

## **SPECIAL LICENSES IN THE MINERAL SECTOR**

(Translated)

### **Exploration licences**

- The moratorium on the issuance of new exploration licences has been repealed. However, no competitive tender process has been introduced for granting new exploration licences. Previous iterations of the Amendments had proposed that a tender process would be introduced wherever there had been state funded exploration work over a grant area. However, the final adopted version of the Amendments have not introduced such a tender process.

- The maximum period for an exploration licence has been extended from 9 years to 12 years with the introduction of an option to extend the licence term for third, and final, term of 3 years. At the same time the ability to enter into premining agreements (which historically could be used to delay the requirement to commence mining for up to 3 years) has been done away with.

- Annual fees for the 10th to 12th years of an exploration licence are US\$5 per hectare and the minimum expenditure is US\$10 per hectare. • Maximum size of an exploration licence has been reduced to 150,000 hectares from 400,000 hectares.

- Whereas previous iterations of the Amendments had proposed:

□ a three year restriction on the transfer or pledge of newly issued exploration licences;

□ the return of 10% of the area of an exploration licence after 3 years and 20% after 6 years, the final adopted version of the Amendments have dropped these proposals. As such, newly issued exploration licences will be immediately transferable, opening the door to a reactivated secondary market and, importantly for junior exploration companies there is no restriction on the use of these licences as security for capital raising. Contrary to international practice, there is no new requirement to periodically surrender any portion of the grant area, as had been expected.

• The Government, upon the recommendation of the Ministry of Mining, has been given the power to determine the coordinates of areas over which exploration licences may be granted. Also, MRAM has been given a duty to determine the co-ordinates of areas over which exploration licences may be granted. At this stage, we presume that a combination of these powers and duties will constitute the mechanism by which the surface area available for exploration and mining will be increased to 20% from the current 8% of Mongolia's territory – in accordance with comments attributed to the Prime Minister regarding the effect of the Amendments.

• No changes were made to the basis for determining the State's ownership of mineral deposits. Previous iterations of the Amendments had proposed that where State-funded exploration had taken place then the State's claim to ownership should be based on the economic valuation and profitability of the mineral deposit and not on the State's historical investment. The final adopted version of the Amendments made no changes to Art. 5.3 of the Minerals Law – so the status quo has been maintained.

## **Mining licences**

1. The following additional obligations have been imposed on mining licence holders, they:

- must supply products that have been mined, processed or semi-processed in preference to processing facilities operating in Mongolia at market price; and
- must employ an employee to act as a liaison with MRAM regarding environmental rehabilitation and mine closure.

2. The Amendments specifically address the overlapping obligations of licence holders with obligations under the Petroleum Law with regard to coal bed methane. They are obliged to notify the Petroleum Authority of Mongolia if methane is discovered during coal mining and are permitted to produce coal bed methane in accordance with the Petroleum Law.

## **Preference for Mongolian employees, suppliers and customers**

1. Mining licence holders must ensure that 90% of their work force and the work force of any sub-contractor working at their mine is comprised of Mongolian nationals. It appears that the existing fine payable by a licence holder for noncompliance with this requirement (Art. 43.2) will now apply equally to any non-compliance by their subcontractor(s).

2. Mining licence holders must preferentially:

- procure goods and services and hire subcontractors from business entities which are registered, and paying taxes, in Mongolia; and High Level Overview – Amendments to the Minerals Law 2006 MINTER ELLISON | COMMERCIAL-IN-CONFIDENCE 3 of 12
- supply products that have been semi-developed, concentrated or mined from the mining licence site to processing facilities operating in Mongolia at prevailing market prices.

3. Previous iterations of the Amendments had imposed requirements for these suppliers to be majority Mongolian owned rather than merely registered and paying tax in Mongolia. This was criticised as being contrary to the Investment Law, (2013) that seeks to create an equal playing field for foreign and local investors.

4. Previous iterations of the Amendments also contemplated a fine equal to the applicable royalty rate being levied on an licence holder which failed to procure services from registered Mongolian entities which paid tax in Mongolia. However, in the final adopted version of the Amendments this sanction has been dropped. At this stage there does not appear to be a special sanction for this type of breach of the Minerals Law, as had been expected.

## **Dispute resolution**

The Amendments limit the rights of recourse for license holders who are prevented from exercising their rights as a result of actions or inactions by civil servants or State Administrative Agencies to administrative actions and claims in the administrative courts. We note, however, that the Administrative Law provides a civil right to claim damages for loss suffered as a result of actions of any administrative organisation or administrative officials.

## **Feasibility studies, work plans and reports**

1. A feasibility study must now be submitted within 1 year of the date upon which the mining licence is granted and must:

- state clearly how it will transport its mineral products and build requisite infrastructure;
- demonstrate the availability of capital required for mine rehabilitation;

2. The time for work plans and reports to be submitted is amended as follows:

- annual exploration work plans must be provided by 15 April each year;
- an exploration work report must be submitted prior 15 February each year;
- the mining plan outlining the proposed production parameters for the following year must be submitted by 1 December of each year.

