

SECTION A: INTRODUCTION AND BACKGROUND

CHAPTER A2: POLICY AND LEGAL FRAMEWORK

Contents

2. POLICY AND LEGAL FRAMEWORK.....	2
2.1 CHAPTER OVERVIEW	2
2.2 CONSTITUTION	2
2.3 GOVERNMENT	2
2.3.1 <i>National and Regional Government</i>	2
2.3.2 <i>Judicial System</i>	3
2.4 LEGISLATION	3
2.4.1 <i>Introduction</i>	3
2.4.2 <i>Environmental Impact Assessment</i>	3
2.4.3 <i>Environmental Protection</i>	3
2.4.4 <i>Land, Land Use and Expropriation</i>	4
2.4.5 <i>Minerals Law</i>	6
2.4.6 <i>Water Law</i>	7
2.4.7 <i>Air Pollution Law</i>	7
2.4.8 <i>Waste and Hazardous Substances</i>	8
2.4.9 <i>Cultural Heritage</i>	8
2.4.10 <i>Environmental Fees</i>	8
2.4.11 <i>Health and Safety</i>	8
2.4.12 <i>Labour Law</i>	9
2.5 MONGOLIAN ENVIRONMENTAL HEALTH & SAFETY STANDARDS.....	10
2.6 INTERNATIONAL AGREEMENTS	13
2.6.1 <i>Environmental Impact Assessment</i>	13
2.6.2 <i>Protection of Flora and Fauna</i>	13
2.6.3 <i>Biodiversity and Sustainable Development</i>	14
2.6.4 <i>Energy and Climate Change</i>	14
2.6.5 <i>Ozone Depleting Substances</i>	14
2.6.6 <i>Hazardous Substances</i>	15
2.6.7 <i>Water</i>	15
2.6.8 <i>Waste</i>	15
2.6.9 <i>Noise</i>	15
2.6.10 <i>Tangible and Intangible Cultural Heritage</i>	15
2.6.11 <i>Labour Relations and Workers' Rights</i>	16
2.6.12 <i>Livestock Production</i>	16
2.7 OYU TOLGOI INVESTMENT AGREEMENT	16
2.7.1 <i>Introduction</i>	16
2.7.2 <i>Core Operations</i>	17
2.7.3 <i>Regional Development</i>	17
2.7.4 <i>Environment</i>	17
2.7.5 <i>Infrastructure</i>	20
2.7.6 <i>Labour Relations, Employment and Training</i>	20
2.7.7 <i>Additional Government Commitments</i>	21
2.8 REQUIREMENTS FOR PROJECT FINANCING	21
2.8.1 <i>IFC Requirements</i>	21
2.8.2 <i>EBRD Requirements</i>	24
2.8.3 <i>OECD Recommendation on Common Approaches on the Environment and Officially Supported Export Credits</i>	27
2.8.4 <i>The Equator Principles</i>	28
2.8.5 <i>Standard Chartered Bank's Mining & Metals Sector and Issue Position Statement</i>	28

Tables

Table 2.1: Environmental and Health and Safety Standards Relating to the Oyu Tolgoi Project Construction and Operation Period	10
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2. POLICY AND LEGAL FRAMEWORK

2.1 CHAPTER OVERVIEW

This Chapter provides an overview of the national and international policy and legal framework within which the Oyu Tolgoi Project is being developed. The Chapter discusses the overall policy and legal framework in Mongolia together with specific sectoral laws on environment, land use and health & safety. Although this Chapter provides an overview of environmental law, specific legislation regarding Environmental Impact Assessment (EIA) is described in detail in *Chapter A3: Methodology*. Similarly, detailed information on applicable environmental and social standards is provided in the respective baseline chapters (*Section B*).

This Chapter addresses the following topics:

- The constitution and government of Mongolia;
- An overview of applicable Mongolian legislation covering environmental protection, worker health and safety, labour management, and property rights;
- An overview of applicable environmental health & safety standards;
- An overview of applicable international agreements;
- A summary of the Oyu Tolgoi Investment Agreement; and
- The requirements and guidelines of International Financial Institutions (IFIs) with regard to environmental and social matters.

2.2 CONSTITUTION

Mongolia was established as a parliamentary republic in 1992, following 70 years of socialism. The 1992 Constitution was adopted by the National Parliament of Mongolia on January 13, 1992. It sets out the personal rights and freedoms of the People of Mongolia including a right to a *'healthy and safe environment and to be protected against environmental pollution and ecological imbalance'* (Article 16.1.2). It also sets out the system of government and allocates powers and responsibilities to each branch of government.

2.3 GOVERNMENT

2.3.1 National and Regional Government

Mongolia is a parliamentary republic. It is a unitary state which means the central government is supreme and any administrative divisions (sub-national units) exercise only those powers which the central government delegates. The central government body is the single parliamentary chamber of the State Great Khural consisting of 76 members.

There are four levels of government in Mongolia including the State Great Khural. The highest level of sub-national government is the province (*aimag*) and the capital city, Ulaanbaatar. Provinces are divided into regions (*soum*), and Ulaanbaatar is divided into districts. The lowest tier consists of communities, of two types: rural sub-districts (*baghs*) and urban sub-districts (*khoroos*). There are a total of 21 *aimags*, with 329 *soum* and 1520 *baghs*; Ulaanbaatar has 9 districts and 117 *khoroos*.

The 1992 Constitution organises administrative units of Mongolia on the basis of self-governance and state management, each unit having its own Governor and Assembly (Khural). The Governor is the local representative of the central or higher levels of sub-national government, whereas the Assembly is elected by the lower assemblies.

Mongolia has a President who is the head of state. The President is elected by the people. The President nominates a candidate for appointment as Prime Minister from the majority party or coalition in the State Great Khural.

2.3.2 Judicial System

The Constitutional Court

The Constitutional Court is an independent body and governed by the Constitution. The Constitutional Court determines when the constitution has been breached and resolves constitutional disputes.

The Supreme Court

The Supreme Court is the highest court in Mongolia.

Any individual or organisation concerned about the meaning or application of a law may submit an application for interpretation to the Supreme Court.

Lower Courts

The Law on Courts 2002 sets out the composition and structure of the judicial system and ensures the independence of judges and courts. Below the Supreme Court of Mongolia are the *aimag*, capital city, *soum*, inter-*soum* and district courts.

2.4 LEGISLATION

2.4.1 Introduction

The following section discusses the laws which are applicable to the development and operation of the Project.

2.4.2 Environmental Impact Assessment

Law of Mongolia on Environmental Impact Assessment dated 22nd January 1998 and amended on 22 November 2001 addresses environmental impact assessment and is discussed in detail in *Chapter A3* which sets out the methodology of this ESIA. This law also addresses public consultation and disclosure associated with the environmental impact assessment process.

2.4.3 Environmental Protection

Environmental Protection Law (In force on June 5, 1995)

The purpose of this law is to manage the environment using the principles of sustainable development. This is a framework law setting out broad principles and requirements, the details of which are contained in other laws. This law introduces a fee payment system for the use of natural resources and includes administrative provisions allocating responsibility for environmental regulation to various levels of government.

The Oyu Tolgoi Project is located in Khanbogd *Soum* of Omnogovi *Aimag* in the South Gobi region of Mongolia. It is regulated by national laws and ordinances and regulations promulgated by the regional Omnogovi and local Khanbogd governments.

The Environmental Protection Law is a framework law which sets out general principles applicable to the Project and facilitates the promulgation of other laws including fee laws which will regulate activities undertaken within the Project Area.

Law on Buffer Zones (In force on October 23, 1997)

This law requires buffer zones to be established around Strictly Protected Areas and National Parks in order to minimise, prevent and eliminate adverse impacts on those areas, and to establish requirements for the proper use of natural resources. The Law specifies the criteria used to establish Buffer Zones and their boundaries, and provides for the establishment of a Buffer Zone Council and for its composition and responsibilities. A Buffer Zone Fund is also established for the development of Buffer Zones and to provide support for local peoples' livelihoods. The Law also provides for the development of Buffer Zone Management Plans, and imposes liabilities for the violation of Buffer Zone legislation. There is a buffer zone surrounding Areas A and B of the Small Gobi Strictly Protected Area (SGSPA).

The road from the Project to the Gashuun Sukhait border crossing passes through the SGSPA and the use and management of the road will be subject to the provisions of the Law on Buffer Zones.

Law on Special Protected Areas (In force on April 1, 1995)

This law regulates the use and procurement of special protected areas, and the preservation and conservation of its original conditions in order to preserve, among other things, rare and endangered animals. The law establishes four types of protected area designations: Strictly Protected Areas; National Conservation Parks; Nature Reserves; and Monuments.

The road from the Project to the Gashuun Sukhait border crossing passes through the SGSPA and the use and management of the road will be subject to the provisions of the Law on Special Protected Areas.

Law on Fauna (In force on May 5, 2000)

The purpose of this law is to regulate the protection and breeding of terrestrial and aquatic fauna. This law includes provisions addressing limits on fauna use; the recording of rare and endangered species listed in the IUCN Red Book; the protection of natural habitats and migration routes; the establishment of game reserves; and stock enhancement and repopulation.

The Project is situated in an area inhabited by species of fauna protected by the Law on Fauna. The provisions of this law are therefore applicable in terms of the development and operation of the Project. The Flora and Fauna Management Plan will help to ensure compliance with this law.

Law on Natural Plants (In force on June 5, 1995)

The purpose of this law is to regulate the proper use, protection and restoration of natural plants other than forests. There is a corresponding law on Natural Plant Use Fees, which sets fees for the use of very rare, rare and abundant plants. Fees are payable to the *soum* and district upon the issuance of a licence. Details of rare plants within the Project Area are set out in *Chapter B7* on Flora.

