

Validation of MONGOLIA
Validation Report
Sustainable Development Strategies Group (SDSG), Independent Validator
10 October 2016

1. BACKGROUND

As one of the first countries to implement the EITI and to expand its scope of reporting to include a large number of companies, Mongolia has long been considered a pioneer in EITI implementation. Mongolia's EITI Reports cover industry contributions to environmental funds and reporting by subnational governments. While facing the challenges and opportunities of frequent political change, Mongolia is working to make data more accessible through innovative tools such as its online data portal. The EITI Board agreed on 2 June 2016 that Mongolia's Validation against the 2016 EITI Standard would commence on 1 July 2016. Pursuant to the Validation Guide, the Secretariat carried out the first phase of validation: initial data collection, stakeholder consultations, and preparation of their initial evaluation of progress against the EITI requirements ("Initial Assessment"). SDSG was appointed as the Independent Validator to evaluate whether the Secretariat's work has been carried out in accordance with the Validation Guide. SDSG will review and amend the Initial Assessment, as needed, and has summarized its comments in this Validation Report for submission to the EITI Board.

- **Work Performed by the Independent Validator**

The Secretariat requested submission of the Validation Reports for Mongolia and four other countries prior to the Board meeting in Astana in late October. Both PDF and editable versions of the Initial Assessments for these countries were transmitted to the SDSG Validation Team in September 2016. We received and took into consideration comments on the Secretariat's Initial Assessment from the following stakeholders: Mongolia's Ministry of Mining & Heavy Industry, the Mongolian National Mining Association, Publish What You Pay Mongolia Civil Society Coalition, and the Multi-Stakeholder Working Group (MSWG) Chair, Mr. Enkhbyara Namjildorj, Senior Advisor to the Prime Minister. The Validation Team committed to undertake this task through: (1) In-depth review and marking up of the EITI Assessment by the team; (2) Detailed review and comments by the Multi-Stakeholder Specialist of Requirements 1 and 7; (3) Detailed review and comments by the Financial Specialist of Requirements 2 through 6; and (4) Overall organizational and drafting lead by the Team Leader.

- **Comments on the Limitations of the Assessment**

The most significant challenge for the Validation Team is the compressed time frame within which to undertake its review of EITI implementation in Mongolia. Stakeholder outreach was not practicable, and detailed review of documentation beyond the Initial Assessment is necessarily limited. It should be noted, however, that the Independent Validator is not expected to duplicate the data collection and consultation work completed by the Secretariat. Neither is it permitted to consider activities conducted after 01 July 2016, per express directive of the Board. Notwithstanding these limitations, the Validation Team has carefully reviewed the Secretariat's Initial Assessment and applicable references to determine Mongolia's level of progress against the requirements of the 2016 Standard.

- **Comments on the Initial Assessment**

The initial data collection, stakeholder consultations, and drafting of the Initial Assessment were generally undertaken by the Secretariat in accordance with the Validation Guide. This entailed a desk

review of relevant documents from 4–17 June 2016, a country visit by a four-person team from 6–8 July 2016 that coincided with the Asia Europe People’s Forum, and the Civil Society Organization (CSO) meeting preceding the 11th Asia-Europe Meeting (ASEM) on 15–16 July 2016 in Ulaanbaatar. This made it difficult for the Secretariat to meet with some stakeholders, such as development partners, but also facilitated meetings with a broad range of Mongolian CSOs who were in Ulaanbaatar for the Forum. Notably, *all* meetings were held in Ulaanbaatar, which naturally limits the extent of consultations with stakeholders based outside of the city. The visit followed the 29 June 2016 legislative elections, during a period of government restructuring and reorganization in Mongolia. Use of a translator during consultations may also have limited the extent and depth of stakeholder consultations. The Secretariat was able to meet with a very broad range of stakeholders, including the MSWG, Independent Administrator, stakeholders represented on the MSWG, and stakeholders directly participating in the MSWG. It does not, however, appear that the Secretariat was able to consult with stakeholders *not* involved in the EITI process. Although the Secretariat’s country visit was only 3 days and was limited by the factors noted above, the team was able to meet with a broad group and impressive number of stakeholders representing all sectors.

The Secretariat’s Initial Assessment is well organized and easy to read. The documentation of progress and of stakeholder views is detailed and thorough, and the initial assessments demonstrate thoughtful and careful analysis.

