AMCHAM POSITION PAPER

Strategic Deposits:
Mongolian Investment Juggle

July 2025

BACKGROUND

What is Mongolia's strategy for its mining sector? The UN Trade and Development's Investment Policy Review stated back in 2013 that Mongolia possesses abundant natural resources and holds significant potential for economic growth. However, it is essential to ensure that the income generated from the mining sector is utilized effectively and directed toward sustainable development. The initial step should involve establishing a comprehensive foreign direct investment (FDI) policy with clear development goals. There is a pressing need to enhance institutional capacity to effectively implement and enforce regulatory reforms, thereby improving overall efficiency. More than a decade has passed since these recommendations were made, prompting the need to evaluate the current situation.

Through Resolution No. 37, the Department of Investment and Trade was established on February 1, 2023, as a government implementing agency. It is worth asking whether or not the establishment of an investment and trade office has enhanced the investment climate. Has it succeeded in attracting investment? Have the rights and legitimate interests of investors been safeguarded and supported? Has trade circulation improved? Have industries focused on import substitution been protected, and have exports been encouraged? Has a comprehensive database been developed and analyzed in this regard? Positive outcomes are not very clear today. Following the Oyu Tolgoi project, the only notable positive development from the government was the signing of an investment agreement with Orano.

Mon Atom, wholly owned by Erdenes Mongol, manages the state's participation in the uranium sector. It holds shares in three joint ventures associated with uranium projects: 51 percent in MonCzech Uranium; 34 percent in Badrakh Energy, which encompasses the Zuuvch-Ovoo, Dulaan-Uul, and Umnut uranium deposits; and 15 percent in Gurvansaikhan. In 2023, significant initiatives were launched for Zuuvch-Ovoo, culminating in the signing of an investment agreement with the French Orano in January 2025. Nevertheless, the level of verbal and physical aggression directed at Orano, specifically Badrakh Energy, raised serious concerns and is counterproductive to efforts aimed at attracting investment. It is important to note that uranium is regarded as a strategic resource under the Mongolian Nuclear Energy Law, regardless of the amount of reserves. The realization and the implementation of the investment agreement will need to be closely monitored.

In its Investment Climate Statement 2024, the U.S. Department of State stated, "Businesses face substantial and unpredictable regulatory burdens at every level, asserting that officials across ministries and agencies, ignoring the actual statutes and regulations, routinely make decisions contravening existing legislation. Investors continue to cite long delays in reaching court judgments, followed by similarly long delays to enforce decisions and report that such administrative bodies as the General Tax Authority are so chronically unable and unwilling to resolve disputes that their behavior creates an indirect expropriation risk. Investors are particularly concerned about a tax process that effectively lets officials issue excessive, confiscatory tax assessments to coerce settlements... The business community also notes that legislative actions are not accompanied by a commitment to make their implementation predictably consistent with the law, making government and parliament actions more a symbolic gesture than a practical effort."

As for U.S.-Mongolia bilateral trade and investment, U.S. FDI in Mongolia totaled 680 million USD as of 2023. U.S. companies have been active in critical infrastructure sectors in Mongolia, as evidenced by aircraft, railway, mining equipment, and telecommunications deals. From 2000 to 2024, Mongolia's trade balance with the U.S. shifted from a significant trade surplus to a substantial deficit, driven primarily by a steady increase in U.S. imports and a decline in Mongolian exports after 2012. Mongolia's exports to the U.S. remain minimal and stagnant, indicating limited diversification. AmCham Mongolia has recently presented a detailed review in the Brief Guide on the U.S.-Mongolia Commercial Relationship.

It is evident that without reinstating the rule of law and providing sufficient protection for the interests of investors and businesses, Mongolia will continue to be an unfriendly environment for investment. Fundamentally, Mongolia lacks a definitive strategy for its mining sector. The challenges this nation encounters include legal and regulatory instability, excessive government intervention, mismanagement of the Sovereign Wealth Fund, inadequate investor protection, inequitable dispute resolution processes, a hostile investment climate, and a disconnect between policy-making and its execution to foster investment. The bold and essential measures that Mongolia could undertake to change its current course will be outlined in the form of policy recommendations derived from the experiences of the private sector, which is the foundation of the economy.

