



*The **AMERICAN CHAMBER** of Commerce in Mongolia*

Position Paper on Supporting a Competitive Mining Sector in Mongolia



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Through its Mining and Heavy Industry Committee, The American Chamber of Commerce in Mongolia (AmCham Mongolia) has developed a policy paper titled "Support a Competitive Mining Sector in Mongolia" to present and discuss major policy issues to support the development of a competitive mining industry in Mongolia. The Position Paper outlines key challenges in the mining industry and proposes some policy recommendations based on international best practices in handling these issues.

AmCham Mongolia stands ready to discuss the challenges and suggested solutions with the state's authorities to make sure that necessary policy actions are taken to promote development of the competitive mining sector in Mongolia.

The paper was prepared by the AmCham Committee and valuable inputs from all members under the leadership of the Chairman of AmCham Mongolia's Mining and Heavy Industry Committee Mr. Ch.Munkhbat. The Mining and Heavy Industry Committee operates under the authority of the AmCham Board of Directors.

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Preamble

AmCham Mongolia's 2018 Roadmap for Private Sector-Led Growth aims to support Mongolia's economic growth by assisting the government and stakeholders in regaining investor confidence through systemic policy reforms and the implementation of major economic and infrastructure projects.

One of the priorities of the Roadmap is supporting a competitive mining sector in Mongolia, an industry which is the engine of the country's economy. AmCham Mongolia believes firmly that developing a responsible and competitive mining sector will create a strong foundation for economic growth and the country's development. We advocate for and support the creation of an effective and attractive legal and policy framework that ensures the investment necessary for the development of both existing and future mining projects in the country.

Advancing the development of the mining industry is one of the government's priorities. Supporting this priority is timely and crucial, especially as the economy has been recovering and the economic outlook and major commodities prices look promising for this and coming years.

Through its Committee of Mining, Infrastructure and Heavy Industry, AmCham Mongolia has developed a Position Paper to present and discuss major policy issues to support the development of a competitive mining industry in Mongolia. The Position Paper outlines key challenges in the mining industry and proposes some policy recommendations based on international best practices in handling these issues.

Industry Background

The mining sector plays a pivotal role in the Mongolian economy. According to official government statistics, for the fiscal year 2017 the mining sector accounted for 23 percent¹ of total gross domestic product (GDP), 73 percent² of industrial output, 80 percent³ of total export earnings, and 73 percent⁴ of foreign direct investment (FDI) in Mongolia. There are 55,688 people⁵ directly working in the sector, making up nearly 4 percent of all employees in the country. As indicated by these figures, Mongolia is highly reliant on the extractive industry and experiences economic boom and bust cycles following global commodity price fluctuations. The State Minerals Policy for 2014-2025 presents a comprehensive overview of the Mongolian State's development goals and principles to be pursued by the government in the minerals sector, which is to be reflected in applicable legislation and medium and long term government programs. The primary mining legislation in Mongolia is the Minerals Law of Mongolia. The Minerals Law provides a regulatory and administrative framework for the prospecting, reconnaissance, exploration and development of most types of mineral resources in Mongolia. A variety of other laws and regulations, including the Nuclear Energy Law, the Subsoil Law, the Environmental Protection Law, the Environmental Impact Assessment Law and the Law on Licensing, supplement the Minerals Law.

As of the last quarter of 2017, there were 753 active entities running operations in the mining sector, making up approximately 1 percent⁶ of all active entities in Mongolia. Given the critical importance of the mining sector in the economy and the nation's enormous resource potential, there are both private and public companies operating in the extractive industry.

In terms of endowments, some of the world's largest undeveloped mineral reserves lie under Mongolian soil, including gold, copper, molybdenum, fluorspar, coal, uranium and rare earth minerals. Mongolia's coal deposits are estimated at roughly 160 billion tons and are some of the largest known deposits (10 percent) in the world, including one of the largest for untapped thermal and energy coal, the Tavan Tolgoi coal mine in Southern Mongolia.

