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Dear Kevin,

I am writing to thank you and John Chomel-Doe for meeting with representatives from the Bank Information Center (BIC) – my colleague Sonia Zilberman and me – at the EBRD’s Annual Meeting in May about the EBRD’s proposed activities in Mongolia’s mining sector. During the meeting, we expressed concerns about the MOU signed by the EBRD, the Asian Development Bank and the World Bank with the Government of Mongolia on development of the country’s mining sector. You suggested that EBRD would appreciate receiving written comments and recommendations on this subject. With our colleague Heike Mainhardt, we have prepared a summary of the Bank Information Center’s major concerns about the involvement of the EBRD and other international financial institutions in the Mongolian mining sector and of our recommendations on the best practices for mining operations.

We recently noted that the EBRD’s staff has proposed to initiate a project to finance coal mining operations by the Mongolian company MAK, and that the EBRD Board will soon review the project. In considering the project, we hope that the Board will take into account our concerns and recommendations. We would also appreciate a reply from the EBRD staff about how the EBRD will address our concerns and whether or not the EBRD will implement the recommended measurements.

### **Major Concerns**

Mongolia’s mining sector is set to be the recipient of significant new investment inflows with assistance from the World Bank, EBRD, and ADB as indicated in an IFI-Mongolia mining sector MOU signed between the parties in May 2007 and as indicated in EBRD’s first country strategy for Mongolia (December 2006). Unfortunately, neither the MOU nor the EBRD country strategy specifies any concrete assistance to improve public governance or environmental conditions in Mongolia’s mining sector, which are sorely needed, as a precondition for IFI mining investments. When governance issues are

addressed by the IFIs, there is fear that they will tend to address commercial interests and not issues of public concern.

For example, the World Bank's Governance Assistance Project's (May 2006) mining sector related activities involve reform of the registry and cadastre system. This assistance does not include any measures, among others, for environmental improvements to the sector, appropriate mechanisms to address land tenure conflicts, or public disclosure of revenues and investment contracts associated with the new mining licenses that will result from the new cadastre system. In the past, World Bank assistance to set up registry/cadastre systems in the mining sector has often not adequately addressed the conflicts with local communities, conflicts with protected areas, and conflicts with small artisanal miners, of which Mongolia has many in the gold sector. Often the rights of these peoples and protected areas are not well established and thus get marginalized through the reformed registry/cadastre systems, which are designed to attract private sector investors.

**Benefits to Mongolians** – According to the *Economist* (December 23<sup>rd</sup>, 2006): Mongolians are concerned that foreigners are taking control of the country's mineral wealth and shipping it out of the country with little benefit to Mongolians themselves. The Russian, Canadian, Australian and American companies digging up minerals in Mongolia see profits to be made not in their own market but from selling to the Chinese. In April 2006, hundreds of Mongolians staged a series of protests in Ulan Bator against the planned exploitation of large copper and gold deposits by Ivanhoe Mines, a Canadian company. The demonstrators attacked what they saw as foreign domination of Mongolia's resources.

Mongolia has no facilities for processing iron ore – so it gets shipped to refineries out of the country (largely China) – this is likely also the case for other minerals. The IFIs should be helping the country to add value to their natural resources instead of primarily concentrating on bringing in all the foreign companies to ship it out. The EBRD, like other MDBs, does not have a strong record in assisting countries to add value to their natural resources. If there is any hope that developing the mining sector will create long-term economic benefits for Mongolia and help to reduce poverty, then creating forward and backward economic linkages to the mining sector is key. But the IFIs almost always fail at this because they only make a marginal effort, mainly investing in banking projects to finance SMEs.

**Few Jobs for Mongolians** – Small-scale mining most often provides more individuals with income compared to bringing in large mining companies, which significantly reduces how many miners have work. Furthermore, in Mongolia's case, foreign operations are bringing in foreign labor, especially from China and not employing the local population.

