

<TRANSLATION>

LAW OF MONGOLIA ON REGULATION OF FOREIGN INVESTMENT IN BUSINESS ENTITIES OPERATING IN STRATEGICALLY IMPORTANT SECTORS

17 May 2012 (Ulaanbaatar)

**CHAPTER ONE
GENERAL PROVISIONS**

Article 1. Purpose of the Law

1.1 The purpose of this law is to regulate investment by foreign investors, their affiliates and third parties in business entities operating in sectors of strategic importance in order to secure national security, and to regulate matters relating to the granting of approvals relating to the same.

Article 2. Legislation relating to the Regulation of Foreign Investment in Business Entities Operating in Sectors of Strategic Importance

2.1 Legislation relating to the regulation of foreign investment in business entities operating in sectors of strategic importance shall consist of the Constitution¹, the Law on National Security², the National Security Policy of Mongolia³, the Law on Foreign Investment⁴, the Law on Competition⁵, this Law, and other legislative acts adopted pursuant to these laws.

2.2 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. Definition of terms

3.1 The following terms used in this Law shall be understood to have the following meanings:

3.1.1 "a business entity operating in a sector of strategic importance" means a business entity operating in a sector specified in Article 5.1 of this Law;

3.1.2 "veto the management decisions" means the capability of foreign investors, their affiliates and third parties to prevent the effective implementation of management decisions which would otherwise be passed by a majority vote as specified in law, the charter of the business entity or a shareholders agreement;

3.1.3 "foreign investor" means an entity referred to in Article 3.2 of the Law on Foreign Investment;

3.1.4 "affiliates" means an entity specified in Article 99.1 of the Company Law⁶;

3.1.5 "third parties" means a legal entity not registered in Mongolia, or an individual, which in either case has a direct or indirect connection or relationship with the foreign investor or its affiliates (either by means of being a parent company or subsidiary at any level of the corporate structure) by way of a shareholding or other equity arrangement;

3.1.6 "national entity" means a business entity founded by a Mongolian citizen or a legal entity, which is incorporated in Mongolia and which is a payer of Mongolian corporate income tax and other taxes, and not less than 50 percent of which is owned by Mongolian citizens or legal entities incorporated in Mongolia;

3.1.7 "invest" shall have the meaning ascribed to it in Article 6 of the Law on Foreign Investment, and shall include the acquisition or transfer of shares in foreign-registered companies which own (in whole or in part) business entities

¹ The Constitution of Mongolia – published in "State Bulletin" No.1, 1992

² Law on National Security – published in "State Bulletin" No.3, 2002

³ Parliamentary Resolution adopting the National Security Policy of Mongolia – published in "State Bulletin" No.36, 2010

⁴ Law on Foreign Investment - published in "State Bulletin" No.4 and No.5, 1993

⁵ Law on Competition - published in "State Bulletin" No.28, 2010

⁶ Company Law - published in "State Bulletin" No.42, 2011.

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operating in sectors of strategic importance, or such foreign-registered companies' subsidiaries, controlled companies or affiliates thereof.

Article 4. Scope of the Law

- 4.1 In the event that a foreign state-owned legal entity (whether such ownership is in whole or in part), an international organization, their affiliates or third parties, operates in Mongolia or invests in any business entity that operates in Mongolia and/or its affiliates or third parties, it shall obtain approval from the Government of Mongolia through its business entity registered in Mongolia.
- 4.2 When undertaking operations in a sector of strategic importance specified in Article 5.1 of this Law, or else entering into a transaction specified in Article 6 of this Law in relation to a company that is a business entity operating in a sector of strategic importance, a foreign investor, its affiliates or third parties must obtain approval for the same from the Government through its business entity operating in a sector of strategic importance.
- 4.3 This Law shall not apply to matters concerning the implementation of foreign investments being made within the scope of international treaties and conventions to which Mongolia is a party.
- 4.4 A foreign investor, its affiliates or third parties shall be prohibited from concluding transactions with a business entity operating in a sector of strategic importance in violation of the provisions of this Law.
- 4.5 This law shall apply to transactions made outside the territory of Mongolia which have the same characteristics as those transactions specified in Article 4.1 or 4.2 of this Law.
- 4.6 This Law shall equally apply to foreign investors, their affiliates or third parties which newly establish a business entity as defined in Article 3.1.1 of this Law, or else that will acquire the shares of a company that is a business entity operating in a sector of strategic importance.
- 4.7 In the event that the share of a business entity operating in a sector of strategic importance which a foreign investor proposes to acquire exceeds 49% of such entity and the amount of investment for such transaction exceeds 100 billion Mongolian tugrugs, Parliament shall decide whether to grant approval following a submission made by the Government. In all

other circumstances, the Government shall decide whether to grant approval.

- 4.8 When a business entity operating in a sector of strategic importance procures goods or services, it shall give preference to national entities, and the procedures relating to such preference shall be adopted by the Government.

CHAPTER TWO SECTORS HAVING STRATEGIC IMPORTANCE, TRANSACTIONS REQUIRING APPROVAL

Article 5. Sectors having strategic importance

- 5.1 The following sectors shall be considered to be of strategic importance for securing the basic needs of the population, the independence and normal functioning of the economy, generating national revenue, and guaranteeing national security:
- 5.1.1 minerals;
- 5.1.2 banking and finance; and
- 5.1.3 media and telecommunications.
- 5.2 The Government may submit proposals to Parliament to include additional sectors within the list of sectors of strategic importance if it considers this to be necessary, and Parliament may approve the same.

