

Seminar Report:

Building Capacity to Implement the IGF's Mining Policy Framework in Mongolia

March 20–23, 2017





Overview

More than 80 Mongolian participants from national and sub-national government, industry, and civil society sectors attended a four-day seminar in March 2017 devoted to building capacity to implement the IGF's Mining Policy Framework (MPF) in Mongolia.

The seminar was co-hosted by the IGF and the Ministry of Mining and Heavy Industry (MOMHI). The first two days focused on fiscal issues: financial benefit optimization; transfer pricing; beneficial ownership; and financial guarantees for mine closure. The third day focused on mine closure policies while the final day was devoted to socio-economic benefit optimization.

The Ministry is currently revising key areas of its legal framework for mining industry, including the new Law on Mining. The Government of Mongolia invited the IGF to perform a MPF Assessment in order to help identify gaps and ensure that the law reflects international best practices, with a focus on achieving sustainable development objectives. During the assessment, the Government of Mongolia invited the IGF to facilitate these capacity building workshops.

Over the past quarter-century, Mongolia has experienced increased foreign direct investment in extractive industries. But economic growth has slowed significantly in recent years. The government is working to stimulate economic growth while ensuring that it meets its commitments to national and international sustainability goals, including the United Nations Sustainable Development Goals and Mongolia's Nationally Determined Contributions under the Paris Agreement. While the country takes a multi-sectorial approach for economic growth, including through its vast agricultural and service sectors, the minerals sector remains a key focus of the government's growth strategy and is a major contributor to Mongolia's GDP.

The seminar was made possible through funding from the Government of Canada. The IGF Secretariat is hosted by the International Institute for Sustainable Development.

Workshops on financial benefit optimization and socio-economic benefit optimizations were held at the Open Society Forum in Ulaanbaatar. The mine closure workshop was held at the Puma-Imperial Hotel in Ulaanbaatar.



Monday, March 20: Introduction to Financial Benefit Optimization

The objectives of this opening session were to orient participants to the seminar, facilitators, and seminar participants; to gain a general understanding of the Intergovernmental Forum (IGF) and its Mining Policy Framework (MPF), and the involvement of Mongolia in the IGF; and to provide an overview of the IISD assessment of Mongolia's level of Implementation of the MPF and to the topic of Financial Benefit Optimization.

G.Nandinjargal, State Secretary, MOMHI, welcomed participants and introduced S.Mandakhbat, Chair of Department of Legal Affairs, MOMHI. Mandakhbat introduced the IGF, Mongolia's involvement in the IGF, and the IGF Assessment process. Kristi Disney Bruckner, Executive Director of SDSG, and Luke J. Danielson, President of SDSG, presented major findings of the IGF Assessment and more detailed findings of the Assessment related to the theme of Financial Benefit Optimization.

Major strengths identified include:

1. There are many well-trained and highly competent professionals working in the mining sector in Mongolia, both in private and public entities.
2. Recent approval of terms for a model agreement between mining companies and local administrative bodies promote integration of benefits of mining into aimag (province) and soum (district) levels.
3. Multi-stakeholder councils are increasingly common at the aimag and soum levels, and are viewed favourably by stakeholders as mechanisms to discuss and manage concerns related to the minerals sector.
4. High level of open and transparent data on tax and royalty flows; Mongolia has 10 years of experience implementing the Extractive Industries Transparency Initiative (EITI).
5. The Minerals Law includes a legal framework for ASM.



Major gaps identified include:

1. Overall lack of management of large volume and high risk mine wastes, including, but not limited to, their impact on water resources.
2. Lack of a clear system of planning and regulating mine closure and rehabilitation, including lack of financial assurance for mine closure.
3. Need to improve government capacity to audit complex tax returns, and to deal with transfer pricing, beneficial ownership, and related issues.
4. Lack of clear criteria as to which deposits should be classified as mineral deposits of strategic importance.
5. Lack of clarity and transparency regarding funding budgets of mining aimags and soums, and distribution and use of revenues.

Regarding Mongolia's implementation under the theme of financial benefit optimization, major strengths were:

1. There is a high level of open and transparent data on tax and royalty flows.
2. Mongolia has established a Stabilization Fund to manage mineral price volatility.
3. Since 2007, the government has established various forms of sovereign wealth funds to accumulate revenue from the mining sector and support national development.

Major weaknesses identified in the assessment were:

1. Government capacity to audit complex returns and to deal with transfer pricing, beneficial ownership, and related issues needs to be improved.
2. There is a lack of clarity regarding funding budgets of mining aimags and soums.
3. There is a lack of transparency in the state-owned mining sector.
4. There is a lack of clear criteria regarding which deposits should be classified as mineral deposits of strategic importance.



