

## 付 属 資 料

### A．投資法

### B．労働法

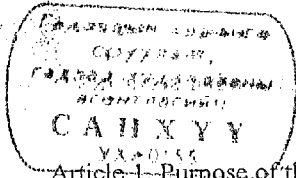
### C．データ集

- 1．県及び特別市の人口・面積
- 2．人口及び労働力
- 3．合計特殊出生率の比較
- 4．各地の年降雨量と冬期・夏期の平均気温
- 5．各地の月平均風速
- 6．日雨量表(ウランバートル、ハラホリン、ハルハ)
- 7．日気温表(ウランバートル、ハラホリン、ハルハ)
- 8．主要輸出入品目
- 9．農地面積の推移
- 10．主要作物の単収
- 11．乾草生産量
- 12．県別農業生産状況
- 13．県別作付状況
- 14．農畜産物の地域別価格差
- 15．各国の供給栄養量
- 16．我が国における天然腸輸入実績
- 17．国別天然腸輸入実績
- 18．我が国の天然腸輸入先比率

参考資料



## A. 投資法



# FOREIGN INVESTMENT LAW OF MONGOLIA

## CHAPTER ONE

### GENERAL PROVISIONS

#### Article 1. Purpose of the Law.

The purpose of the present Law shall be to encourage foreign investment, to protect the investors' rights and assets in Mongolia and to regulate matters relating to the operations of the business entities with foreign investment.

#### Article 2 Foreign Investment Legislation.

1. Legislation on foreign investment shall consist of the Constitution, the present Law and other Laws and regulations in force which are consistent with the preceding.
2. If the International Treaties to which Mongolia is a signatory provide differently than the present Law, then the former shall prevail.

#### Article 3. Definition

1. "Foreign investment" means all tangible and intangible assets which are invested in Mongolia by a foreign investor, for the purpose of establishing in the territory of Mongolia a business entity with foreign investment 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 national or stateless persons not residing permanently in Mongolia and citizens of Mongolia having permanent residence abroad) who is investing in Mongolia.
3. "Mongolian investor" means a Mongolian legal person or individual (citizens of Mongolia and foreign nationals or stateless persons residing permanently 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 performing 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:

- (i) freely convertible currencies and reinvestments of tugrugs yielded by an investment;
- (ii) movable and immovable property and property rights;
- (iii) intellectual and industrial property rights.

#### Article 6. Forms for Implementing Foreign Investment.

Foreign investment shall be implemented in one of the following form:

- (i) establishing a wholly foreign-owned business entity or a local branch or subsidiary of a foreign enterprise;
- (ii) establishing a business entity jointly with a Mongolian investor;
- (iii) investing directly by acquiring shares or other securities of an existing Mongolian business entity using freely convertible currency or tugrugs yielded by an investment, including purchasing shares or other securities which were sold by investment coupons under the Privatization Law of Mongolia;
- (iv) acquiring 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 of any business entity operating within the territory of Mongolia.

## CHAPTER TWO PROTECTION OF FOREIGN INVESTMENT

### Article 8. Legal Guarantees for Foreign Investment.

1. Foreign investment shall enjoy legal protection within the territory of Mongolia as guaranteed by the Constitution, the present Law and other laws and regulations in force 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 nationalized or be subject to unlawful expropriation.
3. Investments of a foreign investor may be subject to expropriation exclusively for public purposes or interests and only in accordance with due process of law, on a non-discriminatory basis and against full compensation.
4. Unless provided otherwise in the International Treaties to which Mongolia is a signatory, the amount of such compensation shall be determined by the value of expropriated assets at the time of expropriation or public notice of such 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 favorable treatment regarding possession, use and disposal of their investments than that accorded to Mongolian investors.

### Article 10. Rights and Duties of Foreign Investors.

1. Foreign investors shall enjoy the following rights:
  - (i) to possess, use and dispose of their property including repatriation of investments, which were contributed to the share capital of the business entity with foreign investment;
  - (ii) to manage or to participate in managing the business entity with foreign investment;
  - (iii) to transfer their rights and obligations to other persons in accordance with the laws;
  - (iv) to promptly transfer abroad the following returns:
    - a) the share of profits and dividends;
    - b) proceeds from the sale of their assets or securities and proceeds from the transfer of their property rights to other persons or proceeds from their withdrawal from or the dissolution of the business entity;
  - (v) any other rights conferred by law.
2. Foreign investors shall have the following duties:
  - (i) to observe the laws of Mongolia;
  - (ii) to fulfill commitments which are stated in the Memorandum and the Articles of Incorporation of the business entity with foreign investment;
  - (iii) to implement measures to ensure the protection and restoration of the natural environment;
  - (iv) to respect the customs and traditions of the people of Mongolia.

