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Dear Ms Ahlers

RE: SOMO DRAFT REPORT FEEDBACK

We are writing in response to the draft report received on 20 December 2019 titled *Undermining Mongolia: Corporate hold over development trajectory*.

Thank you for the opportunity to provide feedback on the draft report. Unfortunately, the report contains factual errors and we would appreciate it if you could incorporate our suggested changes as detailed in the two appendices to this letter. The first addresses key high-level concerns and the second covers specific factual inaccuracies in the report.

Rio Tinto and Turquoise Hill Resources have been working in close collaboration with the Government of Mongolia to develop Oyu Tolgoi into a world class business. There has been an investment in Mongolia of over USD \$9.9 billion in Oyu Tolgoi to date with significant investment in social development.

We are happy to discuss our concerns and comments with you in detail. If the report is published, we request that this letter along with the appendix items are also published at the same time.

Yours sincerely



Arnaud Soirat
Chief Executive Copper & Diamonds

Rio Tinto



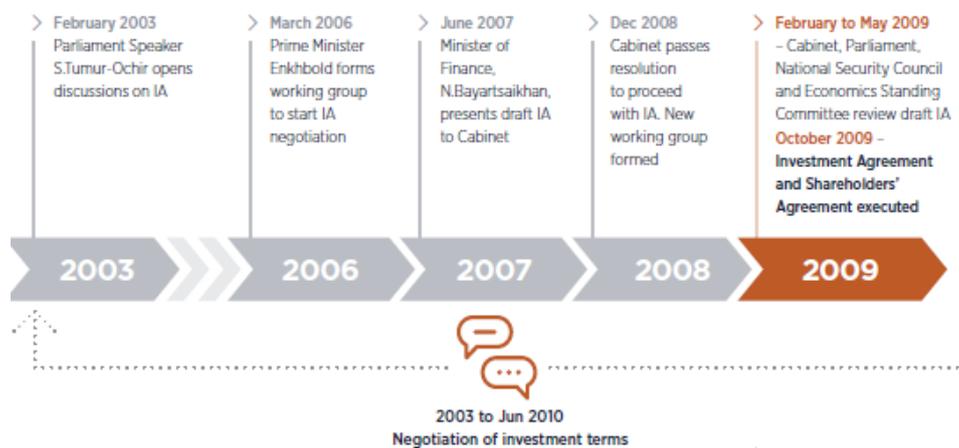
Ulf Quellmann
Chief Executive Officer

Turquoise Hill Resources Ltd

APPENDIX 1 – HIGH LEVEL COMMENTS

1. Assertion the Government of Mongolia was pressured into signing the Oyu Tolgoi Investment Agreement (OTIA)

The report claims the Government of Mongolia (GoM) “*was pressured into signing a deal on OT*”. This claim is untrue. The reality is that the OTIA involved a comprehensive negotiation process that took over 6-years to complete and involved three different governments. Please see the diagram below for a high-level overview of the process.



It is also important to note that the OTIA negotiations from 2003 to 2009 were led by the former Ivanhoe Mines and not Rio Tinto. We believe the OTIA was negotiated in good faith, as were all of Oyu Tolgoi’s investment agreements.

From a legislative process perspective, the State Great Khural passed two key resolutions that set the Government of Mongolia’s high-level requirements for the execution of the OTIA. There is no reference to either of these significant Resolutions in the draft report.

Resolution No. 40 was passed on December 4, 2008. The Resolution and supporting annexure contain the clear principles and guidelines for drafting the OTIA, for example; “*Receive assistance from internationally recognized consulting service providers in drafting a contract*”.

Resolution No. 57 was passed on July 16, 2009. The Resolution contains reference to Articles 8.1.7 and 29 of the Minerals Law in addition to key requirements from the Government of Mongolia’s perspective. For example, a requirement for 34% ownership and the ability to increase to 50% after the initial investment (clause 1.6 of the OTIA).

