and set up lines
- Producing of and transmitting of energy carrying out
- operations on dispatcher coordination, distribution, providing and selling;
- Carrying out fluid flammable gas providing services.

In the area of social protection and employment:

- exporting or importing work force, recruitment business;

In the area of industry and trade:

- producing medals;
- manufacturing jewelries of precious metals and stones;
- trading strong toxic substances other than drugs;
- exporting and selling of toxic and dangerous chemical
- substances, producing of explosive substances and engage detonation works;
- exploration of minerals;
- mining of minerals;
- transactions with regard to oil;
- importing alcoholic beverages.
- to carry out oil production and wholesale.

In the area of food and agriculture:

- planting tobacco plants, manufacturing tobacco;
- producing alcoholic beverages, except for vodka distilled from dairy products;
- producing seed of plant crops;
- manufacturing or importing livestock medicine or veterinary facilities;
- raising or producing livestock disease microbes;
- selling or importing substances used to protect plants;
- adapting new and imported veterinary medicine or new breed of animal selects into production or services, importing or exporting new breed of animals;
- private entrepreneurship in veterinary and selection service,

- manufacturing of a new medicine for veterinary and livestock selection.

In the area of health:

- preparation of medicine using herbs or other plants
- containing drug substance;
- producing or selling medicine, or medical facilities;
- all types of medical services;
- producing, trading or importing narcotic drugs or drug substances that may affect human brains;
- operating a nation-wide medical institution with foreign investment;
- producing, selecting, cultivating, reserving, storing, transporting, selling disease causing microbes or harms thereof;

In the area of copyright and patent right:

- working as entrusted representative of the creatures related to the copyright;
- working as entrusted representative of the creatures related to the patent right;

In the field of building construction:

- printing of location schemes and statistical data of secret importance;
- doing cadastral mapping;
- carrying out services of hitching of elevators and cranes;
- carrying out services of hitching of stoves, thermo-containers and engineering lines;
- carrying out services and production of common economy;
- drafting projects of engineering constructions and constructing of buildings;
- carrying out services and production of geodesic and cartographic drafts;
- holding land cadaster researches;

In the field of road, transport and tourism:

- construing of railway lines;
- holding civil aviation;
- carrying out railway transport services;
- construing and repairing of auto roads and road launches;
- supervising technical control of auto transport vehicles;
- carrying out services for public and post transportation the country and abroad;
- construing and improving of planes for civil aviation;
- carrying out / running hotels of high categories;
- carrying out water transport services;

- construing and repairing of water line signals and marks;
- in the field of mass media, communication and technology:
- using of radio frequency and radio frequency bandwidth;
- establishing, utilizing and carrying out communication service network;

In the field of standardization and measurement:

- production, setting, repairing and selling measurement devices.

The term of the license is 3 years unless otherwise stated in the law. The license holder shall apply extension of the license prior to the expiry date.

### **What restrictions apply to foreign investor in Mongolia?**

If a foreign state owned legal entity is intending to hold 33 percent and more percentage of the total shares issued by the legal entities of Mongolia which deal with business in the following strategic sectors shall get permission from the National Development Agency prior to becoming the shareholder or investor:

- Mining;
- Bank and finance;
- The media and communications.

The following documents are required to apply for getting the permission by a foreign state investor prior to investing to the Mongolian legal entity. They are:

- Official request for permit of the applicant;
- A notarized copy of the certificate of incorporation of the applicant issued by a competent authority of the applicant's country;
- References of the registration authority concerning the applicant, the persons with common interest with it and the applicant's executive management of the last two-years;
- Introduction of the main activity and shareholders of the applicant;
- The investment plan and business project to be implemented by the applicant in Mongolia;
- The preliminary transaction between foreign state owned entity and Mongolian entity, its type and conditions, the transaction parties, shares to be transferred, percentage of Shareholding, agreement price, the charter of the legal entity, if it is agreed to make changes to management it shall be notified as well;
- Financial reports and clarifications to financial statements of the foreign state owned legal entity and the Mongolian business entity /To be audited/;
- Contact details.

### **What are the incentives for Investors in Mongolia?**

#### ***Taxation incentives***

**Stabilization of taxations:** A stabilization certificate shall be issued to the investor

whose project to be carried out in Mongolia meets the following criteria:

1. The total investment amount specified in the business plan and feasibility analysis reached the amount specified in the articles 16.2 and 16.3 of Investment Law;
2. To get done the environmental impact assessment if required by the law;
3. To create stable workplaces; and
4. To introduce high tech and technologies.

**What type of companies may apply:** The stabilization certificate shall be issued to the following sectors for the durations stated below:

- to mining, heavy industry and infrastructure;
- the other sectors.

*Table 1*

Investment amount (in billion Mongolian National tugrugs)	Validity of Stabilization certificate (in years)					Investment Completion period (in years)
	Ulaanbaatar	Central region (Gobisumber, Dornogobi, Dundgobi, Darkhan-Uul, Umnugobi, Selengeand Tuv Provinces)	Khangairegion (Arkhangai, Bayankhongor, Bulgan, Orkhon, Uvurkhangai and Khuvsgul Provinces)	Eastern region (Dornod, Sukhbaatar and Khentii Provinces)	Western region (BayanUlgii, Gobi-Altai, Zavkhan, Uvs and Khovd Provinces)	
10-30	5	6	6	7	8	2
30-100	8	9	9	10	11	3
100-200	10	11	11	12	13	4
200 and above	15	16	16	17	18	5

*Table 2*

Investment amount (in billion Mongolian National tugrugs)	Validity of Stabilization certificate (in years)					Investment Completion period (in years)
	Ulaanbaatar	Central region (Gobisumber, Dornogobi, Dundgobi, Darkhan-Uul, Umnugobi, Selenge and Tuv Provinces)	Khangairegion (Arkhangai, Bayankhongor, Bulgan, Orkhon, Uvurkhangai and Khuvsgul Provinces)	Eastern region (Dornod, Sukhbaatar and Khentii Provinces)	Western region (BayanUlgii, Gobi-Altai, Zavkhan, Uvs and Khovd Provinces)	



				and Khentii Provinces		
10-30	5-15	4-12	3-10	2-8	5	2
30-100	15-50	12-40	10-30	8-25	8	3
100-200	50-100	40-80	30-60	25-50	10	4
200 and above	More than 100	More than 80	More than 60	More than 50	15	5

The investment amount is important criteria for having stabilization certificates. Based upon the Table 1 and 2, depending upon the investment amount and location where investment has made, the stabilization period will apply to corporate income taxation, customs duties, value added taxation and mineral resource royalty.

