



In collaboration with



URBAN REDEVELOPMENT LAW 2015

LEGAL ANALYSIS AND CASE STUDY

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I. ACRONYMS AND ABBREVIATIONS

GADA: Ger Area (Re) Development Agency

GAHP: Ger Area Housing Project

JICA: Japanese International Cooperation Agency

MUGCUP: Capacity Development in Urban Development Sector in Mongolia

UB: Ulaanbaatar

II. ABOUT M.A.D. INVESTMENT SOLUTIONS

The M.A.D. Investment Solutions team is all about making sense of the changes currently taking place in Mongolia as it transitions from a centrally planned economy to a fully fledged market economy in the grips of a mining boom.

M.A.D. Investment Solutions is a boutique real estate investment and consulting firm based and operating in Ulaanbaatar. We focus on added-value investments on all types of Real Estate asset classes both within Ulaanbaatar as well as in Mongolia's high-growth cities. We provide tailor-made investment solutions for our investors to make the most of this dynamic market.

M.A.D. Investment Solutions provides a range of turn-key real estate services dedicated to accompanying our investors through each step of the investment process. This includes, research, due diligence, valuations, transaction assistance, interior design, renovation, property management and tenancy management.

Furthermore, we are one of the only companies on the market to have a dedicated professional research team that provides up-to-date market critical information and analysis to all our clients.

M.A.D. was established in 2009 as a full service real estate research and investment firm to cater to institutional investors investing in a range of real estate assets throughout Mongolia. Today M.A.D. has 42 employees divided into 4 teams (Research, Real Estate, Interior Design, Renovation) and is the only firm accredited by the Royal Institution of Chartered Surveyors in Mongolia. M.A.D. is employed as expert consultants on donor funded projects such as the ADB, World Bank or The Asia Foundation. M.A.D. furthermore maintains its own portfolio of properties in the heart of Ulaanbaatar used as serviced apartments. Please visit the range of websites owned by M.A.D. to gather a better understanding of the range of operations carried out by the firm (websites listed on last page of this document).

III. ABOUT AUDIER AND PARTNERS MONGOLIA

Audier & Partners is an international law firm founded by Nicolas Audier, member of the Paris bar, with offices in Ho Chi Minh City, Hanoi, Ulan Bator and Yangon.

Audier & Partners is present in Ulan Bator since 2012 where it advises in particular foreign companies, within a broad range of industries, for their corporate transactions in Mongolia.

IV. PREAMBLE

The Urban Development Law, the Housing Law of Mongolia and the Land Law of Mongolia form a tripartite legal framework for governing urban planning in Mongolia but lack of consistency and certainty.

From 2010 to 2013, JICA performed the first phase of the MUGCUP (Capacity Development in Urban Development Sector in Mongolia), by proposing a draft law on urban redevelopment laying out an updated and efficient legal framework with the following purposes: (i) redeveloping constructed areas of the city, (ii) re-planning and developing public spaces, (iii) demolishing and rebuilding buildings that does not meet the requirements of usage, (iv) re-organising and developing ger areas. The ultimate aim of such legal framework was to provide citizens with safer environment, mitigating the negative effects of an unplanned and unregulated growth in ger areas as well as inadequate social and engineering infrastructure services in the city. In this regard, the draft urban redevelopment law proposed three schemes constituting, all together, a legal framework. Said schemes are the following:

- **Scheme 1:** Reconstruction of old apartments to be listed
- **Scheme 2:** Reshaping of ger areas, based on a land readjustment regulation
- **Scheme 3:** Land pooling in ger areas in order to move from hashaas (plot of land) to apartments

These three modalities were approved by the Ulaanbaatar City Council (Municipality level) in 2014 as part of the City Housing Program in view to facilitate the implementation of the redevelopment of 24 sites managed by GADA and 8 additional sites managed by GAHP.

While the draft urban redevelopment law has been pending for approval by the Parliament for a significant amount of time, its final version was eventually approved on 16th of June 2015. Therefore, the regulations issued by the UB City Council are not applicable anymore as long as it will not be in accordance with the approved law. Indeed, this law establishes participation and monitoring rules which were not stated within the UB City Council regulations. The Government will enact seven regulations¹ to precise the application of the approved law. A working group is currently working on the elaboration of these regulations. In the meantime, the second phase of the MUGCUP has started working on two pilot projects aiming to implement the approved law. So far, these projects are at the stage of the feasibility study. One will be implemented in UB and the other one in the rest of the country, the sites selection has not been decided yet.

Between its approval by the Government in August 2013 and its approval by the Parliament in June 2015, the draft law has been subject to long discussions and to a significant number of amendments.

Indeed, despite its laudable aim and the vote of a considerable number of amendments, the draft law on urban redevelopment has been widely criticised, especially because it contained provisions that were tantamount to expropriation and therefore not in line with its main principles, i.e. “to ensure social interest and rights” and “to ensure public and community participation”.

The final version of the law seems to have taken into account the concerns of its opponents offering a substantially revised text which tends to minimise the risk of expropriation and developers’ rights excesses. Nevertheless, the law still raises some concerns regarding its social and economic effects on the city of Ulaanbaatar. Indeed, some revisions are radical while some other remains minor. A case study follows the legal analysis in order to offer a comprehensive outlook of the procedure laid out by the approved law regarding urban redevelopment projects and the risks/assumptions relating to each step of this procedure.

¹ Regulation on (i) city redevelopment compensation; (ii) land owners, possessors pooling the lands during the land readjustment in ger district; (iii) establishing order of project implementation stages and operations; (iv) deconstructing and rebuilding buildings that does not meet usage requirements; (v) selecting the area for city redevelopment project; (vi) Template for three party contract between participants of city redevelopment project; (vii) Instruction on formulation, process, method of the city redevelopment project;

V. SIGNIFICANT IMPROVEMENT OF THE URBAN REDEVELOPMENT LAW

From the draft to its final version, the urban redevelopment law has been subject strongly criticised and has therefore been subject to a significant number of revisions before being approved.

