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Mining Mongolia - 2021

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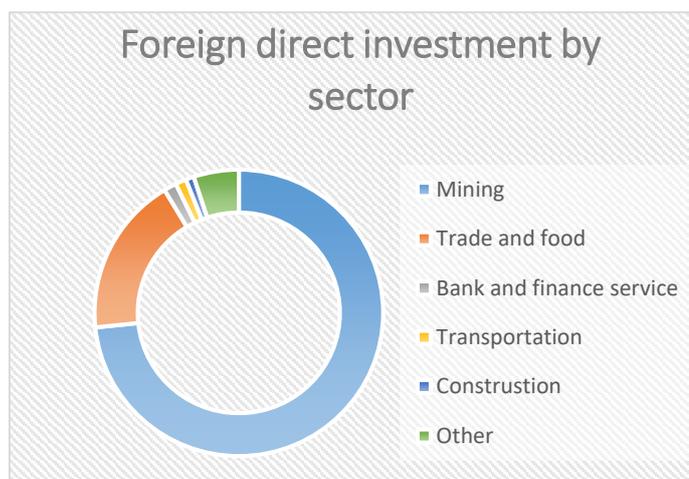
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Mining Mongolia – 2021

I. Mining sector study

Introduction

Mongolia is an attractive environment for medium and long-term foreign direct investment (FDI) due to its vast natural resources, vast agricultural potential, and geographical proximity to major Asian markets. Mongolia's gross domestic product (GDP) is 9.2 trillion MNT or 3.2 billion USD as of the 1st (first) quarter of 2021. Mongolia's GDP averaged \$ 4.44 billion from 1981 until 2018, reached the highest record of \$ 13.01 billion in 2018.¹



Mongolia is a country with a rich mineral resources, which is a attractive environment for foreign direct investment, and the Government of Mongolia is dedicated to attract more foreign investment and use all of its mineral resources. As shown in the diagram, 70 percent of foreign investment is in the mining sector, and the remaining 30 percent is in trade, food, banking and financial service, and other sectors.

Mongolia is one of the world's leading country with rich mineral resources, has more than 8,000 occurrences in 1,170 mines, 80 types of minerals and metals, and high reserves of copper, base metals, gold, coal and uranium.

Proven minerals

Minerals	Unit	Proven reserves
Copper	Million.tn	57.0
Coal	Billion.tn	37.2
Iron ore	Billion.tn	1.2
Gold	tn	2 500
Zinc	Million.tn	1.7
Fluorspar	Million.tn	48.3
Uranium	Thousand.tn	197.0
Crude oil	Million.tn	332.6 ²

¹ <https://investmongolia.gov.mn/metals-and-mining/>

² <https://investmongolia.gov.mn/metals-and-mining/>

Mongolia is China's the largest exporter of a total of 14 minerals and the largest exporter of coal. The following table shows the mineral export plans for 2020 and 2021.

No	Minerals	unit	2018.03	2019	2020	2021
1	Copper concentrate	Million.tn	1.48	1.40	1.22	1.48
2	Coal	Million.tn	27.03	42.0	41.5	43.0
3	Iron ore, concentrate	Million.tn	5.31	7.55	8.0	8.5
4	Gold	tn	3.43	-	5.0	5.0
5	Crude oil	Million.tn	4.81	8.15	6.15	5.60
6	Fluorspar	Thousand. tn	344.68	362.0	250.0	280.0
7	Zinc	Thousand. tn	92.16	78.2	114.1	118.4
8	Molybdenum ore, concentrate	Thousand. tn	5.5	4.8	4.7	4.7 ³

Mineral exploration and mining opportunities

More than 40 types of programs and projects related to mineral exploration and mining are implemented in Mongolia. Here is a brief overview of some projects being implemented:

“Alt-2” National program

Following activities were implemented within the framework of the ‘Alt-2’ National program:

- Geological research, prospecting, exploration, gold mining, processing, sales, and export in the field of gold;
- Environmental protection and rehabilitation, mine closure and sanitation, occupational safety, and artisanal mining.

