

# Mongolia

## Law On Investment (2013)

*Unofficial translation*

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## Contents

**Chapter I. General background**

**Chapter II. Common legal guarantee of investment**

**Chapter III. Full rights of the state bodies related to investment**

**Chapter IV. Investment promotions**

**Chapter V. Stabilization of investment environment**  
**Chapter VI. Investment by foreign government owned legal entity**  
**Chapter VII. Miscellaneous**

# **Law On Investment**

## **Chapter I. General background**

**Article 1. Purpose of law**

1) The purpose of this Law is to protect the legal rights and interests of investors in the territory of Mongolia, to establish a common legislative guarantee for investment, to encourage investment, to stabilize the tax environment, to determine the rights and obligations of investors and the competences of a government body related to investment and to regulate other relations pertaining to investment.

#### **Article 2. Investment legislations**

1) The legislations on investment shall consist of the Mongolian Constitution, the General Taxation Law, this Law and other legislative acts adopted pursuant to these laws.

2) Should provisions of the international treaties to which Mongolia is a party provide otherwise, the provisions of such international treaties shall prevail.

#### **Article 3. Definition of terms**

1) Terms used in this Law shall be understood in the following meaning:

1. "Investment" means the tangible and intangible assets attributed to the joint capital and reflected in financial statements of the business entities which are for profit oriented activities in the territory of Mongolia;
2. "An investor" means a foreign and domestic investor that make an investment
3. "A foreign investor" means a foreign legal entity or individual (a foreign citizen or stateless person who is a non-resident in Mongolia as well as a Mongolian citizen residing permanently in a foreign country) that makes investment in Mongolia;
4. "A domestic investor" means a legal entity or individual registered in Mongolia (a Mongolian citizen and a foreign citizen or stateless person who resides permanently in Mongolia) that makes an investment in Mongolia;
5. "A business entity with foreign investment" means a business entity incorporated according to the applicable legislations in Mongolia and has overall equity of US\$100,000 or more (or equivalent in Mongolian tugriks or MNT), not less than 25 percent of which is invested by a foreign investor(s);
6. "Representative office of a foreign business entity" means a person/entity that has no legal entity status and is established in Mongolia by a foreign legal entity for the purpose of having representation on proxy basis;
7. "Tax environment" means a set of legal regulations for determining the types, percentage and amounts of taxes specified in the applicable laws and their imposition and payment;
8. "Stabilization of tax rate and amount" means according to the Article 13.4 of this law to retain or decrease the rates and amount of taxes and payment specified in this law during the effectiveness of stabilization certificate without escalations;
9. "Tax rate and amount stabilization certificate" means a certificate (hereinafter referred to as "Stabilization Certificate") issued by an authorized organization for the purpose of stabilizing rate and amount of tax and payment specified in this law, to an investing legal body that fulfills the requirements specified in Article 16.1 of this Law;
10. "A stabilization certificate holder" means a legal entity registered in Mongolia, who has taken a stabilization certificate as specified in this Law;
11. "A foreign state owned legal entity" means a legal entity which 50 and more percent of its shares is directly and indirectly owned by a foreign country's government;

12. "An affiliated party" means the party specified in the Article 99.1 of the Company Law of Mongolia.

#### **Article 4. Scope of law**

- 1) This Law shall apply to the investments which are made by foreign and domestic investors in the territory of Mongolia.
- 2) Investors may make investment freely into the sectors and productions and services except as otherwise prohibited or restricted by legislations of Mongolia.
- 3) A foreign state owned legal entity may make investment upon obtaining permission pursuant to Article 21.1 of this Law.
- 4) Foreign and domestic investors shall conduct activities in Mongolia upon registration to state registration in accordance with the Company Law, Law on State Registration of Legal Entities and other relevant laws and regulations.
- 5) This Law shall not apply to the investments at state and local budgets of the governmental organizations and state owned enterprises, as specified in the Law on Procurement of Goods, Works and Services with State and Local Funds.
- 6) This Law shall not apply to donations or grants by international or non-governmental organizations, private businesses or individuals without commercial conditions.
- 7) The Article 20 of this Law shall not apply to conclude/apply an investment agreement in the nuclear energy sector and the relations shall be regulated under the Nuclear Energy Law of Mongolia.

