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MONGOLIA BUSINESS ENVIRONMENT AND COMPETITIVENESS ASSESSMENT REPORT

Implementing business
environment reforms for
economic recovery



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December 2022

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GLOSSARY

AFCCP	Authority for Fair Competition and Consumer Protection
ASEAN	Association of South East Asian Nations
AU	Accelerator Unit
DU	Delivery Unit
EAP	East Asia and Pacific
EIP	Eco-Industrial Parks
ES	World Bank Enterprise Survey
FTA	Free Trade Agreement
GASI	General Authority for State Inspections
GASR	General Authority for State Registration
GDP	Gross Domestic Product
GDT	General Department of State Taxation
GIZ	The Deutsche Gesellschaft für Internationale Zusammenarbeit
GoM	Government of Mongolia
GSP	Generalized Systems of Preferences
GVC	Global Value Chains
IFC	International Finance Corporation
ILO	International Labour Organization
IMF	International Monetary Fund
IP	Industrial Park
IPC	Investor Protection Council
IPR	Intellectual Property Rights
IPS	Investment Policy Statement
IRM	Investment Road Map
LPI	Logistics Performance Indicator
LERO	Legal Entities Registration Office
MED	Ministry of Economy and Development
MDDC	Ministry of Digital Development and Communications
MOF	Ministry of Finance
MOJHA	Ministry of Justice and Home Affairs
MPAA	Mongolian Professional Advisor Association
NDA	National Development Agency
NGO	Non-Government Organization
NLIS	National Land Information System
NRP	New Recovery Policy
PPD	Public-Private Dialogue
PPP	Public-Private Partnership
SIRM	Systemic Investor Response Mechanism
SME	Small- and Medium-Sized Enterprises
SMEDA	SME Development Agency
SPS	Sanitary Phytosanitary Regime
UNIDO	United Nations Industrial Development Organization
UBI	Unique Business Identification
WTO	World Trade Organization
WBG	World Bank Group

FOREWORD

While the negative spillovers from the COVID-19 pandemic, ensuing border frictions with China, supply chain disruptions exacerbated by the Russian invasion of Ukraine, and rising geopolitical tensions may have dented progress made in financial and private sector development in Mongolia, one feels lessons have been learned on the importance of having a favorable business and investment climate to support strong economic recovery and resilience. One also sees greater motivation by the Mongolian authorities and policymakers to deepen reforms and open more opportunities for achieving systemic impact and transformational change. The objective of this report is to provide an assessment of the business environment for private sector development and present a set of recommendations on improving the impact of the government's New Recovery Policy on economic growth and recovery through entrepreneurship, increased equality of opportunities among firms and resilience of the economy to shocks in the long term. While private sector development is driven by many factors including efforts of private entrepreneurs, it is nonetheless affected by a range of government services including policies and regulations establishing the business environment. In turn, this influences dynamics between firms and investment decisions on whether to enter new markets, launch new products, or adopt new technologies. Mongolia has a lot to gain by advancing business and investment climate reforms from the standpoint of private sector development and economic diversification.

However, despite significant reforms in the business environment in recent years, many firms and the economy are yet to reap the benefits. This is partly because business and investment climate reforms in Mongolia, like in many emerging economies, still face the challenge of continuously modernizing and simplifying its business environment as well as limited resources involved in sustaining coordination and reforms of complex business laws. It is crucial for policymakers to stay the course when tackling business environment reforms – ensuring policy coherence and minimizing implementation gaps throughout the transition phase while modernizing policies and legal frameworks in the medium to longer-term. Also, these same concerns when unanswered tend to disrupt and reduce incentives for both domestic and foreign investment needed to enable firms to upgrade or reorient activities to become competitive and integrate into global value chains.

This report is a call to arms for a new approach to business and investment climate reform and private sector development in Mongolia. First, focus on increasing competition amongst firms to foster the necessary innovation pushing firms towards the frontier and exploiting possibilities that new business processes, products, markets, and technologies can offer. Fostering competition implies reforming restrictive regulations, discretionary application of the

regulatory frameworks or ineffective competition policy enforcement. Addressing government regulations and practices that restrict market competition or weaken the enforcement of competition policies is necessary to generate an enabling investment climate. Coordinating policy efforts to improve the business environment and promote contestable and open markets is key to creating incentives for entrepreneurship and increasing pressures to innovate and invest. Second, is the focus on government services key for functioning markets. This focus offers a potentially positive perspective on the role of government in creating a conducive business and investment climate in Mongolia. Focusing on improving the quality of government services such as judicial services and firms' experience with the courts when it comes to commercial matters imply looking beyond existing institutions and delivery channels for resolution of commercial disputes. This might also imply new approaches including greater sensitivity to size when handling claims, automation of workflows using digital tools to enable greater interoperability among government ministries, agencies, and departments as well as the court system. Third, a focus on reducing barriers to international trade and facilitating the domestic manufacturing of goods to boost non-mining productive sectors and support foreign investment. This refers mainly to Mongolia becoming more attractive to foreign and domestic investments and allowing the country to diversify from investments in the extractive sectors. The financial sector also has a crucial role to play in financing investments needed by firms.

Importantly, it is a call that recognizes that the business environment can influence macroeconomic performance, resilience towards negative shocks and economic growth. It argues that to reap the benefits that business and investment climate reforms has to offer, requires recognizing the politics of private sector development and creating a domestic constituency of stakeholders, and recognizing that progress on business environment reforms is inextricably linked to commitment to macroeconomic stabilization. Business environment reforms in Mongolia demands looking beyond the negative spillovers from the COVID-19 pandemic and the resulting difficulties of the last three years, and towards the structural challenges and opportunities offered for deeper reforms. The main messages developed in this report must be translated into a country business environment reform program complete with tools for communicating reforms and supported by complementary measures facilitating entrepreneurship and accelerating economic diversification.

Andrei Mikhnev
World Bank Country Manager for Mongolia

ACKNOWLEDGEMENTS

The acknowledgement for support and contributions to this December 2022 edition of the report, revised from the June 2022 edition, should be read together with the acknowledgements made in relation to the earlier edition as indicated below. The former thanks continue to be relevant.

The revisions to the the June 2022 editon of the report have been prepared by a World Bank team led by Thilasoni Benjamin Musuku (Mongolia Country Sector Program Coordinator and Senior Financial Sector Specialist) and comprising Javkhlan Bold Erdene (External Affairs Associate), Erdenebulgan Ganbat (Consultant) and Sukhchimeg Tumur (Team Assistant). Advise and support as sought and received from members of the study team that prepared the June 2022 edition especially Philippe de Meneval, Alessio Zanelli, Monica Paganini and Jigjidmaa Dugeree as well as the partners and associates at legal firm Melville Erdenedalai LLP. The collaboration of the Cabinet Secretariat and National Commission on State Productivity is greatly appreciated. The translation assistance of Nergui Dorj is appreciated. Graphic work and typesetting was provided by Khanui Luvsandorj.

The following were the acknolwdgements in the June 2022 editon of the report: The report was prepared by a World Bank Group led by Philippe de Meneval and comprising (in alphabetical order) Iwona Maria Borowik, Jigjidmaa Dugeree, Xavier Forneris, Lars Grava, Narantuya Jambalsuren, Monica Paganini, and Alessio Zanelli. The team was assisted by Sukhchimeg Tumur. Legal input was provided by the law firm Melville Erdenedalai LLP, its partners and

legal associates, in particular Bolormaa Gulguu.

The peer reviewers were Vincent Palmade (Lead Economist, World Bank), Ganbaatar Jambal (Senior Consultant, World Bank), and Sihab Azhar (Senior Operations Officer, IFC).

Several government counterparts who generously shared their time and insights were appreciated, including from the Cabinet Secretariat and the Acceleration Unit, the Ministry of Justice and Home Affairs, the Ministry of Economy and Development, the Ministry of Digital Development and Communications, the Authority for Fair Competition and Consumer Protection (AFCCP), the General Authority for State Inspections (GASI), the Parliament Task Force for the Permit Law and the SME Agency.

Finally, the team was grateful to World Bank and IFC colleagues, private sector representatives, representatives of development partners engaged in Mongolia and civil society leaders who generously shared their time and valuable insights during the course of the development of this body of work.

Both editons of the report were prepared under the overall guidance of World Bank Group managers Zafer Mustafaoglu and Andrei Mikhnev.

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I

INTRODUCTION

- a. Scope of the Technical Assessment**
- b. Summary table of short and medium-term recommendations**

a. Scope of the Technical Assessment

1. Mongolia's economic growth performance has been impressive—though volatile—in the last decade.

Mongolia is the least densely populated country in the world with 3.4 million people inhabiting a territory four times the size of Germany. It has demonstrated significant success in reducing poverty and elevating human well-being since the early 1990s¹. Fueled by the extractives industry and international commodity prices, the economy has however become highly dependent on commodities exports, especially coal and copper such that one-quarter of Mongolia's gross domestic product (GDP) and nearly 90 percent of export revenue are derived from the extractives industry with weak linkages between mining and the remainder of the economy.² This dependence exposes the country to large swings in commodity prices. In addition, Mongolia faces a job challenge—particularly for its youth even before the COVID-19 pandemic—with its high and rising unemployment and falling labor force participation rates, notably for women. The jobs challenge arises from a disconnect between the sources of economic growth and the sources of jobs. The employment share of the mining sector—the most productive sector and a key driver of economic growth—has remained stagnant at below five percent of the workforce for the past twenty years. In the meantime, a steady transition of employment out of agriculture—from about half of all jobs in 2000, to about a third in 2010, and a fourth in 2019—has not been met by employment growth in high productivity manufacturing and services sectors.

2. Despite significant progress, Mongolia needs to strengthen the business enabling environment for a level-playing field and a more productive private sector beyond mining.³

The 2019 Enterprise Surveys—results of which are detailed in Annex 1—found political instability, the tax regime, and access to finance as the top three obstacles for firms (35.2, 17.2 and 15.9, respectively).⁴ Although Mongolia's corpus of regulations is relatively strong and modern in many areas,⁵ there is often a significant implementation gap to better

enforce and monitor what is already on the books, while access to regulatory information, licenses, and finance is uneven. The 2020 Business climate survey undertaken by the National Chamber of Commerce and Industry of Mongolia showed that all size businesses encounter difficulties in obtaining necessary permits to start a business due to heavy bureaucratic processes, the numerous steps and signatures required, gaps between laws and regulations, and other technical requirements. Private sector managers in Mongolia spend three times more time dealing with government regulations than in other parts of East Asia and Pacific Region. Regulations are frequently changing, and the playing field is uneven and biased in favor of State Owned Enterprises (SOEs). Insufficient investor protection mechanisms and the lack of a stable and transparent regulatory environment undermine investors' confidence. Foreign investors also indicate that opening a business in Mongolia is more difficult compared to domestic investors. A renewed regulatory reform agenda would strive to simplify, automate, digitalize and render the public bureaucracy fairer, more transparent and predictable, and more conducive for enterprises.

3. The Government of Mongolia (GoM) has recognized the need for a more conducive investment climate and implemented several significant reforms.

The promotion of private sector development is a central element of the GoM's economic policy. Reforms of the business environment were implemented incrementally during the past twenty years, with progress in complex areas such as simplifying inspections with the establishment of the central authority for inspections (GASI), eliminating the minimum capital requirement for establishing domestic limited liability companies, or allowing mobilizing movable collateral to boost access to finance. The adoption of the Law on Tangible and Intangible Movable Property Pledge in 2015, and establishment of a web-based pledge-notice registry in 2017 allow Small and Medium

¹ Mongolia fares relatively well in the World Bank's Human Capital Index (HCI), with a score of 0.61 in 2020, higher than the average of the EAP region and lower middle-income countries. Mobile phone networks cover 99% of the population, with 70% smartphone penetration. Access to banking services is one of the highest in the world.

² World Bank (2020), Institutional and Structural Reforms for a Stronger and More Inclusive Recovery, Policy Note for Mongolia, June 2020. Note that while the mining sector represents close to 25 percent of nominal GDP, its share in real GDP is estimated around 16 percent.

³ As detailed in the Country Partnership Framework (CPF) for the period of FY21-25; Focus Area 2: Boosting competitiveness, Objective 2.1 Improving the business environment.

⁴ 2019 Enterprises Survey-Mongolia, World Bank, <https://www.enterprisesurveys.org/en/data/exploreconomies/2019/mongolia#2>.

⁵ For instance, Mongolia's score in the latest Doing Business 2020 report published is above the EAP average for 7 of 10 indicators, and below average only in indicators "Getting electricity", "Trading across borders" – in particular for the time and costs it takes to export – and "Resolving insolvency". Overall, Mongolia score along the global average among the 190 countries measured in the latest Doing Business report (discontinued at present).

Enterprises (SMEs) to offer moveable assets such as accounts receivable, inventory, livestock, equipment, and future income as collateral to banks – a major move to improve access to finance for SMEs.

4. The recently adopted New Recovery Policy (NRP) aims to further address binding constraints to medium-term economic development. The NRP is a 10-year strategy adopted by the Parliament in December 2021 for the effective implementation of Mongolian long-term Vision 2050 policy.⁶ It includes 94 projects valued at MNT100 trillion (US\$33 billion) to strengthen six major pillars: (i) recovery of operations of border ports; (ii) energy sector recovery; (iii) industrial sector recovery; (iv) urban and rural development; (v) green development; (vi) improving public sector productivity. To finance these projects, the NRP aims to mobilize private sector funding through initiatives such as Public Private Partnerships (PPPs). The NRP also includes

several important legislative reforms that are critical elements of the business environment. The NRP targets improvements in private investment through 2023-25, although the extent to which this is realized will depend on improvements in the macro environment and on the consistent implementation of key legislative reforms. In this respect, the NRP decree includes in its Annex 4 a list of draft laws to be urgently discussed at the Parliament session of Mongolia, and in Annex 5 a list of draft laws to be sequentially presented and tabled at the Parliament session in 2022 (see Table 1 below). However, the NRP still lacks details on private sector participation, selection of projects and the role and responsibilities of different government agencies accountable for the NRP implementation. Further, as of December 2022, although some of the laws have been proposed to the Parliament and are pending approval, and some of the laws are yet to be proposed to the Parliament.

Table 1: List of Draft Laws included as priority for 2022 in the NRP Annexes 4 and 5

Annex 4: List of draft Laws to be urgently discussed at the upcoming Parliamentary session
• Revised version of the Law on Licensing or the initial draft of the Law on Permits.
• Draft Law on Legal Status of Professional Associations.
• Draft revised Law on the Chamber of Commerce and Industry.
• Initial draft Law on Temporary Suspension of Certain Types of State Inspections.
• Draft amendments to the Law on Procurement of Goods, Work and Services with State and Local Funds.
• Draft amendments to the laws on corporate and personal income tax, amendments to other taxation legislation, and draft law on exempting from some taxes.
• Draft amendments to the Law on Civil Service.
Annex 5: List of draft laws to be sequentially submitted to the Parliament of Mongolia in 2022
• Initial draft Law on the State and Locally Owned Companies.
• Revised Law on Bankruptcy or Law on Insolvency.
• Revised Law on Procurement of Goods, Work and Services with State and Local Funds.
• Law on Public-Private Partnership.
• Initial Draft Law on Creating Enabling Environment for Financing the Development Projects to Support Economic Revival.
• Revised Law on the State Inspection.
• Package of Laws on Land.
• Revised Law on Investment.
• Initial draft Law on the Enforcement of Civil and Administrative Court Decisions.
• Revised Code of Civil Procedure.

⁶ In response to the Covid-19 pandemic, Mongolia's Long-Term Development Policy Vision 2050 was approved by the Parliament on 13 May 2020, with an aim to transform the country into a leading regional power by 2050.

5. Even though the business environment is only one of the elements of a country’s competitiveness, it often “sets the tone” for an attractive investment climate. Economic development depends on a wide number of potential policy actions, such as the efficiency of government institutions and regulations, corporate governance and the protection of investors, the quality of infrastructure, macroeconomic stability, the quality of health and education, training, the level of competition, the efficiency of labor and financial

markets and the support for innovation.⁷ However, business regulations play a specific role as they provide the overall framework that will be followed by the private sector, government departments, regulatory agencies and the court system. The lack of a reliable regulatory framework will be considered a major risk to investors, with a risk of deterring needed financing, for example in the infrastructures.

Table 2: Key categories of the business environment

Key Areas	Elements of the business environment
Economic Law	Commercial and contract law, company law, collateral law, insolvency and bankruptcy, investment law, competition law, consumer protection, PPP law.
Administrative system & rules	“One stop shop”, single window, inspections, permits, licenses, ministerial orders, circulars, instructions, standardized forms and model documents.
Digital services	Legal portal, company registry, collateral registry, credit bureau/registry, electronic signature, unique business identifier, online payment of taxes.
Judicial system	Case law, court procedure, case management, training of judges, tools for enforcement or orders and judgements, specialized courts/chambers.
Tax and Subsidies	Corporate tax, VAT, social contribution, registration duties, selective interventions.

Source: World Bank study team illustration

6. The quality of the business environment has also become a critical element of the competition between countries aiming to offer an attractive legal environment for investors. Almost all countries are implementing or are in the process of undertaking significant reforms of their legal framework, often with the underlying objective of shifting from a command-and-control system towards being more market-driven, a change that implies repositioning the rule of law at the heart of the political system. This legal competition creates pressure on countries to adapt or follow international trends and practice changes, while sometimes at the same time struggling to retain their legal tradition and cultural identity. It also requires strategic management of the reform process as it may lead to a perceived instability of the rules of the game and fail to achieve results if capacity constraints are not considered.

7. In this context, this report reviews the existing policy and regulatory framework impacting enterprise creation and development in Mongolia and provides a set of recommendations to improve the impact of the NRP. As described above, the business environment can encompass a wide array of areas that are beyond the scope

of this technical assessment, which necessarily focuses on some of the key building blocks aligned with Mongolia’s institutional and regulatory reform program, notably: (i) key commercial laws; (ii) registration, permits, licensing and inspection procedures for businesses; (iii) policy for attracting foreign investors; (iv) policies for supporting SMEs development and clusters. While this report does not focus on important issues related to tax policy, financial sector regulations and access to finance, all business environment components are interconnected and would need to be strengthened simultaneously to achieve meaningful and sustainable change. GoM is commitment to supporting and growing light industries, including the interrelated agribusiness sectors of meat, wool and leather this report also discusses elements of the institutional and legal framework for industrial development and trade such as the Law on the Legal Status of Industrial and Technology Park (2022), and the implementation of the recently-adopted SME Law (2019).

8. To assess Mongolia’s business environment, the team conducted a broad literature review, interviews and focus group discussions with business managers, business organizations,

⁷ These elements are part of the competitiveness of countries, defined by the Global Competitiveness Report of the World Economic Forum as the “set of institutions, policies, and factors that determine the level of productivity of a country and provide economic prosperity to its citizens.”

government officials and development partners based in Mongolia. The desk review included research and technical papers, government reports and working papers, a list is included in References. The report has notably been informed by the 2018 Mongolia Systematic Country Diagnostic (SCD) and the Country Economic Memorandum (CEM) published in September 2020.⁸ Some recommendations draw on Mongolia's results in the WBG's Doing Business 2019 report, which measured select aspects of the business environment for domestic firms.⁹ The team also leveraged conclusions of previous IFC assistance to Mongolia, notably regarding Mongolia's adaptation of its investment policy and strategy to better leverage existing foreign direct investment, attract new forms of FDI and diversify its economy.¹⁰ Interviews were conducted with SMEs, members of business organizations and donors. Focus group discussions were held with the assistance of a local law firm and allowed the analytical team to gather inputs from local enterprises on reform priorities. Enterprises interviewed included a cross-section of company size and maturity across a variety of industries. The consultations were conducted based on a model questionnaire developed by the team.

9. For each chapter, the report presents key recommendations regarding reform priorities.

These recommendations aim to ensure that Government's business environment policy and SME support framework are well-designed, targeted, and cost-effective to best meet the objectives laid out in Mongolia's NRP. Some of the recommendations provided can be addressed in the short term, while other recommendations are only implementable over a medium to longer-term period. The indicated timeframes are preliminary and based on the experience of other countries. The summary table below provides a compilation of the short and medium-term reform recommendations, which are described in more detail in the relevant chapters of the report. They constitute overall a comprehensive business environment reform program that simultaneously balances short-term de facto implementation gaps as well as longer-term de jure legislation and policy modernization imperatives, thereby building trust in the reform process. These technical recommendations are aligned with the recently-approved Country Partnership

Framework¹¹, in particular its focus area 2 ("Boosting competitiveness") and its objective 2.1 ("Improving the business environment") and aim to support the design and implementation of potential development policy operations and technical assistance programs.

10. A key cross-cutting topic that is addressed up front relates to needed enhancement to the reform process itself.

International experience demonstrates that successful reform actions require consultations with and coordination of different stakeholders and especially with the private sector. Interagency coordination and a strong focus on implementation are also crucial to the success of any reform efforts. Despite Mongolia having a relatively sound regulatory governance framework in place, private sector consultation and participation are perceived by stakeholders interviewed as time-consuming and not impactful due to changes in political priorities and lack of a stable and reliable reform process. The impact of political instability over the investment climate has also surged as a major obstacle in the latest World Bank's Enterprise Survey, which highlights the needs for an effective and stable reform process. The shortcomings of the regulatory reform process are deeply felt by the private sector, which has expressed some degree of "reform fatigue" towards a process which too often resulted in poorly drafted laws, and underlined the need to account for the implementation challenge which remains a key constraint for reform impact.

⁸ Nganou, Jean-Pascal; Eckardt, Sebastian; Zhao, Luan; Batsuuri, Davaadalai; Batmunkh, Undral; D'Hulster, Katia. 2020. Mines and Minds: Leveraging Natural Wealth to Invest in People and Institutions (English). Washington, D.C.: World Bank Group. <http://documents.worldbank.org/curated/en/273001600370275964/Mines-and-Minds-Leveraging-Natural-Wealth-to-Invest-in-People-and-Institutions>

⁹ While the Doing Business discontinuation has been officially announced on September 16th, 2021 by the WBG, historical data of DB indicators can be used with due regard to their strengths and limitations, and complemented by alternative metrics or data sources, focusing on business regulatory reforms and their outcomes. This Technical Assessment does not refer or rely on historical DB rankings.

¹⁰ See notably "Investment Reform Map for Mongolia", the IFC, 2018.

¹¹ Country Partnership Framework for Mongolia, fiscal years 2021 to 2025.

Table 3: Summary table of Short and Medium-term Recommendations

Topics	Short-term reform recommendations	Medium- to long-term reform recommendations
Business Environment Reform Process	<ol style="list-style-type: none"> 1. Prepare NRP’s business environment reform action plan, with activities, milestones, responsibilities, and periodic reporting mechanism and develop online reform monitoring tools for improved transparency and communication on reform implementation. 2. Strengthen the MOJHA’s capacity to conduct systematic Business Law review, in particular review the budget and staffing needs of the Department of Legislation. 3. Strengthen the consultation process of the draft laws through effective participation and contribution of the private sector, NGOs, and the citizens & ensure that comments on the proposed legislation obtained in the consultation process are all made publicly available and responded to. 4. Clarify the institutional relationship and respective functions of the AU, the MED, MOJHA in coordinating the business environment reform process 	<ol style="list-style-type: none"> 5. Explore the value of establishing a high-level Public-Private Committee for the Business Environment (Investment Climate) overseeing strategic priorities and monitoring the implementation of the reform agenda. 6. Revise the Law on Legislation, which is included among the list of laws to be revised by 2024 (Parliament Resolution No.12 of 21 January 2021)
Competition Law	<ol style="list-style-type: none"> 1. Amend and complete the existing Competition Law and secondary legislation in line with regional and international experience (including the definition of cartels, anticompetitive agreements, natural monopolies and assessment of dominance and detailed procedural rules). 2. Adopt/revise Guidelines on key topics for the private sector, e.g., merger control and increase transparency in decision -making of the Authority for Fair Competition and Consumer Protection (AFCCP). 	<ol style="list-style-type: none"> 3. Strengthen the advocacy role of the AFCCP for the elimination of regulations that prevent competition in strategic sectors.
Insolvency and Bankruptcy	<ol style="list-style-type: none"> 1. Adopt the revised Insolvency Law submitted to the Parliament for approval, to fully align the legal framework with international standards (including the treatment of the debtors’ assets, reorganizations, and creditors’ participation in the insolvency proceedings). 	<ol style="list-style-type: none"> 2. Design and implement non-binding principles for out of court workouts (OCW) to be used by debtors with multiple creditors (suppliers, banks, or other large lenders).
Enforcing contracts	<ol style="list-style-type: none"> 1. Revise the Civil Procedure Code with a view to support court automation, improve the flow of cases through stricter rules on time standards and introducing stricter rules on adjournments and continuances that can be granted. 2. Revise the Law on the Enforcement of Court Decisions with a view to apply stricter standards on notification and enforcement. 3. Facilitate the utilization of Alternative Dispute Resolution (ADR) by providing incentives to those who attempt conciliation in commercial cases. 	<ol style="list-style-type: none"> 4. Consider creating a specialized commercial court (or Chamber) for handling commercial disputes and ensure providing adequate training to judges hearing commercial cases. 5. Consider creating a small claims court (or Chamber). 6. Provide training of judges and court personnel in commercial law. 7. Improve court automation by introducing e-filing, e-service of process and e-payments of court fees and promote the development of a solid e-court system with case management tools for lawyers and judges.
Business registration	<ol style="list-style-type: none"> 1. Increase data exchange and improve the system interoperability between the General Authority for State Registration, the local tax office and the district social insurance department. 	<ol style="list-style-type: none"> 2. Create an effective online single window interface system for all business start-up procedures, eliminating the need to submit hard copies of the required documents and/or have physical interactions between the applicant and the authorities. 3. Eliminate the requirement of obtaining a company seal and ensure that it is not required in day-to-day practice when dealing with the public administration. 4. In the longer term, ensure the development of interoperable ICT systems that are able to transmit and share business information across all government agencies.

