

# **Draft regulations governing investment agreements**

This is a translation of the just released draft regulations governing investment agreements under the new Investment Law. We have tried to keep the translation accurate but it is neither literal nor authorised.

## **Chapter I**

### **General provisions**

- 1.1 The purpose of these regulations shall be to regulate, in accordance with the Investment Law and other Laws and Regulations, the relationship between the Government and Investors, who may or may not hold a stability certificate, as described in Article 20 of the Investment Law.
- 1.2 These regulations are for those investors who fall under the Investment Law and these regulations are mandatory under the Investment Law.
- 1.3 These regulations do not seek to regulate investment agreements on products sharing under the Law on Natural Gas and Oil, or agreement on using mines under the Minerals Law Article 5, Section 5.3, 5.4, 5.5, or agreements in the Nuclear industry.

## **Chapter II**

### **Request to record the investment agreement**

2.1 Investors who seek to invest more than MNT500 billion, as stated in Sections 20.1 and 20.5 of the Investment Law, will have to make a request to the State's central administrative body in charge of foreign investment matters and will enclose the following documents:

- 2.1.1. Information on creating regular work places
- 2.1.2. Information on import of technology
- 2.1.3. Information on previous activities and projects of the applicant company, including its partners
- 2.1.4. The Mongolian registration certificate of the company, or the special permission granted to it by any other authorized organization, other relevant certificates, and a copy of the stability agreement, if there is any
- 2.1.5. Financial and technical approval of the investment amount of MNT500 billion or more by the State's central administrative body in the industry of the company's activity
- 2.1.6. A copy of the permission to invest, under the Investment Law Article 21
- 2.1.7. The assessment of natural impact report.

2.2. The State's central administrative body in charge of foreign investment matters should receive the above request and review it as stated in Section 2.1 of these Regulations.

2.3. This body has the right to ask for any other document, in addition to those listed above, at any time during a review of the investor's request.

2.4. This body can refuse to grant the request of the investor on any one or more of the following grounds:

- 2.4.1. Any proposed activity or any aspect of the investment is deemed to be against Mongolia's security interests
  - 2.4.2. The investment is not productive and will not have a desired impact on Mongolia's financial well-being
  - 2.4.3. The proposed investment amount of MNT500 billion MNT is not supported by the technical and financial reports
  - 2.4.4. The investor does not have permission under Article 21 of the Investment Law
  - 2.4.5. The investor does not fulfill requirements listed in Section 16.1 of the Investment Law
  - 2.4.6. If any planned activity, project or programme of the investor is to have a seriously harmful impact on nature.
- 2.5. The recording body should be guided by reports and opinions of relevant organisations when reviewing the request of the investor.
- 2.6. In the event of the State's central administrative body in charge of foreign investment refusing to grant an investor's request to record an agreement, it would give to the applicant the reasons thereof in writing.

## **Chapter III**

### **Negotiations on investment agreements**

- 3.1. If the State's central administrative body in charge of foreign investment matters feels any of the conditions stated in Section 2.4 of these Regulations has not been fulfilled, it should invite the applicant investor for a hearing.
- 3.2. A working group including the Government official in charge of handling the issues of the relevant sector, or any other official nominated by him, will be formed and its authority and power to handle investment issues will be confirmed by the Government. This group may summon the applicant investor for negotiations.
- 3.3. This working group is free to seek the advice of independent professional institutes, experts and analysts. Their fees will be reported by the Government official with responsibilities for investment issues and approved at a Government meeting.
- 3.4. This working group, as set up under Section 3.2 above will discuss with the applicant issues related to the investment agreement. The whole exercise will be conducted under due process of law and following regulations then in force.
- 3.5. The head of the working group or, else, the official from headquarters who is responsible for investment issues should report regularly to the Government official in charge of investment issues on the progress of talks.
- 3.6. Once the talks are taken to be heading for a resolution, either the applicant investor or the working group will refer to the said official.
- 3.7. Once a recommendation is received from this said Government official in charge of foreign investment matters, the investment agreement shall be listed in the Government meeting agenda, according to the Mongolian Government law.

3.8. The Government will then consider whether to approve the investment agreement or not in accordance with regulations.

3.9. If the Government approves the investment agreement, under Section 20.2 of the Investment Law, the Government official in charge of foreign investment matters will be authorised to sign the agreement with the applicant.

## **Chapter IV**

### **Contents of an agreement**

4.1. The text of an investment agreement should be in both Mongolian and English. It should include the following:

- 4.1.1. Legal basis of the agreement
- 4.1.2. Details of the shareholding pattern of investors
- 4.1.3. If the investor has signed a partnership agreement with any entity or individual, on any matter relating to implementing the investment agreement, he will have to provide that partner's national registration number, as well as tax payers' identification.
- 4.1.4. Aims of the investment, and its proposed main activities
- 4.1.5. Amount and source of the proposed investment
- 4.1.6. Period of investment, and the planned phases
- 4.1.7. Period of the investment agreement
- 4.1.8. Stabilising the taxation environment, conditions for providing financial support as stated in Section 20.4 of the Investment Law
- 4.1.9. Statement on the technology proposed to be used, and financial report under which the agreement is made, indicating how the agreement will be modified if it becomes necessary to make certain changes
- 4.1.10. The anticipated impact of the project on people's health and on nature, and the proposed measures to eliminate or minimise the negative effects
- 4.1.11. Its likely impact on the manufacturing sector
- 4.1.12. Contribution to local development
- 4.1.13. Details of new work units and work places to be created and of how the Law on Working Communication will be observed
- 4.1.14. Resolving infrastructure issues, and problems relating to local human habitations, including those related to social-cultural aspects
- 4.1.15. Information on whether it will create business opportunities for Mongolian individuals and entities
- 4.1.16. Total output from the investors' main operation, the price range of the product or service
- 4.1.17. Expected operations on overwhelming factors
- 4.1.18. Rights and duties of Government
- 4.1.19. Rights and duties of Investor
- 4.1.20. Proposed ways of making changes in the investment agreement
- 4.1.21. Proposed ways of cancelling and closing the agreement
- 4.1.22. Resolving differences
- 4.1.23. Detailed plans on how to monitor the implementation of the agreement

4.1.24. If the investment amount has not reached the amount stated in the Law because the investor did not fulfill all requirements, then offered tax reliefs or stability should be withdrawn, and all due taxation will have to be paid.

4.1.25. Other conditions both sides have negotiated.

4.2. The agreement should be made in accordance with other laws and rules in force.

## **Chapter V**

### **Monitoring implementation of the agreement**

5.1. The investor must submit to the State's central administrative body in charge of foreign investment matters annual reports on the implementations of investment activities and projects before the end of the first quarter of the succeeding year as stated in the Investment Law and in the Regulations of the Investment Law.

5.2. This State body will review, with the help, if necessary, of outside organisations.

5.3. This body should immediately inform the investor of any inadequacies, deviations, or confusion noted in the implementation report and demand rectification forthwith.

5.4. The Government reserves the right to suspend or cancel the contract if the investor fails to observe its terms.

5.5. Any differences over the investment agreement must be resolved by both parties as per the modality specified in the agreement.

## **Chapter VI**

### **Others**

6.1. The State's central administrative body in charge of foreign investment matters must inform the State's central administrative body in charge of taxation matters of any new investment agreement within five working days of its coming into force.