

U.S. EMBASSY IN ULAANBAATAR MONGOLIA

2010 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. However, some 2009 regulatory and legislative acts in the areas of environmental law, taxation, and mineral rights effectively narrow Mongolia's openness to FDI. While most 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 have spurred public criticism that the government is curtailing the rights of foreign investors in favor of the Mongolian state. These criticisms also concern that changes to the uranium law have created a precedent for further restrictions on FDI.

In general, Mongolian law does not discriminate against foreign investors. Foreigners may invest with as little as 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 absolutely 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 in land ownership, petroleum extraction, and strategic mineral deposits.

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, or *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 for terms ranging from three (3) to ninety (90) years.

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 the right to obtain up to either a 34% or 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 current law defines "a mineral deposit of strategic importance" 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 deposit is vested in the State Great Hural or Parliament. To date, the GOM has only identified world class copper and coal reserves and all deposits of rare earths and uranium as reaching this threshold.

If a mineral deposit is determined to be strategic and if the state has contributed to the exploration of the deposit at some point, the GOM may claim up to 50%. If the deposits were developed with private funds and the state has not contributed to the exploration of the deposit at any time, the GOM may acquire up to 34% of that deposit.

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 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.

Importantly, the state equity provision is not expropriatory on its face, because the GOM has committed itself to compensating firms for the share it takes at fair market value. Although experience is limited with the law, so far the GOM has honored this commitment, as experience with the recently signed agreement for the mega Oyu Tolgoi copper-gold mine project confirms.

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 entity to hold a given license, that

failure may serve as grounds for invalidating the license. In essence, the foreign entity may lose its security or its mining rights. We advise investors with specific questions regarding the current status of their respective licenses to seek professional advice on the status of those licenses.

Reaching Agreement on the Oyu Tolgoi Project

In October 2009, the GOM, Ivanhoe Mines of Canada, and Rio Tinto jointly negotiated an investment and development agreement 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 USD seven (7) billion, this 40-year plus mine is conservatively expected to double Mongolia's annual GDP when it becomes fully operational around 2020.

Observers of Mongolia's investment climate consider passage of this agreement an unambiguously positive sign for foreign investors. Although the deal took about six years to craft and several conditions must still be met before implementation begins, nearly all observers conclude that it shows Mongolia can say "Yes" to key projects undertaken with foreign involvement and investment. In addition, the agreement confirms the GOM's commitment to compensating private rights holders of most deposits considered strategic under the current minerals. Finally, the OT deal shows that the GOM and Parliament are willing to amend laws and regulations to enhance the commercial viability of mining projects in Mongolia. As other projects of varying scales have been waiting for OT to pass, the positive impact and message of the OT deal for investors should not be underestimated.

2009 Laws Negatively Affecting Investor Rights

Although the OT deal was the big positive story for foreign investors in 2009, the impact has been moderated by the passage 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 Uranium Law of Mongolia

In 2009 the Parliament imposed significant new controls on mining and processing uranium in Mongolia. The law creates a new regulatory agency, the Nuclear Regulatory Authority of Mongolia (NRA), and a state-owned holding company,

MonAtom, to hold assets that the government will acquire from current rights holders. The law imposes several conditions:

- Immediately revokes all current uranium exploration and mining licenses and then requires all holders to register these licenses with the NRA, for a fee.
- Requires investors to accept that the Mongolian state has an absolute right to take -- without compensation -- at least 51% of the company that will develop the mine -- as opposed to just the deposit -- as a condition of being allowed to develop any uranium property.
- Creates a uranium-specific licensing, regulatory regime independent of the existing regulatory and legal framework for developing 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.

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

In 2009, the Parliament passed a law prohibiting mining in water basins and forested areas of Mongolia. 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 within an area 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 these new laws and their respective implementations as both non-transparent and potentially expropriatory. They 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.

Further, observers note that these laws also raise the specter of outright expropriation, which heretofore has not been present in Mongolia. Although the Water Law requires compensation, the government of Mongolia has not devised detailed plans for indemnifying rights holders. In regards to the Uranium 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.

Investors note that both laws passed without sufficient public review and comment; and that the subsequent regulatory drafting process occurred 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 do these new process detail how investors might appeal non-renewals. 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.

Pending Elimination of the Windfall Profits Tax on Copper and Gold

Since passage in 2006, the Windfall Profits Tax Law has drawn criticism regarding the GOM's commitment to creating an open, predictable, and fair environment for foreign direct investment. The speedy legislative process for passing the WPT was unprecedented: The law passed in six days with no consultation on any of its provisions with stakeholders. The entire process raised concerns among investors about the stability and transparency of Mongolia's legislative and regulatory environment, which three intervening years of legislating have done little to alleviate.

The WPT imposes a 68% tax on the profits from gold and copper mining respectively. For gold, the tax originally kicked in when gold price hit US\$500 per ounce; however, in late 2008 Parliament raised the threshold to US\$850. For copper, the threshold is US\$2,600 per ton. Mining industry sources claim that the 68% tax rate, when combined with other Mongolian taxes, makes the effective tax 100% on all proceeds above the copper threshold price. In theory, the WPT proceeds are set aside in a special fund for a combination of social welfare

expenditures and a reserve fund, although that fund, too, was modified in late 2009.

The recent OT Investment Agreement entailed further amendment to the WPT as a condition precedent to its passage. 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 amended the WPT Law: The WPT will officially end for all copper concentrate and gold products in 2011.

Revisions of the Mongolian Tax Code

Effective since January 1, 2007, the current tax code reduces tax rates, flattens the tax schedule, removes discriminatory loopholes and exemptions, and provides for appropriate deduction opportunities for corporate investment. The current code allows firms to deduct more types of legitimate business expenditures: training, business travel, cafeteria expenses, etc. The law also imposes a level playing field between foreign and domestic investors. Specifically, the current code eliminates the majority of discriminatory tax exemptions and holidays (most of which favored international investors).

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 those requiring large and long-term infrastructure development, note that the two year carry-forward limit is 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 tax (VAT) taxes 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 –OT's likely copper product – 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 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.

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 to intend to debate additional tax reform measures. Discussed since 2007, no substantive progress has been made since. 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 warn that the 2007 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.

Issues in the Telecom and Aviation Sectors

While the Mongolian government supports FDI and domestic investment, both foreign and domestic report that individual agencies and elements of the judiciary often use their respective powers to hinder investments into such sectors as meat production, telecommunications, aviation, or pharmaceuticals. Investors report similar abuses of inspections, permits, and licenses by Mongolian regulatory agencies.

Abuses in Mongolia's telecom and information technology sector have raised public and business concerns. The state-owned telecom company, Mongol Telecom (MT) uses its regulatory and technical clout to forestall or attack competition. As the monopoly supplier of land-based lines through which much internet traffic has traditionally flowed, MT charges predatory rates for access to all other Internet Service Providers (ISPs) at a rate 10 times the charges assessed to the state-owned ISP. These per-minute charges add up and are hard for competitor ISPs to absorb. In addition, some observers believe that the GOM, in an effort to make Mongol Telecom more attractive for privatization, is inclined to make MT the sole portal for all telecommunication into Mongolia. The apparent intent here is to require licenses for both telecommunication services and technology, which only MT could satisfy. There has been significant lobbying against this policy by ISPs, voice-over IP providers, cellular rights holders, multi-lateral organizations, and diplomatic missions as contrary to Mongolia's own competition law and long-term interests. So far these efforts have delayed the passage of any damaging legislation.

Compounding these problems are the non-transparent activities of the Mongolian Information, Communication Technology, and Post Agency (ICTPA), which is charged with providing policy guidance to the Communication Regulatory Commission of Mongolia (CRC). Companies report that these agencies routinely act in ways that seem to have no basis in law or regulation and which have harmed American interests, not to mention those of investors from Mongolia and other countries. For example, ICTPA has attempted to order internet service providers to charge set access prices, without recourse to the market. The CRC routinely tenders licenses for frequency and information technology service allocation through a completely non-transparent process that invariably seems to favor certain domestic interests over other Mongolian companies and foreign investors. While agreeing that the GOM has an interest in allocating frequency, domestic and foreign investors question why either the ICTPA or CRC need to interfere in the provision of ICT services, which they believe should be left to the consumers to decide.

