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DRAFT LAW ON LICENSING

GRATA International Mongolia

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A working group has been established by Resolution No.38 by the Chairman of the State Great Khural (the Parliament) dated 2021 with responsibilities of preparing the draft law on Licensing which was submitted by the Government, approving the license list and other draft laws submitted together with it for discussion at the plenary session, and drafting proposals.

The draft law regulates relations with respect to issuing, suspending, revoking and cancelling issued license from an authorized person to engage in certain types of activities that may adversely affect national security, financial stability, public interest, human health, environment for conducting certain business, or possess and use State and public properties as well as to determine the classification and types of permits, their registration and activities prohibited in the territory of Mongolia. The draft law has 8 chapters and 35 articles.

Preconditions for drafting the Law on Licensing

In the Article 5 of the Constitution of Mongolia, it stated that “Mongolia shall have an economy based on different forms of property consistent to universal trends of world economic development and own country's specifics”, and “the State shall regulate the economy with a view to ensure the nation's economic security, the development of all forms of property and social development of the population.” Also in the Article 6.1 states that “In Mongolia the land, its subsoil, forests, water, fauna and flora and other natural resources shall be subject to the people's power and State protection”, and in paragraph 2 of Article 6 states that “The land, except owned by the citizens of Mongolia, subsoil, its wealth, forests, water resources, and wildlife shall be the state public property” and Article 19, paragraph 3, states that “In exercising his/her rights and freedoms, one shall not infringe the national security, rights and freedoms of others and violate public order”.

In addition, in the Article 26.7 of the Civil law of Mongolia, it states that “for-profit juristic persons shall be entitled to undertake any activity that is not prohibited by law or not in conflict with common accepted moral”, in article 26.8 states, “A legal entity shall undertake certain activities with the consent of respective competent authorities provided by law. The entitlement to undertake the activities shall emerge from the day of getting the special authorization”.

In accordance with the above-mentioned principles proclaimed in the Constitution of Mongolia, the Law on Licensing was adopted in 2001 with the aim of regulate relations with respect to issuing, suspending and revoking a license to conduct certain business activities that require specific conditions and expertise and may negatively affect the public interest, human health, environment and national security and that.

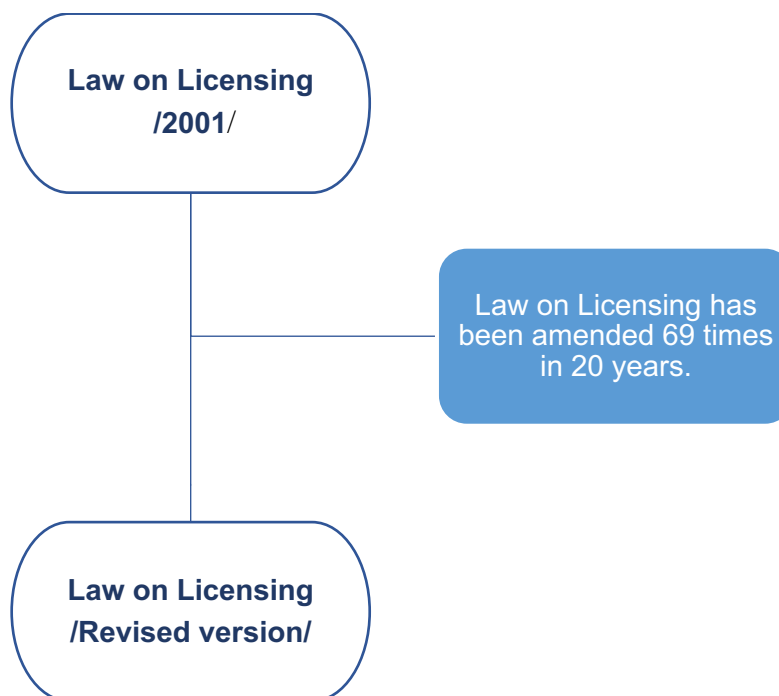
In addition, the Law on Licensing, there are more than 100 laws governing sectoral relations. Thus, depending on the nature of the activity, industry legislation and related rules and regulations may overstate the requirements for licenses, permits, termination and supervision of relationships and may lead to distortions of legal norms such as determining the type of license and the subject matter of its issuance.

