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MONGOLIA: MINING 2020

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MINING - 2020

1. General framework

1.1 Major features

Due to Mongolia has a rich resource of minerals, it is attracted by many foreign investors and many foreign and domestic companies looking for investment or business opportunities in the mining and petroleum sectors.

Mongolia is one of the 29 resource-rich developing countries identified by the International Monetary Fund. Approximately 2745 legal entities are held the mining and exploration licenses for 7,248,800 hectares area. It is covered 4.6% of the overall territory of Mongolia¹.

Mineral deposits are classified as following:

- Mineral deposits of strategic importance;
- Mineral deposits of common minerals; and
- Mineral deposits of conventional minerals.

1.2 Legal system and Sources of law

Mongolia has a civil law legal system primarily based on the continental or Romano-Germanic tradition. The mining sector is regulated by the Law of Mongolia on Mineral (hereinafter “**Mineral law**”) adopted in 2006 and it has been amended several times.

There are several enacted and adhered including Regulation on extractive micro mining, Procedures for Granting exploration license through tender and Procedure on rehabilitation and closure of mine, mountainous and concentrator etc in accordance with Mineral law.

Except for the Mineral law, mining industry has its independent laws such as Law of Mongolia on Petroleum, Law of Mongolia on Common minerals and Law of Mongolia on Subsoil.

1.3 Ownership of Mineral Resources

According to Article 6.2 of the Constitution of Mongolia, the land, except for the land owned

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¹ <https://www.mrpam.gov.mn/public/pages/165/2020-05-mon.pdf>

by the citizens of Mongolia, subsoil, its wealth, forests, water resources and wildlife shall be state public property. The State is entitled to grant the exploration and mining license to the legal entity as set forth in the terms and conditions of the Mineral law.

In the event of illegally conducted the mineral activities without any permission of the competent authority, an individual and legal entity who violated the Mineral law are punishable by Offense law and Criminal code of Mongolia.

1.4 Role of the State

Under hierarchy system of State organization, the State competent authorities shall consist of the Parliament (the State Great Khural), Government, Ministry of Mining and Heavy Industry, and State Central Administrative Agency².

Competence of the Parliament:

- To determine the state policy to develop the geological and mining sector;
- To decide whether ascribe and exclude the mineral deposit as strategically important mineral deposits at the request of the Government or on its own initiative;
- To settle the issue related to prospect, explore and mine on the area with State special protection area.

Competence of the Government:

- To ensure implementation of legislation on mineral prospecting, exploration and mining;
- To decide the issues related to prospect, explore, and mine on State special needs area, an exclusive area with State special protection area;
- To decide whether the determined area has belonged the State resource and State special needs area or to submit a proposal to the Parliament regards it.

Competence of the Ministry of Mining and Heavy Industry:

- Issuance, transfer, extension the term of a license and surrendering whole or partial a licensed area, resolving boundary disputes and determine service fee rates for reviewing of exploration work plan, information and report;
- To constitute the transparency on mineral exploration, mining, processing and sale activities;

² Law of Mongolia on Mineral (2006)

- To approve the procedure for mineral prospecting, exploration and mining and developing the product standard.

Competence of the State Central Administrative Agency:

- To organize the Tender to issue the license and to make conclusion on artisanal mining and common mining;
- To create a favorable investment environment for the mining sector and to provide evaluation with respect to current situation of the investment environment;
- To put the integrated oversight to the activities in connection with exploration and mining licensing; and
- To receive and register the request of the application related to participation of the Tender to issue the exploration and mining license.

1.5 Nature of Mineral License:

Mineral exploration and mining license and common minerals license shall be granted a legal entity which is a taxpayer in Mongolia and duly incorporated and operating under the laws of Mongolia.

- ✓ “Mineral exploration” means conducting a geological and exploration survey of the land surface and its subsoil in order to determine location, quantity and volume of mineral deposits and conducting technical and economic evaluation for studying the possibility of using its resources;
- ✓ “Mineral mining” means extracting and separating mineral from the land surface and its subsoil, ore stockpile, waste natural water and increasing and enriching its useful contents, producing and selling products;
- ✓ “Common mineral” means an accumulation of widespread usable mineral to use for road and construction material such as sand, gravel, brick-earth, trap, and granite³.

Conducting exploration or mining without a valid license is prohibited. One license shall be granted to one legal entity only.

1.6 Granting of Mineral License:

- ❖ The Minister the Mining and Heavy Industry shall appoint a Commission for Tender to evaluate the proposal of the Applicant who submitted a request to hold the exploration

³ Law of Mongolia on Common mineral (2014)

license. The State Central Administrative Agency grants the exploration license on the basis of the evaluation of the Commission.