³ <https://investmongolia.gov.mn/metals-and-mining/>

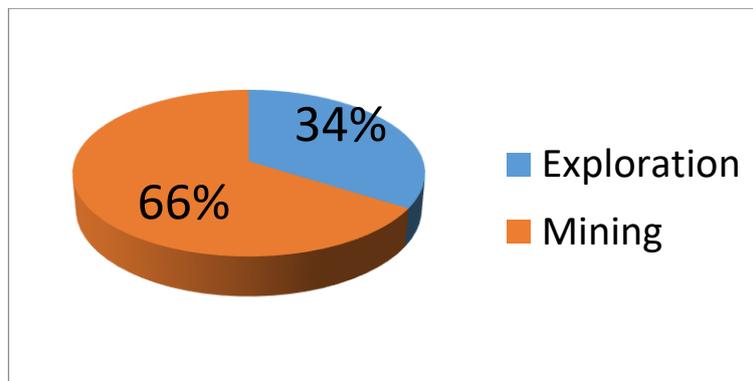
The following goals are included in the program is to ensure the short- and medium-term sustainable development of Mongolia's gold production, introduce advanced techniques, technologies and management in gold mining and processing, protect the environment, improve rehabilitation results, increase the return on gold production and increase economic capacity. The program has three periods and is currently in the final period of stabilization.

- Level 1: Preparation period 2016-2017
- Level 2: Intensification period 2018-2020
- Level 3: Stabilization period 2021-2025

According to the monitoring and evaluation result of the implementation of the general action plan of the “Alt-2” National Program in 2018, the implementation of the program was evaluated as 76.59%.

License

In May 2021, the Government of Mongolia has issued a total of 2,604 active licenses, accounting for 3.9% of the total territory, of which 1,711 mining licenses which is 1.1% of the territory and 893 exploration licenses which covered 2.8% of the territory.⁴



Exploration and mining license ratio

The Mining sector accounts 24% of the Mongolia’s GDP, 72% of the total industrial output, 89% of total exports, and 70% of foreign direct investment, which shown its substantial contribution to Mongolia’s social and economic development.⁵

II. Legal environment

In January 2014, the Parliament of Mongolia approved the “State Policy on the Mineral Resources Sector”. This policy aims to develop the mineral sector through a unified policy, ensure legal stability, create a stable investment environment, improve the quality of mineral exploration, mining and

⁴ Mineral resources statistics 2021/05 - <https://mrpam.gov.mn/public/pages/169/2021-05-stat-report-mon.pdf>

⁵ <https://investmongolia.gov.mn/metals-and-mining/>

processing, and add value by supporting environmentally friendly, advanced techniques, technologies and innovations. The aim is to determine the state's involvement in this sector to produce products and strengthen their competitiveness in the international market. Key principles:

- In order to ensure the long-term sustainability of the mineral sector policy, any decision on the legal and tax environment shall be based on research and analysis and shall not harm the legitimate interests of stakeholders;
- Support modern advanced techniques, technologies and innovations in the field of mining and processing with less negative impact on human health and the environment;
- Government organizations and business entities shall be open, transparent and accountable for the development of the mineral resources sector;
- Investors in the mineral sector shall uphold the provisions of law, work for mutual benefit, and promote good corporate governance;
- The Government shall provide equal conditions for investors in the implementation of policies in the mineral resources sector and not discriminate by the form of property;
- Transparency and openness of information on geological research, mining and processing at all levels shall carried out with public and private funds, which is not prohibited by law;
- Improve the legislation on labor safety and hygiene in the mineral resources sector, bring the standards to the international level and ensure their implementation;
- Improve Government regulation at the level of registration, licensing and control, and ensure a reasonable level of participation in mineral exploration and mining activities.