Furthermore, along with changes in sectoral legislation, there are increased number of licenses by creating new types of licenses or separating the activities associated with licenses under the Law on State Stamp Duties.

Under current effective Law on Licensing, there are licenses for 18 sectors to be issued by the line ministries for 103 general types, and more than 210 sub-types, and 7 types to be issued by aimag, capital, soum, and district governors on the basis of licenses. However, as of today, 914 licenses are being issued in accordance with other laws and regulations. For example, under Article 15.10.4 of the Law on Licensing, it provides issuance of 4 types of licenses related to industrial explosives and explosive devices, while the Law on Controlling the Circulation of explosives and explosive devices provides 6 types of licenses.

Also, it is common for local self-governing(municipal) bodies to issue permits for certain activities that are not authorized by the law and to impose illegal fees and charges.

It can be concluded that the legal provisions regarding licenses are contradictory with each other and the practice of issuing permits beyond the legal framework is widespread due to the loss of basic principles and unified policies governing this type of relationship in Mongolia.



In order to eliminate the above-mentioned conflict of the laws and loopholes, which violates the citizen’s right to run a business, and hinder economic and business activities, the Action plan of Government of Mongolia for 2016-2020 set goals to “Reduce the number of licenses issued by the state to businesses by three times, extend their validity and eliminate duplication of inspections and bureaucracy” and “create a legal environment free of bureaucracy and ensure the rights of citizens”.

Therefore, based on the above-mentioned legal grounds and practical requirements, a revised version of the Law on Licensing was drafted.

The draft law on Licensing will include the following new regulations:

1. In order to eliminate duplications, conflicts and gaps between laws, to create categories and types of illegal permits and to prevent citizens from being dragged along, and to create a unified regulation of state licensing activities, the relevant and irrelevant relations should be clearly defined.
Within this framework, the law on Approving the license list shall be drafted, which defines the types of licenses, its classification and the authorized person to issue license.
2. Depending on the specification, scope and level of risk of the licensed activity, the classification of licenses and their related types shall be updated, and each permit shall be entered into a code system and a unified procedure for its issuance, registration and control shall be established.
3. In order to ensure the conditions to guarantee the civil right to engage in activities, the types of business activities prohibited to be carried out in the territory of Mongolia shall be redefined in accordance with the Constitution and other relevant legislation.

4. Depending on the category of the license, the general timeline for issuing a permit will be extended, and attention will be paid to eliminating duplication and bureaucracy related to the permit.
5. In order to increase the responsibility and control of the authority which issued the license, the licensing authority shall be identified and the grounds and procedures for the transfer of authority shall be specified in detail.
6. In addition to redefining the general requirements for license holders, it will be possible to differentiate them depending on the specifics of the operation. It also eliminates insignificant and overly broad requirements that create bureaucracy and red tape for licensees.
7. The grounds and procedures for issuing, extending, revoking, cancelling and suspending license shall be established in detail, also to reduce the number of steps and the conditions for issuing license shall be simplified.
8. A unified license registration and database shall be established in order to increase the transparency of government organizations and officials related to the licensing process and increase the responsibility of license holders.
9. Create a legal environment for the Licensing Supervisory Board to provide a unified methodological guidance to the licensing authority, evaluate the effectiveness of law enforcement, issue conclusions, and make recommendations on relevant reforms in the law.

The adoption of the draft law on Licensing will have the following positive effects:

The licensing process will become more transparent, public scrutiny will increase, and illegal activities such as creating illegal categories and types of permits and issuing permits to unauthorized persons will be stopped.

In addition to reducing the number of paperwork required to obtain a permit, the burden on the private sector to obtain a license will be reduced, and public services will be more efficient, faster, and more conducive to doing business.