#### **Article 5. Forms of investment**

- 1) Investments in Mongolia can be made in the following forms:
  1. an investor may establish a new business entity solely or jointly with other investors;
  2. an investor may purchase shares, bond/debentures and other types of securities;
  3. an investor may make an investment by a way of wholly acquiring or merging companies;
  4. an investor may establish of concession, product sharing, marketing and management and other agreements;
  5. an investor may make an investment in forms of financial leasing or franchise;
  6. any other forms which are not prohibited by the specified laws.

## **Chapter II. Common legal guarantee of investment**

#### **Article 6. Common legal guarantee of investment**

- 1) An investor shall have a right to seek a tax and non-tax support in order to support investment.
- 2) The State shall provide an investor with a guarantee of ensuring stability of the tax rate by a way of granting a stabilization certificate to the investor or by a way of concluding an investment agreement with the investor as specified in this Law.

- 3) The investor's assets/investment is prohibited to be illegally confiscated in the territory of Mongolia.
- 4) Properties of the investors may be mobilized only for the public interest and on the condition of full compensation of the mobilized properties in accordance with the procedures specified in the law.
- 5) Unless provided otherwise in the international treaties, to which Mongolia is a party, compensation of the mobilized assets shall be valued at the market rate of the assets when it was mobilized or notified to the investor or to the public and paid together with the price, as specified in Article 6.4 of this Law.
- 6) Mongolia shall protect intellectual properties owned by the investors as specified in the applicable laws.
- 7) Investors shall have a right to transfer their following assets and revenues out of Mongolia without hindrance on the condition of having properly fulfilled their tax payment obligations in the territory of Mongolia:
  1. profits of business activities and dividends;
  2. license fees for use of their intellectual property rights and service charges;
  3. payment of principle amounts and interests of overseas loans;
  4. an investor's share of leftover properties after liquidation of a business entity;
  5. other properties gained or owned legally.
- 8) When an investor is moving its assets specified in the Article 6.7 of this Law out of Mongolia as a monetary asset, the investor shall be entitled to convert into any internationally freely convertible currency.
- 9) Unless it is provided by law or in the international treaties, to which Mongolia is a party, an investor is entitled to select an international or domestic arbitration to settle any dispute which may arise regarding the contract concluded with the state authority of Mongolia.
- 10) The amendments to this Law shall be resolved by above two thirds votes of the the Parliament members.

#### **Article 7. Rights and obligations of investor**

- 1) Investors shall have the following common rights:
  1. to select independently objects, form, amount and area or region of investment and to make relevant investment decisions solely;
  2. to make an investment into one or more sectors, projects, productions and operations;
  3. to import goods, works and services from abroad within the framework of implementation of the invested projects and to export produced products, works and services;
  4. to supply their foreign currency needs by purchasing or selling foreign currencies through the banks and non-banking financial institutions registered in Mongolia;
  5. to dispose of their assets and to transfer to and receive from abroad its lawful profits and income;
  6. to manage or participate in management of the invested business entity or to transfer their rights and obligations to other persons according to the relevant legislation;

7. to make requests to their rights to use financing, loans, assistances, land and natural resources and to have their requests resolved;
8. to receive state services freely and equally;
9. other rights specified in the legislations.

2) Investors shall have the following common obligations in addition to their basic obligations to conduct their business operations in accordance with the legislation of Mongolia:

1. to ensure that the products produced, works conducted and services provided by them comply with the national and international standards;
2. to maintain independent accounts and records in respect of the given business entity in accordance with the international accounting standards;
3. to provide the tax authorities and other government authorities with the required information upon their request within the specified time in order to enable them to implement their functions;
4. to conduct environmentally friendly investment activities that respect consumer interests and support human development;
5. to pay the social and health insurance premiums of their staff in accordance with the relevant legislations;
6. to improve knowledge, experience, qualification and skills of their employees, to focus on improvement of the management methodology and to introduce the good governance principles;
7. to respect the national heritage, customs and traditions of the Mongolian
8. to make an investment as specified in the Article 16.2 of this Law as the legal entity holding the stabilization certificate;
9. other obligations specified in the applicable laws.