The Project is situated in an area populated by species of flora protected by the Law on Natural Plants. The Fauna and Flora Management Plan will help to ensure compliance with this law.

Law on Forestry (In force on May 17, 2007)

The purpose of this law is to address the protection, possession, sustainable use, restoration and reproduction of forests in Mongolia. Among other things, this legislation prohibits the cutting and utilisation of elm without permission from the Central Government Authority.

Elm trees are visible within the vicinity of the Project and within the Project Area. The Flora and Fauna Management Plan will help to ensure compliance with this law.

2.4.4 Land, Land Use and Expropriation

The Constitution

Under the Mongolian Constitution all land, subsoil, natural resources and water are the property of the State. The Constitution allows the State to grant ownership of land to Mongolian citizens but they may not transfer such land to foreign entities. Land may be leased to foreign entities.

Law on Land (In force on 1 January 2003)

This law regulates 'possession' and 'use' of 'land'. The following definitions are important in the context of the law:

- Land includes the surface of land and airspace above but not minerals;
- To 'own' land means to have control over land and a right to dispose of it;
- To 'possess' land means to have control over land in accordance with a contract that sets out the permitted use and other terms of possession;

- To 'use land' means the right to use land in accordance with a contract granted by those who 'own' or 'possess' the land; and
- A 'certificate of land use' means a certificate granting the right to use land to foreign entities.

Land must be monitored, protected, restored and used efficiently for its permitted use. Any activities that may cause damage to human health; nature and ecological balance; or national security are prohibited. Foreign countries, international organisations, legal entities and citizens may become users of land for a specific purpose and a specific time period subject to contractual conditions and in compliance with the law.

Land Use Planning and Compulsory Purchase (Expropriation)

The Law on Land also addresses land use planning and expropriation.

The State Central Administrative Organisation has the power to implement legislation and policy on land use and to determine land use classifications subject to government approval.

Citizens' Representatives Khurals and Governors of *Aimags*, the Capital City, *Soums* and districts have powers to:

- enforce land legislation and ratify general land management plans;
- take land from citizens for the special needs of aimags, the capital city and soums on submission of such proposals by corresponding level governors;
- determine the size and boundaries of land to be taken from Citizens and approve the use of such land; and
- make decisions on granting compensation in respect of land taken.

Governors of *aimags*, the capital city, *soums* and districts have the following powers with respect to land issues:

- to enforce land use laws;
- to prepare land use management plans;
- to submit to Citizens' Representatives Khurals proposals regarding taking land for special needs, upon prior agreement with the possessor of the land and the governor of the corresponding level;
- to evict people from land if they cause significant land degradation; and
- to override land use decisions made by lower level governors.

Soum and district governors have the power to grant rights to citizens to use and possess land in accordance with annual land management plans approved by Citizens' Representatives Khural. Citizens' Representative Khurals and governors of *baghs* and *khoroos* have powers to regulate and protect common tenure land. Governors of *baghs* and *khoroos* have the powers to enforce land use and land protection legislation including the implementation of decisions of higher level authorities. Fees are imposed on the possession and use of land by a separate Law on Land Fees (March 30, 1995).

The development and operation of the Project will be regulated by this law. The Law on Land is also important in the context of understanding any land use and ownership rights of third parties affected by the Project.

Customary Land Use Law

Customary law is developed over time through accepted patterns of behavior within societies that become accepted as law within such communities. Customary law is applicable for the allocation of grazing rights between herder families and communities in Mongolia. Grazing rights may be acquired under customary law through:

- the use of land for generations;
- the construction of animal shelters;
- the possession of a well close to grazing land; and
- the possession of croplands close to grazing land.

Pasture use issues among communities are settled via consultation with neighbours.

Customary land use rights will need to be addressed in the event of impacts on herder water supplies or resettlement of herders.

Law on Subsoil (In force on November 29, 1989)

The purpose of this law is to regulate the use and protection of subsoil according to the principles of sustainable development. Subsoil is the property of the state in accordance with the Constitution of Mongolia. Subsoil may be leased; however, if a mining licence is obtained, Article 13 allows for its automatic use subject to requirements set out in *Chapter 4* which includes a requirement to conserve useful soil, conduct mining efficiently and use extracted gravel and other materials properly.

As the Project is a mining project, it will fall within the ambit of this law.

2.4.5 Minerals Law

Laws addressing the permanent and temporary closure of mines are discussed under *Section 2.4.12* below.

Minerals Law (In force on July 8, 2006)

The purpose of the minerals law is to regulate the exploration and mining of minerals and the protection of mining areas and their surroundings. Minerals are defined as '*naturally occurring mineral concentrations formed on the surface of land or in the subsoil as a result of a geological evolutionary process*' but do not include oil and natural gas.

Mineral resources are the property of the State. The State may grant exploration and mining rights and may own up to 34% of the shares of the investment to be made by the licence holder in a 'mineral deposit of strategic importance' which includes deposits which have the potential to influence social and economic development.

Mineral exploration and mining licences may be granted to Mongolian companies or partnerships ('legal persons') that are taxpayers in Mongolia. Only one minerals licence may be granted to a legal person but there is no limit to the number of exploration licences a legal person may hold.

Pre-mining operations are conducted under a pre-mining agreement between the exploration licence holder and the applicable government agency. Pre-mining operation is the period after exploration when the design package is prepared; the feasibility study undertaken; and mine development and commencement of production occurs.

With respect to strategic reserves such as the Oyu Tolgoi Project, mineral licences are granted for a period of 30 years and may be extended for two consecutive periods of 20 years. A mineral licence includes the following rights:

- to use the mining area for mining and related activities;
- to access the mining area subject to the consent of adjoining land owners and occupiers;
- the right to use water in compliance with applicable laws;
- the right to sell mineral products on the international market; and
- the right to transfer or surrender all or part of the mine licence.

Mineral licence holders have the following obligations:

- to define the boundaries of the mining area;
- to comply with environmental protection laws;
- to prepare an Environmental Protection Plan ('EPP') within 30 days of receiving a minerals licence; and
- to deposit funds equal to 50% of the environmental protection budget in any one year in a special bank account established by the governor of the relevant soum or district. If the licence holder does not comply with its environmental obligations, these funds may be used by the soum or district to address such issues.

If a licence holder fails to comply with its environmental obligations or regulations dealing with mine operation and safety, mining operations may be suspended by the State Inspector for up to 2 months. If the non-compliance is not addressed during this period, the licence may be revoked in accordance with a procedure set out in the legislation which gives the licence holder a right to appeal to the Court.

Article 39 outlines the restoration and management obligations of mining licence holders. These obligations include the requirement to develop mine reclamation plans within the EPP, which is a component of the approved Environmental Impact Assessment. The EPP is required to include measures to minimise environmental impacts and reclamation including backfilling, re-grading and re-vegetation to achieve designated post-mining uses.

As outlined above, the Minerals Law requires a mining licence holder to deposit funds equal to 50% of its environmental protection budget for that particular year into a specially designated bank. The environmental protection deposit funds are to be used if a mining licence holder fails to fully implement the environmental reclamation measures. The Government would then use the funds to complete reclamation work and the licence holder would be responsible for any additional funds required.

A minerals licence has been granted to the Project.

The Oyu Tolgoi Project is regulated by this law. In terms of environmental compliance, the requirements of this law are broad and mineral license holders must comply with Mongolian environmental laws.

2.4.6 Water Law

Law on Water (In force on June 5, 1995)

This legislation makes provision for the proper use, protection and restoration of water resources. It sets out a regime to create an inventory of water resources (the "Water Reserve Resource") and to determine the potential maximum quantity of water that may be taken from such resources over a specific time without affecting the 'natural water balance' (the "potential use").

This law will regulate the use of water by the Project. The Water Resources Management Plan will facilitate compliance with this law.

Customary Water Use Law

Customary law is developed over time through accepted patterns of behaviour within societies that become accepted as law within such communities. Discussing and agreeing water rights issues with neighbours and co-owners is an established method of allocating water rights in Mongolia. In circumstances where agreement cannot be reached, herders approach the *bagh* or *soum* administrator for assistance.

Customary water rights will need to be addressed in the event of displacement or resettlement of herders

2.4.7 Air Pollution Law

Law on Air 1995 (In force on June 5, 1995)

This law allows the government to set limits on discharges of emissions into the atmosphere by stationary sources through the issuing of permits. It also includes provision for upper limits on emissions by all sources to be prescribed in standards. If emission limits in permits are exceeded by stationary sources, inspectors may suspend the activities of the emitter.

Emissions monitoring and pollution mitigation technology including greenhouse gas mitigation technology is required in all new or expanded facilities in line with international standards. The legislation also provides for a fee payment system with respect to emissions released into the atmosphere. Air Fee Laws prescribe these fees in more detail.

This law will regulate the discharge of emissions by the Project. The Atmospheric Emissions Management Plan will help to ensure long-term compliance with this law.

2.4.8 Waste and Hazardous Substances

Law on Household and Industrial Waste (In force on July 1, 2004)

This law regulates the collection, transportation, storage, reuse and disposal to landfill of household and industrial waste. Permission to landfill waste is granted by *Soum* or district Governors and organisations undertaking industrial activities that generate a significant amount of waste must landfill that waste in a designated landfill that meets prescribed standards.

Household and industrial waste will be generated by the Project and a permanent landfill will be developed at the Project Waste Management Centre.

