

Minutes of Meeting of Mongolia Extractive Industries Transparency
Initiative Multi-Stakeholder Working Group
24 January 2012

MSWG meeting started 4pm, 24 January 2012, in the Conference Hall of the Mongolian National Mining Association.

Members present: B. Dolgor (Senior Prime Ministerial Advisor, MSWG Head); N. Bayarsaihan (National Council members, PWYP Coalition Coordination, Steps Without Boundaries NGO Head); S. Myagmardash (Finance Ministry Accounting Policy Department Chair); N. Alгаа (Mongolian National Mining Association CEO); B. Delgerbayar (Petro China Daqin Tamsag LLC CEO); B. Boldbaatar (My Mongolia Motherland Movement CEO); D. Tserenjav (Transparency Foundation Head); B. Batbold (Civil Council Member, Mongolian Environmental Federation NGO); E. Sumiya (MSWG Secretary, Cabinet Secretariat Senior Officer); D. Buuveijargal (Mineral Resources and Energy Ministry's Mining and Heavy Industry Policy Department Officer); Ch. Tsendmaa (General Taxation Department's Government Budget Revenue and Inspection Division Chair,); Ch. Oyunchimeg (General Taxation Department Inspector); Byambadagva (Mineral Resources Authority Information and Research Division Chair); S. Munhsaihan (Mineral Resources Authority Officer); E. Oyun (Petroleum Authority Investment Oversight Division Chair); Ch. Sarangerel (Independent Agency Against Corruption's Enlightenment and Prevention Division Officer); G. Lhagva-Ochir (Boroo Gold LLC Tax Accountant); D. Nominzul (MongolRosTsvetmet LLC Chief Accountant); D. Nanjidsambuu (Confederation of Mongolian Employers Officer): attendance=70%.

Also present: Bulgan (General Customs Department Officer); Dashzeveg (General Agency for Social Insurance Officer); D. Narantsatsral (Nuclear Energy Agency Officer); B. Osorgarav (Ulaanbaatar Audit Corporation CEO); N. Erdenetsog and Mendbayar (Ulaanbaatar Audit Corporation Senior Auditors); Paul Moffat (EBRD Senior Finance Officer); Tosiyaki Sakatsume (EBRD Senior Finance Officer); Chuluunbaatar (EBRD project National Legal Consultant); Sh. Tsolmon (EITI Secretariat Coordinator); S. Batbayar (EITI Secretariat Communications Officer).

B. Dolgor, Senior Prime Ministerial Advisor and MSWG Head, opened the MSWG meeting.

B. Dolgor: At today's meeting, the agenda has 5 main topics: the Mongolia EITI 2010 reconciliation report; the 2012 Mongolia EITI draft Action Plan; the Mongolia EITI 2010 performance report; the Mongolia EITI Secretariat 2011 performance report; and a preliminary report on improving the Mongolia EITI legal environment.

The chair explained internal rules and received approval on the rules and agenda.

1. TOPIC: Mongolia EITI 2010 reconciliation report

N. Erdenetsog, Ulaanbaatar Audit Corporation Senior Auditor, gave a presentation on the Mongolia EITI 2010 reconciliation report (presentation attached).

B. Dolgor: Thank you. Any questions?

B. Dolgor: We have very few discrepancies compared with previous reports. After the preliminary report was presented, a lot of work resulted in less discrepancy. Why are there so fewer discrepancies?

B. Osorgarav: In the 2009 audit reconciliation, we found discrepancies totaling MNT 58.1 million; this has fallen to only MNT 356,000. Overall EITI commitment from the mining companies, government, General Taxation Department, Mineral Resources Authority and Welfare Service Agency has improved, and all stakeholders understand the importance of the nationwide EITI initiative in getting accurate data. We understand that discrepancies have been minimized as a result. Actually, there are no discrepancies globally; in practice, payer and receiver record every single transaction no matter how small. Reconciliation is new to Mongolia, but we are improving gradually. One key reason for discrepancies is that every year we have new companies involved in reconciliation; they have discrepancies as they have not previously been involved with EITI reporting. There are some difficulties in working with them, like the need to address them several times and raise their awareness about reconciliation. For example, 200 company reports will be reconciled in 2011; 50 will be new. With these new companies, we have to get them better informed on the importance of our reconciliation, checking of payments and receipts and reporting findings. The EITI Secretariat has run several training courses, resulting in minimization of discrepancies. Our company has also accumulated skill and experiences.

