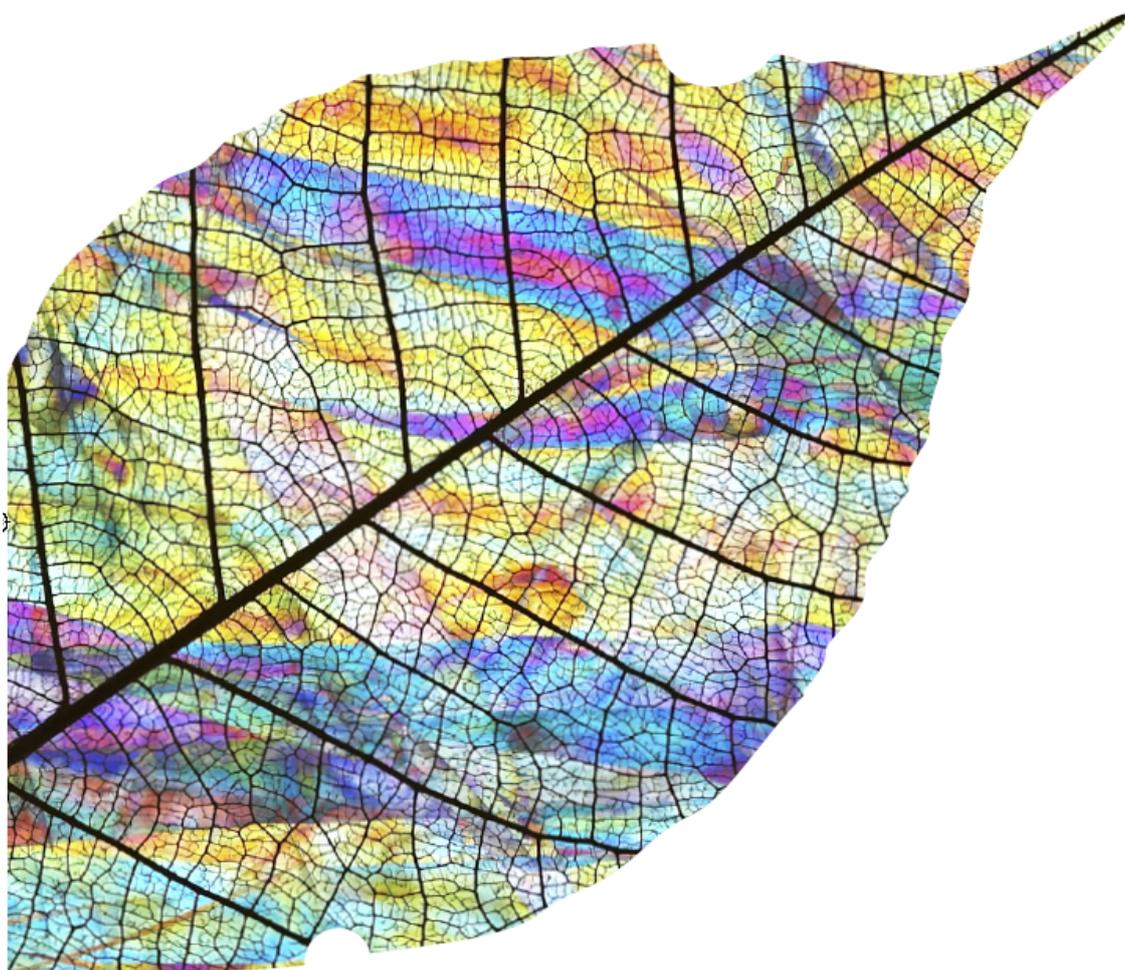


World Universities Comparative Law Project

Legal rating of Mongolia

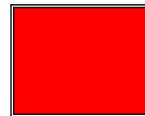
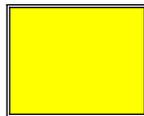
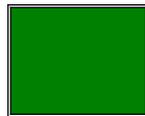
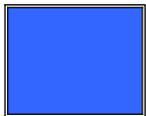
carried out by the National University of Mongolia

A production of the Allen & Overy Global Law Intelligence Unit



July, 2016

World Universities Comparative Law Project
Legal rating of Mongolia
carried out by students at the National University of Mongolia
July, 2016



Produced by the Allen & Overy Global Law Intelligence Unit

World Universities Comparative Law Project

The World Universities Comparative Law Project is a set of legal ratings of selected jurisdictions in the world carried out by students at leading universities in the relevant jurisdictions. This legal rating of Mongolia was carried out by students at the National University of Mongolia.

The member of the Faculty of Law at the National University of Mongolia who assisted the students was Amarsanaa Batbold (PhD), Head of Private Law Department

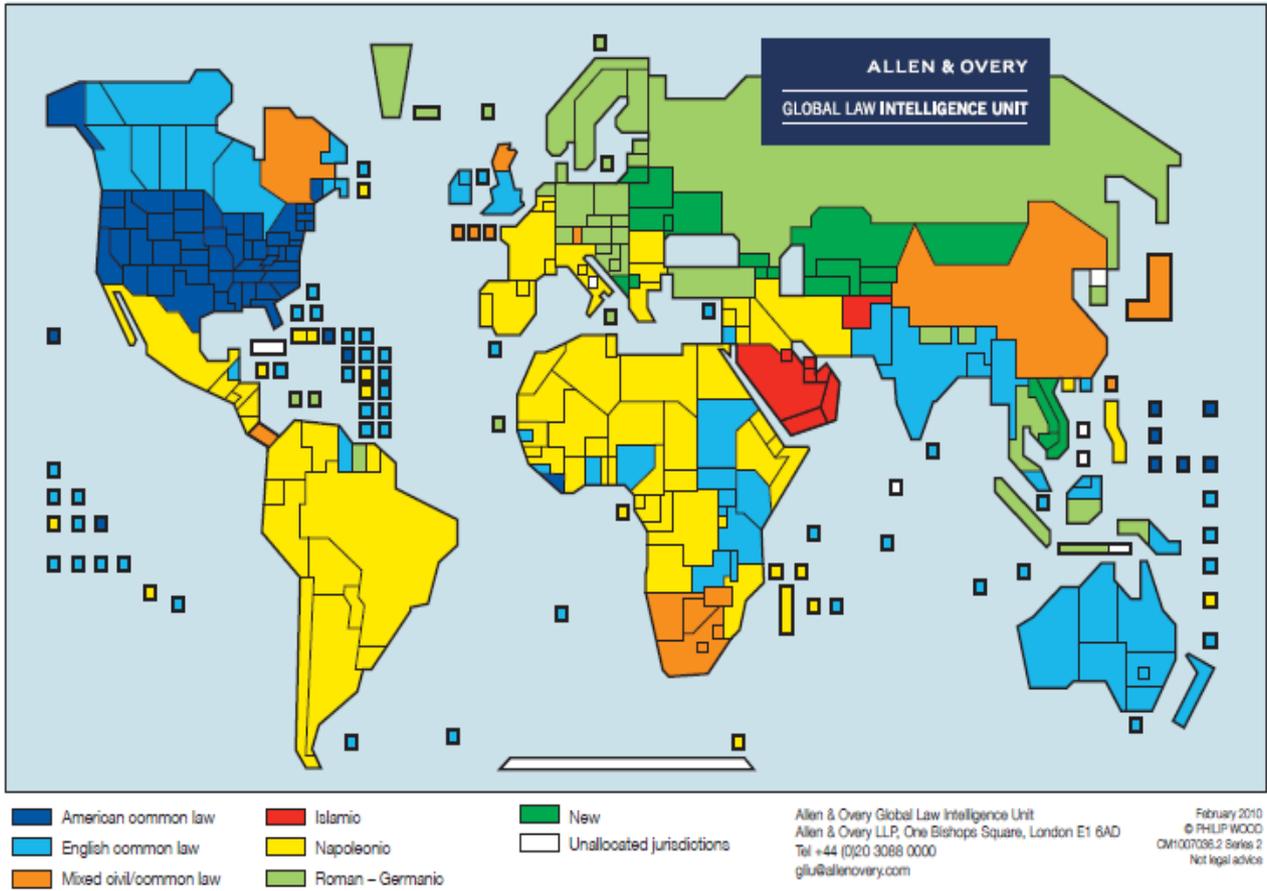
The members of the Practitioner Expert Panel with whom the students could discuss the questions in the survey were:

Zoljargal Dashnyam, Managing Partner, GTs Advocates LLP

The Allen & Overy Global Law Intelligence Unit produced this survey and is most grateful to the above for the work they did in bringing the survey to fruition.

All of those involved congratulate the students who carried out the work.

Families of law



Foreword

Mongolia has a long standing legal tradition, which can be traced back many centuries. Most notable is the introduction of a unified legislation by Chinggis Khaan during the Mongol Empire in the 13th century. However, it was not until 1990, when Mongolia started to fully embrace full democracy and with it, the rule of law. Mongolia's establishment of the rule of law or legal system is still in its development stage, with many reforms underway and still being required, and it has been the duty of lawyers and law students to identify those needed reforms for Mongolia's legal system. This project seems to serve as a guideline which direction Mongolia's legal system is developing compared to other nations and what reforms may be necessary.

As I read the questions and responses, I came to the conclusion that the students by participating in this project have gained an invaluable experience of how to conduct legal research, apply the law, and work in a team environment. I have no doubt that their participation in this project will serve them well in their future endeavours as lawyers. As a public servant and a law practitioner, I am delighted to see our new generation of Mongolian lawyers contributing to a project of this magnitude.

Justice Batsuren Khukhiisuren

Ulaanbaatar, Mongolia
September 2016

Description of the legal rating method

Introduction

This paper assesses aspects of the law in Mongolia with a view to rating the law in the relevant areas. The survey is concerned primarily with wholesale financial and corporate law and transactions, not with retail law.

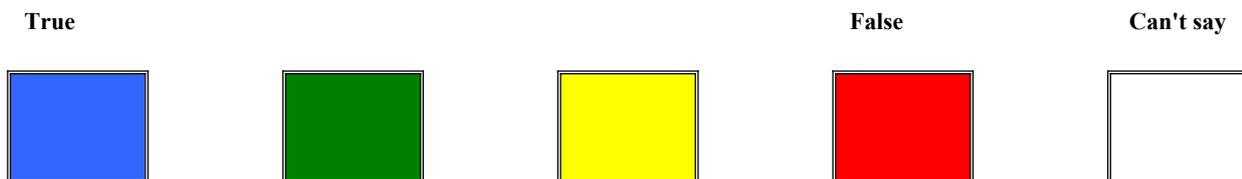
Legal risk has increased globally because of the enormous growth of law; because of its intensity; because many businesses are global but the law is national; because nearly all countries are now part of the world economy; and because the law is considered to play a very significant role in the fortunes of our societies. Liabilities can be very large and reputational losses severe.

The survey was carried out by students at National University of Mongolia. The survey was designed by the Allen & Overy Global Law Intelligence Unit.

The students were requested to express their views freely and in their own way. The views expressed are their views, not necessarily those of National University of Mongolia, the members of the Practitioner Expert Panel or the Global Law Intelligence Unit, the members of Allen & Overy.

Methodology

The survey uses colour-coding as follows:



Blue generally means that the law does not intervene and the parties are free, ie the law is liberal and open.

Red generally means that there is intense legal intervention, usually in the form of a prohibition.

Green and **yellow** are in-between.

The purpose of this colour-coding is to synthesise and distil information in a dramatic way, rather than a legal treatise. The colours correspond to a rating of 1, 2, 3 or 4, or A, B, C or D.

The cross in the relevant box signifies the view of the students carrying out this assessment of the position of Mongolia. This is followed by a brief comment, e.g. pointing out qualifications or expanding the point. These comments were written by the students.

The colour-coding does not usually express a view about what is good or bad. Whether the law should intervene in a particular arena is a matter of opinion. The scale is from low legal intervention to intense legal intervention or control. This is not a policy or value judgment as to whether or not the law should or should not intervene. Jurisdictions often disagree on whether the law should intervene and how much. So one of the main purposes of this survey is to endeavour to identify some of the points of difference so as to promote fruitful debate.

Black letter law and how it is applied

This survey measures two aspects of law. The first is black letter law, ie what the law says or the written law or law in the books.

The second measure is how the law is applied in practice, regardless of what it says. Thus, the law of Congo Kinshasa and Belgium has similar roots but its application is different.

Although there is a continuum, these two measures have to be kept separate. Otherwise we may end up with just a blur or noise or some bland platitude, eg that the law depends upon GDP per capita.

In fact, only the last two questions deal with legal infrastructure and how the law is applied. All of the others deal with the written law, without regard to enforcement or application.

Key indicators

The survey uses key indicators to carry out the assessment. It is not feasible to measure all the laws or even a tiny fraction of them. The law of most jurisdictions is vast and fills whole libraries.

The key indicators are intended to be symptomatic or symbolic of the general approach of the jurisdiction. To qualify as useful, the indicator must usually be (1) important in economic terms, (2) representative or symbolic and (3) measurable. In addition, the indicators seek to measure topics where jurisdictions are in conflict. There is less need for measuring topics where everybody agrees.

An important question is whether this method is useful or not, and, if it is, whether the indicators are relevant.

Legal families of the world

Most of the 320 jurisdictions in the world, spread just under 200 sovereign states, can be grouped into legal families. The three most important of these are: (1) the common law group, originally championed by England; (2) the Napoleonic group, originally championed by France; and (3) the Roman-Germanic group, originally championed by Germany, with major contributions from other countries.

The balance of jurisdictions is made up of mixed, Islamic, new and unallocated jurisdictions.

Many aspects of private law are determined primarily by the family group, but this is not true of regulatory or economic law.

Excluded topics

This survey does not cover:

- transactions involving individuals
- personal law, such as family law or succession
- competition or antitrust law
- intellectual property
- auditing
- general taxation
- macroeconomic conditions, such as inflation, government debt, credit rating or savings rates
- human development, such as education, public health or life expectancy
- infrastructure, such as roads, ports, water supply, electricity supply
- personal security, such as crime rates, civil disorder or terrorism.

Banking and finance

Introduction

Banks and bondholders (typically also banks, but also insurance companies, pension funds and mutual funds) provide credit or capital. Their main risk is the insolvency of the debtor and therefore the key indicators intended to measure whether the law supports those habitual creditors or debtors, such as large corporations

as borrowers, when it matters, ie on bankruptcy. This is when commercial law is at its most ruthless in deciding who survives and who drowns.

This debtor or creditor decision is implemented mainly through the bankruptcy ladder of priorities. A feature of common law systems is the presence of super-priority creditors who are paid before anyone else - creditors with a set-off or a security interest and beneficiaries under a trust. For example, if a bank has universal security over all the assets of a company, the bank is paid before all other creditors, including employees and trade creditors. This regime therefore protects significant creditors who such as banks.

