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AUSTRALIA MONGOLIA EXTRACTIVES PROGRAM

COMPARATIVE STUDY ON COALBED METHANE AND OTHER MINERAL OVERLAPPING TENURE RELATED REGULATORY FRAMEWORK

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Disclaimer

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Preface

As an initial phase of the Australia-Mongolia Extractives Program (hereinafter as '**Program**'), which is conducted based on aids provided by the Australian Government to the Mongolian Government mutual cooperation , is successfully implemented between 2015 to 2019, its second phase is under implementation with wider scope between 2019 to 2023.

The second phase of the Program is directed to make input on straightening investment environment of the mineral sector, which is important role in future development of Mongolia and has concept to enhance cooperation stakeholders so that stability and transparency of the mineral sector will be improved.

Pursuant with the its 12-month activity plan covering July 2019 – June 2020 and one of the activities is to organize a comparative analysis of the Mongolian legal framework and Queensland Coalbed Methane (**CBM**) industry regulatory framework and to provide policy recommendations for the relevant divisions of Ministry of Mining and Heavy Industry (MMHI) and MRPAM to further develop the regulatory environment for CBM in Mongolia.

Mr.Ganbat Enkhbold as local legal expert conducted this comparative study by analyzing similarities and differences between the legal regimes for managing the overlap of licenses for CBM and other resources in Queensland and Mongolia based on respective sources provided from the Program and available Mongolian legislations.

As CBM is to be one of the cleanest energy sources which is reach with methane and formed in between coal seams without serious contaminations in the nature. At global level, during last 20 years study and production volume of the CBM is extending in many countries. Respectfully, issues related with the overlapping tenure has become very important which is required resolved rationally or in most appropriate way.

Pursuant with the State Policies of Mongolia, it aims to extend study and production of the CBM as it defined to be unconventional petroleum source. Under the "State Policy on Developing Petroleum Industry up to 2027" as adopted by the Government Resolution No.169 of 2018, prospecting, exploration and production of the unconventional petroleum will be intensified (Provision 2.2), long run tension shall be defined (Provision 2.3.1.5) and processing study, analyses and production of the unconventional petroleum sources, such as coalbed methane, gas-rich shale, natural bitumen and gas sand, will be supported (Provision 2.3.2.7).

An exploration of the CBM is increased during last couple of years in Mongolia and number of production sharing agreement in signed to undertake exploration activities. Thus, in an overall expectation that CBM production is reaching nearby is overwhelming in Mongolia.

Therefore, this study is relevant as it meets current needs on timely manner.

The Mongolian current legal framework on CBM is quite compact, which consists from the Law on Petroleum (2014), Minerals Law (2006) and Regulation adopted by the Government Resolution No.295 of 2015. Whereas Queensland (Australia)'s legal framework is very detail as it has particular separate act to regulate overlapping issues between coal and CBM tenure. In detail, it consists from the Mineral and Energy Resources (Common Provision) Act 2014 (Qld) as well as industry follows Overlapping Tenure Industry Guide: A Guide to Queensland's Coal and Coal Seam Gas Overlapping Tenure Framework 2016. Also, detailed templates for certain documents such as joint management plan is available to be used.

Even though, two legal frameworks refer to different legal families (Commonwealth and Germanic), upon conducting such study the main attention paid on underlying principles, essence of the regulatory framework and balance between coal and petroleum industry. Based on findings, respective conclusion and recommendations were provided accordingly.

Under this study, detailed technical, economic grounds, environmental protection issues, health and operational safety issues are not considered. Therefore, it is noted that conclusions and recommendation made by this report can be changed due to results reached upon conducting detailed studies in those areas in relation with joint operation of the coal mining as well as CBM production.

This study report consists from following three parts:

1. Overview information on respective legal frameworks.
2. Comparative study of the legal frameworks.
3. Conclusions and recommendations.

One. Overview of legal frameworks

Mongolian and Australian legal systems refer to different origins of legal system families. Notwithstanding, since extractive industry, by its nature, relayed more on science, calculations, technological basis compared to other social industries, it is assumed that comparison between two legal system can be made and good practices can be introduced to each other, especially, with regards legal regulations resolving overlapping tenure.

To provide proper understanding, background information such as historical information on evolution paths, content and set of documentations will be introduced in brief manner but focused on CBM and its tenure overlapping with other mineral's tenure.

Therefore, overview information will begin with Mongolian state policy and regulatory scheme on CBM as it considered to be 'unconventional petroleum source' and then more focused Queensland, Australia, on settling coal and CBM tenure overlapping will be provided based on provisions of the Mineral and Energy Resources (Common Provision) Act 2014 (Qld) (**MERCPA**).

1.1. State Policy of Mongolia and legal framework on coalbed methane

Since CBM production is relatively new matter in case of Mongolian petroleum and extractive industry, its legal framework consists from few generic provisions and regulations.

Currently, Mongolia has no project which produces CBM by industrial means but has few production sharing agreements signed mainly for an exploration purpose. Therefore, Mongolian regulation still very vague with few generic norms. In particular, as it was stated under the 'State Policy to develop Petroleum Industry up to 2027', adopted by the Government Resolution No.169, 2018, by 2018 Mongolia had only 5 exploration agreements signed which are targeting for CBM reserve.

As informed by Mineral and Petroleum Authority of Mongolia, currently Mongolia has 8 CBM exploration sites, and 5 production sharing agreement exists effective.[1] As latest event, on 6 May 2020, the Mineral Resources and Petroleum Authority of Mongolia and Erdenes Methane LLC, state owned entity established jointly by Erdenes Mongol LLC and Australia's Jade Methane LLC executed a production-sharing agreement for the exploration and exploitation of CBM at Tavantolgoi's XXXIII exploration site located in Tavan Tolgoi coal deposit field in Tsogttsetsii, Umbegobi, Mongolia, where methane gas has been detected. The exploration site has estimated coal reserves of over 100 billion tons. This project considered to be closer to CBM production, as respective feasibility study for the production will be conducted under such agreement term.[2]

1.1.1. State Policy of Mongolia

[1] Хөтөлбөрийн зөвлөх А.Эрдэнэпүрэвийн зүгээс 2020.05.06-ны өдөр Ашигт малтмал, газрын тосны газрын Геологи хайгуулын хэлтсийн дарга Б.Сүнжидмаатай хийсэн уулзалтын хүрээнд авсан мэдээлэл.

[2] "Эрдэнэс Монгол"-ын охин компани болох "Эрдэнэс Метан" ХХК нь нүүрсний давхаргын метан хийн нөөцийг тогтоож, эрчим хүчний цэвэр эх үүсвэр болгон эдийн засгийн эргэлтэд оруулах зорилготой төслийг Австралийн "Жэйд Метан" ХХК-тай хамтран хэрэгжүүлж байгийн хүрээнд Тавантолгойн XXXIII хайгуулын талбайд метан хийн хайгуул ашиглалтын үйл ажиллагаа эрхлэх анхны Бүтээгдэхүүн худалдан авах гэрээг АМГТГ-тай байгуулаад байна.
URL: http://www.erdenesmongol.mn/index.php?view=article&type=list&filter=category&val=31

As stated under the State Policies, Mongolia aimed to extend its study over CBM and developing its regulatory framework during last 10 years upon defining CBM to be considered as 'unconventional petroleum' along with the natural bitumen, oil shale, tar sand, gas-rich shale, gas sand under the Article 4.1.4 of the Law on Petroleum 2014.

Under the Provision 3.3.3 of the 'State Policy on Petroleum Industry up to 2017', adopted by the Parliament Resolution No.65 of 2011 (**Initial State Policy**), production of the petroleum industry is planned to be extended upon increasing volume of the crude oil as conventional petroleum source as well as increasing scope of study and starting production of the unconventional petroleum sources (such as oil shale, gas shale, natural bitumen, tar sand and other). Also under the Provision 3.4.8 of the Initial State Policy, within the petroleum industry's production policy, it is stated that State will support initiatives of the professional state organizations, research institutions and foreign investors on introducing production of the environmentally friendly gas fuel from unconventional petroleum sources such as CBM, natural bitumen, tar sand and other.

Moreover, it should be noted that under the revision of the Law on Petroleum made in 2014, the CBM officially defined by law that it shall be considered as 'unconventional petroleum' and under same revision of the same law, drilling wells for the unconventional petroleum is accepted at the exploration stage, but it is restricted to crude oil scenario. This clearly expresses that Mongolia, under this State Policy is aiming to expand study of its unconventional petroleum sources.

Indeed, under the same revision of the Law on Petroleum, very short and brief regulation was introduced on how tenure overlapping will be resolved. Therefore, this could be considered as one step forwards compared to its previous version.

Following such revision, in 2018 the Government Resolution No.169 was approved under which 'State Policy on development of the Petroleum Industry up to 2027'is defined (**Latest State Policy**).

Under such Latest State Policy, within a scope of enhancing prospecting, exploration and production of the unconventional petroleum it is stated that (1) unconventional petroleum prospecting, exploration and exploitation shall be conducted based on production sharing agreement, subject for tax-royalty and other agreements, (2) coherence between state organizations shall be in improved, (3) investment shall be supported and protected, (4) standards, rules and regulations shall be improved, revised and awareness shall be improved, (5) future trend of the industry shall be defined based on prospecting and exploration results.