Law on Hazardous and Toxic Chemicals (In force on May 25, 2006)

This law addresses the import, export, transportation, storage, use, and control of toxic chemicals. It imposes measures to prevent the impact of toxic and hazardous substances on human health and the environment.

Chemicals will be used at and transported to, from and within the Project Area. The Hazardous Materials Management Plan will help to ensure compliance with this law.

2.4.9 Cultural Heritage

Law on the Protection of the Cultural Heritage (In force June 8 2001)

The purpose of the Cultural Heritage Law is to regulate the collection, registration, research, classification, evaluation, preservation, protection, promotion, restoration, possession and usage of cultural heritage including tangible and intangible heritage.

The Project Area has been surveyed extensively for evidence of tangible cultural heritage. A baseline assessment of intangible cultural heritage has been undertaken and a Cultural Heritage Management Plan is in place to ensure future compliance with this law.

2.4.10 Environmental Fees

Law on the Reinvestment of Natural Resource Usage Fees toward Environmental Protection and Restoration of Natural Resources ('Reinvestment Law') (In force on October 1, 2000)

Under Mongolian law, fees are paid for the use of natural resources. Separate laws set and levy fees for the use of resources such as water, mineral water, timber and fuel wood, land, game and natural flora. The purpose of the Reinvestment Law is to define the percentage of these fees that will be applied towards environmental protection and the restoration of natural resources.

This law prescribes the percentage of fees paid by the Project to be invested by the Government in environmental protection and the restoration of natural resources. Procedures are in place for the timely payment of environmental fees.

2.4.11 Health and Safety

Laws addressing the storage, use and handling of chemicals are addressed at 2.4.8 above.

Law on Sanitation (In force on 1 July 1998)

This is a public health law and its purpose is to ensure the rights of individuals to healthy and safe living and working conditions and to define the rights and duties of individuals and businesses in this regards. This law requires the following activities to be carried out in accordance with regulations addressing such activities:

- the supply of drinking and household water;
- air quality including dust, smog and pollution;
- soil sanitation, waste disposal, sewage facilities, water holes and lavatories;
- the disposal of hospital waste, radioactive and toxic chemicals;
- the construction of housing and facilities for public use;

- the use of toxic chemicals and ionising rays;
- activities in environments that are noisy or that are impacted by vibration, electromagnetic fields or radio waves;
- the production and use of foodstuffs; and
- the import of products and technologies.

Duties of business entities under this law include:

- ensuring compliance with applicable regulations within their business including training personnel; and
- notifying the inspection agencies of any conditions harmful to human health or the environment.

Activities and operations will be regulated by Mongolian health and safety law. Environmental Management Plans and the Worker Health, Safety and Security Plan will help to ensure compliance with the law.

Law on Radiation Protection and Safety

This law applies to the use of any materials or equipment considered to be a source of radiation. Prior to the importation or use of such equipment or materials, a licence must be obtained from the applicable regulatory authority. Sources must be stored in accordance with procedures determined by the regulatory authority and must be disposed of under the control of the regulatory authority.

Equipment used in the Project Area will be regulated by this law. The Worker Health and Safety Plan will facilitate compliance with this law.

Regulation on the Temporary and Permanent Closure of Mines (In force on August 21, 2003)

This regulation addresses the remedial actions that are required in the event of a temporary or permanent mine closure. These regulations aim to prevent harm to human health and the environment in the event of a mine closure. Temporary closure may occur in circumstances where a valid mining licence is in place and there are: changes in mining geology or hydrology; technical or economic changes; or other unspecified events.

Mines are closed permanently when proven reserves have been extracted; minerals are excluded from the State Mineral Registry; and there is no opportunity to increase reserves.

The regulation includes detailed administrative procedures that must be carried out in the event of mine closure. These procedures include:

- notification of closure by the licence holder to the State Specialised Inspection Agency;
- development a closure plan by the licence holder to be approved by the State Specialised Inspection Agency; and
- the preparation of additional documentation by the licence holder including details of waste rock facilities; details of the implementation of environmental protection plans; details of reclamation activities; and maps showing potentially hazardous areas arising from mining activity.

The regulations include detailed actions that need to be taken in the event of temporary or permanent closure of an underground mine.

Any temporary or permanent closure of mining activities within the Project Area will be regulated by this law. The Mine Closure Plan will facilitate compliance with this law.

2.4.12 Labour Law

Labour Law of Mongolia (In force on 1 July 1999)

The purpose of this law is to determine the rights and duties of employers and employees including collective agreement, collective bargaining, collective and individual labour disputes, labour conditions, terms and conditions of work, liabilities for breach of the legislation, and to ensure gender equality.

Under this law an employee has the right to be provided with labour conditions that comply with health and safety laws and regulations; to receive payment for work done; to holiday; to freely assemble with other employees for the purpose of protecting his/ her rights and legitimate interests including through representative organisations and collective agreements; to strike in certain circumstances; to receive a pension, an entitlement to social insurance and death in service benefits and to other benefits as may be provided in employment and collective agreements.

Discrimination in the workplace based on nationality, race, sex, social origin or status, wealth, religion, or ideology is prohibited, but women are prevented from undertaking certain forms of work as set out in separate regulations¹. Women with children are protected from discrimination and are entitled to maternity leave. Parents with children under three may take child care leave and employers must re-engage such employees on their return to work.

Collective agreements may be concluded within professions or economic sectors and at the region, *soum*, *aimag*, district or capital city level. All such collective agreements must be registered with the applicable regulator. The Labour arbitration court settles collective labour disputes and a court or commission settles individual labour disputes.

The Labour law will regulate the employment of staff at the Project and is applicable in the context of contractual terms, union activity, gender equality and health and safety. This law will be implemented through contracts of employment and a number of management plans.

2.5 MONGOLIAN ENVIRONMENTAL HEALTH & SAFETY STANDARDS

Environmental quality and health & safety standards relating to the Oyu Tolgoi Project are summarised in *Table 2.1* below. These standards govern compliance with Mongolian national requirements. The specific standards within these regulations are discussed further in the baseline chapters of the ESIA.

Table 2.1: Environmental and Health and Safety Standards Relating to the Oyu Tolgoi Project Construction and Operation Period

No	Environmental / Health and Safety Standards
1	MNS (ISO) 5667-1:2002 Water Quality. Sampling. Part 1. Guidance on the design of sampling programs.
2	MNS 900:2005 Environment. The human health protection. Security. Drinking water. Hygienic requirements and quality control.
3	MNS (ISO) 5667-2:2001 Water Quality. Sampling. Part 2. Guidance on sampling techniques.
4	MNS (ISO) 4867:1999 Water quality. Sampling. Part 3. Recommendation of sample preparation and storage.
5	MNS (ISO) 5667-4:2001 Water Quality. Sampling. Part 4. Guidance on sampling procedure of natural lake and reservoir.
6	MNS (ISO) 5667-10:2001 Water Quality. Sampling. Part 10. Guidance on waste water sampling procedure.
7	MNS (ISO) 5667-11:2000 Water quality. Sampling. Part 11. Guidance on groundwater sampling.
8	MNS (ISO) 5667-13:2001 Water Quality. Sampling. Part 13. Guidance on waste water and water treatment facility sludge sampling procedure.
9	MNS (ISO) 11083:2001 Environment. Water Quality. Determination of chromium (VI) using spectrometric method (1.5-diphenylcarbazide).
10	MNS 5032:2001 Water quality. Determination of heavy metals using the Rontgen fluorescence method.
11	MNS (ISO) 11923:2001 Water quality. Determination of suspended solids by filtration through glass (fibre filters).
12	MNS 4943:2000 Water quality. Waste water.
13	MNS (ISO) 4889:1999 Water quality. Determination of electrical conductivity.

¹ a draft revised list of works prohibited to women is currently being developed by the Ministry of Social Welfare and Labour

No	Environmental / Health and Safety Standards
14	MNS 4586:1998 Water environmental quality. General requirements.
15	MNS 4420:1997 Drinking water. Determination of mercury. Atomic absorption method.
16	MNS 4430:2005 Drinking water. Determination of measuring iron compounds.
17	MNS 2573:1978 Environmental protection. Hydrosphere. Water quality indicators.
18	MNS 4345:1996 Industrial water. Method of preparation of purified water for chemical testing.
19	MNS 4341:1996 Industrial water. Determination of magnesium concentration.
20	MNS 4348:1996 Industrial water. Determination of copper.
21	MNS 4431:2005 Drinking water. Determination of nitrite concentration.
22	MNS 4288:1995 General requirements for selecting a site for wastewater treatment plants and treatment technologies and effectiveness.
23	MNS 4217:1994 Drinking water. Determination of total nitrate concentration.
24	MNS 0899:1992 Requirements and rules for choosing a water supply source and hygienic requirements.
25	MNS 4047:88 Environmental protection. Hydrosphere. Surface water quality monitoring procedure.
26	MNS 3935:1986 Drinking water. General requirement for field testing of water.
27	MNS 3936:1986 Drinking water. Field analysis methods.
28	MNS 3900:1986 Drinking water. Determination of taste, colour, smell and turbidity.
29	MNS 3597:1983 General requirements for protection of surface and groundwater from pollution by mineral fertilizer.
30	MNS 3532:1983 Surface water. Determination of lead content.
31	MNS 3342:1982 General requirements for protection of groundwater from pollution / contamination.
32	MNS 6148:2010 Water quality. Permissible level for ground water polluting substances.
33	MNS 0017-1-5-15:1980 Environmental protection. Hydrosphere. Determination method of oil products in water.
34	MNS 0017-1-1-10:1979 Water use and protection. Terms and definition.
35	MNS 0017-1-1-14:1980 Hydrosphere. Classification of water use. General requirements.
36	MNS 4423:1997 Drinking water. Method of measuring dry residue.
37	MNS 2570:1978 Method of measuring water purity.
38	MNS 4079:1988 Water quality terms and definition.
39	MNS (ISO) 7887:2000 Water quality. Determination method of water colour and its checking.
40	MNS 5790:2007 Water quality. Determination of manganese (Mn) concentration.
41	MNS (ISO) 4817:1999 Water quality. Determination of ammonium.
42	MNS (ISO) 7980:2003 Water quality. Determination of calcium and magnesium through atom absorption spectrometer method.
43	MNS (ISO) 5814:2005. Water quality. Determination of dissolved oxygen concentration. Electric chemistry method.
44	MNS (ISO) 6060:2001 Water quality. Determination of chemical oxygen demand.
45	MNS (ISO) 9280:2001 Water quality. Determination of sulphate by barium chloride gravimetric method.
46	MNS (ISO) 10523:2001 Water quality. Determination of pH.
47	MNS 0017-2-3-16:1988 Environmental protection. Atmosphere. City and settled area air quality monitoring procedure.
48	MNS 3384:1982 Atmosphere. General requirements for sampling.

