



Mining

in 37 jurisdictions worldwide

2012

Contributing editors: Michael Bourassa and John Turner



Published by
Getting the Deal Through
in association with:

- ÁLEX
- Baker & McKenzie – CIS, Limited
- Boga & Associates
- Bowman Gilfillan Inc
- Bufete Candanedo
- Carey
- Chandler & Thong-ek Law Offices Ltd
- Colibri Law Firm
- Corpus Legal Practitioners
- Fasken Martineau
- Foyen Advokatfirma AB
- Gadens Lawyers
- Holland & Hart LLP
- Kalliolaw Asianajotoimisto Oy – Attorneys at Law
- Kimathi & Partners, Corporate Attorneys
- Koep & Partners
- Kusaasira & Co Advocates
- Martelli Abogados
- Martínez Carrera & Hernández
- McGuireWoods LLP
- Miranda Correia Amendoeira & Associados
- Nuna Law Firm
- Peña Mancero Abogados
- Rex Attorneys
- Rubio Leguía Normand
- Savjani & Co
- Soemadipradja & Taher
- SyCip Salazar Hernandez & Gatmaitan
- Tobar & Bustamante
- Tsets
- V&T Law Firm
- Veirano Advogados

Mining 2012

Contributing editors:

Michael Bourassa and John Turner
Fasken Martineau

Business development managers

Alan Lee
George Ingledew
Robyn Hetherington
Dan White

Marketing managers

Ellie Notley
Alice Hazard

Marketing assistants

William Bentley
Zosia Demkowicz

Admin assistant

Megan Friedman

Marketing manager – subscriptions

Rachel Nurse
subscriptions@
gettingthedealthrough.com

Assistant editor

Adam Myers

Editorial assistant

Lydia Gerges

Senior production editor

Jonathan Cowie

Production editor

Martin Forrest

Chief subeditor

Jonathan Allen

Subeditor

Davet Hyland

Editor-in-chief

Callum Campbell

Publisher

Richard Davey

Mining 2012

Published by
Law Business Research Ltd
87 Lancaster Road
London, W11 1QQ, UK
Tel: +44 20 7908 1188
Fax: +44 20 7229 6910
© Law Business Research Ltd
2012

No photocopying; copyright licences
do not apply.

ISSN 1748-3085

The information provided in this publication
is general and may not apply in a specific
situation. Legal advice should always
be sought before taking any legal action
based on the information provided. This
information is not intended to create, nor
does receipt of it constitute, a lawyer-
client relationship. No legal advice is being
given in the publication. The publishers
and authors accept no responsibility for
any acts or omissions contained herein.
Although the information provided is
accurate as of July 2012, be advised that
this is a developing area.

Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112

Law

Business

Research

Global Overview <i>Michael Bourassa</i> Fasken Martineau	3
Albania <i>Alketa Uruçi and Bers Hado</i> Boga & Associates	6
Angola <i>Agostinho Pereira de Miranda and João Afonso Fialho</i> Miranda Correia Amendoeira & Associados	12
Argentina <i>Hugo C Martelli</i> Martelli Abogados	18
Australia <i>Kym Livesley</i> Gadens Lawyers	25
Azerbaijan <i>Ay Khan Asadov and Nigar Hajiyeva</i> Baker & McKenzie – CIS, Limited	31
Brazil <i>Pedro Aguiar de Freitas, Pedro Garcia, Alexandre Calmon and Bruno Chedid</i> Veirano Advogados	36
Canada <i>Michael Bourassa and John Turner</i> Fasken Martineau	43
Chile <i>Rafael Vergara and Juan Francisco Mackenna</i> Carey Abogados	50
China <i>Wang Jihong, Shi Jie, Jiang Jie, Liu Ying, Wu Anjing and Wang Xiaofang</i> V&T Law Firm	56
Colombia <i>Gabriela Mancero and Milton Montoya</i> Peña Mancero Abogados	62
Democratic Republic of the Congo <i>Hubert André-Dumont</i> McGuireWoods LLP	70
Ecuador <i>César Zumárraga, Santiago J Bustamante and Claudia Nannini</i> Tobar & Bustamante	77
Finland <i>Jukka Kallio, Tarja Pirinen and Pekka Holopainen</i> Kalliolaw Asianajotoimisto Oy – Attorneys at Law	83
Ghana <i>Michael Edem Akafia and Kimathi Kuenyehia Sr</i> Kimathi & Partners, Corporate Attorneys	90
Greenland <i>Peter Schriver</i> Nuna Law Firm	96
Indonesia <i>Dezi Kirana and Robert Reid</i> Soemadipradja & Taher	101
Kazakhstan <i>Azamat Kuatbekov and Indira Iminova</i> Baker & McKenzie – CIS, Limited	111
Malawi <i>Krishna Savjani and Duncan Singano</i> Savjani & Co	119
Mexico <i>Abdón H Hernández</i> Martínez Carrera & Hernández	124
Mongolia <i>John Connors</i> Baker & McKenzie and <i>D Khand</i> Tsets	129
Mozambique <i>Agostinho Pereira de Miranda and Nuno Cabeçadas</i> Miranda Correia Amendoeira & Associados	137
Namibia <i>Peter Frank Koep and Hugo Meyer van den Berg</i> Koep & Partners	144
Nigeria <i>Sina Sipasi, Oluremi Andem and Olapeju Bakare</i> ALEX	149
Panama <i>Rolando Candanedo Deneken</i> Bufete Candanedo	154
Papua New Guinea <i>Geoff Applegate and Steve Kami</i> Gadens Lawyers	160
Peru <i>Emil Ruppert</i> Rubio Leguia Normand	164
Philippines <i>Hector M de Leon Jr</i> SyCip Salazar Hernandez & Gatmaitan	171
Russia <i>Alexey Frolov and Alexander Gomonov</i> Baker & McKenzie – CIS, Limited	177
South Africa <i>Claire Tucker and Sandra Gore</i> Bowman Gilfillan Inc	182
Sweden <i>Peter Dyer and Pia Pehrson</i> Foyen Advokatfirma AB	190
Tanzania <i>Tabitha Maro and Daudi A Ramadhani</i> Rex Attorneys	196
Thailand <i>Albert T Chandler, Christopher Kalis and Stefan Chapman</i> Chandler & Thong-ek Law Offices Ltd	202
Uganda <i>Denis Kusaasira and Henry A Kaliisa</i> Kusaasira & Co Advocates	210
Ukraine <i>Svitlana Romanova and Taras Aleshko</i> Baker & McKenzie – CIS, Limited	216
United States <i>Robert A Bassett and Andrew A Irvine</i> Holland & Hart LLP	222
Uzbekistan <i>Bakhodir Jabborov</i> Colibri Law Firm	227
Zambia <i>Charles Mkokweza</i> Corpus Legal Practitioners	233