Following this overview, Shee Boon Law, Head of Knowledge at DL Piper, began an overview of International Standards for Financial Benefit Optimization. Some of the possible strategies include:

- Corporate Income Taxation
- Indirect Taxation
- Royalties
- Resource Rent, and
- Employment Income Taxation

Mr. Law discussed direct taxation principles related to foreign-owned resident entities and non-resident entities. He also discussed expenditure over the life cycle of extractive projects, including exploration, development, and decommissioning. Participants discussed challenges in direct taxation. Issues included whether the subcontractor can be taxable directly on their income, withholding taxes on services, and treaty limitation and related entitlement questions.

Monday Afternoon: International Standards and Guidance for Financial Benefit Optimization

Session Objectives: Continuing from the morning session, this session set out the framework for securing financial benefits from the direct taxation of investments in the mining sector. The framework and best practice guidelines presented are based on international guidelines developed by the Organization for Economic Co-operation and Development (OECD), updated to deal with base erosion and profit sharing (BEPS) concerns that countries have when dealing with multinational enterprises. Discussion around best practices will also take into account the needs and constraints of developing countries.

Shee Boon Law discussed:

- Base Erosion and Profit Shifting (BEPS) concerns and the emerging international standards to counter BEPS
- Measures in domestic law, transfer pricing, tax treaties and transparency
- Developing country considerations and administrative challenges



This session included a panel presenting Mongolian perspectives. Panelists included: B. Batjargal, Advisor to Minister of Mining and Heavy Industry; B. Bayaraa, Head of Department of Minerals and International Taxation, General Authority of Taxation; and Ts.Gerelchimeg, Specialist at Department of Budget Revenue, Ministry of Finance.

Mr. Law then provided some examples from other countries and facilitated a group discussion with all participants.

Tuesday Morning: Transfer Pricing Issues

Session Objectives: This session looked at the transfer pricing challenges that countries face in the context of financial benefit optimization. Mr. Law presented international standards based on the “arm’s length principle” embedded in OECD Guidelines and how they apply. Mr. Law also presented an assessment of relevant implications for Mongolia in relation to the mining sector. The session identified potential risk areas and how to handle them in practice. Mr. Law presented examples of how other countries promote a higher share of taxes and a discussion with the audience followed.

A panel of Mongolian experts provided their experience on this topic, including B. Bayaraa, Head of Department of Minerals and International Taxation, General Authority of Taxation; Ts.Gerelchimeg, Specialist at Department of Budget Revenue, Ministry of Finance; and N.Dorjdari, Executive Director, Natural Resources Governance Institute (NRGI), Mongolia

Tuesday Early Afternoon: Beneficial Ownership Issues

Session Objectives: This session, led by Mr. Law, examined how transparency initiatives, including the notion of ultimate beneficial ownership, are evolving globally, and where these developments may be relevant for Mongolia. The significance of transparency initiatives in addressing financial benefit optimization was also explored.

D.Erdenechimeg of Open Society Forum then presented on Beneficial Ownership challenges in Mongolia.



Tuesday Late Afternoon: Introduction to Financial Guarantees for Mine Closure

Session Objectives: In this session, we began to turn our attention to mine closure, with an introduction to financial assurance for mine closure. Mr. Danielson discussed the following:

- *The purpose of the guarantee: why is it needed?*
- *What is being guaranteed?*
- *Elements to consider in calculating the financial guarantee*
- *Acceptable forms for the financial guarantee*
- *Who are acceptable guarantors?*
- *How can the level of guarantee be changed?*
- *When and how does the guarantee terminate?*

Mr. Danielson discussed examples from other countries.

A panel presenting Mongolia's experience with financial guarantee followed Mr. Danielson's presentation. The panelists included: J.Batmagnai, Head of Legal Department, Mineral Resources and Petroleum Authority; M.Dagva, Director General, QMC LLC; B.Saran, Senior specialist, Division of Natural Resources, Ministry of Environment, Green Development and Tourism; Ts.Tsogtbaatar, Senior specialist, Division of Mining Policy, MOMHI; and D.Ulzibayar, Chair, Association of Mongolian Environmental Professionals.

A discussion with all participants followed the panel presentations.

Wednesday Morning: Introduction to Mine Closure Law & Policy

Session Objectives:

The objectives of this opening session were to orient participants to the seminar, facilitators and seminar participants; to gain a general understanding of the Intergovernmental Forum (IGF) and its Mining Policy Framework (MPF), and the involvement of Mongolia in the IGF; and to provide an overview of the IISD assessment of Mongolia's level of implementation of the MPF.



The session began with opening remarks by G.Nandinjargal, State Secretary, Ministry of Mining and Heavy Industry (MOMHI).

