

## LEGISLATIVE UPDATE: MONGOLIA ADOPTS LAW ON NATIONAL WEALTH FUND

In November 2019, Mongolia revised its Constitution for the first time in 19 years, introducing significant changes to Article 6.2, which focuses on ensuring that Mongolian citizens benefit from the country's natural resources, following these main principles:

- **State Policy on Natural Wealth:** The state policy regarding the use of natural wealth must be based on long-term development objectives. It aims to ensure the rights of current and future generations to a healthy and safe environment and mandates the fair and equitable distribution of benefits derived from land subsoil wealth by accumulating these benefits into the National Wealth Fund.
- **Exploitation of Strategic Mineral Deposits:** The exploitation of mineral deposits deemed to be of strategic importance must adhere to the principle that natural wealth is subject to the control of the people, and the legal framework must ensure that the majority of benefits gained from such exploitation are allotted to the citizens of Mongolia.

In alignment with these constitutional amendments, the Law of Mongolia on National Wealth Fund ("**National Wealth Fund Law**") was approved on 19 April 2024, following extensive parliamentary discussions. This law establishes the legal basis for implementing the constitutional provisions related to the distribution and management of the country's wealth.

We highlight the main points of this law below.

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The National Wealth Fund Law is designed to establish a National Wealth Fund, determine its type, purpose, and sources, ensure the stability of the fund's assets, and report and monitor its activities in order to ensure that every citizen of Mongolia receives the benefits of subsoil resources equitably and fairly.

### 1. NATIONAL WEALTH FUND

As per the National Wealth Fund Law, the National Wealth Fund is a structured system designed to consolidate the benefits from underground resources, effectively invest them, and equitably distribute and accumulate them for present and future generations of citizens.

The National Wealth Fund comprises three distinct funds, each serving specific purposes:

(a) **Future Generations Fund:**

- (i) Aimed at the equitable distribution of benefits to future generations through prudent saving and investment in international financial markets;
- (ii) Managed by the Ministry of Finance; and
- (iii) Funded by 65% of remaining royalty payments after allocations to the Fiscal Stability Fund and the Unified Local Development Fund, alongside other revenues.

- (b) **Savings Fund:**
  - (i) Provides support to current citizens in sectors such as healthcare, education, and housing needs;
  - (ii) Managed by the Ministry of Labor and Social Protection; and
  - (iii) Dividend income allocated to the state from all state-owned or state-involved mining companies, including oil, allocated as follows:
    - (1) 100% of dividend income from companies where the state's stake is up to 34%; or
    - (2) 34% of dividend income from companies where the state's stake exceeds 34%.
- (c) **Development Fund:**
  - (i) Supports economically and socially beneficial development projects aligned with Mongolia's long-term and medium-term development policies;
  - (ii) Managed by the Ministry of Economy and Development; and
  - (iii) Receives 50% of income resulting from price increases of major minerals, if the unified budget shows a surplus.

All revenues allocated to the state will be collected and centralized by the designated "revenue collector," which is mandated to be a wholly state-owned enterprise. "Erdenes Mongol LLC" appears to have been identified as the main entity responsible for gathering state revenues from mining companies and allocating them to the respective funds as approved by the Mongolian Parliament.

## 2. RELEVANT AUTHORITIES

According to the National Wealth Fund Law, the following authorities have specific mandates concerning the National Wealth Fund:

- (a) **Parliament of Mongolia:** Oversees the National Wealth Fund by approving the annual budget plan, which includes revenue, expenditure, performance, and results, and approves projects and activities funded from the Development Fund.
- (b) **The Government of Mongolia:** Approves policy documents governing fund utilization and provides general instructions to ministries. It will support Parliament in its oversight role. Additionally, the Government will establish operational procedures for corporate governance and rules for the board of directors and executives of the "revenue collector," following international best practice.
- (c) **The Ministry of Finance:** Manages the Future Generations Fund, including preparing annual plans and reporting results. It will oversee expenditures of other funds within the National Wealth Fund.
- (d) **The Ministry of Labor and Social Protection:** Manages the Savings Fund, prepares its annual plan, reports and submit it to the Ministry of Finance.
- (e) **Ministry of Economy and Development:** Manages the Development Fund, prepares projects and activities to be funded from the Development Fund and submit it to the Government, and is responsible for an annual plan and reports and submit it to the Ministry of Finance.

