

CASE DESCRIPTION

This case is inspired by current ethical, legal, social, and environmental issues which have plagued the multi-national mining industry. The case focuses on a multitude of legal and ethical issues involving a multinational mining organization and its operating procedures and practices. This case describes a hypothetical assignment facing an operations manager at our fictional Minera, Inc. The assignment revolves around several dilemmas our manager must confront as he attempts to secure valuable mining licenses from the Mongolian government while simultaneously attempting to harmonize seemingly detrimental operating practices with the organizations stated beliefs. The case provides detailed background information on the social, economic, and political climate in Mongolia, as well as the applicable laws, ethical frameworks, and competitive market considerations multinational mining organizations must face. This case has a difficulty level appropriate for senior level courses and is designed to be taught in approximately 2 class hours with approximately three hours of outside preparation to be conducted by the students

CASE SYNOPSIS

This case describes the hypothetical management decisions of Matt Lealander, an operations officer of the multi-national mining corporation Minera, Inc. Matt is charged with securing the renewal of Minera's valuable mining permit and lease from the Mongolian government. Matt faces of growing protests from local citizens and international environmental activists as well as fierce competition from other multinational mining firms. Matt must balance the delicate equilibrium of stakeholder and shareholder interests as he navigates this competitive approval process. The principle dilemma revolves around an internal audit which unmistakably indicates that Minera is "overlooking" their clearly established operating and ethical standards. Further, the mining industry is a competitive business with multiple organizations competing for the same opportunities. Unfortunately, in the mining industry, mercury and other chemical spills are common as is the depletion of local water sources and severe reduction of air quality. The environmental toll Matt's organization has levied on the local community is significant. Matt has seen the destruction first hand and knows of the harmful impact on the local community as well as the environment. However, Matt certainly appreciates that the economic and political benefits involved if his firm's lease and permit are renewed. Matt also recognizes the potential for a substantial positive impact on the community if the proper procedures and safeguards are put in place. Matt will face legally challenging issues with regards to contract performance, environmental law, and bribery. The case provides detailed background information on the mining industry along with an examination of applicable laws, ethical frameworks, and competitive market considerations. Matt is faced with several decisions, which will impact not only his career, but the survival of the organization itself, and the lives of the entire community. At the end of the narrative the reader is asked to formulate ethically and strategically sound recommendations.

Mineral mining abroad: An ethically and legally complicated endeavor

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ABSTRACT

This case describes the hypothetical management decisions of Matt Lealander, an operations officer of the multi-national mining corporation Minera, Inc. Matt is charged with securing the renewal of Minera's valuable mining permit and lease from the Mongolian government. He must complete this assignment in the face of growing protests from local citizens and international environmental activists as well as fierce competition from other multinational mining firms. Matt must balance the delicate equilibrium of stakeholder and shareholder interests as he navigates this competitive approval process. The principle dilemma revolves around an internal audit which unmistakably indicates that Minera is "overlooking" their clearly established operating and ethical standards. Further, the mining industry is a competitive business with multiple organizations competing for the same opportunities. Unfortunately, in the mining industry mercury and other chemical spills are common as is the depletion of local water sources and severe reduction of air quality. The environmental toll Matt's organization has levied on the local community is significant. Matt has seen the destruction first hand and knows of the harmful impact on the local community as well as the environment. However, Matt certainly appreciates that the economic and political benefits involved if his firm's lease and permit are renewed. Matt also recognizes the potential for a substantial positive impact on the community if the proper procedures and safeguards are put in place. Matt will face legally challenging issues with regards to contract performance, environmental law, and bribery. The case provides detailed background information on the mining industry along with an examination of applicable laws, ethical frameworks, and competitive market considerations. Matt is faced with several decisions, which will impact not only his career, but the survival of the organization itself, and the lives of the entire community. At the end of the narrative the reader is asked to formulate ethically and strategically sound recommendations.

INTRODUCTION

Matt coughs twice as his head spins from his first cigarette in fifteen hours. The year of the horse is off to a disastrous start¹. Matt spent New Year's Eve with his estranged wife and their 3 year old daughter in Minot, North Dakota. If bearing sub-zero temperatures and minus twenty degree wind chill was not enough, his wife decided to have one glass too much Champaign, leaving Matt to care for their daughter alone. It is now three days into the New Year and Matt finds himself in the smoking lounge (which is more like a large glass telephone booth) in the Beijing airport after a fifteen hour flight from Minneapolis.