**Energy Supply** – Mongolia already has issues with lack of electricity for its citizens and for business/industry. This issue must be a priority for the EBRD and IFIs prior to significantly increasing mining development because mining is an energy intensive sector

and will make the problem worse for Mongolia and for Mongolians living without power. The current trend of selling Mongolia's coal to China to fuel China's energy needs is not a sound strategy for Mongolia's long-term development needs, which depend on an affordable energy source for domestic growth.

**Climate Change** – The IFI MOU specifies the development of coal – this contradicts the commitments made to foster low carbon economies in the name of combating Climate Change, at least a recent commitment made by the World Bank and ADB. For EBRD's part, the recent EBRD Environmental Policy Discussion Paper states that two of the reasons for the revision of the 2003 Environmental Policy include the need to respond to emerging best practice amongst the international institutions, and the growing value attached to carbon neutrality (p.2). Furthermore, EBRD's Article 2.1 vii directs the Bank to "promote in the full range of its activities environmentally sound and sustainable development." Investment in coal projects, especially to fuel China's energy needs, is in direct contradiction with the EBRD's Article 2.1 and its stated Environmental Policy goals.

**Revenue and Contract Transparency** - Mongolia has become a member of the EITI, with the encouragement of the EBRD and the World Bank, but has moved slowly toward implementation. Both banks have announced their intention to work with the Mongolian Government, industry and civil society to work toward full implementation of its EITI commitments and the WB states that "a grant from the EITI trust fund has been made available to the Government to support the government's EITI work." Although, these planned initial activities are encouraging, it would be far more effective and accountable if the IFIs required revenue transparency and, additionally, disclosure of all investment contracts between the private sector and the government for all lending operations relevant to the mining sector. On the part of the EBRD, the EBRD's new Energy Operations Policy (July 11, 2006) requires sponsors of EBRD oil, gas, and coal mining projects to publicly disclose their material project payments to the host government as a minimum revenue transparency obligation. Although, the new Energy Operations Policy does not contain specific revenue transparency requirements for mining projects outside of the coal sector, EBRD officials have informed BIC that the EBRD would apply the same transparency principles to the entire mining sector. In Mongolia's mining sector, we strongly urge the EBRD to go beyond the "minimum" revenue transparency requirement, beginning with the international best practice (as confirmed by the IMF) of disclosing investment contracts.

**How does the EBRD plan to address specifically and resolve the many issues/problems associated with developing Mongolia's mining sector, including: benefits to Mongolia's poor, long-term job creation, forward and backward economic linkages, energy supply, climate change, environmental damage, land tenure rights of local communities and small-scale miners, human rights abuses, and revenue & contract transparency?** The social and environmental issues involved in Mongolia's mining sector are not adequately or specifically addressed by the EBRD's current operational policies, including the Natural Resources Policy and the

Environmental Policy. We urge the EBRD to implement the recommendations provided in the following section.

### **Recommendations for EBRD Mining Investments in Mongolia**

For any potential mining project in Mongolia (and all countries for that matter), the EBRD should begin by requiring the recommendations stemming from two extensive multi-stakeholder consultations - the World Bank Group's Extractive Industries Review (EIR) and the Canadian Government's National Roundtable Discussions on Corporate Social Responsibility and the Canadian Extractive Sector in Developing Countries<sup>1</sup>. These consultations and assessment processes included stakeholders from governments, industry, academia, local communities, and local/international civil society organizations. These recommendations are essential for the EBRD to appropriately address and protect social rights and the environment.

