

U.S. DEPARTMENT OF STATE

2011 MONGOLIA INVESTMENT CLIMATE STATEMENT

ECONOMIC AND COMMERCIAL SECTION OF THE U.S. EMBASSY IN ULAANBAATAR, MONGOLIA

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A.1 OPENNESS OF GOVERNMENT TO FOREIGN INVESTMENT

In its specific policies, laws, and general attitude, the Government of Mongolia (GOM) has tended to support foreign direct investment (FDI) in all sectors and businesses. In general, Mongolian law does not discriminate against foreign investors. Foreigners may invest with a minimum of US \$100,000 cash or the equivalent value of capital material (office stock, structures, autos, etc.). In both law and practice, foreigners may own 100% of any registered business with no legal, regulatory, or administrative requirement to take on any Mongolian entity as a joint venture partner, shareholder, or agent. Mongolia pre-screens neither investments nor investors, except in terms of the legality of the proposed activity under Mongolian law. The only exceptions to this flexible investment regime are land ownership, petroleum extraction, certain rail projects, and *strategic* mineral deposits.

Reflecting on the year just passed, 2010 presented investors with a very mixed business climate. Positively, the key Oyu Tolgoi copper-gold project (OT) continues to move forward, having brought over US \$2 billion into Mongolia through technology, jobs, and other revenues. Although some clouds loom over the OT horizon, this marquee project represents and justifies Mongolia's investment potential for most investors. More negatively, 2010 continued regulatory and legislative trends that began in 2009 in the areas of environmental law, taxation, and mineral rights which have been widely perceived as narrowing Mongolia's openness to FDI. We expect these trends to bleed into other sectors into 2011 and beyond.

While many Mongolian industrial and economic strategies do not discriminate actively or passively for or against foreign investors, specific governmental acts regarding foreign involvement in Mongolia's nascent uranium sector as well as preferential treatment for state-owned mining ventures have spurred criticism that the government is curtailing the rights of foreign and domestic private investors in favor of the Mongolian state.

Creating Oyu Tolgoi

In October 2009, the GOM, Ivanhoe Mines of Canada, and Rio Tinto jointly negotiated investment and share-holders agreements respectively for the Oyu Tolgoi (OT) copper- gold deposit located in Mongolia's South Gobi desert. The OT agreement vests the government of Mongolia with 34% ownership of the project and provides guarantees for local employment and procurement. With

estimated development costs in excess of US \$7 billion and a 40-year plus mine-life, OT is conservatively expected to double Mongolia's annual GDP by the time it reaches full production around 2017.

With construction well underway and over 6,000 workers employed by OT LLC, most observers of Mongolia's investment climate continue to consider this agreement a landmark for foreign and domestic investment in Mongolia. The consensus is that it

- Shows Mongolia can say "Yes" to key projects undertaken with foreign involvement and investment;
- Confirms the GOM's commitment to compensating private rights holders of most deposits considered strategic under the current minerals;
- Demonstrates the GOM's and Parliament's willingness to amend laws and regulations to enhance and ensure the commercial viability of mining projects.

The positive message of OT for investors cannot be underestimated. All observers consider OT responsible for spurring progress on other mining projects, for the successful listing of these projects on foreign stock exchanges, and for current buoyancy of the Mongolian economy.

However, in a trend beginning in late 2010 and likely to continue through 2011, some within the GOM and Parliament have begun to push to re-open the investment agreement that sets the project's legal, tax, and regulatory environment for the next few decades. While no one yet anticipates such an action occurring anytime soon, the debate has moved into the public sphere, including news and opinion pieces in the local papers, on television, and on the radio. To date, investors have expressed concern that the GOM has not sufficiently addressed the issue publicly, as it has not explicitly and definitively rejected calls for renegotiating the OT investment agreement (as opposed to the OT shareholders agreement, which has been subject to proposed changes at well-publicized behest of OT LLC's principal shareholders).

The absence of a clear, public GOM commitment to honor its agreement has raised the question within the business community of the durability of agreements in Mongolia in general, casting a cloud on the country's investment climate. Left unaddressed, uncertainty over OT's future could impair investor perceptions and

stall inward FDI and consequently domestic development and employment linked to the resource sector. Even as the OT investment agreement dramatically brightened Mongolia's business profile in 2010, it could just as dramatically darken it in 2011 and beyond.

Legislation and Regulation that May Negatively Affect the Investment Climate

Although the OT remains *the big positive* for foreign investors in 2011, its impact on the investment climate is moderated by the ongoing implementation of two key laws that many foreign and domestic investors think detract from Mongolia's claims to being a competitive, safe, and predictable destination for investment.

The 2009 Nuclear Energy Law of Mongolia (NEL)

In 2009, Parliament imposed significant new controls on mining and processing uranium (and some rare earths) in Mongolia. The law created a new regulatory agency, the Nuclear Energy Agency of Mongolia (NEA). A state-owned enterprise, MonAtom, was subsequently created by a decree of the Cabinet of Ministers to hold assets and manage uranium mining and exploration rights and operational entities that the government might acquire from current rights holders through implementation of the law. The NEL imposed several conditions:

- Immediately revoked all current uranium exploration and mining licenses and then required all holders to register these licenses with the NEA, for a fee;
- Required investors to accept that if the exploration was done with state funds, the Mongolian state has an absolute right to take, without compensation, at least 51% of the operating entity that will develop the mine -- as opposed to just the deposit -- as a condition of being allowed to develop any uranium property. If exploration was accomplished with non-state funds, the GOM has the right to take no less than 34% of the operating entity, again without compensation.
- Created a uranium-specific licensing, regulatory regime independent of the existing regulatory and legal framework for developing mineral and metal resources. Prior to the Nuclear Energy Law, exploration licenses gave their respective holders the rights to discover and develop any and all mineral and metal resources discovered within that license area (this did not include petroleum resources, which are governed separately). According to officials, this law means that the state can issue a distinct license for uranium exploration on a property otherwise dedicated to other mineral and metals exploration.

The 2009 Law on the Prohibition of Minerals Exploration in Water Basins and Forested Areas

In 2009, Parliament passed The Law on Prohibition of Minerals Exploration in Water Basins and Forested Areas, or as it is locally known, *The Law with the Long Name*. The stated intent was to limit environmental damage caused primarily by placer gold mining in and around forests and watersheds. The law imposes the following restrictions on exploration and mining rights:

- Revokes or modifies licenses to explore for or mine any and all mineral resources located no less than 200 meters from a water or forest resource.
- Requires the government to compensate rights holders for exploration expenses already incurred or revenue lost from actual mining operations.
- Empowers local officials to determine the actual areas which can be mined. In effect, the local official can extend the 200 meter minimum at his discretion.

Both foreign and domestic investors have unambiguously criticized the nuclear energy and water/forest laws and their respective implementations as both non-transparent and potentially expropriatory. They continue to argue that these laws radically change the rules for investing in Mongolia's vital minerals sector quite late in the game, raising the question of Mongolia's reliability as an investment destination.

GOM claims to the contrary, observers consider these laws expropriatory. In regards to the Nuclear Energy Law, the legislation explicitly rejects any obligation to compensate investors for loss of economic rights and property, hence generating credible investor fears of government of expropriation. In 2010, these fears became real when the GOM acted against a Canadian company in what many observers defined as a stripping of the firm's rights to develop a uranium deposit without any apparent due process or compensation. The company had attempted to pursue the matter through Mongolia's court system; however, when the GOM announced that the company's rights were revoked and vested in a Russian-Mongolian state-owned company, the firm moved to settle its claims through international arbitration.

In late 2010, the GOM moved to enforce the terms of the Forest and Watershed Law, announcing that it would immediately suspend and cancel the exploration and mining licenses of over 240 mines and later move to modify or revoke the rights of the other 1,600 or so licensees. Because the Water Law requires

compensation, the GOM is in the process of developing a procedure for indemnifying holders. These rights holders have claimed to us that they have been inadequately consulted on the criteria for determining compensation levels and how they might dispute compensation awards. Consequently, the GOM approach has led to the perception that the process will be arbitrary and inequitable.

Investors note that both laws passed without sufficient public review and comment and that the subsequent regulatory drafting processes continued with little participation of the affected parties. The resulting regulatory regimes do not generally specify how and on what basis licenses will be revoked; nor explain how investors might appeal administrative revocations. The open-ended powers seemingly granted Mongolian officials seem to give central, regional, and local officials broad discretionary powers to curtail rights without apparent limit.

Presidential ban on the processing of exploration and mining licenses

In 2010, the President of Mongolia used his authority as head of the National Security Council of Mongolia (NSC) to suspend the issuance and processing of both mining and exploration licenses.

In taking this action, the president publicly decried the very disorganized and corrupt situation at the Mineral Resources Authority of Mongolia, which he argued justified his suspending the license issue process, as national security concerns supersede legislation and regulation.

The suspension only extends to "new" or disputed licenses and not to licenses for ongoing activities. For instance, if a company wishes to convert an exploration license to a mining license, it can still do so. However, certain categories are suspended:

- Newly pegged land: land never explored or registered for exploration.
- Exploration rights dropped and now to be re-tendered.
- Exploration and mining licenses (about 1,800) at risk from revocation under the 2009 water and forest law.

No Mongolian president, to our knowledge, has ever used this power so broadly and publicly to halt bureaucratic activity not normally associated with traditional national security categories. GOM officials explained that the powers granted to the president as head of the NSC are quite broad and without any apparent institutional limit in emergency situations.

Investors did not know what to make of the president's action: Was it a one off or the first of many NSC interventions into commercial activities? Nor are they sure of the criteria used to raise licenses to the level of national threat to Mongolia.

The GOM and Parliament subsequently confirmed the president's actions, announcing that the moratorium on issuing the specified licenses will be lifted only after Parliament deals with the issue of licenses when it amends the 2006 Minerals law of Mongolia during the spring 2011 session of Parliament. The World Bank is assisting with this amendment process.

Public Private Partnership/Concession Law

In 2010, Parliament passed legislation that allows the state to issue private concessions for certain functions and to enter into public-private partnerships (PPPs) in a variety of areas. Currently over 170 separate projects—ranging from a major rail expansion to the north eastern border with Russia to education centers—are listed as available for private entities to engage with the GOM.

The GOM seeks private industry to support for social and economic development by ostensibly providing commercial incentives for participation. However, while approving the concept in principle, foreign and domestic investors have criticized the operative legislation. Chiefly, potential investors tell us that they see few incentives in the design of the PPPs. As currently envisioned, most Mongolian PPPs seem to allow for recovery of construction costs and a very limited horizon for operation (and profit generation) before the asset must be returned to the GOM. In essence, investors argue that the GOM wants them to act like fee-for-service contractors but declines to compensate as they would such a contractor.

Until these unattractive features are amended, most investors will likely pass on Mongolia's PPP opportunities.

Use of NGOs as regulators may affect provision of services

In 2010, the GOM introduced the concept that some regulatory functions could be effectively and safely executed by NGOs and professional associations rather than government agencies. The enabling legislation allows NGOs and professional associations to inspect and certify entities perceived of as low risk for serious health and safety, economic and commercial, social and cultural impacts. Examples include hair care, legal advocacy, and broadcasting. For instance, the

General Agency for State Inspections (GASI) can now allow a local association of barbers and stylists to monitor the quality of such services and practitioners, thus freeing up GASI resources for areas posing greater risk to the public.

Investor responses to the concept have been mixed. On the one hand, they are quite familiar with this approach as an international best practice and approve of the concept of NGOs and professional associations monitoring, supervising, certifying, and sanctioning members and their businesses in place of government agency. The American Bar Association (ABA) and the American Medical Association are examples.

On the other hand, concerns arise over the composition of the monitoring entities, how their mandates and enforcement powers are set, and how they will resolve disputes. Some domestic and foreign businesses have brought cases to our attention in which they claim the role of the GOM is so intrusive that it oversteps the bounds of inspection and interferes directly in commercial matters. For example, the GOM has used "public interest" as a justification for specifying content and form for broadcasters, pay rates for legal services, and enforcement responsibilities for Internet Service Providers (ISP).

To cite a few examples, a Mongolian ISP might have to certify that information and comments posted on blogs are not defamatory; otherwise they may face civil or criminal penalties. Attorneys would not be able to charge more for their legal services than allowed by an Advocates Association. This association, largely composed of GOM-selected appointees, would also have the power to set professional standards and impose fines. The proposed plan and associated legislation would also severely limit the role that foreign lawyers licensed in Mongolia can play in courtroom activities.

In most cases, the GOM has neither involved nor consulted with the affected parties. In fact, in all cases brought to our attention the affected industry and practitioners were invited to comment only very late in the drafting and approval process, usually at the moment that the rules are near approval. Without speculating on the motives for GOM's specific approaches to regulating certain professions, foreign and domestic practitioners who seek to practice in Mongolia may find their ability to service clients in Mongolia increasingly restricted.

The Mongolian Judiciary and the Sanctity of Contracts

We find no concerted, systematic, institutional abuse specifically targeted at foreign investment. In the case of the judiciary—corruption aside—most problems arise from ignorance of commercial principles rather than antipathy to foreign investment as such. (See A. 13 for a detailed discussion of corruption in Mongolia.) In principle, both the law and the judiciary recognize the concept of sanctity of contracts. However, the practical application of this concept lags, with both foreign and domestic investors reporting inconsistent enforcement of contracts by the judiciary. This inconsistency comes from the slow transition from Marxist-based jurisprudence to more market-oriented laws and judicial practices. Recent decisions in banking and land use cases in which contract provisions were upheld reflect a growing commercial sophistication among Mongolia’s judges. As more judges receive commercial training and as socialist era (1921-1990) jurists retire, we expect to see the gradual improvement of the entire judicial system. (See Chapter A.4 for a discussion of the role of the judiciary in dispute settlement see.)

Concerns over Exit Visas

Initially reported in 2010, Mongolian public and private entities continue to abuse the exit visa system to exert pressure on foreign investors to settle civil and commercial. Generally, visitors in Mongolia for less than 90 days (with no visa) have no exit visa or permit requirement. However, Mongolia does normally require valid exit visas at the port of departure (e.g. the international airport) for visitors who have stayed more than 90 consecutive days in Mongolia. These exit visas must be obtained from the Office of Immigration prior to departure, but may be denied for a variety of reasons including civil disputes, pending criminal investigation, or for immigration violations.

If denied for a civil dispute, the visa may not be issued until either the dispute is resolved administratively or a court has rendered a decision. Neither current law nor regulation establishes a clear process or time-table for settlement of the issue. Nor does the law allow authorities to distinguish a criminal and civil case when detaining a person. The Mongolian government claims the right to detain foreigners indefinitely without appeal until the situation is resolved.

Research into issue has revealed that abuse of the exit-visa system also affects investors from countries other than the U.S. All cases have a similar profile. A foreign investor has a commercial dispute with a Mongolian entity, often involving assets, management practices, or contract compliance. The Mongolian entity responds by filing either civil or criminal charges with local police or prosecutorial authorities. It is important to note that at this point there need be no actual arrest

warrant or any sort of official determination that charges are warranted: mere complaint by an aggrieved party is sufficient to deny exit.

An investor in this situation is effectively detained in Mongolia indefinitely. Some foreign investors have resolved these impasses by settling, allowing them to depart Mongolia. If unwilling to settle, the foreign investor will have to undergo the full investigatory process, which may lead to a court action. Investigations commonly take up to six months, and in one case an American citizen was not able to depart Mongolia for over two years while under criminal investigation for a failed business deal. Even if a dispute seems settled, it can be filed in the same venue again -- if the local police and prosecutors are willing -- or in a different venue.

We also note that Mongolian citizens are not similarly detained when involved in commercial disputes. Mongolian citizens require no exit visas to depart Mongolia and can only be denied exit if an actual arrest warrant has been issued.

Limitations on Participation in Real Estate, Petroleum Extraction, and Strategic Minerals Deposits

Only individual Mongolian citizens can own real estate. Ownership rights are currently limited to urban areas in the capital city of Ulaanbaatar, the provincial capitals, and the county seats (called *soums*). No corporate entity of any type, foreign or domestic, may own real estate. However, foreigners and Mongolian and foreign firms may own structures outright and can lease property and obtain use rights for terms ranging from one (1) to ninety (90) years. Mongolian law and regulation generally cedes control of the land, usually through lease, to the owner of the structure built upon a given piece of property.

Mongolian law also requires oil extraction firms to enter into production sharing contracts with the government as a precondition for both petroleum exploration and extraction.

Passed in 2006, Mongolia's current Minerals Law enacted the concept of the ***strategically important deposit***, which empowers the GOM to obtain up to a 50% share of any mine on, or abutting, such a deposit. The prior 1997 law had no concept of *strategic deposits* allowing the state to take equity in mines.

The 2006 law defines a *strategic deposit* as "*a mineral concentration where it is possible to maintain production that has a potential impact on national security, economic and social development of the country at national and regional levels or*

deposits which are producing or have potential of producing above 5% of total GDP per year." Ultimately, the power to determine what is or is not a *strategic* is vested in the State Great Hural (Parliament). To date, the GOM has only identified world-class copper and coal reserves, some iron ore deposits, and all deposits of rare earths and uranium as crossing the *strategic* threshold.

If a mineral deposit is labeled *strategic*, and if the state has contributed to the exploration of the deposit at some point, the GOM may claim up to 50% ownership of the operating entity that may ultimately mine the resource. However, if the deposit has been explored with private funds and the state has not contributed to the exploration of the deposit, the GOM may acquire up to 34% of that entity.

State participation (or share) is determined by an agreement on exploitation of the deposit considering the amount of investment made the state; or, in the case of a privately-explored strategic deposit, by agreement between the state and the firm on the amount to be invested by the state. Parliament may determine the state share using a proposal made by the government or on its own initiative using official figures on minerals reserves in the integrated state registry.

Regarding the state-taking of mining and explorations rights under the 2006 Minerals Law, Parliament did not commit itself, neither by legislation nor by any other acts, to compensate existing rights holders for the share it might takes in a given *strategic deposit*. However, the GOM is obliged by law to cover its investment and portion of equity in the operating entity that might develop any given strategic deposit. Investors and representatives of the GOM believe that the OT Investment Agreement sets a precedent that confirms this Mongolian commitment to honor this obligation. However, as discussed below, such a commitment may not be extended to uranium and some rare earth oxide deposits.

In addition, the current Minerals Law restricts the access of petroleum and mineral licenses to entities registered in Mongolia under the terms of the relevant company and investment laws. A foreign entity, in its own right, cannot hold any sort of mining or petroleum license. Should a foreign entity acquire a given license as either collateral or for the purpose of actual exploration or mining, and fail to create the appropriate Mongolian corporate or financial entity to hold a given license, that failure has served, and continues to serve, as grounds for the GOM to invalidate the license. In essence, the foreign entity may lose its security or its mining rights. We advise investors with specific questions to seek professional advice on the status of their licenses.

