

FOREIGN INVESTMENT LAW OF MONGOLIA

CHAPTER ONE

GENERAL PROVISIONS

Article 1. Purpose of the law

The purpose of this law shall be to encourage foreign investment, to protect the rights and property of foreign investors in Mongolia, and to regulate matters relating to the operations of business entities foreign invest.

Article 2. Legislation on foreign investment

1. Legislation on foreign investment is comprised of the Constitution of Mongolia, this law, and other laws and regulations which are consistent with them.

2. If the international treaties to which Mongolia is a signatory are inconsistent with this law, then the international treaties shall prevail.

Article 3. Definitions

1. - foreign investment□ means every kind of tangible and intangible property which is invested in Mongolia by a foreign investor for the purpose of establishing a business entity with foreign investment within the territory of Mongolia or for the purpose of jointly operating with an existing business entity of Mongolia.

2. - foreign investor□ means a foreign legal person or individual (foreign citizens and stateless persons not residing permanently in Mongolia and citizens of Mongolia permanently residing abroad) who invest in Mongolia.

3. - Mongolian investor□ means a Mongolian legal person or individual (citizens of Mongolia and immigrants and stateless persons permanently residing in Mongolia) who is making an investment.

Article 4. Areas for foreign investment

1. Foreign investment may take place in all areas of production and services which are not prohibited by the laws of Mongolia.

2. Foreign investment may take place in all parts of the territory of Mongolia where the performance of production and services is not prohibited by the laws of Mongolia.

Article 5. Types of foreign investment

A foreign investor may invest in the following:

- 1) freely convertible currencies and reinvestment of togrog yielded by an investment;
- 2) moveable and immovable property and property rights;

- 3) intellectual and industrial property rights.

Article 6. Forms for implementing foreign investments

Foreign investments shall be implemented in the following forms:

- 1) establishing a wholly foreign-owned business entity or a local branch or subsidiary of a foreign enterprise;
- 2) establishing a business entity jointly with a Mongolian investor;
- 3) investing directly by acquiring shares or other securities in an existing Mongolian business entity using freely convertible currencies or togrogs yielded by an investment, including the purchasing of shares or other securities which were sold for coupons under the Privatisation Law of Mongolia.
- 4) acquiring the rights conferred by law or contract to exploit and process natural resources.

Article 7. Purchase of shares or other securities

A foreign investor may, in accordance with the laws of Mongolia, purchase shares or other securities in any business entity which is operating within the territory of Mongolia.

CHAPTER TWO

PROTECTION OF FOREIGN INVESTMENT

Article 8. Legal guarantees for foreign investment

1. Foreign investment within the territory of Mongolia shall enjoy legal protection as guaranteed by the Constitution, the present Law, and other laws and regulations which are consistent with the preceding and as guaranteed by the international treaties to which Mongolia is a signatory.
2. Foreign investment within the territory of Mongolia shall not be nationalised or be subjected to unlawful expropriation.
3. Investments of a foreign investor may be subjected to expropriation exclusively for public purposes or interests and only in accordance with due process of law on a non-discriminatory basis and on payment of full compensation.
4. Unless provided otherwise in international treaties to which Mongolia is a signatory, the amount of compensation shall be determined by the value of the expropriated assets at the time of expropriation or public notice of expropriation. Such compensation shall be effected without delay.
5. Losses suffered by foreign investors due to a state of emergency or war in Mongolia shall be treated equally with losses suffered by Mongolian investors.

Article 9. Treatment of foreign investors

Mongolia shall accord to foreign investors no less favourable treatment regarding the possession, use, and disposal of their

investments than that accorded to Mongolian investors.

Article 10. Rights and obligations of foreign investors

1. Foreign investors shall enjoy the following rights:

- 1) to possess, use, and dispose of their property including the repatriation of investments which were contributed to the registered capital of a business entity with foreign investment;
- 2) to manage or to participate in managing a business entity with foreign investment;
- 3) to transfer their rights and obligations to other persons in accordance with the law;
- 4) to transfer abroad promptly the following returns:
 - a) their share of profits and dividends;
 - b) proceeds from the sale of their assets and securities and from the transfer of their property rights to other persons, or from their withdrawal from or the dissolution of a business entity;
- 5) any other rights conferred by law.