01

CHALLENGES BEGAN WITH SEFIL

Mongolia possesses extensive land and largely untapped subsoil resources. There is no up-to-date and full-scale evaluation of Mongolia's mineral resources, particularly regarding rare earth element resource potential. In 2006, Mongolia introduced the concept of "strategic mineral deposit" to the global arena. This introduction led many to believe that the nation had established a strategy for the advancement of its minerals sector. In 2007, the Mongolian parliament, via Resolution No. 27, also referred to as the Resolution of the Parliament of Mongolia on the Classification of Certain Deposits to Mineral Deposits of Strategic Importance, designated 16 mineral deposits as strategic. This classification, as per the Minerals Law, pertains to deposits that influence national security, contribute to national or regional economic and social development, or account for over five percent of Mongolia's annual gross domestic product. A significant outcome of this classification is that no entity may possess more than 34 percent of the shares in a company that holds a license for a strategic deposit unless it is a legal entity that has entered into an investment agreement with the Mongolian government or a state-owned entity.

The Mongolian Strategic Entities Foreign Investment Law (SEFIL) regulated foreign investments in critical sectors such as mining, which involved the state's participation in these domains. Enacted on May 17, 2012, the law required companies to secure government or parliamentary approval for transactions in specified sectors, a stipulation that ignited significant discussion. Furthermore, the law allowed the government to confiscate assets deemed strategically vital. SEFIL mandated state ownership in strategic mineral deposits, with the government retaining 34 to 50 percent ownership depending on whether the exploration was state-funded. The law was criticized for creating uncertainty and hindering foreign investment in Mongolia, as the requirement for government consent and perceived unpredictability were seen as barriers to attracting foreign capital. Ultimately, SEFIL was repealed in November 2013 to improve the investment climate and foster a more equitable balance between protecting Mongolian interests and encouraging foreign investment. However, the law's adverse effects were felt shortly thereafter.

02

CHALLENGES CONTINUED WITH SWF

On April 19, 2024, Parliament ratified the Law on the Sovereign Wealth Fund. This legislation delineates the processes for the establishment, distribution, and management of the Sovereign Wealth Fund (SWF). The primary aim of this law can be interpreted as guaranteeing the equitable and just distribution of benefits derived from mineral resources to all Mongolian citizens. Recent amendments broaden the regulation to encompass both the original mineral deposits of strategic importance and their associated derivative deposits. In practical terms, the state will obtain shares from the license holders of derivative deposits linked to strategically important deposits, adhering to the same principles previously mentioned. A 30 percent tax is imposed if the beneficial owner of a mining license for a strategically important mineral deposit fully or partially transfers their rights to own and utilize land, along with exploration and exploitation licenses for minerals, radioactive minerals, and oil. Such transfers may take place through the gifting or bequeathing of shares, participation, or the voting rights of a legal entity. Domestic and foreign investors yet again have more questions than answers at this stage.

To understand the SWF, different components need to be explained. The SWF consists of three distinct funds: the Future Heritage Fund, the Savings Fund, and the Development Fund, each fulfilling specific roles in accumulation, distribution, and investment. The Future Heritage Fund focuses on maintaining savings derived from natural resources for the benefit of future generations, whereas the Savings Fund is responsible for distributing the benefits of natural resources to citizens. In contrast, the Development Fund is designed to support major development initiatives. The government intends to use accumulated funds in the SWF to finance 14 mega projects. Among the government's 14 major projects, several will be carried out in the Gobi region. These projects encompass cross-border railways at the Gashuunsukhait–Gantsmod, Khangi–Mandal, and Shiveekhuren–Sekhe crossings, a coal-chemical and coke-chemical complex, an oil refinery, and a 450-MW thermal power plant. Both the Future Heritage Fund and the Development Fund have been integral components of the country's financial framework for an extended period. The Savings Fund establishes a policy for creating specific savings accounts for all citizens, facilitating the distribution of dividends derived from the state ownership of strategic deposits. This initiative aims to address long-standing criticisms regarding the inaccessibility of mining profits for the general population. Meanwhile, the practice of distributing cash from state-owned enterprises (SOEs) to citizens is expected to be discontinued.