Windfall Profits Tax Eliminated; New Mining Royalty Regime Imposed

From its passage in 2006 until its sunset on December 31, 2010, the Windfall Profits Tax (WPT) Law drew criticism regarding the GOM's commitment to creating an open, predictable, and fair environment for foreign direct investment. Passed in just six days, the law's establishment raised concerns among investors about the stability and transparency of Mongolia's legislative and regulatory environment.

The WPT imposed a 68% tax on the profits from gold and copper mining respectively. For gold, the tax kicked in when the price hit US\$850 per ounce. For copper, the threshold was US\$2,600 per ton. Mining industry sources claimed that when combined with other Mongolian taxes, the effective tax rate was 100%.

The OT Investment Agreement changed all of this. OT's private investors successfully argued that they would not be able to run a commercially viable OT operation when faced with the WPT. Consequently, Parliament passed an amendment which officially ended the WPT on December 31, 2010.

To compensate for lost WPT revenue, Parliament amended the mineral royalty rates in late 2010. The new regime imposes a sliding scale on a variety of mineral and metal products, which depends on the market price of the commodity on certain world exchanges and the amount of processing the mineral or metal receives in Mongolia. The more value added done in Mongolia, the lower the increase in the royalty.

Revisions of the Mongolian Tax Code

The 2006 code taxes all income types at 10%; and taxes business profits at 10 % for profits less than 3 billion Tugriks (US\$ 2.4 million) and at 25% for any profit 3 billion or above. The Value Added Tax (VAT) is currently 10%. Mongolia also imposes excise taxes and licensing fees upon a variety of activities and imports.

As with the WPT, the OT Agreement had a salutary effect on key tax provisions long-desired by foreign and domestic investors alike. Before OT, firms could only carry-forward losses for two (2) years after incurring the loss. While most businesses approved of this provision, many, especially that requiring large and

long-term infrastructure development, noted that the two year carry-forward limit was insufficient for projects with long development lead times, as is typical of most large-scale mining developments. As a condition precedent of passing the OT Agreement, Parliament extended loss-carry forward to eight (8) years.

On the down side, Mongolia's Parliament revoked an exemption available on value-added taxes (VAT) of 10% on equipment used to bring a given mine into production, except on equipment to be used in the production of highly processed mining products. For example, if the OT project decides to smelt copper, imported equipment supporting production of metallic copper might qualify for a 10% reduction on VAT. However, in an effort to promote value-added production in Mongolia, the GOM defines the production of copper concentrate as non-value-added output; and so, equipment imported to develop and operate this sort of operation would not qualify for the 10% VAT exemption.

Most jurisdictions, recognizing that most mines have long development lead times before production begins, either waive or do not tax such imports at all. Parliament, with no consultation with investors, international experts, or its own tax officials, chose to impose the VAT, which immediately makes Mongolian mining costs 10% higher than they would otherwise be, impairing competitiveness and dramatically varying from global practice.

Whether any mining output qualifies for this exemption seems completely at the discretion of the GOM, which has not set out in regulation or statute a process by which it will regularly adjudicate such VAT exemption requests.

Unfinished Business (Including Customs Rates)

Both the GOM and Parliament continue debate additional tax reform measures. Despite ongoing discussion, no substantive changes have occurred since 2007. Proposed measures include revisions to the law on customs and customs tariffs. While the exact nature of the proposed changes in the customs law remains murky, the GOM states that changes will be consistent with Mongolia's WTO obligations and investment climate enhancement goals.

Despite overall solid, positive changes, international financial institutions and foreign and domestic investors continue to note that the 2007 tax reforms and subsequent actions remain insufficient. They report that to improve Mongolia's business environment reform efforts need to go beyond changes to the tax code to

restructure the operations of those agencies—the tax department, customs administration and inspections agency—that directly interact with private entities.

Privatization Policies and Resistance of Mongolian firms to Foreign Investment

Privatization policies have favored foreign investment in some key industries, including banking and cashmere production. The bidding processes for privatizations and other tenders have generally been transparent.

Although the GOM routinely announces plans, we have seen little real movement to privatize state holdings in the aviation, telecommunications, power, and mining sectors. Recent moves by the GOM to acquire assets in the minerals sector – especially in uranium, rare earth oxides, and coal – suggest to some that the GOM intends to expand its role in some areas.

That said, the GOM continues to promote plans for initial public offerings (IPO) for certain state-owned power, infrastructure, and mining holdings. It has stated that funds from such offerings would be used to underwrite these projects and to pay for needed infrastructure improvements. To date, the IPO discussion has moved beyond the conceptual level, with the government seeking the assistance of international investment advisors to move ahead. The GOM has told the Mongolian public and investors that it would like to hold an international IPO for at least one mining asset, specifically the world-class Tavan Tolgoi (TT) coking project as early as spring 2012. While most observers believe such IPOs viable in the long run, they argue that the GOM's 2012 time table is too ambitious given that TT is an undeveloped, remote Gobi site with little viable infrastructure owned by a government with no track record in bringing such projects into operation.

Mongolian businesses vs. Foreign Direct Investors

Foreign companies and investors are subject to the same legal regime imposed on Mongolian domestic firms regarding incorporation and corporate activities. For example, casinos are illegal under Mongolian law; and so, neither Mongolians nor foreigners may own or operate them (except in one specifically designated free trade zone, although no casino has been established there). Generally, Mongolian private businesses seek foreign participation and equity in all sectors of the economy. That said, some Mongolian businesses use Mongolian institutions to stop competitors, if they can. These actions represent no animus against foreign investment as such; rather, they reflect individual businesses desire to keep competitors, Mongolian or foreign, at bay.

Key Investment Laws

The Foreign Investment Law of Mongolia (FILM) transformed the anti-business environment of the socialist era into today's generally investor-friendly regime. Under the old system, everything not provided for in law was illegal. Because such economic activities as franchising, leasing, joint venture companies were not specifically mentioned in earlier Mongolian statutes, they were technically illegal. In 1993, the GOM enacted FILM to legalize all manner of foreign investment in Mongolia (amended in 2002 to allow for representative offices and franchises). This law and its subsequent amendments define broad ranges of activity that would otherwise have limited validity under Mongolian law. It also defines the meaning of foreign investment under the civil code without limiting activities that foreign investors can conduct. FILM also establishes registration procedures for foreign companies. Specifically, the law requires that any investment with 25% or more of FDI must register as a foreign-invested firm with the government. The law creates a supervisory agency, the Foreign Investment and Foreign Trade Agency (FIFTA), that runs the registration process, liaises among businesses and the Mongolian government, and promotes in- and out-bound investments.

In 2008, the Parliament of Mongolia amended the FILM. The stated intent of the revision was to improve FIFTA's ability to track foreign investment and to enhance the services provided by FIFTA to foreign investors. The 2008 FILM requires foreign investors to invest a minimum of US\$100,000 and imposes a series of requirements on foreign investors seeking registration. Registered foreign companies must have FIFTA certify that their by-laws, environmental practices, their technologies, etc., comply with standards determined by FIFTA.

Foreign investors have expressed concern over what they perceive as FIFTA's broad and seemingly un-transparent regulatory authority. FIFTA officials report that procedures are still under development; and that because they lack specific expertise in most of these areas, they will have to consult with the relevant ministries and agencies as they assesses each firm's request for investment registration. FIFTA also seems to lack transparent, predictable processes to evaluate investments. Investors still tell us that they do not know the exact standards FIFTA will apply for any given investment; how it will determine those standards; and how they might seek redress if FIFTA denies a registration request.

Ministerial Structure Impacts Foreign Investment

In late 2008, Parliament re-organized the government structure by combining various ministries and agencies in an effort to streamline government functions. Relevant to foreign investors, Parliament took trade policy and trade promotion functions that had been vested in the former Ministry of Industry and Trade (MIT) and FIFTA respectively and merged them with the Ministry of Foreign Affairs. The Ministry of Foreign Affairs and Trade (MFAT) formulates and implements trade policies and promotion efforts, which includes export promotion and in-bound investment efforts. FIFTA is now under MFAT's direct supervision. Other units of MIT were absorbed by the now-named Ministry of Food, Agriculture, and Light Industry and Ministry of Nature, Environment, and Tourism.

Ministry officials have stated that the government will concentrate on promoting Mongolian exports and foreign investment into Mongolia. They want FIFTA to resemble counterpart agencies in South Korea, Japan, or the U.S.; and have told both us and businesses that they plan to get FIFTA out of the regulatory business. The intent is to limit FIFTA's activities to supporting business in their efforts to work in Mongolia and to registering in-bound investment for purposes of investment tracking only.

Mongolia's Ranking as a Place to Do Business

Measure	Year	Index/Ranking
TI Corruption Index	2010	<i>Corruption Perceptions: 2.7</i>
Heritage Economic Freedom	2011	<i>World Ranking: 94/179 Freedom Score: 59.9</i>
World Bank Doing Business	2010 2011	Doing Business: 63 Doing Business: 73
MCC Gov't Effectiveness	FY 2011	0.10 (53%)
MCC Rule of Law	FY 2011	0.53 (89%)
MCC Control of Corruption	FY 2011	0.00 (50%)
MCC Fiscal Policy	FY 2011	-2.5 (45%)
MCC Trade Policy	FY 2011	79.8 (88%)
MCC Regulatory Quality	FY 2011	0.34 (81%)
MCC Business Start Up	FY 2011	0.989 (97%)
MCC Land Rights Access	FY 2011	0.683 (78%)
MCC Natural Resource Mgmt	FY 2011	76.26 (90%)

A.2 CONVERSION AND TRANSFER POLICIES

The Mongolian government employs a streamlined, liberal regime for controlling foreign exchange for investment remittances. 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 whenever they wish. There is no difficulty in obtaining foreign exchange, whether the investor wants Yuan, Euros, Yen, English Pounds, Rubles, or U.S. Dollars.

In regards to domestic transactions, current law requires domestic transactions be conducted in Mongolia's national currency, the Tugrik, excepting those entities allowed specific waivers as determined by the Mongolian central bank, the Bank of Mongolia (BOM).

Businesses report no delays in remitting investment returns or receiving in-bound funds. Most transfers occur within 1-2 business days or at most a single business week.

Ease of transfer aside, foreign investors criticize Mongolia's lack of sophisticated mechanisms for converting currencies and parking money. Letters of credit can be difficult to obtain, and legal parallel markets do not yet exist in the form of government dollar or tugrik denominated bonds or other instruments for parking funds in lieu of payment. Many Mongolian financial institutions lack experience with these arrangements. Moreover, Mongolian banking law currently provides incomplete statutory grounds and regulatory support for the activity to take place. The immediate impact has been to limit access to certain types of foreign capital, as international companies resist parking cash in Mongolian banks or in local debt instruments. That said, the government of Mongolia, the BOM, and several donor agencies have combined efforts to develop and employ such instruments in 2011.

A.3 EXPROPRIATION AND COMPENSATION

Mongolia respects property rights as they apply to most asset types. In 2010, we detected no wide-scale changes in policies, statutes, or regulations related to the use and ownership of private property. Foreigners face no legal bias in asset ownership (except that only citizens of Mongolian may own land) or how they structure ownership. Foreign investors need not seek local partners or share ownership of most assets or endeavors as a condition of doing business. However, in the crucial mining sector, 2010 saw the continuation of actions that represent both “creeping expropriation” and outright, state-sanctioned expropriation.

Security of Ownership

Mongolia and the United States signed and ratified a Bilateral Investment Treaty (BIT) which entered in force in 1997, and which specifically enjoins both signatories from expropriatory acts against private property and investments. (For a copy of the BIT go to <http://www.state.gov/e/eeb/ifd/43303.htm>.) In addition, both Mongolian law and the national constitution recognize private property and use rights and specifically bar the government from expropriating such assets. To date, the government of Mongolia (GOM) has not expropriated any American property or assets. However, recent actions by the GOM against a foreign (non-US) mining company provide an example for investors of how the Mongolian government is willing to respond to seizure of, and compensation for, private property.

Like most governments, the Mongolian government exercises its right of eminent domain in the national interest. Currently, this means little, as most land outside Mongolia’s few urban centers remains government property, as provided in Mongolia’s constitution and relevant statutes. The government has no plans to privatize these vast countryside holdings, but it leases parcels for such economic activities as mining, pasturage, timbering, etc. This practice remains in flux because the government must still determine how to let these rights and what fees to charge. Because the GOM has provided a clearer legal and regulatory path to investors in the minerals sector than in others, mining has traditionally attracted more foreign investment. However, recent government policies to promote agricultural activities have led to foreign direct investment in both livestock and cropping.

Since May 2003, land in the urban areas has been privatized to citizens of Mongolia or leased to both citizens and foreigners for periods ranging from 3-90 years. The legislation and implementing regulations are evolving, but so far investors believe that the GOM generally respects property rights and leases.

I: Implications of the Current Minerals Laws for Use Rights

Minerals Law of 2006

We closely watch the key mining sector, Mongolia's major foreign exchange earner and chief engine for economic and commercial development. The 2006 Minerals Law has several provisions that raise red flags for investors. The law does not allow the GOM to usurp rights to explore and exploit natural mineral, metal, and hydrocarbons resources per se. Instead, the law imposes procedural requirements and grants powers to central, provincial, and local officials - powers that, if abused, might prevent mineral license holders from exercising their exploration or mining rights. The current law has the potential to deny the rights holder access to his rights without formally revoking use rights.

An example is the new tender process for apportioning some exploration rights. The old law awarded exploration rights on a "first come, first served" basis, a process that gave little discretion to government officials to intervene. The current law establishes a different procedure for obtaining exploration rights on land explored with state funds or lands where the current holder has forfeited exploration rights. The Mineral Resources Authority of Mongolia (MRAM) will tender such exploration rights only to firms technically qualified to conduct minerals work. The new tender procedure neither requires nor allows for a cash-bid. Only the technical merits of exploration proposals will determine who gains exploration rights. MRAM staff has the authority and responsibility to assess the merits of proposals to determine who wins the tenders.

Both MRAM and its supervising authority, the Ministry of Mineral Resources and Energy, have broad discretionary authority to select who will get tenements. Under the current system, it is possible for a company to prospect virgin territory and scope out a potential exploration site, only to risk losing the site should MRAM decide to grant the rights to another exploration company; and we have heard of several instances where this has happened.

Investors and observers are also concerned about authority granted to the MRAM Chairman to approve transfers of existing and new licenses. The law grants final

approval authority to the MRAM, without specifying any check or balance on this official's authority. This power is not a revocation but if abused would certainly prevent exercise of economic rights.

Complicating matters is that in 2008 MRAM had been moved under the direct authority of the Ministry of Mineral Resources and Energy (MMRE) in a sweeping re-organization of the government. Prior to this restructuring, MRAM had been a quasi-independent agency, the acts of which did not require ministerial approval. Now, the ministry can intervene in the registration and transfer of exploration and mining licenses. The ministry seems to have only overtly intervened in cases where the license involves a *strategic deposit*. (See A.1 for explanation of *strategic deposits*.) In this specific category, ministerial officials have ordered MRAM to freeze all transfers and transactions involving properties near or in strategic deposits, which includes uranium deposits of any size and massive coal and copper deposits near the Chinese border. Further, these same officials have indicated that the government may modify or even revoke exploration or mining licenses in or near strategic deposits. MMRE officials have asserted to us that the GOM has no statutory or regulatory obligation to compensate such rights holders for modification of licenses considered strategic under the 2006 Minerals Law.

Expropriatory Aspects of the 2009 Nuclear Energy Law

The 2009 Nuclear Energy Law (NEL) imposes significant controls on mining and processing uranium (and some rare earths) and created a new regulatory agency, the Nuclear Energy Agency of Mongolia (NEA). A state-owned enterprise, MonAtom, was subsequently incorporated created by a decree of the Cabinet of Ministers to hold assets and manage uranium mining and exploration rights and operational entities that the government might acquire from current rights holders through implementation of the law. The NEL imposed several conditions:

- Immediately revoked all current uranium exploration and mining licenses and then required all holders to register these licenses with the NEA, for a fee.
- Required investors to accept that if the exploration was done with state funds, the Mongolian state has an absolute right to take, without compensation, at least 51% of the operating entity that will develop the mine -- as opposed to just the deposit -- as a condition of being allowed to develop any uranium property. If exploration was accomplished with non-state funds, the GOM has the right to take no less than 34% of the operating entity, again without compensation.

- Created a uranium-specific licensing, regulatory regime independent of the existing regulatory and legal framework existing for mineral and metal resources. Prior to the Uranium Law, exploration licenses gave their respective holders the rights to discover and develop any and all mineral and metal resources discovered within that license area (this did not include petroleum resources, which are governed separately). According to GOM officials, this new law means that the state can issue a distinct license for uranium exploration on a property otherwise dedicated to other mineral and metals exploration.

To many foreign and domestic investors, this law is outright, statutorily sanctioned expropriation, which heretofore had not been present in Mongolia. The NEL gives the GOM the right to take uranium holdings from whomever it will with no obligation to compensate the rights holders. Complicating the issue is that the law seems to conflate the deposit and company mining the deposit, allowing the GOM to claim an uncompensated share in any entity that might mine the deposit. In effect, the GOM is demanding a free-carried, non-compensated interest of no less than 51% of any uranium mine.

GOM claims to the contrary, observers argue that implementation of the Nuclear Energy Law has validated their concerns about expropriation. In 2010, the GOM acted against a Canadian company in what observers defined as a stripping of the company's rights to develop a uranium deposit without any apparent due process or compensation. The company had attempted to pursue the matter through Mongolia's court system; however, when the GOM announced that the company's rights were revoked and vested in a Russian-Mongolian state-owned company, the firm moved to settle its claims through international arbitration, which is ongoing.

Acts of Provincial Administrations

With regard to the issuance of both exploration permits and mining licenses, observers routinely report that provincial officials use their authority arbitrarily to block access to mining rights legally granted under the current law. For example, reports regularly circulate that some provincial government officials use their authority to designate land as "special use zones" to usurp mining exploration tenements. In a common technique, provincial governors often reclassify property that has never felt the touch of the plow or felt the tread of a tourist for agricultural use or cultural tourism respectively, although the central government has legally granted exploration rights to miners.

Other miners harshly criticize the misuse of the local officials' rights to comment on mining licenses. Comments are advisory, and have limited legal force regarding disallowing activity, but the central government routinely hesitates to reject a governor's negative comment no matter the motives behind it. The effect has been to stop progress for months, limiting access to the resource and costing rights holders' time and money. Whatever the motives, these provincial actions are often seen as a creeping bureaucratic expropriation through denial of access and use rights.

