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MINING FOR SUSTAINABLE DEVELOPMENT

Mineral Licensing Corruption Risk Assessment Mongolia

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Executive Summary

Three License Allocation Mechanisms

(1) First-come-first-served (FCFS) for exploration licenses

The vast majority of the exploration licenses in Mongolia are allocated by the FCFS procedure, according to which a license is awarded to the first applicant that meets all regulatory requirements. FCFS is suitable for concessions with limited geological information, and which therefore have higher development risks. In theory, this system allows for the allocation of a large number of licenses in an automated, non-discretionary, fast-paced and transparent manner that encourages investment.

Certain aspects of the FCFS mechanism can be abused in corrupt schemes that manipulate the sequential order of applications, leak application details or misuse discretion over adjustments and approvals of applications. Other vulnerabilities of the FCFS procedure are unlikely to result in corruption directly, and might include issues such as unrealistic deadlines to submit applications, or restrictions on the ability to amend the contents of applications. All vulnerabilities tend to substantially increase uncertainty which can jeopardize the potential benefits of the FCFS allocation mechanism, but are also likely to deter quality investment, and therefore contribute indirectly to greater corruption in the sector (Risk 1).

The Mongolian system further requires a second level of approval from the relevant aimag (province) governor for an exploration license application. Risks at this level are associated with an absence of clearly defined legitimate and objective reasons to deny an application; the delegation of decision-making authority to an official who may lack the capacity to render an informed decision; the absence of any requirement for consultation; and the introduction of discretion that may result in decisions that are arbitrary or in-transparent. Each of these factors increases the risk of corruption (Risk 2).

(2) Right of first refusal for a mining license

An exploration license-holder has the right of first refusal to convert an exploration license (or parts of it) into a mining license. Securing priority rights for exploration companies increases investor's confidence that they will earn a return on their investment. The requirements, or burden of proof, regarding technical feasibility is higher for mining companies than for exploration license applicants. Such requirements may create corruption risk that is discussed in more detail in the following section (Risks 5 and 6). However, the allocation system itself is well-defined and easy to administer. No corruption risks were identified in the process of granting mining licenses.

(3) Resource tenders for exploration and mining licenses

Mongolia issued its first mineral licenses via resource tenders in 2009, and restarted this practice again after a longer break in 2014. It has since used this tender mechanism to allocate both exploration and mining licenses, even though the number of licenses allocated by tender is much lower than by the other two mechanisms. In theory, resource tenders promote competition which can yield more efficient outcomes for both parties, especially if robust geological information is available.

Mongolian law requires tenders only for those areas that have previously been explored, regardless whether with private or state funds. This law, however, can be circumvented because of the absence of selection criteria for tender areas and a lack of accountability and enforcement mechanisms. It appears that such vulnerabilities have been exploited by powerful companies to urge authorities to tender selected areas on demand (Risk 3).

The allocation of resources by tender should treat all bidders fairly and equally. Furthermore, the evaluation of tenders must be insulated from discretion in order to prevent manipulation. The timing and placement

of tender announcements may restrict or impede the participation of potential bidders. Accountability and transparency are perceived to be low in Mongolia. Notwithstanding the real risk of tenders being corrupted, even the suspicion of tenders being subject to discretion could likely deter quality investment, and therefore contribute indirectly to greater corruption in the sector (Risk 4).

Three License Holder Obligations

(1) Detailed Environmental Impact Assessment (DEIA)

Mining projects have significant adverse impacts on the environment and people. In Mongolia, the DEIA is the principal mechanism by which to identify and estimate a particular project's risks and impacts, and to develop annual plans to prevent and mitigate them. Mining license applicants need to acquire a DEIA within a year of award.

A specialised Technical Board (TB) exists within the Ministry of Environment and Tourism (MET) to approve DEIAs. However, its capacity for objective evaluation is perceived to be compromised due to the political nature of staffing, potential and real conflicts of interest, and pervasive under-capacity to review and evaluate the large number of assessments.

In addition, Mongolia relies on state-accredited environmental assessment companies to compile DEIAs in order to ensure that minimum standards are met. This system is jeopardized by flawed accreditation criteria, and by conflict of interest since the Technical Board is both responsible for the accreditation of the assessors and for the approval of the reports they prepare. As a result, there is significant risk that contents of the DEIA could be forged and go undetected, or that the DEIA approval process itself could be corrupted. The impact of the systemic failure to establish minimum standards for environmental and human impact must be considered severe, and could jeopardize the long-term benefits of mining in Mongolia (Risk 5).

(2) Final Exploration Report (FER)

The state should ensure the development of a comprehensive inventory and assessment of its resource wealth in order to attract more high-quality investment. This shall be achieved through the annual reporting obligations, and includes the process by which the final exploration report, required to register a reserve, is approved. Reserves must be registered in order to apply for a mining license.

A specialised council, the Minerals Council of Mongolia (MCM) approves final exploration reports, however, its capacity for objective evaluation is perceived to be compromised due to the political nature of staffing, potential and real conflicts of interest, and pervasive under-capacity to conduct the technical assessments. In addition, Mongolia relies on geological assessors to the compile final exploration reports in order to ensure compliance with minimum standards. As a result, there is severe risk that reserves are either over- or under-valued for corrupt purposes, and thus efforts to establish a reliable and accurate resource database are jeopardized (Risk 6).

(3) Community Development Agreement (CDA)

A mining operation yields benefits for both the mining company and affected communities. A CDA can formalize the outcome of negotiations between the two parties, and encourage local hiring and purchasing and other benefit-sharing schemes. The CDA can be manipulated by an unclear scope of provisions that may result in undue benefits that accrue to both decision-makers and companies. Furthermore, CDA negotiations involve only the local governor and the company itself, and do not include community representation. Non-disclosure of CDAs further increases the potential for corruption. The benefits of CDAs may be jeopardized by these vulnerabilities, and the CDA negotiations themselves may thus lead to increased corruption or collusion which would not have otherwise occurred. (Risk 7).

Three Administrative Considerations

(1) Governance Systems

The GOM undertakes **due diligence** and assesses license applicants' technical and financial capabilities prior to granting a mineral title in order to prevent low-quality investment from entering the sector. With the exception of license transfers and the award of mining licenses via tender, the scope of the requirements with which applicants must comply is largely sufficient. The corruption risks derive from the lack of capacity to evaluate evidence provided by companies, and a lack of objective criteria for assessment. Due diligence is therefore largely discretionary, and the due diligence approval process can be exploited for corruption in exchange for approvals (Risk 8).

Efficient **data management** is important to enhancing access, and to the exchange and usability of stored information. Overall, data management in Mongolia is poor. The majority of information is stored in hardcopy in highly fragmented databases, some of which are no longer maintained or accessible. Constraints on the access to data limits the effectiveness of governance and inter-agency cooperation in the public sector. Failure to provide transparent and open access to well-maintained data is likely to increase sector corruption, and can itself be a source of corruption if information, particularly proprietary information, is shared in-transparently and inconsistently, or is leaked by officials to selected companies (Risk 9).

(2) Cadastre System

A sound cadastre registry is a pre-requisite for the provision of many important functions for sector management and effective governance. The current cadastre system must be perceived to be effective and to have integrity.

One source of potential conflict surrounds Locally Protected Areas (LPA), which can be misused to obstruct or prevent the award of exploration licenses. This risk derives mainly from the fact that the LPAs are processed by a MET system that is not connected to the mining cadastre. The fact that the two systems are disconnected allows for a broader range of local stakeholders to effectively impede license award which can be more powerful than the governor's veto of license applications. Local stakeholders can abuse this power to exert pressure on license applicants in order to secure undue benefits in return for approvals (Risk 10).

Limited information on licenses is made available on a public website that is connected to the minerals cadastre. More comprehensive data is available through the EITI Data portal or via the EITI Report. Important information that is not disclosed includes the reasons for applications to be denied. The impact of un-disclosed information is severe because it can conceal corrupt practices (Risk 11).

(3) Prevention of Speculation

License stockpiling refers to the practice of acquiring exploration licenses for the purpose of speculation, without any intention of undertaking exploration work. Two mechanisms exist to compel companies to invest in exploration: staggered and increasing exploration license fees, and regulations requiring minimum exploration expenditure – both are largely ineffective. A third mechanism requires the surrender of a part of a license area if investment fails to meet statutory requirements, though this mechanism is not enforced. The prevalence of license stockpiling impedes development of the sector, and increases the likelihood of corruption since speculators may be more willing to participate in corrupt practices (Risk 12).

Transferability of mining rights substantially reduces investment risk, but the state must exert its authority in the granting of mineral rights by enforcing the same high standards for due diligence and accountability, and impose fees for transfers that are comparable with any other mode of license allocation. Current policies fall short, which increases the likelihood that speculators can broker licenses on more attractive terms than the state, which is likely to discourage investment in the sector and therefore increase the likelihood of corruption (Risk 13).

Mongolia does not enforce the **disclosure of Beneficial Ownership** (BO), the natural persons who truly own, control, or benefit from a company. Non-disclosure of BO could be used to conceal many types of corruption and financial crime (Risk 14).

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LIST OF ABBREVIATIONS

ADFAT	Australian Department of Foreign Affairs and Trade
AMEP	Australia Mongolia Extractive Program
BGR	German Federal Institute for Geosciences and Natural Resources
CDA	Community Development Agreement
CMCS	Computerised Mining Cadastre System
CRA	Citizens Representative Assembly
CRH	Citizens Representative Khural
CSO	Civil Society Organisations
DEIA	Detailed Environmental Impact Assessment
EIA	Environmental Impact Assessment
EITI	Extractive Industries Transparency Initiative
EMP	Environmental Management Plan
EPP	Environmental Protection Plan
ESIA	Environmental and Social Impact Assessment
FATF	Financial Action Task Force
FCFS	First Come First Served
GASI	General Agency for Special Inspection
GEIA	General Environmental Impact Assessment
GIS	Geological Information System
GIC	Geological Information Centre
GUI	Graphical User Interface
GW	Global Witness

LPA	Locally Protected Areas
MACRA	Mining Awards Corruption Risk Assessment
MAEP	Mongolian Association of Environmental Professionals
MRPAM	Mineral Resource, Petroleum Agency of Mongolia
MCM	Minerals Council of Mongolia
MMHI	Ministry of Mining and Heavy Industry
MET	Ministry of Environment and Tourism
MNMA	Mongolian National Mining Association
MPIGM	Mongolian Professional Institute of Geosciences and Mining
NRGI	National Resource Governance Institute
NSC	National Security Council
NSO	National Statistics Office
OAS	Online Application System
OECD	Organization for Economic Cooperation and Development
PLA	Pending License Applications
SEA	Strategic Environmental Assessment
SOE	State Owned Enterprise
TI	Transparency International
TB MET	Technical Board of the Ministry of Environemnt and Tourism
TC	Tender Committee
UNDP	United Nation Development Program
VPN	Virtual Private Network

INTRODUCTION

Preface

Transparency International Mongolia is one of 20 national chapters participating in Transparency International's global Mining for Sustainable Development (M4SD) Programme. The Programme is coordinated by TI Australia. The M4SD Programme complements existing efforts to improve transparency and accountability in the extractive industries by focussing specifically on the start of the mining decision chain: the point at which governments grant and award mining permits and licenses, negotiate contracts and make agreements.

Phase 1 of the Programme (2016-2017) focused on understanding the problem by identifying and assessing the corruption risks in the process and practice of awarding mining licenses, permits and contracts. With an understanding of the nature and causes of corruption risks, national chapters will develop and implement solutions to tackle priority corruption risks in Phase 2 (2018-2020). The chapters will work with key stakeholders from government, the mining industry, civil society and affected communities to improve transparency, accountability and integrity in the decision-making related to the approval of mining projects.

This corruption risk assessment was conducted as part of Transparency International's Mining for Sustainable Development Programme. The aim of this study is to identify the systemic, regulatory and institutional vulnerabilities to corruption in awarding mining and mining-related licenses, permits and contracts, and to assess the specific corruption risks created by these vulnerabilities.

The participation of Transparency International Mongolia in the Programme is supported by the Australian Department of Foreign Affairs and Trade (ADFAT). Globally, the M4SD Programme is also funded by the BHP Billiton Foundation.

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The author and coordinator of this report is Richard Biastoch, an economist and consultant specialised in extractive industries governance.

Methodology

The analysis in this report is based on the research methods contained in the Mining Awards Corruption Risk Assessment (MACRA) Tool (Nest 2016). The MACRA Tool was created by an independent expert engaged by Transparency International to provide a consistent methodology for identifying and assessing corruption risks in the twenty countries participating in the M4SD Programme. The MACRA Tool builds on Transparency International's experience with corruption risk assessments in other fields, such as National Integrity Systems, and other mining and extractive sector instruments, indices and resources. Experts from multilateral institutions, major international non-governmental organisations and industry bodies have provided valuable feedback in the development of the MACRA Tool.

Mongolia implemented a pilot with a limited scope of the MACRA methodology, and provided feedback on implementation and guidance to TI Australia. The MACRA Tool guides users in creating a map of the awards process as set out in law, official guidelines and policy. It also directs users to collect information about the practices in implementing the awards process and about relevant contextual factors. Users then analyse these three aspects of mining awards - the process, the practice and the context - to identify vulnerabilities to corruption.

In Mongolia, the first phase of the research was dedicated to the adaptation of the generic risk assessment framework to the Mongolian context, and to the development of detailed step-by-step models of the different license award schemes in accordance with relevant law.

In the second phase, desk research and interviews were conducted to identify vulnerabilities, defined as systemic, regulatory, and institutional, or other weaknesses in the process that result in corruption risks. That is, they create opportunities for corrupt conduct to occur or to pass undetected and there by undermine the lawful, compliant and ethical award of licenses.

A six-person advisory group guided the research in this second phase. A total of 25 semi-structured interviews were held with 27 persons, of which 4 persons were from Civil Society Organisations, 4 from Think-Tanks or individual experts, 8 from Government Ministries and Agencies, and 11 from extractive industry companies and associations.

Finally, vulnerabilities were assessed in accordance with the classification of risks contained in the MACRA Tool. A total of 54 vulnerabilities were identified which led to fourteen distinct corruption risks. Three of the risks were identified by the author; the other eleven risks were comprised among the common risks in the MACRA methodology.

The MACRA tool contains a total of 89 common risks relating to five different risk factor categories – corruption risks originating in the process design (PD), process practice (PP), contextual factors (CF), accountability mechanisms (RA), and the legal and judicial responses to corruption (RL). The corruption risks identified in this assessment were coded according to this classification.

The vulnerabilities and resulting risks that were identified were introduced and meticulously discussed during two events with different cohorts of multi-stakeholder groups (see Annex B). The aim of these exercises was to score the identified risks according to their likelihood of occurring, and the perceived potential impacts.

The final draft of the report was assessed by two independent consultants who evaluated the soundness of the research findings and their interpretation. A validation workshop comprising a comprehensive selection of representatives from civil society organisations, media, industry and government was subsequently held to review the evidence.

Based on the present report, a risk prioritisation exercise will be held in September 2017 with key sector stakeholders who will identify the corruption risks that TI-Mongolia will seek to mitigate or manage. The results of the risk assessment are the primary input to this determination, but other factors such as the national chapter's capacity to take action, the resources required, and the potential for stakeholder collaboration are also important considerations.

Scope of the Research

Mongolia utilizes a **Licensing regime** for the award of mineral titles. In such a regime, all rights and obligations are the same for any license holder, regardless of the resource mined, the entity type, or the origin of the investment. Based upon the two predominant phases of mine operation, two types of licenses are awarded for which rights and obligations are defined accordingly: *exploration and mining licenses*. No mining project can operate without these licenses. The vast majority of all mining projects in Mongolia operate under this Licensing regime for which the modes of allocation of licenses, the obligations incumbent upon license holders, and the challenges in the administrative framework shall be the focus of this research that will be discussed in the following chapters. There are, however, two exceptions for which the Government of Mongolia accepts deviations from the designated Licensing regime.

The first exception is due to the special features of the **type of resource** which differ so significantly that specific regulation had to be adopted. Such is the case for *petroleum*, for which product-sharing agreements are utilized, and for *radioactive materials*, for which special exploration and mining licenses are awarded. These types of resources are governed by different legislation and are generally subject to higher levels of scrutiny. Mongolia further utilizes a decentralised award mechanism for resource types defined as *"common" materials (construction materials)*.[1] These types of concessions are not included within the scope of this research. All other minerals are defined as conventional minerals and shall be subject to the analysis of this report.

The second exception relates to the **size of an operation**. This applies to *small-scale mining*, for which 24 areas have been designated in an effort to formalize artisanal mining.[2] Within these areas, small-scale mining can be undertaken by natural persons without the need for a concession. Regulation is different for these operations and is not included within the scope of this research. The Government of Mongolia also allows for the tailoring of special conditions for particularly large-scale operations, so called *deposits of strategic importance*.[3] While regular mining licenses are also required for this type of deposit and all obligations and rights are equally applicable, special conditions can be articulated in unique contracts to supplement the limited legal provisions in existing law, or to explicitly supersede existing law in order to attract investment. There are currently 14 strategic deposits, but it remains unclear whether unique contracts have been negotiated for each because there is no obligation to publicly disclose such contracts. Contracts for deposits of strategic importance are therefore not included within the scope of this research.

Mineral rights cannot be awarded in any other form. Different **contracts and permits** are used to implement applicable law, or formalize and extend license-holder obligations particularly regarding the use of resources and environmental protection. Some of the requirements are formalized and are appropriately and sensibly applied to most license-holders, but most are applied incoherently, particularly at the provincial level. Most of the executed contracts and permits are not publicly accessible. The utilization of contracts and permits in the mining sector of Mongolia warrant examination, but the scope of this research did not allow for such analysis.

[1] Minerals Law of Mongolia (2006), Article 3
[2] MRPAM, Minerals Cadastre of Mongolia
[3] Definition: Deposits with a potential impact on national security, economic and social development or producing more than 5% of GDP in a given year (Minerals Law of Mongolia, 2006, Article 4.1.12)

Vulnerabilities and Risk categorization

The corruption risk analysis identified a total of 14 corruption risks resulting from 54 vulnerabilities. Both risks and vulnerabilities can be divided into five categories. Vulnerabilities can be clearly distinguished by these five categories, while risks usually originate from a mixture of vulnerabilities. Five hypotheses examine the origin of the vulnerability and its potential to trigger corruption risks. This categorization will help the reader to more easily understand the vulnerabilities that have been identified and the coding system that is applied in the following analysis.

Legal Issue

The vulnerability or risk is primarily caused by the absence or poor definition of primary law which is either not implemented, is circumvented, misused, or has negative implications in practice.

– *Legal issues can be a trigger for corruption (risks 12, 13, 14), but are mostly the facilitators of corruption (risks 2, 3, 6, 8) which may increase the likelihood of risk.*

Technological Issue

The vulnerability is primarily caused by the absence or malfunction of a technological system. In contrast with other types of risk, technological issues have the distinction that a malfunction cannot be compensated by excellent rule of law, high accountability, or other measures.

– *Technological issues are a trigger for corruption (risks 1, 10, 11) or a facilitator of corruption (risks 8) which may increase the likelihood of risk.*

Accountability

The vulnerability can be divided into two groups. Issues of internal accountability are derived from the lack of mechanisms which hold decision-maker(s) accountable within the government agency, including the absence of an oversight body, politically motivated staffing, conflict of interest, or a non-competitive salary. External accountability describes the lack of means of oversight over governmental decision-makers by external stakeholders or the public due to no or insufficient transparency or the absence of mitigation systems.

– *Lack of accountability is a facilitator of corruption (risks 1, 3-10), which may increase the likelihood of a risk to occur, but lack of accountability does not trigger risks which would not exist otherwise.*

Discretion in Decision-making

The vulnerability is primarily caused by absence of clearly defined laws absence of or in-sufficient decision-making criteria) and accountability mechanisms (unclear or incapacitated decision-maker), which could be abused by decision-makers to give undue preference or discriminate.

– *Excessive discretion is a trigger for corruption (risks 2-8), which only occurs if accountability mechanisms and/or robust legal framework are not in place.*

Due Diligence

For the purpose of this report, due diligence shall refer to the evaluation of the eligibility of mineral license applicants and the accreditation of assessor companies. Due diligence risks arise for the same reasons as risks in decision-maker discretion.

– *Due diligence is a trigger for corruption (risk 8), which only occurs if accountability mechanisms and/or legal framework are not in place.*

Background Information Mongolia

Mongolia is a landlocked country in East-Central Asia. It borders Russia in the north and China in the south, east and west. Kazakhstan is only is only 38 kilometres away at the westernmost point. With a size of 1.5553,560 km² it is approximately the size of France, Spain and Germany combined. A population of only 3 million people makes it the least populated country in the world. Mongolian society is largely homogenous. The country is exposed to an extreme continental climate with long cold winters and short phases of spring, summer and autumn. An average annual temperature of ca. 0.2 degrees Celsius makes Ulaanbaatar the coldest capital in the world. The varied landscape includes grasslands in central and eastern Mongolia, taiga and forest in the north, a stretched-out desert steppe belt in south-central Mongolia and a desert zone in the south to the border of China.[4]

Political Development

Political System. Mongolia is a unicameral parliamentary republic in which the people directly elect the President and members of parliament. The parliament appoints the Prime Minister, and the Cabinet on the proposal of the Prime Minister. The major parties are the Mongolian People's Party (MPP), the ruling party from 1921 until 1996, and the Democratic Party (DP). After a relatively unstable period of DP rule, the MPP was able to secure a landslide victory in the parliamentary election in June 2016. Mongolia has elected its next president in July 2017, who has power to appoint judiciary and prosecutors and has otherwise mainly representative functions. Albeit lacking clear distinctive political agenda or ideology, clique networks and high fragmentation is traceable across parties and government bodies, resulting in a fragile political environment. Changes of political leadership commonly result in exchange of personnel from top to lower level officials, state owned enterprises and even the private sector . Pressure groups, private and state-owned enterprises are influential in shaping policies.

Foreign Politics. Mongolia has positive relations and democratic missions in many countries is widely considered to be a stable country with a strong history of democracy. Traditionally in the influence sphere between neighbouring China and Russia, Mongolia pursues a foreign policy titled "third neighbour", seeking to boost bilateral and multilateral relations with countries in the region and worldwide. Ties with Russia and China nonetheless remain crucial and Mongolia depends on Russia for oil imports and China as the main source of imports and main destination of Mongolian exports.

Social Development

Living standards. Before transition, provision of social welfare services, a rampant shadow economy, relatively equal income distribution, and high and stable levels of employment ensured a basic level of sustenance. Despite of more than a decade of progressive economic growth, the share of people living below the national poverty line steadily decreased but is still relatively high at 21.6% in 2014. Strong inflation has a particularly hard impact on the poor, only dampened by subsidies on staple foods such as milk and flour. 82% of the people have access to safe water and 59.7% have access to sanitation. The average life expectancy was 66.02 years for men and 75.84 years for women in 2015. Primary and secondary school enrolment is at 96.3% and adult literacy is 98.5%.