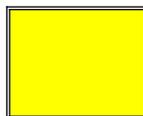
Jurisdictions based on the English common law model give super-priority to all three claimants. Traditional Napoleonic jurisdictions typically do not allow insolvency set-off, have narrower security interests and do not recognise the trust. Their bankruptcy ladder favours greater equality of creditors. Most traditional Roman-Germanic jurisdictions are in-between. They allow insolvency set-off and have quite wide security but most do not recognise the trust. There are wide exceptions to these generalisations.

Insolvency set-off

Generally If set-off of mutual debts is allowed on insolvency, the creditor is paid. If it is not allowed, then effectively the creditor is not paid. Very large amounts are involved in markets for foreign exchange, securities, derivatives, commodities and the like, so that the question of whether exposures should be gross or net is a matter of policy as to who the law should protect.

Q1 In Mongolia, creditors can set off mutual debts on the insolvency of a debtor if they are incurred before notice of the insolvency.

True



False



Can't say



Comment:

According to Article 17.1 of the Law on Bankruptcy of Mongolia, the debtor's assets to be distributed shall comprise items owned by the debtor at the time of commencement of filing for insolvency, or newly acquired during the period until the debtor's liquidation and removal from the state register as well as revenues and profits generated by such items. Persons who have debts to the debtor shall pay them off according to the contract or transaction.

As for the company which is being liquidated by the decision of the shareholders, liquidation commission must publish a liquidation notice setting out liquidation procedures and the time periods for the presentation of claims by creditors. The commission must also give such a notice to each of the company's creditors in a written form.

Thus, it can be analysed that creditors cannot set-off mutual debts on the insolvency of a debtor if they are incurred before insolvency.

Security interests

Generally Security interests give priority to the creditor with security - typically banks - who are the main providers of credit in most countries.

In traditional common law jurisdictions, a company can create universal security over all its present and future assets to secure all present and future debt owed to a bank. Once registered, the security is valid against all creditors, except that the floating collateral ranks after preferred creditors - typically wages and

taxes. The security can be granted to a trustee for creditors. On a default there are no mandatory grace periods and the creditor can enforce out-of-court by appointing a receiver (a type of possessory manager) or by private sale. But in some common law jurisdictions there are freezes on enforcement in the event of a judicial rescue of the debtor. Also, in some of these jurisdictions there are stamp duties.

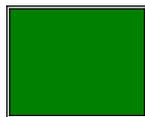
On the other hand, in many traditional Napoleonic jurisdictions, universal security is not possible, neither is security for all future debt. There is no trustee to hold the security. On enforcement, there are grace periods and no receiver. Sale is through the court and a public auction. Preferential creditors rank ahead. Some countries have a freeze on enforcement under a judicial rescue statute.

The main policy issue is therefore whether security should be encouraged or whether the law should intervene to impose greater equality.

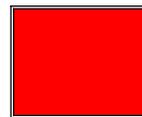
The main tests are (1) scope of eligible assets, (2) debt secured, (3) trustee, (4) priority over preferred creditors, (5) private enforcement and receiver, (6) no rescue freezes and (7) low costs.

Q2 In Mongolia, the law offers a security interest which is highly protective of the secured creditor.

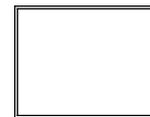
True



False



Can't say



Comment:

According to Article 157.1.2 of the Civil Code, a pledgor is entitled to have his/her demand satisfied from the sales proceeds of the collateral prior to other creditors. As stated in the Civil Code and the Law on Pledge of Immovable Property of Mongolia, immovable property (land and buildings) pledge agreement must be concluded in writing and be notarized by a public notary and registered with the State Registration Authority in order to be valid and effective.

In addition, the Minerals Law requires the pledge over minerals license (along with its relevant documents, such as, the exploration work results, geological information, feasibility study report and properties) to be registered with the Minerals Authority in order to be valid and effective.

Thus, the pledge over immovable properties and minerals licenses can be viewed as relatively secure.

From 1 September 2016 the “Law on Movable and Intangible Property Pledges” (MIPP) will come into force. Under the MIPP, a pledgor of movable property is getting an option to register his/her contract with the State Registration Authority.

Hence, registered security interests are relatively secure and provide protection to the secured investors. However, in the event that the pledgor is insolvent and his/her property which was sold in order to pay the loan is not sufficient to fulfil the obligation, rest of the claims have to follow the basic principles of priority provided in the Civil Code and the Bankruptcy Law, which do not distinguish between secured or unsecured creditors.

Therefore, it can be concluded that the law offers a security interest which is protective of the secured creditor in Mongolia if all legal formalities are followed. But the protections may not fully apply if the pledgor is in a bankruptcy proceeding.

Universal trusts

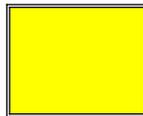
Under a trust, one person, called the trustee, holds title to the assets of another person, called the beneficiary, on terms that, if the trustee becomes insolvent, the assets go to the beneficiary and are not used to pay the trustee's private creditors. The assets are immune and therefore taken away from the debtor-trustee's bankrupt estate.

The main examples of trusts are custodianship of securities, pension funds, securities settlement systems and trustees of security for bondholders and syndicate banks. The amounts involved are enormous.

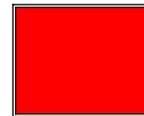
All jurisdictions have an effective trust of goods (called bailment or deposit). The common law group has a universal trust for all other assets (land and intangible property). Most members of the civil code group do not have a universal trust, subject to wide exceptions, especially for custodianship of securities. A few countries in this group have a universal trust by statute, e.g. France and China.

Q3 Mongolia has a universal trust for all assets.

True



False



Can't say



Comment:

The universal trust is not available under Mongolian laws. The nearest to the concept of common law countries' "trust" can be viewed as property entrusting contract (Хөрөнгө итгэмжлэх гэрээ) which is stated in the Civil Code. According to the Civil Code, the settlor undertakes to transfer the right or disposal over movable property to the trustee and the trustee upon receiving them undertakes the obligation to manage the movable property or rights in the best interest of the settlor. However, there are no legal grounds to entrust immovable property according to this contract. Thus, in Mongolia since it is only possible to entrust movable property and rights, it cannot be fully concluded that Mongolia has universal trust for all assets.

Other indicators

Other bankruptcy indicators not measured here include freezes on the termination of contracts, fraudulent preferences, the priority of rescue new money, the presence and intensity of corporate rescue proceedings and recognition of foreign insolvencies. Director liability for deepening the insolvency is dealt with below.

Other financial law topics not covered in this survey include the regulatory regime, especially capital, liquidity, authorisation of financial business, conduct of business, control of prospectuses, control of market abuse and frauds, such as insider dealing, and the insolvency regime for banks. Financial regulation is a very large field.

Corporations

Introduction

Financial law involves competition between debtors and creditors so that jurisdictions can be positioned on a straight line. Corporate law however involves three main competitors: (1) shareholders, (2) creditors and (3) managers - a triangle. If the key indicators show that a jurisdiction strongly favours one or other of the parties at the points of the triangle, whether creditors, shareholders or management, then one can begin to build up a picture of the choices which the jurisdiction habitually makes in resolving the conflicting interests of the parties.

