Property tenure/ownership

Property tenure/ownership in Mongolia is interesting because of its history and distinctions. In most countries, real estate usually includes both the land and the buildings. In Mongolia, there are different levels of ownership for properties on land. For example, land is usually owned by the government, whereas the title to the land belongs to an individual holding possession right, and the building on top of the land may be owned by another individual. “Immovable property” is, as its name indicates, a property that cannot be moved and an important distinction in a country populated by nomads. Essentially, it refers to buildings and houses. The precise legal definition for the ownership of immovable property in Mongolia is termed as “floating freehold”. It signifies that the property owners hold a freehold interest over the property, but not over the land on which it sits.

Major property legislation

In respect of the real estate sector, the following laws are the most relevant:

• The Constitution
• Civil Code
• General Law on Taxation
• Law on Registration of Immovable Property
• Law on Investment
• Law on Immovable Property Tax
• Law on Personal Income Tax
• Law on Land
• Law on Land Fees
• Law on Allocation of Land to Mongolian Citizens for Ownership
• Law on State Registration of Property Ownership Right and Other Related Property Rights
• Law on Urban Planning
• Company Law
• Law on Licensing

Laws on Mongolian property rights protect foreign investors’ rights and interests.

Operational requirements for foreign corporations

As provided by law, a foreign investor is a foreign legal person or citizen (a foreign citizen or stateless person who is a non-resident in Mongolia or a citizen of Mongolia who is residing in a foreign country permanently) making an investment in Mongolia. To invest in Mongolia, a foreign legal person/citizen may:

• Incorporate a company or a representative office
• Purchase shares, bonds and other securities
• Establish agreements specified by law

One of the sectors where foreign direct investment (FDI) is usually channelled is “movable and immovable property”.

Foreign-investment entities are able to own, use their properties (except land) and dispose of the income derived from their properties.

Foreign investors have the following rights with respect to their property:

• To possess, use, and dispose of their property
• To repatriate investments that contributed to the equity of a business entity with foreign investment
• To manage or participate in the management of a business entity with foreign investment
• To transfer their rights and obligations to others, as provided for by legislation
• To remit income, such as profit and payments, abroad
• To pay shareholders’ income and dividends
• To transfer service fees and charges for letting others use their intellectual property
• To receive income after sale of assets and securities
• To transfer their property rights to others
• To terminate an investment agreement and liquidate a business entity
• To pay principal debts and interest as well as other equivalent payments
• To receive compensation payment for confiscated property
• To receive other income gained in conformity with the legislation of Mongolia
• To enjoy such other rights as conferred by legislation

Foreign investors are required to:

• Observe the laws of Mongolia
• Perform the obligations set forth in the investment agreement and statutes of the business entity with foreign investment
• Implement measures to ensure the protection and restoration of the natural environment
• Respect the national tradition and custom of the people of Mongolia.
Investment, including foreign investment, in Mongolia is regulated primarily through the Law on Investment, which was enacted by the Parliament on October 3, 2013. This Investment Law removed most requirements and restrictions on foreign investors and aims to support and encourage investors, as well as attract more investments to Mongolia. The main objectives of the Law on Investment are:

- Not to distinguish between foreign and domestic investors
- To issue stabilisation certificates to qualifying entities. The holders of stabilisation certificates will enjoy stable treatment with respect to certain tax rates and amounts
- To establish a ministry approval process for foreign investments by foreign state-owned entities

Under this Law, the state central administrative body in charge of investment affairs (Prime Minister of Mongolia1) has the power to issue approvals to state-owned entities holding 33 percent or more of the total issued shares in a Mongolian legal entity to operate in the mining, banking and finance, media and communication sectors.

While the state administrative body in charge of investment affairs, namely the Investment Agency has the power to issue stabilization certificates to legal entities that satisfy the certain requirements.

In addition, a foreign investor that satisfies certain requirements may enter into an investment agreement to enjoy certain stable tax rates and amounts with the Cabinet member in charge of investment affairs (Prime Minister of Mongolia).

