Draft law on Foreign investment and some key provisions

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In Brief

The revision of the 2013 Law on Investment has been under discussion for quite some time. The Law on Investment is a key legal framework for investors, as it regulates matters such as investment protections, incentives, and the rights of foreign investors investing in Mongolia. Accordingly, this newsletter presents the key provisions outlined in the Draft Law on Foreign Investment (“**the Draft Law**”).

Main business-relevant changes

1. OVERVIEW OF THE DRAFT LAW

The Draft Law is proposed to be renamed the “Law on Foreign Investment,” distinguishing it from the 2013 Law on Investment. While most provisions of the Draft Law are relevant to foreign investors, the regulations on tax incentives are also applicable to domestic investors. The Draft Law is structured into six chapters and 26 articles, with each chapter addressing the following areas.

1st Chapter	General provisions
2nd Chapter	Powers and functions of government authorities in relation to investment
3rd Chapter	Investment protection
4th Chapter	Registration and incentives for investment
5th Chapter	Investor complaints and Investment dispute resolution procedures
6th Chapter	Miscellaneous

2. FOREIGN INVESTMENT

Compared to the current law, the Draft Law provides a significantly broader definition of foreign investment and foreign investor.

Main business-relevant changes (Cont'd)

Under the current law, investment is defined as **capital contributed to the equity of a legal entity established in Mongolia and recorded in its financial statements**. The Draft Law, however, adopts a more expansive definition, broadening the scope of both investment and investor to encompass a wider range of investment activities within the territory of Mongolia, as outlined below:

- Incorporate a foreign-invested legal entity
- Purchase shares and other securities
- Make a tangible investment in fixed assets
- Enter into PPPs, PSAs, marketing agreements, management agreements, and other agreements
- Invest through mergers and acquisitions
- Invest by commercializing intellectual property rights in accordance with applicable laws
- Provide convertible loans into the equity of a legal entity
- Invest through financial leasing and franchising arrangements
- Independent or joint implementation of new projects
- Any other legally permitted forms of investment that fall within the scope of the definition of investment

Foreign-Invested Legal Entities

The Draft Law eliminates the current legal requirement that mandates a minimum investment of USD 100,000, regardless of sector, for a foreign-invested legal entity registered in Mongolia. Instead, it grants the Government the authority to set different sector-specific minimum investment thresholds. The Draft Law also introduces a new compliance obligation for foreign investors and foreign-invested legal entities to report and register investment-related information in accordance with the requirements issued by the relevant government authority. This reporting obligation marks a notable addition to the regulatory framework, as it was not provided under the current law.

3. INVESTMENT INCENTIVES

There are no fundamental changes regarding non-tax incentives. While the main forms of tax incentives appear largely similar to those outlined in the 2013 Law on Investment, the several notable conceptual changes are made. Tax incentives are limited to the stabilization of the tax environment. This includes the stabilization of tax rates, depreciation and amortization periods, and the timeframe for carrying forward losses reported in tax filings. The Draft Law also eliminates the current provision granting zero-rated VAT treatment for the specified machineries and equipment.

Tax incentives

- Stabilization certificate
- Investment agreement
- Customs duty exemption

Non-tax incentives

- Visa and residence permit
- Foreign employee fee and permit etc.

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Main business-relevant changes (Cont'd)

Stabilization Certificate

In relation to the stabilization Certificate, the Draft Law introduces the following provisions:

- The stabilization certificate, which previously only regulated the stabilization of tax rates, has been expanded to stabilize the entire tax environment.
- The stabilization certificate may be granted for a period of up to 30 years.
- The Government shall approve the criteria for granting a stabilization certificate
- Mongolian legal entities and individuals are both eligible for a stabilization certificate.
- If the certificate holder engages in multiple types of activities, tax stabilization will apply only to the specific project or program for which the certificate was granted.

Investment Agreement

- Under the 2013 Law on Investment, investment agreements were concluded with investors whose investments exceeded MNT 500 billion. The Draft Law eliminates this threshold and instead authorizes the Government to decide on investment agreement requests based on criteria outlined in a regulation approved by the Government.
- Similar to a stabilization certificate, an investment agreement may stabilize 4 types of tax environment and may be concluded for a period of up to 30 years.
- The investment agreement shall provide for the granting of non-tax incentives.
- the Government shall approve the regulation on eligibility criteria for entering into an investment agreement, and monitoring based on the recommendations and conclusions of the Foreign Investment Council.

4. INVESTMENT PROTECTION

The provisions in the Draft Law concerning investment protection and guarantees for investors are generally consistent with those set out in the 2013 Law on Investment. Key changes in this aspect include the following:

- The Draft Law introduced a new provision to protect the business confidentiality of foreign investors and foreign-invested invested legal entities;
- If the terms of an agreement or stabilization certificate are modified in the interest of national or public policy, any resulting damages to the investor or the foreign-invested legal entity must be compensated in accordance with the law;
- It is prohibited to adopt any decision that would negatively affect the legal status of the investor.

5. OTHER CHANGES

In connection with the Draft Law, the following regulatory changes are also proposed in areas such as state oversight, investment reporting, and registration.

State inspections	Requirement on domestic investors	State registration
Except as otherwise provided by law, the number of scheduled inspections of a foreign investor's activities shall not exceed two per year	The requirement for legal entities to have a domestic shareholder, stipulated in laws such as the Law on Auditing, the Law on Valuation, and the Law on Water, will be removed.	The registration timeframe and stamp duty payment, which were previously set differently for foreign-invested legal entities, have been reduced to align with those applicable to domestic legal entities.

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