Article 6. Transactions which require approval

- 6.1 The following transactions shall require approval in accordance with this Law (henceforth "transactions"):
- 6.1.1 transactions that afford the right to acquire a third or more of the shares of a company that is a business entity operating in a sector of strategic importance;
- 6.1.2 transactions that afford the right unilaterally to appoint the executive director(s), or appoint the majority of the executive management team, or unconditionally appoint the majority of the board of directors, in each case of a business entity operating in a sector of strategic importance;
- 6.1.3 transactions that afford a right to veto the management decisions of a business entity operating in a sector of strategic importance;

- 6.1.4 transactions that afford a right to implement the management functions of a business entity operating in a sector of strategic importance, direct its decisions, or exercise its business operations;
- 6.1.5 transactions that may establish a buyer or seller monopoly in the international or Mongolian markets for processed or unprocessed mining products;
- 6.1.6 transactions that may directly or indirectly influence the market or price of Mongolian mining products for export; or
- 6.1.7 transactions which, either directly or through affiliates or third parties, would result in a reduction of the shares held by a foreign investor in a company that is a business entity operating in a sector of strategic importance.
- 6.2 A party referred to in Articles 4.1 or 4.2 of this Law shall submit an application seeking approval to the state administrative agency responsible for foreign investment through its business entity operating in a sector of strategic importance which is registered in Mongolia within 30 days of the date of a transaction specified in Article 6.1 of this Law.
- 6.3 Foreign investors, their affiliates or third parties that have entered into a transaction specified in Articles 6.1.1 or 6.1.7 of this Law shall, from the consideration relating thereto, pay into the state budget the taxes payable pursuant to Mongolian tax legislation, and the business entity operating in a sector of strategic importance that is registered in Mongolia shall be responsible for such payment.
- 7.1 of this Law shall be approved by the Government in accordance with this Law.
- 7.3 The state administrative agency responsible for foreign investment shall receive the applications specified in Article 7.1 of this Law and shall consider whether any of the following circumstances will apply:
- 7.3.1 any activity of the investor or the nature of the investment is contrary to the National Security Policy;
- 7.3.2 the applicant is capable of complying with Mongolian legislation or established business codes;
- 7.3.3 the nature of the investment is such that it would restrict competition in the concerned sector or create a dominating position;
- 7.3.4 the investment would have a significantly adverse effect on the state budget or other policies or activities of Mongolia; or
- 7.3.5 the investment would have an adverse effect on the operations of the concerned sector.
- 7.4 The state administrative agency responsible for foreign investment shall deliver its opinion to the Government on the transaction within 45 days of receipt of the application specified in Article 7.1 of this Law.
- 7.5 In cases other than those specified in Article 4.7 of this Law, the Government shall decide whether to grant or refuse approval within 45 days of receipt of the opinion specified in Article 7.4 of this Law.
- 7.6 The state administrative agency responsible for foreign investment shall notify the applicant within 5 days of the decision specified in Article 7.5 of this Law through its business entity operating in a sector of strategic importance that is registered in Mongolia.
- 7.7 The Government is prohibited from refusing to grant approval on grounds other than those specified in Article 7.3 of this Law.

CHAPTER THREE REVIEW OF APPLICATIONS AND DECISION

Article 7. Applications for Approval

- 7.1 A party specified in Articles 4.1 or 4.2 of this Law that wishes to enter into a transaction referred to in Article 6 of this Law shall submit an application for approval through its business entity operating in a sector of strategic importance that is registered in Mongolia to the state administrative agency responsible for foreign investment.
- 7.2 Detailed procedures connected with receiving, reviewing, and deciding applications specified in Article

Article 8. Notification of Completed Transactions

- 8.1 Foreign investors, their affiliates or third parties shall notify the state administrative agency responsible for foreign investment through its business entity operating in a sector of strategic importance that is registered in Mongolia within 30 days in respect of its acquisition of between five percent and the percentage

specified in Article 6.1.1 of this Law of the shares of a company that is a business entity operating in a sector of strategic importance or in respect of the circumstances specified in Article 6.1.7 of this Law.

- 8.2 Within 180 days of this Law coming into effect, an entity specified in Articles 4.1 or 4.2 of this Law shall provide information through its business entity operating in a sector of strategic importance that is registered in Mongolia to the state administrative agency responsible for foreign investment concerning any shareholding equal to five percent or more of the shares of a business entity operating in a sector of strategic importance which it held at the date of entry into force of this Law.

CHAPTER FOUR MISCELLANEOUS

Article 9. Sanctions

- 9.1 Transactions made in violation of the provisions of this Law, and in particular the provisions of Articles 4.1 or 4.2 of this Law, shall be void.
- 9.2 If this Law is violated, the relevant competent authority shall discontinue the operations of a business entity operating in a sector of strategic importance and revoke its licences.

Article 10. Entry into Force

- 10.1 This Law shall take effect on 17 May 2012.

Speaker of Parliament

D. Demberel