No	Environmental / Health and Safety Standards
49	MNS 3383:1982 Atmosphere. Pollution source. Terms and definitions.
50	MNS 4990:2000. Occupational Health and Safety. Workplace environment. Hygienic requirements.
51	MNS 5885:2008 Accepted concentration of air polluting substances. Technical general requirements.
52	MNS (ISO) 4225:2001 Air quality. General background. Vocabulary.
53	MNS 5365:2004 General issues of air quality. Fine size dust determination method.
54	MNS 4219:1994 Environmental protection. Ecological passport for enterprises. Main procedures.
55	MNS 4219:2002 Air Quality. Determination of sulphur content in ambient air.
56	58 MNS 5914:2008 Environment. Land reclamation. Terms and definitions.
57	MNS 5915:2008 Environment. Classification of land destroyed due to mining activities.
58	MNS 5916:2008 Environment. Requirements for fertile soil removing and its temporary storage during the earth excavation.
59	MNS 5917:2008 Environment. Reclamation of land destroyed due to mining activities. General technical requirements.
60	MNS 5918:2008 Environment. Re-vegetation of destroyed land. General technical requirements.
61	MNS 4920:2000 Environment. Destroyed land slope. Technical requirements.
62	MNS 3298:1991 Soil. General requirements for sampling.
63	MNS 3297:1991 Soil. Permissible level for hygienic characteristics.
64	MNS 0017-0-0-06:1979 Environmental protection standard system.
65	MNS 3473:1983 Environment. Land. Land use. Terminology and determination.
66	MNS 5002:2000 Occupational Health and Safety. General requirements for noise norm and safe working procedure.
67	MNS 5003:2000 Occupational Health and Safety. General requirements for noise measurement.
68	MNS 12.1.009:1985 Occupational Safety. Noise. Noise accepted level in apartment and civil construction.
69	MNS 12.1.06:1988 Occupational Safety standard system. Extreme high noise. General requirements for safety.
70	MNS 12.4.005:1985 Occupational Health and Safety. Protection tools and methods against noise. Classification.
71	MNS 12.1.017:1988 Occupational Safety standard system. Extreme high noise. Workplace noise pressure measure method.
72	MNS 5666:2006 Water biological properties assessment. Determination method of active sludge of waste water treatment facility.
73	MNS 5668:2006 Water biological properties assessment. Microbiological analysis method of waste water.
74	MNS 4585:2007 Air quality. Technical general requirements.
75	MNS-3384:82 Atmospheres. General requirements for sampling
76	MNS-4048:88 Atmospheres. Gravimetric method for determination of dust concentration. .

Note: blue = water quality standards; green = land protection, soils and ecological standards; grey = air quality standards; orange = occupational health & safety standards.

The Mongolian Agency for Standardization and Metrology (MASM) is responsible for the development and agreement of standards in Mongolia. The preparation, application and promotion of national standards are set out in the Mongolian law on "Standardization and Conformity Assessment", adopted in 2003.

Standards are being harmonized to ISO standards and those that are harmonized to ISO standards are indicated in the above table.

2.6 INTERNATIONAL AGREEMENTS

International agreements are commitments by states to act or refrain from acting in the manner prescribed in the agreement. If the obligations contained in international agreements are to be applied at national level, governments must promulgate national laws implementing the terms of the international agreement. While the government of Mongolia has promulgated specific laws implementing specific international agreements, it has also incorporated provisions in national laws indicating that where the national law is inconsistent with international agreements to which Mongolia is a signatory, the requirements of the international agreement will prevail. Accordingly, the terms of international agreements to which Mongolia is a party need to be understood for the purposes of the Project. Set out below is a brief summary of international agreements applicable to the Project.

2.6.1 Environmental Impact Assessment

UNECE Convention on Environmental Impact Assessment in the Transboundary Context ('Espoo Convention') (*In force 10 September, 1997, not ratified by Mongolia*)

The Espoo Convention sets out the obligations of parties to assess the environmental impact of certain activities at an early stage of planning. It also lays down the general obligation of States to notify and consult each other on all major projects under consideration that are likely to have a significant adverse environmental impact across boundaries.

The UNECE (United Nations Economic Commission for Europe) is one of 5 regional commissions of the UN. Its major aim is to promote pan-European economic integration. To do so, UNECE brings together 56 countries located in the European Union, non-EU Western and Eastern Europe, South-East Europe and Commonwealth of Independent States (CIS) and North America. Mongolia is not a Member State and is not a party to the above-mentioned convention and protocol. However, The Espoo Convention and its Protocol are applicable to the Project because EBRD's Performance Requirements require clients to interact with their stakeholders on an ongoing basis in a manner consistent with the spirit, purpose and ultimate goals of the Espoo Convention. The Espoo Convention is also applicable to the Project in the context of EBRD's Performance Requirement 6 which addresses biodiversity conservation and the sustainable management of living natural resources.

UNECE Kyiv SEA Protocol to the Espoo Convention (*In force, 11 July 2010, not ratified by Mongolia*)

This protocol aims to ensure that environmental considerations are taken into account in an integrated manner to inform governments' strategic decision-making to support environmentally sound and sustainable development. This protocol also provides for extensive public participation in the governmental decision-making process.

2.6.2 Protection of Flora and Fauna

The Convention on the Conservation of Migratory Species of Wild Animals ('CMS') (*In force in Mongolia on 24 June 1999*)

This Convention aims to conserve terrestrial, marine and avian migratory species throughout their range. Under the framework of the CMS, a number of agreements and memoranda of understanding ('MoUs') have been entered into, focussing on specific endangered species. Mongolia has ratified the CMS and is signatory to the following agreements and MoUs:

Memorandum of Understanding concerning the Conservation of Migratory Birds of Prey in Africa and Eurasia (*Signed by Mongolia on 22 October 2008*)

The objective of this MoU is to achieve the favourable conservation status of migratory birds of prey with reference to their range, population dynamics and habitat. A range of measures are included in the MoU to achieve these objectives including the promulgation of appropriate national laws, the identification and maintenance of habitats and action to recover population numbers.

Memorandum of Understanding concerning Conservation Measures for the Siberian Crane (*Signed by Mongolia on 29 April 2004*)

The threat to the Siberian Crane is attributed to hunting during migration and habitat deterioration in their wintering grounds. The aim of the MoU is to reduce mortality in the remaining populations, to protect and

manage their habitats and enhance co-operation among the range states and other concerned agencies through a range of measures.

Memorandum of Understanding concerning the Conservation of the Saiga Antelope (Signed by Mongolia on 10 September 2010)

The objective of the MoU is to provide a road map to guide the implementation of conservation action for the Saiga Antelope in the range states and in those countries which import Saiga produce such as the horns. A range of measures to achieve these objectives include improved monitoring of populations, control of poaching, awareness raising and captive breeding.

Convention on Wetlands of International Importance especially as Waterfowl Habitat (In force in Mongolia on 8 April 1998)

The Convention on Wetlands provides a framework for national action and international cooperation for the conservation of wetlands of international importance and the sustainable use of all wetlands.

Convention on International Trade in Endangered Species (In force in Mongolia on 1 May 1995)

The Convention on International Trade in Endangered Species of Wild Fauna and Flora aims to ensure that international trade in specimens of wild animals and plants does not threaten their survival.

2.6.3 Biodiversity and Sustainable Development

International Convention to Combat Desertification (In force in Mongolia on 26 December 1996)

The objective of this Convention is to combat desertification and mitigate the effects of drought in countries experiencing serious drought and/or desertification through effective action at all levels and supported by international cooperation.

Convention on Biological Diversity (In force in Mongolia on 30 September 1993)

The Convention on Biological Diversity focuses on promoting sustainable development and establishes three main goals: the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of the benefits from the use of genetic resources.

2.6.4 Energy and Climate Change

United Nations Framework Convention on Climate Change (In force in Mongolia on 21 March 1994)

The objective of this Convention is to stabilize greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.

Kyoto Protocol (In force in Mongolia on 16 February 2005)

The Kyoto Protocol sets binding targets for 37 industrialised countries (which do not include Mongolia) and the European Union for reducing greenhouse gas emissions. It includes three mechanisms to help promote greenhouse gas reduction: emissions trading; clean development mechanism; and joint implementation.

