With new law, Mongolia opens to investors

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The Great Hural, Mongolia's Parliament, has ratified a new investment law, already in effect since November 1, that dramatically alters the investment landscape in Mongolia.

"The new investment law is one of the first steps in reversing the current slowdown of Mongolia's economy and increasing the inflow of foreign direct investment," said Zandaakhuugiin Enkhbold, the Speaker of Parliament.

The Investment Law eliminates current restrictions on private foreign investment, narrows Mongolian government approval requirements for state-owned foreign investment, offers a simpler and more open investment process, establishes a new agency to assist with the process, and provides an array of investment incentives.

A more open landscape

Under the Investment Law, any domestic or foreign investor may invest in any industry or sector without any limitation or government approval, except that any foreign state owned enterprise (SOE) investing in more than 33 percent of an entity in the minerals, communication or financial sectors must obtain approval from the newly established Invest Mongolia Agency. A foreign SOE is defined as an entity of which a foreign sovereign state owns directly or indirectly more than 50 percent.

The Investment Law eliminates the much broader restrictions on private foreign investment in the minerals, communication and financial sectors that previously existed, removes Parliament from the approval process where foreign SOEs are involved, and ends the distinction between foreign and domestic investors.

In addition, any investment tax stabilization agreements made prior to the effective date of the Investment Law will still be valid, and approval by the Invest Mongolia Agency will not apply to changes to share structure of entities in which a foreign SOE already owned a 75 percent or more interest.

Foreign entities doing business in Mongolia

The Investment Law requires that a foreign entity must either be registered as an entity with foreign investment (EFI) or as a representative office to conduct any activity in Mongolia. An EFI is defined as an entity that is incorporated in Mongolia and of which at least 25 percent is owned by a foreign investor whose minimum contribution to the entity is US$100,000. A representative office is defined as an entity that is incorporated in Mongolia solely to operate as a representative office of the foreign entity – it does not have the status to receive revenue from business activity in Mongolia.

All domestic and foreign shareholders of Mongolian corporate entities are required to register with the State Registry in accordance with the relevant laws of Mongolia. The Registration of Legal Entities Law sets out the registration requirements for an EFI, which include submitting an application with by-laws and bank statements and identifying investors. In addition, the Invest Mongolia Agency has the authority to obtain information regarding investors from all relevant government agencies.

Implications for foreign investment: some examples

Some specific examples are useful for appreciating the application of the Investment Law. For example:

- Ownership by a foreign SOE (which includes any foreign company which is more than 50 percent owned by a foreign sovereign state directly or indirectly) of 30 percent of a Mongolian company in the minerals, communication or financial sectors will not require Invest Mongolia Agency approval; however, the Mongolian company is an EFI since it is at least 25 percent foreign owned.
- In the example above, if the percent ownership is 34 percent, then Invest Mongolia Agency approval will be required, but if the sector is not minerals, communication or financial, then Invest Mongolia Agency approval will not be required. If the percent ownership is less than 25 percent, then the Mongolian company will not be considered an EFI; however, the names of investors will still need to be registered with the State Registry.
- A private, foreign individual or company may acquire 100 percent ownership of a Mongolian company with assets in any sector, including minerals, communication or financial, without Invest Mongolia Agency approval. The Mongolian company in this example would be an EFI.

Invest Mongolia Agency – implementing the law, assisting investors

The Investment Law establishes the Invest Mongolia Agency to implement the Investment Law, to issue tax stabilization certificates (Stabilization Certificates) to investors and to make determinations about investments by foreign SOEs. In addition, the Invest Mongolia Agency is mandated to assist investors in planning their investments and to protect investors' interests and rights.

Even though the Invest Mongolia Agency issues the Stabilization Certificates, the ultimate authority to approve such issuance will be a council appointed by the Minister of Economic Development.

When reviewing the application of a foreign SOE for an investment in Mongolia, the Invest Mongolia Agency is required to take into consideration whether the investment is in conflict with national security interests, adversely impacts government revenue or constrains competition.

Stabilization certificates provide certainty on tax rates

Stabilization Certificates provide investors with certainty as to tax rates for a specified period and are issued based on the sector involved and the amount and location of the investment in Mongolia.

The first table below illustrates the scope of Stabilization Certificates for the minerals, heavy industry and infrastructure development sectors (the Investment Law excludes investments in the atomic energy sector, which is governed by the Atomic Energy Law). The second table covers all other sectors.

MINERALS, HEAVY INDUSTRY OR INFRASTRUCTURE DEVELOPMENT SECTOR

Investment Value (MNT in billions)	**Stabilization Timeframe (years)**					**Invest the Amount within (years)**
	Ulaanbaatar	**Central Region**	**Midwest Region**	**Eastern Region**	**Western Region**	
30-100	5	6	6	7	8	2
100-300	8	9	9	10	11	3
300-500	10	11	11	12	13	4

Investment Value (MNT in billions)	Stabilization Timeframe (years)					Invest the Amount within (years)
	Ulaanbaatar	Central Region	Midwest Region	Eastern Region	Western Region	
500 and more	15	16	16	17	18	5

OTHER SECTORS

Investment Value (MNT in billions)					Stabilization Timeframe (years)	Invest the Amount within (years)
Ulaanbaatar	Central Region	Midwest Region	Eastern Region	Western Region		
10-30	5-15	4-12	3-10	2-8	5	2
30-100	15-50	12-40	10-30	8-25	8	3
100-200	50-100	40-80	30-60	25-50	10	4
200 and more	100 and more	80 and more	60 and more	50 and more	15	5

The Invest Mongolia Agency may extend the time period within which the investment must be made by two years, upon an investor's request. Furthermore, the duration of the Stabilization Certificate may be extended by 1.5 times the period identified in the above tables, if:

- the investment project plans to produce or manufacture goods for import or export that will contribute to Mongolia's long term sustainable social and economic development. In addition, the planned investment value, based upon a feasibility study, must exceed MNT 500 billion and the project development must be expected to last for more than 3 years.
- the investment project produces value added goods for export.

Investors holding Stabilization Certificates have the right to enjoy any new laws or regulations which contain tax rates that are more beneficial than those specified in the Stabilization Certificate. The taxes and other levies that are subject to stabilization are corporate income taxes, customs duties, value added taxes and mineral royalties.

If the value of an investment exceeds MNT 10 billion, then a feasibility study must be provided, and if the value of an investment is less than MNT 10 billion, then only a business plan must be provided.

Enter into an investment agreement with the Government of Mongolia

The Investment Law provides any entity whose investment will exceed MNT 500 billion with an option to enter into an investment agreement with the Government of Mongolia. An investment agreement may stipulate a longer stabilization period than the set timeframes under the Investment Law. The investment agreement may include all the legal protections stipulated in the Investment Law, as well as other tax stabilization terms and financial incentives.

Investors may enjoy additional incentives

The Investment Law also provides that investors in Mongolia may enjoy a variety of other tax and non-tax benefits from the Government of Mongolia.

Tax benefits may include exemption from taxes, preferential tax treatments, accelerated depreciation and amortization that is deductible from taxable income, carrying forward of losses, and deduction of employee training expenses from taxable income.

Non-tax benefits may include land lease rights, residential permits for international investors and their families, expedited registration process if the investment involves a free economic zone or industrial complex, and financial pledges to investment projects involving innovative technology.

In addition, equipment imported for construction purposes may be exempt from custom duties and value added taxes.

Clarifying regulations to come

It is expected that the Ministry of Economic Development will issue regulations clarifying various aspects of the Investment Law.

To find out more about investing in Mongolia under the new Investment Law, please contact Stewart Diana.

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