B. Dolgor: Any comments?

E. Sumiya: I have one comment. We have already discussed the report, and the MSWG has concluded that the auditors worked well; I want to say that first. Now I propose to submit this report to the National Council. The taxes and fees to government exceed reported company amounts; I think the MNT 11.8 million discrepancies were because of poor company accounting. Company reports exceed government receipts; this was due to MNT 8,090,000 as advance payment/deposit for environmental reclamation and donations worth MNT 3,726,400. Please give us the financial documents and proof of reconciliation. MSWG representatives will ask the Inspectorate to check the discrepancy.

B. Osorgarav: OK. Now we have MNT 356,000 discrepancy in 11 companies.

E. Sumiya: No. I mean page 2 of the report gives a discrepancy of MNT 11 million. Government agencies claim to have received, but companies say they did not pay; this does not interest us, but we are interested in what companies reported as paid compared with what government claims not to have received. Please give us the documents.

N. Erdenetsog: This relates to donations to the Han-Uul district administration.

E. Sumiya: We need to check ones that involve small amounts. We will ask Specialized Inspection Agency Chair R. Sodhuu to appoint an inspector, and we can also appoint an MSWG representative to check. So, give us all the documents - not right now, but when you finish your work, I mean.

B. Dolgor: Any more comments?

B. Batbold: Now we are submitting the report to the National Council, is this our final report?

B. Dolgor: Yes.

B. Batbold: Perhaps your company won't be able to do the reconciliation next year because you have done it for several years. Do you think you are eligible to bid after three years in row?

B. Osorgarav: Reconciliation is a consulting service. If it is a pure financial report auditing, it is prohibited by law. We have every right to bid for the 2011 reconciliation.

B. Batbold: Will there be final recommendations?

B. Osorgarav: The recommendations were discussed at the previous meeting, so we now present only the work we have done since. Recommendations were presented at the meeting last December.

B. Batbold: There were some issues on environmental reclamation at the previous meeting. Will they be included in the report?

B. Osorgarav: Everything will be included. We will submit a report in print, like a big book.

N. Bayarsaihan: There are 8 types of taxes and fees for which we often find discrepancies. It is good that you report on taxes separated by company irresponsibility or accounting errors. But discrepancies must also be shown in a classified way: the government did not report, the company reported etc.

B. Dolgor: It seems that MSWG members have no questions and comments; we did discuss the report thoroughly at our previous meeting. The auditors included the comments from the previous meeting, and their clarification resulted in a small amount of discrepancy. Our parties did a good job. Now we have decided to submit the reconciliation report to the National Council. We need to highlight the production of summary reports, publicizing results, delivering copies to agencies, identifying actions to be taken and taking remedial action, plus public advertising, delivery of information to citizens and organizing a press conference. We also need a kind of inspection of government agencies, particularly those with discrepancies, to identify reasons for discrepancies and to take action, as Mr Sumiya suggested. Any questions? If not, this concludes the first topic.

RESOLVED to: 1. Support Mongolia EITI 2010 reconciliation report and submit to National Council, with MSWG comments.

2. Assign MSWG (B. Dolgor) and EITI Secretariat (Sh. Tzolmon) to produce summary reports, grounded on EITI 2010 reconciliation report, disaggregated by aimags and types of taxes, send to aimags and capital city, and hold a press conference and multi-stakeholder conferences.

3. In cooperation with the Specialized Inspection Agency, investigate discrepancies of MNT 11 million in government agency reporting.

2. TOPIC: 2012 Draft Action Plan of Mongolia EITI (presented by E. Sumiya, MSWG Secretary and Cabinet Secretariat Senior Officer)

B. Dolgor: Any questions?

S. Myagmardash: Draft Plan Clause 2.7, Provision 30, says "Methodology for producing reports of payments from licensed companies to local governments and their expenditure and informing the public." What does this mean?

E. Sumiya: Our civil society organizations produced EITI reports for two soums. We plan that aimag-based EITI sub-national councils will produce reports, and also report on the soum where the mining

sector is developing. This was based on a proposal at previous MSWG and National Council meetings. So we decided to develop reporting methodology/tools for aimags and soums. After several reconciliation reports, MSWG and National Council members are kept well informed and auditors have also provided in-depth information. However, many local government agencies have never produced EITI reports, so we wanted to offer them technical assistance on how to report. That is what it means. Clear? We have sub-national MSWGs at aimags and capital city level.

S. Myagmardash: I understood this as a work to develop tools. Will the tools be submitted for approval at an MSWG meeting?

E. Sumiya: We have several stakeholders, from whom we should get comments and priorities for incorporation in the methodology, but no formal approval is required.

