

Comments from Mongolian stakeholders on the Mongolia 2016 Validation initial assessment

Comments from the Ministry of Mining

TO; MONGOLIA EXTRACTIVE INDUSTRY TRANSPARENCY INITIATIVE SECRETARIAT

Re: Commenting on the evaluation/validation report

We carefully studied the evaluation report of EITI implementation in Mongolia, which was made by the EITI International Secretariat, submitted by Mongolia EITI Secretariat.

From the report, it was found that Mongolia was evaluated as “inadequately performing” in the following requirements:

MSG governance and functioning (Requirement #1.4),
State participation (Requirement #2.6),
SOE quasi-fiscal expenditures (Requirement #6.2),

and, hereby, we submit the following proposals for improving the performance on the indicators with inadequate progress.

It would be correct to stabilize the meetings of sub-working groups, which were established at the MSWG, followed by presenting the draft decisions to the MSWG meeting for guidance and instructions, and make relevant decisions in order to improve the governance and functioning of MGG. Also we ensure equal representation of CSOs in the sub-working groups and reflect the comments and proposals of members in our activities.

In addition, validation findings indicate that Mongolia EITI does not disclose all information on rules and practices governing the retained earnings and investment by the SOEs, including some details of loans and loan guarantees. In relation to this finding, it is required to make changes in the relevant reporting templates and require the SOEs to report identical data as the other extractive companies.

Regarding the disclosure of SOEs quasi-fiscal expenditures, evaluation report includes a detailed information on quasi-fiscal expenditures of a SOE, but it is unclear whether the evaluation made the comprehensive assessment on the quasi-fiscal expenditures.

Moreover, it is observed that the validation findings mis-classified the payments from several SOEs, particularly in the terms of sub-national payments. It is also understood that validation reveals MSG did not study any other subsidies aside from the coal mines are subsidized for supplying sub-market priced coal. For improving the performance on this indicator, it is vital to change the templates to requiring the reporting entities to provide data on land fee, water fee and percent of royalties. Also, it is noteworthy that the SOEs don't receive any investment from the government.

Ministry will re-visit the indicators that were evaluated with inadequate progress, and will work in the future to improve the performance on these indicators and implement the recommendations with strategic focus, which was provided by the International EITI Secretariat.

Sincerely yours

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Director General, Mining Policy Department

Comments from the Mongolian National Mining Association

Mongolian National Mining association and its member organizations are fully supporting EITI and express willingness to actively implement recommendations specified by this Report.

Also, when we firstly introduced this Report, there was important issue, which relates a definition of materiality, which should be overviewed carefully by all parties, otherwise there will be time spent, many documents are created as result there will companies for production of sand and gravel. So, this aspect should be under careful consideration. As for other issues, we will deliver what received from companies.

Comments from Publish What You Pay Mongolia Civil Society Coalition

Although the English version of Validation report was sent to the MSWG members on 8 September 2016, its Mongolian translation was sent to MSWG members on 22 September, 7 working days prior to the deadline for commenting; and such short period reduced the possibilities for MSWG members to read the report completely and agree on comments. It is noteworthy that reading 150-page document completely and reaching agreements on comments during this short period of time was difficult.

In addition, Mongolian version was not stylistically apprehensible and in some cases contents were found incongruous and unclear as opposed to English version; this caused certain difficulties to the MSWG members to clearly understand the conclusion and recommendations so that members could give substantial comments.

