Allens is delighted to present the *Investor’s Guide to Mongolia*, a guide to the key issues a foreign investor will need to consider when planning an investment in Mongolia.

We will publish a more detailed guide in coming months. In the interim, please contact our Mongolia team, who would be happy to discuss any queries that you might have about investing in Mongolia.
Investment in Mongolia

Since Mongolia’s trajectory of rapid economic growth began in 2009, the nation has attracted considerable interest as a foreign direct investment destination. From 2009 to 2011, foreign investment increased rapidly, with investors encouraged by Mongolia’s young democratic government and generally open regulatory regime. While initially drawn to Mongolia’s substantial resources wealth, more recently investors have been attracted by burgeoning opportunities in sectors including energy, infrastructure, real estate and banking.

This Investor’s Guide to Mongolia provides a snapshot of some of the key legal considerations investors should take into account when looking to enter the Mongolian market, and foreshadows areas of anticipated change over the next twelve months.

Allens has a long history of acting for investors in Mongolia. We pride ourselves on working closely with clients to develop flexible entry strategies, which enable investment projects to commence even in times of regulatory uncertainty. If you would like to discuss your investment strategy or any of the issues raised in this guide, please contact David Wenger (see our contact details on page 1). Allens also publishes ‘real-time’ updates on changes to key laws affecting foreign investment – contact us to subscribe.
Foreign investment approval

The Mongolian Government has introduced a number of laws in the past two years which regulate foreign investment. Previous laws focused on certain sectors of the economy – referred to as ‘sectors of strategic importance’ – but those laws were broadly considered to be overly restrictive and to have contributed to weakened investor confidence. In response, the Parliament has passed a new Law on Investment to recapture investor interest.

The first significant change to the regulation of foreign investment occurred on 17 May 2012, when the Great State Khural passed the Law on Regulation of Foreign Investment in Business Entities Operating in Sectors of Strategic Importance (the SEFIL). In April 2013, the Government of Mongolia introduced amendments to the SEFIL. At the same time, reports emerged from Mongolia that the amendments to the SEFIL were a first step towards further foreign investment regulation reform, which was intended to provide greater assurance and comfort to foreign investors. Recently, the State Great Khural passed the Law on Investment (the Law), which represents a significant step in attempting to recapture foreign investor interest in Mongolia.

The Law intends to create a stable investment environment for all investors in Mongolia, both domestic and foreign, through the reversal of some restrictions on foreign investment, the provision of specific investment guarantees and the potential for tax stabilisation. The Government has also sought to entrench the Law and guarantee stable investment legislation by providing that the Law can only be amended with the approval of a two-thirds majority of the votes of the State Great Khural.

The Law provides that investors may freely invest in all sectors and services, except those that are prohibited or restricted under Mongolian law. The Law regulates investment by foreign state-owned enterprises (FSOEs) in sectors of strategic importance by requiring that FSOEs obtain a permit if they are to acquire more than 33 per cent of the shareholding in a Mongolian entity. The sectors of strategic importance are: mineral resources; banking and finance; and media and communications. These sectors reflect the sectors that were identified as strategic sectors in the SEFIL.

The Law is divided into the following substantive chapters, which are discussed below:

- Legal guarantees for investment (Chapter 2);
- Powers of government in connection to investment (Chapter 3);
- Investment support (Chapter 4);
- Stabilisation of investment environment (Chapter 5); and
- Investment by FSOEs (Chapter 6).
Legal guarantees for investment

Chapter 2 of the Law provides certain ‘legal guarantees’ for investment, which relevantly include:

- recognition that disputes relating to an agreement between an investor and the Government may be settled by domestic or foreign arbitration bodies;
- assurance that confiscation of an investment shall be prohibited unless it is for public purposes in accordance with due process of law and on payment of full compensation, where compensation is determined based on a market rate (although we note that it is not clear how the ‘market rate’ will be calculated); and
- subject to the investor’s obligation to fully discharge its tax obligations in Mongolia, confirmation that investors will have the right to freely remit abroad:
  - profits and dividends;
  - payments received from the provision of services and from intellectual property;
  - principal and interest on foreign loans;
  - invested capital and proceeds from the liquidation of a business entity; and
  - other assets earned or owned by the investor.

