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## FALL SESSION AGENDA

It's always an exciting moment for lawyers when the Parliamentary agenda for the next session is published and there are some interesting legislative developments pencilled in for discussion during the fall session of Parliament. While this time is typically dominated by debates around the state budget, a number of other interesting points are worth highlighting.

### Tax

The long-awaited amendments to last year's imposition of a 30 per cent tax on indirect transfers of rights over mineral licences and interests in land is scheduled for discussion. [In previous articles](#), I have suggested that this has been the government's SEFIL 2.0, seriously impacting on foreign investment, especially in the mining sector. Almost every major investment transaction that we have advised on in 2018 has required careful consideration of the impact of the amendments made last year to the tax laws, increasing costs for foreign investors and making them highly cautious of investing into Mongolia. For example, the inclusion, or the risk of inclusion, of exploration costs, which may yield no results in terms of moving an asset forward, in the overall valuation of an exploration or mining licence, results in a prohibitive additional cost which no serious investor would be prepared to consider.

*“ Moreover, most businesses looking for investment have land rights of one kind or another, particularly where the energy sector is concerned. As the law currently operates, the acquisition of a company holding land*

*rights would result in a tax charge to the target company holding the land at 30% of the value of the land based on the sale price of the company, regardless of its other assets or business.* ”

While it is difficult to put a number on the impact, I would estimate the reduction in FDI inflows as a result of this legislation to be something in the region of USD 500 million and would doubt that overall it has resulted in a tax revenue windfall.

Business associations have been actively lobbying the government to reverse the legislation entirely, but the likely outcome will be a reduction in the tax rate of 30 per cent to 10 per cent. With other markets offering tax incentives to invest in their jurisdictions, an additional tax of 10 per cent remains difficult for some investors to consider.

We can only hope that there will be no late surprises to the tax laws during the budget discussions this time around.

### Labour Law

Proposed amendments to the labour law have been on the cards for many years. The last attempt to introduce amendments to the law was in 2016, but that ended in controversy. Among the key issues with the previous draft was a proposal to compensate workers for their time spent travelling to work. For large mining companies, such as OT, which operate on a roster basis at their site, this would have a big impact – driving to OT from Ulaanbaatar can be up to 8 hours and taking a flight probably four hours ►►

- ▶ overall. Aside from mining companies at site, given the horrific traffic in Ulaanbaatar itself this becomes potentially a significant issue for employers.

### Investment Banking Law

Another important piece of legislation for discussion could be a new Investment Banking Law. Several international banks have been trying to break into the Mongolian market and obtain a full banking licence. The Investment Banking Law represents a compromise in terms of allowing foreign banks to enter the market in a limited way, focused on high profile transactions with restrictions on the type of lending that can be made. Investment banks would effectively be prohibited from competing with local banks in terms of opening accounts for retail customers.

The draft law previously circulated sets out key activities of investment banks, including investment advisory services, underwriting, brokering for clients in stock investments, limited long-term and short-term lending, issuing guarantees, certain fund management activities, M&A activity and consultancy services, buying and selling securities, loans and other financial instruments, and engaging in other

financial services permitted by the BoM. Early drafts were criticized by foreign banks already operating in or aware of the Mongolian market, due to a proposed minimum share capital requirement of MNT 200 billion (USD 80 million) and a limitation on lending of a minimum of MNT 100 billion (USD 40 million). While the latter requirement appears to have been removed from the latest drafts, it will be interesting to observe the discussions around this law and whether foreign banks may be interested to enter into the market in a limited way.

### Other

Among other interesting laws slated for discussion is a Law on Promotion of Small and Medium-sized Enterprises, which I expect will focus on potential tax incentives to encourage development and growth of smaller businesses.

“*In summary, there should be some important developments on tax to look out for over the next few months and intriguing to see the reaction to and effectiveness of the Investment Banking Law on the Mongolian economy.*”

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