The stabilization certificates shall become effective from the date of their issuance and the tax rate of corporate income tax, customs duty, value-added tax and mineral resource royalty shall be stabilized during the entire period of validity of the stabilization certificates.

The validity duration of stabilization certificate shown in Table 1 and 2 shall be issued 1.5 times longer for the investors who are to implement the following projects:

1. to produce import substitute and export oriented products, which are significant to long term sustainable development of the socio-economic sector of Mongolia, to invest more than MNT 500 billion according to the Central Bank official rate as of the date of approval of the feasibility analysis and to require more than three years of construction works regardless of any location and sector;
2. The investor - legal entity meeting the criteria listed above deals with value added processing industry and export its basic products.

An investor – legal entity meeting the criteria specified above may make its application for a stabilization certificate to the state administrative body in charge of investment affairs.

**Taxation support:** Tax support shall be rendered to investors in the following types:

1. to exempt from taxes;
2. to render tax incentive;
3. to calculate under the accelerated method the depreciation expense to be deducted from the taxable revenue;
4. to calculate the loss to be deducted from the taxable revenue by transferring to the future revenue; and
5. to deduct the employee training expense from the taxable revenue.

Imported machineries and technical equipment may be exempted from the customs duty and VAT rate may be zero-rated during the construction works in the following cases:

1. to build construction materials, petroleum and agricultural processing and export product plants;

2. to build plants to use Nano, bio and innovation technologies; and
3. to build power plant and railway.

Investors shall have a right to transfer their following assets and revenues out of Mongolia without hindrance on the condition of having properly fulfilled their tax payment obligations in the territory of Mongolia:

1. profits of business activities and dividends;
2. license fees for use of their intellectual property rights and service charges;
3. payment of principle amounts and interests of overseas loans;
4. an investor's share of leftover properties after liquidation of a business entity; and
5. Other properties gained or owned legally.

Losses can be carried forward for up to two years and use of such losses is restricted to 50% of the taxable profit in any year for economic sectors other than mining and infrastructure.

Tax losses in the infrastructure and mining sectors are able to be carried forward and deducted from taxable income for four to eight income years following the year in which the loss was incurred.

### ***Non-taxation incentives***

The non-tax promotions may be rendered to investors in the following forms:

1. to lease and use the land for up to 60 years on the basis of a contract and to extend the contract duration once for up to 40 years under the contract's primary condition;
2. to render support to the investors who are to make investments to the activities of free zones, production and technological park and to serve with alleviated regime of registration and checkpoint;
3. to render support to implement creation projects in the infrastructure, sciences and educational sectors, to increase the number of foreign workforces and specialists, to exempt them from employment fees and to grant the required permits at eased regime;
4. to render support to carry out innovation projects and to guarantee the financing for production of export oriented innovation products;
5. to provide the foreign investors, who have made investment to Mongolia, and their family members with multiple visas and residential permissions under the applicable laws of Mongolia;
6. other non-taxation supports stated under the law.

### **What are main taxations?**

#### ***Corporate income taxation (CIT)***

In accordance with Law on Corporate Income tax, a taxpayer classified permanent resident- taxpayer or non-resident taxpayer.

A resident taxpayer that resides in Mongolia on a permanent basis shall include the following economic entity:

1. More than 50% of the total number of shareholders meetings held in Mongolia for the four consecutive years preceding that tax year;
2. More than 50% of the shareholders, directly or indirectly exercising the rights and obligations of the shareholders through their shareholders or through their representatives, reside in Mongolia;
3. Keeps accounting and financial documents in Mongolia;
4. At least 25 percent of the members of the Board of Directors, or through its representatives, directly and indirectly exercise the rights and obligations of the Board member;
5. At least 60% of total sales revenue is sourced in Mongolia.

Income earned for the tax year or from 01 January to 31 December in a territory of Mongolia and a foreign country by a resident taxpayer shall be subject to tax.

A non-resident taxpayer that does not reside in Mongolia shall include the following economic entities:

1. A foreign economic entity that conducts its business activities in Mongolia under its representative office;
2. A foreign economic entity that earns income in Mongolia in forms other than representative office of foreign company.

A representative office shall include the following units that partially or wholly conduct business activities of a foreign economic entity:

- The place of business management;
- Branch and departments;
- The place of conducting seminars, exhibitions and trade;
- Warehouse, trade and service department;
- Mine, oil, gas, or mineral extraction area;
- Industry;
- Other places and units stated in Article 6.1 of Law on Corporate Income Tax (Representative office).

Non-resident economic entities carrying out business activities in Mongolia are taxable on the income earned in the territory of Mongolia and from Mongolian sources.

Taxable income: The following income from activities of a taxpayer shall be subject to tax:

- Income from operations;
- Income from assets;

Income from sale and transfer of assets and other income.

**Tax rate:** Mongolian Corporate Income Taxation is levied at the following rates, using a progressive-rate scale that ranges from 10% to 25%, as follows:

- 10% applies to the first 6 billion MNT of annual taxable income; and
- 600 million MNT plus 25% applies to any excess of MNT 6 billion of annual taxable income.

