

## Draft Revised Minerals Law December 2012

The Office of the President of Mongolia published a draft revised Minerals Law ("**Draft Law**") on its website on Friday 7 December 2012.

The Draft Law is comprehensive, and runs to over 100 pages and a total of 145 articles, in comparison with the existing law of 66 articles. Mongolia last revised its Minerals Law in 2006, replacing the Minerals Law adopted in 1997 which had provided a very liberal mining regime. Although only adopted in 2006, a revision of the existing Minerals Law had been pending for the last few years and a moratorium on the issuance of new exploration licences had been in place since 17 June 2010. Such moratorium was due to expire today, 31 December 2012, but was extended by a plenary session of Parliament held on 28 December 2012. The extension will be in place until such time as the new Minerals Law enters into force.

It appears that the President's Office intends to hold a public consultation on the Draft Law in the coming weeks, however at this stage it is not certain what format this will take. We expect that the Draft Law will undergo at least some amendment prior to adoption. We understand that the current draft has not yet been submitted to Parliament for approval.

The Draft Law deviates from the existing Minerals Law in many areas and seeks to introduce a new regulatory regime with new legal concepts.

Below is a brief summary of the main changes to be introduced by the Draft Law:

### 1. Definition of "strategic minerals"

The Draft Law introduces a concept of "strategic minerals" which include water, oil, natural gas, radioactive minerals and rare earth metals;

### 2. Deposits of strategic importance

The draft law reaffirms the existing list of deposits of strategic importance as approved by Parliamentary resolution #27 dated 6 February 2007<sup>1</sup> and states that no additional deposits will be included in such list. Further the Government is authorised to submit its proposals to remove certain deposits

<sup>1</sup> Currently, there are 15 mineral deposits regarded as having of strategic importance, including both operating mines and deposits that are still to be developed.

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from the list for Parliamentary approval. In respect of development of strategic deposits, the Draft Law no longer provides for "investment agreements", instead these are replaced with so-called "**mining agreements**" to be entered into between the government and a licence holder of a strategic deposit. Under these agreements, the Mongolian state has the right to take an equity interest in the licence holder for no consideration. The Draft Law specifies further conditions for such agreements;

### 3. Licences

There will be 4 types of licences in respect of the mining sector (as opposed to the existing two), being:

- a) **prospecting licences** - are to be issued only by way of tender bidding in areas determined by the Ministry of Mining and for up to 4 year terms. Such licences are not extendable nor transferable. Holders of prospecting licences will have a priority right to apply for and obtain exploration licences provided that such entities satisfy the requirements set out in the Draft Law. A legal entity may hold up to a maximum of 5 prospecting licences;
- b) **exploration licences** - are to be issued for a term of up to 5 years in the following circumstances (i) to applicants holding prospecting licences; (ii) to state-owned or state-participated entities for areas not already licensed or that are in the state reserve without a requirement to participate in tender bidding; or (iii) by way of tender bidding in areas determined by the Ministry of Mining.

The term of such licences is not extendable and they may not be transferred for a period of 1 year after the date of issue. Holders of exploration licences will have priority rights to apply for and obtain mining licences provided that such entities satisfy the requirements set out in the Draft Law;

- c) **mining licences** - are to be issued for a period of up to 20 years in the following circumstances (i) to applicants holding exploration licences; (ii) to state-owned or state-participated entities for areas that are not already licensed or that are in the state reserve without a requirement to participate in tender bidding; or (iii) by way of tender bidding. Mining licenses are extendable a further two times by up to 20 years each time. A legal entity may hold up to a maximum of 5 mining licences.

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Mining licences will be transferable, but state-owned entities will have preemptive rights in respect of any transfer;

- d) **processing licences** - are to be issued in the following circumstances (i) by application; or (ii) tender bidding. The term of issue will vary depending on the results of the supporting feasibility study.

#### 4. **Transfer/pledge of licences**

The Draft Law provides for the transfer of exploration, mining and processing licences with certain restrictions. Licence transfer agreements will only be valid upon registration with the Mineral Resources Authority. State-owned entities shall have a preemptive right to licences being transferred. Pledging of licences is allowed.

#### 5. **Cancellation of licences**

There are 13 grounds under which licences may be revoked by the Mineral Resources Authority. Such grounds are more extensive than those under the existing Minerals Law and include high-grading and failure to start operations within a specified period of time.

#### 6. **Tender process**

Licences will be issued by way of tender bidding, save for certain circumstances set out in the Draft Law and the current "first come-first served" system shall be abolished;

#### 7. **Eligibility of licence holders**

Under the Draft Law, holders of prospecting, exploration and processing licences relating to areas other than the special border zones must be Mongolian-incorporated entities, but the Draft Law does not restrict foreign investment in such entities. However, the Draft Law does impose requirements for local equity participation of mining licence holders. The Draft Law states that not less than 34% of the equity in a foreign-invested mining licence holder must be held by a Mongolian citizen. This effectively requires divestment by foreign investors in favour of Mongolian citizens in the event exploration licence holders intend to convert their licences. The local equity participation requirement increases to a minimum of 51% where the mineral deposit was discovered by means of state-funded exploration. Furthermore, if an area that is subject to a prospecting, exploration, mining or processing licence is located within the special border zones, not less than 51% of the equity of the licence holder must be held by Mongolian citizens.

#### 8. **Royalties**

Licence fees and royalties would no longer be regulated by the Minerals Law, rather by separate legislation.

#### 9. **Permit to commence**

Licence holders (save for prospecting licence holders) may only start their operations on receipt of a so-called "work permit" from the Mineral Resources Authority.

#### 10. **Obligations of licence holders**

There are extensive regulations on environmental protection, mine closures, public consultations, agreements with local authorities, local content requirements, mandatory insurance policies, prohibitions on high-grading and feasibility studies.

As currently drafted, the Draft Law does not provide for any transitional provisions relating to existing licences nor the rights and obligations of licence holders under the existing system.

Overall, if adopted the Draft Law will change the existing regulatory regime in many areas. The Draft Law represents a shift to a more state-centric mining regime and imposes additional requirements and obligations on licence holders while at the same time potentially weakening the security of tenure granted under the existing Minerals Law.

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