Inequality is rising, particularly between urban and rural areas. Prospect for improved livelihood, better access to education and health services and impact of harsh winters and dry summers compromising means of minimum existence of herders have contributed to increasing urbanization in the last years. According to latest census data, Ulaanbaatar is home to at least 1.3 million people, posing for challenges on sewage, electricity, traffic and provision of basic services such as education or healthcare. Electric power and heating, supplied by aged and inefficient coal-fired power plants and grid, remains unavailable for larger shares of the population and contribute

[4] National Statistical Office, 2017

to hazardous levels of air quality in the colder months of the year.[5]

Indexes. Mongolia is categorized as an average human development country,[6] in transition between a factor- and efficiency driven economy.[7] Economic freedom is described as mostly unfree,[8] but Mongolia is ranked as a country with relative ease of doing business.[9] The 2016 Transparency International Corruption Perception Index ranks Mongolia in the middle field as a somewhat corrupt country.[10]

Economic Development

Economic transition. Mongolia's economy has traditionally been based on livestock and agriculture. Mining was introduced nearly a century ago with Mongolia becoming a Soviet satellite state in 1924. The instant collapse of the Soviet Union left Mongolia unprepared and unable to compete at global market prices. The following decade was characterized by rapid but uncoordinated privatization, disorganization by vanishing or absent institutions; firms simultaneously seeking to adopt market rules and inquiring state support; and soaring unemployment paired with massive inflation, the latter not being entirely unwelcome since it eliminated debt.

Economic boom. Coinciding with rising commodities prices from the beginning of the 2000s, Mongolia's largely unexplored and untapped mineral resources increasingly became the target of domestic and international investment, setting Mongolia on a path of unprecedented economic growth. Fuelled by construction of the world-class Oyu Tolgoi copper and gold mine and coinciding peak in resource prices in 2011, Mongolia secured international attention when being ranked the fastest growing economy at a rate of 17.3%. Despite highly expansionary fiscal and monetary policies, the country gradually lost growth momentum amidst decreasing resource prices.

Economic bust. Systematic violation of the policy rate and ongoing currency intervention maintained low one-digit growth into 2016 – at the cost of depleted reserves and eroding quality of commercial banks' assets and financial stability. While such stimulus has largely faded out, high levels of off-budget expenditure ahead of the general elections in June 2016 further increased macroeconomic imbalances. Foreign borrowing at high cost staved off the risk of a crisis in the balance of payments, but it added to the problem of long-term debt sustainability. The fiscal deficit rose to 15.4% of GDP in 2016 and the country's public debt was 86.5% of GDP in 2016, compared to 32.7% in 2011. [11]

Economic Outlook. Higher commodity prices and the return of FDI inflows to two large mining projects are expected to contribute to GDP growth in 2017. An IMF-led program confirmed in May 2017 aims at stabilizing the economy and restoring debt sustainability in the face of upcoming sovereign debt repayments in 2017–2018 (over $1.2 billion). Priority mid-term goals for Mongolia must be the consolidation of the soaring public debt, development of infrastructure and the diversification of the economy. Once commodity prices pick up again, it is important for Mongolia to pursue a non-cyclical fiscal and monetary policy and found the future development on a sound banking system.

[5] NSO, Mongolian Statistical Information Service
[6] UNDP Human Development Index, 2016, Rank 92/188
[7] The World Economic Forum Global Competitiveness Report, 2017
[8] The Heritage Foundation Index of Economic Freedom, 2017
[9] The World Bank Group Doing Business Index, 2017, Rank 64/ 190
[10] The Transparency International Corruption Perception Index, 2016
[11] The Asian Development Bank Asian Development Outlook, 2017

1 LICENSE GRANTING MECHANISMS

Similar to most countries, Mongolia's sub-surface wealth is owned by the people. The state manages resources and grants exploration and exploitation rights to private companies, sometimes in partnership with state-owned mining companies. Mongolia relies mainly on a Licensing regime to grant and administer mineral rights. In a pure Licensing regime, a well-developed legal framework governs the rights and obligations of the state and the private entity. All major obligations relating to the project are clearly established in legislation and regulation, and therefore are applied uniformly to all companies. The principle of equality before the law enhances transparency and provides for a stable investment climate, in which all license-holders operate under the same legal framework. Consistency in the enforcement of law and regulation makes enforcement and monitoring much easier. The private entity acquires the right to undertake exploration or exploitation for the period of its tenure under the law. Legally, however, the sub-surface resources remain those of the people. There are three mechanisms that are used to allocate mineral licenses in Mongolia, which shall be explored in the following section.

1.1. Exploration License by First-Come-First-Served Procedure

First-come-first-served (FCFS) is a common method of license allocation all over the world. In this mechanism, a license is awarded to the first applicant to a designated area that is available for mineral titling and who meets the government's regulatory requirements. This method is commonly used for concessions with limited geological information and which therefore have higher development risks. While this system is simple and allows for the allocation of a larger number of licenses than other modes, such as direct negotiation or competitive resource tenders, it requires the government to set the right incentives or obligations to discourage long-term tenancy and investors that are unqualified. The system should be protected from outside interference, uncomplicated and fast-paced in order to encourage investment.

The MRPAM Geological Division selects areas that will be made available for exploration licensing by the FCFS procedure, in consultation with other ministries and government authorities. The cabinet is required to approve a list of such areas by resolution. The latest ordinance dating to 2014 increased the area available for exploration licenses to 19.88% of the land, and opened an additional 6.49% to be available by tender. [12]

[12] The Government of Mongolia, Ordinance 239, 07.28.2014

1.1.1. 2015 Online Application Process (now suspended)

1. Application

1.1. The applicant company registers with MRPAM by providing evidence of its registration as a Mongolian taxpayer with the state registration office.

1.2. Under the old application system, the company had to acquire Virtual Private Network (VPN) equipment (MNT 280,000) from the third-party company "Accense IT Support LLC" which developed and administered the OAS. The VPN hardware, a so called YubiKey, is globally recognized hardware which generates a unique public/private key pair to ensure that only one user can submit an exploration license application per key.

1.3. Additionally, the company had to purchase the login-rights from MRPAM for either one week (MNT 500,000) or one month (MNT 2,000,000).

1.4. Using the VPN equipment and login information, companies filed their applications containing license coordinates and the name of the company. The number of applications per week was limited to 120, for a total of 37 weeks, without restriction on the number of applications per company.

1.5. The OAS assigned appointment dates in accordance with the sequential order in which the applications were submitted. Applications were submitted on Mondays, with appointments assigned over the rest of the week, beginning with the first applicant on Tuesday.

2. Review

2.1. Each company is provided a 15-minute time-frame to submit its hardcopy application documents in person to MRPAM's "One Window Service." If the applicant fails to be present, the application becomes invalid. Information to be submitted include: administrative company registration information; evidence of payment of the application fee (MNT 250,000) and service fee (MNT 3 million)[13] evidence of staff capacity; proof of financial capacity and debt service ability; a tentative exploration work plan including the type, scope and cost of exploration works; and license coordinates and map.

2.2. The MRPAM Cadastre Department receives the application documents on the appointment dates without undertaking any further review. Only the license coordinates are entered into the cadastre system. In theory, license applicants have the opportunity to inquire about amending the desired license area in instances of conflict regarding, shape, size or potential overlap of the license.

2.3. MRPAM has 20 business days in order to approve or deny the license application. Applicants' documents are reviewed by several internal MRPAM departments. The company is informed of the MRPAM decision, and approved applications are forwarded to the local governor via post, typically the aimag[14] governor, for their approval.[15]

2.4. The local governor shall make a decision within 30 days, with prior consultation of the Citizens' Representatives Assembly (CRA) of the soum or district where the area is located, and with the Presidium of the Citizens' Representatives Assembly of the People. Failure to respond within 30 days is deemed to be approval of the application.[16]

2.5. The law grants MRPAM, as representative of the central Government, authority that is senior to that of the local authorities, and as such MRPAM has the right to review and amend decisions of the aimag governor.[17]

[13] Minister of MMHI, Order 15, January 2015
[14] Mongolia is divided into 21 provinces, so called aimag, plus the capital Ulaanbaatar which is governed as an independent provincial municipality. All aimags are divided into a sub-division of 331 districts, so called sum, which are again divided into smaller organisational units, bag.
[15] Minerals Law of Mongolia, 2006, Article 19.2
[16] Minerals Law of Mongolia, 2006, Article, 19.4
[17] Law on the Legal Status of Government Agencies, 2004, Article 11.6

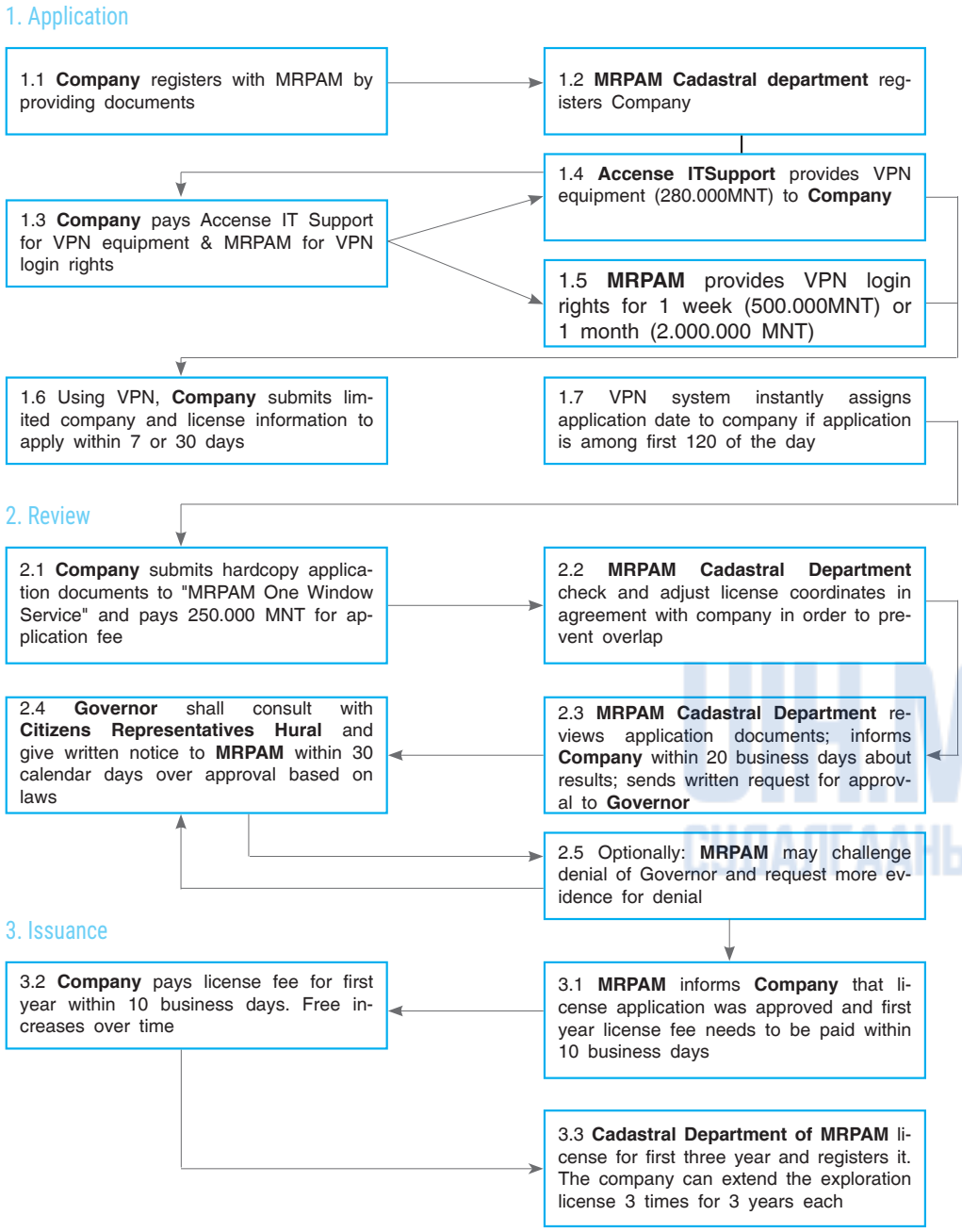
3. Issuance

3.1. The company is informed by MRPAM of the approved license application.

3.2. The company is required to pay the first annual license fee within 10 business days of receipt of confirmation. The license fee per year is calculated per hectare and increases over time.[18]

3.3. Upon receipt of the payment, the MRPAM Cadastral Department shall issue the license for 3 years and register the license in the cadastre.[19] MRPAM shall notify the Ministry of Environment and Tourism (MET), governors of the aimag, soum or district where the license area is located, the General Agency for Specialized Inspections (GASI), and publish an official notice in a daily newspaper.

Figure 1. Exploration License Awarding Scheme



Source: Own creation. Minerals Law of Mongolia, Legal Status of the Government Agencies Law.

[18] Minerals Law of Mongolia, 2006, Article 34.1
[19] Minerals Law of Mongolia, 2006, Article 19.8

1.1.2. 2015 Online Application System in Practice

The overarching principle for the allocation of mineral rights should be equality before the law, meaning: no applicant should be discriminated against or favoured.[20] For the purpose of this analysis, the following criteria were developed to evaluate the 2015 application system. These criteria ensure competitive and efficient terms for the allocation of licenses via FCFS.

The **sequential order** should be adhered to, and should be inalterable, meaning that any applicant that meets the requirements set by law should have priority right to a license over all other applicants who applied for the same patch of land at a later time. Allegations that the third-party company 'Accense IT Support' changed to the sequential order cannot be ruled out due to the lack of internal oversight over the system that was administered exclusively by the company. Time-stamped application lists, which could potentially enable external stakeholders to ensure that the timing of applications was not manipulated, are only made available for limited periods of time.[21] These lists were no longer available at the time of this research. The lack of accountability and oversight could create opportunity for abuse by the third-party company which could make changes in the sequential order of applications in exchange for corrupt benefits.

The **confidentiality of applications** should be ensured, giving investors the security that application details are not leaked to competitors. Confidentiality is compromised by the same lack of oversight over the third-party administrator "Accense IT Support." The third-party company is suspected of having leaked application details to selected companies. Informants report confirmed cases in which large companies' applications were entirely copied, in anticipation of coordinates for commercially viable tracts being carefully researched.[22] Coincidental submission of the same coordinates can be ruled out, because license coordinates are defined by a minimum of four GPS coordinates. A system that does not ensure the confidentiality of application details is highly likely to deter quality investment, and therefore contribute indirectly to greater corruption in the sector. The sale of application details is evidence of severe corruption.

Application details should not be altered or only under clearly defined circumstances in which subjectivity can be ruled out. This principle was compromised, since all details submitted through the OAS, including company name and license coordinates, were able to be altered until the binding submission of comprehensive application details at the MRPAM "One Window Service."[23] While opportunity to make such changes was technically available for all applicant companies, official guidance by MRPAM compelled applicants to apply in the OAS with their actual information. As a result of this technical gap, many companies disclosed their real license coordinates on online-application, which led to leaks to competitors (as described above), and also allowed for competitors to copy coordinates and alter theur applications when applying at the MRPAM "One Window Service."

[20] N. Mutemeri, H. Mtegha and J. Rocha (2010), p.4
[21] Former MRAM employee, 02.16.2017; Undisclosed IT specialist, 03.14.2017
[22] Representative of MNMA, 03.03.2017; Undisclosed IT specialist, 03.14.2017
[23] Undisclosed IT specialist, 03.14.2017, Ulaanbaatar

Companies should have **equal access to the application system**, and access should be limited to the officially designated procedure. This principle was breached due to the widespread use of robotic scripts and the possible duplication of unique VPN keys. As a result, application slots were usually assigned within less than a minute, making it impossible for applicants using the intended system to submit applications in time.[24] Investors also established new companies in order to secure an application slot.[25] These practices are likely to fuel speculation.

Evaluations for **approval of applications** should be based on consistent and strict criteria that minimizes the need for interpretation and reduces or eliminates discretion in decision-making. This principle has been breached at the MRPAM "One Window Service" for license approval, mainly due to unclear regulations. The Minerals Law states that the shape of an exploration license may deviate from straight lines in order to avoid overlaps with existing licenses or areas protected from mineral titling.[26] The law fails to define whether such adjustments should be undertaken by the license applicant or the MRPAM officials. In practice, both applications, those with adjustments (and therefore deviating from the tetragon shape) and those without adjustment (straight lines overlapping with areas prohibited from mineral titling), were usually denied.[27] As a result, mainly tetragon-shaped licenses were awarded, leaving land bordering non-square areas prohibited from mineral titling without exploration. This practice is not only inefficient, but also allows for discretion, which could lead to abuse associated with corruption.

Risk 1

Volation of the First-Come-First-Served Principle (PP13)

What is the risk that the first legitimate applicant will not be awarded the license?

Likelihood (3) Most of the identified vulnerabilities are of a systemic nature, meaning they are likely to effect many or all applications. While the functionality of the FCFS system was clearly compromised, stakeholders considered this a "level playing field," forcing all applicants to make use of work-arounds. The likelihood of a license not being awarded to the first legitimate applicant due to corruption was therefore rated as unusual.

Impact (3) Different parts of the FCFS system have vulnerabilities which can be exploited in corrupt practices on an ad-hoc basis. More critically, an application system, which only works by making use of work-arounds in a grey-zone of what is legally acceptable, is likely to facilitate speculation and discourage legitimate investors. Stakeholders, however, provided relatively low impact scores for this factor, perhaps because the correlation between a corrupted OAS and the impacts on the sector are difficult to discern or quantify.

Recommendations

- Any points in the process requiring human intervention, decision-making or interpretation should be minimized.
- Deadlines should be defined for all phases of the process and limited to short intervals.
- Every decision in the process should be logged and transparently disclosed.
- The system should be fully administered and operated by the designated authorities.
- Application days and the number of application slots should be announced in advance.
- Application details should be disclosed in a coherent database, including reasons for approval or denial.

[24] Former MRAM employee, 02.16.2017; IT specialist, 03.14.2017
[25] Mining Investor, 03.15.2017
[26] Minerals Law of Mongolia, 2006, Article 17.3
[27] Former MRPAM employee, 02.16.2017

1.1.3. Background: New Online Application System

The new OAS had not come into operation at the time of writing and we do not have the technical means to render a professional opinion on the technical specifics and the safeness of the system, but we recognize that prior issues that were identified were thoroughly considered and technological safeguards have been implemented to prevent them.[28] We encourage readers of this report to closely observe the launch of the new OAS.

Sequential order. In the new system, the OAS is directly connected to the cadastre. Pending license application coordinates are integrated into the cadastre. License applicants receive notice and the option to adjust their application in case of overlap with pending licenses. Licenses can only be granted in accordance with the sequential order of applications. The first-come-first-served principle is secured by a checksum code, calculated from date and time of the application by a secret algorithm. This checksum can always verify which application was logged earlier. The sequential order should therefore be largely secured in the new system.

Confidentiality of applications. The new OAS is connected to both the cadastre and the state registration office database. Companies can therefore be uniquely identified and all information related to license applications submitted online are binding. The new system does not rely on a third-party company to administer the online application and queuing system. The system runs on high-security servers at the Mongolian national data centre. The number of system administrators is limited to two MRPAM officials. Even administrators cannot alter, but only delete applications. Successful applicants receive a pdf confirmation; a deleted application would trigger immediate attention. Applications sequential order and contents is therefore highly unlikely to be able to be altered.

A **realistic chance for submission of applications** should be ensured by different mechanisms in the new system. First, every applicant can now check for conflicts related to overlaps, size, or shape when preparing their applications in advance, using an online map. Further, submitting an application requires human input, and an application should take at least take several minutes. The system is expected to slow down during pressure times when many applications are submitted, in particular due to the map graphical user interface. Finally, the new system no longer relies on the YubiKey to uniquely identify users, but uses a unique username and password. A company uses those login-details for all sorts of services, including the license application on application days. While there are no limitations on the number of parallel users using the same login credentials, only one channel is secured for a limited amount of time to submit an exploration license application. The mechanisms described should effectively prevent automated high-frequency applications.

Coherence of processing of applications should be ensured by the online system. MRPAM officials are not required to approve or adjust license coordinates anymore. Therefore, the vulnerability to corruption arising from the exercise of discretionary power over the approval of license coordinates is eliminated.

Adherence to **timeframe for actions** is supposed to be ensured by allowing applicants to track the chain of decisions online. While increased accountability does not necessarily mean improved performance by officials, it can at the very least help to identify bottlenecks and decrease uncertainty.

[28] All information in this section: IT specialist, 03.14.2017

1.1.4. Local Governor Approval

Similar to other countries at a comparable stage of mining sector development, the reputation of the mining sector ranks low in Mongolian public opinion, particularly at the provincial level. This is to some extent derived from environmental and fiscal mismanagement, but is also grounded in the failure to properly inform and hold public consultations with those bearing the impacts. Delegating approval power to a lower jurisdiction may impose higher administrative burdens, but could also lead to a process resembling the Free Prior Informed Consent (FPIC) principles for greater inclusion of indigenous and marginalized groups, and thereby improve the legitimacy of the mining project.[29] In a well-defined decision-making process, any opportunity for interpretation should be minimized, and all criteria that are defined must be appropriate and consistent with the capacity and authority of the decision-maker. Such considerations are particularly important in an approval mechanism which requires multiple stages of approval in order to avoid overlap or a lack of clarity.

Ineffective consultation mechanism. The Mongolian Minerals Law requires that the aimag governor assess and approve or disapprove projects based upon consultation with the Citizens' Representative Hural (CRH) and the Citizens' Representative Assembly (CRA).[30] The CRH is the directly elected representative body, consisting of 15-45 representatives depending upon the size of the aimag (or capital city), that is elected for four years;[31] the CRA is the Presidium of the CRH, and it is elected by its members, and typically consists of 3-7 members of the CRH.[32] Approval by the CRH does not constitute consultation with affected communities or marginalized groups, and FPIC principles are therefore not fulfilled. The CRH is supposed to meet quarterly at the aimag centre,[33] but many CRH cannot be mobilized to reply within the specified 30-day deadline, the CRA is therefore more commonly consulted.[34] The aimag governor is the only mandatory signatory, which implies that consultations are not undertaken in practice. Governors can seemingly make decisions at their discretion without accountability to any other party, which thus represents a vulnerability to corruption in return for approvals.

The **decision-maker should be clearly defined** and chosen in accordance with the purpose of the approval. There are breaches with at least two other laws regarding the consultation mechanism defined in the minerals law. First, the Constitutional Court recognised the award of licenses as an administrative act in response to inquiry from the Mongolian National Mining Association (MNMA), which implies the General Administration Law is applicable for Licensing. The General Administration Law stipulates that the time period for consultations can be up to 90 days,[35] and that the right of veto for license applications is not only reserved for the aimag governor, but also that soum and bag governors should be consulted.[36] The second law containing conflicting clauses is the Law on Water, which requires that the CRH or the CRA consult with the Administration of River Basin represented in the affected aimag before approval of an exploration license application.[37] Conflicting law increases uncertainty which can be exploited for corrupt purposes.