However, the income described in the chart below is excluded when determining the annual taxable income and is taxed at different tax rates on a gross basis:

*Table 3*

Source of income	Applicable tax rate (%)
Dividends	10%
Royalties	10%
Interest	10%
Law on Environmental Impact Assessment of Mongolia; The project implementing entity which is a holder of a mining license shall deposit, annually until the end of the operation, as a guarantee, a sum in the amount of no less than 50 percent of the total annual budget required for implementation of environmental protection measures in the designated account opened by the state central administrative organization in charge of environment for centralizing environmental protection and restoration funds.	10%
Law on Petroleum of Mongolia; Upon termination of a production sharing agreement by a Government decision, the costs incurred in exploration and exploitation activities will not be reimbursed, and the money deposited in the escrow account will be used to fully rehabilitate the environment and, if necessary, to dismantle exploration and exploitation facilities, and the remaining money to be returned to the contractor.	10%
Insurance reimbursement	10%
Fees and charges evidenced by a payment receipt paid to the State organization in connection with obtaining the right when it is issued by a State authority;	10%
Sale income and transfer of real estate	2%
Quizzes, gambling, and lotteries(net)	40%

Profit transferred from the representative office to its own head entity in the given tax year;	20%
Interest income on loans and debt drawn by commercial and domestic sources of the Commercial Bank of Mongolia	5%
Earned income up to MNT 300million in the year for operating activities except exploration, mining, transportation, sale of minerals and radioactive minerals, production of alcoholic beverages, tobacco plants, and to import tobacco, petroleum products, import of all types of fuel, wholesale and retail trade, exploration, extraction and sale of petroleum.	1%

1. Some of general deductible other expenses stipulated in the laws included;

- Normal loss of goods and materials;
- Health and social insurance contributions;
- Taxes, payments and fees reported for payment to the budget other than those stated in Article 16.1.8 of the Law on Corporate income taxation;
- Expenditures on providing vocational training and production center training;
- Expenses for internships of teachers stated in Articles 11.5 and 18 of the Law on Vocational Education and Training;
- Financial support provided to vocational education and training institutions for the purpose of training specialists by his own order;
- Donations of up to MNT 10 million to support non-governmental organizations created by disabled Mongolian citizens;
- Donations of up to MNT 10 million to the Sports Support Fund to support sports activities and club activities;
- Donations and funds provided to the vocational education support fund;
- Donations for the purpose of reducing air pollution;
- Funds concentrated in the bank and non-banking financial institution's funds against loss against loan repayment;
- Funds concentrated in the deposit and loan cooperative loan risk fund and in the potential risk protection fund of other cooperatives;
- A special fund to be included in the annual environmental management plan of a license holder, project implementer or contractor in accordance with the Law on Environmental Impact Assessment, Law on Minerals, Law on Petroleum and Nuclear Energy and opened by the relevant state body and money transferred to the treasury and to the account stated in Article 11.2.9 of the Law on Petroleum;
- Expenses accrued to the Veterans' Fund within the limits stated in 14.7 of the Law on Elderly person's social welfare.

**Corporate income taxation exemption:**

1. The Payment, interest, fine of bond of the Government and Development Bank of Mongolia;
2. Revenues from the state budget and fund investment income to future heritage;
3. Income specified in Articles 18.6.2 and 20.1 of Corporate Income Tax Law from the sales of petroleum products by a taxpayer operating in the territory of the country under a production sharing agreement in the petroleum sector; /Article 18.6.2 on Corporate Income Tax- *dividend income*, Article 20.1on Corporate Income Tax - *10% applies to the first 6 billion MNT of annual taxable income; and 600 million MNT plus 25% applies to any excess of MNT 6 billion of annual taxable income!*
4. Income from basic activities;
5. Deposit insurance fund fee income;
6. Dividends distributed by the state-owned enterprises to the Government;
7. Income from activities of health care organizations and educational organizations;
8. Income from business activities related to accomplishing the purpose stated in the charter of a non-profit legal entity;
9. Cooperative revenue from the intermediary price difference of selling member's products.

Corporate taxation credit - *Table 4*

	<b>Entity which shall enjoy tax credits</b>	<b>Condition</b>	<b>Rate</b>
1	The entity with 25 or more employees	Disabled people engaged two thirds or more percent of total employees	The specific tax on the income of that business entity;
2	<i>Entity</i>	Payable tax	Taxes on income from rational use of natural resources, reduction of environmental pollution and waste, and sales of environmentally friendly machinery and equipment;
3	Start-up company stated in the Law on Innovation of Mongolia for three years from the date of state registration	Payable tax	Taxes on sales of newly produced innovative products, works, and services domestically;

4	Entity	For all employees with disabilities for 50% or more of the total number of employees	Tax on the income of the enterprise, calculated as a percentage of the total number of employees with a disability;
5	Entity	Invested USD500 thousand or more in infrastructure, such as free energy, heat sources, networks, clean water, sewerage, roads, railways, airports, and major telecommunications networks in free zones	Tax on income equal to 50% of investment in free zone income;
6	Entity	Invested USD300 thousand or more in the establishment of a warehouse, loading and unloading facility, hotel and tourist complex, import substitution, and export product factory in the free zone	Tax on income equal to 50% of investment in free zone income;
7	Entity	Improvement of natural water quality and rehabilitation of rivers, streams to increase the water resources of the specific territories, and to ensure reliable water supply.	Tax on income of the citizen, business entity and organization financed by the measure;
8	Entity	The following products are manufactured or cultivated: <ul style="list-style-type: none"> <li>• Cereals, potatoes and vegetables;</li> <li>• Milk</li> <li>• Fruit and berries</li> <li>• Nutrition and fodder plants</li> <li>• Meat and meat products produced by intensive chicken farm.</li> </ul>	50% tax on the income of the business entity that manufactured and cultivated.