The general idea of the SWF was welcomed by major domestic investors, and some even publicly expressed their willingness to enter negotiations with the government. In cases of collaborative financing during the exploration phase of strategic deposits, the government will retain ownership of up to 50 percent at no expense. Similarly, in exploration initiatives financed by private investments, the government will maintain ownership of up to 34 percent, with free carried interest. Importantly, the conversion of a legal entity holding a strategic deposit license into an open joint-stock company is forbidden, thereby preventing any individual or associated parties from owning more than 34 percent of the company's shares. The expiration of stability agreements allows the government to reevaluate the percentage of state ownership and distribute benefits to the SWF. However, the list of strategic deposits is not fixed but rather dynamic, intended to grow as new deposits are identified or resources are exhausted. What an investor already owns could become strategic overnight.

03

NEW INVITATIONS BUT NOT-SO-NEW INVESTORS

The assaults and acts of violence directed at the private sector, coupled with burdensome government regulations and adverse public communications, are considerably undermining trust in the private sector and destabilizing the foundations of Mongolia's investment environment. This development is particularly concerning considering the essential role the private sector has in job creation, fostering innovation, and enhancing state revenue. Just as no individual would consent to participate in a game where the rules are subject to change during play, businesses and investors require clear, consistent, and equitable regulations to operate confidently and make substantial contributions to Mongolia's progress, as emphasized in an interview with AmCham Board member James Liotta. Mongolia presents itself as investor-friendly at international conferences. The most recent examples include the World Economic Forum in Davos, the Prospectors and Developers Association of Canada (PDAC) Convention in Toronto, and the Mongolian Investment Forum in New York.

AmCham Mongolia submitted official correspondence to the Ministry of Industry and Mineral Resources, addressing several key issues pertinent to the private sector in anticipation of PDAC 2025. PDAC is one of the premier global events for the mineral exploration and development sector, uniting prominent mining investors and industry leaders. To maximize the effectiveness of Mongolia's delegation at this event, AmCham Mongolia identified several critical matters that required attention before and during PDAC 2025 as part of preparatory efforts. The letter outlined several significant concerns:

- The need for clarity and advancement in the legal framework, particularly regarding the revision of the Minerals Law;
- The resumption of exploration license issuance, which has been suspended since April 2024;
- The importance of showcasing success stories from the private sector during the convention;
- Updates on the resolution of tax disputes and strategies to mitigate future conflicts; and
- The necessity for government collaboration with currently active foreign investors.

Numerous promises have been made to investors throughout the years. Nevertheless, no system exists to avert grievances from developing into legal or arbitration conflicts. While directives are provided to address these grievances, the execution of government resolutions is still insufficient. The dispute resolution mechanism operates ineffectively. The Mongolian Tax Authority (MTA) frequently threatens to close bank accounts prior to the resolution of disputes, resulting in considerable operational disruption and the risk of insolvency for businesses. One example among many is the failure to adhere to the General Tax Law during its execution. According to Section 47.3 of Article 47 of the General Tax Law, taxpayers are obligated to pay only 10 percent of the disputed tax amount indicated in the tax act, with a maximum limit of 100 million MNT. The requirement to pay the full amount determined during a tax audit imposes significant financial pressure on taxpayers, causing some to confront the possibility of halting operations or facing bankruptcy. An analysis of data from 2023 reveals that only 10 percent of all disputes were resolved in favor of taxpayers. This suggests that the dispute resolution mechanism is heavily biased and underscores the lack of sufficient independence of the Dispute Resolution Council. In general, inconsistencies between the messages communicated at international conferences and the subsequent actions taken by the government can create substantial barriers to investment. It is vital to ensure alignment between the invitations issued and the support offered upon the arrival of investors. The interests of investors must be protected, accompanied by a shared commitment to responsible practices.

At AmCham's May Monthly Meeting this year, H.E. Ambassador Richard L. Buangan accurately expressed in his remarks, "[A] closer look reveals substantial and unpredictable regulatory burdens at every level, where officials across ministries and agencies seem to routinely and arbitrarily contravene existing laws. Long delays in resolving disputes and in enforcing decisions—often hidden behind a veil of secrecy—only increase the barriers for both domestic and foreign investors. Investors are particularly concerned about a tax process that effectively allows officials to issue excessive, confiscatory, and again arbitrary tax assessments to coerce settlements. The perception that the government favors its own state-owned entities over private sector companies discourages existing investors from expanding and new investors from coming. Finally, there is the 2024 package of laws aimed at reestablishing Mongolia's sovereign wealth funds by the state taking no less than 34 percent of strategic mining assets without compensation. The foreign and domestic business community, most notably AmCham, has expressed concerns that the government, having opened the door for expropriation in one arena, may do so for others. The business community has conveyed these concerns to government and legislative leaders, asking for reconsideration of the expropriatory aspects of these laws."