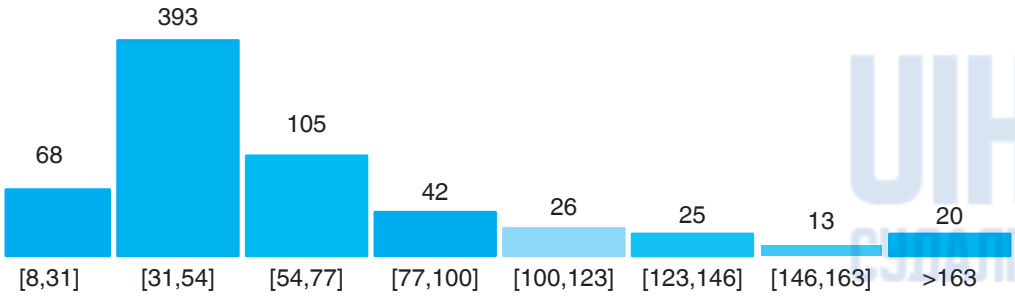
[29] Mongolia has ratified the United Nations Declaration on the Rights of Indigenous Peoples, but has not ratified the International Labour Organisation's Indigenous and Tribal Peoples Convention, which is the second important international treaty in which FPIC principles are established.
[30] Citizens Representative Khural's Election Law, 2012, Article 4
[31] Minerals Law of Mongolia, 2006, Article 19.4
[32] Mongolian Municipality Territorial Units and its Governance Law, 2006, Article 14.2
[33] Mongolian Municipality Territorial Units and its Governance Law, 2006, Article 10
[34] G. Ider (2015)
[35] General Administrative Law, 2015, Articles 62.2, 75.1 & 75.2
[36] Representative of MNMA, 02.15.2017
[37] Law on Water, 2012, Article 13.1.5

Several informants reported corrupt requests for compensation in return for approvals by local authorities.[38] An analysis conducted by the Natural Resource Governance Institute (NRGI) in 49 countries on cases with allegations of corruption for the award of licenses or contracts in the oil, gas and mining sectors found that efforts to influence decisions through gift-giving was the most common corruption risk that was identified in 58 of 100 cases.[39]

In an ideal scenario, local authorities would be **fully capable of making informed decisions**, and analysing the long-term benefits and impacts of an operation before approval.[40] In Mongolia, the capacity to render such assessments varies greatly, but is usually higher in those provinces with more mining activity.[41] National authorities who may be better able to evaluate companies' technical and financial information provide only a short brief containing company contact details and license coordinates, and no substantial guidance or perspective on the actual license application to local authorities.[42] Local authorities are therefore provided no meaningful evaluation or insight. Essentially, they are only supplied with the contact of the company, and thus local authorities are likely to make the decision for approval based on the willingness of the company to cooperate or provide benefits of a corrupt nature. MRPAM, as a policy-implementing agency, has the right to overrule decisions by local governors.[43] This policy not only weakens the governor's veto, but also appears to cause substantial delays in license award.[44]

Out of the 692 exploration licenses awarded in 2015, it took 54 days or more to issue 231,[45] which exceeds the government's target.[46] A process that tolerates significant delays is likely to increase pressure on companies to provide corrupt benefits to local authorities in in order to facilitate approval.

Figure 2 Number of Exploration Licenses awarded in 2015 by days to approve



Source: Own creation. Hart Nurse and Ulaanbaatar Audit Corporation (2016), Appendix 16h.

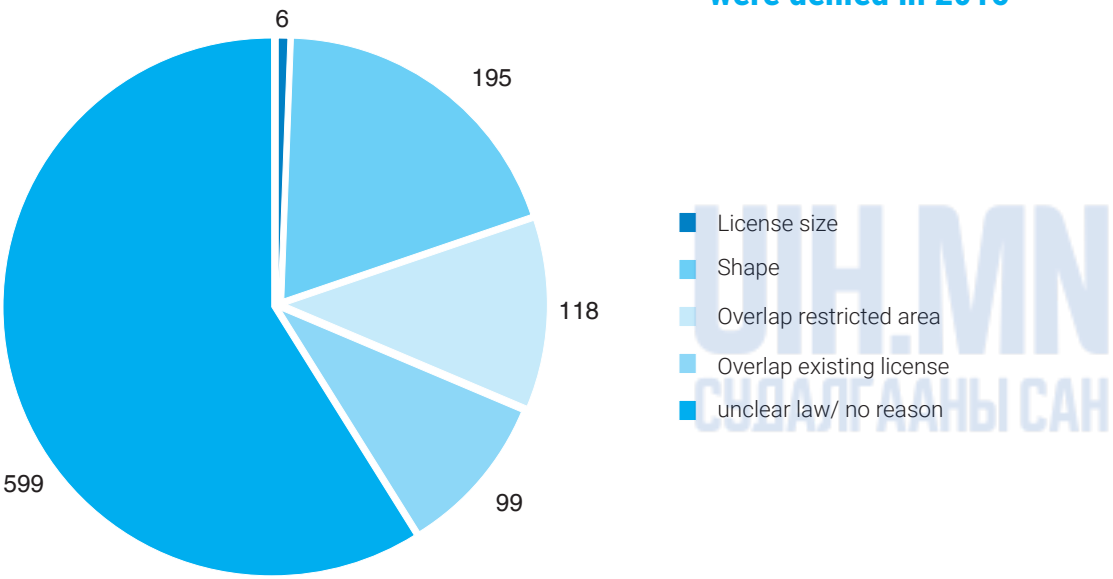
[38] Former Head of un-named Agency, 03.09.2017; Mining Investor, 03.15.2017
[39] A. Sayne, A. Gillies and A. Watkins (2017), p.24
[40] IT specialist, 03.14.2017
[41] Former MRAM employee, 02.16.2017
[42] Minerals Law of Mongolia, 2006, Article 19.3
[43] Legal Status of the Government Agencies Law, 2004, Article 11.6
[44] IT specialist, 03.14.2017
[45] Hart Nurse and Ulaanbaatar Audit Corporation (2016), Appendix 16h
[46] The Minerals Law does not define the maximum duration, but adding the time for the individual steps suggests that the process should take up to 54 business days: MRPAM Screening of application documents 20 business days; Governor approval 21 business days (30 calendar days); Company pays license fee 10 business days; MPAM grants license 3 business days.

Criteria for the denial of license application by local governors should be clearly defined in order to limit discretion, appropriate to the decision makers' responsibilities and capacity, and clearly attributable to a distinct decision-maker to prevent overlap and clearly delineate responsibilities. Several laws contain provisions that may allow for the denial of a license application, but specific criteria related to license denial by an aimag governor is not defined. In the absence of specific criteria, a governor's decision to deny license approval is difficult to defend if challenged, and to that extent undermines the governor's authority. This could increase the likelihood that governors and local authorities may seek corrupt benefits in return for approvals, rather than seeking to enforce a legitimate decision to deny approval.

In addition to legal clauses cited, local authorities can exploit a loophole in the legal and technological framework by creating a Locally Protected Area which in turn leads to the automatic denial of the license application - a risk for corruption that is discussed in more detail in 3.2.1. The Mongolian Cadastre System.

Analysing information on the reasons for license denial that is compiled by the EITI reveals that in the majority of instances, the reason for denial is not disclosed, or is not supported by specific reference or citation in law. The Minerals Law is, however, generically cited as the reason for denial. Furthermore, the data does not distinguish whether licenses were denied by MRPAM or by the local governor.[47]

Figure 3 Reasons that 1,017 exploration license applications were denied in 2015



Source: Own creation. Hart Nurse and Ulaanbaatar Audit Corporation (2016), Appendix 16h.

[47] Minerals Law of Mongolia, 2006, Articles 19.2.2, 19.5

Background: Criteria for Denial of an Exploration License

Minerals Law: tetragon license shape with straight lines along longitude and latitude; no overlap with nationally or locally protected areas; granted or pending exploration or mining licenses; national borders; or lakes, rivers or other natural formations; license size shall be between 25 – 150,000 hectares.[48]
Water Law: no issuance within 200 metres of rivers and forested areas.[49]
Border Law: No issuance within 15 kilometres of border areas.[50]

Risk 2

Discretionary Power of Local Governor's approval (CF5)

What is the risk that decentralisation of decision-making will create uncertainty in the awards process?

Likelihood (4) The likelihood that decentralisation in the awards process will lead to uncertainty is high. There is little to constrain local officials from engaging in corrupt practices, though stakeholders perceive that increased capacity-building and engagement at the local level to have reduced the likelihood of corruption since 2015.

Impact (5) Decentralised decision-making was perceived to have significantly contributed to increased risk of corruption. Under the current system, local authorities can abuse power and exert pressure on companies that have limited recourse or ability to resist corruption, in return for a license approval. The impact on local governor's approval is perceived to be one link in a longer chain of issues that derive from decentralised decision-making, and which further increase corruption risks.

Recommendations

- Establish simple and clearly-defined objective criteria to deny license applications that are appropriate to local-level capacity and interests.
- Either the full scope of license applicants' documents should be provided to local decision-makers, or requests should be made anonymous in order to prevent local authorities from seeking undue benefits from applicant companies.
- Harmonize conflicting provisions in the Minerals Law, the General Administrative Law, the Law on Water, and others, clearly defining the authority of relevant decision-makers. All decision-makers should be required to sign-off on their decisions.
- Alternatively, prior to opening areas for exploration and mining the consent of the local governor and communities should be sought. Consultation and coordinated local level discussion weighing the pros and cons could be held with national authorities, and without the involvement of companies.

[48] Minerals law of Mongolia, 2006, Articles 17.2 and 17.3
[49] Law on Water, 2012, Article 22.3
[50] Border Law, 2016, Article 26.1

1.2. Mining License Right of First Refusal

An exploration license holder has the priority right to convert an exploration license into a mining license for a declared deposit. Exploration is inherently risky and requires large initial capital investment which may take many years to generate a return, if it ever does. Securing priority rights for exploration companies in the conversion to extraction therefore increases investor's confidence that they may realize a return on investment. Exploration license-holders should be encouraged to apply for mining licenses, and the process should be uncomplicated and simple to be administered.

Scrutiny for obtaining a mining license is higher than for an exploration license,[51] particularly regarding the approval and registration of the mineral reserve and the preparation of the Detailed Environmental Impact Assessment (DEIA). The principle of right of first refusal provides assurance that exploration license-holders can convert to a mining license, and thereby mitigates the incentive for them to engage in corrupt practices.

Primary and secondary research revealed no reason to amend the Right of First Refusal policy, and thus there is no further elaboration on corruption risks related to this mechanism.

1. Application

1.1. Before expiry of the exploration license, a license holder has the right of first refusal to convert an exploration license, partially or fully, into a mining license.[52] A mining license cannot deviate from the previously designated area of the exploration license. The mining license can also not create a hole within the exploration license.[53] The license holder may retain any part of the exploration license that has not been converted. Any part of an exploration license that is surrendered should be tendered.

1.2. Prior to application for a mining license, the exploration license-holder needs to obtain a feasibility study compiled by a certified geological expert, a final exploration report compiled by an MCM certified company in order to register the reserve,[54] and a Detailed Environmental Impact Assessment (DEIA) compiled by a Ministry of Environment and Tourism (MET) certified expert.[55]

1.3. The company submits the application in person at the MRPAM "One Window Service" containing evidence of the approval of the feasibility study, the final exploration report and the DEIA, several administrative documents, map and coordinates of the mine area, and receipt of payment of the MNT 1 million application fee.[56]

2. Review

2.1. The application is reviewed by MRPAM's Legal Department for comprehensiveness and accuracy of the documents, and it ensures that the applicant has no outstanding fees to be paid;

2.2. The MRPAM Cadastral Department screens the application for possible conflicts of the license area;

2.3. The MRPAM Coal and Mining Department ensures that the applicant is capable of undertaking production and rehabilitation work.[57]

3. Issuance

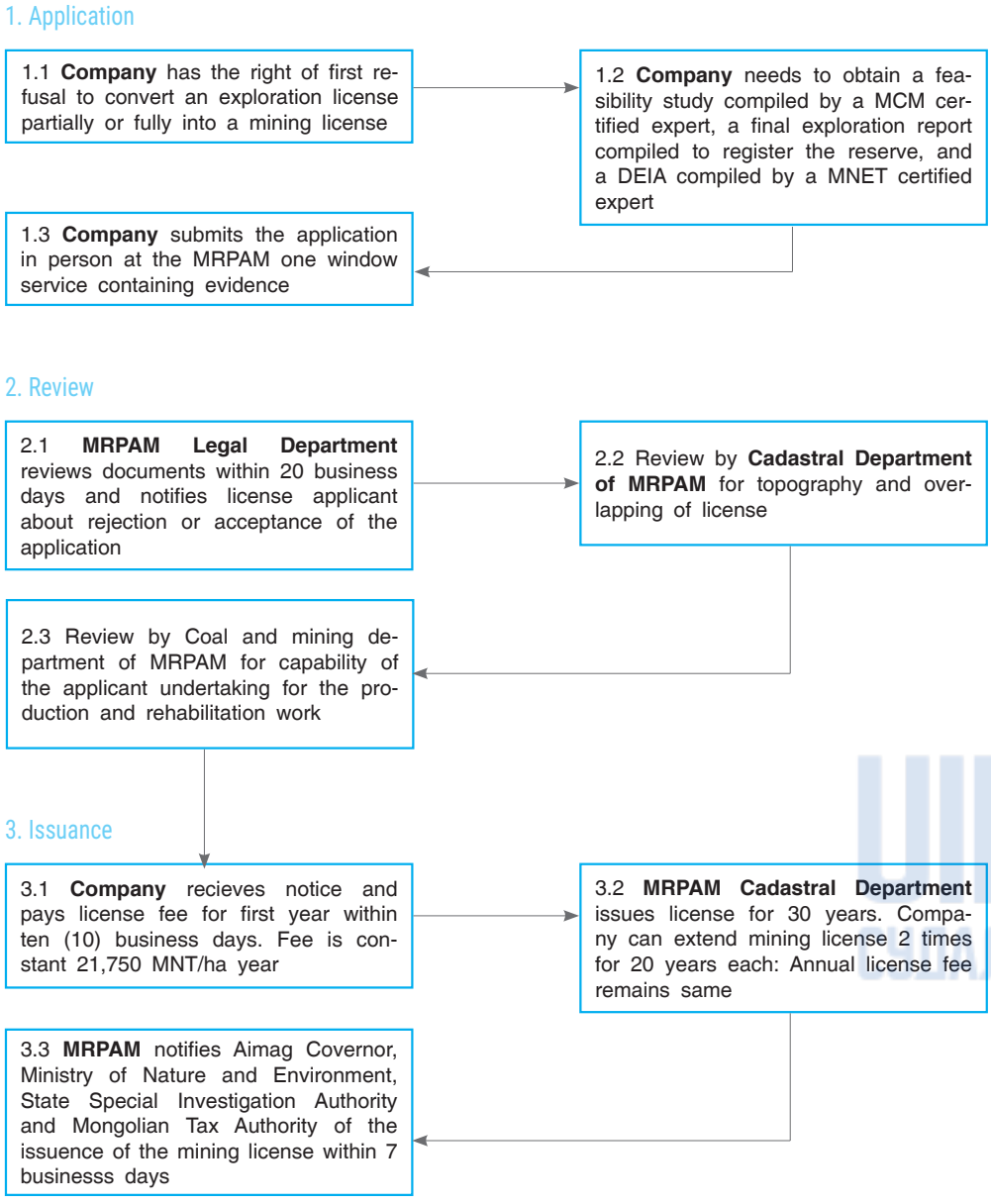
3.1. The applicant shall be informed about the decision from MRPAM within 20 business days. The applicant company shall pay for the first annual mining license fee, calculated as MNT 21,750 per hectare.[58]

[51] Mining Investor, 03.15.2017
[52] Minerals Law of Mongolia, 2006, Article 24.1
[53] Minerals Law of Mongolia, 2006, Article 24.4
[54] Minerals Law of Mongolia, 2006, Article 25.1.5
[55] Minerals Law of Mongolia, 2006, Article 25.1.6
[56] Minerals Law of Mongolia, 2006, Article 25.1
[57] Minerals Law of Mongolia, 2006, Article 26.2
[58] Minerals Law of Mongolia, 2006, Article 26.4 & 32.3

3.2. Upon receipt of payment, the MRPAM cadastral department shall issue the mining license for 30 years, with the possibility of extending the license twice for 20 years each.[59]

3.3. MRPAM shall notify MET, the State Tax Authority, the aimag and district Governors, and GASI, and then publish an official notice in a daily newspaper and on the designated state website disclosing the award of the mining license and its location within seven business days of issuance.[60]

Figure 4. Steps in the Award of Exploration and Mining Licenses



Source. Own Creation. Minerals Law of Mongolia.

[59] Minerals Law of Mongolia, 2006, Article 26.5
[60] Minerals Law of Mongolia, 2006, Article 26.7

1.3. Competitive Resource Tender

Mongolia uses public tenders to allocate exploration and mining licenses for areas that have been under private or state-funded exploration, but which are expired, surrendered or revoked.[61] Tenders were introduced to Mongolian law in 2006. The first 14 licenses were issued by tender in 2009, but all were revoked together with 106 other licenses in conjunction with corruption charges brought against the former Director of MRAM in 2013.[62] The current regulation on the tendering process was issued in January 2015 and was amended in June 2015 and again in January 2017.[63]

In theory, well-designed auctions are preferable to first-come-first-served award or license-by-license negotiations since competitive bidding should secure greater value for the country. Auctions can also help provide information about the mining companies that the government may not have. Public resource tenders may lead to more competition and higher returns for the government, particularly when natural resource reserves are understood and are perceived to have the potential to lead to additional discovery: when competition for limited resources is high; and when the general economic and political environment are considered stable. In such jurisdictions, prospective investors are willing to incur substantial up-front costs and preparation in order to secure rights to the reserve. A successful tender process requires careful planning, and is predicated upon the government's capacity to articulate evaluation criteria in support of the national development strategy.

1.3.1. Step-by-step Process by Law

1. Tender preparation

1.1.The Geological division of MRPAM selects areas which should be tendered. Only those areas that have previously been subject to private or state-funded exploration, and which have expired, or were surrendered or revoked may be tendered.[64]

1.2. Similar to the exploration license application, MRPAM is required to secure approval from the Governor of the relevant aimag or capital city to issue a license in their jurisdiction. Inquiries include a written notification and map of the relevant area that is available for tender.[65] The governor of the aimag or capital city shall respond based upon the opinion of CRA of the soum or district, and of the Presidium of the CRA of the Aimag or district, and provide written justification for approval or denial under existing law.

1.3. The Director of MRPAM appoints an evaluation committee for each tender that consists of eight qualified professionals in the fields of mining or law. The evaluation committee will include a head, a non-voting secretary, and six additional members.[66] The evaluation committee sets the threshold amount of the tender, which is calculated according to the license size and prior license status: (mining license: MNT 2,244 / ha; revoked exploration license: MNT 1,800 / ha; expired exploration license MNT 1,350 / ha).[67]

1.4. The Head of MRPAM issues a decree announcing the tender. The cadastral department of MRPAM prepares the tender and issues a public invitation to the tender in a daily newspaper at least 30 days in advance of the opening of the bids.[68] The invitation includes information on the license area coordinates, area size, address and deadline to receive bids,

[61] Minerals Law of Mongolia, 2006, Articles 19.12 ,20.1
[62] Government of Mongolia, Ordinance 216; Chairman of the Geology and Mining Cadastre Department, Resolution 457
[63] Tendering Bid process for Special Licenses Regulation, 2015
[64] Minerals Law of Mongolia, 2006, Article 19.12 & 20.1
[65] Minerals Law of Mongolia, 2006, Article 20.1.1; Tendering Bid process for Special Licenses Regulation, 2015, Article 3.1
[66] Tendering Bid process for Special Licenses Regulation, 2015, Article 5.13.5, 6.1, 6.3, 6.8
[67] Tendering Bid process for Special Licenses Regulation, 2015, Article 5.1
[68] Tendering Bid process for Special Licenses Regulation, 2015, Article 3.5

the place and date of opening the offers, and the account to which the bid threshold amount is to be paid.[69]

2. Tender Application

2.1. Companies need to transfer the threshold amount to the designated MRPAM account and submit their bid in person to the Secretary of the tendering committee within 30 days of publication, or by the deadline designated in the public bid announcement.[70] The documents required to submit a bid include company information, a tentative work plan, a list of machinery and equipment, qualifications of staff, and a plan regarding the methods and technological approach to exploration, mining and rehabilitation. The requirements are the same regardless of whether an exploration or mining license is tendered.

3. Tender Evaluation

3.1. The tender evaluation committee screens the bids, and disqualifies those that are incomplete or do not meet technical criteria. For those bids that are disqualified, written notice detailing the grounds for rejection is issued to the applicant and is recorded in the application registration book.[71]

3.2. The Evaluation Committee can open bid offers with the attendance of more than 70% of its 8 members present. A representative from the bidding company must attend the bid opening.[72] The evaluation process is to take no more than 10 business days after the bid opening.[73] Bids are evaluated by assigning points: 50 points for the financial proposal, and 50 points for the technical proposal.[74] Technical criteria are based upon an assessment of the exploration plans, prior exploration experience, the qualifications of professional staff, and the availability of exploration equipment.[75] If two or more applicants receive the same score, the license shall be granted to the applicant that filed its application first.[76] If no bid is submitted in response to the tender, then the exploration license shall be awarded on a first-come-first-served basis.[77] The regulation on the tendering process does not limit the number of bidders.