**Timeframe for tax reporting:** If the taxable income of a tax of the previous tax year is 6 billion MNT or more, A taxpayer shall submit its quarterly tax statement by the 20th of the first month of the following quarter and annual tax statement by February 10th of the following year to the Tax authority.

A taxpayer who did not register with the tax authority in accordance with the taxable income of up to MNT 6 billion in the tax year prior to the year, A taxpayer shall submit tax reports for the first half of the fiscal year by July 20, and to submit the final year tax reports by February 10 of the following year to the Tax authority

#### *Personal income taxation*

A taxpayer is an individual who resides in Mongolia and earns income subject to tax for the tax year or who is otherwise liable to pay tax. A taxpayer is classified as either a permanent

resident taxpayer of or a non-resident taxpayer of Mongolia.

A permanent resident taxpayer of Mongolia is:

- An individual with a residence in Mongolia;
- An individual who resides in Mongolia for 183 or more days in a tax year; and
- A civil servant of Mongolia appointed to work overseas.

A non-resident taxpayer of Mongolia is an individual who has no residence in Mongolia and has not resided in Mongolia for 183 or more days in a tax year.

A permanent resident taxpayer of Mongolia is subject to tax on worldwide income.

A non-resident taxpayer of Mongolia is subject to tax on the income earned in the territory of Mongolia during the tax year.

*Table 5*

Income	Applicable tax rate (%) - Residents
Indirect income and salaries, wages, bonuses, and similar employment income	
Sales and transfer of property	
Art, sport competition, festival, and other similar income	
Income from quizzes, gambling, and lotteries	
<ul style="list-style-type: none"> <li>• Income from the sale and transfer of land possession rights and other intangible assets;</li> <li>• Income from activity; Income from property;</li> <li>• Income from sale of property;</li> </ul> <p>From the proceeds from the sale of shares, securities and other financial instruments, the amount minus the purchase price of such shares, securities and other financial instruments, and any other costs substantiated by the receipt paid.</p>	
Income of non-resident taxpayers sources from Mongolia	20



In the case when the taxable income of a taxable person of the previous year has not exceeded 50.0 million MNT, the personal income will be deducted from his / her own application and the total income from his / her activities if the application is registered by the relevant Tax authority.	
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**Timeframe for tax reporting:** A taxpayer shall submit its quarterly tax statement by the 20th of the first month of the following quarter and annual tax statement by February 10th of the following year to the Tax authority.

### **Value Added Taxation**

Tax withholder and payer means an individual or a legal entity whose sales income and operating income has reached 50 million MNT and above and who is charged with the task of deducting the tax and remit it to the budget.

Items subject to VAT taxation:

1. All types of goods, works and services sold/provided/rendered in the territory of Mongolia;
2. All types of goods, works and services imported to Mongolia from abroad; and
3. All types of goods, works and services exported from Mongolia.

*Table 6: VAT rate*

	<b>Items taxed</b>	<b>Rate</b>
1	All types of goods, works and services sold in the territory of Mongolia; All types of goods, works and services imported to Mongolia from abroad,	10
2	All types of goods and services exported from Mongolia	0
3	For value of auto fuel or diesel fuel imported, or produced and sold	0-10
4	Sell right	0
5	repayment of debt through transfer of goods, performance of work and provision of services;	0
6	The resident person Goods sold. Work, performed, services rendered to a non-resident's	0
7	To provide electricity, heat, gas, water, sewerage, postal, telecommunications and other services;	0
8	Rent, lease, and use of goods;	0
9	Rent, lease, rent or use of accommodation in hotels or similar places;	0

10	To rent movable and immovable property, to possess and use in other forms;	0
11	Transfer, rent, and sell inventions, industrial designs, utility models, copyrighted works, software, trademarks, know-how, and asset information;	0
12	to issue lotteries, provide services for paying puzzles and gambling;	0
3	Provide services of mediation (mediation, exclusive right of mediation, trade representations, commissions, commissions and the like) specified in Chapter Thirty-nine of the Civil Code;	0
14	To receive interest, fines and penalties due to others' wrongful actions;	0
15	Property valuation services;	0
16	Financing of the state budget, subsidies and incentives;	0
17	Financing through the acquisition of claim rights (transactions similar to factoring and forfeiting);	0
18	Counseling and legal consulting services;	0
19	Any services other than those specified in Article 13 of this Law, such as hairdressing, cosmetics, maintenance, washing and chemical cleaning.	0

Following value added taxes paid by an individual or legal entity in conformity Law on Value added tax after being registered as a taxpayer shall be deducted from value-added tax to be paid to the state budget:

1. taxes paid in connection with the purchased goods, performed works and rendered services for production and services purposes;
2. taxes paid for goods, works and services directly imported by himself for the purpose of selling as well as manufacturing and servicing;
3. By deducting value-added tax paid from the sum amount if goods, works and services were purchased with value-added tax when being registered as value-added taxpayer.

The rate of value-added tax imposed on the following exported goods, works and services shall be equal to zero /"0"/:

1. Goods exported from the territory of Mongolia for the purpose of sale and declared with the customs organization;
2. Passenger and cargo transportation services rendered from the territory of Mongolia to foreign countries, from foreign countries to the territory of Mongolia, as well as from foreign countries to third countries transiting through the territory of Mongolia under International treaties of Mongolia;
3. Any services rendered /"including non-taxable services"/ outside the territory of

Mongolia;

4. Any rendering of services /including "non-taxable services"/ to a foreign citizen or a legal person, who is a non-resident of Mongolia;
5. Any services of air navigation management, technical and fuel services, and cleaning which shall be provided for both foreign and domestic airplanes conducting international flight and sale, food and drink services provided for air crew members or passengers during flight;
6. State orders, medals and coins manufactured domestically on the order of Government or Bank of Mongolia; and Final mineral products.

