

1. The Law of Mongolia on Pledge of Movable and Intangible Property

On July 2, 2015, Parliament of Mongolia ratified the Law on Pledge of Movable and Intangible Property (the “**Law**”). The purpose of the Law is to regulate the rights and legal interests of the parties to a transaction involving the pledge of movable and intangible properties. The Law will come into force on 1 March 2017.

According to the Law, all types movable assets and intangible assets such as vehicles, equipment, company shares (except shares of public companies), receivables, bank accounts, IPRs, any rights or benefits under all types of agreements (including insurance contracts and project agreements) can be pledged in order to discharge secured obligations.¹

The significance of registration of the pledge is as follows:

- a public declaration by secured creditors of security over the borrower’s (the pledgor’s, if the borrower and the pledger are different persons) assets, and
- claims of secured creditors would be ranked in the chronological order of their date and time of registration.

Therefore, the registration of the pledge does not constitute its perfection and, thus, does not impact its validity or enforceability.

Security interests will be perfected if the following circumstances have been satisfied:

- parties, i.e., pledgee and pledgor, have entered into a written pledge agreement; and
- the security has been registered with the State Registration Office of Mongolia (the **SRO**).

According to the Law, it is the pledgee’s (or pledgee’s designated person’s) obligation to register the security interest. Such registration takes place through filing a “security notice” with the SRO’s registration engine which will be available to the public online. In other words, the registration system is online-based, not paper-based.

A “security notice” must contain certain information such as identity of the parties, the security period, and description of the pledged asset.

¹ The Law does not apply to two types of important assets - shares of public companies and mining rights (licenses). In case of shares of public (listed) companies, security over these shares is currently registered with the (per the regulations by the Financial Regulatory Commission of Mongolia). In case of mining licenses, security over these licenses is currently registered with the Mineral Resource Authority of Mongolia. It is our understanding that the current registration system in respect of the shares in public companies and mining licenses will remain the same.

For online registration of the “security notice” with the SRO the following would be needed for the pledgee to successfully register the pledge:

- 1) a copy of the pledge agreement;
- 2) consent by the pledgor (to register the pledge);
- 3) bank receipt of stamp duty payment (approx. USD 10);
- 4) the right (username and password) to access the online registration engine of the SRO.²

Based on our understanding of the proposed regulations and on our informal discussions with the government officials, below is the step-by-step registration procedure of the security notice that a pledge (or its designee) would need to undertake:

STEP 1.	OBTAINING RIGHT (USERNAME AND PASSWORD) TO ACCESS ONLINE ENGINE	<p>In order to obtaining the right to access the online engine, a pledgee:</p> <ol style="list-style-type: none"> 1) Files a request with the SRO; 2) Enters into an online access agreement with the SRO. <p>The SRO provides to the pledgee the right (username and password) to access the online registration engine.</p>
STEP 2.	PAY A STAMP DUTY (APPROX. USD 10)	<p>The pledgee pays the stamp duty. The stamp duty may be paid through a bank teller or using a credit card (online).</p> <p>If the stamp duty is paid through a bank teller, the bank teller issues to the pledgee the security number which is registered with the SRO’s online registration engine.</p> <p>The security number is valid for thirty (30) days upon payment of the stamp duty. Therefore, the pledgee needs to register the security notice within 30 days after payment of the stamp duty.</p>
STEP 3.	ENTER SECURITY (TYPE) NOTICE	<p>The pledgee enters the following in the online registration engine of the SRO:</p>

²We understand in order to obtain the right (username and password) to access the online registration engine of the SRO, an online access agreement allowing such access would need entering into with the SRO. We expect further details to emerge from the Ministry of Justice of Mongolia and/or the SRO clarifying the terms and conditions governing the access to the online registration engine of the SRO.

	WITH SRO'S ONLINE ENGINE	<ol style="list-style-type: none"> 1) Name, registration number and address of the pledgee and pledgor; 2) Security period; 3) Description of the pledged asset (including quantity, size, general view).
STEP 4.	OBTAINING REGISTRATION NUMBER FROM SRO	<p>Upon the successful registration of the security notice, the SRO automatically issues to the pledgee the registration number (i.e., the bar code).</p> <p>This registration number serves as confirmation for registration (or amendment, extension and termination of the pledge in the future).</p>

The SRO's online registration engine will be accessible to the public 24/7 through an online search function administered by the SRO. There would be no charge or password or any other restriction to conduct a search in the registration engine by any user. If the user wishes to print out certain information from the registration engine, he/she can do so (i) upon paying the stamp duty to the SRO and (ii) filing a request with the SRO.

The registration shall be valid for three (3) years unless it has been extended. If the security notice has not been extended by the pledgee at the end of the third year, such security interest would be considered as not perfected.

In addition, during the security period, the parties may agree to modify or even de-register the security interest subject to certain notification procedure.

Finally, the Law is retroactive - the pledge agreements which have created security over movable and intangible assets prior to the entry into force of the Law (i.e., prior to 1 March 2017) must be registered within 6 (six) months after the Law comes into force (i.e., before 1 September 2017). Failing the registration of the executed pledge within this period will result in such pledge losing its priority.

We note the above represents our understanding of the proposed regulations and intentions of the government authorities. Further changes may be made to the above once the regulations are finalized.

We will continue our coverage (ӨМНӨХ МЭДЭЭНЭЭС ОРУУЛНА УУ)

If you would like (ӨМНӨХ МЭДЭЭНЭЭС ОРУУЛНА УУ)