Powers of government in connection to investment

Chapter 3 of the Law describes the role and powers of the following State bodies:

- the Ministry of Economic Development (MED) is responsible for:
  - formulating government policies on investment and presenting such policies to Cabinet; and
  - issuing the authorisation required by FSOEs to invest in sectors of strategic importance.
- the Foreign Investment Regulations and Registration Department (FIRRD) of the MED is responsible for:
  - promoting the legal environment and favourable conditions for investment;
  - issuing stabilisation certificates;
  - monitoring and inspecting the investment activities of stabilisation certificate holders; and
  - maintaining the State registration of stabilisation certificate holders.
- a council will be established by the Minister of Economic Development to draw a conclusion on whether the applicant satisfies the criteria for obtaining a stabilisation certificate and assist the FIRRD in this respect (the Council). The Council’s operational guidelines and composition will be determined by the Minister of Economic Development and will include representatives for protecting investors’ interests.
**Promotion of investment**

Chapter 4 of the Law sets out the tax and other incentives for investment.

Tax incentives are a key investment promotion policy. The Law provides that tax incentives may be provided to investors according to the Mongolian tax legislation and include the following potential tax incentives: exemptions, credits, accelerated calculation of depreciation costs, carry-forward of losses and the deduction of employee training costs.

Exemption from customs duty and value added tax will be available to investors importing machinery and equipment during the construction period of projects in the following industries: construction materials, petroleum, agricultural processing or exporting, nano, bio and innovation technology, power plants and railroads.

**Stabilisation of the investment environment: tax stabilisation certificate and investment agreement**

The Law includes a specific chapter on stabilisation of the tax environment and the possibility of entering into an investment agreement with the Government of Mongolia.

A critical aspect of tax stabilisation is the introduction of a stabilisation certificate that the FIRRD issues to an investor. If a legal entity is to implement the investment on its own, the stabilisation certificate will be issued to such legal entity registered in Mongolia. If one or more affiliated parties are to implement the investment together, the stabilisation certificate will be issued to the parent company of such affiliates.

The stabilisation certificate sets out:

- the name of the legal entity to which the stabilisation certificate applies;
- the date of issuance and duration of the stabilisation certificate;
- the State registry and registration number of the stabilisation certificate holder;
- the name of the investment project to be implemented;
- the term of the stabilisation certificate; and
- the rates of the taxes stabilised by the stabilisation certificate.

A stabilisation certificate may not be sold, pledged, donated or otherwise transferred.

The stabilisation certificate stabilises the percentage rates of the following four taxes: corporate income tax; customs duty; value-added tax; and royalties.
A stabilisation certificate will be granted if:

- the total investment amount specified in the business plan and feasibility study reaches the amount specified in the table below;
- an environmental impact assessment has been prepared, if required by law;
- the investment will create stable workplaces; and
- the investment introduces new technology.

The term of a stabilisation certificate depends upon the amount of investment and the geographic location of the investment, as set out in the tables below.

For investment in the mining, heavy industry and infrastructure sectors:

<table>
<thead>
<tr>
<th>Investment amount (MNT in billions)</th>
<th>Ulaanbaatar region</th>
<th>Central region</th>
<th>Khangai region</th>
<th>Eastern region</th>
<th>Western region</th>
<th>Investment term (years)</th>
</tr>
</thead>
<tbody>
<tr>
<td>30-100</td>
<td>5</td>
<td>6</td>
<td>6</td>
<td>7</td>
<td>8</td>
<td>2</td>
</tr>
<tr>
<td>100-300</td>
<td>8</td>
<td>9</td>
<td>9</td>
<td>10</td>
<td>11</td>
<td>3</td>
</tr>
<tr>
<td>300-500</td>
<td>10</td>
<td>11</td>
<td>11</td>
<td>12</td>
<td>13</td>
<td>4</td>
</tr>
<tr>
<td>Above 500</td>
<td>15</td>
<td>16</td>
<td>16</td>
<td>17</td>
<td>18</td>
<td>5</td>
</tr>
</tbody>
</table>

For investments in any other sectors:

<table>
<thead>
<tr>
<th>Investment amount (MNT in billions)</th>
<th>Ulaanbaatar region</th>
<th>Central region</th>
<th>Khangai region</th>
<th>Eastern region</th>
<th>Western region</th>
<th>Stabilisation certificate validity (years)</th>
<th>Investment term (years)</th>
</tr>
</thead>
<tbody>
<tr>
<td>10-30</td>
<td>5-15</td>
<td>4-12</td>
<td>3-10</td>
<td>2-8</td>
<td></td>
<td>5</td>
<td>2</td>
</tr>
<tr>
<td>30-100</td>
<td>15-50</td>
<td>12-40</td>
<td>10-30</td>
<td>8-25</td>
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<td>8</td>
<td>3</td>
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<tr>
<td>100-200</td>
<td>50-100</td>
<td>40-80</td>
<td>30-60</td>
<td>25-50</td>
<td></td>
<td>10</td>
<td>4</td>
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<tr>
<td>Above 200</td>
<td>Above 100</td>
<td>Above 80</td>
<td>Above 60</td>
<td>Above 60</td>
<td></td>
<td>15</td>
<td>5</td>
</tr>
</tbody>
</table>
For projects that are important for the long-term social and economic development of Mongolia, that produce products that substitute for imported products or that create value-added products for export, the stabilisation certificate may be extended by a period equal to 50 per cent of the original term, provided certain conditions are met.

The investment completion date will be calculated from the stabilisation certificate issuance date. If the investor fails to invest the required amount within the investment term, this could result in the cancellation of the stabilisation certificate.

It is interesting to note that according to the Regulation on implementing the Law, an investor that has already invested in a project in Mongolia can include its investments over the five years preceding the coming into force of the Law when applying for a stabilisation certificate.

The Law provides that the FIRRD will make a decision within 30 days after the receipt of an application, taking into account: (i) the conclusion of the Council that will be set up under the Law and (ii) the criteria specified in the Law. If necessary, the period for FIRRD’s decision may be extended by 15 days. If the FIRRD rejects the application it must provide the reasons for its rejection in writing.

The Law provides that an investor may benefit from any changes to tax laws or regulations that have the effect of reducing the taxable amount payable by the investor under its stabilisation certificate. Accordingly, a holder of a stabilisation certificate can take advantage of favourable changes to tax laws in Mongolia after the stabilisation certificate has been issued.

**Investment agreement**

For investments over MNT500 billion (equivalent to approximately US$300 million), if requested by an investor, the Government may enter into an investment agreement to stabilise the environment in which the investor will be carrying out its operations. The Law does not specify the areas which can be subject to the stabilisation arrangements but we expect that areas which will be of interest to investors include taxation, licensing and permitting, repatriation and use of funds, and community consultation.

The investment agreement will be entered into by the Minister of Economic Development. There is no limit on the maximum term of the investment agreement: the Law only states that the term can be longer than the term of a stabilisation certificate.

The Cabinet is expected to issue regulations regarding the process of entering into an investment agreement.

**Investments by FSOEs**

An FSOE (defined as a legal entity in which at least 50 per cent of the shareholding is directly or indirectly owned by a foreign State) must obtain approval from the MED if it intends to acquire 33 per cent or more of the shareholding of a company operating in Mongolia in any of the following sectors:

- mineral resources;
- banking and finance; and
- media and communications.
The 33 per cent shareholding threshold is lower than the 49 per cent threshold that applied to FSOEs under the SEFIL. However, the Law only requires FSOEs to obtain approval from the MED, whereas the SEFIL required approval by the Great State Khural, which was a significantly more onerous requirement.

The MED will make its decision within 45 days of receipt of the application, having regard to the following conditions:

• whether any activity of the applicant or the nature of the proposed investment conflicts with the national security of Mongolia;
• whether the applicant fulfils the conditions for complying with the laws and business norms of Mongolia;
• whether the investment is of a nature which restricts competition or creates a monopoly in the relevant sector; and
• whether the investment would have a serious impact on the budget income, other policies and activities of Mongolia.

The MED shall make its decision within 45 days of receipt of the application. Once the MED has made its decision, it is required to inform the applicant of its decision within five days.

The Law provides grand-fathering to a certain extent: FSOEs that were already holding more than 75 per cent of the shareholding of a Mongolian entity in any of the three strategic sectors described above will not need prior approval of the MED if the level of their shareholding changes.
Structuring your investment

In determining the structure of an investment in Mongolia, a foreign investor will need to consider:

• how much capital will be invested?
• what are the tax implications of the available structures?
• is it necessary or desirable to involve a local partner?
• what sort of business activity will the business undertake and what are the related licensing requirements?
• what will be the employment needs of the Mongolian business, and will this change over time?