Mongolia

John Connors Baker & McKenzie

D Khand Tsets

Mining industry

- 1 What is the nature and importance of the mining industry in your country?

Mongolia is well endowed geologically and considered highly prospective. Approximately 8,000 mineral deposits have been identified to date, including significant deposits of copper, coking and thermal coal, gold, iron ore, uranium, chromium, manganese, lead, zinc, nickel, cobalt, bauxite and rare earth elements.

During the Soviet era (1921-91), Mongolia was closely aligned economically and politically with the USSR and there was little foreign investment from outside the Soviet bloc.

Since the introduction of the 1997 Minerals Law, and especially since the signing of the investment agreement for the Oyu Tolgoi deposit in October 2009, Mongolia has attracted significant investment in exploration and mining. Favourable geology, a relatively liberal and open foreign investment framework, rising world demand for mineral commodities and geographical location with a proximity to industrial centres in Northern China are typically cited as among Mongolia's principal attractions.

Although still at an early stage of development, the mining industry is central to Mongolia's economy and plans for national development. Mongolia's mining sector has steadily grown by 8 to 12 per cent annually over the last few years and the mining industry's contribution to the country's total GDP tripled between 2002 and 2007. Today the mining industry accounts for 55 per cent of industrial output and more than 40 per cent of export earnings. The significance of the mining industry in Mongolia's economy will continue to grow as more mines proceed to development and production, including major mines such as Oyu Tolgoi and Tavan Tolgoi.

The majority of mining and exploration companies operating in Mongolia are foreign-invested and controlled. Although Western companies receive most attention in the foreign and domestic media numerous Chinese, Japanese, Korean and Russian companies are involved in the mining sector, as investors, offtakers, financiers and suppliers. The industry also features a significant number of domestic private mineral enterprises and several state-owned companies, including the national companies Erdenes MGL LLC, its subsidiary Erdenes Tavan Tolgoi LLC and MonAtom LLC, the latter playing a central role in the uranium sector.

Although Mongolia is, in many ways, the most open and foreign investor-friendly of the former Soviet aligned states and is increasingly being seen as on the path to becoming a serious mining jurisdiction, political and legal risks remain high. The legal and regulatory framework for exploration and mining is unsettled. Mongolia has a democratic system of government and there are strong nationalist, populist and environmental protection sentiments in the electorate and politics. There are also strong domestic business interests involved in various aspects of the mining industry.

Mongolia's small population, lack of infrastructure outside urban areas and the arid nature of southern regions make transportation logistics and the availability of water, along with project funding and the availability of skilled labour, key considerations in project development.

Mongolia is also landlocked, raising questions of transit and access to rail and port facilities in China and Russia in regard to any bulk commodity projects where exports beyond China and Russia are contemplated.

-
- 2 What are the target minerals?

The minerals being targeted include coking and thermal coal, copper, gold, molybdenum, fluorspar, iron ore, uranium and rare earths.

-
- 3 Which regions are most active?

Almost all regions in Mongolia are active in terms of mineral exploration and mining. The largest undeveloped copper and coal deposits, Oyu Tolgoi and Tavan Tolgoi, are located in the South Gobi region (Southern Mongolia).

