



**AMCHAM POSITION PAPER:**

**AMENDMENTS TO THE  
INVESTMENT LAW**

Nov. 2023

## **AmCham Mongolia**

### **Position Paper on the Amendments to the Investment Law**

This paper was written by members of AmCham Mongolia's Trade and Investment Committee and Legal Working Group, under the supervision of AmCham Mongolia's Director of Policy and Advocacy, G. Javkhlantugs.

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## Background

The Investment Law was enacted in 2013 and was relatively progressive, offering several incentives to investors. However, numerous challenges in its implementation have created burdens for investors, including the inconsistency of provisions related to tax incentives offered by the law and tax law and a capital requirement of 100,000 USD for each investor.

The long-awaited amendments were drafted by the newly established Ministry of Economy and Development (MED). It is commendable that the ministry, under the personal leadership of its minister, convened a series of inclusive and participatory consultations, provided English and Mongolian versions of the draft, and responded with detailed feedback to comments from stakeholders.

The draft has several progressive features, including removing the 100,000 USD capital requirement and using arbitration as a dispute resolution mechanism. However, the amendments removed all tax-related incentives, stating that tax laws should deal with these matters. The Ministry of Finance does not plan to draft any amendments soon, so the Investment Law amendments may be a declarative piece of legislation.

AmCham Mongolia submitted about 80 comments on the amendments, highlighting its top 10 comments, and stressed the importance of comprehensive business environment and investment climate reforms through comprehensive legislation, the enforcement of court decisions, and expedited tax and investor dispute mechanisms. The MED included most of AmCham's recommendations in the amendments.

## PUBLIC CONSULTATION

On May 2, the MED organized a public consultation on amendments to the Investment Law. Key stakeholders from the public and private sectors, including Minister of Economy and Development Ch. Khurelbaatar, IFC Resident Representative Rufat Alimardanov, EBRD Head of Mongolia Hannes Takacs, AmCham Mongolia Executive Director O. Adiya, Chairman of Mandal Financial Group U. Ganzorig, and CEO of Mobicom Koji Kurushima, participated in the consultation as panelists. The ministry introduced the eight major changes proposed.

O. Adiya stated that AmCham Mongolia had provided 80 comments on the amendments and stressed the importance of the comprehensive reform of the business and investment ecosystem through comprehensive legislation, the enforcement of court decisions, and expedited tax and investor dispute mechanisms.



During a Q&A session, AmCham Mongolia's Director of Policy and Advocacy - G. Javkhlantugs, suggested making the Investment Law regionally competitive by offering specific investment incentives, including tax exemptions based on best global practices instead of the tax deferrals outlined in proposed amendments. He also highlighted the need for comprehensive tax reform to resolve tax issues that are harmful to foreign direct investment (FDI) in Mongolia. In his response to questions concerning tax incentives, Minister Ch. Khurelbaatar stated that a legal task force removed clauses referring to tax exemptions since these incentives should be included in tax regulations. The amendments were discussed during the spring session of Parliament in July 2023. Further discussion was postponed due to the reference to allowing land use by foreigners for 60 years.

## AMCHAM MONGOLIA'S CRITICAL COMMENTS ON AMENDMENTS TO THE INVESTMENT LAW

AmCham Mongolia submitted the following key proposals to be included in the draft of amendments to the Investment Law developed by the Ministry of Economy and Development on April 14, 2023, and accompanying legislation:

*In the framework of amending the Investment Law, it is necessary to add relevant regulations according to the following general proposals:*

1. AmCham Mongolia believes the proposed amendments have too few incentives and insufficient tax support for Mongolia to competitively attract investment at the regional level. Therefore, it is necessary to increase the types of incentives and adequately include tax benefits. Considering the incentives included in the amendments, foreign investors will be more likely to invest in countries such as the Republic of Korea, Kazakhstan, Vietnam, and Cambodia than in Mongolia. When foreign investors invest in any country, they first ask for tax and non-tax support. Hence, the amendments need to increase investment incentives and leverage offered by Mongolia to make it competitive at the regional level.

According to a comparative study of the investment policies and laws of foreign countries conducted by the National Development Agency in 2020, the governments of the Republic of Korea, Vietnam, the Czech Republic, Kazakhstan, and Chile provide investment incentives, mostly in the form of tax credits, when starting business activities. Business, income, local, and real estate taxes were exempted. Goods were also exempt from customs duties and value-added tax. If a foreign investment meets specific criteria, financial support from the central and local governments may be available; for example, subsidizing the cost of a land purchase, rent, and employee training and education. Exemptions varied for different sectors, and it was common for tax exemptions to last for the first three years of operations and for investments in small towns and remote areas to be eligible for tax exemptions.

