

**MONGOLIA INVESTMENT CLIMATE
STATEMENT
2017**

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Executive Summary

Mongolia's tremendous mineral reserves, agricultural endowments, and proximity to the vast Asia market continue to make it an attractive foreign direct investment (FDI) destination in the medium to long term. However, ongoing stagnation in global commodities markets, limited infrastructure, policy missteps, and the Government of Mongolia's (GOM) lack of responsiveness to foreign investor concerns warrant caution in the short term. In addition to these factors, an economic downturn and fiscal crisis hamper the GOM's ability to attract foreign investment, grow the economy, and address its many challenges.

Against this backdrop, the new majority government, elected in June 2016, which came to power on a wave of voter discontent with the previous government's perceived mismanagement of the economy, has taken some encouraging steps. First, the U.S.-Mongolia Agreement on Transparency in Matters Related to International Trade and Investment, or Transparency Agreement, went into effect on March 20, 2017. Warmly welcomed by U.S. and foreign investors alike, it will establish clear processes for drafting and commenting on new legislation and regulations and require strict transparency related to laws involving trade and investment. A copy of the Transparency Agreement is available [here](#).

Second, in 2017 the GOM and the International Monetary Fund (IMF) reached an agreement on a comprehensive USD \$5.5 billion package that will not only stave off default on Mongolia's large public debt, but also bring with it necessary discipline and budget reforms, as well as a detailed banking assessment. The IMF agreement has enabled the GOM to refinance on the international market bonds that came due in 2017, a more attractive and politically palatable alternative to relying exclusively on Chinese financing. Although investors recognize that the IMF program's budget tightening will initially dampen economic growth, they praise the GOM's commitment to reform its fiscal and borrowing practices, improve its banking sector, and complete long-delayed regulatory reforms. The IMF and the Mongolian government anticipate low, flat economic growth in 2017 and 2018 but higher sustainable growth to return in 2019.

The GOM's commitment to taking these bold, pragmatic steps could help create and nurture a business-enabling environment, but U.S. and foreign investors continue to call for further efforts, including: (1) rooting out the pervasive corruption that threatens the foundational institutions of Mongolian democracy; (2) creating in reality the judicial independence the Mongolian constitution establishes in principle; (3) facilitating the emergence of private sector small- and medium-sized enterprises as the primary engine of economic diversification; (4) putting in place a more transparent, inclusive, and effective rule-making process for drafting and implementing commercial legislation; (5) modernizing traditional Mongolian business sectors such as agriculture and animal husbandry; and (6) improving Mongolia's physical infrastructure.

Challenges notwithstanding, there is significant longer term upside to the Mongolian investment climate. Promising signs include recently implemented legislation and programs to support large-scale development of the domestic agriculture sector, the second largest contributor to GDP and employment after mining. Agriculture and animal husbandry, along with renewable energy, are sectors in which Mongolia has natural advantages and which provide promise for economic diversification while offering significant opportunities for U.S. exporters of goods, services, and technologies.

Table 1

Measure	Year	Index/Rank	Website Address
TI Corruption Perceptions Index	2016	87 of 175	http://www.transparency.org/research/cpi/overview
World Bank's "Ease of Doing Business" Report	2016	64 of 190	http://www.doingbusiness.org/rankings
Global Innovation Index	2016	55 of 128	https://www.globalinnovationindex.org/analysis-indicator
U.S. FDI in partner country (\$M USD, stock positions)	2016	\$39.7	https://mongolbank.mn/documents/statistic/externalsector/bopreview/bopreview_2016.pdf
World Bank GNI per capita	2015	\$3,870	http://data.worldbank.org/indicator/NY.GNP.PCAP.CD

1. Openness To, and Restrictions Upon, Foreign Investment

Policies Towards Foreign Direct Investment

Over the last four years, Mongolia has suffered from a combination of declines in the value of its key commodity exports of coal and copper and policy missteps. These missteps have led the Government of Mongolia (GOM) to seek financial support from an International Monetary Fund (IMF)-led group of organizations and bilateral donors to cover budget shortfalls and sovereign debts. Starting in 2017, this three-year program will require significant budget tightening and increased fiscal discipline. Consequently, the GOM is limited in its capacity to financially support investment projects in important sectors, most notably mining and agriculture; and relies on foreign direct investment (FDI) to support its broad economic and development agendas.

The GOM has publicly pledged to support FDI and taken significant measures that confirm this commitment. It has reaffirmed support for the investment agreements that established the Oyu

Tolgoi copper/gold mega-mine project, repealed potentially onerous certificate of origin requirements for imports in response to U.S. Embassy, AmCham, and U.S. company complaints, reduced the use of prosecutorial “exit bans” against foreign business executives (although these continue to be a source of concern), and moved to bring into force and implement the U.S.-Mongolia Agreement on Transparency in Matters Related to International Trade and Investment. This Agreement allows investors and exporters to review and comment on legislation and regulations affecting trade and commerce before they are approved. A copy of the Transparency Agreement is available [here](#).

Investors have expressed appreciation for these positive steps, but question whether this recent progress indicates broader and more permanent progress. In late 2016, the GOM closed the Invest Mongolia Agency (IMA), which had promoted Mongolian investment opportunities abroad and assisted foreign investors with obtaining tax stabilization, corporate registrations, and investment dispute resolutions with the government. The IMA replacement, the new National Development Agency, is supposed to issue tax stabilization certificates but has not implemented a process for doing so. The previous IMA support functions are no longer available to foreign investors from the GOM. In conjunction with the International Finance Corporation and the World Bank, the GOM has promised, but not yet established, an Investor Dispute Resolution Council. In addition, the Prime Minister’s Office maintains an Investors Advisory Council, which occasionally includes representatives from the foreign investment community.

Investors are also concerned that the GOM has not yet fulfilled public commitments to adequately reform or completely eliminate the practice of barring foreign and Mongolian nationals involved in a commercial dispute from leaving Mongolia, commonly referred to as an exit ban. Other concerns that investors point to include stalled GOM negotiations over key infrastructure projects, lack of progress on construction of power plants, and the absence of an agreement with a consortium to exploit the Tavan Tolgoi mega-coking coal mine, as reasons for skepticism about Mongolia's ability to provide a business-enabling environment. They also cite stagnant global commodity prices as a disincentive to invest in Mongolia's mining sector and other sectors, including construction, real estate, and IT, that depend on mining sector activity for profitability. Investors approve of GOM plans to diversify the economy from overreliance on the volatile mining sector – with the agricultural and livestock sectors being the most important diversification targets – but are concerned about the government’s slow progress to craft and implement practical diversification strategies.

Broadly, there is no systemic, institutional effort to impose laws and practices that discriminate against foreign investors in general or U.S. investors in particular – with two key exceptions. First, foreign investors object to the regulatory requirement that they invest a minimum of USD \$100,000 to establish a venture when the Investment Law of Mongolia states that all investors in Mongolia, without reference to nationality, are subject to national treatment. In contrast, Mongolian investors are not subject to investment minimums. Second, foreign nationals and companies may not own real estate; only Mongolian adult citizens can own land. While foreign investors may obtain use rights for the underlying land, these rights expire after a set number of years, with no automatic right of renewal.

Various international financial institutions (IFI) active in Mongolia have helped the country improve its standing as a destination for FDI. The European Bank for Reconstruction and Development (EBRD) has invested nearly USD \$2 billion in the country, mostly in projects designed to facilitate private sector growth in the mining, energy, financial, agri-business, and retail sectors. The Asian Development Bank's USD \$700 million project portfolio largely complements EBRD efforts in its focus on the transportation, energy, urban utilities and services, education, and health sectors. The International Finance Corporation and the World Bank have committed several hundred million dollars to projects that support infrastructure development, employment generation, economic diversification as well as the institutional strengthening of the mining sector. Other UN agencies and NGOs also make significant contributions to making Mongolia more accommodating to FDI either as their primary missions or as secondary aspects of their programming.

In line with these IFI investment-support projects, the U.S. government, GOM, and international NGO Mercy Corps have launched a USD \$10 million program to stimulate production and export opportunities in the domestic livestock economy. The project works with herders, meat processors, downstream customers, U.S. technology suppliers, government organizations, and veterinarians to produce high quality, organic Mongolian meat products meeting international export standards.