For example, a very tough prohibition on financial assistance (which is protective of creditors against shareholders) tends also to support an attitude to other principles of the maintenance of capital or to support the proposition that mergers by fusion are difficult (because they can prejudice creditors). This would be true of the English regime in 1948. Similarly, a view which easily imposes personal liability on directors for deepening insolvency might also show a legal approach which is not supportive of the veil of incorporation in other areas, eg shareholder liability and substantive consolidation on insolvency.

The two extreme corporate law models are the Delaware model and the traditional English model, exemplified by the English Companies Act 1948 (now superseded). Napoleonic and Roman-Germanic models are in-between to varying degrees.

The Delaware regime is highly protective of management in the key areas. The traditional English regime favours creditors on most of the key contests and, where creditor interests are not involved, it tends to favour shareholders as opposed to managers.

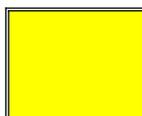
Director liability for deepening an insolvency

Generally If the law imposes personal liability on directors for deepening an insolvency, eg carrying on business and incurring debts where there is no reasonable prospect of paying them, then the regime is hostile to the interests of management. The legal risks of management are increased.

There are basically four regimes internationally: (1) directors are hardly ever liable for deepening the insolvency, eg Delaware and most US jurisdictions, plus some traditional English jurisdictions which only punish fraudulent trading; (2) directors are liable for serious negligence (England, Singapore, Australia, Ireland); (3) directors are liable for mere business misjudgements deepening the insolvency (France); and (4) directors are liable if they fail to file for an insolvency proceeding after the company becomes insolvent (France, Germany and others).

Q4 In Mongolia the law rarely imposes personal liability on directors for deepening the insolvency and there is no rule that the directors must file for insolvency when the company is insolvent.

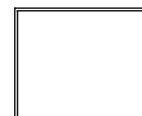
True



False



Can't say



Comment:

There are no legal grounds for directors to become liable for deepening the insolvency of the company under Mongolian law. However, under the Company Law of Mongolia, directors are considered as “governing persons” of the company.

In general, the director, in its capacity as governing person, is personally liable for its followings acts:

- used the company name for personal interest;
- intentionally provided the shareholders and creditors with false information;
- failed to fulfil his reporting obligations;
- failed to disclose the company documents as required in the law; and
- failed to provide the authorized body with the information in time as required under Article 98 of the Company Law.

The Bankruptcy Law does not require directors to file for bankruptcy if the company becomes insolvent.

Financial assistance to buy own shares

Generally Many jurisdictions prohibit a company from giving financial assistance to buy its own shares. The typical example would be where a bidder finances the acquisition of a target company by a loan and after the takeover arranges for the target to guarantee the loan and charge its assets to secure the guarantee. The commercial effect is similar to the repayment of the share capital of the target before its creditors are paid. Shareholders should be subordinated to creditors.

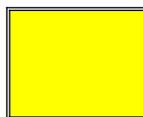
The prohibition therefore favours creditors against shareholders of the target.

The Delaware regime does not prohibit financial assistance. The traditional English regime has a wide prohibition (not England any more). Most Roman-Germanic regimes are against it, with Napoleonic regimes hesitant. The EU has a prohibition against financial assistance by public companies. Some countries allow financial assistance by private companies if solvency is established.

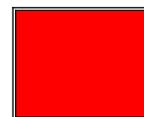
A contravening transaction is usually a criminal offence and void.

Q5 Mongolia permits a company to grant financial assistance for the purchase of its own shares.

True



False



Can't say

**Comment:**

There are no legal requirements under Mongolian law on this matter. According to Article 49 of the Company Law, unless otherwise provided in the company charter, a company’s Board of Directors (in its absence, the shareholders meeting) may agree with one or more of its shareholders to re-purchase securities of the company held by such shareholders, the company may pay for redeemed securities with cash, securities or other forms of property as agreed with the purchasing party. However, a company cannot purchase its securities that are in the process of an initial public offering.

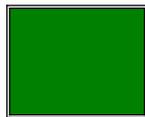
Public takeover regime

Generally A public takeover regime which is free and open tends to favour managers who can guard against takeovers by poison pills and the like and who have relative freedom to acquire other companies. An example is the Delaware regime. A restrictive regime on the lines of the British system tends to favour shareholders.

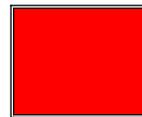
The chief features of a restrictive regime are: (1) the bidder must make a mandatory bid in cash when a threshold of shares in the target is reached, eg 30%; (2) the bidder must pay the same price to all shareholders (sharing the control premium); (3) no partial bids (getting control on the cheap); (4) proof of certain funds to implement the offer; (5) compulsory acquisition of dissenting minorities (squeeze-out); (6) fixed timetable; (7) no ability of the managers to frustrate a bid by poison pills without shareholder approval; and (8) control of the content of circulars, especially forecasts.

Q6 Apart from exchange controls and restrictions on foreign direct investments, the public takeover regime in Mongolia is open and has few restrictions.

True



False



Can't say



Comment:

The Company Law regulates the establishment, registration and reorganization of a company and its management. A controlling stake is defined as 33% or more of a company's issued and outstanding shares. Under Article 56.3 of the Company Law, in the event a person proposes to acquire a controlling stake in a public company and unless the shareholders vote otherwise the shareholders may not restrict the acquisition of the shares. In addition, if the acquiring person amasses a stake of 33% or more, it must make a bid to the other shareholders who hold the remaining shares within 60 days reaching the 33% threshold.

In addition, a minority shareholder who voted against a takeover, merger, or reorganization may demand the company to repurchase its shares at the market price when such demand right was obtained.

Furthermore, under the Banking Law, a person contemplating to acquire a stake of 5% or more in a licensed commercial bank must receive prior approval from the Central Bank of Mongolia.

Other indicators

Other important indicators are corporate governance (difficult to measure), free ability to merge companies by fusion, the one-share-one-vote rule, and, to a lesser extent, minority protections. Other indicators relate to quick and cheap incorporation, the *ultra vires* rule, maintenance of capital, no par value shares, shareholder liability, substantive consolidation on insolvency and disclosure. These are not measured here.

Commercial contracts

Introduction

Contract is at the heart of commercial life, and is everywhere. In fact, the main tenets of contract law across the main families of jurisdictions are consistent - it is in the fields of insolvency and property law where the main differences emerge. It is true that there are contract differences, for example, between writing

requirements, open offers, the time of acceptance and specific performance, but often these differences are of lesser significance in practice in the business field.

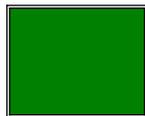
The key indicators the survey chooses all tend to symbolise whether the approach of the jurisdiction to contract is hard or soft. If the approach is hard, then the jurisdiction tends to support predictability in business contracts so that certainty and freedom of contract are valued more than mitigating the risk of occasionally abusive behaviour and unfair results, especially for weaker parties. A soft jurisdiction tends to give greater primacy to notions of good faith and the like.

Exclusion of contract formation

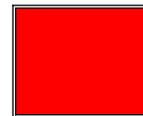
Generally Commercial parties often wish to be able to negotiate heads of terms commercially without being bound by a contract. In some jurisdictions, the courts are ready to infer that the parties are bound if the terms are sufficiently clear, even if they have said expressly that they do not intend to be bound.

Q7 In Mongolia, parties are not bound to heads of terms if they expressly state that the terms are "subject to contract" or some such clear phrase.

