

LEGAL ENVIRONMENT OF MONGOLIA'S FOREIGN INVESTMENT

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Legal environment of Mongolia's foreign investment

Since the transition into market economy our country has pursued active policy to attract foreign investment. The Law on Foreign Investment of 1990 is one of the first legislations to declare open economy and regulate important factors of market relations.

Based on the knowledge and experience accumulated in the first years of drastic political, economic and social changes, Mongolia has revised its Foreign Investment Law in 1993. During the past time no substantial amendments were made into this law except increasing the types of investment and ensuring sustainability and openness of investment regulations.

Mongolian Government has steadfastly followed the policy to ensure stable legal environment for foreign investment and introduce changes only to grant more favorable terms to investment regimes and regulations. A vivid evidence of this policy is seen from the stable implementation of the Law on Foreign Investment of 1993 until now.

Mongolia is one of the countries which has a special law and a specialized state administrative organization on foreign investment. This is another advantage offered by our country's foreign investment legal environment and state regulation. The objectives of the Law on Foreign Investment are to promote foreign investment, protect rights and assets of investors and to regulate relations pertaining to foreign investment.

Mongolia has an open and simplified legal regulations regarding foreign investment and permission to establish an economic entity with foreign investment is granted within 3-5 working days. The legal stipulation of the registration of economic entities with foreign investment is an important regulation aiming at ensuring sustainability, openness and transparency of this process.

Foreign investors can make any investments except in industries and services prohibited by the laws of Mongolia. Also the investment could be made in any territory except those prohibited by the legislations. The types and implementation forms of foreign investment are in conformity with the global standards.

It is prohibited to nationalize or illegally confiscate foreign investment on the territory of Mongolia and foreign investors are provided by the law with the favorable conditions that are no less than those offered to Mongolian investors in possessing, using and disposing investments they made. Mongolia also follows the principle of non-discrimination of investment by types and sources.

Foreign investors give more priority to sustainability than to any concession or exemptions.

Our country has a regulation which allows an investor of 20 million or more USD in Mongolia upon his/her request to establish a stability agreement for 10-15 years with the Cabinet member in charge of tax policy on behalf of the Government of Mongolia to guarantee stable environment to conduct activities.

Foreign investment is not only protected by national legislations in Mongolia but also by legal protection backed up by the international treaties.

Mongolia became a member of the WTO in 1997 and joined universal treaties and international conventions to promote and protect investment, such as Washington Convention on “Settlement of Investment Disputes” and Seoul Convention on “Investment Insurance” and joined Multilateral Investment Guarantee Agency.

Therefore, investors view Mongolia’s foreign investment environment as adequate and accordingly carry out their activities. The researchers, too, are of opinion that the Law of Mongolia on Foreign Investment provides the legal environment for foreign investment in mineral resources sector.

Future trends of foreign investment

Mongolia is at the brink of rapid development. The IMF estimated that Mongolia’s current GDP that is less than 5 billion USD will double within 5 years and average annual GDP growth from 2013 through 2016 can be 20%, as GDP doubles in 2020, the GDP per capita could grow from 1916 USD to 7000 USD within 10 years. However, national economic growth estimates say that our country’s GDP will grow 2.8 times by 2015 compared to 2010 and by 2021 GDP will grow 7,6 times.

As of 2010 the investment in mining sector constituted over 60 percent of total investment and exports of this sector have rapidly increased showing robust signs of further growth. Over 80 percent of total exports of Mongolia are from mining sector and most of them are products with primary processing.

High economic growth will result from mining exploitation, processing industries and large infrastructure projects. This can be viewed as first steps of the transition from raw material based economy to one based on processing industry.

Thus, the industry’s proportion in the national economic structure will expand. In 2010 the industry was 46 percent whereas in 2015 it will grow into 58% and in 2021 - 57%. Agriculture was 14% in 2010 and it is estimated to reduce to 11 percent in 2015 and 8% in 2021. Service sector was 40% in 2010 which will be changed into 31% by 2015, and 35% in 2021.

Once Oyu tolgoi copper and gold, Tavan tolgoi’s coal minings start operations and with the launch of industrial park of Sainshand and other large industries the medium term foreign trade indicators will improve significantly.

These construction projects will require large amount of investment and international experts and researchers estimated that Mongolia's economy has the absorption capacity of about 40 billion USD in coming years.

The size of domestic investment and foreign loan (which should not exceed certain percent of GDP) is limited, therefore, foreign investment will play the main role.

In order to attract foreign capital that will ensure high growth of development there is a need to improve legal environment for foreign investment and the absorption capacity of the economy on one hand, and to involve government regulation for the purpose of reducing risks associated with the development driven by the mining, on the other hand.

The Resolution No.48 of the Parliament of Mongolia issued in 2010 approved a revised version of the National Security Concept (NSC) and Resolution No.10 of 2011 approved the revised version of the Foreign Policy Concept (FPC). These concepts provide clear-cut provisions on the policy to be pursued on foreign investment.

NSC defines the decisive role of national investors in the country's economic development and contains concrete provisions that state "... balanced investment policy shall be pursued to balance amount of investments from neighboring countries and other highly developed countries in strategically significant sectors" and "use foreign investment as an important leverage and instrument to improve competitive capacity, financial and management effectiveness, introduce new technology and pave foundations for long term development".

The FPC states that on the basis of the National Security Concept the country will strive to ensure its economic security in all aspects and avoid becoming too dependent on any other country. It also states concrete activities to be carried out in economic sectors like to introduce the best technology and management, improve competitiveness by bringing the quality and standards of works, services and products closer to international standards, promote exports; fully process mining and agricultural raw materials, produce value-added products, boost production of import substitutes, increase workplace and support development of knowledge based industry ... it also stipulates implementation of renewable energy projects and programs, attraction of foreign investment and introduction of modern accomplishments in the information technology sector and the support to be rendered to expansion and development of national scientific-technological information network.

Thus, the NSC and FPC provide concrete assignments to the state agencies to implement Mongolia's regulated foreign investment policy.

Within the framework of these provisions it is important for us to work to attract investment from highly industrialized third neighbor countries, especially in production of value-added and competitive products. Also I would like to highlight the need to incorporate into relevant laws and ensure enforcement of tax concessions and tax exemptions on investment as well as providing loan guarantee for economic entities running their activities in high end technology based on the "Government Policy on High end Technology Industry" approved by the Parliament in June 2010.

As a result of tax exemptions and concessions offered to the foreign investment in infrastructure sector by the Law on Foreign Investment of 1993, Mongolia has witnessed faster development of cellular phone and internet use compared to its neighboring countries and these sectors established together with the foreign investors are now transferred to the hands of the national investors. Based on this experience there is a need and possibility to support and attract foreign investment in high end technology.

Conclusion

The policy pursued on foreign investment since 1990 until now can be labeled as an “open policy with minimum state involvement”. From now on it is regarded as appropriate to pursue an “open policy with proper state involvement”. In so doing, it is stipulated that priority areas will be given balanced incentives and control, the state involvement shall be kept at the level that does not impede activities of the economic entities with foreign investment, and the state shall be capable of managing the social and economic impact of foreign investment on the country. Also this policy shall emphasize attracting foreign investment in some sectors where competitiveness and development level is low, whereas it will introduce selection procedures for the foreign investment in the sectors which have been successful in actively attracting and securing interests of foreign investors.

The foreign direct investment made a concrete contribution to the socio-economic development of Mongolia and its role will further increase in the future. The legal environment to attract foreign investment in Mongolia is set up and foreign investment will be attracted with a policy that has proper state regulation.