In that respect, the final version of the urban redevelopment law has deleted, clarified or softened the most controversial provisions which were included in the previous versions.

The main improvements made to the draft urban redevelopment law are detailed below:

1. A REWORDING OF THE LAW TO CLARIFY THE MEANING OF CITY AND TOWN REDEVELOPMENT

The three schemes laid out by this legal framework have been reworded in order to clarify and make more practical the meaning of city redevelopment and the way to ensure it. In the same aim, an article defining the “scope of law” has been added in the final version of the law (Article 3)

The table below stresses the rewording of the three schemes.

	WORDING IN THE DRAFT LAW	WORDING IN THE APPROVED LAW
Scheme 1	Redevelopment of Built-up areas that do not comply with the requirement of architecture, public spaces, urban development and urban planning and redevelopment of public spaces + reconstruction of buildings and structures that do not comply with requirements of building usage - Article 14 and 15	Redevelopment of Built-up areas that do not comply with the requirement of urban planning and redevelopment of public spaces + reconstruction of buildings and structures that do not comply with requirements of building usage - Article 15 and 16
Scheme 2	Reorganisation of ger areas - Article 16	Land readjustment of ger areas - Article 17
Scheme 3	Replanning and development of ger areas - Article 17	Redevelopment of ger areas - Article 18 The current definition include, among other, the provisions of “housing”

2. A MORE DEMOCRATIC PROCEDURE

A. REMOVAL OF THE COERCIVE MEANS ON THE LAND/PROPERTY RIGHTS HOLDERS (OWNERS/POSSESSORS)

As per the draft law, the validation of each stage of a redevelopment project was submitted to the following process:

a. VALIDATION OF PROJECT PREPARATION STAGE

Firstly the project has to be introduced to land/property rights holders in the designated area and at least 80% of them have to give their approval

b. VALIDATION OF PLANNING AND APPLYING FOR APPROVAL STAGE

A consensus need to be reached with the land and property owners for the finalisation of the draft plans.

c. VALIDATION OF IMPLEMENTATION STAGE

In case of failure to reach a consensus with land/property rights holders who refused the project on the designated area, the draft law allowed the implementation of specific coercive means in order to push reluctant people to leave. Indeed, the text stated that the following limitations could be imposed (article 26):

- Limitation on supply of heating, electricity, water (which could be a considerable issue during the winter)
- Limitation on property related rights such as transfer of title
- Limitation on using public spaces, roads, public facilities
- Penalty for each day of nonfulfillment of a decision and deduction of the accumulated sum from the amount of compensation

Moreover, despite the application of such limitations, should a consensus still not be reached, the draft law allowed the project implementation body (for instance developers) to submit to the court a request for forced eviction.

d. VALIDATION OF PROJECT COMPLETION STAGE

This kind of procedure constitutes a strong mean to constrain the land/property rights holders in the designated area who do not agree with the project to give up their land, imposing them unbearable conditions of life. The list of limitations looks like a set of punitive measure and shows a promotion of the rights of the project implementation body over the rights of the citizens involved in the project (land/property rights holders in the designated area). Furthermore, the implementation of such limitations raised other concerns. For instance, the question arises how the city would be able to check the status (agree/do not agree with the project) of the owners in order to allow or not the access to public spaces? Therefore, in addition to be punitive, these measures couldn't be implemented without creating trouble within the community and social issues and leading to worsen situation in the designated area, though the redevelopment project are supposed to enhance the situation.

The approved law has kept the four validation process stages but has removed these constraining limitations, applicable in case the consensus fails, from the validation of implementation stage (as referred to stage 3 above) and replaced it by the possibility for the project implementation body to submit to the court a claim for land acquisition with compensation (which is much less radical and punitive and will be time consuming). It being specified that no guidance is given by the law about how the court will judge in such situation. The removal of the rights of the project implementation body to request the limitations of public services/facilities access and the forced eviction constitutes a significant step towards a more democratic procedure. Indeed, the approved law abandons its punitive nature and tends to balance the rights of the stakeholders, considering the community interest.

B. PROMOTION OF LAND/PROPERTY RIGHTS HOLDERS' PARTICIPATION

In the approved law, the article related to the rights and obligations of the citizens involved (land/property owners and possessors) in the project (Article 22) adds the following list of rights:

- To give a comment on project implementation
- To evaluate and be evaluated their land and immovable property
- To get information and request information about project implementation plan and other related documents

- To make contract and negotiation related to project implementation. This is reminded in the article 23.1.5.
- To initiate and request to involve the land and property owners, which not supported the project to the project
- To get information about project implementation procedure and demand the fulfillment of the contract obligations
- To be provided a temporary housing during the project implementation period
- Do not have any violation on land and immovable property documents
- To provide correct and right information and documents required for the project implementation
- Citizens shall participate in the project through the organization representing them
- To request or give a complaint about projects implementation procedure to the supervisory board: this means that the citizens have the right to control the project implementation. The article 23.1.5 emphasises this right, mentioning that the project implementation body has to evaluate the fulfilment of the contract (on the project) with all the parties (i.e. including the citizens involved in the project). Moreover, the article 23.1.4, (“the project implementation body has to do request for amendment of the project plan based on the request of the land and property owners and possessors in the selected area), which is a rewording of the article 22.1.6 of the draft law, emphasises the right of the citizens involved to participate in the procedure. Such article takes on its full meaning since the removal of the limitations measures

The enumeration of these rights recognised to the land/property rights holders fosters the community participation in the project and leads to a more democratic process. Moreover, these participation rights should be exercised individually, as well as through the Resident Representative Organisation in order to strengthen the community voice. It is important to note that such Organisation was not established by the UB City Council regulations related to redevelopment project. To comply with the international standards, the Government has pushed for the establishment of such Organisation in the urban redevelopment law.