True



False



Can't say



Comment:

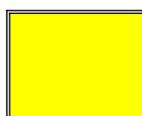
There is no a specific regulation about this in the laws of Mongolia. Generally, parties are free to choose the terms and conditions of their agreement unless the agreement is against the law. Thus, by specifically stating that the terms are subject to a contract may be enforced. If there is a document or a contract which expresses the parties will or mutual acceptance of the contract, it is typically viewed as a valid contract, in other words a contract is formed upon an offer and acceptance. Thus, a court may see the contract as binding irrespective of the heads of terms.

Termination clauses

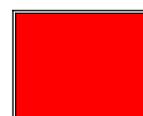
Generally Many contracts, especially loan contracts, leases of goods and long-term sales contracts, contain events of default on the occurrence of which one party can terminate the contract. Jurisdictions which uphold freedom of contract and the literal interpretation of contract give effect to these clauses and do not rewrite the contract according to the court's notions of what is fair. Other jurisdictions prefer good faith. We ignore consumer contracts - where there may be consumer protections.

Q8 In Mongolia, a termination clause in a loan or sale of goods contract between sophisticated companies (not individuals) providing for the termination of the contract immediately on certain events is usually upheld, even if the event concerned is relatively trivial.

True



False



Can't say



Comment:

According to Article 221 of the Civil Code, “If grounds exist, parties entered a long-term contract, may renounce the contract regardless of its expiration date”. Force majeure condition and emergency, or the circumstances, making impossible to demand to prolong or extend duration of the contract in order to protect legitimate interests and rights of parties, shall be deemed as legitimate grounds. If a breach of contract obligation becomes grounds for terminating it, the contract may be terminated, if it is obvious that no results could be achieved with giving additional time or the client reminded the obligation performer to execute obligations.

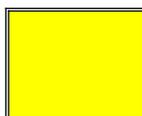
For sale and purchase contracts, if actual circumstances emerge when one of parties to the contract after concluding it, becomes unable to perform the majority of its obligation, the other party may refuse to perform its obligation. Furthermore, both seller and buyer can be entitled to cancel the contract in connection with the property defect. In this case, the seller is liable to compensate any losses incurred by the buyer.

Exclusion clauses

Generally Contracting parties often seek to exclude their liability for defective performance of the contract. So the issue is whether these exclusion clauses are generally upheld if they are clear and whether freedom of contract is allowed in this area.

Q9 In Mongolia, exclusions of liability in most commercial contracts between sophisticated companies, such as a sale of goods contract, are generally upheld if they are clear.

True



False



Can't say



Comment:

According to Article 257 of the Civil Code, “Parties may negotiate and state in the contract that no responsibility shall be borne for selling defective property, or that responsibility shall not be limited, however, if a seller intentionally hides defects of the goods or property, such transaction shall be deemed void.”

Other indicators

Other contract indicators not assessed here include writing formalities, open offers, mistake, frustration, damages, penalties, specific performance and whether notice of assignment of the contract to the debtor is mandatory if the assignment is to be valid on the insolvency of the assignor.

Litigation

Introduction

The first three key indicators of governing law, jurisdiction and arbitration tend to show whether the jurisdiction does or does not place a high value on international comity and freedom of contract as opposed to national primacy.

The indicator on class actions tends to show whether or not the jurisdiction's litigation system is orientated towards plaintiffs, especially mass plaintiffs in product liability cases. This indicator may also show the

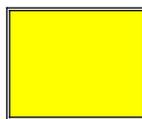
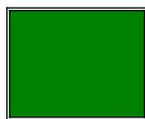
attitude of the jurisdiction to the protection of individual parties as against business parties, both in terms of the incidence of costs and enforcement.

Governing law clauses

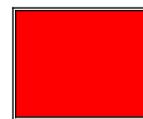
Generally Most countries apply a foreign governing law of a contract even if there is no connection between the contract and the jurisdiction. If the courts do not uphold the governing law, the effect is that the contract obligations may be different.

Q10 The Mongolian courts will apply an express choice of a foreign law in a loan or sale of goods contract between sophisticated companies, even though the contract has no connection with the foreign jurisdiction, but subject to Mongolian public policy and mandatory statutes.

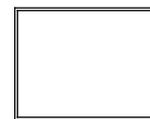
True



False



Can't say



Comment:

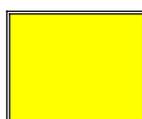
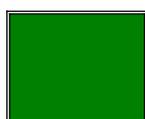
According to Article 540.1 of the Civil Code, foreign laws, legislative acts or internationally accepted practice not contradicting Mongolian law or the international treaties to which Mongolia is signatory may apply. In general, Mongolian law allows the parties to the contract to freely choose the law governing the contract. When applying foreign law, Mongolian courts must ascertain their legal framework within the context of their official interpretation and practice. Mongolian courts may request the Ministry of Justice, other competent authorities in Mongolia or abroad to provide legal assistance and interpretations as well as to invite experts in order to ascertain the contents of foreign law. Parties to the contract have a duty to issue court documents defining the respective content of foreign law. Mongolian law is applied in case it is impossible to ascertain foreign law content despite the best effort.

Foreign jurisdiction clauses

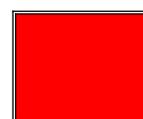
Generally Many contracts confer jurisdiction, sometimes exclusive, on the courts of a foreign jurisdiction, usually accompanied by a choice of foreign governing law.

Q11 The Mongolian courts will generally uphold a clear submission in a loan or sale of goods contract between sophisticated companies to the exclusive jurisdiction of the courts of a foreign country, even if there is no connection between that country and the contract.

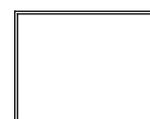
True



False



Can't say



Comment:

Under the Civil Procedure law, Mongolian courts generally uphold a clear submission in a loan or sales of goods contracts between sophisticated companies to the exclusive jurisdiction of the foreign country, save

for some matters over which Mongolian courts have exclusive jurisdiction (“**Exclusive jurisdiction**”). These include:

- proceedings in relation to immovable property located in Mongolia;
- proceedings in relation to the registration, incorporation, and liquidation of legal entities in Mongolia;
- proceedings in relation to registrations effectuated by governmental authorities;
- Proceedings in relation to the registrations of patents, trademarks, and other intellectual property made by the relevant Mongolian governmental authority; and
- proceedings in relation to court decision enforcement actions conducted in Mongolia.

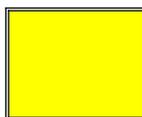
However, Mongolian courts will not enforce foreign court judgments unless Mongolia and the country in which the judgment was issued have a legal assistance treaty for the reciprocal enforcement of court decisions.

Arbitration recognition

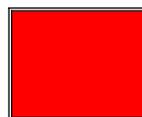
Generally Contracting parties, especially in trading and construction contracts, but less so in loan contracts, wish to submit disputes to arbitration, sometimes in a foreign country. The resulting award is often enforceable locally under the New York Arbitration Convention of 1958, to which most countries have adhered.

Q12 In Mongolia, the courts allow sophisticated contracting parties to submit contract disputes to a foreign arbitral tribunal to the exclusion of the Mongolian courts.

True



False



Can't say



Comment:

According to Civil Procedure Law and the Arbitration Law, parties may mutually agree in their contract to resolve their disputes by arbitration except claims which fall into the Exclusive Jurisdiction of Mongolian courts. Additionally, Mongolia is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958. However, Mongolian courts will only enforce foreign arbitral awards obtained in a member country and is in relation to commercial disputes.

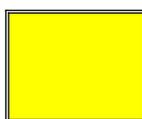
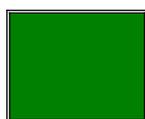
Thus, the parties may submit contract disputes to a foreign arbitral tribunal to the exclusion of the Mongolian courts except disputes which fall into exclusive jurisdiction of Mongolian courts.

