



POSITION PAPER ON AMENDMENTS TO THE MINERALS LAW

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This paper was written by members of AmCham Mongolia's Mining, Heavy Industry, and Infrastructure 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 Minerals Law amendments are one of a few critical pieces of legislation investors are closely monitoring. The Minerals Law was first adopted in 2006. The mining sector has faced boom-and-bust cycles, with regulations related to exploration and mining permits changing radically in recent years. The Ministry of Mining and Heavy Industry (MIHI) plans to develop comprehensive legislation to address inconsistency and overlaps in other legislation related to the minerals sector.

The MIHI organized a series of public consultations on the amendments in March 2023. AmCham Mongolia provided its members with an English version of the amendments, submitted 120 comments—highlighting 16 critical comments, and attended the public consultations organized by the MIHI.



In October, during Mining Week 2023, AmCham Mongolia hosted the session: "How Critical is Mongolia in Critical Minerals?".

G. Javkhlantugs, AmCham Mongolia's Director of Policy and Advocacy, presented the key issues for investors in the minerals sector and suggestions for the proposed amendments to the Minerals Law.

Another key message conveyed to policymakers was that the best PR for Mongolia is the success stories of current investors. Mongolia should do its best to promote a private sector-led mining sector by reforming state-owned enterprises (SOEs) and ensuring that investors are successful, supported, listened to, and their concerns are addressed.

AmCham Mongolia applauds the Government of Mongolia and AmCham member Orano for signing a protocol for developing and operating a uranium mine project at the Zuuvch Ovoo deposit. The project will require an investment of 1.7 billion USD over a 30-year period. AmCham Mongolia has been actively promoting this important third-neighbor investment deal in Mongolia by showcasing it as "the next Oyu Tolgoi".

On November 9, AmCham Mongolia's Mining and Heavy Industry Committee hosted Mr. Mendbayar, head of the Mining Policy Department at the Ministry of Mining and Heavy Industry. He provided a detailed update on the latest draft of amendments to the Minerals Law. Following his presentation, AmCham's Director of Policy and Advocacy, G. Javkhlantugs, presented AmCham Mongolia's key comments on the amendments.



AmCham Mongolia submitted the following key comments on amendments to the Minerals Law to the Ministry of Mining and Heavy Industry:

1. Increased license fees

The amendments include a significant increase in license fees for all types of minerals, including uranium. This would have the negative effect of significantly increasing the effective tax rate, which currently stands at over 50 percent, and would lead to diminished competitiveness in the international market. Although we understand the government's desire to increase the revenue generated from higher market prices, the percentage and volume should take into account pre-market conditions.

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2. Royalties imposed on secondary metals with economic importance

Article 41.7. states, "Royalties shall be imposed on the contents of primary and secondary minerals with economic importance contained in the mineral per the procedure specified in this article." The criterion of "with economic importance" must not be used to impose royalties on secondary elements, but royalties should be imposed based on the sale of such elements or the proceeds from sales. There is a high risk of disputes over royalties that are applicable under the broad definition of "economic importance".

3. Mineral deposits of strategic importance

The definition of "strategically important mineral deposits" is relatively general. Although there are clarifications, such as being valued at more than five percent of the GDP, there are also overly general criteria, such as the effect on national security, the economy, and social development, allowing Parliament and Cabinet to define any deposit as "strategically important". The possibility of any deposit being listed as such creates risks for investors in medium and large-scale projects. Therefore, revise the definition of "strategic mineral deposits" to attract investment to the mining sector. Consider the opinions of license holders when deciding to have state participation or apply a special fee for the use of mineral resources.

4. Tax arrangements related to the transfer of exploration and exploitation licenses

The holder of a special license for exploration and exploitation must pay a 10 percent tax on their taxable income in accordance with the Law on Enterprise Tax if ownership is transferred. The method of imposing taxes, calculating the evaluation of special licenses for exploration and exploitation, and determining the tax rate is regulated by procedures approved by the cabinet member in charge of finance.



It should be taken into account that the same principles apply to special licenses for exploration and exploitation. The existing regulations for exploitation licenses should be maintained but made flexible for exploration licenses.

5. Exploration operations

Mineral exploration operations are included in the draft law as an independent phase for enterprises wishing to conduct mineral exploration. While the Minerals Law currently states that exploration can be carried out with state budget funds, the amendments state that mineral exploration can also be carried out with private funds and in areas where companies may have mineral resources after sending a request for exploration.

Although this newly introduced exploration operation does not require a license and, on the other hand, does not conclude any contracts, it is unclear if this will have a negative effect in the form of more steps, or if it will have a positive effect in making exploration more open, flexible and prompt. The exploration should be directly dependent on exploration regulations, and also avoid creating negative consequences and additional requirements.

6. Land use permits and granting special rights

The amendments do not specify how to grant land use permits and special purpose rights at the local, regional, and national levels. Uncertainty in the distribution of powers and the different interpretations and applications of regulations at each level of government may lead to investors being unable to fully exercise their legal rights.