The basic requirement to establish a foreign investment entity is to have at least MNT 189.2 million (USD 100,000) invested by any change in taxation laws to increase the relevant tax rates and amounts will not apply to the investor during the term of the investment agreement.

While immovable property can be owned outright by foreign investors, land can only be leased by foreign investors.

According to the Law of Mongolia on Land, dated June 7, 2002, the land may only be owned by Mongolian citizens. However, as provided by clause 12.1.1 of the Law on Investment, “land may be possessed or used with an agreement for up to 60 years, with a single extension of up to 40 years on the same conditions as the original agreement in a form of nontax incentive by an entity duly registered in Mongolia, regardless of the investment being domestic or foreign.”

Restrictions on foreign property ownership

Except for land, there are currently no restrictions on foreign residents or non-residents owning property (building, apartment) in Mongolia. Certified copies of the buyers’ passports have to be submitted to the Property Registration Office, along with the demand for a new certificate.

Foreign exchange controls

All transactions within the territory of Mongolia are legislatively required to be carried out using national currency, togrog (“MNT”).

However, it is usual for prices to be quoted in other currencies (predominantly USD), particularly in international trade and the tourism industry and there are presently no restrictions on foreign exchange transactions. No restrictions are placed on the inflow and outflow of foreign capital to and from the country. Currency risks associated with Mongolia are usually considered relatively low, as both the economy and the political environment are stable.

Taxation

Property tax

Mongolian property taxes are easy to understand and follow. In general, there are only a few applicable taxes. The tax regime will differ depending on whether the property is owned by a corporate or personal entity. The tax regime will also differ if the entity is a registered Mongolian resident entity or a nonresident foreign entity.

The differences between the various tax regimes can be significant. For instance, a legal resident in Mongolia who holds the property in his/her own name will only be liable for a 10 percent income tax on the rental income. However, if the legal resident purchases the property in the name of a foreign

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1The government structure of Mongolia has been changed at the end of the year 2014, and as of January 8, 2015 the Prime Minister of Mongolia is in charge of investment affairs and policies.

2The denominated rate in MNT is based on the rate of Central Bank of Mongolia as of January 6, 2015.
A company based abroad, the foreign company will be liable for a 30 percent tax rate [20 percent income + 10 percent value added tax (VAT)]. The government is becoming increasingly apt at communication between its different departments. Inspectors are sent to conduct regular checks on the status of tax payments.

**Real estate tax**

Persons who own immovable property in Mongolia have to register their ownership with the tax authority. An annual tax of minimum 0.6 percent the total value of immovable property is payable by the owner. The value is determined with its state registration valuation or insurance on the property or based on the book value. Apartments are exempted from such tax. As to immovable properties that are located in the Capital City of Mongolia, depending on its location, size, market demand and supply of such immovable property, the annual tax rate fluctuates between 0.6 percent and 1.0 percent.

**Property purchase tax**

Property purchase tax is relatively straightforward. A 2 percent stamp duty is payable on the declared purchase price. Payment can be easily made in most banks. Property purchase tax is normally split between the buyer and the seller, but is also generally open to negotiations.

**Real estate leasing tax**

A 10 percent income tax on the amount derived from the property, essentially on the lease amount and payable quarterly.

**VAT**

It is applicable to a Mongolian registered corporate entity, a citizen and a permanent establishment of foreign legal entity and to revenues derived from a property amounting to MNT 10 million (USD 5,283) or above. Such legal persons will become a registered Mongolian VAT payer. A VAT number can be obtained from the Mongolian Tax Authority.

**Land fees**

The government determines the land base rate, and land fees are calculated from this rate. Land fees are determined according to the type of the land, such as pasture land, cultivation land or land for household needs.

