

LEGAL DEVELOPMENTS AND UPCOMING LEGISLATIVE AGENDA: 2015

Hogan Lovells Mongolia

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State Policy on Energy

- Purpose of this policy is to ensure uninterrupted and reliable supply of energy and to transform Mongolia into an energy exporting country
- Principle directions
 - Reliability and energy security
 - Sustainable environment and green development
 - Efficiency and productivity
 - Privatisation
 - Market regulation
 - Technology innovation

State Policy on Energy

- Policy will be implemented in two phases:
 - Phase 1 (between 2015 - 2023)
 - completion of Power Plant #5; thermal power plants at Tavan Tolgoi, Baganuur, and in the eastern and western regions; hydro-power plants at Egiin Gol and Khovd Gol; construction of various power transmission lines connecting towns and cities etc.
 - Phase 2 (between 2024 - 2030)
 - establishing transnational grid; hydro-power plant Selenge Murun; establishing power plants and relevant lines for exporting energy

Energy Policy: Privatisation

- Policy for the Privatisation or Restructuring of State Property for 2015-2016
- Government is to approve the list of state-owned legal entities to be privatised or restructured
- Assets proposed to be privatised/restructured:
 - Thermal Power Plants #2, #3 and #4
 - Erdenet and Darkhan thermal power plants
 - Ulaanbaatar Electricity Distribution Network
 - Shivee-Ovoo and Baganuur
 - Other assets.
- Intention to use domestic stock exchange
- Proceeds to be used for undertaking technical development of the business

Energy Policy: Market regulation

Amendments to the Law on Energy

- Contractual tariff arrangement for private or foreign financed energy projects
- Pro-forma supply contract to be prepared by the Energy Regulatory Commission

Amendment to the Law on Renewable Energy

- Tariff arrangement and contract period connected to the payback period of the project

The Law on Promoting Economic Transparency

- A one time relief in relation to sanctions, penalties, late fees, tax and social insurance premiums under following laws:
 - Law of Mongolia on Value Added Tax
 - General Tax Law
 - Law of Mongolia on Social Insurance
 - Law of Mongolia on State Registration of Legal Entities
 - Law of Mongolia on Accountancy
 - Law of Mongolia on Customs

The Law on Promoting Economic Transparency

- Aims to uncover undeclared income and assets
- Applicable to legal entities and natural persons
- Encouraging proper reporting and registration without any legal or financial consequences
- Applicable to breaches committed before 1 April 2015, if reported before 31 December 2015
- Implementing regulation enacted by the Cabinet

Highlights of the Agenda for Autumn 2015 Session

- Budget Law of 2016
- Trade Law
 - Introduces comprehensive regulatory framework for both domestic and foreign trade
 - Defines regulatory mechanisms such as non-tariff measures
- Asset Income Tax Law
 - Applicable to real estate, vehicles, firearms, and cattle
- Revised Labour Law
- Revised Law on Enforcement of Court Decisions

Changes to the Immovable Property Pledge Law

- Provides that parties to a land pledge agreement may agree determination procedures involving non-judicial bodies, such as arbitration tribunals and notaries
- The provision which prohibits the sale of pledged land by non-judicial procedures remains in effect
- Courts will be required to issue an order for an forced sale

MIPPL: introduction

- Relatively well-developed registration system for security over:
 - immovable properties and land;
 - mineral licenses; and
 - shares in open joint stock companies.
- Security over movable properties and intangible assets (including floating charges) possible but no detailed regulations
- Enforcement of security interests often involves judicial procedure and/or cooperation of borrowers

MIPPL: key features

- Approved on 2 July 2015
- Comes into force on 1 September 2016
- Aims to increase asset mobility and increase access to finance
- Provides for detailed regulations on creation, perfection and enforcement of security interests over movable and intangible property
- Establishes formal registration mechanism and searchable online database for security interests over movable and intangible property
- Makes it possible to enforce security interests without judicial procedure

MIPPL: scope

- Scope:
 - Applies to security over:
 - movable property (transferable and has monetary value)
 - intangible assets such as bank accounts, shares, intellectual property rights, and claims
 - Excludes mineral licenses
- Secured obligations may:
 - be existing or future obligations (expressed in monetary terms)
 - include ancillary obligations
 - change throughout the validity of security

MIPPL: creation of pledge

- Creation of pledge:
 - By way of a written agreement
 - By operation of law
- Only written agreement creates valid security interest
- A written pledge agreement must identify the parties, pledged property, and secured obligations
- A written pledge agreement must be signed by pledgor and pledgee
- No requirement for notarisation

MIPPL: perfection of pledge

- Perfection of pledge:
 - by taking possession of secured property
 - by filing a notice of security interests
- Special rules of perfection for:
 - **saving accounts**: by taking control of the account by pledgor
 - **motor vehicles**: by registering a notice of security indicating serial numbers of each vehicle
 - **purchase money security interest**: perfection is effective from the date of transfer of property to buyer's possession if a notice of security is filed within 10 days of the transfer

MIPPL: electronic registry

- General Authority for State Registration will maintain an electronic registration system
- Notice-based registry:
 - perfection of security by submitting a notice of security
 - pledgor may submit a notice of security with pledgee's consent
 - no requirement to submit underlying transaction documents
 - searchable and accessible by public

MIPPL: priority of claims

- Priority of claims secured by the same property is determined by the date of perfection
- Secured claims have priority over unsecured claims
- Order of unperfected but valid security interests is determined by date of creation of security interests
- Preferential priority:
 - Holder of purchase money security interest has priority regardless of other perfected security over the same property
 - Security over livestock and grain products

MIPPL: enforcement procedure

- Notice of default is required before enforcement
- Simplified and expedited procedure for enforcement
 - Request for possession of a pledged property
 - Non-judicial enforcement is allowed for certain types of security interests
 - Sale of a pledged property by way of:
 - Direct sale
 - Auction sale
 - Market sale

MIPPL: conclusion

- Welcome development to expand the scope of assets to be secured effectively
- Increases access to finance
- Provides increased transparency and legal certainty to lenders with establishment of formal registration mechanism and electronic database
- Notice-based perfection, less formality
- Effective enforcement and building trust in the system remains a key challenge

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