Beijing is not Mr. Lelander's final destination; he has another three hour flight to Ulaanbaatar in Outer Mongolia after a five hour layover. Matt finishes his third cigarette and hopes he has enough of his favorite brand to hold him over in Mongolia, as he knows American cigarettes are not the same in Ulaanbaatar. Matt works for Minera Inc., one of the largest mining companies in the world and has traveled to some exotic locations in search of the minerals that power the modern economy. Last year, he was in charge of his employers operations in Borneo and the year before that was primarily spent in negotiation with the Burmese government about mining rights in that newly opening economy. During the company's New Year's Eve party an inebriated Matt told his colleagues somewhat sarcastically, "I am looking forward to going to Mongolia, it is about time I stop tromping around snake invested jungles!"

Matt knows Mongolia is one of mining's final frontiers. The country is one of a small handful of places with major untouched mineral deposits. The problem and the reason Matt is waiting for a flight to Ulaanbaatar is that it has been difficult for Mongolia's leadership to get along with foreign mining companies. In particular, there are problems with the Oyu Tolgoi mine, the largest investment in Mongolia's history. It is one of the world's largest mixed deposits of copper and gold and is being partially developed by Matt's employer who owns 66 % and the Mongolian government itself which owns 34% (Bator, 2013). Production will not start for another couple months or so, but even in the preparatory stages, Oyu Tolgoi was almost entirely responsible for Mongolia's world-leading GDP growth in 2011, as suppliers and contractors arrived and spread benefits across the wider economy. When fully operational, the mine will account for a third of Mongolia's GDP (www.imf.org).

¹ 2014 is the year of the horse in the Chinese calendar.

However, this growth has not been sustainable. Foreign direct investment in the country dropped 49% to September 2013 compared to last year which already marked a 17% year-on-year decline, the value of the currency, the tugrik, is down 20% this year, inflation has returned to double digits and the Mongolian central bank's off-balance sheet spending is burning through foreign reserves as foreign debts balloon to 55% of GDP (Els, 2013). The mining sector accounts for more than 20% of GDP today, but has the potential to contribute a much greater proportion to the economy where 30% still live in poverty (Els, 2013).

After more than a decade of exploration and preparation, however, Ulaanbaatar wants to renegotiate its share of the profits while simultaneously negotiating permit renewal, and it is Matt's duty to deal with this situation. In dealing with this situation, Matt must be cognizant that taking to hard a line may jeopardize future deals in Mongolia or cause the entire current deal to collapse. Despite the huge potential of this mine, Minera's board is anxious especially considering that the Mongolian government is currently being sued for illegally expropriating a competitors mining permits, (Stanway, 2013).. Additionally, Minera has invested heavily in this and several other mines. The uncertainty in the area has spooked Minera's investors sending Minera's stock value down. Further complicating the situation is the ominous presence of growing local protest. These protests were spurred by a massive chemical leak which caused hundreds of local residents to get ill. The cleanup was slow and news reports as well as social media videos, show children playing in puddles of spilled chemicals.

These spills helped lead a grassroots movement against foreign mining organizations. In 2007, Tsetege Munkhbayar, a herder, was awarded the prestigious Goldman Environmental Prize for his efforts organizing opposition to mining pollution. This movement continued to grow and in 2012 the Mongolian government began overhauling its mining law and calling for higher financial returns and greater scrutiny of mining licensees (Schneider, 2013). Further, as global demand for scarce resources has increased so too has competition. As many as five additional mining firms have submitted licensing requests to the Mongolian government. This growing resistance, increased competition, renewed negotiations, and Minera's considerable investment in the region has everyone at Minera worried.

Matt vividly remembers the issues Newmont Mining incurred when they ignored local unrest. In 2004, indigenous communities blocked access to Newmont' mines in Peru after they learned of the company's plans to level a sacred mountain. Following violent confrontations,

Newmont (a Colorado based company), withdrew its operations and promised never to return (Perlez and Bergman, 2005).

When Minera's CEO Tim Jares personally and surprisingly called Matt last month to inform him of this assignment, Tim impressed upon Matt how important this project is as Minera's investors are growing impatient and concerned.