Typical structures

Direct investment in Mongolia generally occurs through investment in, acquisition of, or setting up of a legal entity, typically a limited liability company (LLC). It is also possible to establish a presence in Mongolia by entering into a partnership or setting up a representative office.

For many investors, entering the market with a Mongolian company through a joint venture arrangement offers advantages in terms of local knowledge and networks. Contractual joint ventures are not common in Mongolia (see page 19 for further details in the context of mining investments) and an arrangement described as a ‘joint venture’ is generally an incorporated joint venture, typically an LLC.

Establishing a representative office

First-time investors in Mongolia may find that establishing a representative office will best meet their near-term business needs. The representative office structure is well suited to investors who are interested in establishing a ‘light’ on the ground presence initially while developing local relationships and an understanding of Mongolia’s business and political environment. Representative offices may apply for business visas and hire locally (to a limited extent). Importantly, a representative office may not generate income and may only undertake limited, non-profitable activities as set out in their business licence. Certain other conditions apply for representatives offices of businesses involved in particular sectors, such as banking.

Advantages of this structure include that there is no requirement to inject initial capital and no requirement to pay business tax in Mongolia. However, a draw-back of the structure is that a representative office is not a separate legal entity in Mongolia, and accordingly the head office will remain ‘on the hook’ in respect of any liability incurred by the representative office.

Establishing a company

For investors who require a more robust on-the-ground presence in Mongolia, Mongolian law permits two types of foreign-invested companies:

• an LLC; or
• a joint stock company (JSC).

The minimum start-up investment required for a foreign-invested LLC, and certain JSCs, is US$100,000.
Investors tend to favour the LLC structure, as this form of entity offers greater flexibility in management structure and is the more established form of company in Mongolia (with JSCs remaining largely untested). Key differences between LLCs and JSCs include:

- the shares of a JSC (specifically, an ‘open joint stock company’) may be publicly traded, whereas the shares of an LLC (and a ‘closed joint stock company’) cannot be publicly traded;
- LLCs are not required to have a board of directors whereas a JSC must have a board of directors (which shall consist of at least nine directors (one third of which shall be independent)); and
- the board of directors of a JSC must have audit, salary, bonus and nominating committees, whereas no similar requirement applies to LLCs.

As may be expected, establishing a company in Mongolia involves various regulatory procedures including lodging key company documents (such as the Company Charter) with Mongolian regulators. In our experience, the process of registering a company takes approximately two weeks after all of the application documents are submitted to the regulators.

Treaty protection

A foreign investor should also consider the foreign jurisdiction from which the investment will be made. In particular, an investor may wish to ensure that the investing entity is from a jurisdiction which is a party to a double taxation treaty and a bi-lateral investment treaty with Mongolia.

Bilateral investment treaty

A bilateral investment treaty is an agreement between two states under which both states agree to promote and protect investments made by entities from the other contracting state within their territory. Ensuring that your investment is protected under a bilateral investment treaty will provide you with guarantees from the Mongolian Government that your right to fair and equitable treatment will be protected in Mongolia. While the terms of many bi-lateral investment treaties are similar, it is worth considering the specific treaty which will apply to the investment prior to making the investment to ensure that your investment will receive the full benefit of the ‘most-favoured nation’ clauses and other standard protections.

As of June 2013, Mongolia has entered into bilateral investment treaties with 43 countries. There are currently 37 bilateral investment treaties in force between Mongolia and countries such as China, Singapore, Japan, France, the United Kingdom and the United States of America.

Double taxation treaty

As of March 2013, Mongolia is a party to double taxation treaties with 28 countries, including China, Singapore, France and the United Kingdom. Ensuring that your Mongolia investment is covered by a double taxation treaty will provide you with greater tax certainty and reduce the risk of double taxation.

The Mongolian Government has provided notice of termination of double taxation treaties with four countries: Kuwait, the United Arab Emirates, Luxembourg and the Netherlands and if such notice is accepted, the treaties will terminate on 1 April 2015, 1 January 2015, 1 January 2014 and 1 January 2014, respectively. This decision followed an earlier recommendation from the Ministry of Finance to terminate all double taxation treaties.
Repatriation of funds and foreign exchange

An investor’s right to repatriate funds from the investment destination is of primary concern to all foreign investors. In this regard, Mongolian law affords broad rights to investors. As discussed above, the Law on Investment provides that foreign investors may, subject to the discharge of tax obligations, freely remit abroad profits and dividends and other assets owned by the investor.