Moreover, under Provision 2.3.2 of the Latest State Policy, besides establishment of the crude oil processing plants, the State will support conducting research and studies on producing liquid and gas fuels from the unconventional petroleum sources, including CBM, shale, natural bitumen, tar sand and etc and respective productions.

Also, pursuant with the Provision 2.3.3.7 of the same Latest State Policy, gas industry recognized to be clean fuel which will have impact on combat against air pollution, and under the Provision 2.3.5.2 of the same Policy, development of the unconventional petroleum industry considered to have positive impact on creating work places for the local residents and supporting local economies by purchasing goods and services from local suppliers.

In terms of implementation plans, under 1st stage of the Latest State Policy, during 2018-2021, the sectorial policies and industry legal framework is planned to be improved, investment is planned to be increased and state owned as well as company with state participation is planned to be established.

As other State Policies, under the 'Government Action Plan between 2016-2020', adopted by the Parliament Resolution No.45 of 2016, as well as under the 'Trip-pillar Development Policy', approved by the Government Resolution No.42 of 2018, prospecting and exploration of the unconventional petroleum is planned to be intensified in order to increase defined reserves, respective studies allowing methane gas to be produced is planned also to be intensified. Moreover, gas supply related legal and infrastructure environment is planned to be developed.

Also, under the 'Green Development Policy', adopted by the Parliament Resolution No.43 of 2014 and its implementation plan adopted by the Government Resolution No.35 of 2016, under the strategic goal of enhancing utilization and developing environmental resource efficient, with low greenhouse gas emission and waste, between 2016-2025 new energy sources from produced coal, biomass, CBM, syngas, fuel elements are planned to be established and tested. Moreover, international standards applied on exploration and production if both conventional and unconventional petroleum sources are planned to be introduced. With this regard, between 2016-2020, international experiences and standards of environmental management during exploration and production stages of unconventional petroleum sources such as shale, CBM are planned to be introduced.

Besides this, under the Provision 4.2.12 of the 'National Program on Decreasing Air and Settlement Area Pollution', adopted by the Government Resolution No.98 of 2017, specifically stated that reserve study of the CBM will be intensified as well as coal processing, deeply processing plants, coal-chemical plants will be supported to be established.

Indeed, under the Provision 3.3.2 of the 'National Program on Development of Heavy Industry', adopted by the Government Resolution No.214 of 2019, CBM utilization studies are planned to be undertaken.

Lastly, under the 'Long Vision 2050', adopted by the Parliament Resolution No.52, dated 12 may 2020, within a regional development policy and responsible extractive industry, in particular, for the southern regions, coal-chemical, coal-power and methane gas production plants as well as technological parks are planned to be developed, in line with the overall policy of developing such region with dually coexisting feature of responsible extractive industry and paleontological tourism.

To conclude, as prescribed under the Policy documents, Mongolia aiming to enhance study of the CBM to increase its defined reserves and begin CBM production. Especially, it supports such industry with regards its feature of being clean and environmentally friendly green fuel. Based on such interest, it aims to improve its legal environment and promote investment in such industry.

In terms of overlapping of the CBM tenure with other mineral tenure, we were unable to identify provisions on how such case will be settled. Therefore, we assume that nothing with this regard is planned to be conducted by state authorities as per respective State Policy documents, unless they will rely on general statements to improve legal environment of the industry.

1.1.2. Mongolian Legal Framework

A. Law on Petroleum (2014)

Under the Petroleum Law (1991), only term 'petroleum' was defined by the law. CBM was considered to be covered by general term of 'petroleum' under the Article 2.1 of the Law on Petroleum (1991), as petroleum was defined to be hydrocarbon compounds occurring in a solid, liquid, or gaseous state in the subsoil.
Later, under the revision of the Law on Petroleum, adopted by the Parliament in 2014, besides general term of 'petroleum', specific term of 'unconventional petroleum' was defined. Pursuant with the Article 4.1.4 of

the Law on Petroleum, "unconventional petroleum" meant to be natural bitumen, oil shale, tar sand, gas-rich shale, gas sand, and coal bed methane. Also, under Article 4.1.5, 4.1.5."coal bed methane" defined to be gas accumulated in coal during the process of carbonization.

As mentioned earlier, in accordance with the 15.4 of the Law on Petroleum, drilling is allowed during exploration of the unconventional petroleum, which includes CBM.

In term of tenure overlapping occurred at each state of prospecting, exploration, or exploitation/production, noting is defined at the stage of prospecting under the Law on Petroleum.

At the stage of exploration and exploitation, the matter of tenure overlapping between license holders shall be resolved in accordance with the Articles 7.1.10, 42.3-42.5.6 of the Law on Petroleum. As prescribed under the Article 42.3 of the same Law, ***if exploration or exploitation operations for petroleum oil or unconventional petroleum oil and other minerals are overlapping, the license holders shall enter into mutual agreements and operate without causing interference and obstacles to each other***.

Further, if parties unable to operate under the abovementioned Article 42.3 of the same law, such overlapping matter shall be resolved by the Government pursuant to Article 7.1.10 of the Law on Petroleum. As stated in the Article 7.1.10 of the same law, in the event that a petroleum exploration or exploitation area overlaps with an exploration or exploitation area for another mineral, the Government will prioritize by social and economic significance to resolve such overlapping matter.

As circumstances of the Law on Petroleum, pursuant with the Article 42.5 of the Petroleum Law, if a decision made by the Government with regards overlapping matter resulted in a complete halt of operations of one party, all exploration and exploitation expenses of such license holder shall be paid off fully by the party which a license is granted.

Based on content of above mentioned provisions of the Law on Petroleum, direct conclusion can be made as that overlapping matter is not considered at the stage of granting prospecting, exploration and exploitation licenses for the unconventional petroleum or it is vague at law level. Essentially, option to settlement mechanism of the overlapping tenure is defined at law in very generic way, only after each of licenses were already granted.

It should be also, noted that above discussed Articles 7.1.10, 42.3-42.5.6 of the Law on Petroleum, are relevant in into the case were licenses, license for crude oil or unconventional petroleum, granted under the Law on Petroleum overlaps with the licenses granted for other minerals under the different laws such as Minerals Law.

In terms of considering potential overlapping at the stage where application for prospecting, exploration or exploitation for unconventional petroleum, such case is not defined under the law, but some part of it regulated under the 'Regulation on Exploration and Exploitation Activities of the Unconventional Petroleum', adopted by the Government Resolution No.295 of 2015. Under such regulation, the scenario of defining whether certain party who already has been executed respective Production Sharing Agreement for petroleum prior 1 July 2014 is willing to pursue further with Production Sharing Agreement for unconventional petroleum under the new law with priority.

Also, Article 2.16 of the same Regulation on Exploration and Exploitation Activities of the Unconventional Petroleum, if any reserve of the unconventional petroleum is defined by the license holder other that crude oil, is obliged to report to the state authority responsible for the petroleum within 15 days and granting respective license for such unconventional petroleum reserve will be resolved pursuant with the common procedures as prescribed under the Law on Petroleum.

Thus, Regulation on Exploration and Exploitation Activities of the Unconventional Petroleum, adopted by the Government Resolution No.296 of 2015, considered to be limited with regards resolving overlapping issues, but it seems it was adopted with intention to provide transitional regulation from old legal framework to newly revised Law on Petroleum in 2014.

B. Minerals Law

As general framework, matter of potential overlapping of the existing and applied tenure area is clearly stated to be considered under the Minerals Law of Mongolia (2006) (**MML**), which mainly refers to the applications submitted for solid minerals, but not the petroleum. In other words, under the MML, scenario on considering potential overlapping with licenses granted under the Law on Petroleum is not clearly defined.

For instances, in accordance with the Articles 17.4 and 17.5 of the MML, the state authority responsible for minerals (Mineral Authority) defines potential area to be tendered for an exploration licenses, which is free from overlapping with areas already granted by existing effective license, is not a part of reserve area or special purpose territory. To clarify, under such requirements, the term 'effective license' is not clear enough, whether is refers to licenses granted only under such MML or it also includes licenses granted by other laws, such as Law on Petroleum, Law on Nuclear Energy or Law.

Further, in terms of exploitation license areas, under the Article 24.4.2 of the MML, requested mining area also shall not overlap with a reserve area, special purpose territory or an area under existing effective license and for purpose of avoiding any overlapping the borders of a mining license area allowed to deviate from straight lines as per Article 24.4.2 of the same MML.

Also, pursuant with Articles 26.2 and 26.3 of the MML, the upon receipt of the application for mineral exploitation licenses, the Mineral Authority properly clarifies whether the requested mining area overlaps with any (1) reserve area, (2) special purpose territory or (3) area under which mineral exploration or exploitation activity is restricted or (4) area already subject to an existing valid license and if any overlapping is identified such application becomes subject of refusal, if no overlapping is defined, then Mineral Authority grants requested mining license and instructs applicant to pay first year's license fee.

Moreover, under the Article 62 of the MML, boundary disputes between or among license holders shall be resolved by the Mineral Authority. The Mineral Authority gives all parties involved in the dispute an opportunity to present its position and arguments in writing. It verifies if there is an overlap between disputed areas in the licenses and cartographic licenses registries. If there is an overlap, it shall determine based on the original applications and reports of field surveys, whether the coordinates and boundaries of the area were correctly recorded. If, in a result of a field survey, an overlap is confirmed the Mineral Authority modifies the area covered by the most recently granted license and eliminates the overlapping between licenses.