04

CORRECTIVE EFFORTS

On March 28, 2025, in a letter to chambers and associations, Member of Parliament (MP) Uyanga Bold conveyed that with the effective execution of the SWF, the public is expected to begin supporting and recognizing the advantages of the mining industry instead of opposing it, particularly when exploration and fundamental geological research are carried out across the nation. Nevertheless, the Savings Fund's limitation to income derived from a select number of deposits, specifically strategic mineral deposits, is likely to result in the following issue: investors and companies engaged in the mining sector may be apprehensive that deposits developed through their investments could be designated as "strategic" in the future and subsequently appropriated by the state. MP Uyanga Bold proposed the following: to rectify the misleading concept and terminology of "strategic deposits" established by 2006 amendments to the Minerals Law; propose legislation that would create a fixed, clear, and specific royalty for the Savings Fund from mining projects set to commence operations; and facilitate savings. For instance, royalties could be distinctly regulated to be between 1–3 percent of sales revenue. It remains to be seen if this modification could potentially shift perceptions and alleviate investor apprehensions.

On April 25, 2025, then Prime Minister of Mongolia, Oyun-Erdene Luvsannamsrai[1], provided an official report on the first year of implementing the SWF. Over the past year, 495.6 billion MNT has been accumulated in individual citizen savings accounts under the SWF framework. The ultimate aim is to distribute resource benefits according to a 33–33–33 principle: 33 percent to future generations, 33 percent to citizen savings, and 33 percent to national and regional development. During the session, MPs expressed significant concerns regarding the governance, management, and transparency of the nation's sovereign and public funds. Lawmakers criticized the growing trend of utilizing these funds as short-term measures to address fiscal deficits rather than investing in long-term development or stabilization objectives. Concerns were also expressed regarding inadequate governance and the lack of skilled, professional management teams capable of managing extensive investment portfolios. MPs pointed out the absence of clear mechanisms to increase the funds' assets and produce sustainable returns.

According to their observations, fund disbursements often seem to be influenced by political factors, which undermines the credibility and intended objectives of the SWF. In light of these challenges, MPs suggested considering the creation of an independent, internationally managed

[1] *While concluding this document, Prime Minister Oyun-Erdene Luvsannamsrai stepped down following his inability to secure sufficient backing in a parliamentary vote of confidence.*

oversight framework to improve the SWF's transparency, performance, and long-term governance. More up-to-date decisions on strategic mineral deposits are pending. Just recently, on May 8, a working group was tasked by the Speaker of Parliament to review the implementation of the provision from the Resolution No. 27 on classifying certain deposits as strategically important mineral deposits, and to formulate recommendations. The group's preliminary findings are due to be released during Parliament's autumn session this year. AmCham Mongolia has consistently voiced concerns that the state's interference and efforts at expropriation deter foreign and domestic investment. Furthermore, AmCham Mongolia emphasizes the necessity for tax reform.

05

A SIMILAR PATH

The Republic of Zambia is a sub-Saharan resource-rich developing country facing challenges in attracting and retaining foreign investors. Despite being the seventh-largest copper-producing nation, policy inconsistency, state intervention, and regulatory uncertainty have hindered the realization of its full economic potential.

In the past, Zambia pursued a policy of increasing state ownership of critical minerals. The government passed the Mines and Minerals Development Act (2008) to increase its influence and mineral revenue by raising the royalty rates from 0.6 percent to 3.0 percent, mandating the participation of local partners in mining ventures, and reserving the right to acquire discovered and unknown mineral sites for government use. Although the purpose of the law was to increase government income, the policy inadvertently caused investor flight by

making mining operations less profitable. Increasing the tax burden on private corporations alongside the 2008 financial crisis, which depressed metal prices, led to a decline in investor confidence. Similar to Mongolia's SWF, Zambia plans to unveil its Sovereign Wealth Fund in 2025, hoping to encourage foreign investment through government transparency, tax incentives, or other support for outside investors and collaborating with international partners on joint ventures, including the development or expansion of mines and refining facilities. Nonetheless, a compelling argument suggests that Zambia ought to postpone the SWF, considering the nation's fragile fiscal situation and the urgent need for socioeconomic advancement instead of focusing on wealth generation for future generations.

