

THE LAW ON THE REGULATION OF FOREIGN INVESTMENT IN ENTITIES OPERATING IN STRATEGIC SECTORS

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PART ONE GENERAL PROVISIONS

Article 1. Purpose of the law

1.1. The purpose of this Law is to regulate investment by foreign investors, the persons and the third parties with common interest with these investors in entities operating in the strategic sectors and the relations pertaining to the permission with a view to ensuring the national security.

Article 2. The legislation on the regulation of foreign investment in entities operating in strategic sectors

2.1. The legislation on the regulation of foreign investment in entities operating in the strategic sectors shall consist of the Constitution of Mongolia, the National Security Law, the National Security Concept of Mongolia, the Foreign Investment Law, the Competition Law, this law and other legislative acts enacted in conformity with them.

2.2. In case of inconsistency of this Law with the provisions of international treaties to which Mongolia is a party, the provisions of the international treaty shall prevail.

Article 3. Definitions

3.1. For the purpose of this Law:

3.1.1. “an entity operating in the strategic sector” means an entity operating in the sectors provided for in Article 5.1 of this Law;

3.1.2. “vetoing the decisions of the management” means the possibility to cease the enforcement of the decisions of the management as stipulated to be adopted by the majority of votes in the laws, the rules and a contract of an entity by foreign investors, the persons and the third parties with common interests with these investors;

3.1.3. “a foreign investor” means an investor as provided for in paragraph 2 of Article 3 of the Foreign Investment Law;

3.1.4. “persons with common interests” means the persons as provided for in Article 99.1 of the Company Law;

3.1.5. “a third party” means a legal person or an individual that has a continuous link with the foreign investor and the persons with common interests with that investor and not registered in Mongolia;

3.1.6. “a national entity” means an entity established by a Mongolian citizen, legal person, a payer of a corporate and other taxes, a citizen and an entity of Mongolia owning more than 50% of that entity’s share;

3.1.7. “making an investment” means investment as provided for in Article 6 of Foreign Investment Law and the purchase and transfer of shares of an entity operating in the strategic sector by companies registered in foreign countries, their subsidiaries, the companies under their control and the persons with common interests therewith;

Article 4. Applicability of the law

4.1. In case an entity or an international organization owned partly or fully by a foreign state, the persons and the third parties with common interests with them wish to operate in Mongolia or to make an investment in an entity operating in Mongolia, the persons and the third parties with common interests therewith, shall obtain a permit from the Government of Mongolia through an entity registered in Mongolia.

4.2. A foreign entity, the persons and the third parties with common interests with that entity wishing to operate in a strategic sector as indicated in Article 5.1 of this Law, or to make a transaction with a company that is an entity operating in the strategic sector as provided for in Article 6 of this Law shall obtain a permit from the Government of Mongolia (hereinafter referred to as “the Government”) through an entity operating in the strategic sector and registered in Mongolia.

4.3. This Law shall not extend to the relations pertaining to foreign investment made under any international treaty to which Mongolia is a party.

4.4. Any transaction made by a foreign investor, the persons and the third parties having common interests with that investor with an entity operating in the strategic sector in breach of the provisions of this Law shall be forbidden.

4.5. If any transaction made outside of the territory of Mongolia pertains to the provisions of Article 4.1 and 4.2 of this Law, this Law shall apply.

4.6. This Law shall be equally applied for the creation of a new company under Article 3.1.1 of this Law, as well as foreign investors, the persons and the third parties having a common interest with that investor in acquiring the shares of a company that is an entity operating in the strategic sector.

4.7. In case foreign investor’s share in an entity operating in the strategic sector exceeds 49% and the amount of investment at that time is more than 100 billion tugrugs, the State Great Hural shall decide upon the submission by the Government. In all other cases, the Government shall make a decision on the permission.

4.8. An entity operating in the strategic sector shall give a priority treatment to national entities

of Mongolia in procuring goods, works and services. The Government shall adopt the rules for the priority rights.

PART TWO STRATEGIC SECTORS, OBTAINING A PERMIT

Article 5. Strategic sectors

5.1. The following sectors shall be considered as strategic for the purposes of national security with a view to ensuring the basic needs of the population, the independence, the normal operations of the economy and the national revenues and affirming the national security:

5.1.1. mining;

5.1.2. banking and finance;

5.1.3. media, information and communications.

