

# Recent and Upcoming Legal Developments

## Past, Present and Future of Mongolian Legislation

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# Overview

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Investment Law	Prime Minister	Autumn Session
Security Markets Law	MPP and DP Coalition Government	Agenda
Custodian Regulations	New Government Structure, Members	Measures Moving Forward
Glass Accounts Law		
Petroleum Law		
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# Past Legislation:

## Law of Mongolia on Investment

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- Passed by Parliament on 3 October 2013
- Published in State Gazette on 1 November
- Effective from 1 November 2013
- Necessitates ancillary amendments to 9 other laws

# Investment Law: Overview

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- Replaces Foreign Investment Law of 2003
- Repeals the Strategic Foreign Investment Law of 2012
- Framework for regulation of both foreign and domestic investment
- No government approval requirements for foreign private investment
- Maintains an approval regime for foreign state-owned entity investment in strategic sectors (mining, banking finance, media and telecommunications)
- Provides legal guarantees to protect investment and introduces tax and non-tax incentives for investment
- Originally designated the Ministry of Economic Development ("**MED**") as the overall approval authority, however the MED has been abolished and its responsibilities will be divided between other ministries/agencies.

# Investment Law: Key provisions

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- Definition of a foreign-invested entity: incorporated in accordance with the laws of Mongolia; foreign investor(s) hold(s) a 25% or more interest; and the capital contributions made by each foreign investor (shareholder) exceeds US\$ 100,000.
- The form of investment may be incorporation of a Mongolian incorporated entity, purchase of securities, merger of companies, entry into of concession, production sharing, marketing or management agreements, or franchise or financial leasing agreements.
- Tax Stabilisation: Certificate will cover corporate income tax, customs duties, VAT and royalties (not withholding tax)
- Other incentives include: extended land use right, increased foreign worker quota, and immigration benefits.
- Amendments to the law require the approval of 66 per cent of parliament members.

# Past Legislation:

## Law of Mongolia on Security Markets Law

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- Passed by Parliament on 24 May 2013
- Published on State Gazette on 24 June 2013
- Effective from 1 January 2014
- Supporting amendments to several laws, including laws on advertisements, corporate and personal income taxes, licensing and the legal status of the Financial Regulatory Commission ("**FRC**")

# Security Markets Law: Overview

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- The FRC has the authority to issue implementing regulations applicable to listed companies as well as securities market participants.
- Currently, there are over 300 listed companies on the Mongolian Stock Exchange ("**MSE**"), however market capitalisation and liquidity is minimal.
- The Revised Securities Market Law is a welcome framework for future regulation at an international standard.

# Security Markets Law: Key provisions

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- Provision for financial instruments, options, futures, convertible securities, derivatives and depository receipts
- A distinction between nominal and beneficial ownership of securities
- The possibility for dual-listing by Mongolian-listed companies and secondary listing of foreign companies on the MSE
- Detailed regulations on IPOs and issuers to ensure transparency
- Creation of a dispute resolution body within the FRC
- Enhanced regime for sanctioning insider trading and market abuse



# Past Legislation: Regulations on Custodial Licensing and Operations

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- Passed by the head of the FRC and the President of the Bank of Mongolia (the "**BoM**") on 3 July 2014.
- The Regulations on Custodial Licensing and Operations (the "**Custodial Regulations**") were much-awaited after the adoption Security Markets Law, which introduced the concept of custodian services to Mongolian capital markets and provides a basic regulatory framework for the same.

# Custodial Regulations: Overview

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- Custodial services: services related to the deposit of securities and the exercise of ownership rights therein.
- Regulates the issuance, suspension, extension and revocation of custodian service licences and set out the requirements to be observed when conducting custodian services.
- Only banks, their controlled or subsidiary companies, or the central securities depository (the "**Permitted Entities**") may conduct custodial services.