## **Chapter III. Full rights of the state bodies related to investment**

### **Article 8. Full rights of state central administrative body in charge of investment affairs**

1) The state central administrative body in charge of investment affairs shall exercise the following full rights:

1. to ensure and monitor implementation of the investment legislation;
2. to prepare proposals concerning the investment policy and the sectors and areas, where investments need to be encouraged, and to deliver them to the Government for decision;
3. to issue the authorization specified in the Article 21.1 of this Law;
4. to collect the following investment related data from the Central Bank and the state administrative bodies in charge of employment, taxation, customs, social insurance and foreign citizen affairs semi-annually and annually, and to issue investment statistics accordingly:
  - a. investment sources and amounts;
  - b. payment of taxes;

- c. number of jobs/ workplaces;
  - d. residence permits of foreign citizens;
  - e. number of foreign invested entities;
  - f. goods and services imported by direct investments
5. other rights provided for by the laws.

**Article 9. The state administrative body in charge of investment affairs (agency)**

- 1) There shall be a state administrative body in charge of investment affairs (agency) with functions to attract investment, to promote the advocacy of the investment environment and to provide services to investors.
- 2) The state administrative body in charge of investment affairs shall fulfill the following rights and obligations:
  1. to implement comprehensive activities to attract investments; 9.2.2. to provide support and services for the legal interest of investors;
  2. to promote the legal environment of investment and the favorable conditions of the domestic market to investors;
  3. to render support to investors in planning their investments;
  4. to provide consulting and one-stop online services regarding other state services for investment;
  5. to issue a Stabilization certificate to the investors meeting the requirements specified in the Article 16 of this Law;
  6. to monitor whether the stabilization certificate holder`s investment activities are carried out under the business plan, feasibility study and the duration to make the investment specified in the Article 16.2 of this Law;
  7. in order to implement its obligation specified in the Article 9.2.7 of this Law, of the legal entity from the state central administrative body and from the legal entity if required.
  8. to maintain a state registration of the stabilization certificate holders;
  9. to render support in continued stable investment.
- 3) A /freelance/ council shall be set up to draw a conclusion on the issues specified in the Article 9.2.6 of this Law under the decision by the Government member in charge of investment affairs.
- 4) The Government member in charge of investment affairs shall determine the compound and activity regulation of the council specified in the Article 9.3 of this Law.
- 5) A representative to protect the investor`s interest shall be appointed to the council specified in the Article 9.3 of this Law.

## **Chapter IV. Investment promotions**

**Article 10. Types of investment promotions**

- 1) The investment promotions for investors shall consist of tax and non-tax incentives.

**Article 11. Tax incentive for investment**

1) Tax incentives shall be rendered to investors in the following types:

1. to exempt from taxes;
2. to render tax incentive;
3. to calculate under the accelerated method the depreciation expense to be deducted from the taxable revenue
4. to calculate the loss to be deducted from the taxable revenue by transferring to the future revenue;
5. to deduct the employee training expense from the taxable revenue.

2) Imported machineries and technical equipment may be exempted from the customs duty and VAT rate may be zero-rated during the construction works in the following cases:

1. to build construction materials, oil and agricultural processing and export product plants;
2. to build plants to use nano, bio and innovation technologies;
3. to build power plant and railway.

3) The promotions for investors specified in the Articles 11.1 and 11.2 of this Law shall be regulated by legislations on taxation.

