

LEGISLATIVE UPDATE: ONE YEAR OF AMENDMENTS TO THE CONSTITUTION OF MONGOLIA



It has been nearly one year since the amendments to the *Constitution of Mongolia*, enacted on 13 January 1992 (“**Constitution**”) became effective. On 14 November 2019, the State Great Khural of Mongolia (“**Parliament**”) made significant amendments (“**Amendments**”) to the Constitution and the amendments became effective on 25 May 2020. This was the second time that the Constitution was amended since its adoption in 1992.

The Constitution, as the supreme source of law in Mongolia, sets out the fundamental principles of the state, its organisation, and the basic rights of individuals. The amendments to the Constitution were well received in general and addressed various controversial issues that were introduced to the Constitution with amendments made in 2000. The drafting of the amendments involved extensive consultation with political parties, civil society, academia and the public, and put an end to at least ten years of discussion on the topic of amending the Constitution.

It was anticipated that the amendments to the Constitution would contribute to the improvement of legislative process, the stability and the accountability of government, the independence of the judiciary, the improvement of local governance and the use of more equitable resource management. To an extent the long-term effectiveness of the amendments will depend on the supporting laws and regulations to be adopted by the Parliament and their implementation in practice.

The Amendments itself may not have direct influence or impact to the business and investment environment of Mongolia, but we believe it will have an indirect and long-term effect. For example, we believe that certain arrangements with respect to the stability and the accountability of the government, may gradually decrease political risk longer, which is one of the key concerns of foreign direct investments into Mongolia. Further, the laws and regulations aimed at enforcing the amendments relating to the principles concerning equitable resource management will likely impact on those operating in the extractive sector.

We provide brief details of the key Amendments below.

1. HIGHLIGHTS OF MAIN CHANGES

The amendments to the Constitution relate to the use of natural resources, operation of political parties, the law making process, the powers of the president, the formation and dismissal of the cabinet, and judicial independence and local governance.

1.1 Changes with respect to use of natural resources

- (a) Natural resources other than those privatized shall be state public property (as opposed to state property);
- (b) State policy on the use of natural resources shall be based on long-term development policy and directed towards ensuring the right to live in a healthy and safe environment for all current and future citizens and ensuring equal and fair distribution of benefits from the use of natural resources through reserving proceeds in a Sovereign Wealth Fund;

- (c) Citizens have the right to be informed regarding the environmental impact of the use of natural resources within the scope of their right to live in a healthy and safe environment; and
- (d) The legal basis for allocating the majority of benefits of the use of strategic mineral deposits to the Mongolian people, in line with the principle that natural resources belong to the people, shall be regulated by law.

1.2 Changes with respect to the Parliament and political parties

- (a) The parliamentary election law may not be adopted or amended less than one year prior to the regular election of the Parliament;
- (b) The Parliament may dissolve itself by a vote of no less than two thirds of all members of the Parliament if no less than two-thirds of all members of Parliament deem that the Parliament cannot exercise its powers or the President has proposed the same upon consultation with the Speaker of the Parliament;
- (c) The President may dissolve the Parliament if the Parliament fails to appoint a new Prime Minister within 45 days from proposing the appointment of the Prime Minister to Parliament or within 30 days of dismissal of the Prime Minister;
- (d) In the event that Parliament is dissolved, a parliamentary election shall be announced within 10 days and organized within 60 days of its dissolution. Parliament shall exercise its powers until newly elected members of the Parliament are sworn in;
- (e) Development policy and planning shall be sustainable;
- (f) When approving the state budget, the Parliament may amend the state income and expenditure structure but it may not increase budget expenditure or loss in the state budget proposed by the Government;
- (g) The powers, organization and structure of the organization in charge of providing independent auditing of state finances and budgets shall be regulated by law;
- (h) Regular sessions of the Parliament shall be held for not less than 75 working days (increased from 50 working days);
- (i) Unless otherwise provided in the Constitution, laws are to be approved by majority vote of members of the Parliament (as opposed to majority vote of those participating in the session). This means laws must be adopted by votes of at least 39 members of the Parliament;
- (j) Secret voting is possible by a vote of majority of members sitting in the Parliamentary session or if provided in the Constitution or other laws;
- (k) An ad-hoc inquiry committee with representation from minority parties may be established within the Parliament on certain matters of public concern with a vote of no less one-fourth of members of Parliament;
- (l) Violation of the Constitution by breaching his/her oath of office by a member of Parliament when exercising his/her powers shall be grounds for removing him/her as a member of the Parliament;
- (m) Political parties shall develop and implement national level policy and shall be formed by no less than one percent of the population who are eligible to vote;¹
- (n) The assets, funding sources and spending of political parties shall be transparent to the public;
- (o) Internal organization of political parties shall conform to democratic principles and operational procedures, and funding and conditions for providing financial assistance to political parties from the state shall be regulated by law;
- (p) Any attempt to deny the independence and sovereignty of Mongolia shall not be tolerated and the organization of a public referendum directed towards the same is prohibited;
- (q) The scope of and limitations on the right to initiate laws by the President,

¹ This amendment will become effective from 1 January 2028.

members of the Parliament and the Cabinet shall be regulated by law.