There is a need to correct the information on page 25, Section "Civil Society Engagement" of the report. It is commendable that this section mentioned about problems that came up in the past years regarding registration of NGOs, but misunderstanding on the name of the law and the overall situation must be corrected. This incorrect information was reflected in 2015 Pilot Validation Report, on which subsequently PWYP Coalition provided correct information on that info and provided comments. Moreover, PWYP Coalition also mentioned about this misunderstanding and provided correct information. However, such incorrect info was included in the Validation Report again, so we request this section to be corrected as follows:

"Resulting from 2013 amendments in the legislations on legal entity registration, responsibilities on

NGO registration was shifted from Ministry of Justice to General Agency for State Registration. In relation to changes in government authorities responsible for NGO registration, NGOs were required to get re-registered at the General Agency for State Registration. For the re-registration, some additional requirements were set including submission of information on the founders and a copy of decision (signed by Board members) made by NGO Board, if the structure and members of Board had changes. Such requirements make it impossible for NGOs to get re-registered for they are not able to get signatures in case founders or previous Board members passed away or currently reside in foreign countries. For these reasons, many NGOs were not able to get re-registered at that time. Subsequently, those NGOs became impossible to submit their tax reports and financial statements to the respective government agencies. However, NGOs did not encounter any negative consequences and difficulties due to such issues until 2015 and the NGO operated normally. In 2015, State Registration Agency notified about potential annulment of registration of over 7000 NGOs for they violated the regulations on registration and reporting, which included several member NGOs of PWYP Coalition.

At that time, Government of Mongolia adopted a Law on Economic Transparency, which aims at reducing the gray economy and increasing the monetary flow into the financial market. The new law provided one time pardon/amnesty to citizens and legal entities that declare their assets and incomes that evaded from taxation, within set time limits and exempts from any legal sanctions. Such tax amnesty was supposed to be applicable to NGOs, which were in risk of de-registration, but many NGOs did not use the opportunity as they lacked legal expertise and knowledge. PWYP Coalition organized training for its member NGOs introducing the opportunities provided by the Law on Economic Transparency. As a result, PWYP members avoided from the risk of de-registration, but we consider that these requirements, which are not legally imposed, new and hard-to-implement, violate the rights of citizens to association, guaranteed by International Pact on Civil and Political Rights, and preclude the normal operations of NGOs.”

PWYP Coalition disagrees with the recommendation in the report, “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...”. At the present time that the legal environment for the EITI implementation has not been established and rights and responsibilities of government agencies in the EITI implementation have not been set forth by law, having the representatives of government agencies in the MSWG is one way to ensure the government engagement in EITI. EITI implementation on Mongolia is undertaken by MSWG and National Council, which have separate functions, respectively; National Council is responsible for more policy-level decisions while the MSWG is responsible for studying these issues, submitting to National Council for approval. Meantime, MSWG operation has become more stable as opposed to National Council and the attendance of MSWG members is often much higher than those of National Council. Whilst, PWYP Coalition agrees that stability of operations of National Council, which includes high ranking government officers as its members, has been lost during the past years e.g. members not participating in meetings, instead sending their representatives, but it is worth noting that such situation is much less at the MSWG level. Therefore, reducing the number of representatives of MSWG, which plays key role in the EITI implementation, is not an optimal solution.

MSWG is proposing to include a recommendation in the report that says “Evaluate the Communications

Strategy to identify the difficulties and challenges followed by taking improvement measures responding to needs”, as an addition.

PWYP does not agree with the findings on p.12 (English version) “Overview on government and CSO engagement” and p.16 “Government engagement”, which say, “..., civil society and government representatives have tended to designate alternates to attend meetings...”. Attendance logs of both National Council and MSWG meetings show that CSO representatives have much better attendance in meetings and the designated CSO representatives participate in meetings in person. It is undeniable that individuals that are not members of National Council and MSWG might have participated in meetings of National Council and MSWG; however it might be connected to the fact that MSWG meetings are organized as extended meetings in some cases.

Also, EITI Secretariat invites additional CSO people to the meetings in order to meet the quorum and does not post the names of officially elected CSO representatives in its website; these are also the cases that are undeniable.