#### **Article 12. Non-tax promotion for investment**

1) The non-tax promotions may be rendered to investors in the following forms:

1. to put land lease and use for up to 60 years on the basis of a contract and to extend the contract duration once for up to 40 years under the contract's primary condition;
2. to render support to the investors who are to make investments to the activities of free zones, production and technological park and to serve with alleviated regime of registration and checkpoint;
3. to render support to implement creation projects in the infrastructure, sciences and educational sectors, to increase the number of foreign workforces and specialists, to exempt them from employment fees and to grant the required permits at eased regime;
4. to render support to carry out innovation projects and to guarantee the financing for production of export oriented innovation products;
5. to provide the foreign investors, who have made investment to Mongolia, and their family members with multiple visas and residential permissions under the applicable laws of Mongolia;
6. other promotions specified in the applicable laws.

2) Non-tax investment incentives shall be regulated in accordance with the Land Law, Free Zones Law, the Law on Legal Status of Industrial and Technological Parks, Innovation Law, the Law on Export of Mongolian Workforces and Import of Workforces and Specialists from Abroad and other relevant legislations in force.

## **Chapter V. Stabilization of investment environment**

#### **Article 13. Tax rate stabilization**



- 1) The rate of taxes to be paid by the legal entity, who is to implement an investment project, shall be stabilized by a way of issuing stabilization certificates to the party specified in the Article 13.5 of this Law.
- 2) The stabilization certificates shall become effective from the date of their issuance and the tax rate shall be stabilized during the entire period of validity of the stabilization certificates.
- 3) Issues of stabilization of the tax rate shall be regulated only as specified in this Law and the investment contract specified in this Law except specified otherwise in the Article 4.7 of this Law.
- 4) In case if any amendments made to the Tax Law within the validity of the stabilization certificates by reducing the rates of taxes, duties and fees specified in the Article 14.1, the stabilization certificate holders shall be entitled to be covered by the amendments and if the amendment was made by increasing the rates, the stabilization certificate holders shall not be covered by the amendments.
- 5) The stabilization certificate shall be granted to the following investors depending on
- 6) The tax rate shall not be stabilized for production, import and trade activities of tobacco and alcohol beverage.

#### **Article 14. Types of the taxes to be stabilized**

- 1) The rates of the following taxes, fees and duties shall be stabilized under the stabilization certificates during their validity period:
  1. corporate income tax;
  2. customs duty;
  3. value-added tax;
  4. mineral resource royalty.

#### **Article 15. Stabilization certificate**

- 1) The template of stabilization certificate shall be approved by the Government member in charge of investment affairs.
- 2) The following information shall be reflected in the stabilization certificate:
  1. name and address of the stabilization certificate holder - legal entity;
  2. state registration number and registry number of the stabilization certificate holder – legal entity;
  3. name, state registration number and registry number of the legal entity specified in the Article 13.5.2 of this Law;
  4. name of the investment projects to be implemented;
  5. date of issuance and validity term of the stabilization certificate;
  6. rates of taxes and fees specified in the Article 14.1 of this Law.
- 3) It is strictly prohibited to transfer the stabilization certificate by selling, pledging and giving as a gift.

4) In cases, a legal entity holding stabilization certificate is reorganizing in the forms of merging, consolidating and reforming, the stabilization certificate shall be transferred to the legal entity which has been established newly or inherited the entity if it fulfills the following requirements:

1. if the legal entity continues the investment project;
2. if the investment project meets the criteria specified in the Article 16.1 of this Law.

**Article 16. Criteria and duration for issuing stabilization certificate**

1) A stabilization certificate shall be issued to the investor whose project to be carried out in Mongolia meets the following criteria:

1. the total investment amount specified in the business plan and feasibility analysis reached the amount specified in the Articles 16.2 and 16.3 of this Law;
2. to get done the environmental impact assessment if required by the law;
3. to create stable workplaces;
4. to introduce high tech and technologies.

2) The stabilization certificate shall be issued to the following sectors for the durations stated below:

1. to the mining extraction, heavy industry and infrastructure sector (Details find in the source of the law).
2. to other sectors except the sectors specified in the Article 16.2.1.(Details find in the source of the law.)

