



E-Newsletter

Mongolian Stock Exchange

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REVISED SECURITIES MARKET LAW OF MONGOLIA



On 24 May 2013, the Parliament of Mongolia approved an amended version of the Securities Market Law ("**Revised Securities Law**"). The Revised Securities Law will enter into force on 1 January 2014.

The Revised Securities Law aims to create a legal framework which develops local capital market in line with international standards, enhances regulation of market participants, increases market transparency, protects investors' rights and interests, increases state authority in regulating, monitoring, and ensuring the sound operation of the securities market.

Having a Securities Markets Law which aligns with international standards is a major milestone in internationally accepting our market regulatory framework.

KEY FEATURES

Over-the-counter ("OTC") trading of securities is permitted. "Over-the-counter market" means the market in which licensed persons enter into agreements relating to directly buying and selling of financial instruments which are not otherwise prohibited by laws and regulations and which such persons either themselves own or are authorized by the owner to trade.

In accordance with shifting to post payment system for securities, the Law provides detailed provisions for such payment system. It states that trade settlements shall be made **within three /3/ business days** of the relevant trade. In order words, this provides an opportunity for trade participants to fund their trades 3 business days after the trade is executed and the ownership rights of securities shall be transferred provided the payment obligation for the securities trade is discharged in full.

Custodial services: Securities custodial services shall mean the deposit of securities, and providing services connected with exercising other rights of ownership evidenced by the securities. The Bank of Mongolia and the FRC shall jointly approve the procedures for conducting custodial services.

[/refer to article 46 of the Law/](#)

The Law provides a legal framework for further development of local capital market in a conventional way. **Sophisticated investors** are deemed to be the main players of the market, they include pension funds, investment funds /closed end, open end/, insurance funds, investment banks etc. Investment fund activities and types have been determined by the Law - detailed regulations will be regulated by the respective laws.

[/refer to article 38 of the Law/](#)

SECURITIES ISSUERS

According to the new law securities may be issued for sale either by public offer or by closed subscription.

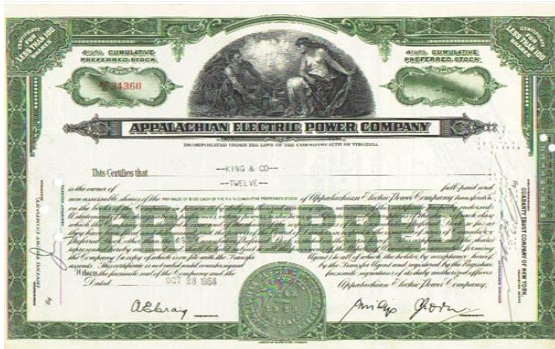
The Securities Law referred to the possibility of **dual-listing** within the territory of Mongolia or in another jurisdiction where issuers can raise funds from both domestic and international markets at the same time. The Revised Securities Law specifically allows for the dual-listing of Mongolian-listed companies abroad as well as the listing of foreign-listed companies in Mongolia. The absence of an enabling regulatory framework for dual listing restricted capital-raising opportunities for Mongolian companies. The FRC will be in charge of approving and monitoring such dual-listing.

The Revised Securities Law provides a basic regulatory framework for the issue of **depository receipts**. The law recognises both global and Mongolian depository receipts, issued by Mongolian-listed and foreign-listed companies respectively. Depository receipts are defined as securities that are issued by depositors for the purpose of trading on foreign securities markets, with the underlying securities to be held by a custodian. The law briefly sets out the process for issuing depository receipts - detailed regulations will be issued by the FRC.

[/refer to articles 17,18 of the Law/](#)

Furthermore, a variety of derivatives and financial instruments can be issued and traded through the market.

[/refer to articles 5, 19 of the Law/](#)



The Revised Securities Law enhances **IPO disclosure requirements**, stipulating that prospectuses now must include detailed financial information, lists of related parties, a business plan for the capital raised by public offering and risk management plans. Detailed provision of information to be included in a prospectus facilitates issuers to comply with its obligations to be transparent under the laws, rules and regulations and to fully prepare all the necessary documents needed for listing.

[/refer to article 10 of the Law/](#)

The securities issuer shall, either independently or on the basis of a contract established with a regulated entity, offer its securities on the primary securities market by way of advertising and offering the securities to 50 or more investors.

The FRC shall consider applications to register securities within 20 working days of receiving the prospectus and other necessary documents. The period of examination has been shortened from 30 working days set by the current law to 20 working days. The securities issuer may simultaneously apply to register its securities for registration in the register of securities approved for public offering and in the stock exchange register.