4. Issuance of license

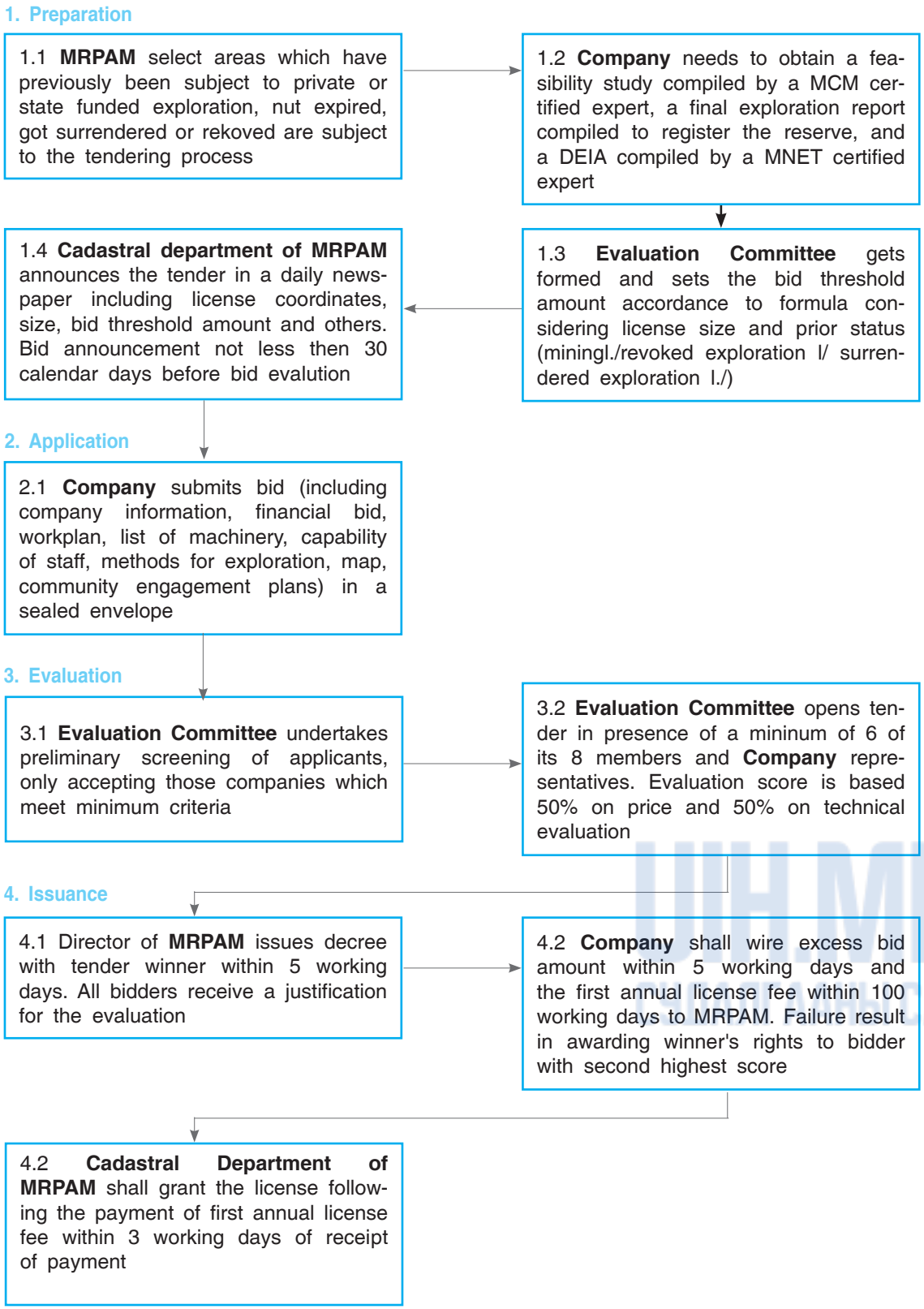
4.1. The Director of MRPAM approves the conclusion of the tender committee's evaluation report, and issues a decree announcing the winner of the bid.[78] Companies that participated in the bid can issue a formal complaint to the Minister of the Ministry of Mining and Heavy Industry (MMHI) within 5 (business) days of receipt of the tender decision.[79] The result of the tender shall be published in a daily newspaper and on the designated state website. All bidders are informed of the outcome in writing.[80]

4.2. The company selected in the tender shall pay the outstanding bid amount within five business days and the first annual license fee within ten business days of the issuance of decree announcing the award of the tender. Licenses issued by tender have the same rights and obligations as regularly issued licenses. An additional fee is required for areas that have previously been subject to state-funded exploration. A 'reimbursement agreement' is executed with the company that defines the total amount of the reimbursement due to the state, the duration and the number of annual instalments. The total amount of the reimbursement is "calculated by proportionally subtracting the exploration costs funded through the State budget"[81] with the "annual amount of reimbursement determined on the basis of the annual production rate".[82]

4.3. MRPAM's cadastral department issues the license within three business days of receipt of payment

[69] Tendering Bid process for Special Licenses Regulation, 2015, Article 4.1
[70] Tendering Bid process for Special Licenses Regulation, 2015, Article 5.6
[71] Minerals Law of Mongolia, 2006, Article 20.2
[72] Tendering Bid process for Special Licenses Regulation, 2015, Article 8.2.1
[73] Tendering Bid process for Special Licenses Regulation, 2015, Article 8.4
[74] Tendering Bid process for Special Licenses Regulation, 2015, Article 8.2.1
[75] Tendering Bid process for Special Licenses Regulation, 2015, Article 4.1
[76] Minerals Law of Mongolia, 2006, Article 20.1.3
[77] Minerals Law of Mongolia, 2006, Article 20.3
[78] Tendering Bid process for Special Licenses Regulation, 2015, Article 10.1.1
[79] Tendering Bid process for Special Licenses Regulation, 2015, Article 13
[80] GOM, Government Services to Citizens
[81] Minerals Law of Mongolia, 2006, Article 60.3
[82] Minerals Law of Mongolia, 2006, Article 60

Figure 5. Steps in the Tender for Exploration and Mining Licenses



Source: Own Creation. Tendering Bid process for Special Licenses Regulation, 2015; Minerals Law of Mongolia, 2006.

1.3.2. Discretionary Power over Selection of Areas for Tender

Countries that use more than one method to allocate mineral rights should carefully establish criteria to determine which method to employ. Theory suggests that for a largely under-explored country like Mongolia, that tenders be used only for those deposits for which there is greater geological knowledge and a high probability of continued discovery. Mongolia generally follows this approach, but selection of the areas for tender is discretionary and is accompanied by corruption risk.

The criteria for the selection of areas for tender is defined as any area which has been under state-funded exploration or licensed to a company in the past.[83] State funded exploration work has been limited to geological mapping, a nationwide exercise that was completed for the whole country at a scale of 1: 200,000.[84] Geological mapping does not provide sufficient geological information on deposits to justify tender, yet this legal gap appears to have been used by authorities to tender arbitrarily selected areas.

A minimum threshold bid amount has been established for revoked or surrendered mining licenses, revoked exploration licenses, and surrendered or expired exploration licenses; but not for areas which have never been under state-funded exploration.[85] The absence of a clear definition of bidding thresholds suggests that tendering only the areas subject to state-funded exploration was not initially foreseen. It may also allow for discretion when setting thresholds, which could be misused for corruption.

A fee for the **reimbursement of state-funded exploration costs** is enforced.[86] The fee is calculated by hand on the basis of the historic expenses. The formula to calculate the reimbursable amount allows for certain discretion in the adjustment of historic prices and for foreign exchange rate fluctuation.[87] Analysis of EITI data showed that the rate can vary significantly between MNT 1 - 500 million.[88] The fee for the reimbursement of state-funded exploration work is not published with the tender announcement, but only after the award.[89] It is unclear whether the fee is imposed only for the few projects for which drilling was undertaken, or whether it is imposed more broadly on all areas that have been under state funded-exploration. This uncertainty and the announcement of fees post-award allows for the exercise of discretion by authorities.

The Geological Division of **MRPAM that is responsible for the selection of areas for tender**, is only accountable to the director of MRPAM.[90] No criteria exist by which areas are selected. It is apparent that not all surrendered or revoked licenses are being tendered (see Table 1). It remains unclear whether a tendered area has been fully or partially licensed before. The selection of areas for tender must therefore be considered discretionary and exploitable for corrupt purposes.

[83] Minerals Law of Mongolia, 2006, Article 19.12 & 20.1
[84] MRPAM Monthly Statistics, 2017
[85] Tendering Bid process for Special Licenses Regulation, 2015, Article 5.1
[86] Regulation on State Funded Exploration Work Reimbursement Calculation and Payment, 2007, Article 9
[87] Former MRAM employee, 02.16.2017
[88] Mongolia Tenth EITI Report 2015, 2016, Appendix 12
[89] GOM, Government Services to Citizens
[90] Tendering Bid process for Special Licenses Regulation, 2015, Article 1.2

Table 1. Revoked and tendered licenses

	2014	2015	2016
Exploration and mining licenses issued by tender	14	39	28
Revoked exploration licenses	106	125	125
Revoked mining licenses	13	25	25

Source: MRPAM, Monthly Statistics; MEITI, Mongolian EITI Data Portal

Two informants report that powerful companies have inquired the tender of certain areas by the MRPAM Geological Division.[91] Tender is perceived to be a more secure way to secure award of a li-cense as compared to the lengthy FCFS method, which is more difficult to influence because of the multiple reviews that an exploration license application has to pass through in this procedure.

Risk 3

Arbitrary selection of Areas for Tender (RA3)

What is the risk that the criteria for selecting a specific process for awarding a license will not be publicly knowable?

Likelihood (5) All of the vulnerabilities that have been identified in the process of selecting areas for tender are considered systemic issues. In the absence of clear criteria guiding the selection of areas to be tendered, decisions by the authorities are by definition discretionary. Due to the lack of accountability, external stakeholders do not have any means oversee the process and ensure that it conforms with law and regulation. As a result, mistrust and suspicions of corruption are very high. Stakeholders believe that the selection process for areas to be tendered is systemically made at the discretion of officials, and without any clear pattern or criteria. Consequently, the risk of manipulation and abuse is considered high.

Impact (3) The perception that authorities exercise excessive discretion in the selection of tendered areas may impede participation of bidders, and to that extent may restrict competition. Statistics affirm that participation in tenders is very low. Allegations of the existence of clique networks that can influence government officials to tender certain areas threatens the integrity and legitimacy of the allocation process as a whole. While the process of selecting of areas may be subject to influence and manipulation, the impacts are considered limited by stakeholders.

Recommendations

- Criteria for the selection of areas for tender should be clearly defined. As long as spatial information related to areas that have had meaningful state-funded exploration is not widely available or accessible, the Mongolian state should only tender those areas that were previously under exploration or mining license and for which this information is available.
- Ideally, the tender process should be automated, and should include licenses that have been surrendered or revoked within a specified timeframe. Manual intervention in this system should be limited to the rearrangement or consolidation of revoked license areas to establish more feasible shapes and sizes.

[91] Representative of MNMA, 03.03.2017; Former MRAM employee, 02.16.2017

1.3.3. Manipulation of Tender by Authorities

The overarching principle for the allocation of mineral rights should be equality before the law, meaning no applicant should be discriminated against or favoured by authorities.[92] This principle is particularly important for open and competitive resource tenders, in which no prospective bidder for the same license should have preferential rights, treatment or access to information.[93]

In the Mongolian tender, bidders submit their bids in a sealed envelope, only opened on commencement of the tender evaluation, and in presence of the MRPAM Tender Committee (TC) and bidding companies. Bidding is limited to one round and the first bid counts for the final assessment. The rules are simple, clearly communicated and remain the same for every auction. This easy to administer system is appropriate for the Mongolian context, and reduces the risk of manipulation and corruption. The following analysis identifies several vulnerabilities in the framework which could potentially allow authorities, particularly the TC, to influence or manipulate the tender outcome.

Tender evaluation. A total of 100 points can be awarded. 50 points for the financial proposal, and 50 points for the technical proposal, the latter are allocated to the evaluation of the plans (20 points), technical experience (10 points), assessment of staff (10 points), and equipment (10 points).[94] While the allocation of points is clear, the evaluation criteria for the assessment of the technical documents is not defined. A former MRAM employee, who used to be part of the TC, reported an instance of pressure being exerted by higher-level officials to manipulate the technical assessment in order to skew the tender in favour of a particular bidder.[95] The absence of clear criteria for the evaluation of technical documents allows for the manipulation of tender outcomes.

Internal accountability of the technical committee is very limited. The MRPAM TC consists of eight members, including a secretary without voting rights. Decisions can only be made with a minimum of 6 members present. All members are from MRPAM and are appointed by the Director of MRPAM for an undefined term. No minimum qualification criteria for TC members exist. The Head of the Cadastre Office appears to commonly serve as Head of the TC. Members of the TC are not publicly disclosed and can change frequently. There is no specific clause forbidding conflicts of interest. The evaluation board is accountable to the Director of MRPAM, the Monitoring and Evaluation Department of MRPAM and the Minister of MMHI.[96] Reimbursement is inappropriately low and selection for membership is likely to be politically motivated. One interviewee reported that the TC does not have sufficient capacity to comprehensively assess the technical proposals. Lack of accountability and objective evaluation criteria increase vulnerability to corruption.[97]

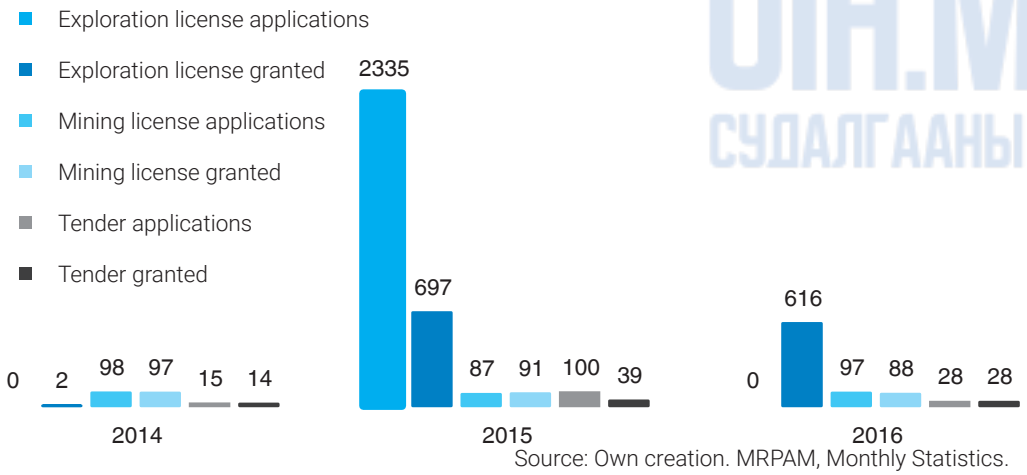
[92] N. Mutemeri, H. Mtegha and J. Rocha (2010), p.4
[93] Global Witness (2012), p.33
[94] Hart Nurse and Ulaanbaatar Audit Corporation (2016), p.44f; Tendering Bid process for Special Licenses Regulation, 2015, Article 8.2.1
[95] Former MRAM employee, 02.16.2017
[96] Tendering Bid process for Special Licenses Regulation, 2015, Articles 3.5; 6.1; 6.3; 6.8.
[97] Former MRPAM employee, 02.16.201

External accountability is particularly weak. Information on tender outcomes must be disclosed in a daily newspaper and on the designated dedicated state-run website.[98] Additionally, statistics on the number of successfully awarded licenses by tender and the total number of bids are disclosed through the MRPAM monthly report, but the two sources do not align.[99] Information on tender outcomes is limited to the names of the bidders; the successful bidder and bid are not disclosed. A lack of transparency constrains the ability to hold authorities accountable and raises the risk that tender outcomes can be manipulated, or even held entirely secretly.

Tender announcements are the instrument used to attract and invite potential bids. By law, announcements should include information on the application deadline, license coordinates, the name of the area, the area's size in hectares, the address for submission, and the minimum threshold amount that is due from the bidder.[100] The analysis of 30 tender announcements revealed a very incoherent scope, many of which lacked the proscribed information.[101] A phone number advertised for the purpose of inquiry and the request of additional information did not work. It is noteworthy that geological information is not released in tender announcements. The omission of important information may discourage company participation which reduces competition and thereby increases the risk that outcomes will be skewed. Risk and vulnerability are exacerbated when companies are provided additional information that is not made publicly available.

Due Diligence. Companies need to provide evidence that their technical capacity and financial resources are adequate for participation in the tender. However, evidence of technical and financial capacity is required only for participation in exploration license tenders, not mining licenses. This represents a material weakness, particularly considering that 24 out of the 30 tender announcements reviewed were for mining licenses.[102] The absence of clear minimum standards could also allow officials to arbitrarily reject legitimate bids without accountability.[103] Lack of capacity to perform due diligence could also allow for unqualified companies to enter the sector which could increase the risk and prevalence of corruption, a risk discussed in more detail in section 3.1.1. Due Diligence.

Figure 6 License applications and licenses granted 2014-2016



Source: Own creation. MRPAM, Monthly Statistics.

[98] Minerals Law of Mongolia, 2006, Article 26.7; GOM, Government Services to Citizens
[99] MRPAM, Monthly Statistics
[100] Tendering Bid process for Special Licenses Regulation, 2015, Article 4.1
[101] Annex E; GOM, Government Services to Citizens
[102] Compare Annex E Licenses issues by Tender
[103] OECD (2012); A. Sayne, A. Gillies and A. Watkins (2017), p.29

Statistics show that participation in tenders is very low, particularly in comparison to other modes of allocation. Low participation in tenders could be an indicator of low trust resulting from several causes, notably: TC discretion in the evaluation, a lack of accountability and poor tender announcement practices; but it could also be an indicator of bid-rigging among companies which collude to take turns winning bids (described in the next paragraph).[104]

An amendment to the regulation on license tenders from February 2017 introduced a clause permitting the tender of areas within Locally Protected Areas (LPA) for mining. In addition to reversing prior policy that forbid mineral titling within LPAs, the amendment limited participation to state-owned enterprises and private companies registered in the relevant aimag.[105] This amendment conflicts with regulation forbidding discrimination on the basis of the origin of investment, but is also likely to further increase abuse of the policy on the enactment of LPAs by local administrations. The risks derived from the enactment of LPAs are elaborated in 3.2.1. The Mongolian Cadastre System.

Risk 4

Manipulation of Tender Evaluations (PP15)

What is the risk that tenders can be manipulated by authorities?

Likelihood (4) Key-aspects of a successful tender design are compromised and could be misused to either favour or discriminate against bidders. The scope of tender announcements is inconsistent and often lacks relevant information. Considering the lack of accountability associated with various stages of the tender and selection process, secretly held tenders cannot be ruled out. Accordingly, stakeholders widely acknowledge the likelihood of tender manipulation, and rate the risk as fairly high.

Impact (4) Similar to the FCFS mechanism, the impact of a compromised tender evaluation system can be manifold – can jeopardize the license allocation system itself. It already appears to be the case that the system is compromised as evidenced by very low participation. Suspicion of rigged tenders is likely to impede quality investment, the impacts of which may only become apparent in the mid- and long-terms.

Recommendations

- As long as accountability for tender evaluations remains weak and is not improved by introducing measures such as independent audit, overview by a mixed independent council,[106] full disclosure of bids and their evaluation, technical criteria should be abolished and the tender should be awarded to the highest financial bid. This will ensure that authorities cannot manipulate the outcome, and that the state will at least reap greater financial benefits.
- Tender announcements should include the full scope of information required by law. Publishing geological information will contribute to a level-playing field, and also significantly increase returns to the state. The 30-day deadline from tender announcement to application should be extended to allow sufficient time for the preparation of bids.
- In order to increase participation in tenders, the minimum threshold amount due for any bidder could be replaced with a signature bonus only due from the winning bidder. This change in procedure should be thoroughly considered.

[104] MRPAM, Monthly Statistics
[105] Tendering Bid process for Special Licenses Regulation, 2015, Article 4.1; Minister of MMHI, Order 40, 02.16.2017
[106] Global Witness (2012), p.19

1.3.4. Background: Tender Manipulation by Bidders

Bid-rigging (or collusion in tendering) refers to a practice in which companies, that would otherwise be expected to compete, secretly conspire to achieve lower-than market-based outcomes. Resource tender can only achieve higher yields for the government when companies compete fairly.[107] Bid-rigging in Mongolia is illegal practice, but it is not a criminal offence.

Detection of bid-rigging schemes is difficult. Bid-rigging can take many forms, including: only one bid is submitted; a bidding company suspiciously withdraws its bid (bid suppression); multiple companies linked to a single individual or parent company submit bids; one or more bids appear uncompetitive (cover bidding); two or more competing companies collude and take turns winning licenses in a repetitive and predictable pattern (bid rotation); or competitors agree not to compete for licenses in certain geographic areas (market allocation).[108] Such schemes often include mechanisms to apportion profits among competitors.

Literature identifies **conditions under which bid rigging is more likely to occur**, all of which are relevant to the current Mongolian context: only a small number of companies engage in tenders; constant and high demand for licenses, license allocation that is characterized by high uncertainty; and few or no financial or technical barriers to entry.[109]

Policies which may prevent bid-rigging would include provisions that require that bids are submitted sealed envelopes that are only opened in the presence of the TC and bidding companies. Increasing the threshold amount for bidding could deter bid-rigging (but could discourage participation).[110] Greater company due diligence could prevent bid-rigging, but low accountability could allow for the arbitrary exclusion of otherwise legitimate bidders. The absence of regulations requiring the disclosure of beneficial ownership increases the likelihood of bid-rigging. Licenses which received no bids during tender process should be issued by a regular FCFS procedure, but single-bid auctions have regularly been awarded in the past.[111]

[107] OECD (2009), p.1
[108] OECD (2012); A. Sayne, A. Gillies and A. Watkins (2017)
[109] OECD (2009), p.3
[110] Tendering Bid process for Special Licenses Regulation, 2015, Article 5.1; Annex E Licenses issues by Tender
[111] Tendering Bid process for Special Licenses Regulation, 2015, Article 8

2 LICENSE APPLICANT OBLIGATIONS

This chapter formally explores the major obligations of license holders regarding the provision of potential benefits and the minimization of adverse impacts of operations. Such issues are important, but they are complex, and consequently this report will provide a general introduction to the issues, and not comprehensive analysis or guidance.

This chapter explores the extent to which corruption compromises the framework for environmental protection, discourages the development of a coherent geological database from private-funded exploration, and examines the Community Development Agreement that are entered into by mining companies and affected communities defining roles, responsibilities, expectations, and the benefits that will accrue to each of the two parties.

2.1. Environmental Protection

The Ministry of Environment and Tourism (MET) relies on Environmental Impact Assessments (EIAs) as the core analytical tool to identify, estimate, mitigate, and communicate a particular project's risks to the environment and society prior to its initiation. "EIAs are critical for making informed decisions […] as they determine whether a proposed project complies with standards and thus whether, and how, benefits prevail and the project should proceed."[112]

The Mongolian EIA consists of five parts, two of which are undertaken regionally and not specific to a project, and the remaining three are specific to a project and need to be renewed every five years. In addition, the EIA shall be translated into an achievable and concrete annual action plan which needs to be assessed at the end of each year. These documents that comprise the environmental protection framework are discussed in 2.1.1 Background: Environmental Framework Mongolia.

Out of the five parts of the EIA, the Detailed Environmental Impact Assessment (DEIA) is the most important. Vulnerability to corruption in the approval of the DEIA constitutes a major risk for mining license holders, and is discussed in section 2.1.2 Approval DEIA.

[112] A. Williams and K. Dupuy (2016), p.4

2.1.1. Background: Environmental Framework Mongolia

The **Strategic Environmental Assessment** (SEA) is intended to inform policy-making across different ministries and agencies, enabling decision-makers to plan policies and assess their impacts and efficiency in protecting the environment of a region. The SEA is compiled and funded by MET.

The **Cumulative Impact Assessment** is formulated on the basis of the SEA to develop an understanding of the combined effects of residents and corporate entities on the environment in a region. Two cumulative impact assessments have been prepared for Tuv and Dornogobi aimags, and two more are underway for Baganuur and Tavantolgoi. All four are funded by the World Bank. In the future, accredited environmental assessor companies will prepare the assessments that will be financed by the companies operating in the affected region.[113]

Companies are obliged to provide a **baseline assessment** of environmental conditions prior to the commencement of activities under both exploration and mining licenses. The baseline assessment must be prepared by a MET-accredited assessor company, which is hired and paid for by the license holder.

The MET performs the **General Environmental Impact Assessment** in accordance with the baseline assessment. The GEIA must be updated every five years, and needs to accompany the mine license application.[114] The GEIA identifies impacts and proposes mitigating measures. The MET appears understaffed to prepare these comprehensive assessments.[115]

DEIAs need to be undertaken for every project component that can have a severe impact on the environment or people. One project can therefore require several DEIAs, with the largest projects in Mongolia having more than 50 DEIAs. DEIAs must be prepared by a MET-accredited assessor company, which is selected and hired by the license holder.

The Environmental Management Plan (EMP) translates the DEIA findings into concrete, budgeted, scheduled activities to mitigate and monitor the environmental impacts that were identified. An EMP needs to be prepared for the GEIA and for every additional DEIA. EMPs can be prepared by the license-holder themselves on the basis of an existing template, but must be approved by the MET. Part of the documentation required for the annual EMP is an approval of the prior year's EMP report. Approval of the EMP report is a major bottleneck for companies.

The **EMP Report** is prepared by the company itself, and assesses the extent to which objectives from the EMP were attained. A working group established by the Aimag Environment and Tourism Department, the regional representative of the MET, must approve the evaluation.