7. Transitioning to the revised law and conflicting understandings of the law

In the current version of the law, there is no provision for how to transition to revisions. It is necessary to clarify whether any of the new provisions will apply retroactively to ongoing projects. State and local officials have differing understandings of the law when enforcing and enacting regulations that exceed their statutory authority.

8. Regulations for investment agreements

Communications related to the negotiation and conclusion of an investment agreement are regulated by the Investment Law, not the Minerals Law.

The Law on Nuclear Energy provides somewhat different regulations for radioactive mineral investment agreements. In the Law on Nuclear Energy, investment agreements related to the exploration and extraction of radioactive minerals are treated and regulated in the same way as investment agreements related to the use of nuclear fuel, nuclear fuel raw materials, and nuclear facilities.



The Law on Nuclear Energy does not include detailed regulations related to the negotiation and conclusion of investment agreements, but the Investment Law and the regulations adopted pursuant to it contain detailed regulations on investment agreements subject to the law's regulations.

Due to the different regulations in the Law on Minerals and the Law on Nuclear Energy, two important issues affect the interests of investors and the government.

First, in Article 30.1 of the Law on Nuclear Energy, if the investor of the company holding a special license to operate as specified in Article 15.1.2 and 15.2 of the law requests themselves for an investment agreement, the investment agreement for a period of up to 10 years can be concluded to maintain a stable environment. Article 30.2 of the law states that a contract under terms specified in Article 30.1 can be extended for up to 10 years.

The provisions of the Law on Nuclear Energy regarding the term of an investment agreement being up to 10 years and the period of its extension are not aligned with the duration of mining projects. To obtain investment, it is very important for investors to have a definite, clear, and stable legal and tax environment throughout the entire life of a project.

The term of the investment agreement and its extension should be aligned with the term of the special use license and automatically extended if the term of the special use license is extended. This is in line with international standards for other major mining and infrastructure projects.

Second, the process of negotiating and concluding a contract stipulated in the Law on Investment and related regulations does not apply to radioactive mineral investment agreements. To attract investment, including these processes in the Law on Investment will be a more favorable arrangement for foreign investors and the government.

To resolve these and other unclear issues, we believe it is appropriate to include in the amendments that an investment agreement, as specified in the Law on Investment, applies to all mineral projects, including radioactive minerals. It is also appropriate to amend the Law on Nuclear Energy, ensuring that the requirements and procedures for investment contracts specified in the Law on Investments apply to the activities specified in Article 15.2 of the Law on Nuclear Energy.

9. Guarantee of performance

In accordance with the Law on Environmental Impact Assessment, the licensee shall provide funds equal to 50 percent of the current year's costs for the implementation of the environmental management plan. The licensee is responsible for depositing those funds to the account of the central state administrative organization in charge of environmental issues, guaranteeing the fulfillment of environmental restoration obligations set forth in the project's environmental management plan.



According to the Law on Nuclear Energy, the holder of a special license is obliged to deposit funds as a guarantee to fulfill their obligations to protect the environment and prevent nuclear and radiation accidents. However, the amount of these funds has not been determined to date. Therefore, it is necessary to specify the amount of funds deposited to make the regulation clear to license holders.

It is also necessary to investigate and implement the possibility of depositing these funds to a commercial bank account instead of a government one or securing them with a special bank guarantee and depositing them to an interest-bearing USD account.

In connection with the new regulation on financing closure activities, as stipulated in Article 34 of the amendments, it is possible to guarantee the fulfillment of a mine's environmental management plan without the need to deposit funds that are returned during the closure phase. We propose including only one type of financing in the Law on Minerals or cash regulation, as stipulated in Article 34 of the amendments, in connection to the obligation of environmental restoration at the mine closure stage.

10. Funding for mine closure operations

It is important for the licensee to ensure that the total cost of closure and rehabilitation at the end of the production period is fully funded. However, the Law on Nuclear Energy does not clearly regulate this issue. In practice, the cost of decommissioning and rehabilitation at the end of the production phase is fully funded by the special placement of closure activity and rehabilitation costs.

Therefore, it is suggested that amendments to the Minerals Law or the Law on Nuclear Energy state that the licensee shall (i) annually allocate the estimated costs required for decommissioning and rehabilitation proportionately and (ii) specifically open the funds with an internationally recognized financial institution, or include depositing the funds in a USD account or issuing a special bank guarantee (this should include foreign banks). In addition, it is necessary to attribute the funds to expenses deducted from taxable income.

It is unclear how the issues mentioned above will be handled in the two laws, as the proposed amendments to the Nuclear Energy Law are not yet public. We hope that amendments to the Law on Nuclear Energy are drafted in accordance with the law and incorporate opinions from relevant parties.

Additionally, AmCham Mongolia provided 83 specific comments and suggestions for changes or additions to the amendments.