Limits on Foreign Control and Right to Private Ownership and Establishment

The Constitution limits the right to privately own land to adult citizens of Mongolia. However, no formal law exists vesting Mongolia's pastoral nomadic herders with exclusive rights of pasturage, control of water, or land rights. As such, rural municipalities unofficially recognize that traditional, customary access to these resources by pastoralists must be taken into account before, during, and after other non-resident users, particularly but not exclusively those in the mining sector, can exercise their use and ownership rights. Both foreign and domestic investors have the same rights to establish, sell, transfer, or securitize structures, shares, use-rights, companies, and movable property, subject to relevant legislation and related regulation controlling such activities. Mongolian law does allow creditors to recover debts by seizing and disposing of property offered as collateral.

Other Investment Policy Reviews

The GOM conducted an investment policy review through the United Nations Conference on Trade and Development (UNCTAD) in 2013 and a trade policy review with the World Trade Organization (WTO) in 2014. Although the Organization for Economic Cooperation and Development (OECD) has not conducted a comprehensive investment policy review of Mongolia in the past three years, it has completed economic studies on specific aspects of investment and development in Mongolia.

For the UNCTAD Mongolia investment policy review:
<http://unctad.org/en/pages/PublicationWebflyer.aspx?publicationid=758>.

For WTO's Mongolia investment policy review in the context of a Trade Policy Review:
https://www.wto.org/english/tratop_e/tptr_e/tp397_e.htm.

For OECD Mongolia reports: <http://www.oecd.org/countries/mongolia>.

Business Facilitation

In its 2013 Investment Policy Review of Mongolia, UNCTAD reported that to diversify and facilitate FDI beyond mining, Mongolia needed to comprehensively reform FDI policies to include clear “developmental objectives.” Legislation and regulation should be reformed so as to reflect an “open stance and practice” to FDI. The GOM’s limited institutional capacity requires enhancement to better implement and enforce effective, efficient regulations. As of 2017, Mongolia has yet to adopt these recommendations and has not applied UNCTAD’s ten investment facilitation guidelines to create a consistently transparent, predictable, efficient, and open regime to facilitate FDI. A copy of the UNCTAD report is available [online](#).

However, consistent with the World Bank’s 2016 Doing Business Report, investors report that Mongolia’s business registration process is reasonable efficient and clear. All enterprises, foreign and domestic, must register with the General Authority for Intellectual Property and State Registration (GAIPSR: www.burtgel.gov.mn). Registrants obtain form UB 03-II and other required documents from the website and can submit completed documents by email. GAIPSR aims at a two-day turnaround for the review and approval process, but investors report that complex cases can take anywhere from several weeks to three months. Once approved by GAIPSR, a company must register with the Mongolian General Authority Taxation (GTA: <http://en.mta.mn/>). Upon hiring its first employees, a company must register with the Social Insurance Agency. GAIPSR reports that notarization is not required for its registration process.

Outward Investment

Although the GOM neither promotes nor incentivizes outward investment, it does not restrict domestic investors from investing abroad.

2. Bilateral Investment Agreements and Taxation Treaties

The United States and Mongolia signed a Bilateral Investment Treat (BIT) in 1994, with the agreement entering into force in 1997. The BIT states that the agreement will protect U.S. investors and assist Mongolia in its efforts to develop its economy by creating conditions more favorable for U.S. private investment and thus strengthening the development of the private sector. More information on the BIT is available from the Department of State’s [website](#).

In January 2017, the two countries certified completion of their respective applicable legal requirements and procedures for the U.S.-Mongolia Agreement on Transparency in Matters Related to International Trade and Investment, or Transparency Agreement, which came into effect on March 20, 2017. It sets out clear processes for drafting and commenting on new legislation and regulations and requires strict transparency related to laws involving trade and investment. A copy of the U.S.-Mongolia Transparency Agreement is available [here](#).

Mongolia and the United States have no bilateral tax or free-trade agreements.

Mongolia has also signed an Economic Partnership Agreement (EPA) with Japan, which entered into effect in June 2016. For details on the EPA, please see the Japanese Ministry of Finance [website](#). In 2016, Mongolia and Canada signed a Foreign Investment Promotion and Protection Agreement (FIPA) which entered into force on March 7, 2017. For the FIPA text, please see the Canadian government [website](#). In 2016, Mongolia and the Republic of Korea agreed to launch talks on a Free Trade Agreement in 2017.

For other investment agreements Mongolia has signed go to the UNCTAD [website](#).

3. Legal Regime

Transparency of the Regulatory System

In September 2013, the United States and Mongolia signed the U.S.-Mongolia Agreement on Transparency in Matters Related to International Trade and Investment, or Transparency Agreement (TA). The agreement marked an important step in developing and broadening the economic relationship between the two countries. The TA makes it easier for U.S. and Mongolian firms to do business by guaranteeing transparency in the formation of trade-related laws and regulations, the conduct of fair administrative proceedings, and measures to address bribery and corruption. In addition, it provides for commercial laws and regulations to be published in English, improving transparency and making it easier for foreign investors to operate in the country. Parliament ratified the TA in December 2014, the United States and Mongolia certified that their respective applicable legal requirements and procedures were completed in January 2017, and the TA entered into force on March 20, 2017. Mongolia has five years to implement the TA fully. A copy of the U.S.-Mongolia Transparency Agreement is [here](#).

Coming into force on January 1, 2017, the new Law on Legislation (LL) aligns Mongolia's legislative processes with its TA obligations. The LL clarifies who has the right to draft legislation, the format of these bills, the respective roles of GOM and Parliament, and the procedures for obtaining and employing public comment on pending legislation. The LL states that law initiators – i.e., Members of Parliament, the President of Mongolia, or the Cabinet of Mongolia – may introduce laws and amendments to existing statutes. To initiate legislation, the initiator must fulfill the following criteria: (1) provide a clear process for both developing, and justifying the need for, the draft legislation; (2) set out methodologies for estimating costs to the government related to the draft law's implementation; (3) evaluate the impact of the legislation on the public once implemented; and (4) conduct public outreach before submitting legislation to the public. The LL requires that both the Head of the Cabinet Secretariat and the Head of the Parliament Secretariat certify that the law initiator has complied with these requirements before Parliament officially accepts legislation for consideration.

To justify draft legislation and account for its costs and impacts, initiators must conduct studies that clearly demonstrate the need for, and consequences of, a new law. The initiator may reach out to government experts or contract with citizens and such legal entities as professional associations or civil society organizations for data-based information. Initiators must also submit draft legislation to the Cabinet and affected GOM ministries for comment and review as a precondition for receiving certification from the Head of the Cabinet Secretariat that the legislation complies with the LL.

The LL requires that law initiators obtain public comment by posting draft legislation and required reports evaluating costs and impacts on Parliament's official [website](#) at least thirty days prior to submitting it to Parliament. These posts must explicitly state the time period for public comment and review. In addition, initiators must solicit comments in writing, organize public meetings and discussions, seek comment through social media, and carry out public surveys. No more than thirty days after the public comment period ends, the initiator must prepare a matrix of all comments, including those used to revise the legislation as well as those not used. This matrix must be posted on Parliament's official web site. After passing a law, Parliament is responsible for monitoring and evaluating both the implementation and impact of the legislation.

Publically listed Mongolian companies adhere to International Financial Reporting Standards (IFRS). As with statutory requirements for transparent law making, regulations for accounting, legal, and regulatory procedures also require transparent processes for consistent implementation, and are sometimes (but not always) consistent with international norms and best practices. The business community and legal experts have criticized legal, regulatory, and accounting practices that are non-transparent, vague, or poorly worded in Mongolian and English translations, as well as inconsistently enforced. Domestic and foreign investors claim these domestic practices are largely aimed at extracting revenue for both the government and individuals, and occasionally to injure a company that may be competing against a state-owned or influential private entity. Consequently, some investors have concluded that the Mongolian government does not use transparent laws and regulations to create a level playing field for either foreign or domestic competitors. However, investors have expressed some hope that the TA and the recently passed raft of transparency-based legislation will give them leverage in dealing with GOM regulators.

The General Administrative Law, Article 6, (GAL) brings Mongolia's regulatory drafting process into line with its Transparency Agreement obligations. Parliament specifies in the text of each statute the specific ministry responsible for administering the law, which includes drafting of regulations. The designated ministry creates a ministerial working group that may also include representatives of other ministries affected by the statute. Regulatory drafts must also be reviewed by the Ministry of Justice and Home Affairs to ensure consistency with other statutes and the Constitution of Mongolia. GAL requires regulations to use scientific or data-driven assessments to assess the costs and impact of the proposed rules. GAL also requires ministries, agencies, and provincial governments to seek public comment by posting draft regulations on their respective websites for at least thirty days and by holding public hearings, following the rules set out in the 2015 Public Hearing Law. The drafting entity must record, report, and respond to the public comment. The Ministry of Justice and Home Affairs must certify that each regulatory drafting process complies with the GAL before the regulations enter into force. After approval, the relevant government agency is responsible for monitoring and evaluating both the implementation and impact of the regulations.