The state also involves itself in the domestic aviation sector. Mongolia has two domestic service providers, the privately owned 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). However, the GOM frowns on domestic airlines that charge more for service. These state prices are well below operating costs and inhibit the

private carriers from charging a break-even fee. However, private carriers have decided to shake off GOM prohibitions and are charging rates that might yield profits and support safe and efficient flying arrangements.

State-owned MIAT formerly ran domestic operations which were heavily subsidized, primarily through its foreign routes. This state-subsidized competition with private carriers has inhibited investors from participating in the provision of private domestic service and consequently limited the aviation products and services that U.S. firms might sell into the Mongolian market. Apart from a brief and no-longer operating domestic service in 2009 using aircraft from their international fleet, MIAT and the GOM have failed to upgrade the domestic air fleet, which is effectively non-existent. This seems to have opened the field for private investment into the aviation sector.

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 (see A. 11 Corruption)—most problems arise from ignorance of commercial principles rather than antipathy to foreign investment. 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 Soviet era (1921-1990) jurists retire, we expect to see the gradual improvement of the entire judicial system.

Concerns over Exit Visa’s

Although not strictly a judicial issue, in 2009 a trend intensified involving abuse of the country’s requirement for exit visas by both Mongolian public and private entities to exert pressure on foreign investors to settle commercial disputes. The required valid exit visas are normally issued at the port of departure (e.g. the international airport), 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 regulations establish a clear process or timetable for settlement of the issue. Nor does the law allow authorities to distinguish a criminal and civil case when detaining a person. In fact, the Mongolian government maintains the right to detain foreign citizens indefinitely without appeal until the situation has been resolved.

Research into issue has revealed that investors from countries other than the U.S. are being affected by abuse of the exit-visa system. 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. We should note that Mongolian investors are not subject to similar detention when involved in commercial disputes. Mongolian citizens do not require exit visas to depart Mongolia and can only be denied exit with if an actual arrest warrant has been issued.

An investor in this situation is effectively detained in Mongolia indefinitely. Some foreign investors have resolved the impasse 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 has been denied an exit visa for two years pending a criminal investigation into a failed business deal. In addition, 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.

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, and after some legal disputes among the winners and losers lasting from late 2006 through mid-2008, most participants have accepted the results.

Although the GOM routinely announces that it plans to privatize its remaining assets, 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 and coal – suggest to some that, to the contrary, the GOM has no intention to extract the state from ownership.

That said, the GOM has recently discussed initial public offerings (IPO) for certain state-owned power, infrastructure, and mining holdings. To date, the IPO discussion has developed at the conceptual level, with little focus on the details.

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 Soviet 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 amendments apply only to investments registered after the new law came into force in summer 2008. The new law has raised the minimum level for new foreign investment from US\$1,000 to US\$100,000 and imposed a series of requirements on foreign investors seeking registration. Registered foreign companies must now have FIFTA certify that their by-laws, environmental practices, their technologies, etc., comply with standards determined by FIFTA.

FIFTA officials admit 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 has also not clearly defined what the precise processes it will use to evaluate investments, what the exact standards will be for any given investment, how it will determine those standards, and how an investor might seek redress if FIFTA denies a registration request. Foreign investors have expressed concern over what they perceive as FIFTA's broad and seemingly un-transparent regulatory authority; however, we have not received any complaint of abuse of these new powers to date.

New Ministerial Structure Impacts Foreign Investment

In late 2008, the 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 new Ministry of Foreign Affairs and Trade (MFAT) has assumed direct control all formulation and execution of 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.

A.2 CONVERSION AND TRANSFER POLICIES

The Mongolian government employs a limited regulatory regime for controlling foreign exchange for investment remittances and maintains exceptionally liberal policies for these transactions. 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 to wherever they wish. There is no difficulty in obtaining foreign exchange, whether the investor wants Chinese Renminbi, Euros, English Pounds, Rubles, or U.S. Dollars.

In regards to domestic transactions, the Parliament of Mongolia in 2009 closed a loophole that allowed local transactions to occur in any currency desired. Now, all domestic transactions must 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.

The Mongolian government wants funds to flow easily in and out of the nation, with one exception. Foreign-held interest bearing dollar accounts remain subject to a 20% withholding tax. The bank retains 20% of all such interest payments sent abroad, and remits this withholding to the Tax Authority of Mongolia. Otherwise, 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 are difficult to obtain, and legal parallel markets do not exist in the form of government dollar 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.

A.3 EXPROPRIATION AND COMPENSATION

Mongolia respects property rights as they apply to most asset types. In 2009, 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 Mongolia 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 foreign-investor dependent crucial mining sector, 2009 saw the government of Mongolia (GOM) cross from actions that might represent “creeping expropriation” to what many consider explicitly expropriatory acts sanctioned through force of law, especially in the uranium mining sector.

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 this 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 expropriation of such assets. To date, the government of Mongolia (GOM) has not expropriated any American property or assets. Thus, we have no precedent from which to assess how the Mongolian system would respond to seizure and compensation.

Like most governments, the Mongolian government can claim land or restrict use rights 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. 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. Except for mining, most foreign firms remain inactive in these sectors.

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 recently enacted property rights and leases.

I: Implications of the Current Minerals Laws

Minerals Law of 2006

We closely watch the key mining sector, Mongolia's major foreign exchange earner and chief engine for economic and commercial growth and development. The current Minerals Law has several provisions that raise red flags for investors and observers alike. 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 new law lays out 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, now 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. This authority disturbs miners, who fear this power will be the source of corruption and arbitrary decisions by MRAM. Evidence suggests that local mining guilds will define an expert in Mongolian mining as a person who received a degree from a Mongolian institution, such as the National University, rather than an internationally recognized institution. While this enforced employment program for Mongolian geologists would be an annoyance, the discretionary power MRAM now has generates the most concern. If MRAM rejects a firm's experts and mining plan as unqualified, no recourse is spelled out under the new law, and the firm will in effect lose its rights.

The concept of “expertise” allows another potential avenue for expropriation of rights by denying or preventing their use. 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 will 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. A given bank is unlikely to set up a "qualified" mining firm just to receive a pledged license offered as collateral. Thus, the law limits the investment pool that a mining firm might tap to finance its mine, which might prevent bringing a property into production, again denying licensees access to their legal economic rights.

The current law removed from its predecessor the Mongol word for “exclusive” from the grant of exploration rights. The old article read, "To conduct exclusive exploration for minerals within the boundaries of an exploration area in accordance with this law." The new article reads, "To conduct exploration for minerals. . . ." It is unclear what, if anything, this deletion means. However, the deletion would seem to allow the government to apportion mineral rights per metal or mineral rather than as a whole, which has been the standard practice. The deletion was apparently done intentionally, as the word appeared in earlier drafts, right up to the passage of the law.

Investors and observers are also concerned about new 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 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. In the new structure, the ministry can intervene in the registration and transfer of exploration and mining licenses. The ministry seems to have only intervened in cases where the license involves a “strategic” deposit. (See A.1 Openness to Foreign Investment 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 then revoke the rights

of those holding exploration rights or mining licenses in or near strategic deposits. Although the law seems to allow for compensation, the ministry has not presented formal compensation packages or even issued compensation guidelines to those potentially affected by its actions.

Expropriatory Aspects of the 2009 Law on Uranium Mining

In 2009 the Parliament passed a new law imposing significant new controls on mining and processing uranium in Mongolia. The law created a new regulatory agency, the Nuclear Regulatory Authority of Mongolia (NRA), and a state-owned holding company, MonAtom, to hold assets that the government will acquire from current rights holders. The law imposes several key policies:

- Immediately revokes all current uranium exploration and mining licenses and then requires all holders to register these licenses with the NRA, for a fee.
- Requires investors to accept that the Mongolian state has an absolute right to take -- without compensation -- at least 51% of the company (as opposed to the deposit) that will develop the mine as a condition of being allowed to develop any uranium property.
- Creates 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. Although the Minerals Law of Mongolia and other pieces of legislation officially state that the GOM must compensate rights holders for any taking, the Uranium Law gives the GOM the unfettered 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.