Continuation of table 3

Topics	Short-term reform recommendations	Medium- to long-term reform recommendations
Procedures relating to construction, electricity, and property registration	<ol style="list-style-type: none"> 1. Introduce a clear-cut system of inspections in which the number and type of inspections depends on well-defined risk categories of buildings. 2. Streamline the building permitting process and introduce a single online window for application and approval of construction-related permits. 	<ol style="list-style-type: none"> 3. Reduce power outages, both in terms of frequency and duration, and increase collaboration between utility providers and other public stakeholders to simplify and automatize the process of connecting to the electric grid. 4. Improve efficiency, consistency, and transparency of land administration services, including titling and registration. 5. Further increase the geographic coverage of cadaster and immovable property registry. 6. Continue the digitization of cadastral maps and property titles and consider introducing a common identifier as to effectively link the information recorded by the immovable property registration agency and the cadastral agency.
Business Licensing	<ol style="list-style-type: none"> 1. Set out in detail activities that are licensed together with their approval and procedural timeframes through secondary legislation. 2. Clarify the relationship of the Permit Law and sector specific laws and consider whether any changes are required to be made to existing laws and regulations in light of the Permit Law. 	<ol style="list-style-type: none"> 3. Upgrade the e-Mongolia platform to provide online transactional services for obtaining all permits, registrations and notifications. 4. Set up the Permit Council for improving public-private coordination and allocate permanent technical staff to support the Permit Council in its review process.
Business inspections	<ol style="list-style-type: none"> 1. Strengthen capacities of government entities authorized to undertake state inspections by provision of targeted training for the inspectors. Develop systematic training curriculum for inspectors and make some of training as mandatory. Performance measurement of each inspector should be measured not only how many training sessions an inspector went through but also how he or she applied this knowledge in certain processes, for example in giving consultations. 2. Enhance the role of government entities authorized to undertake state inspections associated with offering advice, guidance, and training for businesses. 3. Ensure wider consultation is conducted on the draft revised State Inspections Law to ensure that current shortcomings and constraints are adequately addressed and other laws and regulations that provide for or relate to state inspections are reviewed for consistency and clarity. 4. Ensure the continuity of existing work and efforts of GASI such as online portals and tools in light of the recent restructuring. 	<ol style="list-style-type: none"> 5. Revise and upgrade the State Inspections Law. 6. Create data management policies, that should include open data for consumers, businesses and other regulators for example social protection, or tax. 7. Increase peer to peer learning by improving foreign relations with inspectorates especially those that consider as best practice. 8. Monitoring and evaluating should assess progress against outcomes and impact especially related to risk management.
Customs procedures	<ol style="list-style-type: none"> 1. Develop pre-arrival processing system by the Customs; develop Authorized Operators program IT system to support self-declaration and payment processes. 2. Implement more robust risk assessment and management system to substantially reduce physical inspections by Customs and other government entities authorized to undertake state inspections medium and low risk consignments. 3. Implement Standardized Operational Procedures across all Border Crossing Points and internal terminals to eliminate uneven performance and reduce unnecessary steps and procedures developed by units. 	<ol style="list-style-type: none"> 4. Improve automation of customs clearance process that will allow electronic submission of transport documents, payments for all border agencies plus railway and the national air freight forwarder MIAT. 5. Invest in infrastructure trade logistics that meet international standards to favor diversification of the economy. 6. Increase the participation to trade agreements while aligning to international standards to stimulate cross-border economic exchanges. 7. Streamline the inspection process for exports by ensuring coordination between Customs and Other Border Agencies (OGAs) and eliminating duplication of functions. 8. Develop a national single window (NSW) for trade, connecting all relevant agencies and fully automating all trade-related procedures.

Continuation of table 3

Topics	Short-term reform recommendations	Medium- to long-term reform recommendations
Attracting and Retaining Foreign Investors and Investment	<ol style="list-style-type: none"> 1. Develop a new and clearly articulated Investment Policy officialized in an Investment Policy Statement (IPS) that reaffirms the GoM's commitment to welcome foreign investment as an engine of growth and diversification, alongside domestic investment, to strengthen effective investor protection, and to fully operationalize the Systemic Investor Response Mechanism (SIRM) created in 2018. 2. Implement a consistent and transparent taxation policy in the minerals and extractives sector. 	<ol style="list-style-type: none"> 3. Develop a comprehensive Business Environment / Investment Climate reform program. 4. Re-create or strengthen the investment promotion capacity 5. Design and implement a realistic investment promotion strategy that is aligned with the new investment policy and focus on a few sectors that can both help Mongolia reach its socio-economic objectives and present real potential for investors.
Investment Law	<ol style="list-style-type: none"> 1. Define policy directions/objectives on which the new Investment Law shall be based upon. 2. Revise current Investment Law in relation to minimum capital requirement. 	<ol style="list-style-type: none"> 3. Consider offering investment visas to attract young foreign entrepreneurs and engineers to encourage a faster development of the IT sector.
Developing an Effective Framework for Industrial Parks (IP)	<ol style="list-style-type: none"> 1. Strengthen the legislative framework regarding certain gaps and shortcomings addressed in this report by way of amending the Law on the Legal Status of Industrial and Technology Parks or when drafting secondary legislation 2. Consider adopting the concept of the Eco-Industrial Park. 	<ol style="list-style-type: none"> 3. Integrate the vision of IP and development of new products and technologies into the national strategy for SMEs competitiveness and economic diversification. 4. Coordinate IP development with Mongolia's policies on (i) Research and Development (R&D) promotion; (ii) Higher Education Reforms towards development of relevant skills, and (iii) Intellectual Property Rights (IPR).
Capacity and role of the SME Agency	<ol style="list-style-type: none"> 1. Determine up front an appropriate budget to cover both specified operating costs and program costs over the medium-term to enable efficient planning. 2. Build the operational capacity of the SME Agency through knowledge gaps assessment of staff and specific courses/training/knowledge exchange sessions with experts to address deficiencies in the operational capacities revealed in the knowledge gaps assessment. 3. Undertake periodic firm surveys and focus groups of potential beneficiaries to validate SME needs, program design and KPIs. 	<ol style="list-style-type: none"> 4. Pilot new programs supporting SMEs digitalization and economic diversification, incorporating international best practices in design, implementation, and program monitoring, notably in the ICT and the tourism sectors. 5. Expand the SME Agency's outreach in the regions through fostering partnerships with local authorities and international agencies.



OVERVIEW OF MONGOLIA'S COMPETITIVENESS AND PRIVATE SECTOR

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- a. **Mongolia's economic complexity and challenges**
 - b. **Enterprises' perception over business environment obstacles**

a. Mongolia's economic complexity and challenges

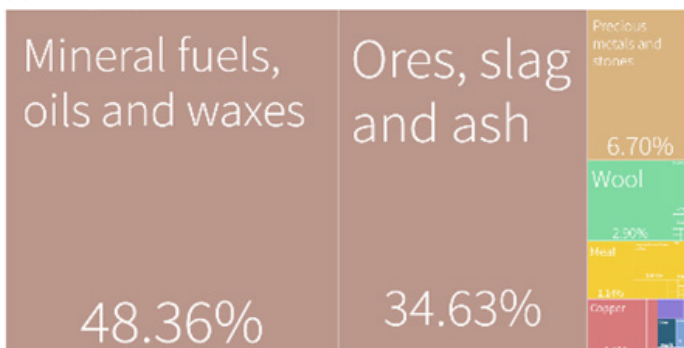
11. Mongolia has a set of structural features that make it quite a unique country. Landlocked between Russia and China, its vast rural areas lack essential infrastructure and connectivity. Almost half of its population live in the capital Ulaanbaatar and its surroundings, and the rest is spread across small urban centers and vast steppes where people herd livestock such as sheep, goats, horses, cattle, yaks, and camels. Wintertime temperatures often dip below -30 degrees Celsius. Agricultural and construction seasons are short, and natural productivity is low with arable land constituting only 1 percent of the total area. Physical constraints due to this geographic condition involve high transportation and logistics costs, which undermine the competitiveness of economy. In addition, since the early 1990s Mongolia has become one of the most vibrant democracies in the region after being part of the centrally planned economies of central Asia under

soviet influence. Finally, while it has a past of mostly agricultural activities, Mongolia possesses world-class mineral deposits (e.g., coking coal, copper, gold) and over the last three decades the exploitation of these large deposits have turned the country into mining-driven economy.

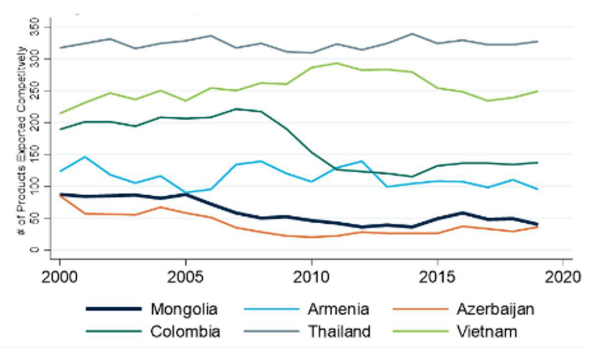
12. Mongolia's export basket is mostly composed of mineral products, and the country has been losing its export diversity. Despite increasing exports, the country is currently not diversified and has relied on a reduced number of mineral products to increase the value of its exports (Figure 1 (a)). Already one of the least diversified countries in the world, Mongolia reduced the number of competitively exported products since the mid-2000s, losing export diversity (Figure 1 (b))¹² and becoming 'specialized' in a smaller number of products.

Figure 1. Mongolia's export basket is composed chiefly of mineral products, and the country has been losing its export diversity

(a) What did Mongolia export in 2019



(b) Diversity of exports, 2000–2019



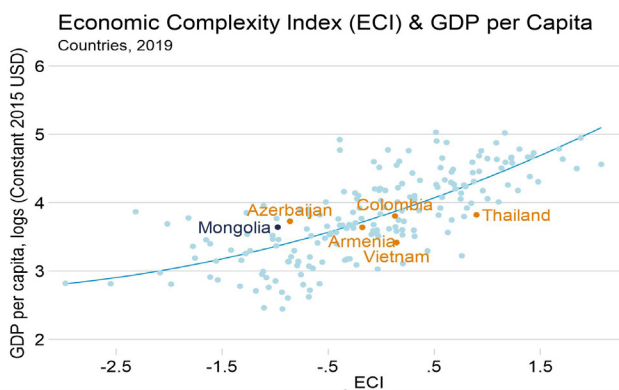
Source: Atlas of Economic Complexity.

13. Mongolia has the lowest Economic Complexity Index (ECI) among its peers and ranks 113 out of 133 economies in terms of complexity (Figure 2). In this case, the low agglomeration of know-how of Mongolia—represented by an export basket mostly composed of low complexity products and concentrated in the natural resources sector—can imply longer jumps into new sectors and pose relatively more challenges in its future diversification process.¹³

¹² Diversity is the number of products the country exports competitively (with a 'revealed comparative advantage' more than 1)

¹³ Hausmann (2016) argues that the accumulation of know-how or tacit knowledge, which is embedded in goods and services produced and traded between countries, is a key driver of economic growth. Using international trade data, the author shows that the ECI, a measure of how diversified and sophisticated a country's export matrix is based on its revealed comparative advantage, is strongly associated with GDP per capita; complexity explains future economic growth. See Hausmann et. al (2021) for further reference on the theory and methodology of economic complexity.

Figure 2. Mongolia has the lowest ECI among its peers



Source: Atlas of Economic Complexity.

14. The economy contracted as the COVID-19 pandemic adversely affected exports, FDI, private investment, and domestic activities in 2020. A stronger foundation for a sustainable and inclusive recovery from COVID-19 must be based on a more diversified and resilient economy, which requires upgrading the investment climate and implementing support programs that help to accelerate firms' transformation and the

creation of more and better jobs. Private Sector Development as the main driver of growth and jobs is often constrained by an unpredictable investment climate. Despite some advances in the business environment, private investors still perceive Mongolia as a high-risk environment. Mongolia's implementation of business laws and regulations is weak, access to regulatory information, licenses, and finance are uneven; regulations are frequently changing; the playing field is uneven and biased toward SOEs.

15. Mongolia is open to FDI in terms of policy (de jure), but still registers low volumes of FDI relative to comparators. Mongolia receives over half of its FDI from two countries (Canada and China)—principally in natural resources—exposing it to the economic outlook of those investor countries and the sector. Sudden policy reversals—at times encouraging FDI and at other times openly hostile to it—in addition to the revocation of licenses and permits without notice or justification and other state practices have eroded investor confidence. Mongolia also performs poorly in terms of market dominance, the intensity of local competition and the effectiveness of antimonopoly policies.

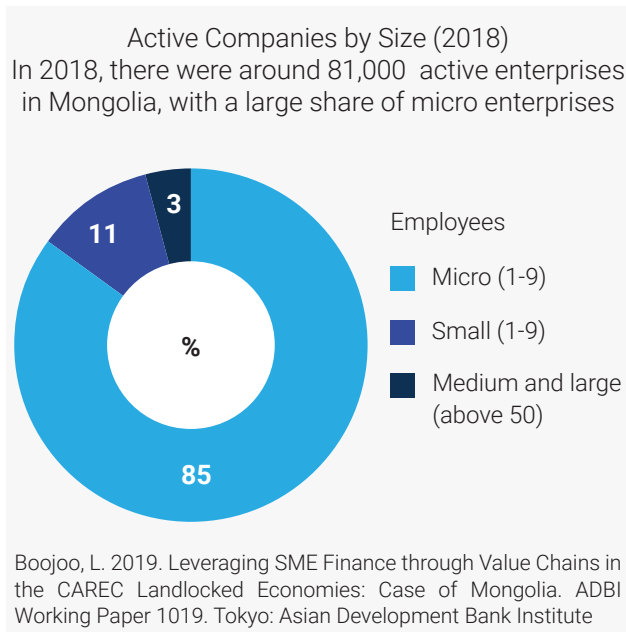
b. Enterprises' perception over business environment obstacles

16. Firms responding to the 2019 Enterprise Survey report corruption, tax rates, access to finance, and political instability as the most important obstacles in their business environment (see Annex 1 for further detailed analysis). These factors are barriers to growth and job creation. More than one-third (35 percent) of employers identified political instability as the most important obstacle to their current operations. Tax rates and access to finance were mentioned by 17.2 percent and 15.9 percent, respectively, with corruption issues cited by 9 percent for firms, followed by inadequately educated workers (5 percent). According to the size of firms, the constraints were perceived as follows: small firms and large firms confirmed political instability as the biggest constraint for 36.52% and 28% respectively, whereas 28.57% of medium firms perceived tax rates as the biggest constraint to operations. The perceptions of managers among the different size of firms can differ based on the capacity to navigate business environment obstacles: larger firms may have more options to face obstacles, but at the same time they are also more visible and more exposed to failures of the business environment.

17. The significance of political instability for Mongolia's private sector has increased substantially since 2009 and is now considered the largest obstacle particularly among retailers (43 percent), firms with foreign ownership (44 percent), and companies 20 years or older (66 percent). Only for manufacturers, exporters, and relatively young employers (operating for ten years or less) is the political situation not the biggest concern. Instead, access to finance is the top obstacle for manufacturers (30 percent of manufacturers) and exporters (42 percent). More than one-third of younger employers see tax rates as their biggest challenge. Similarly, a smaller, but growing share of employers considers corruption the largest obstacle. The share of firms perceiving corruption-related issues as the biggest challenge increased from 4 to 9 percent between 2009-2019. The share of firms identifying tax rates as the main constraint remained relatively constant over time, reaching 17 percent in 2019.

18. Establishing a more conducive and predictable business environment would benefit micro and small firms, which constitute the larger share of companies in Mongolia (see Figure 3) and are more vulnerable to regulatory discretion. SMEs in Mongolia are critical to the economy as they provide employment, thereby helping to reduce poverty and foster inclusive growth. In Mongolia particularly—where the mining sector dominates alongside traditional herding activities—SMEs appear as crucial agents for diversifying the economy. In 2017, SMEs made up 77 percent of the active establishments registered at the National Statistical Office, contributing almost 18 percent of GDP and slightly more than 2 percent to exports.¹⁴ Significantly, more than two-thirds of the active population—that is, approximately 760,000 people—are employed by SMEs.¹⁵

Figure 3: Characteristics of the private sector, Mongolia



19. Limited access to finance and business advisory services are also among key barriers in SMEs development. The major constraints for SMEs to borrow from banks are high-interest rates (approximately is 1.5–2.5 percent per month), short-term maturity (maximum maturity is 48 months), and strict collateral requirements (200 percent of the value of loans in 99.7 percent of cases, which reflects the deep distrust shown by financial institutions).¹⁶ Many entrepreneurs feel constrained by their internal capacity to deal with bookkeeping and accounting issues after they have formalized their businesses.¹⁷ The country is well endowed with business services to support the formalization of firms, but entrepreneurs are not always aware of them. For instance, Ulaanbaatar provides services to firms through an innovation center, business incubators, the capital city department for economic development and of SMEs. Overall, the business community recognizes the presence of an adequate support system for enterprises seeking to formalize. However, 72 percent of enterprises are still unaware of this service system.¹⁸

¹⁴ Source: Zolzaya and Zhou 2018, cited by Boojoo 2019.

¹⁵ Source: MoFALL, cited by Boojoo 2019

¹⁶ Leveraging SME Finance through value chains in landlocked countries, Asian Development Bank Institute (2021). Peter J. Morgan and Naoyuki Yoshino.

¹⁷ World Bank interviews.

¹⁸ Formalizing enterprises in Mongolia: challenges and policy directions, ILO 2015.



MONGOLIA'S BUSINESS ENVIRONMENT REFORM PROCESS

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- a. **GoM capacity of conducting systematic business law review**
 - b. **Public-private consultation on draft legislation**
 - c. **Strategic oversight of the business environment reform agenda**
 - d. **Management and monitoring of economic reforms**

20. Mongolia needs to strengthen its institutional and organizational efficiency for a successful implementation of business environment reforms.

There is no one-size fits all approach to organizing for a successful program to reform the business environment. However, considering its relatively well-developed institutional framework already in place, Mongolia will need to focus on implementation tools and practices, such as involving the private sector at the level of strategic decision-making, adopting, and abiding by detailed roadmaps with specific actions, deadlines, and responsibilities, clarifying the functions of

Mongolia's public and private institutions, and improving the transparency of the reform process. The process of obtaining the private sector's feedback on draft legislation, as well as providing systematically and transparently an answer from concerned public sector agencies will need to be streamlined to address capacity issues. Enhancing the capacity of the MoJHA and its Department of Legislation as well as Cabinet Secretariat to conduct systematic Business Law reviews and suggest annually priority legal reforms and amendments will also be critical. These reforms are detailed further below.

a. GoM capacity of conducting systematic business law review

21. Mongolia, like many other countries, faces the challenge of modernizing and simplifying constantly its business environment, following the adoption of increasingly complex and numerous standards and obligations in legislative texts.

Government departments seldom have the in-house technical and legal capacity necessary to produce high-quality commercial regulations and are often reluctant to hire costly experts or consulting firms to assist them. For instance, while MOJHA has some legal capacity, it is already involved in the challenge of court organization and procedure, modernizing civil law, criminal or public law, and has limited resources in getting involved in the reform of complex business laws. Parliaments have also limited capacity and time to digest the increasingly technical aspects of modern legislation.

22. Mongolia tends to follow the principle "one new law amends/replaces one existing law", which entails the high political cost of going before the Parliament for each law taken separately.

This approach is time-consuming, in particular for technical measures that may be essential for businesses but insignificant taken separately for a parliamentary discussion. To address this challenge, developed economies have progressively opted for a codification of their commercial law, together with the development of "omnibus legislation" which allows the government to prepare and propose a single legislative text which amends directly several other laws (e.g. "Simplification law" or "Law of modernization of the economy"). In some respects, periodic omnibus legislation can be compared the annual "finance laws" which can modify multiple laws containing

tax articles. This legislative tool however requires a state-of-the-art legal portal and adequate capacity for undertaking a systematic review of the business regulations to structure the process and avoid contributing to the unpredictability of the legal framework.

23. The GoM could strengthen the staffing and capacity of the Department of Legislation of the Ministry of Justice and Home Affairs (MoJHA) as well as Cabinet Secretariat to undertake and implement periodic reviews of regulatory reform.

In addition to a review of the adequacy of the budget and staffing of the Department of Legislation, its institutional model could be adapted for improved transparency and dialogue. The Law Reform Commissions (LRC) could provide some valuable lessons, while not being fully transferable in the context of Mongolia.¹⁹ LRCs are independent bodies set up to consider the state of laws and make recommendations or proposals for legal changes, which typically include a permanent committee of 5 to 8 members and an advisory committee of up to 10 members that can rotate periodically. The duties assigned to this institution vary from country to country but usually include mainly making recommendations on updating or repealing obsolete laws, drafting revised versions of confusing laws, and preparing consolidated versions of laws. These institutions do not have a monopoly of legal reform, which remains the main responsibility of the executive and legislative branches, but they should have the capacity to assume a coordinating and systematic advisory role in the law-making process.

¹⁹ LRC are often established in countries with a common law tradition which lack a full-fledged Ministry of Justice.

b. Public-private consultation on draft legislation

24. Mongolia has a relatively sound regulatory governance framework in place, but it remains under-utilized due to a series of constraints.

The public consultation process for laws to be approved by the Parliament is regulated broadly by the Law on Legislation²⁰ while the process for secondary legislation is regulated by other laws.²¹ Mongolian authorities generally publish the text of proposed legislation before it is enacted, making it available for comments.²² A Public-Private Consultative Committee (PPCC) was established by order of the General Secretariat in December 2019. The Committee is a permanent body established under the auspices of the Investors' Rights Protection Council (hereafter referred to as "IPC"). It is chaired by the GoM and the Chairman of the National Chamber of Commerce and Industry of Mongolia on behalf of the private sector. Its main function is to make comments and provide feedback on draft laws and administrative decisions which may affect the interests of domestic and foreign investors, the private sector, and their business operations. While a government website is presenting draft laws, concepts and affording an opportunity to comment on the draft, in practice it is seldom used by the public to provide comments and government answers are not made public.²³

25. In practice, business associations interviewed by the World Bank study team reported that they are often given little time to consult with their associates and provide meaningful feedback.²⁴

This problem extends also to the prior phases, when law drafts are prepared, since in most cases the government working groups have little input from the private sector and NGOs. Generally, it is reported that the participation of private sector representative in the working groups tasked with the drafting of the laws depends largely on the experience and attitude of the head of the working group and the government entity in charge of the overall process.²⁵

26. Government does not respond in detail to comments submitted.

Instead, it prepares a unified and often scant response acknowledging the contribution provided and does not provide feedback as to why certain comments and inputs are not accepted.²⁶ As a result, entrepreneurs and citizens often complain that they have little opportunity to understand the government positions on matters that they consider as having an important repercussion on their business activities and left feeling that there was not any meaningful engagement and consultation. In addition, Mongolian authorities generally do not disclose forward regulatory plans²⁷ (that is, a public list of anticipated regulatory changes intended to be adopted within a specified time frame) so to give time to the private sector prepare adequately to provide relevant input and comments when draft laws are rushed through. In this sense, the NRP is a welcome change with a list of high priority laws and planned legal reforms.

27. While assessing the perceived lack of impact of the structured consultation process on draft regulations would require an in-depth review of the reform process, it seems overall that the relative weakness of private sector involvement in business policies making stems from a combination of factors:

These include: (i) weak involvement in the initial phase of reform identification and prioritization, as the design of the reform agenda remains managed by the public sector and informal private sector inputs; (ii) complicated access to technical capacity to contribute and provide meaningful suggestions and comments on complex regulatory topics; and (iii) complex governance structure with several technical working groups, which do not allow gathering comments in time to comply with the tight deadlines of the public reform calendar.

²⁰ The law primarily deals with what technical requirements draft legislation which includes laws and decisions of the Parliament should satisfy in terms of content and format etc. and the process involved in ensuring that the draft legislation reflects the comments of state entities other than the law initiator itself. Public consultation is not required in respect to parts of a draft legislation such as dealing with the state budget, state investment program, development policies and those protected by law to be secret from the perspective of national security. In addition, the law does not apply to decisions to be adopted by state authorities other than the Parliament. In other words, executive decisions of the Government and other government entities are regulated by separate legislation.

²¹ The General Administrative Law, enacted on 19 June 2015. Examples are (i) amendments to the Law on Corporate Income Tax where 30% tax was imposed for indirect transfer of land and mineral and radioactive licenses by means of transfer of shares in companies that hold land rights and licenses; (ii) amendments to the Law on Personal Income Tax where progressive income tax was introduced (now repealed); (iii) the Windfall Tax Law (now repealed). Another recent example (but not effecting the business communities) is the Law on Associations and the Law on Foundations.

²² The Legislation draft is published on the website with a clear timeframe for comments that is not inferior to 15 days, unless provided differently by law or international treaties.

²³ The website is accessible at: <http://forum.parliament.mn/projects>

²⁴ The legislation mandates to publish the draft legislation along with the relevant accompanying documents specifying a specific deadline to submit comments in writing and says that such deadline must be no less than 15 days from publication. However, such timelines are rarely respected in day-to-day practice.

²⁵ Interview conducted by the team with private sector representatives.

²⁶ According to the current legislation, the law initiator is to publish on its website a summary as to the comments accepted and rejected within 30 days of the public consultation.

²⁷ The Government should plan in advance the legislation to be initiated during its term of office and reflect it in the Guidelines for improving the Legislation. However, the Government can initiate a draft law and submit it to the Parliament, even it is not included in the Guidelines and at the request of the government, the parliament may consider draft laws that are not in the List or Guidelines.

Box 1: International experiences in engaging with the private sector to identify potential policy improvements

Singapore actively engages the private sector to identify regulatory shortcomings and potential policy improvements through its Pro Enterprise Panel (PEP). The public-private panel serves as feedback and troubleshooting platform when new policies and public initiatives are tested and rolled out. Businesses can also report to PEP regulatory problems as well as issues relating to red tape and public service performance.

In Malaysia, the private sector is also actively engaged in policy problem solving. Feedback from firms on policy matters is encouraged through the online portal of PEMUDAH, a special task force to facilitate business. At the same time, the private sector is engaged in matters of policy design. For example, PEMANDU, a dedicated delivery unit, introduced “Labs” to determine strategic priorities and support reform implementation for the new government in 2009. The Labs bring together relevant public and private sector stakeholders from their field of competence to identify bottlenecks for firms along with potential solutions. Each lab had access to statistics and data analysis.

The New Zealand Government is relatively small and there is strong culture of transparency where the policy design process is informed by business groups and private sector committees. Public servants are required to build a network of trusted advisors to gather feedback on policies so that proposals have a large consensus and answer the needs of the business community. At the same time, private sector councils and associations such as Business New Zealand – are asked to regularly weigh in on business regulation matters to the Ministry of Business, Innovation, and Employment (MBIE), which oversees policy, regulation, and services impacting local firms. Such consultations have guided policy design. For example, after businesses complained that government services were fragmented in 2012, the government set up an online portal to provide all the advice and support business’s needs.

c. Strategic oversight of the business environment reform agenda

28. Reforming the business environment is a complex endeavor with intensive inter-agency coordination. Business legislation falls under the purview of various State bodies, each addressing its concerns: MOJHA, Ministry of Economy and Development, Ministry of Finance, Bank of Mongolia, and the ever-growing body of autonomous authorities such as Financial Regulatory Commission and the Authority for Fair Competition and Consumer Protection etc. This inter-agency coordination challenge, coupled with elections and the ensuing political transition, may result in laws that remain in draft form before being rushed to adoption without having clarified key implementation issues linked to the local context. To address this challenge, the GoM is prone to establishing on a case-by-case basis some ad hoc task forces with concerned ministries and agencies. While these task forces may be useful for technical-level coordination, the GoM may explore the need to establishing a higher level committee that would include high level public and private stakeholders.