# Custodial Regulation: Key provisions

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- Permitted Entities are required to satisfy a number of requirements to obtain custodial service licence.
- A legal entity licensed to conduct custodial services (the "**Custodian**") will conduct activities agreed with client required activities by the FRC.
- The Custodians shall undertake a crosscheck of the assets in client accounts on weekly basis in cooperation with the central securities depository.
- Clients outside of Mongolia can also receive services
- Custodians are required to undertake 'know your client' activities in accordance with the relevant regulations.
- The FRC may suspend a custodial service licence following a breach of the regulations.

# Past Legislation:

## Law of Mongolia on Glass Accounts

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- Passed by Parliament on 1 July 2014.
- Published on State Gazette on 10 July 2014
- Effective from 1 January 2015

# Glass Accounts Law: Overview

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- It followed the Anti-Corruption Law and the Conflict of Interest Law with a view to reduce and prevent corruption.
- The main objective is to ensure the efficient and proper use of state and local government funds, the transparency of decisions and actions concerning budget management and public overview of the same.
- Implementation shall be monitored by Citizen's Representative Meetings and the state auditing authority.

# Glass Accounts Law: Key provisions

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- This Law is applicable to a number of parties and certain types of budgets/financial activities.
- Relevant entities must provide information in relation to their accounts on their websites.
- Information on certain Government decisions must be made public within a week of such decision:
  - tender evaluation and selection process
  - details of procured goods, work and services with a value of more than MNT 5 million (approximately US\$ 2,700)
  - the entry into of any bonds, loans, debentures, guarantees and other forms of financial indebtedness, public and private partnership agreements, concessions

# Past Legislation:

## Law of Mongolia on Petroleum

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- Passed by Parliament on 1 July 2014.
- Published on State Gazette, issue no. 26 in 2014
- Effective from 1 July 2014

# Petroleum Law: Overview

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- New Petroleum Law sets out a comprehensive legal framework for the petroleum sector - the former petroleum law enacted in 1991 had been criticized as being out of date.
- Provides two types of petroleum:
  - Oil (crude oil and gas);
  - Unconventional oil (oil sands, oil shale etc.)
- Provides three main petroleum activities:
  - Prospecting
  - Exploration (needs licence)
  - Extraction (needs licence)
- The Ministry of Mining and the Petroleum Authority of Mongolia ("**PAM**") are the two primary regulators for the petroleum sector.



# Past Legislation:

## Amendments to the Minerals Law

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- *Law on Amending the Minerals Law* adopted on 1 July 2014
- Several minor amendments were made in 2014
  - preferential royalty rate for gold (10 → 2.5%)
- Introduced 13 new provisions and altered a number of existing provisions
- Effective from 1 July 2014

# Minerals Law Amendment: Overview

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- New stakeholders, but MRAM remains the main regulator of the sector.
  - Policy Council (ad hoc)
  - National Geological Office
  - Technical experts and specialists
- The repeal of the moratorium on granting exploration licences.
- Extension of the exploration licence term (up to 12 years).
- Exploration licence area is reduced from 400,000 to 150,000 hectares.
- Other obligations on licence holders in respect of reporting and conducting business activities, such as giving priority to Mongolian entities when selling its products.

# Present: Mongolian Government Status Quo

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The 28<sup>th</sup> Prime Minister  
of Mongolia  
Ch. Sakhainbileg  
(Democratic Party)

- Education:
  - Moscow State University for Humanities (History)
  - National University of Mongolia (LL.B.)
  - George Washington University (LL.M.).
  - speaks English and Russian.
- Political office:
  - 1998-1999 Minister of Education
  - 2004-2008 Director at Information, Telecommunications and Technology Authority
  - 2004 Director at the Government's News and Media Department
  - 2008-2012 MP; leader of the Democratic caucus in parliament.
  - 2012-2014 Minister of the Cabinet Office

# MPP and DP Coalition Government

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- The Mongolian People's Party ("**MPP**") has accepted the ruling Democratic Party's ("**DP**") invitation for a coalition government.
- This is widely regarded as a welcome step for a stable and effective government.
  - Mongolian tugrug strengthened against the USD after this news.
- The new Government is also known as the "Solutions Government", and the main agenda is to revive the economy and follow through with major projects.