Acts of Provincial Administrations:

With regard to the issuance of both exploration permits and mining licenses, provincial officials reportedly routinely 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. In one case, a miner could not gain access to the subsurface resources because the provincial government claimed that doing so would damage a potato farm that had suddenly appeared over the site.

Other miners harshly criticize the misuse of the local officials’ rights to comment on permits for water use and 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 current 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 one’s 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 recently passed *Law on the Prohibition of Minerals Exploration in Water Basins and Forested Areas of 2009* 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, the Parliament prohibited mining in water basins and forested areas of Mongolia. The stated and laudatory 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:

- Requires 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.
- Requires the government to compensate rights holders for exploration expenses already incurred or revenue lost from actual mining operations.
- Empowers 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 are concerned that the power of local governors to curtail mining in their respective jurisdictions seems unlimited and unregulated. 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 *soum* administration's ruling, the law makes no provision for administrative appeal. A company would then have to pursue redress through a lengthy case in Mongolia's courts. In either case, the rights holder would lose access to their economic rights for a protracted period or permanently.

A.4 DISPUTE SETTLEMENT

The GOM consistently supports transparent, equitable dispute settlements, but executing good intentions has proven problematic. These problems largely stem from a lack of experience with standard commercial practices rather than from any systemic intent by public or private entities to target foreign investors. The framework of laws and procedures is functional, but many judges remain ignorant of commercial principles.

Problems with Dispute Settlement in Mongolia's Courts

Court structure is straightforward and supports dispute settlement. Disputants know the procedures and the venues. 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 a 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 in Mongolia and broad understanding of it remain in flux. New laws and regulations on contracts, investment, corporate structures, leasing, banking, etc. have been passed or are being considered at both the ministerial and parliamentary levels. 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 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 former Soviet era, many judges lack training in or remain ignorant of commercial principles, in some cases willfully. They dismiss such concepts as the sanctity of the contract. This is not a problem of the law, which recognizes contracts, but what most conclude is 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 not an option. It is politically impossible—if not functionally impractical—for the Mongolians to dismiss its cadre of Soviet-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. Lately, we have seen better decisions in several cases involving Americans seeking to recover on debts and contractual fees and to hold Mongolian government entities to the terms of their respective contracts and regulations, but these results tend to be limited to courts where modern-educated judges preside.

Bankruptcy and Debt Collection

Mongolia's bankruptcy provisions and procedures for securing the rights of creditors need serious 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 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 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 help improve the

ability of creditors and debtors to prove ownership. For program details go to <http://www.mca.mn/?q=project/property>.

Overall, the legal system does recognize 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. A 2005 change to Mongolian law attempted to simplify the process by allowing creditors to foreclose without judicial review. Prior to this law, all creditors had to go to court to collect on securitized collateral, adding months to the entire collection process. However, the Constitutional Court of Mongolia voided the law on constitutional grounds, slowing down debt collection to pre-2005 levels. Waits of up to 24 months for final liquidations and settlement of security were not uncommon.

Once a judgment is rendered, the disputant faces a relatively hostile environment to execute the court's decision. For example, a bank collecting on a debt in Mongolia must allow debtors to put forward assets for auction and set the minimum bid price for those assets. If assets do not sell, a second round of auctions occurs in which a reduced minimum bid is put forward. The State Collection Office (SCO) supervises this process but does not set the price. However, the SCO receives 10% from the sales price or from the second auction minimum price even if there is no sale.

The SCO does not allow collateralized assets to be valued by neutral 3rd parties. Because it derives income from the forced sale of assets, the SCO has a conflict of interest; and, anecdotally, seems to have failed as an impartial arbiter between debtors and creditors. For banks, this has meant that forcing a company into bankruptcy may be the safest way to recover rather than forcing piecemeal sales of assets. This approach automatically puts all assets into play rather than those selected by the debtor. However, this procedure is onerous without a clear process behind it.

Purchase financing remains tricky. For example, a local car dealer financed an auto for US\$20,000 down and US\$60,000 in credit, complete with a local bank guarantee. The buyer subsequently defaulted on the loan, the bank refused to honor its guarantee, and the dealer took the 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 asset rusts in an impound lot. In this case, the dealer simply reclaimed the car and dropped the lawsuit, swallowing the lost

interest payments and loss of value on the car. 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 supports and will submit 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 five disputes where claimants have asserted the government reneged on a sovereign guarantee to indemnify them. In all cases the government has consistently declared that it would honor the arbitrators' judgments. However, this resolution has not been put to the test. In the four cases where a decision has been rendered, Mongolia has won each case; and so, its commitment to imposing a negative international arbitral decision remains untested.

More widely, Mongolian businesses partnered with foreign investors 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. These entities tell us that they 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. In two cases, the Mongolian-state-owned copper mine lost two international arbitral cases. The awards were certified and recognized as valid and enforceable by Mongolian courts. But the local bailiff's office has consistently failed to execute the collection orders. 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 to, 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.

Formally quite generous to foreign investors, the current Tax Law of Mongolia (amended in 2006) offers few incentives and exemptions. While preferential tax agreements made with most foreign investors have been allowed to run their courses, the government of Mongolia (GOM) has attempted to limit both exemptions and incentives and to make sure that tax preferences offered are available to both foreign and domestic investors.

Current exemptions are granted for imports of staples as flour and for imports in certain sectors targeted for growth, such as the agriculture sector. Exemptions 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 2009's changes into the tax code's treatment of exemptions as something of a mixed bag. On the down side, Mongolia's Parliament revoked an exemption available on value-added tax (VAT) taxes 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 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 –OT's likely copper product – 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 advisors provided by donor organizations, or even with 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.

Pro-Investment Changes to the Tax Code

On the plus side, Parliament revised both the Windfall Profit Tax (WPT) and loss-carry forward provisions. Under the old regime, the WPT imposed a 68% tax on the profits from gold and copper mining respectively. (For more details on the WPT see Chapter A.1: Openness of Government to Foreign Investment.) The recent OT Investment Agreement entailed further amendment to the WPT as a condition precedent to its passage. 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: The WPT will officially end for all copper concentrate and gold products in 2011.

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 impose 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 current but soon to sunset WPT applied the tax to copper concentrate, but exempted metallic copper produced in Mongolia. Recently concluded negotiations on the OT copper-gold project ended with commitments by the companies to explore copper smelting 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 imposes no offset requirements for major procurements. Certain tenders may require bidders to agree to levels of local employment or to fund certain facilities as a condition of the tender, but as matter of course such conditions are not the normal approach of the government in its tendering and procurement policies.

Investors, not the Mongolian government, make arrangements regarding technology, intellectual property, and similar resources and may generally finance as they see fit. Foreign investors 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 (For more detail on what constitutes a strategic mining asset see Chapter *A.1: Openness of Government to Foreign Investment*). 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, the employer can pay a fee of around US\$140 per employee per month. 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 between 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 current 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. 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 on exploration
- 4th to 6th years miners must spend no less than US \$1.00 per hectare on exploration
- 7th to 9th years miners must spend no less than US \$1.50 per hectare on exploration

In addition to these performance requirements, the law also requires holders of mining licenses for projects of strategic importance to sell no less than 10% of

company shares on the Mongolian Stock Exchange. Vaguely presented in the statute, the GOM has provided no formal clarification in law or regulation of what this provision means in practical terms or how it is to be implemented.

In 2009 the Parliament passed a new law imposing significant new controls on mining and processing uranium in Mongolia. This law created a new regulatory agency, the Nuclear Regulatory Authority of Mongolia (NRA) and a state-owned holding company, MonAtom, to hold assets that the government will acquire from current rights holders. The law imposes several conditions:

- Immediately revokes all current uranium exploration and mining licenses and then requires all holders to register these licenses with the NRA, for a fee.
- Requires investors to accept that the Mongolian state has an absolute right to take -- without compensation -- at least 50% of the company (as opposed to the deposit) that will develop the mine as a condition of being allowed to develop any uranium property.
- Creates 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

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 12, 000 Mongolian tugrik or about US\$8.00. Foreign Investors must then pay a yearly prolongation fee of 6,000 Mongolian tugrik or about US\$4.00.

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. Local 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 their proprietary information. Several foreign investors have claimed that agents of FIFTA routinely 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 there are few internal controls over access to the annual reports.

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 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 and petroleum sectors.

