

## Legal environment surrounding establishment of a foreign invested company in Mongolia

1. What is the difference between a legal entity, a representative office or a branch under the Mongolian legislation?

A company, legal entity	Branch of a company	Representative office
<p>A company is a legal entity whose capital is divided into shares, that has its own separate property, and that has as its primary purpose the making of profit.</p>	<p>A branch of a company is a unit located in a place other than the principal place of business of the company that may perform the principal functions of the company, in whole or in part, and may also function as the company's representative office.</p>	<p>A representative office of a company is a unit located in a place other than the principal place of business of the company that may undertake to protect the legal interests of the company and conclude transactions on behalf of the company as its legal representative.</p>
	<p>A branch or representative office of a company shall not be deemed to be a legal entity and shall conduct its activities in accordance with regulations adopted by the company. The assets of a branch or representative office shall be shown in the balance sheet of the company that established such branch or representative office.</p>	
<p>A company shall be responsible for liabilities by its own capital</p>	<p>A branch or representative office of a company shall conduct its activities on behalf of the company that established it. Such company shall be responsible for liabilities incurred by its branches and representative offices.</p>	
<p>For establishing a foreign invested company minimum paid-in capital has to be USD 100,000</p>	<p style="text-align: center;">No capital requirement</p>	
<p>A company can conduct all business activities allowed by laws of Mongolia</p>	<p>A branch of a foreign company is not allowed to be opened in Mongolia</p>	<p>A representative office can not carry out business activity, other than legal representation of the company</p>

2. What are the organizational and legal options for establishment of a legal entity in existence in Mongolia? And what are their distinctive features?

- In Mongolia we have only two types of companies:

1. Distinctive features of a Joint (open) stock company:

- A shareholder of an open or joint stock company shall have the right to freely dispose of its shares without regard to preemptive rights of other shareholders.
- The number of shareholders of a joint stock company shall not be limited by the company's charter.
- A joint stock company may issue shares and other securities through open or closed subscription, unless otherwise provided in the company's charter. A purchaser of shares issued on the basis of a closed subscription may freely dispose of such shares.

However foreign companies are not entitled to establish a Joint (open) stock company in Mongolia.

2. Distinctive features of a Limited liability company:

- The number of founders of a closed or limited liability company shall not be more than 50. The number of shareholders of a limited liability company after its foundation shall be unlimited.
- A limited liability company shall issue shares, options to acquire shares, and securities convertible into shares, only by means of closed subscription. A limited liability company may issue securities other than shares, options to acquire shares, and securities convertible into shares, by means of open or closed subscription unless otherwise provided in its charter.
- Unless otherwise provided in a company's charter, shareholders of a limited liability company shall have a preemptive right to purchase shares, options to acquire shares, and securities convertible into shares, that are offered for sale by another shareholder to a third party in proportion to the number of shares held by each such shareholder and at the price offered to such third party by the offering shareholder pursuant to the procedures provided in this Article and the company's charter.

3. Are there any limitations or restrictions set by the Mongolian legislation in respect to foreign legal entities as regards their involvement as founders in another legal entity (or a branch, or a representative office)?

- A foreign company is not allowed to open its branch in Mongolia due to lack of regulation of such branches.
- A foreign company is not entitled to establish a Joint stock company in Mongolia.

Therefore eligible options for the foreigner are either Foreign invested limited liability company or a Representative office of a foreign company.

4. Is it possible for a legal entity to be founded by a single foreign legal entity? If yes, what documents should be filed by such a single foreign legal entity for purposes of registration?

- Yes, a foreign company can establish a 100 percent foreign invested Limited liability company in Mongolia.
- For establishing such a company, the investor shall submit its application to Foreign investment and foreign trade agency first with following list of documents:

**1. To apply to Foreign Investment and Foreign Trade Agency:**

**Application Letter**

- Name, address, nationality of investor;
- Type and size of investment;
- Form of business entity;
- Sector of investment, activity;
- Term, stage of project investment and implementation.

**Introduction of investors**

- Full introduction of the company/corporation: name, a country of origin, contact addresses, type of activities; branches, permanent representations-contact addresses, type of activities; administration structure;
- Copy of the Registration Certificate

**Bank confirmation – from Investor’s national banks**

**Company name permission /issued by the General Registrations Agency of Mongolia/**

**Statutes – shall be guaranteed by notary**

- full information of investors;
- full information of a business entity, its term;
- number of investors, detailed information of registered capital;
- rights and responsibilities of the Parties, administration;
- procedure of profit and loss distribution;
- finance and auditing;
- labor and social benefits of employees;
- resolution of Disputes;
- suspension and termination of operations of a business entity with foreign investment, final accounting procedure;
- liquidation of the JVC;
- other provisions.

Other agreements related to the investment

Reference of ownership (Bank statement)

Special Approvals from related institutions /if required by laws/

Sanitary Evaluation of work-place /issued by the Labor and Social Welfare Inspection Agency/

Address of company /Lease contract/

Feasibility study /for each kind of activity/

Receipt of registration service: around USD 20

After submitting these documents FIFTA will issue a foreign invested incorporation certification and approval for establishing the company within 10 days.

