Annex to the Government resolution

No. 52 dated 2014

**REGULATION ON ENTERING INTO AN**

**INVESTMENT AGREEMENT**

**1. General provisions**

1.1 The purpose of this regulation is to regulate the relations regarding the execution of an investment agreement with an investor that holds a stabilization certificate to invest more than 500 billion MNT in Mongolia and a legal entity that has not yet acquired a stabilization certificate as contemplated in provision 20 of the Investment Law within the framework permitted by the Investment Law and other laws and regulations.

1.2 This regulation shall bind the investors set forth in the Investment law and Regulation on the adherence of the Investment Law.

1.3 This regulation shall not apply to the execution of agreements in the nuclear energy sector as contemplated in 4.7 of the Investment Law and a deposit utilization agreement set forth in 5.3, 5.4, 5.5 of the Minerals Law and product sharing agreement in accordance with the Law on Petroleum.

**2. Applying for an investment agreement**

2.1 The investing legal entity who intends to make an investment exceeding 500 billion MNT as set forth in 20.1 and 20.5 of the Investment Law, shall file to the state central administrative agency in charge of investment matters a request to execute an investment agreement as set forth in the Investment law and this regulation and the following documents shall be attached to the application:

2.1.1 Information on establishing a sustainable employment;

2.1.2 Information on introducing innovative technology;

2.1.3 Information on the shareholders, operations and projects previously implemented by the applicant;

2.1.4 A copy of state registration certificate, a copy of the license issued by a competent authority in case required by the law, other rights certificate of the applicant and a copy of the stabilization certificate in case it is a holder of such certificate;

2.1.5 A feasibility study approved by the state central administrative agency to which the project operation refers or the scientific or technical council under it, if the amount of investment is 500 billion MNT or above;

          2.1.6 A copy of the permission, if it is required according to the Article 21 of the Investment law;

2.1.7 An environmental and social impact assessment.

2.2 The state central administrative agency in charge of investment matters shall receive and review the request to execute an investment agreement set forth in provision 2.1 of this regulation.

2.3 The state central administrative agency in charge of investment matters may require documents other than those set forth in provision 2.1 of this regulation during the process of reviewing the request.

2.4 The state central administrative agency may reject the conclusion of a negotiation to execute an investment agreement due to the following grounds:

2.4.1 Operations of the investor or the nature of the investment may breach the National security concept of Mongolia;

2.4.2 The investment is not profitable or will have negative impact on the Mongolian State budget, fiscal revenue or policy;

2.4.3 The investment amount of the investor is determined to be less than 500 billion MNT according to the estimation and financial evidence set forth in the feasibility study;

2.4.4 A legal entity which is obliged to acquire the permission set forth in provision 21 of the Investment Law has not acquired such permission;

2.4.5 It has been determined that the criteria set forth in provision 16.1 of the Investment law have not been satisfied;

2.4.6 The operations of the investor, the investment project or program will have substantial damage on the environment.

2.5 The state central administrative agency in charge of investment matters shall get recommendation and evaluation from applicable entities while verifying whether the circumstance set forth in 2.4 of this regulation has arisen.

2.6 The state central administrative agency in charge of investment matters shall reply in writing to the applicant if the grounds to reject the conclusion of negotiation to execute investment agreement set forth in provision 2.4 are identified.

**3. Conclusion of negotiation and execution of the agreement**

3.1 The state central administrative agency in charge of investment matters shall invite the applicant legal entity to conclude negotiation to execute an investment agreement if grounds for rejection set forth in provisions 2.4 of this regulation is not constituted.

3.2 The state central administrative agency in charge of investment shall, if it deems necessary, establish a working group which will conclude negotiation to execute an investment agreement with the applicant legal entity. A cabinet member in charge of the relevant sector matters or an authorized person appointed by him/her shall participate in the working group and the cabinet member in charge of investment matters shall approve the working group composition.

3.3 The working group may retain professional scientists and experts to provide external consultancy services during the negotiation process and the relevant cost shall be presented to the Cabinet meeting from time to time by the relevant Cabinet member in charge of investment matters and resolved.