[113] Regulation on conducting Environmental Strategic and Cumulative Assessment, 2013, Articles 1, 2; Interview with GreenTrends, 04.12.2017
[114] Environmental Impact Assessment Law, 2011, Article 7.3
[115] Representative of Mongolian Association of Environmental Professionals (MAEP) 04.21.2017

Table 2 Overview environmental reports and plans

	Type	Description	Timeframe	Compiled by	Paid by	Approved by
5 year EIA	Environmental Strategic Assessment	Sector independent, long-term assessment of policies on the environmental impact of a region, intended to inform policy making across different ministries and agencies.	Constantly updated	MET Policy and Planning Department	MET	MET and Cabinet
	Cumulative Impact Assessment	Regional assessment of cumulative effects of residents and entities on the environment of a specified area.	Constantly updated	MET Environment Department[5] tendered assessor company	License holder[116]	Minister of MET and Minister of Health
	Environmental Impact Assessment (General)	Identification of possible impacts and solutions for mitigation for a specific project.	Project start; updated every 5 years	MET Environment Department[117]	MET	MET Technical Board; Environmental Assessment and Auditing Divsion
	Environmental Baseline Assessment	Assessment of environmental conditions prior to all project activities.	Project start; updated every 5 years	Assessor company and/ or expert	License holder	MET Environment, Natural Resource Management Department[118]
	Detailed Environmental Impact Assessment	Identification of possible impacts and solutions for mitigation for each project component with a severe impact on the environment.	Project start; update every 5 years	Assessor company	License holder	MET Technical Board; other appointed experts from MET
Annual EMP	Environmental Management Plan	Translation of each DEIA into annual plan of concrete, budgeted, scheduled activities to mitigate and monitor identified environmental risks.	Annually by March 15th	License holder (optionally assessor)	License holder	EPA Working Group MET Monitoring, Evaluation and Internal Audit department
	Environmental Management Report	Evaluation of each EMP at the end of year on the achievement of set goals regarding environmental mitigation.	Annually by November 1st; Conclusion by December 1st	License holder (optionally assessor)	License holder	Aimag Environment and Tourism Department, MET Monitoring, Evaluation and Internal Audit Department

[116] Regulation on conducting Environmental Strategic and Cumulative Assessment, 2013, Articles 3, 3.8
[117] Environmental Impact Assessment methodology guidance, Section A – General EIA, Article 1.3
[118] MET's Operational Strategy, Structural Change program, Government Resolution № 63, 2012

2.1.2 Approval of Detailed Environmental Impact Assessment

Conflict of interest. DEIAs require approval by the MET Technical Board (TB), a specialised council. The MET TB consists of approximately 20 members and positions are usually reserved for the heads of departments of the MET, and officials and representatives from MRPAM, MMHI, GASI, the Ministry of Health, Ministry of Energy, the Institute of Geography and Geo-Ecology of the Mongolian Academy of Sciences, and the Mongolian National University. Additional independent experts can also be invited for their consideration.[119] As long as there is no declared or disclosed conflict of interest, TB members continue their civil service jobs at agencies and ministries. Members are appointed by the Minister of MET for an undefined term, but usually change with the Minister.[120] Members need to have a master's degree or above in natural sciences and a minimum of ten years' relevant work experience, though not all members appear to fulfil these criteria.[121] Informants estimate compensation for membership on the TB is between MNT 1.2 - 2.5 million monthly, a salary that is not commensurate with the responsibility and authority of the position.[122] There is suspicion that prospective TB members pay significantly more in bribes to gain a seat on the board, which suggests that board members may engage in corrupt practices once appointed.[123]

Mongolia has sought to establish and enforce minimum DEIA standards by requiring that state-accredited experts, individuals or companies, prepare the DEIAs, rather than the mining companies themselves. The **accreditation of assessor companies** however, is compromised because of a lack of a code of conduct for certifications, a lack of capacity to hold environmental assessors accountable, and the absence of punitive mechanisms.[124] The fee for accreditation is very low, MNT 500,000, for three years. Assessors need to provide evidence that experts have 10 years of experience in a relevant field[125] and possess relevant technical equipment.[126] Requirements can be circumvented by contracting both human resources and equipment on an ad-hoc basis.[127] In addition, assessors need to provide a list of manuals and virtual guides, and a certified and recognised environmental evaluation methodology.[128] 193 environmental assessor companies are registered in Mongolia,[129] but only 50 are active. The companies tend to have political ties, and are more or less active according to the political party in power.[130] Political ties could explain the strong regional orientation of the assessor companies. By law, only DEIAs need to be undertaken by accredited assessors, but in practice most companies rely on assessor companies to prepare documents such as the environmental management plan and report.

[119] Environmental Impact Assessment Regulation, 2013, Article 9
[120] Representative of Mongolian Association of Environmental Professionals (MAEP), 04.21.2017
[121] MMJ (2016)
[122] Employee of GreenTrends, 04.12.2017; Employee of MRPAM Reporting and Monitoring Department, 04.18.2017
[123] Employee of GreenTrends, 04.12.2017; Employee of a mining company, 04.04.2017
[124] A. Williams and K. Dupuy (2016); Environmental Professional Accreditation Provision, 2006
[125] Environmental Impact Assessment Law, 2011, Article 12
[126] Environmental Assessor Accreditation Requirements, MET, 2009
[127] Undisclosed employee of GreenTrends, 04.12.2017
[128] MET, Requirements for Accreditation (2017)
[129] MET, Accredited Evaluation Companies (2017)
[130] Undisclosed employee of a mining company, 04.04.2017; Representative of MAEP, 04.21.2017

Lack of capacity. The Technical Board meets once a month to evaluate and approve or reject the DEIA's prepared by the environmental assessor companies. The technical board renders its decisions based upon an appraisal framework created by experts from the MET Environmental Auditing Division, which appears to lack the capacity to make evaluations. The MET TB appears to have met only five times in 2016,[131] when it approved several hundred DEIAs during these multi-day meetings. A DEIA is a very comprehensive, technical document, comprising at least 100 pages. According to an informant from an environmental assessor company, the MET Monitoring, Evaluation and Internal Audit Department has six experts to appraise the DEIAs, an insufficient number of persons to handle this workload.[132] By law, the assessments have to be undertaken within 18 days of submission, with the possibility of a single 18-day extension.

Environmental assessor companies have to be present at the TB assemblies in order to defend the DEIAs that they have prepared. An informant from an environmental assessor company reports that the levels of scrutiny vary greatly, and the examination of the DEIAs by the TB can last for minutes or hours. The informant reports that there is no clear criteria that guides the DEIA evaluations.[133] An environmental expert from an un-named mining company confirms allegations of subjectivity in the evaluation process and criticized the process for being too lengthy, but otherwise reported that the process was largely fair treatment and that he/she was never solicited for corrupt payments in return for DEIA approval.[134] A member of the Open Society Forum reports that they have made use of the Freedom of Information Law to request EIAs from random samples of companies, and they have found that EIAs were typically of low quality, sometimes simply copied from other assessments, with the names incompletely changed.[135]

Conflict of interest between MET TB and assessors exist in two potential ways. First, the MET TB is both responsible for the accreditation of assessor companies and for the approval of the DEIAS prepared by the same assessors. The absence of any oversight body could lead the MET to accredit assessors and approve their DEIAs in return for corrupt benefits.

A second, and more severe potential for conflict of interest exists, as many of the TB members have direct or indirect interests in environmental assessor companies. While a provision exists which forbids TB members from having direct or indirect conflicts of interest regarding the assessor companies, project-owners and any related stakeholder;[136] several informants expressed concern that connections linking the assessor to TB decision-makers had more bearing on DEIA approvals than the technical merit of the underlying work.[137] One mining company employee was reportedly urged by officials to hire certain assessors on several occasions.[138] Conflicts of interest between MET TB and assessors can be exploited for corrupt purposes.

[131] Employee of GreenTrends, 04.12.2017; Employee of MRPAM Reporting & Monitoring Department, 04.18.2017
[132] Employee of GreenTrends, 04.12.2017
[133] Employee of GreenTrends, 04.12.2017
[134] Employee of a mining company, 04.04.2017
[135] Representative of the Open Society Forum (OSF), 01.30.2017
[136] Environmental Impact Assessment Regulation, 2013, Article 9.11
[137] Employee of an un-named mining company, 04.04.2017; Employee of MRPAM's Reporting and Monitoring Department; Representative of MAEP, 04.21.2017
[138] Employee of a mining company, 04.04.2017, Ulaanbaatar

Accountability. Decisions by the MET TB can be challenged by the Minister of MET and by the MET Internal Audit and Evaluation Department.[139] No external independent body oversees or holds the TB accountable, and transparency is low. DEIAs are not publicly disclosed, and few companies voluntarily make them available. A MET-hosted online database makes available 4,680 DEIAs that were approved from 1995 to date, of which 932 are mining project assessments.[140] It should be noted that these reports represent a small fraction of the reports produced. Results of the MET TB assessments are not disclosed, and the entire process is not held accountable.

Risk 5

Approval of Detailed Environmental Impact Assessment (CF-N1)

What is the risk that the approval of the DEIA can be manipulated?

Likelihood (3) The risk of manipulation of the DEAI approval can occur in two different ways. First, the DEIA document could be forged and go undetected because of severe capacity constraints among the MET TB, and the absence of minimum reporting standards. Second, the approval process could be corrupted because of a lack of accountability and intransparency, and discretionary decision-making resulting from a lack of objective evaluation criteria. The corruption risk-scoring associated with DEIA approval focussed on the second sources of risk, and concluded that the threat was medium which explains the likelihood score.

Impact (5) The environmental and human impacts of manipulation of DEIA approval are potentially severe. The DEIA is the key document ensuring that project operations adhere to plans and are benchmarked. Systemic failure to establish and enforce minimum standards was perceived to have particularly high impacts on environment and people.

2.2. Geological Survey

Mongolia, like most countries in the world, relies mainly on private companies to undertake exploration, rather than engaging in high-risk exploration itself. While the award of exploration licenses generates little tax revenue, governments accept the allocation of land at low fees in anticipation of high returns if a reserve is discovered and exploited. The major interests a state should pursue when granting exploration rights to private companies is the development of comprehensive knowledge of the country's natural resource wealth which can enhance and strengthen planning and sector management. Enhanced knowledge allows countries to attract higher-quality investment and promote mutually beneficial cooperation with private mining companies which can generate greater efficiency and mineral recovery. This chapter will explore the efficiency of both state-funded and private-funded exploration.

2.2.1 Background: State Funded Exploration Work: A well-defined scope for state-funded exploration should be established to support of the national strategy for minerals sector development.

2.2.2 Companies' geological reporting: Clear reporting mechanisms are necessary to ensure that the state "learns" from private-funded exploration. The information generated from private exploration must be processed and used to establish national geological databases.

[139] MET, Structure Overview (2017)
[140] MET, Environmental Impact Assessment Database

Table 3 Comparison MCM, MET TB and MMHI TC

	MCM	MET Technical Board	MMHI Tender Committee
Appointed by	Minister of MMHI	Minister of MET	Director of MRPAM[141]
Qualification[142]	Master degree and 10-year work experience in geology, petroleum, or mining	Master degree; 10-year experience in environment, development, economics, social, or health	Not defined
Reserved positions	Senior officials from MMHI, MOF, MRPAM; optional: Central Geological Laboratory, NUM, MUST and MNMA[143]	Heads of MET departments, officials from the MMHI, MRPAM, GASI, Ministry of Health	Non-defined, but always from MRPAM, head is usually Head of MRPAM Cadastre Division
Duration of term	Annual; with reselection for additional year for 30% of panellists based on performance	Non-defined, but tend to change with the Minister	Non-defined, change fairly frequently
Members	Approximately 20	Minimum 10, currently 18	8 members, including the Secretary of the Committee, who has no voting rights
Conflict of interest[144]	Generic Article in accordance to Law on Prevention of Conflict of Interest.	Generic Article in accordance to Law on Prevention of Conflict of Interest.	Generic Article in accordance to Law on Prevention of Conflict of Interest.
Salary[145]	Approx. MNT 2.5 million / month	Approx. MNT 1.2 - 2.5 million / month	N/A
Assessment mechanism	1) FER compiled by independent expert 2) FER evaluated by independent expert appointed by MCM 3) Evaluation checked by MRPAM Geological Department officer 4) Approval by MCM simple majority with minimum of 70% members present	1) DEIA compiled by independent expert 2) DEIA evaluated by MET TB member 3) Approval by MET TB simple majority with minimum of 75% members present	1) Sealed bids opened in presence of company representatives 2) Evaluation by MMHI TC within 10 days
Assessment criteria	Non-defined	Stringent criteria defined in law[146]	Point scheme available, but assessment criteria non-defined
Accountability	No transparency, no accountability	No transparency, accountable to Minister of MET	Limited results published, decisions can be challenged

[141] Tendering Bid process for Special Licenses Regulation, 2015, Article 1.2.
[142] Mineral Council Charter (2016), Article 3.2; Regulation on EIA (2013), Article, 9.1.
[143] Abbreviations: National University of Mongolia, Mongolian University of Science and Technology and Mongolian National Mining Association
[144] Regulation and Prevention of Private Conflicts of Interests in Civil Service Law (2012), Article 3.1.3; Mineral Council Charter (2016), Article 3.2; Regulation on Environmental Impact Assessment (2013), Article 9.2
[145] Employee of MRPAM's Reporting and Monitoring Department, 04.18.2017; Employee of GreenTrends, 04.12.2017
[146] Regulation on Environmental Impact Assessment, Articles 2 – 8.

2.2.1. Background: State Funded Exploration Work

The Mongolian state has undertaken exploration work in cooperation with other nations since 1932. There are currently 40 on-going geologic exploration projects, of which 19 are expected to be finished in 2017. Mongolia is currently cooperating on geological survey projects with the Czech Republic, Poland, the Republic of Korea, and in a joint project with Russia, China, Kazakhstan and the Republic of Korea.[147]

The main efforts include the development of geological maps at a scale of 1: 50,000 (completed for approx. 33.7% of the country) and 1: 200,000 (completed for the entire country).[148] The government dedicates approximately 17% of its exploration budget to thematic geological work. Geophysical mapping at various scales has been concluded for approximately 40% of the country and hydrogeological studies have been completed for approximately 84%.[149] The soviet-style grid-sample geological survey undertaken by the Mongolian government to compile geological maps is considered legitimate, though out-dated given technology available today. Surface measurements are taken at constant distances, creating an information grid that permits conclusions about the underlying geology to be drawn. The intervals are not adjusted as a function of the findings, which means that large geologically diverse and potentially more promising areas and surveyed at the same intervals as less promising areas. An expert from AMEP recommends that the government use satellite imagery which is a more efficient means to identify potential deposits.[150]

The latest Minerals Policy calls for an increase in the volume and quality of information in the state geological database that is gathered using standard international surveying methods and mineral classifications.[151] The Mongolian government budgets funds each year for geological surveys, and from 2004 to 2016 averaged 0.12% of total annual government expenditures. In nominal terms, the budget increased from MNT 1.6 billion in 2004 to MNT 9.3 billion in 2016.[152]

A 2016 survey of ten mining countries conducted by the Australian Mongolian Extractives Program found that Mongolia's core budget for survey work is unusually low relative to its GDP/capita. In order to meet the 10-country average, Mongolia would almost have to quadruple expenditures for geological survey (approx. USD 16 million).[153] The actual amount spent on state-funded surveys may be higher, since Mongolia continues to finance state-funded survey in cooperation with foreign governments.[154]

Table 4 Expenditures in million MNT

	2012	2013	2014	2015	2016
Geological survey Total	3,995	6,810	9,209	9,281	9,341
SGMP 1:200,000	848	764	807	331	643
SGMP 1:50,000	3,006	5,809	7,315	5,557	4,976
Thematic work	84	156	1,004	3,168	3,476
Cooperation expenditure	60	81	84	226	247
GS in % of total capital expenditure	0.26%	0.46%	0.52%	0.66%	0.41%

Source: NSO, Mongolian Statistical Information Service

[147] MRPAM, Investment Guide (2016), p.25
[148] MRPAM, Monthly Statistics
[149] National Geodetic Survey Models, AMEP, 2016
[150] AMEP Geologist, 30th of March 2017
[151] MMJ (2014)
[152] NSO, Mongolian Statistical Information Service; MRAM and BGR (2015), p.2
[153] ASI (2017)
[154] MRPAM, Monthly Statistics

2.2.2. Companies' Geological Reporting

MRPAM relies on private companies to build comprehensive understanding of its resource wealth, and it should therefore ensure that geological reporting is accurate and of high quality. Exploration license holders need to submit two types of reports which include geological information: the annual exploration report and a one-time Final Exploration Report (FER). Mining license holders are not required to provide geological reports. Annual exploration reports are prepared by companies and submitted via standardized templates. According to informants, the value of information disclosed in annual exploration reports is usually of limited use for the development a geological database, and a lack of institutional capacity restricts MRPAM's ability to hold companies accountable for the contents of reports.[155] The FER is the main source of geological information, and it is a requirement that must accompany a company's application for a mining license. The FER is one of the major bottlenecks in the mine license application process

Discretion for **approval of the Final Exploration Report** is limited by requiring evaluation by a specialized council, the Minerals Council of Mongolia (MCM). The council consists of 20 members, of which at least 70% need to be present in order to approve a report. Reports are evaluated by an independent geological expert appointed by MCM, and checked by the officer in charge of mineral exploration at the Geological Department of MRPAM prior to assessment by the full MCM. All council members must have a minimum of 10 years of work experience in geology or mining. Appointments are for a single year, with re-appointment possible for 30% of the panellists based upon performance. Such policies regarding report approval and staffing can minimize discretionary decision-making if enforced. However, it appears that the policies are not all enforced in practice, which diminishes the accountability of the council.[156]

No criteria are defined for the assessment of the FER. There are no mechanisms in place to hold the MCM accountable for its decisions, neither is there any clear guide or scale according to which decision-making by MCM members could be held accountable. The approval of the FER report is of significant commercial value for both junior companies seeking to sell the exploration license and for major companies seeking to apply for a mining license. The MCM has discretion in the approval of the FERs, and this is a vulnerability that can be exploited for corrupt purposes.

Due diligence A former MRAM employee reports of lack of capacity for evaluation, and as a result, mere screening of the FER, at best affirming completeness.[157] A former head of the MCM reported cases of over-valuing deposits in order to increase the commercial value of the license, and conversely instances when there was interest to underestimate a deposit's value in order to avoid classification as strategic deposit which would require joint exploitation with a state-owned enterprise.[158] A representative of the MNMA reports of an organized network of companies and officials registering false reserve values in return for corrupt payments.[159]

[155] AMEP Geologist, 03.30. 2017; Former Head of undisclosed Agency, 03.09.2017
[156] Former MRAM employee, 03.10.2017;
[157] Former MRAM employee, 03.10.2017
[158] Former Head of MCM, 02.01.2017
[159] Representative of MNMA, 03.03.2017

Conflict of interest between MCM and geological experts. The GOM seeks to compensate for a lack of capacity in monitoring geological reporting by requiring that the FERs are prepared by independent geological experts (also referred to as "assessors").[160] The assessor's fee is paid by the license holder[161] and is calculated according to a formula specified in regulation on which basis negotiations between assessor and company shall be held.[162] Any professional with at least 10 years sector experience can be certified by the Mongolian Professional Institute of Geosciences and Mining (MPIGM) and the State Secretary of Minister of MMHI. A list of all accredited assessor companies is not publicly available.

The MCM is both responsible for the selection of geological experts that will prepare the FERs, and for evaluating the FERs that are rendered. A former MCM member reports that provisions to prevent conflicts of interest had been enforced from 2014-2016, and forbid MCM members from having a direct or indirect interest in a geological assessor, but said that this provision does not appear to have been enforced since the new government took power in July 2016.[163] The concentration of a number of powers in the MCM presents risk of conflict of interest which could be exploited in corrupt kick-back-schemes between the MCM and the geological experts.

Risk 6
Approval of Reserve Deposits (CF-N2)

What is the risk that the approval of reserve deposits can be manipulated?

Likelihood (4) Systemic failure in the evaluation of reserve deposits makes the approval very susceptible to manipulation. Beyond the critical issues that make the process highly subjective, the approval is also a major bottleneck in the mineral license granting procedure, which further increases the corruption risk.

Impact (4) Failure to enforce an efficient system for continuous learning about resource potential means that the government may not realize the full magnitude of potential benefits. The impacts of a potentially fraudulent system for reserve approvals therefore goes far beyond the negative impacts of corruption. Consequently, stakeholders did not score this factor as having the highest impact for corruption risk.

[160] Mineral Council of Mongolia (MCM) Charter, 2016, Article 6
[161] Mineral's Council of Mongolia Charter, 2016, Article 3.13
[162] Regulation on Calculation of Assessor's Fees, 2016, Article 2.2
[163] Javkhlanbold D., 06.20.2017

2.3. Community Development Agreements

The reputation of Mongolia's mining sector is low, possibly due to mismanagement but also due to the failure to properly inform stakeholders about opportunities and risks. At the local level, those who bear the impacts of mining have reaped few benefits for a long time. Communities are often not informed about upcoming projects, nor are they asked for consent. In recent years, the GOM has sought to improve this situation by integrating local participation into decision-making, and seeking to ensure benefit-sharing.[164]

One of the mechanisms used to strengthen community engagement is the Community Development Agreement (CDA). The CDA is a mandatory, legally-binding document that all exploration and mining license holders enter into with local administrations to encourage local hiring and sourcing, and promote other benefit-sharing schemes.[165] Mongolia was one of the first countries to make the implementation of CDAs mandatory in 2009, largely as a result of lobbying by CSOs.[166] The CDA improves and formalizes the relationships between companies and communities, formalizes license holders' environmental and social commitments, and ensures more close overall cooperation. CDAs may include provisions on environment, commerce, local hiring and sourcing, economics, community, finance and infrastructure.

The Scope of the provisions in the CDAs remain unclear. Mongolian law briefly states that the CDA should include provisions on environmental protection, mine exploitation, infrastructure, and job creation.[167] None of the regulations distinguish, however, between a CDA for an exploration license or for a mining license. The CDA for an exploration license is not required to be updated. The law does not define whether a CDA remains in place in the event of license transfer.

A model CDA that was developed in 2015 was intended to provide examples of the broad range of provisions that could be included.[168] However, the template that was approved did not meet expectations because it was too short to serve as sufficient guidance.[169] The legal hierarchy in Mongolia dictates that contracts may supplement legal provisions, imposing more stringent requirements on companies than those required by law, but they cannot supplant applicable law and clauses. Any clauses in a CDA designed to do so, such as tax stabilisation clauses, tax holidays, etc., are therefore not valid. Likewise, certain responsibilities which should be borne by the local administrator can be shifted to companies, like the provision of certain community services. Negligence in defining the scope of provisions is not only likely to reduce the potential benefits from CDAs, but could also increase the likelihood that CDA negotiations are abused to secure undue benefits for decision-makers or companies.