The draft investment agreement itself was subject to review from multiple levels of government including the Cabinet, Parliament and its standing committees, National Security Council and relevant ministries.

The report claims, “a number of powerful national and international actors colluded with Rio Tinto and Ivanhoe Mines to pressure Mongolia into an agreement that favours international corporate interests over Mongolian public needs” and that “negotiations around Oyu Tolgoi were skewed in favour of Rio Tinto and its corporate partners, due to a coordinated international campaign of diplomatic pressure”. There is no tangible evidence to support the aforementioned statements other than subjective opinion. Unfortunately, the report fails to acknowledge that international governments and finance institutions have a shared interest in Mongolia’s economic and social development and acknowledge the catalytic role Oyu Tolgoi has to play in the country’s current and future economic prosperity.

The OTIA provides a legal framework that enables a total investment of what will be over \$12 billion in Oyu Tolgoi to proceed, and source supporting project finance.

2. Selective use of quotes from unauthorised data sources

The report references a number of quotes from alleged foreign embassy staff cables obtained via WikiLeaks. The quotes represent personal opinion rather than official embassy positions.

It seems that on some occasions, selected sections of the cables have been used with no acknowledgement of the wider context as identified in the following example.

Page 15 states “*past negotiations have pitted woefully amateurish Mongolians against the deeply skilled agents that corporations like RT can bring to the table.*” The implication of this passage is that the statement was the opinion of an embassy staff member. However, from the full passage of cable text below, the reference was an observation of a Government of Mongolia official’s personal point of view.

“Assuming that SGH will provide direction on the amendments and authorize negotiations, MoME officials are considering how to conduct talks with RT/Ivanhoe on OT and with other parties on TT. In their opinion (and the opinion of longtime observers of the Mongolian mining scene), Mongolia has suffered from a lack of world-class expertise at the negotiating table. Past negotiations have pitted woefully amateurish Mongolians against the deeply skilled agents that corporations like RT can bring to the table.

Page 15 makes the following claim “*brief mention was made in Embassy accounts of lingering concerns among some of Mongolia’s donor countries who were worried that the Government gave*

away too much in the deal". However, the reference passage of text concludes with *"However, all agree that the deal is sufficient, workable, and can be improved down the road"*.

The cables also contained statements presenting an alternate position that were not referenced. For example:

"Using concerns over economic collapse, the PM and his team have spent the last year pushing the GOM and Parliament into negotiating and approving the deal before RT and Ivanhoe departed for greener pastures"

"GOM and Parliamentary sources expressed general satisfaction with the deal"

"the deal is not perfect, but we share the opinion of most observers that it balances state and private interests in a way that allows all sides to claim victory".

3. No discussion of Oyu Tolgoi's clear economic benefits

Chapter 4 is titled *Who benefits from Oyu Tolgoi*. However, there is a strong focus on shareholder dividends as the only form of economic benefit from the project which is one avenue of economic benefit but it does not discuss the project's holistic economic and social benefits, which at a high-level include:

- Direct financial contribution to Mongolian economy since 2009:
 - \$9.9B¹ of foreign investment
 - \$3B in national procurement with 700+ Mongolian businesses
 - \$2.5B + paid in taxes, royalties and fees to the GoM since 2010 (\$308M in 2018)
- Current workforce of over 14,000² - 93 per cent Mongolian nationals and 20 per cent female:
 - An estimated 45,000 jobs supported directly and indirectly
 - 900,000+ man hours of training for employees and contractors in 2018
- Regional economic development.
 - Over \$450M invested in regional infrastructure, economic and social development.

¹ All figures quoted in USD

² Includes permanent staff and contractors

It is very important to note, that all shareholders need to pay down their share of project debt before they receive maximum economic benefit from the Oyu Tolgoi project. It takes time in complex mining projects to re-coup the costs associated with building and constructing an operation, and the underground project at Oyu Tolgoi is still in construction where the true economic value of the resource is located. So, it is simply untrue to state that the Government has not received any economic benefits and also untrue to state that foreign investors have.