Uncertain what to make of Tim's unusual call, Matt instantly began preparing. Matt immediately asks his college roommate and, now chief legal counsel for Minera (and rumored next CEO), Lee Geddy, to oversee an internal Environmental Impact Audit or simply an EIA. These EIAs are similar to the Environmental Protection Agency's environmental audits which are commonly done by the EPA for U.S. based projects. Matt has learned the importance of 'doing your research' whenever negotiating with nation states. He plans to use his next flight to review the current political, economic, and social environments in Mongolia. Additionally, Matt realizes a phone call to the on-site operations managers is a priority when he arrives in Ulaanbaatar to get the details of his companies dealing with Mongolia, local villages, the press, and any legal issues he needs to be aware of. He is looking forward to sleeping in a real bed in the capital's best hotel, ironically called the Genghis Khan.

CASE BACKGROUND

A. Political and Economic Considerations

"Global services and 1k flyers are welcome to board at their convenience", Matt hears from his seat in the boarding area of gate 12. Matt sighs and thinks, at least priority boarding is one of the advantages to traveling to the far reaches of the planet. To Matt's surprise the plane fills up and Matt wonders aloud why so many foreigners are heading to Ulaanbaatar in the middle of its notoriously brutal winter. The burly man next to him replies, "Three kinds of foreigners, they say, prowl the world's energy frontiers: missionaries, misfits, and mercenaries."

Matt laughs knowingly and replies, "And just what type are you?"

The familiar stranger chuckles and sips his Genghis Khan beer, "my ex-wife would say I am a misfit."

This lightens Matt's mood and he introduces himself. The stranger is a 55 year old Australian mining executive who has been working in Mongolia for over two decades, he calls himself Mitch. "When I landed here," Mitch continues, "I found an economic wasteland still reeling from the fall of Communist in 1990. The few other expatriates on the scene were mostly busy proselytizing, and there was little to do during the brutal winters."

"Winters eh? I have spent the past two years in southeast Asia, so I am guessing that I have a lot to learn about my new residence," mumbles Matt.

"Indeed," smiles Mitch, as he lays his head back and closes his eyes.

Fortunately, Matt's administrative assistant, Kristi, prepared an electronic file for him to review highlighting important political, economic and social factors. Matt opens the first page and finds a map, replicated in Figure 1.

Figure 1: The Map of Mongolia

Source: www.cia.gov

Matt knows all too well the importance of geography, particularly in the mining industry. As illustrated in figure 1, Mongolia is landlocked between Russia and China. Rosneft, Russia's state-owned energy company is Mongolia's only significant supplier of fuels, and Moscow has a history of using energy exports as a political tool. Rosneft charges above-market rates to Mongolian importers and often supplies less than demand, periodically sending prices skyrocketing throughout Mongolia's economy (Foreign affairs).

Moreover, because there are so few transportation routes from Mongolia, China is essentially Mongolia's only foreign customer for its existing mining output. Consequently, in negotiations over prices, China always has the upper hand.

Other geographic considerations are limited natural freshwater resources in some areas and the burning of soft coal in power plants and by residents have severely polluted the air in Ulaanbaatar (www.cia.gov).

Matt continues his reading, turning now to Mongolia's economy and the importance of mineral wealth to its future growth. Mongolia's extensive mineral deposits and attendant growth in the mining-sector have transformed Mongolia's economy, which traditionally has been dependent on herding and agriculture. Mongolia's copper, gold, coal, molybdenum, fluorspar, uranium, tin, and tungsten deposits, among others, have attracted foreign direct investment (www.cia.gov).

Soviet assistance, at its height one-third of GDP, disappeared almost overnight in 1990 and 1991 at the time of the dismantlement of the USSR. The following decade saw Mongolia endure both deep recession and several natural disasters. Mongolia joined the World Trade Organization in 1997. Recently, growth averaged nearly 9% per year in 2004-08 largely because of high copper prices. But in late 2008, Mongolia was hit hard by the global financial crisis. Mongolia's real economy contracted 1.3% in 2009. In early 2009, the International Monetary Fund reached a \$236 million Stand-by Arrangement with Mongolia and the country has largely emerged from the crisis with better regulations and closer supervision (www.imf.org).