Oyu Tolgoi

Oyu Tolgoi is one of the world's largest undeveloped copper and gold deposits, with estimated reserves including 25 million tonnes of contained copper, and 1,028 tonnes of contained gold. It is expected that commercial production, averaging 544,000 tonnes of copper and 650,000 ounces of gold a year during the first 10 years, will commence in 2013. In October 2009, the government of Mongolia, Ivanhoe Mines and Rio Tinto signed an investment agreement regarding the development of the Oyu Tolgoi copper-gold complex and other agreements entitling the government, through the state owned Erdenes MGL LLC, to acquire a 34 per cent stake in Oyu Tolgoi LLC, the entity holding the Oyu Tolgoi mining licences.

Tavan Tolgoi

Tavan Tolgoi is one of the world's largest undeveloped coal deposits. Reserves are estimated to include 1.7 billion tonnes of high quality coking and 4.7 billion tonnes of thermal coal. Ultimately, production at the rate of 15 to 20 million tonnes per year from each of the east and west Tsankhi blocs, is anticipated. The development structure envisaged by the Mongolian government entails the state-owned entity, Erdenes Tavan Tolgoi LLC, holding mining licences covering much of the deposit and itself developing an eastern Tsankhi bloc, while allocating the western Tsankhi bloc for development by a private investment consortium. However, a number of issues remain to be resolved in relation to the development of the western Tsankhi bloc, including the final composition of the investor consortium, fiscal terms and arrangements regarding infrastructure and transit and transportation through China and Russia.

Legal and regulatory structure

4 Is the legal system civil or common law-based?

Mongolia's legal system is civil law-based, built on the traditions of the continental, Roman-Germanic system of law but with a significant Soviet era legacy. Elements drawing on common law examples have also been included in economic laws. The source of law is written law and the courts only apply laws in resolving cases and disputes.

5 How is the mining industry regulated?

Mongolia is a unitary state. The parliament of Mongolia adopts the mining laws and regulations on a national level, which are then applicable throughout the country.

6 What are the principal laws that regulate the mining industry? What are the principal regulatory bodies that administer those laws?

The principal laws regulating the mining industry are the Minerals Law 2006, (revising the Minerals Law 1997), which applies to all minerals except for uranium, petroleum, natural gas and water; the Subsoil Law (1988), the Nuclear Energy Law (2009), which regulate activities in the uranium sector and the Law on Regulation of Foreign Investment in Business Entities Operating in Strategically Important Industries, enacted on 17 May 2012 (the Law dated 17 May 2012), which restricts investment by foreign governments and state-owned enterprises and foreign investment in strategic industries including mineral resources.

The Ministry of Mineral Resources and Energy determines state policies for the mining industry. The Mineral Resources Authority of Mongolia (MRAM), an implementing agency of government, is the main regulatory authority that issues, extends and revokes mineral licences and constitutes the state administrative body referred to in the Minerals Law. MRAM is also responsible for compiling information on Mongolia's mining industry, conducting geological surveys and research and archiving geological data. The Nuclear Energy Commission constitutes the state administrative body for purposes of the Nuclear Energy Law. The Nuclear Energy Commission issues radioactive mineral exploration and mining licences and certain other types of licence for radioactive mineral sector activities.

Also relevant is the State General Specialised Inspection Authority (SGSIA), a single authority for all government inspection in Mongolia. The Environment, Geology and Mining Department of SGSIA and its local offices are in charge of reviewing and approving annual exploration work plans and reports as well as inspection of various aspects of exploration, mining and processing activities.

7 What classification system does the mining industry use for reporting mineral resources and mineral reserves?

The Minerals Law requires exploration licence holders to annually submit an exploration work report, and mining licence holders to submit a mining work report to MRAM for approval.

In addition, upon completion of an exploration works, licence holders must submit exploration work results and hand over the mineral reserves to the Minerals Council for its approval and registration in the unified state register of mineral reserves.

Classification

Mongolia's classification system for reporting mineral resources and mineral reserves is based on the Russian system and accordingly, differs significantly from systems such as the JORC Code, CIM Standards and SAMREC. The Provisional Instruction for Classification of Mineral Resources approved by MRAM in 1998 classifies reserves of mineral deposits by their actual economic importance at the

respective time as follows: profitable reserves, limited profitable reserves and reserves profitable under certain circumstances.

Mineral resources are classified on the basis of evaluation as preliminary evaluated resource (marked P1) and inferred resources (marked P2).

The table below shows comparison of this provisional instruction system to CIM, JORC Code and SAMREC:

Provisional instruction (Mongolia)	CIM (Canada)	JORC (Australia)	SAMREC (South Africa)
Mineral reserves			
Proven reserves 'A'	Indicated	Indicated	Proved
Probable reserves 'B'	Inferred	Inferred	Measured
Potential reserves 'C'	Identified	Identified	Probable
Mineral resources			
Preliminary evaluated resources 'P1'	Inferred subeconomic resources	Inferred subeconomic resources	Indicated
Inferred resources 'P2'	Non conventional resources	Non conventional resources	Inferred
			Identified

Mining rights and title

8 To what extent does the state control mining rights in your jurisdiction? Can those rights be granted to private parties and to what extent will they have title to minerals in the ground? Are there large areas where the mining rights are held privately or which belong to the owner of the surface rights? Is there a separate legal regime or process for third parties to obtain mining rights in those areas?