3. REDUCTION OF THE EXPROPRIATION RISK

The possibility to limit the public services/facilities access to the land/property rights holders who disagree with the project (see above) in order to constrain them to leave their land was considerate as tantamount to expropriation. The threat to cut access to water, electricity and heating is equivalent to force citizen to have a restrictive utilisation of their premises and to expose them to an unsafe environment (especially during winter), which is in opposition with the purpose of the law. On the top of that, the right of the project implementation body to request a forced eviction make stronger the risk of expropriation and the violation of the ownership right.

Abandoning these controversial provisions, the approved law minimises the risk of expropriation and make a step towards a greater respect of ownership rights. This seems to be an encouraging progress in offering a better protection to the citizen involved in a project they do not support.

Moreover, article 22.1.5 recognises the right of the citizen to initiate and request to involve the land/property rights holders who do not support the project in order to facilitate the consensus. This means that there is a real attempt to reach a consensus instead of imposing a procedure which is tantamount to expropriation.

4. BETTER CONSIDERATION OF THE COMPENSATION SYSTEM

As per the Law on Allocation of Land to Mongolian Citizens for Ownership (Article 37), the right of expropriation (only applicable in occurrence of environmental or public disasters) is subject to the obligation to compensate the affected party who is entitled to undertake a legal action for full and appropriate compensation of its expropriated land. Despite this provision and besides the threat of expropriation, the draft law did not provide a clear and appropriate compensation system, especially for business owners whose losses are also economic.

The newest progresses of the approved law are the following:

- The article 26.4.2 which reinforces the obligation of the supervisory body to organise activities regarding the compensation assessment
- The article 7.1.4. which states that the Government will have to approve the rules and regulations regarding compensation. This will be part of the seven regulations aiming to precise the application of the urban redevelopment law on which the Government is working (see above).

5. BETTER CONSIDERATION OF THE TEMPORARY RESETTLEMENT ISSUE

The draft law contained no clear legal framework to ensure appropriate temporary resettlement of displaced residents.

In its last version, the draft law stated that the agreement on the project, as well as on the project implementation plan, should include a temporary housing plan. These provisions were not sufficient to ensure an adequate temporary resettlement.

The approved law tends to broach the matter of temporary resettlement with two new provisions:

- Article 4.(Legal definition): rewording of temporary housing which is replaced by temporary resettlement
- Article 22: addition of the right for the citizen involved in the project to be provided with a temporary resettlement during the project implementation period. This provision recognises and emphasises this right, so that one may think that such right could be claimed in court in case it would be violated.

6. BETTER TRANSPARENCY FOR THE SELECTION OF THE PROJECT IMPLEMENTATION BODY AND THE CONTRACT NEGOTIATION

Firstly, as in the last version of the draft, the approved law lays out the selection process of the project implementation body including a bidding procedure.

Secondly, the approved law provides a specification of the tripartite agreement stating that the project implementation body has to conclude it with the land/property rights holders and the aimag, capital city, sum and district Governor. This is reminded in Articles 11.2. and 23.1.5, insisting on the obligation of negotiation, and the content of the contract is outlined in article 24. Besides, Article 22.1.4 recognises the rights of citizens involved in the project to negotiate and entering into tripartite agreement. Such specification is important in terms of transparency of the selection procedure to the extent that the citizens involved in the project have to be part of the agreement and so, of its negotiation.

Finally, the law clarifies that the model of this agreement has to be approved by the Central Governmental Administrative Organisation in charge of Urban Redevelopment (Article 8.1.7). This will be part of the seven regulations aiming to precise the application of the Urban Redevelopment Law on which the Government is working (see above).

7. REMOVAL OF THE REFERENCE TO EARTHQUAKE

The draft law stated that the risk of earthquake was one of the criteria showing that an old building did not comply with requirements of building usage and allowing to order its destruction. However, if the objective of the draft law was really to secure the health and safety of the residents of old apartments then why not apply the same criteria to new residential and commercial units built in the last 20 years. Many of these have been built using poor quality materials, with little or no thought about earthquake safety. The fact is that an earthquake would likely pose a greater overall threat to many new constructions than to the 3 or 4 level 40,000 and 50,000 buildings whose thick walls and short height go a long way to mitigating earthquake related risks.

The approved law has removed all references to earthquake resistance as requirement of building usage, which means that the risk of earthquake cannot be a criteria to plan the destruction of a building. So, the “requirements of Building usage” criteria being less precise, it should be easier to defend and set out arguments on the preservation of building which could be simply renovated instead of being demolished.

8. CLARIFICATION OF THE PROJECTS’ FUNDS

The draft law contained a provision (Article 20.2) which was internally contradicted (with article 6.2). The approved law has removed this provision ending any contradiction regarding the distribution between state funds and local funds.

Moreover, the approved law has removed the “Mongolian Development Bank Profit” from the list of the projects’ funds because these kind of funds should not be able to be used for redevelopment project as per the State Budget Law.

9. REINFORCEMENT OF THE PROJECT IMPLEMENTATION CONTROL

First of all, it is important to note that existence of the Supervisory Board, in charge of inspection and contract execution control, was not provided by the Municipal regulations related to redevelopment projects. Complying with the international standards, the Government has insisted for the creation of such Organisation.

The approved law has assigned a list of competences to the Central Governmental Administrative Organisation in charge of urban Redevelopment (Article 8), especially, some of them will be included in the seven regulations on which the Government is working (see above). This could ensure a better control and monitoring of the projects’ activities, provide the stakeholders with the necessary guidelines and allow the enforcement of necessary rules and regulations.

Furthermore, as stated above, a right to participate in the control of the project implementation is recognised to the citizens involved in the project (see article 23.1.5 and 22.2).

Besides, the new article 23.1.7 strengthens the stakeholders' power of control on the project, stating that the project implementation body has to communicate to them the required information regarding the implementation. Such provision will lead to a better transparency and participative process.

Finally, the approved law adds a provision (article 23.1.9) stating that in addition to comply with article 24 of the Urban Development Law, the project implementation body shall also comply with article 15 of the Construction Law regarding the acceptance of the construction process. This is another protection against the potential misbehaviours of the project implementation body provided by the approved law.