¹ National accounts data from the National Statistical Office www.1212.mn

² Ministry of Finance Monthly Economic News for January 2018, p.3

³ Foreign trade data from the National Statistical Office www.1212.mn

⁴ Balance of payments data from the National Statistical Office www.1212.mn

⁵ Labor force and unemployment data from the National Statistical Office www.1212.mn

⁶ Business registry data from the National Statistical Office www.1212.mn



In terms of monetary value, the International Monetary Fund projected in 2015 that Mongolia has an estimated 1-3 trillion USD in mineral deposits⁷, yet only 25 percent of the country has been geologically surveyed⁸.

Mongolia's close proximity to China, the world's largest consumer of most minerals, presents both opportunities and challenges for Mongolia. If managed well, the rich and underutilized endowment promises sizeable economic gains for the country.

Mongolia's mining sector celebrated its 95th anniversary in December 2017. However, it has only been about two decades since the country started to develop a mining sector with private sector participation and investment⁹. Furthermore, it has been only about ten years since Mongolian mineral resources started to attract the interest of international mining corporations, and since a world class mining project began development in Mongolia¹⁰.

The national impact of the mining industry has increased considerably over the last decade, influencing the design of public policies and the country's macroeconomic stability - Certain fundamental questions arise when this is taken into account: How can the nation's minerals potential be developed so that it contributes substantially to the growth and sustainable development of the country? What are the policy challenges to unlock this potential and develop a competitive mining industry in Mongolia? How can all stakeholders and the public have a shared understanding of the mining industry and how it can be used for the country's development and the well-being of current and future generations? Is the role of the private sector in developing a competitive mining sector being recognized and promoted? To what extent have transparency and accountability across the mining sector value chain been developed, implemented, and monitored by all the actors in the industry?

Allowing and facilitating interaction between the public and private sectors to detect existing challenges and opportunities affecting existing and future investment problems is crucial for developing a competitive mining sector in Mongolia.

To assess the policy and regulatory environment in the extractive sector, AmCham developed a simple questionnaire and sent it to its members. Based on responses received from its members, the following high-level policy challenges have been identified.

Challenge: Public and stakeholder perceptions of and expectations from the mining industry

Despite the significant contribution of the mining sector to the country's economy, the industry's reputation remains tarnished in society, due to perceptions that the industry contributes to environmental damage and has a negative impact on communities.

There is no social cohesion due to the lack of a shared understanding and awareness among stakeholders of the industry in Mongolia. The public perception presents largely negative aspects of the industry, including unexpected and undesired social impacts, environmental damage, and bad economic experiences due to the boom and bust cycle. There are also unrealistic expectations, especially during boom periods.

These impressions of the industry cause challenges in the day to day operations of mining companies. The challenges include frequent pressures and demands from communities, CSOs, and local government offices.

⁷ IMF Working Paper, From Natural Resource Boom to Sustainable Economic Growth: Lessons for Mongolia, p.5 (2015).

⁸ UK Guidance, Doing Business in Mongolia: Mongolian Trade and Export Guide, update February 8, 2018, <https://www.gov.uk/government/publications/exporting-to-mongolia/exporting-to-mongolia#mongolia-export-overview>

⁹ The first Mongolian Minerals Law was enacted in 1994, and thus a legal framework that allowed private sector involvement in the mining sector was put in place.

¹⁰ Ivanhoe Mines and Rio Tinto made an agreement to develop the Oyu Tolgoi copper deposit through a strategic partnership in 2006.

Solution:

- Disclose and share more thorough and realistic information with the public and all stakeholders about the industry and mining operations in simple and understandable ways.
- Have regular dialogues and interactions between the public, the private sector and other stakeholders in a systematic way, and discuss the major pressing social issues in the sector. In this regard, continue to support and lead existing multi-stakeholder platforms such as EITI and other multi-stakeholder initiatives on the ground.
- Conduct joint communications and awareness campaigns by the public and private sectors for a shared understanding about the industry in society.
- Introduce a framework for a responsible mining industry and monitor its implementation. Promote best practices and good local initiatives from the industry.
- Review the State Minerals Policy for 2014-2025 with key stakeholders and assess its implementation, and amend and update if necessary.
- Develop Mongolia's Roadmap for the Development of a Competitive Mining Industry with active and effective participation from stakeholders. Explain, promote, and implement it properly once it is finalized.