Legislation

Minerals legislation consists of the following laws:

Law	Regulating relations
Law of Mongolia on Minerals	<p>The Law on Minerals is a key mineral law, and as part of the above policy, the Government of Mongolia initiated amendment of the Law on Minerals has enacted in 2006 and until now has made more than 20 amendments.</p> <p>Specific provisions of the Law on Minerals:</p> <ol style="list-style-type: none"> 1. Developed infrastructure and created work places related to environment protection, mining and factory construction. 2. The Government has determined the coordinates of the exploration license area and made it public. 3. The establishment of a National Geological Survey in charge of geological research, analysis and information aimed at

	<p>implementing a unified policy in the geological sector.</p> <ol style="list-style-type: none"> 4. Regulated to give priority to the legal entities registered in Mongolia in purchasing goods, works, services necessary and selecting subcontractors for license holders in its activities. 5. The supply of mined, enriched and semi-processed products to the processing plants which operates in the territory of Mongolia shall be prioritized at the market prices. 6. According to the Investment Law, if a taxpayer has a stabilization certificate, the royalty shall be imposed at the rate specified in the certificate. 7. The amount of received cash equivalent to dividends can be replaced in accordance with the state's share of the deposit in the form of special royalties.⁶
<p>Law of Mongolia on Common minerals</p>	<p>Common minerals are accumulations of common building stones for sand and gravel, brick, clay, granite, and crushed stone that can be used for roads and construction materials.</p> <p>The Law on Common Minerals regulates the exploration and acquisition of licenses for common minerals in the territory of Mongolia, the liability of the license holder and the protection and rehabilitation of the exploration area and mining environment. This includes,</p> <ul style="list-style-type: none"> • Clay and sand using for treatment; and • Regulate relations related to exploration and exploitation of common minerals required for projects and programs that are implemented in the road and railway sector by the decision of the State Great Hural and the Government.⁷
<p>Law of Mongolia on Petroleum</p>	<p>The Petroleum Law is a law aimed at regulating relations related to exploration, prospecting and use of petroleum and non-traditional petroleum in the territory of Mongolia.⁸</p>
<p>Law of Mongolia on</p>	<p>The purpose of this law is to regulate the relations arising in connection with the import, production, sale, transportation, storage and safety of</p>

⁶ Law of Mongolia on Minerals - <https://www.legalinfo.mn/law/details/63>

⁷ Law of Mongolia on Common minerals - <https://www.legalinfo.mn/law/details/9750>

⁸ Law of Mongolia on Subsoil - <https://www.legalinfo.mn/law/details/10484>

Petroleum product	petroleum products and the petroleum products means all types of fuels, special liquids and fuels obtained by refining petroleum and chemical compound referred to gases, oils, lubricants, bitumen, fuel oil and other products. ⁹
Law of Mongolia on Nuclear Energy	The Law on Nuclear Energy regulates relations related to the peaceful use of radioactive minerals and nuclear energy in the territory of Mongolia, ensuring nuclear and radiation safety, and protecting the population, society, and the environment protection from the negative effects of ionizing radiation. ¹⁰

License

a. Procedure of granting exploration licens

According to the Procedure of granting exploration license approved by the Minister of Mining and Heavy Industry Order NoA / 28 dated 2018, mineral exploration and mining licenses and common mineral licenses shall be issued to taxpayer legal entities which is duly established and operating in accordance with the laws of Mongolia.

- Exploration licenses are granted for up to three years with the possibility of three times extensions for period of three years.
- The size of an exploration area shall not be less than 25 hectares and shall not exceed 150,000 hectares.
- The State Central Administrative Agency shall announce an official invitation of the Tender throughout daily newspaper, its own website <https://mrpam.gov.mn/> or external mass media in a transparent and honest manner to the public not less than 30 days prior to conducting the Tender.
- As the announced invitation of the Tender, the legal entity shall submit its request related to participation of the tender, included a price proposal and a technical proposal.
- Technical proposal includes copy of the state registration certificate of the Applicant, community development and cooperation plan, capability of professional specialist and their experience whereas pricing proposal shall consist of threshold price and pricing proposal.
- The threshold price for the Tender will be 2,240 MNT/ha (app 0.78USD) and an area with mineral concentration shall be 4,500 MNT/ha (app 1.57USD).
- The Commission of Tender shall issue a conclusion on basis the evaluation both of technical and pricing proposals.