29. Establishing an inter-ministerial business reform committee involving also high-level private sector representatives has often been essential to the success of reforms in times of political turbulence or in the face of strong resistance from interest groups. High level reform commissions

have been established by some emerging countries to reconcile the different viewpoints of various ministries and agencies. These non-permanent commissions—which are created by decree and can meet two to three times a year to serve as a monitoring and incentive tool—rather than an implementing tool, have often proved more successful. A condition to the success of such committees is the clarity of their mandate, the direct support of a high-level champion, and their direct link with a permanent technical team and ministerial department necessary to undertake the program management function, which can be time-consuming. The permanent staff can be seconded from the Prime Minister office or from a Ministry with an inter-ministerial function such as the Ministry of Economy. Involving respected private sector representatives can also be critical or their success. The case of Morocco’s National Reform Committee for Business Environment (CNEA) is detailed below.

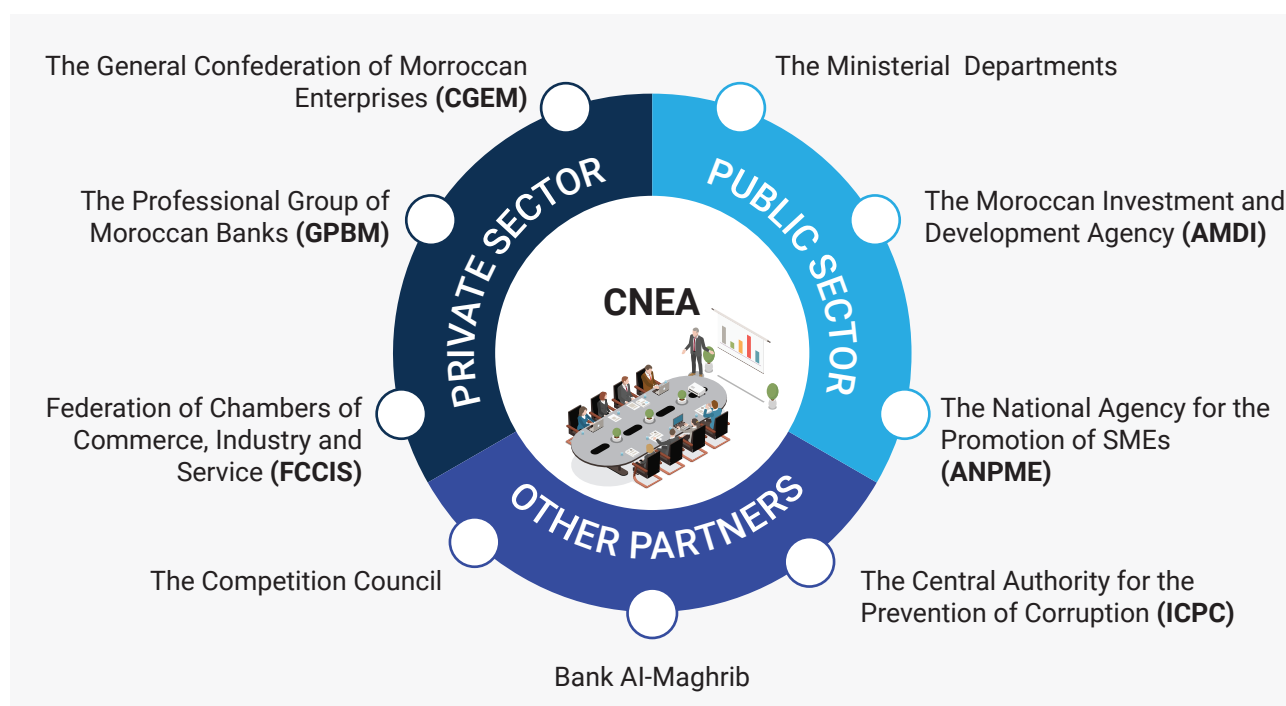
Box 2: Morocco's National Reform Committee for Business Environment (CNEA)

In February 2009 the government signed a "Public-Private Pact for Industrial Emergence" with the main business organizations of the country, which provided among others for the establishment of a high-level public-private Commission to coordinate cross-cutting reforms of the investment climate, notably business law reforms.

The Deputy Prime Minister for Economic Affairs was identified as the champion for this action. He laid down a detailed institutional framework for the Committee, which was established by decree and included key ministers and representatives of business organizations and set up in his Ministry a central Reform Management Unit in charge of providing support to various public-private working groups and ministerial project units.

The inaugural meeting of the "National Committee for Business Environment" was chaired by the Head of Government in December 2009. During this meeting, it approved its first annual reform program for 2010 with a narrow focus on 10 key reform projects. Thereupon, every three months the Deputy Prime Minister for Economic Affairs chaired technical meetings to monitor the reform progress. The following years, the Head of Government adopted each year an action plan that was progressively expanded to include around 40 reform actions by 2013. This institutional framework continued to operate successfully in spite of the political transition that happened following the adoption of the new constitution in 2011 and the ensuing elections.

Source: Business Environment Reform in MENA: Setting Up the Right Implementation Framework, The World Bank, Philippe de Meneval, Youssef Saadani, December 2009

Membership of Morocco's National Reform Committee for Business Environment (CNEA)

30. On the institutional side, the establishment of the MED and the AU²⁸ for strategic monitoring of the reform process is aligned with best international practices but entails a careful analysis of the respective functions of key public

sector institutions. A study of five countries that have achieved sustained economic progress over the last 30 years also concluded that relying on a small, dedicated team with direct access to the top government was a common feature of

²⁸ The Cabinet Secretariat includes a recently established Delivery Unit (DU) positioned as the "Reform Accelerator Unit (RAU)" for the implementation of the NRP. The RAU is staffed with private sector experts as well as top talent from the public sector. Some of its staff has public sector exposure while having a high salary differential compared with civil servants. The AU will have three main functions: (a) coordination between stakeholders and counterparts, (b) focus on project financing issues, and (c) develop a monitoring and evaluation framework for the reforms of the NRP. The AU does not plan to accomplish itself the NRP goals alone but rather selectively assist the Ministries, Departments and Agencies in charge of implementing the key strategic priorities of the government. Day to day reform tasks would remain under the responsibility of ministries and agencies.

d. Management and monitoring of economic reforms

the governments that succeeded in ambitious reform programs.²⁹ The advantage of these structures is that they are embedded in the policy process, yet at the same time are relieved of daily administrative matters. However, coordinating and clarifying the respective functions of the AU, the newly established MED,³⁰ the MOJIA and the new Ministry of Digital Development and Communications will be critical for the successful reforms as they all have an important role to play.

31. The new Ministry of Economy and Development (MED) will need to develop rapidly its in-house expertise, its capacity to oversee economic reforms and build alliances with public counterparts and private sector stakeholders. The MED is still new, it has been established following the amendments to the Law on the Government of Mongolia dated November 12, 2021. The MED replaces the National Development Agency (NDA) with a wider scope of functions, which include national development policy and planning, regional and local development policy and planning, investment policy, FDI, but also macroeconomic policy and the development of integrated policy in the areas of international cooperation, trade, industry, concessions and PPP, technology and innovation, free zones. The MED however does not yet have a specialized department in charge of the business environment. Considering the intensive coordination work needed on business environment reforms, and expectations on transparency on reform progress, the MED could also develop an online reform monitoring tool.

32. The new Ministry of Digital Development and Communications (MODC) established in January 2022 should also be a key partner for the simplification of the business environment.

This Ministry has the mandate of facilitating the digital transition and will need to accelerate the setting up of fully transactional portals for procedures, in particular through the e-Mongolia national portal.³¹ The MODC has recently drafted a mid-term program called the "Digital Nation for 2022-2027".³² The digitalization of the economy has been a priority of the Mongolian government in recent years, as highlighted in the "Mongolia Vision 2050" of 2020 and in the NPR's objectives.³³ Pivotal steps have recently been taken thanks to the adoption of five laws in December 2021, which became effective in May 2022, including the Law on Electronic Signature,³⁴ the Law on Protection of Personal Data;³⁵ the Law on Virtual Asset Service Providers;³⁶ the Law on Cyber Security;³⁷ and the Law on Transparency of Public Information.³⁸

²⁹ Criscuolo, Alberto and Vincent Palmade. 2008. Reform Teams. Public Policy for the Private Sector. Note Number 318. World Bank Group. Financial and Private Sector Development Vice Presidency. The countries are Botswana, Cape Verde, Malaysia, Mauritius and Taiwan (China).

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³¹ In 2018, the Government adopted the resolution n. 259 to guarantee the digitalization of 486 services for governmental entities and organizations.

³² The draft has been posted on the Ministry of Digital Development and Communications website but it has not been submitted/approved to the Government yet. It is available at <https://mddc.gov.mn/wp-content/uploads/2022/02/%D0%A6%D0%90%D0%A5%D0%98%D0%9C-%D2%AE%D0%9D%D0%94%D0%AD%D0%A1%D0%A2%D0%AD%D0%9D.pdf>

³³ See objective 6.1 under the NPR, which aims to "intensify the efforts to become a Digital Nation; rationalize public information infrastructure, reduce paper-based activities and transfer to digital or electronic communications; ensure that the information and data, which can be obtained, retrieved and exchanged from public information system or domain not to be required from the citizens and legal entities; increase an access and quantity of public services to be provided digitally; and gradually implement the provision of electronic signatures to the citizens".

³⁴ The Law on Electronic Signature was adopted on 17 December 2022 and became effective on 1 May 2022. This law repealed the Law on Electronic Signature which was adopted in December 2011. The law is available at <https://legalinfo.mn/mn/detail?lawid=16390355252531>.

³⁵ The Law on the Protection of Personal Data was adopted on 17 December 2021 and became effective on 1 May 2022. This law repealed the Law on Personal Secrets which was adopted in April 1995. Given that the Law on Personal Secrets is a rather old and brief legislation, the new law is considered to be the first comprehensive legislation on the protection personal data. The law is available at <https://legalinfo.mn/mn/detail?lawid=16390288615991>.

³⁶ The Law on Virtual Asset Service Providers was adopted on 17 December 2021 and became effective on 24 February 2022. This law is adopted for the first time in Mongolia. The law is available at <https://legalinfo.mn/mn/detail?lawid=16390242606091>.

³⁷ The Law on Cyber Security was adopted on 17 December 2022 and became effective from 1 May 2022. This law is adopted for the first time in Mongolia. The law is available at <https://legalinfo.mn/mn/detail?lawid=16390365491061>

³⁸ The Law on Transparency of Public Information was adopted on 17 December 2021 and became effective from 1 May 2022. This law repealed the Law on Information Transparency and Right to Information which was adopted in June 2011. The law is available at <https://legalinfo.mn/mn/detail?lawid=16390263044601>

Box 3: International practices and functions of Delivery Units (DU)

A DU is usually a discrete unit at the center of government with a mandate to use the authority of the chief executive to: (i) focus on improving citizen outcomes in a limited number of priority areas; (ii) unblock obstacles when monitoring shows that progress is off-track; and (iii) build understanding and capability for strengthening the underlying actors and systems/processes.

The DU approach to public sector performance draws on two broad methodologies: (i) the leadership and management practices from both private and public sectors, and (ii) an understanding of the network of organizations and their relationships that must work together to deliver services to citizens, known as "delivery systems." DUs are created at the center of government and are typically close to the chief executive (President or Prime Minister). This signals the leadership's commitment to results and focuses on performance. International experience shows that DUs work best when they: (i) rely on the existing organizational performance framework; (ii) drive a limited number of high-profile goals; and (iii) receive high-frequency data to monitor progress.

Different countries adopted different forms of DUs depending on their existing government structures. Although their size varies, DUs usually rely on a relatively small and nimble team of highly skilled experts. Their focus is to change the culture in the public sector with the end goal of delivering quality services faster. Given that they are closely tied to a Chief Executive who drives their establishment and provides the authorizing environment, DUs may not last beyond a specific administration or term in office – they are often semi-permanent structures.

DUs must rely heavily on the functioning of existing public management systems within MDAs. After all, it is the MDAs who deliver, while the DUs enable the center of government to manage the process.

Source: Driving Performance from the Center: Malaysia's Experience, The World Bank 2017.

33. Summary of recommendations:

Short term:

- Prepare NRP's business environment reform action plan, with activities, milestones, responsibilities, and periodic reporting mechanism and develop online reform monitoring tools for improved transparency and communication on reform implementation.
- Strengthen the MOJHA's capacity to conduct systematic Business Law review, in particular review the budget and staffing needs of the Department of Legislation.
- Strengthen the consultation process of the draft laws through effective participation and contribution of the private sector, NGOs, and the citizens & ensure that comments on the proposed legislation obtained in the consultation process are all made publicly available and responded to.
- Clarify the institutional relationship and respective functions of the AU, the MED, MoJHA, Cabinet Secretariat in coordinating the business environment reform process

Medium/long term:

- Explore the value of establishing a high-level Public-Private Committee for the Business Environment (Investment Climate) overseeing strategic priorities and monitoring the implementation of the reform agenda.
- Revise the Law on Legislation, which is included among the list of laws to be revised by 2024 (Parliament Resolution No.12 of 21 January 2021)



IV

BUSINESS LAW: ENSURING FAIR RELATIONS BETWEEN BUSINESSES AND THEIR STAKEHOLDERS

-
- a. Competition law**
 - b. Insolvency and bankruptcy**
 - c. Enforcing contracts**

a. Competition law

34. Competition in Mongolian markets is perceived to be weak.

Following the Global Competitiveness Report (GCR), Mongolia is among the countries with the lowest perceptions of domestic competition (133 out of 141 countries in 2019 GCR). This result is based on significant market dominance (137 out of 141 countries) and limited competition in services (104 out of 141 countries). In addition, the perception of the effectiveness of its anti-monopoly policy is significantly low (130 out of 137 countries in 2017-2017 GCR) and considerably weaker than other countries in the region, including China and Cambodia. Moreover, manufacturing firms face fewer competitors in Mongolia than similar firms do in other East Asia and Pacific region countries and Russia. World Bank Enterprise Survey (ES) data illustrate how firms in markets of manufacturing goods in Mongolia perceive higher levels of concentration relative to other economies in the region: 11% of manufacturing firms considered to be participating either in monopolistic or duopolistic market structures, which is a higher rate than other regional peers such as Cambodia, Philippines, and Vietnam.

35. Limited market competition can stem from restrictive regulations or discretionary application of the regulatory framework that render entry and operation of new firms difficult, as well as from ineffective competition policy enforcement.

While concentrated market structures may naturally emerge from market characteristics; (e.g., high economies of scale and small market size, they can also be related to competition restrictions enacted by governments or market players. Addressing government regulations and practices that restrict market competition or weaken the enforcement of competition policies is necessary to generate an enabling investment climate, but the effective implementation of competition rules is equally important. Coordinating policy efforts to improve the business environment and promote contestable and open markets, would be key

to creating incentives for entrepreneurship and increasing pressures to innovate.

36. An effective competition policy framework encourages competition by ensuring that all businesses can interact on a level playing field and by facilitating entry to markets while penalizing and preventing anticompetitive behavior.

The competition policy framework is defined as “the set of policies and laws that ensure that competition in the marketplace is not restricted in such a way as to reduce economic welfare.”³⁹ In practical terms, competition policy usually involves the enforcement of antitrust laws (typically rules against abuse of dominance and anticompetitive agreements, and mergers regulation) and the promotion of measures to enable firm entry and rivalry, typically called competition advocacy. The former is targeted at firms, while the latter involves government bodies.

37. Mongolia lacks a comprehensive and effective Competition Policy framework.

While the Competition Law of Mongolia approved in 2010 (the “Competition Law”) addresses most economy-wide issues that may prevent competition in the marketplace,⁴⁰ its implementation and enforcement requires adjustments to be in line with regional and international examples. There is scope for improvement concerning the implementation of the Competition Law, in particular, regarding merger control, cartel enforcement and the treatment of dominant entities. Although a draft revised Competition Law and implementing secondary legislation is being drafted, they have not been approved yet.⁴¹ Restrictions imposed on participation of foreign investors in certain sectors and a growing role of government as market player should be monitored in order to minimize market distortions. Finally, market conditions and restrictive regulation in selected markets such as telecommunications, air transport and fuel supply should be assessed to identify specific areas for further policy action.

³⁹ Massimo Motta. 2004. Competition Policy. Cambridge Books, Cambridge University Press, p.30.

⁴⁰ The Competition Law approved in 2010 regulates cartels, monopolies (including natural monopolies), mergers, state aid and public procurement (also regulated in the Law on the Procurement of Goods, Work and Service with State and Local Budget). Additionally, it grants an independent status to the Authority for Fair Competition and Consumer Protection (AFCCP) together with ample powers to ensure competition enforcement and competition advocacy. The Agency is also entitled to act against unfair commercial practices - which are different from anticompetitive practices typically covered under an antitrust framework - and assure consumer protection (not only related to unfair commercial practices such as false advertisement or false information about the product features but also product safety). The AFCCP oversees the implementation of the Competition Law, Law on Consumer Protection, Law on Advertisement and parts of the Law on the Procurement of Goods, Work and Services with State and Local Budgets.

⁴¹ The AFCCP has been working with the Japanese Federal Trade Commission to revise the Competition Law and draft relevant guidelines. See, for example, the Project Completion Report for the Enhancement of the Fair Competition Environment in Mongolia, 2019 (<283229838283938353838B8BA39188964095F18D908F912E706466> (jica.go.jp)

38. Key challenges to build an effective Competition Policy Framework in Mongolia

- *Merger control policy unduly increases the cost of doing business.* The Authority for Fair Competition and Consumer Protection (AFCCP) has power to review economic concentrations, but the current merger control framework uses dominance as criterion for notification. Moreover, the standard of proof is not clear and procedural rules have not been established. Merger control policy should be designed and implemented to ensure that merger review is effective, efficient, and timely. This means that this policy should prevent operations that significantly lessen competition and minimize the burden of administrative procedures on business to avoid disrupting the development of markets. Entry, growth and exit of business are natural in a competitive business environment; therefore, merger regulations should not obstruct these efficient processes. In line with best international practice, the Competition Law should be amended in order to dissociate merger review from dominance. Additionally, objective thresholds –based upon turnover and/or assets rather than market shares or possession of dominant position – could be introduced as a trigger for merger review. The Competition Law could also benefit from establishing a more detailed framework on the substantive assessment of mergers, including unilateral and coordinated effects, as well as setting out the process to submit, review and agree structural and/or behavioral merger remedies. **In this regard, detailed guidelines on the application of the law could be a useful mechanism to reduce uncertainty regarding the standard of proof, the required information to assess a merger, and the applicable substantive and procedural aspects.** A transparent and predictable regime would reduce business risk when engaging in

a merger transaction and facilitate efficient investments. Key concepts for competition policy enforcement could be clarified through the guidelines, for example, market definition and what amounts to a concentration.

- *Weak legal framework to attack anticompetitive agreements among competitors.* Cartels and other horizontal agreements⁴² that reduce competition result in a considerable welfare loss for the economy as a whole. The current Competition Law prohibits anticompetitive agreements but falls short of international best practice due to lack of clarity, for example, the application of an effects-based approach instead of a per-se prohibition to cartels, and lack of differentiation between horizontal and vertical agreements when assessing anticompetitive agreements. As such, it would be advisable to introduce a definition for the terms “cartel” and “anticompetitive agreement” as well as a clear separate treatment of⁴³ as per se violations⁴⁴ as opposed to other agreements to be analyzed on the basis of their effects. **Secondary legislation in line with international experience is needed to clarify how to apply Art. 11 of the current Competition Law to deal with anticompetitive agreements.**
- *Limited mechanisms to detect cartel behavior.* An effective leniency policy is key to detecting and sanctioning cartels based on the information provided by one of the cartel members in exchange of immunity from the sanctions imposed on the other members of the cartel.⁴⁵ While this provision existed in the Competition Law (Art. 28), it was later repealed in 2015. **Reinstating the leniency policy and developing it through guidelines describing the procedure, circumstances and requirements to apply fine exemptions would be key to strengthening the Mongolian anticartel policy.**

⁴² Horizontal agreements refer to agreements among actual or potential competitors present at the same level of the supply chain while vertical agreements refers to those among firms present at different levels of the supply chain, for instance, an agreement between a manufacturer and a distributor or between a distributor and a retailer. Absent market power of any of the parties, vertical agreements are normally considered procompetitive.

⁴³ The Term Hard-core cartel refers to “anticompetitive agreements by competitors to fix prices, restrict output, submit collusive tenders, or divide or share markets” as defined by the OECD, 1998, “Recommendation of the Council concerning Effective Action against Hard Core Cartels.” Available at <http://www.oecd.org/competition/cartels/2350130.pdf>

⁴⁴ Per se violations imply that no market effect needs to be proved in order to condemn a practice as the object of the practice itself is the restriction of competition. As stated by the OECD 1998 Recommendations at p. 2, “hard-core cartels are the most egregious violations of competition law as they injure consumers in many countries by raising prices and restricting supply, thus making goods and services completely unavailable to some purchasers and unnecessarily expensive for others.”

⁴⁵ A well-functioning leniency program can destabilize and deter cartels by creating a permanent threat that any of its members may come forward to the authority in order to avoid the fine. The difficulty in stopping cartels is secrecy. Leniency programs can break the code of silence among cartel members and uncover conspiracies that might otherwise go undetected. Additionally, they make investigations more efficient and effective. The programs that have proven to be the most successful give complete amnesty to the first cartel member to come forward and reveal the inner workings of the cartel to competition law enforcers. Thus, most competition agencies around the world, including the EU and the US, Colombia, Turkey, Canada, Brazil, Mexico, Chile, China, Korea and India, have the ability to offer either total immunity or significant fine reductions to violators that cooperate in their investigations. Miller (2009) found that the leniency program in the US reduced the rate of cartel formation by 59% and increased the rate of cartel detection by 62%.

- *Incomplete/Unclear rules to prevent granting state support that distorts competition.* Rules guaranteeing that all businesses compete on a level playing field and enjoy access to markets are crucial to ensuring efficient and open markets. Additionally, the state should minimize interference in the competitive process or restrictions on competition by granting subsidies or any other direct or indirect advantage to specific firms. While the current Competition Law provides the basic elements to develop a state aid control system⁴⁶, further clarification and development of the legal framework is needed. This is relevant, for example, for granting tax exemptions or providing soft loans to support investments in priority sectors. **A comprehensive package of measures further defining the scope and application of State Aid rules will ensure that distortions in Mongolian markets are minimized and proportional to the expected benefits of government aid.**
- *Reform of the regulatory framework on natural monopolies and dominant firms.* The current Competition Law allows the AFCCP to identify and monitor natural monopolies as well as to regulate their output and prices. Given the extended powers of the AFCCP over natural monopolies, the methodology applied to identify them becomes ever more relevant. Moreover, given that natural monopolies are typically present in network industries – such as electricity, gas or water distribution – closer cooperation with sector regulators is necessary to ensure the quality and opportunity of AFCCP decisions. Regarding dominant firms, the definition of dominance needs to be adjusted under the Competition Law to avoid generating an undue burden on business by including firms that would not qualify as dominant under international standards (referenced under the Competition Law to market shares, which are set at a level that is too low). Per se prohibitions on practices by dominant firms should be carefully interpreted to avoid restricting efficient pricing and vertical relationships that would benefit consumers. **A revision of the regulatory framework applicable to natural monopolies and dominant firms would be advisable in order to align it to international best practices.**
- *Lack of transparency reduces policy effectiveness.* The lack of clear written procedures for the AFCCP to act has allowed fined companies to challenge the AFCCP decisions in judicial review on a procedural basis. **Establishing clear and efficient procedural rules, including those for the treatment of confidential information, access to file and key stages in the investigation where parties may exercise rights of defense, would increase the transparency and quality of decisions, and ensure robustness vis-à-vis potential judicial review.** This would be complemented by guidelines on the application of the Competition Law to encourage consistent practice in order to maintain accountability, increase transparency, and thereby create a stable investment climate.
- *Under-exploited powers limit the role of the AFCCP in key sectors of the economy.* While the Competition Law grants AFCCP powers to prohibit state and local institutions from restricting competition, promoting a competition culture, and providing opinions on regulations that harm competition, the agency has not fully embraced the use of these powers. Appropriate competition policy should focus on factors that thwart entry or competition in specific sectors. Advocating for the elimination of regulations that prevent competition constitutes a necessary complement to the agency's enforcement capacity as it allows infusing competition principles in key sectors of the economy. **Drawing on the advocacy capabilities of the AFCCP and enhancing its role in the economy is crucial to embed procompetitive principles across sectors and markets, e.g., public procurement, and remove barriers to competition in sectors that have a crosscutting effect such as telecommunications, air transport and fuel supply.**⁴⁷
- *The fuel supply market offers a good example of how the AFCCP could implement its extensive powers in terms of antitrust enforcement, fight against unfair business practices, prevention of market distortions, and advocacy through the combined use of different tools.* The Mongolian market of fuel supply appears to be highly concentrated at the wholesale level as well as vertically integrated with the retail level. The AFCCP adopted a series of measures trying to fight competition infringements (e.g., price-fixing) and unfair practices but results remain

⁴⁶ Following the definition included in Article 107 of the Treaty of the Functioning of the European Union, we use the term State Aid to refer to any aid granted either by the State, including any central, regional or local public body, or through State resources in any form whatsoever which distorts or threatens to distort competition by favoring certain undertakings or the production of certain goods.

⁴⁷ While these sectors have been pre-identified by the 2012 "UNCTAD Voluntary Peer Review of Competition Law and Policy in Mongolia" as somehow problematic, further scoping will be necessary in order to identify issues in additional sectors and determine their relevance for investment and economic growth.

uncertain. Moreover, heavy subsidies to fuel importers appear to distort competition in the sector. **Thus, the effective implementation of the AFCCP powers regarding anticompetitive practices as well as distortive state aid could be used as a tool to encourage well-functioning markets in a key sector of the Mongolian economy.**

39. Key recommendations:

- Amend the Competition Law and secondary legislation in line with regional and international experience – among others regarding the definition of cartels, anticompetitive agreements, leniency policy, natural monopolies, and

assessment of dominance as well as detailed procedural rules to foster due process.