3) The validity duration of stabilization certificate, specified in the Article 16.2 of this Law, shall be issued 1.5 times longer for the investors who are to implement the following projects:

1. to produce import substitute and export oriented products, which are significant to long term sustainable development of the socio-economic sector of Mongolia, to invest more than MNT 500 billion according to the Central Bank official rate as of the date of approval of the feasibility analysis and to require more than three years of construction works regardless of any location and sector;
2. the investor - legal entity meeting the criteria specified in the Article 16.1 of this Law deals with VAT inclusive processing industry and export its basic products.

4) The investment completion period shall be considered commencing from the issuance date of the stabilization certificate.

5) The stabilization certificate holder – legal entity may request the Central state administrative body in charge of investment affairs to extend investment completion period specified in the Article 16.2 of this Law. If the request is considered as reasonable, then the duration can be extended for two years.

**Article 17. Application for stabilization certificate**

1) An investor – legal entity meeting the criteria specified in the Article 16.1 of this Law may make its application for a stabilization certificate to the state administrative body in charge of investment affairs.

2) The following documents shall be attached to the request to take a stabilization certificate:

1. Statement by the applicant confirming satisfaction of the criteria specified in the Article 16.1 of this Law;
2. Introduction of the legal entity, copies of the state registration certificate, licenses and other rights issued by a competent authority if specified in the law;
3. Information about introduction of new high techniques and technologies;
4. General environmental impact assessment specified in the applicable law;
5. Business plan, if the investment amount is up to MNT 10 billion or feasibility analysis, if the investment amount is MNT 10 billion and above.

#### **Article 18. Issuance of stabilization certificate**

1) The state administrative body in charge of investment affairs shall decide whether to grant a stabilization certificate or not within 30 (thirty) days after receipt the request for a stabilization certificate on the basis of the resolution by the council specified in the Article 9.3 of this Law. This term may be extended for 15 days if required.

2) If the state administrative body in charge of investment affairs decides to grant the stabilization certificate, it shall write the related information onto the stabilization certificate and give the certificate to the project implementing legal entity registered in Mongolia.

3) In case if the investment project does not meet the criteria specified in the Article 16.1 of this Law or the submitted documents are incomplete, the state administrative body in charge of investment affairs shall deliver to the investor a written reply refusing to grant the stabilization certificate together with the relevant justification within the term specified in the Article 18.1 of this Law.

4) The state administrative body in charge of investment affairs shall make amendments the stabilization certificate at the request of the legal entity holding stabilization certificate for each occasion of the amendment in the information specified in the Article 15.2 of this Law.

#### **Article 19. Invalidation of stabilization certificate**

1) The state administrative body in charge of investment affairs shall invalidate the stabilization certificates with the following grounds:

1. Validity term of the stabilization certificate has expired;
2. If the stabilization certificate holder has requested or is liquidated;
3. If the stabilization certificate holder has completely shifted and transferred its properties from the territory of Mongolia;
4. If the stabilization certificate holder was identified as taken the stabilization certificate by submitting illegal documents;
5. If the heritor does not meet the requirements specified in the Article 15.4 of this Law;
6. If the Article 15.3 of this Law was breached;
7. If a foreign state invested entity was confirmed as not taking the permission specified in the Article 21.1 of this Law;
8. The stabilization certificate holder did not make its investment specified in the Article 16.2 of this Law;
9. The stabilization certificate holder has concluded an investment contract.

2) The state administrative body in charge of investment affairs shall inform its decision to invalidate the stabilization certificate specified in the Article 19.2 of this Law within five (5) working days to the stabilization certificate holding legal entity and the state administrative body in charge of taxation issues.

#### **Article 20. Investment contract**

1) The Government of Mongolia shall conclude an investment contract with the investor who is to invest more than MNT 500 billion at the investor's request with the purpose of stabilizing the environment of business activities.

2) The Government member in charge of investment affairs shall make investment contracts with investors.