The 2006 Minerals Law provides no clear limit on provincial control of permits and special use rights or guidance on how to apply these powers beyond codifying that the provincial and local authorities have some authority over activities occurring in their provinces and soums (counties). Faced with these unclear boundaries of authority, the central government often interprets the rules and regulations differently from the provincial authorities, creating administrative conflicts among the various stakeholders. The central government acknowledges the problematic ambiguity but has yet to definitively clarify the situation in law or practice, even though the situation threatens accessing use rights. Mongolian and foreign permit holders have advised the government that letting this problem fester raises perceptions among investors that they may risk losing their economic rights, which can scare away inbound investors.

Expansion of License Revocation Powers to the Soum Level

The *Law on the Prohibition of Minerals Exploration in Water Basins and Forested Areas of 2009*—or *The Law with the Long Name*, as it is colloquially known—represents a considerable extension of unregulated authority to Mongolia's 320 *soum* (county) administrations in regards to mining activities within their respective jurisdictions.

In 2009, Parliament prohibited mining in water basins and forested areas of Mongolia. The law's laudatory intent was to limit environmental damage caused primarily by placer gold mining in and around forests and watersheds. The law imposed the following restrictions on exploration and mining rights:

- Required the government of Mongolia to revoke or modify licenses to explore for any and all mineral resources within an area no less than 200 meters from a water or forest resource.

- Required the government to compensate rights holders for exploration expenses already incurred or revenue lost from actual mining operations.
- Empowered local officials, the *soum* or county governors, to determine the actual areas which can be mined. In effect, the local official can extend the 200 meter minimum at his discretion.

Current rights holders note that the law vests local governors with seemingly unlimited and unregulated power to curtail mining in their respective jurisdictions. Although the governor cannot allow mining within the 200 meter limit, the law sets no upper limit on mining near water courses and forests in the respective *soum*. The local administration has full discretion to prohibit operations 400 meters, 600, 1000, or more. Mining companies have to work out the issue with the local governor; and should any company disagree with a given locality's ruling, the law makes no provision for administrative appeal. A company would then have to pursue redress through Mongolia's courts. In either case, the rights holder would lose access to their economic rights for a protracted period, or even permanently.

In late 2010, the GOM moved to enforce the terms of the Forest and Watershed Law, announcing that it would immediately suspend and cancel the exploration and mining licenses of over 240 mines and later move to modify or revoke the rights of the other 1,600 or so licensees. Because the Water Law requires compensation, the GOM is in the process of developing a procedure for indemnifying holders. These rights holders have claimed to us that they have been inadequately consulted on the criteria for determining compensation levels and how they might dispute compensation awards. Consequently, the GOM approach has led to the perception that the process will be arbitrary and inequitable.

National Security Concerns May Lead to Loss of Rights:

In 2010, the President of Mongolia used his authority as head of the National Security Council of Mongolia (NSC) to suspend the issuance and processing of both mining and exploration licenses.

In taking this action, the president publicly stated that the disorganized and corrupt situation at the Mineral Resources Authority of Mongolia justified his suspending the license issuance process, as national security concerns supersede legislation and regulation.

The suspension only extends to "new" or disputed licenses and not to licenses for on-going activities. For instance, if a company wishes to convert an exploration license to a mining license, it can still do so. However, certain categories are suspended:

- Newly pegged land: land never explored or registered for exploration
- Exploration rights dropped and now to be re-tendered.
- Exploration and mining licenses (about 1,800) at risk from revocation under the 2009 water and forest law

No Mongolian president, to our knowledge, has ever used this power so broadly and publicly to halt bureaucratic activity not normally associated with traditional national security categories. GOM officials explained that the powers granted to the president as head of the NSC are quite broad and without any apparent institutional limit in emergency situations.

The GOM and Parliament subsequently confirmed the president's actions, announcing that the moratorium on issuing the specified licenses will be lifted only after Parliament deals with the issue of licenses when it amends the 2006 Minerals Law of Mongolia during the spring 2011 session of Parliament. The World Bank is assisting with this amendment process.

Investors did not know what to make of the president's action: Was it a one off or the first of many NSC interventions into commercial activities? Nor are they sure of the criteria used that raised mining licenses to the level of national threat to Mongolia. Whatever the precise answer to these questions, the president's actions have created a national security precedent for suspending or revoking commercial and economic rights formally granted under Mongolian law.

A.4 DISPUTE SETTLEMENT

The GOM inconsistently supports transparent, equitable dispute settlements. These inconsistencies largely stem from both a lack of experience with standard commercial practices and the opportunistic, non-systematic intent of some public or private entities to target foreign investors. The framework of laws and procedures is functional, but many judges and officials remain unaware of commercial principles.

Problems with Dispute Settlement in Mongolia's Courts

Mongolian court structure supports dispute settlement. Disputants know the procedures and the venues. Mongolia does not use juries in court proceedings; rather, plaintiffs bring cases at the district court level before a single district judge or panel of judges, depending on the complexity and importance of the case. The district court renders its verdict. Either party can appeal this decision to the Ulaanbaatar City Court, which rules on matters of fact as well as matters of law. It may uphold the verdict, send it back for reconsideration or nullify the judgment. Disputants may then take the case to the Mongolian Supreme Court for final review. Matters regarding the constitutionality of laws and regulations may be taken directly before the Constitutional Court of Mongolia (the *Tsetz*) by Mongolian citizens, foreign citizens, or stateless persons residing legally in Mongolia.

Problems arise for several reasons. First, commercial law and broad understanding of it remain in flux in Mongolia. It has become necessary to pass new laws and regulations on contracts, investment, corporate structures, leasing, banking, etc., because generally Mongolian civil law does not work on precedents but from application of the statute as written. If a law is vague or does not cover a particular commercial activity, the judge's remit to adjudicate can be severely limited or non-existent. For example, until recently leasing did not exist in the Mongolian civil law code as such, but seemed to be covered under various aspects of Mongolian civil law regarding contracts and other agreements. But judgments on leasing made under these laws might not have applied to an arrangement not otherwise specifically recognized under its own exclusive law. Further, because precedents are not legally relevant to, or binding on, other judges and Mongolian courts, decisions reached in one case have no legal force in other suits, even when the circumstances are similar or even before the same court and judges.

Trained in the socialist era, many judges lack training in, or remain unaware of, commercial principles, in some cases willfully. They put less stock in such concepts as sanctity of contracts. Most observers argue that this view is no problem of law but of faulty interpretation. In several cases courts have misinterpreted provisions regarding leases and loan contracts, allegedly intentionally in some cases. Judges regularly ignore terms of a contract in their decisions. If someone defaults on a loan, the courts often order assets returned without requiring the debtor to compensate the creditor for any loss of value. Judges routinely assert that the creditor has recovered the asset, such as it is, and that is enough. Bad faith and loss of value simply have no formal standing in judicial calculations of equity.

Replacing old-school judges is no option. It is politically impossible—if not functionally impractical—for the Mongolians to dismiss its cadre of socialist-era judges. There is a realistic hope that young justices, trained in modern commercial principles by international experts, will gradually improve judicial protections for commercial activities in Mongolia.

At the same time, a problem may be developing for foreign investors with regard to what they term the *blatant* preference judges seem to show for local plaintiffs and defendants versus non-Mongolian ones. Investors have provided us with numerous, consistent accounts of judicial (and of local arbitral panels) decisions in which they claim that the ruling clearly ignored the terms of the contract. Further, the judges adjudicating the case have stated directly to the investors or to third party intermediaries that such decisions are justified based on the foreign identity of the plaintiff or defendant. Examples of arguments include: the foreign investor can afford the loss, the foreigner must be stealing from Mongolia in some way and so deserves to lose, or that Mongolian judges must support Mongolians or risk being accused of being unpatriotic. While the validity and accuracy of these claims is difficult to assess, they reflect a growing perception that foreign investors may not receive fair and equitable treatment before Mongolia's judiciary.

Bankruptcy and Debt Collection

Mongolia's bankruptcy provisions and procedures for securing the rights of creditors and debtors need comprehensive reform. Mongolian law allows for mortgages and other debt instruments backed with securitized collateral. However, nascent systems for determining title and liens and for collecting on debts make lending on local security risky. Banks frequently complain that onerous foreclosure rules are barely workable and unfair to creditors. Although a system

exists to register immovable property—structures and real estate—for the purpose of confirming ownership, the current system does not record existing liens against immovable property. In addition, no system exists to register ownership of, and liens on, movable property. Consequently, Mongolian lenders face the added risk of lending on collateral that the debtor may not actually own or which may have already been pledged as security for another debt. It is hoped that a project funded by the Millennium Challenge Corporation to create a modern and efficient property registration system will improve the ability of creditors and debtors to prove ownership. (For details go to <http://www.mca.mn/?q=eng/Project/PropertyRights>.)

Overall, the legal system recognizes the concept of collateralized assets provided as security for loans, investment capital, or other debt-based financial mechanisms. The legal system also provides for foreclosure, but this process is exceptionally onerous and time consuming. Waits of up to 24 months for final settlement of security are not uncommon.

Even with the delays, getting a ruling is relatively easy compared to executing the court's decision. The problem is not the law but the enforcement. A judge orders the *State Collection Office* (SCO) to move on the assets of the debtor. The SCO orders district bailiffs to seize and turn those assets over to the state, which then distributes them to creditors. However, foreign and domestic investors claim that the state collection office and the district bailiffs frequently fail in their responsibilities to both courts and creditors.

In some cases, bailiffs refuse to enforce the court orders. The perception is that they do so because they have been bribed or otherwise suborned. Bailiffs are often local agents who fear local retribution against them and their interests if they collect in their localities. In some cases, bailiffs will not collect unless the creditor provides bodyguards during seizure of assets. Creditors also have reason to believe that the state collection office accepts payments from debtors to delay seizure of assets.

Bankruptcy is an option on paper, but we can offer no example of a successful bankruptcy process for a business entity. Indeed, local law firms suggest that the process is so apparently vague and onerous that the option is more theoretical concept than practical approach to winding down a business.

Purchase financing remains tricky. Numerous cases have come to our attention in which domestic and foreign distributors finance sales, complete with a local bank guarantee. Buyers subsequently default on loans, banks refuse to honor their

guarantees, and the dealers take the respective buyer to court. Under current Mongolian law, interest payments are suspended for the duration of such a case, from first filing to final appeal before the Supreme Court of Mongolia. Possibly months of interest-free time can pass while the now impounded asset wears away. In such cases, the dealers simply reclaim the asset and drop the lawsuit, swallowing the lost interest payments and loss of value. Domestic and foreign businesses often respond by requiring customers to pay in cash, limiting sales and the expansion of the economy.

Binding Arbitration: International and Domestic

The Mongolian government generally supports and has submitted to both binding arbitration and international settlement procedures. However, glitches remain in local execution. Mongolia ratified the Washington Convention and joined the International Centre for Settlement of Investment Disputes in 1991. It also signed and ratified the New York Convention in 1994.

To our knowledge, the government of Mongolia has accepted international arbitration in approximately six disputes where claimants have asserted the government reneged on sovereign guarantees to indemnify them or in which the government engaged in an improper taking of property or rights. In all cases the government consistently declares it will honor the arbitrators' judgments.

More widely, Mongolian businesses partnered with foreign investors will accept international arbitration, as do government agencies that contract business with foreign investors, rather than avail themselves of the Arbitration Bureau operated by the Mongolian National Chamber of Commerce and Industry. Regarding the domestic Arbitration Bureau, foreign investors tell us they resist local arbitration, preferring to seek redress abroad because they perceive that domestic arbitrators are too politicized, unfamiliar with commercial practices, and too self-interested to render fair decisions.

Although arbitration is widely accepted among business people and elements of the government, support for binding international arbitration has not penetrated local Mongolian agencies responsible for executing judgments. Local business people routinely cite the failure of SCO and the bailiffs to enforce court-ordered foreclosures and judgments as the most common problem threatening resolution of debt-driven disputes.

A.5 PERFORMANCE REQUIREMENTS AND INCENTIVES

Mongolia imposes few performance requirements on, and offers few incentives for, investors. The few requirements imposed are not onerous and do not limit foreign participation in any sector of the economy. Performance requirements are applied somewhat differently to foreign investors in a limited number of sectors.

Under the current Tax Law of Mongolia, the government of Mongolia (GOM) attempts to limit both exemptions and incentives and to make sure that tax preferences offered are available to both foreign and domestic investors. Exemptions are occasionally granted for imports of such staples as flour and rice or for imports in certain sectors targeted for growth, such as the agriculture sector. Such exemptions can apply to both import duties and Mongolia's value-added tax (VAT). In addition, the GOM will extend a 10% tax credit on case by case basis to investments in such key sectors as mining, agriculture, and infrastructure.

Foreign investors have accepted phasing out of tax incentives, because the amendments have brought some needed best practices to the tax code. These include provision for 8-year loss-carry-forwards, five-year accelerated depreciation, and more deductions for legitimate business expenses including but not limited to marketing and training expenses.

Revocation of the VAT Exemption

Investors view Mongolia's treatment of exemptions as something of a mixed bag. On the down side, Mongolia does not exempt equipment used to bring a given mine into production from the 10% value-added tax (VAT) unless the equipment will be to produce highly processed mining products in Mongolia. For example, if the Oyu Tolgoi (OT) copper-gold project were to smelt copper, imported equipment supporting production of metallic copper might qualify for an exemption from the VAT. However, to promote value-added production in Mongolia, the GOM defines the production of copper concentrate as non-value-added output; and so, equipment imported to develop and operate this sort of operation would not qualify for the 10% VAT exemption.

Most jurisdictions, recognizing that most mines have long development lead times before production begins, either waive or do not tax such imports at all. Parliament has chosen to impose the VAT, making Mongolian mining costs 10% higher than they would otherwise be, thus impairing competitiveness and dramatically varying from global practice.

New Royalty Regime

On January 1, 2011, the Windfall Profits Tax (WPT) was formally cancelled, as condition for the GOM entering the OT agreement. OT's private investors successfully argued that they would not be able to operate OT commercially if burdened with the WPT. Consequently, Parliament amended the WPT Law: (See Chapter A.1 for more details on the WPT.)

However, the end of the WPT represents a significant loss of revenue to the GOM; and so, Parliament responded by imposing a revised royalty scheme. The new regime imposes a sliding scale on a variety of mineral and metal products which depends on the market price of the commodity on certain world exchanges and the amount of processing the mineral or metal receives in Mongolia. The more value added done in Mongolia, the lower the increase in royalty.

More Generous Loss Carry-forward provisions

Regarding the granting of more generous loss carry-forward provisions, as a condition precedent of passing the OT Agreement Parliament extended the provision from two (2) years to eight (8) years after incurring a loss. Most investors find eight years sufficient for many Mongolian investments that require long, expensive development horizons before producing any sort of profit.

Few Restrictions on Foreign Investment

The government applies the same geographical restrictions to both foreign and domestic investors. Existing restrictions involve border security, environmental concerns, or local use rights. There are no onerous or discriminatory visas, residence, or work permits requirements imposed on American investors. Generally, foreign investors need not use local goods, services, or equity, or engage in substitution of imports. Neither foreign nor domestic businesses need purchase from local sources or export a certain percentage of output, or have access to foreign exchange in relation to their exports.

Although there remains no formal law requiring the use of local goods and services, the GOM encourages firms to do value-added production in Mongolia, especially for firms engaged in natural resource extraction. All Mongolian senior officials and politicians make in-country processing a consistent feature of their public and private policy statements regarding the development of mining. For example, the new royalty scheme offers reduced royalty rates for companies that

do more value-added processing in Mongolia. Government talks on coal production constantly feature discussions of power generation and coals-to-liquid processing in Mongolia. Government plans also call for increased investment in businesses and activities that keep the *value* of a resource in Mongolia. Consequently, firms should continue to expect the GOM to press aggressively for value-added production in Mongolia.

Generally, foreign investors set their own export and production targets without concern for government imposed targets or requirements. There is no requirement to transfer technology. As a matter of law, the government generally imposes no offset requirements for major procurements. Certain tenders and projects on *strategic deposits* may require agreeing to specific levels of local employment, procurement, or to fund certain facilities as a condition of the tender or project, but as matter of course such conditions are not the normal approach of the government in its tendering and procurement policies. (See Chapter A.1 for a discussion of the concept of a *strategic deposit*.)

Investors, not the Mongolian government, make arrangements regarding technology, intellectual property, and similar resources and may generally finance as they see fit. Foreign investors generally need sell no shares to Mongolian nationals. Equity stakes are generally at the complete discretion of investors, Mongolian or foreign -- with one key exception for *strategic* mining assets, discussed below.

Although Mongolia imposes no official statutory or regulatory requirement, the GOM, as a matter of foreign policy, sometimes negotiates restrictions on what sort of financing foreign investors may obtain and with whom those investors might partner or to whom they might sell shares or equity stakes. These restrictive covenants will most likely be imposed in certain sectors where the investment is determined to have national impact or national security concerns, especially in the key mining sector.

Regarding employment, investors can locate and hire workers without using hiring agencies—as long as hiring practices are consistent with Mongolian Labor Law. However, Mongolian law requires companies to employ Mongolian workers in certain labor categories whenever a Mongolian can perform the task as well as a foreigner. This law generally applies to unskilled labor categories and not areas where a high degree of technical expertise not existing in Mongolia is required. The law does provide an escape hatch for all employers. Should an employer seek to hire a non-Mongolian laborer and cannot obtain a waiver from the Ministry of

Labor for that employee. Depending on the importance of a project, the Ministry of Labor may grant an employer a 50% exemption of the waiver fees as an incentive.

Limited Performance Requirements

Requirements in the Petroleum and Mining Sectors

Performance requirements are sparingly imposed on investors in Mongolia with the exception of petroleum and mining exploration firms. The Petroleum Authority of Mongolia (PAM) issues petroleum exploration blocks to firms, which then agree to conduct exploration activities. The size and scope of these activities are agreed upon with PAM and are binding. If the firm fails to fulfill exploration commitments, it must pay a penalty to PAM based on the amount of hectares in the exploration block, or return the block to PAM. These procedures apply to all investors in the petroleum exploration sector.

Under the 2006 Minerals Law of Mongolia, receiving and keeping exploration licenses depends on conducting actual exploration work. Each year exploration firms must submit a work plan and report on the execution of the previous year's performance commitments, all of which are subject to annual verification by the Minerals Authority of Mongolia (MRAM). Failure to comply with work requirements may result in fines, suspension, or even revocation of exploration rights. Exploration work commitments expressed in terms of US dollar expenses per hectare per year:

- 2nd and 3rd years miners must spend no less than US \$.50 per hectare.
- 4th to 6th years miners must spend no less than US \$1.00 per hectare.
- 7th to 9th years miners must spend no less than US \$1.50 per hectare.