- Adopt Guidelines, after seeking inputs and feedback from the public, to help businesses understand how the AFCCP will conduct investigations and control anticompetitive effects of mergers and increase transparency in decision-making of the AFCCP.
- Strengthen the advocacy role of the AFCCP for the elimination of regulations that prevent competition in certain strategic sectors such as telecommunications, air transport and fuel supply.

b. Insolvency and bankruptcy

40. Insolvency is a problematic area for Mongolia's businesses. According to the latest World Bank data, it can take up to four years to go through the necessary insolvency proceedings. This is almost one year and a half longer than the regional average for the East Asia and Pacific region (2.6 years). In East Asia, the only economies that perform worse are Vietnam (five years), Myanmar (five years), and Cambodia (five years) (Figure 4). Not surprisingly, Mongolia has one of the region's lowest recovery rates: 18.2 cents on the dollar. In the region, only Cambodia (14.6 cents), Myanmar (14.7 cents) and the Marshall Islands (17.1 cents) perform worse (Figure 5).⁴⁸

Figure 4: Time to go through insolvency proceedings:

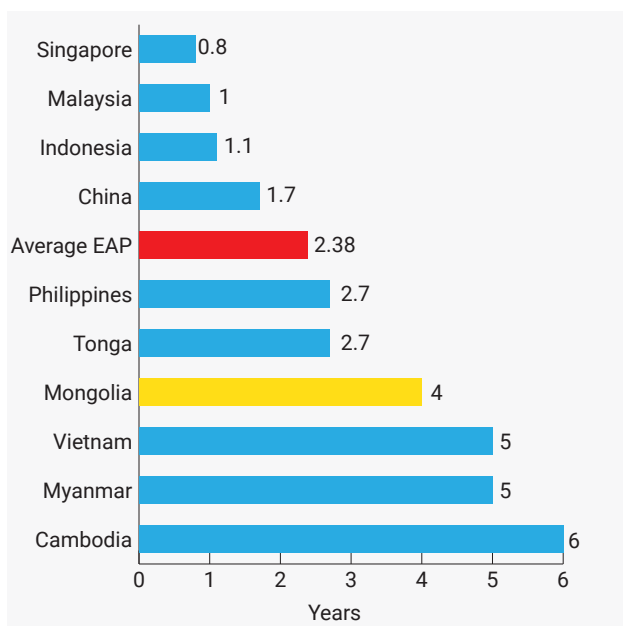
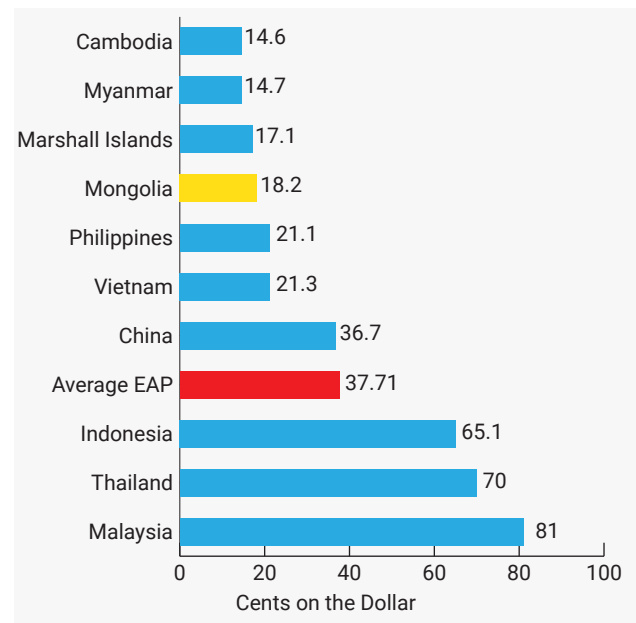


Figure 5: Recovering rates from insolvency procedures



Source: Doing Business database.

41. A well-functioning insolvency framework is essential for the healthy circulation of credit—where insolvency regimes are effective, creditors are more likely to lend, both in higher volumes and at lower interest rates. A balanced insolvency system also operates as a filter that promotes economic efficiency by providing a framework for the rehabilitation of viable companies and the swift liquidation of unviable ones, thereby preserving jobs and enterprise value in the former situations, and freeing up capital and assets in

⁴⁸ Source: Doing Business 2020.

the latter cases to be put to better use elsewhere. An effective insolvency framework supports the efficient reallocation of resources across the economy by facilitating the efficient business exit and liquidation of nonviable companies.⁴⁹ Improvements to insolvency systems require sustained and continuous efforts given that the effects of reforms are not immediately evident and only become clear and measurable several years after their enactment when insolvency cases under the new regimes were filed, litigated, or otherwise brought to a close. **Insolvency proceedings for legal entities are regulated by the Law on Bankruptcy (also known as the Insolvency Law) of 20 November 1997.** General rules and relevant provisions for court proceedings and liquidations can also be found in the Civil Procedure Code, the Civil Code, and the Company Law. Insolvency cases are handled by courts of general civil jurisdiction. There is no specialized court or judges trained to deal with insolvency-related matters. Further, bankruptcy proceedings are relatively rare and uncommon. For example, from 2004 to the first half of 2016, only 174 court cases were brought before the courts.⁵⁰ Further, the court's jurisdiction is based on the location of the debtor and insolvency practitioners (also known as trustees) are not required to have any special accreditation, registration, or license authority to act in insolvency matters.⁵¹

42. The current legislation presents several weaknesses that the planned legislative reform should address. These include improving the provisions regulating the treatment of the debtors' assets, those relating to reorganizations and those connected to the creditors' participation in the insolvency proceedings. For instance, the law does not provide for the possibility of the debtor obtaining credit after the commencement of the insolvency proceedings. All creditors vote on the reorganization plan, and not only those creditors whose rights are modified or affected by the plan - as it would be mandated by good international practice. Furthermore, there is no provision mandating dissenting creditors to receive at least as much as what they would obtain in a liquidation. The law does not require approval by the creditors when it comes to the appointment

of the insolvency practitioner or for the sale of substantial assets of the debtor. Finally, the individual creditor has no right to request financial information about the debtor from the insolvency practitioner or to object to the court's decision (or of the insolvency practitioner) to approve or reject claims against the debtor brought by the creditor itself and by other creditors.

43. Mongolia's insolvency framework does not offer incentives or guidelines for extrajudicial voluntary agreements (out-of-court workouts). Many countries have already adopted non-binding guidelines or principles to provide a framework for multiple institutional creditors (banks or other large lenders) to cooperate when they have a common debtor in financial distress. The guidelines often set time limits for the out-of-court process, and the banks will often agree—under the guidelines—to a moratorium on collection or recovery actions among themselves. The objective of the out-of-court workout process is to provide a flexible and informal mechanism for banks to negotiate a business rescue plan with the debtor, where the core of business operations remains valid, and the business is still viable. Out-of-court instruments have many advantages: they provide flexibility and ease of adaptation to the specific needs of the debtor's business; they are less formalistic and confrontational than formal insolvency proceedings; they involve a confidential process thereby mitigating the reputational damage of the debtor and make it easier for the debtor to continue to maintain control of the business. Box 4 below presents the example of Latvia's adoption of voluntary out of court workouts (OCW) guidelines.

⁴⁹ See Djankov, Simeon. 2009. "Bankruptcy Regimes during Financial Distress." Mimeo, World Bank Group; Funchal, Bruno. 2008. "The Effects of the 2005 Bankruptcy Reform in Brazil." *Economics Letters*, 101: 84–86; Klapper, Leora. 2011. "Saving Viable Businesses." *Viewpoint* 328, September 2011, World Bank Group; Visaria, Sujata. 2009. "Legal Reform and Loan Repayment: The Microeconomic Impact of Debt Recovery Tribunals in India." *American Economic Journal: Applied Economics*, 1(3): 59-81.

⁵⁰ Concept Paper for the revised Insolvency Law, prepared by the Ministry of Justice and Home of Affairs available at <https://mojha.gov.mn/wp-content/uploads/2020/09/Tulburiin-chadvarguidel-Uzel-barimtlal.pdf> (in Mongolian).

⁵¹ Insolvency practitioners must be either individuals with a degree in law, finance or economics, who do not have financial and economic personal interests in the debtor's activities, or legal entities with the rights and responsibilities to provide professional consulting services in the field of law, finance or economics. For more information, please visit: [https://ebrd-restructuring.com/storage/uploads/documents/13472%20EBRD%20\(Mongolia%20Country%20Profile%20ARTWORK\).pdf](https://ebrd-restructuring.com/storage/uploads/documents/13472%20EBRD%20(Mongolia%20Country%20Profile%20ARTWORK).pdf)

Box 4: The Latvia example of voluntary out of court workouts (OCW) guidelines

Latvia adopted non-binding out of court debt restructuring guidelines in 2009, which were developed by a working group consisting of the state agency “Insolvency Administration,” the Latvian Commercial Bank Association, Latvian Certified Insolvency Process Administrator Association, the Latvian Labor Confederation, the Foreign Investor’s Council in Latvia, the Latvian Chamber of Commerce and Industry, and the Latvian Borrower’s Association. The guidelines are based on the INSOL Principles for a global approach to multi-creditor workouts. According to a 2010 survey conducted by the Latvian Ministry of Justice, the guidelines were successfully used in 90 percent of out-of-court restructurings. Indonesia, Malaysia, and other countries in the EAP region have also adopted out-of-court guidelines that are successfully used to restructure financially distressed debtors. However, for OCW guidelines to be effective, there needs to be a facilitating legal framework in place and a local champion to promote them (usually the Central Bank).

44. The Mongolian authorities are adopting a new draft legislative framework that is expected to replace the existing Insolvency Law. The Government has submitted the draft revised Insolvency Law to the Parliament for approval in March 2022. The draft law was included in the list of laws to be adopted during the 2022 Spring Session of the Parliament. The draft revised Insolvency Law aims to address the issues mentioned above in line with international practice, providing detailed regulations concerning court proceedings and re-financing of the debtor.

45. Key recommendations:

- *Adopt the revised Insolvency Law submitted to the Parliament for approval to fully align the legal framework with international standards, notably regarding the treatment of the debtors’ assets, reorganizations, and creditors’ participation in the insolvency proceedings.*
- *Design and implement non-binding principles for out-of-court workouts (OCW) to be used by debtors with multiple creditors (suppliers, banks, or other large lenders).*

c. Enforcing contracts

46. Research in various countries suggests that firms make fewer investments in the absence of efficient courts while everyday transactions become more attractive. A study of 27 economies found that the informal sector’s share in overall economic activity decreased with better contract enforcement quality, evaluated by a country-wide measure of the rule of law and by the firm’s perception of the fairness of courts.⁵² Improvements in court efficiency are associated with a lower share of the informal sector in the overall economic activity, increased investor confidence and with increased bank financing of firms for new investment.⁵³ For example, reforms in other areas, such as creditors’ rights, can increase bank lending only if contracts can be enforced through the courts.⁵⁴ Several studies

also link contract enforcement, including through efficient domestic alternative dispute resolution (ADR), with higher FDI flows.⁵⁵

47. As in many developing countries, commercial contract enforcement in Mongolia can be problematic, particularly about the enforcement of court decisions. According to the latest WBG data presented in Figure 6 below, resolving a simple commercial dispute through a first instance court takes more than a year and costs roughly one-fifth of the claim value. However, in this respect Mongolia performs better than economies in the East Asia and Pacific (EAP) region, except for Singapore and Tonga.⁵⁶ The costs associated with commercial court are also relatively low and amount to less than half of the average costs registered in the

⁵² Dabla-Norris, Era, and Maria Gabriela Inchauste Comboni. 2008. “Informality and Regulations: What Drives the Growth of Firms?” IMF Staff Papers 55 (1): 50–82. <http://www.palgrave-journals.com/imfsp/journal/v55/n1/full/9450030a.html>

⁵³ Among other papers, see G.B. Ramello and S. Voigt, 2012. “The economics of efficiency and the judicial system,” International Review of Law and Economics; Mehnaz Safavian and Siddharth Sharma, 2007. “When Do Creditor Rights Work?” *World Bank Policy Research Working Paper No. 4296*; John Ahlquist and Aseem Prakash, 2010. “FDI and the costs of contract enforcement in developing countries,” *Policy Sciences*, Springer, vol. 43(2), pages 181-200, June; Inessa Love, 2011. “Settling Out of Court: How Effective is Alternative Dispute Resolution,” Viewpoint Note No. 329, The World Bank Group, October.

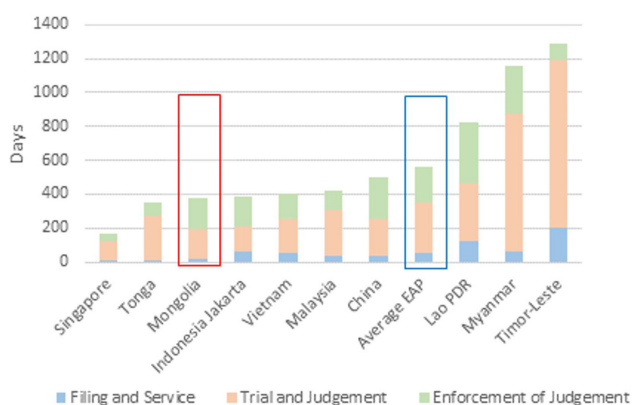
⁵⁴ Mehnaz Safavian and Siddharth Sharma, 2007. “When Do Creditor Rights Work?” *World Bank Policy Research Working Paper No. 4296*.

⁵⁵ John Ahlquist and Aseem Prakash, 2010. *Policy Sciences*, 2010, vol. 43, issue 2, 181-200.

⁵⁶ Enforcing a commercial contract through the Ulaanbaatar District Court takes an average of 374 days, in Singapore it takes 164 days, while in Tonga 350 days. The regional average for the EAP region amounts to 581 days. Source: Doing Business 2020.

EAP region.⁵⁷ Yet, the enforcement of court judgments can be a lengthy process that takes as much time as the trial itself.⁵⁸ Reportedly, the length of the enforcement process is connected to the Law on the Enforcement of Court Decisions adopted in June 2017 (Enforcement Law),⁵⁹ which intended to slow down the seizure of collateral by creditors—in particular banks—when the economy was in a period of financial distress.⁶⁰

Figure 6: Seeking redress through courts for commercial matters is not particularly problematic while the enforcement of a judgment can be drawn out.



Source: Doing Business database.

48. Several smaller foreign investors have suffered due to their Mongolian business partners' unreasonable or unethical activities, including breaching agreements and not consulting on key decisions. These small investors have found it difficult to seek redress or find reasonable solutions before Mongolian courts, in part due to the perception that it is those foreign companies that are more likely to abuse the court system for their own advantage at a relatively small cost. A very common practice is to drag out court cases through all levels of court and the General Executive Agency of Court Decisions (the “Enforcement Agency”) to avoid and delay the administration of justice. Unlike some other jurisdictions, undischarged judgments are free from interest accruals, hence respondents are incentivized to delay payment or satisfaction of any judgment debt for as long as possible without

being at risk of penalty, leading to enforceability issues.⁶¹

49. The quality of the judicial processes could be sensibly improved. Mongolia is still missing many international good practices that are known to sensibly improve the experience with the courts when it comes to commercial matters. While specialized administrative courts and procedures are considered relatively effective at resolving claims brought against government agencies, Mongolia does not have a specialized commercial chamber, commercial court, or a small-claims court to deal with minor claims expeditiously. In addition, while the law limits the adjournments to unforeseen and exceptional circumstances, practically, such rules are not always respected, resulting in delays when respondents or defendants are prone to dilatory tactics. Furthermore, whilst there is a consolidated law governing conciliation, there are no financial incentives for parties to attempt it. Finally, pre-trial conferences are not provided in civil procedural legislation and there are no electronic case management tools available for judges or lawyers. While judgments rendered in commercial cases at all court levels—including at the appellate and supreme court levels—are required to be made available online, the levels of court automation are low. The e-filing of cases, the e-service of process, and e-payments of court fees are not yet available.

50. The Enforcement Law is outdated and not adapted to best international practices. The current enforcement law was introduced in June 2017 when the Mongolian economy underwent financial distress. In a new economic context after the pandemic, the law should be reviewed and revised so that court decisions are enforced efficiently without causing difficulties on the parties involved. The lack of specific and accelerated processes for small claims and commercial matters ends up in long delays and complicated processes that are often not aligned with the interest of the parties, in particular traders and investors, which value more an accelerated process.

⁵⁷ Contract enforcement in Mongolia has a cost equal to 18.3% of claim value. While the regional average for EAP region amounts to 47.2% of claim value, the only economies with lower costs are China (17.5% in Beijing; 15.1% in Shanghai), Hong Kong SAR, China (18.3%), Thailand (16.9%) and Timor Leste (16.5%). Source: Doing Business 2020.

⁵⁸ Doing Business 2020.

⁵⁹ Enacted on June 9, 2017, the law entered into force on July 1, 2017. The law is available at: <http://legalinfo.mn/law/details/12701?lawid=>. The primary change introduced by the law is abolishing the incentive payment that used to be advanced to the court enforcement official based on an ‘incentive payment agreement.’ As a result, the only fees that must now be advanced by the winning party to enforce a judgment are a newspaper announcement fee in relation to the conduct of the auction and an enforcement fee. The latter is established by Regulation on Determining the Costs of Court Decision Enforcement, as approved by the Order No. A/181 of the Minister of Justice, dated August 23, 2013.

⁶⁰ In its position paper of 2021, the Euro Chamber of Mongolia recommends a revision of such law as to make it more functional and tailored to the post-pandemic context. For more information, please visit: <https://resource4.sodonsolution.org/eurochamber/File/2021/11/08/lsjftfg56pnmm6sb/FOREIGN%20INVESTMENT%20CLIMATE%20IN%20MONGOLIA-final%20printing.pdf>

⁶¹ In many jurisdictions, interest rates are usually set at fixed levels and often several percentage points above the central bank policy rate. See for instance examples from Australia and Hong Kong: <https://www.fedcourt.gov.au/forms-and-fees/interest-rates> and https://www.judiciary.hk/en/court_services_facilities/interest_rate.html

51. Like most emerging economies, Mongolia should continue striving to develop a reliable and efficient judiciary system for the long-term development of industry and commerce. Such awareness should translate into an increased budget for the judiciary, but also in a change of approach by the courts about the specific needs of commercial disputes. Judges should be encouraged to recognize the objective of the private sector efficiency as well as that of fairness in the enforcement of commercial contracts, debts, and collaterals. Better contract enforcement and improved access to dispute resolution for businesses are crucial elements for establishing trust in business relationships and enhancing commercial practices in the long term. Claimants of good faith should be enabled to enforce their rights fairly and cost-effectively. Otherwise, as a direct consequence of the inefficiency of the judicial system, private parties tend to develop their businesses based on family and personal relationships rather than on contractual commitments.

52. To attain this objective, Mongolia should review the functioning of its court system, in particular the training of judges and court personnel in commercial law. According to observers, many judges are not aware of the complexities of modern business practices. For some emerging regions of law, such as banking law, secured transactions, or intellectual property rights, few judges have sufficient knowledge of business practices and the complexities of the legal issues. Improving the training of judges could be made by (a) increasing the interaction between the private sector, legal universities, and the legal profession; (b) improving the continuing education of judges; (c) specializing courts and judges in commercial disputes.

53. In addition, the functioning of the court system will highly depend on the reform of the codes of procedures. These rules must provide clear guidance to judges, prevent misuse of the judicial procedures by bad faith claimants, and determine a reasonable cost for access to justice. Enforcement personnel must also be held accountable. If an order or judgment cannot effectively be enforced, then all trial proceedings are for naught. Anecdotal evidence points out that this is often the case in Mongolia for repossessing or seizing collateral.

54. Key recommendations:

- Revise Civil Procedure Code to support court automation, improve the flow of cases through stricter rules on time standards and introduce more stringent rules on adjournments and continuances that can be granted.
- Revise the Law on the Enforcement of Court Decisions to apply stricter standards on notification and enforcement.
- Consider creating a specialized commercial court (or Chamber) for handling commercial disputes and providing adequate training to judges hearing commercial cases.
- Consider creating a small claims court (or Chamber) to resolve minor disputes quickly and efficiently.
- Improve court automation by introducing e-filing, e-service of process, and e-payments of court fees and promote the development of a solid e-court system with case management tools for lawyers and judges.
- Further facilitate Alternative Dispute Resolution (ADR) by providing incentives to those who attempt conciliation in commercial cases.



V

SIMPLIFYING PROCEDURES FOR STARTING AND OPERATING A BUSINESS

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- a. **Business registration**
 - b. **Procedures relating to construction, electricity and property registration**
 - c. **Business permits and licenses**
 - d. **Business inspections**
 - e. **Customs procedures**

a. Business registration

55. Mongolia has taken necessary steps to simplify the business entry process in the early 2010s.

In October 2011, the Government revised the Company Law. The revised law, which came into effect in the same year, eliminated the minimum starting capital required to establish companies. Two years later, in 2013, the General Authority for State Registration (GASR) of Mongolia abolished the requirement to notarize company incorporation documents.⁶² In addition, it signed an agreement with the General Department of State Taxation (GDT) to exchange periodic data updates on new registrations between the two agencies. Subsequently in January 2015, the Parliament adopted the revised Law on the State Registration of Legal Entities. As a result, the Legal Entities Registration Office of the GASR (LERO) must process company registration within ten business days for business entities with foreign investment and within two business days for domestic entities. On June 21, 2018, the Parliament adopted the revised Law on State Registration of Legal Entities which entered into force on November 1, 2018, with time limits and introduced online registration that is yet to be put fully into practice⁶³.

56. Business entry still requires several physical interactions between different agencies.

Since 2018, the GASR has embarked on an overhaul of services related to the registration of businesses and the issuance of different types of documents through the digitalization of the government services and enhanced integration with other agencies including social security, tax, and customs. In principle, it should take only two days to undertake LERO's processes related to registering a domestic legal entity. Representative units of LERO have started working under the One-Stop Service Center (OSSC) for the registration of Foreign Direct Investment (FDI) companies established in February 2019 by then NDA.⁶⁴ Other participants to the OSSC include the General

Department of Taxation, Department of Foreign Citizens and Nationality, and General Department of Social Insurance. In addition to assistance in the registration of foreign legal entities, the OSSC provides investment legal advice and information; investment tax and nontax support, guarantee advice and information. Investor residence permit applications are now being received electronically. However, in practice, entrepreneurs still need to interact with several agencies to start and operate their business, such as the General Authority for State Registration, the local tax office, and the local social insurance department. Also, companies are still required to obtain a company seal with a specific seal number provided by the MOJHA.⁶⁵ Important progress has been made over the past months, especially in regard to the services provided by the LERO⁶⁶. Looking forward, all official services of the OSSC should be provided through an effective online single window interface system in order to reduce bureaucracy, eliminating the need to submit required documents in paper format or visit any agency in order to complete the business start-up process⁶⁷.

57. Digitalizing the whole registration process would improve the coordination and the level of interoperability between agencies.

While the business registry maintained by the General Authority for State Registration covers the whole country and companies are identified through a unique business identification (UBI) number across government agencies. Currently, Mongolia has no electronic system that covers the whole company registration process. As a result, applicants need to deal separately with the different agencies involved, often submitting the same documents over and over.⁶⁸ Even if company records are stored in digital form, there is hardly any electronic exchange of information between the registrar and other agencies. Finally, company records are not searchable, there is no electronic filing of changes in ownership, and

⁶² GASR Procedure 227 of February 26, 2013.

⁶³ For instance, private sector representatives interviewed in June 2022 reported that, as of April 2022, online registration for incorporation of a foreign invested company was not possible in practice.

⁶⁴ See website : www.invest-assist.gov.mn

⁶⁵ See Order A/216 of the Minister of Justice, dated 19 November 2018.

⁶⁶ LERO officers interviewed in June 2022 reported that is now possible to reserve a unique legal entity name, submit relevant documentation and incorporate a company online through e-Mongolia. They also reported that, because of the recent improvements, applicants are only required to visit LERO once to obtain the incorporation certificate. Please note that the WBG team could not independently verify that these statements are true in day-to-day practice.

⁶⁷ The Law on the State Registration of Legal Entities provides that registration services can be obtained online as provided in this law. However, article 12.4 of the above-mentioned law provides that "an applicant who made an online application shall submit the documents specified in Articles 16.1, 16.2 and 16.3 of this law, which originals are required within 5 working days of receiving a notification to register in the state register as provided in Article 12.1 of this law."

⁶⁸ For instance, copies of the State Registration Certificate must be submitted when registering to obtain a

electronic signatures are not used for company registration.⁶⁹ In addition, publicly available information on registered companies is quite limited (that is, only information such as company name, address, authorized representatives, and direct shareholders are typically included).⁷⁰

58. Key recommendations:

- Increase data exchange and improve the system interoperability between the General Authority for State Registration, the local tax office, and the local Social Insurance Department.
- Ensure suitable practice mechanisms to sustain the business registry's quality, reliability, and transparency as the repository of business data.
- Create an effective online single window interface system for all business start-up procedures, eliminating the need to submit hard copies of the required documents and/or have physical interactions between the applicant and the authorities.
- Eliminate the requirement of obtaining a company seal and ensure that it is not required in day-to-day practice when dealing with the public administration.
- In the longer term, ensure the development of interoperable ICT systems that are able to transmit and share relevant business information among all government agencies.

b. Procedures relating to construction, electricity and property registration

59. A review of the latest data and scores of Mongolia in the Doing Business 2020 indicators measuring property registration, construction permit and access to electricity show that Mongolia can further simplify and reduce the number of procedures and interactions with public authorities. While Mongolia fares relatively well on data measuring the cost to comply with the procedures, it is below the regional EAP average regarding data measuring the number of steps and the time for implementation. While legislation has been modified and revised numerous times to align with best practices, improved transparency, and the use of digital technologies for undertaking online transactions, further effort is still required for successful simplification of procedures and interactions with public authorities.

60. Mongolia has aligned itself with several international best practices related to construction quality control. Construction laws and regulations are generally and freely accessible online. In addition, building requirements, required preapprovals and fee schedules are generally clearly specified. Parties that are liable for structural flaws or problems are clearly identified

by legislation, while public liability, personal injury (including life-insurances), third-party property and contractor insurance is mandatory for those participating in construction. Professional certifications are also in line with international best practice.⁷¹ Before construction commences, third-party entities (licensed architects or engineers) are required by law to verify that the building plans are following existing construction regulations. During construction, inspections are phased and happen at a specific time during construction or are unscheduled (for instance, if relating to safety standards and working conditions). At completion, a final inspection is carried out by the relevant agency to ensure that the building complies with relevant standards and is ready for occupancy. In spite of the good practices described above, Mongolia is still lacking a coherent risk-based inspection system where the number and type of inspections depend on well-defined risk categories of buildings.⁷²

61. The construction permitting process in Mongolia remains inefficient due to a large number of interactions with multiple authorities. Construction companies and developers are

⁶⁹ Doing Business database. The information was confirmed through interviews with the private sector in March 2022. Such a situation might change once the new Law on E-signature is implemented.

⁷⁰ EBRD. Business Reorganization Assessment in Mongolia.

⁷¹ Both the professionals responsible for verifying that the architectural plans are in compliance with existing building regulations and those charged to supervision the construction works must have a relevant University degree, have passed a certification exam, be licensed architects or engineers, and have a minimum number of years of experience.