2. Foreign investors shall have the following obligations:

- 1) to observe the laws of Mongolia;
- 2) to fulfil commitments which are stated in the Memorandum and in the Articles of Incorporation of the business entity with foreign investment;
- 3) to implement measures to ensure the protection and restoration of the natural environment;
- 4) to respect the customs and traditions of the people of Mongolia

CHAPTER THREE

OPERATIONS OF BUSINESS ENTITIES WITH FOREIGN INVESTMENT

Article 11. Business entity with foreign investment

1. A business entity which is incorporated under the laws of Mongolia and in which the contribution of a foreign investor is not less than 20 percent of the registered capital shall constitute a business entity with foreign investment.

2. A business entity with foreign investment shall become a legal person of Mongolia from the date of its registration and shall conduct its operations in accordance with the laws of Mongolia.

Article 12. Approval procedures for establishing a business entity with foreign investment

1. Upon application by the investors, the establishment of a business entity with foreign investment shall be subject to approval by the State central administrative body which is responsible for executing foreign investment policy

(hereinafter referred to as the - Ministry of Trade and Industry).

2. An application from the investors shall contain:

- 1) the name, address, and nationality of the investors;
- 2) the types and the amount of investment;
- 3) the form of business entity to be established;
- 4) the main areas of investment and the type of production and services to be undertaken;
- 5) the duration and stages of making and implementing the investment.

3. The following documents shall be enclosed with the application:

- 1) information about the investors and a copy of the certificate of incorporation;
- 2) Memorandum of Incorporation of the business entity with foreign investment;
- 3) Articles of Incorporation of the business entity with foreign investment;
- 4) marketing, management, technological, and other agreements related to the investment;
- 5) technical and financial plans and estimates;
- 6) a confirmation of the financial resources of the investors from the bank of the investors.
- 7) authorisation from a competent organisation of Mongolia to search for, extract, and cultivate and process natural resources, to use land, and to engage in production and services any of which are subject to special authorisation.

4. An application with the aforementioned enclosures shall be considered and decided by the Minister of Trade and Industry within 60 days from its receipt on the basis of the following assessment from specialised organisations:

- 1) compliance with legislation;
- 2) impact on the natural environment;
- 3) meeting the health and sanitary requirements; and
- 4) appraisal of the level of technology.

5. Assessments referred to in sub-paragraph 2,3 paragraph 4 of this Article shall be based on international standards and the standards of Mongolia.

6. The assessments referred to in sub-paragraph 4 paragraph 4 of this Article shall be made according to the regulations of the Government of Mongolia.

7. Should the establishment of a business entity with foreign investment be approved, then the Ministry of Trade and Industry shall issue a certificate.

8. If the activities of a business entity with foreign investment are considered to be inconsistent with the requirements of law, environmental protection, health and sanitary standards, or technological standards, then the approval shall not be granted provided that the reasons for refusal are given.

9. The forms of application and the certificate referred to in paragraphs 2 and 7 of this Article shall be adopted for use by the Minister of Trade and Industry.

10. A business entity with foreign investment shall give the Ministry of Trade and Industry 30 days notice prior to altering the registered capital or the Memorandum or the Articles of Incorporation. The Ministry of Trade and Industry shall examine such alterations according to the procedures set forth in this Article and shall give its ruling within 30 days.

Article 13. Valuation of tangible and intangible property

1. The value of tangible and intangible property which will be contributed by investors to the registered capital of the business entity with foreign investment shall be mutually agreed to by the investors and estimated in freely convertible currency and in togrogs on the basis of a common principle of valuation.

2. Conversion of togrogs into freely convertible currency shall be made at the rate of exchange which is fixed by the Mongolbank and applicable at the time of valuation.

Article 14. Authority of the Ministry of Trade and Industry relating to the implementation of foreign investment policy

The Ministry of Trade and Industry shall be authorised to do the following regarding the foreign investment policy:

- 1) supervise the implementation of the foreign investment legislation;
- 2) request assessments referred to in paragraph 4 of Article 12 of this law;
- 3) invite offers against tender projects involving foreign investment;
- 4) select from proposed foreign investment projects;
- 5) grant approval for or reject the establishment of a business entity with foreign investment;
- 6) suspend or terminate the operation of a business entity with foreign investment;
- 7) exercise any other rights conferred by law.