The registration and control of licensee and permit-based activities will be improved, and conditions will be created for the development of an economy that ensures national economic security and the social development of all sectors of the economy and the population.

How the draft law is consistent with the Constitution of Mongolia and other laws:

This draft law shall be developed in accordance with the Constitution of Mongolia, international treaties to which Mongolia is a party and other relevant law.

In line with the draft Law on Licensing, the draft Law on Repealing the Law on Licensing, the Law on Approving the List of Licenses, and the Law on Procedures for Complying with the Law on Licensing were drafted. Thus, drafted amendments to the Civil Code, the Law on Combating Alcoholism, the Law on Auditing, the Law on Environmental Protection, and the Law on Regulation of Non-Banking Financial Activities are prepared.

The main provision of the draft law on Licensing

The main purpose of the law on Licensing	<ul style="list-style-type: none"> To reduce the number of licenses To extend the term of licenses
Types and duration of permit	<ul style="list-style-type: none"> Exclusive permit Less than 5 years Common permit Less than 3 years
Prohibited activities	<ul style="list-style-type: none"> 9 types of activities
Permitted activities	<ul style="list-style-type: none"> Exclusive-168 Basic-285 Total- 448 licenses
Application	<ul style="list-style-type: none"> Written Electronic
Extension of permit	<ul style="list-style-type: none"> Resolve within 10 days
License registration	<ul style="list-style-type: none"> State Registration office Board
Monitor to the licensing process	<ul style="list-style-type: none"> Prime Minister Board

Comparison of current effective law and draft law

Law on Licensing /2001/	Law on Licensing /Revised draft/
<p>1. Purpose of the law Objective of this law is to regulate relations with respect to issuing, suspending and revoking a license to conduct certain business activities that may negatively affect the public interest, human health, environment and national security and that require specific conditions and expertise.</p>	<p>1. Purpose of the law Main purpose of this law is to regulates the relation with respect to issuing, suspending, revoking and <i>canceling issued permits from an authorized person to engage in certain types of activities</i> that may adversely affect national security, financial stability, public interest, human health, <i>environment for conducting certain business, or possess and use State and public properties as well as to determine the classification and types of permits, their registration and activities prohibited in the territory of Mongolia.</i></p>
<p>2. Definitions -“License to conduct a business activity” - shall mean an official document issued by an authorized institution to an individual, for-profit or not-for-profit legal entity to conduct certain types of business for a fixed period of time and upon meeting specific terms and requirements; -“License holder”- shall mean a person who has obtained a license from an authorized institution to conduct a particular type of business’</p>	<p>2. Definitions -“Permit” means a right granted to a person or legal entity by authorized body to conduct certain types of activities and to possess and use public property according to Law. -“Authorized body to grant permit” (hereinafter referred to as an authorized body) means State organization, administrator or a body who has been transferred rights to grant a permit authorized by the Law. -“License holder”- shall mean a person who has obtained a license from an authorized institution to conduct a particular type of business’</p>
<p>3. The law on Licensing /2001/ regulates only licensed business activities.</p>	<p>3. Types of permit -Exclusive permit</p>