4. Incorrect assertion that international dispute resolution favours foreign investors

Page 26 of the report states “An ISDS clause allows investors to sue host governments in the case of investment disputes”. It is not correct to say the ISDS system is one sided.

Chapter 14 of the OTIA clearly outlines the dispute resolution process that can be triggered by either party to the Agreement. There is no impediment to the Government of Mongolia raising any claims for breach of contract it may wish to state against Oyu Tolgoi in arbitration under the OTIA.

5. Incorrect assertion IFI's pushed Mongolia towards mining-based economic development

Page 8 of the report states “*Chapter 2 provides an analysis of how IFIs pushed Mongolia towards mining-based economic development, before describing widely known academic findings on the detrimental effect such a mining focus has for a country's people*”.

In reality, development of the mining sector has been a mainstay of Mongolian economic policy dating back as far as 1922 when as part of the five-year development programmes, the then government announced that it will prioritize to develop the energy and minerals sector.

Naturally, Mongolia has natural resource endowment, which is a form of competitive advantage when it comes to economic development. Mining has been a mainstay of Mongolia's economic development policy for decades.

6. Payments to government

The report raise several taxation issues pertinent to the OTIA. These issues were addressed in some detail in response to SOMO's previous report *The case of Oyu Tolgoi and profitable tax avoidance by Rio Tinto in Mongolia*. Turquoise Hill Resource's response is available on [SOMO's webpage](#).

APPENDIX 2 - SUGGESTION FACTUAL CORRECTIONS AND CONTEXT

Reference	SOMO Text	Comment
1. (p4) Introduction	<i>"The government that signed the agreement was established after post-election riots in 2008 related to Mongolians resource politics , that led to a 4 day state of emergency, leaving 5 killed, over 300 injured and 700 detained"</i>	This quote does not fully represent reality; it is simplistic to claim "Mongolia's resource politics" was the primary driver of the 2008 post-election riots. It was reported at the time election fraud, rather than "resource politics" sparked the riots as reported at the time by many sources include The Guardian and The New York Times .
1. (p4) Introduction	<i>"Since its signing in 2009, the Oyu Tolgoi Investment Agreement (OTIA) has been questioned by members of parliament, politicians, and civil society actors. In 2019, a parliamentary working group concluded that the OTIA should be revised in favour of the Mongolian people, and that a second agreement signed in 2015 should be scrapped altogether"</i>	A more accurate reference is to the wording of Parliament of Mongolia's Resolution 92 which was passed by members of Parliament on November 21, 2019. This instructs the Government to <i>"take comprehensive measures to improve the implementation of the OTIA" and to improve the Oyu Tolgoi Underground Mine Development and Financing Plan</i> ".
1. (p4) Introduction	<i>"The copper produced at Oyu Tolgoi is exported to China"</i>	Oyu Tolgoi produces copper concentrate not finished copper product.
1. (p5) Introduction	<i>"Local herders successfully filed complaints in 2012 and 2013 to the Compliance Advisor Ombudsman (CAO) of the International Finance Corporation (IFC) because the impacts jeopardize their indigenous culture and livelihood. These complaints were resolved through a mediation process in 2017, and the agreement struck between Oyu Tolgoi's owners and the herder communities appears to have held so far".</i>	Please note the CAO process was formally closed out in March 2019 following Oyu Tolgoi's close constructive cooperation with the local community.
1.1 (p6) A short history of the Oyu Tolgoi Gold and Copper Mine	<i>"The Tavan Tolgoi power agreement"</i>	Correct name – Power Services Framework Agreement (PSFA)
1.1 (p6) A short history of the Oyu Tolgoi Gold and Copper Mine	<i>"34% owned by the Mongolian state-owned enterprise Erdenes"</i>	Correct name – Erdenes Oyu Tolgoi LLC