Zambia often alternates between liberalizing and nationalizing various industries for control of its resources. The confidence of foreign investors is reduced by frequent changes to tax policies and unclear regulations that govern its mining industries. President Hichilema has worked towards improving Zambia's investment climate in this regard. He has introduced new policies, like the deductibility of mineral royalties (2022), to provide financial incentives for investors and has committed to upholding the strong rule of law. His administration hopes to spur investment by avoiding frequent changes to laws regarding its mining industry to demonstrate regulatory stability to potential partners. Mongolia's business climate suffers from inconsistent tax enforcement and poor dispute resolution, which, despite the repeal of SEFIL in 2013, contributes to barriers for foreign investors.

Both Zambia and Mongolia are attempting to demonstrate strategies for attracting FDI and partnering with countries to advance their mining industries. However, without predictable legal frameworks and investor protections, the presence of natural resources does not directly result in international investment. The two countries can attract more domestic and foreign investment by passing laws securing the long-term legal protection of investor assets, providing further fiscal incentives to attract more businesses, and separating politics from mining policies by establishing independent oversight of their respective SWFs. These policy reforms could guarantee security and stability and develop systems that create a degree of trust between the investor and the government. In the future, developing countries like Mongolia will need to strike a balance between free market systems and state interests to maximize the value of their natural resources.

CONCLUSION

AmCham Mongolia conducted an extensive analysis to create this Position Paper. Mongolia's regulatory framework is not only complex but also places significant financial strains on operating businesses. Restricting the strategic deposits issue to a limited number of deposits risks establishing a system that is counterproductive to its intended goals and may lead to serious negative consequences for the future of mining. In the absence of policies that protect substantial investments and mitigate business risks, the mining sector could gradually fall under government monopoly, deterring foreign investment, which is crucial for the industry's growth. If new deposits are not opened up through foreign investment, the mining industry's development will come to a standstill. Therefore, the success and stability of the SWF depend on a flourishing mining industry marked by ongoing growth.

Major global economies are focusing on securing strategic mineral resources, production, and supply chains, investing billions of dollars to safeguard national interests and enhance their domestic industries. However, Mongolia's strategy concerning mineral resources remains unclear. Currently, the Mongolian government seems to be implementing a "strategically important policy" aimed at acquiring stakes in various strategic deposits. Nonetheless, there has been little progress in developing new resources or in attracting fresh investments and partners for the exploration and development of mineral deposits.

In a nutshell, the problems Mongolia faces include legal and regulatory instability, state overreach, SWF mismanagement, weak investor protection, unfair dispute resolution, a hostile investment environment, and a gap between policy and its implementation to

support investment. The execution of the Sovereign Wealth Fund Law is generating considerable inquiries concerning the assessment of state ownership shares in partnership with the previously mentioned foreign-invested and private-sector entities. This situation gives rise to numerous uncertainties. The status of ongoing initiatives launched under investment agreement discussions with the private sector and foreign-invested firms remains unclear. Furthermore, the repercussions for publicly listed companies and the ensuing outcomes are still vague.

Within the parameters of Resolution No. 27, the incorporation of newly identified resources, alongside the current 16 strategic deposits, presents additional obstacles. Historically, debates surrounding the alignment of Mongolia's mining industry regulations with international norms have frequently resulted in the dismissal of the strategic deposit notion, promoting restrictions on the existing 16 deposits. Nevertheless, the recent enlargement of the strategic deposits list, which includes newly discovered resources, has sparked concern within the mining industry and among domestic and international investors. A perception is developing that Mongolia will solely pursue state-owned mining operations, which could discourage investment prospects, delay planned initiatives, and obstruct business activities. This pattern may not only diminish the influence of the private sector and foreign investment in the mining industry but also hinder the operations of local companies.