Moreover, in the case of *strategic deposits*, the GOM can acquire a sliding percentage of the mines operating entity ranging from 34% to 50%. It also requires the holder of the *strategic* asset to sell no less than 10 percent of the enterprise to Mongolian citizens on the existing Mongolian Stock Exchange. (See Chapters A.9 and A.10 for details on the Mongolian Stock Exchange.) Mining companies that operate or seek to develop non-strategic deposits have reported that GOM has also vigorously pressed them to list on the MSE, although not required by law or regulation. While foreign and domestic investors and mining companies have supported the GOM's call to list in principle, they argue that neither the

statute nor the GOM provide clear, transparent guidance on how listing is to be accomplished.

In 2009 the Parliament imposed significant new controls on mining and processing uranium (and some rare earths) in Mongolia. The law created a new regulatory agency, the Nuclear Energy Agency of Mongolia (NEA). A state-owned enterprise, MonAtom, was subsequently created by a decree of the Cabinet of Ministers to hold and manage uranium mining and exploration rights and operational entities that the government might acquire through implementation of the law. The NEL imposed several conditions:

- Immediately revoked all current uranium exploration and mining licenses and then required all holders to register these licenses with the NEA, for a fee.
- Required investors to accept that if the exploration was done with state funds, the Mongolian state has an absolute right to take, without compensation, at least 51% of the operating entity that will develop the mine -- as opposed to just the deposit -- as a condition of being allowed to develop any uranium property. If exploration was accomplished with non-state funds, the GOM has the right to take no less than 34% of the operating entity, again without compensation.
- Created a uranium-specific licensing, regulatory regime independent of the existing regulatory and legal framework existing for mineral and metal resources. Prior to the Nuclear Energy Law, exploration licenses gave their respective holders the rights to discover and develop any and all mineral and metal resources discovered within that license area (this did not include petroleum resources, which are governed separately). GOM officials have said this law means that the state can issue a distinct license for uranium exploration on a property otherwise dedicated to other mineral and metals exploration

Requirements Imposed on Foreign Investors Only

All foreign investors must register with the Foreign Investment and Foreign trade Agency (FIFTA). The Foreign Investment Law of Mongolia requires all foreign investors to show a minimum of US\$100,000 in assets (cash, working stock, property, etc.) registered in Mongolia as a precondition for registration. In addition to this particular requirement, all foreign investors must pay an initial processing fee of some 20,000 Mongolian Tugrik (US\$16.00) for an investment card or 10,000 Tugrik for an annual extension (US\$ 8.00) Investment certificates cost 12,000 Tugrik (US\$9.50). In addition, Parliament raised fees for the delivery of

most state registration services in its most recent amendment to the State Stamp Duty Law, which took effect on January 1, 2011. The amendment raised fees for foreign investment activities substantially. Examples of these new fees include:

- Operating a new branch, unit, or representative office: 1,100,000 Tugrik (US\$ 900);
- Extending operation of a branch, unit or representative office: 750,000 Tugrik (US\$600);
- Extending a license: 75,000 Tugrik (US\$ 60);
- Issuing a permit to for a bank with foreign investment: 2,800,000 Tugrik (US\$ 2,240).

As with many such amendments, we have not been able to document any consultations between Parliament and the GOM and the affected parties.

In addition to these fees, foreign investors must annually report on their activities for the coming year to the government through FIFTA. Businesses need not fulfill plans set out in this report, but failure to report may result in non-issuance of licenses and registrations and suspension of activities. This requirement differs from that imposed on domestic investors and businesses. Domestic investors have no yearly reporting requirement. Mongolians pay lower registration fees, which vary too much to say with any precision what the fees actually are.

FIFTA explains that the higher registration costs for foreign investors arise from the need to compensate for the services it provides to foreign investors, including assistance with registrations, liaison services, trouble-shooting, etc. The different reporting requirements provide the government with a clearer picture of foreign investment in Mongolia. Foreign investors are generally aware of FIFTA's arguments and largely accept them, but they question the need for annual registrations. Investors recommend that FIFTA simply charge an annual fee rather than require businesses to submit a new application each year.

Regarding reports, foreign businesses are concerned about the security of proprietary information. Foreign investors routinely claim that agents of FIFTA use or sell information on business plans and financial data. We have yet to verify these claims, but FIFTA acknowledges that data security largely depends on the honesty of its staff, as FIFTA has few internal controls over access to annual reports. Investors related that concerns over the security of confidential and proprietary information is not a problem limited to FIFTA but arises whenever

they need to divulge such information to any GOM agency. Revealing such information is prohibited under Mongolian law with civil and criminal penalties; however, to our knowledge no one has been prosecuted under the relevant statutes.

Tariffs

Mongolia has one of Asia's least restrictive tariff regimes. Its export and import policies do not harm or inhibit foreign investment. Low by world standards, tariffs of 5% on most products are applied across the board to all firms, albeit with some concerns about consistency of application and valuation. However, some non-tariff barriers, such as phyto-sanitary regulations, exist that limit both foreign and domestic competition in the fields of pharmaceutical imports and food imports and exports. The testing requirements for imported drugs, food products, chemicals, construction materials, etc., are extremely nontransparent, inconsistent, and onerous. When companies attempt to clarify what the rules for importing such products into the country are, they routinely receive contradictory information from multiple agencies.

WTO TRIMS Requirements

Mongolia employs no measures inconsistent with WTO TRIMs requirements, nor has anyone alleged that any such violation has occurred.

A.6 RIGHT TO PRIVATE OWNERSHIP AND ESTABLISHMENT

Mongolia has one of Asia's most liberal ownership and establishment regimes. Unless otherwise forbidden by law, foreign and domestic businesses may establish and engage in any form of remunerative activity. All businesses can start up, buy, sell, merge; in short, do whatever they wish with their assets and firms, with exceptions in the mining, petroleum, and real estate sectors.

Competition from the State-Owned Sector

Mongolia passed and implemented a competition law applying to foreign, domestic, and state-owned entities active in Mongolia. As a practical matter, competition between state-owned and private businesses has been declining for the simple reason that many parastatals have been privatized. The exceptions are the state-owned power and telecom industries, a national airline (international only at present), the national rail system (half-owned by Russia), several coal mines, and a large copper mining and concentration facility (partially owned by Russia).

Currently, firms from Mongolia, China, Japan, Europe, Canada, and the U.S. are actively seeking opportunities for renewable and traditional power generation 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 are set at rates allowing profits.

Regarding its railway sector, Mongolia has no plans to privatize its existing railroad jointly held with the government of Russia, but current law does allow private firms to build, operate, and transfer new railroads to the state. Under this law several private mining companies have proposed rail links, and obtained licenses to construct these new lines from their respective coal mines to the Chinese border or to the currently operating spur of the Trans-Siberian Railroad.

These proposals have not progressed, and are not likely to given Parliament's 2010 approval of a new national rail expansion plan. Under the plan, the GOM and Parliament require that rail railroads linking key coal deposits in the southern Gobi desert region must first link those deposits to Russia's Pacific ports before they link with Chinese markets. Further, these projects may use international gauge used in China only after the links with Russia are completed using the Russian gauge. The GOM argues that it needs these policies to keep Mongolia from being dependent on one market to buy its coal products, namely China.

Although they tell us they recognize Mongolia's need for diversified markets, observers question the sequencing of government plans. In their collective opinions, the Chinese market, the largest and most lucrative, should be developed first, followed by (or parallel with) diversification strategies. They also fail to see a clear justification of the commercial and economic benefits behind GOM plans, in particular the impact of northern rail lines to Russia on the commercial operations of Gobi coal mines close to the Chinese border. As a result, they argue that that this new plan may require investment incentives to overcome the disincentive of delayed permission to develop appropriate infrastructure to the Chinese market.

Government Re-enters the Mining Business

Although the trend had been for the GOM to extract itself from ownership of firms and other commercial assets, the 2006 Minerals Law of Mongolia and the 2009 Nuclear Energy Law keep the state in the mining business. (See Chapter A.1 for fuller discussions of both laws.) Under both laws, the GOM granted itself the right to acquire equity stakes ranging from 34% to perhaps 100% of certain deposits deemed *strategic* for the nation. Once acquired, these assets are to be placed with one of two state-owned management companies: *Erdenes MGL*, for non-uranium assets; and *MonAtom*, for uranium resources. These companies are then mandated to use the proceeds from their respective activities for the benefit of the Mongolian people.

The role of state as an equity owner, in terms of management of revenues and operation of the mining asset, remains unclear at this point. There are some concerns over the capacity of the GOM to deal with conflicts of interest arising from its position as both regulator and owner of these strategic assets. Specifically, firms are worried that the GOM's desire to maximize local procurement, employment, and revenues may comprise the long term commercial and economic viability of any mining project.

There is also a concern that the GOM will waive legal and regulatory requirements for its state-owned mining companies that it imposes on all others. These claims seem borne out by the GOM's treatment of its *Erdenes MGL Tavan Tolgoi* mining operation. The GOM has widely publicized (and we have privately confirmed) that in 2010 it had begun pre-mining activities at one of its *Tavan Tolgoi* holdings and intends to mine and market at least 500,000 tons of coal in 2011. Generally, private mining firms take at least two years to submit and receive relevant environmental and operating permits for coal mines in Mongolia. However, there is no indication that GOM has required its operation at *Tavan Tolgoi* to follow the

statutory or regulatory requirements imposed on other operations; in fact, a review of its timeline suggests that the normally lengthy approval process cannot have been followed. If true, it would run counter to extremely vocal GOM demands that companies show respect for Mongolia's rules and laws and comply with all applicable mining statutes. Of course, such waiving of requirements would give the GOM's own companies substantial cost advantages over those forced to follow the law.

A.7 PROTECTION OF PROPERTY RIGHTS

The right to own private, movable and immovable property is recognized under Mongolian law. Regardless of, owners can do as they wish with their property citizenship (except for land, allowed only to citizens of Mongolia). One can collateralize real and movable property. If debtors default on such secured loans, creditors have recourse under Mongolian law to recover debts by disposing of property offered as security. The only exceptions to this liberal environment are current mining laws, which either bar transfer of exploration and mining licenses to third parties lacking professional mining qualifications or status as a Mongolian registered entity, or which threaten to expropriate without compensation certain mineral holdings outright.

Mongolia's Current Regime to Protect Creditors

The current protection regime for creditors functions but needs reform. The legal system presents the greatest pitfalls. Courts recognize property rights in concept but have a checkered record of protecting and facilitating acquisition and disposition of assets in practice. Part of the problem is ignorance of, and inexperience with, standard practices regarding land, leases, buildings, and mortgages. As noted in Chapter A.4: Dispute Settlement, some judges, largely out of ignorance of the concepts, have failed to recognize these practices. Some newly trained judges are making a good faith effort to uphold property rights, but need experience to master adjudicating such cases.

Mongolia's bankruptcy provisions and procedures for securing the rights of creditors need reform. Mongolian law allows for mortgages and other loan instruments backed with securitized collateral. However, rudimentary systems for determining title and liens and for collecting on debts make lending on local security risky. Banks frequently complain that onerous foreclosure rules are barely workable and unfair to creditors.

Although a system exists to register immovable property—structures and real estate—for the purpose of confirming ownership, the current system does not record existing liens on immovable property; nor does the current system record ownership and liens on movable property. Consequently, Mongolian lenders risk lending on collateral that the debtor may not actually own or which may have already been offered as security for another debt. It is hoped that a project sponsored by the Millennium Challenge Corporation to create a more modern and efficient property registration system will go some way to improving the ability of

creditors and debtors to prove ownership. For program details go to <http://www.mca.mn/?q=eng/Project/PropertyRights>.

Overall, the legal system recognizes the concept of collateralized assets as security for loans, investment capital, or other debt-based financial mechanisms. The legal system also provides for foreclosure, but this process remains exceptionally burdensome and time consuming. Current law bars creditors from non-judicial foreclosure, requiring them to submit all contested foreclosure actions for judicial review through Mongolia's court system. This approach slows debt collection substantially: Waits of up to 24 months for final liquidations and settlement of security are not uncommon.

Debt Collection Procedures

Even with the delays, getting a ruling is relatively easy compared to executing the court's decision. The problem is not the law but the enforcement. A judge orders the *State Collection Office* (SCO) to move on the assets of the debtor. The SCO orders district bailiffs to seize and turn those assets over to the state, which then distributes them to creditors. However, foreign and domestic investors claim that the state collection office and the district bailiffs frequently fail in their responsibilities to both courts and creditors.

In some cases, bailiffs refuse to enforce the court orders. The perception is that they do so because they have been bribed or otherwise suborned. Bailiffs are often local agents who fear local retribution against them and their interests if they collect in their localities. In some cases, bailiffs will not collect unless the creditor provides bodyguards during seizure of assets. Creditors also have reason to believe that the state collection office accepts payments from debtors to delay seizure of assets.

Protection of Intellectual Property Rights

Mongolia supports intellectual property rights (IPR) in general and has protected American rights in particular. It has joined the World Intellectual Property Organization (WIPO) and signed and ratified most treaties and conventions, including the WTO TRIPS agreement. The WIPO Internet treaties have been signed but remain un-ratified by Parliament. However, even if a convention is un-ratified, the Mongolian government and its intellectual property rights enforcer, the *Intellectual Property Office of Mongolia* (IPOM), make a good faith effort to honor these agreements.

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 pirates. The IPOM has the administrative authority to investigate and seize fakes without court order. Of these three, the IPOM makes the most consistent good faith effort to fulfill its mandates.

Problems stem from ignorance of the importance of intellectual property to Mongolia and of the obligations imposed by TRIPS on member states. Customs still hesitates to seize shipments, saying that their statutory mandate does not allow seizure of such goods, but Mongolian statutory and constitutional laws clearly recognize that international treaty obligations in this area take precedence over local statutes and regulations. A clear legal basis exists for Customs to act, which has been recognized by elements of the Mongolian Judiciary, the Parliament, and the IPOM. Customs officers may occasionally seize fake products, but it seems that Mongolian customs law will have to be brought into formal compliance with TRIPS before Customs will fulfill its obligations. The ECU has also been lax. The ECU hesitates to investigate and prosecute IPR cases, deferring to the IPOM. Anecdotal evidence suggests that ECU officials fear political repercussions from going after IPR pirates, many of whom wield political influence.

The IPOM generally has an excellent record of protecting American trademarks, copyrights, and patents; however, tight resources limit the IPOM's ability to act. In most cases, when the U.S. Embassy in Ulaanbaatar conveys a complaint from a rights holder to the IPOM, it quickly investigates the complaint. If it judges that an abuse occurred, it will (and has in every case brought before it to date) seize the pirated products or remove faked trademarks, under administrative powers granted in Mongolian law.

We note two areas where enforcement lags. Legitimate software products are rare in Mongolia. Low per capita incomes give rise to a thriving local market for cheap, pirated software. The IPOM estimates pirated software constitutes at least 95% of the market. The Office enforces the law where it can but the scale of the problem dwarfs its capacity to deal with it. The IPOM will act if we bring cases to its attention.

Pirated optical media are also readily available and subject to spotty enforcement. Mongolians produce no significant quantities of fake CD's, videos, or DVD's, but import such products from China, Russia, and elsewhere. Products are sold

through numerous local outlets and regularly broadcast on private local TV stations. The IPOM hesitates to move on TV broadcasters, most of which are connected to major government or political figures. Rather the IPOM raids local (“street”) DVD and CD outlets run by poor urban youth who lack the political and economic clout of the TV broadcasters. Again, when an American raises a specific complaint, the IPOM acts on the complaint, but IPOM rarely initiates action.

Restrictive Aspects of Current Mining Laws

Minerals Law of 2006

The current Minerals Law of Mongolia would seem on its face to prevent transfer of exploration or mining rights to any third party lacking professional mining qualifications as determined by the Mineral Resources Authority of Mongolia (MRAM).

Under the Minerals Law, the concept of *mining expertise* can either qualify or disqualify any entity from acquiring, transferring, securitizing exploration and mining rights. The law has the potential to limit the ability of rights holders to seek financing, because it forbids transfer of mining licenses and exploration rights to *non-qualified individuals*. Consequently, a miner might not be able to offer his licenses as secured collateral to banks or to any lender lacking the professional qualifications to receive these rights if the miner defaulted on his debt obligations.

In addition, no foreign entity, in its own right, can hold any sort of mining or petroleum license; only entities registered in Mongolia under the terms of relevant company and investment laws may hold exploration and mining licenses. Should a foreign entity acquire a license as collateral or for the purpose of actual exploration or mining, and fail to create the appropriate Mongolian corporate entity to hold a given license, that failure may serve as grounds for invalidating the license.

Foreign financial institutions should be particularly vigilant as the GOM has proven willing and able to revoke mining and exploration licenses held by foreign financial entities on the grounds that they have not been properly pledged to legitimate Mongolian financial institutions. We advise investors with specific questions to seek professional advice on the status of their licenses.

Nuclear Energy Law of 2009

The Nuclear Energy Law of 2009 dramatically curtails property rights protection regime protecting most exploration and mining licenses. The law imposed the following conditions upon investors in the uranium (and some rare earths) mining sector:

- Immediately revoked all current uranium exploration and mining licenses and then required all holders to register these licenses with the NRA, for a fee.
- Required investors to accept that if the exploration was done with state funds, the Mongolian state has an absolute right to take, without compensation, at least 51% of the operating entity that will develop the mine -- as opposed to just the deposit -- as a condition of being allowed to develop any uranium property. If exploration was accomplished with non-state funds, the GOM has the right to take no less than 34% of the operating entity, again without compensation.
- Created a uranium-specific licensing, regulatory regime independent of the existing regulatory and legal framework existing for mineral and metal resources. Prior to the Nuclear Energy Law, exploration licenses gave their respective holders the rights to discover and develop any and all mineral and metal resources discovered within that license area (this did not include petroleum resources, which are governed separately). According to GOM officials, this new law means that the state can issue a distinct license for uranium exploration on a property otherwise dedicated to other mineral and metals exploration

To both investors and observers, this law statutorily sanctions expropriation, a concept heretofore alien to Mongolian law. The NEL allows the GOM unfettered power to seize holdings with no obligation to compensate rights holders. Complicating the issue, the law conflates deposits with the companies developing those deposits, letting the GOM claim an uncompensated share of any entity that might mine the deposit. In effect, the GOM demands a free-carried, non-compensated interest of no less than 51% of any uranium mining firm in Mongolia.