The banking sector strengthened but weaknesses remain. Recent calls by nationalist politicians to renegotiate the investment agreements, however, have called into question the attractiveness of Mongolia as a destination for foreign direct investment. Despite this the economy grew by 6.4% in 2010, 17.5% in 2011, and by more than 12.3% in 2012, largely on the strength of commodity exports to nearby countries and high government spending domestically. Mongolia's economy, however, faces near-term economic risks from the government's loose fiscal policies, which are contributing to high inflation, and uncertainties in foreign demand for Mongolian exports. China receives more than 90% of Mongolia's exports. Mongolia purchases 95% of its petroleum products from Russia, leaving it vulnerable to price increases. Due to severe winter weather in 2009-10, Mongolia lost 22% of its total livestock, and meat prices doubled. Inflation remained higher than 10% for much of 2010-12. The economic slowdown in China during 2011-2012 resulted in fewer Mongolian exports and decreased government revenues (www.cia.gov). Matt continues reviewing the file Kristi sent. As Matt reviews the

monthly expense reports he notices several large monthly payments made to an apparently local contractor by the name Khan Enterprises. They are not listed on any of the approved contractor lists which have been previously provided to Matt. Unable to determine who they are or what they do for Minera, matt composes an e-mail to his administrative assistant, Kristi. Taking advantage of the now ubiquitous on board Wi-Fi Matt shoots an e-mail to Kristi asking her to check in with accounting as to who this contractor is.

Matt polishes off his orange juice, as he looks forward to a cigarette or two when he arrives. The flight attendant collects his rubbish and informs him they will be on the ground shortly. Matt notes Kristi had slipped a Fed Ex envelope into his briefcase before he left. When he opens the envelope he finds a file entitled “Environmental Impact Report.” As he had read hundreds of these before and is about to land Matt decides to set this aside for later.

B. Societal considerations

Upon arrival at the Genghis Khan International Airport, Mr. Leland is pleased at the efficient immigration process. Mongolia recently lifted its short-term visa requirement for most Western nationals allowing visa free travel for up to 90 days. Mr. Leland is greeted by a driver supplied by his firm and after a couple well deserved cigarettes is on his way to the Genghis Khan hotel. Matt is immediately struck by the awful air pollution and the general disrepair of the road system between the airport and the city center.

“Is the air always like this?” Matt inquires of his driver.

“Only the winter sir, burning coal in the *ger* camps really blackens the place up.”

“Got you,” Matt continues, “Can we stop at the U.S. embassy to register on the way to the hotel?”

“Most certainly!” the dovish looking driver replies.

Matt is struck by the plethora of *gers* surrounding the U.S. embassy and notices the blackish smoke coming from the multitude of cook/heating stoves within the gers. Matt quickly registers his passport and then checks into the Genghis Khan and checks his email. Nothing from headquarters, this suits Mr. Leland perfectly, as he has an appointment with Mitch for a couple beers at Hennessey's as local Irish pub.

"G' day, mate, hope you brought an extra parka," chuckles Mitch, as Matt scurries into the pub for a pint. "What will it be? a Genghis Khan?" Queries Mitch.

"I'll take a large Genghis," Matt chuckles. Matt continues after a long pull from his beer, "So Mitch, give me the low down on Ulaanbaatar, what do I need to know?"

"Well mate, where to start aye?" Mitch coughs slightly and continues, "Mongolia is a country barreling from a nomadic past to an urban future, and things are a lot better than they were immediately following the collapse of the Soviet Union, but the country is still plagued by income inequality, corrupt politicians, and environmental problems. Have you had a deep breath of the fine Ulaanbaatar air?" Mitch laughs as he sips his beer.

Matt smiles questions Mitch, "I have been reading about an increase of ultranationalists within Mongolia. Is this a problem and what is fueling the rise of such groups?"

"The rise of China is disrupting the old order of things, realigning economies and shaking up politics. Mongolia is encircled by China and Russia and is home to just under three million people. Across the border are 1.3 billion Chinese, countless factories, and the growing power of an ancient enemy. Most importantly, under the Mongol earth is the very stuff needed to fuel China. As you know, Mongolia's mineral wealth comprises pretty much everything in quantities estimated to be worth trillions of dollars. Currently, China is the largest buyer by far," Mitch swigs his beer and continues, "For some; Mongolia is a place where you can become filthy rich, if you can tap into the minerals boom. In Sükhbaatar Square, under a new statue of Genghis Khan, the first Louis Vuitton and Zegna boutiques were opened as old Moscow city buses sputter by. It is important to understand that a big reason in the rise of nationalism is income inequality.

The country's GDP per capita is still just under USD \$3,000. You will find that Mongolia is a place where plenty of people fear the future. Government corruption is widespread, and a small number of tycoons exert a large influence on the government and economy (Bator, 2013). Herders and environmentalists complain that mining development is destroying the grasslands and water sources on which livestock and nomads depend. The indigenous population fears they are caught in the resource curse (Hasain 2011). The population is well aware of the lack of effectiveness and poor control of corruption. Most indicators suggest widespread corruption permeating all level of society (Chene, 2012)." Mitch finishes his beverage and orders a double vodka tonic.