2. GENERAL COMMENTS

- **Progress in EITI Implementation**

Mongolia has produced nine EITI reports covering the fiscal years 2006–2014, with 1,198 oil, gas, coal, and mining companies reported in FY2013. Mongolia is currently preparing its 10th report covering fiscal year 2015. The Secretariat’s Assessment notes that “the early stages of the EITI in Mongolia were characterised by momentum and inclusiveness. More recently, particularly since 2012, attendance by designated MSWG and National Council members has been less consistent.”

Mongolia has been able to expand the scope of reporting to include a large number of companies, and to cover industry contributions to environmental funds and reporting by subnational governments. It has also established subnational EITI councils and increased EITI data accessibility through an online data portal. Areas of concern include data quality assurance and comprehensiveness of reporting by both government and industry as well as state-owned enterprises, including quasi-fiscal expenditures, financial relations with government, and third-party financing.

- **Impact of EITI Implementation**

Mongolia has seen many positive impacts of EITI Implementation. Through open days and increased activities at the soum and aimag levels, including through EITI sub-councils, EITI has contributed to public debate and increased transparency. The Secretariat’s Initial Assessment notes that many local government and local civil society stakeholders noted a change of attitudes of central government entities and companies. “While they were previously perceived as not caring about the impact on local communities, it was noted there was now more respect and attention paid to the needs and interests of local communities. Local residents now had access to information on the number of licenses active in their soum and aimag, where previously only the local governor had access to this information.” Government representatives noted that transparency in revenues and expenditures have created a supportive environment for investment, created grounds for building trust with local communities, and ensured a social license for extractives companies to operate.

- The Independent Validator's Assessment of Compliance

Figure 1 – Validator's assessment

EITI Requirements		LEVEL OF PROGRESS					
		No Progress	Inadequate	Meaningful	Satisfactory	Beyond	Note
Categories	Requirements						
MSG oversight	Government engagement (#1.1)			Meaningful	Satisfactory		1
	Industry engagement (#1.2)				Satisfactory		
	Civil society engagement (#1.3)				Satisfactory		
	MSG governance (#1.4)			Meaningful			
	Work plan (#1.5)				Satisfactory		
Licenses and contracts	Legal framework (#2.1)				Satisfactory		
	License allocations (#2.2)			Meaningful			
	License register (#2.3)			Meaningful			
	Policy on contract disclosure (#2.4)				Satisfactory		
	Beneficial ownership (#2.5)						
	State participation (#2.6)		Inadequate				
Monitoring production	Exploration data (#3.1)				Satisfactory		
	Production data (#3.2)				Satisfactory		
	Export data (#3.3)			Meaningful	Satisfactory		2
Revenue collection	Comprehensiveness (#4.1)				Satisfactory		
	In-kind revenues (#4.2)			Meaningful			3
	Barter agreements (#4.3)						
	Transportation revenues (#4.4)				Satisfactory		
	SOE transactions (#4.5)			Meaningful			
	Direct subnational payments (#4.6)			Satisfactory	Satisfactory		4
	Disaggregation (#4.7)				Satisfactory		
	Data timeliness (#4.8)				Satisfactory		
	Data quality (#4.9)			Meaningful			
Revenue allocation	Revenue management & expenditures (#5.1)				Satisfactory		
	Subnational transfers (#5.2)			Meaningful			
	Distribution of revenues (#5.3)						
Socio-economic contribution	Mandatory social expenditures (#6.1.a)			Meaningful			
	Discretionary social expenditures (#6.1.b)						
	SOE quasi-fiscal expenditures (#6.2)		Inadequate				
	Economic contribution (#6.3)				Satisfactory	Beyond	5
Outcomes and impact	Public debate (#7.1)				Satisfactory		
	Data accessibility (#7.2)						6
	Follow up on recommendations (#7.3)				Satisfactory		
	Outcomes & impact of implementation (#7.4)			Meaningful			

Notes: 1–2: Validator disagrees and finds that meaningful, rather than satisfactory, progress has been made

3: Validator disagrees that this Requirement is not applicable, and finds that Mongolia's progress is meaningful.

4: Validator disagrees that Mongolia's progress is meaningful, and finds that it is satisfactory.

5: Validator agrees that Mongolia's progress is satisfactory, but finds that Mongolia has gone beyond what is required.