D. Tserenjav: I understand that the EITI focus must now shift to the sub-national level, and we are unlikely to be focusing on Ulaanbaatar. So far, how many EITI rural sub-national councils are there? What is the current situation? Do we have a goal in our 2012 Action Plan to establish sub-national councils in all aimags? Or what goals do we have in terms of going sub-national?

E. Sumiya: Including the capital city, formal decisions to establish sub-councils in 13 aimags have been submitted to us, with proposals for membership structure etc. As with the draft Action Plan, we have planned to establish sub-councils in clause 2.5 and 7.59. The draft government resolution contains a specific clause; the draft was revised at an MSWG meeting and sent to ministers for comment. The resolution even details activities that aimag sub-councils will undertake. You may remember we discussed this resolution twice at MSWG meetings. We waited for EBRD recommendations, but this process has stalled. If we wait for EBRD recommendations on sub-national expansion, we will be waiting for another 2 years. That is why we are collecting comments on the draft resolution.

D. Tserenjav: Will there be any progress in setting up sub-councils in the other aimags? Or are we waiting for them to take the initiative?

E. Sumiya: We will establish them in every aimag. Then, after the local assembly elections, we will have to establish them again, as some may disappear because of election results.

B. Batbold: Here it says module training. Does this mean the modules we used before, or new modules?

E. Sumiya: There is an EBRD-funded project. Part of the project focuses on training, and they are preparing a capacity-building training program. Project consultant Emma met us last December, many of you know her. Actually, we were going to develop the training program ourselves. However, it seemed that we were not really able to develop it, so we pushed the project team to develop one, which became part of the project. We understand that there will be models for several training programs; each target group will be defined and programs developed accordingly: what training for first-time reporting groups, what for groups who have reported with mistakes, what for government agencies, how re-training is to be conducted etc. We expect the material to be comprehensively planned. Yesterday we met EBRD's Paul Moffat and told him about this; he accepted and agreed. So the initial draft program will be by the project, and of course we will work to improve the draft, with stakeholder participation.

N. Bayarsaihan: 75% of all planned activities have no identified finance sources. Can they really be carried out with no financing? Section 6 says there will be capacity-building. That training must be for all

stakeholders. Civil society is talking internally about being more active at the local level. Wasn't it possible to include more work on this?

E. Sumiya: Government agencies are responsible for financing; we will work on our government wages. That is why we did not specify funding sources. Actually, many stakeholders carry on activities at their own costs. You also asked the National Council to act to build NGO capacity. We have one agreement with the World Bank and they ran a workshop in September where we identified three categories of NGO training needs. Tsolmon and I attended a session assessing general needs, but not training needs. World Bank Consultant Enhzaya facilitated the session and Alгаа, Dorjdari and Tsolmon attended. Trainers were identified and overall training needs assessed. The World Bank said it could possibly provide some funding for training. We basically agreed to build civil society capacity with this money. We also plan to include one person from each stakeholder for capacity building and communications training. I note Batbayar is here, so for selection of trainees, please give the names of your people to him. The Mining Association, PWYP Coalition and government agencies like the Mineral Resources Authority and General Taxation Department should send people for training. If this course does not happen, we have another 12 World Bank training sessions planned, 3 this year and 9 later, one of which could focus on civil society capacity building. However, we could probably not run it this year because we are planning another 12 EBRD training sessions, making 15 this year.

D. Narantsatsral: Section 43 of the Draft Plan says "Develop software to receive electronic reports from government agencies." Does that mean new software just for receiving reports electronically?

E. Sumiya: Software development. The General Taxation Department plans a project with small funding, but the finance falls short. Yesterday, World Bank Consultant Enhzaya said GTSZ is considering support for our software. I said that we also need separate software for company reporting, based on the General Taxation Department database. I also asked her think about a different company reporting platform. The General Taxation Department budgeted MNT 20 million, but because it was small, no one wanted to bid. If we manage to get such software, the tax office will launch it next year after training.

Oyun: Clause 2.8 mentions activities towards transparency of Petroleum Product Sharing Agreements. Do we intend to disclose all agreements, some of them or just models?

E. Sumiya: Oyun and I have discussed this several times. A Product Sharing Agreement is considered confidential, but we would like disclosure; we appreciate your efforts, and companies have started producing reports, but we have some trouble in agreement disclosure. We know that terminated agreements have been sold on a US-based website: the old Petroleum Law and old agreements for USD 800 each. So, we have some problems with disclosure. Our civil society members are also aware of this. It is hard to disclose and to get closure. We tried to get at least partial disclosure, resulting in a 40:60 ratio and we did get to 60:40. With full disclosure, some companies seeking a contract would use this agreement ratio to delaying effective contracting. Also, a government resolution sets payments imposed on oil concessions. So, we don't need to hide already clear points. You must bring your proposal for disclosure so we can work on it.

