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AMENDMENTS TO THE LAW OF MONGOLIA ON INVESTMENT

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LEGAL ALERT: AMENDMENTS TO THE LAW OF MONGOLIA ON INVESTMENT

On the plenary session of the State Great Khural (the Parliament) dated October 7, 2021, the draft law on amending the Investment Law submitted by MP Kh.Gankhuyag was discussed and 51.9 percent of the members who participated at the plenary session voted in favor and transferred to the Standing Committee on Economic Affairs to prepare for the first discussion.

Preconditions for drafting the Law on amending the Investment Law

In the Article 5 of the Constitution of Mongolia, it is stated that Mongolia's economy is based on different forms of property following both universal trends of world economic development and national specifics, and the State regulates the economy of the country with a view to ensure the nation's economic security, the development of all modes of production, and social development of the population.

Mongolia first adopted the Law on Foreign Investment in 1993 as part of the objectives of encouraging foreign investment, protecting investor rights and property and regulating foreign investment-related relations. As a result, between 1990 and middle of 2012, about 12,118 foreign companies from 112 countries were registered and around \$14 billion foreign investment was made in Mongolia. Thereof, 74 percent of these investments were in geology and mining sectors, creating economic structure that is dependent on the mining sector alone and resulting low competitiveness, investment, and development in other industries.

Further, since the end of 2012, foreign investment has declined due to the global economic situation and the lack of domestic legal regulations supporting investment, the Parliament of Mongolia revised the Investment law in 2013, to protect the legal rights and interests of investors in the territory of Mongolia, establish a common guarantee on investment law, promote investment, stabilize the tax environment, and regulate other investment related relations that may determine the rights and responsibilities of government organizations and investors.

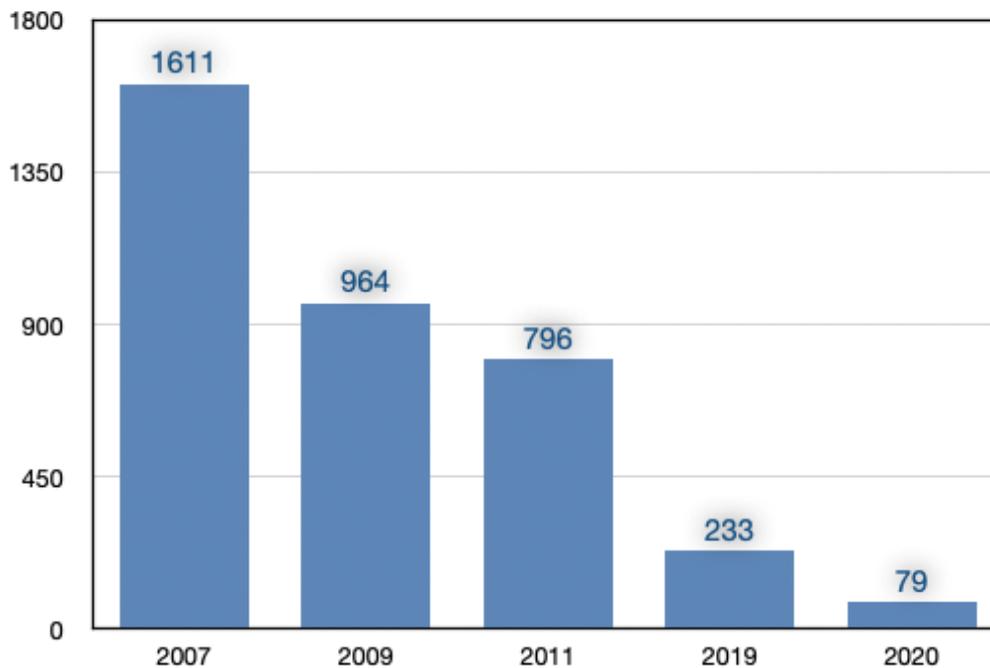
Within the current legal framework, minimum amount of investment is set for foreign investors. A foreign investor is required to choose its status as a business entity with foreign investment or a representative office prior to starting its business in Mongolia. Additionally, at least 25 percent of the foreign investment company must be owned by a foreign investor through an investment of no less than USD 100,000. The MP considered that the threshold is unnecessary for establishing a business entity with foreign investment. However, it is more suitable to specifically establish the minimum amount of investment in Mongolia in the case where an investor and their family apply for a residence permit.

The requirement for a minimum amount of foreign investment could be a challenge for investors who are interested in deciding whether to continue to increase the amount of investment after low initial investment. As for representative offices, they are not permitted to run business activities despite there being no restrictions regarding investment.