6: Validator notes that 7.2 is encourage and not required, thus is not taken into account in the overall assessment of compliance.

3. DETAILED FINDINGS

- 1.1 **Government engagement.** We disagree that Mongolia has made satisfactory progress and find that progress is **MEANINGFUL**. We note that Mr. Baabar, as MSWG Chair, stated at a 22 May 2016 Working Group Meeting that CSOs are “the villain” and, according to the Secretariat’s Initial Assessment, CSO stakeholders view him as “hostile to CSO participation.” This undermines the effective engagement required under 1.1(c) and reflects poorly on government leadership of EITIM. The Initial Assessment notes that attendance by designated MSWG and National Council members has been inconsistent, with “civil society and government representatives tending to designate alternates to attend meetings, with little consistency in the ad hoc nomination of alternatives.” Additionally, frequent political change has impacted the holding of National Council meetings: “successive Prime Ministers and Ministers of Finance have not attended a National Council meeting since 2012. The National Council did not meet in 2014 (although it made up for this by meeting twice in 2015) because the Chair of the MSWG was left vacant for five months due to delays in the formation of a new government (in November 2014) and appointment of a new MSWG Chair.” “Frequent changes in Prime Ministers impacted the chairing of National Council and MSWG meetings, since the senior advisor to the Prime Minister selected to chair the MSWG.” Finally, while government has provided funding to EITI implementation, funding has been inconsistent.
- 1.2 **Company engagement.** We agree that Mongolia has made **SATISFACTORY** progress, and encourage the MSWG to work to engage greater participation of smaller mining companies.
- 1.3 **Civil society engagement.** We agree that Mongolia has made **SATISFACTORY** progress.
- 1.4 **MSG governance and functioning.** We agree that Mongolia has made **MEANINGFUL** progress.
- 1.5 **Work Plan.** We agree that Mongolia has made **SATISFACTORY** progress.
- 2.1 **Legal Framework and Fiscal Regime.** We agree that Mongolia has made **SATISFACTORY** progress.
- 2.2 **License Allocations.** We agree that Mongolia has made **MEANINGFUL** progress.
- 2.3 **Register of Licences.** We agree that Mongolia has made **MEANINGFUL** progress.
- 2.4 **Contracts.** We agree that Mongolia has made **SATISFACTORY** progress. However, the Initial Assessment references very limited overviews of the contracts that had been made public to date and does not clearly state that the EITI Report includes a reference or link to the location where those contracts were published.
- 2.5 **Beneficial Ownership.** Implementing countries are not yet required to address this provision and progress on this provision does not yet have implications for a country’s EITI status.
- 2.6 **State Participation.** We agree that Mongolia has made **INADEQUATE** progress.
- 3.1 **Exploration.** We agree that Mongolia has made **SATISFACTORY** progress.

- 3.2 **Production.** We agree that Mongolia has made **SATISFACTORY** progress. However, we note the concerns raised that regional disaggregation is not comprehensive and about data inconsistencies across sources.
- 3.3 **Exports.** We disagree with the assessment that Mongolia has made satisfactory progress in meeting this requirement, and find that it has made **MEANINGFUL** progress. Although the Initial Assessment states that MRAM publishes export volume and value figures for all minerals exported (presumably disaggregated by commodity), it also states that mineral and crude oil export volumes and values are not disaggregated by province or district of origin. In addition, export data is required to be disclosed for the fiscal year covered by the EITI Report (presumably meaning all exports during that year), but a statement attributed to MRAM suggests that only minerals that are produced and sold during the same year are included in the numbers reported by MRAM, which would exclude some portion of the exports made during that year. Based on the Initial Assessment, it appears that *significant aspects* of the requirement are in the process of being implemented by Mongolia, but that that process is not complete and the broader objective of the requirement (including comprehensive disclosure, disaggregated by commodity and region of origin) has not yet been fulfilled.
- 4.1 **Comprehensive Disclosure of Taxes and Revenues.** We agree that Mongolia has made **SATISFACTORY** progress.
- 4.2 **Sale of the State’s Share of Production or Other Revenues Collected in Kind.** We disagree that this provision is not applicable because we disagree with the distinction drawn in the EITI Report, and accepted in the Initial Assessment, that the sale of profit oil to which the state is legally entitled is not covered by provision 4.2 if the oil is sold by the operator, on behalf of the state, instead of being sold by the state. The issues that provision 4.2 is designed to draw out—potential issues involving volumes sold, prices obtained, and fees paid—are present in the arrangement where an operator sells on behalf of the state. Given that the revenues from the sales are fully disclosed and reconciled, but that volumes were not disclosed, we would assess this provision as **MEANINGFUL** progress.
- 4.3 **Infrastructure Provisions and Barter Arrangements.** This provision is not currently applicable to Mongolia because such arrangements were fully considered and determined not to be material.
- 4.4 **Transportation Revenues.** We agree that Mongolia has made **SATISFACTORY** progress. As required by provision 4.4, the EITI Report documents that the MSWG considered the issue of disclosing transportation revenues and an implied rationale (immateriality) for nondisclosure, or at least, a lack of complete disclosure.
- 4.5 **Transactions Related to State-Owned Enterprises.** We agree that Mongolia has made **MEANINGFUL** progress.
- 4.6 **Subnational Payments.** We disagree that Mongolia has made meaningful progress and find, instead, that it has made **SATISFACTORY** progress. Based on the findings contained in the Initial Assessment, the MSWG selected nine subnational revenue streams and disclosed, disaggregated, and reconciled them in accordance with its agreed materiality thresholds. The issue raised in the Initial Assessment regarding SOEs seems more properly addressed through provisions 2.6 and 6.2.
- 4.7 **Level of Disaggregation.** We agree that Mongolia has made **SATISFACTORY** progress. We note, however, that although Mongolia is considering project-level disaggregation; the data