In 2010, these fears became concrete when the GOM acted against a foreign (non-US) Canadian company in what many observers defining as a stripping of the firm's rights to develop a uranium deposit without any apparent due process or compensation. The company had attempted to pursue the matter through Mongolia's court system; however, when the GOM announced that the company's

rights were revoked and vested in a Russian-Mongolian state-owned company, the firm moved to settle its claims through international arbitration.

Affected uranium rights holders contested the constitutionality of these provisions before Mongolia's Constitutional Court, and lost the case. The Court upheld the law, asserting that the all minerals in the ground are the property of the Mongolian state even if separated from the ground. Legal experts with whom we consulted explained that the Court seems to make the extraordinary and unprecedented claim that Mongolia's ownership extends to products created with the ore; hence the state has a "legitimate" claim on both the ore body and any company mining the resource. This theory appears to undermine the property rights of uranium investors and chips away at property rights protections granted both under the constitution and Mongolia's Minerals, Company, and Foreign Investment Laws.

A.8: LEGISLATIVE AND REGULATORY TRANSPARENCY

Generally, Mongolia's problem is not lack of laws and regulations—Mongolia has passed more than 1,700 laws since undertaking its transition to a market economy 20 years ago—but rather, that legislators lack knowledge on what foreign and domestic investors need from the state when investing; and that they do not consult with those affected by their legislative actions. Corruption aside, that laws and regulations change with little consultation creates a chaotic situation for all parties.

Problems with the Drafting Process for Legislation and Regulations

Normally, laws are crafted in two ways. Once rare but now common, Members of Parliament and the President of Mongolia may draft their respective proposals for direct submission to Parliament. Such bills need not be submitted to the Cabinet of Ministers but can be delivered directly to the Speaker of Parliament for consideration by the relevant Standing Committee. The relevant Standing Committee may either reject the bill (in which case it dies in committee) or pass it on to the Parliament's plenary body, unaltered or revised, for a general vote. More typically, Parliament or the Cabinet of Ministers requests legislative action. These institutions send such requests to the relevant ministry. The respective minister then relays the task to his ministerial council, which in turn sends the request to the proper internal division or agency, which in turn forms a working group. The working group prepares the bill, submits it for ministerial review, makes any recommended changes, and then the bill is reviewed by the full Cabinet of Ministers. Relevant ministries are asked to comment and recommend changes in the legislation.

Prior to a final vote by the Cabinet of Ministers, the National Security Council of Mongolia (NSC)—consisting of the President of Mongolia, the Prime Minister, and Speaker of Parliament—can review each piece of legislation for issues related to national security. The NSC can veto or recommend changes to draft legislation.

Once through NSC and Cabinet reviews, the bill goes to Parliament. In Parliament, the bill is vetted by the relevant Standing Committee, sent back for changes or sent on to the full Parliament for a vote. The President can veto bills, but his veto can be overcome by a two-thirds (2/3) vote of Parliament.

For regulations, the process is truncated. The relevant minister tasks the working group that wrote the original law to draft regulations. This group submits their work to the minister who approves or recommends changes. In most cases,

regulations require no Cabinet approval, and become official when the relevant incumbent minister approves them. When legislation crosses inter-ministerial boundaries, the Cabinet authorizes the most relevant ministry to supervise an inter-ministerial approval process for regulations.

The Ministry of Justice and Home Affairs (MOJHA) plays an important role in both laws and regulations. MOJHA vets all statutes and regulations before they are passed for final approval. In the case of legislation, MOJHA reconciles the language and provisions of the law with both existing legislation and the constitution of Mongolia, after which the law passes to the Cabinet and then Parliament. In the case of regulations, MOJHA vets the regulations to ensure consistency with current laws and provisions of the constitution. In effect, MOJHA can either modify or even veto legal or regulatory provisions that it finds inconsistent with the statutes and constitution.

System Lacks Transparency

Absent from these drafting processes is a statutory, systematic, and transparent review of legislation and regulations by stakeholders and the public. Ministerial initiatives are not published until the draft passes out of a given ministry to the full Cabinet. Typically, the full Cabinet discusses and passes bills on to Parliament, without public input or consultations. Parliament itself neither issues a formal calendar nor routinely announces or opens its standing committees or full chamber hearings to the public. While Parliament at the beginning of each session announces a list of bills to be considered during the session, this list is very general and often amended. New legislation is commonly introduced, discussed, and passed without public announcement or consideration. For example, in 2009, Parliament passed legislation threatening property rights in the mining sector that many viewed as expropriatory and that revoked key tax exemptions affecting major mining and construction projects, all with no formal or informal public comment and review. Members of the public that request information on the voting record of their representative are often told that such information is not publicly available.

In late 2010, Parliament limited transparency even further by statutorily denying media access to committee meetings. Parliament justified the new law by publicly asserting that the lack of press coverage would prevent members from grandstanding and making populist gestures. However, the media are allowed to cover plenary sessions. As with many of Parliament's controversial acts, this law passed without public review and comment. The public and media responded to

this closure with vocal and creative protests, and Parliament subsequently suspended enforcement to consider amending the law.

The U.S. Embassy in Ulaanbaatar and foreign and domestic investors repeatedly urge the Mongolian government to use the government's *Open Government* web site and other media to post draft and pending legislation for public consultation and review before it is finalized and sent to Parliament. The Business Council of Mongolia (BCM: <http://www.bcmongolia.org/>) also reports on laws and regulations and maintains an in-house working group that monitors and reports on legislation to the BCM's members. The BCM will also represent its members' concerns about legislative and regulatory issues to Mongolian officials and legislators directly.

Monitoring and consultation efforts remain a *project-in-process*. Mongolian regulators resist consultation when it comes to implementation. Bureaucrats are only slowly becoming comfortable with the concepts and practices of broad, public consultation and information sharing with their own citizens, let alone foreigners. Many times businesses ask unsuccessfully for a clear copy of the current regulations. The government has long acknowledged that the socialist-era State Secrets Law requires substantial amendment. Currently, most government documents—including administrative regulations affecting investments and business activities—can be technically classified as *state secrets* forbidden to the public. This gives both bureaucrats and regulators a convenient excuse to deny requests for information or, more commonly, to demand extralegal fees to provide documents. The legacy of secrecy has also resulted in cases where government officials themselves cannot get up-to-date copies of the rules. Mongolia has considered a freedom of information law for several years, but it remains in legislative limbo.

High officials acknowledge the value of, and need for, a more open, transparent system. While laws are easy to fix, the behavior of individual bureaucrats, Members of Parliament, and the judiciary will only gradually change with training and experience. Already a younger generation of professionals, many trained abroad during Mongolia's democratic era, is taking hold and moving into senior positions of authority. The successful media-led pushback of Parliament's attempt to limit access to committee and subcommittee sessions bodes well for Mongolia's continuing transition to a private sector-led, open market economy underpinned by good government and corporate governance.

The Impact of NGOS and Private Sector Associations on GOM Policy

The Mongolian government actively protects its prerogatives to legislate and regulate economic activities in its domain. While NGOs and private sector associations have wide latitude to run their activities, the government of Mongolia has until recently never allowed any non-governmental entity—be it business, civil society, trade union, etc.—to serve more than an advisory role over the formulation and execution of both laws and rules, which also applies to setting standards for various industries.

However, in 2010, the GOM began to authorize NGOs to execute selected regulatory functions, while maintaining policy setting functions. Regulatory areas of perceived low risk that carry no heavy health and safety, economic and commercial, social and cultural burdens can now be inspected and certified by NGOs and professional associations, subject to review of the relevant agency. Example areas include hair care, legal advocacy, and broadcasting. For example, the General Agency for State Inspections (GASI) would allow a local association of barbers and stylists to monitor the quality of such services and practitioners, freeing up GASI resources for areas posing greater risk to the public.

Laws, Regulations, and Policies that Impede FDI

While the GOM supports FDI and domestic investment, individual agencies and elements of the judiciary reportedly use their respective powers to hinder investments into such sectors as meat production, telecommunications, aviation, or pharmaceuticals. Both domestic and foreign investors report similar abuses of inspections, permits, and licenses by Mongolian regulatory agencies. Beyond the growing perception that the judiciary is prejudiced against foreign investors, we generally note no systematic pattern of abuse consistently initiated by either government or private Mongolian entities aimed against foreign investors in general or against U.S. investment in particular. (See Chapter A. 4 for a fuller discussion of the Mongolian judicial response to foreign investor disputes.) More typically, we find opportunistic attempts by individuals misusing contacts to harass U.S. and other foreign investors with whom the Mongolian entity is in dispute.

Alternatively, other reports suggest that Mongolians use connections to well-placed regulators at all levels to extract extralegal payments from both foreign and domestic businesses or otherwise hinder their work. In the latter case the general approach is to demand a payment in lieu of not enforcing work, environmental, tax, health and safety rules, otherwise imposing the full weight of a contradictory

mix of socialist era and the current, reformed rules on the firm. Most foreign businesses refuse to pay bribes and in turn accept the punitive inspections, concede to some of the violations found, and contest the rest in the City Administrative Court. In our experience companies that show resolve against such predatory abuse of statutory and regulatory power will face impediments at the start; but these usually ease over time as state agents look for easier targets.

Abuse of the Exit Visa System

Although we note no systemic or routine abuse of Mongolia's legal system to hinder FDI and investors, a worrisome trend affecting implementation of Mongolia's requirement for exit visas by both public and private Mongolian entities to exert pressure on foreign investors to settle commercial disputes.

Valid exit visas are required and normally issued *pro forma* by the Immigration Authority prior to departure to visitors who have stayed in Mongolia for more than 90 consecutive days and must be presented at the port of departure (e.g., the international airport); however, exit visas be denied for a variety of reasons including civil disputes, pending criminal investigation, or for immigration violations. The law does not allow authorities to distinguish a criminal and civil case when detaining a person. If denied for a civil dispute, the exit visa may not be issued until either the dispute is resolved administratively or a court has rendered a decision. Neither current law nor regulations establish a clear process or timetable for resolution. In fact, the Mongolian government maintains the right to detain foreign citizens indefinitely without appeal until the situation has been resolved.

Research into the issue has revealed that abuse of the exit-visa system also affects investors from countries other than the U.S. All cases have a similar profile. A foreign investor has a commercial dispute with a Mongolian entity, often involving assets, management practices, or contract compliance. The Mongolian entities respond by filing either civil or criminal charges with local police or prosecutorial authority. It is important to note that at this point there need be no actual arrest warrant or any sort of official determination that charges are warranted: Mere complaint by an aggrieved party is sufficient grounds to deny exit.

An investor in this situation is effectively detained in Mongolia indefinitely. Some foreign investors have resolved the impasse by settling, thereby allowing them to depart Mongolia. If unwilling to settle, the foreign investor will have to undergo the full investigatory process, which may lead to a court action. Investigations commonly take up to six months, and in one case an American citizen was denied

an exit visa for two years. In addition, even if a dispute seems settled, it can be filed in the same venue again or in a different venue.

We note that Mongolian citizens are not subject to similar impositions of their immigration codes when involved in commercial disputes. Mongolian citizens do not require exit visas to depart Mongolia and can only be denied exit with a pending arrest warrant.

Use of NGOs as Regulators may Affect Provision of Services

Finally, some investors have expressed concern about the GOM's effort to allow certain NGOs and professional associations to conduct regulatory activities on behalf of the state. Investor responses to the concept have been mixed. On one hand, they are quite familiar with this approach as an international best practice and approve of the concept of NGOs and professional associations monitoring, supervising, certifying, and sanctioning members and their businesses in place of government agency.

On the other hand, concerns arise over the composition of the monitoring entities and how they will resolve disputes. Some domestic and foreign businesses have brought cases to our attention in which they claim the role of the GOM is so intrusive that it oversteps the bounds of inspection and interferes directly in commercial matters. For example, the GOM has used "public interest" as a justification to specify content and form for broadcasters, to set pay rates for legal services, and to enforce responsibilities for Internet Service Providers (ISP).

To cite a few examples, a Mongolian ISP might have to certify that information and comments posted on blogs are not defamatory; otherwise they may face civil or criminal penalties. Also, attorneys would not be able to charge more for their legal services than allowed by an Advocates Association. This association, largely composed of GOM-selected appointees, would also have the power to set professional standards and impose fines. The proposed plan also severely limits the role that foreign lawyers licensed in Mongolia can play in courtroom activities.

In most cases, the GOM has neither involved nor consulted with the affected parties. In fact, in all cases brought to our attention the affected industry and practitioners were invited to comment only very late in the drafting and approval process, usually at the moment that the rules were near approval.

Without speculating on the motives behind the GOM's specific approaches to regulating certain professions, foreign and domestic practitioners who seek to practice in Mongolia may find their ability to service clients in Mongolia increasingly restricted.

A.9 EFFICIENT CAPITAL MARKETS AND PORTFOLIO INVESTMENT

Mongolia is developing the experience and expertise needed to sustain portfolio investments and active capital markets. It has a nascent regulatory apparatus for these activities, and both state and private entities are beginning to engage in them. The government of Mongolia (GOM) imposes few restraints on the flow of capital in any of its markets. Multilateral institutions, particularly the International Monetary Fund, have typically found the regime too loose, especially in the crucial banking sector. Although capital reserve requirements, loan rules, and banking management practices are specified in law and regulation, the Bank of Mongolia (BOM), Mongolia's central bank, has historically resisted restraining credit flows and interfering with operations at Mongolia's commercial banks, even when the need to intervene has been apparent. However, in response to the severe impact of the recent global financial crisis on Mongolia's banking sector, the BOM has attempted to improve its capacity to deal with both those insolvent banks and improperly managed banks that have affected the health of Mongolia's financial system. To illustrate, closed and/or merged banks resulted in a net loss of three of the country's 16 banks. Additional consolidation is under consideration but the reform process has stalled.

Capital and Currency Markets

Inflation Concerns

Although liquidity is quite high, affordable capital remains scarce. Local credit interest rates for customers range from 12% for the most credit worthy to perhaps 90% per annum (or more) for the least, with inflation peaking at around 40% in 2008 before settling at 24%. Inflation eased in 2009 and 2010 as the global economic crisis drove down global commodity prices, which, when coupled with domestic fiscal tightening, helped lower Mongolia's import-driven inflation rate. However, the newly-passed 2011 budget generated concerns by the IMF and others that inflation may rise above 20% in 2011. The GOM is spending 65% of current GDP just at the time when private sector lending and growth is expanding. As the GOM shows no intention to reduce spending, the only solution to curb inflation might be for the BOM raise interest rates to dampen private sector demand.

Foreign investors can easily tap into domestic capital markets. However, they seldom do, because they can do better abroad or better locally by simply taking on an equity investor, Mongolian or otherwise.

The global economic crisis savaged Mongolia's currency, capital, and equity markets. While the currency, the Tugrik, proved resilient in holding its value against most international currencies, it fell some 40 % against the U.S. dollar from late 2008 into spring 2009, as the worst of the crisis hit. In 2010, the Tugrik appreciated nearly 15% against the U.S. dollar. This resiliency has largely been attributed to the latest commodities boom and to the influx of capital to fund the Oyu Tolgoi mining project. As elsewhere, of course, the strengthening of the currency may prove something of a mixed blessing, complicating economic policy.

Equity Markets

The Mongolian Stock Exchange seems set for reforms that could see it become a more or less fully functioning stock exchange in 2011.

The Mongolian Stock Exchange (MSE) remains fully state-owned and state-managed, although it does allow private brokerage firms to conduct stock-trading operations. It is officially owned by the State Property Committee of Mongolia (SPC), a government agency that oversees all state-owned enterprises, and had been managed day-to-day by a team selected from the ranks of the leading political party (although such employees do have to give up official party membership upon accepting a position at any state-owned enterprise).

The GOM has recently pushed for reforms that will let MSE serve as a venue to raise international capital. This capital is ostensibly intended to pay for public works and mining projects, and to underwrite public expectations of cash disbursements. Currently, investors trading at the MSE can only buy and sell shares listed locally, because the MSE can neither accept nor process overseas transactions, having no links to any international exchange. This lack of international links limits the ability of investment to flow smoothly in and out of Mongolia, and limits the available pool of buyers and sellers to those based in Mongolia.

Faced with growing demands from the public and development needs, the GOM recognizes that its ambitious program to raise capital for development projects—IPO's of state-owned businesses and underwriting of state-owned mining companies—hinges on creating a best-practices exchange. Hence, the GOM accepts in principal that the MSE required wholesale changes. To support this effort, the GOM altered the composition of the existing MSE board of directors by replacing seven of the current nine (9) members of the board with independent expatriate and Mongolian business leaders. In addition, the GOM has begun the process of replacing the existing management at the MSE with a qualified

international operator of stock exchanges chosen through an international tender process. This process led to the selection of the London Stock Exchange (LSE) to manage the MSE.

While no one seems to be disputing these changes in principle, they cannot occur unless and until the GOM works with Parliament to change the laws and regulations affecting MSE operations so that the LSE has the legal right to manage the MSE in Mongolia; and so, that the practices and processes it will institute become enshrined in Mongolian law. Such reforming legislation for the MSE is still pending, and the promised changes cannot begin without legislative approval. Those who have seen have seen the current draft legislation are concerned that it does not go far enough to reform the legal and regulatory environment. In short, preparatory work to date is incomplete and there is no known time frame for consideration, consultation, passage, and implementation.

Mining company stock issues also remain an impediment to expanding the role of the MSE. The 2006 Minerals Law of Mongolia contains a provision that requires that holders of mining licenses for projects of strategic importance—Oyu Tolgoi, for example—to sell no less than 10% of the resulting entity's shares on the Mongolian Stock Exchange. Foreign and domestic mining companies with non-strategic assets have told us that the GOM has been pressuring them to list shares on the MSE, too. To our knowledge no company has followed the law or submitted to GOM pressure to list, because no one understands, nor has the GOM explained, what this provision means in practical terms or how it is to be implemented.

The Banking Sector

Chronic weakness in Mongolia's banking sector concerns all players, including the International Monetary Fund (IMF: <http://www.imf.org>). The total assets of Mongolia's remaining 13 commercial banks (down from 16 in 2008) adds up to just around US\$5 billion. The system has been through massive changes since the socialist era, during which the banking system was divided into several different units. This early system failed through mismanagement and commercial naivety in the mid-90s, but over the last decade has become more sophisticated and better managed.

Mongolia has a few large, generally well-regarded banks owned by both Mongolian and foreign interests. They follow international standards for prudent capital reserve requirements, have conservative lending policies, up-to-date

banking technology, and are generally well managed. If a storm should descend again on Mongolia's banking sector, these banks appear well-positioned to weather it.