Reference	SOMO Text	Comment
1.1 (p6) A short history of the Oyu Tolgoi Gold and Copper Mine	<i>"In turn, Turquoise Hill Resources is majority owned by mining firm Rio Tinto, which operates the Oyu Tolgoi mine in Turquoise Hill Resources' stead."</i>	This is factually incorrect. All shareholders have collectively appointed Rio Tinto to provide management services to Oyu Tolgoi.
Never a dull moment with Rio Tinto in Mongolia (p7)	<i>"In the very last week of 2018, GoM and Oyu Tolgoi LLC sign a Power Source Framework Agreement (PSFA) that enables the construction of the Tavan Tolgoi coal-fired power plant to ensure domestic energy provision for the Oyu Tolgoi mine"</i>	The PFSA says the following which is more accurate "The Government and OT LLC wish to enter this Agreement in order to develop a TT Power Plant and to specify the other possible domestic sources to supply power to Oyu Tolgoi mine (OT Project), including but not limited to the Mongolian national grid and renewables.
Never a dull moment with Rio Tinto in Mongolia (p7)	<i>"Finance is sought through the planned public listing of 30% of state owned Erdenes Tavan Tolgoi in 2019, expected to raise up to USD 3 Billion"</i>	This statement is inaccurate and it is unclear how the author arrived at this determination. The PSFA includes a provision to agree funding principles. The Erdenes Tavan Tolgoi IPO is a separate and different matter not related to the PSFA.
Never a dull moment with Rio Tinto in Mongolia (p7)	<i>"In July of 2019, Rio Tinto announced a delay of up to 30 months at Oyu Tolgoi's underground construction, costing Oyu Tolgoi's corporate and public owners an additional \$1.9 billion"</i>	This statement has been paraphrased to present the worst-case scenario. The actual Rio Tinto statement outlines "Preliminary information now suggests that, depending on which mine design options are adopted, first sustainable production could be achieved between May 2022 and June 2023, a delay of 16 to 30 months compared to the original feasibility study guidance in 2016" "Preliminary estimates for development capital spend for the Project, depending on the outcome of the work described above, is now \$6.5 billion to \$7.2 billion, an increase of \$1.2 billion to \$1.9 billion from the \$5.3 billion previously disclosed"
Never a dull moment with Rio Tinto in Mongolia (p7)	<i>"Furthermore, they [the Parliament working group] stated that the 2015 Underground Mine Development and Financing Plan was not approved by Mongolia's parliament, and therefore was not legally binding"</i>	The Underground Development Plan (UDP) is not an investment agreement or an amendment to an investment agreement. It does not require parliamentary approval under the Mongolian Mineral Law or the Investment Law.
Never a dull moment with Rio Tinto in Mongolia (p8)	<i>"In November 2019 an administrative court upheld claims that the 2015 Dubai agreement did not follow due process, but arbitration rules built into the earlier"</i>	This statement is inaccurate. The court established that the PM decrees relating to the UDP execution did not follow due process, not the UDP, and further