Then, Mineral Authority verifies the disputed boundaries, makes decision on as to the relevant modifications and notifies the parties to the dispute accordingly. If the parties to the dispute disagree with the decision of the Mineral Authority, they may file a claim with the court (Articles 62.6 and 62.7 of the MML).

C. Law on Common Minerals

Under the Article 14.1.4 of the Law on Common Minerals (2014) (**MLCM**), upon receipt of the application for an exploration of the common minerals, the Governor of the Province or Capital city clarifies whether

such requested area has overlapping with the any (1) reserve area, (2) special purpose territory or (3) area under which mineral exploration or exploitation activity is restricted or (4) area already subject to an existing valid license by referring to the Mineral Authority. Based on response received from the Mineral Authority, it resolves whether to grant exploration license or not.

Pursuant with the Article 14.03 of the MLCM, if requested exploration area fully or partially overlaps with any (1) reserve area, (2) special purpose territory or (3) area under which mineral exploration or exploitation activity is restricted or (4) area already subject to an existing valid license, then respective Governor refused to grant exploration license for such application.

Also, same non overlapping requirement applies to both mine area and mining license areas of the common mineral, in an exact same manner upon referring to the Articles 24.4 and 24.5 of the MML. None-overlapping requirement is defined under the Article 19.2.2 and such reference to MML is made under the Article 17.3 of the MLCM.

D. Law on Nuclear Energy

Under Article 19.7 of the Law o Nuclear Energy, same overlapping clarification on the requested areas for an exploration and exploitation radioactive substances stated to be done by the Mineral Authority in same manner with the Article 26.2 of the MML. In other words, Mineral Authority clarifies whether the requested mining area overlaps with any (1) reserve area, (2) special purpose territory or (3) area under which mineral exploration or exploitation activity is restricted or (4) area already subject to an existing valid license in same manner as minerals defined under the MML.

However, as deferral from MLL framework, under the Law on Nuclear Energy, it has no provision on how such potential overlapping factor will influence decision making to grant requested license. In other words, it is not clear under the Law on Nuclear Energy, whether given application will be refused if potential overlapping is identified.

Besides this under the Article 25 of the Law on Nuclear Energy, boundary disputes between or among license holders of radioactive substance prospecting, exploration and exploitation stated to be resolved in accordance with the 62 and 63 of the MLL. Which means, such boundary dispute will be resolved by the Mineral Authority, reserving prevailing status of the older licenses over latest licenses.

It shall be noted that matter of boundary overlapping between radioactive substance license with other mineral licenses, such as minerals defined under the MML or unconventional petroleum defined under the Law on Petroleum, is not clear how it will be resolved .

E. Law on Subsoil

There is no provision under the Law on Subsoil, with regards clarifying potential overlapping of the applications for utilization of subsoil. There is no such cross-checking procedure under the Law on Subsoil, at the stage of granting subsoil use rights.

However, under the Article 56 of the Law on Subsoil, disputes are classified to be resolved as:

- Disputes between companies, organizations and citizens regarding the use subsoil for mining of minerals, as well disputes regarding use of water reserves on their respective territories shall be resolved by Governors of Province and the Capital city.

- Disputes regarding the use of subsoil for using mineral deposits other than minerals and for purposes other than mining shall be resolved by the state central administrative authority in charge of geology and mining.
- Disputes regarding geological surveys of subsoil shall be resolved by the state central administrative authority in charge of geology and mining.
- Disputes regarding property and related to the use of subsoil shall be resolved by the court. However, as Law on Subsoil was adopted in 1988, prior approval of the current Constitution of

Mongolia in 1992, based on previous socio-economic regime, actual application of the above provisions should be clarified. It could be the case that any public body's decision on granting or refusing to grant any licenses, could be subject for administrative dispute settlement procedures defined by the Law on Administrative Case Settlement or by procedures defined under the MLL, Law on Common Minerals and Law on Petroleum.

1.2. Development path, Core principles and Essence of the Australian (Queensland) legal framework on resolving tenure overlapping of the coal and CBM.

In general, Australian legal framework is similar with the Mongolian Legal framework with regards to its structural feature that coal reserve prospecting, exploration and exploitation related matters are regulated under the mineral law and CBM related matters are regulated under petroleum legislation. Such structure is also similar in a sense having separate state regulatory authority for coal and CBM, the Mineral Authority and Petroleum Authority.

As such, due to granting separate licenses based on separate two different legal framework, overlapping tenure become evident. Therefore, initial legal framework on resolving coal and CBM tenure was defined in 2004 in Australia (Queensland). Such overarching cross-industry legal framework was adopted by the Queensland Parliament as separate act, titled as Petroleum & Gas (Production & Safety) Act 2004, as well as, respective amendments were made to the respective mineral and petroleum industry schemes, namely to the Mineral Resources Act 1989(Qld) and Petroleum Act 1923(Qld).

It shall be noted that under above mentioned Australian (Qld) legal framework addressing tenure overlapping, specifically addresses coal and CBM tenure overlapping, but no other minerals.

In principle, such duplicative licensing framework for coal and CBM under separate mineral and petroleum industry legislations, caused or pushed both industry operations to improve each of its efficiency. In overall, as such approach caused certain degree of improvements to both coal and gas industry operational efficiency, respectively demand for an efficient legal framework is increased.

New framework aimed to remove drawbacks of the 2004 legislation by eliminating or minimizing possibility for undue delay, dead lock and veto rights and competition for access for resources. Undue delay and veto rights of the CLH criticized at that time claiming that CLHs causing delay over long period without reaching an agreement and negotiation procedures between CLH and PLH extended without any deadline or time limit.

As an initial draft was prepared and disclosed to the gas and coal industries by the Queensland Government in 2011 and such boll was planned to be introduced to the Parliament to be heard and approved within following months. However, industries' reaction was not supportive, rather criticizing for likely unbalanced consequences. Therefore, the Government of Queensland decided to postpone such a bill submission, and instead it set up a joint industry working group ('**Working Group**'), including required specialists, industry representatives in very balanced manner. Such, Working Group was structured in very balanced way by involving equal number of individuals or representatives from each industry and each

industry group had a leader who will present their interest during meetings organized. Upon lengthy discussions, negotiations and meetings organized within such Working group over more than one year, involving various stake holders, experts and professionals, it prepared draft bill of 2014 revision.

As it was stated in the report of the Working Group, success of the Working Group was defining underlying core interest of the all parties as to reach consensus for the public good, which is utilizing natural wealth efficiently and fully, so that tax revenues would increase and benefit citizens. Moreover, studying practically applies successful cases on jointly utilizing coal and CBM resources should also be highlighted. Defining legal mechanism which directs parties' negotiation to overcome any potential deadlock scenario was one if the main focuses for new framework.[3]

Such practical approach of considering realistically performed successful cases is very important as it offers suitable for each party's, as they would have their own specific norms and standards per different frameworks. Also, concluding draft bill only after reaching consensus and common understanding among both coal and petroleum industries, and professionals is important. Moreover, ensuring proper compliance with the safety norms, environmental protection and environmental resettlement obligations of both coal and gas sides in accordance with each of applicable laws, regulations, standards, and norms is important to note here.

Compared to Mongolian framework, under Australian framework, no issue of license cancelation or termination or suspension is considered as they were clear that such restrictive approach would not meet public interests. Instead, they guided to cooperative and joint development approach among license holders. This is very important, since it leaves ruling power for license holders, but not be ordered or instructed by regulatory authorities (except arbitration procedure).

In 9 September 2014, the Mineral Resources and Energy (Common Provisions) Act 2014 ('**MRECA'**) was adopted by the Parliament of Queensland, Australia and in 26 September 2014 it was officially ratified by Queen. The preparation procedure of such bill continued over 2012-2013. Along with the MRECA, respective amendments were made on Mineral Resources Act and other relevant legislations. Also, health and safety requirements are reflected in the revision of Water Act in 2014.

Besides these revisions, as of matter of balancing two industry statuses, with regards initiating overlapping tenure settlement procedure, under new MRECA 2014, in addition to coal side the gas side also granted right to initiate overlapping tenure settlement procedure. Under previous legislation, only coal side had a power to call for settlement procedure.

Moreover, number of clauses causing problems were removed from the legislation. In particular, (1) deadlines for issuing response with regards certain claims where clearly defined, (2) requirements to have joint development plan and terms and conditions of such joint plan is defined, (3) requirement for an information exchange and confidentiality terms defined, (4) dispute resolution mechanism are defined to be conducted under alternative or amicable dispute resolution principles without involving lengthy litigation procedures, as well as single stage arbitration procedure is introduced, (5) terms on defining compensation and reimbursement scheme is defined. These shall be noted as it increases practical efficiency of the overlapping tenure related legal scheme of the MRECA.

In addition, it shall be also noted that MRECA reflects technological specifications of the two industries. For instance, MRECA reflects scope of exploitation activities of the two industries as fundamental regulatory principle, under which coal industries could conduct exploitation operation up to 1000 meter from the surface (in open pit case approximately up to 500 meter and up to 1000 meter in case of

[3] Maximising Utilisation of Coal and Coal Seam Gas Resources – A New Approach to Overlapping Tenure in Queensland, Queensland Resources Council, May 2012, page 7.

underground mining) whereas in case of gas industry wells could reach beyond above mentioned deepest point of the coal industry. Moreover, it classifies overlapping tenure areas into different types such as initial mining area, running mining area, future mining area, joint operation area of which would have different terms and conditions on how parties would undertake their operations as it shall be planned under the joint development plan. Most importantly, under MRECA such joint development plan is required to have most efficient version based on each side's feasibility studies with regards both sides.

