



## 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.

## **PRESENCE OF THE MONGOLBANK (THE BANK OF MONGOLIA)**

The control over banking activities by the Mongolbank has been increased according to the amendment to the law. For instance:

- The Mongolbank shall revoke the bank license in accordance with article 27 of the Law on Banking if the bank has violated or may have violated the Law on Banking, and rules, procedures, and decisions of the Mongolbank, has failed to meet the requirements of the bank license, or has conducted unreliable and unusual activities.
- The bank shall notify the Mongolbank in writing in advance of any changes in the bank's share capital, issuance of securities related to the shares, or any transaction to change the amount of equity.
- The bank shall notify the Mongolbank in writing within 10 days, if any person becomes an influential shareholder, or the amount and structure of the shares of an influential shareholder (either individual or legal entity) changes.
- The Mongolbank shall issue a decision on approval of a request to change the amount and structure of the shares of an influential shareholder of a bank and to issue shares and securities related to the shares within 60 days from the completion of required documents that meet the requirements and criteria set forth in the Law on Banking. The Mongolbank shall notify the bank of its decision.
- If the Mongolbank has not approved becoming of an influential shareholder and changes to the amount and structure of the shares, or the request has not met the requirements

and criteria set forth the law, the shares shall have no voting rights and the right to receive dividend. The unapproved part of the shares shall be deducted from the bank's equity and sold or transferred to others.

- The Mongolbank shall, if necessary, suspend the voting rights of the bank's shareholders when implementing restructure of the bank<sup>1</sup>.

The following activities shall be carried out with the approval of the Mongolbank:

- Resell of the shares and securities related to the shares to a bank by its influential shareholder;
- Appointment, or dismissal of board members.

Additionally, the executive management of the bank shall be appointed with approval of the Governor of the Mongolbank.

## **OTHER**

- The definition of the ultimate beneficial owner has been amended that it shall be an individual: "**An individual** who directs the bank's activities, or delegates this right to others, or owns the bank's shares through one or more related legal entities and is a founder of such entity/entities who is entitled to benefit from the bank's shares and activities establishes the legal entity, or has the right to benefit from the bank's shares and activities<sup>2</sup>".
- Also, "a person who exercises **indirectly** the rights of ultimate beneficial owner of the bank's shares" has been added to the definition of the influential shareholder. Information and relevant documents identifying the ultimate beneficial owner of the shares of an influential shareholder shall be submitted to the Mongolbank and this information shall be updated each time the beneficial owner changes.
- The assets to purchase the shares issued by the bank shall be cash.

Source:

1. Draft of the Law on Banking - <http://forum.parliament.mn/projects/10926>.

## **Note:**

*This summary is produced by GRATA International in Mongolia. The material provided in this summary is for general information purposes only and does not contain a comprehensive analysis of each item described. Before taking (or not taking) any action, readers should seek professional advice specific to their situation. No liability is accepted for acts or omissions taken in reliance upon the contents of this material.*

---

<sup>1</sup> The comprehensive measure taken by the Mongolbank in accordance with the laws with respect to management, organization, finance, and operation of a bank to ensure the bank's normal business activity and to enhance its financial position, after an inspection to the bank by the Mongolbank and finding of decline of the bank's solvency (3.1.16, the Law on Banking)

<sup>2</sup> Previously, it was defined as a "legal person".

***For more information or any queries, please feel free to contact V.Bolormaa, Partner, and T.Buyanjargal, Lawyer, of Grata International Law Firm by [bvolodya@gratanet.com](mailto:bvolodya@gratanet.com), [btungalag@gratanet.com](mailto:btungalag@gratanet.com) or +976 70155031.***