10. REFINING THE DISTRIBUTION OF COMPETENCES

The approved law has made a special effort in order to clarify and refine the distribution of competences between the stakeholders involved in the project.

The article 16.4 states that the "Councils of aimag, capital city, soum or district shall issue a resolution ordering the demolition and reconstruction of the buildings and structures that do not comply with the requirements of usage". In the draft law, it was the competence of the aimag or capital city governor. Transferring this competence from the governor to the Council (which is an elected assembly taking decisions through collective approval) is a way to make the procedure more democratic and to restrict the political power. Furthermore, It is clearly stated that the request of redevelopment should come from the buildings owners after receiving the decision from the Governor, and based on the State Inspection Agency, to prohibit the use of the buildings.

Finally, the article 13.2 and 14.4 of the approved law clarify the distribution of competences between the project implementation body and the aimag, capital city, soum or district Governor. Indeed, the article 13.2 states that the project implementation body will implement the project and the article 14.4 clarifies that the aimag, capital city, soum and district governor will "initiate" (instead of "implement" in the draft law) the projects which consist of measure ensuring public interests. This rewording allows to avoid a conflict of competences and also a conflict of interest.

VI. THE REMAINING CHALLENGES REGARDING THE URBAN REDEVELOPMENT LAW

Although the approved law provide some radical revisions (compared with the draft law), some other revisions remains minor and some inconsistencies of the draft law remain unchanged.

1. GLITCHES IN THE DEMOCRATIC PROCEDURE

A. THE RULE OF 80% ACCEPTANCE

As per the approved law, the validation of the project preparation stage (first step of the redevelopment project procedure) is submitted to the following scheme: the project has to be introduced to land/property rights holders in the designated area and at least 80% of them have to give their approval.

Although the project implementation stage does not allow anymore to impose limitations in public services/facilities in case of failure to reach consensus with the land/property rights holders disagreed with the project (see above), the rule of the 80% persists. Therefore, even if a significant majority of citizens agrees with the implementation of such projects, it should not allow to attack the right and interest of the citizens who disagree with such decision. If the punitive measures forcing the opponents to the project to leave have been withdrawn, there is still a lack of democracy in the procedure. The law should aim to find a right combination and balance between the provision of rights/interest of land/property rights holders and provision of public right/interest and healthy environment.

On a practical level, one of the issue raised by this rule of 80% is the vote participation. Indeed, the law does not plan any notification process to make sure that every citizen involved in the project will be fully informed about the project. This lack of clarification could imply the risk that on 10 landlords, if 2 of them were abroad or didn't receive the notice, they would be de facto voting for the re-development. Such situation would constitute a constraint to the participative process.

B. UNCERTAIN ENFORCEABILITY OF THE CITIZENS PARTICIPATION RIGHTS

Although the approved law recognises a list of participation rights to the citizens involved in the project (article 22, see above), there is an uncertainty regarding the enforceability of these rights.

Firstly, except the provision of the article 27 ("any violation of this law shall be subject to the liability according to the relevant laws and regulation"), which lack of consistency, the law does not include any reference to practical procedure to be followed in case of violation of these rights. Besides, some of the rights granted therein may not be precise enough to be directly enforceable before a court.

Secondly, although the law aims to allow the exercise of these participation rights both individually and through the Resident Representative Organisation (see above), the current provisions of the law (article 22) are not clear enough regarding such assumption. Therefore, their formulation could lead to misinterpretation casting doubts on whether this rights can be exercise individually or only through the resident Representative Organisation (particularly in case of legal proceeding for violation of one of these rights before a court).

Furthermore, the Resident Representative Organisation can be created if more than 75% of the citizens involved expressed their will to establish such organisation. In case this percentage is not reached, the

Organisation will not be established, leaving the citizens without the possibility to empower their participation in the project.

Finally, the article 22.3 states that the Residents Representative Organisation by-laws are approved by the majority of members' vote. The lack of precision of such provision with respect to the content of the by-laws raises questions on the terms and conditions under which the citizens will exercise their participation rights within the Resident Representative Organisation. Indeed, the question arises as to whether the terms and conditions will ensure the equality and equity among the citizens.

C. ABSENCE OF CHOICE REGARDING THE BUILDING FUTURE

The only option proposed by the approved law (same provision than in the draft law) with respect to the implementation of a re-development project appears to be the destruction of the older buildings, while it is never contemplated that renovation may be part of the re-development process and an alternative to a simple destruction. Indeed, subject to renovation, some of the existing UB buildings are part of its architectural heritage and still offer a great potential for both living and commercial purposes.

2. LACK OF A COMPLETE COMPENSATION SYSTEM

As stated above, compared with the draft law, the approved law broaches the compensation question in a more concrete manner and emphasises the need of assessment (valuation) to define the amount of the compensation. However, this appears to be still insufficient to ensure the protection of the involved citizens' rights.

Firstly, the compensation system is still not clearly defined and there is not specification about the valuation (which method, based on which value, which criteria should be applied to adjust the valuation to a specific situation, for instance to take into account the community interest).

Secondly, the approved law does not address the specificity of the compensation system for business owners whose businesses will be affected by the project. Indeed, after the decision made to re-develop the building, all the authorisations to conduct business activities will cease until the completion of the re-development, and therefore, it means that businesses will have to stop their activity for an unknown period. Without an appropriate compensation system in that respect, the repercussions of a redevelopment project would potentially be devastating, not only on a social level but also to the city economy.

Last but not least, the approved law does not provide any safeguards for the citizens involved in the project in case their rights of compensation will not be respected. However, the article 37 in Law on Allocation of Land to Mongolian Citizens for Ownership, applicable in occurrence of environmental or public disasters, states that "If it becomes impossible to return the expropriated land, the owner shall be compensated for the value of the land and the damages according to the market rate of that time or the damages shall be compensated by allocating other land not worse than the expropriated land by its status and quality", and in case of dispute on this matter the affected person can apply to the court. The draft law on Land Acquisition for Unavoidable Public Needs also provides a compensation scheme and the possibility to apply to the court if a dispute occurs. Therefore, the approved law should contain such kind of provision to ensure the compensation right for affected citizens to apply to the court in case their right to receive an appropriate compensation would be violated. In this context, the provision of the article 27 ("any violation of this law shall be subject to the liability according to the relevant laws and regulation") lacks of consistency and is not sufficient to ensure a right to compensation.

