



MONGOLIA: Legal Reforms for a Market Economy

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This paper is a description of the Asian Development Bank's contribution to good governance in Mongolia through its assistance in the development of the Mongolian legal system.

Since the pro-democracy demonstrations in 1990 and the 1991 breakdown of the Council for Mutual Economic Assistance, whose member states were our main trading partners, Mongolia has moved rapidly to establish the legal framework necessary for a market economy. The basic elements — laws on property, the creation and winding-up of business entities, and a fair marketplace — are in place, as well as laws governing the complex areas of banking, securities, tax, bankruptcy, and accounting. Many of these laws, however, need to be reinforced by detailed regulations. Equally important, capacity building and training are necessary so that these laws and regulations can be implemented and enforced.

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The ADB's Law and Development Activities

In this regard, we have been grateful for the ADB's leadership and assistance in (i) reviewing the Mongolian legal system and formulating an action plan for the coordination of foreign assistance in law and development, (ii) drafting and preparing certain key laws and regulations required for a market economy, and (iii) providing training for the implementation and enforcement of these laws and regulations.

1. Industrial Sector Program Loan

The ADB's first substantial law and development activities in Mongolia began in August 1993 in connection with a US\$30 million loan for an industry sector program. One of the conditions for the release of the second tranche of the loan was a condition requiring the Government to undertake a

review of existing and pending laws affecting the industry sector, including laws relating to business entities, contracts, secured transactions, bankruptcy, and foreign investment. It was clear that market-friendly economic reform had to be matched with laws suited to the purpose.

2. Technical Assistance for Developing Mongolia's Legal Framework

In order to assist the Government with this review, the ADB provided a technical assistance grant of US\$500,000 for developing Mongolia's legal framework. The major accomplishments of the assistance were fourfold.

- First, the publication in October 1995 of a needs analysis report on the Mongolian legal sector and a two-day conference to discuss the report's findings with members of the Mongolian legal community and representatives of interested donor institutions. The Legal Needs Analysis Report was the first comprehensive assessment of Mongolian laws with an action plan identifying areas where assistance was required. The conference was the first organized meeting of donors to discuss assistance in the legal sector to Mongolia.
- Second, legal training. Lawyers were trained in three provinces in Mongolia; seven Mongolian lawyers received training overseas at Duke Law School's Asia-America Institute in Transnational Law in Hong Kong; and a senior Ministry of Justice official participated in a three-month internship program at a private law firm in New Zealand.

- Third, four United Nations Volunteer legal advisors and a commercial law expert provided legal advice on commercial legislation and assisted with the translation of Mongolia's Civil Code into English.
- Fourth, a compendium of authorized English translations of the principal commercial and economic laws enacted since 1990 was prepared. This compendium is expected to be published later this month.

3. Technical Assistance for Institutional Strengthening of the Financial Sector

From 1993 to the end of 1996, the ADB provided six technical assistance grants totaling approximately US\$2.3 million for Mongolia's financial sector. This technical assistance was primarily in support of institutional strengthening of agricultural banking services, the commercial banking system, and financial intermediaries. Two of these six technical assistance projects included legal components.

The first was a technical assistance grant in 1993 for institutional strengthening of the financial sector. Under this grant, the ADB assisted our Government in the drafting and implementation of a Securities Law which came into effect on 1 January 1995. Prior to enactment of the Securities Law, only procedural rules covering trading operations of the Mongolian Stock Exchange, which was established in February 1992, existed. The grant also assisted in (i) the establishment of the Securities Commission as an independent body to supervise the operations of the Stock Exchange, and (ii) the drafting of rules and procedures for the Commission.

4. Technical Assistance for Development of Procedures for the Reconstruction and Liquidation of Insolvent Banks

The second technical assistance project was a grant approved last year for the development of procedures for the reconstruction and liquidation of insolvent banks. This assistance could not have been more timely in light of the banking sector crisis and closure of the Central Asia Bank, the Ardyn Bank, and the Insurance Bank last year. Although monetary targets were achieved during 1995 and the first half of 1996, most banks violated credit ceilings and minimum reserve requirements, and the Bank of Mongolia was unable to enforce regulatory discipline due to weaknesses in legal authority.

Under the technical assistance, a legal advisor (i) reviewed the legal framework for restructuring and liquidating commercial banks, including the bankruptcy law, contract law provisions under the civil code, and the banking law and regulations; (ii) reviewed amendments to the banking law and statutes of the Bank of Mongolia and recommended appropriate changes; and (iii) advised the Bank of Mongolia on legal aspects pertaining to the revision of its regulations and procedures for dealing with the liquidation of insolvent commercial banks.