1.3 Changes with respect to the President of Mongolia

- (a) Citizens who have attained the age of fifty (as opposed to forty-five) are qualified to be elected as President;
- (b) The President may be elected for six years but cannot be re-elected; and
- (c) Certain powers may be granted to the President only within the framework provided in the Constitution.

1.4 Changes with respect to the Government (Cabinet)

- (a) The Prime Minister and no more than four members of the Government may hold concurrently the position of member of the Parliament (regulating the so-called 'double-deel' concept);
- (b) The President must submit the candidate for Prime Minister to the Parliament within five days following a person having been nominated by the political party or coalition that has a majority of seats in the Parliament.
- (c) The Prime Minister shall, upon consulting with the President, submit a draft law (as opposed proposal) on the structure and composition of the Government and amendments thereto to the Parliament. The Prime Minister shall consult with the President within 7 days and shall propose the law to Parliament on his or her own if no agreement is reached;
- (d) Cabinet members shall be appointed, dismissed and removed by the Prime Minister upon introducing them to the Parliament and the President. Cabinet members shall make an oath to the Parliament;
- (e) If no less than one-fourth of members of Parliament submit a proposal to remove the Prime Minister, the Parliament shall consider the proposal within three days and decide the matter within ten days. A resolution of Parliament on the removal or resignation of the Prime Minister shall be deemed to have been approved if the majority of members of the Parliament support the proposal. In such case, the

new Prime Minister shall be appointed within 30 days;

- (f) If the Prime Minister resigns, the Cabinet must resign in its entirety;
- (g) If the Prime Minister submits a draft resolution requesting a vote of confidence in relation to the state budget or a specific policy matter, the Parliament must discuss it within three days and resolve it within ten days by majority vote of the members of the Parliament; and

1.5 Changes with respect to the judiciary

- (a) Courts may be organized on a territorial basis;
- (b) Five members of the Judicial General Council ("**Council**") shall be selected from among judges and the other five members shall be appointed through a public nomination process. The members shall work for a period of four years and the Chairperson of the Council shall be elected from among the members of the Council. Reporting on Council activities concerning the impartiality of judges shall be presented to the Supreme Court;
- (c) The organization, operational procedures and requirements for members and the appointment procedure of the Council shall be regulated by law; and
- (d) A Judicial Disciplinary Committee with the mandate to suspend or dismiss judges from the position of judge and to impose other disciplinary sanctions under the procedures and grounds specified in the law; and the power, organization, operational procedures, requirements for members and the appointment procedure of the Committee shall be regulated by law.

1.6 Changes with respect to local governance

- (a) Local parliaments in provinces, capital city, soums and districts have the right to set tax rates and manage property within limits provided by law;
- (b) The function and basis for the budget of local self-governing bodies may be regulated by law taking into consideration

the socio-economic situation of the territory.

- (c) The legal basis for self-governance and organization of local and national level cities and towns within administrative and territorial units shall be regulated by law;
- (d) The delegation of certain functions of administrative and territorial units and their governance to cities or towns shall be decided by the Parliament upon the Government's proposal;
- (e) Changes to administrative and territorial units shall be decided by the Parliament upon the Government's proposal on the basis of proposals of local citizens taking into consideration economic structure and population distribution;
- (f) The presidiums of local councils, which exercised most of the powers of local self-governing bodies during the period between sessions of the local parliaments, are eliminated.

IN SUMMARY, THE AMENDMENTS AIM TO:

- (a) Improve the governance of the use of natural resources by clarifying the principles applicable to the use of natural resources;
- (b) Improve the stability and accountability of the Government by empowering the Prime Minister to appoint and dismiss Cabinet members;
- (c) Improve legislative process and the accountability of the Parliament by setting specific requirements and procedures relating to the appointment of the Prime Minister and approval of laws;
- (d) Clarify the powers of the President and matters relating to the Presidential election;
- (e) Strengthen the independence of the judiciary by setting out the regulations applicable to the Council and establishing a Judicial Disciplinary Committee; and
- (f) Support the independence and efficiency of local self-governing bodies.

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