To increase transparency and ensure adequate levels of disclosure, the Revised Securities Law shifts the onus of compliance to listed companies. The scope of disclosable information is provided by law. Issuers must disclose within 1 business day of the occurrence of certain organisational changes, changes in shareholding structure affecting influential shareholders and such other information that may influence share prices. Immediate disclosure is required in certain circumstances. This simplifies the security issuer fulfilling their reporting obligations.

[/Refer to articles 20, 21, 55-56 of the Law/](#)

REGULATED ACTIVITIES

Regulated activities shall be of the following types: securities brokering; securities dealing; securities investment advisory services; securities nominee services; underwriting; registration of securities ownership rights; securities trading clearing; securities trading settlements; securities central depository services; custodial services; securities trading; investment fund activities; investment management activities; credit rating services; providing legal advice to participants in the securities market; providing property valuations and appraisal services for participants in the securities market; providing auditing services for participants in the securities market; and such other activities as may be set down by the FRC. The FRC will set conditions and requirements for the regulated activities and issue a license.

It states that the following activities may be conducted concurrently:

- a legal entity licensed to conduct broker activities may conduct dealing and underwriting, or investment advisory activities;
- a legal entity licensed to conduct securities central depository activities may conduct securities custodial services and clearing or settlement activities;
- a legal entity licensed to conduct custodial services may conduct specific securities registration activities;
- a legal entity licensed to conduct custodial services may conduct settlement activities; or
- such other activities as approved by the FRC on ad hoc basis.

| Regulated entities | Activity |
|---|--|
| Securities broker | Undertaking intermediary services on a contractual basis in connection with the buying and selling of securities with client funds, in their name, and on their instructions shall be called securities broker activities |
| Securities dealing | The activities of selling and buying securities in one's own name and with one's own assets shall be called dealing Activities |
| Investment fund | An investment fund shall have the objective to operate fully representing its investors' rights and interests and to increase its asset base as efficiently as possible. |
| Securities investment advisory | Securities investment advisory activities shall mean performing research and analysis based on publicly-available information of securities issuers and providing fee-based professional advice to clients concerning the price, conditions, and period for the buying and selling of securities. |
| Security nominee | Security nominee activities shall mean exercising the rights of ownership in relation to the client's securities and associated assets within the scope of limitations set out in a security nominee contract. |
| Underwriting | Underwriting activities shall mean activities including providing professional services to a securities issuer on the basis of a contract concluded for a public offer of its securities, and buying a contractually-agreed amount of those securities that remain unsold following an offer of the same on the primary securities market. |
| Securities ownership rights registration | Securities ownership rights registration activities shall mean activities carried out based on a contract entered into with a securities issuer for receiving information connected with the contractual transfer of securities ownership rights and entering the same in a database of a register of securities ownership rights, and maintaining, developing, and reporting such information in accordance with legislation. |
| Securities clearing | Following a securities trade, determining the payments that the parties which participated in the trade should make in accordance with a contract or agreement on a contract-by-contract and aggregate basis and making the relevant financial and accounting records, preparing trade settlements and issuing payment processing requests to competent settlement institutions. |
| Securities trade settlement | Transferring the payment by the purchaser to the account of the seller in accordance with the instructions of the clearing house; depositing the appropriate number of securities that are in the account of the seller of securities into the account of the purchaser; performing simultaneous payment transactions by way of issuing instructions to the custodians' central depository and cash depository institutions within the prescribed period; making the proper financial records in accordance with the statement of payments, and certifying transactions; delivering relevant information to securities depository and registration institutions. |
| Securities central depository | Activities relating to the safe-keeping of securities on the basis of a contract entered into with a securities issuer or other participants and maintaining the register in connection there with. |
| Custodial services | The deposit of securities, and providing services connected with exercising other rights of ownership evidenced by the securities. |
| Securities trading | Providing an environment for the entry into and performance of contracts and transactions for the buying and selling of securities and derivative financial instruments for public offer and organising the trading of securities. |
| Credit rating | Independent and impartial assessments to establish the financial standing of a securities issuer on the basis of methodologies adopted for this purpose. |

[/Please refer to articles 24-54 of the Law regarding regulated activities/](#)

INVESTORS

The Revised Securities Law introduces the concept of **beneficial and nominal ownership** of securities. A "nominal holder" of securities is defined as a regulated entity who is registered as the depositor/custodian of a given security and who is not the beneficial owner of such security. By contrast, "beneficial owner" is defined as the "real" owner of the security who is entitled to enjoy the rights and benefits attached to such security.