Limitations on Exercise of Property Rights

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 had 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 (also half-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. 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.

Although the trend had been for the GOM to extract itself from ownership of firms and other commercial assets, both the current Minerals Law of Mongolia and the 2009 Uranium Law bring the state back into mining. (See Chapter A.1: Openness of Government to Foreign Investment for fuller discussions of both the 2009 Uranium Law and Minerals Law) 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; or 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 compromise the long term commercial viability of any mining project. In addition, discussions are underway to set up three new state-owned holding entities to manage assets in three priority areas -- mining, energy, and infrastructure -- then take the companies public to raise investment revenues through the capital markets.

A.7 PROTECTION OF PROPERTY RIGHTS

The right to own private, movable and immovable property is recognized under Mongolian law. Regardless of citizenship (except for land which only citizens of Mongolia can own), owners can do as they wish with their property. One can collateralize real and movable property. If debtors default on such secured loans, creditors do have recourse under Mongolian law to recover debts by seizing and 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. Although the courts recognize property rights in concept, they 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 time to learn how to adjudicate 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=project/property>.

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 has proven 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 have given 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 sometimes 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. In essence, the foreign entity may lose its security or mining rights. We advise investors with specific questions regarding the current status of their respective to seek professional advice on the status of those licenses.

Uranium Law of 2009

The Uranium Law of 2009 dramatically curtails property rights protection regime protecting most exploration and mining licenses. The law imposes the following conditions upon investors in the uranium mining sector:

- Immediately revokes all current uranium exploration and mining licenses and then requires all holders to register these licenses with the NRA, for a fee.
- Requires investors to accept that the Mongolian state has an absolute right to take -- without compensation -- at least 51% of the company (as opposed to the deposit) that will develop the mine as a condition of being allowed to develop any uranium property.
- Creates 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 both investors and observers, this law statutorily sanctions expropriation, a concept heretofore alien to Mongolian law. Although the Minerals Law of Mongolia and other pieces of legislation officially state that the GOM must compensate rights holders for any taking, the Uranium law 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.

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 TRANSPARENCY OF THE LEGISLATIVE AND REGULATORY PROCESS

Generally, Mongolia's problem is not lack of laws and regulations—Mongolia has passed more than 1,600 laws since undertaking its transition to a market economy 20 years ago—but rather, the problem is 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, the fact 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 can be crafted in two ways. Once rare but now common, Members of Parliament and the President of Mongolia may draft their own proposals for direct submission to the 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 Minister relays the request to ministerial council, which in turn sends the request to the proper internal division or agency within the respective ministry, 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. Although the government has never clarified the legal and constitutional authority of the NSC to veto or recommend changes to draft legislation, the Cabinet to our knowledge will not and has never overruled NSC recommendations.

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 will authorize 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 drafting 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, transparent review of legislation or regulations by stakeholders and the public. Ministerial initiatives are not publicized 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 issues neither 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 2006, Parliament passed the (since-amended) Wind Fall Profits Tax Law bill in six days without consulting any business, NGO, or other entity about the impact and desirability of the bill. In 2007, Parliament significantly amended the Law on State Procurement within thirty days without any public notification or comment regarding new limits on competitive, transparent bidding practices and limits on access tender opportunities to foreign bidders. In 2009, Parliament passed legislation threatening property rights in the mining sector that many view as expropriatory and revoked key tax

exemptions affecting major mining and construction projects, all with no formal or informal public comment and review.

The U.S. Embassy in Ulaanbaatar and foreign and domestic investors have repeatedly urged the Mongolian government to utilize the government's *Open Government* web site to post draft and pending legislation for public consultation and review before it is finalized and sent to Parliament. Over the past couple of years, we have noticed some improvement in the timeliness and completeness of the postings.

To supplement this effort, the U.S. Embassy and local business organizations have jointly created an informal system to identify legislation and regulations under review. Once identified, we meet with working groups, provide information on how other nations have handled such legislation, share stakeholders' points of view, and widely distribute publicly available draft bills, preferably before they reach a minister's desk. Should a piece of vital legislation pass on to the Minister, Cabinet, or Parliament, these non-government organizations are prepared to lobby at the appropriate level. Over the last three years we have found that many agencies and Members of Parliament welcome our advice and information, particularly if given in a non-confrontational way that respects Mongolia's political process and right to deliberate.

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 for a clear copy of the current regulations, only to be met with blank stares or outright refusals. The government has long acknowledged that the Soviet-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” not be released to the public. This gives both bureaucrats and regulators a convenient excuse to deny requests for information or, more commonly, to demand extra-legal 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 is considering a freedom of information law for several years, but it remains in its formative stages.

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 or during Mongolia's democratic era, is taking hold and moving into senior positions of authority. This 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 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. Based on experience, the GOM will routinely resist any expanded role for civil society and NGOs. This unarticulated but tacit policy of the government of Mongolia applies to both domestic and foreign entities.

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. However, we generally note no consistent, 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. The impediments more often than not are opportunistic attempts by individuals to misuse 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 extra-legal payments from both foreign and domestic businesses or otherwise hinder their work. In the latter case the general approach is to demand some sort of payment in lieu of not enforcing work, environmental, tax, health and safety rules, otherwise imposing the full weight of a contradictory mix of Soviet 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.

Although we have note no systemic and 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 Mongolian public and private entities to exert pressure on foreign investors to settle commercial disputes.

Required, valid exit visas are normally issued *pro forma* at the port of departure (e.g. the international airport), but may 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 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 time-table 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 issue has revealed that investors from countries other than the U.S. are affected by abuse of the exit-visa system. 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 has been denied an exit visa for two years pending a criminal investigation into a failed business deal. In addition, 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. In one case, an American citizen has been denied an exit visa for over two years pending a criminal investigation into a failed business deal with the Government of Mongolia.

We note that Mongolian investors 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.

A.9 EFFICIENT CAPITAL MARKETS AND PORTFOLIO INVESTMENT

Mongolia currently lacks the experience and expertise needed to sustain portfolio investments. It has no regulatory apparatus for these activities, and both the state and private entities are just beginning to engage in them. However, Mongolia has active capital markets. 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 the government has clear rules about capital reserve requirements, loan practices, and banking management practices, 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 ongoing global financial crisis on Mongolia's banking sector, the BOM is striving 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, two (2) of the country's 16 banks are currently in receivership, and additional consolidation is under consideration.

Capital and Currency Markets

Although liquidity is quite high in Mongolia, 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 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. 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 had proved resilient, holding its value against most international currencies, it fell some 40 percent against the U.S. dollar from late 2008 into spring 2009, as the worst of the crisis hit; it has remained relatively stable and even resilient since then. The currency's resiliency has largely been attributed to the commodities boom, which saw Mongolia selling such raw materials as copper, gold, and coal, primarily to China. In mid 2008, the commodity markets began to cool and Mongolia's foreign trade began to fall,

leading to growing trade deficit as imports no longer balanced or exceeded exports. Subsequently, once the tugrik began to slide relative to the U.S. dollar, import-related trade was affected as well. Complicating matters, major banks and other institutions that formally had access to international capital flows (in the form of dollars, yen, Renmimbi, Euros, etc, which were parked in high-interest yielding tugrik accounts), found international in-flows reversing as foreign depositors repatriated their funds, either because these entities needed the money to weather their own financial crises or they fear that the tugrik's collapse would eat away the value of their deposits. Banks no longer had access to easy capital and liquidity, and began and continue to restrict lending to almost all clients, who in turn found they lacked funds to finance construction projects, trade, and other activities.

After several months of tapping reserves to slow the tugrik's decline, Mongol Bank curtailed such infusions. Instead, the Bank sells dollars into the system by auction to the local commercial banks and lets the market decide the value of the exchange rate rather than attempting to set the rate. . In addition, Parliament closed a loophole that allowed local transactions to occur in any currency desired. Now, all domestic transactions must 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. The move was intended to bolster the value of the Tugrik by increasing demand for the currency.

Equity Markets

Investors do not use stocks to raise equity for investment but to gain control of companies listed on the exchange. As most of the firms have been bought up, the market sees little trading.

