

## COMPREHENSIVE INTRODUCTION TO THE DRAFT LAW ON FOREIGN INVESTMENT

The Draft Law on Foreign Investment, the implementing laws, and the resolutions have been developed in alignment with the Concept of the Draft Law and the requirements set forth in the Law on Legislative Frameworks, incorporating feedback received from the public into the drafting process.

I. The Draft Law on Foreign Investment has been formulated to consist of five chapters and 25 articles.

№	Chapter	Article	Overview
1	<b>Chapter 1 General Provisions</b>	Article 1. Objectives of the Law Article 2. Legislation on Foreign Investment Article 3. Scope of the Law Article 4. Terminology of the Law Article 5. Policies and Principles for Foreign Investment Article 6. Scope of Foreign Investment Activities Article 7. Rights and Obligations of Foreign Investors	<p>1. The draft law is titled the "Law on Foreign Investment" The title reflects international best practices and considers the necessity of establishing a detailed legal framework to regulate foreign investment participation and legal relations in support of the country's economic development.</p> <p>Most developing countries have laws on foreign direct investment (FDI). A comparative study by the United Nations Conference on Trade and Development (UNCTAD) found that at least 108 countries have investment-specific laws, 58% (64 countries) of which regulate both foreign and domestic investments, while the rest focus solely on foreign investment. Asian countries typically adopt foreign investment-specific laws, whereas most African countries implement general investment laws.</p> <p>2. The General Provisions chapter defines the objectives of the law, terminology, investment policies and principles, scope, and the rights and obligations of foreign investors.</p> <p>-The objectives of the Draft Law are defined based on the analysis of 124 investment laws in the United Nations Conference on Trade and Development's (UNCTAD) Investment Policy Database, recommendations from international organizations, and feedback on the draft law. These objectives include supporting Mongolia's economic growth through foreign direct investment, protecting the rights and lawful interests of foreign investors within Mongolia, encouraging and facilitating foreign investment, and regulating relations related to investment management.</p> <p>3. The scope of the Draft Law is defined to apply to foreign investments made within the territory of Mongolia.</p> <p>4. The Draft Law incorporates terms such as foreign investment, foreign investor, indirect investment, and investment management.</p>

			<p>-The term "investment promote" has been defined in accordance with its internationally accepted context.</p> <p>-The concept of "Pre-established National Conditions" ensures that the conditions granted to foreign investors are not less favorable than those provided to domestic investors. The "Restriction List" framework stipulates the implementation of specific administrative measures for foreign investments in designated sectors.</p> <p>5. To ensure a stable and open foreign investment environment, promote accountability in government policies and operations, and reflect internationally recognized standards and practices, an Article titled "Policies and Principles on Foreign Investment" has been included. This Article emphasizes the adoption of an open and favorable foreign investment policy, establishing a stable, transparent, predictable, and balanced environment. It further stipulates that any amendments or enactments to foreign investment legislation require the mandatory attendance of Members of Parliament.</p> <p>6. The Restriction List for foreign investment will be approved by Parliament based on a proposal submitted by the Government. The draft law stipulates that foreign investments not included in the Restriction List will be subject to national treatment.</p> <p>7. The government shall protect the property, income, rights, and lawful interests of foreign investors.</p>
<p>2</p>	<p><b>Chapter 2. Foreign Investment Promotion</b></p>	<p>Article 8. Government Duties to Promote Investment Article 9. Duties of the National Council for Foreign Investment and Foreign Trade Article 10. Services Provided by the Government Authority by the State Administrative Agency for Foreign Investment and Foreign Trade</p>	<p>The chapter titled "Foreign Investment Promotion" defines the policies for foreign investment, the support measures, and the duties of the State Administrative Agency and the Council.</p> <p>8.The forms of support include applying national production support policies equally to foreign investors, granting preferential incentives within the framework of policies promoting foreign investment in specific sectors, incorporating feedback on foreign investment-related draft laws and resolutions, and establishing a system for providing services.</p> <p>9. The State Administrative Agency responsible for foreign investment is tasked with developing a comprehensive action plan to promote investment, providing information and consultation to investors, supporting the protection of investors' lawful rights and interests, offering a one-stop electronic service for foreign trade and investment matters, and</p>