However, concerns remain among bankers and the sector's observers about the effectiveness of Mongolia's legal and regulatory environment. As with many issues in Mongolia, the problem is not of lack of laws or procedures but the will and capacity of the regulator, BOM, to supervise and execute mandated functions, particularly in regard to capital reserve requirements and non-performing loans.

From 1999 through late 2008, the BOM consistently refused to close any commercial bank for insolvency or malpractice. In late 2008, Mongol Bank took Mongolia's fourth largest bank into receivership. Most deposits were guaranteed and their depositors paid out at a cost of around US\$150 million -- not an inconsequential sum in an economy with a US\$5 billion per annum GDP. In 2009, Mongolia's fifth largest bank went into receivership, and in 2010 two other mid-sized banks were merged.

The BOM and Mongolia's financial system have endured the crisis. However, most observers note that the insolvent banks had shown signs of mismanagement, non-performing loans, and ill-liquidity for several years before the BOM moved to safeguard depositors and the financial sector. In response the BOM has attempted to introduce long-term reforms to enhance its ability to supervise the banking system; however, Parliament has yet to approve a package of reforms that has been before it for over a year. Little action is expected in 2011.

A.10 Competition from State-Owned Enterprises (SOE)

Mongolia has SOEs in, among other areas, transport, power, and mining. Investors may conduct activities in these sectors, although in some cases a largely opaque regulatory framework limits both competition and foreign investor penetration. Importantly, Mongolian statute and regulation do not generally give SOEs preferential status over private companies. However, observers perceive that the GOM, sanctioned by Parliament, is implementing policies that in effect exempt SOEs from following laws and regulations imposed on private foreign and domestic companies.

Corporate Governance of Mongolian SOEs

Officially, all Mongolian SOEs are under the direct control of the State Property Committee (SPC), which in turn answers to the Prime Minister of Mongolia, who in turn appoints the Chairman of the SPC for a set term subject to parliamentary approval. Once approved, the Chair can serve out the full term regardless of any change in government, unless Parliament votes to remove the incumbent. The SPC appoints boards of directors for each SOE, which includes members of the SPC. These boards then select management teams to run each state-owned entity. If an SOE's activities fall under the regulatory remit of certain line ministries, that particular ministry may have a role on the board of directors.

In the case of Mongolian mining sector SOEs, several agencies, ministries, and the SPC have various responsibilities and authorities. For example, because the Nuclear Energy Law is unclear on which government agency has primacy in managing uranium assets, it is not certain if the SPC, Nuclear Energy Agency, or the holding company, MonAtom, has paramount authority.

In any case, when investing in joint activities with Mongolian SOEs, investors are strongly advised to contact all relevant government entities to learn what their respective interests are and what actual administrative and management authority they actually have.

SOEs are technically required to submit to the same international best practices on disclosure, accounting, and reporting as imposed on private companies. When the SOEs seek international investment and financing, they tend to follow these rules. However, because international best practices are not institutionalized in, and are sometimes at odds with, Mongolian law, many SOEs tend to follow existing

Mongolian rules by default. At the same time, foreign-invested firms follow the international rules, which results in inconsistencies in disclosure and accounting.

Aviation SOE

The state involves itself in the domestic and international aviation sectors; however, at this time, it operates no regular domestic schedule of flights. In addition to the state-owned Mongolian Airlines (MIAT), Mongolia has two private domestic service providers, Aero Mongolia and EZNIS. Government regulation recommends maximum ticket prices that airlines may charge for all domestic routes, but the law does not strictly forbid airlines from charging fees higher than the state carrier, which does not currently operate domestically. Private carriers have succeeded in charging rates that might yield profits and support safe and efficient flying arrangements. MIAT flies a regular and profitable schedule of international flights, serving China, Korea, Russia, and Germany. Air China, Korean Air, and Aeroflot also serve these routes. As far as the provision of airport services is concerned, there is no indication that MIAT is receiving preferential pricing or services.

Rail SOE

Mongolia has no plans to privatize its existing railroad jointly held with the government of Russia since 1949. As far as the construction of additional rail lines, the state has no real plans to turn over control of any rail network to a private entity: Current law does allow private firms to build and operate but ultimately transfer new railroads to the state. Under this law several private mining companies have proposed rail links, and obtained licenses to construct new lines from their respective coal mines to the Chinese border or to the currently operating spur of the Trans-Siberian Railroad. However, because landlocked Mongolia and its neighbors have yet to resolve transnational shipping issues, companies may not be able to access rights granted under these licenses.

In 2010, Parliament further limited company rights to develop shipping and transport infrastructure required to move mineral and metal products to likely markets, most obviously the Chinese market. Specifically, current policy requires that railroads linking key coal deposits in the southern Gobi desert region must first link those deposits to Russia's Pacific ports before they develop links with Chinese markets. Further, these projects may use the international gauge used in China only after the links with Russia are completed using the Russian gauge. The GOM

has stated that these policies are needed to keep Mongolia from dependency on one market to buy its coal products, namely China.

Mining SOEs

Mongolia maintains two basic categories of mining SOEs. The first group is composed of legacy SOEs from the socialist era. The most important of these are Mongolrostvetmet and Erdenet Mining Concern, both jointly owned by the Mongolian and Russian governments. The second category includes new SOEs in copper and coal and uranium and rare earth held by Erdenes MGL and MonAtom respectively. Erdenes MGL holds the government's 34 % of the Oyu Tolgoi project, although has no direct management and operational responsibilities for this asset. Erdenes also holds the GOM's 100% share of the Tavan Tolgoi coal deposit. Part of this holding is structured through a subsidiary company Erdenes MGL Tavan Tolgoi, which owns and operates a new project on one of the Tavan Tolgoi licenses.

Although the trend had been for the GOM to extract itself from ownership of firms and other commercial assets, both the 2006 Minerals Law of Mongolia and the 2009 Nuclear Energy Law bring the state back into mining. (See Chapter A.1 for fuller discussions of both laws.) Under both laws, the GOM granted itself the right to acquire equity stakes ranging from 34% to perhaps 100% of certain deposits deemed *strategic* for the nation. These companies are then mandated to use the proceeds from their respective activities for the benefit of the Mongolian people.

Driving these recent trends is an explicit, public desire by the GOM to create national champions in the key mining sector for high profile products such as coal, uranium, and rare earths. The policy posits that a national champion owned and operated by Mongolians for Mongolians would be more inclined (and more susceptible to state and public pressure) to conduct value-added operations in Mongolia than would foreign investors. Leaving aside the question of the efficacy of this policy, observers have told us that they perceive that the GOM may not favor foreign investment and even take steps to limit such investment in projects because it considers such investment will hobble GOM aims. Recent resolutions by Parliament that specifically limit how long foreign firms can operate before they must turn over the operations to the GOM (and which vary from best practices followed in most mining regions) tend to support these perceptions.

There is also concern that the GOM will waive legal and regulatory requirements for its state-owned mining companies that it imposes on all others. These claims

seem borne out by the GOM's treatment of its Erdenes MGL Tavan Tolgoi mining operation. The GOM has widely publicized (and we have privately confirmed) that in 2010 it had begun pre-mining activities at one of its Tavan Tolgoi holdings and intends to mine and market at least half a million tons of coal in 2011. Generally, private mining firms take at least two years to submit and receive approval for relevant environmental and operating permits for coal mines in Mongolia. However, for the GOM's mine there is no indication that it has required its operation at Tavan Tolgoi to follow the statutory or regulatory requirements imposed on other operations; in fact, a review of its timeline suggests that the extensive statutory requirements of the current approval process that normally takes several years to complete cannot have been followed in this case. If true, it would run counter to extremely vocal GOM demands that companies show respect for Mongolia's rules and laws and comply with all applicable mining statutes.

Mongolia's Human Development Fund and Development Bank

In 2008, Parliament approved the Law on the Human Development Fund (HDF) to establish governance of the GOM putatively-named *Mongolia's first ever sovereign wealth fund*, although it does not seem to function as a sovereign wealth fund precisely. The stated purpose of the law was to fulfill campaign promises to provide every citizen with cash payments in excess of US\$ 1,000 so that the public benefits directly from Mongolia's mineral wealth. The HDF will be funded from the profits, taxes, and royalties generated by the mining industry as a whole, including large, medium and small scale projects.

There seems no plan to use the HDF as a conduit for foreign direct investments. The HDF basically serves as an instrument to distribute cash to the citizens of Mongolia as a share from the mining profits. HDF funds will also be used for the following social benefits: payments for pension and health insurance premiums; housing purchases; cash benefits; and payments for health and education services. In that sense, we find no conflict between the HDF and private sector investments.

In early 2011, Parliament passed the Law on the Development Bank for the explicit purpose of financing major development infrastructure projects. The Mongolian government will select a foreign company to manage the Development Bank, overseen by a board of directors composed of government appointees. Operations have yet to begin.

Advisors to the bank have told us that currently U.S. \$16 million has been allocated with an additional US\$ 250 million promised but not yet formally

appropriated. Those public and private entities involved with the Development Bank tell us that it will invest in railways, power, and oil processing, housing projects, aviation projects, and so on. Our sources further assert that the Bank will be able to engage private entities by extending sovereign guarantees on behalf Mongolia. We have yet to confirm, however, that the implementing legislation allows the Development Bank to grant sovereign guarantees, which has traditionally been the exclusive province of Parliament.

Fiscal Stability Law

Mongolia passed a Fiscal Stability Law (FSL) in 2010 as part of its Stand-By Arrangement with the International Monetary Fund, which ended on September 30, 2010. The FSL establishes a stabilization fund that sets aside certain mining revenues in excess of pre-set structural revenue estimates. Savings may then be used during a downturn to finance the budget. Under the FSL, a portion of the savings generated by the Fiscal Stability Fund can be used to finance domestic and foreign investments. For example, the government is allowed to use this money to purchase long term securities offered by the Development Bank to fund its activities.

How the GOM and Parliament will divide mining revenues between the HDF and the FSL remains to be determined.

A.11 CORPORATE SOCIAL RESPONSIBILITY (CSR)

It is early days for corporate social responsibility (CSR) in Mongolia. Most western companies make a good faith effort to work with the communities in which they invest. These efforts usually take the form of specific projects aimed at providing missing infrastructure or public benefit—wells, power, clinics and schools—or or such support for education as books and scholarships. The larger western firms tend to follow accepted international CSR practices and underwrite a full range of CSR activities across Mongolia; however, the smaller ones, lacking sufficient resources, often limit their CSR actions to the locales in which they work. Only the largest Mongolian firms regularly undertake CSR actions, with small to medium-sized enterprises generally (but not always) hindered by limited resources from underwriting CSR actions.

Generally, firms that pursue CSR are perceived favorably, at least within the communities in which they act. Nationally, responses range from praise from politicians to cynical condemnation by certain civil society groups of CSR actions as nothing more than an attempt to “buy” public approval.

A.12 POLITICAL VIOLENCE

Mongolia is peaceful and stable. Political violence is rare. Mongolia has held nine (9) peaceful presidential and parliamentary elections in the past 17 years. However, a brief but violent outbreak of civil unrest followed disputed parliamentary elections on July 1, 2008. Five people were killed and a political party's headquarters was burned, but the unrest was quickly contained and order restored. There has been no repeat of civil unrest since then. Mongolia held peaceful presidential elections in May 2009 in which the incumbent president was defeated and conceded at noon the next day, and power smoothly transitioned to the winner.

Mongolia has an ethnically homogenous population: 97% of the population is Khalkh Mongol. The largest minority, numbering an estimated 90,000 people, is Kazakh (Muslim), concentrated in the far western part of the country.

There have been no known incidents of anti-American sentiment or politically motivated damage to American projects or installations in at least the last decade. However, there has been a gradual and perceptible level of rising hostility to Chinese and Korean nationals in Mongolia. This hostility has led to some instances of improper seizure of Chinese and Korean property; and in more limited cases acts of physical violence against the persons and property of Chinese and Korean nationals resident in Mongolia. Other foreign nationals living in Mongolia have expressed concern that they may inadvertently become victims of this hostility. The Indian Chargé d'Affaires was hospitalized in 2010 after being accosted by attackers who mistook him for a Chinese. Also in 2010, a small group of young men verbally threatened one U.S. embassy employee for being foreign (not specifically American) and threw a stone at him.

A.13 CORRUPTION

Current Views on Mongolian Corruption

In mid-2005, the USAID Mission to Mongolia, in collaboration with USAID/Washington and The Asia Foundation (TAF), funded a corruption assessment conducted by Casals & Associates, Inc. (C&A). The complete report is available at <http://www.usaid.gov/mn>. Follow-up surveys of the problem show that the results of this assessment remain valid in 2011. The study found that opportunities for corruption continue to increase in Mongolia at both the “petty” or administrative and “grand” or elite levels. Both types of corruption should concern Mongolians and investors, but grand corruption should be considered a more serious threat because it solidifies linkages between economic and political power that could negatively affect or ultimately derail or delay democracy and development. Several inter-related factors contribute to Mongolia’s corruption problem:

- A blurring of the lines between the public and private sector brought about by systemic conflicts of interest at nearly all levels;
- A lack of transparency and access to information, stemming in part from a broad State Secrets Law that surrounds many government functions and has yielded criticism that it renders the media ineffective and hinders citizen participation in policy discussions and government oversight;
- An inadequate civil service system that gives rise to a highly politicized public administration and the existence of a “spoils system;”
- Limited political will to actually implement required reforms in accordance with the law, complicated by conflicting and overlapping laws that further inhibit effective policy implementation;
- Weak government control institutions, including the Central Bank, National Audit Office, parliamentary standing committees, Prosecutor General, Generalized State Inspection Agency, State Property Committee, and departments within the Ministry of Finance.

The aforementioned systemic shortcomings have allowed for an evolution of corruption in Mongolia that “follows the money,” meaning that graft on the

most significant scales generally occurs most often in the industries and sectors where there is the most potential for financial gain.

During the early 1990s, in the early transition toward democracy and market economy, two areas that offered particular opportunities for grand scale corruption at that time were foreign donor assistance and privatization of state-owned enterprises. As Mongolia later embarked on further policy changes to institutionalize capitalistic practices, corruption reared its head in the process of privatizing public land. As the economy continues to develop, emerging areas for corruption include the banking and mining sectors. There also are several areas that provide stable and consistent opportunities for corruption, both grand and administrative in nature, such as for procurement opportunities, issuance of permits and licenses, customs, inspections, the justice sector, among high-level elected and appointed officials, and in the conduct of a variety of day-to-day citizen- and business-to-government transactions, notably in education, health care, and city services.

Despite the fact that few of the conditions to prevent corruption from getting worse are in place, the situation has not reached the levels that are evident in many other countries with contexts and histories similar to that of Mongolia. Perhaps more importantly, there are a number of efforts underway to actively combat corruption, including:

- Government commitments to international anti-corruption regimes and protocols, such as the Anti-Corruption Plan of the Asian Development Bank/Organization of Economic Cooperation and Development (ADB/OECD) and the United Nations Convention Against Corruption (UNCAC);
- Development of a National Program for Combating Corruption and formation of a National Council for coordinating the Program and a Parliamentary Anti-Corruption Working Group;
- Implementation of an anti-corruption law that has included the formation of an independent anti-corruption body;
- Short- and medium-term anti-corruption advocacy and “watchdog” programs initiated by civil society organizations, often with international donor support.

There is, in fact, time for Mongolians and the international community to nurture these efforts and take further action before corruption grows too large to rein in. In general, the main need in Mongolia is to develop effective disincentives for corrupt behavior at both the administrative and political levels. In its broadest configuration, this implies a strategy of increasing transparency and effective citizen oversight, as well as intra-governmental checks and balances. Without these major changes, administrative reforms may provide some small improvements, but they are unlikely to solve the problem. Specifically, the aforementioned USAID-sponsored report of 2005 makes several strategic recommendations, which remain relevant in 2011, including:

- Diplomatic engagement focused on keeping anti-corruption issues high on the policy agenda, promoting implementation of existing laws related to anti-corruption, and highlighting the need for further measures to promote transparency and improved donor coordination;
- General programmatic recommendations to address conflicts of interest, transparency/access to information, civil service reforms, and the independent anti-corruption body, with a definitive focus on engaging civil society and promoting public participation utilizing UNCAC as a framework; and
- Specific programmatic recommendations to address loci of corruption, such as citizen- and business-to-government transactions, procurement, privatization, customs, land use, mining, banking, the justice sector, and the political and economic elite.

In addition, the reputable international anti-corruption NGO Transparency International (TI) opened a national chapter in Mongolia in 2004 (for more information, see: www.transparency.org). U.S. technical advisors have worked with TI to train Mongolian staff to monitor corruption and to advocate on behalf of anti-corruption legislation and. TI first included Mongolia in its annual “Perceptions of Corruption” survey in September 2004. In that initial survey, Mongolia ranked 85 out of 145 countries and its score of 3 on the Corruption Perception Index was “poor.” (TI’s CPI Score relates to “perceptions” of the degree of corruption as seen by business people and country analysts and ranges between 10 (highly clean) and 0 (highly corrupt). TI’s 2005 Survey ranked Mongolia 85 out 158; and again Mongolia earned a “poor” score of 3. In 2007, Mongolia was still 99 but out of 179 nations and had achieved a score of 3.0, a slight uptick but still poor. 2008 saw Mongolia drop to 102 out 180 nations, maintaining its poor score of 3. 2009 found Mongolia dropping to 124 out of 180

nations, and declining to a poorer score of 2.7; and 2010 found Mongolia 116 out of 178, with a score of 2.7.

Although TI's ranking was stable from 2009 to 2010, other signs of decline persist. The MCC latest Mongolia score card for controlling corruption hit a new low (<http://www.mcc.gov/documents/scorecards/score-fy11-mongolia.pdf>), having fallen to the median for controlling corruption based on World Bank and Brookings WGI indices. ***Failure of this one indicator signifies failing the MCC scorecard.*** MCC and Mongolia are working to reverse this trend, but no one is pretending that the decline will be easily reversed.

One factor raising concerns about Mongolia's commitment to fight corruption is the series of amnesties granted to Mongolians found guilty of corruption or those under investigation for abuses. These amnesties have taken place about every three years, usually through presidential legislative action, with the most recent occurring in late 2009. Because they allow corrupt officials and those who enable them to avoid substantial prison time for their improper acts, these amnesties are demoralizing for the IAAC and the public, who question the value of tackling corruption with a government lacking the will to hold malefactors to account. The President's Office (with assistance from The Asia Foundation) has proposed amendments to criminal code, which are tentatively scheduled for consideration by Parliament during its spring 2011 session. (For a text of these amendments go to the President's official web site: <http://www.president.mn/eng/>.)

