

LACK OF PROGRESS FOR THE 106-LICENSE DISPUTE CONTINUES TO DAMAGE MONGOLIA

TO: Prime Minister of Mongolia ALTANKHUYAG.N

We address this letter directly to you as Prime Minister of Mongolia, as co-signatory of Resolution #216, head of the Mongolian Government responsible for Cabinet changes to Ministries involved in the resolution of the 106-license dispute, the reference to this dispute in your September 8th national address and publically stated initiatives to improve the economy and revive FDI.

Over 100 days have passed since Resolution #216 was approved, over 160 days since this issue was raised to your “100 day plan” committee, and the lack of progress relating to resolving this dispute has, and continues to, cause further damage to former license holders, Mongolia’s international reputation and private sector investment and activities.

This is clearly at odds with the state objective of Resolution #216 and public comment from Government officials. It highlights either a lack of capacity or intent to resolve this dispute and a politically driven environment that supports this dispute extending now to over 20 months with little meaningful process likely in the near to medium term that would support resolution to key licenses and a much needed improvement towards investor confidence and activity.

To date, only four licenses of the impacted 106 have been successfully retendered, noting under questionable circumstances, and the majority of impacted groups and licenses haven’t made any progress advancing towards resolution due to a lack of accountability and understanding of the proposed process from the various different Government Ministries, officials and departments.

This later situation is now impacted by initiatives lead by you, the Prime Minister, to reshuffle the current Cabinet, directly impacting the two Ministries involved in the resolution of the 106-license dispute.

Despite repeated statements from senior Government officials that the 106-license matter is being resolved without further loss to former licenses holders and is a priority for resolution, the lack of action to date best illustrates the current process and statements being little more than a public relations exercise with minimal substance.

Three key facts help illustrate this point:

- i. **Limited action to date:** the first 4 licenses returned (October 6th), of the initial retender of 14 licenses (September 22nd), had previous investment of only totalled US\$0.6 million (for the total 14, only US\$1.65 million of “approved” costs). There has not yet been the announcement of a second or any other tender for other impacted licenses and no other licenses have had their previous costs yet agreed with the Government dispute often providing all the required and requested documentation.

For only 31 of the 106 licenses, which are represented by members of the association of active former license holders, US\$19 million has been invested, approximately the scale of Khan Resources in-country, currently seeking over \$300 million in compensation via international arbitration, and a further US\$36 million investment planned from 17 of 24 companies.

It is apparent that the first 14 licenses put to tender were just the easiest from an administrative perspective, with little or not previous exploration, and that no progress has been made for licenses which are relatively advanced, prospective and experienced more

meaningful previous investment. Such a situation means that investors and market participants are still waiting to see how the meaningful licenses are resolved, and discounted any “progress” in the limited actions made to date. As such investment and private sector activities continue to deteriorate.

Of the first 14 licenses, 10 have to have a second retender, again, an overly complex and administratively lead process which doesn't look to efficiently resolve this dispute or minimize continued damage to former license holders.

- ii. **Uncertainty relating to previous costs:** There continues to be considerable uncertainty relating to what costs incurred by the former licenses will be recognized by the Government. This is critical to determine the “threshold price” which acts as the minimum required tender price and potential compensation level to former license owners.

The process for agreeing costs is not transparent with some groups having had some elements of costs, such as acquisition costs, accepted while others are yet to. We note that it is proposed that the costs that are being accepted and recognized by the Government are often significantly less than the actual costs related to previous exploration activities undertaken, excluding the concept of cost of capital, interest costs or future economic benefit, the later points which are critical considerations for investors particularly when undertaking exploration activities.

- iii. **Uncertainty relating to process:** The stated purpose of Resolution #216 is for such a re-tendering to be undertaken in an open, fair and transparent manner, with due notification of the re-tendering to be made.

The tender rules do not clearly proscribe for what occurs under the situation where there are two or less bidders and how former license holders actually regain their licenses. As illustrated by 10 of the first 14 licenses, a subsequent and second tender process is required.

Why is a second re-tender of the same license area required under the same process if the first re-tender went through the correct process in an open, fair and transparent manner? Surely under such situation, then the license should be returned to the sole bidder and former license holder without the need of a second, subsequent retender?

Furthermore, nowhere is it proscribed in writing that even after a second tender, that the license will be returned to the former license holder if they participated in both tenders?

Such a slow and non-transparent process supports a political, administrative and public relation driven motive rather than commercial looking to actively return key licenses, support private sector activities and FDI, and conclude a relatively simple dispute to assist restore Mongolia's international reputation as a destination for investment, that continues to negatively impact investor sentiment toward, and investment in Mongolia, and unfortunately undermines statements and credibility of a timely resolution being achieved. Investors, the media, analysts and other market participants are paying particular focus for the resolution of key licenses where significant funds were previously invested and those which have public market disclosure requirements.

Given the situation we find ourselves, the time period lapsed, the lack of accountability and decision making from various ministries and now ministerial change, we request direct guidance from your office in this matter.

Former license owners have been negatively impacted by this dispute for over 20 months, including over 12 months since this matter was put into the hands of the Government following the initial various criminal court processes against former government officials. While former license holders have already incurred significant damage and loss, and continue to, from the actions relating to these licenses being revoked and the time it has taken to this point, however, we highlight that the ongoing delay, current procedural process and uncertainty relating to the resolution of this issue is now having

a greater impact to the Government and Mongolia's reputation, than the economic interests of the former license holders.

The association of active former license holders continues to advocate for an equitable and timely resolution that is in the interests of all stakeholders.