Mongolian firms do not use shareholding relationships to restrict foreign investment at this point. Part of this arises from lack of experience with such devices. It also arises from the fact that Mongolians prefer to concentrate ownership in their own hands, rather than disperse it through complicated shareholding relationships. They perceive such devices as weakening their ability to control the companies, which is more important than safeguarding the firm from foreign or domestic raiders or raising capital for investment. If a foreign company wanted to purchase a Mongolian firm, the foreign entity would have to contact the shareholders and buy them out. These could not be hostile takeovers, because few outstanding shares remain on the market to buy. Eager to take on equity partners or sell businesses entirely, the Mongolians would employ few defenses beyond sharp negotiating.

The current Minerals Law of Mongolia contains a provision that requires that holders of mining licenses for projects of strategic importance must sell no less than 10% of the resulting entity's shares on the Mongolian Stock Exchange. Vaguely presented in the statute, what this new provision means in practical terms and how it is to be implemented has yet to be spelled out in regulation.

The Banking Sector

Weakness in Mongolia's banking sector concerns all players, including the International Monetary Fund (IMF: <http://www.imf.org>). Small by American standards, the total assets of Mongolia's remaining fourteen commercial banks (down from 16 in 2008) adds up to just around US\$2 billion. The system has been through massive changes since the Soviet 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 somewhat better managed.

Mongolia has three large, generally well-regarded banks owned primarily by Japanese and Mongolian interests respectively. 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 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, 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 three (3) other mid-tier banks are at the center of widespread discussion of future consolidation.

The BOM and Mongolia's financial system have so far 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. They argue further that the BOM withheld effective supervision fearing that closure would signal weakness to, and spur panic among, the general public; and because of interference on the part of those whose financial interests in the troubled banks would have been threatened by regulatory action.

The latest crisis has spurred the BOM to develop a short run plan to identify and close insolvent banks while preserving the integrity of financial system. Reserve requirements will be raised to deal with the on-going non-performing loan problem, too. Beyond this triage, the BOM is in the process of instituting long-term reforms to enhance its ability to supervise the banking system; however, such reform depends on Parliament to amend both Mongolia's banking and banking supervision laws, a process that may be completed by mid-2010.

A.10 COMPETITION FROM STATE-OWNED ENTERPRISES (SOES)

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 had 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 (also half-owned by Russia).

Although the trend had been for the GOM to extract itself from ownership of firms and other commercial assets, both the current Minerals Law of Mongolia and the 2009 Uranium Law bring the state back into mining. (See Chapter A.1: Openness of Government to Foreign Investment for fuller discussions of both the 2009 Uranium Law and Minerals Law) 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; or MonAtom for uranium resources. These companies are then mandated to use the proceeds from their respective activities for the benefit of the Mongolian people.

In addition, the GOM has publically discussed using the expected proceeds from mining to underwrite SOE projects in variety of sectors, beyond its current mining portfolio. These include operations in flour milling, meat-processing, telecommunications, and pharmaceuticals. Business observers have found such plans unsettling; for rather than use the revenues to create infrastructure or to provide affordable financing, the GOM seem to want to enter into direct competition with both foreign and domestic private investors. From statements by GOM policy representatives, investors might conclude the GOM is clearly considering giving its SOE preferential financing at rates not available to commercial firms.

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. Currently, most GOM's assets are managed by professionals appointed by the State Property Committee (SPC), which ultimately answers to Parliament and the Prime Minister. How the SPC selects management and boards of directors remains untransparent, but observers perceive the process to be politicized, with Parliament playing a key role in appointments.

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 compromise the long term commercial viability of any mining project. In addition, discussions are underway to set up three new state-owned holding entities to manage assets in three priority areas -- mining, energy, and infrastructure -- then take the companies public to raise investment revenues through the capital markets.

Mongolia currently lacks a sovereign wealth fund (SWF); however, the GOM has expressed an interest in using mining revenues to create such a fund. The issue remains under review.

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—wells, power, medical and educational structures—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, 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) limiting the use of limited resources to underwrite 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 16 years. However, a brief but violent outbreak of civil unrest followed disputed parliamentary elections on July 1, 2008. Accompanied by some property destruction and bodily injury, the unrest was quickly contained and order restored. There has been no repeat of this civil unrest since July 1. Mongolia held peaceful presidential elections in May 2009 in which the incumbent president was defeated and power smoothly transitioned to the current president

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 nationals in Mongolia. This hostility has led to some instances of improper seizure of Chinese-invested property; and in more limited cases acts of physical violence against the persons and property of Chinese nationals resident in Mongolia. Other Asians living in Mongolia have expressed concern that they may inadvertently become victims of this hostility.

A.13 CORRUPTION

Corruption in Mongolia, including bribery, raises the costs and risks of doing business. Corruption corrodes market opportunities in Mongolia for U.S. companies as well as the overall Mongolian business climate. It also deters international investment into Mongolia, stifles economic growth and development, distorts prices, and undermines the rule of law.

It is important for U.S. companies, irrespective of their size, to assess the business climate in Mongolia to have an effective compliance program or measures in place to detect and prevent corruption, including foreign bribery. U.S. individuals and firms operating or investing in such foreign markets as Mongolia should take the time to become familiar with the relevant anticorruption laws of both Mongolia and the United States in order to comply with them, and where appropriate, they should seek the advice of legal counsel.

The U.S. Government seeks to level the global playing field for U.S. businesses by encouraging other countries to take steps to criminalize their own companies' acts of corruption, including bribery of foreign public officials, by requiring them to uphold their obligations under relevant international conventions. A U. S. firm that believes a competitor is seeking to use bribery of a foreign public official to secure a contract should bring this to the attention of appropriate U.S. agencies, as noted below

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 2010. 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 be of concern to Mongolians, but grand corruption should be considered a more serious one because it solidifies linkages between economic and political power that could negatively impact 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 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 2010, including:

- Diplomatic engagement focused on keeping anti-corruption issues 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 conflict 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;

- 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 are working 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 TI’s 2006 survey, Mongolia had dropped to 99 out of 163 countries, receiving a score of 2.8—poor. 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, In short, Mongolia has declined.

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 happen 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.

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 antibribery provisions of the FCPA regarding any proposed business conduct. The details of the 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. For further information, 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. More general information on the FCPA is available at the Websites listed below.

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.

Other Instruments: It is U.S. Government policy to promote good governance, including host country implementation and enforcement of anti-corruption laws and policies pursuant to their obligations under international agreements. Since enactment of the FCPA, the United States has been instrumental to the expansion of the international framework to fight corruption. Several significant components of this framework are the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Antibribery Convention), the United Nations Convention against Corruption (UN Convention), the Inter-American Convention against Corruption (OAS Convention), the Council of Europe Criminal and Civil Law Conventions, and a growing list of U.S. free trade agreements. Mongolia is party to the UN Convention Against Corruption and prohibits the bribery and solicitation of its public officials.

OECD Antibribery Convention: The OECD Antibribery Convention entered into force in February 1999. As of December 2009, 38 nations are party to it, including the United States (see <http://www.oecd.org/dataoecd/59/13/40272933.pdf>). Major exporters China, India, and Russia are not parties, although the U.S. Government strongly endorses their eventual accession to the Convention. The Convention

obligates the Parties to criminalize bribery of foreign public officials in the conduct of international business. The United States meets its international obligations under the OECD Antibribery Convention through the U.S. FCPA. Mongolia is not a party to the OECD Antibribery convention.

UN Convention: The UN Anticorruption Convention entered into force on December 14, 2005, and there are 143 parties to it as of December 2009 (see <http://www.unodc.org/unodc/en/treaties/CAC/signatories.html>). The UN Convention is the first global comprehensive international anticorruption agreement. The UN Convention requires countries to establish criminal and other offences to cover a wide range of acts of corruption. The UN Convention goes beyond previous anticorruption instruments, covering a broad range of issues ranging from basic forms of corruption such as bribery and solicitation, embezzlement, trading in influence to the concealment and laundering of the proceeds of corruption. The Convention contains transnational business bribery provisions that are functionally similar to those in the OECD Antibribery Convention and contains provisions on private sector auditing and books and records requirements. Other provisions address matters such as prevention, international cooperation, and asset recovery. Mongolia is a member of the UN Convention Against Corruption.