The term of "**Influential shareholder**" is included in the law. "Influential shareholder" signifies an individual or legal entity who alone or in concert holds 5% or more of the total issued shares with voting rights of the concerned company or who exercises the voting rights of such securities on the basis of the provisions of law or contract. The influential shareholder has to report upon changes that occur to his ownership.

The Revised Securities Law increases the range of tradable securities and offerable services, while providing regulations related to investors' interests and rights. For instance,



Tradable securities:

- shares, company debt instruments, debt instruments issued by the Government or the governors of aimags or the capital city
- shares or unit rights in an investment fund
- asset-backed securities
- warrant
- depositary receipts
- international companies securities by dual listing in domestic market



In order to give information to the investors and protect them the Revised Securities Law provides details on the IPO procedure and imposes stringent requirements on issuers and their advisors in terms of disclosure requirements, update obligations, and sanctions for non-compliance. Information contained in a prospectus must be verified by authorized auditors and legal professionals.

[/refer to article 10 of the Law/](#)



By the new law, the period of validity of an offer to buy the controlling block of the company shall not be less than one month and not exceed three months. Specific provisions are included in the law in relation to the reporting commitments of the person who made an offer to buy controlling block of the company. The price offered by the offeror to purchase the shares shall not be less than the market price of the relevant shares.

[/refer to articles 22, 23 of the Law/](#)



According to the Law, around 14 activities have been considered as regulated activities, which have to be conducted upon getting approval from the FRC. Conditions, requirements and activity descriptions have been determined by the law, while it states that detailed regulations shall be made through rules and regulations of the FRC. In general, the Revised Securities Law seeks to impose stricter liabilities and obligations on market participants and to protect investors' interests and rights.

[/refer to articles 24-26 of the Law/](#)

PROHIBITED ACTIVITIES IN THE SECURITIES MARKET

To protect investors' interests, the Revised Securities Law expressly prohibits insider dealing and market abuse.

Insider dealing

Insider information is defined as such information not publicly available which may influence the price of certain securities. Holders of insider information are influential shareholders (holding 5 per cent or greater), competent officials, employees of the relevant company and their related parties, as well as those individuals who obtained insider information in the course of performing their official duties, or negotiating or preparing transaction documents.

Holders of insider information are prohibited from trading in the relevant securities, inducing others to trade, and from disclosing insider information other than when required.

[/refer to articles 77-79 of the Law/](#)

Market abuse

The Revised Securities Law explicitly prohibits market abuse which includes fraudulent trading, artificial pricing, and misleading clients in order to promote/prevent securities trading. An offending person shall compensate any loss or damage caused to others as a result of having participated in trade using inside information, not having disclosed to the public inside information in accordance with the proper procedures, or having abused the securities market.

[/refer to articles 80, 81 of the Law/](#)

SUPERVISION AND INSPECTION OF THE SECURITIES MARKET

Under the Revised Securities Law, the key regulator is the FRC, who is authorised to exercise the state authority in regulating, monitoring, and ensuring the sound operation of the securities market. The FRC may, in exercising its authority or in accordance with a request from a competent regulatory body of a foreign jurisdiction, demand in writing from regulated entities, securities issuers, their connected persons or any other relevant person, confirmation and submission of information of the form and type it considers necessary within a prescribed period. The FRC shall undertake regular supervision to determine whether a regulated entity is in compliance with the provisions of this Law, the rules and regulations issued by the FRC in accordance there with, and the conditions and requirements of its license.

[/refer to articles 61-66, 82-87 of the Law/](#)



DISPUTE RESOLUTION BOARD

The Revised Securities Law introduces a dispute resolution body at the FRC to resolve disputes among regulated entities, issuers, investors and/or customers. This introduces a non-judicial dispute resolution mechanism which may offer benefits in terms of efficient and fast dispute resolution determined by experienced market professionals. The FRC shall approve the personnel and operating procedures of the Board.

SANCTIONS FOR VIOLATIONS

As is customary with Mongolian laws, the Revised Securities Law imposes administrative sanctions on offending persons, expressed in financial penalties. The Revised Securities Law significantly increases these fines by 200 to 300 times the existing levels to a maximum of MNT 86,400,000 (approximately US\$ 59,000).



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The adoption of the Revised Securities Law is certainly a welcome development for the strengthening and improving of the current regulatory regime and market practices. Under the new law self-governing bodies shall have to issue implementing rules, regulations, standardized procedures, develop professional skills, develop the market and ensure market stability. Thus, every markets participant's involvement and efforts are very important for further development of the market and efficient implementation of the law.