Article 15. Registration of business entities with foreign investment

1. Upon granting the approval certificate by the Ministry of Trade and Industry, the General Department of State Taxation shall register the business entity with foreign investment and make the registration public.

2. Upon authorisation by the Ministry of Trade and Industry, the General Department of State Taxation shall register alterations to the registered capital and to the Memorandum and Articles of Incorporation of a business entity with foreign investment.

Article 16. Suspension and termination of operations of business entities with foreign investment

1. The operations of a business entity with foreign investment shall be subject to suspension or termination under the conditions provided for by the Law on Business Entities of Mongolia.

2. If the operations of a business entity with foreign investment are found to be in violation of any of the conditions referred to in paragraph 4 of Article 12 of this law, then the Ministry of Trade and Industry may suspend or terminate the operations of that business entity with foreign investment.

Article 17. Winding up and dissolution of business entities with foreign investment

1. Within 14 days from the date of adopting a resolution to suspend or terminate the operations of a business entity with foreign investors, the business entity with foreign investors shall submit this resolution to the Ministry of Trade and Industry.

2. A business entity with foreign investment which is under dissolution shall submit to the Ministry of Trade and Industry statements by the appropriate authorities which certify completion of all its payments and fulfilment of its obligations to restore the natural environment in accordance with the laws of Mongolia.

3. The Ministry of Trade and Industry shall thereafter withdraw its authorisation for establishment of the business entity with foreign investment which is under dissolution and shall inform the General Department of State Taxation about such nullification.

4. Upon receiving the notice referred to in paragraph 3 of this Article, the General Department of State Taxation shall remove the business entity with foreign investment from the state register and make such fact public.

5. Should the operations of the business entity with foreign investment be terminated in preparation for dissolution, then the foreign investor concerned shall be entitled to transfer the returns referred to in paragraph 4 of Article 10 of this law upon completion of the final accounts of the business entity concerned.

Article 18. Taxation

1. A business entity with foreign investment shall be subject to taxation under the tax laws of Mongolia.

2. Any grant made to foreign investors or business entities with foreign investment of a tax treatment which is more favourable than that provided for by the tax laws of Mongolia shall be governed by this law and the laws and regulations in force which are consistent with this law.

Article 19. Exemptions from customs duties and sales tax

1. Technological equipment and machinery which forms part of the registered capital of a business entity with foreign investment shall not be subject to customs duties and sales tax effective from the date of approval by the Ministry of Trade and Industry of the establishment of that business entity with foreign investment.

2. All business entities with foreign investment, except those in trading and catering, shall not be subject to customs duties for 5 years effective from the date of registration with the General Department of State Taxation when bringing in raw materials, components, spare parts, and materials for production.

Article 20. Tax preferences

1. A business entity with foreign investment in any of the following areas shall be granted the tax preferences set forth below effective from the date of starting production activities:

- 1) power and thermal plants and their transmission networks, highways, railways, air-cargo and engineering constructions, and basic telecommunications networks shall receive 10 years of tax exemption and 50 % tax relief during the following 5 year period;
- 2) mining and processing of mineral resources (except precious metals), oil and coal, metallurgy, chemical production, machinery, and electronics shall receive 5 years of tax exemption and 50% tax relief during the following 5 year period;

2. Should a business entity with foreign investment, which is not referred to in paragraph 1 of this Article, export more than 50% of its production, then it shall be entitled to tax exemption for 3 years and 50% tax relief in the following 3 year period.

3. A business entity with foreign investment which is not referred to in this Article may be granted tax preferences. Decisions in this matter shall be adopted by the State Ih Hural on a case by case basis upon the presentation by the Government of Mongolia.

4. Should a foreign investor reinvest income due to it in the same business entity with foreign investment which produced such income, then the taxable income of the concerned business entity shall be subject to a deduction equal to the amount of such reinvestment.

