

## **How to incorporate a company or representative office 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 LLC or JSC. Representative office of foreign legal entities is also common.

### **Limited Liability Company (LLC)**

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

There is no minimum charter capital requirement, while participants' interests are proportional to their contributions. Participants have pre-emption rights on each other's interests.

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 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. The authorities entrusted to the Board of Directors shall be specified in the founding documents of the company. The company may also have a Supervisory Board, which is, however, not mandatory.

### **Limited Liability Company with a foreign investment**

According to the law, a foreign investor is defined as "a business entity with an overall equity of 100,000 USD 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 company's 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.

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

A JSC is a legal entity, which issues shares in order to raise capital for its activities. A 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, 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 legal entity, a representative office is not entitled to conduct a 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.

**State Registration**

1. To establish an LLC 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 an LLC from the State Registration Authority. The company name shall meet the following requirements:
    - not duplicate other companies' names; and
    - be in Cyrillic letters.

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

- b) Setting up a temporary account of the company: Along with obtaining a company name, the founder shall get forms of opening (a) current temporary account(s) for a new company with any commercial bank in Mongolia. This temporary current account is required to deposit 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 the assistance of the founder, appointed Executive Director, or any other representative, who is the first signatory, the deposited amount can be withdrawn.

c) Development of the documents required for establishment: Under 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 12 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 the 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 the investor, then printed in 2 copies each, where each copy of the shareholder agreement shall be notarized;
- Meeting minutes of the founders and its Mongolian translation. The Chair of the meeting shall sign on the meeting minutes if founders are two or more;
- If the founder is a legal entity, a copy of the company incorporation/ registration certificate and a brief company profile are 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 the establishment of a foreign-invested LLC, which is 750,000 MNT or approximately 239 USD;
- Power of attorney (if applicable).

After 3-5 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.

Currently, the registration with these 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 and submit the following documents as the relevant law and regulations provide. They are:

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

### **Obtaining permission for strategic sectors**

If a foreign state-owned legal entity holds 33 or more percent of the total shares issued by the legal entities of Mongolia (a foreign invested company) operating in the following sectors, it shall obtain a permit from the Investment Authority:

1. Mining industry;
2. Banking and Finance; and
3. Media and Communications.

If a foreign state-owned legal entity is going to hold less than 33 percent of the total shares issued by the legal entities of Mongolia (a foreign invested company), such permission is not required.

### **Documents required to establish the representative office of a foreign company**

Under the Law on State Registration of a Legal Entity, a parent company or individual(s) shall prepare the following documents. They are:

- Application form (UB-13 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 permit from the authorized organization to establish a representative office in a 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 MNT or about 347 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.

### **UBO registration**

In connection with an obligation under FATF Recommendation, Mongolia is registering the ultimate beneficial owner (UBO) of all legal entities registered in Mongolia. The UBO /in the case of a legal entity/ is defined in the Law of Mongolia on Combating Money Laundering and Terrorism Financing as follows (3.1.6.a):

1. An individual who owns the majority of the share capital of the legal entity alone or collectively with others; or
2. An individual who manages or directs the activities of the legal entity, or have the activities done so by others on behalf of himself/herself; or
3. An individual who receives benefits or profits by managing any transactions to be made by the legal entity and their implementation activities.

The majority refers to 33% of total share capital (article 4.3 of the Procedure for Prevention of Money Laundering and Financing of Terrorism). In other words, UBO shall be an individual who owns 33 or more percent of the parent company alone or jointly with others.

Furthermore, according to article 3 of the Procedure for Prevention of Money Laundering and Financing of Terrorism, adopted by the Mongolbank, Banks are obliged to obtain the following information among other things from customers and document them respectively */if the customer is a legal entity/*:

1. Information on the structure of the ownership in the company, and original or notarized copy of the state registration certificate and charter of each company in the ownership;
2. Information on the UBO (ID card or passport; Permanent address and phone number of the UBO /this information is obtained in a form regulated by an internal policy of Banks/; Current address and phone number; employment, business information of the UBO /this information is obtained in a form regulated by an internal policy of Banks/ - including the type and scope of business; job title, address, and position./

### **Source:**

1. <https://legalinfo.mn/mn/detail/310> - Law on Company.
2. <https://legalinfo.mn/mn/detail/13591> - Law on State Registration of Legal Entities.
3. <https://legalinfo.mn/mn/detail/9242> - Law on Combating Money Laundering and Terrorism Financing.
4. <https://www.legalinfo.mn/annex/details/9281?lawid=14078> - Procedure for Prevention of Money Laundering and Financing of Terrorism.

**For more information or any queries, please feel free to contact Bolormaa. V, Partner, and Director by [bvolodya@gratanet.com](mailto:bvolodya@gratanet.com) and Demchigselmaa G., Lawyer of Umguulliin Grata International Mongolia LLP by [dgendensuren@gratanet.com](mailto:dgendensuren@gratanet.com) or 976-70155031.**

*This legal information was prepared by Umguulliin GRATA International Mongolia LLP, the*

*Mongolian office of GRATA International, an international law firm that has its branches in 20 countries around the world. The material contained in this alert is provided 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 alert.*