Local Laws: U.S. firms should familiarize themselves with local anticorruption laws, and, where appropriate, seek legal counsel. While the U.S. Department of Commerce cannot provide legal advice on local laws, the Department's U.S. and Foreign Commercial Service can provide assistance with navigating the host country's legal system and obtaining a list of local legal counsel.

Anti-Corruption Resources: Documents and Contacts

Resources for combating corruption in global markets include the following:

- Information about the U.S. Foreign Corrupt Practices Act (FCPA), including a "Lay-Person's Guide to the FCPA" is available at the U.S. Department of Justice's Website at: <http://www.justice.gov/criminal/fraud/fcpa>.
- Information about the OECD Antibribery Convention including links to national implementing legislation and monitoring reports is available at: http://www.oecd.org/department/0,3355,en_2649_34859_1_1_1_1_1,00.html. See also new Antibribery Recommendation and Good Practice Guidance Annex for companies: <http://www.oecd.org/dataoecd/11/40/44176910.pdf>

- For general information about anticorruption initiatives, such as the OECD Convention and the FCPA, including translations of the statute into several languages, go to the Department of Commerce Office of the Chief Counsel for International Commerce at: http://www.ogc.doc.gov/trans_anti_bribery.html.
- Transparency International (TI) publishes an annual Corruption Perceptions Index (CPI). The CPI measures the perceived level of public-sector corruption in 180 countries and territories around the world. The CPI is available at: http://www.transparency.org/policy_research/surveys_indices/cpi/2009. TI also publishes an annual *Global Corruption Report* which provides a systematic evaluation of the state of corruption around the world. It includes an in-depth analysis of a focal theme, a series of country reports that document major corruption related events and developments from all continents and an overview of the latest research findings on anti-corruption diagnostics and tools. See <http://www.transparency.org/publications/gcr>.
- The World Bank Institute publishes Worldwide Governance Indicators (WGI), which six dimensions of governance in 212 countries, including Voice and Accountability, Political Stability and Absence of Violence, Government Effectiveness, Regulatory Quality, Rule of Law and Control of Corruption. See http://info.worldbank.org/governance/wgi/sc_country.asp. The World Bank Business Environment and Enterprise Performance Surveys may also be of interest and are available at: <http://go.worldbank.org/RQQXYJ6210>.
- The World Economic Forum publishes the *Global Enabling Trade Report* that assesses both border administration transparency (focused on bribe payments and corruption) and corruption and the regulatory environment: <http://www.weforum.org/en/initiatives/gcp/GlobalEnablingTradeReport/index.htm>.
- For additional information on corruption see the U.S. State Department's annual *Human Rights Report* at <http://www.state.gov/g/drl/rls/hrrpt/>.
- Global Integrity, a nonprofit organization, publishes its annual *Global Integrity Report*, which provides indicators for 92 countries with respect to governance and anti-corruption. The report highlights the strengths and weaknesses of national level anti-corruption systems. The report is available at: <http://report.globalintegrity.org/>

A.14 BILATERAL INVESTMENT AGREEMENTS AND TAXATION

(Source: U NCTD: <http://www.unctad.org>)

<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. 2009 saw some changes in the Mongolian tax system, most of which, with the exception of the revocation of the value-added tax exemption for mining equipment, were greeted positively by most foreign and domestic investor in Mongolia. Observers noted that recent experience with tax-code revisions does suggest that both the GOM and Parliament are amenable to revising legislation if the economic benefits to the state, the public, and investors can be proven.

Windfall Profits Tax on Copper and Gold Sunsets in 2011

Since passage in 2006, the Windfall Profits Tax Law has generated criticism regarding the depth of the GOM's commitment to creating an open, predictable, and fair environment for foreign direct investment. The speedy legislative process for passing the WPT was unprecedented. This bill was passed in six days without any consultation with outside stakeholders on any its provisions. The entire process raised concerns among investors about the stability and transparency of Mongolia's legislative and regulatory environment, which intervening years and experience with other non-transparently passed legislation did little to alleviate.

The WPT imposes a 68% tax on the profits from gold and copper mining respectively, and for gold originally kicked in when gold the price for gold hit US\$500 per ounce; however, in late 2008 Parliament raised the threshold to US\$850. For copper, the threshold is US\$2,600 per ton. Mining industry sources claim that the 68% tax rate, when combined with other Mongolian taxes, makes the effective tax 100% on all proceeds above the copper threshold price.

The recent Oyu Tolgoi Investment Agreement entailed further amendment to the WPT as a condition precedent to its passage. 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, the Parliament agreed to amend the WPT Law: The WPT will officially end for all copper concentrate and gold products in 2011.

Revisions of the Mongolian Tax Code:

Effective since January 1, 2007 the current tax code reduces tax rates, flattens the tax schedule, removes discriminatory loopholes and exemptions, and introduces

appropriate deduction opportunities for corporate investment. The current law allows firms to deduct more types of legitimate business expenditures: training, business travel, cafeteria expenses, etc. The current law levels the playing field between foreign and domestic investors, eliminating the majority of discriminatory tax exemptions and holidays, most of which favored international investors.

2009 changes into the tax code's treatment of exemptions present something of a mixed bag for investors. On the down side, Mongolia's Parliament revoked an exemption available on value-added tax (VAT) taxes 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.

On the plus side, 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. Like the revision of the WPT, this change is also a condition precedent of passing the OT Agreement. Most investors find eight years sufficient for many Mongolian investments that require impose long, expensive development horizons before producing any sort of profit.

Unfinished Taxation Business: Improving Institutions and Practices

As reported in the *2009 Investment Climate Statement and Country Commercial Guide*, both the GOM and Parliament has been intending 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. While the exact nature of the proposed changes to the customs law 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.

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 generally well educated, relatively 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 because Mongolians who obtain such skills frequently go abroad to find higher wages. Foreign-invested companies are dealing 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 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 nonexistent 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, the employer can pay a fee of US\$140.00 per employee per month. Depending on a project's importance, the Ministry of Labor can exempt employers from 50% of the waiver fees per worker.

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\$75) 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 broach even US\$100, 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
C29 Forced Labor Convention, 1930	15:03:2005	ratified
C59 Minimum Age (Industry) Convention (Revised), 1937	03:06:1969	denounced on 16:12:2002
C87 Freedom of Association and Protection of the Right to Organize Convention, 1948	03:06:1969	ratified
C98 Right to Organize and Collective Bargaining Convention, 1949	03:06:1969	ratified
C100 Equal Remuneration Convention, 1951	03:06:1969	ratified
C103 Maternity Protection Convention (Revised), 1952	03:06:1969	ratified
C105 Abolition of Forced Labor Convention, 1957	15:03:2005	ratified
C111 Discrimination (Employment and Occupation) Convention, 1958	03:06:1969	ratified
C122 Employment Policy Convention, 1964	24:11:1976	ratified
C123 Minimum Age (Underground Work) Convention, 1965	03:12:1981	ratified
C135 Workers' Representatives Convention, 1971	08:10:1996	ratified
C138 Minimum Age Convention, 1973	16:12:2002	ratified
C144 Tripartite Consultation (International Labor Standards) Convention, 1976	10:08:1998	ratified
C155 Occupational Safety and Health Convention, 1981	03:02:1998	ratified
C159 Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983	03:02:1998	ratified
C182 Worst Forms of Child Labor Convention, 1999	26:02:2001	ratified

A. 17 FOREIGN TRADE ZONES/FREE PORTS

The Mongolian government launched its free trade zone (FTZ) program in 2004. Currently there are two FTZ areas 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 inactive, with no development at either site. The port of entry of Tsagaan Nuur in Bayan-Olgii province is being considered as the site of a third FTZ.

Management for the Zamyn-Uud Free Trade Zone (ZUFTZ) was originally tendered to a Chinese firm. In 2006, the GOM voided the agreement for non-compliance with the terms of the tender. The GOM re-tendered the management contract in 2006, but later voided that contract, alleging that the current holder of the management rights in the ZUFTZ had failed to live up to the terms of the tender.

So far, there are no indications that government will not keep promises to open the zone to any who satisfy the relevant legal requirements. However, 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 2010, 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, the data has limitations:

Incomplete reporting

Many foreign firms provide FIFTA with inaccurate or 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, firms reportedly believe FIFTA may not be able to guarantee the confidentiality of proprietary business information, and so they withhold complete data on their actual activities. Mongolia suffers from promised investment that never materializes 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 6, Section A.5: Performance Requirements and Incentives).