B. Dolgor: It says "regional workshop and forum;" do we really need to run one in every region? I think we should focus on the main regions. Really there is only one 'hot' region, on which we should focus; otherwise we are spreading our strength too thinly. What do you think?

E. Sumiya: We discussed this at the National Council meeting and set up an overall work framework for the next two years, which we used for the plan. If MSWG decided to focus on a specific aimag, we can do it. We could send fewer delegates to some aimags. Dorjdari and Alгаа have been active in regional meetings when Ganbold has facilitated it, and the Prime Minister sent his greetings.

B. Dolgor: No more questions? Shall we start commenting?

N. Alгаа: I mentioned this earlier. We are not good enough at getting information to local aimags. We lack resources. As to regional workshops and sub-national councils, I agree with Dolgor. Rather than running a large campaign that demands all our efforts, we should focus on a specific region like Umnugobi or Selenge. They are Mongolia's 'hot' spots. We must consider them as mining regions rather than simply administrative regions. That would even work for environmental inspection. Instead of one person in each aimag or soum, we could have 2-3 people in mining areas, so that we could do both EITI and environmental monitoring work. Likewise, we could select Hanbogd and Tsogttsetsii of Umnugobi and Huder of Selenge aimags. In Tuv aimag, Zaamar is the main area, while in Hovd, Hushuut is the key point. We do not need a regional workshop in Ulaangom, the regional center. In the eastern region, Dornod is the key area with poli-metal deposits, but we need to identify areas both by number of exploration licenses and by active mining operations. I have another key principle proposal. The draft plan is huge, with all National Council, MSWG and Secretariat activities, with 75 planned activities plus another 35 of the Secretariat. I represent the National Mining Association, and I know how hard it is to present draft plans to 140-150 members. It is hard to comment meaningfully on such a huge plan, and comments are usually minor, focusing on specific action. So I propose that the three stakeholders each appoint a representative to sit together for a day, assessing what we can do, what strengths and weaknesses we have, then form a plan to identify deliverables, financial resources, responsible persons and measurable indicators. Those are two of my suggestions. We could approve the plans and monitor the performance. Talking about all 75 actions one by one is difficult and we have no time for this.

Boldbaatar: I suggest that, instead of dividing by regions, we could divide workshops and training courses by mineral type - gold, coal, rare earth, iron ore etc - because many of these deposits are centered in one area. For iron, there is the Bold Tumor company, for copper, Oyu Tolgoi. We could focus on these areas by minerals. The oil sector in Tamsag.

N. Alгаа: That is almost the same as I suggested earlier.

E. Sumiya: We have budgeted for three events.

N. Alгаа: That means we will select three areas.

E. Sumiya: You make suggestions. I suggest three areas, one to be facilitated by government agencies, one by civil society and one by companies.

N. Alгаа: I agree with Boldbaatar. Let's have one in Umnugobi on copper. The others can be on coal and iron ore.

E. Sumiya: One workshop with coal companies and other stakeholders?

N. Alгаа: Yes, three including coal, copper and iron ore.

B. Dolgor: Coal and copper can be together, with one on iron ore and one on gold.

N. Bayarsaihan: Your first plan was not to organize in every aimag, was it?

E. Sumiya: No, by region. That is what we planned to get financing for from the World Bank.

B. Batbold: What will be the aim for selected regions, particularly at the mines?

Sh. Tsolmon: We prefer regional divisions rather than by minerals. For instance, we ran a regional workshop-training course in Uvurhangai aimag, with representatives from Bayanhongor, Arhangai, Tuv and Bulgan aimags. At the regional workshop, part of the main topic was extractive industry transparency and local issues; the latter was facilitated by local governors and we had heated debate among the three stakeholders, including companies and civil society. The event in Selenge aimag was hot with debate and discussion. For that workshop, people came from Bulgan, Orhon and Hentii, and most importantly they had effective dialogue and consensus building. So we have planned activities expecting similar results. The important thing is to talk face-to-face about what works and what does not work in rural areas, raise EITI awareness and get governors, companies and civil societies involved.

N. Bayarsaihan: After a regional workshop in Umnugobi, we had EITI reports from the Umnugobi aimag level; then we held discussions, where stakeholders gave opinions and comments and agreed they could repeat the process in their respective aimags. Last year Dundgobi aimag sub-council came with civil society representatives and learned about best practice.