Similarly, Mongolian law does not impose any foreign exchange controls (although it does impose certain restrictions which may impair the repatriation of funds).

There are also certain banking restrictions and regulations with regards to domestic transactions of which investors should be aware. In particular, under the Law on Settlement of Payments in the National Currency, all contracts for goods, services and wages in the territory of Mongolia must specify prices in, and be paid in, togrog (the Mongolian currency). Any payment in or advertisement of prices in a foreign currency is prohibited. The Financial Regulatory Commission of Mongolia has issued guidelines which exclude cross-border transactions from falling within the ambit of these currency restrictions.

We have considerable experience advising clients with operations in Mongolia on these and related currency and banking restrictions, and on practical ways of managing currency risk.
For some potential foreign investors, the ability to hold an interest in land, and to deal with that interest, will be crucial to their investment decision-making. Mongolian law imposes certain restrictions on foreign-invested entities dealings with land which should be considered at the outset of any investment.

Foreign invested entities and foreign individuals cannot hold land ownership or possession rights in Mongolia. Such entities may, however, obtain their interest in land through land use rights, which can be held for up to 100 years. This option will be suitable for many foreign investors. However, as land use rights cannot be transferred or pledged under Mongolian law, such rights will not be sufficient in some circumstances. One option to overcome this restriction is for the foreign-invested LLC to incorporate a wholly owned local subsidiary, which is then able to hold and pledge land possession rights.

Owners of land are prohibited from granting a security over land or land possession rights in favour of foreign banks or companies. However, in practice this may be overcome by using a local Mongolian bank as security agent.
Taking security

The ability to take security over property is important for investors seeking international financing for their Mongolian projects, and is of course of primary importance to lenders who are looking to engage with the Mongolian market.

Security techniques available in Mongolia are principally governed by the Civil Code which, compared with other emerging market jurisdictions, provides a relatively detailed framework.

The main security techniques available in Mongolia are:

- **pledge** – this is the most commonly used security in Mongolia, and is somewhat analogous to the English law concept of a ‘charge’ over assets. Most objects (including movable and immovable objects, contractual rights, shares, and rights to payment) are capable of being pledged. However, in general, licences for carrying out commercial activities cannot be pledged. A notable exception to this rule is that a minerals licence can be pledged under the Minerals Law, subject to certain conditions. A pledge over immovable property may be registered with the Property Rights Registration Office (PRRO). Currently, it is not possible to register a pledge over movable property, however this is the subject of potential law reform and is discussed below.

- **fiducia assignment** – a fiducia assignment contract transfers the legal ownership of an obligor’s property to a lender with a right to have such property returned if the secured obligations are successfully performed.

- **hypothec** – similar to a real property mortgage, a hypothec is a method of security over immoveable property. Property subject to a hypothec is used to satisfy secured lenders prior to other parties who have a claim.

- **penalty/forfeiture** – Mongolian law expressly recognises the concept of contractual penalty or forfeiture (in contrast to jurisdictions such as England and Australia where contractual penalties are unenforceable). A penalty may be agreed between the parties and takes the form of a fine (ie, similar to a bond, a cash payment which is forfeited upon the non-performance of underlying obligations) or compensation for losses. Mongolian law caps the amount at which the fine or compensation may be set and the courts may reduce a penalty which is considered too high.

- **guarantee** – third-party guarantees are recognised under the Civil Code. A guarantee entitles a creditor to demand performance of the obligation by the guarantor if the debtor fails to fulfil its obligations.

We have advised extensively on the various security techniques available in Mongolia and the risks and limitations of the alternative techniques, as well as strategies to mitigate such risks. If this area is of particular interest to you, please contact a member of our team as we would be happy to make a more extensive publication on this topic available to you.
Proposed law reform: registration of pledges over movable property

In 2011 a draft bill on the Movable Property Pledge Law (the Bill) was introduced into the Parliament of Mongolia. If the Bill is enacted, the PRRO will become responsible for registering pledges over movable property, including shares. The extent to which the PRRO will then commence to do so however, may be subject to the introduction of a registration procedure which sets out the process for such registration. This would be a significant milestone in Mongolia’s legal framework which should assist in facilitating the development of lending and financing activity.