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 may not be recorded by FIFTA, even though the investment is demonstrably foreign. For example, the investment by Ivanhoe Mines Mongolia (a Canadian company) into Mongolia has reached nearly US\$ 1 billion, yet this investment is not recorded among the data provided by FIFTA.

Data not Available

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

FDI Statistics (Source Foreign Investment and Foreign Trade Agency of Mongolia)

A. Trade turnover (USD mln.)

Year	Total turnover	Percent comp.	Exports	Percent comp.	Imports	Percentage in comp.	Balance
2000	1,150.3	119.0%	535.8	118.0%	614.5	119.8%	-78.7
2001	1,159.2	100.8%	512.5	97.3%	637.7	103.8%	-116.2
2002	1,214.7	104.8%	524.0	100.5%	690.7	108.3%	-166.2
2003	1,416.9	116.6%	615.9	117.5%	801.0	116.0%	-185.2
2004	1,890.9	133.4%	869.7	141.2%	1,021.1	127.5%	-151.5
2005	2,249.2	119.0%	1,064.9	122.4%	1,184.4	116.0%	-119.5
2006	3,018.0	134.2%	1,528.8	143.6%	1,489.2	125.7%	39.0
2007	4,119.3	136.0%	1,949.2	126.3%	2,170.1	146.1%	-220.9
2008	6,155.1	149.4%	2,539.3	130.3%	3,615.8	166.6%	-1076.6

Source: National Statistics commission of Mongolia, December 2008

B. Top 10 Investor Countries (USD)

№	Countries	%	Total	1990-2004	2005	2006	2007	2008	2009
1	China	60.09	2,292,197.04	441,786.38	227,922.28	172,014.03	339,614.67	497,800.88	613,058.80
2	Canada	6.61	252,193.92	174,206.58	1,542.25	72,180.37	497.15	2,739.57	1,028.00
3	Korea	5.69	217,050.18	85,180.14	19,004.49	16,434.78	22,991.38	41,765.41	31,673.98
4	Japan	3.45	131,445.00	66,208.26	5,840.80	4,727.59	2,450.10	46,623.46	5,594.78
5	BVI	3.16	120,451.88	48,394.23	5,033.92	6,111.67	35,449.00	6,157.89	19,305.18
6	Russia	2.78	105,976.82	37,163.16	7,450.14	11,654.52	39,774.38	3,795.42	6,139.20
7	USA	2.67	101,779.39	45,725.48	5,564.06	37,165.78	4,285.67	6,466.89	2,571.52
8	Netherlands	1.60	61,119.44	5,265.58	221.70	475.86	58.50	4,069.20	51,028.60
9	Singapore	1.48	56,286.96	8,513.28	4,645.78	728.60	700.00	32,339.86	9,359.44
10	Great Britain	1.33	50,633.49	25,813.22	6,347.90	9,013.47	2,429.000	6,057.76	972.15

Source: FIFTA

C. Top 25 Entities Registered with FIFTA

No	Entity	Equity	Foreign	Domestic	Sectors	Countries
1	Peabody-Polo Resources	61,047,789	60,947,789	-	Geological exploration	Netherlands
2	Tethys Mining	24,198,521	20,198,521	-	Geological exploration	Switzerland
3	Midas wolf	12,600,000	12,600,000	-	Trade- catering service	Germany
4	Tengerin Tsag group	8,704,199	8,704,199	-	Trade-catering service	Singapore
5	Central Asian Cement	5,524,403	4,910,561	303,842	Engineering/ construction/ production of building materials	Belgium-Great Britain-Hong Kong- Netherlands-Singapore-USA- Mongolia
6	Ulaanbaatar University	6,697,000	4,641,000	-	Culture/education, science/ press	USA-Korea- Mongolia
7	Hyway Mongolia	5,250,000	3,675,000	1,575,000	Trade-catering service	China/Hong Kong/-Mongolia
8	Gyantbaylag	5,000,000	3,333,500	1,666,500	Trade-catering service	BVI (UK)- Mongolia
9	Xinxing Pipes	2,628,200	2,628,200	-	Geological exploration	China
10	Agmmaining	13,360,000	2,500,000	-	Geological exploration	Korea
11	L G Mongol	2,514,200	2,250,561	-	Engineering/construction/ production of building materials	Korea
12	Louis Vuitton Mongolia LLC	2,000,000	2,000,000	-	Trade-catering service	France
13	KMNR	2,000,000	2,000,000	-	Trade-catering service	Korea
14	Minghongda	1,660,000	1,600,000	-	Geological exploration	China
15	New Elion Neng Yuan	1,600,000	1,524,000	-	Trade-catering service	China
16	Asian United Mining	1,500,000	1,500,000	-	Trade-catering service	China /Hong Kong/
17	Mongolian-Soviet JVC	2,806,394	1,403,197	1,403,197	Transportation	Russia- Mongolia
18	Santanmores	2,800,000	1,300,000	-	Geological exploration	Korea
19	Yuan Xing Energy	1,200,000	1,200,000	-	Trade-catering service	China
20	MCTT	1,672,669	1,198,094	-	Geological exploration	China- China/Hong Kong/
21	Yokozuna Net	2,695,859	942,000	269,500	ICT	Japan-Mongolia
22	Dedbuttsiin hogjil	1,776,000	888,000	888,000	Transportation	Russia- Mongolia
23	Altaikhangai burd	1,260,667	882,467	378,200	Geological exploration	China-Mongolia
24	EAM khokh adar	1,118,110	782,677	335,433	Geological exploration	BVI (UK)- Mongolia
25	Nuutbulag	1,000,000	800,000	200,000	Trade and catering service	China /Taiwan/- Mongolia

Source: FIFTA

D. Mongolian Sectoral FDI (USD)

No	Sectors	%	Total	1990-2004	2005	2006	2007	2008	2009
1	Mining/Oil Geological services	61.3	2,338,954.27	493,972.74	183,961.91	195,390.34	336,985.65	485,189.08	643,454.56
2	Trade support services	19.7	751,142.03	162,764.31	53,376.62	103,388.43	111,528.37	187,447.85	132,636.45
3	Others	5.7	217,772.98	92,880.36	52,884.35	47,739.57	13,882.50	6,875.86	3,510.34
4	Banking & financial services	3.1	118,410.97	67,105.46	9,671.09	11,982.63	21,936.52	4,495.96	3,219.31
5	Light industry	2.8	107,754.41	85,001.91	1,792.13	1,454.22	1,205.34	18,208.00	92.82
6	Engineering services/construction material manufacture	1.9	73,337.16	55,237.94	772.73	1,791.75	4,273.45	1,894.74	9,366.55
7	Processing: animal raw materials	1.4	55,174.12	53,516.29	825.33	292.50	540.00	-	-
8	IT/Telecom sales and services	0.9	35,983.56	19,623.03	6,267.60	480.86	6,916.70	1,442.57	1,252.80
9	Transport	0.7	25,147.30	20,951.90	933.33	24.60	657.15	174.13	2,406.20
10	Tourism	0.5	18,499.30	13,028.04	1,490.23	1,637.36	486.70	1,365.63	491.34
11	Food processing	0.5	18,134.49	15,297.57	303.96	1,424.37	710.00	100.50	298.08
12	Cultural/educational products manufacture	0.4	14,623.32	10,656.24	12.99	391.47	67.00		3,495.61
13	Agriculture/livestock processing	0.4	14,410.42	9,305.76	2,787.10	362.60	208.43	1,242.38	504.15
14	Wooden Furniture manufacture	0.2	5,853.15	5,400.63	22.00	14.15	81.30	335.06	-
15	Energy	0.1	5,515.80	5,415.32	100.48	-	-	-	-
16	Health/ beauty	0.1	4,999.40	4,011.72	56.30	5.25	395.00	101.00	430.12
17	Public utilities services	0.1	2,720.22	2,474.73	33.19	162.50	-	49.80	-
18	Jewelry/souvenirs	0.1	2,648.18	1,224.43	1,353.75	-	70.00	-	-
19	Electric appliance manufacture	0.0	1,809.20	1,615.02	194.18	-	-	-	-
20	Household items manufacture	0.0	1,432.50	1,411.50	-	3.00	18.00	-	-
	Total FDI	100	3,814,322.77	1,120,894.91	316,839.28	366,545.59	499,962.11	708,922.55	801,158.33