Designated implementing agencies, such as the Mineral Resources Authority, the General Tax Authority, or the General Agency for Specialized Inspections, have statutory responsibility for enforcing regulations. These agencies use administrative remedies to enforce most regulations, including but not limited to seizing contraband, suspending or cancelling use rights and permits, or freezing financial assets. In addition to these administrative remedies, organizations

responsible for criminal enforcement, such as the National Police, may enforce regulations using such criminal penalties as imprisonment if the regulatory infraction is deemed to rise to the level of a crime. The public can contest administrative enforcement acts under the 2002 Law on Procedure for Administrative Cases (LPAC). LPAC gives disputants the right to a hearing from the Administrative Court of Mongolia based in Ulaanbaatar. However, LPAC requires that parties first mediate the dispute with the relevant regulatory authority before seeking judicial remedy. Once the Administrative Court rules, either party can appeal the decision to the Supreme Court of Mongolia.

International Regulatory Considerations

Mongolia is not part of any regional economic block, but often seeks to adapt and adopt European standards and norms in areas such as construction materials, food, and environmental regulations, and looks to U.S. standards for activity in the petroleum sector, while adopting a combination of Australian and Canadian standards and norms in the mining sector. There is also a tendency for Mongolia to attempt to sync its customs and transport standards to China's, its primary trade partner.

Mongolia, a member of the WTO, asserts that it will notify the WTO Committee on Technical Barriers to Trade (TBT) of all draft technical regulations; however, as demonstrated by the recent failure to notify TBT about changes in the process for using certificates of origin, Mongolia does not always comply with that commitment.

Legal System and Judicial Independence

Mongolia has adopted a hybrid Civil Law-Common Law system of jurisprudence. Trial judges may use prior rulings to adjudicate cases similar to those that have come before them but are not obliged to respect legal precedent as such. Mongolian laws, and even their implementing regulations, often lack the specificity needed for consistent interpretation and application. Experienced and dedicated judges do their best to rule in the spirit of the law in routine matters. However, statutory and regulatory vagueness invites corruption within the underfinanced and understaffed judiciary, especially in cases where large sums of money are at stake, or where large foreign corporations are in court against domestic government agencies or well-connected private Mongolian citizens.

Mongolia has a specialized law for contracts but no dedicated law for commercial activities. Contractual disputes are usually adjudicated in Mongolia's district court system. Disputants may appeal cases to the City Court of Ulaanbaatar and ultimately to the Supreme Court of Mongolia. Mongolia has in place several specialized administrative courts authorized to adjudicate cases brought by citizens against official administrative acts. Disputants may appeal administrative court decisions to higher trial courts. Mongolia has a Constitutional Court, dedicated to ruling on constitutional issues. The General Executive Agency for Court Decisions (GEACD) enforces court decisions.

The Mongolian constitution specifies that non-judicial elements of the GOM "shall not interfere with the discharge of judicial duties" by the judicial branch. The Judicial General Council (JGC), composed of respected jurists, is charged with the constitutional duty of ensuring the

impartiality of judges and independence of the judiciary. However, the council lacks express authority to investigate allegations of judicial misconduct or to impose disciplinary measures on judges or other judicial sector personnel. Mongolian law recently required judges to maintain membership in the Mongolian Bar Association (MBA), but some judges actively oppose that requirement with the result that the MBA is no better positioned than the JGC to police the judiciary.

The legislative branch interfered directly with the judicial branch in 2016 when Mongolia's Constitutional Court ruled that four provisions of a subsidized residential mortgage program were unconstitutional. Following the program's suspension, then Parliament Speaker Z. Enkhbold issued a statement that "the Parliament will annul the decision of the Constitutional Court and restore the original law with the same provisions as before." Parliament thereupon voted in special session to dismiss the presiding justice of the court, paving the way for re-adoption of the original legislation and re-establishment of the mortgage subsidy program. Legal experts believe Parliament had no authority under Mongolian law to dismiss the presiding justice. Even Members of Parliament who supported his ouster did so to keep the very popular mortgage program in place and readily admit that the speaker effectively engineered an assault on the court's independence.

Legal experts believe that Mongolian substantive law also invites judicial corruption through weak distinctions between the branches of the GOM, which allows unconstitutional over-reach. The thinly staffed GEACD is charged with all aspects of implementing the decisions and verdicts of Mongolia's civil and criminal courts. GEACD is responsible for operating prisons, garnishing wages, impounding moveable property, and much more. But GEACD personnel do not report to the JGC or directly to the courts, but to the Ministry of Justice and Home Affairs (an element of the executive branch). The GEACD works closely on a functional level with the Office of the Prosecutor General, an independent agency run by a presidential appointee. However, its funding is provided by Parliament. The strong influence of Mongolian prosecutors on Mongolian courts is well documented. Mongolian courts, for example, rarely dismiss charges over the objection of the prosecution or otherwise enter defense verdicts even after trial. As a result of this convoluted chain-of-command, the GEACD can function as a conduit of potentially inappropriate communication from most any interested corner of the GOM to the judiciary.

Laws and Regulations on Foreign Direct Investment

2016 saw no major changes in the 2013 Investment Law of Mongolia. The Investment Law frames the general statutory and regulatory environment for all investors in Mongolia. Under the law, foreign investors can access the same investment opportunities as Mongolian citizens and receive the same protections as domestic investors. Investor residence, not nationality, determines whether an investor is foreign or domestic. The law also provides for a more stable tax environment and provides tax and other incentives for investors. Accordingly, most investments by private foreign individuals or firms residing in Mongolia need only be registered with the General Authority for Intellectual Property and State Registration ([GAIPSR](#)).

The Investment Law offers tax incentives in the form of transferrable tax stabilization certificates which give qualifying projects favorable tax treatment for up to 27 years. Affected taxes may include the corporate income tax, customs duties, value-added tax, and mineral resource

royalties. The criteria for participation in the tax stabilization program are transparent and include the amount of investment, the sector involved, and the geographic area involved. For information on tax stabilization certification, see www.investmongolia.gov.mn.

The law created a one-stop shop for investors, the Invest Mongolia Agency, but the current government cancelled this program in September 2016. The new National Development Agency is to issue tax stabilization certificates but has not implemented a process for doing so. The remaining IMA support functions are no longer available to foreign investors from the GOM. In conjunction with the International Finance Corporation and the World Bank, the GOM has promised, but not yet established, an Investor Dispute Resolution Council. In addition, the Prime Minister's Office maintains an Investors Advisory Council, which occasionally includes representatives from the foreign investment community.

While foreign investors report they appreciate the intent of the Investment Law, they note that its implementation does not always deliver the promised national treatment, specifically in two areas. First, foreign nationals and companies may not own real estate; only Mongolian adult citizens can own land. While foreign investors may obtain use rights for the underlying land, these rights expire after a set number of years, with no automatic right of renewal. Second, foreign investors object to the regulatory requirement that they invest a minimum of USD \$100,000 to establish a venture. Although the Investment Law has no such requirement, GOM regulators have unilaterally imposed it on all foreign investors. In contrast, Mongolian investors are not subject to investment minimums.

Competition and Anti-Trust Laws

Mongolia's Agency for Fair Competition and Consumer Protection (AFCCP) reviews domestic transactions for competition-related concerns. For a description of the AFCCP and its legal and regulatory powers, see the UNCTAD [website](#) and the AFCCP [website](#).

Expropriation and Compensation

Although Mongolia generally respects property rights, the Mongolian government and Parliament may exercise eminent domain in the national interest. Mongolian state entities at all levels are authorized to confiscate or modify land use rights for purposes of economic development, national security, historical preservation, or environmental protection. However, Mongolia's constitution recognizes private real property rights and derivative rights, and Mongolian law specifically bars the GOM from expropriating such assets without payment of adequate market-based compensation. Investors express little disagreement with such takings in principle, but worry that a lack of clear lines of authority among the central, provincial, and municipal levels of government creates occasions for loss of property rights. For example, the 2006 Minerals Law (amended in 2014) provides no clear division of local, regional, and national jurisdictions for issuances of land use permits and special use rights. Faced with unclear lines of authority and frequent differences in practices and interpretation of rules and regulations by different levels of government, investors may find themselves unable to fully exercise duly conferred property rights. The GOM acknowledges this but has taken no effective steps to remedy it.