### 3. PROCEDURE

As per legal requirements, the Ministry of Labor and Social Protection, along with the Ministry of Economy and Development, are tasked with drafting the annual plan and budget for the upcoming year. These drafts are subsequently submitted to the Ministry of Finance. The Ministry of Finance then forwards these plans, including those related to the Future Generations Fund, to the Government for approval.

The National Wealth Fund Law does not explicitly specify whether the Ministry of Finance and the Government have the authority to suggest, review, or modify these plans and budgets before or after their submission to Parliament. However, it is anticipated that specific regulations governing these procedures will be issued by the respective authorities.

### 4. OVERSEE AND MONITORING

While the National Wealth Fund Law outlines fundamental principles such as reporting, transparency, and state audit requirements, it lacks clarity regarding the consequences of fund misuse or other irregularities. Additionally, as previously noted, there appears to be no formal mechanism for revising or monitoring the annual budget. The law specifies that expenditures from the fund must be reported to the Ministry of Finance for review, but it does not specify a mechanism for reviewing the actual plans for the subsequent year.

Additionally, the law mandates that the respective ministries oversee fund management, although the details in the current legislation are somewhat unclear. Detailed guidelines regarding distribution criteria, responsible parties, and procedural requirements remain unspecified but are likely to be clarified through separate regulation.

### 5. IMPACTS FOR MINING COMPANIES

According to the National Wealth Fund Law, mining companies, except those holding licenses for strategic deposits, do not appear to be directly affected, even if they operate with state-owned or state-involved entities. Revenue from the state's interest in these mining companies will be collected by the revenue collector and allocated to the relevant funds as required.

However, concurrently with the adoption of the National Wealth Fund Law, amendments to the Minerals Law of Mongolia introduced certain provisions concerning strategic deposits:

- (a) Article 5.7 stipulates that no entity can hold more than 34%—directly or through affiliated entities—of the shares in a company holding licenses for strategic deposits; and
- (b) Article 5.8 clarifies that Article 5.7 does not apply to state-owned or state-involved entities or companies that have entered into investment agreements with the Government.

Further changes to the Minerals Law concerning the Government's free carry stake in companies holding licenses for strategic deposits include the following:

- (a) Article 5.4 stipulates that if exploration in a strategic deposit was conducted with state funding, the Government can hold up to a 50% stake in that company at no cost, depending on the level of the state's investment; and
- (b) Article 5.5 stipulates that if exploration in a strategic deposit was conducted without state funding, the Government can hold up to a 34% stake in the company at no cost, depending on future state investment.

A royalty can be offered to the Government instead of granting it an equity stake in the company, subject to approval by Parliament.

The law also imposes a shareholding limit for holding shares in a company possessing mineral licenses over strategic deposits of 34%, unless an investment agreement is entered into with the government. For mines over strategic deposits, the Government may hold up to 50% of the shares as a free carry, depending on the level of state investment in exploration. We note that these restrictions only apply to strategic deposits; the current regulations and licensing requirements remain unchanged for all other mines.

Regarding strategic deposits, Parliament Resolution No. 27 of 6 February 2007 approved two lists: one for strategic deposits and another for potential strategic deposits that may be designated as strategic in the future. Currently, there are 16 deposits classified as strategic and 39 classified as potential strategic deposits. According to the Minerals Law, a strategic deposit is defined as one that has the potential to impact national security, national or regional economic and social development, or those capable of producing more than 5% of total annual Gross Domestic Product.

Therefore, the recent amendments apply exclusively to the 16 current strategic deposits; however, additional deposits may be included in this list in the future.

## 6. CONCLUSION

Overall, this appears to be a positive initiative for Mongolia aimed at maximizing benefits from its natural resources for the benefit its citizens.

However, there are some uncertainties in the National Wealth Fund Law concerning review, monitoring, and responsibilities, which may pose challenges during implementation. Given the mixed track record of similar funds in Mongolia, it will be important to ensure robust regulation to enhance key matters such as governance, monitoring, investment strategy and risk management. We hope that these issues will be addressed through specific procedures or regulations approved by Parliament, the Government, or respective ministries, including the Ministry of Finance.

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We trust this is helpful. For further inquiries, please contact the following lawyers or those with whom you usually deal:

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