As initial approach, under MRECA, it requires parties to agree on initial mining area, under which coal side will undertake its coal mining operation on it sole discretion as it will proceed on ordinary course of operation, of which detailed estimates, plans and ground would be prepared and offered to the PLH by the CLH. Based on such materials, parties agree on detailed joint development plan. In addition, MRECA appears to be more practically friendly as it accepts flexible settlements due course of the operation, under which CLH releases and transfers certain parts of the initial mining area to PLH, if CLH decides as it completed it coal mining activity and such arrangement allows PLH to commence its study and exploitation activities without waiting 10 year period of initial mining area.

Two. Comparative analyses of the two legal frameworks

2.1. Scope and subject of the comparative analyses

Under this analyses the Law on Petroleum of Mongolia ("**MPL**") and the 'Regulation on Exploration and Exploitation Activities of the Unconventional Petroleum', adopted by the Government Resolution No.295 of 2015 ('**MRUP**' or Mongolian Regulation on Unconventional Petroleum) is as main source with regards Mongolian legal framework on resolving overlapping tenure of the coal and CBM. In contrast, the Mineral and Energy Resources (Common Provision) Act 2014 (Qld) ('MRECA') and Overlapping Tenure Industry Guide: A Guide to Queensland's Coal and Coal Seam Gas Overlapping Tenure Framework 2016 ('**QG**' or Queensland Guide) is used as primary legal source for consideration.

Under this study, the primary attention is paid on how such overlapping over coal and CBM is happening and procedures, stages, and relevant activities subject for completed under two legal frameworks will be compared as to extend of availability.

However, it shall be noted that technical and technological issues, as well as economics and social impact matters, respective consequences of respective two legal scheme is not considered no compared under this report.

2.2. Similarities and differences of the two legal frameworks

Following similarities are noted among Mongolian and Australian (Qld) legal frameworks:

1. In both counties, mining and petroleum industries are regulated under separate legal frameworks: Coal deposit prospecting, exploration and exploitation matters are regulated under the mining laws and legislations and CBM deposit prospecting, exploration and exploitation (production) matters are regulated under petroleum legislations.
2. With regards state regulatory bodies, two industries are subject to two different agencies or used to be subject for two different agencies. Each agencies power and authority defined by separate laws. [4]
3. In principle in under each of legal frameworks, CLH and PLH are free to agree with each other under commercial terms based on their free will with regards how they will cooperate.

In term of differences, based on available sources, it is understood that in Australia (Qld) permits for the CBM are granted under general petroleum permits, which results no overlapping between CBM and other petroleum minerals, including both conventional and unconventional petroleum sources. Whereas, in Mongolia, licenses for CBM is granted under separate license titles 'license for unconventional petroleum', and license for crude oil is granted under separate licenses. Therefore, as per Mongolian legal framework, overlapping among crude oil and unconventional petroleum licensed areas could occur.

Therefore, we assume that in 2015, the Government seems intentionally passed MRUP to settle existing as well as to prevent from further overlapping of the petroleum licensed areas with CBM areas. As it was

[4] Монгол Улсын хувьд хоёр өөр хуулиар зохицуулж байгаа ба Ашигт малтмалын газар болон Газрын тосны газрыг 2016 оноос хойш нэгтгэсэн зохион байгуулалтад оруулсан ч тус бүрийн хуулиар ашигт малмал болон газрын тосны эрх хэмжээ нь тодорхойлогдож байгаа, тусгай зөвшөөрөл олгох үндэслэл нь өөр өөр хуулиар тодорхойлогдсон байх тул харьцангуй тусгаар гэж үзэх боломжтой. Өөрөөр хэлбэл, төрийн зүгээс өөр өөр хуулийг үндэслэн нүүрс болон нүүрсний давхаргын метан хийг эрэх, хайх, ашиглах зөвшөөрлийг өөр өөр хуулийн этгээдэд олгох боломж нээлттэй байна.

mentioned during workshops with officials, MRUP was adopted in order to settle mineral licenses granted for the purpose of exploration and exploitation of the shale under minerals law as shale was classified to be considered as unconventional petroleum as per revised MPL starting from 1 July 2014. Having mentioned this, MRUP by its nature aims to resolve issues related with transfer from old to new legal framework, such regulation seems payed out its role and has no regulatory significance currently.

In brief, as per MRUP, within 30 days since MPL became effective, the Petroleum authority of Mongolia ('**MPA**') shall deliver notice to petroleum license holders to clarify whether they have interest to enter into the product sharing agreement for CBM, in other words whether they willing to have unconventional petroleum license over their existing petroleum licensed areas. Such PLH required to respond within 90 days since receipt of MPA's notice. If no response is delivered within such deadline or PLH expressed that it has no interest to have unconventional petroleum license, such area becomes open area for the public request.

If, PLH expressed its interest to have unconventional petroleum license, then MPA refers to Mineral Resource Authority of Mongolia ('**MRAM**') within 30 days to clarify overlapping. In particular, MPA clarifies interest of the existing mineral license holder which has already approved unconventional petroleum deposit. It such mineral license holder exists, then MPA refers to such mineral license holder with notice whether such license holder interested to have permits from MPA for an exploration and exploitation of an unconventional petroleum deposits defined.

The mineral license holder required to express its interest within 30 of receipt notice from MPA. If mineral license holder failed to deliver its response within such deadline or response was made with content of no interest to MPA, then respective petroleum license holder would have preemptive right to apply for unconventional petroleum licenses. If such mineral license holder expressed its interest to have respective unconventional petroleum licenses, then respective actions to enter into product sharing agreement will be organized by MPA.

Pursuant with MRUP, contract negotiation for product sharing agreement shall be conducted within 45 days and if no agreement reached within such period, then such area becomes open for third party application.

Further, under MRUP, it clearly rules that only unconventional license holder which entered into respective product sharing agreement shall have legal right to conduct exploration and exploitation activities for an unconventional petroleum source. Also, it rules that mineral license holder and radioactive substance license holder shall be obliged to acknowledge MPA if they spots any unconventional petroleum deposit during their respective operation.

Moreover, in accordance with MRUP, license area coordinates for an unconventional petroleum will be defined by MPA based on basin as same as crude oil. [5]

The main difference of the Australian legal framework has overarching particular act on overlapping of the coal and CBM areas, the MRECA, which has power to apply to both industry regulations, whereas, in Mongolia there is no such particular legal framework focused on overlapping of the coal and CBM, rather in respective laws, overlapping matter is defined by general terminologies such as 'overlapping among licensed areas'. Thus, relevance of the clauses under Mongolian Minerals Law with licensed areas under MPL is not clear enough with regards practical application.

[5] Энэ хэсэгт товчлон тайлбарласан зохицуулалтууд нь 2015 оны 295 дугаар тогтоолоор баталсан МУБГТЖ-ын 2 дугаар зүйлд туссан зүйлс болно.

Moreover, as fundamental difference, it shall be noted that Australian (Queensland) approach was based on the public interest to facilitate most efficient version to utilize both coal and CBM resources. Whereas, under Mongolian mineral legislation, at the stage of granting mining licenses, if potential overlapping will be identified, then such application becomes automatically subject for refusal as well as in case where respective mineral licenses were granted then initial license holder will be granted prevailing status and latest license will be modified to avoid overlapping of the respective tenure areas. Indeed, as per petroleum legislation, without proper participation of the license holders, without considering their interest, respective economics, technical specs, plans and prospects, the Government holds power to prioritize significance of the licenses and entitled to make decision to terminate any of the licenses without considering interests and will of the license holders. Moreover, the Government shall not be responsible for any circumstances caused by its decisions, but license holders must bear the cost by compensating each other. Thus, Mongolian legal framework is far more limited with regards facilitating socio-economic efficiency, compared Australian (Qld) legal framework.

Furthermore, Australian (Qld) legal framework provides mandatory requirements on how information should be exchanges as it appears to be fundamental factor to reach common grounds or same page and to come up with mutually acceptable version. Moreover, it clearly defines confidentiality obligations of each parties and respective compensation requirements if one will breach such requirement. We assume that these detailed plain provisions facilitate trust and confidence among license holders and pushes them for honest cooperation without any time-consuming plays. Moreover, as Australian (Qld) legal framework clearly states that health and hygiene, safety operational requirements as well as environmental impact management works, rehabilitation works are defined to be properly fulfilled and implemented by each of license holder in accordance with their applicable laws, regulations, norms and standards. Whereas, under Mongolian legal framework, such issues are vague.