Discretion. While the model CDA requires the formation of a committee consisting of 9 representatives from local administration, the mining company and the community; only the company and the governor are required to sign the CDA. The identification or inclusion of qualified representatives from affected communities or marginalized and vulnerable groups is not required. It is not specified whether the signing governor is to be from the aimag or soum, or on which basis the responsible jurisdiction shall be chosen. Capacity-building mechanisms to enable communities to understand the advantages and limits of CDAs, or to undertake negotiations, were not foreseen. The negotiation of CDAs with companies is largely at the discretion of a single local decision-maker - without oversight. The negotiation is therefore susceptible to abuse and corruption.

[164] Such as the establishment of local development funds (2015), requirement for public consultation prior to introduction or changes to administrative acts (General Administrative Law 2016), local governor veto for exploration licenses.
[165] Minerals Law of Mongolia, 2006, Article 42
[166] D. Byambajav (2015)
[167] Minerals Law of Mongolia, 2006, Article 42.1
[168] Hogan Lovells Mongolia (2015)
[169] Prime Minister, Decree 179, 03.28.2016; MMHI (2015)

Accountability. While CDAs have been required since 2009, experience is still limited and it is unclear how many of the approximately 3,800 exploration and mining license holders have entered into agreements. Public disclosure of CDAs is mandatory, but does not appear to have been enforced. OSF and EITI collect CDAs that have been voluntarily disclosed. Failure to release and disclose agreements denies the public and communities insight into the various provisions that may have been negotiated. Failure to disclose also restricts oversight and therefore the ability to hold government and companies accountable, which jeopardizes the realization of the potential benefits and increases the risk of abuse for corrupt purposes by the signing parties.

The Minerals Law stipulates that all license holders must negotiate a CDA, but the **timing when the agreement should be entered into** is not defined.[170] Failure to clearly define the timing when the CDA should be negotiated could allow for collusion and abuse of power by the relevant governor in exchange for license approval, and it leaves open the possibility that a CDA is never executed.

Risk 7

Manipulation of CDA negotiations (PD16)

What is the risk that negotiations for Community Development Agreements can be manipulated?

Likelihood (4) Limited experience and intransparency make it difficult to quantify the risk that CDA negotiations could be manipulated, but poor definitions in the law and derived malpractice create vulnerability.

Impact (3) While the CDA process was perceived to likely be corrupted, stakeholders did not perceive that the CDA process itself would significantly increase the incidence of corruption at the sub-national level. While experience is still limited, the CDA process is recognised as a tool that can produce potentially positive impacts.

Recommendations

- The CDA in its current form and scope should only be required for mining licenses. Sufficient time should be budgeted prior to entering into such agreement in order to allow for research (stakeholder mapping, environmental and social impact assessment, identification of the most beneficial provisions, etc.), consultation and capacity-building of communities, identification of the parties who should be involved in the negotiations, and finally the negotiations themselves.[171]
- Local hiring can be susceptible to corruption and elite capture of an industry is a threat. Requirements to enter joint ventures, nepotism in hiring local staff, public procurement, and the use of shell companies may result in corruption. Anti-corruption clauses, independent oversight bodies, clear procurement rules, disclosure of beneficial owners of the extractive companies and subcontractors, publication of contracts, and mandatory asset declaration may be legitimate mechanisms that help mitigate such risks.[172]

[170] Minerals Law of Mongolia, 2006, Article 42.1
[171] J. Loutit, J. Mandelbaum and S. Szoke-Burke (2016)
[172] M. Martini (2014)

3 LICENSING GOVERNANCE FRAMEWORK

The concept of corporate governance refers to a set of rules, controls, and policies that are put in place to guide corporate behaviour. Each company is considered to be part of a broader framework of stakeholders that it depends upon, and who influence its behaviour, creating an effective framework of checks and balances. This framework ceases to work when one or more of the stakeholders are unable or unwilling to exert control, either due to the company not being dependent on the domestic or global product or factor markets; the home or host government being unable or unwilling to regulate the company; or civil society being unable to hold the company accountable.

Most of the companies operating in Mongolia are small and medium-sized enterprises that do not depend upon global markets. Only a few companies operating in Mongolia's mining sector are listed on international exchanges or are scrutinised by their home governments. Governance in the Mongolian mining sector therefore depends largely on the Mongolian host government. The GOM could share more of these responsibilities with CSOs, but largely fails, mainly due to the overall lack of transparency in the sector and the absence of effective mechanisms for joint engagement. Civil society participation must not be understood to substitute for a legal/regulatory framework or challenge its institutions, but should rather function as a powerful tool that complements and enhances governance where government capacity for oversight is weak or lacking. Already today, thousands of civil society organisations exist in Mongolia, and many are focused on mining sector governance.[173]

This section on the governance framework is dedicated to the investigation of the general framework governing the licensing process and its mechanisms, including a discussion of governance issues, the effectiveness of the cadastre system, and the prevention of speculation.

3.1. Governance Issues

Before allocating exploration and production rights, the government should carefully consider the whole chain of decisions, taking into consideration all of the relevant environmental, social and economic factors. Competent and law-abiding companies are more likely to make discoveries, maximize income from these discoveries, and avoid accidents and corruption than incompetent or corrupt companies.[174]

3.1.1 Due Diligence: The effectiveness of the GOM's requirements on documentation and the evaluation application documents that are submitted will be discussed in this section.

3.1.2 Data Management: Efficient data management is important to enhancing the usability of the information that is submitted, which is discussed in section.[175]

[173] NSO, Mongolian Statistical Information Service
[174] NRGI (2014)
[175] The limited scope of this research only allows the analysis of data management practices of MRPAM, but most findings are applicable to other Ministries and Agencies as well.

3.1.1. Due Diligence

Due diligence refers to the examination and investigation of a business prior to entering into a contract in order to fully understand the business' current situation and history. For the purpose of this report, due diligence will be referred to as the evaluation process undertaken by the government to ensure that license applicants are capable of undertaking exploration or exploitation, and that they meet the requirements that are defined. The scope of this research permits assessment of due diligence related to license applications - annual and quarterly reporting requirements are not covered, but the issues are largely the same.

Scope of application plans. Ideally, companies would provide evidence of their capability and viability by submitting extensive plans with their license applications which would enable the government to evaluate whether the applicant is likely to operate in accordance with the law and generate benefits for the country. The scope of the requirements that prospective licensees must meet is the lowest for exploration licenses, and are limited to meeting requirements on human and financial resources, as well as a provision of a plan that demonstrates project technical soundness and financial viability. The requirements for a mining license application require similar evidence, as well as documents regarding health, safety and environmental concerns.[176] Overall, the documentary and evidentiary requirements for exploration and mining licenses can be considered sufficient. Notable exceptions relate to the transfer of exploration and mining licenses, for which no evidence of the competence of the buyer is required, and the absence of reporting requirements for mining licenses that are auctioned. Each represents gross negligence, and is a betrayal of due diligence principles. Failing to establish minimum requirements in these instances could allow unqualified companies to enter the sector and therefore contribute to higher sector corruption.

Table 5 License transfer reporting requirements

Transfer Exploration License	1. Application Form (K6), Reference form (K10); 2. Evidence that the legal reasons stated in the law for a transfer have occurred; 3. Payment receipt of application fee; 4. Payment receipts for environmental reclamation fund; 5. Reference letter from the Aimag Environmental Department on due compliance
Transfer Mining License	1. Application Form (K5), Reference form (K10); 2. Evidence that the legal reasons stated in the law for a transfer have occurred; 3. Payment receipt of application fee; 4. Payment receipts for environmental reclamation fund; 5. Reference letter from the Aimag Environmental Department on due compliance

Source: MRPAM, Investment Guide.

Governments should seek to reduce and remove subjective evaluation criteria in order to minimize the **risk of discretion in the evaluation** which would arise whenever a rule or procedure requires interpretation.[177] In practice, Mongolia and many other governments lack the capacity to fully evaluate complex and often project- and context-dependent reports in a coherent manner. Minimum criteria are not defined, and a policy of non-disclosure of assessments makes the process intransparent and unaccountable. Despite these apparent deficiencies, authorities are required to approve the content of all types of plans and reports that are required for exploration or mining. These approvals must be considered largely discretionary, and to this extent are vulnerable to corruption in exchange for approvals.

[176] Plans to include provisions regarding mine abandonment or closure were underway at the time of writing.
[177] E. Ortega-Girones, A. Pugachevsky and G. Walser (2009), p.15

Accountability. A government's decision-making process to grant a mining license needs to be unbiased, objective and non-discretionary. Suspicion of unfair or unequal treatment, or the intransparent and non-accountable denial of applications can discourage potential investment. A representative of the Open Society Forum (OSF) reported that their members use the Freedom of Information Act to procure and examine company reports and to hold those companies accountable. The informant reports that almost all company reports are of low quality and are flawed, with the rare exception of the few large-scale companies operating in Mongolia.[178] If companies' proof of capacity and financial resources is not verified, it creates an opportunity to falsify details and/or to bribe officials to accept unsubstantiated information.

Risk 8
Due Diligence (PP10)

What is the risk that there is no due diligence of an applicant's capacity?

Likelihood (4) The risk that there is no (effective) due diligence on an applicant's capacity was perceived to be pervasive and systemic, mainly due to subjective evaluation criteria and the lack of capacity to undertake adequate due diligence.

Impact (3) Inefficient and incomplete due diligence conducted on license applicants will increase that share of companies that lack that capacity and are unqualified to operate in Mongolia's mining sector – which could lead to an increase in the prevalence of corruption. The impact of corrupt companies operating was perceived as limited by stakeholders in consideration of other accountability mechanisms. Discretion in the conduct of due diligence also presents a risk of corruption in itself. Officials must be fully capable of assessing applicants' capability, competence and fitness to perform as measured by a coherent and objective scale.

Recommendations

- The scope of application requirements is well-defined and companies are likely to have developed the capacity to provide such details. Existing application requirements should therefore be maintained, and extended if missing.
- The negative impacts of requiring that plans be approved without establishing clearly-defined minimum criteria and in the absence of sufficient technical, operational or financial capacity within MRPAM are likely to exceed the benefits – and should therefore be abolished.
- Minimum criteria should be limited to few, simple-to-assess terms, which would minimize the risk of subjective evaluation and interpretation.
- Introduce due diligence to prevent shell-companies from entering the sector (indicators may include: no prior relevant work experience; registered shortly before application submission; no associated parent company; no physical address or office space, staff or website; no tax payment history). Conduct due diligence on the criminal record or other misconduct, and to prevent conflicts of interest in the award of licenses to companies with a Politically Exposed Person (PEP) as legal or hidden shareholder; and disclosure of beneficial ownership (BO).[179]

[178] Interview Open Society Forum, 01.30.2017
[179] A. Sayne, A. Gillies and A. Watkins (2017), indicators 1, 2, 3, 4, 5

Table 6 Evidence for License Applications

	Administrative	Technical Feasibility
Exploration License Application	1. Application form (K1 form); 2. Official reference of legal entity (K4 form); 3. Notarised copy of state registration certificate; 4. Certificate if foreign invested company (K19 form); 5. Area map incl. location, name area and coordinates; 6. Payment receipt of application fee; 7. Proof of tax payer residence in Mongolia from relative Tax office; Proof of outstanding debt (Social Insurance, Correction Service, etc.);	1. Tentative exploration work plan including type, scope and cost of exploration works with proof of financial capability; 2. Evidence on experienced staff and financial capacity (K18 form); 3. Optional: Detailed Environmental Impact Assessment.
Mining License Application	1. Application form (K2 form) 2. Official reference of legal entity (K4 form); 3. Notarised copy of state registration certificate; 4. Certificate if foreign invested company; 5. Area map incl. location, name of area and coordinates 6. Payment receipt of application fee; 7. Proof of tax payer residence in Mongolia from relative Tax office; Exploration license document including all its annexes	1. FER approved by MCM; 2. Topographical pictures of registered reserve; 3. Reference letter of Aimag Environmental Department on environmental reclamation
Tender Procedure	1. Proposal to participate in selection; 2. Official description about proposed entity; 3. Notarised copy of state registration certificate; 4. Proof that applicant is a Mongolian tax payer 5. Area map incl. location, name of area and coordinates Payment receipt of threshold amount;	1. Tentative exploration work plan including the scope, duration and type of mining undertaken, and the planned expenses for environmental preservation and protection. 2. Evidence on availability of machinery and equipment; 3. Evidence on experienced staff; 4. Community Development Agreement
Extension Exploration License	1. Application form (K11); 2. Exploration License Certificate including all annexes; 3. Payment receipt of application fee; 4. Payment receipt of annual license fee; Evidence on minimum exploration expenditure;	1. Report on completion of exploration work of given stage and document on its acceptance;
Extension Mining License	1. Application form (K11); 2. Mining License Certificate including all annexes; 3. Payment receipt of application fee; 4. Payment receipt of annual license fee;	1. Reference letter by Aimag Environmental Department on no outstanding obligations regarding environmental obligations

Source: MRPAM, Investment Guide.

3.1.2. Data Management

Data products. Quality data which that has been cleaned, filtered, anonymised and processed contribute to a database that can be used to generate insights and recommendations that can be sold at a premium to companies. Mongolia currently provides no data product. The only information sold is geological maps that are produced by state-funded exploration and which are available in hard-copy. A price list for the purchase of maps is available on the old MRAM website.[180] The benefits of making geological information publicly available are likely to exceed the small fees charged for maps.

Data governance. There are no formal listings of data ownership or management in Mongolia, beyond the legislative mandate to undertake certain processes. By implication, the parties responsible for certain tasks also manage the data associated with them.[181] One exception is the cadastre for which responsibilities, access constraints and maintenance are described in law. Allocating resources and personnel for data ownership and management is likely to improve sector oversight.

Database integration.A 2014 MRAM internal and un-published census revealed that 113 separate databases exist, and are managed by 63 staff. One database was CMCS, 22 were part of the GIC and the remaining 90 databases were part of the reporting archive.[182] According to a former MRAM employee, of all the databases only the CMCS is fully functional, but none is compatible. MRPAM is currently working to integrate fragmented data sets. Early efforts to digitize hardcopy reports led to resistance after most of the digitized information was leaked.[183]

There are no formalized processes for internal data exchange within or across agencies. Data is not shared across agencies, and thus external information, such as company reports, are usually only submitted to one agency which stores them in in-house archives. Rarely is data made publicly available, and when it is, it is released in the form of aggregated statistics. Requests for information within MRPAM or other public ministries and agencies are delivered to the MRPAM archives section and are processed on a case-by-case basis. These inefficiencies contribute to system weakness in monitoring, enforcement, and assessing penalties. A former MRAM employee reports that it was easier to request information from companies on an ad-hoc basis, rather than searching for it in archives or going through the internal bureaucratic process to retrieve it.[184]

External data communication. Information that facilitates quality investment should be made publicly available, especially if such information can be provided automatically or at small expense. Beyond the MRPAM website and its publications, there are no formalized processes or clear policies by which external stakeholders can access information. All external requests for data, reports or maps require human intervention, usually undertaken by the MRPAM archives section. Making comprehensive sector information publicly available sets a strong example for a transparent and open investment climate and is likely to lead to increases in quality investment. The current practice of non-disclosure appears to stimulate corrupt practices in order to get access to information. Several sources report that powerful companies exert influence over MRPAM, or place their associates within the agency in order to gain access to otherwise confidential information.[185]

[180] MRPAM, Geological Central Archive Pricelist (2014)
[181] K. Milton and N. Car (2016)
[182] Former MRAM employee, 03.10.2017
[183] Former MRAM employee, 03.10.2017
[184] Former MRAM employee, 03.10.2017
[185] Former MRAM employee, 03.10.2017; former Head of undisclosed Agency, 03.09.2017; representative of MNMA, 03.03.2017

Risk 9

Arbitrary Information Sharing (PP17)

What is the risk that confidential information will be leaked?

Likelihood (4)) The risk that confidential information will be leaked is almost exclusively systemic, and is therefore high. Eliminating all risk of leaks is almost impossible, but current policies appear to be reducing risk. Risk of leaks is rated high because policies on information disclosure are poor.

Impact (4) Poor data management is endemic in the mining sector, and the impact negatively affects the whole value chain. The impacts are particularly severe when they discourage quality investment.

Recommendations

- Issue a strong policy statement on the availability of datasets for internal and external use (e.g. single point online catalogue for all geoscience data with different levels of access), conditions of use (fees for access), and establish the infrastructure to share data internally and externally. Data managers should be identified and their rights and obligations should be defined.
- Public disclosure of geological data free of charge will foreclose the risk of corruption in gaining access to information, mitigate reputational risks associated with leaks, and reduce the effort needed to preserve the confidentiality of information. Public disclosure of geological information could lead to significantly higher returns from tender auctions.
- Opportunities to create and disseminate high-quality data products should be explored, such as geological assessment of certain areas, which can be sold at a premium.

Background: MRPAM archives

The results of geological investigations are stored in the **Geological Information Centre** which includes information on 2,329 deposits that are defined as economically mineable mineral concentration, 8,460 occurrences that are defined as non-economically mineable mineral concentration due to low tonnage, grade and mineral content, 194 water deposits, boreholes. The GIC is also repository for different maps. The GIC also maintains categorized databases on mineral resources, geological surveys, stratigraphy, igneous units, hydrogeology, geochemistry, and a Mineral Resources Balance Database.[186] Most of this information is derived from annual exploration reports, though the archive also stores FERs and therefore houses proprietary company information.

The **reporting archive** is a fairly fragmented containing all types of reports submitted by companies, including approx. 40,000 paper reports; 40 MS Microsoft access databases, and 70 geological information datasets. Some of the hard copy reports are currently being digitized, even though digitization often means that they are being scanned, but not integrated into organized digital databases.

[186] MRPAM, Investment Guide (2016)

3.2. Cadastre System

The term "cadastre" may refer to the public institutions responsible for cadastral activities or to graphic representations of the mineral rights (cadastral maps).[187] For the purpose of this report, "cadastre" shall refer to the list of mining properties (the registry). A cadastre registry lists all land parcels within a country and includes details of the ownership, tenure, precise location, dimensions, and value of the individual areas. The registry is a key tool that authorities use to manage the sector, and it enables a wide range of actions, such as effective taxation, security of tenure, and others.

3.2.1 The Mongolian Cadastre System: The effectiveness of the Mongolian cadastre to manage the sector shall be explored in section
3.2.2 Background: Locally Protected Areas: Establishment of locally Protected Areas (LPA) has become popular since around 2013, but the high frequency of new LPAs and a technical gap pose unique challenges to the cadastre.
3.2.3 Transparency of Cadastre System: The importance of the cadastre for effective sector management make its comprehensive disclosure one of the most important pre-conditions for efficient oversight by external stakeholders which will be discussed in this section.

3.2.1. The Mongolian Cadastre System

The Computerised Mining Cadastre System (CMCS) is a fully functional cadastre system operated by the MRPAM Cadastre Division. No other authority has the right to grant or register mineral rights. All licenses are clearly assigned to a legal entity registered with the State Registration Office. The Mongolian cadastre system also fulfils a number of other functions, including the assurance on compliance with payment of fees and other requirements to keep a mining title valid as well as advice on when mining titles should be cancelled, but does not cancel licenses itself.

Spatial boundaries are clearly established and the cadastre does not allow for overlap or the assignment of an area for multiple purposes or owners. The system also ensures that licenses meet criteria regarding shape and size, and ensures that revocation, cancellation, or expiration of licenses is registered in accordance with the provisions of the minerals law. Spatial information is stored in one coherent system including all mineral license information, and the majority of the areas that are protected from mining. Areas that are not integrated include city and village buffer zones, industrial development zones, or privately-owned land or usage rights.[188] The research did not reveal any conflicts related to those land types that are not being registered. Key functions of the cadastre are in place, and contribute importantly to increasing investor confidence, and minimizing illegitimate expropriation and corruption.

[187] E. Ortega-Girones, A. Pugachevsky and G. Walser (2009)
[188] Undisclosed IT specialist, 03.14.2017

Changes to the cadastre are undertaken on an ad-hoc basis, which is not an issue so long as the changes are rare and are implemented in a timely fashion. New LPAs are being enacted in much higher numbers and frequency than any other land type, and they are also initially registered with MET, rather than the MRPAM cadastre. Since the two systems are not coordinated, authorities cannot ensure that LPAs are not included within areas proposed in pending exploration licenses.

Since LPAs are subject to less scrutiny and can therefore be enacted much faster than exploration licenses can be awarded, LPAs can and are used to prevent the allocation of pending exploration licenses – and have proven a more effective means for local authorities to block exploration as compared to the use of a local governor's veto (compare 1.1.4 Local Governor Approval).[189]

Mineral titling in locally protected areas. A recent amendment to the regulation on license tenders allows for the award of exploration and mining licenses for areas overlapping with Locally Protected Areas (LPA), but participation is limited to state-owned enterprises or private companies registered in the aimag of the tendered area.[190] This amendment conflicts with regulation forbidding discrimination based upon the origin of investment, but is also likely to further increase misuse of LPAs for the benefit of local administrations. Before this regulation was introduced, LPAs were commonly enacted by local stakeholders to prevent the award of licenses in certain areas to unwanted companies, but they were able to be revoked in order to permit licensing to more favoured companies. It is likely that this new amendment will lead to the increased allocation of licenses to unqualified companies and contribute to corruption, rather than support to local development.

Table 7 Land Rights Overview

	Enacted by	Recorded areas	established since 2015[191]	% of total land-mass
Exploration license	MRPAM	2,200	697	7.90%
Mining license	MRPAM	1,568	91	0.90%
Artisanal mining	Aimag/Soum Governor	56	24	0.00%
Locally protected areas	Aimag/Soum Governor	1,123	676	15.79%
State Protected Area	GOM	169	2	18.12%
Reserved Area	GOM	33	1	4.07%
Strategic deposits	GOM	22	0	0.01%
State boundary & railway	GOM / NSC	Only available on map GUI	N/A	Only available on map GUI
Areas available for mining	MMHI	4,167	3457	N/A

Source: MRPAM, Minerals Cadastre of Mongolia

[189] Former MRPAM employee, 03.10.2017
[190] Tendering Bid process for Special Licenses Regulation, Article 4.1; Minister of MMHI, Order 40, 02.16.2017
[191] From 01.01.2015 to 14.03.2017

Risk 10

Conflicts caused by Locally Protected Areas (PP5)

What is the risk that integration of LPAs will result in conflicts in the cadastre system?

Likelihood (3) Stakeholders were familiar with the practice of LPAs breaching FCFS principles or their misuse to exert pressure on companies for corrupt purposes. Conflicts are less of a systemic and are not related to weaknesses in the technical parameters of the cadastre, but derive from mismanagement and a general lack of accountability. The enactment of amendments to LPA legislation is recent, and has only been applied in a limited number of instances related to the mining sector. Consequently, the risk that LPAs could lead to increased corruption was rated medium.

Impact (3) The impetus for the enactment of new legislation extends beyond the mining sector. Consequently, the potential impacts from conflict and uncertainties regarding the integration of prospective LPAs into the cadastre is perceived to be medium. The purpose of creating LPAs is generally legitimate, and the issues are associated with a lack of accountability related to their creation.