"Sounds like a challenging place to do business," Matt says as he looks away from his drink.

"Indeed mate, then there's the question of where the money goes. Will Mongolia be able to use the vast wealth to build a fair society, or will it follow other poor countries afflicted by the 'resource curse?' Will it be like Norway or Nigeria? The good people of Mongolia desperately need their voices heard or they will continually be exploited," sighs Mitch.

"This unfortunately is often the issue with mineral rich countries," Matt groans, "I need a cigarette, I'll be right back."

Matt staggers out into the cold and lights up. It is difficult not to notice the two heavily intoxicated Mongolian men across the street throwing punches at each other.

Matt returns to his seat looks at Mitch and says "Saw a hell of a fight out there on my smoke break; think one guy could be in for a long night at the hospital."

Mitch nonchalantly replies "Fights are pretty common here in Ulaanbaatar, make sure and stay away from people who are drinking too much Genghis Khan vodka. "Mongolians pride themselves on their warrior spirit. The post-Communist period has seen the rehabilitation of Genghis Khan from shunned despot to a beloved national symbol. His likeness is found on monuments throughout the capital and on no fewer than three different brands of vodka, not to

mention that beer you are drinking, the hotel you are staying in, and the airport you arrived in today.”

Matt laughs as Mitch continues, “Alcohol abuse is widespread, with passed-out and stumbling people visible on the streets day and night. Fights are an almost routine feature of Ulaanbaatar’s nightlife as you have seen already. The 1990s was when Mongolia’s urban influx really started, but the mining boom is adding to the slums of *ger* outside the capital and exacerbating social tensions. On the other side we have these very rich people with their million-dollar apartments or houses. Besides the big mining projects like yours, there are ‘black mines’, many of them run or backed by Chinese interests, which have popped up largely unnoticed in remote corners of the country. Construction too has brought to the capital thousands of Chinese who live in high-walled compounds. No one, in the government or elsewhere, seems to know how many there are. While Mongolia’s democracy has proved resilient, an ugly ultra-nationalism has been on the rise. At the most extreme end, a handful of home-grown neo-Nazi groups have turned against Chinese and other foreigners, picking fights, harassing inter-ethnic couples, and carrying out vigilante attacks. More generally, the sort of reflexive racism has become commonplace (Bator, 2013).”

“You really know how to give a guy a warm fuzz feeling about his new hometown.” Matt clears his throat and continues, “It can’t be all that bad can it?”

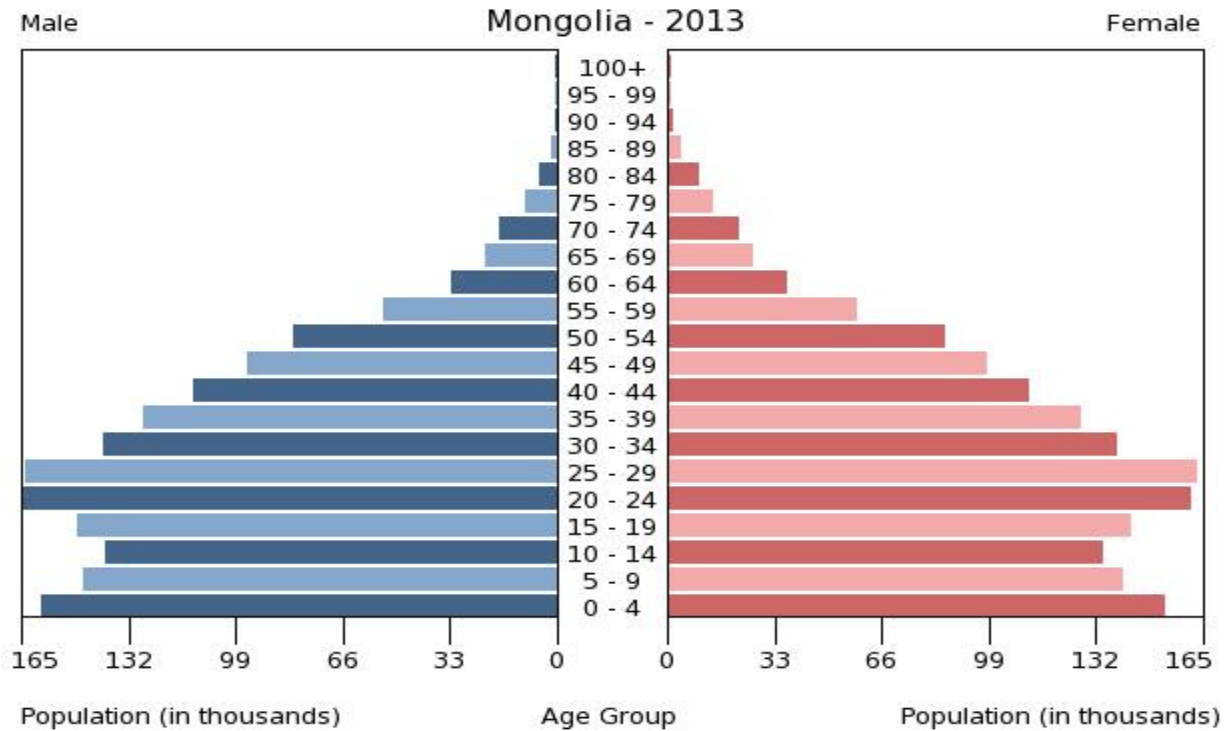
“One more round miss!” Mitch’s voice resounds against the cover band’s rendition of the Eagles’ classic Hotel California, “You can check in anytime you like, but like me you will likely never leave,” Mitch sings along and continues, “this place grows on you Matt, there are a lot of problems, but the country has a young dynamic population and there is opportunity everywhere one turns. I think once you get use to Ulaanbaatar you will be here for a very long time.”