Many of the cases alleging expropriation involve court expropriations after criminal trials in which the investors were compelled to appear as “civil defendants” but were not allowed to fully participate in the court proceedings. In these cases a GOM official is usually convicted of corruption and sentenced to prison, and the trial court judge then orders the foreign civil defendant to surrender a license or pay a tax penalty or fine for having received an alleged favor from the criminal defendant. In ongoing disputes involving several foreign investors, among them U.S. companies, the courts have taken property or revoked use licenses despite an absence of evidence the property or licenses were derived from corruption.

Investors and the legal community have expressed concerns about an act of Parliament they perceive as expropriation. In June 2016, a privately-held Mongolian company, using some U.S.-sourced financing, bought 49 percent of Mongolian state-owned Erdenet Mining Corporation from the Russian state-owned company Rostec. The non-transparent sale of this mining asset generated public controversy. Parliament subsequently nullified the transaction on February 10, 2017, and ordered seizure of the Mongolian company’s shares. While investors and legal experts do not dispute Parliament’s powers under the Constitution and statute to nationalize property, so long as compensation is provided, they state that Parliament has no authority to undo a business transaction between two non-government or foreign parties. They argue that Parliament’s claim undermines the sanctity of contracts and may well inhibit investment into other projects.

Dispute Settlement

ICSID Convention and New York Convention

Mongolia has ratified the Washington Convention and has joined the International Centre for Settlement of Investment Disputes (ICSID) in 1991. It also signed and ratified the New York Convention in 1994. The government of Mongolia has accepted international arbitration in several disputes.

Investor-State Dispute Settlement

The U.S.-Mongolia Bilateral Investment Treaty (BIT) entered into force in 1997 (<http://www.state.gov/e/eb/afd/bit/117402.htm>). Under this BIT, the two countries have agreed to respect international legal standards for state-facilitated property expropriation and compensation matters involving nationals of either country. The BIT effectively provides an extra measure of protection against financial loss for U.S. nationals doing business in Mongolia. In at least one expropriation case, however, the GOM restored a mining license it had unilaterally modified years previously, but declined to pay compensation for undisputed financial loss as required by the BIT and independently required by the domestic law specifically cited in rendering the modification. Under the BIT, such uncompensated expropriation is appealable through arbitration proceedings. However, the cost of arbitration can make it impractical for aggrieved parties.

The number of investment disputes involving foreigners in Mongolia is unknown. Fearing to jeopardize future opportunities in Mongolia, some U.S. and foreign investors quietly pursue or even abandon potentially sensitive projects, especially those involving a GOM interest. Some

investors report that GOM entities have solicited bribes in order to pre-empt or resolve particular investment disputes with foreign interests.

In disputes involving the GOM, investors report government interference in the dispute resolution process, both administrative and judicial. Foreign investors describe three general categories of disputes that invite such interference. The first comprises disputes between private parties before a GOM administrative tribunal. In these cases, a Mongolian private party may exploit contacts in government, the judiciary, law enforcement, or the prosecutor's office to coerce a foreign private party to accede to demands. The second category involves disputes between investors and the GOM directly. In these cases, the GOM may claim a sovereign right to intervene in the business venture, often because the GOM itself is operating a competing state-owned enterprise (SOE) or because officials have undisclosed business interests. The third category involves Mongolian tax officials or prosecutors levying highly inflated tax assessments against a foreign entity and demanding immediate payment, sometimes in concert with imposition of exit bans on company executives or even the filing of criminal charges.

Investors have reported to us that local courts recognize and enforce arbitral decisions, but that problems exist with enforcement. The thinly staffed General Executive Agency for Court Decisions (GEACD) is charged with implementing the decisions and verdicts of Mongolia's civil and criminal courts. GEACD employees often live in the jurisdictions in which they work, and are subject to pressure from friends and professional acquaintances. A complicated chain-of-command and opportunities for conflicts of interest can weaken GEACD's resolve to execute court judgments on behalf of foreign and domestic interests.

International Commercial Arbitration and Foreign Courts

Although investors voice concern that the GOM may choose to ignore international arbitration decisions, the GOM has consistently declared it will honor arbitral awards. In 2016, the GOM and Canadian uranium mining company Khan Resources settled a high-profile expropriation dispute after a Paris arbitration panel awarded USD \$104 million to the Canadian company. The parties settled for USD \$70 million and Mongolia paid Khan Resources in May 2016.

To improve Mongolia-based international arbitration, Parliament passed a new Arbitration Law in January 2017. Based on the United Nations Commission on International Trade Law (UNCITRAL), the Arbitration Law provides a clearer set of rules and protections for Mongolia-based arbitration. The law does not, however, designate any particular organization for use by all disputants, and has yet to be used by a foreign entity, to our knowledge. Any organization that satisfies specific requirements set out in the law can provide arbitral services. This change breaks the monopoly on domestic arbitration held by the Mongolian National Chamber of Commerce and Industry (MNCCI), which many investors criticized as politicized, unfamiliar with commercial practices, and too self-interested to render fair decisions. Foreign investors tell us that they prefer international arbitration, but might consider domestic arbitration if they now have options other than MNCCI.

The new law also limits the role of Mongolia's courts in the arbitration process. Previously, disputants could appeal to Mongolia's civil courts if the results of "binding arbitration" were not to their liking. The new arbitration law limits parties to a single appeal only to Mongolia's Court

of Civil Appeals in Ulaanbaatar (CCA). The CCA can only reject an arbitration judgment for “serious” procedural failings or discrepancies with official public policy initiatives.

As reported in the section on Investor-State Dispute Settlement, local courts will recognize both foreign and domestic arbitral awards and order the General Executive Agency for Court Decisions to enforce them, although collection may be slowed or even sabotaged for the reasons described above.

Foreign investors perceive a bias against them if they pursue legal action against a Mongolian SOE. To our knowledge no foreign plaintiff has prevailed against an SOE in Mongolia’s courts. Mongolia-based legal experts relate that foreign investors and exporters are likely to experience preemptory, non-transparent court processes up to outright discrimination by judges. Most investors and legal experts advise using other dispute resolution mechanisms when confronting Mongolian SOEs.

Bankruptcy Regulations

Mongolia’s bankruptcy law defines bankruptcy as a civil matter. Mongolian law mandates the registration of mortgages and other debt instruments backed by real estate, structures, immovable collateral (mining and exploration licenses and other use rights); and, after March 2017, movable property (cars, equipment, livestock, receivables, and other items of value). However, even though the law allows for securitizing movable and immovable assets, local law firms hold that the bankruptcy process remains too vague, onerous, and time consuming to make it practical. Mongolia’s Constitution and statutes allow contested foreclosure and bankruptcy only through judicial (rather than administrative) proceedings. Local business and legal advisors report that proceedings usually require no less than 18 months, with 36 months not uncommon. Investors and legal advisors state that a lengthy appeals process and perceived corruption and government interference can create years of delay. Moreover, while in court, creditors face suspended interest payments and limited access to the asset.

4. Industrial Policies

Investment Incentives

The GOM generally offers the same tax preferences to both foreign and domestic investors. The GOM occasionally grants tax exemptions for imports of essential fuel and food products or for imports in certain targeted sectors, such as agriculture or energy. Such exemptions can apply to Mongolia’s five percent import duty and ten percent value-added tax (VAT). In addition, the GOM occasionally extends a ten percent tax credit on a case-by-case basis to investments in key sectors such as mining, agriculture, and infrastructure. Under the Investment Law, foreign-invested companies properly registered and paying taxes in Mongolia are considered domestic Mongolian entities, thus qualifying for investment incentive packages that, among other benefits, include tax stabilization for a period of years. In 2014 Parliament authorized the central bank, the Bank of Mongolia (BOM), to waive 7.5 percent of the ten percent royalty payments that gold miners must pay when selling gold to the BOM and Mongolian commercial banks through 2017. The GOM intends to extend this program and to underwrite low-interest loans from commercial banks for small- to medium-sized gold mines that commit to selling gold to the BOM.

Investors should note that an impending three-year International Monetary Fund Program, set to begin in first half of 2017, may require the GOM to curtail lending and tax incentive programs as part of a fiscal austerity program.