Recommendations

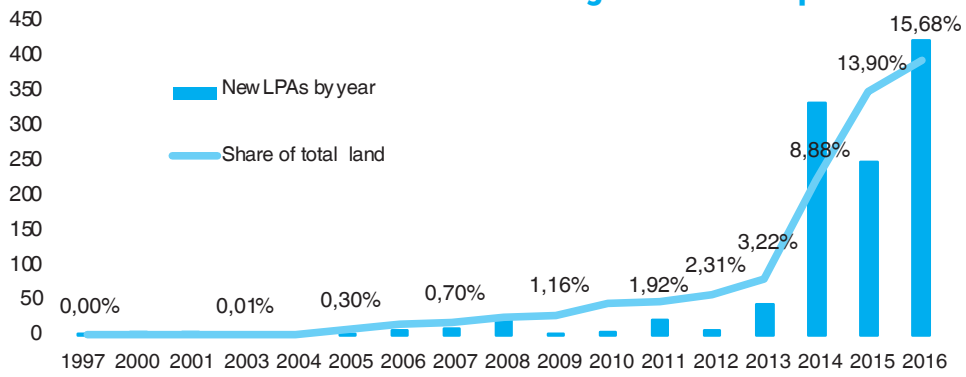
- There are several approaches that may be employed in order to integrate and coordinate the creation of new LPAs with the existing cadastre. One very efficient approach would be to develop a simple GUI program for local administrations, potentially based on a Google earth map, on which authorities could draw the approved protected areas, which could then be transmitted directly to the CMCS and incorporated. This could also include an option for national cadastre officials to review the proposed LPA, and consult with local officials on feasibility.
- Establishment of prospective LPAs could be considered in consultation with national and provincial authorities, companies and civil society when areas are proposed for mining. In this way, critical capacity and more understanding would be developed, and would ensure that optimal solutions are derived that support the national resource development strategy.

3.2.2. Background: Locally Protected Areas

The first LPAs were established in 1997, but it was only around 2013 when the numbers significantly increased. At year-end 2016, a total of 1,134 LPAs were created, covering 15.68% of the total land of Mongolia.[192] The rapid increase in LPAs is attributed to the enactment of legislation restricting the establishment of Nationally Protected Areas, and the subsequent realization that the less-scrutinized LPAs provide a more expeditious and straight-forward mechanism to expand the area that is environmentally protected.[193]

By design, the enactment of an LPA can be initiated by an aimag or soum governor, or even a local NGO. The prospective LPA is approved by the Protected Area Administration Department of the MET, which has proven supportive of such requests. The general inclination for decentralization provided further impetus to devolve authority to sub-sovereign levels for the protection and maintenance of protected areas. This orientation was bolstered by the experience with nationally protected areas which lack proper management and preservation by national officers.

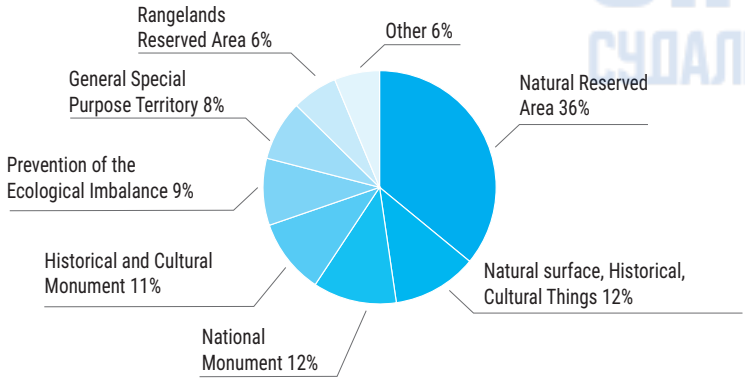
Figure 7 Development of LPAs



Source. Own Creation. MRPAM, Minerals Cadastre of Mongolia.

The reasons for which LPAs can be enacted are manifold. The main reason, however, is for purposes of environmental protection.

Figure 8 LPAs by Type (% of total LPAs by area)



Source: Own Creation. MRPAM, Minerals Cadastre of Mongolia

[192] MRPAM, Minerals Cadastre of Mongolia
[193] UNDP (2013)

3.2.3. Transparency of Cadastre System

Missing information. The CMCS only lists currently active licenses and a limited selection of related details. More comprehensive information is available through the Mongolian EITI report and its online data portal. A selection of key information not disclosed includes the mode of award (FCFS / tender / transfer); a list of all in-valid licenses, the date and reason for invalidation; unsuccessful applications and the reasons for denial.

Table 8 Public, registered, and EITI access CMCS online

	CMCS Public access	EITI 2016 Report	EITI online data portal
Registration id	√	√	√
License code	√	√	√
Area name (not clearly defined)	√	√	√
Aimag name	√	√	√
Soum name		√	√
License type (exploration license / mining license)	√	√	
Status of license (only valid licenses)	√	√	√
Status of license (both valid and not valid)		√	√
Company name	√	√	√
Company state registration number		v	√
Entity type (joint venture/foreign/limited)		√	
Area size	√	√	√
Area coordinates (coordinate degrees)	√	√	
Pledger register number and bank name		√	
Natural resource type for mining licenses		√	√
Date issued and expiration date		√	√
Registration date, deadline date, date of approval		√	
Denied license applications and reason for denial		√	

Source: MRPAM, Minerals Cadastre of Mongolia; Hart Nurse and Ulaanbaatar Audit Corporation (2016); MEITI, Mongolian EITI Data Portal

Timeliness of information. The scope of disclosures in the EITI reports changes yearly and appears to be largely at the discretion of the authorities. The EITI online data portal receives manually-prepared data from MRPAM cadastre officials on an ad-hoc basis, usually with several months' delay. Disclosures in the EITI reports are at least one year old, though summary statistics are published monthly. Delays in making detailed information available could be used to conceal corruption.

Accessibility of information. MRPAM maintains a website that is connected to the CMCS which provides a limited set of information to the public, and enhanced information to MRPAM employees and license holders. The research team requested registered access to the CMCS system for the purpose of this analysis, but was denied access with the explanation that information was 'confidential'.[194] The Organisational Confidentiality Law defines a document as confidential if it contains specific and sensitive company information that can influence trade, reputation or revenue. The company can independently define documents as proprietary.[195] License information is not downloadable in a machine-readable format

[194] Official Request to MRPAM Cadastre Division by TIM on 04.18.2017
[195] Organisational Confidentiality Law, 1995, Article 3.2

from the CMCS, which is the same as some of the EITI information. Information which cannot be accessed in machine-readable format requires substantial effort to compile and analyse, and can therefore be used to conceal important information.

Data analysis. Analysis requires technical knowledge to understand the license information that is disclosed by MRPAM and EITI. Both organisations provide limited contextual information; MRPAM through its annual and monthly reports, the EITI in the form of its annual report. Such efforts are commendable, but insufficient for a non-technical audience. A narrative explanation or analysis of the data is not provided. This is particularly problematic since statistics do not always align across all sources, or are incorrect.[196] As a result, there is generally very low knowledge, even on essential issues such as the exploration license granting stop since 2015 or how many licenses are awarded each year.[197]

Table 9 Cadastre Information Access Types

	CMCS Public access	EITI 2016 Report	EITI online data portal
Access type	Live	Annual reporting (ca. 1 year delay)	Intermittent updates (approx. quarterly)
Scope	Valid licenses	Valid licenses	Valid & non-valid l.
Machine-readable	No	Yes	Mixed
Map GUI	Yes	No	yes

Source: MRPAM, Minerals Cadastre of Mongolia; Hart Nurse and Ulaanbaatar Audit Corporation (2016); MEITI, Mongolian EITI Data Portal

Data assurance and integrity. Both the data owner and data host have a shared responsibility to provide assurance of data correctness and accuracy, but neither MRPAM nor EITI do so. MRPAM should provide audited statements on the validity and accuracy of data, and the EITI should clean and run data profiling to identify data errors and inconsistencies. Different sources of data should be reconciled and time-stamped. None of the numbers disclosed in MRPAM statistics, the EITI data portal or CMCS are consistent, and they are difficult to reconcile since information is not time-stamped. Assurance is particularly important since MRPAM provides information for the purpose of the EITI. In most cases external analysts have no means to audit and affirm data, even in instances where the statistics are obviously faulty.

Risk 11

Limited Accessibility of all License Information (PD36)

What is the risk that the details of licenses will not be publicly known?

Likelihood (3) Generally, the CMCS cadastre system and registry are well functioning systems, and information related to license details can be considered robust. Issues arise with unpublished or less robust contextual information. Non-disclosure must also be considered to be severe in the anti-corruption context so long as MRPAM restricts access to information and denies full disclosure. Stakeholders recognize that intransparency is not always intentional, but could result from limited experience and technical constraints. The risk of corruption associated with lack of transparency was therefore rated as low and unlikely to occur.

Impact (4) The consequences intransparency must however be considered to be high, since existing corruption practices may conveniently remain concealed as long as transparency and other efforts to improve accountability remain insufficient. The impact was therefore rated as high.

[196] Obvious flaws include higher number of awarded licenses than applications filed.
[197] 629 exploration licenses were awarded in 2016, all of them were applied for in 2015. None of this is mentioned, giving the impression that license applications have continued in 2016.

3.3. Prevention of Speculation

In a financial context, the term speculation is normally understood as the assumption of risk in return for the uncertain possibility of reward. Not all speculative practices should be considered to be negative. In the mining sector, the term speculation is most often used with negative connotations, referring to titleholders who apply for and hoard licenses with the intention of selling them later, and, without investing in exploration. If this practice of passive speculation is common, it could impede development of the mining sector and increase the risk of corruption since speculators are more willing to participate in, and/or entertain corrupt practices for short-term gain since they incur little reputational cost if corruption is uncovered.[198]

A different form of speculation is the acquisition of exploration licenses in order to promote the property and increase its selling value by undertaking exploration work. This type of active speculation is commonly undertaken by junior mining companies that have higher appetite for risk and therefore play an essential role in the development of the mining sector, particularly in periods when prices are low and country risks are high. Developed markets with stiff competition are more likely to be able to reduce passive speculation to a minimum, while less explored countries often tend to experience a higher share of passive speculators which can in the long run ultimately attract larger numbers of investors.[199]

3.3.1 Prevention of License Stockpiling: Mongolia implements two mechanisms which seek to prevent passive speculation, but their effectiveness is poor.

3.3.2. Prevention of a Secondary Market: The ability to transfer licenses tends to inspire investor confidence which is critically important to attracting desirable investment. The state should ensure that the same or similar standards are enforced on license transfers as on new license applications that use FCFS or other regular procedures. License transfers could otherwise be abused, effectively permitting brokers to supplant the state in its authority to grant licenses resulting in low-quality investment in the sector.

3.3.3. Beneficial Ownership: Strong arguments support the disclosure of the natural persons who truly own, control, or benefit from a company, the so-called Beneficial Owners. Mongolia does not enforce the disclosure of beneficial owners' identities, but meaningful progress is being made. We will discuss the risks and challenges of non-disclosure in this section.

3.3.1. Prevention of License Stockpiling

License stockpiling refers to the practice of acquiring exploration licenses for the purpose of speculation, without any intention of undertaking exploration work. Mechanisms to prevent license stockpiling should focus on compelling companies to invest in exploration while simultaneously preserving the overall investment attractiveness of the country. In this context, it is important to ensure the essential principles of security of title. There are no restrictions on how many exploration or mining licenses a company may hold. A 2013 proposed amendment to limit the number of mining licenses per company to five was not implemented[200] and stockpiling licenses in order to sell them to other companies is permitted. Mongolia, however, enforces two mechanisms to induce companies to invest in exploration, commonly referred to as work programmes. The first work programme is associated with staggered or increasing license fee, and the second requires minimum annual exploration expenditure. A third commonly-used programme is relinquishment or license forfeiture requirements, but this has not been enforced in Mongolia.

[198] M.D. Beevers (2015); 2017, OECD (2016), p.32
[199] E. Ortega-Girones, A. Pugachevsky and G. Walser (2009)
[200] BLP (2013)

Staggered license fees significantly increase the financial burden of holding an exploration license over time. The requirements associated with this mechanism are unambiguous, easily enforced and easily monitored. Fees are calculated based upon the size of the license and "its age". The mechanism also guarantees security of tenure, since it stimulates voluntary relinquishment, without the introduction of risks for the titleholder.[201] Mongolia tailors the fee structure to the common phases in exploration, namely a first validity period characterized by low fees when companies are obliged to apply for large areas. The fees are progressively raised and are more expensive as the exploration programmes advance and as companies normally reduce the area of interest to focus on identified targets. This inflection point when low fees during validation ratchet up to higher fees with greater targeting coincides with the time when passive speculation starts.[202]

The challenge regarding staggered license fees is to identify the right fee levels in order to prevent passive speculation without impeding active speculation and legitimate exploration. This criterion is a lot harder to fulfil in a sector with diversity in margins and generally high volatility. Identifying the right level of license fees should therefore be carefully considered, and the implications modelled. The scope of this research does not allow for the development of any elaborate answer, but it is noteworthy that exploration license fees remain significantly lower than mining license fees. While it is not possible to predict whether higher exploration license fees would impede bona fide exploration, evidence suggests that low exploration license fees, particularly when license durations are long (up to 12 years),[203] leads to abuse. License holders may be inclined to delay or defer investment, pending a rise in resource prices or the advent of technology to improve rates of resource recovery.

Table 10 Overview license fees

Annual Exploration License Fee	Minimum exploration expenditure thresholds	Annual Mining License Fee
Y1: MNT 145 / ha Y2: MNT 290 / ha Y3: MNT 435 / ha Y4-6: MNT 1,450 / ha Y7-9: MNT 2,175 / ha Y10-12: MNT 7,250 / ha	Y1: no costs Y2-3: USD 0.50 / ha Y4-6: USD 1.00 / ha Y7-9: USD 1.50 / ha Y10-12: USD 10.00 / ha	Y1-70: MNT 21,750 / ha for export; or MNT 7,250 / ha for domestic production.

Source: Minerals Law of Mongolia, 2006, Articles 32 & 33

Minimum exploration expenditure requirements constitute a threshold of expenditures that exploration companies need to meet. The threshold is calculated based on license size and "age". The minimum exploration expenditure is not a fee paid to the budget, but rather an annual spending threshold that the company must meet. Companies need to provide evidence over their own investment activities, and thus enforcement and monitoring is more difficult.[204] Similar to the license fee mechanism, it is challenging to identify the right threshold of annual expenditure that ensures adequate exploration is carried out. The requirement must be substantial enough to discourage speculation and consistent with standard exploration costs associated with other deposits in other geological environment.[205] Mongolia does not distinguish between different metallogenic deposits,

[201] E. Ortega-Girones, A. Pugachevsky and G. Walser (2009), p.38
[202] E. Ortega-Girones, A. Pugachevsky and G. Walser (2009), p.37
[203] N. Mutemeri, H. Mtegha and J. Rocha (2010), p.19
[204] C. Krakoff (2011)
[205] C. Krakoff (2011); E. Ortega-Girones, A. Pugachevsky and G. Walser (2009), p.39

and sets a single universal threshold for all minerals which increases over time. Several informants expressed their concern about the effectiveness of this mechanism, due to limited capacity for inspection.[206] A former head of an un-named agency believes that requiring MRPAM approval for the exploration expenditure report may be susceptible to corruption, since the company may be encouraged to bribe MRPAM officials to approve the report.[207]

Relinquishment requirements enforce the periodic surrender of a defined fraction of the license area at the discretion of the license holder, annually or on the date of each license extension.[208] The methodology is clear and involves no discretion. It is effective in compelling companies to undertake exploration, since companies have an inherent interest in only surrendering low-potential, unprofitable parts of a license. This mechanism also prevents excessively large areas from being held by a single company, and allows other companies to invest in surrendered parcels. Relinquishment obligations are not enforced in Mongolia. A July 2014 amendment to the Minerals Law would have provided for the surrender of 10% of an exploration area after 3 years, and 20% after 6 years, but was not included in the final law.[209] Staggered license fees and minimum exploration expenditures are unlikely to work efficiently, and so introduction of relinquishment requirements should be considered. The mechanism must be well-defined and communicated in order to ensure that relinquishment does not compromise the security of tenure.

Risk 12

Inadequate Work Programmes (PP4)

What is the risk that companies can stockpile exploration licenses without actually doing any work?

Likelihood (4) Since systems to prevent stockpiling are largely not in place, stockpiling goes largely undetected, and is therefore not statistically recorded. Research suggests that stockpiling is prevalent, which is corroborated by stakeholders.

Impact (3) Considering the relatively limited experience with private funded exploration, and the fact that less than 8% of the country is under exploration; stockpiling, was considered a common, but necessary evil, that does not constrain competitiveness in any significant way. While the state currently does not prevent stockpiling, participants perceive that this situation is changing as the sector matures.

[206] Head of Division of an un-named Ministry, 03.06.2017; Former Head of undisclosed Agency, 03.09.2017
[207] Interview Former Head of an un-named Agency 03.09.2017
[208] Relinquishment Guide, Queensland Government, 2016
[209] Minter Ellison (2014)

3.3.2. Prevention of a Secondary Market

The state governs and enjoys the authority to award and grant of subsurface rights on behalf of the owner, the people of Mongolia. In theory, secure and transferable mining rights substantially reduce investment risk, since they protect investors against the arbitrary revocation of claims and allow junior companies to undertake exploration with a view to selling their rights to larger and better-capitalized companies once a discovery is confirmed.[210] The GOM permits the business-to-business transfers of both exploration and mining licenses.[211] Transferred licenses retain their initial issuance and expiration dates.[212] This important provision prevents license stockpiling and should be maintained.

In order to ensure that prospective benefits are uncompromised in any way from license transfer, all transfers should require authorization and uphold the same standards for, due diligence and accountability as other license applications. License transfers should be taxed at a level comparable to that associated with the acquisition of licenses under other regular procedures. This will also ensure that the state preserves its authority to grant mineral titles and is not supplanted by third-party brokers.

Transparency. A list including the transferee, transferor, license number and transfer date has been disclosed for both exploration and mining license transfers in the 10th annual EITI Report.[213] Information disclosure allows for accountability, but must be timely. There currently exists no provision requiring timely data disclosure, and thus license transfer data is published one year in arrears and is thus out-dated. The ownership of the licenses should, however, be accessible on the CMCS webpage. Statistics on the number of licenses transferred annually are published by MRPAM. Transparency regarding transfers can thus be considered mostly sufficient.

Prevention of newly issued license transfers In the current system, a newly-issued exploration license can be transferred from the first day of its award. As the 2016 EITI report shows, 12 out of the 41 exploration licenses transferred in 2015 were issued less than three years earlier.[214] A 2014 Minerals Law Draft included an anti-speculation clause to prevent the transfer of a newly-issued exploration licenses within the first 3 years, but was not included in the approved version of the law.[215] This policy may incentivise companies to acquire exploration licenses for speculative purposes.

Fee for transfers. The state charges a service fee of MNT 1.5 million for an exploration license transfer, and MNT 7 million for the transfer of a mining license.[216] In this way, the state recovers a certain share of the surplus generated from the transfer. Under conditions prescribed by law, a regular application for an exploration license in the old system would cost more than MNT 4 million in fees and MNT 1 million for a mining license. While the fee for the transfer of a mining license is appropriate, the fee to transfer an exploration license is approximately MNT 2.5 million less expensive than acquiring a license by the FCFS procedure. Unless the fees for transfer are at least as high as the charges associated with obtaining a license under the regular process from the state, companies may seek

[210] C. Krakoff (2011), p.10
[211] Minerals Law of Mongolia, 2006, Article 50
[212] Minerals Law of Mongolia, 2006, Article of Mongolia, 2006, Article 49.6.1
[213] Hart Nurse and Ulaanbaatar Audit Corporation (2016), Appendix 16g
[214] Hart Nurse and Ulaanbaatar Audit Corporation (2016), Appendix 16e & 16f
[215] Oxford (2014)
[216] State Mandated Service Fees Law, 2011, Article 25.1

to obtain licenses directly from other companies rather than the state. This practice of acquiring exploration licenses through transfer may be further facilitated by the absence of due diligence and a more certain and expeditious process in comparison with other regular procedures. Such practice may result in missed opportunities regarding budget revenue (especially as long as partial-license transfers are legal), but could also facilitate speculation, license stockpiling, could undermine state oversight and discourage quality of investment.

In Mongolia, **due diligence** is only undertaken to affirm that the license seller has met all obligations. The license buyer is not subject to same due diligence associated with minimum capacity requirements. Transfers are confirmed in five days, which is an insufficient amount of time to allow for inspection.[217] Lack of enforcement of due diligence on the transferee significantly increases the risk of low quality investment, and to that extent increases the risk of sector corruption.

The ability to undertake **partial-license transfers** refers to the right of an exploration or mining license holder to transfer an arbitrary amount of their license area to any willing buyer for the same fee as for a complete license transfer.[218] The partial license areas only need to meet the general requirements prescribed by law regarding shape and size. This provision effectively enables companies to broker licenses cheaper than the state, undermining state authority and source of revenue. The surplus reaped by the seller in license transfers represents a loss of potential revenue to the state. Buyers of licenses through transfer are not subject to the same financial or technical criteria. They circumvent the uncertainty associated with the regular license award process, and generally encounter much less bureaucracy in a process that is generally faster.

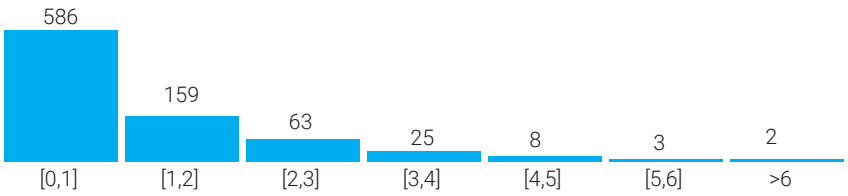
Between 2008 and 2016, 449 mining licenses and 2,047 exploration licenses were transferred, which means that on average 83% of all exploration licenses and 35% of all mining licenses have been transferred.[219] The statistics do not distinguish between complete and partial license transfers.

Change of ownership of the license holder. One way companies appear to commonly transfer licenses is to sell an entire company in order to circumvent fees and oversight. Once a company is sold the new owner reaches out to the MRPAM Cadastre Division to change the ownership of the license. No fee is charged for this change in the registry, and due diligence is not conducted on the new owner. A list of the number of such ownership transfers should be available internally at MRPAM.

In 2015 and 2016, about 586 of the 1,318 exploration license applications were awarded to companies that had applied for only one license.[220] At the end of 2014, unique companies held 866 of the 2,018 active licenses that were outstanding.[221] This data suggests that companies may have been created for the exclusive purpose of acquiring licenses with a view to selling the company, as a whole, at a later date, thus circumventing regulatory requirements and transfer fees.

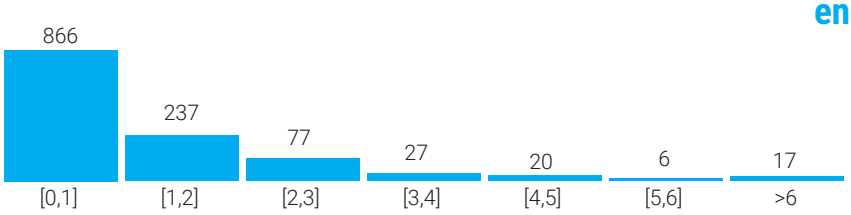
[217] Minerals Law of Mongolia, 2006, Article 49.6
[218] Minerals Law of Mongolia, 2006, Article 50
[219] MRPAM Monthly Statistics, 2017
[220] Hart Nurse and Ulaanbaatar Audit Corporation (2016), Appendix 16h; Data on newly-granted licenses is extremely limited because the state registration number is not listed, only the name of the company is used, commonly with typographic errors and in an inconsistent manner. The list of newly-issued licenses is only available from the EITI Report.
[221] Hart Nurse and Ulaanbaatar Audit Corporation (2016), Appendix 16a

Figure 9 Number of exploration licenses granted per company in 2015



Source: Own creation. Hart Nurse and Ulaanbaatar Audit Corporation (2016), Appendix 16h.