Following goods are exempted from value-added tax:

1. Passengers' personal use goods with permitted amount to let without tax and approved by customs authority;
2. Imported goods for the work needs of diplomatic missions and consular offices, UN and its specialized branches permanently residing in the territory of Mongolia;
3. Goods received through humanitarian and grant aid from foreign governments, NGOs and international or humanitarian organizations;
4. Special purpose appliances, equipment and machinery designed for citizens with learning difficulties;
5. Any weapons and special equipment imported for the needs of armed forces, police, and organizations of national security or court or der enforcement;
6. Civil passenger airplane, its spare parts;
7. Revenues from the sale of establishments used for housing and/or their parts;
8. Imported blood, blood products, and organs to be used for treatment purposes;
9. Gas fuel, its container, equipment, special purpose machineries, mechanisms, and mechanics;
10. Mongolian monetary notes made abroad by order;
11. Sold gold etc.

Following services are exempted from the value-added tax:

1. Currency exchange;
2. Banking services, such as the receipt or transfer of, or any dealing with, money, any security for money or any note or order for the payment of money and the operation of any savings account;
3. Services of insurance, reinsurance and registration of property;
4. The issuance, transfer or receipt of any securities and shares, and underwriting of such securities;
5. The making the advance or the granting of loan;
6. The provision, or transfer of an interest on social and health insurance fund;

7. Any services in respect of fees for bank or non-banking financial institution for interest, dividend, credit guarantees or insurance contract;
8. The renting service of accommodation for housing and its part;
9. Educational and professional service mentioned in the regulation of the citizen or legal entity that is engaged in and has a special permission to conduct educational and professional training;
10. Medical services;
11. Services of religious organizations etc.

**Timeframe for tax reporting:** A taxpayer shall pay to the budget the value-added tax imposed on goods sold, jobs and services furnished in that month by the 10th of the following month and prepare the report observing the approved standard format and submit to the Tax administration.

## ***Innovation in Mongolia***

### **1. Prioritized industries of the innovation**

The innovation strategy has been approved by the Parliament in 2015. Under the innovation strategy, industries at the forefront of innovation are identified in order to make sound allocations of resources to increase the capacity of national industry to export high quality products and its competitiveness in the international market.

The strategy shall devote its main resources and efforts towards the following industries:

- Mining and raw material infrastructure development;
- Agricultural infrastructure development;
- Development of eco-friendly products from raw materials; and
- Chemical production of materials.

Those companies operating in industries deemed to be at the forefront of innovation shall receive government subsidies in acquiring technology, marketing and research.

Industries at the forefront of innovation shall be determined by their technical capacity among other factors and those decisions shall be grounded on solid research. The government shall devote its efforts to the development and support of those industries.

### **2. Procurement of Funding for innovation projects:**

- 1% of gross domestic product shall be appropriated to the facilitation of innovation;
- Funding for innovation within given industries shall be contained within the budgets of the relevant ministries;
- Profits from contracts and innovation activities shall be distributed to national scientific entities;

- Enhance opportunities for funding for innovation infrastructure and long-term investment through public-private partnership;
- Provide innovation loans with certain assets equating to a certain percentage of the loan used as collateral;
- Support innovation efforts grounded in solid market analysis by purchasing the product and implementing offset mechanisms;
- Support industries with significant intellectual capacities and those who have invested in advanced technological resources by loans and lax tax policies; and
- Innovation system in Mongolia.

According to the Law on Innovation, the government shall support innovation activity in the following ways:

1. financing a specific percentage of the loan interest for implementation of the innovation project;
2. financing the costs of patenting innovation products at local and foreign institutions;
3. to calculate the immediate depreciation of the property of a startup company to carry out innovation activities;
4. to regulate provision of services to companies conducting innovation activities through laboratory equipment of state-owned research institutes on preferential terms approved by Government;
5. With 60% or more of the total project cost financed by own funds, the remainder will be financed by the innovative financing organization and local budget;
6. to support participation in international exhibitions and exhibitions of high-tech innovative products;
7. financing of all or part of the costs of international quality assurance of export-oriented innovation products;
8. supporting domestic procurement of innovation products through Government procurement;
9. organize and finance exhibitions, conferences, seminars and events with public awareness and culture on innovation;
10. to provide monetary incentives to patent holders who have engaged in innovation and have established a product or service of a high social and economic value;
11. to award national innovation awards for innovation products and services that have made significant contributions to social and economic development;

#### **Tax exemption on innovation**

Under the Law of Value added tax and Law on Customs duties and Customs tariff exemption, following type of goods or income are exempted from value added tax and custom duties:

- Import of equipment, parts, components and materials supplied or to be supplied for the expansion of innovation local and foreign markets, import of innovative products and services (List of innovative equipment exempted from customs duties and value added tax dated 2018); and
- Income earned by innovation and advanced technology-based industry or entities in free zone shall exempted from the income tax for 5 years.

## **Custom duties**

The term “Customs duty” means an amount of tax levied on, collected from or paid for goods entering or leaving the Customs territory, based on the Customs tariff (MFN Tariff Rate 2017). The tariff rate for non-WTO member countries shall be twice more than the MFN tariff rate. The Customs duties shall be of the following types:

- Ad valorem;
- Specific;
- Combination of the two above;
- Any of the first two above which entails higher amount of duty.

The most of imported goods are subject to 5% ad valorem Customs duty while some others are subject to seasonal duties. Certain goods for export are subject to specific Customs duties. Any person (physical or legal) engaged in foreign trade is liable to paying Customs duties as well as some other taxes and fees upon importation or exportation of goods.