			<p>maintaining a database on foreign investment and trade.</p> <p>10. The Foreign Investment and Foreign Trade Council will be established by the Government and consist of nine members, including representatives from the government and independent members. The Council will be chaired by the Government member responsible for foreign investment and foreign trade, while independent members will be selected and appointed through an open selection process.</p> <p>The Council's duties include providing feedback on draft laws and regulations related to foreign investment and trade, submitting recommendations to the Government on trade liberalization, facilitation, and customs tariff policies, fostering temporary public-private partnerships, and reviewing and resolving complaints from foreign investors.</p>
3	<b>Chapter 3. Investment Protections</b>	<p>Article 11. Guarantee of Property for Foreign Investors</p> <p>Article 12. Guarantees for the Operations of Foreign Investors</p>	<p>The chapter Investment Protections establishes regulations to ensure the property and operational guarantees for foreign investors, as follows:</p> <p>11. Foreign investors are protected from the unlawful expropriation of their property. Expropriation is only permitted under conditions specified by law, based on public interest, and must include compensation. Investors are also guaranteed the right to transfer their income and profits abroad.</p> <p>12. The government prohibits any unlawful restrictions or regulations on the activities of foreign investors. For instance, except where legally restricted, interference in operations, imposition of additional obligations, or establishment of conditions for market entry or exit is not allowed. The government is obligated to fulfill its commitments under laws and agreements. If contractual amendments are required due to public interest, compensation for incurred damages must be ensured, and investors are granted the right to resolve complaints in accordance with the law.</p>
4	<b>Chapter 4. Investment Management and Incentives</b>	<p>Article 13. Registration and Approval of Foreign Investment Activities</p> <p>Article 14. Thresholds and Shares for Foreign Investors</p> <p>Article 15. Investment Incentives</p> <p>Article 16. Non-Tax Incentives for Foreign Investment</p> <p>Article 17. Tax Stabilization Incentives</p>	<p>The chapter "Investment Management and Incentives" outlines the government's oversight, regulation, and restrictions on foreign investment activities, as well as compliance requirements for entities with foreign investment under Mongolian legislation.</p> <p>13. Foreign investors are subject to the same licensing procedures as domestic investors. Foreign investment projects must comply with the legal requirements for certification and registration. Investments that may affect or</p>

		<p>Article 18. Conditions for Issuing Stabilization Certificates</p> <p>Article 19. Investment Agreements</p> <p>Article 20. Conclusion of Investment Agreements</p>	<p>pose a risk to national security are subject to security reviews.</p> <p>14. The management, operational structure, and organizational arrangements of foreign-invested entities must comply with the Company Law. Additionally, entities must fulfill duties stipulated in laws related to taxation, finance, reporting, labor, and social protection.</p> <p>15. The shareholding and minimum ownership percentage of foreign investors in entities with foreign investment shall be determined by the Government based on the specifics of the sector.</p> <p>16. The framework for incentives granted to investors includes both tax and non-tax incentives, as well as the conditions and procedures for concluding investment agreements. The sectors for attracting foreign investment will be approved by the State Great Khural.</p> <p>17. Non-tax incentives include exemptions or reductions related to labor permits, workplace fees, state registration requirements, and residence permits, among others.</p> <ul style="list-style-type: none"> <li>• Stabilization incentives, such as stabilizing tax rates, are provided through the issuance of Stabilization Certificates or the conclusion of investment agreements. The current legal provisions for stabilizing four types of taxes remain unchanged.</li> <li>• If tax rates are reduced during the validity period of the Stabilization Certificate, the reduced rates will apply.</li> <li>• Stabilization Certificates can be issued for up to 30 years, and the conditions and procedures for their issuance will be approved by the Government.</li> </ul> <p>18. The Government shall approve the procedures related to submitting requests, conducting negotiations, meeting requirements, concluding agreements, and overseeing compliance with investment agreements. The agreements may be concluded for a period of up to 30 years.</p>
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<p>5</p>	<p><b>Chapter 5. Supplementary Provisions</b></p>	<p>Article 21. Submission and Handling of Complaints by Foreign Investors                  Article 22. Disputes Related to Foreign Investment                  Article 23. Liability for Violations                  Article 24. Transitional Provisions                  Article 25. Effective Date of the Law</p>	<p>The chapter titled “Supplementary Provisions” includes provisions for resolving complaints and disputes from investors, imposing liability on those who violate the law, and ensuring compliance with the law.</p> <p>19. If a foreign investor believes their rights or interests have been violated, they may submit a complaint to the Foreign Investment and Foreign Trade Council.</p> <ul style="list-style-type: none"> <li>• The Council shall issue a decision, provide directives to the relevant government agency, and the implementation of its decisions shall be reviewed and discussed by the Council and the Government as necessary.</li> <li>• The Government is responsible for approving the procedures for the Council to receive, review, and resolve complaints.</li> </ul> <p>20. Provisions are included to regulate investment disputes between foreign investors and government agencies, as well as disputes between foreign investors and individuals or legal entities.                  Disputes between the government and foreign investors shall be resolved through negotiations, and if unresolved, they shall be referred to international arbitration for resolution.</p> <p>21. Provisions are included for imposing liability on individuals and legal entities that violate the law, as well as for stipulating the effective date of the law.                  The law provides regulations on how the rights and interests of entities that obtained stabilization certificates or concluded investment agreements under the previous law will be addressed after the new law takes effect.</p>
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II. The draft law proposes amendments to 17 laws, the repeal of one law, and the preparation of one draft resolution of the State Great Khural. These include:

1. On Repealing a Law

The Law on Investment, approved by the State Great Khural on October 3, 2013, will be repealed.

2. Amendments and Additions to the Law on State Registration of Legal Entities

Amendments will simplify the registration process for legal entities with foreign investment, ensuring the registration period is the same as for domestic investors and removing the requirement for certain unnecessary documents.

3. Amendments to the Law on State Stamp Duty

The stamp duty for registering legal entities with foreign investment in the state registry will be adjusted to align with the fees applicable to domestic investors.

4. Amendments to the Law on Nuclear Energy

The provision allowing the conclusion of investment agreements with business entities engaged in activities requiring special licenses issued by the Nuclear Energy Commission will be repealed.

5. Amendments to the Law on State Oversight and Inspections

Relevant amendments will be introduced to the Law on State Oversight and Inspections to align with the provision in the draft law that limits scheduled inspections of legal entities with foreign investment to no more than twice a year.

6. Amendments and Additions to the Law on the Legal Status of Foreign Nationals

The amendments will ensure that residence permits for foreign investor individuals are issued based on the investment information database without requiring duplicate documentation.

7. Amendments to the Law on Violations

The fines imposed on foreign nationals and stateless persons for violating travel regulations or overstaying their visas will be increased.

8. Amendments to the Law on Auditing

The provision requiring that at least one-third of the shares in auditing companies established by foreign legal entities be owned by Mongolian citizens and certified accountants will be repealed.

9. Amendments to the Law on Asset Valuation

The requirement that at least one-third of the shares in asset valuation companies established by foreign entities be owned by Mongolian citizens who are certified appraisers, as well as the requirement that at least two-thirds of the shares in asset valuation companies be owned by individuals holding valuation licenses, will be repealed.

10. Amendments to the Law on Environmental Impact Assessment

The provision stipulating that detailed environmental impact assessment licenses be issued only to Mongolian business entities will be amended to allow issuance to legal entities in general.

11. Amendments to the Law on Water

The provision restricting the rights to conduct water resource exploration and research to business entities with domestic investment will be repealed.

12. Amendments to the Law on Natural Plants

The provision limiting the right to cultivate and use rare and common natural plants for pharmaceutical purposes exclusively to domestic business entities will be repealed.

13. Amendments to the Law on Customs Tariffs and Customs Duties

Investors in major national projects and activities may benefit from deferred payment or installment options for customs duties. This amendment will define the specific sectors eligible for these benefits.

14. Amendments to the Law on the Legal Status of the Capital City Ulaanbaatar

Legal and technical amendments will be made to reflect changes in citation numbers.

15. Amendments to the Law on Value-Added Tax

A provision will be added stipulating that holders of Stabilization Certificates shall pay taxes at the stabilized rates for the duration of the certificate's validity.

16. Amendments to the Law on Construction

The requirement for legal entities with foreign investment to attach a certificate issued by the competent authority of their home country when applying for a special permit to conduct construction activities will be repealed.

17. Amendments to the Law on Permits

The provision requiring approval for foreign state-owned legal entities to acquire 33% or more of the shares of domestic business entities operating in mining, banking, finance, media, and telecommunications will be repealed.

18. Amendments to the Law on Investment Banks

The provision requiring approval for foreign state-owned legal entities to establish investment banks or acquire shares in them will be repealed.

19. Draft Resolution of the State Great Khural on Ensuring the Implementation of the Law

The resolution will instruct the Government to take measures in several areas related to protecting the rights and interests of investors. These measures include organizing compensation for expropriated investor property, soliciting input from all parties on decisions affecting investor interests, and incorporating compensation into the state budget for resolution.