On the other hand, the law does not make any provision against abusive compensation requests which could be made by the khaasha's owners.

However, as already explained above, a specific regulation on which the Government is working will come to detail the compensation system.

3. LACK OF CLEAR TEMPORARY RESETTLEMENT AND RELOCATION FRAMEWORK

Even though the approved law officially recognises the right to temporary resettlement for affected citizen (see above), there is still no clear legal framework to ensure appropriate temporary resettlement and relocation. Indeed, such process is not define in the law and therefore grants too much freedom to the project implementation body to the extent that the affected person does not have a real way to show that the resettlement process has not been properly enforced.

Moreover, as stated above, there is an uncertainty regarding the enforceability of the citizens' rights, including the temporary resettlement right which is part of the list of rights enumerated in article 22 of the law.

Unfortunately, so far, the seven regulations on which the Government is working to precise the law do not include the resettlement matter.

4. POTENTIAL CONFLICT OF INTEREST IN THE PROJECT IMPLEMENTATION BODY SELECTION

As per article 19-6 of the approved law (same provision than the draft law), "the aimag, capital city, sum and district Governor shall establish a selection committee and organise the selection process". This provision creates a risk of conflict of interest and corruption. Indeed, it is not consistent that Municipal and Aimag Governor Offices establish the evaluation committee by themselves, conducts the competition procedures by themselves and recruits the implementer of the project by themselves. One might think that a stronger participation of other stakeholders, such as citizens representative, would have been more appropriate.

5. A DISTRIBUTION OF COMPETENCES STILL CONFUSING

Although the approved law refines the distribution of competences, it remains unclear at some points. For instance, the aimag, capital city, sum and district governor can organise activities to initiate, develop, implement urban redevelopment project, review and decide on project proposal submitted by the citizens, initiate redevelopment projects which consist of measures ensuring public interest and select the implementation body (articles 11.1.1, 11.1.2, 11.1.3, 14.1, 14.4). These list of competences remains confusing and could lead to a conflict of competences with the others stakeholders.

Moreover, the article 13.1 states that the three entities which have the capacity to initiate the project are the citizens, legal entity and Governor. Based on the definition of "legal entity" outlined in the civil code, this provision does not refer only to the legal entities running business in the designated area (and so being land/property rights holders) but to any legal entity. This means that a developer can also initiate the project. In that case two issues can be raised:

- The same entity could potentially initiate and implement the project.

- An increase risk of potential competitors threatening the implementation of ongoing redevelopment projects.

6. INEQUITY OF RIGHTS

Even though the approved law constitutes an improvement regarding the promotion of citizens' rights involved in the project, there is still an obvious inequity between the rights of the project implementation body and the rights of the land/property right holders. Indeed, the article 25-2 of the law (same provision than the draft law) stated that the project implementation body shall propose to the citizens involved in the project the purchase price of their own real estate to be transferred. However, the citizens should also have the right to propose their own sale price. At least, a fair and enforceable land assessment system should be defined.

Moreover, the governor's decision to prohibit the use of buildings is based only on the decision of the State Agency Inspection and not anymore on the request of buildings owners (article 16.2).

7. INAPPROPRIATE PROJECTS' FUNDS

The article 21 of the approved law (same provision than the draft law) states that the Government special funds could be a financial resources for the funding of some redevelopment project. However, it shall be specified that such funding is in any case subject to an amendment of the law on Government special funds which regulates Government spending.

8. LACK OF FLEXIBILITY

In accordance with the article 14.2 (same provision than the draft law), in case the redevelopment proposal has been confirm by the Capital City Governor, a "detailed district plan" in designated area has to be developed. This provision constitutes a lack of flexibility which could lead to a risk of project's freezing.

Instead of a "detailed district plan", an enforceable "land use plan", only providing for the urban design and specifying the guidelines to be applied by developers, would be a more adequate solution. Indeed, it would allow to limit the resettlements and respect a step by step development fostering the community participation, facilitating the consensus and catalysing the community demand.

It is important to note that the term "detailed district plan" comes from the Urban Development Law on which the Urban Redevelopment Law is based. The Urban Development law does not refer to any land use plan but to Master plan and detailed planning, however, the Government is currently working on the revision of the Urban Development Law. Such revision could further lead to Urban Redevelopment law amendments. The second stage of MUGCUP is involved in the revision work of Urban the Development Law.

VII. CASE STUDY

One of the underlying issues of the draft law was the risk that developers (project implementation body) could have been more interested in generating incomes using political schemes than solving the outstanding issues of safety, social growth, efficiency and economic development of Ulaanbaatar’s city centre. The question arises as to whether the same kind of threat could be caused by the approved law despite the fact that it contains significant revisions compared with the draft law.

The following table is a summary of the redevelopment project’s scheme (common procedure to each type of redevelopment project) lays out by the approved law. This table outlines, among other, the risks/assumptions which could be created in case an interested developer would be the project implementation body of such redevelopment project.