Under Australian (Qld) legal framework, misunderstanding and disputes among CLH and PLH are instructed to be resolved by alternative dispute mechanisms within short period of time compared to lightly litigation procedures via many stages of court hearing. It rules that disputes shall be subject shall be aimed to be resolved initially under parties meeting as amicable dispute settlement procedure to be organized within 21 days and if parties failed to reach an agreement, then reference to arbitration procedure can followed with regards CBM and coal overlapping and only land access issues can be referred to special land court. To conclude, underlaying concept of such dispute resolution procedures is to resolve matters within short period of time upon considering all technical issues of the parties with proper balance. Whereas, under Mongolian legislation, all disputes in general are open to be referred to the administrative court or can be resolved by respective regulatory authorities, which has no proper involvement and balance of the license holders. Thus, it has shortfalls with regards level of detailed technical considerations, timeframe to reach final settlement as well as it is vague with regards balance among two interests of industry participants to be considered. Therefore, we assume that Mongolian legal framework is limited with regards resolving disputes related with the tenure overlapping efficiently, compared to Australian (Qld) framework.

Under Australian (Qld) framework is balanced in a sense that tenure overlapping resolving procedure can be initiated by any party, by CLH or PLH. Whereas, under Mongolian legislation, including MRUP, no such balanced approach is defined.

Per Australian (Qld) legal framework, it clearly defines legal clauses on how compensation could be defined as matter of reimbursing each other due to impacts caused to each other. It rules how such lost revenue of the impacted party shall be defined, what gas facilities shall be subject for compensation for what consideration, what cost shall be subject for compensation etc. In contrast, under Mongolian legislation, such matters are not considered. Instead, Government holds ultimate power to rule which license shall remain effective and which once shall be terminated, leaving remaining party subject for compensation obligations to the party who lost its license. Eventually, compensation issues are to be resolved by the court.

2.3. Procedure on Resolving Tenure Overlapping

2.3.1. Procedure to Resolve Tenure Overlapping by Coal Permit Holder

Sole occupancy of Coal Permit Holder over Initial Mining Area

An Coal License Holder (**CLH**) has sole occupancy of an *Initial Mining Area* (**IMA**) for an overlapping area the subject of the coal from the mining commencement date for the IMA, but only if the CLH has given each Petroleum License Holder (**PLH**) the notices mentioned below:

- If the PLH holds prospecting right, then an advance notice for the coal and an 18 months' notice for the coal.
- If the PLH holds exploitation right, then an advance notice for the coal and a confirmation notice for the coal.

An ***advance notice***, for an mineral license (coal), is a notice that (a) states that the CLH has applied for the grant of mineral license; and (b)includes a copy of the application for the mineral license, other than any statement detailing the applicant's financial and technical resources; and (c) if the PLH holds exploration license—identifies any IMA or *Rolling Mining Area* (**RMA**) in the overlapping area, and the mining commencement date for the IMA or RMA; and (d) if the PLH holds exploitation license—includes a joint development plan for the overlapping area the subject of the coal. An advance notice must be given to a PLH within 10 business days after the day the CLH applies for the grant of the mineral license for coal.

An advance notice must be given to a PLH within 10 business days after the day the CLH applies for the grant of the mineral permit for coal.

An ***initial mining area***, or IMA, is an area in an overlapping area, identified by an CLH, for which the CLH requires sole occupancy to carry out authorized activities for the coal. The total area that may be identified as an IMA is the minimum area that is reasonably considered to be required for 10 years of safe mining. An IMA may be a single area, or several separate areas, each of which is an IMA.

A ***rolling mining area***, or RMA, is an area in an overlapping area, identified by the CLH, for which the CLH requires sole occupancy to carry out authorized activities for the coal and the total area that may be identified as an RMA is the minimum area that is reasonably considered to be required for 1 year of safe mining. An RMA must be within a Future Mining Area (**FMA**). Each RMA must be considered on a sequential, year by year basis. An RMA for a particular year must not be more than 10% of the total of the areas that are an IMA or FMA in the overlapping area.

A ***future mining area***, or FMA, is an area in an overlapping area, identified by CLH, in which the CLH intends to carry out authorized activities for the coal as mining operations advance outside the IMA. An FMA must be contiguous with an IMA.

An ***18 months notice***, for coal, is a notice that—(a) states that the CLH has applied for the grant of mineral permit for coal and intends to start carrying out authorized activities for coal in an IMA in an overlapping area the subject of the ML (coal); and (b) states the mining commencement date for the IMA; and (c)includes any other information prescribed by regulation. An 18 months notice must be given to PLH holding exploration license at least 18 months before the mining commencement date for the IMA, subject to subsection — (a) an 18 months notice may be given at the same time as an advance notice; or (b) an 18 months notice and an advance notice may be given as a combined notice.

A ***confirmation notice***, for coal, is a notice that— (a) states that the CLH intends to start carrying out authorized activities for the coal in an IMA in an overlapping area the subject of the coal; and (b) states the mining commencement date for the IMA; and (c) confirms the CLH will start coal mining operations in the IMA on the date stated under paragraph (b) for the IMA; and (d) includes any other information prescribed by regulation. A confirmation notice must be given to a PLH at least 18 months, but no more than 2 years, before the mining commencement date.

Sole occupancy of RMA

An ***RMA notice***, for an coal, is a notice that— (a) states that the CLH intends to start carrying out authorised activities for the coal in an RMA in an overlapping area the subject of the coal; and (b) states the mining commencement date for the RMA; and (c) confirms the CLH will start coal mining operations in the RMA on the mining commencement date; and (d)includes any other information prescribed by regulation. An RMA notice must be given to a petroleum resource authority holder at least 18 months before the mining commencement date for the RMA.

Joint occupancy of SOZ

The ***simultaneous operations zone*** **(SOZ)** for an IMA or RMA, is an area in an overlapping area, contiguous with an IMA or RMA, in relation to which safety and health arrangements for the co-existence of an mineral and a petroleum resource authority are reasonably considered to be required. An CLH and a petroleum resource authority holder have ***joint occupancy*** of a SOZ for an IMA or RMA for an overlapping area from the mining commencement date for the IMA or RMA.

Exceptional circumstances notice may be given by petroleum resource authority holder

This applies if (a) a petroleum resource authority holder has received an advance notice for an coal mineral license and such notice must be given within 3 months after the petroleum resource authority holder receives the advance notice or has received a proposal to amend an agreed joint development plan to change the size or location of, or the mining commencement date for, an IMA or RMA, but has not yet agreed to the proposal; and (b)the holder considers an extension of the period (the ***relevant period***) before the CLH may carry out authorized activities for the coal in the IMA or RMA is justified because of the following exceptional circumstances there are high performing petroleum wells or fields in the IMA or RMA and the relevant period is not sufficient to allow for production of petroleum from the high performing wells or fields at the prescribed threshold.
The petroleum resource authority holder may give the ML (coal) holder a notice (an ***exceptional circumstances notice***) stating (a) the exceptional circumstances justifying the extension; and (b) the petroleum resource authority holder's preferred mining commencement date, which must not be more than 5 years after the mining commencement date for the IMA or RMA; and (c) any other information prescribed by regulation.

The exceptional circumstances notice must be accompanied by technical data, including, for example, data about production modelling, justifying the preferred mining commencement date. The CLH must, within 3 months after receiving the exceptional circumstances notice, give the PLH a notice stating whether the CLH accepts the PLH's preferred mining commencement date.

If the CLH does not accept the PLH's preferred mining commencement date or claims that exceptional circumstances justifying the extension do not exist, the PLH may apply for arbitration of the dispute. Despite this the PLH and the CLH may jointly apply for arbitration of the dispute at any time.

If CLH accepts an PLH's preferred mining commencement date for an IMA or RMA (the ***new date***), or a new mining commencement date for an IMA or RMA is established by arbitration (also the ***new date***)— (a) the new date applies as the mining commencement date for the IMA or RMA, including if a petroleum license is granted; and (b) within 20 business days after the new date is accepted or established, the CLH must give the chief executive a written notice stating— (i) that exceptional circumstances justifying a new mining commencement date have been accepted by the CLH or established by arbitration; and (ii)the new mining commencement date; and (iii)any other information prescribed by regulation.

Acceleration notice may be given by CLH

It applies if an CLH considers a mining commencement date for an IMA or RMA should be an earlier date. The CLH may give the PLH a notice (an ***acceleration notice***) that—(a) states the earlier date; and (b) includes any other information prescribed by regulation. The acceleration notice may be given only in the period—(a) starting on the day an advance notice is given to the PLH; and (b)ending on the day that is 18 months before the mining commencement date for the IMA or RMA.

The CLH must amend any joint development plan that applies to the CLH to ensure it is consistent with the acceleration notice. The acceleration notice has effect to change a mining commencement date whether the PLH agrees to the change.

Abandonment of sole occupancy of IMA or RMA

This applies if an CLH no longer requires sole occupancy of the whole or a part of an IMA or RMA for an overlapping area. The CLH must give each PLH for the overlapping area a notice (an ***abandonment notice***) that—(a) identifies the area of the IMA or RMA for which the CLH proposes to abandon sole occupancy; and (b) states the date (the ***abandonment date***) on which the CLH proposes to abandon sole occupancy; and (c)includes any other information prescribed by regulation.
The site senior executive for the coal mine must facilitate the PLH's access to the area to abandon sole occupancy from the abandonment date. An abandonment of sole occupancy does not limit—(a) any obligation of the CLH to carry out rehabilitation or environmental management required of the holder under the Environmental Protection Act; or (b) the CLH's right to occupy the IMA or RMA to comply with an obligation mentioned above.