# New Government Structure and Nominated Ministers

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1. Minister for Environment and Tourism, D. Oyunkhorol (MPP)
2. Minister for Foreign Affairs, L. Purevsuren (DP)
3. Minister for Finance, J. Erdenebat (MPP)
4. Minister for Justice, D. Dorligojaw (DP)
5. Minister for Industry, D. Erdenebat (DP)
6. Minister for Defence, Ts. Tsolomon ("Justice" coalition)
7. Minister for Construction and Urban Development, D. Tsogtbaatar (MPP)
8. Minister for Education, Culture and Science, L. Gantumur (DP)
9. Minister for Roads and Transportation, N. Tumurkhuu (MPP)
10. Minister for Mining, P. Jigjid (DP)
11. Minister for Labour, S. Chinzorig (MPP)
12. Minister for Human Development, Social Security, S. Erdene (DP)
13. Minister for Agriculture, P. Burmaa (DP)
14. Minister for Energy, D. Zoirt (DP)
15. Minister for Health and Sports, G. Shilegdamba ("Justice" coalition)
16. Minister without Portfolio, M. Enkhsaikhan ("Justice" coalition)

\*All nominated ministers must be voted into office by Parliament this week.

# New Government Structure

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- The Cabinet Secretariat on 27 November appointed new heads of the following agencies/departments:
  - General Intelligence Agency (B. Khurts);
  - General Police Department (R. Chingis); and
  - General Taxation Department (B. Ariunsan).

# Future: Autumn Session Agenda

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- On 22 September 2014, the Parliament speaker adopted Order #147 which approved those matters which will be discussed at the autumn session of Parliament.
- Below is a sample of the agenda:
  - Law on the Ratification of the Agreement on Transparency in Matters Related to International Trade and Investment between the United States of America and Mongolia;
  - Law on Trade;
  - Law on Amendments to the Tax Laws;
  - Law on Pledges of Movable Property and Intangible Assets;
  - Resolution on the Approval of the Long Term Development Policy of Mongolia;
  - Law on Inspections;
  - Law on Amendments to the Minerals Law;
  - Law on the State Registration of Legal Entities;

For full list please see our client alert "Legislative Agenda for the Autumn Session of the Mongolian Parliament." Hogan Lovells, 26 September 2014

# Overview: Law on the Pledge of Movable Properties and Intangible Assets

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- Access to finance is one of the major challenges faced by many Mongolian businesses.
- Mongolia lacks clear legal framework and registration regime for taking security over movable assets such as:
  - equipment, machinery;
  - certain types of intellectual property rights, and
  - shares or securities in unlisted Mongolian companies.
- Reforms in this sector should improve access to finance by enabling lenders to take a broader range of collateral as security.



# Overview: Law on the State Registration of Legal Entities

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- Improvements were made to the process for incorporating companies by foreign investors in Mongolia by the passage of the Investment Law in November 2013
- Amendments this time will introduce an online registration process:
  - for incorporation of legal entities; and
  - registration of subsequent changes in the registered details of a legal entity
- Provisions on services to be provided by the Legal Entities Registration Office.
- The amendment will hopefully make the registration process and other related services more efficient and increase the level of transparency and openness of the state register.

# Measures Moving Forward

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- Given the current economic climate, the PM has requested the State Specialised Inspection Agency cease its inspections of private entities until the Law on Inspections is approved.
- The PM has also requested the Tax Authority of Mongolia ensure the speedy transition to an online system and submit proposal on reforming the tax inspectors' bonus schemes.
- State Investment Fund to established in collaboration with Development Bank of Mongolia and JP Morgan.
- Mongolia will host 14 international sports events in 2015.

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