## **What is social insurance payment?**

Social insurance shall have two forms including mandatory and voluntary social insurance under Law on Social Insurance of Mongolia.

The following employees shall maintain compulsory social insurance:

- 1) Citizens of Mongolia, foreign citizens, and stateless persons employed under labor agreement with business entity of all types of ownership, non-governmental organization, religious and other organizations and individuals or contract made with individuals pursuant to 343 and 359 of the Civil code inclusive hire agreement, work delivery agreement, service or consulting service agreement or similar agreements.
- 2) Citizens of Mongolia, foreign citizens, and stateless persons employed by foreign business entities operating in the territory of Mongolia, and projects and programs implemented with foreign loan and aid, diplomatic representative offices of foreign countries, and international organizations unless otherwise stated in international agreements to which Mongolia is a party;
- 3) Public servants unless otherwise stated in laws; and
- 4) Citizens of Mongolia employed abroad under employment contract. There shall be the following types of social insurance:
  - pension insurance;
  - benefit insurance;
  - health insurance;
  - industrial accident and occupational disease insurance; and
  - Unemployment insurance.

Pensioner employed under employment contract made with employer or employed under hire agreement, work delivery agreement, service or consulting service agreement or similar agreements shall be insured for types of insurance on pension, benefit and industrial accident and occupational disease insurance.

Table 7

Type of social insurance	Deduction percentage /%/ of Employer's salary fund or equivalent earnings	Deduction percentage /%/ of Insured's salary fund or equivalent earnings
Pension insurance	9.5	9.5
Benefit insurance	1.0	0.8
Health insurance	2.0	2.0
Unemployment insurance	0.2	0.2
Total deductions	12.7	12.5

Amount of social insurance premium on industrial accident and occupational disease shall be established at a different rate up to 2.8% of employer's payroll fund and similar income depending on operational security and hygiene requirements.

The monthly premiums to be paid by the insured and employers shall be paid before the 5th of the following month.

### Which documents are required to hire foreign employees in Mongolia?

#### Work permit

The Government approves its resolution each year on foreign employees' ratio. Depending upon number of total employees and sector in where the company operates, the ratio of expatriate varies. For 2019, the ratio of expatriate employees follows for the selected sectors:

Table 8

Sector	Total employees number				
	21 -30	31-50	51-100	101-200	More than 201
<b>Mining</b>	10	20	30	30	30
<b>Construction</b>	10	30	35	45	60
<b>Railway and auto road construction</b>	10	30	35	45	60

If the Company has 30 local employees, 10% of total employees can be an expatriate for above 3 sectors. The hired expatriate who is going to work at mine site, construction field, the expatriate employee shall obtain HG or employment visa. Otherwise other type of visa such

as B or business visa is not allowed to work in Mongolia.

Prior to arrival, the hiring Company shall obtain employment invitation for an expatriate employee. Based upon employment invitation, the hiring company shall obtain entry visa permission from Immigration authority.

For getting employment invitation, the following documents are required:

1. Application form;
2. Receipt of payment service fee (25 000 MNT or app 10USD/ 1 person);
3. Copy of State registration certificate;
4. Copy of license with attachment;
5. Forms SI(Social Insurance)-7 and SI-8 on the last month of the social insurance that confirmed the number of employees who paid social insurance in the entity;
6. Copies of Government enactment if Government if entity has passed quota by Government enactment;
7. Statement of Ministries and Agencies in the Employment of Economic Entities;
8. Proposal of Labor & Social Welfare Services and / or Division of province or district of the respective organization;
9. An employment agreement with a foreign legal entity, with its Mongolian translation;
10. Copy of a foreign citizen's passport;
11. Professional diploma and diploma certificates demonstrating profession in the field of employment;
12. Other materials required.

After arrival of hired expatriate in Mongolia, the hired employee shall obtain employment permission in order to get multi HG or employment visa.

The workplace payment is 640,000MNT or 243USD per expatriate employee per month. This payment shall be paid prior to getting work permission for 6 months up to 1 year.

### **Visa**

Mongolia has 11 types of visas. The type of a visa shall be indicated on the visa slip as Latin letters "D", "A", "T", "O", "B", "S", "J", "HG", "SH", "TS", "H" in conformity with the purpose of a foreign citizen or a stateless person.

Type "T" visa shall apply to:

- A foreign investor;
- A senior manager in a joint venture, branch, or representative office of a foreign corporation.

Type "B" visa shall apply to:

A foreign citizen or stateless person visiting Mongolia with business purpose;

Type "HG" visa shall apply to:

- A foreign citizen or stateless person with the purpose of working in Mongolia under



an employment agreement irrespective of his/her passport type.

Visas shall be issued by the following authorities:

1. Ministry of Foreign Affairs;
2. Mongolia Immigration Agency;
3. Mongolian Embassies and Consulates in foreign countries.

For business visas for 30 days or less, is required to submit:

1. Passport with a validity date of at least six months beyond the end of the applicant's intended period of stay in Mongolia;
2. Completed visa Application Form for non-tourists with one passport-size photo;
3. Invitation from the inviting Mongolian organization which should be approved by the Ministry of Foreign Affairs of Mongolia.

For foreigners planning to stay over 30 days and up to 90 days wishing to receive visa on arrival, permission should be obtained from the Mongolian Immigration Agency.

Foreign citizens who come to Mongolia for more than 30 days should register at the Mongolian Immigration Agency within 7 days after their arrival. The foreigners came to Mongolia for official or private purposes for less than 30 days do not need to register.

Required Documents:

1. Registration request from inviting organization or individual. In cases where there is no inviting organization or individual, the foreign national should submit his/her own request for registration;
2. Passport or equivalent document & additional copies;
3. 1 copy of passport-size photo (3x4 cm);
4. Completed registration form

### ***Residence permission***

Visitors planning to stay for more than 90 days should obtain residence permission. Foreign citizens who hold valid foreign passports or equivalent legal documents may visit or reside in Mongolia upon obtaining the required visa from a competent authority of Mongolia.