Subsequently, the company has to be registered with the General Registrations Agency:

## **2. The list of documents to apply to the General Registration Agency:**

- Application Letter to be registered at the GRA.
- Confirmation document of the official name of the Company.
- Official decision of the founder of the Company.
- Statute of the Company. /2 copies/
- Confirmation of the Company's bank account.
- Notarized copy of Certificate of foreign invested company granted by the FIFTA.
- If the company's operation needs to acquire special license from the Government of Mongolia, then the copy of such licenses. /Note: importation of tobaccos required to obtain special license from the Government/
- Receipt of the registration service fee. /10000 tugrugs/
- CV of the CEO of the Company. /2 copies/
- Notarized copy of Certificate of the Investor. /2 copies/
- Initial accounting balance of the Company. /3 copies/
- Confirmation document of the registration of the Company at respective Tax office.

After providing all necessary documents to the GRA, they will register and grant the Certificate of Legal Entity of Mongolia within 10 days.

5. Does your service for registration include the cost of drawing up the Charter (or another document of incorporation) for a legal entity (representative office or branch)?

- Yes, it includes drafting of articles of incorporation of the company.

6. What other state authorities should have the information about a newly registered legal entity? What are the requirements set in the Mongolian legislation, including as regards the amount of the state duty/fee for filing information?
  - Other than FIFTA, General Registration Agency, respective taxation office no authorities required to be informed upon establishment of the company.
7. Is there a requirement to obtain permission for production of a legal entity's seal? What are the documents required to this end? What is the cost of production of the seal? Does your service for registration of a legal entity (representative office or branch) include this?
  - Official seal of the company has to be made by state accredited manufacturers only. After acquiring certification of incorporation from the GRA, the company shall apply to a stamp manufacturer for production of the stamp (attached with copies of certifications).
  - Yes, our service includes obtaining of official stamp.
8. Is there a requirement to obtain a license or another permission for marketing and merchandising activities to be carried out by a legal entity in the territory of Mongolia? If yes, what are the requirements of the Mongolian legislation to this effect?
  1. Yes, certain types of activities required to obtain special licenses and permissions from various state agencies.
  2. As for Mining business the Minerals exploration or production licenses shall be issued by the Minerals Authority of Mongolia.
9. Is there a requirement to provide documents in support of the address of a legal entity (representative office or branch) such as the lease agreement, etc.? If yes, what are the requirements of the Mongolian legislation to this effect?
  - Yes, upon filing to the FIFTA, the investor shall submit rent agreement of office facility accompanied by **Sanitary Evaluation of work-place** /issued by the Labor and Social Welfare Inspection Agency/
10. Whether a foreign citizen can serve as a chief executive officer in a legal entity under the legislation of Mongolia? What are the requirements of the Mongolian legislation to this effect?
  - Yes, a representative of the investor can serve as CEO of the foreign invested company.

- The investor will have to make a request to FIFTA informing about the candidate and FIFTA will issue passport of investor which entitles the candidate to work in territory of Mongolia (without any payment or fee).
11. What are the requirements of the Mongolian legislation in terms of the use of foreign labor force, in particular, executive personnel in a legal entity (representative office or branch)? What is the cost of obtaining a work permit (license) for a foreign national (executive personnel or a chief executive officer in a newly registered legal entity)? What is the procedure for stay of foreign nationals in the territory of Mongolia? What are the requirements of the Mongolian legislation to this effect?
- Although acquiring work permit for foreign national usually requires complicated proceeding involving Labor, social welfare agency with monthly payments, FIFTA facilitates one representative of the investor a foreign investor's passport which allows one to work in Mongolia without any fee.
  - And representative of the investor shall acquire proper visas from Mongolian embassy or Agency in charge of foreign citizens.

12. Tax Code of Mongolia. Particular provisions and requirements related to taxation of a legal entity, a representative office and a branch?

First, there are no differences as regard to taxation of legal entity or its branch.

As for the representative office, it is supposed not to conduct any profitable activity other than legal representation of the company. So, since representative office shall not conduct profitable activities (such as sales and distribution...etc) it shall not be levied corporate income tax and other taxes, excluding personal income tax of its employees.

**Taxation related corporate revenue of Legal entities and branches:**

The following revenue shall be subject to tax:

1) Business operation revenues:

If annual taxable income is 0-3.0 (zero to three) billion togrogs, it shall be taxed at the rate of 10 (ten) percent. If annual taxable income exceeds 3.0 (three) billion togrogs, it shall be 300.0 (three hundred) million togrogs plus 25 (twenty five) percent of income exceeding 3.0 billion togrogs.

2) Property revenues:

- Income from dividend at 10 (ten) percent;
- Income from royalty at 10 (ten) percent;
- Income from interest at 10 (ten) percent;

3) Revenues from sale of property:

- Income from sale of immovable property at 2 (two) percent;
- Income from sale of right at 30 (thirty) percent;

If a branch of a foreign company transfers its profits overseas, the transferred income shall be taxable at the rate of 20 (twenty) percent;

**Taxation related to personal income, social insurance:**

- A tax rate of 10 (ten) percent shall be imposed on the annual amount of the personal income (no matter foreign or Mongolian citizen).

- They shall be subject to compulsory social insurance as stipulated in the Article 4.2.2 of the Social insurance law of Mongolia.

- Insurees and employer shall pay monthly social insurance premiums of 22 percent of the employee's monthly salary from which 12 percent shall be born by the employer and 10 percent shall be born by the insurees /employees/ as stipulated in the Article 15.1, 15.3 and 15.5 of the Social insurance law.

**Value Added Tax:**

- Legal entity or a branch of a foreign legal entity with sales revenues of goods sold, work performed, or services provided in the territory of Mongolia of 10 (ten) million togrogs or more shall be levied VAT.

- Value-added tax rate shall be 10 (ten) percent of the taxable amount of goods imported, produced or sold, work performed, or services provided.