Joint development plan

When CLH gives an advance notice to a PLH, it must ensure within 12 months after giving the advance notice to the PLH or, if an application for arbitration of a dispute is made, within 9 months after the appointment of the arbitrator—there is in place—(i) a joint development plan that has been agreed with the PLH; or (ii) an agreed joint development plan as arbitrated. Within 20 business days after the agreed joint development plan is in place a written notice shall be given to the chief executive stating the following (i) that the plan is in place; (ii) the period for which the plan has effect; (iii) other information prescribed by regulation.

The agreed joint development plan must—

(a)identify the CLH and PLH under the plan; and
(b)set out an overview of the activities proposed to be carried out in the overlapping area by the CLH, including the location of the activities and when they will start; and
(c)set out an overview of the activities proposed to be carried out in the overlapping area by the PLH, including the location of the activities and when they will start; and

(d)identify any IMA and RMA for the overlapping area, and any SOZ proposed for any IMA or RMA for the overlapping area; and

(e)state the mining commencement date for any IMA or RMA; and

(f)state how the activities mentioned in paragraphs (b) and (c) optimize the development and use of the State's coal and coal seam gas resources; and

(g)state the period for which the agreed joint development plan is to have effect; and

(h)include any other information prescribed by regulation.

For 2 or more overlapping areas in the area the subject of the coal— (a) to the extent practicable, there may be in place a single agreed joint development plan for 2 or more of the overlapping areas; and (b) if there are 2 or more agreed joint development plans in place for the overlapping areas, the CLH may give the chief executive a single notice for all the agreed joint development plans.

A PLH who receives an advance notice must negotiate in good faith with the CLH to enable the CLH to give its notices. If a PLH and the CLH cannot agree on a joint development plan to the extent it relates to a relevant matter within 6 months after the PLH receives the advance notice, the CLH must apply for arbitration of the dispute. Despite this the PLH and the CLH may jointly apply for arbitration of the dispute, to the extent it relates to a relevant matter, at any time.

The CLH must ensure any development plan under the Mineral Resources Act for the coal is consistent to the greatest practicable extent with each agreed joint development plan that applies to the CLH. The PL holder must ensure any development plan under the P&G Act for the PL is consistent to the greatest practicable extent with each agreed joint development plan that applies to the PLH. It applies even if (a) a renewal; (b) a transfer; (c) a complete or partial subletting of an any of licenses.

An agreed joint development plan may be amended by agreement at any time. A license holder who receives a proposal for an amendment of an agreed joint development plan must negotiate in good faith about the amendment. A license holder who cannot obtain a proposed amendment of an agreed joint development plan under this section may apply for arbitration of the dispute to the extent it relates to a relevant matter.

If an amendment of an agreed joint development plan, whether by agreement or by arbitration, provides for a cessation, or significant reduction or increase, of (a) mining under the mineral license relevant to coal; or (b) production under the petroleum license. Within 20 business days after making the amendment, the license holders must jointly give the chief executive a written notice that (a) states the agreed joint development plan has been amended; and (b) if there is a cessation or significant reduction of an authorized activity for a resource authority—includes, or is accompanied by, a statement about—

(i)whether the cessation or reduction is reasonable in the circumstances; and

(ii)whether the license holders have taken all reasonable steps to prevent the cessation or reduction.

The CLH may carry out an authorized activity for the coal in an overlapping area the subject of the coal only if carrying out the activity is consistent with the agreed joint development plan. The PLH may carry out an authorized activity for the CBM in an overlapping area the subject of the CBM only if carrying out the activity is consistent with the agreed joint development plan. For avoidance of doubt, it is declared that if an CLH has given an advance notice to a PLH and there is no agreed joint development plan that applies to the CLH and the PLH, the PLH may carry out an authorized activity for the CBM in the overlapping area the subject of the CBM and coal if carrying out the activity is consistent with each development plan under the P&G Act that applies to the PLH.

<u>Incidental coal seam gas</u>

An CLH must, in relation to incidental coal seam gas in an overlapping area that is subject to the coal, use reasonable endeavors to (a) minimize unnecessary contamination or dilution of the incidental coal seam gas; and (b) maximize production of undiluted incidental coal seam gas.

The CLH must offer to supply, on reasonable terms, any incidental coal seam gas in an overlapping area that is subject to the coal, to which the CLH is otherwise entitled under the Mineral Resources Act, section 318CN, to a petroleum resource authority holder in the overlapping area.

The CLH must make the offer by giving the PLH written notice of the offer (a) for undiluted incidental coal seam gas in an IMA in the overlapping area—as early as practicable; or (b) for diluted incidental coal seam gas in an IMA in the overlapping area—when the CLH gives the PLH (if, the PLH is a exploitation license holder—a confirmation notice or if the PLH is an prospecting license holder—an 18 months notice). The PLH may accept the offer within 12 months after receiving the notice, or a later period agreed by the CLH.

In case of undiluted or diluted incidental coal seam gas in an RMA in the overlapping area then the CLH gives to the PLH the RMA notice. In such case the PLH may accept the offer within 3 months after receiving the notice, or a later period agreed to by the CLH.

If the PLH accepts the offer, the PLH must (a) enter into a contract with the CLH for delivery of the gas; and (b) take supply of the gas within 2 years after accepting the offer, or a later period agreed to by the CLH; and (c) pay the CLH the amount of royalty that is payable for the gas under the Mineral Resources Act, section 320. Such contract must include the matters prescribed by regulation.

If the petroleum resource authority holder does not accept the offer or take supply of the gas, the CLH may use the gas under the Mineral Resources Act, section 318CN. However, if the CLH has not, under the Mineral Resources Act, section 318CN, used gas offered to a PLH within 12 months after becoming entitled to use the gas, the CLH must not use the gas under the Mineral Resources Act, section 318CN until (a) the CLH re-offers to supply the gas to the PLH and (b) either PLH rejects the re-offer; or 3 months, or a longer period agreed to by the CLH, elapses after the re-offer is made without the petroleum resource authority holder accepting the re-offer.

A notice of offer or a notice of re-offer must include the matters prescribed by regulation. However, such clauses does not limit or otherwise affect the obligations imposed on a PLH under the P&G Act.

2.3.2 Procedure to Resolve Tenure Overlapping by Petroleum Permit Holder

Petroleum production notice

A PLH must give a CLH a notice (a ***petroleum production notice***) that (a) states that the PLH has applied for the grant of the petroleum license; and (b) includes a copy of the application for the petroleum license, other than any statement detailing the applicant's financial and technical resources; and (c) if the mineral license for coal includes a proposed joint development plan; and (d) includes any other information prescribed by regulation.

A petroleum production notice must be given to a coal resource authority holder within 10 business days after the day the PLH applies for the grant of the petroleum license

The PL holder must ensure within 12 months after giving the petroleum production notice to the CLH or, if an application for arbitration of a dispute is made within 9 months after the appointment of the arbitrator—there is in place (i) a joint development plan that has been agreed with the CLH or an agreed joint development plan as arbitrated.

Within 20 business days after the agreed joint development plan is in place, a written notice is given to the chief executive stating (i) that the plan is in place, (ii) the period for which the plan has effect and (iii) other information prescribed by regulation.

The agreed joint development plan must:

(a)identify the CLH and PLH under the plan; and

(b)set out an overview of the activities proposed to be carried out in the overlapping area by the CLH and PLH, including the location of the activities and when they will start; and

(c)identify any IMA and RMA for the overlapping area, and any SOZ for any IMA or RMA for the overlapping area; and

(d)state the mining commencement date for any IMA or RMA; and

(e)state how the activities mentioned in paragraph (b) optimize the development and use of the State's coal and coal seam gas resources; and

(f)state the period for which the agreed joint development plan is to have effect; and

(g)include any other information prescribed by regulation.

Petroleum production notice given more than 6 months after advance notice

It applies if (a) an exploration and exploitation CLH gave an advance notice for an coal to the prospecting PLH in relation to an overlapping area; and (b) a petroleum production notice in relation to the overlapping area was given under this part more than 6 months after the giving of the advance notice; and (c) the petroleum license is granted, but the mineral license for coal has not yet been granted.

The mining commencement date for an IMA in the overlapping area must be taken to be the date that is the earlier of the (a) the end of 9 years after the giving of the advance notice; (b) the end of 11 years after the giving of the advance notice, less the period between the giving of the advance notice and the giving of the petroleum production notice.

This section does not limit (a) the changing of the mining commencement date for the IMA as prescribed in previous part; or (b) the power of the PLH to give an exceptional circumstances notice; or (c) the power of the CLH to give an acceleration notice.

The CLH who receives a petroleum production notice that includes a proposed joint development plan must negotiate in good faith with the PLH to enable the PLH to give a Petroleum production notice given more than 6 months after advance notice.

If an CLH and the PLH cannot agree on a joint development plan to the extent it relates to a relevant matter within 6 months after the CLH receives the petroleum production notice, the PLH must apply for arbitration of the dispute. Despite this, the CLH and the PLH may jointly apply for arbitration of the dispute, to the extent it relates to a relevant matter, at any time.

Consistency of development plans

The PLH must ensure any development plan under the P&G Act for the petroleum license is consistent to the greatest practicable extent with each agreed joint development plan that applies to the PLH. The CLH must ensure any development plan under the Mineral Resources Act for the mineral license for coal is consistent to the greatest practicable extent with each agreed joint development plan that applies to the CLH.

This applies even if any of the following takes place for the each of petroleum and mineral licenses for coal (a) a renewal, (b) a transfer and (c) a complete or partial subletting.