Challenge: Predictable policy and regulatory environment

A predictable policy and regulatory environment is one of the top indicators for any investor and business in any industry. This is particularly important for the mining business, which requires large investments and a long turnaround time for returns. Such an environment has been consistently requested by investors and businesses in the mining industry of Mongolia, due to the frequent changes in policy and the regulatory environment, as well as the ambiguity of interpretations during policy and regulatory implementations.

Solution:

- Have regular and effective interactions and dialogues between the public and private sectors on policy and the regulatory environment.
- Have quality consultations with the private sector and stakeholders on any policy and regulatory changes. Ensure sufficient time and the capacity of relevant public institutions for high-quality reviews by and consultations with the private sector and other stakeholders before policy and regulatory changes are submitted to Parliament.
- Ensure the development of the quality of regulations, ensuring that they are clear, understandable, consistent with each other, in line with international practices, implementable, and monitored.
- Strengthen the capacity of relevant government institutions and implementing agencies.
- Ensure sustainability in the government's policy and regulatory institutions in terms of staffing and core professionals.

Challenge: Community engagement

Community engagement in the extractive industry is fairly a new concept for Mongolia. It has been and remains one of the most challenging issues in the country's extractive industry. The reasons for this are, for instance, negative perceptions within communities about the industry and their high expectations of returns and action; poor regulatory implementation on the ground; the poor social performance of some mining operations; and a lack of expertise in mining companies in engaging with their host communities.

To support improved community engagement and building trustworthy relationships between companies and host communities, "Community agreement" in article 42.1 existed in the Minerals Law since its approval in 2006 (the wording has not been changed since then). In July 2014 the Cabinet approved the template for community agreements (article 9.1.10 of Minerals Law). Accordingly, Article 42.1 of the amended Minerals Law says: "A license holder should make an agreement with a provincial administration institute in areas of environmental protection; development of infrastructure in regard to the development of mining construction and operations; and job creation in a mining community."

There have been some good initiatives and attempts from mining companies to engage with their host communities, and also in signing community partnership agreements in Mongolia. However, in many cases, these programs lack proper implementation and systematic review. From the public sector point of view, advocacy and monitoring of the implementation of Article 42.1 are insufficient. The capacity of local administrative offices and communities also need to be strengthened and supported.

Mining companies often face challenges from their host communities, including activists who demand increased benefits and, in some cases, stop mining operations for different reasons.

Solution:

- Review the implementation of Article 42.1 and make necessary adjustments and amendments, especially to the template for community agreements approved by the Cabinet.
- Develop a review-based regulation to support the implementation of Article 42.1, and introduce a regular monitoring system in a transparent and accountable way.
- Promote good practices for community engagement and the implementation of Article 42.1.
- Build the capacity of local governor's offices and communities for engagement with mining companies.

Ways Forward

Mining is one of the key sectors of Mongolia's economy. Developing a competitive mining sector in Mongolia would contribute greatly to the country's economic growth and its sustainable development going forward, as well as to the well-being of current and future generations. Timely and consistent action taken in tackling the challenges addressed in this Position Paper will greatly contribute to the sustainable social and economic development of Mongolia, and the long-term well-being of the Mongolian people.

AmCham Mongolia and its Committee for Mining, Infrastructure and Heavy Industry stand ready to discuss and collaborate with the government and other key stakeholders in addressing these challenging issues.

AmCham members are major investors and suppliers to Mongolia's mining industry. By sharing and showcasing our members' best practices and successes, we can work together to support the development of a competitive mining sector in Mongolia.



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