5.2. In case the Government considers any sector as strategic, it shall submit to the State Great Hural for a decision.

Article 6. Obtaining a permit

6.1. The following transactions as per this Law (hereinafter referred to as “transactions”) shall require a permit:

6.1.1. a transaction to acquire one third or more of the shares of the company that is an entity operating in the strategic sector;

6.1.2. a transaction that confers an unconditional right for electing the executive management, the majority of the joint executive management and the board of directors of an entity operating in the strategic sector;

6.1.3. a transaction that ensures the rights to veto the decision of the management of an entity operating in the strategic sector;

6.1.4. a transaction that confers the rights to enforce the directions of the management of an entity operating in the strategic sector, determine its decisions and exercise the economic activities;

6.1.5. a transaction likely to ascertain the buyer’s and the seller’s monopoly in the commercialization of raw minerals and their products at the international and Mongolian markets;

6.1.6. a transaction likely to impact directly or indirectly the market or the price of Mongolian mining products for export;

6.1.7. the conclusion of a transaction that would result in the decrease of shares of the company that is an entity operating in the strategic sector by itself, or the persons and the third parties having common interests with that investor with others;

6.2. The persons indicated in Articles 4.1 and 4.2 of the Law shall, upon the agreement on the transaction as provided for in Article 6.1, submit an application for a permit to the state administrative body responsible for foreign investment through an entity operating in the strategic sector and registered in Mongolia within 30 days.

6.3. A foreign investor, the persons and the third parties having common interests with that investor that concluded a transaction as per Article 6.1.1 and 6.1.7 shall, in accordance with the taxation legislation of Mongolia, pay the taxes to the state budget from the payment made to the other side. This action shall be the responsibility of the entity operating in the strategic sector and registered in Mongolia.

PART THREE EXAMINATION OF THE APPLICATION AND MAKING A DECISION

Article 7. Application for a permit, filing of the application and making a decision

7.1. The persons indicated in Article 4.1 and 4.2 of this Law wishing to make a transaction as provided for in Article 6 of this Law shall submit an application for a permit to the state administrative body responsible for foreign investment through an entity operating in the strategic sector and registered in Mongolia.

7.2. The Government shall adopt the detailed regulation on the receipt and the discussion of the application provided for in Article 7.1 of this Law and making a decision thereupon.

7.3. The state administrative body responsible for foreign investment shall, upon the receipt of an application under Article 7.1 of this Law, examine:

7.3.1. if any activity of a foreign investor and the nature of the investment conflicts with the National Security Concept of Mongolia;

7.3.2. if the applicant meets the conditions and feasible to observe the laws, the regulations and the business norms of Mongolia;

7.3.3. if the investment has a nature to restrict competition in the concerned sector and establish a dominating position;

7.3.4. if the investment would have a serious impact on the budget income, other policies and activities of Mongolia;

7.3.5. if the investment would have a negative impact on the operations of the concerned sector;

7.4. The state administrative body responsible for foreign investment shall, within 45 days upon the receipt of the application provided for in Article 7.1 of this Law, deliver its recommendation on the permissibility of the transaction to the Government.

7.5. Except as provided for in Article 4.7 of this Law, the Government shall, within 45 days upon the receipt of the recommendation under Article 7.4 of this Law, draw its decision either on the permissibility or impermissibility of the transaction.

7.6. The state administrative body responsible for foreign investment shall, within 5 days after the decision is made under Article 7.5 of this Law, inform the applicant of the decision through an entity operating in the strategic sector and registered in Mongolia.

7.7. Except as justified by the provisions of Article 7.3 of this Law, the Government shall not object to give a permit.

Article 8. Informing of the transaction

8.1. The foreign investor, the persons and the third party having common interests with that investor shall have an obligation to inform of the acquisition of 5 and more percents of the share of the company that is an entity operating in the strategic sector up to the percentage level provided for in Article 6.1.1 of this Law and an entity operating in the strategic sector and registered in Mongolia to inform the state administrative body responsible for foreign investment of the conditions provided for in Article 6.1.7 of this Law within 30 days.

8.2. The persons indicated in Article 4.1 and 4.2 of this Law shall, within 180 days after the entry into force of this Law and through an entity operating in the strategic sector and registered in Mongolia, inform the state administrative body responsible for foreign investment of the ownership of 5 and more percents of the shares of the company that is a strategic entity before the entry force of this Law.

PART FOUR OTHER PROVISIONS

Article 9. Legal consequences

9.1. A transaction made in breach of the requirements under this Law and of Article 4.1 and 4.2 shall be considered null and void.

9.2. The respective authorities shall terminate the operations and invalidate the permit of an entity operating in the strategic sector that breached this Law.

Article 10. Entry into force

10.1. This Law shall enter into force on the day of its adoption.