

# 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 foreign investment. */This paragraph was rephrased by the Law of January 3, 2002/*

#### Article 2. Legislation on foreign investment

1. The legislation on foreign investment is comprised of the Constitution of Mongolia, this law and other relevant legislation which is consistent with those laws.
2. If an international treaty to which Mongolia is a party is inconsistent with this law, then the provisions of the international treaty 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 (a foreign citizen or stateless person not residing permanently in Mongolia or a citizen of Mongolia permanently residing abroad) who invests in Mongolia.
3. "Mongolian investor" means a Mongolian legal person or individual (a citizen of Mongolia, immigrant or stateless person permanently residing in Mongolia) who invests.
4. "Investment agreement" is an agreement and/or a contract on concession, product sharing, marketing, management, financial leasing and franchise investment concluded by foreign investors for implementation of concrete project without having to establish a legal entity. */This paragraph was added by the Law of January 3, 2002/*
5. "One stop service" is a complex service including to receive applications and other relevant materials on establishing a business entity with foreign investment or a branch of foreign legal entity, issuing certificate, license and special permission in order to start a business activity, making a conclusion, appraisal at one place and to organize activities to solve of these issues by relevant authorities, and to provide investors with necessary information as well as consultancy service." */This paragraph was added by the Law of January 3, 2002/*

#### Article 4. Areas for foreign investment

1. Foreign investment may take place in all areas of production and all services other than those prohibited by the laws of Mongolia.
2. Foreign investment may take place in all parts of the territory of Mongolia where the types of production to be undertaken or services to be provided are 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 togrogs yielded by investments;
- 2) moveable and immovable property and property rights;
- 3) intellectual and industrial property rights.

#### Article 6. Forms of foreign investment

Foreign investment shall be made in the following ways:

- 1) by establishing wholly foreign-owned business entities or local branches or subsidiaries of foreign enterprises;
- 2) by establishing business entities jointly with Mongolian investors;
- 3) a foreign investor makes a direct investment by buying stocks, shares and other securities of the Mongolian business entities under the legislation of Mongolia; */This paragraph was rephrased by the Law of January 3, 2002/*
- 4) by acquiring rights by law, concession and product sharing contract to exploit and process natural resources. */This paragraph was amended by the Law of January 3, 2002/*
- 5) Conclude a contract for marketing and management,
- 6) Make an investment through financial leasing and franchise. */The paragraphs 5, 6 were added by the Law of January 3, 2002/*

#### **Article 7. Purchase of shares or other securities**

Foreign investors may purchase shares or other securities in any business entity which is operating within the territory of Mongolia in accordance with the laws 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 the legal protection guaranteed by the Constitution, this law and other legislation which is consistent with those laws and as guaranteed by the international treaties to which Mongolia is a party.
2. Foreign investment within the territory of Mongolia shall not be unlawfully expropriated. */The word "nationalized" was cancelled from this paragraph by the Law of January 3, 2002/*
3. Investments of foreign investors may be expropriated only 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 any international treaties to which Mongolia is a party, 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 paid 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 in respect of the possession, use, and disposal of their investments than that accorded 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 contributed to the equity of a business entity with foreign investment; *This subparagraph was amended by the Law of January 3, 2002/*
  - 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) Remit the following income, profit and payments to abroad without any barriers:
    - (a) allotted stockholders income and share dividends;

- (b) allotted income after property and securities' sale, transfer of property right to other party, completion of an investment agreement and liquidation of an entity;
- (c) principal and interest of debt or other identical payments;
- (d) compensation payment for confiscated property;
- (e) other income gained under the legislation of Mongolia. */This subparagraph was re-edited by the Law of January 3, 2002/*

5) any other rights conferred by law.