is not reported in that manner, which is required if such reporting is to be consistent with US SEC rules and forthcoming EU requirements.

- 4.8 **Data Timeliness.** We agree that Mongolia has made **SATISFACTORY** progress.
- 4.9 **Data Quality and Assurance.** We agree that Mongolia has made **MEANINGFUL** progress. The fact that a significant number of reporting companies and government entities failed to comply with the agreed-upon quality assurance procedures, and none provided the limited assurance opinions that were requested, is particularly concerning.
- 5.1 **Distribution of Extractive Industry Revenues.** We agree that Mongolia has made **SATISFACTORY** progress.
- 5.2 **Subnational Transfers.** We agree that Mongolia has made **MEANINGFUL** progress.
- 5.3 **Revenue Management and Expenditures.** This is encouraged, but not required, thus is not taken into account in the overall assessment of compliance.
- 6.1 **Social Expenditures by Extractive Companies.** We agree that Mongolia has made **MEANINGFUL** progress with regard to the disclosure of mandatory social expenditures, for the reasons set forth in the Initial Assessment, and note that the disclosure of discretionary social expenditures is encouraged, but is not considered in assessing Mongolia's progress.
- 6.2 **Quasi-Fiscal Expenditures.** We agree that Mongolia has made **INADEQUATE** progress.
- 6.3 **The Contribution of the Extractive Sector to the Economy.** We agree that Mongolia has made satisfactory progress and find that it has gone **BEYOND** what is required, especially in regard to employment data.
- 7.1 **Public Debate.** We agree that Mongolia has made **SATISFACTORY** progress. In particular, we agree that while the organization of subnational dissemination events and establishment of subnational MSGs is commendable and has contributed to public debate, the MSWG may wish to consider establishing more formal mechanisms for incorporating subnational MSG input into national EITI discussions.
- 7.2 **Data Accessibility.** This is encouraged, but not required, thus is not taken into account in the overall assessment of compliance.
- 7.3 **Lessons Learned and Follow-Up on Recommendations.** We agree that Mongolia has made **SATISFACTORY** progress.
- 7.4 **Outcomes and Impacts of EITI Implementation.** We agree that Mongolia has made **MEANINGFUL** progress.

4. **RECOMMENDATIONS.**

Below are the Secretariat's overarching recommendations for improving EITI implementation in Mongolia, with the Validation Team's modifications and supplements in italics.

- 4.1 *The government should designate a MSWG Chair who is respectful of all stakeholders, to ensure full, active, and effective engagement in the EITI process. The government is encouraged to agree*

a process to better manage (1) consistency in government attendance at MSWG and National Council meetings, and (2) methods to support continued MSWG functioning through elections and political change.