- ❖ The State Central Administrative Agency shall grant the mining license considering the submitted request along with documents by the Applicants under Mineral law.
- ❖ The State Central Administrative Agency grants the common mineral license based on decision of the Governor of the province(aimag) and capital.

1.7 Security of Tenure

A. Procedure granting exploration license:

Exploration licenses are granted for up to three years with the possibility of three times extensions for period of three years.

Exploration license holder has an exclusive right to obtain a mining license for any part of an exploration area upon fulfillment of the terms and conditions of Mineral law. 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 as stated by the Mongolian government throughout daily newspaper, its own website or external mass media in a transparent and honest manner to the public 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 0.82USD) regardless an area with mineral concentration shall be 4,500 MNT/ha (app 1.6USD).

The Commission of Tender shall issue a conclusion on basis the evaluation both of technical and pricing proposals. 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-selected⁴.

⁴ Appendix of resolution No A/28 on Granting License through Tender by Minister of the Mining and Heavy Industry in 2018

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.

B. Procedure granting of mining license:

The license holder of the exploration license has a right to submit a request to hold mining license to the State Administrative Agency. The legal entity which is not an exploration license shall submit the request 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.

2. Environmental Protection and Community Relations

2.1 Environmental Protection and Licensing

The Law of Mongolia on Environmental protection and Mineral law are the major laws setting out the ecological requirements for mineral use activities.

The exploration license holder shall be obliged to draft an environmental protection plan in consultation with the respective Environmental inspection agency and Governor of the soum or district where the exploration area is located within thirty days following the granting an exploration license.

The State Central Administrative Agency has a right to revoke the license if the license holder has not pay the payment of license, illegally transferred the license to others, not fulfilled the obligations specified in the environmental management plan or the mineral mining or exploration activities were harmfully influenced to the environment.

Under the Criminal law and Offence law of Mongolia, the Legal entity or individual who violated the Mineral law and other related law shall be strictly punishable by fine, imprisonment and revoke the right.

2.2 Communities

The State Central Administrative Agency shall get a permission from the Governor of the province/capital related to explore in the exploration area's border points . The Governor shall make a decision on the basis of proposal of the Representatives of Citizen's Representative Meeting within 45 days from proposal notification of State Central Administrative Agency. The Governor may refuse on the grounds specified to the Mineral law.

A license holder shall work in cooperation with the local administrative body and conclude agreement in connection with environmental protection, mine exploitation, infrastructure development in relation to the mine-site development and job creation. The mining license holder and its subcontractor are obliged to employ the local citizens of such province and up to ten (10) percent of the total employees of a license holder may be foreign citizens.

3. Sustainable Development

3.1 Sustainable Development Initiatives

From an ecological point of view, sustainable development is one of the major principles of environmental legislation of Mongolia. The Parliament of Mongolia approved its long-term development strategy (Mongolia's Sustainable Development Vision 2030) reflecting sustainable development.

The Mineral Law regulates the relations between mining minerals activities, environment and socio-economic sectors. The Parliament approved a Law on Development Fund of Mongolia with an aim to prevent the market fluctuations and to ensure sustainable development.⁵

⁵ <https://sustainabledevelopment.un.org/memberstates/mongolia>

4. Taxation

4.1 Royalties and Taxes

Corporate income taxation is levied at the following rates, using a progressive-rate scale that ranges from 10% to 25%, as follows⁶:

- ✓ Taxable income up to MNT 6 billion / via Mongol bank USD exchange rate, app USD 2,255,000 /– 10%
- ✓ If annual taxable income exceeds MNT 6.0 billion/ app USD 2,255,000/, it shall be MNT600.0 million /app USD 225,560/ plus 25 (twenty five) percent of income exceeding MNT6.0 billion.

The following legal entity shall be royalty taxpayer:

- 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/; and
- The legal entity that delivered 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/.

4.2 Incentives

The Parliament of Mongolia approved a tax package laws in 2019, which came into force on January 1, 2020.

- In accordance with Law of Mongolia on Corporate income tax, mineral licensed legal entity shall not obtain any tax credit and tax exemption;
- 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 exempt from Value added tax.

5. Mining investment and finance

5.1 Attracting investment

⁶ Law of Mongolia on Corporate income tax (2019)

Mongolia conducts proactive activities to attract investors and the Law of Mongolia on Investment, adopted on 13 October 2013, regulates relations with regards to the investment attraction.