Foreign Trade Zones/Free Ports/Trade Facilitation

The Mongolian government launched a free trade zone (FTZ) program in 2004. Two FTZ areas are located along the Mongolia spur of the trans-Siberian highway: one in the north at the Russia-Mongolia border in the town of Altanbulag; the other in the south at the Chinese-Mongolia border in the town of Zamiin-Uud. Both FTZs are relatively inactive, still pending development. A third FTZ is located at the port of entry of Tsagaan Nuur in the far western province of Bayan-Olgii bordering Russia. Mongolian officials also suggest that the New Ulaanbaatar International Airport (NUBIA), expected to commence operations in 2018, may host an FTZ. As first noted in the April 2004 USAID sponsored Economic Policy Reform and Competitiveness Project, benchmarking Mongolia's FTZ program against current successful international practices shows deficiencies in the legal and regulatory framework as well as in the process to establish FTZs. In addition, Mongolian FTZs lack implementing regulations based on international best practices. Further, due diligence, including a cost-benefit analysis, has never been completed for the FTZs, nor has sufficient funding been mobilized for on-site infrastructure requirements. Finally, these shortcomings may lead to "hidden costs" or subsidies that the government of Mongolia did not foresee.

Performance and Data Localization Requirements

Mongolia imposes no legal requirement for foreign investors to use local goods, services, or equity, or to engage in substitution of imports. The government applies the same geographical restrictions to both foreign and domestic investors. Existing restrictions involve border security, environmental concerns, and local use rights. There are no onerous or discriminatory visa, residence, or work permit requirements imposed on U.S. investors – although foreign firms must meet certain local hire requirements. Neither foreign nor domestic businesses need purchase locally, export a certain percentage of output, or use foreign exchange to cover exports.

The GOM strongly encourages but does not legally compel domestic sourcing of material inputs in Mongolia, especially for firms engaged in natural resource extraction. The 2014 Amendments to the 2006 Minerals Law of Mongolia state that holders of exploration and mining licenses should preferentially supply extracted minerals at market prices to Mongolian processing facilities and should procure goods and services and hire subcontractors from business entities registered in Mongolia. Although there are no formal enforcement procedures to ensure local sourcing, investors occasionally report that central, provincial, or municipal governments slow down permitting and licensing until domestic and foreign enterprises make some effort to source locally. The GOM's encouraging of the hiring of Mongolians becomes essentially a legal requirement when combined with the GOM requirement that individual employers seeking work visas for foreign employees demonstrate that their workforces comprise the same percentage of domestic hires that are suggested in Mongolia's procurement law. A long-pending draft labor law, if adopted in fall of 2017, would clarify the extent to which these target percentages are mandatory.

Despite pressure to source locally, foreign investors generally set their own export and production targets without concern for government imposed targets or requirements. Mongolia has no requirement to transfer technology. The government generally imposes no offset requirements for major procurements. Certain tenders and projects on strategic mineral deposits may require specific levels of local employment, procurement, or commitments to fund certain facilities or training opportunities as a condition of the tender or project; however, such conditions are not the norm. Investors, not the Mongolian government, make arrangements regarding technology, intellectual property, and similar resources, and may generally finance as they see fit. Except for a currently unenforced provision of the amended Minerals Law of Mongolia requiring mining companies to list ten percent of the shares of the Mongolian mining company on the Mongolian Stock Exchange, foreign-invested businesses are not required to sell shares to Mongolian nationals. Equity stakes are generally at the discretion of investors, Mongolian or foreign.

In cases where investments are determined to have national impact or raise national security concerns, the GOM may restrict the type of financing that foreign investors may obtain, their choice of partners, or to whom they sell shares or equity stakes. Investors and local legal experts note that the system by which the GOM regulates these transactions lacks a clear statutory basis and transparent, predictable regulatory procedures.

Investors can locate and hire workers without using hiring agencies as long as hiring practices follow the Mongolian Law on Labor. Mongolian law requires companies to employ Mongolian workers in certain labor categories where it has been determined that a Mongolian can perform the task as well as a foreigner. This law generally applies to unskilled labor categories and not fields in which a high degree of technical expertise not existing in Mongolia is required.

The GOM has no forced localization policy for data storage; no legal requirements for IT providers to turn over source code or to provide access for surveillance; and no rules or mechanisms for maintaining a certain amount of data storage at facilities within Mongolia.

5. Protection of Property Rights

Real Property

The Mongolian Constitution provides that “the State shall recognize any forms of public and private properties.” The Constitution limits real estate ownership to adult citizens of Mongolia, though that limitation does not apply to “subsoil,” a term that is not expressly defined in the Constitution. Mongolian civil law allows private Mongolian citizens or government agencies to assume property ownership or use rights if the current owner or holder of use rights does not use the property or the rights. In the case of use rights, revocation and assumption is almost always written into the formal agreements covering the rights. Squatters may also under certain circumstances claim effective property ownership of unused structures.

Although foreigners and non-resident investors may own structures and obtain use rights to land, only Mongolian citizens may own real estate. Ownership of a structure vests the owner with control over the use rights of the land upon which the structure sits. Use rights are granted from periods of three to sixty years depending on the particular use right. Although Mongolia has a

well-established register for immovable property – structures and real estate – it lacks a central register for use rights; consequently, investors, particularly those seeking to invest in rural Mongolia, have no easy way to learn who might have conflicting rights. Complicating matters, Mongolia’s civil law system has yet to develop a formal process for apportioning multiple use rights on adjacent lands or adjudicating disputes arising from conflicting use rights.

Mongolian law does allow creditors to recover debts by seizing and disposing of property offered as collateral. Mongolian law mandates that mortgages and other debt instruments backed by real estate, fixed structures, and other immovable collateral be registered with the Immoveable Property Office of the General Authority for Intellectual Property and State Registration (GAIPSR: www.burtgel.gov.mn). Beginning in March 2017, Mongolian law allows movable property (cars, equipment, livestock, receivables, and other items of value) to be registered with GAIPSR as collateral. Investors report that the Immoveable Property registration system is generally reliable, but the Movable Property system is new and just beginning its implementation. At this point, the GOM has no accurate figure for land with clear titles.

Intellectual Property Rights

Mongolia supports intellectual property rights (IPR) in general, and as member of the World Intellectual Property Organization (WIPO) has signed and ratified most relevant treaties and conventions, including the World Trade Organization Agreement on Trade Related Aspects of Intellectual Property Rights (WTO TRIPS). Mongolia’s Parliament has yet to ratify the WIPO internet treaties. Nevertheless, the Mongolian government and its intellectual property rights enforcer, GAIPSR, make a good faith effort to comply with these agreements. For additional information on IPR protection, see <http://www.ipom.mn/>.

Under TRIPS and Mongolian law, the Mongolian Customs Authority (MCA) and the Economic Crimes Unit of the National Police (ECU) also have an obligation to protect IPR. MCA can seize shipments at the border. The ECU has the exclusive power to conduct criminal investigations and bring criminal charges against IPR violators. GAIPSR has the administrative authority to investigate and seize pirated goods. Of these agencies, GAIPSR makes the most consistent efforts to fulfill Mongolia’s treaty commitments. It generally has an excellent record of protecting U.S. trademarks and copyrights; however, tight resources limit the GAIPSR’s ability to act. In most cases, when a rights holder files a complaint, GAIPSR investigates. If it judges that an abuse has occurred, it has in every case so far seized the pirated products under its administrative powers granted under Mongolian law. Mongolia does not publicize figures of seizures of IPR violating contraband.

The U.S. Embassy is aware of two particular areas in which enforcement lags. First, legitimate software products remain rare in Mongolia, with GAIPSR estimating in early 2017 that at least 85 percent of the domestic market uses pirated software. GAIPSR enforces the law where it can but the scale of the problem dwarfs its capacity to deal with it. Second, pirated optical media are also readily available and subject to spotty anti-piracy enforcement. The growth of online downloads of pirated digital media by individuals, local Mongolian TV stations using pirated videos, radio broadcasters playing pirated music, and cellular service providers offering pirated ringtones has eclipsed local production and imports of fake CDs, videos, and DVDs. GAIPSR acknowledges that most local public and privately held TV stations, some 184 at latest count,

regularly broadcast pirated materials; however, GAIPSR hesitates to move on these broadcasters, most of which are connected to major government or political figures. GAIPSR rarely initiates action on its own without prompts from rights holders.

Resources for Rights Holders

Contact at the U.S. Embassy in Ulaanbaatar Economic and Commercial Section; +976-7007-6001 or Ulaanbaatar-Econ-Comm@state.gov. For additional resources on protecting IPR in Mongolia, please see the American Chamber of Commerce in Mongolia website <http://amcham.mn/>. The U.S. Embassy also provides a list of attorneys available [here](#).

For additional information about national laws and points of contact at local IP offices, please see WIPO's country profiles: <http://www.wipo.int/directory/en/>.