CHAPTER THREE  
OPERATION 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 share 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 incorporation and shall conduct its operations in accordance with the laws of Mongolia.

Article 12. Approval Procedure for Establishing a Business Entity with Foreign Investment.

1. The application of the investors establishing a business entity with foreign investment shall be subject to approval by a Central State Administrative Authority which is responsible for the implementation of foreign investment policy (hereinafter referred to as "Ministry of Trade and Industry").

2. An application shall contain:

- (i) names, addresses and nationality of investors;
- (ii) types and amount of investments;
- (iii) the form of a business entity to be established;
- (iv) main areas of investment and type of production and services to be undertaken;
- (v) stages and duration of making and implementing the investment.

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

- (i) information on the investors and a copy of the Certificate of Incorporation, if they are legal persons;
- (ii) Memorandum of Incorporation of a business entity with foreign investment;
- (iii) Articles of Incorporation of a business entity with foreign investment;
- (iv) marketing, management, technology and other agreements related to the investment;
- (v) technical and financial plans and estimates;
- (vi) a confirmation of the investors' financial resources from the bank of the investors;
- (vii) authorization from competent organizations of Mongolia to search for, extract and process natural resources, to use land and to be engaged in production and services which are subject to special authorization.

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 assessments produced by the specialized organizations:

- (i) compliance with legislation;
- (ii) impact on the natural environment;
- (iii) meeting of health and sanitary requirements;
- (iv) appraisal of the level of technology.

5. Assessments referred to in paragraph 4 (ii), (iii) of this Article shall be based on international standards and standards of Mongolia.

6. The assessment referred to in paragraph 4 (iv) of this Article shall be made in accordance with 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 of Approval.

8. If the activities of a business entity with foreign investment to be established are considered inconsistent with requirements of laws, environmental protection, health and sanitary standards or technological standards then the approval shall not be granted provided that the reasons for such refusal are given.
9. The form of Application and Certificate referred to in paragraphs 2, 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 share 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 Assets**

1. The value of tangible and intangible assets which will be contributed by the investors to the share capital of the business entity with foreign investment shall be mutually agreed to by the investors and be estimated in a freely convertible currency and in tugriqs on the basis of a common principle of valuation.
2. Conversion of tugriqs into a freely convertible currency shall be made at the rate of exchange fixed by Mongol Bank and applicable at the time of valuation.

**Article 14. Authority of the Ministry of Trade and Industry Relating to Implementation of Foreign Investment Policy.**

The Ministry of Trade and Industry with regard to foreign investment policy shall be authorized to:

- (i) supervise the implementation of foreign investment legislation;
- (ii) request assessments referred to in paragraph 4 of Article 12 of the present Law;
- (iii) invite offers against tender projects involving foreign investment;
- (iv) make selections from proposed foreign investment projects;
- (v) grant approval to or reject the establishment of a business entity with foreign investments;
- (vi) suspend or terminate the operations of the business entity with foreign investment;
- (vii) any other rights conferred by law.

**Article 15. Registration of Business Entities with Foreign Investment.**

1. Upon the granting of Certificate of Approval 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 the authorization by the Ministry of Trade and Industry, the General Department of State Taxation shall register alterations to the share capital, to the Memorandum or to the Articles of Incorporation of the 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 on the grounds 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 assessments referred to in paragraph 4 of Article 12 of the present Law, the Ministry of Trade and Industry may suspend or terminate the operations of such business entity with foreign investment.

**Article 17. Winding Up and Dissolution of Business Entities with Foreign Investment.**

1. Within 14 days from the date on which a resolution to suspend or terminate the operations of the business entity with foreign investment has been adopted, the business entity with foreign investment 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 statement of the appropriate authorities which certify completion of all its payments and fulfillment, in accordance with the laws of Mongolia, of its duties to restore the natural environment.
3. The Ministry of Trade and Industry shall thereafter withdraw its authorization which had originally approved the establishment of the business entity with foreign investment, and shall inform the General Department of State Taxation of such annulment.
4. Upon the receipt of 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 removal public.
5. Should the operations of the business entity with foreign investment be terminated in preparation for dissolution, the foreign investor shall be entitled to transfer its returns referred to in paragraph 4 of Article 10 of the present Law upon completion of 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. Granting to foreign investors or to a business entity with foreign investment treatment more favorable than that provided for by the tax laws of Mongolia shall be governed by the present Law and the laws and regulations in force which are consistent with the preceding.