Reference	SOMO Text	Comment
	<i>agreements complicate possible measures to affect Oyu Tolgoi's continuing development and operation"</i>	stated that the above did not affect in any way the validity of the UDP.
The world bank and the resource curse (p10)	<i>"The World Bank commissioned 2003 Extractive Industries Review (EIR) reveals clearly that potential resource wealth seldom results in sustainable economic growth"</i>	This research is from 17 years ago. There are many other research studies that acknowledge the positive economic contribution the extractive industries make to national economies. For example; The Work Bank contribution of the mining sector to socioeconomic and human development study.
2.2 Attracting FDI in Mongolia (p11)	<i>"Furthermore, data from the Mongolian National Statistics Office show that the mining sector serves only about 3.6 per cent of total employment"</i>	The author uses selected facts. There is no reference to the fact that the mining industry in Mongolia accounts for approx. 25% of GDP contribution, more than any other industry or over approx.. 70% of total exports.
2.2 Attracting FDI in Mongolia (p11)	<i>"Taking cue from Rio Tinto, other mining corporations cancelled their mining contracts"</i>	The source provided does not state the actions of other companies are a result of Rio Tinto's.
A chronology of the Investment Agreement negotiations between 2003 and 2010 (p13)	<i>"According to the amended Minerals Law, Oyu Tolgoi is a 'strategic deposit' and thus OT's water access rights last 30 years (instead of the usual 20 years).</i>	The definition of strategic deposits was in the Minerals Law since its approval in 2006.
A chronology of the Investment Agreement negotiations between 2003 and 2010 (p13)	<i>This access can be extended for periods of 20 years (while others have only 5 year extensions)".</i>	20-year extensions apply to all strategic deposits, not just Oyu Tolgoi. 16 strategic deposits were approved by Parliament resolution 27 of 2007.
A chronology of the Investment Agreement negotiations between 2003 and 2010 (p13)	<i>"This is when Rio Tinto exposes its desire to take over Ivanhoe Mines against its will"</i>	There is no proof or substance to this statement.
3. Behind the scenes; pressuring Mongolia into Oyu Tolgoi (p15)	<i>"The Oyu Tolgoi negotiations were a perfect vehicle for the US to strengthen its economic presence"</i>	There appears to be no reference for this statement.
3.3 Mongolia's financial instability and western mining interests(p19)	<i>"This shines a light on how the democratic process in Mongolia is undermined by corporate power:decisions made by the democratically elected legislative power can be overturned based on Rio Tinto's preferences, by employing the country's financial instability as leverage"</i>	This comment in reference to Rio Tinto's ability to influence Mongolian-banking regulations in false. Clause 9.4 of the OTIA states, "The Investor shall be entitled to maintain bank accounts in a commercial bank of Mongolia and elsewhere, and the Investor may make international transactions freely and without any obstructions in its chosen currency. Without affecting the Investor's

Reference	SOMO Text	Comment
		rights under Clause 9.10.5, payments for goods and services inside Mongolia must be made in Mongolian currency in accordance with Mongolian laws and regulations, unless the Investor is authorised to make such payments in foreign currency as a result of an authorisation issued by the Bank of Mongolia in accordance with Article 4.1 of the Law of Mongolia on Conducting Settlements in National Currency.”
3.4. Political gain or Mongolian welfare (p20)	<i>“During the negotiation of the Oyu Tolgoi Investment Agreement, the Mongolian Government struggled to make the deal acceptable to the Mongolian people”</i>	This is a question for the Government.
3.4. Political gain or Mongolian welfare (p21)	<i>“In fact, the loan was to be paid back in full, adding to the billions of dollar in loans the GoM was forced to take on to finance its 34% share of Oyu Tolgoi”</i>	This is an inaccurate statement.
4.1 Tax revenue losses for Mongolia (p23)	<i>“In 2016, consultancy firm Open Oil published a different model, detailing how the Government could expect to receive approximately 57% of Oyu Tolgoi’s profits, with the remaining 43% going to Rio Tinto and its fellow investors”.</i>	The link to this reference is a suspended webpage. Furthermore, It is difficult to develop an accurate financial model without access to commercial in confidence information. No reference to this model should be included.
4.2.1. Investor State Dispute Settlement (p26)	<i>“In the case that Rio Tinto and its fellow investors consider the GoM to have violated the terms in the Investment Agreement, they could sue Mongolia before the United Nations Commission on International Trade Law (UNCITRAL)”.</i>	This is false. The London Court of International Arbitration under the UNCITRAL Rules (clause 14.2.6 of the OTIA) will resolve any dispute.
4.2.1. Investor State Dispute Settlement (p26)	<i>“Meanwhile, the ISDS system has led to over 40 tax-related legal cases, with corporations challenging legislative changes or the application of law by tax authorities”</i>	This reference requires further context as it could be misinterpreted to assume Oyu Tolgoi has had over 40 related legal cases requiring ISDS. It is not clear what the parameters of the reference apply to.
4.2.2. The 2015 OTUMDFP/ Dubai Agreement (p27)	<i>“First, it involves the largest publicly financed mining deal ever in the sector, totalling 4.4 Billion USD”</i>	This is a private transaction on commercial terms between the borrower being OT and multiple financial institutions. It is not public financing.
4.2.2. The 2015 OTUMDFP/ Dubai Agreement (p27)	<i>“This huge Public finance deal consists of a USD 400 million loan from the European Bank for Reconstruction and Development (ERBD), known as an A loan, and</i>	This is misleading. The Loan Structure for both EBRD and IFC are the same, they both provide an A loan of US\$400M and then under umbrella facilities commercial lenders participate in tranches of