### **Revocation of licences**

- The Amendments have introduced a grace period of 30 days for the late payment of annual licence fees before a licence is revoked. During this period a late penalty of 0.3% of the annual licence fee, per day is payable.
- Where a licence is revoked it must be reissued by tender except where the revocation is because the licence holder has failed to pay licence fees on time (or spend the minimum expenditure).
- If a court annuls a decision to revoke a licence the licence term continues.
- Similarly, if a special purpose area or reserved area expires and the area is returned to a licence holder the term continues.

### **Government, ministries and departments**

1. The Amendments give certain additional powers to the Government including:

- establishment of a National Geology Office;
- approving the contacts to be entered into by licence holders with local administrative bodies (i.e. Cooperation Agreements);
- determining co-ordinates of areas available for exploration licences;
- determine boundaries of strategic deposits;
- granting a new licence over a new licence area as compensation where the Government has taken a licence holders other licence on national security grounds or to undertake a major project.

2. The Amendments give certain additional powers to the Ministry of Mining including:

- establishment of a Minerals Professional Council;
- regulate mine and mine processing plant commissioning; High Level Overview – Amendments to the Minerals Law 2006 MINTER ELLISON | COMMERCIAL-IN-CONFIDENCE 4 of 12
- regulate mine processing plant operations;
- approve the composition and supervision of an external professional association tasked with advising on and supporting the implementation of the State Mineral Sector Policy (which was adopted on 16 January 2014).

3. MRAM functions are to be split between the newly created National Geology Office and the existing mining and cadastre departments. The Amendments give MRAM certain additional duties, including:

- creation and maintenance of a register of licence holders that are listed on a stock exchange;
- determining co-ordinates of areas available for exploration licences;
- creation of a National Geology Office which has duties including conducting geological, geophysical, geochemical, hydro geological and geo-ecological mapping, research and surveys, setting up a geological database and maintaining a Register of minerals.

Other

1. Otherwise the changes introduced by the Amendments are clarificatory in nature:

- common minerals are excluded from the operation of the Minerals Law;
- where a licence wholly overlaps with a Special Purpose Area, the affected licence holder must be reimbursed within 1 year of the decision by the competent agency;
- verification of the exploration work expenditure by the State administrative agency is to be based on the conclusions of exploration specialists and third party audits.

2. The deposit reports submitted by exploration licence holders in connection with their application for a mining licence must be from internationally recognised organisations appointed by the Minerals Professional Board.

3. Monetary penalties for breach are determined by reference to the minimum wage.

### **Procedure for submitting application requesting exploration license**

The following documents shall be attached to the application:

1. The applicant's name, mailing address, phone and fax numbers;
2. The certified copy of the applicant's State registration certificate;

3. An area map prepared as set forth in the requirements of law of mining and the name of the aimag, soum or district where the exploration area is located;
4. A document showing that the applicant has paid the service fee;
5. An information about the qualifications of the staff conducting the exploration works;
6. A document proving that the applicant meets the requirements;
7. A preliminary plan that includes the type, scope and cost of exploration work to be conducted by the applicant.

State administrative agency shall carry out the following:

1. To register the application in the application registry and recording the number, date, hour and minute of registration on each page attached to the application and issue the applicant a receipt acknowledging the filing of the application;
2. To record the first and last registered application of that day;
3. The immediately following the registration it shall be determined by preliminary screening whether the application and the attached documents meet the requirements specified under law of mining;
4. It shall be determined whether the requested exploration area overlaps with an area with restrictions or prohibitions on mineral exploration or mining, reserve area, special purpose territory, or any area subject to an existing valid license or previously filed pending application for a license.

#### **Procedure for submitting application requesting mining license**

The following documents shall be attached to the application:

1. The applicant's name, mailing address for official postal address, phone and fax numbers and a reference containing the name of its officer authorized to make decisions;
2. A document certifying that the applicant meets the requirements of law of mining;
3. A map of the area prepared as set forth in the requirements of law of mining. The map shall contain the name of the aimag or capital city and soum or district in which the area is located;
4. A document showing that the applicant has paid the service fee;
5. The Minerals Council's notes on its discussion of the exploration work results, and a decision of the State administrative agency;
6. A verification of performance of the duties with regard to environment protection plan during exploration work;
7. An evaluation of the effect on the environment;

8. A decision by official or the organization that conducted the tender as set forth in law of mining for the license areas explored with State budget funding.

More information:

Mineral Resources Authority: [http://mram.gov.mn/?page\\_id=136&lang=en](http://mram.gov.mn/?page_id=136&lang=en)

Mining Ministry: <http://www.mm.gov.mn/news/show/18>

Petroleum Authority: <http://english.pam.gov.mn/contentlist/category922.shtml?sel=4985>