Mongolia's Constitution (1992) and Minerals Law (2006) provide that the Mongolian State is the owner of all mineral assets and resources occurring on the earth's surface and in subsoil in Mongolia. Private parties are only granted the right to explore for or mine minerals by way of licences.

State Equity Entitlement

The Minerals Law and Nuclear Energy Law (2009) each entitle the State to a substantial equity interest in a Mongolian mineral enterprise, in certain circumstances.

The 2006 Minerals Law introduced the concept of 'deposits of strategic importance', defined as a deposit of the size that may have potential impact on national security, economic and social development of the country at the national or regional levels or that produces or has a potential of producing more than 5 per cent of total GDP in a given year.

The state may acquire up to 34 per cent equity interest in the exploitation of a deposit of strategic importance, on a commercial basis, where private funds have been used to register the reserve. In cases where state-funded exploration has been used to register a resource the state can acquire up to 50 per cent interest.

The parliament has identified 15 deposits as of strategic importance and placed a further 39 deposits on a tier 2 deposits list, for further review and possible classification as strategic deposits.

Pursuant to the Nuclear Energy Law any radioactive minerals deposit, regardless of its size is classified as a strategically important mineral deposit. The law entitles the state to own directly and

without consideration no less than 51 per cent of shares in a company holding a licence to a radioactive minerals deposit, if the reserves of such deposit were determined by state budget funding, and no less than 31 per cent, where reserves were determined by private funding. Furthermore, if the state is to hold more share equity than specified, then such share equity is to be determined by the parliament at submission of the cabinet, taking into account past and future state investments.

There are no large areas where the mining rights are held privately or that belong to the owner of the surface rights.

9 What information and data is publicly available to private parties that wish to engage in exploration and other mining activities? Is there an agency which collects mineral assessment reports from private parties? Must private parties file mineral assessment reports? Does the agency or the government conduct geoscience surveys, which become part of the database? Is the database available online?

The government agency responsible for compiling information on Mongolia's mining industry, conducting geological surveys and research, and archiving geological data is MRAM. Such geological data is publicly available, unless it constitutes a state secret. The database, however, is not available online.

Any interested person has the right to access the licence and cartographic licence registries kept by MRAM during office hours in specially designated rooms.

MRAM may, however, at a licence holder's request, treat as confidential information the reports of exploration works, information with respect to mine operations and feasibility studies prepared by a licence holder during the validity period of the licence. Such information may not be disclosed, published or disseminated, unless required by law.

10 What mining rights may private parties acquire? How are these acquired? What obligations does the rights holder have? If exploration or reconnaissance licences are granted, does such tenure give the holder to a preferential right acquire a mining licence?

There are two types of mineral licence available to private entities in Mongolia, namely, exploration licences and mining licences. An exploration licence is granted to the first applicant who registers and files an application to MRAM for an exploration area. The law allows the eligible legal entity to hold any number of exploration licences of up to 400,000 hectares each.

The Minerals Law does not recognise acquisition or sale of licences per se but it allows transfer of a licence following sale of the assets entailed in the relevant exploration or mining activity. In addition, one licence can only be held by one legal entity and hence is not divisible.

Licence Grants

MRAM is required to make a decision on a licence application within 20 business days of receipt. During such a period, if it believes that a licence can be granted, MRAM will notify in writing to the governor of the relevant aimag or the capital city. The governor, in turn, may object to the issuing of the respective licence within 30 days, but only 'on grounds provided in law'.

In specified cases, exploration licences are issued by way of tender, namely:

- for the areas with mineral concentration determined through state-funded geological surveys or state-funded exploration;
- if a licence is revoked;
- if an exploration licence expires and its holder fails to apply for a mining licence; and
- a licence holder fails to reimburse the state-funded exploration expenses within 30 days from notice.

An exploration licence is granted for an initial three year term, extendable twice each for two further three year periods.

Rights and Obligations of Licence Holders

An exploration licence holder has the rights to conduct exploration for minerals within the boundaries of the licensed area during the licence term, to gain access to the licence area.

An exploration licence holder also has the exclusive right to apply for a mining licence for the same area.

Exploration licence holders have the following obligations:

- to pay annually in advance the licence fees for the subsequent year;
- to keep certain specified documents at the exploration site;
- satisfy the minimum annual exploration work expenditures;
- to comply with the specific environmental protection obligations of exploration licence holders; and
- to submit the required information and reports to MRAM.

Mining licences are granted for an initial 30-year term, extendable for further successive 20-year periods 'depending on the reserve of the mineral'. Mining licence applications must be submitted together with an Environmental Impact Assessment Report and a Resource Report.

The Minerals Law also specifically provides for a three-year pre-mining period after expiration of an exploration licence term. Once the results of exploration works are accepted by the Minerals Council and the reserve is registered in the State Registry a licence holder develops mining drawings, prepares the feasibility study, constructs a mine and commences production. Pre-mining operations are governed by a pre-mining agreement between the exploration licence holder and MRAM.

A mining licence holder has, among others, the rights to engage in mining within the licence area during the licence term, gain access, construct necessary facilities, and use land and water.