Figure 10 Number of active exploration licenses per company at year-end 2014



Source: Own creation. Hart Nurse and Ulaanbaatar Audit Corporation (2016), Appendix 16a.

Risk 13

Prevention of a secondary market (PP-N1)

What is the risk that the state's authority to issue licenses is undermined by brokers transferring licenses?

Likelihood (3) Most of policies discussed above systemically facilitate a circumstance in which business to business license transfers may be more attractive than applying for a license from the state. Drawing the line between legitimate transfers and speculation at the cost of the state is very difficult, particularly in a relatively underdeveloped mining sector, as in Mongolia. Despite high awareness abuse of license transfers is pervasive, and acceptance as a "necessary evil" appears to be high.

Impact (3) Quantifying the impact of speculation and illegitimate license transfer is difficult. Stakeholders are aware of the negative impacts regarding the deterrence to quality of investment, environmental and social impacts and increased risks for corruption, but they believe that more stringent enforcement will negatively impact the investment climate, and potentially hurt development. The negative impacts of speculation are similarly accepted as necessary for development.

Recommendations

- Raise transfer fees for exploration licenses to a minimum of MNT 4 million, equal to the fee for licenses issued by first-come-first-served procedure.
- Limit how often a license can be transferred, and only allow license transfers for those exploration licenses that have been extended at least once.
- Enforce the same or stricter technical and financial qualifications for license transferees as for licensees under regular procedures.

3.3.3. Beneficial Ownership

Beneficial Owners (BO) are natural persons who truly own, control, or benefit from a company. BO may hide behind a complex ownership structure, in which entities are held directly or indirectly by other companies, private trusts, or under private agreements. This means that the BO of a company can be – and often are - different from legal shareholders or nominees who act on behalf of the real manager or owner. The BO does not necessarily have to have an ownership share in a company, but may also be a natural person with significant say in company decision-making, which may indirectly benefit the BO or their cronies. The disclosure of BO therefore permits greater insight and understanding into who owns and stands behind a company, thus permitting the identification of conflicts of interest which would otherwise remain hidden.[222] There are many legitimate reasons for a company to have a complex ownership structure, but non-disclosure could conceal different types of corrupt practices. Multi-layered structures that cross various jurisdictions involving shell companies and other corporate vehicles can be used to channel and conceal corrupt transactions, and distance the corrupt agent from their crimes.

Mongolia does not enforce disclosure of BO. Efforts to advocate and promote an environment of BO disclosure have been spearheaded by the Mongolian EITI process.[223] Some mining companies have voluntarily disclosed corporate ownership in the annual EITI reports since 2013 (2013: 215 companies, 2014: 30 companies, 2015: 51 companies). In most cases, legal ownership is disclosed and for those cases in which natural persons are disclosed as equity holder, no evidence is provided whether this is the ultimate BO or only a nominee.[224] A visualization of information disclosed for reporting year 2013 is available from the Mongolian EITI webpage.[225] The international EITI standards require BO disclosure by 2020.[226] The latest draft on the Minerals Law from February 2017 includes a clause requiring the mandatory disclosure of BO.

Risk 14

Non-disclosure of Beneficial Owners (PD9)

What is the risk that applicants for licenses will be controlled by un-disclosed BO?

Likelihood (5)) Mongolian law does not require mandatory BO disclosure, and voluntary disclosure mechanisms remain largely ineffective for the sector as a whole. The likelihood that BO remains undeclared was perceived as very high and systemic.

Impact (4) The lack of access to adequate information on corporate structures, including beneficial ownership, ranks among the greatest corruption risks in the mining sector.[227] The impact of non-disclosure was perceived to be very high and systemic, but difficult to quantify. Stakeholders were aware that non-disclosure creates vulnerability to corruption and can be exploited for tax evasion, favouritism, bribery, money laundering, contract fraud and of financial crimes.[228] Non-disclosure of beneficial ownership received the second highest risk score because of the perception that the negative impacts are even more acute in other sectors such as public procurement and services.

[222] TI, Anti-Corruption Glossary
[223] MEITI (2016)
[224] EITI (2016)
[225] MEITI (2015)
[226] EITI (2017)
[227] OECD (2016), p.20
[228] A. Sayne, E. Westenberg, and A. Shafaie (2015)

Recommendations

- BO disclosure benefits all sectors, and the mining sector could set an important precedent for generally applied BO disclosure. The Licensing regime affords an inherently a strong framework to enforce new regulation. Existing bodies, like the State Registration Office and the license register, could be required to obtain and maintain up-to-date information on companies' beneficial ownership. BO information can be solicited and required at various points, such as the annual submission regular reports, or at the time of license award, extension or transfer.[229]
- Ensure the effective supervision of BO disclosure requirements, including the establishment and enforcement of effective and appropriate sanctions for non-compliance.
- To the extent possible, harmonize national regulations related to BO with international standards on ownership transparency, and consider using model BO declaration forms, such as that developed by the EITI.[230]
- A critical weak spot in obtaining BO information is limited cooperation between countries, which can be exploited by criminals seeking to conceal their identities by using multiple companies in-corporated in different jurisdictions. Mongolia should explore opportunities for increased cooperation, particularly with the home countries of companies operating in Mongolia, and reciprocally with the countries in which Mongolian companies operate. Mongolia could make BO information available online and establish a mechanism through which foreign authorities can request information.[231]

[229] FATF (2014)
[230] OECD (2016)
[231] FATF (2014)

4 RISK PROFILE

The corruption risk analysis identified 14 corruption risks resulting from 54 vulnerabilities. The table below provides an overview of all corruption risks and their sources, organized according to topics addressed in this assessment.

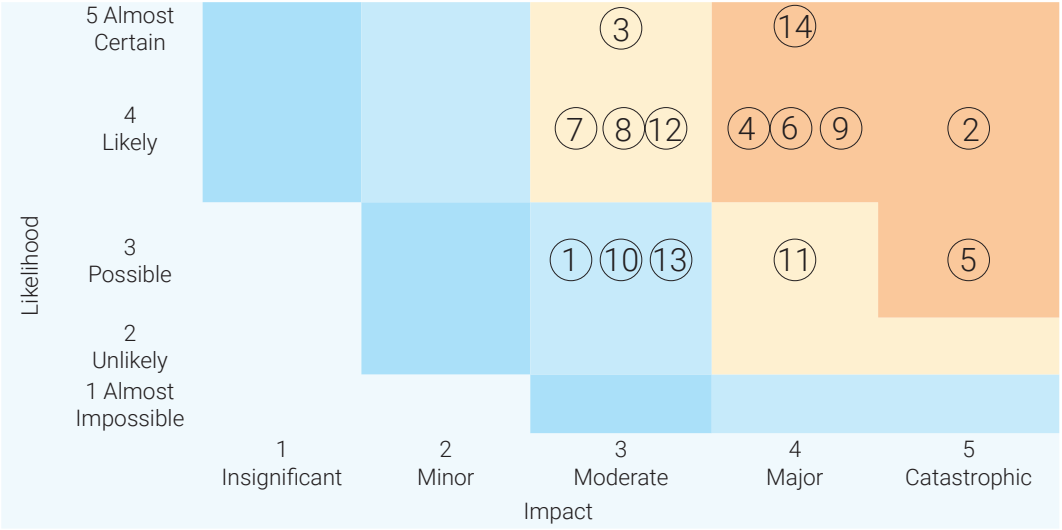
Overview risks and vulnerabilities by category

				Risks	Contributing Vulnerabilities				
Technological (T), Legal (L), Accountability (A), Discretion (D), Due Diligence (DD)									
Granting Mechanism	1	T		Violation of the First-Come-First-Served Principle	T	T	A	A	D
	2	D		Discretionary Power of Local Governor's approval	L	A	A	D	T
	3	D		Arbitrary selection of Areas for Tender	L	A	D		
	4	D		Manipulation of Tender Evaluations	A	A	A	D	DD
Ob-ligat-ions	5	D		Approval of DEIA	A	A	A	A	DD
	6	D		Approval of Reserve Deposits	A	A	D	DD	
	7	D		Manipulation of CDA negotiations	L	A	D	D	
Gover-nance	8	DD		Due Diligence	A	DD	DD		
	9	D		Arbitrary Information Sharing	L	A	T	T	
	10	T		Conflicts caused by Locally Protected Areas	T	L			
	11	T		Limited Accessibility of all License Information	A	A	A	A	L
Specula-tion	12	L		Inadequate Work Programmes	L	L	DD		
	13	L		Prevention of a secondary market	L	L	L	A	DD
	14	L		Non-disclosure of Beneficial Owners	L				

Source: Own creation

During two risk-scoring exercises held on the 9th and 11th of May 2017, risks were evaluated by thirteen stakeholders (see Annex B) on the basis of a presentation of the research findings. The 14 risks listed in Table 11 above were scored on scale from 1 to 5, impossible to certain. None of the risks were scored below '3' for likelihood or impact, thus each was perceived to be at least possible and to have at least moderate impact. The findings in this report were presented, and short discussions were held to agree upon appropriate scoring. The table below visualizes the results of the risk-scoring exercise.

Figure 11 Risk Matrix by likelihood and impact scoring



Source: Own creation

Likelihood scorings by stakeholders are largely consistent with expectations regarding the importance of a sound legal framework, appropriate accountability mechanisms and relevant supporting technology.

The risks scored with the highest likelihood '5' (Risks 3 & 14) are both notable for the complete absence of any legal regulation or accountability, making them 'almost certain' to occur. Risks rated as 'likely' to occur (4) (Risks 2, 4, 6, 7, 8, 9, 12) share a limited degree of legal regulation and accountability, and are perceived overall as largely inefficient and characterized by substantial discretion, which can be abused. Risks rated as 'possible' to occur (3) were perceived to have fairly strong regulation or accountability mechanisms (Risk 5: Approval of DEIA), or were of a technical nature (Risks 1, 10, 11). In the instance of Risk 13 the likelihood was perceived as difficult to assess.

Limited conclusions could be drawn regarding **impact scorings**. The author would like to suggest the following factors that may explain such limitations. The impacts of corruption are difficult to trace to a single specific risk, but must rather be considered as the cumulative effect of a number of risks. The impacts of risks are also difficult to measure, which also implies that the source of an impact is difficult to determine. Stakeholders' scoring may, however, explain most accurately the impact of risk on all stages of the operation, not only limited to the scope of this report that examines the allocation of exploration and mining licenses.

Risks with the highest impact scoring '5', 'catastrophic' were perceived to have a particularly strong adverse impact on the licensing process itself, but also on the overall mining governance system regarding local participation (Risk 2) and environmental protection and mitigation (Risk 5). Both of these risks also have a particularly strong impact on sector management at the provincial level where stakeholders seek to secure (undue) benefits or block mining operations due to these two key mechanisms not being properly implemented. The impacts of risks scored to have a 'major' impact '4' (Risks 4, 6, 9, 11, 14) also share this feature of impact on the entire sector that extend beyond the licensing process itself. The impact of risks scored to have a 'moderate' impact '3' (1, 3, 7, 8, 10, 12, 13) were perceived to have impacts that are limited to the licensing process itself, and less of an impact on the sector as a whole.

The **total risk score** of each of the risks can be considered to be an indicator of the significance of each risk, and considers both likelihood and impact scoring. The colour code indicates this significance, with all risks being placed in the three most significant categories from red to yellow then blue. This classification system provided by the TI MACRA methodology emphasises impact as the key factor of concern. The highest total scores are not to be construed as a single indicator for the

purpose of prioritizing engagement to mitigate or prevent risk.

Limitations. The risk scoring exercise seeks to overcome subjectivity in corruption-related research by involving diverse stakeholders whose collective inputs contribute to a robust and accurate assessment of risk. Insight and understanding would, however, benefit from participation of a larger population of stakeholders, particularly government officials. Variance and discrepancies in scoring amongst stakeholders are attributable to different perceptions of the sector that are derived from prior experience, and from differing perspectives on the veracity of the evidence.

Annexes

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B. List of Interviews

	Organisation and department	Date	Interviewee	Place
1	Representative of Open Society Forum	01.30.2017	Richard Biastoch	OSF office, UB
2	Director of NRGI Mongolia	01.31.2017	Richard Biastoch	NRGI Office, UB
3	Former Head of Minerals Council of Mongolia (MCM)	01.02.2017	Richard Biastoch	Zen Res-taurant, UB
4	Honorary Research Fellow at the University of Queensland	02.02.2017	Richard Biastoch	Azurro Café, UB
5	Representative of Mongolian National Mining Association (MNMA)	02.15.2017	Richard Biastoch	MNMA office, UB
6	Geologist of Adam Smith International (ASI) – Mongolia Extractives Program (AMEP)	02.16.2017	Richard Biastoch	ASI office, UB
7	Former employee of MRPAM	02.16.2017	Richard Biastoch	Un-named
8	Bayarmaa B., Head of Khuvsul Dalain Ezed NGO	02.23.2017	Batpurev Ayushsuren	Bodi Tower
9	Bayarsaikhan N., Coordinator of CSO Coalition of Mongolian EITI	02.23.2017	Batpurev Ayushsuren	Bodi Tower
10	Head of state administration division of MRPAM	03.03.2017	Batpurev Ayushsuren	MRPAM office
11	Head of Division of un-named Agency	03.03.2017	Batpurev Ayushsuren	Un-named
12	Representative of Mongolian National Mining Association (MNMA)	03.03.2017	Batpurev Ayushsuren	MNMA office, UB
13	Head of Division of un-named Ministry	03.06.2017	Batpurev Ayushsuren	Un-named
14	Former Head of un-named Agency	03.09.2017	Batpurev Ayushsuren	Un-named
15	Representative of Geology, Mining and Environmental Inspection department of GASI	03.09.2017	Batpurev Ayushsuren	GASI Office, UB
16	Former employee of MRPAM	03.10.2017	Richard Biastoch	Un-named
17	IT specialist of un-named company	03.14.2017	Richard Biastoch	Tuul Café, UB
18	Mining Investor	03.15.2017	Batpurev Ayushsuren	Bayangol Res-taurant, UB
19	Geologist of Adam Smith International (ASI) – Mongolia Extractives Program (AMEP)	03.30.2017	Enkh-Uils Ganbold	ASI office, UB
20	Environmental specialist from un-named mining company	04.04.2017	Richard Biastoch	Un-named
21	Environmental specialist from un-named mining company (2 pax)	04.04.2017	Richard Biastoch	Un-named
22	Specialist from un-named mining company	04.04.2017	Enkh-Uils Ganbold	Un-named
23	Representative GreenTrends	04.11.2017	Enkh-Uils Ganbold	GreenTrends Office, UB
24	Environmental expert of un-named Agency	04.18.2017	Enkh-Uils Ganbold	Un-named
25	Representative of Mongolian Association of Environmental Professionals (MAEP) (2 pax)	04.21.2017	Enkh-Uils Ganbold	MAEP office, UB
26	Javkhlanbold D., former MMHI employee	06.20.2017	Richard Biastoch	TIM office

C. Risk Scoring Exercises Participation

Risk Scoring Exercise, May 9th, 2017
Meeting Room of Club Coworking, Ulaanbaatar

1	Sh.Tsolmon	National Coordinator	EITI Mongolia
2	D.Enkhbold	Executive Director	Mongolian National Mining Association
3	N.Erdenebayar	Manager Environment and Biodiversity	Oyu Tolgoi
4	G.Damdinnyam	Managing Director	Procon Mining Mongolia
5	A.Batpurev	Researcher	(Independent)

Risk Scoring Exercise, May 11th, 2017
Training Facilities of Gesellschaft für Internationale Zusammenarbeit (GIZ)
Integrated Mineral Resource Initiative (IMRI), Ulaanbaatar

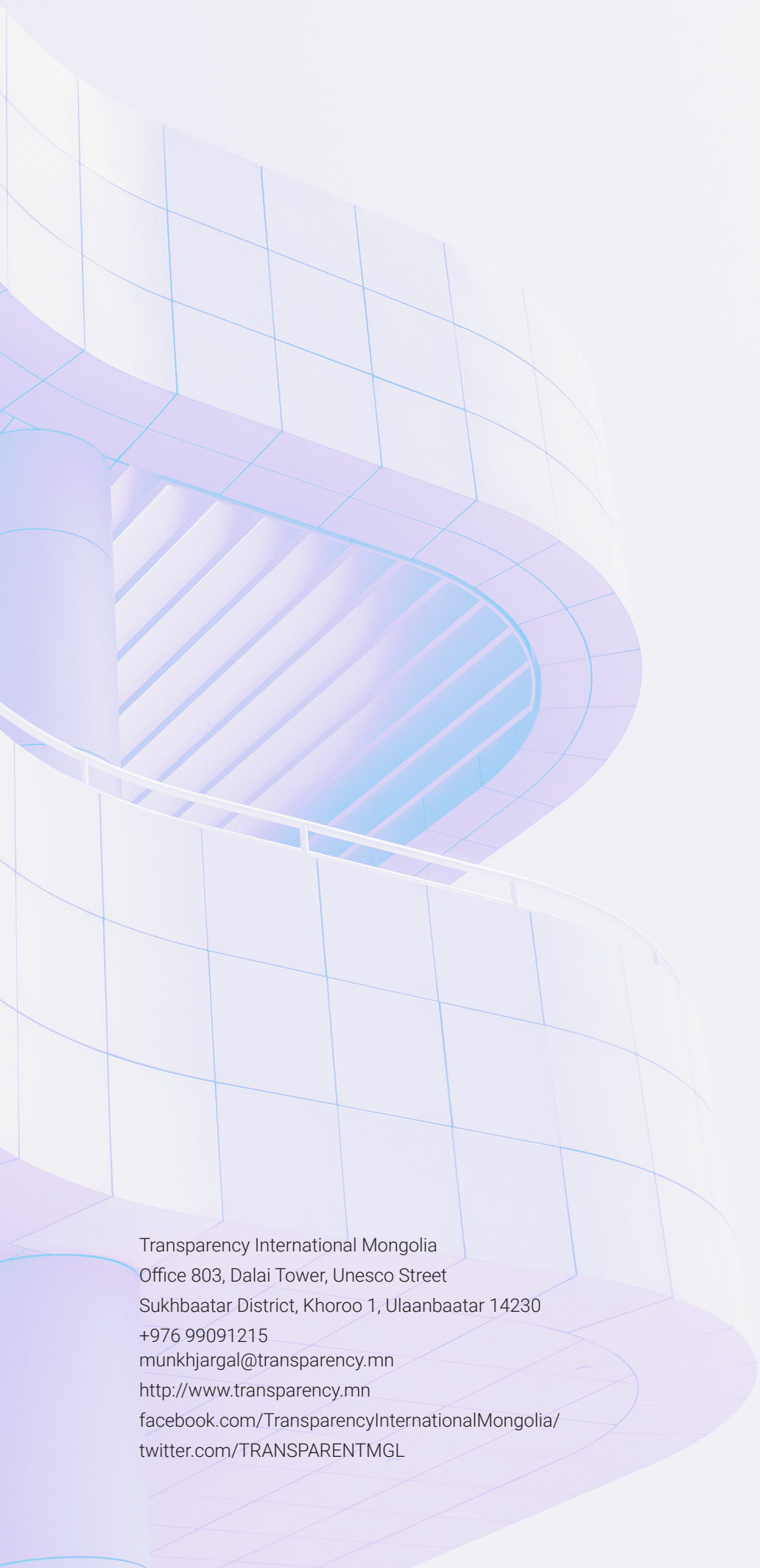
1	N.Bayarsaikhan	Coordinator	Publish What You Pay Mongolia
2	L. Otgontsetseg	Director	Peoples in River Basins Onon-Ulz NGO
3	B.Byambaragchaa	Specialist	MMHI, Department of Heavy Industry Policy
4	Ts.Batsugar	Researcher	Independent Research Institute of Mongolia
5	D.Erdenechimeg	Director Governance Prograogram	Open Society Forum
6	B.Delgermaa	Communications Officer	EITI Mongolia
7	G.Ganbat	IT Consultant	EITI Mongolia
8	D.Enkhbold	Executive Director	Mongolian National Mining Association

D. Advisory Group Members

1	D.Erdenechimeg	Director Governance Prograogram	Open Society Forum
2	Ch.Otgochuluu	Independent Expert	
3	D. Byambajav	Independent Expert	
4	J.Sunjidmaa	Independent Expert	
5	G.Damdinnyam	Managing Director	Procon Mining Mongolia
6	N.Dorjdari	Director	Natural Resource Governance Institute of Mongolia

E. Licenses issued by Tender

№	Location	Size (ha)	Threshold amount (MNT)	Prior license status	Timeframe
1	Bayankhongor province	1,129.06	1,524,150	Expired Exploration	05.01.2017
2	Bayankhongor province	847.99	1,902,912	Mining	05.01.2017
3	Uvs province	952.66	2,138,532	Mining	05.01.2017
4	Bayankhongor province	1,270.41	2,849,880	Mining	05.01.2017
5	Dundgovi province	3,645.76	4,922,100	Expired Exploration	05.01.2017
6	Bayankhongor province	2,225.06	4,992,900	Mining	05.01.2017
7	Uvs province	4,719.96	6,372,000	Expired Exploration	05.01.2017
8	Dornogovi province	3,924.47	7,065,000	Revoked Exploration	05.01.2017
9	Uvs province	5,945.12	13,342,824	Mining	05.01.2017
10	Arkhangai Province	7,094.64	15,921,180	Mining	05.01.2017
11	Dornod province	18,467.24	41,439,938	Mining	05.01.2017
12	Dornod province	23,570.66	52,893,324	Mining	05.01.2017
13	Tuv province, Zaamar soum	5,628.50	12,630,354	Mining	05.08.2017
14	Tuv province, Zaamar soum	15,541.08	34,874,183	Mining	05.08.2017
15	Dornogove province	620.75	1,394,000	Mining	05.12.2017
16	Khovd province	765.04	1,717,000	Mining	05.12.2017
17	Khovd province	996.50	2,238,000	Mining	05.12.2017
18	Bayan-Ulgii province	2,003.62	4,500,000	Mining	05.12.2017
19	Uvurkhangai province	2,458.19	5,516,000	Mining	05.12.2017
20	Arkhangai province	2,749.69	6,171,000	Mining	05.12.2017
21	Dornod province	3,642.74	8,173,000	Mining	05.12.2017
22	Bayankhongor province	7,577.53	10,229,000	Expired Exploration	05.12.2017
23	Arkhangai province	5,378.41	12,070,000	Mining	05.12.2017
24	Gobi-Altai province	6,158.24	13,820,000	Mining	05.12.2017
25	Arkhangai province	12,539.29	28,138,000	Mining	05.12.2017
26	Uvurkhangai province	22,350.96	50,156,000	Mining	05.12.2017
27	Dornod province	31,756.04	71,260,000	Mining	05.12.2017
28	Bayankhongor province	14,397.28	32,309,500	Mining	05.18.2017
29	Selenge province	181.82	245,700	Expired Exploration	05.19.2017
30	Khovd province	5623.7	12,620,300	Mining	05.19.2017



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