⁹ Law of Mongolia on Subsoil product - <https://www.legalinfo.mn/law/details/10484>

¹⁰ Law of Mongolia on Nuclear Energy - <https://www.legalinfo.mn/law/details/97>

- If two or more Tender Applicants shall obtain the same assessment, the Applicant, who registered its request first for a license, shall obtain an exploration license.
- The threshold payment, paid by other Applicants who have not selected, shall be returned within five working days after submission of the notification related to non-selection.
- If the Applicant made the first year's license fee, variance of threshold price and proposed price of tender within 10 business days stated in the Mineral Law, the State Central Administrative Agency shall issue an exploration license for a three year and register the exploration license and the area at the cartographic registry.
- One month prior to the expiration of an exploration license, the license holder may apply for an extension of the license by submitting an application to the State Central Administrative Agency.

Within the framework of the "Vision 2050" long-term development policy approved by the Parliament Resolution No. 52 dated 2020, the activities to be implemented in 2021-2030 include such provision as "Geological research will be intensified, medium and long-term economic growth will be ensured and mineral resources will be increased". In addition to general provisions, the draft procedure contains such provisions as the definition and preparation of a tender platform for exploration licenses, the conducting tenders online and offline, invitation and participation in the tenders, their registration, opening and evaluation of tender and technical proposals, issue a special license for exploration, the structure of the Tenders Committee and the rights and obligations of participants. The draft has not been finalized and is under discussion.

This new procedure will open up the possibility of conducting exploration licensing tenders under the supervision of the public in accordance with the principles of transparency, openness, fair competition and equal opportunities.

b. Procedure of granting of mining license

The exploration license holder has a right to submit a request to hold mining license to the State Administrative Agency. For legal entities without exploration license, the mining license request shall be submitted under the Procedure of Granting exploration license.

- The State Central Administrative Agency shall grant a mining license according to the exclusive rights of the Applicant with exploration license or delivery written notice containing grounds for refusal within 20 business days following the registration of an application.
- The Applicant who has received approval notice of the mining license shall pay the first year payment of the license within ten business days. Within 3 business days following the payment of the license fee for the first year made by Applicant, the State Central Administrative Agency shall issue a mining license to the Applicant for a term of 30 years.

- No less than 2 years prior to the expiration of a mining license, the license holder may submit an application on the form approved by the State Central Administrative Agency for an extension of the mining license. A mining license holder is entitled to extend the term of the mining license two times for a term of 20 years.
- A license holder shall not commence exploration and mining operations without obtaining written approval from the relevant Environmental agency.

Taxation and finance environment

Corporate income tax in the mining sector is based on the following rates, depending on the amount of taxable income.

Taxable income	Tax rate
Taxable income up to 6 billion MNT (via Mongol Bank USD exchange rate app 2,105,263 USD)	10%
Taxable income exceeds 6 billion MN(via Mongol Bank USD 2.105.263) it shall be 600.0 million MNT (app 210.526 USD) plus 25 percent of income exceeding 6.0 billion MNT	25%

Entities that use mineral resources shall pay a royalty, which shall be determined as follows.

Mineral license holder	Coal royalty used for personal use, sold domestic market or shipped for sale shall be 2.5 percent of the sales value whereas other royalty except for coal shall be 5 percent of the sales value
Mineral exporting legal entity	If the product is exported, the market price accepted by international trade shall be adhered
The legal entity that sold gold to the Central bank of Mongolia and other licensed commercial banks	Royalty on gold sold to the Central bank of Mongolia and other licensed commercial banks shall be 5 percent of the sales value ¹¹

In accordance with Law of Mongolia on Corporate income tax, mineral licensed legal entity shall not obtain any tax credit and tax exemption.

¹¹ Law of Mongolia on Corporate Income Tax- <https://www.legalinfo.mn/law/details/14407>

In accordance with Law of Mongolia on Value added tax, the final mineral products shall be subjected the charge to zero-rate. Moreover, mineral products exported other than final mineral products are exempted from Value added tax.