Energy Charter Treaty (In force in Mongolia on 17 February 2000)

The Treaty focuses on promoting transparency and efficiency in the operation of energy markets and includes provisions addressing: the protection of foreign investment; non-discriminatory conditions for trade in energy; the resolution of disputes; and the promotion of energy efficiency and the reduction of environmental impact resulting from energy production and use.

Energy Charter Protocol on Energy Efficiency and related Environmental Impacts (In force in Mongolia 19 March 2000)

This Protocol defines policy principles for the promotion of energy efficiency as a source of energy and for reducing the adverse environmental impacts of energy systems.

2.6.5 Ozone Depleting Substances

Vienna Convention and Montreal Protocol (In force in Mongolia on 5 June 1996)

The Vienna Convention outlines states' responsibilities for protecting human health and the environment against the adverse effects of ozone depletion in the stratosphere and establishes the framework under which the Montreal Protocol was negotiated.

The Montreal Protocol signed in 1987 and substantially amended in 1990 and 1992 provides for the phase out of the production and consumption of certain compounds that deplete ozone in the stratosphere.

2.6.6 Hazardous Substances

Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (In force in Mongolia on 8 March 2001)

This Convention covers pesticides and industrial chemicals that have been banned or severely restricted for health or environmental reasons by parties to the convention and which have been notified by parties for inclusion in the Prior Informed Consent Procedure. Under the Prior Informed Consent Procedure, all parties have an opportunity to make informed decisions as to whether they will consent to future imports of certain listed chemicals.

Stockholm Convention on Persistent Organic Pollutants (In force in Mongolia on 30 April 2004)

The objective of this treaty is to protect human health and the environment from chemicals that remain intact in the environment for long periods; become widely distributed geographically; and which are bio-accumulative in humans and wildlife.

2.6.7 Water

Agreement between the Government of the PRC and Mongolia on the Protection and Utilisation of Transboundary Waters (In force on 29 April 1994)

This Agreement refers specifically to a number of transboundary rivers and lakes and it also applies to other inland waters including groundwater that forms or crosses the boundary between China and Mongolia. Applicable aspects of the Agreement include the reduction of water pollution; maintenance and rational use of water and the requirement for consultation between the parties on an annual basis with respect to the consumption of water from transboundary waters.

2.6.8 Waste

Convention on the Trans-boundary Movement of Hazardous Wastes and their Disposal (In Force in Mongolia on 15 April 1997)

The Convention includes a number of principles including environmentally sound management and the disposal of waste close to its source. It also includes controls on the transboundary movement of hazardous waste including the requirement for movement documents and, in some cases, prior written notification by the State of export to the competent authorities of the States of import and transit.

2.6.9 Noise

Convention on International Civil Aviation - Annex 16 – Aircraft Noise (In force in Mongolia on 7 October 1989)

Annex 16 deals with the protection of the environment from the effect of aircraft noise and aircraft engine emissions. Different requirements apply to different types of aircraft. Aircraft landing at the airport will be assessed to ensure that they comply with the requirements of Annex 16.

2.6.10 Tangible and Intangible Cultural Heritage

Convention concerning the Protection of World Culture and Natural Heritage (In force in Mongolia on 2 February 1990)

This Convention focuses on the identification, protection, conservation, presentation and transmission to future generations of cultural and natural heritage.

Convention on the Safeguarding of Intangible Cultural Heritage (Ratified in Mongolia on 29 June 2005)

This Convention focuses on protecting intangible cultural heritage which includes: language; music; song; performing arts; social practices; rituals and festive events; traditional crafts and knowledge; and practices concerning nature and the universe.

2.6.11 Labour Relations and Workers' Rights

Mongolia has been a member of the International Labour Organisation (ILO) since 1968 and has ratified a range of ILO Conventions, including:

- Forced Labour Convention, 1930 (No. 29), ratified 15.03.2005;
- Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), ratified 3.06.1969;
- Right to Organise and Collective Bargaining Convention, 1949 (No. 98), ratified 3.06.1969;
- Equal Remuneration Convention, 1951 (No. 100), ratified 3.06.1969;
- Maternity Protection Convention (Revised), 1952 (No. 103), ratified 3.06.1969;
- Abolition of Forced Labour Convention, 1957 (No. 105), ratified 15.03.2005;
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111), ratified 3.06.1969;
- Employment Policy Convention, 1964 (No. 122), ratified, 24.11.1976;
- Minimum Age (Underground Work) Convention, 1965 (No. 123) Minimum age specified: 18 years, ratified 3.12.1981;
- Workers' Representatives Convention, 1971 (No. 135), ratified 8.10.1996;
- Minimum Age Convention, 1973 (No. 138) Minimum age specified: 15 years, ratified 16.12.2002;
- Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), ratified 10.08.1998;
- Occupational Safety and Health Convention, 1981 (No. 155), ratified 3.02.1998; and
- Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159), ratified 3.02.1998.

2.6.12 Livestock Production

Agreement for the Establishment of a Regional Animal Production and Health Commission for Asia and the Pacific (*Entry into force in Mongolia on 8 May 2007*)

The purposes of the Commission include the promotion of livestock development; building up national and regional livestock programmes; promoting livestock production as an industry; and raising the level of nutrition and standard of living of small farmers and rural communities.

2.7 OYU TOLGOI INVESTMENT AGREEMENT

This section provides a synopsis of the Investment Agreement (IA) that governs the relationship between the Oyu Tolgoi Project, Project investors and the Government of Mongolia. The IA is a public document, and is reproduced in Volume II of this ESIA. Applicable details of the IA are summarised below.

2.7.1 Introduction

The Investment Agreement (“IA”) is dated October 6, 2009 and the conditions precedent under the IA were satisfied on 31 March, 2010.

The IA was entered into between: (1) the Government of Mongolia represented by the Minister of Finance, the Minister of Mineral Resources and the Minister of Nature, Environment and Tourism; (2) Oyu Tolgoi (formerly, Ivanhoe Mines Mongolia Inc LLC) (the “Investor”); (3) Ivanhoe Mines Ltd; and (4) Rio Tinto International Holdings Limited in accordance with the provisions of Article 29 of the Minerals Law which is discussed above. Those aspects of the IA which relate to social and environmental impacts, mitigation and management are discussed in this section.

2.7.2 Core Operations

“Core Operations” under the IA comprise the construction and operation of infrastructure and related facilities and to conduct mineral exploration and mining activities throughout the Mine Licence Area (referred to as the “Contract Area” and including mining licences 6709A, 6708A and 6710A) and all other connected activities (such as water supply and concentrate transportation).

The IA grants the Investor the right to undertake mining and mineral processing operations. The Investor is under an obligation to use modern mining and processing technology that meets Mongolian and international standards and to conduct exploration, mining and production operations efficiently and, to the extent that it is economically feasible, in a manner that minimises environmental impact.

2.7.3 Regional Development

The Government will establish the “South Gobi Regional Development Council (the “**Council**”) and lead its activities. The Council will be governed by a board which will include representatives of the Government, local governance organisations, the private sector entities, civil society organisations and donor and international financial organisations with activities directed towards the Southern Gobi region. The Investor will be a member of the Council’s governing board, shall report the to the Council.

The Council will assist the Government in terms of preparation, financing, organising and implementation of the Southern Gobi local and regional development strategy, plans and budgets.

The Investor will undertake the following:

- develop partnerships to ensure that sustainable benefits from the Oyu Tolgoi Project reach the Mongolian people giving priority to Omnogovi Aimag citizens and groups directly and indirectly impacted by the Oyu Tolgoi Project, as determined by socio-economic and environmental impact assessments;
- establish cooperation agreements with local administrative organisations which may include the establishment of local development and participation funds, local participation committees and local environmental monitoring committees;
- consult with local administrative organisations to provide appropriate compensation upon resettlement of herder families located in the Contract Area² who are directly impacted by the Oyu Tolgoi Project;
- give priority to citizens of local communities in the Southern Gobi region, with preference to Omnogovi Aimag, when recruiting, training and employing a workforce;
- support business development programs to assist in starting and developing local businesses to supply Oyu Tolgoi and the wider Mongolian economy; and
- continue to build relationships with non-governmental organisations, civic groups, civil councils and other stakeholders based on principles of transparency, accountability, accuracy, trust, respect and mutual interest.

Further information of how Oyu Tolgoi is implementing the regional development provisions of the IA can be found in *Section D: Management Plans* of this ESIA.

2.7.4 Environment

Many of the environmental provisions contained in the IA track the requirements of the Minerals Law and Water Law and the Investor has contractually committed to comply with these laws. The environmental provisions can be summarised as follows:

- The Investor agrees to comply with the international environmental law treaties to which Mongolia is a party and Articles 35 and 37 of the Minerals Law, and agrees to obtain detailed environmental impact assessment reports (the “EIA Reports”) in accordance with the Law on Environmental Impact Assessment;

² Defined in the IA as the area of mining licences 6709A, 6708A and 6710A.