Some of the key recommendations for mining operations from these important consultations and research/assessment processes include, *inter alia*:

- Explicit core and mining-specific **governance requirements/indicators** that must be met before a project qualifies for EBRD funding (i.e. **sequencing**);
- Under no circumstances should EBRD support mining projects in areas involved in, or at high risk of, **armed conflict**;
- Only support projects that **benefit all affected local groups**, including vulnerable ethnic minorities, women, small-scale miners, and the poorest - revenues should be shared equitably among local, regional and national levels;
- Require **baseline data on poverty and social indicators**, which should be monitored and publicly disclosed throughout the lifetime of the project;
- Require upstream social and environmental analyses for all **policy advice, technical assistance and analytic/advisory activities** (e.g., privatization, new contract models);
- Ensure **free, prior and informed consent (FPIC)** for all projects from indigenous peoples and other affected communities in relation to mining activities that may affect the lands, territories and resources traditionally owned or otherwise occupied and used;
- Require **broad community support** and consult with local civil society to define it and develop a methodology for its determination; if local communities consent to the project, covenants should be included in project agreements that provide for multiparty negotiated and enforceable agreements;
- Ensure that there is an effective **local complaints and dispute resolution system** in place for communities affected by mining projects;

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<sup>1</sup> See National Roundtables on Corporate Social Responsibility (CSR) and the Canadian Extractive Industry in Developing Countries: Advisory Group Report. March 29, 2007. <http://geo.international.gc.ca/cip-pic/library/Advisory%20Group%20Report%20-%20March%202007.pdf>

- Ensure fair and appropriate **resettlement compensation and Resettlement Insurance** - ensure that the **value of informal activities and resources** not captured by property rights are included in resettlement agreements;
- Build government capacity to legalize and regulate **artisanal and small-scale mining (ASM)**, while respecting community land rights – contribute to enhancing the safety and environmental performance of artisanal, and small-scale mining, as well as the benefits derived through this activity [further guidance can be obtained: Association for Responsible Mining];
- Provide clear guidelines and require sufficient funds to be available over time for **closure** of any new or expanded mining development – closure plans should be independently verified and monitored and made available to the public;
- Do not support any project where there is **riverine tailings disposal or submarine talings disposal**;
- Require and support regional laboratory capacity to test for **cyanide and other relevant toxics** before supporting an EI project using those compounds;
- Adopt clear **no go zones** and do not finance any extractive operation that might affect existing UNESCO World Heritage properties, current official protected areas, or critical natural habitat, or areas planned in the future to be designated;
- Require **emergency environmental and social response plans** as a precondition of EBRD funding;
- Require **public disclosure of all revenues paid to and investment contracts with governments**, including all stabilization agreements and side agreements;
- Require projects and EBRD lending practices to explicitly respect and adhere to applicable provisions of **international human rights and humanitarian law/principles** and ensure that projects do not lead to or exacerbate violations of human rights or humanitarian law – either directly or indirectly – including: Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Voluntary Principles on Security and Human Rights, United Nations Global Compact, and other related instruments; systematically engage experienced, independent, and reputable third parties to verify the status of human rights in all relevant projects; and
- Adopt all of the **core labor standards** as contractual obligations for project financing, including the requirement for projects not to benefit from forced or child labor through **supply chain relationships**.

### **Concluding remarks**

I would like to follow up on two specific questions about transparency in EBRD's operations in Mongolia, which we raised during the general meetings between EBRD staff and civil society organizations at the Annual Meeting. First, we asked if the MOU

between the international financial institutions and the Government of Mongolia could be published. You indicated that that EBRD would consider publication of the document, but we have not seen it published on the websites of the EBRD, ADB or the World Bank. Do you anticipate public disclosure of the MOU? Second, we observed that, although EBRD officials have informally informed us that the EBRD would apply the same transparency principles to metals mining projects that it does for oil, gas, and coal mining projects, the Bank has not published explicit requirements for revenue transparency for metals mining. You said that EBRD would consider publishing such requirements. Has the Bank made a decision on this question?

We appreciate the opportunity to express our view at EBRD's Annual Meeting and your interest in receiving written comments from the Bank Information Center. We hope that our recommendations will help the EBRD to establish standards for its operations in Mongolia's mining sector that will make them more environmentally sustainable and ensure that benefits are widely shared among the population. Please feel free to contact us if there are any questions about our comments or recommendations.

Sincerely,



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