⁷² This assessment is based upon the "building quality control index" of latest Doing Business (2020) report. According to the World Bank database, Mongolia scored 14 out of 15 points on building quality control. The only point missing out of the 15 available is due to the lack of a solid risk-based system of inspections implemented during the construction phase. For more information, please visit: https://archive.doingbusiness.org/en/data/exploreconomies/mongolia#DB_dwcp

required to engage with a range of agencies and comply with often onerous procedures prior to applying for a building permit. For less complex builds, these include obtaining pre-approvals by relevant Fire Departments and the Municipal Urban Planning and Development Agency (MUPDA) and complying with technical conditions from utility providers for heating, electricity, water, and sewage, among others. Whilst the obtaining the building permit from MUDPA can take as little as three weeks, the pre-requisite procedures can consume several months to a year and are prone to corrupt practices.⁷³

62. New connections to the electric grid further prove challenging. Securing electricity in Mongolia requires more interactions with the authorities and external parties than in any other country in the East Asia and Pacific region.⁷⁴ In Ulaanbaatar, companies intending to connect their building to the electric grid must not only deal with the utility providers but also with a gamut of other stakeholders – including the Road Department, Police and Municipality, licensed contractors, and design firms. In simpler cases, the process can take up to three months and has a cost equivalent to around 600% of income per capita. In addition, the average frequency and duration of outages is considerably high, and the distribution utility has no automatic mechanisms to restore service.⁷⁵ The electricity infrastructure is getting obsolete and doesn't have a sufficient distribution capacity to meet the increasing energy demands.⁷⁶ Only 44 percent of current power consumption by the mining and heavy industries sector is grid-supplied, while the remaining 56 percent comes from auto-generation or imports from China (with a cost of \$0.10/kWh).⁷⁷

63. The Mongolian energy sector has a high level of energy inefficiency and is carbon intense with outdated coal-fired Combined Heat and Power (CHP) plants. 74% of the total electricity consumption is produced by coal-fired CHP, owned by the State, while 5% is produced by a

handful of renewable energy (RE)⁷⁸. The remainder is imported from Russia and China. Mongolia has a huge RE potential which can represent a significant source of cleaner electricity for the country and its neighbors. The country has excellent wind resources, and good solar and hydropower resources. The Law on the Renewable Energy was passed in 2007 to support and regulate the generation and transmission of green energy. The law established a renewable energy fund and feed-in tariffs (FITs) for renewable energy power sources, including import duty and value-added tax exemptions for importing equipment and materials for renewable power plants by SMEs. The government also promotes building a high-voltage direct current (HVDC) electric power transmission system between Russia and China through Mongolia⁷⁹. WBG technical assistance is providing support in civil works related to sustainable cooling technologies and/or integration with RE⁸⁰, the construction of grid-connected solar photovoltaics (PV) power generation⁸¹, including tariff reforms in promoting and introducing green technologies.

64. The vast majority of the land in Mongolia is under State ownership. Less than 5% of the land is made available for private use, while the remainder is under the control of the State. State land can be leased by the private sector primarily for mining purposes, while foreign ownership is prohibited.⁸² The Land Law allows land possession for 15-60 years with an option to renew for a further 40 years.⁸³ Similarly, land use rights are granted for five years with an option for a single extension. An exception is made for pastureland, which covers 72 percent of total land and is recognized as "common tenure land" and is available for collective management.⁸⁴ The remaining area is protected under special laws to preserve flora and fauna⁸⁵ (for example, the Law on Forests and the Law on Specially Protected Areas).

65. Mongolia suffers from a cumbersome and costly land administration process. The introduction

⁷³ According to World Bank interviews carried out in March 2022

⁷⁴ Data on this topic can be found at: <https://www.worldbank.org/en/programs/business-enabling-environment/doing-business-legacy>

⁷⁵ In 2019, the System average interruption duration index (SAIDI) for Mongolia was 62 hours while the System average interruption frequency index (SAIFI) was 15 times a year. Data are available at: https://archive.doingbusiness.org/en/data/exploreconomies/mongolia#DB_ge

⁷⁶ The World Bank 2020. Mongolia InfraSAP. Infrastructure for connectivity and economic diversification.

⁷⁷ The World Bank. 2020. Mongolia InfraSAP. Infrastructure for Connectivity and Economic Diversification.

⁷⁸ Mongolia. Multi-Annual Indicative Programme 2021-2027.

⁷⁹ Partnership for Action on Green Economy. 2014. Mongolia's Transition to a Green Economy: a Stocktaking Report.

⁸⁰ Smart Government II Project. P176631. May 2022.

⁸¹ Second Energy Sector Project. P152343.

⁸² Barcus, H. R. (2018). Contested Space, Contested Livelihoods: A Review of Mongolia's Pastureland Management and Land-Tenure Reform. Geographical Review, 108(1), 138–157.

⁸³ Article available at: <https://landportal.org/book/narratives/2021/mongolia#ref25>

⁸⁴ Gender and Land Rights Database Country Profiles. Food and Agriculture Organization of the United Nations. <http://www.fao.org/gender-landrights-database/country-profiles/en/>

⁸⁵ Nyamdorj, B., Molen, P. van der, & Tuladhar, A. M. (2014). Land privatization in urban Mongolia: An observation. Survey Review, 46(335), 90–96.

and the multiple amendments of laws related to land administration, titling, and land evaluation have led to public confusion and uncertainty. The Land Law was first enacted in 2002 and has been amended 32 times since its enactment in 2003.⁸⁶ A multiplicity of central and local public sector agencies are involved in the land administration process.⁸⁷ The interaction of these multiple institutions and interests involved leads to a lack of coordination among agencies and costly procedures.⁸⁸ In addition, the quality of services provided locally can vary widely.⁸⁹

66. Databases registering titles and cadastral maps are separate and disconnected. The Immovable Property Registration Office of the GASR is in charge of handling the property registration process. There is a comprehensive and functional database for checking encumbrances (such as liens and mortgages). Title certificates are kept in a scanned format but are not fully digital. Similarly, cadastral maps showing legal boundaries are also computer scanned and kept by the District Land Authority and Capital Property Relations Department. The two databases – of titles and maps – are separate and do not use the same identification number for properties. Notably, both databases are incomplete and not updated in a timely manner.⁹⁰ Finally, not all privately held land plots are neither registered nor mapped, neither on the Ulaanbaatar or the national level. This can lead to land management issues where property valuations are not based on a transparent and established land and property market.

67. Transparency and access to information in land administration matters could be readily improved. The requirements of the legal documents necessary to carry out a transfer of real estate property are publicly available as are the applicable fee schedules for cadastral and property registration services.⁹¹ In addition, both the Cadastral agency and the property registry commit to delivering their services within a specified timeframe. However, neither property records nor cadastral maps are publicly available. Furthermore, there are no publicly available statistics on the number of transactions, nor specific or independent mechanisms to file

complaints for problems that occurred at the point of property registration and when dealing with the Cadastral Agency.⁹² This discourages individuals from completing procedures and paying fees and taxes for registering ownership.

68. Key recommendations:

- *Introduce a clear and coherent system of performing inspections in which the number and type of inspections depend on well-defined risk categories of buildings.*
- *Streamline the building permitting process and introduce a single online window for the application and approval of construction-related permits.*
- *Reduce power outages—both in terms of frequency and duration—and increase collaboration between utility providers and other public stakeholders in order to simplify and automatize the process of connecting to the electric grid.*
- *Improve energy efficiency through the establishment of renewable energy technologies and the development and implementation of a Master Plan to use the renewable energy sources.*
- *Improve efficiency, consistency, and transparency of land administration services, including titling and registration.*
- *Further increase the geographic coverage of cadaster and immovable property registry.*
- *Continue the digitization of cadastral maps and property titles and consider introducing common identifiers as to effectively link the information recorded by the immovable property registration agency and the cadastral agency.*

⁸⁶ The latest draft of the Land Law includes a revised draft of the General Land Law, a revised Law on Allocation of Land to Mongolian Citizens for Ownership, a revised Law on Cadastre, a revised Law on Land Fees, and a Law on Land Acquisition for Urgent Needs

⁸⁷ The World Bank. 2015. Land Administration and Management in Ulaanbaatar, Mongolia.

⁸⁸ World Bank interviews.

⁸⁹ The registration of immovable property and the regulation of all matters relating to the registration and protection of rights are regulated by the Law on State Registration of Property Rights (2018)

⁹⁰ In this regard, it must be noted that there is a significant mismatch between the records of the property registry and claims on land (The World Bank. 2020. Land Administration and Management in Ulaanbaatar, Mongolia)

⁹¹ Cadastral fees are made available through public boards while property registry services fees can be found online. For more information, please see: <http://burtgel.gov.mn/service/index.php/eprs-newlist>

⁹² The Agency for Land Administration, Geodesy and Cartography (ALAGaC) is the authority in charge of legal (e.g. land tenure) and tax (e.g. taxation) aspects of land management.

c. Business permits and licenses

69. Business permits and licenses effectively take the form of any type of approval issued by a government or delegated entity for a business to conduct operations. As a general best practice, business permits and licenses should be based on public policy objectives to protect public health, safety, and the environment or to address limited resources. However, business permits and licenses can often be burdensome, redundant, non-predictable and lack transparency in their administration. They can also be used to serve vested interests or present opportunities for bribery. While business permits and licenses are often used by the government as a revenue-generating instrument, this is inconsistent with good policy, which mandates the administration of licenses and permits for regulatory purposes.

70. A more streamlined licensing process can reduce the burden of starting and operating a business and issues relating to informality. Licenses and permits in Mongolia can be cumbersome and costly as they add uncertainty and incur additional costs to business operations. Some businesses in Mongolia are unregistered, operating without a license or permit, paying no taxes, and relying only on verbal employment agreements.⁹³ Compared to its regional peers, Mongolia has the highest average time required to obtain an operating license with 42 days vs 16 days in Tajikistan (Figure 7 (a)).⁹⁴ According to the Enterprise Survey, only 3 percent of respondents confirm that it takes one day or less to obtain an operating license, whereas 23-25 percent of firms need from 2 to 25 days, while the majority of firms reported a period of greater than 25 days with around 10 percent reporting up to 60 days (Figure 7 (b)). Similarly, more than 25 percent require more than 25 days to obtain an import license and more than 70 percent a construction permit. In reference to the establishment’s experience of the whole process of obtaining an operating license, 60 percent agreed that public officials were professional and transparent in making decisions, while 62 percent reported comfort to voice complaints. Additionally, on the positive side, 89 percent declared that no informal gift or payment was requested when applying for the operating license.

Figure 7 (a): Average time required for obtaining an operating license in 2019

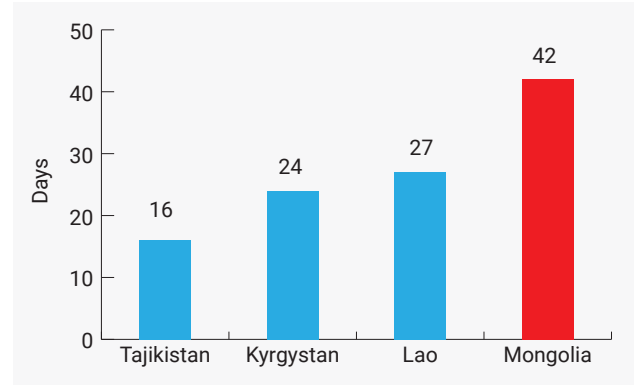
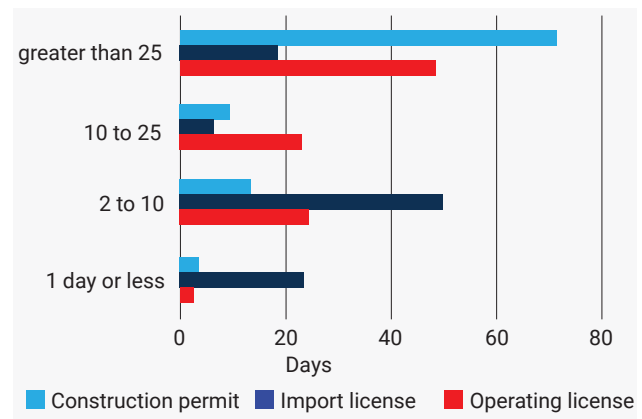


Figure 7 (b): How many days did it take to obtain your license?



Source: World Bank Indicators.

71. Mongolia has previously engaged in permits and licensing reforms with limited degrees of success. The current Law on Licensing of Business Activities was enacted on 1 February 2001 (the “2001 Licensing Law”) to regulate relations concerning the issuance, suspension and revocation of licenses required for business activities that may cause harm to the public interest, human health, the environment or national security, or that require certain conditions or specialist expertise. Since its adoption in 2001, the law has been amended 69 times. The law provides for 103 general types of licenses divided into 210 subtypes of licenses in 19 different sectors.⁹⁵

72. The 2001 Licensing Law provides a list of business activities requiring licenses and the general procedures for granting, suspending

⁹³ ILO. 2015. Formalizing enterprises in Mongolia: Challenges and policy directions.

⁹⁴ World Bank Indicators 2019. <https://data.worldbank.org/indicator/IC.FRM.DURS?locations=MN>

⁹⁵ Concept Paper to the draft Licensing Law initiated by the Parliament Member Byambatsogt Sandag <http://forum.parliament.mn/projects/11132#collapse1>.

and terminating permits and licenses, which are further complemented by sector-specific laws and regulations. There is no unified framework that regulates standards and requirements and procedures, often due to coordination issues among different regulatory agencies.⁹⁶ The complex licensing environment in Mongolia is regulated by different laws providing numerous licenses, permits, and certificates. Several sector-specific laws provide for permits that are not covered by the 2001 Licensing Law. According to a survey conducted in 2016, 54 entities were issuing more than 914 different kinds of permits. This creates confusion on the permitting and licensing process in various sectors such as cross-border business activity and increases corruption risk.

Box 5: “Licenses” and “Permits” in Mongolia

The 2001 Licensing Law provides for the term “license” (literal translation of the Mongolian term is “special license”). As per the 2001 Licensing Law and the related sector-specific laws, government entities grant licenses. However, certain sector-specific laws also provide for the term “permit” which government entities can also grant to businesses. For example, in the construction sector, construction companies require a construction license (granted for a period of 5 years) to construct certain types of buildings and the license is granted by the Ministry of Construction and Urban Development. Concurrently, construction companies obtain a permit to commence specific construction work, which is granted by the local government which is valid from the commencement of the construction work until the end of the construction work. Another example is that in order to establish a bank, the business would need to obtain a banking license issued by the Bank of Mongolia. However, if the licensed bank wishes to establish its branch or settlement unit, a permit is required to be obtained from the Bank of Mongolia. Obtaining a permit should be simpler than obtaining a license given the nature of the activities involved, however the process is often similarly onerous.

73. A new Permit Law has been adopted in June 2022 in an effort to streamline the issuance of permits and licenses and follow a unified framework.

The new Permit Law will become effective from 1 January 2023 and the 2001 Licensing Law will be repealed with the entry into force of the Permit Law. Revisions to the 2001 Licensing Law has been under discussion since the Government submitted a draft to the Parliament in 2014. However, no progress has been made until recently. In March 2019, 22 members of Parliament proposed a new draft Licensing Law to the Parliament, while the Government submitted its own draft Permit

Law to the Parliament for discussion. The Permit Law is the result of consolidation of the two draft laws. The Permit Law was adopted with the aim to improve the process of issuing, suspending, revoking, and terminating licenses, establish a definitive list of permits and develop a unified control and coordination system.

74. Under Section 6 of the NRP, Mongolia is committed to resolving and streamlining the system of state inspections, licenses, and technical specifications required by the government authorities.

To support businesses more transparently and efficiently, the government aims to reduce the number of licenses and permits by 50 percent and to monitor progress by setting up and maintaining an integrated electronic database of licenses and ensuring its accessibility to the public. With the approval of the Permit Law, the country aims to cease unnecessary licenses from businesses and to establish a unified database of licenses to ensure transparency. The Permit Law aims to: (i) limit the creation of new permits/licenses without law; (ii) set time limits and deadlines in the process of granting and renewing permits; (iii) establish a review process with a Permit Council; and (iv) improve transparency with an online permit database. These reforms would help support a systematic and effective simplification of permits that affect business development, while also monitoring adequately business activities that could pose environmental and social risks.

75. While the Permit Law contains many positive changes, there could be certain improvements made in line with best international practices.

The World Bank has the following remarks regarding the Permit Law:

- **Relationship between the Permit Law and sector specific laws:** The Permit Law defers to sector specific laws in a number of areas, which could reduce its overall impact. Some provisions indicate that sector specific laws will need to be in conformity with its provisions, while conversely, other provisions provide that the Permit Law will defer to sector specific laws. Clarity in terms of the relationship between the Permit Law and sector specific laws is necessary to avoid creating confusion or potential “legislative vacuums”. Otherwise, the situation that existed in the 2001 Licensing Law and sector specific laws will likely to remain the same.
- **Difference between ordinary and special permits:** The Permit Law draws a distinction between ordinary and special permits but does

⁹⁶ World Bank Interviews.

not define clearly the distinction between the two types of permits. Apart from a few specific implications in time-limit and the term of the permits, the purpose and usefulness of the two categories does not appear well-grounded. Conversely, follow on work is needed to further clarify and refine the two categories.

- **Inventory and listing of permits.** The list of permits in the Permit Law seems overly comprehensive and detailed. Going forward, there should be greater clarity in terms of grounds and criteria for making certain activities as licensed activities.
- **Time limits:** Time limits set in the law for processing applications and extension requests could be too short or unrealistic for permits for certain complex activities. There is also a risk of confusion as to when the time limits set in the sector specific laws will prevail and whether they will be amended in line with the Permit Law.
- **Online database of permits:** Initiating an electronic register of all permits constitutes an important step according to international experience. The Permit Law provides that the Government shall approve a regulation with respect to information on the integrated permit online database, its clearance and registration of permits on the database, as well as provide references and other relevant information. It would be useful to clarify the status of these procedures as well as the relationship between this and other portals such as the trade information portal which already includes several licenses and forms. Currently, government entities authorized to grant permits have their respective online permit systems through which the applicants can file their request to obtain permits and monitor its status. For instance, permits to be obtained from the Ministry of Mining and Heavy Industry, the Ministry of Finance and the General Customs Authority can be obtained through an online licensing portal license.mn, and the Ministry of Environment and Tourism has its own licensing portal. It will also be important to assess whether sector specific laws would prevent the digitalization of service delivery because of mandated use of paper documents or physical presence, resistance to change, lack of interoperability, or similar constraints.
- **Permit Council:** The Council could play an important role for public-private coordination and as an institutional gatekeeper. The office of the Council is to be performed by the Cabinet Secretariat. It is prudent for the Council to have necessary support and resources to fulfill its mandate. As of December 2022, there is no publicly available information concerning the establishment of the Permit Council.
- **Systematic review of the stock of permits versus quality control of new permits.** The Permit Council seems predominantly focused on new permits. A more systematic streamlining and review of permits and their subsets are critical for engendering clarity among economic stakeholders and those with inspections that safeguard social and environmental assets may be required.
- **Effect of the law on existing licenses and permits.** The effect of the Permit Law on existing licenses and permits are unclear. Specifically, it is unclear as to whether there would be review, cancellation or limitation of the overall number of permits and licenses.
- **Alternative/complementary approaches:**
 - **Risk-based approaches to regulating business activities.** Public administration efficiency can be improved greatly by focusing checks on business activities that present higher risks to public safety and the environment. This would require classifying economic activities into risk categories based on impact on health, safety, and the environment. While specific activities that pose a high risk to public health, safety or the environment would demand a thorough inspection and mandatory licensing requirements, in the case of lower-risk activities onerous licensing requirements can be replaced with a simple registration or notification through an online platform.
 - **Standardized application forms:** The law provides minimum information requirements that could be further enhanced. Further—beyond legal provisions—in most countries the simplification effort entails a focus on improved standardization and certification of application forms such as paper forms, online forms, and standard operating procedures used by the public administration. For end-users, the form is often the only visible part of any administrative action. The systematic translation of legal and regulatory provisions into clear and standardized forms can play an important role in transparency, the simplification of processes and the digitalization of permits.

76. Upgrading the e-Mongolia platform to provide transactional services to businesses and citizens alike will be a critical step for simplification of licensing.

The e-Mongolia platform aims to ensure that public services are responsive, accountable and accessible to save time and costs for citizens.⁹⁷ To date, the e-Mongolia platform has digitalized over 684 services.⁹⁸ However, most services offered are still purely informational. For business registration, the platform requires LERO⁹⁹ to process the application of business entities and to submit the documents afterward.¹⁰⁰ E-Mongolia also allows registered business entities to obtain “letters of reference” to confirm specific rights or certify registration.¹⁰¹ The system does not release any electronic certificate and the whole review process must be done in person with paper-based documentation, given the non-effectiveness of a Law on E-signature. There is a widespread lack of awareness among citizens and business entities of all services and transactions that e-Mongolia can offer. For most services, citizens are unclear about the procedure that needs to be followed and the information available in the system, since there is not enough transparency about the data and the steps required to process an application.¹⁰² Limits to access to the Internet may also hinder the outreach of the platform: although more than 70% of the Mongolian population own a smartphone, few have access to the Internet beyond social media platforms because data plans with mobile phone companies are too expensive.¹⁰³

77. Key recommendations:

- *Upgrade the e-Mongolia platform to provide online transactional services for obtaining all permits, registrations and notifications.*
- *Adopt secondary legislation concerning the operation of the Permit Council for improving public-private coordination and allocating permanent technical staff to support the Council and detailed regulations providing standards and guidance to aid the Permit Council in effectively implementing its mandate.*
- *Further enhance the digitalization of licensing procedures allow businesses to obtain their licenses promptly and in a transparent manner. Make it clear as to whether the Permit Law will result in cancellation or limitation of the existing permits and licenses.*
- *Clarify the relationship of the Permit law and sector specific laws and consider whether any changes are required to be made to existing laws and regulations in light of the Permit Law.*
-

⁹⁷ The e-Mongolia website is accessible at: <https://e-mongolia.mn/services/citizen/sector/all>.

⁹⁸ Updated in accordance with the data on <https://e-mongolia.mn/home>.

⁹⁹ LERO does not offer online services to foreign invested companies.

¹⁰⁰ This is due to the fact that registration of any changes in the charter or change of the executive director of company need to be reflected on the back of the state registration certificate of the business entity.

¹⁰¹ The executive director of the business entity has to register with e-Mongolia by including phone number, bank account and/or e-signature. It is not clear if it is possible for the applicant to review/monitor the process of handling the request/application.

¹⁰² World Bank. 2022. Prioritized Human-centry Digital Services for Mongolia Final Report.

¹⁰³ World Bank interviews.

d. Business inspections

78. Mongolia had consolidated several sector-specific inspectorates into one single inspection authority, the General Authority for State Inspections (“GASI”) with the adoption of the State Inspections Law in 2003. Since then, the governance and practices of the GASI have been adapted several times to keep pace with best practices and private sector needs. Inspections are tools which government or delegated entities deploy to ensure and monitor compliance with rules and regulations. They consist of on-site visits by regulators (inspectors), which may be a pre-requisite for issuing permits (ex ante) or they can be used to monitor compliance with the terms of a permit (ex post). Inspections by various agencies can often be non-standardized, duplicative, unclear, and are often avenues for bribery. Nevertheless, there are several reform options available to governments to make the inspections system more effective and efficient, including shifting from policing and punishment, to counselling and advice to improve compliance by businesses.

79. Currently, GASI has a complex governance and operational structure because it works across various sectors in a geographically large territory. The approximately thirty surveillance areas in the Authority’s responsibility are split into seven departments: (a) Food/Agriculture; (b) Environment/Geology/Mining; (c) Health/Education/Culture; (d) Infrastructure; (e) Border; (f) Occupational Safety; and (g) Nuclear-Radiation. There are also two key horizontal departments, namely, the Risk Management, Strategy, and Planning Unit—responsible for overall risk assessment and planning, strategic and operational planning, and consolidating data on inspections—and the Administration Department—responsible for monitoring and evaluation, human resources, finance, and legal units. The Authority is also divided by geographical locations. GASI is headquartered in Ulaanbaatar and consists of senior management, horizontal departments, and administration. Then there are local GASI offices for each Aimag (administrative sub-division) and the capital city, Ulaanbaatar. The Chairman of GASI is appointed by the Cabinet and reports to the Deputy Prime Minister.¹⁰⁴ However, due to recent amendments to the State Inspections Law initiated by the Government, there will no longer be

GASI and GASI offices at aimags and the capital city effective from 1 January 2023 (see below).

80. The World Bank Group supported GASI in a series of reforms between 2009–16, which led to a decrease in inspection and a more targeted approach. A report in 2016 found that, as a result of the reforms, the burden from inspections in Mongolia had generally decreased, and in particular, the share of businesses inspected each year by GASI.¹⁰⁵ On average, the number of inspections by the GASI ‘inland’ unit responsible for all Mongolian businesses decreased by 57 percent between 2009 and 2015. This decrease resulted in savings in administrative compliance costs of more than US\$2.6 million over four years. Reforms during this period included the introduction of risk-based inspections, inspection checklists, and inspection planning. Respondents to a survey covered by the report confirmed that GASI had put in place targeting methods, which relied on risk assessment and resulted in significantly less frequent visits to low-risk businesses, including those with good compliance records. In addition, GASI inspectors used sanctions less frequently and placed more effort into informing, advising and otherwise supporting businesses with their compliance matters.

81. Nevertheless, the assessment report also found that many complaints remained concerning low professionalism of many inspectors, sector-specific issues, and significant variations in implementing the reforms between rural areas. Frequent concerns include inspections still being used as a revenue-generating tool by central and local governments alike and that many of the requirements being checked are outdated or inadequate. In addition, GASI suffers from excessive political interference, in particular frequent changes in senior management.

82. Another important reform was the deployment of the “Glass Inspections Portal” (2015–21), which was designed to allow businesses to track their own file, receive notifications and results (including what measures and penalties have been taken), and upload their complaints concerning inspectors. The portal was also used by GASI for planning of inspections on a risk basis, data sharing, workflow management, and recording and analysis of inspection results. More

¹⁰⁴ This section was adapted from an internal World Bank Group report prepared by Donald Macrae.

¹⁰⁵ “Mongolia Inspections Reform Project – 2009-2016: Evaluation Report on Reform Outcomes”, World Bank Group, May 2016.

specifically, the portal had the following features:

- Allow businesses safe and secure access to their profiles in the inspection database using a unique ID and password, where they could review all inspections reports, complete checklists, view the measures taken and assigned risk levels, and provide comments on the inspection report or express disagreement with the conclusions and measures taken by an inspector. If a complaint against an inspector was lodged, the system would notify the upper-level inspector or chief inspector to review the case and reply back to the business.
- Allowed GASI to plan “joint” inspections that covered more than one regulatory area. The team of inspectors were usually led by the inspector in charge of the dominant sector where the business operated, for example, for the mining sector, the lead was either a mining or an environmental inspector, but if the company has a previous history of non-compliance in occupational safety, the lead was the occupational safety inspector.
- The system also allowed for tracking the time spent on conducting an inspection by both the inspector and the business. Businesses could even upload the amount of time their employees spent on assisting with an inspection, its overall duration, and how much it cost them.

83. Digitalization of inspections is in progress; however, managing data and developing policies based on data analysis needs to be strengthened.