6. Financial Sector

Capital Markets and Portfolio Investment

Mongolia is developing the experience and expertise needed to sustain portfolio investments and active capital markets. The GOM has reported that it wants to establish vibrant capital markets, and seeks to use the state-owned Mongolian Stock Exchange as the primary venue for generating capital and portfolio investments. To achieve this goal, Parliament passed the Revised Securities Market Law (RSML), which most investors believe creates a sufficient regulatory apparatus for these activities. However, most foreign investors shy away from investing in the Mongolian Stock Exchange because it lacks the regulatory capacity, accountability, transparency, and liquidity to effect proper capital formation and portfolio investments. GOM imposes few restrictions on the flow of capital into and out of any of its markets.

Money and Banking System

Of the 13 commercial banks currently operating in Mongolia, there are four large banks that are majority owned by both Mongolian and foreign investors. These banks – Golomt, Khas, Trade and Development Bank, and Khan Bank – collectively hold approximately 80 percent of all banking assets or about USD \$8 billion as of January 2017. The banks operate branches throughout the country and are regularly audited by one of the big four international accounting firms. Their rates of non-performing loans averaged 9.3 percent in February 2017, a slight rise from February 2016's 8.8 percent. They generally follow international standards for prudent capital reserve requirements, have conservative lending policies, up-to-date banking technology, seem generally well-managed, and are open to foreigners opening bank accounts under the same terms as Mongolian nationals. In addition, foreign investors, including the International Finance Corporation (IFC) and Goldman Sachs, have equity stakes in several of these four banks. While there are no legal prohibitions, the GOM generally discourages majority foreign control of any local commercial bank or foreign establishment of local branch operations. Mongolia's commercial banks also face the challenge of maintaining correspondent relations with U.S.-based banks. Local bankers report that correspondent banks are terminating their Mongolian relationships because the revenue generated by the relatively small number of Mongolian transactions is not worth the administrative costs of providing correspondent relationships.

In 2015, to consolidate weaker, less capitalized banks into larger, better funded institutions, the BOM, the central bank, ordered all commercial banks to increase their minimum paid-in-capital from the current minimum of USD \$8 million to USD \$25 million by December 2017. While the BOM and Mongolia's financial system have endured insolvencies over time, each failed bank had shown clear signs of distress before the BOM moved to safeguard depositors and the banking system. As with many issues in Mongolia, the problem is not lack of laws or procedures for dealing with troubled banks, but rather, some lack of capacity and an apparent reluctance on the part of BOM banking overseers to enforce regulations related to capital reserve requirements, bank management and corporate governance, and non-performing loans.

Pursuant to the IMF-led program, international auditors will conduct an in-depth asset quality review of Mongolia's commercial banking sector to be completed in 2018. International accounting firms will conduct comprehensive financial audits on Mongolia's commercial banks. The audits, a condition for Mongolia's receiving support under an IMF extended fund facility, will stress test all of Mongolia's 13 commercial banks. Publicly the BOM and the IMF have stated that the banking assessments are unlikely to measurably affect the commercial banking sector but may result in some consolidation among the smaller, less-well capitalized banks.

Foreign Exchange and Remittances

Foreign Exchange

The Mongolian government employs a liberal regime for controlling foreign exchange. Foreign and domestic businesses report no problems converting or transferring investment funds, profits and revenues, loan repayments, or lease payments into whatever currency they wish aside from occasional, market-driven shortages of foreign reserves. Mongolia's national currency, the tugrik (denoted as MNT), is fully convertible into a wide array of international currencies with its relative value fluctuating freely (mostly falling in recent years against the USD) in response to economic trends. Mongolia's central bank, the Bank of Mongolia (BOM), regularly intervenes in currency markets to limit MNT volatility.

The 2009 Currency Law of Mongolia requires all domestic transactions be conducted in MNT unless expressly excepted by the BOM. The central bank's regulation prohibits the listing in Mongolia of wholesale or retail prices in any fashion (including as an internal accounting practice) that effectively denominates or otherwise indexes those prices to currencies other than the MNT. Given the 50 percent devaluation of the MNT over the past few years, this BOM edict has adversely impacted businesses that pay for imported goods in USD or other hard currency and sell them in MNT. Businesses caught adjusting MNT prices in exact or nearly exact proportion to currency fluctuations can face stiff penalties up to the full market value of the involved goods.

BOM regulation compels lenders to issue written warnings to borrowers seeking dollar-denominated loans that the steady depreciation of the MNT in recent years has translated to very significant increases in the real costs of servicing dollar loans. Hedging forward mechanisms available elsewhere to mitigate exchange risk for many national currencies are generally unavailable in Mongolia given the small size of the market. Letters of credit remain difficult to

obtain, and the GOM sometimes resorts to paying for goods and services with promissory notes that cannot be directly exchanged for other currencies.

Remittance Policies

Businesses report no delays in remitting investment returns or receiving in-bound funds. Most transfers are completed within a few days to a week. However, in response to occasional currency shortages, most often of U.S. dollars, commercial banks can temporarily limit the amounts they exchange daily, transmit abroad, or allow to be withdrawn. Remittances sent abroad are subject to a ten percent withholding tax to cover any potential profit, income, or value-added tax liabilities.

Sovereign Wealth Funds

In 2008, Parliament established the Human Development Fund (HDF), ostensibly Mongolia's first sovereign wealth fund (SWF); however, it does not function as a traditional SWF. The HDF is to be funded from the profits, taxes, and royalties generated by the mining industry as a whole. Rather than husband these revenues for later days, the HDF, when it has funds from mining activities, distributes them to the citizens of Mongolia in the form of social benefits: payments for pension and health insurance premiums; mortgage support and other loan guarantees; and payments for health and education services. The GOM has no plans to use the HDF as a conduit for Mongolian investments abroad or for investment into Mongolia. In that sense, there is conflict between the HDF and U.S. investors in Mongolia.

7. State-Owned Enterprises

The Mongolian government maintains various state owned enterprises (SOEs) in the banking and finance, energy production, mining, and transport sectors. The Government Agency for Policy Coordination on State Property and Regulation (PCSP: <http://www.pcsp.gov.mn/en>) manages these assets but currently provides no complete list of its SOEs. Investors can compete with SOEs, although in some cases an opaque regulatory framework limits both competition and investor penetration. Indeed, both foreign and domestic private investors believe the current GOM approach to regulating SOEs is favorable to Mongolian SOEs over private enterprises and foreign SOEs. Although many private companies have been created or registered in Mongolia in recent years, including foreign private companies, the GOM has also created several dozen SOEs over the same period.

In 2010, Mongolia passed and implemented the Law of Mongolia on Competition applying to private enterprises and SOEs active in Mongolia. Prior to passage, competition between state-owned and private businesses had been declining for the simple reason that many SOEs had been privatized. Currently, firms from Mongolia, China, Japan, Europe, Canada, and the United States have sought opportunities for renewable and traditional power generation, a sector still under state control in Mongolia. However, few want to invest in the power generation field until the regulatory and statutory framework for private power generation firms up and tariffs reflect commercial best practices and true cost recovery.

The 2006 Minerals Law of Mongolia (amended in 2014) and the 2009 Nuclear Energy Law grant the GOM the right to acquire equity stakes ranging from 34 percent up to 100 percent of certain uranium and rare earth deposits deemed strategic for the nation. Once acquired, these assets are vested with Erdenes MGL, the state-owned entity for mining assets. Mongolia requires Erdenes MGL to use its profits to “benefit the Mongolian people.”

The role of the state as an equity owner in management of revenues and operation of mines remains unclear. Investors question the GOM’s capacity to deal with conflicts of interest arising from its position as both regulator and owner-operator. Specifically, they worry that the GOM’s desire to maximize local procurement, employment, and revenues may compromise the long-term commercial viability of mining projects. Investors also question the GOM’s capacity to execute its fiduciary responsibilities as both owner and operator of mines. Observers are concerned that the GOM waives legal and regulatory requirements for state-owned mining companies that it imposes on all others. Generally, approval for relevant environmental and operating permits for private coal mines in Mongolia takes at least two years. However, there are indications that the GOM has exempted Erdenes Tavan Tolgoi (ETT) mining operations from regulatory requirements imposed on other operations. Preferential treatment for SOEs creates the appearance that the GOM has one standard for its SOEs and another for foreign-invested and private domestic invested companies; and also provides SOEs with substantial cost advantages via a more lenient interpretation or outright waiver of legal requirements.