5. If the activities of a business entity with foreign investment cover more than one of the areas referred to in

paragraph 1 of this Article, then the tax preferences to be granted to such business entity shall be in respect to the main area of activity.

6. A business entity with foreign investment which is established by purchasing shares and securities which were previously sold by coupons under the Privatisation Law of Mongolia shall not be eligible for the preferences set forth in paragraphs 1 and 2 of this Article.

Article 21. Use of land by business entities with foreign investment

1. Land shall be used by a business entity with foreign investment on the basis of a leasehold interest and subject to the conditions and procedures set forth in the land laws of Mongolia.
2. A lease shall contain the terms and duration of use and measures to ensure the protection and restoration of the environment to its natural state, the amount of annual ground rent, and the liabilities of the lessor and lessee.
3. A lease shall be made under the procedures set forth below:
 - 1) a lease for the use of state-owned land by a wholly foreign-owned business entity shall be made between the Mongolian landowner and the foreign investor and shall be subject to authorisation by the respective local Hural of Representatives and its Presidium;
 - 2) a lease for the use of state-owned land by a business entity with foreign investment in which a Mongolian investor is a participant shall be made between the Mongolian landowner and the head of the business entity concerned and shall be subject to authorisation by the respective local Hural of Representatives and its Presidium;
 - 3) a lease for the use of private freehold land by a business entity with foreign investment in which a Mongolian investor is a participant shall be made between the Mongolian landowner and the head of the business entity with foreign investment and shall be subject to authorisation by the competent state authorities.
4. Responsibilities arising from a lease referred to in subparagraph 2,3 paragraph 3 of this Article which are contracted by the head of the business entity with foreign investment shall be borne by the Mongolian and the foreign investor in proportion to their contributions to the registered capital of the business entity.
5. The duration of any lease shall be determined by the duration of the operations of the business entity with foreign investment. The initial term of a lease shall not exceed 60 years. The lease may be extended once for a period of up to 40 years under the initial conditions of the lease.
6. If a business entity with foreign investment is dissolved before the expiration of the lease, then the lease shall be terminated at the same time.
7. Leasehold land may be substituted or taken back for a specific state purpose. Decisions concerning this matter shall rest exclusively with the Government of Mongolia.

Compensation for losses suffered by a foreign investor due to such actions shall be effected without delay. The amount of such compensation shall be determined on the basis of value at the time of such substitution or transfer.

8. If leasehold land is used to the detriment of the public health, natural environment or the interests of national security, then the lease shall be cancelled.

Article 22. Finances, loans, accounts and inspections

1. A business entity with foreign investment shall conduct its activities relating to finances, loans, accounts, and foreign currency operations in accordance with the laws of Mongolia.
2. A business entity with foreign investment shall keep account books and balance sheets in accordance with the laws of Mongolia.
3. The accounts and financial and business transactions of a business entity with foreign investment shall be investigated by state financial inspectors or by a chartered auditor in accordance with the laws of Mongolia. A foreign auditing organisation may be invited if required.

Article 23. Insurance

A business entity with foreign investment may be insured by a Mongolian insurance agency in accordance with the laws of Mongolia.

Article 24. Labour and social security relations

1. A business entity with foreign investment shall primarily employ citizens of Mongolia. Foreign citizens may be hired for a job requiring special or high qualification. The Ministry of Demography and Labour shall consider and decide this matter.
2. Matters of labour and social security relating to citizens of Mongolia who are employed by a business entity with foreign investment shall be governed by the laws of Mongolia on labour and social security.
3. Foreign citizens who are employed by a business entity with foreign investment shall be subject to income taxation according to the laws of Mongolia and shall have the right to transfer their income abroad after paying tax.

CHAPTER FOUR

MISCELLANEOUS

Article 25. Settlement of disputes

Disputes between a foreign investor and a Mongolian investor as well as between a foreign investor and a Mongolian legal and natural person shall be resolved in the courts of Mongolia unless provided otherwise by international treaties to which Mongolia is a signatory or by a contract between the parties to the dispute.

Article 26. Coming into force of the law

The present law shall come into force on July 1, 1993.

Chairman of the State Ih Hural of Mongolia. N. Bagabandi.

Secretary General of the State Ih Hural. N. Rinchindorj.