“Let’s see how the meeting goes in a couple days, I better get back to the Genghis Khan and get some shut eye, thanks for the info, I got the drinks tonight.”

“Cheers mate!”

Matt gets back to the hotel and reads more about the demographics of Mongolia. Mitch was correct; the country is poised to reap a demographic dividend. Figure 2 shows the age pyramid for Mongolia in 2013. The vast majority of Mongolia’s population is below 40 years of age with many more productive working years ahead of them.

Figure 2: Demographic Pyramid in Mongolia



Source: www.cia.gov

C. Legal and environmental anxieties.

Matt wakes up at 3:30 am Mongolian time annoyed that he cannot sleep. “One would think that after a career of travel, one would figure out how to sleep in different time zones,” Matt muses to himself. Unable to sleep, Matt remembers the environmental impact report and opens it hoping it will put him to sleep, unfortunately it does the opposite. As Matt sits in his suit at the Genghis Khan, Matt reviews the environmental impact report which delineates several worst case scenarios for the local environment as a result of over usage by Minera of the local water supply. Minera’s usage tops 18.5 million gallon a day (Schneider, 2013)

Making matters worse Matt opens a reply e-mail from Kristi regarding Kahn Enterprises. Kristi's e-mail informs Matt that accounting thinks there must be some mistake as there is no approved contractor by the name Khan Enterprises. Further, when Kristi contacted the Minera's payroll offices to investigate where these payments are being sent, the address given corresponds to the Mongolian parliament building. Given his experience and knowing Mongolia scores poorly on the Transparency International Corruption Perception Index, these payments make Matt suspicious.

Several hours later Matt contacts Lee, Minera's chief counsel and his main contact at Minera's headquarters. Luckily Lee, an early riser, is on his computer and able to talk about the details of Minera's Mongolian mining licenses and the other issues Matt has been sent to this nomadic country to resolve. "Well good morning Matt, trouble sleeping? How was your flight?" Chimes Lee over Skype.

"Doing ok, flight was pleasant, thanks for asking, though it is cold up here in the land of Genghis Khan," laughs Matt as he continues, "So tell me Lee who has seen the environmental audit?"

"Whoa Matt slow down, first let me give you some background information; Oyu Tolgoi contains one of the world's largest copper and gold reserves. The scale of deposits at Oyu Tolgoi is expected to allow the project to operate for over 50 years. Just recently, Oyu Tolgoi began shipping copper concentrate to customers in China. The underground section of the mine, which is expected to be developed in the next phase of the project, contains 80% of the value of the mine. Oyu Tolgoi is located in the southern Gobi desert, about 80 kilometers north of the Mongolia-China border. It is jointly owned by the Government of Mongolia and Turquoise Hill Resources. As you know we are a 51% owner of Turquoise Hill. Currently, we are the majority owner of the mine with a 66% equity stake with Mongolia owning the balance of the equity."

"Thanks for the briefing Lee, but what have we promised Mongolia for the mining rights?"