Mongolian SOEs will source from foreign firms only when inputs are not available locally or cannot be produced competitively in Mongolia. SOEs and private enterprises are under political pressure to source locally as much as possible and often resort to creating local Mongolian shell companies to act as a domestic storefront for foreign-sourced goods. This unofficial requirement adds inefficiency and cost to serving the Mongolian market. Finally, Mongolia is not yet a party to the World Trade Organization Procurement Agreement, although it has expressed a desire to join.

Mongolian Compliance with OECD Guidelines on Corporate Governance of SOEs

Mongolian SOEs do not adhere to the OECD Corporate Governance Guidelines for SOEs, however they are technically required to follow to the same international best practices on disclosure, accounting, and reporting as imposed on private companies. When SOEs seek international investment and financing, they tend to follow these rules. Many international best practices are not institutionalized in Mongolian law, and SOEs tend to follow existing Mongolian rules. At the same time, foreign-invested firms follow the international rules, causing inconsistencies in corporate governance, management, disclosure, and accounting.

The SOE corporate governance structure is clear on paper. There is an independent management answering to an independent board of directors, who, report to the Government Agency for Policy Coordination on State Property and Regulation (PCSP: <http://www.pcsp.gov.mn/en>). In reality, government officials tell us that management and board of director operations and appointments are subject to political interference to an almost crippling extent. Some of the professional managers of these SOEs have expressed hope that implementation of the 2015 amendments to the Law on the Human Development Fund formally allowing independent,

professional management of SOEs would curtail such interference. In support of this effort, the Asian Development Bank is funding a USD \$35 million corporate governance strengthening project for Erdenes Mongol, an SOE holding key copper and coal mining assets.

Privatization Program

Parliament's 2016 National Action Plan references privatizing some state-held assets, but the government has yet to identify the specific assets to privatize or the process to implement privatization. The Government Agency for Policy Coordination on State Property and Regulation ([PCSP](#)) holds and operates some SOE mining assets, the Mongolian Stock Exchange (MSE), the national air carrier MIAT, the Mongol Post Office, and other properties. Since 2015 some of these assets have been auctioned off. Most notably, in 2015 30 percent of the post office was offered to private buyers through an initial public offering on the MSE. However, while stating that it welcomes foreign participation in privatization efforts, the GOM has yet to clarify a tendering process for the privatization of state assets not to be sold via the MSE. Mongolia has no plans to privatize its existing railroad jointly held with the government of Russia, but the law does allow private firms to build, operate, and transfer new railroads to the state.

8. Responsible Business Conduct

The concept and practice of responsible business conduct (RBC) in Mongolia is still in its infancy. Most reputable international companies make good faith efforts to work with local communities. The larger firms tend to follow accepted international RBC practices and underwrite a range of RBC activities across Mongolia; however, smaller companies, lacking sufficient resources, often limit RBC actions to the locales in which they work. A few large Mongolian firms regularly undertake RBC actions, with small- to medium-sized enterprises generally (but not always) hindered by limited resources. Generally, firms that pursue RBC are perceived favorably, at least within the communities in which they operate. Nationally, responses range from praise from politicians to cynical condemnation by certain civil society groups, which allege that RBC is no more than an attempt to buy public approval. Public awareness of RBC remains limited, with only a few NGOs involved in RBC promotion or monitoring, and those concentrated on large projects such as the Oyu Tolgoi mega-mine project owned by international mining giant Rio Tinto.

The government has no statutory requirement for RBC covering all companies active in Mongolia. However, the Minerals Law of Mongolia requires minerals exploration and mining companies to develop local development plans with the soum (county) in which they operate. Ministry of Mining and Heavy Industry (MMHI) officials explain that the GOM will eventually codify and standardize how companies should work with soums on local development issues. MMHI has a model agreement laying out specific, mandatory obligations that companies and municipalities would assume toward one another and the specific projects that companies would be able to undertake in the municipalities in which they operate. Investors report the model agreement remains a work in progress. Mongolia is also a member in good standing of the Extractive Industries Transparency Initiative ([EITI](#)).

9. Corruption

Domestic and foreign investors continue to report that corruption remains a cause for concern in Mongolia at both the “petty” or administrative and “grand” or elite levels. Instances of grand corruption reinforce the existing linkages between economic and political power that have negatively affected and in some cases ultimately derailed projects in Mongolia. Transparency International’s 2016 Corruption Perception Index ranked Mongolia 87 of 176 countries globally, largely on par with its rankings from previous years.

The primary law governing anti-corruption efforts is the 2006 Anti-Corruption Law (ACL), which sets criminal penalties for official corruption. However, the ACL is poorly enforced, and corruption continues at all levels of government – with some officials enjoying apparent impunity. Factors contributing to corruption include conflicts of interest, lack of transparency, lack of access to information, an inadequate civil service system, and weak government control of key institutions. Parliament approved the National Program to Combat Corruption in November 2016, and the program is currently under development. In addition, in June 2016 Mongolia initiated its second National Action Plan under the Open Government Partnership.

The law proscribes fines and imprisonment of up to five years for the solicitation or acceptance of bribes by government officials. The law also criminalizes the offering of bribes to officials. NGOs previously alleged that the threat of prosecution of both individuals offering bribes and officials involved gave neither guilty party motivation to report the episodes after the fact and thus resulted in significant underreporting. After the government began granting limited immunity for those paying smaller bribes, the reporting of bribes increased. Members of Parliament are immune from prosecution during their tenure, and this immunity can preclude litigation of allegations of corruption.

The Independent Authority Against Corruption (IAAC) is the principal agency responsible for investigating corruption cases, although the Organized Crime Department of the National Police Agency also investigates corruption cases and often assists in IAAC investigations. The IAAC is responsible for investigating complaints against police, prosecutors, and judges. As reported in the State Department’s Human Rights Report, questions about the IAAC’s political impartiality remain, due in part to the President’s power to appoint the head of the IAAC. Despite this potential conflict of interest, the public views the agency as relatively effective. In response to complaints that it was not making the results of its investigations and subsequent court proceedings public, the IAAC has held periodic press conferences about its activities. In addition, the IAAC increased its public awareness and prevention efforts through activities such as distributing educational materials for children and conducting outreach trips to the provinces.

For more information, see The Asia Foundation’s [surveys](#) on corruption in Mongolia and the State Department’s 2016 Mongolian Human Rights [Report](#).

Resources to Report Corruption

Independent Agency Against Corruption (IAAC)
District 5, Seoul Street 41

Ulaanbaatar, Mongolia 14250
Telephone: +976-70110251; 976-11-311919
Email: contact@iaac.mn

Transparency International Mongolia
Tur-Od Lkhagvajav, Chairman of the Mongolian National Chapter
Zorig Foundation, 2nd floor
Peace Avenue 17, Sukhbaataar District
Ulaanbaatar, Mongolia
Telephone: +976 9919 1007; +976 9511 4777; +976 95599714
Email: lturod@gmail.com

10. Political and Security Environment

The Mongolian political and security environment is characterized largely by peace and stability; with instances of political violence rare. Mongolia has held 12 successful presidential and parliamentary elections over the past 20 years, though a brief but violent outbreak of civil unrest followed disputed parliamentary elections in July 2008. During that unrest, five people were killed and a political party's headquarters was burned. The violence was quickly contained and order restored, and no repeat of that level of civil unrest has occurred since. Indeed, Mongolia held peaceful presidential elections less than a year later in May 2009, in which the incumbent president was defeated and conceded the next day; with power smoothly transitioning to the winner. Mongolia's successful parliamentary elections in June 2016 also led to a peaceful transition of political power. Presidential elections are scheduled for June 2017.

A more resource nationalist tone in politics has become evident in recent years. Media and observer reports suggest a rising anti-foreigner sentiment among elements of the public, mostly based on the desire to have Mongolian resources developed in an environmentally sound, culturally sensitive way by Mongolians for the benefit of Mongolians. However, this nationalist sentiment has not led to any known incidents of anti-Americanism or politically motivated damage to American projects or installations since the United States and Mongolia established relations in 1987. However, some commentators over the last three years have described a rising level of hostility towards Chinese, Vietnamese, and South and North Korean nationals in Mongolia. This hostility has led to instances of improper seizure of Chinese and Korean property, and in even more limited cases to acts of physical violence against Chinese nationals and Chinese-owned property, and to a lesser extent, against Korean and Vietnamese nationals residing in Mongolia.

11. Labor Policies and Practices

The National Statistics Office of Mongolia (NSO) reports that as of May 2017, 9.1 percent of the 1.24 million people defined by the NSO as economically active were unemployed. Youth unemployment (15-34 year olds) currently hovers around 57.6 percent of total unemployed. There are currently approximately 5,900 foreign workers officially registered with the Ministry of Labor (MOL), two-thirds of whom work in construction, mining, and manufacturing. More than one-third of the foreign workers are from China.