3) The investment contract may be concluded for not less than the duration specified in the Articles 16.2 and 16.3 of this Law.

4) If not stated otherwise in the applicable laws, the investment contract may reflect the conditions to provide a legal guarantee to the investor specified in this law, stabilize the tax environment and render coordination and financial support.

5) If the legal entity holding the stabilization certificate with investment of more than MNT 500 billion made a request, an investment contract may be concluded with the relevant investor.

6) The Government of Mongolia shall approve the regulation to conclude investment contracts.

## **Chapter VI. Investment by foreign government owned legal entity**

#### **Article 21. Investment by foreign government owned legal entities**

1) If a foreign government owned legal entity holds 33 percent and more percentage of the total shares issued by the legal entities of Mongolia which deal with business in the following sectors shall get permission:

1. Mining;
2. Bank and finance;
3. The media and communications.

#### **Article 22. Request and solution of application for permit**

1) A legal entity specified in the Article 21.1 of this Law shall make its application for authorization to the state central administrative body in charge of investment affairs directly or through a representative office and authorized representative in Mongolia and shall attach the following documents to the application:

1. A notarized copy of the certificate of incorporation of the applicant issued by a competent authority of the applicant's country;
2. References of the registration authority concerning the applicant, the persons with common interest with it, the applicant's executive management specified in the Article 21.1 of this Law of the last two-years;
3. The preliminary transaction between foreign state owned entity and Mongolian entity, its

type and conditions, the transaction parties, shares to be transferred, percentage of shareholding, agreement price, the charter of the legal entity, if it is agreed to make changes to management it shall be notified as well;

4. Financial statements and clarifications to financial statements of the foreign state owned legal entity and the Mongolian business entity;
  5. The investment plan and business project to be implemented by the applicant in Mongolia.
- 2) The documents specified in the Article 22.1 of this Law shall be in Mongolian language.
- 3) The state central administrative body in charge of investment affairs may demand required documents other than those specified in the Article 22.1 of this Law from the applicant in the course of reviewing the submitted application documents.
- 4) The state central administrative body in charge of investment affairs shall receive the application that meets the requirements specified in the Article 22.1 of this Law and review whether the following conditions may arise or not:
1. Any activity of the investor or pattern of investment contradicts with the National Security Concept of Mongolia;
  2. Whether the applicant meets the conditions to adhere to the legislations and the established business norms of Mongolia or not;
  3. Whether the investment has a nature to restrict competition in the relevant sector or create dominance in the sector or not;
  4. Whether the investment has serious and adverse impact on the budget revenue and other policies and activities of Mongolia or not;
- 5) The state central administrative body in charge of investment affairs shall make a decision within 45 days after receipt of the application specified in the Article 22.1 of this Law.
- 6) The state central administrative body in charge of investment affairs shall notify the applicant on the decision specified in the Article 22.5 of this Law within five (5) working days after making the decision.

## **Chapter VII. Miscellaneous**

### **Article 23. Liability to be imposed on violators**

- 1) In case of violation of the Law on Investment, the judge or an authorized person of inspection authority may charge with the following administrative punishments:
  1. In case if it was identified that stabilization certificate was obtained based on illegal documents, the relevant guilty competent officers shall be charged with penalty in an amount equal to 25-50 times the minimum salary level and the legal entity 100-200 times the minimum salary level respectively, the unpaid taxes shall be compensated and the illegally earned revenue shall be confiscated;
  2. In case if the stabilization certificate was illegally refused to be issued, the stabilization certificate was issued by violating the applicable laws or the stabilization certificate was invalidated illegally, the guilty officer shall be charged with penalty in an amount equal to 10-20 times the minimum monthly wage level;
  3. In case if the investor failed to fulfill its obligations specified in the Articles 7.2.1- 7.2.5

and 7.2.8 of this Law, the competent authority in charge of monitoring issues shall impose administrative punishment.

**Article 24. Effectiveness of law**

1) This Law shall become effective commencing from the 1st day of November 2013.

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