

REGULATORY INTELLIGENCE

COUNTRY UPDATE-Mongolia: Insurance

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The insurance market is an emerging sector in Mongolia. The Law of Mongolia on Insurance (Insurance Law) and the Law of Mongolia on Insurance Intermediaries (Insurance Intermediaries Law) both adopted on April 30, 2004, form the primary legal framework that regulates the insurance market. According to these laws, the Financial Regulatory Commission (FRC), a statutory body, is the primary authority mandated with regulating insurance activities.

Under the Insurance Law, insurance is generally classified as either long-term insurance or ordinary insurance. These classifications are further divided into mandatory and voluntary. Mandatory insurance includes social, drivers' and health insurance, whereas voluntary insurance includes, among others, insurance cover for property, accident, construction, auto-vehicles, freight, agricultural, financial, livestock, aircraft, liability, financial, loan, performance and fidelity guarantee insurance, railway vehicles, life-term, savings, pension, health and annuities as per FRC Resolution #207, dated June 6, 2018.

Regulation of insurance companies*Insurance companies*

According to the Insurance Law, and excluding foreign-incorporated entities engaged in reinsurance activities (see further below), a Mongolian incorporated company and a foreign incorporated company can carry out the business of an insurer with authorisation from the FRC in the form of a licence. The FRC may grant a licence to an applicant if it complies with certain requirements.

The FRC must determine whether to issue the licence to the applicant within 45 working days of receipt of the application. The applicant has to satisfy the following general requirements:

- the applicant, its governing/managing persons or those acting in concert which hold 10% or more of the ordinary shares of the applicant are an "appropriate person" to engage in such activities;

- the applicant has the capacity to comply with the Insurance Law and other insurance regulations following the issuance of the licence;

- the organisation, management, and financial resources of the applicant are adequate for conducting the relevant insurance activities;

- and
- the issuance of the licence must not infringe the public or insureds' legal interests.

Additional requirements apply to applicants depending on whether applying for long-term or ordinary insurance activities.

Licences for long-term and ordinary insurance activities cannot be granted to the same entity.

Insurance intermediaries

All insurance intermediaries have to be authorised by the FRC. Insurance intermediaries comprise:

- insurance agencies;

- insurance brokers; and

- loss adjusters.

The applicant must satisfy the following general requirements:

- the issuance of the licence must not violate Article 12 of the Insurance Intermediaries Law regarding limitations on licence holders;

- the applicant is an "appropriate person" to act as an insurance intermediary;

- if the applicant is an individual, be an "appropriate person" to engage in insurance intermediary activities and if the applicant is a legal entity, its governing/managing person and those acting in concert which hold 10 percent or more of the ordinary shares of the applicant must be an "appropriate person" as specified above;

- be fully capable of complying with the Insurance Intermediary Law and other insurance regulations;

- the organisation, management, and financial resources of the applicant must be adequate for conducting the relevant insurance intermediary activities;

- the name of the applicant must not indicate a desire to engage in insurance-related activities; and

- the issuance of the licence must not infringe the public's nor the insured's legal interests.

The FRC imposes additional requirements for applicants depending on the type of intermediary licence.



There are certain limitations on license holders, being:

- insurance broker and loss adjustor licences may be issued only to legal entities;
- insurance agent and loss adjustor licences may not be issued to the employees, governing persons, or to an entity, acting in concert, that holds 10 percent or more ordinary shares of a licensed insurance broker;
- insurance broker licences may not be granted to an insurance company;
- insurance broker licences may not be granted to entities that hold 10 percent or more of the ordinary shares of an insurance company and such entity must not be an employee or governing person of an insurance broker;
- insurance agent and insurance broker licenses may not be granted to the same entity; and
- insurance agent and insurance broker licences may not be granted to a licensed loss adjustor.