Current Anti-Corruption Law

In 2006, Parliament passed an Anti-Corruption Law (ACL), a significant milestone in Mongolia's efforts against corruption. The legislation had been under consideration since 1999.

The ACL created an independent investigative body, the Independent Authority Against Corruption (IAAC). The IAAC has four sections. The Prevention and Education Section works to prevent corruption and educate the public on anti-corruption legal requirements. The Investigation Section receives corruption cases and executes investigations. The third section collects, checks, and analyzes the legally required property and income statements of government officials. The fourth section, the IAAC's Secretariat, handles administrative tasks. The IAAC formally began operations in August 2007. (For a review of the IAAC's activities from its inception through late 2008 and a general assessment of the public's current views of corruption in Mongolia see the series of Mongolia Corruption

Benchmarking Surveys prepared for USAID Mongolia: <http://www.usaid.gov/mn>; and by The Asia Foundation Mongolia: <http://asiafoundation.org/publications>)

Anti-Corruption Resources Available to U.S. Citizens

U.S. Foreign Corrupt Practices Act: In 1977, the United States enacted the Foreign Corrupt Practices Act (FCPA), which makes it unlawful for a U.S. person, and certain foreign issuers of securities, to make a corrupt payment to foreign public officials for the purpose of obtaining or retaining business for or with, or directing business to, any person. The FCPA also applies to foreign firms and persons who take any act in furtherance of such a corrupt payment while in the United States. For more detailed information on the FCPA, see the FCPA Lay-Person's Guide at: <http://www.justice.gov/criminal/fraud/docs/dojdocb.html>.

Guidance on the U.S. FCPA: The Department of Justice's (DOJ) FCPA Opinion Procedure enables U.S. firms and individuals to request a statement of the Justice Department's present enforcement intentions under the anti-bribery provisions of the FCPA regarding any proposed business conduct. Opinion procedure are available on DOJ's Fraud Section Website at www.justice.gov/criminal/fraud/fcpa. Although the Department of Commerce has no enforcement role with respect to the FCPA, it supplies general guidance to U.S. exporters who have questions about the FCPA and about international developments concerning the FCPA. Also, see the Office of the Chief Counsel for International Counsel, U.S. Department of Commerce, Website, at http://www.ogc.doc.gov/trans_anti_bribery.html.

Other Assistance for U.S. Businesses: The U.S. Department of Commerce offers several services to aid U.S. businesses seeking to address business-related corruption issues. For example, the U.S. and Foreign Commercial Service can provide services that may assist U.S. companies in conducting their due diligence as part of the company's overarching compliance program when choosing business partners or agents overseas. The U.S. Foreign and Commercial Service can be reached directly through its offices in every major U.S. and foreign city, or through its Website at www.trade.gov/cs.

The Departments of Commerce and State provide worldwide support for qualified U.S. companies bidding on foreign government contracts through the Commerce Department's Advocacy Center and State's Office of Commercial and Business Affairs. Problems, including alleged corruption by foreign governments or competitors, encountered by U.S. companies in seeking such foreign business opportunities can be brought to the attention of appropriate U.S. government

officials, including local embassy personnel and through the Department of Commerce Trade Compliance Center “Report A Trade Barrier” Website at tcc.export.gov/Report_a_Barrier/index.asp.

Exporters and investors should be aware that generally all countries prohibit the bribery of their public officials, and prohibit their officials from soliciting bribes under domestic laws. Most countries are required to criminalize such bribery and other acts of corruption by virtue of being parties to various international conventions discussed above.

A.14 BILATERAL INVESTMENT AGREEMENTS

(UNCTD: http://www.unctad.org/sections/dite_pcbb/docs/bits_mongolia.pdf)

<i>Reporter</i>	<i>Partner</i>	<i>Date of Signature</i>	<i>Entry in to force</i>
Mongolia	Austria	19-May-01	1-May-02
	Belarus	28-May-01	1-Dec-01
	Belgium/Luxembourg	3-Mar-92	15-Apr-04
	Bulgaria	6-Jun-00	-----
	China	25-Aug-91	1-Nov-93
	Cuba	26-March-99	-----
	Czech Republic	13-Feb-98	5-Jul-99
	Denmark	13-Mar-95	2-Apr-96
	Egypt	27-Apr-04	25-Jan-05
	Finland	15-May-07	-----
	France	8-Nov-91	22-Dec-93
	Germany	26-Jun-91	23-Jun-96
	Hungary	13-Sep-94	29-Aug-95
	India	3-Jan-01	29-Apr-02
	Indonesia	4-Mar-97	13-Apr-99
	Israel	25-Nov-03	2-Sep-04
	Italy	15-Jan-93	1-Sep-95
	Japan	15-Feb-01	24-Mar-02
	Kazakhstan	2-Dec-94	3-Mar-95
	DPR of Korea	10-Nov-03	-----
	Republic of Korea	28-Mar-91	30-Apr-91
	Kuwait	15-Mar-98	1-May-00
	Kyrgyzstan	5-Dec-99	-----
	Lao People's DR	3-Mar-94	29-Dec-94
	Lithuania	27-Jun-03	3-May-04
	Malaysia	27-Jul-95	14-Jan-96
	Netherlands	9-Mar-95	1-Jun-96
	Philippines	1-Sep-00	1-Nov-01
	Poland	8-Nov-95	26-Mar-96
	Qatar	29-Nov-07	-----
	Romania	6-Nov-95	15-Aug-96
	Russian Federation	29-Nov-95	-----
	Singapore	24-Jul-95	14-Jan-96
	Sweden	20-Oct-03	1-Jun-04
	Switzerland	29-Jan-97	9-Sep-99
	Turkey	16-Mar-98	22-May-00
	Ukraine	5-Nov-92	5-Nov-92
	UAE	21-Feb-01	-----
	United Kingdom	4-Oct-91	4-Oct-91
	United States	6-Oct-94	4-Jan-97
	Vietnam	17-Apr-00	13-Dec-01

Taxation Issues of Concern to American Investors

Taxation remains a key concern for Americans, other foreign investors, and Mongolian domestic investors and businesses. 2011 saw the end of the Windfall Profits Tax, but generally there appear to be few changes to the tax code on the horizon—although Parliament and the GOM are considering lowering or waiving the value-added tax rate to encourage local production of certain mineral and food products among other items.

Windfall Profits Tax on copper and gold ends, but sliding royalties begin

From its passage in 2006 until its sunset on December 31, 2010, the Windfall Profits Tax Law (WPT) drew criticism regarding the depth of the GOM's commitment to creating an open, predictable, and fair environment for foreign direct investment. Passed in just six days, the law's establishment raised concerns among investors about the stability and transparency of Mongolia's legislative and regulatory environment. This sort of whirlwind, non-transparent legislating continues to vex foreign and domestic investors.

The WPT imposed a 68% tax on the profits from gold and copper mining respectively. For gold, the tax kicked in when the price hit US\$850 per ounce. For copper, the threshold was US\$2,600 per ton. Mining industry sources claimed that when combined with other Mongolian taxes, the effective tax rate was 100%.

The Oyu Tolgoi Investment Agreement changed all of this. OT's private investors successfully argued that they would not be able to run a commercially viable OT operation when faced with the WPT. The WPT officially ended for all copper concentrate and gold products in 2011.

To compensate for lost WPT revenue, Parliament in late 2010 passed an amended royalty structure. The new regime imposes a sliding scale on a variety of mineral and metal products which depends on the market price of the commodity on certain world exchanges and the amount of processing the mineral or metal receives in Mongolia. The more value added done in Mongolia the lower the increase in royalty.

The Mongolian Tax Code:

The 2006 code taxes all income types at 10%; and taxes business profits at 10% for profits less than 3 billion Tugriks (US\$ 2.4 million) and at 25% for any profit 3

billion or above. The Value Added Tax (VAT) is currently 10%. Mongolia also imposes a variety of excise taxes and licensing fees upon a variety of activities and imports.

2010 saw few changes to the tax code, but investors would like to see some amendment to changes inaugurated last year. Mongolia's Parliament revoked an exemption available on value-added taxes (VAT) of 10% on equipment used to bring a given mine into production. Most jurisdictions, recognizing that most mines have long development lead times before production begins, either waive or do not tax such imports at all. Parliament, with no consultation with investors, international advisors provided by donor organizations, or even of its own tax officials, chose to impose the VAT, which immediately makes Mongolian mining costs 10% higher than they would otherwise be, impairing competitiveness and dramatically varying from global practice.

The GOM may choose to allow investors to use an investment tax credit for mining investments, but only if those investments that meet defined national development needs—that is, conducting approved value-added operations in Mongolia. For example, investment in a copper mine that would lead to crushing and concentrating might not qualify for the credit while the addition of a smelter would most likely guarantee receiving the tax credit.

More positively, Parliament revised loss-carry forward provisions, extending from two (2) years to eight (8) years the ability to deduct losses from taxes after incurring a loss. Most investors find eight years sufficient for many Mongolian investments that require long, expensive development horizons before producing any sort of profit.

Unfinished Taxation Business: Improving Institutions and Practices

As reported in the *2010 Investment Climate Statement* and *2010 Country Commercial Guide*, both the GOM and Parliament have intended to take up additional tax reform measures since 2007 but have made no substantive progress since promising additional reforms. These measures include revisions to the Law on Customs and Customs Tariffs and the VAT Law. While the exact nature of the proposed changes to these laws remains murky, the GOM states that changes will be consistent with Mongolia's WTO obligations and best practices.

Despite overall solid, positive changes, international financial institutions warn that last year's tax reforms by themselves are insufficient to improve Mongolia's

business environment. They report that reform efforts need to go beyond changes to the tax code to restructure the operations of the key agencies - the tax department, the customs administration and the inspections agency – that directly interact with private firms and individuals.

Specifically, tax authorities charged with enforcing the tax codes require a more customer-based approach to dealing with their business clientele and a more detailed and rigorously enforced regulatory framework under which to audit company accounts. Many foreign and domestic investors argue that the lack of such a clear, implementable code of ethics and enforceable set of guidelines leads to arbitrary, capricious, or predatory tax audits.

A.15 OPIC AND OTHER INVESTMENT INSURANCE PROGRAMS

The U.S. government's Overseas Private Investment Corporation (OPIC: www.opic.gov) offers loans and political risk insurance to American investors involved in most sectors of the Mongolian economy.

In addition, OPIC and the GOM have signed and ratified an *Investment Incentive Agreement* that requires the GOM to extend national treatment to OPIC financed projects in Mongolia. 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: www.exim.gov) 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 a member of the Multilateral Investment Guarantee Agency (MIGA: www.miga.org).

A. 16 LABOR

The Mongolian labor pool is educated, young, and adaptable, but shortages exist in most professional categories requiring advanced degrees or training. Only time and investment in education and training will remedy this deficit of trained skilled labor. Unskilled labor is sufficiently available.

Shortages exist in both vocational and professional categories. Foreign-invested and domestic companies deal with this situation by providing in-country training to their staffs, raising salaries to retain employees, or hiring expatriate workers to provide skills and expertise unavailable in the local market. In addition, the USG funded Millennium Challenge Corporation (MCC) is underwriting a five-year training and vocational education program (TVET) to develop sustainable programs to help Mongolia meet its needs for skilled *blue-collar* workers (<http://www.mca.mn> or <http://www.mcc.gov>).

Mongolian labor law is not particularly restrictive. Investors can locate and hire workers without using hiring agencies—as long as hiring practices are consistent with Mongolian Labor Law. However, Mongolian law requires companies to employ Mongolian workers in all labor categories whenever a Mongolian can perform the task as well as a foreigner. This law generally applies to unskilled labor categories and not areas where a high degree of technical expertise nonexistent in Mongolia is required. The law does provide an escape hatch for employers. Should an employer seek to hire a non-Mongolian laborer and cannot obtain a waiver from the Ministry of Labor for that employee, the employer can pay a monthly fee. Depending on a project's importance, the Ministry of Labor can exempt employers from 50% of the waiver fees per worker. However, trends suggest that it is becoming more difficult to obtain waivers, in part because of public concerns that foreign and domestic companies are not hiring Mongolians at an *appropriate level*.

Foreign and domestic investors consistently argue that they bear too much of the social security costs for each domestic and foreign hire under the amended 2008 Social Insurance Law enacted in July 2008. Foreign employees became liable for social insurance taxes if they reside within Mongolia for 181 days within a 365 day period. Under this law, foreign and domestic workers pay up to 108,000 tugrik (US\$85) for this tax, no matter their respective rates of pay. Employers must pay a tax equivalent to 13% of the annual wage on both domestic and foreign workers. Given that state pensions have yet to barely broach even US\$100 per month, employers argue that pensions are not commensurate with worker contributions,

especially those of highly-paid ex-patriot employees. In addition, workers must pay in for twenty years in order to be vested, highly unlikely for many ex-patriot employees, who reside in Mongolia for less than three years on average. Local and foreign business associations are attempting to work with both the government and Parliament to address these perceived inequalities.

ILO conventions

Mongolia has ratified 15 ILO conventions (<http://www.ilo.org>):

Convention	Ratification date	Status
<u>C29 Forced Labor Convention, 1930</u>	15:03:2005	ratified
<u>C59 Minimum Age (Industry) Convention (Revised), 1937</u>	03:06:1969	denounced on 16:12:2002
<u>C87 Freedom of Association and Protection of the Right to Organize Convention, 1948</u>	03:06:1969	ratified
<u>C98 Right to Organize and Collective Bargaining Convention, 1949</u>	03:06:1969	ratified
<u>C100 Equal Remuneration Convention, 1951</u>	03:06:1969	ratified
<u>C103 Maternity Protection Convention (Revised), 1952</u>	03:06:1969	ratified
<u>C105 Abolition of Forced Labor Convention, 1957</u>	15:03:2005	ratified
<u>C111 Discrimination (Employment and Occupation) Convention, 1958</u>	03:06:1969	ratified
<u>C122 Employment Policy Convention, 1964</u>	24:11:1976	ratified
<u>C123 Minimum Age (Underground Work) Convention, 1965</u>	03:12:1981	ratified
<u>C135 Workers' Representatives Convention, 1971</u>	08:10:1996	ratified
<u>C138 Minimum Age Convention, 1973</u>	16:12:2002	ratified
<u>C144 Tripartite Consultation (International Labor Standards) Convention, 1976</u>	10:08:1998	ratified
<u>C155 Occupational Safety and Health Convention, 1981</u>	03:02:1998	ratified
<u>C159 Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983</u>	03:02:1998	ratified
<u>C182 Worst Forms of Child Labor Convention, 1999</u>	26:02:2001	Ratified

A. 17 FOREIGN TRADE ZONES/FREE PORTS

The Mongolian government launched its 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 town of Altanbulag and the other in the south at the Chinese-Mongolia border at the town of Zamyn-Uud. Both FTZs are relatively inactive, with little development at either site. The port of entry of Tsagaan Nuur in Bayan-Olgii province has long been considered as the site of a third FTZ.

There are concerns about the Mongolian free trade zones in general and Zamyn-Uud in particular. In April 2004, the USAID sponsored Economic Policy Reform and Competitiveness Project (EPRC: <http://www.eprc-chemonics.biz/>) made the following observations of Mongolia's FTZ Program. In 2011, these issues remain concerns:

1. Benchmarking of Mongolia's FTZ Program against current successful international practices shows deficiencies in the legal and regulatory framework as well as in the process being followed to establish FTZs in the country.
2. Lack of implementing regulations and procedural definitions encapsulated in transparency and predictability quotient required to implement key international best practices.
3. A process of due diligence, including a cost-benefit analysis, has not been completed for the proposed Zamyn-Uud FTZ.
4. Identifiable funding is not in place to meet off-site infrastructure requirements for Zamyn-Uud and Altanbulag sites.
5. Deviations from international best practices in the process of launching FTZs risks repeating mistakes made in other countries and may lead to "hidden costs" or the provision of subsidies that the government of Mongolia did not foresee or which will have to be granted at the expense of other high priority needs.

A. 18 FOREIGN DIRECT INVESTMENT STATISTICS

The Foreign Investment and Foreign Trade Agency (FIFTA) provides most of the data for tracking FDI in Mongolia. However, these data have limitations:

Incomplete reporting

Many foreign firms provide FIFTA with incomplete data on their annual investment amounts. FIFTA's registration regime requires companies to document business plans and total FDI for the coming year. FIFTA uses these amounts to determine FDI for the year. However, concerns in the business community that FIFTA cannot be trusted to keep proprietary business information confidential means that many firms withhold data on their activities.

Mongolia, therefore, suffers from promised investment that does not materialize or which comes in at a lower level than originally stated. FIFTA does not update reports to account for these or other changes to investments during the year. (See Chapter A.5)

Many of Mongolia's largest foreign-owned or foreign-invested entities are in the mining sector, which because of a quirk of the current Minerals Law of Mongolia are not necessarily defined as foreign-invested firms. The current minerals law specifies that only domestically registered mining firms can have mining licenses registered in their names, which means that foreign investments associated with mining are channeled through a locally-established entity. As a result, the entity's investment may not be recorded by FIFTA, even though the investment is demonstrably foreign. For example, the massive Oyu Tolgoi mine is managed by Oyu Tolgoi LLC, a joint venture of the government of Mongolia, Rio Tinto, and Ivanhoe. Although it has generated immense foreign investment, it is considered a domestic entity and not part of FIFTA's record.

Data not Available

To our knowledge neither FIFTA nor any other Mongolian agency tracks Mongolia's direct investment abroad.