Request to obtain residence permission must be filed within 21 days after entry to Mongolia.

### **Trademark protection in Mongolia**

To enjoy legal protection be in Mongolia, the trademark needs to be registered the General authority of Intellectual property in the Register of Trademarks. Alternatively, it may be protected in Russia provided that it is registered in accordance with the Madrid Agreement Concerning the International Registration of Marks dated 1891 and the Protocol Relating to the Madrid Agreement.

"Trademark" means distinctive expression used by an individual or a legal entity, engaged in manufacturing of goods or the provision of services, in order to distinguish the goods or services from those of others. It may be expressed in words, figures, letters, numerals, three-32

dimensional configurations, colors, sounds, scents and/or any combinations thereof.

Trademark registration process takes 9 months and can be extended for additional 6 months.

When the trademark is registered, its certificate shall be issued for 10 years term and can be extended for additional 10 years.

The exclusive rights of the trademark holder shall be enforced within registered list of goods and services.

**Exclusive rights:** The trademark holder shall have the following exclusive rights:

- a. To own the registered trademark;
- b. To allow use of the registered trademark;
- c. To transfer the registered trademark ;
- d. To demand cessation of use of registered trademark without permission;
- e. To demand cessation of use of similar trademark by a third party which misleads the customers; and
- f. To demand payment for incurred loss due to action stated in (d) and (e).

The only allowed use of the registered trademark under the law is a licensing agreement. In accordance with the licensing agreement, trademark holder may allow use of the trademark by a third party. As outlined by the law, the licensing agreement shall be registered with the intellectual property authority and only then the agreement shall be considered as valid.

If an individual or legal entity uses the trademark without permission, the trademark holder may protect its exclusive rights and file the claim to the authorities:

- a) Intellectual property authority;
- b) Customs authority; and
- c) Court.

**Enforcement action by Intellectual property authority:** In case of trademark infringement, the trademark holder may file a claim to the supervisory department of Intellectual property authority. The claim shall be supported by the evidence of trademark infringement. The assigned state inspector will work on trademark infringement.

The inspection shall start within 3 days from submission date of the claim. The inspection shall last for 14 days and can be extended for 30 days.

The state inspector can impose following sanctions to the trademark infringement case:

- Oblige to cease the use of trademark and undertake corrective action or cease action within defined term;
- Oblige to cease sell of product or destroy product; and
- Impose penalty specified in Law of Offence (please see Section: Liabilities).

In case state inspector's action is not satisfactory to the claimant, he/she can file a claim to the senior inspector and court.

**Enforcement action by the Customs authority:** For protecting or fighting with fake products to be supplied and sold in the market, trademark holder or its authorized entity or individual under the licensing agreement can register the trademark at customs authority on basis of the

registered trademark certificate at its registry. The customs authority shall not clear fake products with registered trademark through the customs if there is any complaint.

The trademark holder can file a claim on ceasing to clear the products by the customs if there is an infringement of its trademark rights and cleared products through the customs illegally, or there are solid grounds that illegal or fake products are under the customs inspection to the Customs authority. The claim shall contain information about trademark holder, intellectual property and detailed description of the products which cleared the customs illegally and defining term for measures which will be undertaken by the customs authority.

The state inspector of the Customs authority is authorized to impose same sanctions to a trademark infringer.

#### **Enforcement action by the courts:**

a. If state inspector and its senior inspector have not performed satisfactory to the trademark holder's claims for protecting its exclusive rights, the trademark holder may file a claim to the court.

b. If trademark infringement caused a loss in form of monetary or non-monetary such as damage to the business reputation etc. The trademark holder is entitled to file claim for compensation of caused loss to the court. However, the caused loss shall be proved by evidence in order to claim caused loss.

c. The criminal sanction will be imposed to the defaulted entity and individual by the court. In this case, if defaulted party has manufactured, supplied, sold and stored fake products with the registered trademark; the criminal sanction will be imposed.

Trademark infringement shall be classified as an offence or a crime under the relevant law.

#### **How disputes are settled in Mongolia?**

If the disputing Parties cannot reach an agreement by negotiations, they may apply to a Mongolian court or a Mongolian International and National Arbitration Center attached to the Mongolian National Chamber of Commerce and Industry.

#### *Judicial System of Mongolia*

Under article 10.1 of the Law on Court, the Judicial System of Mongolia follows the basic judicial system shall consist of the Supreme Court, /The Court of Cassation or Review/, aimag and capital city courts /the Court of Appeals/, soum and district courts /Courts of the First instance/.

- Soum, intersoum and district courts have jurisdiction only at first instance;
- Aimag courts, found in the Aimag capitals and the Capital City Court, deals with appeals from the lower level courts; and
- The Supreme Court is the highest level of the Court which deals with any matters at first instance that are not specifically within the jurisdiction of the other courts and appeals from decisions of the Aimag courts and the Capital City Court.

The courts, except the Supreme Court shall establish to specialize in type of case such as criminal, civil and administrative matters. For Administrative Cases Courts, Courts deal with matters relating to public law but outside purely constitutional matters. Reviews were made by 34

an independent body of all administrative acts affecting the citizenry, the main function of the Administrative Cases Court is to review the constitutionality of the entire range of administrative action, particularly where it encroaches on basic rights. The Administrative Cases Court of Mongolia was established by the State Great Hural / the Parliament of Mongolia / in June 2004. They deal with the area of law concerned with disputes between the public authorities and individuals arising from the exercise of public authority, including citizens and legal entities. This is regulated by the Law on Administrative Procedure.