A. Stabilization certificate

The State Central Administrative Agency issues a stabilization certificate in order to stabilize the tax rate to be paid by an investor who fully meets the requirements specified in the Investment law in the purpose of attracting investment. The stabilization certificate shall become effective from the date of its issuance and the tax rate shall be stabilized during the entire period of validity of the stabilization certificate. The stabilization certificate shall be issued to heavy mining extraction, heavy industry and infrastructure sectors for the durations stated below:

Investment amount /in billion tugrugs/	Validity of the stabilization certificates (in years)					Investment completion period /in years/
	Ulaanbaatar area	Central region	Khangai region	Eastern region	Western region	
30-100	5	6	6	7	8	2
100-300	8	9	9	10	11	3
300-500	10	11	11	12	13	4
500 and above	15	16	16	17	18	5

B. Investment agreement

The Government of Mongolia shall conclude an Investment agreement with the investor who invested more than 500 billion tugrugs /app USD 176,919,756/ pursuant to the investor's request with the purpose of stabilizing the environment of business activities. The Investment agreement may reflect the conditions to provide a legal guarantee to the investor specified in Law of Mongolia on Investment, stabilize the tax environment and render coordination and financial support⁷.

⁷ Law of Mongolia on Investment (2013)

C. Investor and its representative

The residence permit shall be issued to the investor for a period of 1 year taking into account the investor's employment, taxation payment and operational stability and it's may be extended for a period of 3 years⁸.

Up to 3 investors, members and management representatives of the legal entity with foreign investment are exempted from workplace payment on the basis of the reference of the State Central Administrative Agency⁹.

D. Rights of the Investor

The investor is entitled to import goods, works and services from abroad and export produced products, works and services, dispose of their assets and transfer to and receive from abroad its lawful profits and income and make requests to their rights to use financing, loans, assistance, land and natural resources and submit their request and have their requests be resolved.

5.2 Foreign investment restriction

If a foreign government-owned legal entity holds 33 percent and more percentage of the total shares issued by the legal entities of Mongolia which deal with business in the mining sector, the permission from respective State Central Administrative Agency is required. There is no other restriction and prohibition to conduct mining operations.

5.3 International treaty

Mongolia is a party of the several international treaties in the mining sector such as Multilateral investment treaty (1988), the financing treaty on development objectives of the Mining Infrastructure Investment Support Project concluded between Government of Mongolia and International Development Association on 24 May 2011 and executed bilateral agreements on the promotion and protection of investment have been signed with 42 countries.

Moreover, Mongolia has ratified the Convention on the settlement of investment disputes

⁸ Appendixes of Resolution No 146 on the Residence and Registration of foreign nationals in Mongolia by Government of Mongolia in 2018

⁹ Appendixes of Resolution No 41 on Procedure for paying workplace payments, providing discounts and exemptions by Government of Mongolia in 2015

between Mongolian citizens and other countries and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

5.4 Source of finance

The mineral licensed legal entities seek the other financial opportunity beside their primary property from time to time.

The mineral license holder may pledge the exploration and mining license to the bank and non-bank financial organization or the taxation department in order to find the capital financing and decide the investment matters. The license shall not be a pledge item per se.

The mineral licensed legal entity may transfer the license in case of merging or joining with other legal entities.

5.5 Transfer of license

The license holder may transfer the license to the buyer if it is proven by the relevant documents that the license holder has sold and paid the taxation in accordance with the applicable laws and regulations. In the event the license holder is divided or separated, the license shall be returned to the State Central Administrative agency.

The exploration and mining license holders may transfer a part of the licensed area to legal entity eligible to hold a license and the shape, size and position of the transferred and remained parts of the licensed area shall fully meet the conditions and requirements stated under the law.

6. Conclusion

Mongolia is one of the richest countries in the world in terms of mineral resources and has created a favorable legal environment to support the stability of legal entities operating in the mining sector and attract investors.

Mineral exploration and mining license shall be granted to the legal entity, taxpayer in Mongolia which is duly incorporated and operating under the laws of Mongolia.

The exploration and mining license shall be granted through the tender and the exploration license holder has an exclusive right to hold the mining license in whole and part of the exploration area.

The mineral licensed holder shall exercise the rights and obligations under the Minerals Law

and may additionally pledge or transfer the exploration and mining license. Moreover, to conducting exploration and mining activities, the license holder is responsible for protecting and rehabilitating the environment, protecting public health and paying royalties payment.

According to the Law of Mongolia on Corporate Income Taxation, the mineral licensed legal entity shall pay a 10 percent tax on taxable income of up to MNT 6 billion and a 25 percent tax on taxable income of more than MNT 6 billion. The license holder is entitled to have taxation credit and taxation exemption under Law of Mongolia on Value Added Tax.

The State Central Administrative Agency shall issue the stabilization certificate in order to stabilize the tax rate whereas the Government of Mongolia shall enter into the Investment agreement with the investor who invested more than 500 billion tugrugs /app USD 176,919,756/ in the purpose of stabilizing the environment of business activities. Additionally, the investor is available to get long-term residence permits, visas and exempted from workplace payment for its management officers.

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