Mining licence holders have the following obligations:

- to pay annually in advance the licence fees for the subsequent year;
- to keep certain specified documents at the mine site;
- to pay the required royalties;
- to comply with the specific environmental protection obligations of mining licence holders;
- to submit information and reports to MRAM; and
- to keep specified documents at the mine.

The Minerals Law also obliges a mining licence holder to extract all the mineral resources in the licence area and not just mine the high grade area. However, there is no indication that this obligation is being enforced.

11 Is there any distinction in law or practice between the mining rights that may be acquired by domestic parties and those that may be acquired by foreign parties?

Only Mongolian legal entities are eligible to hold mineral rights. Accordingly, no mining rights are available to foreign parties.

12 How are mining rights protected? Are foreign arbitration awards in respect of domestic mining disputes freely enforceable in your jurisdiction?

A legal and valid mineral licence serves as proof of a licence holder's mineral rights to a specified mineral deposit. The rights of licence holders are protected by Mongolian law and may be protected or enforced through a court, either through the general courts (in the case of disputes between licence holders) or administrative courts (when one of the parties is a government body or agency).

Although the judicial system is independent, it is worth noting that judges in Mongolian courts can at times interpret laws arbitrarily and may be susceptible to political influence.

Foreign arbitration awards in respect of domestic mining disputes are freely enforceable in Mongolia due to Mongolia being a signatory to the 1958 New York Convention.

13 What surface rights may private parties acquire? How are these rights acquired?

A mining licence holder is not automatically granted land rights for the licensed area in order to carry out mining activities. Land rights are obtainable at the mining stage by way of a land possession agreement (in the case of local companies) or land use agreement (in the case of foreign-invested companies) by applying to the local administrative body. Once a land use agreement is entered, an environmental impact assessment must be carried out within 90 days. If the result of the environmental impact assessment is negative then the land use right is revoked.

A land user may only use the land on the terms and conditions and according to the purpose as set out in the land use agreement.

Apart from land rights, other permits to use water for mining purposes and to construct, maintain and use roads and buildings must be obtained by a mining licence holder.

14 Are any areas designated as protected areas within your jurisdiction and which are off-limits or specially regulated?

Under the Land Law (2002) a mineral licence cannot be granted in relation to certain types of land, including: specially protected areas; border strip lands; aimag level reserve range lands; hayfields for government fodder reserves; and petroleum contract areas subject to production-sharing contracts.

Pursuant to the same law, local self-governing bodies may claim for special needs, often arbitrarily, all or part of the areas under an existing mineral licence. Such decisions may adversely impact and even render impossible all further exploration or mining operations of the licence holders in such areas. Although the law requires that the licence holder be fully compensated, the relevant legal provisions are not always observed. A licence holder is entitled to bring a claim against such a decision to the respective level administrative court.

On 16 July 2009, Mongolia's parliament enacted the Law to Prohibit Mineral Exploration and Mining Operations at Headwaters of Rivers, Protected Water Reservoirs and Forested Areas, known locally as 'the law with the long name'. Under this law, exploration and mining activity is prohibited in the head waters of rivers and lakes, forested areas and land adjacent to rivers and lakes. Several aspects of the application of this law, including in relation to compensation payable to existing licence holders, remain unclear.

Duties, royalties and taxes

15 What duties, royalties and taxes are payable by private parties carrying on mining activities? Are these duties, royalties and taxes revenue-based or profit-based?

Private parties carrying on mining activities are subject to generally applied taxes and duties, such as corporate tax, VAT and customs duties.

Royalties

Mining licence holders must also pay royalties to the treasuries of the central and local administration bodies, on the sales value of all products extracted from the licence area that are sold, shipped to sale or used.

The applicable royalty rates are as follows:

- 2.5 per cent of the sales value for domestically sold coal and common mineral resources and 5 per cent if sold abroad; and
- 5 per cent of the sales value for other extracted products.

All royalty payments are applied to state and local budgets namely, 70 per cent to the state budget, 10 per cent to the budget of the soum or district, and 20 per cent into the budget of the aimag or capital city.

In late 2010, Mongolia's parliament adopted amendments to the royalty regime providing for increased royalties, on a sliding scale, as a surtax, imposed on sale value of 23 minerals including coal, depending on the prevailing world market price for the relevant commodity and the degree of processing and value adding completed in Mongolia.

The sliding scale royalty is only payable on sales of minerals at sales values above a certain market price namely:

- US\$25 per tonne for non processed coal;
- US \$100 per tonne for processed coal;
- US\$5,000 per tonne for copper;
- US\$60 per tonne for iron ore;
- US\$900 per ounce for gold.

The surtax royalty rates are lower for processed minerals than for unprocessed or raw minerals, for example, for iron ore sold at US\$100 per tonne or above, the iron ore surtax royalty rate is 5 per cent for unprocessed ore, 3.5 per cent for concentrate and 2 per cent for further processed products.

Licence fees

Licence fees are payable in relation to both exploration and mining licences. Exploration licence fees are US\$0.10 per hectare for the first year, US\$0.20 per hectare for the second year, US\$0.3 for the third year, US\$1 for the fourth, fifth and sixth years, and US\$1.50 per hectare for years seven, eight and nine. Mining licence fees are US\$15 per hectare.