Thanks to the combined efforts and recommendations of the ADB, the World Bank, and the International Monetary Fund, the legal framework covering the commercial banking sector was strengthened in September last year with the separation of provisions on central and commercial banking through the enactment of two laws — the Banking Law and the Central Bank Law. Under the Central Bank Law, the Bank of Mongolia now has the clear power to issue regulations to carry out its functions as supervisor of banks.

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Provisions on the restructuring and liquidation of commercial banks are included in the new Banking Law. We expect that the stronger legal framework will help increase confidence in the banking system.

5. Financial Sector Program Loan

The ADB's assistance to Mongolia's financial sector culminated in the Financial Sector Program Loan approved in 1996. To support further legal reforms in the financial sector, approval by the ADB's Board of Directors of the Program Loan was conditional on a number of actions, including the enactment of the new Banking Law and Central Bank Law.

Release of the second tranche of the Program Loan is subject to satisfaction of a number of law-related conditions, including (i) submission of a draft Law on Secured Transactions (for movables) to Parliament; and (ii) strengthening bankruptcy legislation to facilitate debt recovery — in particular, giving preferred status to secured creditors.

In order to assist the Bank of Mongolia in fulfilling several of the other conditions specified for the release of the second tranche, the ADB is providing a technical assistance grant of US\$1 million for strengthening the supervisory and restructuring capacity of the Bank of Mongolia. This technical assistance includes the services of a legal advisor to (i) advise the Bank of Mongolia on legal issues pertaining to the conservatorship and receivership of commercial banks; (ii) assist the Bank of Mongolia in the liquidation of banks; and (iii) assist the Bank of Mongolia in the preparation of regulations on banking supervision, bank licensing, and conservatorship.

I would now like to move to a critical area of good governance where the ADB has provided invaluable assistance: public sector management and capacity building through training.

6. Technical Assistance for Restructuring and Capacity Building in the Ministry of Justice

Early this year, the ADB's law and development activities included a technical assistance to the Ministry of Justice for restructuring and capacity building. The primary focus of the assistance was to help the Ministry prepare its business plan in accordance with the Government's policy on reforming government processes and the general system of structure. The purpose of the policy is to "redefine directions of Government processes, streamline its general system of structure through re-engineering, introduce management methods suited to market economy relations in a democratic society, reduce budget costs of public entities and raise their efficiency by enhancing the leadership role of the Government."

The Ministry of Justice's Business Plan contains three key recommendations: (i) to enhance the policy and planning capacity of the Ministry; (ii) to strengthen the legal drafting capability of the Ministry by creating a specialized legal drafting department; and (iii) to transfer implementing responsibilities to the Ministry's agencies, while having the Ministry retain the appropriate policy development and coordination functions.

7. Technical Assistance for Legal Training

Finally, I would like to turn to capacity building through training. One of the major conclusions of the Legal Needs Analysis Report was the need to establish a training program for Mongolia's legal professionals. The ADB's assistance commenced with training in skills required for international sales contracts. A second technical assistance project was designed to address the ad

hoc nature of the many training programs that had been offered for Mongolian legal professionals by supporting a working group to prepare a program to institutionalize legal training.

8. Proposed TA for the Retraining of Legal Professionals for Market Economy

As a result of the recommendations of the working group, which consists of representatives of the major legal institutions in Mongolia, including the Ministry of Justice, the Judiciary, the General Prosecutor's Office, and the Institute of Law, and at the request of the Mongolian Government, the ADB is currently preparing a technical assistance project to establish a retraining center for legal professionals in Mongolia. The proposed project will be provided on a grant basis over three years, and will be executed by the Ministry of Justice.

The objective of the technical assistance is to establish a retraining center where Mongolian lawyers will be taught how to apply market economy-based legal principles in recently enacted commercial laws and regulations such as the Banking Law, Civil Code and Bankruptcy Law. The Retraining Center will also provide training in lawyering skills such as negotiating and drafting legal agreements and regulations.

The Retraining Center will offer training for about 200 lawyers each year through six three-month programs, and will be located within the Institute of Administration and Management Development, Mongolia's central organization for retraining and upgrading the skills of public administrators and business managers in public and business administration.

The Center will be twinned with an international legal training institution throughout the duration of the technical assistance. This long-term relationship will start even before the Retraining

Center opens when the Center's instructors receive training at the international institution in commercial legal principles, lawyering skills, and effective teaching techniques. It is expected that the Retraining Center will open early next year.

Conclusion

It has been an honor to participate in this conference and to learn more about the experiences and successes achieved in promoting sound development management. On behalf of the Government of Mongolia, I would like to express our sincere appreciation to the ADB for the assistance it has provided in developing Mongolia's legal system, and our hearty congratulations on the ADB's achievements during the past 30 years.