PROCEDURE'S STEPS OF A REDEVELOPMENT PROJECT		DESCRIPTION	ARTICLES	RISK AND ASSUMPTION (BASED ON THE COMPARISON WITH THE DRAFT LAW)
1-Project initiation	1.1- Preliminary conditions	<p>The redevelopment project has to match one this three types:</p> <ul style="list-style-type: none"> ● Redevelopment of built-up areas that do not meet urban development requirements, redevelopment of public spaces and reconstruction of buildings that do not comply with requirements of building usage ● Land readjustment of Ger areas ● Redevelopment of Ger areas 	Articles 3 - 12 - 15 - 16 - 17 - 18	<p>Positive</p> <ul style="list-style-type: none"> ● Resistance to earthquake is not a criteria of demolition/reconstruction of buildings anymore. “Requirements of Building usage” being less precise, it would be easier to defend and set out arguments on the preservation of building which could be simply renovate instead of being demolish. ● It is clearly stated that the request of redevelopment should come from the buildings owners after receiving the decision from the Governor, and based on the State Inspection Agency, to prohibit the use of the buildings ● The resolution ordering the demolition/reconstruction should now be the competence of the councils of Aimag, capital city, sum and district (instead of the Governor). It leads to a restriction of the political power and limit the conflicts of interest. ● The current definition of ger area redevelopment includes the provisions of “housing” (not only infrastructure and public spaces). <p>Negative</p> <ul style="list-style-type: none"> ● The governor’s decision to prohibit the use of buildings is based only on the decision of the State Agency Inspection and not anymore on the request of buildings owners. ● There is still no choice between the renovation and the demolition of the buildings (see above page 18)

PROCEDURE'S STEPS OF A REDEVELOPMENT PROJECT		DESCRIPTION	ARTICLES	RISK AND ASSUMPTION (BASED ON THE COMPARISON WITH THE DRAFT LAW)
	1.2- Initiation action	<p>The redevelopment project can be initiate by two entities:</p> <ul style="list-style-type: none"> ● Citizens/legal entities ● Aimag, capital city, sum and district Governor 	Article 13.1	<p>Positive</p> <ul style="list-style-type: none"> ● The distribution of competence is clearer: only the citizens/legal entities and Governor can initiate the project . The Governor will review and decide on the project proposal submitted by the citizens. The Governor will “initiate”, but not implement, the project which consist of measures ensuring public interest. <p>Negative</p> <ul style="list-style-type: none"> ● The distribution of competences remains confusing at some points. For instance, the aimag, capital city, sum and district Governor can organise activities to initiate, develop, implement urban redevelopment project, review and decide on project proposal submitted by the citizens, initiate redevelopment projects which consist of measures ensuring public interest and select the implementation body (articles 11.1.1, 11.1.2, 11.1.3, 14.1, 14.4). This list of competences remains confusing and could lead to a conflict of competences with the others stakeholders. ● The article 13.1 states that the three entities which have the capacity to initiate the project are the citizens, legal entity and Governor. Based on the definition of “legal entity” outlined in the civil code, this provision does not refer only to the legal entities running business in the designated area (and so being land/property rights holders) but to any legal entity. This means that a developer can also initiate the project. In that case two issues can be raised: (i) the same entity could potentially initiate and implement the project; (ii) an increase risk of potential competitors threatening the implementation of ongoing redevelopment projects.
	1.3-Review	<p>The redevelopment project proposal submitted by the citizens/legal entities has to be reviewed by the Aimag, capital city, sum and district Governor. The review will consist in verifying that the proposal meets the requirements stated in the article 20 of the law</p>	Articles 14.1 - 20	N/A
	1.4-Detailed plan	<p>If the project proposal is confirmed by Aimag, capital city, sum and district Governor, a detailed plan in designated area will be developed and approved based on the Urban Development Law. The Government will approve the priority projects and programs which are important for the economic and social development of the country and have to be implemented by the state budget.</p>	Article 14.2 - 7.1.2	<p>Negative</p> <ul style="list-style-type: none"> ● Detailed plan at this stage could constitute a lack of flexibility (could freeze the project), this has not been revised. Instead of a “detailed district plan”, a “land use plan”, only providing for the urban design and specifying the guidelines to be applied by developers, would be a more adequate solution (see above page 22).

PROCEDURE'S STEPS OF A REDEVELOPMENT PROJECT		DESCRIPTION	ARTICLES	RISK AND ASSUMPTION (BASED ON THE COMPARISON WITH THE DRAFT LAW)
2-Selection of Project implementation body	2.1-Tender	The Aimag, capital city, sum and district Governor will do a public call for expressions of interest for the project implementation	Article 14.5 - 19.2	<p>Positive</p> <ul style="list-style-type: none"> The law (as in the last version of the draft law) outlines the information that the invitation to bid should contain (article 19.2).
	2.2-Proposal analysis	The Aimag, capital city, sum and district Governor will receive and analyse the proposal of interested legal entities	Articles 14.6 -19.3 - 19.4	N/A
	2.3-Selection decision	The Aimag, capital city, sum and district Governor will establish a selection committee and process to the selection of the project implementation body	Articles 4.1.7 - 11.1.3 - 14.7 - 19.5 - 19.6	<p>Positive</p> <ul style="list-style-type: none"> The law (as in the last version of the draft law) outlines the selection criteria which have to be taken into account to select the project implementation body (article 19.5) <p>Negative</p> <ul style="list-style-type: none"> The aimag, capital city, sum and district Governor shall establish a selection committee and organise the selection process (article 19.6, no change compare with the draft law). This provision creates a risk of conflict of interest and corruption. It is not consistent that Municipal and Aimag Governor offices establish the evaluation Committee by themselves, conducts the competition procedures by themselves and recruits the implementor of the project by themselves. One might think that a stronger participation of other stakeholders, such as citizens representative, would have been more appropriate.
3-Project preparation stage	3.1-First draft of the project programme	After conducting analysis on the designated project area, a first official draft (in view to be presented to the citizens involved) of the project plan and programme will be developed	Article 14.7.1	N/A
	3.2-Approval of the project by the citizens involved	The project will be introduced to the citizens involved (land and property owners/possessors in the designated area) and has to be approved at 80%	Article 14.7.1	<p>Negative</p> <ul style="list-style-type: none"> The rule of the 80% acceptance has not been removed from the law, that raises a democratic issue. Even if a significant majority of citizens agrees with the implementation of such projects, this should not allow to attack the right and interest of the citizens who disagree with such decision. Moreover, the law does not plan any notification process to make sure that every citizen involved in the project will be fully informed about the project. This lack of clarification could imply the risk that on 10 landlords, if 2 of them were abroad or didn't receive the notice, they would be de facto voting for the re-development. Such situation would constitute a constraint to the participative process.