<p>4. License period -a license shall be issued for three years.</p> <p>Extension of license: - Unless otherwise stated by law, a license may be extended for a period equal to the original duration. - A license shall be extended within three days upon the license holder's application unless other stated by law and the circumstances described in Paragraph 13.1 of this law have arisen. - A license shall not be extended if its terms and conditions have been violated.</p>	<p>-Common permit</p> <p>4. License period -Exclusive permit Less than 5 years -Common permit Less than 3 years -if particularly specified in the law, permit may be issued termless. Extension of license: - The permit shall be extended for a period not less than the period for which it was originally issued. - The license holder shall submit a request to the authorized person to renew the permit 30 days prior to the expiration of the permit.</p>
<p>5. Suspension of the license If the terms, timelines or requirements of a license have been breached, the licensing institution may suspend the license for up to three months upon the conclusion of a relevant inspection body.</p>	<p>5. Suspension of the license If the timelines or requirements of the permit was determined by a decision of the competent authority; In case of non-submission or incorrect submission of information and reports specified in the law, the authorized person shall suspend the permit for a period of up to 3 months.</p>
<p>6. Revoking a license The licensing institution shall revoke a license in the following cases: -if a license holder has applied so; -if the legal entity [license holder] has been dissolved; -if it is proven that false application documents have been submitted to receive the license; -if the terms and requirements of the license have been breached several times or have been egregiously breached; -if the demand to rectify reasons of the license suspension has not been met within the suspension period.</p>	<p>6. Revoking a license The license shall revoke in the following cases: -a license holder has made a request; - No request was made to rectify the breach or reinstate the license during the suspension period; - it has been determined by the decision of the competent authority that the license holder has caused significant damage to the public interest, health, safety, environment and national security; - the license holder has repeatedly violated the terms and conditions of the permit; -permission and documents certifying it have been transferred, sold, gifted or pledged to others, except as provided by law; -has not conducted activities for 1 year under exclusive permit; - if the license holder is a citizen, he / she is considered legally incompetent, and if the legal entity is a bankrupt, he / she is considered bankrupt or liquidated; -others specified in the law.</p>
<p>7. The law on Licensing /2001/ does not regulate the issue of cancellation of a business license.</p>	<p>7. Cancellation of permit The permit shall be cancelled on the following cases, and if the permit is cancelled, the authorized person shall make a relevant actions in the electronic permit database: - if the license holder is a person who has died or a court decision is declaring that the person</p>

	<p>is dead, or if the legal entity has been liquidated;</p> <ul style="list-style-type: none"> -the permit has expired; -permission is considered invalid; -authorized person has revoked the permit, cancellation of a license holder's license to engage in certain activities shall also terminate the license and permit issued for other activities related to the licensed activities.
<p>8. Prohibited business activities</p> <ul style="list-style-type: none"> -manufacturing, importing and selling drugs and narcotics unless otherwise stated by law -organizing, advertising and promoting any forms of pornography; -casino; -profit-seeking business through fraudulent multi-tiered marketing or financial pyramid. 	<p>8. Prohibited business activities</p> <ul style="list-style-type: none"> --manufacturing, importing and selling drugs and narcotics unless otherwise stated by law -organizing, advertising and promoting any forms of pornography; -casino unless otherwise stated in the law; -profit-seeking business through multi-tiered marketing or financial pyramid. <i>-import of a hazardous waste to Mongolia for use, storage, temporary disposal and disposal;</i> <i>- transportation of hazardous waste across the border of Mongolia;</i> <i>- financing the proliferation of weapons of mass destruction;</i> <i>-carry out paid puzzles and gambling activities.</i>
<p>9. Article 15 of the Law on Licensing provides for a total of 497 licenses.</p>	<p>9. Types of licensing activities</p> <p>According to Chapter 7 of the draft Law on Licensing, 285 common permits, 163 exclusive permits and a total of 448¹ permits will be issued in 12 sectors. The industries, their types and authorized organization to issue the license has been included in the list.</p>
<p>10. Only the licensing authority has the right to monitor issuance of license.</p>	<p>10. The person authorized to monitor the licensing process and the implementation of the legislation, and its functions</p> <p><i>Non-permanent council</i> consisting of representatives of government, private sector and professional non-governmental organizations which is responsible for issuing and registering permits, monitoring the implementation of licensing legislation, and making recommendations on the grounds and requirements for amendments to the licensing legislation works under the <i>Prime Minister</i>.</p>

¹ <http://forum.parliament.mn/projects/11138> - Article 7 of "Consolidated Draft Law on Licensing" list of licenses.

Source:

<https://legalinfo.mn/mn/detail/34> - “Law on Licensing” /2001/

<http://forum.parliament.mn/projects/11138> - “Consolidated draft law on Licensing”

For more information or any queries, please feel free to contact Bolormaa.V, Partner by bvolodya@gratanet.com or +976 70155031.

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