S.Mandakhbat, Chair of Department of Legal Affairs, MOMHI, then provided an introduction to the IGF Mining Policy Framework (MPF) and Mongolia's involvement in the IGF.

T.Zuunnast, Senior specialist, of the Division of Mining Policy, MOMHI, provided an overview of mine closure policy in Mongolia.

Ms. Bruckner and Mr. Danielson then presented the IGF Assessment of Mongolia's implementation on the MPF theme of Mine Closure Policy.

Mr. Danielson then presented on the Importance of Mine Closure Policy. Topics included:

- *When do mines close and why?*
- *The evolution of mine closure policy*
- *Brief history of the evolution of mine closure policy internationally*
- *The issue of orphaned and abandoned mines*
- *Costs of orphaned and abandoned mines*

M.Dagva, Director General, QMC LLC, and **D.Ulziibayar, Chair**, Association of Mongolian Environmental Professionals, provided their perspectives and commentary on the theme of mine closure policy in Mongolia.

Wednesday Afternoon: The Structure of Effective Mine Closure Law & Policy

Session Objectives:

The Mine Policy Framework states that "a mining operation which is consistent with sustainable development is one whereby planning for closure is present during the entire operation of the mine." The objective of this session was to discuss this and other basic elements of an effective mine closure law and policy, and the timeline for planning and implementation of the mine closure plan.



Mr. Danielson discussed the Basic Structure of an Effective Mine Closure Law, including discussion of the following topics:

- *Elements of successful closure planning*
- *Timing, approval process, modification*
- *Dealing with the different segments of the industry*
- *Financial guarantee*
- *Monitoring, reporting, inspection and enforcement*

M.Dagva, Director General, QMC LLC, then presented case studies of mine closure issues in Mongolia.

D.Ulzibayar, Chair, Association of Mongolian Environmental Professionals, followed with a presentation on the need for strengthened mine closure planning in Mongolia.

Mr. Danielson then discussed management of closure risks over the life of the mine. Topics discussed included:

- *Importance of progressive rehabilitation and ongoing monitoring and risk management*
- *Relationship of mine closure management plans and environmental impact assessment management plans*
- *“Rolling” closure plans*
- *What events should trigger revision of the plan (and the guarantee)?*
- *The “new frontier”—the social aspects of closure*
- *Examples*

D.Byambajav, Director, InEDU LLC, closed the day with a presentation on the role for communities in development, monitoring and updating of mine closure plans. Topics discussed included:

- *Economic transition to a post-closure state*
- *Stakeholder consultation in the development of closure objectives and plans*
- *Ongoing community roles*
- *Examples*



Thursday Morning: Socioeconomic Benefit Optimization: Funding Budgets of Aimags and Soums

Session Objectives:

The objectives of this session were to discuss current systems of managing the impacts and benefits of mining, including through company-community agreements; multi-stakeholder forums; foundations, trusts, and funds; and other law and policy frameworks that transfer benefits to aimags and soums. The session began with an overview of IGF Assessment results of Mongolia's implementation of the Social and Economic Benefit Optimization theme of the MPF. The session included an overview of current frameworks utilized in Mongolia to optimize social and economic benefits, and panels to discuss the experience under these frameworks, and foundations for good practice.

Ms. Bruckner introduced the session and presented the IGF Assessment of Mongolia's implementation of the MPF on the theme of Socioeconomic Benefit Optimization.

Ms. Bruckner, D.Byambajav and Mr. Danielson then presented tools for Socioeconomic benefit optimization. Their presentation included discussion of the following:

- *Understanding social costs, the cost of conflict, and the social license to operate*
- *Multi-stakeholder engagement*
- *Other revenue sharing arrangements*
- *Foundations, trusts, and funds*
- *Local content*

The session continued with a panel presentation on Mongolia's experience with socioeconomic benefit optimization. Panelists discussed current legal and policy frameworks, Challenges and opportunities in Mongolia. Members of the panel included B.Uujim-Ukhaan, Head of Department of Finance, MOMHI; Umnugovi Aimag Governor's Office; Bulgan Aimag Governor's Office; and J.Sunjidmaa, CSR Consultant.



Thursday Afternoon: Management and Implementation of Community Development Agreements (CDAs)

Session Objectives:

This session featured discussion of good practice for managing and implementing CDAs. We discussed Mongolia's Model Agreement on Issues of Environmental Protection, Mine Exploitation, and Infrastructure Development in Relation to Mine Site Development and Jobs Creation (2016); efforts to negotiate, manage, and implement agreements under the Model Agreement; and current CDAs in Mongolia.