2. Foreign investors shall have the following obligations:

- 1) to observe the laws of Mongolia;
- 2) **follow commitments stated in the Agreement and Statute of the business entity with foreign investment, branch of a foreign legal entity and in Investment agreement; */This subparagraph was re-edited by the Law of January 3, 2002/***
- 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

#### Activities of a foreign entity and a branch of a foreign legal entity

##### Article 11. Business entities with foreign investment

1. Business entity with foreign investment is a entity, established in accordance with the legislation of Mongolia, of which not less than 25 percent of the equity is constituted with an investment of a foreign investor. */This paragraph was re-edited by the Law of January 3, 2002/*

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.

*/The article 12 was annulled by the Law of January 3, 2002/*

##### Article 13. Valuation of tangible and intangible property

1. Investors of a business entity with foreign investment shall negotiate on evaluation of the property and intellectually valuable items invested from them to form the equity of the entity following the same principle sued for convertible currency and tugrug (local currency). If investor considers it as necessary, the evaluation can be done by either Mongolian or foreign specialized company licensed to conduct asset evaluation. */This paragraph was re-edited by the Law of January 3, 2002/*

2. Conversion of togrogs into freely convertible currency shall be done at the rate of exchange set by the Bank of Mongolia and applicable at the time of valuation.

## **Article 14. Plenary rights of the state administrative body in charge of foreign investment**

1. The State Central administrative body in charge of foreign investment shall have the following plenary rights with respect to foreign investment:

- 1) to formulate foreign investment policy in accordance with the Government general action plan on development country's economy and society, and monitor its implementation;
- 2) to ensure and supervise the implementation of legislation regard to foreign investment;
- 3) to work out a proposal on leading sectors and directions of foreign investment.

2. The State administrative body in charge of foreign investment shall have the following plenary rights:

- (1) to implement policies and legislation with respect to foreign investment;
- (2) to research possibilities to increase foreign investment, to organize investment promotional activities, to provide investors with relevant information, and to involve foreign investors to project tender;
- (3) to render foreign investors with complex "One-stop service";
- (4) to prepare information on foreign investment statistics;
- (5) to approve and/or disapprove establishment of a business entity with foreign investment or a branch of a foreign legal entity;
- (6) to terminate, temporarily or completely, the activities of a business entity with foreign investment or a branch of a foreign legal entity;
- (7) other rights specified in legislation.

3. The State administrative body in charge of foreign investment issue shall render some of the

services specified in the provision 3 of section 2 of this Article on charge base. */This article was*

*re-edited by the Law of January 3, 2002/*

## **Article 15. Registration of Business entity with foreign investment, branch of a foreign legal entity and Investment agreement**

1. A business entity with foreign investment and a branch of a foreign legal entity that received a certificate from the State administrative body in charge of foreign investment shall be registered by the National General Taxation Office with state registration.

2. Any amendment to the Agreement or Statute of a business entity with foreign investment and a branch of a foreign legal entity shall be registered with the National General Taxation Office as approved by the State administrative body in charge of foreign investment.

3. The State administrative body in charge of foreign investment will register an Investment agreement based on an application to register an investment agreement and a notarized copy of the investment agreement, and will issue a certificate within 10 business days after the receipt of the application. */This article was re-edited by the Law of January 3, 2002/*

#### **Article 16. Terminating a foreign invested entity and branch of a foreign legal entity**

1. The operations of business entities with foreign investment and a branch of a foreign legal entity may be suspended or terminated on the grounds provided in the laws of Mongolia. */This paragraph was amended by the Law of January 3, 2002/*
2. */This paragraph was annulled by the Law of November 30, 2001//*