Land fees

Land fees are defined for each licensed area by the local self-governing body based on the initial value of the land (namely, whether agricultural, pasture, etc) and the base land value set by the government.

16 What tax advantages and incentives are available to private parties carrying on mining activities?

Certain tax incentives are available to investors engaged in oil-related activities pursuant to a production-sharing contract (PSC) in the oil-extraction industry, namely:

Exemption from corporate tax on the income derived from the sale of their share of the product and its transfer abroad.

Relief from customs tariffs on:

- equipment, facilities, materials, raw materials, appliances, gasoline diesel fuel, foodstuffs for employees and their personal consumer items;
- re-exportation of equipment and facilities temporarily introduced into the customs territory; and
- exportation of a foreign contractor's share of oil.

Relief from excise tax on gasoline and diesel fuel imported.

Relief from VAT on the machinery, equipment, materials, raw materials, spare parts, gasoline, diesel fuel, foodstuffs for employees and their personal consumer items imported.

Certain exemptions from VAT (which normally applies at the rate of 10 per cent) are available in relation to mineral processing activity, including coal washing.

The Minerals Law provides for tax stability provisions under a mining Investment Agreement with the government.

- 17** Is there any distinction between the duties, royalties and taxes payable by domestic parties and those payable by foreign parties?

Pursuant to the Business Entities Income Tax Law (2006), dividends distributed to the foreign shareholders of Mongolian companies are taxed at the rate of 20 per cent withholding tax, unless a lower rate is established by a relevant double taxation treaty.

Business structures

- 18** What are the principal business structures used by private parties carrying on mining activities?

The principal business structures used in Mongolia are the limited liability company (LLC) and joint-stock company (JSC). In practice, an LLC, due to a simpler governing structure and being outside the purview of securities regulations is the prevalent form for both local and foreign-invested companies. A JSC may issue bearer shares and, thus, is the appropriate form for companies with a large number of shareholders and for those who seek to raise capital on the public securities market.

Irrespective of their form, Mongolian companies may be wholly foreign-owned.

- 19** Is there a requirement that a local entity be a party to the transaction?

The Law dated 7 May 2012, imposes a 49 per cent cap on foreign ownership of strategic companies (defined as any company operating in the mineral resources sector and other sectors deemed strategic) as a result of investment with a total value of more than 1 million tögrög. The cap may be exceeded if a decision to that effect is made by parliament pursuant to a proposal by the government.

As noted above, the Minerals Law and Nuclear Energy Law entitle the state to equity holdings in private entities engaged in exploitation of strategic mineral deposit. Due to only Mongolian legal entities being eligible to hold mineral rights, a foreign party, which has no practical, local subsidiary is required to form a joint venture with a Mongolian partner that already holds a mineral licence.

- 20** Are there jurisdictions with favourable bilateral investment treaties or tax treaties with your jurisdiction through which foreign entities will commonly structure their operations in your jurisdiction?

Mongolia currently has double taxation treaties with 35 countries and investment treaties with 39 countries.

Financing

- 21** What are the principal sources of financing available to private parties carrying on mining activities? What role does the domestic public securities market play in financing the mining industry?

The most common sources of debt financing for private parties carrying on mining activities in Mongolia are loans from shareholders or from Mongolian and foreign banks and international financial institutions, where the mineral licences and related assets are used as security.

The Minerals Law allows a licence holder to pledge its licence to a bank or non-bank financial institution, together with the related documents (in the case of exploration licences) and assets (in the case of mining licences) with the purpose of obtaining financing of its investment or operations of a particular project. However, a licence alone may not be a pledge item.

Equity Finance

As regards equity financing, the public securities market in Mongolia is at an early stage, with only a few mining companies registered on the Mongolian Stock Exchange. However, a number of large local

and foreign-invested mining companies have listed and raised capital on foreign stock exchanges, most commonly Hong Kong, Toronto (TSX) and Australia (ASX).

The government of Mongolia also plans listing several state-owned companies on the Hong Kong and London stock exchanges.

Restrictions

- 22** What restrictions are imposed on the importation of machinery and equipment or services required in connection with exploration and extraction?

There are no such restrictions.

- 23** What restrictions are imposed on the processing, export or sale of minerals? Are there any export quotas, licensing or other mechanisms that prevent producers from freely exporting their production?

No restrictions are imposed on the processing, export or sale of minerals, however, there are certain special rules with respect to specified minerals and metals, namely:

- all precious metals extracted by mining licence holders are subject to assay and registration by the State Assaying Agency;
- gold may be exported only through the Bank of Mongolia or authorised commercial banks. Gold nuggets weighing more than 400 grams or precious stones of rare colour or shape, or both, extracted by mining licence holders are subject to sale to the Treasury Fund of the Bank of Mongolia; and
- copper ore and concentrate are subject to quality certification for the purposes of exportation.

- 24** What restrictions are imposed on the import of funds for exploration and extraction or the use of the proceeds from the export or sale of minerals?