The Bill has been developed by the Ministry of Justice in consultation with the IFC and EBRD. It is understood that when the necessary formalities have been completed the registration process will be similar to that in other jurisdictions that have recently implemented a personal property security registration system, including Australia. The Bill has not been passed as at the date of publication.
Employment

A foreign investor intending to employ staff in Mongolia will need to ensure that it complies with foreign worker quotas as well as local laws governing the terms and conditions of employment.

Foreign worker quotas

The Mongolian Government sets an annual quota of foreign workers, which varies according to the sector, total employees and invested capital of the foreign invested entity. A foreign investor will need to consider which quota will apply to their business when considering how to structure their local operations.

Terms of employment

Mongolia’s Labour Law mandates that certain basic terms of employment must be set out in an employment contract — such as terms setting out the position description and wage. In other respects, foreign investors may include terms similar to those that they would ordinarily use in their employment contracts globally.

It should be noted however that, as in many other jurisdictions, Mongolian law mandates certain minimum employment conditions which will apply regardless of the terms of the employment contract. These relate to areas including the redundancy or firing of employees and maternity leave. Employees also have a right to join trade unions, which are vested with power and authority under the Trade Union Law.

Mongolia’s courts have a reputation for being ‘employee friendly’, and foreign investors may find it worthwhile to acquaint themselves with the basic principles of Mongolia’s employment law when planning their local workforce.
Dispute resolution

Many foreign investors will be keen to ensure that any dispute arising in connection with their investment will be subject to international arbitration. Mongolia is a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the 1965 Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States. Accordingly, Mongolia recognises and enforces foreign arbitral awards through its domestic court system.

Mongolian courts do, however, have exclusive jurisdiction over a limited range of disputes, such as disputes regarding real property located in Mongolia. A contract cannot seek to exclude these disputes from the court’s jurisdiction. Accordingly, it is important for any compulsory arbitration clause to include an appropriate carve-out.

It is common business practice for cross-border transactions to include a compulsory international arbitration provision nominating a seat of arbitration outside of Mongolia (such as Hong Kong or London). Transactions involving any Mongolian entity, including a foreign-invested Mongolian entity, may also be made subject to international arbitration, which we would ordinarily expect this to be the case in any significant transaction.
Company law

Mongolia’s Company Law has several notable features which are worth considering upfront when contemplating an investment in Mongolia.

Shareholder decision making

Under Mongolian law, the highest governing authority of a Mongolian company (whether a limited liability company or a joint stock company) is the shareholders’ meeting. Mongolia’s Company Law mandates that certain matters must be decided by a meeting of the shareholders and also imposes minimum voting thresholds on particular shareholder decisions. Where an investor is entering Mongolia through a joint venture these mandatory matters and voting thresholds should be considered at the outset of negotiations and in light of the joint venturers’ respective share ownership. We have advised companies on various deal structures to ensure that their commercial deal can be achieved within the context of these compulsory voting thresholds.

Liability of directors and managers as ‘governing persons’

Mongolia’s Company Law provides that governing persons may be personally liable for any loss caused to the company, its shareholders or its creditors, if such governing person has intentionally committed certain unlawful acts or omissions. The concept of ‘governing persons’ comprises the directors of the company and certain senior personnel, including the chief financial officer, secretary and general managers. By way of example, a governing person who gives false information to a company’s shareholders or creditors, or uses the company name for his/her personal benefit, may be found liable under these provisions.

Potential shareholders’ liability

Mongolian law provides that shareholders may be personally liable for the obligations or liabilities of the company in certain circumstances. Though there is the potential for liability to attach to shareholders under particular provisions of Mongolian law, it should be noted that such provisions are yet to have actually be tested.
Implications for foreign investment

Investors may need to take the Company Law requirements (including those summarised above) into account when planning their investment to consider any structuring implications such issues may raise. In a joint venture context, adopting an offshore holding company structure can provide greater flexibility in determining the company’s management structure – however such structures may also have drawbacks, which should be considered individually in the case of each investor. It may also be advisable for foreign investors to seek detailed advice on the possible exposure of directors and officers of the Mongolian company, and ‘upstream’ liability for the investing company, so that relevant risks can be adequately dealt with through group structuring, internal controls and insurance policies.