3.4 The working group set forth in provision 3.2 of this regulation shall negotiate and agree the investment agreement draft with the applicant legal entity within the scope of the laws and legislation effective at such time.

3.5 The working group leader or relevant official of the state central administrative agency in charge of investment matters shall be obliged to regularly notify about the negotiation process to the Cabinet member in charge of investment matters.

3.6 The parties shall present to the Cabinet member in charge of investment matters after they fully agree on investment project draft as a result of negotiation.

3.7 If the Cabinet member in charge of investment matters approves such investment agreement draft, the matter shall be discussed at the Cabinet meeting in accordance with the Law on the Government of Mongolia and relevant regulations.

3.8 The Government shall issue a resolution on whether to execute such investment agreement in accordance with the applicable laws and regulations.

3.9 If the Government approves such investment agreement draft, the Cabinet member in charge of investment agreement shall acquire the signature right and execute the investment agreement with the applicant legal entity in accordance with the provision 20.2 of the Investment Law.

**4. Contents of the agreement**

4.1 The investment agreement shall be executed in Mongolian and English and it shall reflect the following:

4.1.1 The legal grounds for execution of the investment agreement;

  4.1.2 The parties to the investment agreement, the percentage or amount of shares held by them;

4.1.3 If the investor intends to develop the investment project as a group or cooperation of legal entities, the name of the legal entity which pertains the regulation in the investment agreement, its state registration certificate number and tax payer certificate number;

    4.1.4 The purpose of the investment and main operations;

  4.1.5 The amount and source of investment;

     4.1.6 Duration and stages of investment;

    4.1.7 The duration of the investment agreement ;

  4.1.8 The term of tax environment stabilization and provision of financial support set forth in provision 20.4 of the Investment Law;

4.1.9 The feasibility study based on which the agreement is executed, information on how to revisit the agreement in case of any amendments;

4.1.10 Information on its impact on human health and environment, methods and solutions for elimination and mitigation of adverse impact;

      4.1.11 other impacts on manufacturing or services;

    4.1.12 its contribution to the regional development;

   4.1.13 adherence of laws on labor relations, creation of new jobs and training of staff;

     4.1.14 the solution of infrastructure matters, urban, social and cultural matters;

      4.1.15 whether it will create business opportunities to Mongolian citizens and legal entities;

      4.1.16 the amount and rate of products to be manufactured, processed and sold during the main course of investor’s operation;

      4.1.17 the measures to be taken in case of force majeure;

      4.1.18 the rights and responsibilities of the Government;

      4.1.19 the rights and responsibilities of the investing legal entity;

       4.1.20 the grounds for making amendments to the investment agreement;

      4.1.21 the grounds for annulling and terminating the agreement;

       4.1.22 resolving of dispute;

       4.1.23 the monitoring the implementation of agreement by the parties;

4.1.24 Information on the invalidation of tax incentive and stabilization provided to the investor and claiming the tax amount within the scope of the agreement, if the investment does not reach the amount set by the law due to investor’s failure to properly comply with its obligations under the agreement.

      4.1.25 other terms which the parties agreed on.

4.2 The agreement shall be executed in accordance with the laws and legislation in force.

**5. Monitoring the implementation of the agreement**

5.1 The investing legal entity which executes an investment agreement shall be obliged to submit the operational report of the investment and project implementation to the state central administrative agency in charge of investment matters within the 1st quarter of subsequent year in accordance with the Investment Law and Investment agreement.

5.2 The state central administrative agency in charge of investment matters shall monitor the implementation of the investment agreement and sectoral agencies and other applicable entities may cooperate if necessary.

5.3 The state central administrative agency shall promptly notify the investing legal entity which executed the investment agreement about the breach and shortcoming which occurred during the implementation process of the investment agreement, and shall take measures to eliminate these.

5.4 The Government shall enjoy the right to suspend or terminate the agreement, if the investor does not comply with its obligations under the agreement.

5.5 The disputes to arise due to relations of investment agreement shall be resolved as set forth in the Mongolian laws and such agreement.

**6. Miscellaneous**

6.1 The state central administrative agency in charge of investment matters shall submit to the state central administrative agency in charge of tax matters the information about the investment agreement executed with the investing entity within 5 business days.

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