S. Myagmardash: I support running training by region. In the past, all events, whether workshops or training, targeted companies. When we run such events, we must ensure local government officers are present, show them examples and proof of discrepancies, tell them what EITI reporting mistakes they made, with examples such as Mr Osorgarav mentioned, so we can get better validation results and better reporting by local government and companies.

D. Tserenjav: This report will be approved by the National Council and will also be publicized. Mongolia has had 5 reports so far. We have worked for many years, done lots of work and had ups and downs. Now we need to make reforms on how to use reports. We probably need to re-visit the 5 reports and make a final product on deliverables. The Secretariat or stakeholders could arrange making a black and white list from all reports, showing which companies submit reports every year and which don't; the same with the government agencies and local governments. Using all the available material and reports, we could have a product for advocacy. The black list would comprise names of bad performers, designed to shame them. With the material evidence, we need that advocacy product and could run local workshops. We must work with local administrations and ministries. From the 5 reports, we have detailed information on which company repeatedly violates rules and which remedies mistakes, which will lead on to our next work.

B. Batbold: It has been said that there will be an EITI information center as a World Bank project. We want a good center, but the draft plan has nothing about it. Was it abandoned or rejected?

Sh. Tsolmon: It is still unclear. We have some disagreement with the World Bank on who will be responsible for the project and who will be the grant recipient. It is not clear whether it should be directly connected to the PWYP coalition or also be linked to the environment etc.

E. Sumiya: That's 2 or 3 suggestions to be included in the plan. Do we agree on regional workshops? Let's include the product that Tserenjav proposed in the report. On 2.4, let's get civil society to develop a methodology in partnership with Batbold and the Environment and Tourism Ministry.

B. Dolgor: I propose adoption of the draft plan after inclusion of these suggestions. The suggestions have been important, such as Mr Tserenjav's idea and my own. Running training-workshops where mining takes place would be effective. There are places with no importance, so let's focus on the main areas, not exactly regional, by involving all stakeholders fully and running participatory events. We have also assigned the parties to work on the plan implementation. Remember the important comments from Mr Alгаа. In general, our planning methodology is changing, particularly indicators for assessing outcomes. We probably need to shift to this system. The Secretariat and Mr Sumiya must pay attention to this, and work with stakeholder representatives, as Mr Alгаа said. Now, let's vote on the plan.

RESOLVED to: 1. Support the draft Action Plan for Mongolia EITI for 2012 with the inclusion of MSWG members' suggestions, as authorized by the National Council.

2. Assign MSWG Head B. Dolgor; Mongolian National Mining Association CEO N. Alгаа; PWYP Coalition Coordinator N. Bayarsaihan; and EITI Secretariat Coordinator Sh. Tsolmon, to take action to implement every action planned, reporting semi-annually and annually on performance to an MSWG meeting.

3 & 4. TOPIC: Mongolia EITI and EITI Secretariat performance report for 2011 (presented by EITI Secretariat Coordinator Sh. Tsolmon)

B. Dolgor: Any questions? Comments?

N. Alгаа: The Secretariat recently recruited an officer for communications and information. On your behalf I would like to express gratitude to our two Secretariat staff for their excellent work. Having worked on several Working Groups, I personally and our companies are delighted with the work of the Secretariat.

E. Sumiya: General content for the Mongolia EITI 2011 performance report was circulated earlier. You don't have to comment right now. This report must go to the International EITI Secretariat by July, so you have time to comment on, add to or remove from the report by email. We will keep working on the report and add activities under the new regulations. Please email comments and suggestions to Tsolmon. Before we send our final report to the International EITI Secretariat, we will present the report to the leaders of the three stakeholders, including the PWYP Coalition Coordinator, the Mongolian National Mining Association CEO and representatives of the Finance Ministry and Mineral Resources and Energy Ministry. So, write if you have any comments and suggestions to enrich the content. If necessary, we can change some chapters.

Sh. Tsolmon: We can add civil society and company activities. Perhaps activities of the Finance Ministry, Mineral Resources Authority and General Taxation Department's full-time EITI staff could be detailed. Whatever, you should give your comments and suggestions as soon as possible in more detail.

N. Bayarsaihan: The draft report does not contain anything about civil society activities, particularly at the sub-national level. We have not fully reached both national and local levels. We did hope to work at both levels, but did not manage to do so, so reasons/explanations can be added. As Mongolia is

complying with the validations reportage, some important stakeholder activities should be included. Why civil society organizations have not yet worked in local areas should be clear in the report.