- 4.2 The composition and structure of the EITI governance institutions should be revisited, with consideration given to reducing the number of representatives on the working-level body, increasing the frequency of working-level meetings and improving reporting on these discussions (including those of ad hoc working groups).
- 4.3 The three stakeholder groups should consider what issues in the extractive sector the EITI can help address and how. The objectives of EITI implementation could then be more clearly articulated, and the work plan revised to address these objectives.
- 4.4 Outreach and stakeholder consultation mechanisms should be reviewed and formalised to improve the relevance of MSWG discussions to national debates and key demands of stakeholders not directly participating in the MSWG.
- 4.5 The MSWG is urged to consider revisiting the materiality threshold for payments (Including in-kind revenues, transport revenues and barter and infrastructure transactions) to strike a balance between the comprehensiveness of disclosures and the quality of reporting. The MSWG should agree with the National Statistics Office the procedures for updating reporting templates in conjunction with the IA, and make these procedures public. The MSWG should also ensure that the IA includes a clear assessment of the comprehensiveness of the next EITI Report.
- 4.6 *Mongolia should disaggregate mineral and crude oil export volumes and values by province or district of origin as required under 3.3 of the EITI Standard.*
- 4.7 In preparing the next EITI Report, covering FY2016, the MSWG and Independent Administrator (IA) should develop a robust and pragmatic approach for addressing the quality assurance of EITI disclosures from both government and companies. The MSWG should work with the Mongolian National Audit Office (MNAO), the State Professional Inspection Agency (SPIA), the IA, and industry MSWG members in particular to establish a robust quality assurance framework. The MSWG should consider procuring its next IA earlier in the year to allow for sufficient time to consider these issues before data collection.
- 4.8 In preparing the next EITI Report, the MSWG should clarify the number of mining, oil, and gas licenses awarded and transferred in the year under review, highlighting any non-trivial deviations from statutory procedures. The MSWG should also ensure that the dates of application for all licenses held by material companies are publicly available ahead of publication of the next EITI Report. The government may wish to consider making this data part of the online license system.
- 4.9 In preparing the next EITI Report, the MSWG should ensure the government's policy on beneficial ownership is clearly stated and include information on the legal ownership.
- 4.10 In preparing the next EITI Report, the MSWG should clarify the practices related to SOEs' retained earnings and reinvestment, any changes in government ownership in SOEs or their subsidiaries during the year under review, and provide a comprehensive account of any loans or loan guarantees extended by the state or SOEs to mining, oil, and gas companies. The MSWG should consider the existence of subsidies in the mining sector and of other quasi-fiscal expenditures undertaken by SOEs in the extractive industries.

- 4.11 In preparing the next EITI Report, the MSWG should ensure that the IA provides an assessment of comprehensiveness and reliability of the (financial) data presented, including an informative summary of the work performed by the IA and the limitations of the assessment provided.
- 4.12 In preparing the next EITI Report, the MSWG should clarify the distinction between SOEs' direct subnational payments and subnational transfers prior to data collection. The MSWG should ensure that the Report includes the revenue sharing formula used to calculate transfers to individual aimags and soums, to support an assessment of discrepancies between budgeted and executed subnational transfers.
- 4.13 In preparing the next EITI Report, the MSWG should agree a clear distinction between mandatory and voluntary social expenditures prior to data collection. It should also clarify the treatment of any non-governmental beneficiaries of mandatory social expenditures as reporting of in-kind mandatory social expenditures.
- 4.14 Given the prevalence of social media users in Mongolia, the MSWG could consider alternative means of engaging a larger section of the population in its debates. More outreach online through social networking tools could facilitate greater public participation in EITI-related debates, swifter dissemination of EITI information, and input to key MSWG documents such as the work plan and annual progress report.
- 4.15 In preparing the next annual progress report, the MSWG should conduct an assessment of follow-up on EITI recommendations and impact of implementation based on consultations with a broad range of stakeholders.
- 4.16 The MSWG should consider whether to take a more active role in developing recommendations from EITI Reports, and monitoring implementation of these recommendations.
- 4.17 The MSWG is encouraged to further entrench extractive sector transparency in government systems, and take steps to move towards more frequent publication of EITI information on a routine basis. As part of the second phase of the eReporting project, the MSWG should consider undertaking a study to identify what information required to be disclosed under the EITI Standard is already publicly available and what information is not yet routinely disclosed. Opportunities for providing more EITI data in open data formats should also be explored.