Securities Market Law

The Mongolian Parliament, on 24 May 2013, adopted a revised version of the Securities Market Law (the Revised Securities Market Law) replacing the Securities Market Law of 12 December 2002. Changes under the Revised Securities Market Law include the introduction of the concept of ‘beneficial’ and ‘nominal’ ownership of securities and an increase in the range of tradable securities to include depository receipts, warrants and market derivatives. Significantly, the Revised Securities Law will permit the dual-listing of Mongolian-listed companies on foreign bourses and listing of foreign-listed companies in Mongolia. The Revised Securities Market Law will enter into force on 1 January 2014.
Spotlight on: Mining

Mongolia’s mining sector has long been a focus of inbound foreign investment. In recent years, reform of the existing mining laws has been high on the political agenda, with successive governments keen to secure greater benefits for the Mongolian people out of the development of the nation’s natural resource wealth. In December 2012, a draft law was released by the Government which raised serious concerns for investors in the mining sector (domestic and foreign alike). Following sustained business lobbying and a decrease in mining sector investment, the Mongolian Government announced that it would reconsider its approach to regulating the mining sector as set out in the draft law (which it subsequently withdrew).

Status quo – Minerals Law

Mongolian law provides that mineral resources are the property of the Mongolian State. Under the Minerals Law, individuals and legal entities may apply for exploration licences and mining licences which authorise exploration and mining activities (respectively) for minerals within the licence area. Unlike in many other jurisdictions, a licence under the Minerals Law relates to minerals generally rather than specific minerals.

Notably for all investors a licence may have only one registered holder, which must be a Mongolian entity. Mongolian law also does not recognise a beneficial or equitable interest as separate from legal interest. As a result of this legal environment it is relatively difficult, if not entirely impractical, to form unincorporated joint ventures (where all joint venturers hold an interest in the tenement).
The key rights and terms of a licence under the *Minerals Law* are summarised below.

<table>
<thead>
<tr>
<th>Exploration Licence</th>
<th>Mining Licence</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Rights of a licence holder</strong></td>
<td><strong>Rights of a licence holder</strong></td>
</tr>
<tr>
<td>• exclusive right to conduct exploration for minerals</td>
<td>• right to engage in the mining of minerals</td>
</tr>
<tr>
<td>• exclusive right to obtain a mining licence</td>
<td>• right to sell mineral products at international prices</td>
</tr>
<tr>
<td>• right to transfer or pledge all or any of the exploration licence</td>
<td>• right to transfer or pledge all or any of the mining licence</td>
</tr>
<tr>
<td>• right to explore for radioactive minerals if special licence is granted</td>
<td>• right to engage in mining of radioactive minerals if a special licence is granted</td>
</tr>
<tr>
<td><strong>Max. term</strong></td>
<td><strong>9 years</strong></td>
</tr>
<tr>
<td><strong>Annual licence fees</strong></td>
<td>• 1st year – US$0.10 per hectare (gradually increases)</td>
</tr>
<tr>
<td></td>
<td>• maximum fee – US$1.50 per hectare</td>
</tr>
<tr>
<td><strong>Royalty</strong></td>
<td><strong>Nil</strong></td>
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<td></td>
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<td></td>
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<tr>
<td><strong>Minimum investment</strong></td>
<td>• 2nd to 3rd years – US$0.50 per hectare</td>
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<td></td>
<td>• 4th to 6th years – US$1.00 per hectare</td>
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<tr>
<td></td>
<td>• 7th to 9 years – US$1.50 per hectare</td>
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There is currently an official moratorium on granting new exploration licences which is expected to continue until the proposed reforms to the mining law are enacted.
Recent developments

The Draft Minerals Law of December 2012 generated a considerable degree of concern and uncertainty within Mongolia’s mining industry and the foreign investor community. The concern was that the Draft Minerals Law contained a number of provisions which seemed unworkable and unduly restrictive for the industry.

In January 2013, the President announced that the Draft Minerals Law had been withdrawn. At the same time, the President formed a working group to consider and develop a mining policy for Mongolia, which was intended to form the framework for the development of a new minerals law and related regulations.

In November 2013, the President announced that a new minerals law would be released in 2014 which would be substantially based on the existing Minerals Law with only minor amendments which are intended to improve the operation of the law.