Class actions

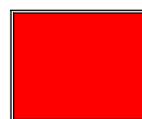
Generally In some countries, such as the United States, a plaintiff can be authorised by the court to sue on behalf of all claimants who are similarly situated. Claimants have to opt out or they are bound.

Q13 In, class actions where the class is bound if they do not opt out are generally not allowed.

True



False



Can't say

**Comment:**

The class action is not available in Mongolia, because the context of class action is not stated in Mongolian laws. However, pursuant to Article 27 of the Civil Procedural Law, it is possible for several plaintiffs or several defendants to jointly participate in case proceedings. And it is also possible to entrust one of the co-plaintiffs to represent them only if the person is considered that he/she does not have conflict of interests so that it is not necessary for all of them to participate in case-proceedings.

If the plaintiff does not have written confirmation to represent his/her co-plaintiffs or if plaintiffs did not entrust that person to represent them in the court, that person will be replaced with the one who has authority to rightfully represent the rest of the plaintiffs in case proceedings as required under Article 28.1 of the Civil Procedure Law.

Other indicators

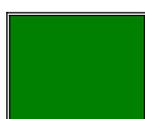
Other indicators not covered by this survey include contingent costs, loser pays the costs of the winner, prejudgment freezes or arrests, appeals, scope of disclosure (discovery of documents), efficacy of waivers of sovereign immunity and the enforceability of foreign judgments.

Real property**Ownership of land**

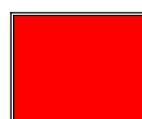
Generally In most countries, nationals can own land absolutely and are not restricted simply to leases for a limited term or simple rights of occupancy. However, in some jurisdictions, absolute ownership of land is not available to nationals or local corporations. If this is so, then the jurisdiction would be coloured green if citizens can lease land for a very long term without material restrictions, such as 999 years, and can also mortgage or sell the land or give it away or bequeath it under their wills without official consent because the ownership is a close proximate of absolute ownership. If on the other hand citizens are entitled only to a lease of, say, 70 years or less, or to similar rights of occupancy, and if there are limitations on dealing with the land without official consent, such as mortgaging, selling or bequeathing it, then the jurisdiction would be red.

Q14 In Mongolia nationals and local corporations are entitled to own land absolutely.

True



False



Can't say



Comment:

According to Article 6.3 of the Constitution of Mongolia, the State may give for private ownership plots of land, except pastures and areas under public utilization and special use, only to the citizens of Mongolia. Thus, only Mongolian citizens can own limited area of land for family and private holdings free of charge. Furthermore, citizens above the age of 18 and legal entities may obtain possession or use rights in land for a specific purpose and time period subject to contract signed with the relevant land authority. The transfer of such land rights may only be made upon prior governmental approvals.

In Mongolia the land, its subsoil, forests, water, fauna, flora, and other natural resources in Mongolia shall belong exclusively to the people and is under the State’s protection. As mentioned, Mongolian citizens are entitled to own land for family and private holdings. This enables them to sell, exchange, inherit, gift, mortgage by on their own within the scope and limitation established by the relevant laws. According to Article 29.1 of the Land Law citizens may allow others to possess or use the owned land along with its purposes, for a certain period, with the permission of the relevant land authority. These transfers however can only be undertaken between Mongolian citizens, legal entities and organizations and in such event the parties are obligated to register their transfer of ownership to authorized state organization.

As for amount of fees to be charged for transfer of licenses to others, the government of Mongolia sets its amount as stated under Article 36.4 of the Land Law and presently the amount of money required to be paid is not that high (up to 35,000 tugrugs (US\$17.1) based on the location).

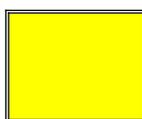
Security of land title and land registers

Generally Many jurisdictions improve the security of title to land by a registration system which, although not necessarily state-guaranteed, has high reliability. An example is the Torrens system developed in Australia and used in many other countries, eg Canada and England.

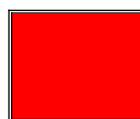
Most countries in the civil code groups do not have a title register but instead require documents concerning land to be notarised and filed at the registry so that they can be searched. The United States does not generally have title registers for land although there may be mortgage registers. They rely on title registration companies which provide title insurance.

Q15 Most land in Mongolia is registered in a land register which records most major interests in land, eg ownership, mortgages and longer-term leases.

True



False



Can't say



Comment:

All land rights are registered in Mongolia with the relevant land and cadastral office as well as property rights registration office.

Under Article 26.2 of Land Law, the relevant cadastral authorities must register all data such as the national register of land in all classifications of the unified land territory, quantitative registration information; quality of land; evaluation; fees; changes of ownership, possession or use and land protection measures

The property rights which the registration office records are mortgages, liens, and long term leases.

Land development restrictions

Generally Many countries restrict development and the change of use of land and require permits to be obtained for any development or change of use.

Q16 In Mongolia, apart from environmental controls (dealt with later), the control of commercial development and the change of use of land is very light and, where required, permits are quick and cheap to obtain.

True			False	Can't say
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Comment:

Because of the yearly urban development and budget plans approved by the city officials changing the purpose of the possession or use land right can be challenging, and it may take months or years. In addition, obtaining permits for commercial development on a land requires many different permits from various governmental authorities, which are very time consuming to obtain. Therefore, it cannot be said that the change of the use of land and the permits are easy to obtain.

Other indicators

Other indicators not surveyed include transfer costs, stamp duties and lessee protections.

Employment law

Generally The indicator here is whether it is easy or hard to hire and fire employees. The measures include high minimum wages, maximum hours, minimum holidays, maternity rights, equal pay for equal work (non-discrimination) and severance costs.

Q17 In Mongolia, there are few controls on hiring and firing employees or on the terms of employment.

True			False	Can't say
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Comment:

The Mongolian Labor Law may be considered as employee friendly. An employer is obliged to conclude employment agreement in writing with an individual, and shall be obliged to deliver a copy thereof to the employee. It is prohibited to conclude agreements other than employment agreement for a permanent workplace. According to Article 21 of the Labor Law the following basic terms must be included in an employment agreement:

- Job title or position name
- Job duties specified in the position description

- Amount of basic or position salary
- Labor conditions

An employer is required to conclude a labor agreement for an indefinite time in a permanent position. However, Article 23.2.3 of the Labor Law authorizes the parties upon mutual agreement to conclude a labor agreement for a definite time. Furthermore, employers are obligated to open social and health insurance accounts for each employee on the date of the employment agreement and make entries for monthly social and health insurance premium payments in the prescribed procedures. In addition, there might be collective bargaining agreements between the employer and the relevant labor union, which might add additional restrictions in hiring and firing employees.

An employer may only terminate an employment agreement on the grounds allowed under the Labor Law. These include:

- The organization or its branches/units are dissolved, a work position is terminated, or the organization is cutting its work force.
- It is determined that the employee can no longer fulfil the requirements under the job description due to the lack of professional skills or physical health.
- The employee reaches the age of retirement, which is 60 under Mongolian Law.
- The employee has violated internal rules at least twice or has seriously violated certain provisions in the employment contract which call for immediate termination of employment under the employment contract.
- An employee who is responsible for moneys and other properties has committed acts against or failed to act in the interests of his/her employer.
- The employee is elected or is promoted to a different position.
- Other basis for termination as stated in the contract with an employee with unique talent or high skills (Note: This type of contract is usually concluded with the employees at senior positions of the company such as CEO, CFO etc.).