From 2021, GASI started developing www.E-khyanalt.mn as a system to replace the Glass Inspections Portal, which would continue as an archive of inspection history covering 2015–21. The new system consists of three interoperable portals: 1. Inspectors portal; 2. Consumers portal; and 3. Business portal. The Consumers portal allows citizens to upload their complaints related to products or services. Complaints would then be seen by inspectors to determine if they should take actions, such as conducting investigations or inspections. Reports on such actions are then uploaded to the system and the complainant will be notified of the results of actions taken. Businesses will be able to use the portal’s checklist to conduct a self-check against requirements. They can also complete check lists with their responses and attach necessary evidence (documents, photos, video recording) and share with the Inspectors portal. Inspectors can then decide whether to organize a physical inspection based on quality of

responses and evidence submitted by businesses. The system is still in the developmental stage.

84. If the plan is to develop the system despite the restructuring of GASI, full deployment of the system will likely significantly increase the amount of data collected.

It will become difficult to manage vast amounts of information if strategies and objectives are not developed clearly and purposefully. Furthermore, processes need to be in place to ensure fraudulent data is not being entered into the system. It is important to develop and share these processes openly with businesses and consumers so that they can avoid providing fraud and misleading information, which may result in raids or unplanned inspections. Consumers and businesses also need to be educated and better understand the risks and hazards and impacts of business activities on human health and safety, as well as to the environment. Moreover, it is crucial that the entire GASI, including the Aimag and city-level entities, participate and are involved in the development of the operational systems and portals to be used by consumers and businesses.

85. The inspections reform initiatives have also faced setbacks.

With the approval of the Minor Offences Law, enacted on 11 May 2017, the sanctions provided in various laws were consolidated into one legislation. However, one of the negative effects of the Minor Offences Law appears to have been the removal of the option of providing lower penalties based on the level of breach, such as being able to provide a warning or an opportunity for an issue to be addressed. With the approval of the Minor Offences Procedure Code, the prosecution is also involved in the process of imposing sanctions for those who breach various laws.

86. A draft to revise the State Inspections Law in its entirety was initiated and submitted to the Parliament on 1 May 2020 by members of the Parliament while the Government is also working on its own draft law to revise the State Inspections Law.

It should be noted that the State Inspections Law applies to inspections carried out not only by GASI but also by other government entities. The need to improve the legislative framework is a result of a lack of detailed procedures for conducting inspections i.e. what specific inspection would be carried for each sector/fields are not clear and conflicting regulations with regard to the process, outcome, and powers of state inspectors provided in sector-specific laws, and a lack of clarity regarding the

rights, obligations and participation of individuals and legal entities in the inspection process. In addition, the law lacks alternative forms of state inspections, such as the ability to provide advice and recommendations and issue warnings. There is also a need to prioritize or target inspections focusing on safety, protecting the public interest, and preventing grave damage; currently, the broad scope of operations results in repeated and unnecessary inspections being carried out on business entities that are not considered to be at risk or are less risky. Finally, the process of inspection should be separated from investigating and imposing sanctions for minor or administrative offenses provided under the Minor Offences Law and the Minor Offences Procedure Code. The law initiator provides that the draft law aims to address these shortcomings and constraints.

87. In parallel, the Government has proposed the Law on Temporary Suspension of Certain State Inspection to the Parliament.¹⁰⁶

The draft law was proposed in an effort to reduce the negative impacts of the COVID-19 pandemic on the economy, increase economic efficiency, and accelerate economic recovery by suspending scheduled state inspections. The draft law provides that there will be no scheduled inspections for a period of three years and inspections will only be made in the event of submission of complaints, requests or petitions from the public, decisions of a government entity, or other circumstances leading to direct and indirect damage to human life, health, or the environment. As of December 2022, the draft law has not been approved.

88. Allowing inspection authority itself to define and set critical inspection criteria may create potential conflict of interest and implementation challenges.

Many laws stipulate that implementation of their legal provisions is the inspection authority's responsibility while not providing a clear framework or specific criteria. This not only results in additional work for the inspection authority, requiring it to acquire new knowledge but also creates regulatory gaps on enforcement as inspection authority has to conduct inspections based on risks. A recent example of this concern was demonstrated in the enforcement of the Law on Animal Health. This law does not clearly define the roles of veterinarians and GASI inspectors in relation to the issuance of export certificates and inspections. As a result, exporters of animal-originating products faced multiple and repeated inspections and requests

for corrective steps costing money and time.

89. Implementation of policies across the entire system, including Ulaanbaatar city, districts, and aimag inspectorates, requires better communication, monitoring and evaluation and this could particularly become challenging in light of the recent restructuring.

During the collection of data for the Time Release Study (TRS) in 2019, it became obvious that orders from the GASI HQ were implemented unevenly across institutional levels. Developing required standard operating procedures to bring unification of processes are highly desirable. Thus, special attention should be paid to ensure better communication, monitoring and evaluation among various inspection authorities

90. Looking forward, there is need to further improve inspectors' training, as well as support the recent focus towards the provision of advice, guidance, and training for low-risk businesses.

In 2016, GASI planned to provide such "consultancy" services to 6,366 businesses, in the end delivering it to 5,336 businesses. Providing advice, guidance, and training to businesses is a new function for inspectors. At the beginning of instituting these new functions, inspectors were opposed to advising businesses because they were afraid to lose what they saw as their main role, namely catching and imposing fines on as many non-complying firms as possible. Preliminary feedback from enterprises indicated that the provision of advice was valued and could contribute to developing a more productive relationship between inspectors and firms. Training inspectors, the Risk Management Department, middle managers, and high-level policy advisors through concrete examples (for example, developing check lists and simulating inspections), has also been essential to sustain these institutional and operational changes.

91. Recent amendments to the State Inspections Law and the restructuring of GASI.

Prior to the establishment of GASI, state inspections were carried out by sector-specific inspectors operating under various government agencies. GASI was established by combining more than 20 state inspection units and agencies operating under various ministries responsible for more than 30 surveillance fields. However, after several years some key stakeholders concluded that the consolidation under GASI had not delivered the expected outcomes of reducing the number of inspections and the associated regulatory

¹⁰⁶ The law will not apply to inspections to be carried out by the Bank of Mongolia, the Financial Regulatory Commission, tax, customs, social insurance, health insurance, and government entities in charge of child and family development matters.

burden. On the contrary, key stakeholders felt that GASI had increased its enforcement pressure on businesses, relying on heavy sanctions and creating considerable burden. On 11 November 2022, the State Inspections Law was amended resulting in the restructuring of GASI. The amendments shall become effective from 1 January 2023. The amendments provide that inspections shall be carried out by (i) central state administrative bodies (i.e. ministries), (ii) state administrative bodies (i.e. agencies) and (iii) entities mandated to implement inspections at local level. The amendments then removed references to “central authority/body to implement state inspections” (i.e. GASI). The rationale for the amendments were (i) eliminate the overlapping functions of state inspection bodies and state inspectors, (ii) ensure integrated management for planning, approving, implementing and monitoring the implementation of sectoral policy, (iii) improve the implementation of policies and decisions, and (iv) improve policies, decisions and their implementation based on the result of inspections.¹⁰⁷ Accordingly, all functions of GASI would be transferred to the relevant ministries, agencies, local governors and/or other inspection authorities (such as professional associations) and these entities would become responsible for state inspections in their respective areas/sectors. The amendment also provides that inspection bodies shall not be obliged to contribute income to the state or local budget. Another concept introduced by the amendments is “preventative state inspection” where inspection would be carried out in order to prevent, detect and stop illegal activities and risks to human life, health, public and environmental safety.

92. Key recommendations:

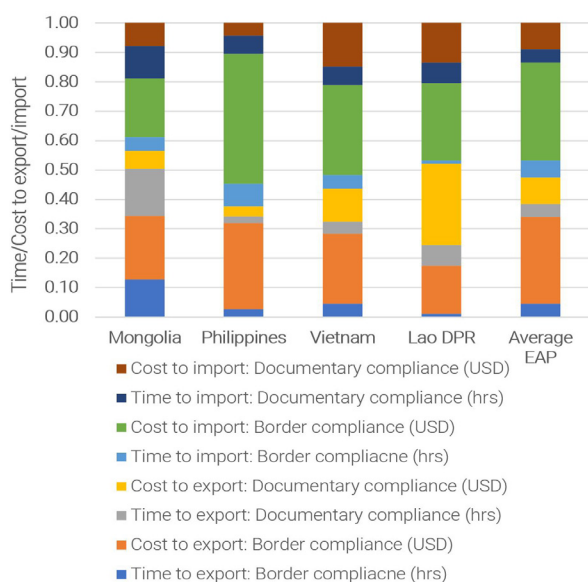
- *Enhance the role of government entities authorized to undertake state inspections to be able to effectively provide advice, guidance, and training for businesses.*
- *Strengthen the capacities of government entities authorized to undertake state inspections by developing a systematic training curriculum and providing targeted training for inspectors, including making aspects of the training mandatory.*
- *Measure the performance of each inspector, including the completion of the number of training sessions attended and their ability to apply their knowledge to certain processes, for example, in conducting consultations and providing advice.*
- *Create data management policies, which should include open data for consumers, businesses, and other regulators, for example, social protection or tax. Develop systematic reporting both to public and private sectors that cover not only imposed and collected fines but also concerning risk reduction.*
- *Increase peer-to-peer learning by improving foreign relations with inspectorates in other jurisdictions, especially those that are considered to have best practice.*
- *Monitoring and evaluating should assess progress against outcomes and impacts, especially related to risk management.*
- *Ensure wider consultation is conducted on the draft revised State Inspections Law to ensure that current shortcomings and constraints are adequately addressed and other laws and regulations that provide for and/or relate to state inspections are reviewed for consistency and clarity. Ensure the continuity of existing work and efforts of GASI such as online portals and tools in light of the recent restructuring.*

¹⁰⁷ Introduction to the Law on Amendments to the State Inspection Law available at <https://online.flippingbook.com/view/240352611/2/>, pages 249-250

e. Customs procedures

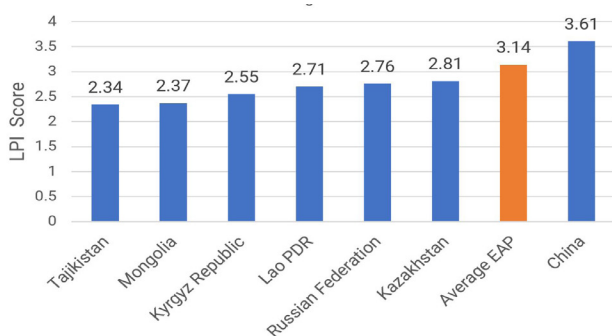
Mongolia has undertaken significant efforts to improve trade facilitation and to modernize its customs procedures, yet the country is still lagging behind the average for East Asia and the Pacific (EAP). Compared to the average in EAP countries, Mongolia requires the implementation of lengthy but less costly procedures at its trading borders (Figure 8). According to the Logistics Performance Indicator (LPI), Mongolia ranks 130/160 globally and scores lower than most of its peer countries and the average EAP (with a score of 2.37) (Figure 9).¹⁰⁸

Figure 8: Time and cost for trading across borders (2020)



Source: World Bank, Doing Business Database.

Figure 9: LPI score



Source: LPI, World Bank.

93. International experience and studies reveal that reducing barriers to international trade and facilitating the movement of goods across national borders can boost a domestic economy and support foreign investment.¹⁰⁹ This would be particularly important for Mongolia to become more attractive to efficiency-seeking FDI, the type of FDI that is most transformative and allow the country to diversify from resource-seeking investments.¹¹⁰ In 2019, the WBG carried out a detailed Time Release Study Report to, measure the real-time spent by border control agencies and private sector stakeholders on importing and exporting goods; collect information on issues and barriers; improve the coordination and performance of these agencies and private sector stakeholders; and ensure compliance with trade facilitation agreements and deepen the trade facilitation process. The WBG report found that the main barriers affecting trade at the border are: (i) weak coordination of border control agencies, and a lack of integrated information systems; (ii) the number of inspections by GASI and Customs; (iii) terminal infrastructure does not meet standard requirements and is obsolete; (iv) traders' lack of awareness of the laws and regulations on foreign trade; and (v) the bureaucratic workflows to issue export/import certificates.¹¹¹ Although the country still faces difficulties with customs clearance and inspection procedures, affecting the average time needed to export/import goods (see Table 3), several interventions¹¹² have improved the country's competitiveness and tradability.¹¹³

¹⁰⁸ The LPI score is measured on six different levels: customs; infrastructure; ease of arranging shipments; quality of logistics services; tracking and tracing; and timeliness. The index ranges from 1 to 4, with a higher score representing better performance.

¹⁰⁹ IFC. 2019. Time Release Study Report.

¹¹⁰ WBG IRM 2019.

¹¹¹ IFC. 2019. Time Release Study Report.

¹¹² Examples are, the adoption of the National Trade Facilitation Roadmap, the establishment of the National Trade Facilitation Committee, the development of the single window application, and the creation of electronic data exchange.

¹¹³ Article available at: https://www.wto.org/english/tratop_e/tpr_e/tp506_crc_e.htm.

Table 3: List of Export/Import Activities with their Average Time to Release and Move Goods across Borders

Activities	Average Time
Goods imported by road and released at the inland terminal	3 days, 12 hours, and 7 minutes
Goods imported by road but then transshipped by rail to the inland terminal	3 days and 40 minutes
Goods imported by rail and released at the inland terminal	4 days, 20 hours, and 10 minutes
Goods imported by air and released at Buyant-Ukhaa airport	2 days, 12 hours, and 32 minutes
Exporting goods by air from the Border Crossing Point	18 hours and 25 minutes
Exporting of goods by air via on-call service	4 days, 20 hours, and 35 minutes
Exporting of goods by road via on-call service	2 days, 18 hours, and 51 minutes
Obtaining import and export certificates and permits	11 hours and 56 minutes

Source: *Mongolia Time Release Study Report 2019*.

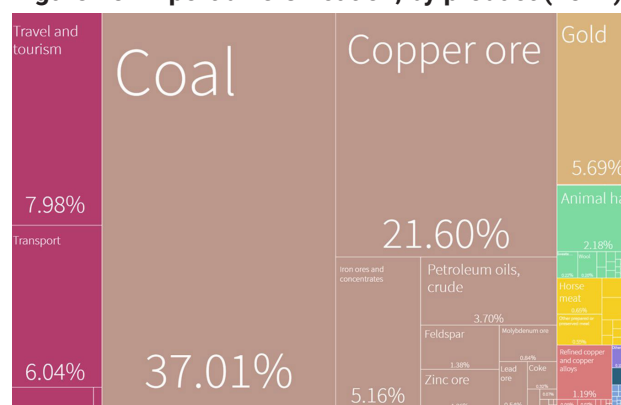
94. The country is still lacking alignment with international standards to improve its trade agreements.

As a WTO member since 1997, Mongolia's role as a key trade partner has improved significantly since the signing of the first Free Trade Agreement (FTA) and Economic Partnership Agreements (EPA) with Japan¹¹⁴, and the recent implementation of the Asia-Pacific Trade Agreement (APTA).¹¹⁵ Under the APTA, the country, together with China, has mutually implemented schedules of concessions to reduce tariffs by an average of 24.2% on several products¹¹⁶. This helped the country to promote the Belt and Road initiative and to deepen bilateral economic and trade cooperation with China. In addition, the country has benefitted from several Generalized Systems of Preferences (GSP) programs from WTO Member countries to diversify its exports: ¹¹⁷exports under GSP accounted for 31 percent of Mongolia's exports to the United States, with GSP trade almost exclusively oriented towards one product, tungsten.¹¹⁸ Mineral products account for 85.9 percent of Mongolia's exports, with very little diversification in other sectors such as agriculture products (Figure 10). Negotiations are underway to export Mongolian cashmere products to the United States on duty-free. However, Mongolia is significantly behind international standards in dealing with the country's Sanitary Phytosanitary (SPS) regime; the import quotas on certain agricultural products; and inspections at the borders when trading with China (particularly in the recovery phase of the pandemic). All of this

causes challenges with WTO obligations and affects the country's competitiveness.

95. Mongolia has to meet strict packaging standards and requirements when exporting to other countries.¹¹⁹

Processed products destined for export must meet international sanitary standards both for outer and inner packaging. All relevant standards are included under Mongolian Law and in accordance with the National Food Safety Standard General Rules. In addition, a specialized border inspector checks the documents and physical condition of goods for export. For instance, exported meat products are subject to very strict procedures and standards set by the importing country, particularly if trading with Russia or China.

Figure 10: Export diversification, by product (2019)

Source: *Atlas of Economic Complexity, Harvard University*

¹¹⁴ The Japan-Mongolia Economic Partnership Agreement allows for zero tariffs on imports of deep-processed leather products exported from Mongolia.

¹¹⁵ APTA is a preferential trade arrangement reached among developing countries under the aegis of the UN Economic and Social Commission for Asia and the Pacific to promote South-South cooperation. China officially acceded to the Agreement in 2001, whose membership now includes Bangladesh, China, India, Laos, Korea, Mongolia and Sri Lanka.

¹¹⁶ Article available at: <http://english.mofcom.gov.cn/article/newsrelease/significantnews/202101/20210103029223.shtml>

¹¹⁷ Article available at: https://www.wto.org/english/tratop_e/tp_r_e/tp506_crc_e.htm.

¹¹⁸ Office of the United State Trade Representative. Mongolia and the Generalized System of Preferences (GSP) Program.

¹¹⁹ Final Report. BSH. Export Process Analysis.

96. A transparent and modern trade facilitation system will enable Mongolian businesses to trade more easily and improve the country's overall export competitiveness.

As a landlocked country between China and Russia, Mongolia relies heavily on its trade relationships with its two powerful neighbors. However, its poor infrastructure and trade facilitation system inhibit diversification of the economy and competitiveness of its sectors. In line with the NPR, the Ministry of Foreign Affairs launched the Mongolia Trade Information Portal, an online repository for all trade-related regulations. The portal aims to help streamline trade and customs regulations, simplify border inspection practices, as well as enhance private sector capacity to meet export requirements to support export diversification, especially agri-livestock.¹²⁰

97. Key recommendations:

- Improve automation of customs clearance process that will allow electronic submission of transport documents and payments for all border agencies, including to the railway and national air freight forwarder MIAT.
- Develop a national single window (NSW) for trade, connecting all relevant agencies and fully automating all trade-related procedures.
- Develop a pre-arrival processing system by Customs; develop Authorized Operators program and IT system to support self-declaration and payment processes.
- Implement a more robust risk assessment and management system to substantially reduce physical inspections by Customs and government entities authorized undertake state inspections for medium and low-risk consignments.
- Implement Standardized Operational Procedures across all Border Crossing Points and internal terminals to eliminate uneven performance and unnecessary requirements.
- Invest in trade logistics infrastructure that meet international standards to foster diversification of the economy.
- Streamline the inspection process for exports by ensuring coordination between Customs and Other Border Agencies (OGAs) to eliminate duplication of functions.

¹²⁰ <https://pressroom.ifc.org/all/pages/PressDetail.aspx?ID=16763>



VI

ATTRACTING AND RETAINING FOREIGN INVESTORS AND INVESTMENT

-
- a. Investment policy
 - b. New investment law

a. Investment policy

98. In 2018, under an IFC Advisory project,¹²¹ a WBG team conducted a comprehensive diagnostic analysis of foreign direct investment: the “Investment Reform Map for Mongolia” (IRM 2018).¹²² While there are clear signs that the institutional framework for investment will be reformed, only a few of the significant reforms of the FDI policy framework have been implemented since the publication of the final report in June 2018 with most of its recommendations still relevant and applicable. As such, they are cited in this report with adjustments where appropriate. The overall conclusion of the IRM 2018 was that Mongolia needed to undertake significant reforms in order to stimulate private sector investment, particularly foreign direct investment (FDI), to achieve more sustainable growth, modernize its private sector, and create more and better jobs, while also starting to diversify its economy. The report included many concrete recommendations touching upon several areas critical to investors, both domestic and foreign. The key recommendations can be grouped into three priority challenges under which tangible recommendations were formulated.

99. First Priority: Need for a comprehensive Investment Climate reform program. A clear conclusion of the IRM 2018 was that, despite some improvements, both domestic and foreign investors continued to face a very challenging business environment not conducive to sustainable private sector growth. As such, the first recommendation was to design and implement a comprehensive investment climate (IC) reform program, including but not limited to the improvement of business regulations, the improvement of good governance, and the establishment of effective and result-driven public-private dialogue (PPD) platforms to identify priority IC reforms for the private sectors and provide feedback to the GoM. In many ways, these recommendations remain relevant to the current political and economic situation and the implementation of the NRP. A competitive business climate is equally important for both domestic and foreign investment and neither the IRM 2018 nor the present report suggest favoring one category of investors over the other. Mongolia will need both foreign and domestic investments to grow, diversify, and reach its socio-economic objectives and a good investment climate will be critical to achieving its goals.

100. Second Priority: Need for a new and clear Investment Policy. Although Mongolia had some

undeniable success in attracting FDI, notably in the extractive sectors, FDI has not played the role it could have played in diversifying Mongolia’s economy, in strengthening its domestic private sector, or in integrating Mongolia into global value chains (GVC’s). Confidence of foreign investors has been severely eroded by ambivalent, unclear, unstable, and sometimes overtly hostile policies. A clear priority recommendation is a need for a “reset” in the relationship between Mongolia and foreign investment through a number of measures. One recommended measure was the adoption of an Investment Policy Statement (IPS) whose purpose would be to reassure foreign investors and explain that Mongolia was open to and would like to attract more FDI, to specify the objectives it would like to reach through greater FDI attraction and to indicate the new sectors the government would like to develop with the help of FDI. The IPS would reaffirm the Government of Mongolia’s commitment to enforce investor protection and to fully operationalize the Systemic Investor Response Mechanism (SIRM) created in 2018.¹²³ In principle, the IPS could precede and be followed, and in a way ‘implemented’, by a new Investment Law.

101. To date, these series of recommendations for an “investment policy reset” remain, by and large, very relevant because:

- An IPS has not been developed and, as a result, it is still unclear what the investment policy of Mongolia is, what objectives it is pursuing, and what type of investment it wants to attract to reach such objectives. Investor confidence has not been restored and, as a result, new investors may be cautious about entering the market and existing investors are equally prudent or in a “wait and see” attitude before reinvesting or expanding. Some may even be leaving the country.
- The SIRM mechanism has been put in place—to the credit of the authorities—but is still not fully operationalized and not sufficiently known and used by investors, perhaps because the GOM has not put its full weight behind the initiative and investors have perceived the “lukewarm” nature of governmental backing for the initiative. A functional SIRM is more important than ever because retaining already established investors should be a top priority given the current economic slowdown and the depleting foreign exchange (FX) reserves, among other challenges

¹²¹ Mongolia Investment Policy and Agriculture Investment Promotion (IPAIP) Project

¹²² “Investment Reform Map for Mongolia: A Foundation for a new Investment Policy & Promotion Strategy”, IFC, World Bank Group, June 2018. Available on line at: <http://www.ifc.org/mongolia-irm-2018>

¹²³ A Systemic Investor Response Mechanism (SIRM) is an early warning and tracking mechanism to identify and resolve complaints that arise from government conduct.

facing Mongolia in the post-COVID-19 recovery. Mongolia needs to adopt a systemic approach, rather than an ad hoc one, in handling investors' grievances and to produce results, which will improve existing investors' confidence and contribute to investor retention. The full implementation of the already established SIRM, backed by unambiguous political will at the highest level possible within the Government, is in the team's view, the way to realize these objectives.¹²⁴

102. Third Priority: Need for better and stronger Investment Promotion.

Investment promotion capabilities have been dramatically eroded over the past decade through a series of institutional reforms that abrogated and re-created agencies in charge of investment promotion, without retaining the expertise that was part of these agencies. Mongolia will continue struggling to attract new investors but also to retain existing investors until these promotion capabilities are restored. The key recommendations from the IRM 2018 report were: a) to re-create or strengthen the investment promotion capacity and b) to design and implement an investment promotion strategy that includes 3 pillars:

- An **FDI Attraction and Diversification Strategy** to focus promotion efforts on new, under-developed sectors with potential (Agribusiness, E-commerce, Eco-Tourism, and others).
- A **Linkages Program** or initiative to foster connections between FDI and the domestic private sector to increase overall in-country value addition, develop or attract new technologies and capabilities, and better integrate local firms into the supply chains of foreign investors where possible.
- An **Investor Aftercare Program** to retain existing investments, including in the extractives sector, by serving their needs.

103. These recommendations on investment promotion have not been implemented yet, or only partially implemented. For instance, elements of a promotion strategy have been developed with the assistance of the above-mentioned IFC advisory project, notably in the agribusiness area, but no comprehensive FDI attraction and diversification strategy has been formulated to our knowledge. Similarly, it does not seem that a comprehensive linkages program, nor an aftercare program, have been developed by NDA. Therefore, the recent termination of the NDA and the possible creation of a new Investment Promotion Agency under

the authority of the newly formed MED offers a unique opportunity to finally implement these recommendations. The WBG can provide technical assistance and support to the new agency to be formed, guiding its design but also its strategy, while providing capacity-building in key areas. This would ensure that investment promotion finally receives the attention it deserves and that foreign investors receive the services they need, while giving more emphasis to investment retention (not just to the attraction of new investors) and focusing on sectors that offer more potential for Mongolia.

104. One major disincentive to the development of the mining sector from an FDI perspective is the inconsistency in tax treatment of companies operating in the extractives business.

As a result of the implementation of requirements relating to a change in beneficial owner, the tax authority has broad discretion over the methodology for taxation of businesses looking to encourage investment over a 30 percent threshold. This methodology, for example, can include tax of 10 percent on aggregate exploration expenditure even if such expenditure has not resulted in finding a deposit for development. There are several projects where tax clearance has been provided in the past, but have been reversed on subsequent tax audits, resulting in significant liabilities for the company concerned. Furthermore, exemptions for internal reorganizations or interpretations of double tax treaties that are clear in the legislation are routinely rejected or challenged. Until there is a sensible and consistent policy direction in relation to the taxation of extractive businesses, investment into the mining sector will remain very high-risk for potential investors.