#### *Alternative dispute resolution - "Mongolian approach to Mediation":*

Mediation a method of alternative dispute resolution parties to any agreement should consider, aside from arbitration. Mediation is essentially a negotiation facilitated by a neutral third party. Unlike arbitration, which takes a form more similar to trial, mediation doesn't involve decision making by the neutral third party, but seeks to find a mutually acceptable resolution or compromise between the parties. Mediation procedures can be initiated by the parties or may be compelled by legislation, the courts, or contractual terms. When parties are unwilling or unable to resolve a dispute, one good option is to turn to mediation. Mediation is generally a

short-term, structured, task-oriented, and "hands-on" process. In Mongolia the institution of mediation was established by adoption of the Law on Mediation in 2012. Pursuant to Law, mediation may be used in civil legal disputes, individual labor disputes and disputes arising from family relationships, and in some other disputes only if specified by law.

In mediation, the disputing parties work with a neutral third party, the mediator, to resolve their disputes. The mediator facilitates the resolution of the parties' disputes by supervising the exchange of information and the bargaining process. The mediator helps the parties find common ground and deal with unrealistic expectations. The mediator may also offer creative solutions and assist in drafting a final settlement. The role of the mediator is to interpret concerns, relay information between the parties, frame issues, and define the problems. Unlike the litigation process or arbitration, where a neutral third party (judge or arbitrator) imposes a decision over the matter, the parties and their mediator ordinarily control the mediation process

– Deciding when and where the mediation takes place, which will be present, how the mediation will be paid for, and how the mediator will interact with the parties.

A mediator is a specialized person, who is certified and registered in the list of mediators. Anyone with higher education may attend training courses for mediators and become a certified and registered mediator. However, currently most certified and registered mediators are usually lawyers or persons with certain legal or economic background. Law on Mediation provides presence of mediation centers at courts of first instance.

#### *Investment Protection Counsel*

The Investment Protection Council (IPC), one of the effective ways to protect rights and interest of the investors and to resolve the disputes involving the foreign investors in Mongolia. The Investor Protection Council is established based on an ordinance of the Prime Minister of Mongolia in December, 2016. That council is composed of Chairman, 16

members, and Secretary. The main formation of the Council's operation structure should be Council's session. The decision will be made by majority of the Council members during the session.

The IPC's Main Roles:

- Preview and make preliminary prognosis on foreign investment related issues that will be discussed by Government Cabinet Session;
- Improve investment legal framework, remove duplications and breaches of laws, introduce investment related proposal that made by relevant organizations to Government Cabinet; and
- Make proposals on implementation of laws and resolutions related to investment, and introduce it to Government Cabinet. The Council's operation should be permanent.

In addition above, one of the main roles of IPC is to protect investors' right, and solve their grievance (except the cases examined under court or arbitration). So far 83 compliant and claims submitted by investors to this Council's Secretariat. As we have been classifying these complaint and claims, there are 40% of them was related to mining, 20% for road, transportation, construction, manufacturing, 10% for information, communication, space technology, 10% for bank, finance, tax, 5% for land, land proprietorship, utilization, 5% for national development, planning, and remaining percentage was claims related to fair competition, as well as supervision, pressure and burden, registration, and authorization activity of the law enforcement agencies since 2016.

#### *Mongolian International and National Arbitration Center*

Mongolian International and National Arbitration attached to Mongolian National Chamber of Commerce and Industry has commenced its operation in 1960 and it is a permanent arbitration in Mongolia which recognized internationally. The arbitration has its branches in 21 aimags which are administrative unit under the law of Mongolia. Currently, local 51 arbitrators with qualification of the law, economics, finance and mining and 11 foreign arbitrators (from the Russian Federation, the People's Republic of China, Federal Republic of Germany, Japan, Hong Kong and Poland) are working at the Arbitration.

Exclusive Court jurisdiction cannot be changed by agreement of the parties to a dispute is established, in particular, in the following cases:

- In disputes concerning the ownership, possession and use rights in land which located in territory of Mongolia;
- In disputes concerning the decisions of reorganization, liquidation of legal persons or its branch, representative office which located in territory of Mongolia;
- In disputes concerning the validity of entries in public registers of the court and other registry of Mongolia;
- In disputes concerning the registration or validity of patents, trademarks, designs, or other registrable rights; and
- In disputes concerning the enforcement of judgments and compliant regarding to take measure in territory of Mongolia.

### *Enforcing Foreign Court Judgments and Arbitrational Awards*

Mongolia has ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958, in 1994 and the courts of Mongolia will enforce an arbitral award in Mongolia provided that such award:

- is given by an arbiter of competent jurisdiction;
- imposes on the judgement debtor a liability to pay a liquidated sum for which the judgement has been given;
- is final;
- is in relation to a dispute which is commercial in nature;
- is confirmed by a judicial order in Mongolia;
- is not in respect of taxes, a fine or a penalty; and
- was not obtained in a manner and is not of a kind the enforcement of which is contrary to the public policy of Mongolia;

There are a few specific circumstances under Mongolia's Arbitration Law in which a foreign arbitration will not be enforced:

- one of the parties to the arbitration agreement is incapacity or arbitration agreement is invalid;
- proper notice of the appointment of an arbitrator or of the arbitral proceedings was not given to the respondent party and unable to participate to the arbitral procedure and provide the response;
- arbitral award is not contemplated by or not falling within the terms of the submission claim, or arbitral award is beyond the scope of the claim;
- the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties and law of the country;
- award is not binding or valid or suspended;
- the subject-matter of the dispute is not capable of settlement by arbitration under the law of Mongolia;
- the recognition or enforcement of the award would be contrary to the public policy of Mongolia.

The information contained in this document is as of February 2020 and of a general nature. We recommend that no one should act on the basis of such information without appropriate professional advice after a thorough examination of the particular situation.