On page 37 of the report and under Section Workplan (1.5) (English version), it states, “Oil and gas companies consulted did not recall reviewing the draft 2016 work plan and stated that CSOs were the most engaged in providing input since they had an interest in steering funding towards their activities.” We understand that International Secretariat is responsible to reflect the comments/information from the stakeholders in the report without any changes, but it is appropriate to check and clarify any information given by individuals expressing the personal views before inserting into the report. For 2016 workplan development, CSOs took active part and submitted many comments and proposals, but it is too much one-sided if such participation is understood as aimed at getting funded. According to proposals from CSOs, 2016 was announced a “Year for Building Capacity o Sub-National Councils” and several related activities were included in the workplan. When the CSOs proposed these ideas, we aimed at establishing real responsibility and accountability at the sub-national level by implementing EITI at sub-national level, disseminate information to the local community and engaging in public discussions rather than obtaining financing.

In evaluating EITI in Mongolia, CSO engagement in MSWG and the CSO impacts, it would be appropriate to evaluate the actions, enthusiasm, impact and transparency of PWYP and Mongolian Environmental Civil Council separately from each other. The reason is that PWYP Coalition works in the area of extractive sector transparency and accountability and has always devoted attention to ensuring equal participation and engagement of its members. PWYP is a civil society coalition with its rules for electing its representative in the EITI MSWG, sharing information and collecting comments and we comply with our rules firmly. Therefore, it would be inappropriate to make conclusions under the overall framework of civil society and to integrate the findings on two separate CSOs into consolidated conclusions.

The title on p.55 of report on the implementation of requirement 3, which says “Monitoring and production”, must be changed to “Extraction and production”.

Under a section on the implementation of requirement 6.2, mention that legislations pertaining government agencies receiving donations are contradictory and provide a recommendation on eliminating such contradictory provisions. The reason for proposing this additional recommendation is

that the CSOs kept raising issues related to donations during the data collecting meeting for the validation. Article 25 and 60 of Budget Law permit government funded organizations in health, education and culture sector are permitted to receive donations and foreign and national citizens and legal entities to give donations to the Local Development Funds. However, these Articles contradict Article 17 of Law on Regulating Private and Public Interests in Public Service and Prevention from Conflict of Interests, which prohibits the government agencies and officers to receive gifts and other financial support from others. Such contradiction between the legislations related to donations creates ambiguity and uncertainty thus enabling to receive bribe and undertake illegal acts, masked behind the name “donation”. That is why this issue must be reflected in the validation report and worth providing clear recommendations on remedial actions to eliminate the contradiction in legislations.

PWYP COALITION

Comments from MSWG Chair, Mr Enkhbyara Namjildorj, Senior Advisor to the Prime Minister



MONGOLIA EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE SECRETARIAT

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Date September 29, 2016
Ref. 1/42

To Mr. Jonas Moberg,
Head of EITI International Secretariat,
Secretary of EITI Board,
Oslo, Norway

Dear Jonas,

Taking this opportunity, I express my sincere appreciation to the EITI Board and International Secretariat for being supportive of Mongolia EITI, and express again our commitment and willingness to continue EITI in Mongolia.

We have studied Mongolia EITI Validation report-2016 issued in early September and its findings, and are consent with them, are keen to go forward with implementation of recommendations despite for some difficulties.

So, firstly, we will work with our Ministry of Mining and Heavy industries to re-submit EITI law draft back to Parliament of Mongolia for final endorsement, which was officially named as Law on transparency in mineral resources sector.

Secondly, we will draft a work plan to implement each of 15 recommendations outlined in this report and will submit for the consideration by the Prime Minister of Mongolia. Upon endorsement by the Prime Minister we will act in timely manner to achieve positive output of this plan.

Lastly, we will do all best to complete Mongolia EITI Report 2015 by early December 2016, along with a draft Road map on Transparency in Beneficial ownership in extractive industries for a period of 2016-2020.

Again, we appreciate for your support and convinced that we will receive positive responses from EITI Board.

Sincerely yours,

Enkhbayar Namjildorj,

Senior adviser to Prime Minister of Mongolia

Secretary of Mongolia EITI National Council and head of Working Group.