- The Investor has the right to review and comment on the EIA Report prior to the EIA Report being submitted to the State central administrative authority in charge of environment;
- The Investor agrees to obtain permits and licences for the Oyu Tolgoi Project required under environmental laws and the Government agrees to provide support process applications for permits in accordance with Mongolian law;
- The Investor agrees to implement an environmental protection plan ("EPP") and environmental monitoring and analysis program and produce an independent report for the State central administrative authority in charge of environment every 3 (three) years³;
- The Investor agrees to make the EPP and independent reports available to the public, provide local communities with sufficient applicable information and regularly consult with local communities on the impact of its operations on the local environment;
- The Investor agrees to deposit funds equivalent to 50% (fifty percent) of its environmental protection cost for the particular year, prior to the start of that year into a bank account established by the State central administrative authority in charge of environment;
- Each deposit will be refunded annually to the Investor upon full implementation of each EPP for that year in all material respects;
- If the Investor fails to fully implement in all material respects the measures specified in an EPP for that year, the deposit will be used for the implementation of the EPP. If the deposit is insufficient, experts shall be appointed to determine the additional actions and funds required by the Investor;
- The Investor agrees to submit an annual report detailing its comprehensive environmental monitoring and analysis program associated with Core Operations to the State central administrative authority in charge of environment;
- If any material adverse impact is found by the environmental monitoring and analysis program, the Investor will take necessary measures to eliminate such material adverse impact at the Investor's expense;
- The Investor agrees to pay compensation for unanticipated and irreversible ecological damage directly caused by the operations of the Oyu Tolgoi Project based on the ecological and economic value for the permanently damaged natural resources, to the extent prescribed by the Law on the Environmental Protection and other applicable laws and regulations;
- Compensation referred to above will be determined by an independent group of environmental experts appointed by the State central administrative authority in charge of environment, taking into consideration the views of the Investor, and the Investor shall cooperate with the experts in such determination; and
- The Investor has the right to access and use its self-discovered water resources (including the water resources the subject of the Water Approval) for purposes connected with the Oyu Tolgoi Project during the life of the Oyu Tolgoi Project, including to construct, commission, operate and rehabilitate the Oyu Tolgoi Project. The following provisions apply to self discovered water:
 - The approved volume of self discovered water resources (as specified in the Water Approval) is only sufficient to meet the Oyu Tolgoi Project's water requirements, and the rights to use such self-discovered water resources shall not be granted to other economic entities;
 - In respect of self-discovered water resources discovered or approved after the date of the IA and where these water resources fully satisfy and exceed the requirements of the Oyu Tolgoi Project, the State administrative authority in charge of water matters may provide the portion of such excess water resources for use of other economic entities on

³ An Environmental Protection Plan (EPP) is prepared as the outcome of an EIA Report. It sets out the measures to be taken to manage issues identified in the EIA in compliance with Mongolian regulatory requirements. EPPs are supported with a budget which is agreed on an annual basis with the Ministry of Nature, Environment and Tourism based on the outcomes of the annual monitoring report. Budgets (and actions) are reviewed and agreed on an annual basis. The three-yearly report provides a more strategic overview of actions and progress, enabling performance over time to be assessed and reported.

terms to be agreed with the Investor and the Investor will be compensated for its exploration costs in proportion to the volume of water made available to the other economic entities; and

- The Investor will make its self-discovered water resources available to be used for household purposes, herder families and agricultural activities of the local *soum* communities.
- The Investor will pay fees to the budget for surface and underground water removed and consumed for the purpose of mine development and mining of minerals at the rate specified in the Law on Fees for Use of Water and Mineral Water effective at that time and these fees shall be treated as a deductible expense from the taxable income of the Investor, however such fees, and the terms upon which the Investor may use such water, shall be no less favourable than those applicable from time to time to other domestic and international users, and shall take into account whether the water is suitable for industrial or household use;
- The Investor will support the Government in the establishment of safe drinking water for the local *soum* centre directly impacted by the Oyu Tolgoi Project as identified in the EIA Report;
- Recognising that the quality of self-discovered water may vary considerably, the Investor will support the Government to upgrade or treat these water resources for household purposes and agricultural activities of the local *soum* communities, or provide infrastructure for water transportation for local household use only;
- The Government will ensure that a contract on water utilisation is awarded upon request of the Investor (including in relation to the water resources the subject of the Water Approval) in accordance with the Water Law, the Law on Fees for Use of Water and Mineral Water and other laws and regulations. As the Oyu Tolgoi Deposit is classified as a mineral deposit of strategic importance, the contract with the Investor on water utilisation will have a term of 30 (thirty) years in accordance with the Water Law, and may be extended for periods of 20 (twenty) years each time in accordance with the Water Law;
- The Government shall grant to the Investor within 30 (thirty) days after its request, all necessary contracts on water utilisation and other water Permits to ensure that there is sufficient water available at all times for the Oyu Tolgoi Project; and
- The Investor has the following obligations with regard to water utilisation:
 - Comply in all material respects with the conditions and requirements set forth in Article 24 of the Water Law, the contract on water utilisation and the EIA Reports and compliance with such conditions and requirements will be audited once every 5 (five) years, within 3 (three) months after the end of the applicable year, by an independent, competent, professional firm, and the audit outcome shall be provided to the State central administrative authority in charge of environment with a copy to the Investor;
 - not reduce from the current level the quality and quantity of the existing potable and livestock water supplies used by existing users at the date of the IA within the water resources area defined in the EIA Reports;
 - apply modern technology and procedures to minimise the volume of water used by the Oyu Tolgoi Project, maximise the efficiency of water usage, and recycle used water where reasonably practicable to do so having regard to technology and procedures used in similar operations; and
 - rehabilitate the environment damaged by Core Operations in accordance with Mongolian and international standards and codes in effect when the mine is closed in whole or in part.

Further information of how Oyu Tolgoi is implementing the environmental protection provisions of the IA can be found in *Section D: Management Plans* of this ESIA.

2.7.5 Infrastructure

The Infrastructure provisions of the IA focus on power and transportation. In terms of power, the IA includes an overarching commitment from the Government and the Investor to work together to determine the most optimal and reliable solutions for power supply to meet the requirements of the Oyu Tolgoi Project. More specifically, the IA grants the investor the following rights for the period up to and including the first four years of production:

- secure power requirements for the Oyu Tolgoi Project from inside or outside Mongolia by the construction of any necessary transmission infrastructure;
- to install power generation facilities at a site most appropriate for the long and short-term power requirements of the Oyu Tolgoi Project; and
- to determine the source of coal to be used for power generation.

The Investor shall within four years of commencement of production secure its total power requirements for the Oyu Tolgoi Project from one or more of the following sources within Mongolia:

- coal-fired power plant developed or funded by the Investor;
- coal-fired power plant developed or funded by a third party; or
- the Mongolian electricity grid.

In circumstances where the Government supplies power, the supply will be on commercial and non-discriminatory terms, and will provide stable, reliable and uninterrupted power sufficient for the Oyu Tolgoi Project.

The Government gives a commitment to grant permits required for power supply as efficiently as possible and for the maximum term permitted under Mongolian law.

The Investor may construct a road between the Oyu Tolgoi Project and Gashuun Sukhait border crossing pursuant to the terms of an agreement with the State central administrative authority responsible for transportation on the following terms:

- the road route is to be agreed with the Government and is to be as cost effective and direct as possible between the Oyu Tolgoi Project and Gashuun Sukhait border crossing;
- the Investor will fund construction of the road and will be exempt from all road user fees in respect of the road; and
- the Government will be responsible for the maintenance of the road.

The State central administrative authority in charge of road matters and the Investor shall enter into a contract under which maintenance of the road is subcontracted to the Investor at the Investor's cost.

The Investor may construct, manage and use an aerodrome in connection with the Oyu Tolgoi Project based on Permits issued in accordance with Mongolian law.

The Government may construct or facilitate the construction and management of a railway in the vicinity of the Oyu Tolgoi Project to the China-Mongolia border. The Government will consult with the Investor on the location and route of the railway and if the railway is constructed it will be made available to the Investor on commercial and non-discriminatory terms.

Further information of how Oyu Tolgoi is implementing the infrastructure provisions of the IA can be found in *Section D: Management Plans* of this ESIA.

2.7.6 Labour Relations, Employment and Training

Many of the labour and employment provisions contained in the IA reflect current Mongolian law and the Investor gives a contractual commitment to comply with these laws. These laws are addressed in *Chapter B13* and are not repeated here.

During the term of the IA, the Investor and the Government will cooperate to ensure there is a suitably qualified Oyu Tolgoi Project workforce available to meet the timeframe of the Oyu Tolgoi Project. Specific activities will include:

- Within 90 days of the Effective Date (as defined in the IA) the Investor will prepare a comprehensive five year Mongolian nationals training strategy and plan focussing on training skilled workers for the Oyu Tolgoi Project which will be submitted to the Government and made publically available;
- The Investor will establish a graduate scholarship program to assist in the education of Mongolian nationals in mining related disciplines, with an emphasis on engineering; and
- To enable all employees on the Oyu Tolgoi Project to be trained to international standards, the Government will assist with the adoption, within 6 (six) months of the Effective Date, of an international mining education and training curricula at selected Mongolian universities and vocational training institutions.

Further information of how Oyu Tolgoi is implementing the labour relations, employment and training provisions of the IA can be found in *Section D: Management Plans* of this ESIA.

2.7.7 Additional Government Commitments

The Government will provide support as requested by the Investor to facilitate and expedite the granting of all permits necessary for the engagement of foreign nationals as part of the Oyu Tolgoi Project workforce.

Where an approval, consent or concurrence of a Ministry or the Government is required in respect of the Oyu Tolgoi Project and where an application is made by the Investor to the Government in connection with the implementation of the IA, such approval or consent will not be unreasonably withheld or delayed.

The Government will use best endeavours to ensure that the Gashuun Sukhait checkpoint becomes an international border crossing, which remains open and operates on a continuous and permanent basis.