B. Dolgor: Let's put these ideas in the EITI Mongolia performance report for 2011. We do need to include, at least briefly, activities of individual stakeholders, plus we need to stress that we will pay more attention to unachieved goals. Then let's finalize the report and present it to the stakeholders, before sending it to the International EITI Secretariat. I think that everyone agrees with what Mr Alгаа said about the Secretariat performance; the small team has worked very hard. So if there are no more comments on Mr Alгаа's acknowledgement, we all congratulate the Secretariat staff. The Mongolia EITI performance report is one we all, MSWG and National Council members, did together. With your participation, we progress. Now I propose acknowledgement to all and approval of the report.

RESOLVED to: Assign EITI Secretariat Coordinator Sh. Tsolmon to include MSWG members' suggestions in the Mongolia EITI 2011 report, present the final report to stakeholders and then send it to the International EITI Secretariat by the deadline.

5. TOPIC: Preliminary report for improving EITI Mongolia legal environment

Chuluunbaatar, lawyer with the Adam Smith-implemented project, presented a preliminary report on improving the legal framework of Mongolia EITI (presentation attached).

B. Dolgor: Any questions?

D. Tserenjav: You said that three countries have EITI laws. Which countries and what are the formal names of the laws? Are they laws approved by parliament and called EITI Law, or just provisions annexed to other laws? Or are they more than one governance, not an initiative? I'd like to hear a short outline of these three laws.

Chuluunbaatar: The Norwegian law is called the Norway EITI Act. It is very brief, only two pages. In general, it includes all necessary points. It says companies and the government shall report and both reports shall be reconciled. It outlines main principles. However, we must stress one point. The Norwegian context is different from the Mongolian; they have only one state-owned company. The law even uses the name of that company. Nigeria and Liberia both have the EITI Act. The Liberia law lays down organizational structure, rights and responsibilities, with fines, suspension or termination of company license for not reporting. The Nigeria law defines the organization e.g. legal status, who will be responsible for what, and reporting requirements.

E. Sumiya: The stand-alone laws of these two countries were ratified by the President as per their governance systems. MSWG has studied these laws, and the material is available at Tsolmon's office. The Norwegian law is headed by regulations endorsed by the relevant minister.

Chuluunbaatar: The law says regulations for implementation shall be approved by the minister.

E. Sumiya: In general, they are laws that were not discussed in parliament.

B. Batbold: You have studied international legislation. Mongolia also developed a bill and related concept note for the EITI law. Did you study these documents?

Chuluunbaatar: If we compare our 2010 bill with foreign legislation, I personally think our bill is at least 20% better. But the Justice Ministry rejected our 2010 bill for several reasons, the most important being conflict with other legal provisions; also the rights and obligations of government and government agencies were unconstitutional. We agreed that conflict was not the reason. Now, companies submit reports to EITI as does the government. The Finance Ministry thinks it is in conflict with the Minerals Law. The Working Group must accurately develop the need for this bill, its socio-economic benefits and concept note.

B. Dolgor: Any more questions?

N. Bayarsaihan: What is the implementation period for the project?

Chuluunbaatar: Actually, the Working Group for the law has a very short time. Last year, we had 14 working days, with some additional days; but we can keep the process going if the respective parties agree on one of the options.

N. Bayarsaihan: What is the project outcome? Approval of concept note or law? What deliverable and when? It looks like we talk about stages, keep doing analyses and then run out of money and time.

Chuluunbaatar: We must develop the bill, so the deliverables are the analyses and options, the concept note and then the bill. It is hard to write a concept note and bill in a fortnight. The concept note will be developed; based on the selected option, a concept note and introduction will be written. Once submitted, that is the end of the project.

N. Bayarsaihan: You will probably develop the concept note. Aren't there any criteria under which the law will be passed?

Chuluunbaatar: It is difficult for the project to get the law approved; the draft will be developed in the name of a ministry; then a Working Group will be established. We are committed to work with them.

N. Alгаа: It seems that your project has no time left, correct?

D. Boldbaatar: For the concept note, there are many other things, such as EITI+. Did you check that? What did you find and what was the structure? I think that the concept note can only be finalized after you have checked these points.

Chuluunbaatar: The three stakeholders need to decide what to include from EITI+, but at present we need to draw up the bill first. The stand-alone law must regulate reportage from both sides, with reconciliation, tracking of discrepancies and imposing of consequences.

Boldbaatar: The important of the law is to impose consequences and sanctions.

Sh. Tsolmon: Actually, Chuluunbaatar is incorrect. The terms of reference for the law consultants end with the submission to Parliament. We need approval of the concept note, then we develop the bill, get ministerial and Cabinet approval, and then submit it to parliament. It is unclear when to submit, either in March, April or October 2012. That is the procedure, so you are not correct.