Mongolia is open to foreign direct investment at the regulatory level, yet it has received relatively low investment compared to other benchmark countries. Openness to investment alone is not enough to attract foreign direct investment and the challenges associated with the investment environment, governance and rule of law are decisive for the economic impact of private sector investment, including foreign investment. The barriers to initial investment describe the challenges of the investment environment in the country as a whole, including issues ranging from entrepreneurship to good governance and regulatory quality.

Foreign direct investment inflows into Mongolia reached \$ 2.5 billion in 2020 which is down percent from a year earlier. In terms of economic sector, mining, quarrying, wholesale and retail trade and other services account for the majority. The high level of foreign direct investment in 2011 and 2012 was due to signing of the Oyu Tolgoi agreement. In order to increase investor confidence, the Government has established an Investor Protection and Support Council under the Prime Minister of Mongolia, which allows investors to protect their rights and address issues to the Government. In 2017 Public-Private Consultative Committee was established. These structures have received and resolved a large number of investor complaints and grievances, which presumably restored investor confidence and increased investment. Mongolia has acceded to the Washington Convention on the Settlement of Investment Disputes to promote and protect investment and established Agreements on Mutual Protection and Promotion of Investments with 43 countries.

Numbers of entities with foreign investment registered in Mongolia



The MP Kh.Ganhuyag highlighted that 900-1500 companies with foreign investment used to be established in Mongolia every year before 2013, however, since then, this number has been decreased to 300-400. The reason for the decrease in the number of companies with foreign investment was due to the fact that the Investment Law (2013) sets a threshold of 100,000 USD. He also said that the temporary deposit of the 100,000 USD was one of the reasons why Mongolia was listed in the FATF's "grey list".

Based on the above-mentioned results, there is a need to improve the legal system aimed at strengthening investment protection guarantees and ensure its implementation. The MP believes that effective regulation aimed at protecting the interests of investors will play an important role in improving the investment environment and attracting quality investment. In addition, the satisfaction of successful investors in a country can be the most effective way to attract new foreign investors.

The draft amendment to the Investment law provides the following framework and scope. These include:

1. Revised the definition of a business entity with foreign investment, in view of the same treatment for both foreign and domestic investors.

2. Removed the minimum investment requirement of USD 100,000 for business entities with foreign investment, and added the investment requirement for the case where an investor and their family apply for a residence permit.
3. Developed the corresponding necessary amendments to be made in the Law on State Registration of Legal Entities.

Social, economic and legal consequences that may occur after the adoption of the draft law:

Amendments to the Investment Law will play an important role in supporting foreign investment, strengthening their safeguards, protecting the interests of investors, improving the investment environment, and attracting quality investment in the face of the worldwide Covid-19 pandemic. In principle, foreign and domestic investors will be able to engage in any type of economic activity on an equal footing in any form of legal entity.

How the draft law is consistent with the Constitution of Mongolia and other laws:

The Government of Mongolia has established "Double Taxation Agreement" with 29 countries, "General Trade and Economic Agreement" with 24 countries, and "Agreement on the Mutual Protection and Promotion of Investment" with 43 countries. By acceding to the Convention, Mongolia has certain obligations and responsibilities to the international community to support and protect foreign investment.

AMENDMENTS TO THE LAW OF MONGOLIA ON INVESTMENT	
Content of the Amendments	Description
Definition of term "A business entity with foreign investment"	To amend "A business entity with foreign investment" as a corporate income tax and other tax-paying business entity incorporated in accordance with the applicable legislation of Mongolia, that created at least two positions of employment and whose 25 percent of shares are owned by a foreign investor.
Non-tax incentive for investment	To amend as follows: <ul style="list-style-type: none"> - To provide multiple-entry visas to the foreign investors, who have made investment in Mongolia and their family members under the applicable laws of Mongolia; - To permit investors and their family apply for a residence permit upon investment

	in the amount 50,000 USD or more (or equivalent Mongolian tugriks or MNT) in Mongolia.
Entry into force of the law	This law shall become effective from the date of its adoption.

AMENDMENTS TO THE LAW ON STATE REGISTRATION OF LEGAL ENTITIES	
Content of the Amendments	Description
Article 16.2.4 of the Law on State Registration of Legal Entities	To amend "transfer monetary asset from a foreign country" as to "if monetary asset has been transferred from a foreign country".
Entry into force of the law	This law shall come into force on the effective date of the Law on amendments to the Investment Law.

Conclusion

Once the draft amendments to the Investment Law is passed by the Parliament of Mongolia, the minimum threshold of 100,000 USD for investment will no longer apply to foreign investors seeking to start business in Mongolia.

Source:

<https://legalinfo.mn/mn/detail/9491>- The Law on Investment

<http://forum.parliament.mn/projects/11153> - The "Draft amendments to the Investment Law"

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