2.8 REQUIREMENTS FOR PROJECT FINANCING

This ESIA is also used to satisfy the applicable environmental and social requirements of international financial institutions that are prospective lenders to the project (IFIs). The IFI requirements addressed in this ESIA comprise:

- International Finance Corporation (IFC) Policy on Social and Environmental Sustainability, 2006, the IFC Performance Standards on Social and Environmental Sustainability (PS) and the IFC Environmental, Health & Safety (EHS) Guidelines, 2007;
- European Bank for Reconstruction and Development (EBRD) Environmental and Social Policy, 2008, including the EBRD Performance Requirements (PR); and
- OECD Recommendation On Common Approaches on the Environment And Officially Supported Export Credits, 2007.

This ESIA is also intended to assist prospective lenders with their commitments to the Equator Principles, 2006. [S&C comment: Equator Principles apply to lenders, not projects.]

2.8.1 IFC Requirements

The IFC Policy on Social and Environmental Sustainability⁴ sets out the environmental, health & safety and community requirements for projects financed by IFC. Through the implementation of the Equator Principles, IFC requirements have become the *de facto* international environmental and social performance benchmark for project financing. IFC requirements are set out in its Performance Standards of Social and Environmental Sustainability⁵ (PSs), which are summarised below. The Performance Standards are also supported by sector-specific environment, health and safety guidelines, the most applicable to the Project being the general guideline document and those for mining, airports, waste management facilities and water and sanitation. This section also describes the ESIA response to the Performance Standards:

⁴ 30 April 2006

⁵ 30 April 2006

PS1: Social and Environmental Assessment and Management System

PS1 underscores the importance of managing social and environmental performance throughout the life of a project by using a dynamic social and environmental management system. Specific objectives of this Performance Standard are:

- to identify and assess social and environment impacts, both adverse and beneficial, in the project's area of influence;
- to avoid, or where avoidance is not possible, minimise, mitigate, or compensate for adverse impacts on workers, affected communities, and the environment;
- to ensure that affected communities are appropriately engaged on issues that could potentially affect them; and
- to promote improved social and environment performance of companies through the effective use of management systems.

PS1 is addressed in two main sections of the ESIA; namely, the assessment of environmental and social impacts (Section C) and the Project environmental and social management plans (Section D). Community engagement and involvement in the Project is discussed in Chapter A6: Community Consultation. Chapter A6 brings together a summary of the extensive consultation activities undertaken by Oyu Tolgoi.

PS2: Labour and Working Conditions

The requirements set out in this PS have been in part guided by a number of international conventions negotiated through the International Labour Organization (ILO) and the United Nations (UN). Specific objectives of this Performance Standard are:

- to establish, maintain and improve the worker-management relationship;
- to promote the fair treatment, non-discrimination and equal opportunity of workers and compliance with national labour and employment laws;
- to protect the workforce by addressing child labour and forced labour; and
- to promote safe and healthy working conditions, and to protect and promote the health of workers.

PS2 is addressed in Section B9: Employment and Livelihoods and in Section D, Oyu Tolgoi Project environmental and social management plans.

PS 3: Pollution Prevention and Abatement

This Performance Standard outlines a project approach to pollution prevention and abatement in line with international available technologies and practices. It promotes the private sector's ability to integrate such technologies and practices as far as their use is technically and financially feasible and cost-effective in the context of a project that relies on commercially available skills and resources. Specific objectives of this Performance Standard are:

- to avoid or minimise adverse impacts on human health and the environment by avoiding or minimising pollution from project activities; and
- to promote the reduction of emissions that contribute to climate change.

PS3 is addressed in Section C (Impact Assessment) and in Section D Oyu Tolgoi Project environmental management plans including the Petroleum and Fuels Management Plan, Water Resources Management Plan, Tailings Management Plan and Hazardous Materials Management Plan. Pollution control and abatement spans several environmental media and, hence is addressed through the mitigation and management sections of the ESIA.

PS 4: Community Health, Safety and Security

This PS recognises that project activities, equipment, and infrastructure often bring benefits to communities including employment, services, and opportunities for economic development. However, projects can also increase risks arising from accidents, releases of hazardous materials, exposure to diseases, and the use of security personnel. While acknowledging the public authorities' role in promoting

the health, safety and security of the public, this PS addresses the project sponsor's responsibility in respect of community health, safety and security. Specific objectives of this Performance Standard are:

- to avoid or minimise risks to and impacts on the health and safety of the local community during the project life cycle from both routine and non-routine circumstances; and
- to ensure that the safeguarding of personnel and property is carried out in a legitimate manner that avoids or minimises risks to the community's safety and security.

PS4 is addressed in Chapter C12: Community Health, Safety and Security, Chapter D20: Emergency Response Plan (ERP) and in Chapter D18: Community Health and Safety Management Plan. Security issues are also discussed under this management plan.

PS 5: Land Acquisition and Involuntary Resettlement

Involuntary resettlement refers both to physical and economic displacement as a result of project-related land acquisition. Where involuntary resettlement is unavoidable, appropriate measures to mitigate adverse impacts on displaced persons and host communities will be carefully planned and implemented. Specific objectives of this Performance Standard are:

- to avoid or at least minimise involuntary resettlement wherever feasible by exploring alternative project designs;
- to mitigate adverse social and economic impacts from land acquisition or restrictions on affected persons' use of land by: (i) providing compensation for loss of assets at replacement cost; and (ii) ensuring that resettlement activities are implemented with appropriate disclosure of information consultation, and the informed participation of those affected;
- to improve or at least restore the livelihoods and standards of living of displaced persons; and
- to improve living conditions among displaced persons through provision of adequate housing with security of tenure at resettlement sites.

Land use and land acquisition issues are discussed in Sections B and C and described under the Land Use Management Plan which is found in Section D of the ESIA.

PS 6: Biodiversity Conservation and Sustainable Natural Resource Management

This Performance Standard reflects the objectives of the Convention on Biological Diversity to conserve biological diversity and promote the use of renewable natural resources in a sustainable manner. This Performance Standard addresses how project sponsors can avoid or mitigate threats to biodiversity arising from their operations as well as sustainably manage renewable natural resources. Specific objectives of this Performance Standard are:

- to protect and conserve biodiversity; and
- to promote the sustainable management and use of natural resources through the adoption of practices that integrate conservation needs and development priorities.

Compliance with PS6 is addressed in several chapters of the ESIA. The biological resources baseline assessment is provided in Chapter B7. Impacts to biological resource are discussed in Chapter C6 of the ESIA. Protection measures for the biodiversity heritage, including long-term mitigation and monitoring, are discussed in the Biodiversity Management Plan.

PS 7: Indigenous Peoples

Performance Standard 7 recognises that Indigenous Peoples, as social groups with identities that are distinct from dominant groups in national societies.

This Performance standard is not applicable as there are no indigenous peoples impacted by the Project. Herder communities are part of the mainstream of Mongolian society from an ethnic and cultural perspective. Herder communities are treated as a "vulnerable group" within the ESIA given the pressures being placed on their traditional lifestyle by economic development and social changes.

PS 8: Cultural Heritage

Consistent with the Convention Concerning the Protection of the World Cultural and Natural Heritage, this Performance Standard aims to protect irreplaceable cultural heritage and to guide project sponsors on protecting cultural heritage in the course of their business operations. Specific objectives of this Performance Standard are:

- to protect cultural heritage from the adverse impacts of project activities and support its preservation; and
- to promote the equitable sharing of benefits from the use of cultural heritage in business activities.

The cultural heritage baseline, for both 'tangible' and 'intangible'⁶ heritage is described in Chapter B12 of the ESIA. Potential impacts are discussed in Section C and the development of mitigation measures, including the Chance Finds procedures, in Chapter D13: Cultural Heritage Management Plan.

IFC Environmental Health & Safety Guidelines

In addition, to the Performance Standards, IFC has also developed general and sector-specific environmental health and safety guidelines. The key guideline documents applicable to the Oyu Tolgoi Project include:

- General Environmental, Health and Safety Guidelines (April 2007);
- Environmental, Health and Safety Guidelines for Mining (December 2007); and
- Environmental, Health and Safety Guidelines for Airports (April 2007).

The mining sectoral guidelines provide guidance on mine closure planning and the financial provisioning for mine closure (temporary and permanent, planned and unplanned).

2.8.2 EBRD Requirements

In accordance with EBRD's 2008 Environmental and Social Policy, EBRD seeks to ensure, through its environmental and social appraisal and monitoring processes, that the projects it finances:

- Are socially and environmentally sustainable;
- Respect the rights of affected workers and communities; and
- Are designed and operated in compliance with applicable regulatory requirements and good international practice.

To translate this objective into successful practical outcomes, EBRD has adopted a comprehensive set of Performance Requirements (PRs) covering key areas of environmental and social impacts and issues. EBRD is committed to promoting European Union (EU) environmental standards as well as the European Principles for the Environment, to which it is a signatory, and which are also reflected in the PRs. EBRD expects clients to assess and manage the environmental and social issues associated with their projects so that projects meet the PRs.

EBRD Performance Requirements are summarised below. As the EBRD PRs are closely linked with the IFC standards, the ESIA response in both cases is similar. EBRD cannot finance or support projects which do not comply with the Bank's standards.

PR 1: Environmental and Social Appraisal and Management

This PR outlines the process of appraising, managing and monitoring environmental and social issues associated with a project consistent with the European Union environmental impact assessment directive (85/337/EEC as amended). The Project has been categorised as a Category A Project which means it will undergo a full Environmental and Social Impact Assessment.

⁶ These terms are defined in the baseline section of the ESIA.