D.Byambajav, Director, InEDU LLC, and Ms. Bruckner, President, SDSG presented the objectives and importance of CDAs. Their presentation included the following topics:

- *Overview of CDAs in mining and internationally*
- *Features of CDAs in Mongolia*
- *Overview of Framework of Mongolia's Model Agreement*

D.Erdenechimeg, Open Society Forum then presented on experience with CDAs in Mongolia. The session concluded with small group discussions and reports in plenary session on managing and implementing agreements under Mongolia's Model Agreement. A robust discussion followed.

Participants completed evaluations and the seminar adjourned.





FACILITATORS

Shee Boon Law is the Head of Knowledge at DLA Piper's International Tax Group, where he is responsible for championing, promoting, and representing the technical expertise of the International Tax Group to clients and the market generally. He brings with him over 20 years of tax advisory experience, which has been accumulated from working in the New Zealand tax authority, the Organization for Economic Co-operation and Development (OECD) in France and International Bureau of Fiscal Documentation (IBFD) in the Netherlands. Prior to joining DLA Piper, Mr. Law managed the training and research services that IBFD, an independent international tax research institute, provides to private sector and government clients. In this capacity he has provided advice on international tax policy and administration issues (including transfer pricing) to multinationals and governments (such as India, China, Saudi Arabia, and South Africa). In his previous role at the OECD, he was responsible for the OECD's dialogue with Non-OECD Economies on international tax instruments such as the OECD Model Tax Convention and the OECD Transfer Pricing Guidelines. In this role, he worked with over 50 countries in Africa, Asia Pacific, Eastern Europe, Commonwealth Independent States, and the Baltic countries to assist in the analysis, implementation, and application of OECD guidelines. Mr. Law is multi-lingual and multi-national, speaking seven languages, and has lived in New Zealand, France, the Netherlands and Malaysia.



Byambajav Dalaibuyan is an Ulaanbaatar-based consultant who works on projects exploring agreement-making in mining, community engagement, local development, and mining governance. He regularly delivers advice and research outputs to organizations such as the United Nations Development Programme, International Mining for Development Centre, Mineral Resources and Petroleum Authority of Mongolia, Open Society Forum, and Rio Tinto. These research and training projects require regular fieldwork in mine-affected areas, including mine sites in Mongolia and Australia, and engagement with various organizations including civil society and think tank groups.





Luke J. Danielson, President and Co-Founder of Sustainable Development Strategies Group, is an attorney, professor, and consultant.



He has over 30 years of worldwide experience on minerals policy, development strategies, and environmental management. He has experience working with over a dozen governments around the globe on these issues. Mr. Danielson was previously the Executive Director of the groundbreaking global Mining Minerals and Sustainable Development Project, a multi-year project involving hundreds of stakeholders, forums, conferences, and reports. He also managed the International Bar Association Mining Law Committee's Model Mine Development Agreement (MMDA) Project. He lives in Gunnison, Colorado, USA.

Kristi Disney Bruckner is an attorney specializing in environmental law and



policy, and international resources transactions law and policy. She is the Executive Director at Sustainable Development Strategies Group, where she develops and implements programs focused on sustainable development in extractive industries. These programs include seminars that build the capacity of developing country governments to negotiate and manage natural resource development agreements; workshops to educate government, community and industry stakeholders about roles, rights and responsibilities in mine development initiatives; preparation of validation reports for the Extractive Industries Transparency Initiative (EITI) and Intergovernmental Forum on Mining, Minerals, Metals, and Sustainable Development; and university-based seminars and internship programs that build the skills of professional leaders around the globe to more sustainably manage natural resources. She lives in Conifer, Colorado, USA.



FACILITATING INSTITUTIONS



IGF

The Intergovernmental Forum on Mining, Minerals, Metals, and Sustainable Development (IGF) is a member-driven organization aimed at providing national governments committed to leveraging mining for sustainable development the

opportunity to work collectively to achieve their goals. It is devoted to optimizing the benefits of mining to achieve poverty reduction, inclusive growth, social development, and environmental stewardship. The IGF serves as a unique global venue for dialogue between its 56 member country governments, mining companies, industry associations, and civil society. www.IGFMining.org



IISD

International Institute for Sustainable Development

The International Institute for Sustainable Development (IISD) is one of the world's leading centers of research and innovation. The Institute provides practical solutions to the growing challenges and opportunities of integrating environmental and social priorities with economic

development. We report on international negotiations and share knowledge gained through collaborative projects, resulting in more rigorous research, stronger global networks, and better engagement among researchers, citizens, businesses, and policymakers. www.IISD.org



Sustainable Development Strategies Group

Sustainable Development Strategies Group (SDSG) is a nonprofit organization that focuses on the contribution of natural resources to sustainable development by working with governments, communities, industry, international organizations and other stakeholders to support improved governance, legal and policy reform, stable and equitable agreements, relevant education and research. www.SDSG.org.