**Tax treaties: Avoidance of double taxation**

As of January 2015, the effective double taxation agreements are as follows:

Country
1. The People’s Republic of China
2. The Republic of Korea
3. The Federal Republic of Germany
4. The Republic of India
5. The Socialist Republic of Vietnam
6. The Republic of Turkey
7. The United Kingdom of Great Britain and Northern Ireland
8. The Republic of Hungary
9. Malaysia
10. The Russian Federation
11. The Republic of Indonesia
12. The State of Kuwait
13. The Republic of France
14. Czech Republic
15. The Kingdom of Belgium
16. The Republic of Kazakhstan
17. The Republic of Kyrgyz
18. The Republic of Poland
19. The Republic of Bulgaria
20. The Swiss Confederation
21. Ukraine
22. Canada
23. The Republic of Singapore
24. The Democratic People’s Republic of Korea
25. The Republic of Austria
26. The Republic of Belarus
27. Italian Republic

**Real estate investment trusts**

The real estate investment trusts (REITs) concept is not known in Mongolia, and such trusts have not been established in Mongolia.

**Conclusion**

The legal environment regarding real estate in Mongolia is evolving. Currently a “package” of land and taxation laws is before the Parliament. The proposed laws may substantially alter the legal landscape for real estate to encourage more private ownership of land plots, consultation and planning together with the landowners, willingness to take a more market-based approach with regards to valuation of lands, involuntary resettlement, and development as well as to combat corruption. According to the proposed taxation laws, several types of taxes may be created, and certain tax rates and amounts may be increased.

*According to the recent draft resolution by the state authority in charge of determining the annual tax rate applicable in the territory of Capital City, the tax rate is likely to increase up to 2.0 percent.

*The agreement between Mongolia and the State of Kuwait for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income is terminated – in force until April 1, 2015.
# Common Terms of Lease for Tenancy Agreements

<table>
<thead>
<tr>
<th><strong>Unit of Measurement</strong></th>
<th></th>
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</thead>
<tbody>
<tr>
<td><strong>Unit of Measurement</strong></td>
<td>Square metres (m²)</td>
</tr>
</tbody>
</table>

## Rental Payments

<table>
<thead>
<tr>
<th><strong>Rents</strong></th>
<th>Quoted in MNT/m²/year (net area)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Typical lease term</strong></td>
<td>1–3 years, with 4–10 years for larger tenants</td>
</tr>
<tr>
<td><strong>Frequency of rent payable (in advance)</strong></td>
<td>Monthly</td>
</tr>
<tr>
<td><strong>Typical rent deposit (expressed as X months’ rent)</strong></td>
<td>Three months gross rent – generally payable by tenant in advance</td>
</tr>
<tr>
<td><strong>Security of tenure</strong></td>
<td>Only for the duration of the tenancy, no guarantee beyond the original lease term</td>
</tr>
<tr>
<td><strong>Does tenant have statutory rights to renewal?</strong></td>
<td>No, unless an option to renew is agreed by the landlord or specified in the lease</td>
</tr>
<tr>
<td><strong>Basis of rent increases or rent review</strong></td>
<td>Open market rental value</td>
</tr>
<tr>
<td><strong>Frequency of rent increases or rent review</strong></td>
<td>Generally at lease renewal, but can be any time if market rent has substantially increased or decreased</td>
</tr>
</tbody>
</table>

## Service charges, operating costs, repairs and insurance

| **Responsibility for utilities** | Generally open to negotiation, but the landlord is responsible for fees such as heating, water and apartment owners' association. Electricity, communication and Internet consumption is payable by each tenant |
| **Car parking** | Where parking is available, it is held under a separate monthly lease for an additional rent |
| **Responsibility for internal repairs** | Responsibility for internal repairs |
| **Responsibility for repairs of common parts (reception, lifts, stairs, etc.)** | Usually apartment owners' association or landlord |
| **Responsibility for building insurance** | Rare, and landlord is responsible for it if it is required |

## Disposal of leases

| **Tenant subleasing and assignment rights** | Usually not permitted |
| **Tenant early termination rights** | Subject to landlord’s approval, with one month’s written notice and subject to penalty payment |
| **Tenant’s building reinstatement responsibilities at lease end** | Original condition, allowing for wear and tear – major damage cost will be deducted from the deposit |

Source: JLL