

RECENT AMENDMENTS TO THE BANKING LAW OF MONGOLIA¹

On 28 January 2021, the Parliament of Mongolia enacted the Law on Amendments to the Banking Law of Mongolia² along with its implementation guidelines (the “**Amendment**”) with effect from 25 February 2021. The Amendment is aimed at decentralization of commercial bank’s ownership through efforts to ensure adequate balance in the ownership-management-control. This policy change is in line with the State Monetary Policy for 2020³ and the National Program of Developing the Financial Market of Mongolia to 2025⁴.

We will briefly introduce the most notable changes to the Banking Law as follows:

- **Change in the definition of a systemically important banks**

The Banking Sector Stability Law, effective from 22 June 2018⁵ defined the systematically important bank to be a bank which total assets has accounted for more than 5% of the total assets of the banking system for the last 6 months. Now, the Amendment introduced a new approach in defining a systematically important bank whereby the Bank of Mongolia (“**BoM**”) is authorized to determine it considering the bank’s assets, debt ratio, total transaction flow holding in the payment system, banking activities and the state of relevancy in the finance system as a whole.

- **New limitation on the shareholders of banks**

The amount of shares and securities owned by any person individually or jointly with its affiliated person in the bank (*except for a special purposed banks and the state-owned shares in the re-capitalized banks*) is set not exceed 20 percent of a total issued shares of the bank. The banks must meet this requirement within 31 December 2023. Besides, the bank shareholders are now prohibited from creating security interest over its shares and securities holding in the bank.

- **New requirements for the corporate form of banks**

Article 4.1 of the current Banking Law provided an option for banks to be established and operate as a “*limited liability company*” or “*a joint stock company*” in respect of a corporate form. But the Amendment now requires any and all commercial banks to operate as joint stock companies with effect from 30 June 2022. Accordingly, the banks must be re-organized as follows:

- a) Banks named as a systematically important bank by the BoM are to trade its common shares by way of organizing initial public offering⁶ (IPO) in the securities market and to operate in the form of an open joint stock company; and
- b) Other banks are required to operate in the form of a closed joint stock company.

- **Change in the ranking of the claims in the event of bank’s liquidation**

The Amendment introduced an expanded list of claims and their rankings in the event of a bank’s liquidation in Article 73 of the current Banking Law. For instance, (i) the compensations for bank’s employees now rank higher than those of BoM receiver and his/her operational expenses, (ii) the

¹ Official print of the Law on Amendments to the Banking Law of Mongolia enacted by the Parliament on 28 January 2021 has not been published yet as of this update.

² <http://forum.parliament.mn/projects/10926>

³ The State Monetary Policy of 2020 adopted under the Parliament Resolution No. 98 of 2019

⁴ National Program to Develop Financial Market of Mongolian to 2025 adopted under the Government Resolution No. 299 of 2017

⁵ <https://dblaw.mn/mongolia-law-on-re-capitalisation-of-commercial-banks-with-public-funds/>

⁶ Article 4.1.21 of the Securities Market Law of Mongolia, “public offer” means the making of an offer to the public through any media channels for the sale of securities to 50 or more persons through an institution undertaking securities trading in accordance with procedures issued by the Financial Regulatory Committee.

uninsured savings and current bank account funds of individuals and legal entities now rank higher than those insured by the insurer, and (iii) Government's claims now rank higher than those owed to BoM and the secured, unsecured creditors, etc.

Conclusion

As per the Amendment, the BoM will now consider each and every bank and newly determine the systematically important banks.

Banks will each have to adopt a re-organization plan to become a joint stock company and comply with the 20 per cent ceiling limit per shareholder. The plan must be submitted to the BoM and the Financial Regulatory Committee (the "FRC") within 1 July 2021 for review and approval.

Accordingly, the BoM and the FRC are now expected to adopt joint procedures for the re-organization and changes in the share capital and shareholding structure of banks in accordance with the Amendment.

Following the re-organization, the bank's board of directors must change to have at least 9 members with least one third of which shall be an independent member. Also, the banks are now responsible for filing detailed information disclosure to the securities settlement and depository body about its shareholders.

With this ongoing legislative efforts, significant changes will take place in the Mongolian finance industry expected to lead to furtherance of the securities market development.

It is needless to say that profound collaboration between the BoM and the FRC will play key role in implementing these changes and reforms and achieving the expected results.

Finally, the expanded ranking of the creditors' claims is certainly a significant step to increase retail and corporate customer's confidence in the banks while there is still uncertainty around having the Government claims ranking higher than those other creditors.

For more information on the Amendment as well as the banking legal framework in Mongolia, please contact us.