"Glad you asked Matt, we estimate that the benefits of Oyu Tolgoi for the Mongolian economy will be significant. Since 2008, we have invested over 6 billion US dollars and have committed to employ a minimum of 90% Mongolians in the work force. To say the least Matt, we are

financially committed. We have also been paying our share of taxes and fees with our accounting department estimating these costs to be well south of a billion US (Behrmann and Humber, 2013). With this type of commitment our investors are expecting a strong return on their investment.”

“Ok, I understand the importance and this sounds like a potential win-win,” Matt turns up the volume in his headphones and continues, “if past experience is any indicator we likely promised some training, correct?”

“Yes of course,” Lee responds, “we are dedicated to Mongolia for the long term. Over 100 million US has been committed to fund education and training. More than 6,000 people will be trained at vocational training centers, and 1,200 vocational training center teachers are being trained in conjunction with the Mongolian Ministry of Education (Behrmann and Humber, 2013). We are adding some true value over there, Matt.”

“I see, so what is the problem with getting the second stage underway? Why all the resistance?” inquires Matt.

“Back in 2009, when you were sweating it out in Borneo or some other jungle mine, we signed the Oyu Tolgoi investment deal. If you go back and read the reports, the deal was considered a symbol of Mongolia's growing engagement with the global economy, but since then it has been a major political issue as many Mongolians are worried that the country is selling off its mineral wealth to cheaply to foreigners. It is a real difficult issue for us to convince the population that this is a good deal for everyone. They want to assure their citizens they have not undersold their mining rights and that they are enforcing strict environmental standards The Mongolian government wants a larger piece of the pie. Simply put they want more money.” responds Lee.

“I understand, I ran into these same sorts of issues in Borneo and Myanmar,” grumbles Matt.

“In addition,” Lee continues, “earlier this year, we postponed the underground mine expansion and announced plans to lay off as many as 1700 Mongolian workers after the government said

any provisional financing for the project would have to be approved by Mongolia's parliament.” (Schneider, 2013)

“Really, why did we decide to take these actions?” asks Matt. “Doesn’t this seem to violate the company’s pledge to adhere to the United Nations Global Compact (Exhibit 1)?

“The second stage of the project has been caught up in dispute for some time, with Mongolia wanting a bigger slice of the wealth from the mine. Mongolia has complained that costs on the first phase were \$2 billion higher than originally planned, and is looking for concrete verifiable assurances from us that such inflation will not happen during the second phase. The overruns meant the Mongolian government would receive no dividends and no income tax from the project for 20 years. Mongolia also continues to object to our financing and management costs, claiming these costs are excessive (Stanway, 2013). The license renewals have been put on hold until we can reach some sort of agreement.”

“The picture is starting to become more clear, looks like I have my hands full tomorrow.” Matt says in an exacerbad manner, and continues, you still haven’t answered my original question, who has seen this environmental impact audit?”

“Only me and you have access to the report, I’ve been very careful to leave no digital trace. The Fed Ex copy I sent you is the only copy which exists, “Lee responds in a whisper.

Lee continuing in a whisper “As I’m sure you’ve read, the report states that Oyu Tolgoi is in the South Gobi and is in close proximity to herder communities and wildlife. Because of this Oyu Tolgoi is designed to be one of the most water-efficient mines of its kind in the world. However, our experts are fairly certain that if our mining operation continues to use water at their current rates, there will be a severe water shortage and an increase of dust which will lead to desertification of the region. Additionally, increased economic growth will increase the pollution which will affect the long term health of millions in the capital city Ulaanbaatar.”

Matt remembers the ecological and public relations nightmare from the devastating mercury spill in Minera's Peruvian gold mine (Fact Sheet Choropampa, 2000).

Aggravated Matt replies, "we have to share this report with our engineers and figure a way to reduce our water consumption even further before we cause permanent damage to the local environment. Also, and I'm afraid to ask, have you heard of a Kahn Enterprises?"

"To be honest Matt," Lee starts, "Kahn Enterprises is a local business which provides logistical support in our mining endeavors for a small fee. As long as we keep those payments going they will remain good friends of ours. I've already given their liaison your contact information. I expect you to facilitate this relationship."

"Are we bribing the Mongolian government? I'm not certain I am comfortable with this. Aren't you afraid of application of the Foreign Corrupt Practices Act?"