The Mongolian labor pool of nearly two million workers is generally educated, young, and skilled. Unskilled labor is abundant but shortages exist in most professional categories requiring advanced degrees or vocational training, including all types of engineers and professional tradespeople in the construction, mining, and services sectors. Foreign-invested companies deal with these shortages by providing in-country training to their staffs, raising salaries and benefits to retain employees, or hiring expatriate workers with specific skills and expertise unavailable in Mongolia.

Mongolian labor laws are not particularly restrictive. Investors can locate and hire workers without using hiring agencies, as long as hiring practices follow the 1999 Law on Labor of Mongolia (LOL). The LOL requires companies to employ Mongolian workers in all labor categories whenever a Mongolian can perform the task as well as a foreigner. This LOL provision generally applies to unskilled labor categories. If an employer seeks to hire a non-Mongolian laborer and cannot obtain a waiver from MOL for that employee, the employer can pay a monthly waiver fee. Depending on a project's importance, MOL can exempt employers from 50 percent of the waiver fees per worker. However, employers report difficulty in obtaining waivers, due in part to public concerns that foreign and domestic companies refuse to hire Mongolians in the numbers that they should.

Because Mongolia's long, cold winters limit outdoor operations in the infrastructure development, commercial and residential construction, and mining exploration sectors, employers tend to use a higher degree of temporary contract labor than companies that can operate year-round. Current law allows employers and employees to use short-term contracts.

Employers have expressed concern over the package of proposed amendments to the LOL currently under consideration by the GOM. If passed by parliament in 2017, the proposed amendments would mandate that employers, the government, and the Confederation of Mongolian Trade Unions (CMTU) form a committee to set actual work hours and conditions, rather than allowing employers and employees to contract directly based on actual labor needs. Both foreign and local employers have advocated against this change and other proposed amendments to LOL, noting that such changes restrict their ability to respond to fluctuating market conditions.

The LOL currently allows workers to form or join independent unions and professional organizations of their choosing and protects rights to strike and collective bargaining. However, some legal provisions restrict these rights for foreign workers, certain public servants, and workers without formal employment contracts, though all groups have the right to organize. The law protects the right of workers to participate in trade union activities without discrimination, and the government has protected this right in practice. The law provides for reinstatement of workers fired for union activity, but the CMTU stated that this provision is not always enforced. According to the CMTU, some employees occasionally face obstacles to forming or joining unions, and some employers have taken steps to weaken existing unions. For example, some companies use the portion of employees' salaries deducted for union dues for other purposes rather than forwarding the monies to the unions. Some employers have prohibited workers from participating in union activities during working hours, despite being mandated by law. There

have also been some violations of collective bargaining rights, as some employers refuse to conclude collective bargaining agreements in contracts.

The law on collective bargaining regulates relations among employers, employees, trade unions, and the government. Wages and other conditions of employment are set between employers (whether public or private) and employees, with trade union input in some cases. Laws protecting the rights to collective bargaining and freedom of association are generally enforced. The Tripartite Labor Dispute Settlement Committees (TC) resolves the majority of disputes between workers and management and consists of representatives from Mongolia's CMTU, employers, and the government. However, management and legal contacts state that TCs are not compliant either with the existing labor law or Mongolia's 2013 Law on Mediation. Cases that cannot be resolved by TCs are referred to the courts. For Mongolian labor laws as they relate to union activity, see the 2016 Mongolia [Country Report](#) on Human Rights Practices.

The LOL allows employers to fire or lay-off workers for cause; however, depending on the circumstances, severance may be required and workers may seek judicial review of their dismissal. The statutory severance package requires employers to pay laid off workers one month of the contracted salary; fired workers receive no severance. Laid off or fired workers are entitled to three months of unemployment insurance from the Social Insurance Agency.

The International Labor Organization (ILO) is concerned that child labor practices are inconsistent with Mongolian law and international labor standards. Authorities report that employers often do not follow the law, requiring minors to work in excess of the permitted hours per week and paying them less than the minimum wage. The General Agency for Specialized Inspections ([GASI](#)) enforces all labor regulations; however the agency is understaffed, with only 1,250 inspectors. GASI Inspectors are authorized to compel compliance with labor statutes, but its limited capacity, combined with the growing number of privately owned enterprises, limits enforcement. Additional information on the ILO conventions ratified by Mongolia are available on the ILO [website](#).

12. OPIC and Other Investment Insurance Programs

The United States Overseas Private Investment Corporation (OPIC) offers loans and political risk insurance to U.S. investors active in most sectors of the Mongolian economy. In addition, OPIC and Mongolia have signed an Investment Incentive Agreement requiring the GOM to extend national treatment to OPIC-financed projects. The agreement is available [online](#). For example, under this agreement mining licenses of firms receiving an OPIC loan may be pledged as collateral to OPIC, a right not normally bestowed on foreign financial entities. The U.S. Export-Import Bank (EXIM) offers programs in Mongolia for short-, medium-, and long-term transactions in the public sector and for short- and medium-term transactions in the private sector. Mongolia is also a member of the Multilateral Investment Guarantee Agency (MIGA).

13. Foreign Direct Investment and Foreign Portfolio Investment Statistics

Table 2: Key Macroeconomic Data, U.S. FDI in Mongolia

Economic Data	Host Country Statistical source*		USG or international statistical source		USG or International Source of Data: BEA; IMF; Eurostat; UNCTAD, Other
	Year	Amount	Year	Amount	
Host Country Gross Domestic Product (GDP) (\$M USD)	2014	\$12.02	2015	\$ 11.74	www.worldbank.org/en/country
Foreign Direct Investment	Host Country Statistical source*		USG or international statistical source		USG or international Source of data: BEA; IMF; Eurostat; UNCTAD, Other
U.S. FDI in partner country (\$M USD, stock positions)	2015	\$521*	2016	\$546*	
Host country's FDI in the United States (\$M USD, stock positions)	NA	NA	NA	NA	BEA data available at http://bea.gov/international/direct_investment_multinational_companies_comprehensive_data.htm
Total inbound stock of FDI as % host GDP	2014	166%*	2015	177%*	

*Mongolia Host Country Data: Bank of Mongolia, Mongolian Foreign Sector Review, 2016: https://mongolbank.mn/documents/statistic/externalsector/bopreview/bopreview_2016.pdf

Table 3: Sources and Destination of Mongolia FDI

The Government of Mongolia has never tracked where the beneficial ownership of a given investment actually terminates. Rather the government only records where the company claims its domicile. The U.S. Embassy is aware of numerous cases where foreign entities active in Mongolia do not incorporate in their countries of origin but rather do so in third countries,

largely for tax mitigation purposes. Consequently, although Mongolia's data and the IMF's, respectively, suggest that much of Mongolia's investment originates from such places as the Netherlands or Singapore, much of the investment comes from other jurisdictions, including but not limited to the United States, Australia, Canada, Russia, and China.

Direct Investment from /in Counterpart Economy Data (From the IMF's Coordinated Direct Investment Survey (CDIS) site: <http://data.imf.org/CDIS>)

From Top Five Sources/To Top Five Destinations (US Dollars, Millions)

Inward Direct Investment			Outward Direct Investment		
Total Inward	16,753	100%	Total Outward	NA	100%
Netherlands	8,385	50%	NA	NA	NA
Hong Kong SAR	1,392	8%	NA	NA	NA
Singapore	1,386	8%	NA	NA	NA
United Kingdom	1,198	7%	NA	NA	NA
P.R. China: Mainland	1,048	6%	NA	NA	NA

"0" reflects amounts rounded to +/- USD 500,000.

Outward Direct Investment figures are unavailable.

Table 4: Sources of Mongolia Portfolio Investment

Mongolia Portfolio Investment Assets (From IMF's Coordinated Portfolio Investment Survey (CPIS) site: <http://data.imf.org/?sk=B981B4E3-4E58-467E-9B90-9DE0C3367363>)

Top Five Partners (Millions, US Dollars)

Total			Equity Securities			Total Debt Securities		
All Countries	235	100%	All Countries	202	100%	All Countries	33	100%
Hong Kong SAR	84	36%	Hong Kong SAR	67	33%	Hong Kong SAR	17	52%
United States	41	18%	United States	39	19%	Singapore	11	33%
Singapore	28	12%	Australia	20	10%	United States	2	6%
Australia	21	9%	Singapore	16	8%	United Kingdom	2	6%
Canada	15	6%	Canada	15	7%	Australia	1	3%

14. Contact for More Information

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