Mongolia employs a limited foreign exchange regulatory regime, with exceptionally liberal policies for converting and transferring funds. After payment of relevant taxes and duties, foreign investors are free to repatriate: their investment contributed to the equity of a business entity with foreign investment in Mongolia; the residual value of their investment upon liquidation of a business entity; earnings from equity investment and dividends; and principal and interest payments on investments.

In order to combat money laundering and the financing of terrorism, banks and other entities are obliged to inform the Financial Intelligence Office, a division of the Bank of Mongolia, of each transaction worth 20 million togrogs or more.

The Law on Payment Settlements in the National Currency (2009) requires that the prices for goods and services within the territory of Mongolia must be denominated and payments for same must be in the Mongolian national currency.

Environment

- 25** What are the principal environmental laws applicable to the mining industry? What are the principal regulatory bodies that administer those laws?

The Minerals Law sets out a number of environmental protection obligations of exploration and mining licence holders. Among those obligations are the development and approving annual environmental protection plans and depositing 50 per cent expenses required for environmental protection in a special account.

Apart from the Minerals Law, several environmental laws are applicable to the mining industry. The principal regulatory body that administers these laws is the Ministry of Environment.

Through its local inspectors the ministry has the power to approve environmental impact assessment and environmental protection plans and reports of the mineral licence holders; to issue an opinion that a licence holder has failed to perform its reclamation duties, which opinion – together with a proposal from a local administrative body – constitutes a ground to revoke a licence.

The Environmental Protection Law (1995) sets out environmental protection obligations, which apply generally to business entities:

- to comply with the environmental legislation; decisions of government and local self-governing bodies; and fulfil the demands of governors, state inspectors and rangers; to strictly comply with environmental standards, norms, rules and procedures and to exercise internal control;
- to keep records of toxic substances, physical adverse impacts and waste discharged into the environment and to timely submit to the relevant authorities reports of measures taken to reduce or eliminate the same;
- to include in the annual budget the amounts necessary to restore soil, purify polluted soil and water and reintroduce plants and animals;
- to timely hand over to the soum (district) governor the reforested areas, cultivated plants, bred animals, improved water sources and land when due pursuant to agreements; and
- to keep ecological passports of the relevant areas.

The Law on Protection from Toxic and Hazardous Chemicals (2006) establishes:

- common requirements for protection from toxic and hazardous chemicals;
- basic requirements for storage of toxic and hazardous chemicals;
- basic requirements for transportation of toxic and hazardous chemicals; and
- basic requirements for destroying toxic and hazardous chemicals.

26 What is the environmental review and permitting process for a mining project? How long does it normally take to obtain the necessary permits?

Under the Minerals Law an environmental impact assessment must be carried out prior to obtaining a mining licence, namely, during the feasibility studies (if converting an existing exploration licence into a mining licence) or after obtaining a mining licence (in the case of issue of a mining licence by way of tender).

The licence holder submits the project description, feasibility study, technical drawings and other related documents to the Ministry of the Environment or a local administrative body.

The initial period for an environmental impact assessment is 12 days, extendable by the Ministry of the Environment.

27 What is the closure and remediation process for a mining project? What performance bonds, guarantees and other financial assurances are required?

In accordance with the Procedure for Temporary and Complete Mine Closure approved by the SGSIA in 2003 a mining licence holder must notify the SGSIA in writing no later than in a year advance of the planned temporary or complete mine closure and, among others, take the following steps:

- prepare a detailed map of an appropriate scale showing the dangerous or potentially dangerous areas created by mining operations marked with the necessary warnings and markings and submit the map to the SGSIA and the local governor;
- render the mining claim safe for public use and take environmental reclamation steps;
- take preventive measures if the mine is potentially dangerous to the public; and
- remove all machinery, equipment and property.

Mining licence holders must take post-mining rehabilitation measures through backfilling, plugging and cultivation to allow future utilisation of the disturbed land for public purposes, which must be provided for in the environmental protection plan.

No performance bonds, guarantees or other financial assurances are required.

Health & safety, and labour issues

28 What are the principal health and safety, and labour laws applicable to the mining industry? What are the principal regulatory bodies that administer those laws?

The Labour Code (1999), which applies to all industries (as well as to all foreign nationals employed by Mongolian companies), establishes rules on labour protection and safety and provides benefits to employees working in harsh labour conditions (including underground). Note that all foreign nationals employed by Mongolian companies (either local or with foreign investment) are subject to the Mongolian Labour Code.

The Health Law (1998) sets forth common obligations of business entities to protect public health: to take steps aimed at improving the healthiness of working conditions, reducing the level of loss of working ability; preventing illnesses, particularly poisoning, infections, accidents, injuries and occupational diseases; those for restoration of health and working abilities and provision of health education; and to strictly follow the standards, norms and rules established by the relevant authorities. Mineral licence holders must include in each annual budget and plan the funds necessary to protect the health of their employees from the adverse impacts of mining activities.

There are also various general health and safety regulations approved by the Ministry of Labour and Social Welfare and administered by SGSIA.

Among the safety rules and regulations specific for the mining industry approved by the Ministry of Industry and Trade (former name) are:

- Open-Pit Mine Safety Rules (2003);
- Closed Mine Safety Rules (2003);
- Detonation Works Safety Rules;
- Unified Fire Safety Rules For Business Entities Engaged In Geological and Mineral Research Activities (2002).