ECONOMIC POLICY RECOMMENDATIONS FOR A STRONGER FUTURE

A strong private sector-driven free market economy is essential for Mongolia's long-term prosperity, fostering economic growth, job creation, and investment while ensuring sustainable tax revenue to support public services. Nations that embrace market-driven principles see increased innovation, efficiency, and economic resilience, benefiting both businesses and workers. Mongolia's most prosperous years in recent history-during the economic boom from 2010 to 2014-highlight the transformative impact of private sector investment and rapid growth.

Conversely, reliance on state-planned economies with extensive state-owned enterprises often leads to stagnation, inefficiency, and lost opportunities for entrepreneurship. While successful examples of state involvement exist, true economic dynamism emerges when competition and private investment thrive. To secure Mongolia's future, policymakers must prioritize reforms that empower businesses, attract investment, and enhance market competitiveness, creating quality jobs and a robust economy for all Mongolians.

Given the urgent need to address Mongolia's economic challenges, AmCham Mongolia proposes a set of immediate priorities to stabilize the economy, foster sustained growth, and enhance the business environment by attracting greater private sector investment.

Immediate Actions:

1

Investors, both domestic and foreign, require genuine decision-making and compromise-making authority to resolve disputes as well as cross-sectoral and inter-ministerial conflicts and discrepancies. It is essential to build on the role of the **Economic Development Board (EDB)** under the Prime Minister as an effective public-private dialogue mechanism between private-sector investors and the government, ensuring that significant investment and business climate issues receive the necessary high-level attention.

2

Develop a **policy framework that fosters a private sector-driven, investment-friendly legal ecosystem**, ensuring transparency, consistency, and fairness in business operations. This framework must curtail the misuse of audits and inspections by state authorities, prevent politically motivated and abusive investigations, and address inefficiencies, bias, and the lack of enforcement in court proceedings. Additionally, it should streamline customs processes, eliminate protective taxation measures that hinder competitiveness, and provide long-term stability for the business and investment environments. Labor policy

- The functions of the **Investment and Trade Agency (ITA)** must be clearly defined to focus on investment promotion, serve as the advisory body for investors before they enter the country, offer one-stop investor services, and facilitate communication between ministries and government agencies to avert misunderstandings and grievances.
- The **Dispute Resolution Council (DRC)** should be reorganized to function as an efficient instrument to address investors' specific grievances by ensuring the broader participation of the private sector and subject matter experts in reviewing the dispute resolution process, particularly in the tax domain. This will enable the elimination of discrimination, promote fairness, enhance the council's operational efficiency, and introduce revised procedures for dispute review and resolution.

reforms should further position Mongolia as a strong contender both regionally and globally. By promoting investment and strengthening Mongolia's ability to attract businesses, this framework will create a dynamic and sustainable environment for economic growth. AmCham Mongolia identified key tax-related policy recommendations in its Position Paper on the Top 10 Issues in the Mongolian Tax Environment, published earlier this year.

3

Reduce state interference, reform SOEs, and clarify investment regulations.

The government must significantly scale back its involvement in industries and reinforce comprehensive reforms of SOEs to foster a more competitive and investment-friendly environment.

- Contrary to some assertions, excessive state ownership signals to investors that they cannot operate independently without government partnership, discouraging private sector participation.
- Additionally, Mongolia must rectify the misinterpretation and terminology surrounding strategic deposits as defined in the Minerals Law. The definition of strategic deposits should be substituted with royalty schemes, as is practiced in other competitive jurisdictions.
- To enhance the efficiency and effectiveness of SOEs, it is essential that they operate on a level playing field with private companies. There is nothing to hinder partnerships with SOEs through commercial agreements that adhere to international standards.
- The classification of strategic resources or critical minerals under government control should entail financial incentives rather

than dispossession in the range of 34 to 50 percent. For instance, Canada's 2022 Critical Mineral Strategy was supported by programs worth four billion USD, which included initiatives related to infrastructure development, research, innovation, labor capacity development, tax incentives, and access to power and transportation networks, enabling investors in these commodities to mine and transport their products to buyers without complications.

- Expropriatory elements within the laws, including the Sovereign Wealth Fund Law, should be reevaluated to mitigate unintended consequences that deter investment and hinder sector growth.
- Mongolia requires a comprehensive development strategy for its mining sector, which should be integrated into its legal framework and consistently communicated across all levels. Establishing a clear and predictable regulatory framework will enhance investor confidence and improve Mongolia's overall business climate.