Reference	SOMO Text	Comment
	<i>the syndication of up to 1 billion to commercial banks, known as a B loan. Another USD 500 million comes from the U.S. Export Import Bank , in addition to a USD 1,2 billion loan facility provided by the International Financial Corporation (IFC) that includes a syndicated debt of USD 821 million .</i>	US\$821m each. As this reads as drafted, it looks like IFC lends a total of US\$1.2bn, which is not correct.
4.2.2. The 2015 OTUMDFP/ Dubai Agreement (p27)	<i>“The Multilateral Investment Guarantee Agency (MIGA) provides a guarantee of 1billion USD to 13 of these institutions”</i>	MIGA covered tranche is US\$700m.
4.2.2. The 2015 OTUMDFP/ Dubai Agreement (p27)	<i>“Second, it removes all possible options for the GoM to change any terms of the 2009 Investment Agreement”</i>	This is not true. The OTIA may be changed as agreed between the parties. It is unreasonable to expect an agreement can be changed unilaterally by a single party.
4.2.2. The 2015 OTUMDFP/ Dubai Agreement (p27)	<i>“Third, there is some discussion to the extent the Dubai agreement is legally binding as it was not discussed by parliament before it was signed”</i>	The UDP is not an investment agreement or an amendment to an investment agreement. It does not require parliamentary approval under the Mongolian Mineral Law or the Investment Law. Additionally, there is no requirement to get investment agreements approved by the Parliament (such requirement was annulled from the Minerals Law in October 2013).
4.2.2. The 2015 OTUMDFP/ Dubai Agreement (p27)	<i>“These loans were approved in 2013, but finally signed after Rio Tinto had been able to eliminate all possible attempts to renegotiating the 2009 OTIA”.</i>	The statement is false. There is no reference 157 in the footnotes as outlined in the text as the citation for this comment. Debt was signed in December 2015 and drawn in May 2016. The reference to eliminating all possible attempts to renegotiate the OTIA does not make sense.
4.2.2. The 2015 OTUMDFP/ Dubai Agreement (p27)	<i>“Not only are the rather staggering amounts of public finance and publicly guaranteed finance for this project remarkable.”</i>	This is not public finance, and it is guaranteed by TRQ and RT not publically guaranteed.
4.2.2. The 2015 OTUMDFP/ Dubai Agreement (p27)	<i>“The development of the controversial Tavan Tolgoi coal mine is explicitly confirmed (Art 3.4) in addition to a copper smelter (Art 3.5)”</i>	Article 3.4 of the UDP provides that OT LLC and TRQ prepare “working assumptions for a possible credit enhancement mechanism to support OT LLC’s obligations under a potential power purchase arrangement from Tavan Tolgoi Power Plant



Reference	SOMO Text	Comment
		Project". It is not clear what made the author to conclude that the development of the Tavan Tolgoi coal mine is explicitly confirmed by this article. Article 3.5 of the UDP and clause 3.19 of the OTIA refer to "preparing a research report on the economic viability of constructing and operating a copper smelter" of which neither confirms the development of a copper smelter in Mongolia.