#### **Article 17. Liquidating a foreign invested entity and a branch of a foreign legal entity**

1. If a business entity with foreign investment or a branch of a foreign legal entity resolve to suspend or terminate its operations it shall submit that resolution to the State Central Administrative body in charge of foreign investment and to the General Department of National Taxation within 14 days of its adoption. */This paragraph was rephrased by the Law of November 30, 2001 and was amended by the Law of January 3, 2002/*
2. An investment agreement shall be removed from the registration and a certificate of approval shall be revoked when duration of the investment agreement expires and/or the investor annuals the agreement or violates laws of Mongolia. */This paragraph was added by the Law of January 3, 2002/*
3. */This paragraph was annulled by the Law of November 30, 2001/*
4. Upon receiving the notice referred to in paragraph 1 of this article, the General Department of National Taxation shall remove the business entity with foreign investment or a branch of a foreign legal entity from the State register and publish that fact. */This paragraph was amended by the Laws of November 30, 2001 and January 3, 2002/*
5. If the operations of the business entity with foreign investment or a branch of a foreign legal entity cease 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. */This paragraph was amended by the Law of January 3, 2002/*

#### **Article 18. Taxation**

1. Business entities with foreign investment and a branch of a foreign legal entity shall be liable for tax under the tax laws of Mongolia.
2. Tax incentives and/or exemptions to a business entity with foreign investment, branch of a foreign legal entity and an implementing entity of an investment agreement will be subject to Income tax law of Business entities and organizations<sup>1</sup>, Customs tariff law<sup>2</sup>, Value added tax law<sup>3</sup>, Excise tax law<sup>4</sup> and Land law<sup>5</sup> of Mongolia. */This paragraph was added by the Law of January 3, 2002/*

#### **Article 19. Stability Agreement**

1. In the event of a request by the investor intending to undertake an investment project of not less than US\$ 2 million or equivalent amount in Mongolian national tugriqs in Mongolia, the Cabinet Member responsible for taxation policy issues as permitted by the Government of Mongolia may sign an agreement with that investor on a stability as a legal guarantee for a stable environment to conduct business activities.

2. A sample of a stability agreement will be approved by the Government of Mongolia. This agreement sample shall contain provisions to ensure stable tax conditions during certain period and state objectives and amount of the investment, its implementation period and rationale to revoke the agreement.

3. If a start-up investment amount of the project to be implemented by a foreign investor is US\$ 2.0-10.0 million or equivalent amount of Mongolian national tugriqs a stability agreement can be signed for 10 years and if the amount is over US\$ 10.0 million or its equivalent in Mongolian national tugriqs for 15 years.

4. In the event of a termination of activities by sole initiative of an investor before the period stated in the stability agreement when a business entity with foreign investment and/or a branch of a foreign legal entity was not bankrupted in accordance with the laws of Mongolia or their activities were not stopped by the respective authorities or the parties did not terminate the contract upon their mutual agreement the amount of tax discounts and/or exemptions awarded to that investor shall be compensated by the investor. */This article was added by the Law of January 3, 2002/*

#### Article 20. Conclusion of a Stability Agreement

1. An investor willing to conclude a Stability Agreement shall submit its application and draft Stability Agreement to the State central administrative body in charge of taxation policy issues.

2. The Government member in charge of taxation policy issues shall examine the application and the draft agreement within 14 business days following the receipt and shall conclude the Stability Agreement with the applicant, if no clarifications are required. If additional clarifications are required, the applicant shall be notified of it within 7 business days.

3. Relevant organizations shall be notified of such Stability Agreement. */This article was added by the Law of January 3, 2002/*

#### **Article 21. Land utilization by a foreign invested entity and a branch of a foreign legal entity**

1. Business entities with foreign investment and branch of a foreign legal entity may acquire the right to use land by way of lease and subject to the conditions and procedures set out in the legislation on land of Mongolia. */This paragraph was amended by the Law of January 3, 2002/*