105. Key recommendations:

- *Develop a new Investment Policy with an Investment Policy Statement (IPS) that reaffirms the Government of Mongolia's commitment to enforce investor protection and fully operationalizing the Systemic Investor Response Mechanism (SIRM) created in 2018.*
- *Develop a comprehensive Business Environment / Investment Climate reform program.*
- *Re-create or strengthen the investment promotion capacity and design and implement an investment promotion strategy with KPIs and use tools such as an investment tracking tool.*
- *Implement a consistent and transparent taxation policy in the minerals and extractives sector.*

¹²⁴ A newly approved (May 2022) advisory project by IFC focusing on several dimensions of Mongolia's Investment Policy will continue supporting the efforts to fully implement the SIRM, for instance by aligning the SIRM bylaw with the new governmental structure and by providing capacity-building to key agencies involved, while also assisting with communication and outreach on the SIRM mechanism with the investor community.

b. New Investment Law

106. While the adoption of the revised Investment Law is part of the NRP, vital strategic issues remain to be clarified because there is no investment policy statement. In the WBG's opinion and experience, policy directions come first and the Investment Law second. In other words, the Investment Law should serve to implement the investment policy by translating it into specific legal terms that can be enforced by governmental agencies and to also provide investors legal mechanisms through court or arbitration, if necessary. If the Government cannot, or prefers not to, adopt an official investment policy statement, it should nevertheless formulate clear directions on the objectives of its investment policy and communicate these decisions to the authorities in charge of developing the new Investment Law. Failing these clear policy directions, the Government runs the risk that the lawyers tasked with drafting the Investment Law will either make marginal improvements or not make the improvements that are really required. Or worse, they could propose provisions that could go against the policy directions which the GoM intends to take. To make our point clearer, we provide below a few examples of the policy directions that are needed:

- What economic sectors or activities does the GoM want to promote? Why?
 - Will all sectors and activities be fully open to foreign participation, or will some be restricted or reserved to domestic investors? Which ones and why?
 - What are the results or contributions the GoM wants from greater foreign participation in these sectors? Jobs, exports, capital injection, technology diffusion, market access, business and managerial practices, linkages, others? Are all of these objectives and potential benefits of FDI equally important and needed or are some more important and urgent than others? Which ones?
 - What will be the role of investment promotion in these efforts?
 - What will be the role of investment incentives and what type of incentives will be used? At what cost to the national budget? How will the cost-efficiency and transparency of the incentive regime be ensured? How will their alignment and consistency with the investment promotion strategy be ensured?
- Does the GoM want to prioritize attracting new investment or retaining existing investment or both? How will it achieve this?
 - What treatment (i.e., level of protection or guarantees) does the GoM want to extend to investors? Against which commitments made by investors?
- 107. The above questions need clear directions from the highest level of government and should not be left to legal drafters to answer or decide on their own.** Once clear directions are set by the government policymakers can then go about the legal task of developing an Investment Law that will support the set objectives. This is why an IPS would have been helpful and was recommended by the WBG in the IRM 2018 report.
- 108. There are other issues that a revision of the current Investment Law could help resolve, among which is the minimum capital required for foreign investors.** The WBG, on several occasions, has suggested that the minimum investment requirement of US\$100,000 is a significant barrier to investment by foreign small and medium-sized firms. Many such businesses cannot afford this amount of investment, nor does such a threshold provide any guarantee that the business will be successful. In addition, when a foreign investor wants to invest in a joint-venture or partnership with a domestic investor, the minimum investment requirement can make it more difficult for the domestic partner to come up with the required participation amount. This will be a key issue because Mongolia, so far, has not been able to attract green field investments and investors are more likely to look for local SME as partners in export-oriented sectors, such as honey, meat, cashmere and leather, and IT. The issue of the minimal investment requirement has been debated in Mongolia for a long time and is still undergoing discussions in Parliament. The new Investment Law needs to address the minimum capital requirement, which should be the same for all and based on the Company Law.
- 109. The revised Investment Law could also strengthen the investors' protection framework.** As discussed in the IRM 2018 report, the investment regime would benefit from upgrading the investment protection framework of the Investment Law (MIL 2013) to the level of some of the most advanced International Investment

Agreements (IIA's) signed by Mongolia, such as the FIPA concluded with Canada in 2017, and to the level of best international practices.¹²⁵ At the same time, the IRM 2018 also stressed that the protection framework, at whatever level it is set, needs to be effective, ensuring that it is enforceable and enforced in practice. A recurring observation with regard to law and regulations in Mongolia is that, more often, it is not their content which are at issue but rather their implementation and enforcement, and the laws and regulations governing investment and FDI are no exception.

110. Another issue that could be addressed within the revised Investment Law is the one-dimensional policy on foreign workers' visas.

For instance, the current policy excludes many foreigners, which may be able to significantly contribute to Mongolia's development in the IT sector. Making it easier for young foreign entrepreneurs and engineers to secure a working visa would encourage a faster development of the country's IT sector. Projects announced by the government in areas of renovation and upgrading existing airports, power plants etc. would also often require specific skill sets, which are difficult to find within Mongolian's labor pool.

111. Key recommendations:

- *Define clear policy directions and objectives as the foundation to base the new Investment Law upon, ideally through an officially adopted Investment Policy Statement.*
- *Revise current Investment Law in relation to the issues identified in the IRM 2018, for example, the minimum capital requirement, the strengthening of investment protections etc.*
- *Consider offering investment visas to attract young foreign entrepreneurs and engineers to encourage a faster development of the IT sector.*

¹²⁵ See Chapter II, Section 3 of the IRM 2018, World Bank.



VII

FACILITATING ENTREPRENEURSHIP AND ECONOMIC DIVERSIFICATION

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- a. **Policy framework for industrial parks**
 - b. **The new SME Agency: governance and objectives**

a. Policy framework for industrial parks

112. Interest in industrial parks has grown substantially in recent decades, many have been developed worldwide for the purposes of industrial and associated commercial, infrastructure, and service activities.¹²⁶ However, industrial parks have both potentially positive and negative impacts. While they contribute to economic growth and social development, they can also cause negative environmental and social impacts, including contributing to climate change, pollution, resource depletion, labor issues, and negative impacts on communities. Thus, sensitive planning and management are needed to mitigate negative outcomes and to optimise economic, social, and environmental gains. The grouping of firms in defined locations offers potential collaborative and efficiency gains, for instance by implementing circular economy practices. As developing and emerging economies seek increased industrial output, there is a pressing need to balance economic growth with environmental and social objectives.

113. The Law on the Legal Status of Industrial and Technology Parks was approved by the Parliament on 5 July 2022 (“Revised Industrial Park Law”) repealing the Law on the Legal Status of Industrial and Technology Parks which was adopted 2009 (“2009 Industrial Park Law”). Under the previous Law on Industrial and Technology Parks, 11 entities received licences to create a park, yet not a single industrial or technology park has been established in Mongolia because of insufficient specifications in the 2009 Industrial Park Law.¹²⁷ Given the importance for the Government for light manufacturing and technology development, as well as SMEs development, the 2009 Industrial Park Law was revised in its entirety. The Revised Industrial Park Law states that the purpose of a park is to: (i) implement national-level projects and programs to produce imports and export substitution products, which are significant for the social and economic development of the country, and improve economic competitiveness

of the country; (ii) transfer, introduce and localize new, advanced, environmentally friendly and high technologies; (iii) develop industries with low environmental impact; (iv) support national and regional social and economic development; (v) create an environment for SMEs development and contribute to jobs creation; and (vi) develop waste sorting, recycling, disposal, and burial industries.

114. Although the Revised Industrial Park Law contains many positive changes by expanding regulations on industrial and technology parks, there could be certain improvements made in line with best international practices and lessons learned.¹²⁸ The World Bank has the following remarks regarding the current legislative framework:

- ✓ *Broader legal framework and status of an industrial and technology park:* Article 2 of the Revised Industrial Park Law refers to the status of industrial and technology park legislation by referring to the Constitution, the Revised Industrial Park Law and other legislative acts to be adopted in line with these laws. It does not specify laws that shall be taken into consideration when developing a park or state whether it would supersede others laws. Moreover, the law could have clearly identify the jurisdictions of other ministries regarding industrial/technology parks. In addition, the legal definition of “Industrial and Technology Park” (Article 4) could have benefitted from further review by introducing the overall definition of an “industrial park”, which could then be classified into different types of parks, such as Technology Parks, Special Economic Zone, Free Trade Zone, Export Processing Zone, Auxiliary industrial area, or Eco-industrial park etc.¹²⁹
- ✓ *Infrastructure:* Article 4.1.5 of the Revised Industrial Park Law defines a park’s infrastructure as “a complex with energy, heat source, fresh water supply, sewerage and treatment facilities, roads and railways in the park area”. The Revised Industrial Park Law provides that a park management shall implement the development

¹²⁶ Industrial parks are known by different names and cover industrial areas, industrial zones, industrial investment regions, special economic zones, and industrial corridors, among others.

¹²⁷ Уйлдвэрлэл, технологийн парк - XXAAXYЯам (mofa.gov.mn)

¹²⁸ The following studies present good practices in industrial parks development: UNIDO, World Bank Group, GIZ, MOTIE (2018). A Practitioner’s Handbook for Eco-Industrial Parks Implementing the International EIP Framework; UNIDO, World Bank Group, GIZ, MOTIE (2019). A Practitioner’s Handbook for Eco-Industrial Parks: Implementing the International EIP Framework – Toolbox; The World Bank (2021). Circular Economy in Industrial Parks: Technologies for Competitiveness; UNIDO (2019). International Guidelines for Industrial Parks

¹²⁹ As an example, in Vietnam, the Decree 82 enacted in 2018 states: Industrial park means an area that is enclosed by definite boundaries, specializes in production of industrial goods and provision of services satisfying the industrial production needs and is established in conformity with conditions, procedures and processes prescribed in this Decree. Industrial park is classified into different types, such as export processing zone, auxiliary industrial area, eco-industrial park (hereinafter referred to as industrial park), unless each type is otherwise subject to particular regulations.

plan of the park, construct, possess and ensure stable operation of the required infrastructure. The Revised Industrial Park Law could have benefitted from introducing infrastructure classification in terms of internal (or on-site) infrastructures and external (or off-site) infrastructures (i.e., last mile infrastructures), and list exemplar facilities under each category. Also, the role and responsibilities of the government in building off-site infrastructure should have been clearly stated.

- ✓ *Park ownership:* Article 5.2 of the Revised Industrial Park Law defined park typology based on ownership. It refers to (i) state-owned; (ii) municipally owned; (iii) private; and (iv) other types of parks. The law could have expanded the classification of parks by including parks that are public-private-partnerships (PPP) and clarify the role of privately owned industrial/technology parks, as well as PPPs. In the case of PPP, references were made in the Revised Industrial Park only in general terms. In addition, the Revised Industrial Park Law is not clear on the process by which a public or private park would be approved and the criteria that would be employed to grant such approval.
- ✓ *Selection of location:* It would be helpful if the law provides specific provisions for how to select (i.e. specific criteria) the location of an industrial or technology park. The Revised Industrial Park Law gives decision powers on location of a park to the Citizens Representatives Khural of aimags and capital city and the Government and this could potentially create an overlap. To address any concerns, the law or any regulation to be adopted in light of the law should require that the decision on park location shall be performed through consultations between the state central administrative body, with aimag/capital city governments. Moreover Article 7.1.6. declares that the Government decision on the park's location shall take into consideration "industrialization, long and medium-term development and innovation policy, infrastructure development and raw materials, labor forces and market demands and needs". Since park location is critical for its success, further specification could be mandatory. In identifying a location, best practice recognizes the importance of investor interest, economic activity/clusters, proximity to supplies and services, the presence of an appropriately skilled workforce, logistical connectivity and cost efficiencies, maximization of user access to sustainable and affordable unitalities, and avoidance of environmentally and culturally sensitive areas to name a few.¹³⁰
- ✓ *Park operation licence:* To apply to the central administrative body for the park's operation licence, the following documentation is

compulsory (Article 12): (1) feasibility study; (2) development plan; (3) technical and technological assessment; (4) environmental impact assessment; (5) list of park units to be contracted, and (6) opinion of the Citizens Representatives Khural of the relevant aimags or capital city. The law does not further elaborate the details for each of the above-mentioned documents and provide clarity on all the relevant regulations that should be considered in licensing parks. For example, a feasibility study typically requires a business plan, technical assessment and plans, investor market potential, assessment of investors' demand for various utilities and services, financial modeling and projection of funding needed, and economic impacts study. Moreover, it is critical that the law requires a sound market demand assessment that proves that the park design responds to market demand and future development needs. Moreover, in the case of greenfield (new) industrial parks, the applicant should be requested to also submit the site analysis. There should be clarity on the process of obtaining an industrial park license, and a clear set of selection criteria applicable to both public and private industrial/technology parks.

- ✓ *Monitoring of environmental impact:* The Revised Industrial Park Law assigns the duty of monitoring of the park's environmental impact to Aimag and capital city governors (Article 10.1.1). Nonetheless, monitoring of environmental impact should be primarily the responsibility of the Ministry of Environment and Tourism, or any other environment-related government entities Overall, roles and responsibilities of various other ministries, agencies and local governments in relation to industrial parks should be clarified.
- ✓ *Park management:* The Revised Industrial Park Law provides that organization, governance, monitoring and operations relation matters shall be regulated by the Company Law. It is important to acknowledge that representatives of tenant firms shall be present on the management structures such as board. This will ensure that the park represents the interests of the tenants. Article 13 of the Revised Industrial Park Law catalogues management responsibilities, yet those are very basic and could benefit from further expansion. Considering international practice, the park management entity should have included at least the following: (1) property management, including plot allotments, re-allotments, development, land use monitoring; (2) utilities, roads, security, including IT security, and emergency response services/facilities and wastewater treatment plants and operations, as well as waste heat/energy recovery and distribution networks; (3) environmental

¹³⁰ UNIDO (2019). International Guidelines for Industrial Parks.

monitoring and advisory activities; (4) common landscaping, buffer zones, street lighting, security surveillance, and street cleaning; (5) provision for facilitating services to and between tenant firms (for example, networking, collaboration, and training opportunities); (6) engagement with the park's stakeholders and business representatives; (7) PR and community participation center/platform/activities. Also, the law could have indicated a possibility for hiring park management (contracting).

115. The Revised Industrial Park Law provides the list of incentives offered with regard to the operations of a park, among others, including tax incentives, stabilization certificates and other subsidies and incentives. Further, the Revised Industrial Park Law provides the activities prohibited for the parks, which are production of alcohol beverages, tobacco and drugs. However, the legislative framework could be reinforced through further expansion and inclusion of several issues that appear not to be regulated. These are: (1) requirements for tenants and their benefits and incentives from allocation in the park. In the case of incentives, reference to respective regulations should be made with clarification as to which law takes precedent; (2) clear definition of administration in the law that will help manage and coordinate efforts on coordinating industrial parks across the country; (3) clauses related to anti-speculation and alternative dispute resolutions.

116. Considering the importance of sustainable growth and the global trend in greening of the global value chain, the Mongolian government could consider application of Eco-Industrial Parks (EIP) methodology in development of its industrial parks.¹³¹ An EIP can be defined as “managed industrial areas that promote cross-industry and community collaboration for common benefits related to economic, social, and environmental performance (WBG, UNIDO and GIZ 2021).”

EIPs offer businesses the advantages of traditional industrial parks, while also using resources more efficiently, improving productivity, supporting the achievement of firms' social responsibility goals, and lowering exposure to climate change risks. In an EIP, enterprises get involved in cleaner production, make effective use of natural resources, and enter manufacturing cooperation and affiliation to tighten industrial symbiosis to promote economic, environmental, and social efficiency in their enterprises. Opportunities exist in Mongolia to promote EIPs and secure better access to the global value chain. This can be done by integrating circular economy solutions, as well as green and resilient infrastructure investments in industrial parks. Mongolia could benefit from application of the International Framework for Eco-Industrial Parks that provides a benchmark with pre-requisites and performance indicators in four performance areas, park management and environmental, social, and economic performance.

117. Key recommendations:

- Strengthen the legislative framework by addressing the above mentioned issues by way of amending the Revised Industrial Park Law or drafting secondary legislation.
- Consider adopting the concept of the Eco-Industrial Park, which has become a recognized model across the world's economies.

¹³¹ For details refer to: UNIDO, World Bank Group, GIZ, MOTIE (2018). A Practitioner's Handbook for Eco-Industrial Parks Implementing the International EIP Framework; UNIDO, World Bank Group, GIZ, MOTIE (2019). A Practitioner's Handbook for Eco-Industrial Parks: Implementing the International EIP Framework – Toolbox; The World Bank (2021). Circular Economy in Industrial Parks: Technologies for Competitiveness.

b. The new SME Agency: governance and objectives

118. The 2019 SME Law is the main legal framework for the development of SMEs with the purpose to promote their growth, including increasing employment and contribution to GDP. The law defines 'micro', 'small', and 'medium' business owners operating in the production, trade, and services sector, according to the number of employees and annual income as presented in the table below.

Enterprise type	Number of employees	Annual sales income
Micro	less than 10 employees	up to 300 million MNT
Small	10–50 employees	300 million – 1 billion MNT
Medium	50–200 employees	1.0–2.5 billion MNT

Source: 2019 SME Law

119. The 2019 SME Law introduced a number of provisions for SMEs and provided a governance framework for various types of assistance for SMEs. Key provisions are:

- The amount of credit to be granted depends on the enterprise size based on the annual sales;
- Credit for micro enterprises is granted from the SME Development Fund, while credit for small and medium enterprises is granted through commercial banks;¹³²
- The law intends for enterprise owners to register with the government as an SME, in order to benefit from the services;
- A wide array of support measures is envisioned for SMEs comprising of training, financial support, easy-term credit, financial leasing services for equipment, tax alleviation, providing business consultancy, promoting clusters, and assistance to access foreign markets;
- SMEs engaged in export can benefit from interest subsidies;
- SMEs have obligations, for example, to comply to standards, to strive for improvement, conduct reporting on loans, and other credit facilities;
- Mongolia's Parliament (Great Khural), is in charge of SME policy and funding (Article 14); and the Cabinet has wide-ranging powers including implementation of the programs contained in the law, such as approval for zoning in cluster

¹³² And from 2021 by the SME Agency.

¹³³ Peter J. Morgan and Naoyuki Yoshino (2021). *Leveraging SME finance through value chains in CAREC landlocked countries*. Asian Development Bank Institute.

¹³⁴ <https://news.mn/en/794200/>

development; earmarking the source of funds required for promoting SMEs; and establishing industrial parks and free trade zones.

120. The SME Development Fund (SMEDF) was established in 2009 to address the challenge of access to finance by SMEs, yet its role has diminished over the years. SMEDF provided firms with low-interest loans at 3 percent interest up to five years. However, operations of the SMEDF were not adjusted to SME's needs, as firms could not apply for funding when they needed it, yet await the Fund's announcements.¹³³ Table 4 summarizes the details of SMEDF funding. In the years 2018-2020, SMEDF noted a significant decrease in the total budget and number of financed projects while experiencing an increase in applications. The fund addressed a small share of existing needs, as it was able to fund between 14-16 percent of received project applications.

Table 4. Number of firms benefiting from the SME Development Fund, 2018-20

	2018	2019	2020
The total amount of requested funding (in million USD)	451.2	178.1	83.6
Number of projects requested funding	1542	2744	1579
Total funding amount (in million USD)	36.5	17.4	8.0
Number of funded projects	212	451	249

Source: Collected from the SME Policy and Planning Division, MoFALI, January 2021.

121. In 2020, the SMEDF was transformed into the SME Agency with a limited role in access to finance. After the SMEDF was accused in 2020 of the lack of transparency in the process of granting loans,¹³⁴ the SME Agency was created following a merger of the SMEDF and the Small and Medium Enterprises Unit of the MoFALI. With a reduced budget allocation, the SME Agency's direct role in providing finance is limited to loans to micro firms, while the government aims to promote the Credit Guarantee Fund as a tool to facilitate SMEs' access to long-term funds from commercial banks. The Agency plays however an important role in channeling and supporting the implementation of donors' lines of credit. As described by its management,

the SME Agency's loan process is organized in a way to ensure transparency and fairness, with an online application system and four main stages of screening and selection of applicants: (i) application screening by a credit officer; (ii) selection by a panel of experts; (iii) onsite visits of the project; and (iv) assessment of project feasibility and decision.¹³⁵

122. Among the SME Agency's priorities is to strengthen its budget, technical capacities and outreach at the regional level.

The SME Agency employs 40 staff yet it suffers from a lack of presence in the rural areas where many of the 68,000 SMEs operate. Moreover, the Agency has confirmed the need for capacity-building activities in procurement, market research, and development of new programs, cluster development methodologies and others. Sustained and predictable government funding allowing for multiyear budget planning are critical factors to enable the SME Agency to effectively plan and execute its capacity building and its support programs. Budget allocations on an ongoing basis are especially important in relation to hiring and training of a capable staff, fixed assets, software, the establishment of M&E processes, operational costs, and so on. These fixed costs need to be consistently met each year to avoid severe impacts on the SME Agency's ability to perform core duties. On the other hand, project costs are variable and hence require commitment flexibility and should be financed based on the detailed needs of each program and their intended results.

123. The 2019 SME Law gives explicit attention to supporting cluster development, which would require developing the SME Agency's expertise in cluster development methodologies.

The law defines cluster as a "consistent collaboration of entities in terms of production, service target, type, field and geographic location and in manners of diversification and combination" and promotes clusters through provisions of an advantageous tax package and financial support; improved access to infrastructure; and facilitating cooperation among entities. Importantly, the establishment of SME-based clusters is supported by industry associations.¹³⁶ A cluster-based approach may be relevant for light industries (including wool and leather) as a cost-reduction mechanism through the establishment of shared facilities: examples include the storage of raw materials and a

centralized effluent treatment plant in the leather sector and streamlined logistics in the supply chains. The Agency is accountable for cluster development in Mongolia, yet it has limited knowledge of relevant methodologies and overall capacity to execute provisions of the SME Law on cluster development. The focus of the SME Agency should therefore be first on liaising with ministries and cities involved in developing clusters, and focus on resolving bottlenecks in SME's access to finance and high-quality professional advisory services through a coordinated approach.¹³⁷

124. The SME Agency could also play a role in promoting SMEs access to digital solutions adapted to their specific corporate and business needs.

Mongolia needs to accelerate the rate of innovation and entrepreneurship to meet its aspirations of building a competitive and digital economy. Digital solutions can lower transaction costs (through better access to information, communication between staff, suppliers, and networks); increase access to domestic and global markets (reductions in costs of transport and border operations, increased scope for service trade); enhance access to finance, training, recruitment, government services; and facilitate innovation through better integration of data and analysis on business operations (OECD 2021). While the population has eagerly adopted mobile technology, the diffusion of digital technologies more broadly and among SMEs in particular is lagging. Mongolia's current ecosystem does not provide adequate support for entrepreneurs and SMEs have difficulty in finding technical and managerial skills, risk capital particularly at early stages, and support organizations such as hubs, incubators, accelerators.

125. In this context, the SME Agency could develop partnerships with the ICT sector to help address SMEs' low level of adoption of digital solutions, increase their operational resiliency and raise SMEs' digital competencies.

Actions could aim to (i) develop a digital transformation road map for Mongolian SMEs with business continuity considerations; (ii) ensure access of advisory services to SMEs interested in digitalization, (iii) curate common/horizontal enterprise applications available in the market for use by SMEs, such as those for accounting, human resource management, and electronic/social-commerce. The SME agency could in particular focus on SMEs in the tourism industry

¹³⁵ Consultations on 03.23.2022 held with Mr. Erdenesaikhan, the Director of the SME Agency, and consultations on 11.18.2021 with Ms. Gerelzaya, Head of Policy and Coordination Department, the SME Agency.

¹³⁶ Consultations with officers of MWCA, January 15, 2021, and MALP, May 19, 2020.

¹³⁷ Consultations on 03.23.2022 held with Mr. Erdenesaikhan, the Director of the SME Agency.

that has been decimated by the impact of COVID-19 as in many other countries but has significant potential to diversify the economy and to provide private-sector employment for Mongolia's growing number of well-educated, English-speaking youths.¹³⁸

126. Overall, the SME Agency will need to carefully determine the type of beneficiaries targeted in priority, and pilote well-focused support programs.

As the SME Agency is still in the early phase of its development, KPIs and an effective M&E system are yet to be defined and will benefit from preliminary returns on the various collaboration programs where the SME Agency is getting involved. However, entrepreneurs, SMEs, startups, each of these potential beneficiaries requires targeted interventions. In particular, the distinction between startups and SMEs needs to be made and integrated into program designs. Startups—high-risk enterprises purposely built for high-growth—need inputs and interventions suitably designed for high-risk and high-growth. In turn, SMEs are existing firms that follow established business models and seek to grow organically over time, using income or traditional credit to finance their growth. While established SMEs are less likely to grow fast, they remain the main source of private sector activity in many sectors and regions, and therefore policies which improve the productivity of SMEs bring considerable economic benefits. In addition, given the gender gap which has been noted in other research, the SME Agency's support programs should consider initiatives specifically focused on women-managed businesses (Annex 2 summarizes findings regarding gender and the business environment in Mongolia).

127. Key recommendations:

- *Determine up front an appropriate budget to cover both specified operating costs and program costs over the medium-term to enable efficient planning.*
- *Build the operational capacity of the SME Agency through knowledge gaps assessment of staff and specific courses/training/knowledge exchange sessions with experts to address deficiencies in the operational capacities revealed in the knowledge gaps assessment.*
- *Undertake periodic firm surveys and focus groups of potential beneficiaries to validate SME needs, program design and KPIs.*
- *Pilot new programs supporting SMEs digitalization and economic diversification, incorporating international best practices in design, implementation, and program monitoring, notably in the ICT and the tourism sectors.*
- *Expand the SME Agency's outreach in the regions through fostering partnerships with local authorities and international agencies.*

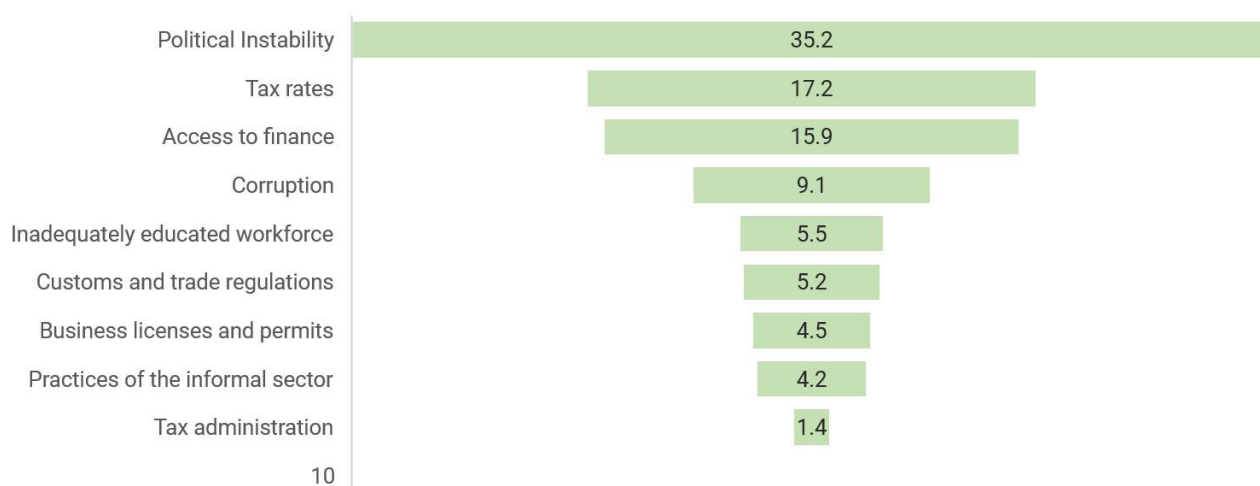
¹³⁸ News.mn. Mongolian tourism sector decimated by Covid-19. <https://news.mn/en/796003/>

Annex 1: Overview of the Mongolia 2019 Enterprise Survey

Businesses participating in the World Bank Enterprise Surveys are asked for their opinion on the relevance of various business environment elements in a systematic and comparable way. They can rank their response on a 5-step scale from 'no obstacle' to 'very severe obstacle'. Also, from a list of 15 business climate factors, respondents are asked to choose the biggest obstacle to the current operations of their establishment.¹³⁹ The ES questions for the business regulatory environment aim to cover the biggest obstacle to the current operations of the establishment, regulations, taxes, and trade. The sampling structure of the ES questionnaire only covers manufacturing, retail, and other services. Therefore, a more disaggregated sectoral analysis is not feasible.