N. Alгаа: So you are going to develop a concept note and bill to submit to parliament. Then we lobby and you must then have your final deliverables.

Chuluunbaatar: I don't know the general project. I am talking within the framework of my contract, which ends with developing the concept note.

B. Dolgor: Any more questions?

N. Alгаа: I have a suggestion. We do this with all projects: we always take a long time to resolve our internal issues, then we change the project and finally nothing emerges. This is common in Mongolia. If the project recommendation is for a stand-alone law and the project awaits final decisions from MSWG and the National Council, we should decide quickly. If we, at least at the MSWG level, OK the proposal, the project will probably finish quickly. Obviously, they will present the concept note to the MSWG. Then we must talk about how many pluses (+) there must be; it is impossible now. The most important finding of the project is for a stand-alone law. I have my own thoughts. There is a provision in the Minerals Law requiring information to be transparent. Information can include the amount of rock mass. So, I think we must clean up all transparency provisions in other laws so we can avoid later conflict, and so we have clear provisions on EIT data.

E. Sumiya: You must know that I commented on the preliminary presentation on the legal environment. I talked to Chuluunbaatar on the phone yesterday and also met with Paul Moffat for two hours. We agreed to explain our deals to the MSWG. This presentation says there will be no conflict between legislations. I gave Paul 13 good reasons for this, and he agreed to include these reasons in the presentation. I think that Paul has something to add. Without repeating my 13 points, I'd like to advise the MSWG that we need two of the three options offered by Chuluunbaatar. A stand-alone law will have many contradictory provisions, as shown on slide 7. At the previous MSWG meeting, we had a presentation from Mr Jigden on reporting dates. Unless we include his points in our law, the Justice Ministry will never agree to us amending the Accounting Law. A key concept of Mongolian law is to regulate all issues. We managed to get our EITI templates approved under the Accounting Law, but a stand-alone EITI law defining the templates will conflict with the Accounting Law. I spoke about this yesterday. I also showed Paul Mr Jigden's slides on the conflict in reporting dates. Actually, it would be best to make a stand-alone law, but laws with conflicting clauses should be amended. This is how our law will pass, otherwise it will be rejected by the Justice Ministry. I gave a copy of the Justice Ministry policy and its applied methodology to Paul yesterday. We then agreed to discuss the issue at Thursday's Project Steering Committee. So we can have a standalone law, but need to amend other laws at the same time, so there must be effective legal analysis. I talked on the phone to Chuluunbaatar yesterday, when he did not mention it. I guess he is not accepting my suggestions. Being chosen to carry out any task involves responsibility. It is not an issue of money. I said this to Paul and the national consultants. Consulting requires responsibility. Developing this law will build our capacity; the capacity to assist ourselves will be created. I said this to Chuluunbaatar yesterday: he said he was interested. That is what I report to MSWG on my work on the project and selection of options. I do not hide it away. I am working on improving the report. The MSWG chair, Tsolmon and I attend every meeting.

Chuluunbaatar: I will include the suggestions from Mr Sumiya in the report of the Law Working Group.

D. Tserenjav: The presentation implies there should be a stand-alone law. You say that various positions and views should be heard. I am in the position that we don't need a law. In truth, EITI is actually what companies must comply with and report to. There is a regulation that the Finance Ministry issued last

year. Donations must be recorded and registered. We don't need to legalize points that must anyway be done. When we have a problem, we try to pass legislation, then we work endlessly on amendments, finally we turn to law experts. I think it is clear what must be done under current laws, we just need a government resolution. If this does not work, we could have an MoU between the government, companies and civil society. If a tax system and templates entail big issues, any new law will violate others. So we keep endlessly working only to match legal provisions. Did you ask why and what law should be made? Has the Working Group made a decision? It is all unclear to me. That is why I am in a different position.

E. Sumiya: I can answer Tserenjav. In 2010, when we wanted a law, the MSWG discussed a Working Group membership and its ToR, and subsequently Minister Zorigt set up a Working Group. The MSWG also discussed the bill, but it did not pass, so we are now getting assistance from the EBRD.

B. Batbold: What has been done since then? Nothing?

B. Dolgor: Right. If you want a law, you must establish what issues it will regulate and what should be in the concept note. You must present these to convince us of the importance of a stand-alone law. But, none of this has been done, so we cannot choose between a stand-alone law and no law. Like Tserenjav and others, I do not know what to do from the presentation or what the meeting should decide. You told us nothing concrete, just possibilities. I don't know what to do.