PROCEDURE'S STEPS OF A REDEVELOPMENT PROJECT	DESCRIPTION	ARTICLES	RISK AND ASSUMPTION (BASED ON THE COMPARISON WITH THE DRAFT LAW)
3.3- Establishment of the Residents Representative Organisation	If the project has received an approval from 80% of the citizens involved, a Residents Representative Organisation will be established (if at least 75% of them express their will to participate in such organisation). This organisation will have to protect the citizens' rights and interests.	Articles 14.7.1 - 22.1.10	<p>Positive</p> <ul style="list-style-type: none"> ● The approved law enumerates a list of participation rights of the citizens involved in project, that drives to a more democratic, participative and transparent procedure. These right should be exercised both individually and through the Resident Representative Organisation (aim of the law). <p>Negative</p> <ul style="list-style-type: none"> ● Except the provision of the article 27 ("any violation of this law shall be subject to the liability according to the relevant laws and regulation"), which lack of consistency, the law does not include any reference to other practical procedure to be followed in case of violation of the citizens' rights. Besides, some of the rights granted therein may not be precise enough to be directly enforceable before a court. ● Although the law aims to allow the exercise of these participation rights both individually and through the Resident Representative Organisation (see above), the current provisions of the law (article 22) are not clear enough regarding such assumption. Therefore, their formulation could lead to misinterpretation casting doubts on whether this rights can be exercise individually or only through the resident Representative Organisation (particularly in case of legal proceeding for violation of one of these rights before a court). ● The Resident Representative Organisation can be created if more than 75% of the citizens involved expressed their will to establish such organisation. In case this percentage is not reached, the Organisation will not be established, leaving the citizens without the possibility to empower their participation in the project.

PROCEDURE'S STEPS OF A REDEVELOPMENT PROJECT		DESCRIPTION	ARTICLES	RISK AND ASSUMPTION (BASED ON THE COMPARISON WITH THE DRAFT LAW)
4-Planning and applying for approval stage	4.1-Project implementation plan	After evaluating the land/ property, a project implementation plan will be set-up. This plan has to include: compensation plan, land contribution scheme, financing system, implementation method, relocation and temporary resettlement plan	Article 14.7.2	<p>Positive</p> <ul style="list-style-type: none"> ● In addition to be included in the project implementation plan, the evaluation of the land, the compensation, the relocation and temporary resettlement are set-up in the approved law as rights of the citizens involved (articles 22.1.2 - 22.1.7). ● The new article 7.1.4 adds a provision stating that the Government has to approve rules for compensation of urban redevelopment activities. This will be part of the seven regulations aiming to precise the application of the Urban Redevelopment Law on which the Government is working (see above page 7). It can be a tool to ensure the respect of the compensation right. ● The approved law (article 23.1.4) states that the project implementation body can request a revision of the project plan based on the request of the citizen involved. This provision is a way to ensure a better participation of the citizens. Such article takes on its full meaning since the removal of the limitations measures. <p>Negative</p> <ul style="list-style-type: none"> ● The compensation system is still not clearly defined and there is not specification about the valuation (which method, which criteria to adapt the valuation to the specific situation, for instance take into account the community interest's). ● The approved law does not address the specificity of the compensation system for business owners whose businesses will be affected by the project. Without an appropriate compensation system in that respect, the repercussions a redevelopment project would potentially be devastating, not only on a social level but also to the city economy. ● The approved law should contain a provision recognising the right for affected citizens to apply to the court in case their right to receive an appropriate compensation would be violated (see above page 19) ● There is still no clear legal framework to ensure appropriate temporary resettlement and relocation and the enforceability of temporary resettlement right remains uncertain (see above page 19)

PROCEDURE'S STEPS OF A REDEVELOPMENT PROJECT		DESCRIPTION	ARTICLES	RISK AND ASSUMPTION (BASED ON THE COMPARISON WITH THE DRAFT LAW)
	4.2-Consensus and implementation authorisation	The project implementation plan will be discussed and finalise with the citizens involved (land and property owners/ possessors in the designated area). After negotiation, a consensus (including the citizens who were not part of the 80% approving the project) needs to be reached in order to move forward	Article 14.7.2	<p>Positive</p> <ul style="list-style-type: none"> ● One of the big changes carried out by the approved law is the withdrawal of the punitive measures (limitation to public services/facilities) forcing the land/property rights holders disagreed with the redevelopment project to leave their real estate as-set. This provision removal drive to a more democratic process and reduce the risk of expropriation when the consensus is not reached ● Instead of the limitations, the approved law states that if the consensus is not reached the project implementation body will be able to submit to the court an appeal for land clearance. However, because the judiciaries procedure are time consuming and costing, On might think that such right would not be often exercised or, if exercised, successful. ● Article 22.1.5 recognises the right of the citizen to initiate and request to involve the land/property rights holders who do not support the project in order to facilitate the consensus. This means that there is a real attempt to reach a consensus instead of imposing a procedure which is tantamount to expropriation. <p>Negative</p> <ul style="list-style-type: none"> ● In terms of redevelopment project in ger areas, it leads to the difficulty to face the consensus failure which could freeze the project, and so invites to rethink the modus operandi of the redevelopment projects' implementation. This is particularly relevant to the extent that Mongolian law does not provide any expropriation framework. Therefore, in order to address such challenge, the idea is to adopt a modular approach of implementation to allow a step by step development through the flexibility offering by a "land use plan" (instead of a "detailed design plan")
	4.3-Implementation authorisation	If a consensus has been reached, the Aimag, capital city, sum and district Governor will review the plans and authorised the implementation of the project.	Article 14.7.2	N/A