2. Any lease shall include the terms and duration of use, measures required to ensure the protection and restoration of the environment to its natural state, the amount of annual ground rent, and the liabilities of the lesser and lessee.
3. A lease for the business entities with foreign investment and branch of a foreign legal entity shall be granted in accordance with the procedures below: */This paragraph was amended by the Law of January 3, 2002/*
  - 1) a lease for the use of State-owned land by a wholly foreign-owned business entity shall be entered into by the Mongolian landowner and the foreign investor and shall be authorized by the relevant 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 entered into by the Mongolian landowner and the head of the business entity concerned and shall be authorized by the relevant 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 entered into by the Mongolian landowner and the head of the business entity with foreign investment and shall be authorized by the competent State authorities.
4. The obligations arising from the leases referred to in sub-paragraphs 2 and 3 of paragraph 3 of this article which are entered into by the head of a business entity with foreign investment shall be borne by the Mongolian and the foreign investor in proportion to their contributions in equity of the business entity. */This paragraph was amended by the Law of January 3, 2002/*
5. The duration of any lease shall be determined by the duration of the operations of the business entity with foreign investment and branch of a foreign legal entity. 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 on the same conditions as the original lease. */This paragraph was amended by the Law of January 3, 2002/*
6. If a business entity with foreign investment and branch of a foreign legal entity are dissolved before the expiry of the lease, then the lease shall terminate at the same time. */This paragraph was amended by the Law of January 3, 2002/*
7. Leasehold land may be substituted or taken back for a specific State purpose. Decisions on that matter may be made only by the Government of Mongolia. Compensation for losses suffered by foreign investors as a result of such action shall be paid without delay. The amount of 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. Business entities with foreign investment and branch of a foreign legal entity shall conduct their activities in respect of finances, loans, accounts, and foreign currency operations in accordance with the laws of Mongolia.
2. Business entities with foreign investment and a branch of a foreign legal entity shall keep account books and balance sheets in accordance with the laws of Mongolia.
3. The accounts and financial and business transactions of business entities with foreign investment and a branch of a foreign legal entity shall be investigated by State financial inspectors or by chartered auditors in accordance with the laws of Mongolia. Foreign auditing organisations may be invited if required. */This paragraph was amended by the Law of January 3, 2002/*

### **Article 23. Insurance**

Business entities with foreign investment and branch of a foreign legal entity may be insured by Mongolian insurance agencies in accordance with the laws of Mongolia. */This article was amended by the Law of January 3, 2002/*

### **Article 24. Labour and social security relations**

1. Business entities with foreign investment and a branch of a foreign legal entity shall primarily employ citizens of Mongolia. Foreign citizens may be hired for jobs requiring special or high qualifications. Issues on importing labour forces and experts shall be regulated by the relevant legislation of Mongolia. */This paragraph was amended by the Law of January 3, 2002/*
2. Matters of labour and social security relating to citizens of Mongolia who are employed by business entities with foreign investment and a branch of a foreign legal entity shall be governed by the laws of Mongolia on labour and social security. */This paragraph was amended by the Law of January 3, 2002/*
3. Foreign citizens who are employed by business entities with foreign investment and a branch of a foreign legal entity shall be liable for income tax in accordance with the laws of Mongolia and may transfer their income abroad after paying tax. */This paragraph was amended by the Law of January 3, 2002/*

## **Chapter Four**

### **Miscellaneous**

### **Article 25. Settlement of disputes**

Disputes between foreign investors and Mongolian investors as well as between foreign investors and Mongolian legal or natural persons on the matters relating to foreign investment and the operations of the business entities with foreign investment and a branch of a foreign legal entity, shall be resolved in the Courts of Mongolia unless provided otherwise by international treaties to which Mongolia is a party or by any contract between the parties to the dispute. */This paragraph was amended by the Law of January 3, 2002/*

### **Article 26. Coming into force of the law**

This law shall come into force on 1 July 1993.

Speaker of the State Ih Hural of Mongolia

N.Bagabandi

Secretary General of the Secretariat of the State Ih Hural

N.Rinchindorj

### **(Footnotes)**

<sup>1</sup>

Bulletin "State Information"

<sup>1</sup> 1

, 1993

<sup>2</sup>

Bulletin "State Information"

<sup>1</sup> 9

, 1996



3

Bulletin "State Information"

1 2

, 1998

4

Bulletin "State Information"

1 2

, 1993

5

Bulletin "State Information"

1 2

, 1995