N. Alгаа: I understand that the project should still have a draft legal document and concept note, and there is time. No matter whether parliament passes or not, let's work on the bill and concept note. As we spend, we need product. We produced before, but it was returned as being not good enough or the concept note was not clear. Now that a prestigious organization is at work, I expect a much better product. The presentation was actually on preliminary studies. We need a draft law and concept note.

Today, some are against it, but we all previously agreed at an MSWG meeting in response to civil society that a stand-alone law is necessary. If you now think we don't need a law, we don't need to play a cat and mouse game. We must at least keep on with the bill and concept note. The goal must be a product.

Boldbaatar: You said three countries have laws. Do they also have concept notes?

N. Alгаа: The MSWG has had those laws translated from the English. We need a tangible product from you. Does the project have time and money to complete?

E. Sumiya: Paul will answer.

Paul Moffat: After the rejection of our bill, we decided to work in stages on the project. We did not know whether the MSWG preferred a stand-alone law, so we looked at various options to help the MSWG choose, then we would get to the production stage. First, we need to select one option, then there is lots of work to do on product/deliverables. The plan is selection first, then work on the product. Today we only present the options.

Our consultants have been assigned to study international practice and present the options to the MSWG members in detail to enable a shift to the next stage.

As planned, the next stage is to make the product available after the MSWG selects one option, and then to submit the product to parliament with all necessary proposals and rationales.

I also have a comment on Mr Tserenjav's suggestion to have no law at all. The present situation is that many obligations are distributed among a wide variety of laws. This may make both administration company operations difficult. Having a stand-alone law helps to unify these separated obligations so that we can implement the process in a more optimal way. According to Mr Sumiya, if we choose a stand-alone law, amendments must be made simultaneously in the other legislation. We will finalize our recommendations after we hear your comments and suggestions on this report, then we have to select according to the recommendation and move to the next stage of product development.

B. Dolgor: When we started project implementation, there were drawbacks or disadvantages. There were agreements reached before the Project Steering Committee was established. Now we need to correct that circumstance. Second, we think that the conditions for a stand-alone law do not yet exist, we think. For instance, the presentation says nothing about what the stand-alone law will regulate (scope), and we have no way to okay it. In the past, we have done the same, but this project is different. I have a question: do you think this preliminary report meets the legal performance requirements of your agreement? Now, about options: do you think that the report fully enables you to make choices?

Paul Moffat: This report clearly states what laws need to be amended if we opt for a stand-alone law. We have also offered possible options. We think that this report is good, but we could add information to improve it, including Mr Sumiya's comments. If MSWG members have any specific comment, we can do more work on the issues. We can also add information on EITI structure and content on how the law will influence society. In addition, we can offer the content of the law, as Dolgor said. If MSWG members tell us of concerns and issues you want to include, we can do so in an improved version of the law. We are ready to include any info that will help MSWG make its choice.

N. Alгаа: If the MSWG chooses a stand-alone law, when will the concept note and bill be ready?

Paul Moffat: Once the MSWG chooses, it won't take long to have the final product ready; the background can be written quickly. The bill will take 2-3 weeks, but Justice Ministry approval could take most time, a long time, I think. During the process, we will get comments from MSWG members.

N. Alгаа: There is something unclear to me. The final project output is a concept note and bill. But this is very little work; the most important outcome lies beyond this. The product has not yet been made, so do we need to delay the project work? The Mongolian rule is that a concept note must first be approved; without it, no law can be made. I think they could develop a concept note and bill at the same time. We could assist in lobbying the Justice Ministry to help pass the law.

Byambadagva: We need to proceed with the bill.

B. Dolgor: It seems that the project people think their report was OK. But we don't. What Mr Tserenjav says is right. If you think a stand-alone law is necessary, you should have told us why and what issues to regulate. Then we could have reached a decision. Today we cannot make a decision. So finish your work and present it to the project Steering Committee. If we think it adequate, we will accept it. If we consider it inadequate, we will have to discuss different issues. That is our decision. Today, we cannot possibly make a decision. If a stand-alone law is really necessary, as you said, you should have developed the concept note immediately and developed the bill at the same time. It is impossible to make a

decision today. So we will discuss the issue at the Steering Committee and discuss it at a later MSWG meeting when the opportunity arises.

RESOLVED: Discussed the preliminary report on improving Mongolia EITI legal environment and assigned the project team to include MSWG members' comments and suggestions in project work.

Meeting minutes revised by

B. Dolgor (Senior Prime Ministerial Advisor, MSWG Head)

Meeting minutes taken by:

S. Batbayar (EITI Secretariat Communications Office)