New taxation regulation

As part of the amendments to the Tax law package, which came into force on January 1, 2020, the ultimate beneficial owner as it defined in the General Taxation Law it is the owner of mining or exploration license of minerals, radioactive minerals, oil exploration with 30 percent or more shares, with individual participation, who owns the voting rights by himself or herself or by one or more continuously connected legal entities, exercises the voting rights on behalf of the parties, or has the right to receive dividends.

Income received in connection with the sale or transfer of land possession and use rights on minerals, radioactive minerals, oil exploration and mining licenses granted in accordance with the laws of Mongolia through the sale and transfer of shares, stakes and voting rights held by the ultimate beneficial owner shall be taxed. According to the “Methodology for evaluating mineral, radioactive minerals, oil exploration and mining licenses and determining tax rates”¹² approved by Order No. 302 by the Minister of Finance in 2019, the value of the minerals, radioactive minerals and oil exploration and mining license shall be calculated using the contract price declared by the taxpayer in one of the following methods. These include:

- cost-based method
- market-based method; and
- income-based methods.

Investment

Mongolia undertakes active measure in attracting investors, and investment-related relations are regulated by the Investment Law dated 13 October 2013.

The purpose of the Investment Law is to protect the legitimate rights and interests of investors in the territory of Mongolia, to establish common legal guarantees for investment, to support investment, to stabilize the tax environment, and to define the rights and responsibilities of Government organizations, investors and other investment-related relationships.

Restrictions on foreign investment

¹² Methodology for evaluating mineral, radioactive minerals, oil exploration and mining licenses and determining tax rates - <https://www.legalinfo.mn/annex/details/10470?lawid=14966>

Foreign state-owned legal entity is intending to possess 33 percent or more of the total shares of a Mongolian legal entity operating in the mining sector, shall obtain a permission from the competent authority. Other than that, there are no restrictions or prohibitions on foreign investors in mining sector.

Bill on package mining law

In accordance with the “Action Plan of the Government of Mongolia for 2016-2020” approved by the Parliament Resolution No. 45 dated 2016, the Minister of Justice and Internal Affairs in 2017 by order A/67 established a working group to eliminate duplications, loopholes and violations in the mining legislation. The working group has analyzed 10 Laws including Law on Minerals, Petroleum, Subsoil, Petroleum Products, Reservoirs, Protected Areas and Forest Prohibitions, Law on Compliance with the Law on Prohibition of Prospecting and Exploitation of Minerals in Watersheds, Protected Areas and Forest Reserves, Law on Nuclear Energy, Law on Procedures for Compliance with the Law on Nuclear Energy, Law on Common Minerals, Explosives in mineral sector on controlling the circulation of explosives and identified a total of 267 duplication, 150 violations and 150 loopholes. The Mining laws package laws needs to be amended to eliminate duplication, loopholes and violations. Draft amendments to the mining law package are currently under discussion and, if approved, will have the following implications. These include:

1. The stable legal environment will be created;
2. The investment environment will be stabilized and the amount of investment will be increased;
3. Problems arising from duplication, loopholes or unclear regulations will be resolved;
4. Some legal concepts and terms will be legible.

Conclusion

Internationally, Mongolia is officialy one of the largest countries with vast mineral resources, which includes 80 types of minerals and metals. The mining sector is Mongolia's leading export sector, and the Government of Mongolia is working to develop the mining sector at the policy level by attracting foreign and domestic investment.

There are no legal restrictions on foreign investment in the mining sector, except for obtaining permission from the Government for a state-owned company to become a shareholder of the license holding legal entity. Exploration licenses are now openly tendered, allowing foreign mining investors to participate in the tender through their subsidiaries in Mongolia.

The Government is working to review mining legislation and regulations for issuing exploration and mining licenses to improve the legal environment for the mining sector and eliminate any inconsistency.

For more information or any queries, please feel free to contact Bolormaa.V, Partner by bvolodya@gratanet.com and Solongo G., Junior Associate of Grata International Law Firm by sgansukh@gmail.com or 976 70155031.

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