#### Article 19. Exemptions from Customs Duties and Sales Tax

1. Technological equipment and machinery which form a part of the share capital of the 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 the business entity with foreign investment.

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- X ② Raw materials, components, spare parts and materials for production which will be brought in by business entities with foreign investment, except those entities in trading and catering, shall not be subject to customs duties for 5 years effective from the date of registration of the business entity with the General Department of State Taxation.

#### Article 20. Income Tax Preferences.

1. A business entity with foreign investment in any of the following areas shall be granted income tax preferences as set forth below, effective from the date its production starts:
  - (i) power and thermal plants and their transmission network, highways, railways, air cargo and engineering constructions and basic networks of telecommunications, shall enjoy 10 years of tax exemption and 50 tax relief in the immediately following 5 year period;
  - (ii) mining and processing of mineral resources (except precious metals), oil and coal, metallurgy, metal processing, chemical production, machinery, and electronics shall enjoy 5 years of tax exemption and 50 % tax relief in the immediately following 5 year period.
2. Should a business entity with foreign investment which is not referred to in paragraph I of this Article export more than 50 per cent of its output, it shall be entitled to an income tax exemption for 3 years and 50% tax relief in the immediately following 3 year period.

3. A business entity with foreign investment which is not referred to in this Article, may be granted income tax preferences. Decisions in this matter shall be adopted by the State Great Hural on a case-by-case basis upon presentation by the Government of Mongolia.
4. Should a foreign investor reinvest its income in the same business entity with foreign investment which produced such income, the taxable income of the business entity concerned 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 I of this Article, the income tax preferences to be granted to such a business entity shall be in respect of the main area of activity.
6. A business entity with foreign investment which has been established by purchasing shares or securities sold by investment coupons under the Privatization Law of Mongolia, shall not be eligible to preferences set forth in paragraph 1 and 2 of this Article.

Article 21. Use of Land by Business Entities with Foreign Investment.

1. Land shall be used by the business entity with foreign investment on the basis of a leasehold and subject to conditions and procedures set forth in land laws of Mongolia.
2. A lease shall contain the terms and duration of use, the measures to ensure the protection and restoration of the natural environment to the original state, 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:
  - (i) a lease for the use of state-owned land by a wholly foreign-owned business entity shall be made between the Mongolian land-owner and the foreign investor and be subject to authorization thereto by the respective local Hural of Representatives and its Presidium;
  - (ii) a lease for the use of state-owned land by a business entity with foreign investment to which a Mongolian investor is a participant, shall be made between the Mongolian land-owner and the head of the business entity concerned and be subject to authorization thereto by the respective local Hural of Representatives and its Presidium;
  - (iii) A lease for the use of private freehold land by a business entity with foreign investment to which a Mongolian investor is a participant; shall be made between the Mongolian land-owner and the head of the business entity with foreign investment and be subject to authorization thereto by the competent state authorities.
4. Liabilities arising from a lease, referred to in paragraph 3 (ii), (iii) of this Article, which is entered into 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 share 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 exclusively rest with the Government of Mongolia. Compensation for losses suffered by a foreign investor due to such action shall be effected without delay. The amount of compensation shall be determined on the basis of the value at the time of such substitution or transfer.
8. If leasehold land is used to the detriment of public health, the natural environment or the interests of national security, then the lease shall be canceled.



Article 22. Finances, Loans, Accounts, Inspection.

1. A business entity with foreign investment shall conduct its activities related to finances, loans, accounts and foreign currency operations in accordance with the laws of Mongolia.
2. A business entity with foreign investment shall keep its 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 inspection authorities or by chartered auditor in accordance with the laws of Mongolia. A foreign auditing organization 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. Business entity with foreign investment shall primarily employ citizens of Mongolia. Expatriates 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 related to the citizens of Mongolia who are employed by the business entity with foreign investment shall be governed by the laws of Mongolia on labour and social insurance.
3. Expatriates who are employed by the 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 persons shall be resolved in the courts of Mongolia unless provided otherwise by the International Treaties to which Mongolia is a signatory or by a contract between the parties to the dispute.

Article 26. Effective Date of the Present Law

The present Law shall come into effect on July 1, 1993.

10 MAY 1993.

ULAANBAATAR