29 What restrictions and limitations are imposed on the use of domestic and foreign employees in connection with mining activities?

The Minerals Law requires business entities engaged in mining activities to employ primarily Mongolian citizens, with expatriates forming only up to 10 per cent of total employees. If the number of foreign citizens employed exceeds this percentage, workplace fees must be paid each month equal to 10 times the minimum monthly salary (currently 140,400 togrogs) for each foreigner.

The employment of expatriates is also subject to obtaining, in advance, necessary work permits.

Social and community issues

- 30** What are the principal community engagement or CSR laws applicable to the mining industry? What are the principal regulatory bodies that administer those laws?

The Minerals Law contains very basic generalised provisions on social responsibility in the mining industry. A licence holder must cooperate with the local administrative bodies and conclude agreements on environmental protection, mine exploitation and infrastructure development in relation to the mining site development and job creation. A licence holder may (but is not obliged to) organise a public forum on these matters in cooperation with the local administrative body. Local citizens may elect a representative to monitor the respective licence holder's activities.

- 31** How do the rights of aboriginal, indigenous or currently or previously disadvantaged peoples affect the acquisition or exercise of mining rights?

There is no legislation that provides special rights to indigenous or disadvantaged peoples. The issue and retention of mining rights may, however, be affected by expectations of a licence holder to make contributions to social and economic development within the soum where the relevant exploration or mining area is located. Also, the rights of Mongolian herders, who still amount to more than 30 per cent of the country's population, are recognised in relation to the granting of water permits. Generally, the environmental impact of mining and related activities such as ground water utilisation and extensive truck movements is increasingly becoming an issue in the south Gobi region and other mining-active areas.

Update and trends

Mongolia's mining industry is expected to grow significantly over the next decade with foreign investment being a key driver in both exploration and mine development as well as in transport and other infrastructure development. It is expected that much of the new mining investment will be focused on the coal, copper and gold sectors.

The legislative and regulatory framework for mining and exploration remains unsettled however, partly because Mongolia is still a relatively young democracy and strong nationalist, national security and environmental sentiments exist in the political sector and the electorate, creating pressures for stricter, less investor-friendly regulation. The government is yet to develop a model format and agreement structure for investment in deposits strategies, while further changes to the Minerals Law, Environmental Protection Laws and Land Law have been foreshadowed. The final shape of any amendments will await the deliberations of newly-elected parliament following the June 2012 elections. The Law on Foreign Investment in Business Entities Operating in Strategic Industries, introduced on 17 May 2012 contains a number of features of concern to the foreign investment community.

Among other matters, questions also exist in regard to the capacity of the state-owned entity Erdenes MGL LLC to fund further acquisitions of significant shares in large mineral deposits even on a partly-carried basis and also the capacity of the state to fund state interests in transportation and other infrastructure.

BAKER & MCKENZIE**John Connors****john.connors@bakermckenzie.com**

Suite 3401, China World Office 2
China World Trade Centre
1 Jianguomenwai Dajie
Beijing 100004
China

Tel: +86 10 6535 3931
Fax: +86 10 6505 2309
www.bakermckenzie.com

**D Khand****d.hand@tsetslaw.mn**

Suite 409 Bridge Group Building
Enhtaivni Avenue
Ulaanbaatar 13343
Mongolia

Tel: +976 11 462393
Fax: +976 11 462392
www.tsetslaw.mn

32 What international treaties, conventions or protocols relating to CSR issues are applicable in your jurisdiction?

Mongolia is not a party to any international treaties, conventions or protocols relating to CSR.

International treaties

33 What international treaties apply to the mining industry or an investment in the mining industry?

Mongolia has signed C123 Convention of the ILO on Minimum Age (Underground Work) and Convention Establishing the Multilateral Investment Guarantee Agency.

GETTING THE DEAL THROUGH

Annual volumes published on:

Air Transport	Licensing
Anti-Corruption Regulation	Life Sciences
Arbitration	Merger Control
Banking Regulation	Mergers & Acquisitions
Cartel Regulation	Mining
Climate Regulation	Oil Regulation
Construction	Patents
Copyright	Pharmaceutical Antitrust
Corporate Governance	Private Antitrust Litigation
Corporate Immigration	Private Equity
Dispute Resolution	Product Liability
Dominance	Product Recall
e-Commerce	Project Finance
Electricity Regulation	Public Procurement
Enforcement of Foreign Judgments	Real Estate
Environment	Restructuring & Insolvency
Foreign Investment Review	Right of Publicity
Franchise	Securities Finance
Gas Regulation	Shipbuilding
Insurance & Reinsurance	Shipping
Intellectual Property & Antitrust	Tax on Inbound Investment
Labour & Employment	Telecoms and Media
	Trademarks
	Vertical Agreements



For more information or to purchase books, please visit:
www.gettingthedealthrough.com



The Official Research Partner of
the International Bar Association



THE QUEEN'S AWARDS
FOR ENTERPRISE:
2012



Strategic research partners of
the ABA International section