Firms report corruption, tax rates, access to finance, and political instability as the most important obstacles in their business environment. These factors are barriers to growth and job creation. More than one-third (35 percent) of employers responding to the 2019 Enterprise Survey round identified political instability as the most important obstacle to their current operations. Tax rates and access to finance were mentioned by 17.2 percent and 15.9 percent, respectively, with corruption issues cited by 9 percent for firms, followed by inadequately educated workers (5 percent). According to the size of firms, the constraints were perceived as follows: small firms and large firms confirmed political instability as the biggest constraint for 36.52% and 28% respectively, whereas 28.57% of medium firms perceived tax rates as the biggest constraint to operations (Figure 11). The perceptions of managers among the different size of firms can differ based on the capacity to navigate business environment obstacles: larger firms may have more options to face obstacles, but at the same time they are also more visible and more exposed to failures of the business environment.

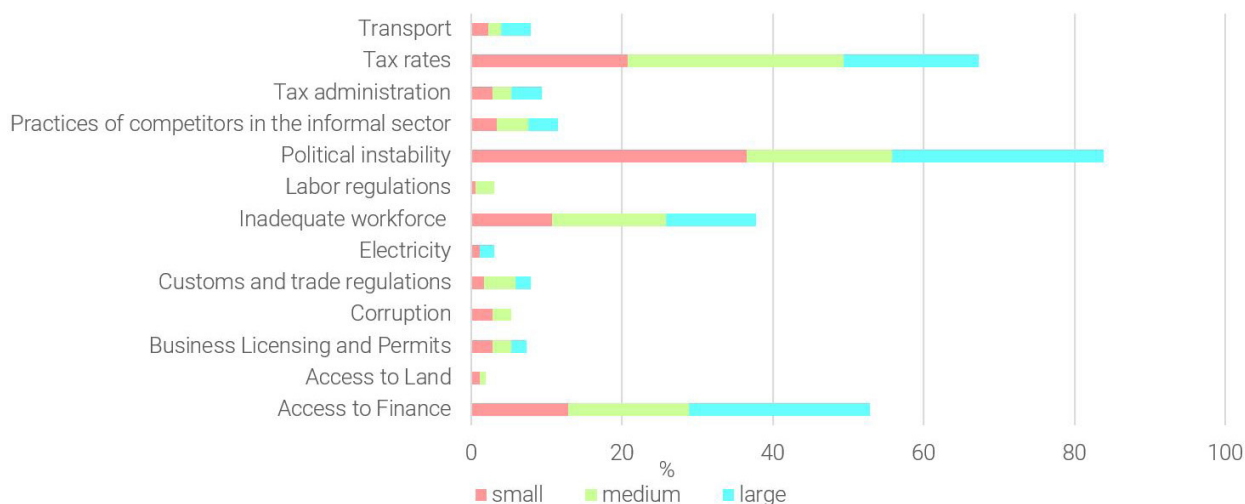
Figure 11: Constraints to Mongolia's business environment (in percent)



Source: World Bank Enterprise Surveys, Mongolia 2019. Category 'other constraints' include labor regulations, transport, access to land, electricity, courts, as well as crime, theft, and disorder.

¹³⁹ The World Bank Enterprise Surveys cover a country's non-agricultural economy.

Figure 12: Biggest Obstacle in the Business Environment by Firm Size ¹⁴⁰

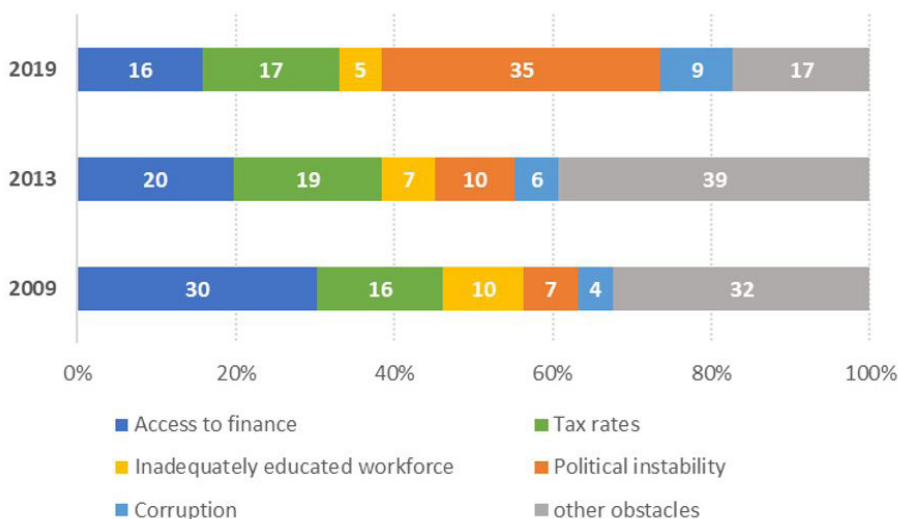


Source: World Bank Enterprise Surveys for Mongolia 2019.

Political instability is considered the largest obstacle particularly among retailers (43 percent), firms with foreign ownership (44 percent), and companies 20 years or older (66 percent). Only for manufacturers, exporters, and relatively young employers (operating for ten years or less) is the political situation not the biggest concern. Instead, access to finance is the top obstacle for manufacturers (30 percent of manufacturers) and exporters (42 percent). More than one-third of younger employers see tax rates as their biggest challenge.

While concerns regarding the political situation had been voiced in the past, its significance for Mongolia’s private sector has increased substantially since 2009. Similarly, a smaller, but growing share of employers considers corruption the largest obstacle. The share of firms perceiving corruption-related issues as the biggest challenge increased from 4 to 9 percent between 2009-2019. The share of firms identifying tax rates as the main constraint remained relatively constant over time, reaching 17 percent in 2019.

Figure 13: Top five business environment constraints: trends over time



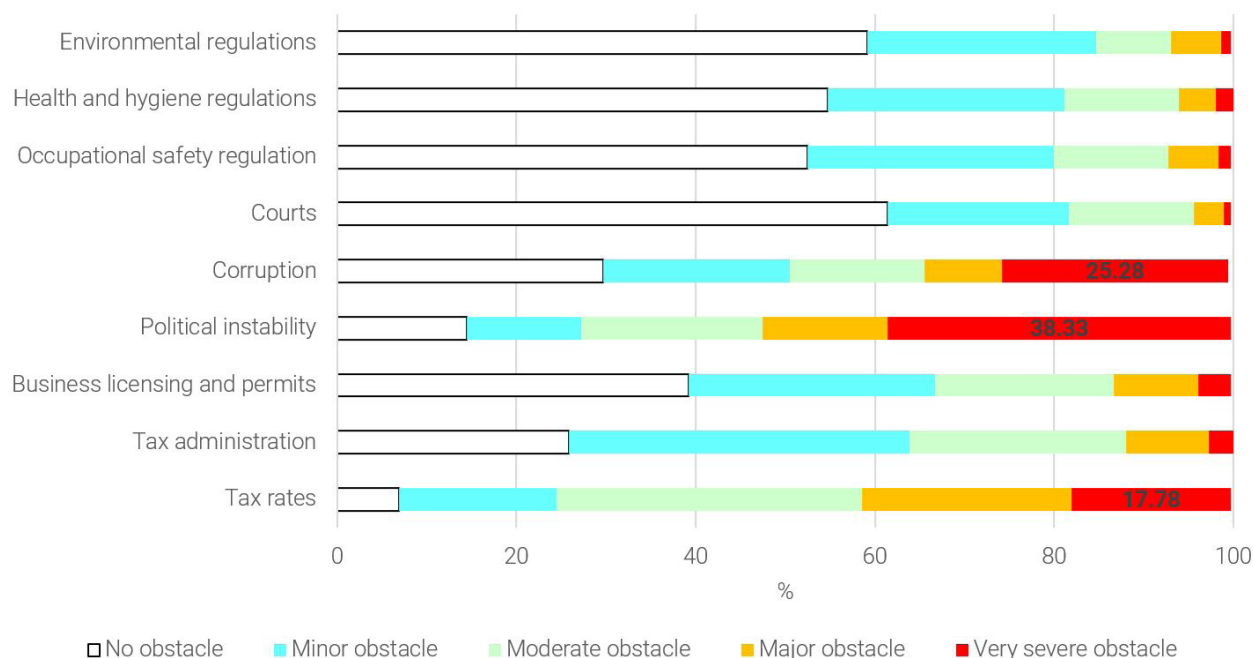
Source: World Bank Enterprise Surveys for Mongolia 2009, 2013, 2019. Category ‘other obstacles’ include tax administration, practice of the informal sector, business licensing, labor regulations, transport, access to land, electricity, crime, theft, and disorder.

The changed view on Mongolia’s business environment is largely confirmed when looking at the severity of individual business climate factors over time. In 2019, one in two firms ranked Mongolia’s political situation/instability as a major or very severe obstacle, up from 30 percent in 2009. Regarding corruption, there are signs of polarization with the share of firms either having no concerns or rating it as a major or very severe obstacle increasing over time. Heightened concerns regarding political factors and graft are mainly driven by medium-sized and large, established firms (20 years or older), many of them in the retail sector.

¹⁴⁰ Small firms are defined with 5-19 employees; medium firms with 20-99 employees and large firms with 100+ employees.

For what concern the business-government relations¹⁴¹, the top three obstacles perceived as a major or very severe obstacle to the current operations are political instability, corruption, and tax rates. Firms interviewed considered political instability (38.33%); corruption (25.28%) and tax rates (17.78%) as very severe obstacles when dealing with government officials and their agencies. On the other hand, firms were strongly satisfied with the functioning of the courts (61.39%); health and hygiene regulations (54.72%), and occupational safety regulation (52.5%) (Figure 14).

Figure 14: Biggest Obstacle to Business-Government Relations



Source: World Bank Enterprise Surveys for Mongolia 2019.

The top three major obstacles in business-government relations were perceived mainly by foreign and small firms. Foreign firms confirmed political instability (63%); corruption (45%), and tax rates (63%) as a major or very severe obstacle. Similarly, small firms perceived political instability (54%) and corruption (39%) as the most severe constraints to the business environment, whereas tax rates (51%) were considered very severe or major obstacle by the majority of medium firms.

On average, the time requested by government regulations was not considered a big constraint to the business operation, however, the licensing and permit process is quite lengthy. For example, 55.83% of firms replied that Senior Management¹⁴² spent – on average – 10% or less of their time dealing with the requirement requested by government regulations versus 36% of staff spending 50% or more of their time. However, obtaining an operating license and construction permits was considered quite lengthy, taking more than 30 days, from the day of the application to the day it was granted, with 27% and 30% of firms, respectively (Figure 15 (a)). Large firms, which are mostly characterized by foreign ownership, are the most constrained in terms of import licenses and construction permits (Figure 15 (b)).

Informal payments to public officials are very low, but more frequent in small firms. The average of informal payments to public officials with regard to customs, taxes, licenses, regulations, services, etc. is 0.5% of total annual sales equivalent to 558,421 MNT. Small firms are more likely to provide informal gifts/payments to public officials with 6% of firms spending more than 5% of annual sales. Small firms are generally characterized by domestic ownership compared to large and foreign firms. 16.9% and 10.29% of firms have used informal payments for obtaining operating licenses and construction permits (Figure 16 (a) & (b)).

¹⁴¹ Questions in the ES assess how establishments deal with government officials and their agencies.

¹⁴² Senior Management includes managers, directors, and officers above direct supervisors of production or sales workers.

Figure 15 (a): Percentage of firms in obtaining permits/licenses

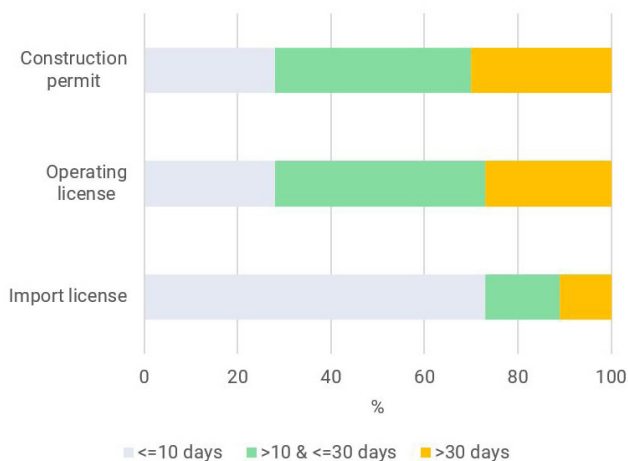
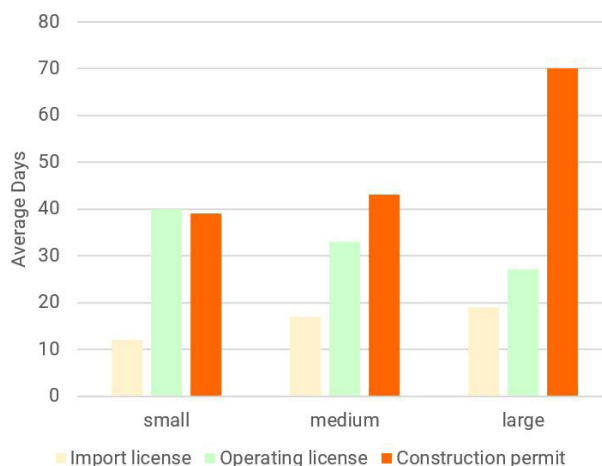


Figure 15 (b): Percentage of firms in obtaining permits/licenses by firm size



Source: World Bank Enterprise Surveys for Mongolia 2019

Figure 16 (a): Informal Gifts/Payments Requested by firm size

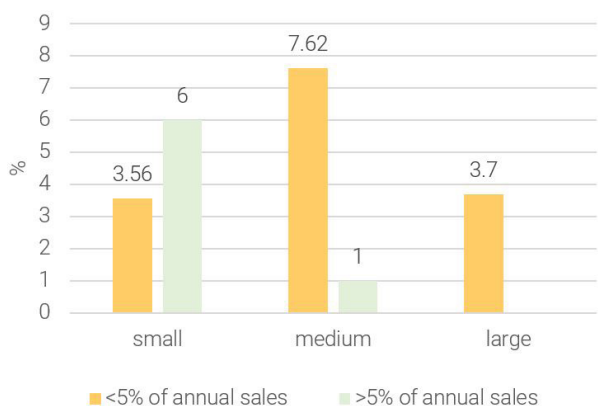
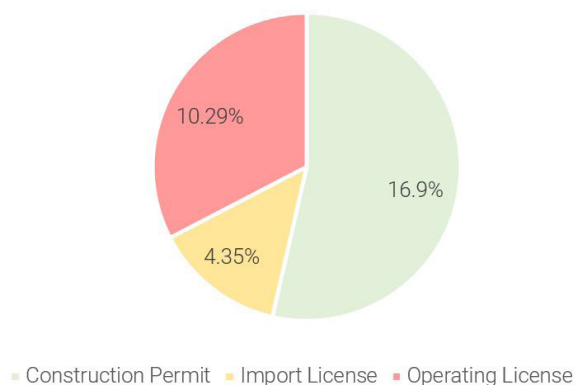


Figure 16 (b): Informal Gifts/Payments Requested by type



Source: World Bank Enterprise Surveys for Mongolia 2019

In relation to international trade, the average time to clear exports and imports through customs is five days, with larger firms as the most efficient. Although the ES in 2019 counts around 46% of importing¹⁴³ firms and only 6% of exporting¹⁴⁴ firms, 77% of exporting and importing firms take five days or less for exported goods to clear customs and 79.15% for imported goods (Figure 17 (a)). Efficient custom procedures enable businesses to directly export and import goods. Constraints at customs clearance are perceived differently by firm size: the larger the firm, the less days are needed at customs, with medium and large firms taking on average a maximum of one day compared to small firms (Figure 17 (b)).

¹⁴³ Firms that use inputs of foreign origin.

¹⁴⁴ The variable captures the percentage of firms that export directly at least 10% of their total annual sales.

Figure 17 (a): Time to clear customs

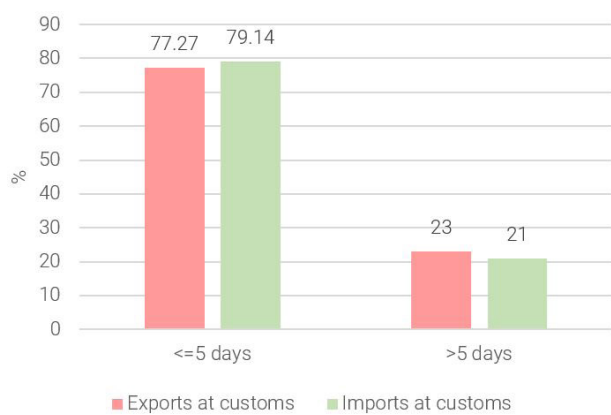
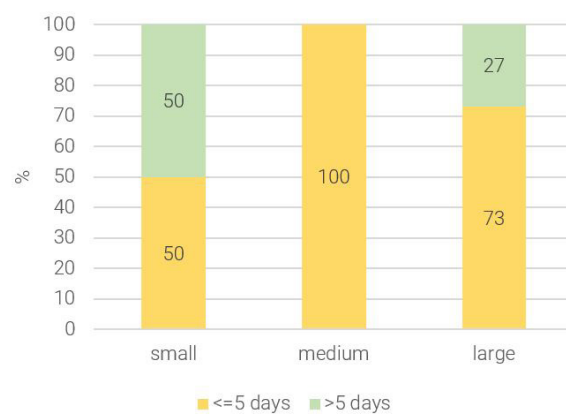


Figure 17 (b): Time to clear customs by firm size



Source: World Bank Enterprise Surveys for Mongolia 2019

Annex 2: Gender and the Business Environment in Mongolia

The regulatory framework in Mongolia promotes gender equality, however, discrimination against women in the labor market remains common. According to the Global Gender Gap report¹⁴⁵ Mongolia scores relatively well (a score¹⁴⁶ of 0.716) compared to Kyrgyz Republic (a score of 0.681) and Tajikistan (a score of 0.650), lagging behind Lao DPR (a score of 0.750). In 2020, women represented 51% of the total labor force participation while 6.71% of the total female labor force is unemployed.¹⁴⁷ According to ILO,¹⁴⁸ the inactivity rate¹⁴⁹ of women with advanced education is 16% higher than men with the same education level. Women's rights in the economic sphere are guaranteed by the Law on Promotion of Gender Equality (2011) and the Family Law (1999), particularly when dealing with starting a business. Women are concentrated in employment sectors typically paid through state budgets and the lowest salaries, mainly for support positions in retail and catering, and teaching.¹⁵⁰ Because of household and family responsibilities, women are often subject to discriminative practices with respect to recruitment, equal pay for work, and equal work and maternity protection, as well as sexual harassment.¹⁵¹

There is a male predominance in the ownership of housing which prevails in current laws and regulations. Sixty percent of land ownership in Mongolia is held by men, with 33% held by women, with 55% of men and 27% of women having registered their ownership rights.¹⁵² According to the National Statistics Office (NSO) of Mongolia, the proportion of women-headed households has decreased from 11.3% in 2008 to 8.1% in 2016.¹⁵³ As is the case elsewhere, women-headed households are the more vulnerable to poverty. Female heads of households are engaged in unpaid care work which prevents them to undertake employment, particularly in rural and remote areas, where men own three times more than women's homeownership certificates.¹⁵⁴ Although the Civil Code recognizes equal ownership rights to immovable property,¹⁵⁵ registered assets after marriage are a common property of family members, and the person in whose name this property is officially registered may dispose of those assets without the consent of other family members.¹⁵⁶

According to the Enterprise Survey,¹⁵⁷ women share many constraints to entrepreneurship with those owned by men, yet their participation in businesses is often informal. According to the Women Business Law indicator for entrepreneurship,¹⁵⁸ women improved by 25 points over the last decade and achieved the highest possible score in 2021. After the communist era,¹⁵⁹ women became highly educated¹⁶⁰ (the labor force with advanced education is 64%¹⁶¹ vs. 76% for women and men respectively in 2020) and aware of their right to start their own business.¹⁶² Similarly to men,¹⁶³ women entrepreneurs face the highest constraints on political instability (30.88%), tax rates (26.27%), access to finance (15.21%), and an inadequately educated workforce (11.52%) (Figure 18).

¹⁴⁵ The full report is available at <https://www.weforum.org/reports/global-gender-gap-report-2021>.

¹⁴⁶ The Global Gender Gap score is based on the population-weighted average for 156 countries in 2021. On average, the gap in Mongolia has been reduced by 0.025 points compared to the previous edition of the index in 2006.

¹⁴⁷ World Bank Indicators, accessible at: <https://data.worldbank.org/indicator/SL.TLF.CACT.FE.ZS?locations=MN>

¹⁴⁸ Data available at: <https://ilostat.ilo.org/data/>.

¹⁴⁹ This indicator conveys the number of persons of working age outside the labour force (that is, not employed or unemployed) expressed as a percentage of the working-age population.

¹⁵⁰ IFC. 2021. SMEs and Women-owned SMEs in Mongolia.

¹⁵¹ IFC. 2021. SMEs and Women-owned SMEs in Mongolia. Initiatives, like the UN Committee on the elimination of discrimination against women (CEDAW), ensure gender-sensitive practices to women employment.

¹⁵² ADB. 2018. Measuring asset ownership and entrepreneurship from a gender perspective. Methodology and Results of Pilot Surveys in Georgia, Mongolia, and the Philippines. Manila.

¹⁵³ Green Climate Fund. 2021. Gender Assessment.

¹⁵⁴ ADB. 2018. Measuring asset ownership and entrepreneurship from a gender perspective. Methodology and Results of Pilot Surveys in Georgia, Mongolia, and the Philippines. Manila.

¹⁵⁵ Art. 127(2) and 128(1).

¹⁵⁶ Green Climate Fund. 2021. Gender Assessment.

¹⁵⁷ The World Bank. Enterprise Survey 2019.

¹⁵⁸ Data are accessible at <https://wbl.worldbank.org/en/wbl>. Indicator-level scores are obtained by calculating the unweighted average of the questions within that indicator and scaling the result to 100.

¹⁵⁹ During the communist period (from 1924 to 1990), governments provided equal educational opportunities for men and women.

¹⁶⁰ According to ILOSTAT, women are almost 10% more educated than men (2010)

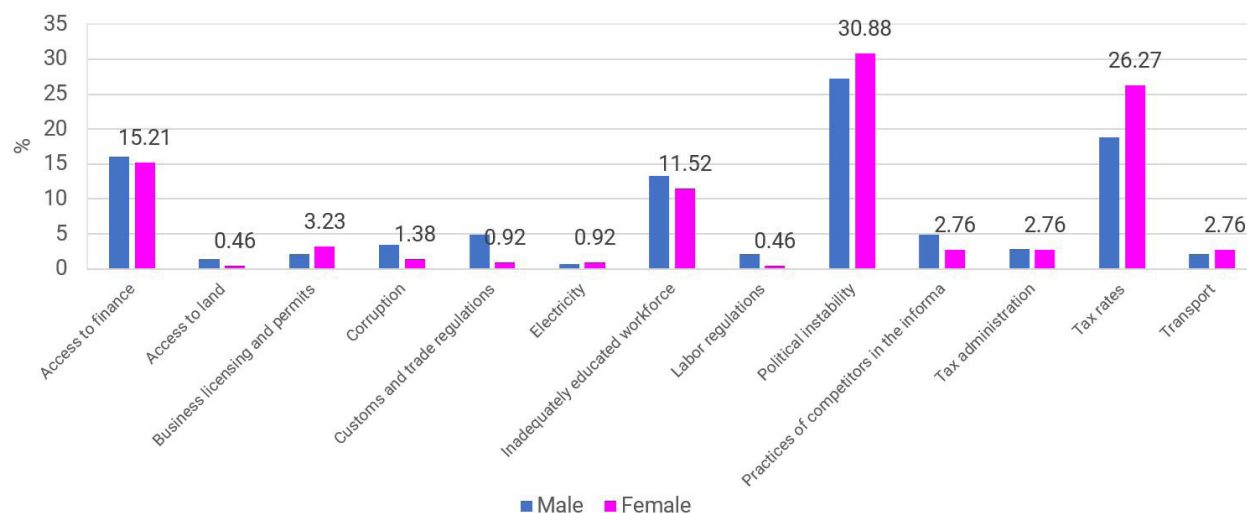
¹⁶¹ World Bank Indicators. Available at: <https://data.worldbank.org/indicator/SL.TLF.ADVN.MA.ZS?locations=MN>

¹⁶² Aramand, M. 2011. Women entrepreneurship in Mongolia: the role of culture on entrepreneurial motivator. Equality, Diversity and Inclusion: An International Journal.

¹⁶³ This finding can be justified by the fact that most of the key business decisions are taken by men and women together (IFC. 2015).

According to the Global Findex, women¹⁶⁴ and men have 95% and 91% access to a financial account, respectively, and women entrepreneurs are protected by the Family Law (Art. 10) and the Law on Promotion of Gender Equality. However, banks are always reluctant to accept collateral and to offer loans to women entrepreneurs¹⁶⁵: loan repayment rates are higher in the case of women entrepreneurs because their business is perceived as riskier than for men. However, this is often because the needs of women entrepreneurs are not sufficiently represented by the Business Women association when dealing with the government¹⁶⁶. It is a common phenomenon that women work for family businesses without formalizing their shares in those businesses, leaving women with any share of the business in the case of a divorce¹⁶⁷. More women, particularly in rural areas, take on insecure informal work and unpaid family work, and far few women participate in entrepreneurial endeavors compared to men¹⁶⁸. Under informality, women scarity their property ownership right in favor of their husbands in order to access finance as a family¹⁶⁹.

Figure 18: What is the biggest obstacle to the business environment faced by male and female entrepreneurs?



Source. World Bank Enterprise Survey 2019.

¹⁶⁴ Adults with age 15+.

¹⁶⁵ World Bank interviews. The Law on Promotion of Gender Equality Art. 9 prohibits discrimination in access to credit based on gender.

¹⁶⁶ World Bank interviews.

¹⁶⁷ ADB. 2019. Mongolia Gender Situational Analysis: Advances, Challenges and Lessons Learnt since 2005

¹⁶⁸ <https://www.worldbank.org/en/news/press-release/2018/03/27/broaden-opportunities-for-women-workers-in-mongolia-new-world-bank-report>

¹⁶⁹ IFC. 2014. SMEs and Women-owned SMEs in Mongolia

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