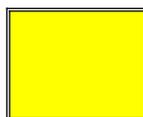
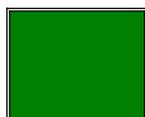
Under most of the above scenarios the fired employee is entitled to at least a month pay.

Therefore, it can be said that the Labor law of Mongolia generally protects the rights of employee by imposing limits and restrictions upon firing employees but there are few restrictions in hiring an employee.

Environmental restrictions

Q18 In Mongolia the rules governing the environment and liability for clean-up are very light and relaxed.

True



False



Can't say



Comment:

In Mongolia the Law on Environmental Protection and the Law on Environmental Impact Assessment are the main laws which regulate the protection and reclamation of the environment. Additionally, there are laws

on water pollution and air pollution. According to Article 25.1.2 of the Law on Environmental Protection the citizens and legal entities which are using resources for industrial purposes are responsible for performing reclamation and developing the area for the purpose of maintaining the environmental balance. Also according to Article 31.1.9 of this law the legal entity is responsible for remedying any damages it caused to the environment through its activities, must inform the relevant organization and pay the indemnity that is imposed by the state control inspector. Therefore, Mongolia has quite strict rules that protect the environment.

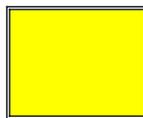
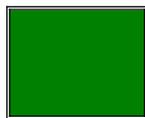
Openness to foreign business

Generally These indicators measure the degree to which the country is open to foreign businesses. The indicators are quite generic and therefore subjective.

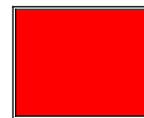
Foreign direct investment

Q19 In Mongolia foreigners may freely own and control local companies outside protected industries, such as media, banks and defence.

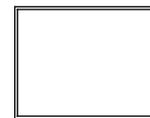
True



False



Can't say



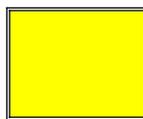
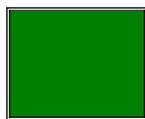
Comment:

There are no restrictions on foreigners owning or controlling local companies as long as they operate in the area that is not prohibited by law in Mongolia. However, if a foreign state owned company wants to acquire a stake of 33% or more of a company operating in the mining, banking and finance, and media and communications sector, it must receive prior approval from a governmental agency.

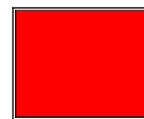
Exchange controls

Q20 In Mongolia, there are no exchange controls. Businesses may therefore have foreign bank deposit accounts in foreign currency, borrow in foreign currency and repatriate profits to foreign shareholders in foreign currency.

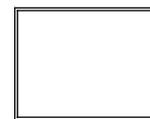
True



False



Can't say



Comment:

It is not prohibited by the law of Mongolia for legal entities to have a bank deposit account in foreign currency. If the citizens and resident of Mongolia position assets, issue loans and aid in foreign country, they will have to register their transaction with the minister of finance. Bank loans in foreign currency, which is issued by a foreign country to legal entities, citizen, shall be registered with the Bank of Mongolia.

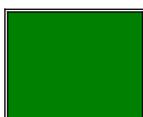
The government of Mongolia, the Bank of Mongolia and the Financial Regulatory Commission take control in accordance with their respective authority, of transactions of legal entities or organizations.

Foreign shareholders may transfer their profit of dividend payments which is income from the economic unit of Mongolia, to a foreign country in foreign currency.

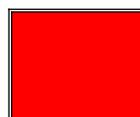
Alien ownership of land

Q21 In Mongolia, foreign-controlled companies have the same rights as nationals or residents to own or lease land without a permit.

True



False



Can't say



Comment:

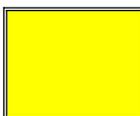
Under Mongolian law, there are three different types of land rights: ownership, possession right, and use right. In Mongolia, all land is owned by the state unless it was transferred to ownership of a citizen for residential purposes. Thus, domestic or foreign legal entities or foreign nationals do not have the right to own land in Mongolia. However, Article 44.5 of the Land law enables foreigners and foreign controlled companies to receive land use rights. In addition, there are no permits required to simply obtain a land use right by the foreign-controlled company; however, permits may be required to develop the land etc.

Application of the law

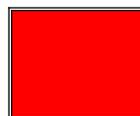
Generally These indicators deal with the application of the law, as opposed to what the law actually says. They are bound to be generic and subjective, a matter of impression.

Q22 In Mongolia, the higher courts usually treat big businesses as fairly as they treat individuals and do not favour local interests over foreigners.

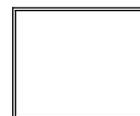
True



False



Can't say



Comment:

Article 14.1 of the Constitution of Mongolia provides that “All persons lawfully residing within Mongolia are equal before the law and the court” and in article 14.2 specifies “No person shall be discriminated against on the basis of ethnic origin, language, race, age, sex, social origin and status, property, occupation and post, religion, opinion or education. Everyone shall have the right to act as a legal person.” So the judge is being an independent and solely conforming in law. The Constitution of Mongolia is a main law which regulates basic relations of society, however other laws contain main principles of the Constitution of Mongolia. For example:

- **Article 1.2 of the Civil Code of Mongolia:** Civil legislation shall be based on the principle of ensuring equality and autonomy of participants in civil legal relations, sanctity of their property, contract freedom, non-interference into personal affairs, unlimited exercising of civil rights and fulfillment of obligations, having violated rights restored and court protection.
- **Article 4.1 of the Civil Procedure Code of Mongolia:** The civil court procedure (hereinafter “court procedure”) is grounded on the principle that, no one shall be discriminated against on the basis of ethnic origin, language, race, age, sex, social origin and status, property, occupation and post, religion, opinion, education or other condition and legal entity shall be discriminated by reason of its wealth or power.
- **Article 189.1 of the Civil Procedure Code of Mongolia:** When court of Mongolia discussing a civil case that related to the foreign citizen, legal entity or stateless person, they have a same right of citizen and legal entity of Mongolia.

In addition, Article 14.1 of the International Covenant on Civil and Political Rights (1966) provides that “All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law”. Mongolia has signed this Covenant in 1968 followed by enforcement in 1976.

However, in practice, decisions may be influenced by their subjective views; therefore, higher courts may or may not treat big businesses as fairly as they treat individuals and do not favour local interests over foreigners.

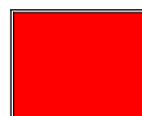
Costs and delays of commercial litigation

Q23 The costs and delays of commercial litigation in the higher courts in Mongolia are not considered materially greater than in other comparable countries.

True



False



Can't say



Comment:

According to the Civil Procedure Law, plaintiffs must pay a stamp duty when filing a claim in accordance with the amounts specified under Article 7 of the Law on Stamp Duties. According to this law the following shall be collected by the courts:

- Claims for damages for tangible assets:

Amount of claim in MNT	Duty in MNT
0-130 000	4550
130 001-650 000	4550 plus 3 percent of the amount of the claim that exceeds 130 000.

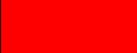
650 001-1 300 000	20150 plus 2.4 percent of the amount of the claim that exceeds 650 000
1 300 001-13 000 000	35750 plus 1.6 percent of the amount of the claim that exceeds 1300 000
13 000 001-and above	222950 plus 0.5 percent of the amount of the claim that exceeds 13 000 000

- MNT 70,200 in stamp duties for claims arising out of damages for intangible property.
- MNT 100 per page for the reissuance of court documents, court decisions, copies of case evidence, court decrees, sentencing documents and invoices.