A. TRADE TURNOVER (USD MLN.)

<i>Year</i>	Total Turnover	Percent comp.	Exports	Percent comp.	Imports	Percentage comp.	Balance
2000	1,150	119%	536	118%	615	120%	-79
2001	1,159	101.%	513	97%	638	104%	-116
2002	1,215	105%	524	101%	691	108%	-166
2003	1,417	117%	616	116%	801	116%	-185
2004	1,891	133%	870	141%	1,021	128%	-152
2005	2,249	119%	1,065	122%	1,184	116%	-120
2006	3,018	134%	1,529	144%	1,489	126%	39
2007	4,119	136%	1949	126%	2,170	146%	-221
2008	6,155	149%	2,539	130%	3,616	167%	-1077

Source: National Statistics commission of Mongolia, December 2009, 2010

B. TOP 10 INVESTOR COUNTRIES (THOUSAND USD)

<i>№</i>	Countries	%	Total	1990-2004	2005	2006	2007	2008	2009	2010
1	China	50.99	2,468,235	441,786.38	227,922.28	172,014.03	339,614.67	497,800.88	613,058.80	176,038.36
2	Canada	8.26	400,005	174,206.58	1,542.25	72,180.37	497.15	2,739.57	1,028.00	147,811.12
3	Netherlands	6.08	294,081	5,265.58	221.70	475.86	58.50	4,069.20	51,028.60	232,962.18
4	South Korea	5.29	255,813	85,180.14	19,004.49	16,434.78	22,991.38	41,765.41	31,673.98	38,763.43
5	UK Virgin Islands	4.60	222,438	48,394.23	5,033.92	6,111.67	35,449.00	6,157.89	19,305.18	101,986.27
6	Japan	2.86	138,570	66,208.26	5,840.80	4,727.59	2,450.10	46,623.46	5,594.78	7,125.37
7	Hong Kong SAR	2.63	127,350	25,033.35	773.02	350.50	8,255.51	1,757.81	11,032.44	80,148.35
8	Bermuda	2.50	121,059	1,604.48	4,962.86	-	30.30	6.46	-	114,455.56
9	USA	2.39	115,690	45,725.48	5,564.06	37,165.78	4,285.67	6,466.89	2,571.52	13,911.20
10	Russia	2.24	108,250	37,163.16	7,450.14	11,654.52	39,774.38	3,795.42	6,139.20	2,273.18

Source: FIFTA

C. TOP 20 INVESTOR ENTITIES (FDI – 2010)

No	Entity	Equity	Foreign	Domestic	Sectors	Countries
1.	Oyu Tolgoi	65,005,920	65,005,913	-	Geological prospecting and exploration	Netherlands-Mongolia
2.	MD Securities	43,603,000	43,500,000	-	Trade and catering service	Virgin Islands (UK)
3.	MCS mining	25,100,000	25,000,000	-	Geological prospecting and exploration	Singapore
4.	HSBC	10,000,000	9,990,000	-	Others	South Korea
5.	Wagner Asia Leasing	9,890,224	9,890,224	-	Trade and catering service	USA
6.	Seoul Senior Tower	7,840,000	7,140,000	-	Health and beauty services	South Korea
7.	Khan Bank	20,599,356	7,073,699	3,393,576	Bank and financial services	USA-China /Hong Kong/-Japan-Mongolia
8.	Gyantbaylag	7,000,000	7,000,000	-	Geological prospecting and exploration	Virgin Islands (UK)
9.	Globalcom	4,500,000	4,500,000	-	Trade and catering service	Virgin Islands (UK)
10.	Louis Vuitton Mongolia LLC	6,000,000	4,000,000	-	Trade and catering service	France
11.	Credit Bank	9,585,108	3,900,686	-	Bank and financial services	Cyprus
12.	MCS Asia Pacific	15,000,000	3,850,000	3,150,000	Production of foods and beverages	Singapore-Mongolia
13.	Shangri-La Ulaanbaatar Hotel	10,000,000	3,820,000	-	Trade and catering service	Virgin Islands (UK)
14.	EAM Bayan-Ulgii	3,548,107	3,538,107	-	Geological prospecting and exploration	Canada
15.	Handy Soft Rich	3,000,000	2,900,000	-	Trade and catering service	South Korea
16.	Tethys Mining	26,992,495	2,793,974	-	Geological prospecting and exploration	Switzerland
17.	Big Mogul Coal and Energy	4,627,722	2,776,633	1,851,089	Geological prospecting and exploration	Luxemburg-Mongolia
18.	Hong Kong Sunkfa group Mongol	1,600,000	1,600,000	-	Transportation	China-China /Hong Kong/
19.	EAM Exploration	1,511,710	1,501,710	-	Geological prospecting and exploration	Canada
20.	Santanmores	5,300,000	1,500,000	-	Geological prospecting and exploration	South Korea

Source: FIFTA

D. FDI by COUNTRY in 1000s USD (Source: FIFTA)

№	Country	%	Total	1990-2004	2005	2006	2007	2008	2009	2010
1	China	50,99	2468235,40	441 786,38	227 922,28	172 014,03	339 614,67	497800,88	613058,80	176038,36
2	Canada	8,26	400005,03	174 206,58	1 542,25	72 180,37	497,15	2 739,57	1 028,00	147811,12
3	Netherlands	6,08	294081,63	5 265,58	221,70	475,86	58,50	4 069,20	51 028,60	232962,18
4	Korea	5,29	255813,61	85 180,14	19 004,49	16 434,78	22 991,38	41 765,41	31 673,98	38 763,43
5	UK Virgin Islands	4,60	222438,15	48 394,23	5 033,92	6 111,67	35 449,00	6 157,89	19 305,18	101986,27
6	Japan	2,86	138570,37	66 208,26	5 840,80	4 727,59	2 450,10	46 623,46	5 594,78	7 125,37
7	Hong Kong SAR	2,63	127350,99	25 033,35	773,02	350,50	8 255,51	1 757,81	11 032,44	80 148,35
8	Bermuda	2,50	121059,66	1 604,48	4 962,86		30,30	6,46		114455,56
9	USA	2,39	115690,58	45 725,48	5 564,06	37 165,78	4 285,67	6 466,89	2 571,52	13 911,20
10	Russia	2,24	108250,01	37 163,16	7 450,14	11 564,52	39 774,38	3 795,42	6 139,20	2 273,18
11	Singapore	1,80	87 361,96	8 513,28	4 645,78	728,60	700,00	32 339,86	9 359,44	31 075,00
12	Great Britain	1,06	51 326,56	25 813,22	6 347,90	9 013,47	2 429,000	6 057,76	972,15	693,07
13	Cayman Islands	1,00	48 417,86	264,02		2 400,00		35 069,33	321,45	10 363,06
14	Switzerland	0,86	41 469,98	5 732,89	2 563,50	6 676,45	366,52	90,00	22 190,40	3 850,22
15	Luxemburg	0,72	34 647,84	2 911,70	1 809,30	10,00	3 118,917	195,80	1 012,65	25 589,47
16	Bulgaria	0,64	30 867,98	30 778,48		17,00	15,00	7,50		50,00
17	Germany	0,57	27 737,41	10 369,80	370,20	1 386,27	817,49	580,01	13 281,00	932,64
18	Vietnam	0,50	24 352,85	505,80	231,67	20 448,54	674,73	1 270,11	442,00	780,00
19	Australia	0,47	22 622,74	3 730,19	12 066,75	384,40	289,20	3 361,90	516,50	2 273,80
20	France	0,41	20 024,49	326,99	35,00	66,30	12 550,00	170,08	2 376,34	4 499,79
21	China /Taiwan/	0,41	19 811,31	11 123,37	474,75	20,10	590,80	6 443,49	997,50	161,30
22	Islands of Saint Kitts & Nevis	0,41	19 718,25	5,00			10,00		173,70	19 529,56
23	The Bahamas	0,36	17 627,79	17 435,79		102,00				90,00
24	Italy	0,31	15 212,65	8 265,85	5 219,43	44,90	37,50	856,97	340,00	448,00
25	Malaysia	0,30	14 411,85	4 529,19	2 993,00	711,60	60,75	5 340,69	445,12	331,50
26	Kazakhstan	0,30	14 288,15	551,76	35,30	31,30	11 522,22	214,57	1 515,00	418,00
27	Portugal	0,28	13 506,00	13 506,00						
28	Cyprus	0,24	11 607,65	244,08		10,00	7 091,52	71,00	190,00	4 001,05
29	Israel	0,17	8 356,68	8 094,91	10,00	20,00	23,70	15,00		193,07
30	India	0,16	7 527,69	334,00	10,00	128,00	4 925,00	690,00	1 155,00	285,69
31	Ukraine	0,15	7 290,54	6 148,12	24,95	89,90	66,90	45,00	725,63	190,04
32	Czech Republic	0,14	6 833,74	4 145,87	24,00	52,22	80,61	2 015,04	80,00	436,00

№	Country	%	Total	1990-2004	2005	2006	2007	2008	2009	2010
33	New Zealand	0,13	6 301,02	2 489,20	1 139,60	60,00	225,95	1 706,28	580,00	100,00
34	Belgium	0,11	5 272,71	2 744,72		2 190,90	134,46	75,00	27,62	100,00
35	China /Macao/	0,09	4 461,00	4 461,00						
36	Turkey	0,07	3 368,67	1 910,27	80,00	32,00	114,30	338,60	514,50	379,00
37	Lichtenstein	0,07	3 336,45	3 336,45						
38	Austria	0,05	2 335,14	1 984,85	10,00	101,87	6,40	191,52		40,50
39	Poland	0,04	2 036,26	1 780,26	10,00	16,00	20,00	10,00	150,00	50,00
40	Hungary	0,04	1 895,68	1 162,48	12,71	54,20	18,00		240,00	408,29
41	Uzbekistan	0,04	1 704,30		3,20			100,00	756,10	845,00
42	DPRK /North Korea/	0,03	1 401,86	1 162,61	66,50	22,75	50,00			100,00
43	Panama	0,03	1 293,65	1 055,45	7,70				100,00	130,50
44	Slovakia	0,02	1 192,06	869,06		273,00	50,00			
45	Pakistan	0,02	931,05	698,95	15,00	6,00	21,10	80,00		110,00
46	Antigua & Barbuda	0,02	729,86	729,86						
47	Kyrgyzstan	0,01	650,50	469,50	1,00				120,00	60,00
48	Sweden	0,01	660,10	13,10	10,90		466,00	30,00	40,10	100,00
49	Mauritania	0,01	510,00					30,00	480,00	
50	Syria	0,01	410,99	285,89	5,10	15,00		105,00		
51	Belize	0,01	375,88		13,00	175,88			85,00	102,00
52	Ireland	0,01	320,14	46,25	9,00		9,00		76,54	179,35
53	Gibraltar	0,01	291,00	176,00	15,00					100,00
54	Thailand	0,01	287,10	76,00				3,00	108,10	100,00
55	Yugoslavia	0,01	285,07	280,17	4,90					
56	Armenia	0,01	270,05	239,60	15,30	6,60		8,55		
57	Belarus	0,01	269,06	27,00				56,00		186,06
58	Iran	0,01	253,00		18,00		2,00			233,00
59	Bangladesh	0,00	215,00				10,00		105,00	100,00
60	Azerbaijan	0,00	210,00				20,00			190,00
61	Isle of Man	0,00	200,00							200,00
62	Anguilla	0,00	200,00							200,00
63	Saudi Arabia	0,00	198,30	198,30						
64	Norway	0,00	193,15	67,15	10,00	5,00	6,00	90,00		15,00
65	Cambodia	0,00	168,30		153,30	15,00				
66	Croatia	0,00	146,00	146,00						
67	Lebanon	0,00	142,86	134,94		7,92				
68	Iraq	0,00	115,00	15,00						100,00
69	Indonesia	0,00	104,00			20,00			84,00	

№	Country	%	Total	1990-2004	2005	2006	2007	2008	2009	2010
70	Romania	0,00	100,00							100,00
71	Denmark	0,00	90,30	90,30						
72	Spain	0,00	89,60	59,60		20,00	10,00			
73	Georgia	0,00	73,05	18,05			5,00		50,00	
74	Seychelles Islands	0,00	70,00				10,00	17,00		43,00
75	Argentina	0,00	55,00						55,00	
76	Greece	0,00	49,00	49,00						
77	Finland	0,00	41,67	20,00	8,17	7,00		6,50		
78	Moldavia	0,00	41,50	39,00			2,50			
79	Qatar	0,00	40,00					10,00	30,00	
80	Nepal	0,00	35,00	5,00					30,00	
81	Turks and Caicos Islands	0,00	31,00		3,10					27,90
82	Turkmenistan	0,00	30,00							30,00
83	Barbados	0,00	30,00	20,00	10,00					
84	Tajikistan	0,00	30,00	10,00	10,00	10,00				
85	Sri Lanka	0,00	28,00					28,00		
86	British Indian Ocean territory	0,00	25,00			25,00				
87	Jordan	0,00	24,93	21,60		3,33				
88	Liberia	0,00	20,50	20,50						
89	Morocco	0,00	20,00					20,00		
90	Honduras	0,00	19,50	13,50	6,00					
91	Estonia	0,00	17,00	17,00						
92	Serbia Montenegro	0,00	15,00	8,25	6,75					
93	Cameroon	0,00	12,00	12,00						
94	Mauritius	0,00	12,00			12,00				
95	Latvia	0,00	10,00	10,00						
96	Marshall Islands	0,00	10,00	10,00						
97	Myanmar	0,00	10,00		10,00					
98	Minor Outlying Islands	0,00	10,00			10,00				
99	Saint Helena	0,00	6,00		6,00					
100	Dominion of Melchizedek	0,00	5,61	5,61						
101	Nigeria	0,00	5,00	5,00						
102	The Philippines	0,00	4,90				4,90			
103	Ethiopia	0,00	2,50	2,50						
104	US Virgin Islands	0,00	2,00		2,00					
	TOTAL	100	4,840,319	1,120,895	316,839	366,545	499,962	708,923	801,158	1,025,996

E. Foreign Invested Companies by Country

№	Country	%	Total	1990-2004	2005	2006	2007	2008	2009	2010
1	China	49,52	5303	1534	532	827	876	859	299	376
2	Korea	18,42	1973	632	203	274	332	302	113	117
3	Russia	7,18	769	433	54	105	72	51	37	17
4	Japan	4,21	451	190	29	56	60	58	35	23
5	USA	2,25	241	98	19	28	27	44	11	14
6	Germany	1,60	171	102	10	18	13	13	8	7
7	UK Virgin Islands	1,41	151	27	9	12	26	17	23	37
8	Vietnam	1,41	151	25	14	34	46	21	3	8
9	Hong Kong SAR	1,20	129	54	9	5	10	14	10	27
10	Singapore	1,15	123	52	9	5	10	21	4	22
11	Great Britain	1,13	121	61	14	12	10	15	4	5
12	Canada	1,01	108	38	8	13	10	17	9	13
13	Australia	0,67	72	18	5	8	12	4	4	21
14	Czech Republic	0,63	67	40	3	7	8	4	1	4
15	Malaysia	0,56	60	17	8	9	3	11	5	7
16	China /Taiwan/	0,49	52	33	1	3	6	7	2	
17	Ukraine	0,45	48	21	1	12	7	3	3	1
18	France	0,45	48	14	2	12	4	9	3	4
19	Turkey	0,43	46	18	4	3	4	8	5	4
20	Kazakhstan	0,42	45	16	3	4	11	5	1	5
21	Pakistan	0,41	44	31	1	2	4	4		2
22	Italy	0,41	44	15	3	2	4	13	3	4
23	Netherlands	0,39	42	14	3	2	6	7	6	4
24	Switzerland	0,38	41	25	2	3	4	3	3	1
25	India	0,28	30	5	1	5	11	4	1	3
26	Poland	0,23	25	16	1	2	2	1	2	1
27	Hungary	0,21	23	7	1	5	3		3	4
28	New Zealand	0,21	22	11	1	3	2	3	1	1
29	Austria	0,17	18	7	1	2	2	6		
30	Bulgaria	0,17	18	12		2	2	1		1
31	Israel	0,14	15	7	1	3	2	2		
32	Belgium	0,14	15	7		4	2	1		1
33	DRPK	0,13	14	9	1	2	1			1
34	Bermuda	0,12	13	8		3	2			
35	Syria	0,11	12	10				2		
36	Antigua & Barbuda	0,10	11	11						

№	Country	%	Total	1990-2004	2005	2006	2007	2008	2009	2010
37	The Bahamas	0,10	11	8		2				1
38	Luxemburg	0,10	11	2		1		2	1	5
39	Uzbekistan	0,09	10		1			1	2	6
40	Cyprus	0,08	9				5	3	1	
41	Sweden	0,07	7	2	1		1	2		1
42	Cayman Islands	0,07	7	2		3		1	1	
43	Slovakia	0,07	7	3		2	2			
44	Spain	0,07	7	6		1				
45	Belarus	0,06	6	2				1		3
46	Kyrgyzstan	0,06	6	4					1	1
47	Iran	0,05	5		2					3
48	Norway	0,05	5	2	1	1	1			
49	Thailand	0,04	4	2					1	1
50	Gibraltar	0,04	4	1	2					1
51	Panama	0,04	4	3					1	
52	Liberia	0,04	4	1		3				
53	Yugoslavia	0,04	4	4						
54	Saudi Arabia	0,04	4	4						
55	Lebanon	0,04	4	3		1				
56	Bangladesh	0,03	3				1		1	1
57	Belize	0,03	3		2					1
58	Mauritania	0,03	3					3		
59	Seychelles Islands	0,03	3				1	2		
60	Moldavia	0,03	3	2			1			
61	Barbados	0,03	3	2	1					
62	Jordan	0,03	3	3						
63	Isle of Man	0,02	2							2
64	Anguilla	0,02	2							2
65	Ireland	0,02	2				1			1
66	Azerbaijan	0,02	2				1			1
67	Iraq	0,02	2	1						1
68	Islands of Saint Kitts & Nevis	0,02	2	1						1
69	Indonesia	0,02	2	1					1	
70	Georgia	0,02	2		1				1	
71	Qatar	0,02	2					1	1	
72	Sri Lanka	0,02	2					2		
73	Armenia	0,02	2		1			1		
74	Tajikistan	0,02	2	1		1				

№	Country	%	Total	1990-2004	2005	2006	2007	2008	2009	2010
75	Estonia	0,02	2	1		1				
76	Ethiopia	0,02	2	1		1				
77	China /Macao/	0,02	2	2						
78	Romania	0,01	1							1
79	Turkmenistan	0,01	1							1
80	Nepal	0,01	1						1	
81	Argentina	0,01	1						1	
82	Finland	0,01	1					1		
83	Morocco	0,01	1					1		
84	The Philippines	0,01	1				1			
85	Marshall Islands	0,01	1			1				
86	Myanmar	0,01	1		1					
87	Turks and Caicos Islands	0,01	1		1					
88	Cambodia	0,01	1		1					
89	Denmark	0,01	1		1					
90	Honduras	0,01	1		1					
91	Mauritius	0,01	1		1					
92	Portugal	0,01	1	1						
93	Lichtenstein	0,01	1	1						
94	Croatia	0,01	1	1						
95	Greece	0,01	1	1						
96	Serbia Montenegro	0,01	1	1						
97	Cameroon	0,01	1	1						
98	Latvia	0,01	1	1						
99	Dominion of Melchizedek	0,01	1	1						
100	Nigeria	0,01	1	1						
101	British Indian Ocean territory	0,00	0							
102	Minor Outlying Islands	0,00	0							
103	Saint Helena	0,00	0							
104	US Virgin Islands	0,00	0							
TOTAL		100	10,709	3,691	971	1,505	1,609	1,551	613	769

Source: FIFTA