An agreed joint development plan may be amended by agreement at any time. License holders who receives a proposal for an amendment of an agreed joint development plan must negotiate in good faith about the amendment. License holder who cannot obtain a proposed amendment of an agreed joint development plan under this section may apply for arbitration of the dispute to the extent it relates to a relevant matter.

If an amendment of an agreed joint development plan, whether by agreement or by arbitration, provides for a cessation, or significant reduction or increase, of (a) mining under the mineral license for coal, or (b) production under the petroleum license. Within 20 business days after making the amendment, the resource authority holders must jointly give the chief executive a written notice that (a) states that the joint development plan has been amended; and (b) if there is a cessation or significant reduction of mining under the mineral license for coal or production under the petroleum license, then it shall be accompanied by, a statement about (i) whether the cessation or reduction is reasonable in the circumstances and (ii) whether the license holders have taken all reasonable steps to prevent the cessation or reduction.

Authorized activities allowed only if consistent with agreed joint development plan

It applies if an agreed joint development plan applies to a PLH and an CLH. The PLH may carry out an authorized activity for the petroleum license in an overlapping area the subject of the petroleum license only if carrying out the activity is consistent with the agreed joint development plan. The CLH may carry out an authorized activity for the coal mineral license ML in an overlapping area the subject of the coal mineral license only if carrying out the activity is consistent with the agreed joint development plan.
For avoidance of doubt, if a PLH has given a petroleum production notice to CLH and there is no agreed joint development plan that applies to the PLH and the CLH, the CLH may carry out an authorized activity for the coal mineral license in the overlapping area the subject of the coal mineral license and petroleum license if carrying out the activity is consistent with each development plan under the Mineral Resources Act that applies to the CLH.

Concurrent notice may be given by ATP holder

It applies if an ATP holder (a) receives an advance notice in relation to an overlapping area from the holder of an exploration or exploitation CLH that includes the overlapping area; and (b) intends to apply for a petroleum license, that will include the overlapping area, within 6 months after the prospecting PLH receives the advance notice.

The prospecting PLH may give the holder of the exploration or exploitation mineral licenses a written notice (a ***concurrent notice***) stating following information. The concurrent notice must be given within 3 months after the ATP holder receives the advance notice.

If the concurrent notice is given and the application for the petroleum license is made within the 6 months, to the greatest practicable extent, be applied as if the prospecting PLH was already a exploitation PLH when the advance notice was given to the prospecting PLH.

Without limiting abovementioned (a) the mining commencement date for an IMA in the overlapping area, for the purposes of the advance notice, is taken to be at least 11 years after the date on which the advance notice was given; and (b) the mining commencement date for the IMA may be changed; and (c) the prospecting PLH ATP holder may give an exceptional circumstances notice, including at the same time as the concurrent notice is given.

The mining commencement date for an IMA in the overlapping area, for the purposes of the advance notice, must be at least 11 years after the date on which the advance notice is given.

2.3.3 Information exchange

The license holders for an overlapping area must give each other all information reasonably necessary to allow them to optimize the development and use of coal and coal seam gas resources in the overlapping area. Therefore, at least following the information must be given:

(a) operational and development plans,
(b) location of gas and mining infrastructure,
(c) development and production goals,
(d) scheduling of authorized activities,
(e) rehabilitation and environmental management,
(f) safety and health arrangements,
(g) information about any application relating to the overlapping area made by the resource authority holder under a Resource Act,
(h) any amendment of a mine plan required to be kept by the resource authority holder under a Resource Act,
(i) any other information prescribed by regulation.

The information must be given (a) within 20 business days after the overlapping area comes into existence; and (b) at least once during each year that the resource authorities for the overlapping area are in force.

However, such requirements do not apply to information that is only in the form of a draft.

No information must not disclosed which are provided to each other in accordance with requirements stated above, unless such information was is publicly available; or disclosed to a person whom the recipient has authorized to carry out authorized activities for the recipient's resource authority; or made with the information-giver's consent; or expressly permitted or required under this or another Act; or to the regulator.

If the recipient does not comply with confidentiality requirements, the recipient must pay the information-giver (a) compensation for any loss the information-giver incurs because of the failure to comply with the subsection; and (b) the amount of any commercial gain the recipient makes because of the failure to comply with the subsection.

2.3.4 Compensation

In case were CLH gives an acceleration notice to a PLH and, because of the acceleration notice, the PLH to face following impact, then CLH shall be obliged to compensate PLH with:

Impact	**Compensation**
(1) suffers, or will suffer, lost production	Lost production
(2) will be, required to replace "Minor gas exploitation infrastructure"	Cost of replacement
(3) "Connecting gas infrastructure" is or will be physically severed and the PLH is or will be required to replace such connecting infrastructure,	Cost of replacement
(4) PLH is or will be required to replace "Major gas exploitation infrastructure"	Cost of replacement

If, the mining commencement date for an IMA or RMA identified in the acceleration notice is changed by the MLH to a later date—additional costs incurred by the PLH because of the delay in the mining commencement date, other than to the extent the liability to compensate will be reduced.

With this regards, ***"Major gas exploitation infrastructure"*** means facility that is a) a pipeline within the meaning of the P&G Act; (b) a petroleum facility within the meaning of the P&G Act; or (c) a water observation bore within the meaning of the P&G Act; or (d) significant infrastructure necessarily associated with a gas facility mentioned in (a), (b) or (c), including, for example, accommodation camps, major roads, communication facilities, workshops, stores and offices; or (e) equipment or facilities used by the PL holder to carry or transmit gas, water or other substances, telecommunications or electricity, other than gathering lines upstream of field or nodal compressor stations; or (f) another gas facility prescribed by regulation.

"Minor gas exploitation infrastructure" means a field asset for CBM, other than Major gas exploitation infrastructure, that is (a) a pilot or producing petroleum well; or(b) a sub-nodal collection network; or (c) a minor access road or track; or (d) minor facilities and infrastructure associated with, or servicing, anything mentioned in paragraph (a), (b) or (c); or (e) minor facilities associated with, and servicing, major gas infrastructure, if the major gas infrastructure does not need to be relocated; or (f) another field asset prescribed by regulation.

"Major gas exploration infrastructure" means (a) a pilot well for the CBM, if (i) the pilot well was drilled or constructed under the CBM exploration license; and (ii) when the PLH was given an 18 months notice by an MLH from whom the PLH seeks compensation under this division, the pilot well (A) was being used, or being held, for future production; and(B) was not planned to be abandoned; and (b)other infrastructure prescribed by regulation.

"Connecting gas infrastructure" means infrastructure that connects Major gas infrastructure to a petroleum well.

In case where MLH carries out, or proposes to carry out, authorized activities in an IMA or RMA and because of that activities, an PLH with exploration rights is or will be required to abandon Major gas exploration infrastructure, then MLH required to compensate such PLH for the cost of abandonment of the Major gas exploration infrastructure.

Unless otherwise agreed, a PLH is entitled to receive an amount to meet a compensation liability only if the PLH is able to give information that shows the value of any lost production, replacement costs or cost of abandonment for which compensation is claimed.

Moreover, a PLH is not entitled to receive an amount of compensation on more than one occasion to meet any compensation liability that may at any time apply to a particular IMA or RMA. Also, an MLH is not required to pay an amount to meet a compensation liability arising from lost production until when the production would otherwise have happened.

Minimizing of Compensation Liability

An MLH and a PLH must both take all reasonable steps to minimize compensation liability in the way, and consistent with the principles, prescribed by regulation.

If, the MLH continues to have a compensation liability to the petroleum resource authority holder after taking actions to minimize compensation liability as mentioned above, the MLH must, to the extent reasonable, offer the PLH an amount of natural gas that is equal to the amount of the compensation liability.

If, after complying above, the MLH continues to have a compensation liability to the PLH, then MLH must give the petroleum resource authority holder a payment equal to the amount of the compensation liability.

Offsetting of Compensation Liability

MLH's compensation liability to a PLH is reduced to the extent of the value of the (a) incidental coal seam gas supplied to the PLH on the acceptance of an offer made, (b) undiluted incidental coal seam gas offered to the PLH but not supplied to the PLH because the offer is not accepted. However, subsection (b) stated herein applies only to the extent it was reasonably practicable for the PLH to take supply of the undiluted incidental coal seam gas when the offer was made.

2.3.5 Dispute settlement

It provides ADR (alternative dispute resolution) option to settle dispute upon entering face to face meeting in duration of 21 days. If parties could not agree, then matter will be referred to an arbitration.

In term of specification, arbitrator will be appointed by the respective arbitration, but not by the parties. Most importantly, arbitrator obliged to deliver his/her arbitration order within 6 months since his/her appointment date or if such period was extended, then no later than 9 months since his/her appointment date.

Moreover, it is specific in a way that if arbitrator to appoint an expert, he/she must appoint always to experts, one from each of two industries, coal and gas exploration and production, so that balance between to industries will be maintained. In addition, arbitrator has power to appoint third expert, for the purpose of preparing response to issues and questions raised by the arbitrator itself.

Arbitration order becomes final and it cannot be appealed. However, such arrangement does not prevent actions to be taken by respective public authorities, including health and safety inspector acts as well as high court power.

