

**THE BANK OF MONGOLIA AND FINANCIAL REGULATORY COMMISSION OF MONGOLIA
 APPROVE THE “REGULATION ON THE APPROVAL OF CHANGES TO THE SHARE CAPITAL AND
 SHAREHOLDING STRUCTURE OF A BANK IN THE FORM OF A JOINT STOCK COMPANY”**

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On 28 January 2021, the Parliament of Mongolia adopted the *Law of Mongolia on Amendments to the Banking Law* (the “**Banking Law Amendments**”) which, among other things, required systemically important banks to become open joint stock companies (i.e. a publicly listed company) by 30 June 2022, and other banks to become open or closed joint stock companies. For more information, please refer to our previous note on the Banking Law Amendments [here](#).

The Banking Law Amendments was adopted within the framework of banking sector reform and a number of related developments. Some of these developments, including the approval of plans of five systemic banks on how they intend to meet the new requirements by the Bank of Mongolia (the “**BoM**”) and the Financial Regulatory Commission of Mongolia (the “**FRC**”), have occurred since the adoption of the Banking Law Amendments; and one non-systemic bank has become a publicly listed company.

Article 36.6 of the Banking Law, enacted on 28 January 2010 (the “**Banking Law**”), revised as per the Banking Law Amendments, provides that the BoM is to make a decision on whether to provide its approval in respect of changes to the amount and structure of shares of an influential shareholder¹ and issuance of shares and other securities classified as shares.

In light of the above, on 5 October 2021, the Governor of the BoM and the Chairperson of the FRC adopted a Joint Order No.A-262/262 approving the Regulation on the Approval of Changes to the Share Capital and Shareholding Structure of a Bank in the form of a Joint Stock Company (the “**New Regulation**”).

The New Regulation is silent as to when it will become effective. However, it is likely that it will apply after banks are registered as joint stock companies.

Below we provide information on some of the key regulations provided in the New Regulation.

1. SHARE CAPITAL AND SHAREHOLDING STRUCTURE CHANGES REQUIRING BoM’S APPROVAL

The BoM’s approval is required in the event of the following:

- (a) issuance of shares and other securities classified as shares;
- (b) reorganization by way merger, consolidation, division, separation or transformation;
- (c) increase or decrease of par value of shares;
- (d) a person becoming an influential shareholder of a bank solely or together with its

¹ Defined as “a person holding five or more percent of the bank shares solely or together with a related person, their ultimate beneficial owner(s) or a shareholder that can influence the policy, decisions and management of the bank and its ultimate beneficial owner(s)”.

related persons;

- (e) an influential shareholder owning an additional one or more percent of the total issued shares of a bank; and
- (f) repurchase of shares and other securities classified as shares.

The New Regulation will not apply to measures undertaken by an administrator or liquidator.

The New Regulation sets out the list of documents and information required to be submitted in relation to each of the events requiring BoM approval including those documents and information required to be submitted by foreign legal entities and individuals.

The BoM is to make a decision on whether to provide its approval within 30 days from the date of receiving complete set of application documents and this period can be extended for further 30 days. The BoM is to notify the applicant and the FRC within three days of making its decision. We note that the Banking Law provides that the BoM is to make a decision on whether to provide its approval within 60 days of receiving an application.

The BoM may refuse to provide its approval on the following grounds:

- (a) the potential influential shareholder does not meet the criteria set out in the Banking Law;
- (b) changes to share capital and shareholding structure breaches relevant legislation;
- (c) documents proving the source and origin of share capital do not meet the requirements of the New Regulation and have not been proven to be income from legitimate activities of the shareholder;
- (d) the information required by the BoM and the documents evidencing such information have not been submitted, the grounds and explanations with respect to the evidence are unclear and cannot be verified; and
- (e) the documents and information specified in the New Regulation have not been submitted in full within 30 days of BoM's request.

The New Regulation does not specify whether an application can be re-submitted after addressing the grounds for refusal.

Once the BoM provides its approval, the registration for public offering or closed subscription of shares or other securities classified as shares, the sale of shares or other securities classified as shares and activities relating to making changes to the register of security holders are to be organised as per the procedures provided under the *Securities Market Law of Mongolia*, enacted on 24 May 2013, and the relevant regulations approved by the FRC and the stock exchanges.

It should be noted that under the current *Regulation on the Approval of Changes to the Amount and Structure of Share Capital of a Bank*, adopted by Order No.A-82 of the Governor of the BoM dated 22 March 2019 (the "**Current Regulation**"), an influential shareholder of a bank is required to obtain an approval from the BoM in the event of changes to the shareholding structure of its shareholders' holding more 20 per cent of its shares. The New Regulation no longer imposes such requirement.

2. NOTIFICATIONS AND REPORTING TO BoM

In the event of changes to the shareholding structure of a bank not listed in Section 1 above, the bank is to provide a notification to the BoM. The New Regulation also provides that in the event that there will be change of up to one percent of the total issued shares in respect of the amount and structure of shares owned by an influential shareholder, the bank shall notify the

BoM.

Natural persons and legal entities who are becoming a shareholder of a bank in the form of an open joint stock company through a broker must provide information specified in the New Regulation such as its shareholders (if the applicant is a legal entity) and related parties as defined in the Banking Law. Similarly, those persons who are becoming a shareholder without the involvement of a broker must submit the same to the bank directly.

The New Regulation requires that relatively detailed information is supplied by an influential shareholder. For example, if an influential shareholder is a legal entity, among others, the following information must be supplied:

- (a) information on its shareholders;
- (b) information on its subsidiaries and controlled entities, companies in which it holds shares, parent companies of the founders and their shareholders together with their respective shareholding interests until the identity of the ultimate beneficial holder(s) can be identified;
- (c) information on its related parties; and
- (d) information on its governing persons;

In the event of any changes to the information previously supplied, an influential shareholder must notify the bank and update its registration within three working days, and the bank is to update the list of shareholders and notify the BoM and the FRC within three working days. Thus, the New Regulation does not provide any qualification or exception as to the reporting requirements applicable to an influential shareholder. As such, any change in the shareholding structure of an influential shareholder (other than those requiring BoM's approval as stated above) would need to be reported to the BoM and the FRC.

In addition to the above, banks must provide periodic and irregular reports to the BoM and the FRC relating to shareholders' register and changes to the share capital and shareholding structure.

3. CONCLUSION

The New Regulation changes the number and scope of events requiring BoM's approval in light of the fact that the banks will become public companies. It is hoped that the New Regulation will be enforced in a manner that will support the efficient operation of the banks in terms of obtaining approvals and reporting to the BoM and the FRC for changes to their share capital and shareholding structure.

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