*· In the Republic of Korea, up to 20-25 percent of buildings, equipment, and real estate costs in a small town can be subsidized.*

*· In the Czech Republic, subsidies are provided for production in government-approved industries. Projects that create new jobs and are in the technology sector can receive 200 million CZK for operating costs and 100 million CZK for equipment purchases. Other projects that create 20 or more jobs can also receive incentives, discounts, or exemptions. If 3.6-4 million EUR is invested, corporate income tax exemptions and cash incentives can be granted for the first 10 years, with a maximum of 45.75 million CZK in incentives or 19 percent of the total cost.*

*· The Government of Kazakhstan supports investment in mining, railway equipment, electrical equipment, chemical products, construction, metallurgical production, food production packaging, medicine, information, communications, electricity, and wind and solar energy with special incentives.*



## AMCHAM MONGOLIA'S CRITICAL COMMENTS ON AMENDMENTS TO THE INVESTMENT LAW

2. Make the concept paper and procedures for the Investment Law public. In doing so, as the stabilization certificates and investment agreements issued under the 2013 Investment Law have not expired, the conditions for their validity will be created. The following relations will be regulated by the Law on Legislation:

- *How to protect, recognize, confirm, and change the rights, interests, and obligations of the investor within the framework of the relationship established under the 2013 Investment Law, in accordance with the revised version of the law;*
- *Conditions and ways to eliminate negative consequences for investors;*
- *Conditions for the preparation and implementation of the organization and transition phase related to the implementation of the law; and*
- *Regulating special cases where the law is retroactively applicable.*

3. Establishment of an Investment Dispute Resolution Council, similar to the Tax Dispute Resolution Council: The arbitration provision in the amendments is too costly in terms of time and cost for some investors to resolve disputes. Therefore, it is necessary to add a provision for the settlement of investment disputes. Due to the poor coordination of government agencies, the decisions of one government agency may not be implemented or be rejected by another government agency, so there is a need for an external council to resolve disputes before filing a lawsuit or pursuing arbitration. The council's composition could include representatives of foreign-invested companies, government institutions responsible for investment issues, and non-governmental organizations.

4. Align investment tax support regulations with the Investment Law and tax reforms to ensure the uniformity of the investment legal framework.

5. We believe the amendments harm the investment environment by removing key tax incentives from the Investment Law. For example, section 11.2 on exemption from customs duty and VAT rates specified should not be amended.

6. Dispute resolution: The establishment of a specialized court for resolving business and commercial disputes and the specialization of judges in business law will result in the speedy resolution of investment disputes and avoid difficulties for investors. Therefore, amendments are required for the following laws and regulations:

- *Law on the Judiciary*
- *Civil Code*
- *Law on Arbitration*
- *Law on Mediation*



## **AMCHAM MONGOLIA'S CRITICAL COMMENTS ON AMENDMENTS TO THE INVESTMENT LAW**

7. **Industry support:** To diversify the economy and reduce over-dependence on the mining industry, within the framework of the Investment Law, identify the areas of priority support and the economic areas to be supported within a certain scope, reflecting on the support provided.

8. **Be clear in the amendments, protect the rights and legal interests of domestic and foreign investors, and include the principles of fairness:** Include all provisions in a clear or obligatory manner, not in the form of "may" or "possible".

9. **Incorporate new provisions on the retroactive application of investment legislation:** If the revised Investment Law harms the rights and legal interests of an investor, the Investment Law should be applied retroactively.

10. **Create a healthy ecosystem for the investment legal environment:** The government should create a favorable tax environment, ensure the provisions of the law are fully implemented, provide investment incentives and support, ensure the implementation of contracts, reform the courts and court decision enforcement institutions, and resolve disputes fairly and efficiently.

11. **To ensure the stability of the investment legal environment, protect the rights and interests of investors, attract investment, and promote responsible investment, the following principles should be included in the amendments as principles for how the government handles investments:** In implementing this law, the government should adhere to the following general principles, in addition to the principles stated in Section 2 of the Article 1 of the Constitution of Mongolia:

- *Non-discrimination toward investors*
- *Treat investors fairly and equitably*
- *Ensure transparency in government decision-making*
- *Ensure sustainable development*
- *Ensure the stability of the investment environment*

12. **Urgently make the necessary changes to the by-laws under the Investment Law.**

13. **Fully implement the Investment Law and align it with other laws**

AmCham Mongolia provided 67 detailed suggestions for the amendments to the Investment Law.

AmCham Mongolia will continue to work with Parliament and the Government of Mongolia to make Mongolia a destination for global investment by creating an enabling business environment and investment climate.