Capital requirements

Insurance companies

According to FRC Resolution #354 enacted on December 4, 2019, insurance companies must have minimum share capital of 5 billion Mongolian tugrug (MNT) (approximately \$1.75 million) for ordinary insurance activities and 6 billion MNT (approximately \$2.1 million) for long-term insurance activities. As for conducting reinsurance activities, the minimum capital requirement is 15 billion MNT (approximately \$5.3 million). A solvency ratio also applies to insurance companies.

Further, an insurance company is prohibited from engaging in the following activities:

- lending money or receiving funds by means of using its shares as security;
- granting a loan from any funds to a "related person", which refers to an insurer and those who have been engaged in insurance activities, or legal entities whose controlling stake (33.3% or more) is held by such insurer or entities formerly engaged in insurance activities, and any individual or legal entity that holds the controlling stake of the former legal entity, and affiliated persons as defined in Article 99.1 of the Law of Mongolia on Company;
- granting unsecured credit to any person;
- providing a guarantee or security for a loan in favor of a related person; or
- placing the share capital funds or insurance reserve funds with a related person or a bank founded by such related person.

Insurance intermediaries

The FRC, under its Resolution #02 dated January 9, 2019 (Appendix 1), requires that insurance brokers have a minimum share capital of 20 million MNT (approximately \$7,000) if involved in insurance activities (long-term or ordinary), and 50 million MNT (approximately \$17,500) if involved in reinsurance activities. The minimum share capital for loss adjustors operating in rural areas is set at 7 million MNT (approximately \$2,500) and 10 million MNT (approximately \$3,500) for operating in Ulaanbaatar.

Under the Law of Mongolia on Investment (Investment Law), a foreign individual or legal entity wishing to incorporate a business entity in Mongolia must invest a minimum of \$100,000. There is no minimum capital requirement for setting up a representative office as representative office is not considered as a separate legal entity and thereby is not permitted to carry out any form of revenue-generating activities.

Foreign entities

Insurance companies

A foreign insurer and foreign insurance intermediary may establish a branch or a representative office in Mongolia in accordance with applicable laws, such as Mongolian company and investment laws relating to the establishment of an entity after obtaining a licence from the FRC.

A foreign insurer and foreign insurance intermediary must satisfy the following criteria according to the Appendix 10 "Terms and Requirements for Foreign Insurer and Foreign Insurance Intermediaries who will Conduct Insurance and intermediary related Activities by establishing a Branch or Representative Office in Mongolia" of the Insurance Package Regulations approved under FRC Resolution #02 dated January 9, 2019 (Appendix 10), being:

- the branch or representative office must be registered with the registration authority of Mongolia;
- a foreign insurer and foreign insurance intermediaries must be rated by a respectable international credit rating institution;
- a foreign insurer must have an insurance guarantee fund in an amount of at least MNT 1 billion (approximately \$374,500), and a foreign insurance intermediary must have an insurance guarantee fund in an amount of MNT 500 million (approximately \$187,250) deposited in a registered Mongolian bank;
- the foreign insurer and foreign insurance intermediaries must have regulations that regulate their operations, which is in compliance with laws;
- the foreign insurer and foreign insurance intermediaries must have a minimum of two years of experience in operating a branch and representative office in the country of its incorporation and in other countries except of Mongolia;
- the foreign insurer must have a share capital of no less than MNT 10 billion and foreign insurance intermediaries must have a share capital of no less than MNT 1 billion in order to submit a request for opening a branch or representative office in Mongolia;



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it must have not breached the Insurance Law, Insurance Intermediaries Law, and other relevant laws and regulations of its country or other countries in the last two years, and its relevant license should be not terminated, and it is not in a financial crisis or insolvency due to the breaches;

it must not have participated in money laundering and terrorism financing;

it must be capable of conducting its operation in compliance with laws of Mongolia and rules, regulations and instructions approved by the FRC;

it must have prepared a business plan for insurance activities for a minimum of three years;

it must have more than one product to offer to the insurance market;

it must have an office for the stable operation of the branch or representative office;

the foreign insurer and foreign insurance intermediaries must have more than four permanent employees in its branch, and more than 2 permanent employees in its representative office;