Under the Civil Procedures Law, a case must be resolved within 60 days from the date of its filing (can be extended once for up to 30 days by the conference of judges of the particular court) at the courts of first instance level. For the appellate court level, an appealed case must be resolved within 30 days, and as for the Supreme Court of Mongolia cases shall be reviewed and resolved within 30 days. However, in practice, it usually takes much more time than the amount of time stated above due to various procedural tools litigants may use.

Overall ranking

This overall ranking is achieved by a survey of all the rankings as shown in this table:

	Question	Rating
1.	Insolvency set-off	
2.	Security interest	
3.	Universal trusts	
4.	Director liability for deepening insolvency	
5.	Financial assistance to buy own shares	Can't say
6.	Public takeover regime	
7.	Exclusion of contract formation	
8.	Termination clauses	
9.	Exclusion clauses	
10.	Governing law clauses	
11.	Foreign jurisdiction clauses	
12.	Arbitration recognition	
13.	Class action	Can't say
14.	Ownership of land	
15.	Security of land title and land registers	
16.	Land development restrictions	
17.	Employment law	
18.	Environmental restrictions	
19.	Foreign direct investment	
20.	Exchange controls	
21.	Alien ownership of land	
22.	Court treatment of foreign big business	
23.	Costs and delays of commercial litigation	Cant' say

True



False



**Can't
say**



Profiles

The research work made by the following students:



Dulguun Khishigtumur is a fifth year student of LL.B at the School of Law, National University of Mongolia. Her research area is in international private law and criminal law. She is a member of the debating club and criminology club at National University of Mongolia and has worked as a board member of both clubs. In 2015 Dulguun attended a Humanitarian Law Moot Court Competition which is organized by the International Red Cross Committee and was selected as a Best Memorial to Defendant. In 2016 she also attended an International Forum for Law School Students which is organized by the Law School of Renmin University, China. Dulguun hopes to study for her LL.M in European countries or in the USA. She hopes to be a good international lawyer in the future. She can be reached at h_dulguun@yahoo.com



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Education and other scholarly activities

- 1999 - LL.B in international law at National University of Mongolia School of Law, Mongolia
- 2002 - LL.M on Comparative Law and Political Science in Nagoya University, Japan
- 2008 - LL.D, “Corporate governance in transitional countries: accountability and transparency-A case of Mongolia” Nagoya University, Japan
- Visiting Research Fellow, National University of Singapore Centre for Asian Legal Studies
- Visiting Scholar, University of Washington Asian Law Center, USA
- Foreign visiting scholar, Nagoya University Graduate School of Law, Japan
- Visiting Scholar, National Taiwan University College of Law, Taiwan

Professional and governmental responsibilities

- Chair, Department of Private Law, National University of Mongolia School of Law
- Member/Administrative Law Judge, Supervisory Board of Financial Regulatory Commission of Mongolia (appointment by the Parliament)
- Member, the Judicial Qualifications Committee of Mongolia
- Arbitrator, Mongolian and International Arbitration Center, Mongolian Chamber of Commerce and Trade
- former Advisor on Legal Policy to the Minister of Mining, Government of Mongolia
- former Head of the Committee, Mongolian Bar Association

Representative Publications

Law and Policy on Mineral Resources in Mongolia: Seeking Inescapable Stability in EMERGING ISSUES IN SUSTAINABLE DEVELOPMENT: INTERNATIONAL TRADE LAW AND POLICY RELATING TO NATURAL RESOURCES, ENERGY, AND THE ENVIRONMENT (Chapter 3), Matsushita, Mitsuo, Schoenbaum, Thomas J. (Eds.), Springer, 2016 ISBN: 978-4- 431-56424-9; The Fledgling Courts and Adjudication System in Mongolia, in ASIAN COURTS IN CONTEXT (Chapter 9), Jiunn-rong Yeh, Wen-Chen Chang (Eds.), Cambridge University Press, 2014 ISBN: 9781107066083; モンゴル法～企業進出における論点と解説, 国際商事法務 (2015年3号) Vol.43 No.3 (通巻 633)

Practitioner's expert panel



Zoljargal Dashnyam, Managing Partner GTS Advocates LLP

Zoljargal is the leading expert on finance and capital market in Mongolia. Further, Zoljargal has extensive experience in debt capital markets, corporate law including mergers and acquisitions, private equity and foreign direct and indirect investments. Zoljargal's portfolio is extensive and her experience in cross border finance transactions is unparalleled.

The Legal500 describes Zoljargal as highly recommended while Chambers and Partners Asia Pacific designates her as leading lawyer in 2011-2016 client's guide to the Asia Pacific's Leading Lawyers for Business.

She is fluent in Mongolian, English and Russian.

Zoljargal is a member of the Mongolian Bar Association and admitted to practice law in Mongolia.

Academic Qualifications:

Bachelor of Arts in International Law from the School of Law of the National University of Mongolia, 2001
Masters in Business Administration in Finance, Oklahoma City University, USA 2004. In addition, she has completed various professional trainings on advanced loan documentation and PPP concepts and contracts at reputable international legal training institutions.

About GTS Advocates LLP

GTS is recognized internationally and domestically as one of the leading local law firms in Ulaanbaatar, Mongolia. What distinguishes GTs is the hard working team of lawyers who are always on the offense for knowledge and greater experience. The firm, which celebrated its 15th anniversary in 2014, has risen in the rankings to a **Band One firm for Mongolia focused in General Business Law** in 2016. GTS represents multinational corporations, international investment banks and financial institutions, real estate developers and EPCM service providers from North America, Australia, Europe and Asia as well as Mongolian companies and governmental bodies for both domestic and cross-border matters.

GTS provides a full range of legal advisory services focalized in five key areas. The areas include corporate and M&A, finance and capital markets, projects (encompassing mining, infrastructure, and energy), commerce and real estate, and lastly, litigation and arbitration. As a local law firm with wide-ranging experience with far reaching clients, GTS has cultivated a consistent and instinctive pragmatism that is sensitive for cultural, social, and legal differences. GTS has worked on intricate and demanding cross border transactions successfully, as we always meet clients' needs by understanding the industries in which they operate. GTS prides themselves on their international outlook and our local insight into the Mongolian legal system when they navigate through the customary ways of conducting business in one of Asia's most exciting emerging markets.

Allen & Overy Global Law Intelligence Unit

The Allen & Overy Global Law Intelligence Unit is part of the international firm of Allen & Overy and produces papers, surveys and other works on cross-border and international law within the field of its practice. Allen & Overy is one of the largest legal practices in the world with approximately 5,000 people, including some 512 partners, working in 40 offices worldwide. For further information, please contact Philip Wood, philip.wood@allenoverly.com or Melissa Hunt, melissa.hunt@allenoverly.com.

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Philip Wood is one of the world's leading comparative lawyers and practitioners. He has written about 18 books on financial law. He was formerly a partner and head of the banking department of Allen & Overy. For many years he has been developing innovative and pioneering methodologies for assessing legal jurisdictions and has produced a book of maps of world financial law. His university textbook on the Law and Practice of International Finance has been translated into Chinese and a Japanese version is forthcoming.

Melissa Hunt is project director of the Intelligence Unit and is responsible for the management of the project. She carries out other work for the Intelligence Unit, including the preparation of tables covering rule of law and legal infrastructure risks in the jurisdictions of the world.

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