Source: FIFTA

E. Registered FDI into Mongolia by Origin (in USD thousands)

No	Countries	%	Total	1990-2004	2005	2006	2007	2008	2009
1	China	60.1	2,292,197.04	441,786.38	227,922.28	172,014.03	339,614.67	497,800.88	613,058.80
2	Canada	6.61	252,193.92	174,206.58	1,542.25	72,180.37	497.15	2,739.57	1,028.00
3	Korea	5.69	217,050.18	85,180.14	19,004.49	16,434.78	22,991.38	41,765.41	31,673.98
4	Japan	3.45	131,445.00	66,208.26	5,840.80	4,727.59	2,450.10	46,623.46	5,594.78
5	BVI (UK)	3.16	120,451.88	48,394.23	5,033.92	6,111.67	35,449.00	6,157.89	19,305.18
6	Russia	2.78	105,976.82	37,163.16	7,450.14	11,654.52	39,774.38	3,795.42	6,139.20
7	USA	2.67	101,779.39	45,725.48	5,564.06	37,165.78	4,285.67	6,466.89	2,571.52
8	Netherlands	1.6	61,119.44	5,265.58	221.7	475.86	58.5	4,069.20	51,028.60
9	Singapore	1.48	56,286.96	8,513.28	4,645.78	728.6	700	32,339.86	9,359.44
10	Great Britain	1.33	50,633.49	25,813.22	6,347.90	9,013.47	2,429.00	6,057.76	972.15
11	Hong Kong SAR	1.24	47,202.64	25,033.35	773.02	350.5	8,255.51	1,757.81	11,032.44
12	Cayman Islands	1	38,054.80	264.02		2,400.00		35,069.33	321.45
13	Switzerland	0.99	37,619.76	5,732.89	2,563.50	6,676.45	366.52	90	22,190.40
14	Bulgaria	0.81	30,817.98	30,778.48		17	15	7.5	
15	German	0.7	26,804.77	10,369.80	370.2	1,386.27	817.49	580.01	13,281.00
16	Vietnam	0.62	23,572.85	505.8	231.67	20,448.54	674.73	1,270.11	442
17	Australia	0.53	20,348.94	3,730.19	12,066.75	384.4	289.2	3,361.90	516.5
18	China /Taiwan/	0.52	19,650.01	11,123.37	474.75	20.1	590.8	6,443.49	997.5
19	The Bahamas	0.46	17,537.79	17,435.79		102			
20	France	0.41	15,524.70	326.99	35	66.3	12,550.00	170.08	2,376.34
21	Italy	0.39	14,764.65	8,265.85	5,219.43	44.9	37.5	856.97	340
22	Portugal	0.35	13,506.00	13,506.00					
23	Malaysia	0.37	14,080.35	4,529.19	2,993.00	711.6	60.75	5,340.69	445.12
24	Kazakhstan	0.36	13,870.15	551.76	35.3	31.3	11,522.22	214.57	1,515.00
25	Luxemburg	0.24	8,968.37	2,911.70	1,809.30	10	3,118.92	195.8	922.65
26	Israel	0.21	8,163.61	8,094.91	10	20	23.7	15	
27	Cyprus	0.2	7,606.60	244.08		10	7,091.52	71	190
28	India	0.19	7,242.00	334	10	128	4,925.00	690	1,155.00
29	Ukraine	0.19	7,100.50	6,148.12	24.95	89.9	66.9	45	725.63
30	Czech republic	0.17	6,397.74	4,145.87	24	52.22	80.61	2,015.04	80
31	Bermuda	0.17	6,604.09	1,604.48	4,962.86		30.3	6.46	
32	New Zealand	0.16	6,201.02	2,489.20	1,139.60	60	225.95	1,706.28	580
33	Belgium	0.14	5,172.71	2,744.72		2,190.90	134.46	75	27.62
34	Macao	0.12	4,461.00	4,461.00					
35	Lichtenstein	0.09	3,336.45	3,336.45					
36	Turkey	0.08	2,989.67	1,910.27	80	32	114.3	338.6	514.5
37	Austria	0.06	2,294.64	1,984.85	10	101.87	6.4	191.52	
38	Poland	0.05	1,986.26	1,780.26	10	16	20	10	150
39	Hungary	0.04	1,487.39	1,162.48	12.71	54.2	18		240
40	Panama	0.03	1,163.15	1,055.45	7.7				100

No	Countries	%	Total	1990-2004	2005	2006	2007	2008	2009
41	DRPK	0.03	1,301.86	1,162.61	66.5	22.75	50		
42	Slovakia	0.03	1,192.06	869.06		273	50		
43	Uzbekistan	0.02	859.3		3.2			100	756.1
44	Kyrgyzstan	0.02	590.5	469.5	1				120
45	Pakistan	0.02	821.05	698.95	15	6	21.1	80	
46	Antigua & Barbuda	0.02	729.86	729.86					
47	Gibraltar	0.01	281	176	15				90
48	Belize	0.01	273.88		13	175.88			85
49	Sweden	0.01	560.1	13.1	10.9		466	30	40.1
50	Syria	0.01	410.99	285.89	5.1	15		105	
51	Armenia	0.01	270.05	239.6	15.3	6.6		8.55	
52	Yugoslavia	0.01	285.07	280.17	4.9				
53	Saudi Arabia	0.01	198.3	198.3					
54	Mauritania	0.01	510					30	480
55	Islands of Saint Kitts & Nevis	0.005	188.7	5			10		173.7
56	Thailand	0.005	187.1	76				3	108.1
57	Norway	0.005	178.15	67.15	10	5	6	90	
58	Ireland	0.004	140.79	46.25	9		9		76.54
59	Cambodia	0.004	168.3		153.3	15			
60	Lebanon	0.004	142.86	134.94		7.92			
61	Croatia	0.004	146	146					
62	Bangladesh	0.003	115				10		105
63	Indonesia	0.003	104			20			84
64	Denmark	0.002	90.3	90.3					
65	Spain	0.002	89.6	59.6		20	10		
66	Belarus	0.002	83	27				56	
67	Georgia	0.002	73.05	18.05			5		50
68	Republic Argentina	0.001	55						55
69	Greece	0.001	49	49					
70	Moldavia	0.001	41.5	39			2.5		
71	Finland	0.001	41.67	20	8.17	7		6.5	
72	Qatar	0.001	40					10	30
73	Barbados	0.001	30	20	10				
74	Tajikistan	0.001	30	10	10	10			
75	Sri Lanka	0.001	28					28	
76	British Indian Ocean territory	0.001	25			25			
77	Jordan	0.001	24.93	21.6		3.33			
78	Liberia	0.001	20.5	20.5					
79	Morocco	0.001	20					20	
80	Uran	0.001	20		18		2		
81	Azerbaijan	0.001	20				20		
82	Honduras	0.001	19.5	13.5	6				

No	Countries	%	Total	1990-2004	2005	2006	2007	2008	2009
84	Seychelles Islands	0.000 7	27				10	17	
85	Estonia	0.000 4	17	17					
86	Iraq	0.000 4	15	15					
87	Serbia Montenegro	0.000 4	15	8.25	6.75				
88	Cameroon	0.000 3	12	12					
89	Mauritius	0.000 3	12			12			
90	Latvia	0.000 3	10	10					
91	Marshall Islands	0.000 3	10	10					
92	Myanmar	0.000 3	10		10				
93	Minor Outlying Islands	0.000 3	10			10			
94	Saint Helena	0.000 2	6		6				
95	Dominion of Melchizedek	0.000 1	5.61	5.61					
96	Nigeria	0.000 1	5	5					
97	The Philippines	0.000 1	4.9				4.9		
98	Turks and Caicos Islands	0.000 1	3.1		3.1				
99	Ethiopia	0.000 1	2.5	2.5					
100	US Virgin Islands	0.000 1	2		2				
	Total FDI	100	3,814,322.77	1,120,894.91	316,839.28	366,545.59	499,962.11	708,922.55	801,158.33

Source: FIFTA