50% or more of permanent employees must be Mongolian citizens;

it must have an "appropriate person" as a director/managing person, who is qualified under the Regulation #179 of the FRC dated April 8, 2020;

in the event that the executive director is a foreigner, he/she must able to speak and write in the Mongolian language or else must have a full-time interpreter;

the branch of a foreign insurer must specify that whether the branch is going to provide regular insurance or long-term insurance service, and the branch of a foreign insurance broker must specify that whether the branch is going to intermediate either reinsurance, regular insurance, or long-term insurance;

if deemed necessary, FRC can set other conditions and requirements depending on the classification, type or form of the insurance service to be provided by the branch/representative office of a foreign insurer and foreign insurance intermediaries;

the branch of a foreign insurer and foreign insurance intermediary must have "branch of ...insurance" before its name; and

the representative office of a foreign insurer and foreign insurance intermediary must have "representative office of ... insurance" before its name.

A foreign insurer and foreign insurance intermediary is obliged to pay a license and an annual administration fee. The relevant fees will be determined by the FRC upon the establishment of the branch or representative office.

Neither the Investment Law nor the Law of Mongolia on the Registration of Legal Entities contemplates the establishment of a branch by a foreign legal entity as provided in the Insurance Law and the Insurance Intermediaries Law.

Monitoring

The FRC regulates insurance company and insurance intermediary operations within the territory of Mongolia. It has the power to:

monitor insurance companies and insurance intermediary activities;

issue, suspend, restore, and revoke licences and supervise/monitor entities in respect of compliance with licence terms and conditions;

issue a directive, appoint inspectors and/or experts for advising on proper conduct;

adopt, enforce and monitor implementation of insurance regulations such as the asset/liability ratio, maintenance and distribution of insurance funds, methodologies for determining the insurance rates, insurance valuations and appointing of actuaries;

maintain a unified register of insurance companies and insurance intermediaries; and

impose sanctions on those entities that have not complied with the rules and regulations.

An entity or person holding 10% or more of the ordinary shares of an insurance company is prohibited from taking the following actions without written approval from the FRC:

directly or indirectly transferring ownership to a third party; or

disposing of their interest by way of sale, transfer or pledge, or authorising others to do so.

In addition, shareholders are prohibited from allotting or issuing shares that could potentially increase or decrease the share capital or concluding transactions that could increase or decrease the relative shareholding interests. Moreover, insurance companies and insurance intermediaries are required to submit quarterly and annual financial reports together with a management report and brief description of the events that had affected the operations of the company.

For long-term insurance companies, an actuary report is also required. The FRC must undertake at least one inspection every two years of former and present insurance companies, insurance intermediaries and their controlled or subsidiary companies.

Sanctions and suspension

The FRC has extensive power over those it regulates, including the power to revoke operating licences. For the following offences, an insurance company or an insurance intermediary licence could be suspended for a maximum of six months:

the emergence of any of the grounds necessitating the imposition of sanctions by the FRC, such as the insurance company has become insolvent or likely to become insolvent, failure to maintain proper accounting and financial reports, or failure to pay fines imposed by the FRC in a timely manner;

failing to commence any insurance or insurance intermediary-related activities within six months of the grant of the licence, or ceasing operations within the same period; or



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failing to pay the annual fee for the licence within two months of the date that it was due and payable.
The FRC may revoke a licence on the following grounds, namely where:

- a licence holder makes a request for the same;
 - the insurance company or insurance intermediary has been liquidated;
 - sufficient evidence is uncovered to indicate that documents submitted for a licence application were false;
 - the licence holder has repeatedly or seriously breached the terms and conditions of the licence; or
 - where the licence holder did not remedy a breach for which the licence was suspended within the applicable suspension period.
- Entities that have violated the provisions of the Insurance Law or the Insurance Intermediary Law may be fined between 1,000,000–10,000,000 MNT (approximately \$350–3,500). If relevant, criminal proceedings may also be brought.

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