European Principles for the Environment

The "European Principles for the Environment" (EPE) consist of the guiding environmental principles enshrined in the EC Treaty⁷ and the project-specific practices and standards incorporated in EU legislation on the environment. The principles include, in particular, the precautionary principle, the prevention principle, and the principle that environmental damage will as a priority be rectified at source, and the polluter pays principle. These principles are reflected in applicable EU legislation.

Key EU legislation applicable to this assessment relates to:

- EU legislation related to environmental assessment, principally Directive 85/337/EEC, as amended; and
- EU environmental legislation related to industrial pollution control, mine waste management, major-accident hazards, waste management, water management, nature protection and worker health and safety, where these are applicable to specific project activities.

Key EU environmental and health & safety legislation which has been taken into consideration in preparation of this ESIA (bearing in mind that Mongolia has no plans to apply for membership of the EU) is set out in the table below.

Air & Noise

Directive 2008/50/EC on Ambient Air Quality
 Directive 2005/55/EC on Heavy Vehicle Emissions
 Directive 2002/49/EC on Environmental Noise
 Directive 2003/17/EC on Fuel Quality
 Directive 1999/32/EC on Sulphur Content of Liquid Fuels

Chemicals

Regulation EC 1907/2006 on Registration, Evaluation, Authorisation and Restriction of Chemicals

Industrial Emissions & Accidents

Directive 2003/105/EC on Major-Accident Hazards involving Dangerous Substances
 Directive 2008/1/EC on Industrial Pollution Prevention and Control
 Directive 2010/75/EU on Industrial Emissions

Waste

Directive 2008/98/EC, Waste Framework Directive
 Directive 2000/76/EC on Waste Incineration
 Directive 1999/31/EC on Landfill of Waste
 Directive 2006/21/EC on Mine Waste Management

Water

Directive 2000/60/EC, Water Framework Directive
 Directive 98/83/EC on Drinking Water
 Directive 91/271/EEC on Urban Waste Water Treatment
 Directive 2006/118/EC on Groundwater

Worker Health & Safety

Directive 89/391/EEC on Health & Safety at Work

Under the terms of Directive 2006/21/EC on Mine Waste Management, mine operators are required to develop fully financed closure plans to ensure that if a mine stops operations for whatever reason, there are always funds available to ensure that the mine site can be closed either temporarily or permanently in a safe manner.

⁷ Treaty Establishing the European Community 2002, Article 174 (2)

PR 2: Labour and Working Conditions

This PR assures that human resources policies, procedures and standards will meet the following minimum requirements during the life of the Project with regards to labour and working conditions:

- Establish and maintain a sound worker-management relationship and promote the fair treatment, non-discrimination and equal opportunity of workers;
- Promote compliance with any collective agreements to which the client is a party, national labour and employment laws, and the fundamental principles and key regulatory standards embodied in the applicable ILO conventions; and
- Protect and promote the health of workers, especially by promoting safe and healthy working conditions.

In addition, EBRD requires compliance with applicable EU Occupational Health and Safety requirements and, where such requirements do not exist, applicable IFC Occupational Health and Safety guidelines.

PR 3: Pollution Prevention and Abatement

Pollution prevention and abatement are key ingredients of a sustainable development agenda and EBRD-financed projects must meet good international practice in this regard. The impacts and issues associated with polluting activities need to be considered in all economic activities, and from effluents and emissions at the facility level, to impacts at a regional and global level where appropriate. This performance requirement assures that all aspects of the Project will meet the following objectives:

- To avoid or, where avoidance is not possible, to minimise adverse impacts on human health and the environment by avoiding or minimising pollution directly arising from projects;
- To assist clients in identifying project-related opportunities for energy and resource efficiency improvements and waste reduction; and
- To promote the reduction of project-related greenhouse gas emissions.

Of particular relevance to the Oyu Tolgoi Project is the EU Mine Waste Directive (2006/21/EC) and the associated best-available techniques guidance documentation.

PR 4: Community Health, Safety & Security

While bringing many positive benefits to local communities, projects can also increase the potential for community exposure to risks and impacts arising from temporary or permanent changes in population; transport of raw and finished materials; construction, operations and decommissioning; accidents, structural failures, and releases of hazardous materials. This performance requirement addresses the project proponent's responsibility to identify and to avoid or minimise the risks and adverse impacts to community health, safety and security.

PR 5: Land Acquisition, Involuntary Resettlement and Economic Displacement

Unless properly managed, involuntary resettlement may result in long-term hardship and impoverishment for affected persons and communities, as well as environmental damage, and adverse socio-economic impacts in areas to which they have been displaced. Under some circumstances, poorly executed involuntary resettlement may leave the client exposed to legal action in other jurisdictions. Objectives for this performance requirement are:

- To avoid, or at least minimise, involuntary resettlement wherever feasible by exploring alternative project designs;
- To mitigate adverse social and economic impacts from land acquisition or restrictions on affected persons' use of and access to land by: (i) providing compensation for loss of assets at replacement cost, and (ii) ensuring that resettlement activities are implemented with appropriate disclosure of information, consultation, and the informed participation of those affected;
- To improve or, at a minimum, restore the livelihoods and standards of living of displaced persons to pre-project levels, through measures that can be enterprise-based, wage-based and/or enterprise based, so as to facilitate sustainable improvements to their socio-economic status; and
- To improve living conditions among displaced persons through provision of adequate housing with security of tenure at resettlement sites.

PR 6: Biodiversity Conservation and Sustainable Management of Living Natural Resources

EBRD recognises the need for the protection and conservation of biodiversity in the context of projects in which it invests. In pursuing these aims, EBRD is guided by and supports the implementation of applicable international law and conventions and applicable EU Directives:

- To protect and conserve biodiversity;
- To avoid, minimise and mitigate impacts on biodiversity and offset significant residual impacts, where appropriate, with the aim of achieving no net loss or a net gain of biodiversity;
- To promote the sustainable management and use of natural resources;
- To provide for fair and equitable sharing of the benefits from project development and arising out of the utilisation of genetic resources;
- To strengthen companies' licence to operate, reputation and competitive advantage through best practice management of biodiversity as a business risk and opportunity; and
- To foster the development of pro-biodiversity business that offers alternative livelihoods in place of unsustainable exploitation of the natural environment.

PR 7: Indigenous Peoples

There are no indigenous peoples associated with this Project. Herder communities are part of the mainstream of Mongolian society from an ethnic and cultural perspective. Herder communities are treated as a "vulnerable group" within the ESIA given the pressures being placed on their traditional lifestyle by economic development and social changes.

PR 8: Cultural Heritage

Cultural heritage is important as a source of valuable historical and scientific information, as an asset for economic and social development, and as an integral part of a people's cultural identity, practices, and continuity. EBRD requires the protection of cultural heritage from project activities.

PR 9: Financial Intermediaries

There are no financial intermediaries associated with this Project.

PR 10: Information Disclosure and Stakeholder Engagement

EBRD considers stakeholder engagement as an essential part of good business practice and corporate citizenship. In particular, effective community engagement is central to the successful management of risks and impacts on communities, as well as central to achieving enhanced community benefits. The specific objectives of this PR are:

- To identify people or communities that are or could be affected by the Project, as well as other interested parties;
- To ensure that such stakeholders are appropriately engaged on environmental and social issues that could potentially affect them through a process of information disclosure and meaningful consultation; and
- To maintain a constructive relationship with stakeholders on an ongoing basis through meaningful engagement during project implementation.

2.8.3 OECD Recommendation on Common Approaches on the Environment and Officially Supported Export Credits

OECD countries agreed in 2007 to strengthen their common approaches for evaluating the environmental impact of infrastructure projects supported by their governments' export credit agencies with a view to ensuring that these meet established international standards. Government export credit agencies support exports, mainly to emerging economies, by providing loan guarantees, export credit insurance and direct loans.

Key elements include:

- Projects will, in all cases, comply with the environmental standards of the host country. When the applicable international standards against which the Project has been benchmarked are more stringent, these standards would be applied by the export credit agency;
- The applicable international standards are those of the World Bank Group and, where applicable from a geographical viewpoint, those of Regional Development Banks. Members may also benchmark against any higher internationally recognised environmental standards, such as those of the European Community;
- With regard to the most sensitive projects, the environmental standards to be applied will be reported and monitored by the export credit agency, and exceptional deviations below international standards will have to be justified; and
- For the most sensitive projects, export credit agencies will seek to make environmental information, particularly Environmental Impact Assessment Reports, publicly available 30 calendar days before final financial commitment.

2.8.4 The Equator Principles

Commercial lenders to the Project are likely to be signatories to the Equator Principles.

The Equator Principles (EPs) are a voluntary set of standards adopted by commercial lenders for determining, assessing and managing social and environmental risk in project financing. The EPs are considered the financial industry 'gold standard' for sustainable project finance.

The EPs, based on the International Finance Corporation (IFC) Performance Standards on Social and Environmental Sustainability, and on the IFC's Environmental, Health and Safety General Guidelines, serve as a common framework for each adopting institution for its own internal social and environmental policies, procedures and standards.

2.8.5 Standard Chartered Bank's Mining & Metals Sector and Issue Position Statement

Standard Chartered clients in the mining and metals sector are expected to operate in accordance with the applicable international, regional and national laws. In jurisdictions where appropriate standards do not exist and/or potential environmental and social impacts are high, the International Finance Corporation (IFC) Performance Standards and IFC Environmental, Health and Safety (EHS) industry sector guidelines on Mining shall be used as a benchmark of internationally accepted standards.

Standard Chartered adopted the Equator Principles in 2003, and therefore all its applicable project finance and advisory transactions are undertaken in accordance with both the Equator Principles and the Mining and Minerals Sector Position Statement.