Three. Conclusions and Recommendations

Main Findings

Mongolian and Queensland, Australia similar in a sense that they regulate prospecting, exploration, and exploitation of the coal under the mineral laws and legislations; and prospecting, exploration, and exploitation of the CBM by petroleum legislations. As well as mineral and unconventional petroleum licenses used to be granted by separate public agencies in Mongolia as it is now in Australia.

In other words, historical evolution grounds of legal frameworks over solid minerals to be defined under the mineral laws and liquid or gas state fuels are regulated separately under the petroleum laws and legislation is exists in both legal frameworks.

Even, from the initial glance, one could be assumed that such dual approach is not rational as it created potential overlapped issuance of prospecting, exploration, or exploitation rights by different government bodies, without cohesion. However, such arrangement seems facilitated more efficient use of natural reserve, as if single license, either mining or petroleum, was granted under single jurisdiction and other one is required to refused. Indeed, such conditions seems intrigued efficiency requirements for both coal mining as well as CBM industries to capture natural resources in most efficient and safe manner and it reflected in the Australian framework.

Both frameworks allow license holders to negotiate and resolve their overlapping matter based on mutual consensus as of freedom and initial option to resolve overlapping tenure.

Notwithstanding above-mentioned few general similarities, comparing two legal frameworks significantly differ from each other by number of factors and features, such as by underlying approaches or principles on resolving overlapping tenure issue, their conceptual purpose, scope and degree of regulatory norms in terms of specification. Such as:

1. Mongolian legal framework on resolving overlapping tenure consists from few clauses defined under the Law on Petroleum (2014). Whereas Australian (Queensland) legal framework consists from a separate act with 244 detailed articles, namely Mineral and Energy Resources (Common Provisions) Act 2014.

2. Australian (Queensland) legal framework in overall balances interests of the mining and petroleum industries and mutual acceptable options for the conflicting interests were defined based on practically applied successful cases.

Moreover, as fundamental difference, it shall be noted that Australian (Queensland) approach was based on the public interest to facilitate most efficient version to utilize both coal and CBM resources. Whereas, under Mongolian mineral legislation, at the stage of granting mining licenses, if potential overlapping will be identified, then such application becomes automatically subject for refusal as well as in case where respective mineral licenses were granted then initial license holder will be granted prevailing status and latest license will be modified to avoid overlapping of the respective tenure areas.

Indeed, as per petroleum legislation, without proper participation of the license holders, the Government holds power to prioritize significance of the licenses and entitled to make decision to terminate any of the licenses without considering interests and will of the license holders. Moreover, the Government

shall not be responsible for any circumstances caused by its decisions, but license holders must bear the cost by compensating each other.

3. Under the Mongolian legal framework, licenses for the CBM is granted by the unconventional petroleum licenses. Whereas in Australia (Queensland) it is granted under petroleum authorizations. Based on such difference, we assume that in Australian case there will be no overlapping over crude oil vs unconventional petroleum sources, but in Mongolian case such overlapping can happen. Therefore, such interindustry overlapping matter seems intentionally regulated by the partially by the 'Regulation on Exploration and Exploitation Activities of the Unconventional Petroleum', adopted by the Government Resolution No.295 of 2015, at some extent.

4. Under Australian (Queensland) legal framework, overlapping of coal and CBM tenure is considered in its direct sense, but under Mongolian legislation as it uses very general wordings such as 'overlapping of the different licensed areas' or 'overlapping effective license areas', it is quite vague in a sense whether such universal approach will bring mutually beneficial outcome in case of overlapping of the coal and CBM licensed areas.

5. It is noticeable and clearly explained that Australian (Queensland) legal framework considers essence of the two-industries' operational nature. In other words, it provides priority for coal miner as it will conduct its extractive activity within 1000 meter from the surface and following such extractive operation it allows gas producer to have access to the released area to drill wells beyond coal miner's scale. To be clear, Australian (Queensland) legal framework allows coal miner to have areas for its sole operation enough for 10 years ordinary operation scenario as clear and rational operational guarantee and also defines clear procedure on how and when such area for sole coal mining operation can be increased or decreased and when and how gas producer can have access to certain overlapping areas. Obliging both sides to agree on mutually compulsory 'Joint management plan' seems provides key role for securing efficient, safest, environmentally friendly operations over overlapping areas. Australian (Queensland) legal framework procedures guides parties to reach consensus via imposing detail procedures to overcome deadlock scenarios.

In contrast, too general and few words for the possibility only if both parties have strong initiative does not provide shall not be capable of providing efficient procedure to overcome deadlock situation and reach most efficient version to utilize both coal and CBM reserves without wasting license holders time and money. Therefore, Mongolian legal framework needs to be improved further.

6. Australian (Queensland) legal framework provides mandatory requirements on how information should be exchanges as it appears to be fundamental factor to reach common grounds or same page and to come up with mutually acceptable version. Moreover, it clearly defines confidentiality obligations of each parties and respective compensation requirements if one will breach such requirement. We assume that these detailed plain provisions facilitate trust and confidence among license holders and pushes them for honest cooperation without any time-consuming plays.

Moreover, as Australian (Queensland) legal framework clearly states that health and hygiene, safety operational requirements as well as environmental impact management works, rehabilitation works are defined to be properly fulfilled and implemented by each of license holder in accordance with their applicable laws, regulations, norms and standards.

We consider these area very important matters that all needed to be addressed properly when certain improvements will be done in Mongolia as information exchange procedures and requirement as well other environmental impact management and protection obligations, party's responsibilities, safe operational norms in case of joint operational scenarios are seems vague and uncertain under current Mongolian legal

framework. Indeed, currently no mutual contract seems executed by overlapping license holders to proceed each of operations over overlapping area.

Even though, it is not directly relevant with the terms of reference of this study, as certain industry practitioners raised, current practice of using same regime for both crude oil and unconventional petroleum should be considered as well as granting licenses over vast territory based on geological basins may be considered for efficiency and rationality purposes. As it was criticized, requiring entering into the production sharing agreement on significantly cheaper sources such as CBM does not work in practice as in case of crude oil, which has high market price. Also, granting licenses with smaller areas, could be useful in terms of avoiding overlapping as well as allowing gas licenser to pursue its operation to produce CBM.

Based on above findings following recommendations are provided. These are:

1. Considering current legal framework of Mongolia, as of fundamental approach procedures on resolving licensed area overlapping issue such as for coal and CBM needed to be done by making respective changes to relevant laws.

In other words, matter of overlapping between coal related licensed area with the CBM related licensed area needed to clearly defined how it shall be resolved and joint operation shall be carried out so that no breach or deviation will occur from stand point of each of MLL and Law on Petroleum. Moreover, restrictive approaches defined under the Mongolian laws, such as automatic refusal, termination of latest licenses or terminating less prioritized one, needed to be revised per Australian approach of following public interest of utilizing both coal and CBM resources in most efficient matter in closes future shall be applied or considered as required.

Upon doing such principle shift, legislative practice followed by Australia (Queensland) Parliament between 2011-2013 is recommended to be followed. In particular, providing balanced and direct participation of the each coal mining and gas production industries in working group and aiming to reach mutual consensus based on considering practically applied workable case principles are recommended to be followed due course of preparing draft bills.

With this regards, clarifications can be made as general provisions of the Law on Petroleum, MML, Law on Common Minerals and Law on Nuclear Energy on licensed area overlapping needed to be distinguished as inapplicable particularly for an overlapping of the coal and CBM license areas and on the other hand detail procedure on how facilitate joint operation over coal and CBM related licenses area be resolved and undertaken can be prepared to be added on Law on Petroleum and MML.

2. Alternative, as dual approach, the Government of Mongolia or Minister for Mining and Heavy Industry may adopt certain rule, regulation, guideline or recommendations on how to reach mutual consensus on overlapping tenure based on Article 42.3 of the Law on Petroleum, if, relatively long period would be assumed to be required for abovementioned legal revision.

Even though, this available option has no mandatory power, parties may proceed based on signing certain memorandum of understanding under which general contract negotiation stages, schedules and principles could be agreed and also confidentiality agreement could be executed so that parties could exchange information with confidence.

Briefly, as it is allowed by current legal framework, without wasting long period, activities to increase awareness of the Australian experience and reliability and importance of having mandatory joint management plan could be starting immediate approach calling for more efficient way of running both coal mining and CBM production industries.

Conclusion

In any case, with regards to Mongolian legal framework, it is recommended to be revised to facilitate more socio-economically efficient version of utilizing both coal and CBM resources to increase benefits of both extractive and petroleum industries. An underlying principle shall be license holder's direct involvement and implementation on clarifying and agreeing on all technical, operational matters and timelines for undertaking stable joint management plans for a at least more than 10 years.

In order words, instead of relaying currently defined restrictive approaches, with very limited participation of the actual license holders on defining options to arrange each party's operation on overlapping licensed area, it is recommended to consider Australian approach. Under Mongolian current system, it may generate unnecessary time-consuming disputes and it is likely that one of the license holder will lose its license and other party will be obliged to compensate that party as well as state will be in a possession of collecting less tax revenues. In that sense, Mongolian current framework is limited in terms of its socio-economic efficiency standpoint.

Whereas Australian approach facilitates all parties to reach mutually acceptable outcome of utilizing both coal and CBM resources in a most available efficient way without refusing or terminating any license. Mandatory procedures, procedural timelines, notice periods with cure periods seems guiding parties to overcome potential deadlock scenarios. Therefore, it is recommended to be considered such procedures in detail to improve current Mongolian framework.

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