

Mongolian tax dispute heads to the Supreme Court

- Mongolian Appeal Court dismisses prior annulment of retrospective tax assessment against Kincora Copper Limited (*Kincora or the Company*)
 - In 2021, a Mongolian subsidiary of Kincora received a reassessed tax claim for 2.7 billion MNT, approximately US\$800,000, from the Mongolian Tax Authority (MTA) relating primarily to the 2016 merger with IBEX (*Reassessed Tax Act*)¹
 - In late 2022, an Administrative Court acknowledged many failings of the Reassessed Tax Act and ruled to dismiss it should the MTA not lodge another revised Act within 3 months
 - Subsequently an Appeal Court ruled outside of its authority, over-turned the Administrative Court, went further to re-endorse the disputed Reassessed Tax Act, and in a hearing lasting less than 2-hours overturned a 2-year legal defence and judicial process
 - The Appeal Court ruling and Reassessed Tax Act are contrary to a 2016 Tax Act and resulting tax payments that were relied upon by Kincora, three Mongolian government agencies to close the IBEX mergers and underpinned significant foreign investment
 - Four independent external legal opinions support Kincora's view that the 2016 tax assessment and merger transaction were properly formulated and supported by the Mongolian authorities at that time with no basis for retrospective tax
 - The Reassessed Tax Act retrospectively taxes historical invested capital of exploration licenses already handed back to the State, written off to zero, where no profit or cash consideration was made or will ever be made
 - The Reassessed Tax Act was received after the statute of limitation came into effect, with many other procedural failures
- Kincora is preparing for and will make an appeal to the Mongolian Supreme Court
- Limited liability recourse to Kincora's Australian and Canadian assets and operations from the Reassessed Tax Act
- The retrospective tax assessment, methodology of the MTA and Kincora's ongoing 2-year legal defense are direct impediments to investment into Mongolia and its resource sector

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Kincora Copper Limited (ASX & TSXV: *KCC*, *Kincora or the Company*) notes that subsidiary Golden Grouse IBEX LLC (*GGI*) is preparing to appeal to the Mongolian Supreme Court to continue the defence against a 2021 retrospective tax assessment.

Sam Spring, President and CEO, commented: *"Kincora continues to defend the tax assessment that was relied upon to complete the 2016 IBEX merger. The unfounded retrospective assessment, noting our position is supported by four independent opinions', the methodology of the MTA and dispute process has curtailed further significant investment in Mongolia.*

We are surprised that the Appeals Court took such a short time, the merits it presented and acted outside of its authority to overturn a previous courts decision. Kincora is now preparing an appeal to the Mongolian Supreme Court.

While many applications to the Supreme Court are turned down, sanctity of contract and a transparent legal and tax system that protects investor's rights are fundamentals required for investment. Resolution of this dispute that respects the original 2016 tax act would be a clear positive signal to the international investment community and provide a precedent to a number of issues that are currently blocking investment into Mongolia."

Background

In January 2021, Kincora's Mongolian subsidiary Golden Grouse IBEX LLC (*GGI*) received a retrospective Tax Act for 2.7 billion MNT, approximately US\$800,000, from the Mongolian Tax Authority (*MTA*) (*Reassessed Tax Act*)¹.

The Reassessed Tax Act is comprised of four items, of which Kincora strongly refutes the merits of three including the very vast majority of the liability sought relating to the 2016 merger with IBEX (the agreed liability owed is less than the deposit lodged by Kincora to pursue the ongoing Mongolian legal defence process).

The Reassessed Tax Act is contrary to four independent Mongolian expert legal opinions, including those of new potential investors and their due diligence processes, and also a recent Mongolian judicial precedent regarding the tax treatment of a merger transaction. Kincora has sought to defend its position and the original 2016 tax act relied upon: by Kincora; three Mongolian government agencies to close the IBEX mergers; and, investors, including the EBRD, that underpinned significant investment and exploration activities.

Kincora is preparing to apply to the Mongolian Administrative Chamber for the dispute to receive a hearing at the Supreme Court, which is the last legal defence step available under the Mongolian judicial system.

This application follows the last Appeal Court ruling being outside of the litigants' appeal and counter-arguments, overturned a prior First Instance Administrative Court ruling that referred the Reassessed Tax Act back to the MTA (with annulment occurring in 3 months should the MTA take no action), and preceded in a timeframe far too short to consider the merits of the Reassessed Tax Act.

The Appeal Court ruling concluded in less than 2-hours relative to the First Instance Administrative Court that had sat for a full day and had previously reviewed significant document submissions.

Kincora notes that the exploration licenses included in the IBEX merger, and the core focus of the 2021 tax assessment, have been thoroughly explored and been properly relinquished back to the State before the retrospective 2021 tax assessment was issued.

However, the basis of the tax liability reassessed retrospectively by the MTA in 2021 is referenced to the historical invested capital of the IBEX entity counterparty to the 2016 merger. The methodology of the MTA is that of effectively taxing foreign direct investment, not that of a merger under Mongolian tax laws or which has any reflection to a transaction or market based value. Kincora also notes:

- the Reassessed Tax Act was received after the statute of limitation deadline and followed many other procedural failures; and,
- the MTA has also frozen GGI's bank account despite paying 100 million MNT for its case to be heard and before the judicial process has completed.

In the Company's view the 2021 tax assessment, if upheld and enforced, would create a notable precedent for investors, as tax is now being imposed, retrospectively, on:

- Invested capital (not any reflection to a transaction, fair or carrying value);
- Non-cash transactions where no profit was made or will ever be made;
- Exploration tenure held by the State (at the time of the Reassessed Tax Act);
- The binding assessment that was relied upon by both Kincora and the Mongolian authorities to allow for closure of the 2016 IBEX merger, and subsequently relied upon by investors (including from the EBRD);
- A tax act received after the statute of limitation for reassessment had expired;
- A tax act which disagrees with four independent external legal opinions that support Kincora's view that the 2016 tax assessment and merger transaction were properly formulated and supported by the Mongolian authorities at that time with no basis for retrospective tax; and,

- Following different rulings in the different courts and rulings conflicting to a recent judicial precedent regarding the tax treatment of a Mongolian merger transaction.

Kincora's application to the Supreme Court comes at a time when the Mongolian government is stating its intention to improve the private sector business environment, resolve disputes between government and the private sector, and, attract foreign direct investment.

Sanctity of contract and a transparent legal and tax system that protects investor's rights are fundamentals required for investment. Uncertainties regarding the application of valuation and tax methodology by the MTA have also been issues identified by investor's due diligence, and, raised broadly by the private sector and Mongolian business associations.

The Company notes limited recourse to Kincora's Australian and Canadian assets and operations from the retrospective 2021 tax reassessment.

Assets held within GGI primarily include the Tourmaline Hills exploration license (the western of the two adjacent licenses that make up the wider Bronze Fox projects) and Red Well exploration license. Kincora also notes limited recourse to Kincora's other Mongolian subsidiary, which hosts the Bronze Fox mining license and JORC resource ².

Kincora will continue to inform the market of any material developments relating to the 2021 tax assessment.

Footnotes

¹ Kincora press release "*Tax Act from Mongolian Tax Authority*" (January 20th, 2021)

² The Mineral Resource Estimate has been reported in accordance with the Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves 2012 (JORC Code), and is not based on Canadian Institute of Mining, Metallurgy and Petroleum (CIM) definitions, and as a result the estimate is not recognized under National Instrument 43-101 of the Canadian Securities Administrators (NI 43-101).

This announcement has been authorised for release by the Board of Kincora Copper Limited (ARBN 645 457 763)

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