PROCEDURE'S STEPS OF A REDEVELOPMENT PROJECT		DESCRIPTION	ARTICLES	RISK AND ASSUMPTION (BASED ON THE COMPARISON WITH THE DRAFT LAW)
5-Implementation stage	4.4-Tripartite agreement	The Aimag, capital city, sum and district Governor will conclude a tripartite agreement with the project implementation body and the citizens involved in the designated project area.	Articles 14.7.2 - 11.1.4	<p>Positive</p> <ul style="list-style-type: none"> ● The approved law provides a specification of the tripartite agreement stating that the project implementation body has to conclude it with the land/property rights holders and the aimag, capital city, sum and district Governor. This is reminded in Articles 11.2. and 23.1.5., insisting on the obligation of negotiation, and the content of the contract is outlined in article 24. ● Besides, the law clarifies that the model of this agreement has to be approved by the Central Governmental Administrative Organisation in charge of Urban Redevelopment (Article 8.1.7). This will be part of the seven regulations on which the Government is working (see above page 7). ● Article 22.1.4 recognises the rights of citizens involved to negotiate and enter into the tripartite agreement <p>Such specifications are important in terms of transparency of the selection procedure to the extent that the citizens involved in the project has to be part of the agreement and so, of its negotiation.</p>
	5.1-Supervisory board	A supervisory board, composed of representatives particular administrative, local government organisation, professional organisation, project implementation body, resident representative organisation, will be established by decision of the Governor in order to ensure the control and monitoring of the project implementation.	Articles 14.7.3 - 26	N/A
	5.2-Compensation and relocation	The compensation and relocation of the citizens who have to vacate the designated area will be ensured.	Articles 14.7.3	<p>Positive</p> <ul style="list-style-type: none"> ● The law (article 26.4.2) emphasises that the supervisory board has to organise an activity of assessment to define the amount of the compensation. <p>Negative</p> <ul style="list-style-type: none"> ● There is still no clear framework for the compensation and relocation process (See above step 4-1). However, the seven regulations on which the Government is working include the compensation issue.

PROCEDURE'S STEPS OF A REDEVELOPMENT PROJECT		DESCRIPTION	ARTICLES	RISK AND ASSUMPTION (BASED ON THE COMPARISON WITH THE DRAFT LAW)
	5.3-Construction	Approval of the design and implementation of the planned construction works.	Articles 14.7.3	<p>Positive</p> <ul style="list-style-type: none"> The approved law adds a provision (article 23.1.9) stating that in addition to comply with the article 24 of the urban development law, the project implementation body shall also comply with the article 15 of the Construction Law regarding the acceptance of the construction process. This is another protection against the potential misbehaviours of the project implementation body.
6-Project completion stage	6.1-Construction completion	Completion of the project according to the approved design	Articles 14.7.4	N/A
	6.2-Registration renewal	Renew and update the registration of ownership and possession rights of land/ property.	Articles 14.7.4	N/A
	6.3-Inspection and finalisation	Inspection of the accounting and contract execution, preparation of the final evaluation with the Supervisory body and finalisation of the project	Articles 14.7.4	N/A
7- Control of the project implementation	7.1-Control through the citizens participation	<p>The citizens involved in the project have the rights (through the Resident Representative Organisation) to control the project implementation by:</p> <ul style="list-style-type: none"> Requesting information on the project implementation process Asking the fulfilment of the contract Giving comments on the project implementation Submitting complaint about implementation procedure to the Supervisory body 	Articles 22.1.1 - 22.1.6 - 22.1.11 - 22.5	<p>Positive</p> <ul style="list-style-type: none"> In addition to this new list of citizens' rights to participate in the control of the project implementation granted by the approved law (see above step 3.3), the article 23.1.5 allows the citizens to evaluate the fulfilment of the contract with the other parties. This fosters the community participation and lead to a more democratic process. <p>Negative</p> <ul style="list-style-type: none"> The enforceability of these rights is uncertain (see above step 3.3)
	7.2-Monitoring carry out by the Supervisory body	<p>The role of the Supervisory body is to ensure the monitoring of the project implementation by:</p> <ul style="list-style-type: none"> Conducting an external control on the project implementation Discussing the proposal and complaints related to the project implementation Organising an assessment of the compensation Discussing the report sent by the project implementation body 	Articles 26.4 - 23.1.6	<p>Positive</p> <ul style="list-style-type: none"> The approved law (article 26.4.2) emphasises that the supervisory body has to organise an activity of assessment to define the amount of the compensation. <p>Negative</p> <ul style="list-style-type: none"> The proposition of purchase price of the lands is still the competence of the citizens, there is no changes regarding that in the approved law despite the fact that the citizens should also have the right to make an offer.

PROCEDURE'S STEPS OF A REDEVELOPMENT PROJECT		DESCRIPTION	ARTICLES	RISK AND ASSUMPTION (BASED ON THE COMPARISON WITH THE DRAFT LAW)
	7.3-Reinforced control through the Central Governmental Administrative Organisation in charge of Urban Redevelopment	The Central Governmental Administrative organisation in charge of Urban Redevelopment has to monitor the projects which has specific role in a social and economic development of the state and ensure the implementation of rules, guidelines and standards on urban redevelopment and coordinate and manage the redevelopment activities	Articles 8.1.4 - 8.1.5	<p>Positive</p> <ul style="list-style-type: none"> These competences of the Central Governmental Administrative Organisation in charge of Urban Redevelopment have been added by the approved law and are part of the seven regulations on which the Government is working (see above page 7). It constitutes a way to reinforce the control on the project and so limit the potential excesses of the project implementation body
	7.4-Obligations of the project implementation body	<ul style="list-style-type: none"> The project implementation body has to: Evaluate the fulfilment of the contract with the Governor and citizens involved Provide the stakeholders with required information Report the project implementation to the stakeholders Strictly enforce regulations on hygiene, safety and environmental protection 	Articles 23.1.5 - 23.1.6 - 23.1.7 - 23.1.8	<p>Positive</p> <ul style="list-style-type: none"> Most of these competences have been added or clarified by the approved law. It increases the participation of the citizens, encourage the transparency and limit the potential excesses of the project implementation body.
	7.5-Monitoring carries out by the Council of Aimag, Capital City, Soum and District	The Council has to monitor the project implementation and discuss the report of Governor regarding this implementation.	Article 10.1.3	N/A

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