Lee responds, "Listen Matt we go way back and I am truly a friend. However, after your intoxicated New Year's Eve performance you are on thin ice with several of the board members. Need I remind you, Minera's stock prices have taken a beating as of late. Matt if you are not successful on this project, there is a strong likely hood you will be replaced by a younger, sober, and more ambitious MBA grad. As you are aware there is not much of a market for older executives whose most recent diploma comes from completion of court mandated AA. Even if no one at Minera, expect me knows of your legal issues, this type of information has a way of becoming public fast. Please tell me you're not drinking again."

An increasingly frustrated Matt responds "Of course not, however, how can I proceed without addressing the water issues detailed in the report?"

"My advice," continues Lee, "it will be best for all involved, if you destroy the report and secure those licenses at all costs."

Matt notices the sun is beginning to rise and feeling increasingly uncomfortable he abruptly “thanks,” Lee and ends the Skype session. Before shutting off his computer Matt clicks on a new e-mail from Minera’s CEO Tim Jares. The message simply states, “Good Luck Matt, the company is counting on you and I know you will come through for us!”

INSTRUCTOR'S NOTES

This case is based on a series reported issues with several multinational mining organizations. This case presents several potential ethical, financial, and legal issues which a multinational firm must confront. After reading this case it is suggested the students formulate an economically, strategically, ethically, and legally sound course of action for Mr. Lelander to pursue. As students present their recommendations they should also discuss potential resolutions for the multitude of legal and ethical issues which are imbedded throughout the case.

Learning and Teaching Objectives:

This case has several learning objectives:

1. Identify and evaluate the potential ethical or legal issues Mr. Lelander must confront.
2. Discuss the dynamic interaction of a firm's global ethical standards with corporate initiatives which may violate these standards while still adhering to local regulations and laws.
3. Explore the various potential responses (and protections) available for a manager presented with this type of situation.
4. Recognize and assess potential ethical and legal lapses in Matt's, Lee's, and Tim's actions.
5. Describe the type of unique issues operation of a multinational mining creates.
6. Discuss what procedures and policies a multinational mining operation an organization could or should implement to avoid these types of issues.
7. To lay a foundation for ethics discussions by introducing ethical theories and their applications.
8. To develop an appreciation for the complexity of ethical decision making through identification of affected stakeholders and examination of those perspectives.

Class Use:

The overall discussion of this exercise usually takes about two or two class periods in a class of 35-40 students. This discussion can be structured in three parts; brainstorming and listing all the ethical and legal issues, narrowing the list, and constructing a feasible proposal to all questions which should be presented in front of the class.

An alternative approach is to discuss and narrow all the potential legal and ethical issues and then assign the students (as groups or individuals) the task of preparing and turning in a well written report (usually by the next class period), just as our fictional Mr. Lelander has been assigned. You can also assign several groups to present their proposals.

As there are a multitude of business ethics course books and approaches, this case is designed so it can accompany any business ethics text. We cite an ethical framework, published in the Ferrell et al. text, (Ferrell, O.C., Fraedrich, J, and Ferrell, L, 2013, *Business Ethics, Ethical Decision Making and Cases*, Mason, OH, Cengage); however, the case can be completed using any established business ethics framework.

Time permitting, and to further encourage a robust discussion, a role play scenario can be used. Divide the students into groups to represent various stakeholders including Minera employees, Mongolian citizens, the environment, the Mongolian government, and Minera's shareholders. As discussed below there is a multitude of potential ethical decision making frameworks available. This case is not tailored to any one specific framework or text, and should be compatible with most business ethics and business law texts.

Suggested Supplemental video: <http://www.youtube.com/watch?v=dW7zn0SbrV4>

Recognizing Ethical Issues

It should be noted that Minera is a fictitious corporation. However, this case is grounded in fact and provides an excellent foundation for discussing the imperative for organizational codes of conduct and well as corporate governance programs. Further, this case sets up the fundamental business ethics principle that the laws and regulations established by our governments set *minimum* standards for responsible behavior. These laws do not delineate what is ethical nor do they establish organizational values.

Before any meaningful class discussion is attempted it is imperative that the class read the entire case study including Exhibits.

Students will need to identify the ethical issues present in this case. An ethical issue is a situation, a problem, or even an opportunity that requires thought, discussion, or investigation to determine the moral impact of the decision. Stakeholders, who include employees, define a business's ethical issues.

Laws regulating business conduct are passed because certain stakeholders believe that business cannot be trusted to do what is right in certain areas, such as consumer safety and environmental protection. Civil law defines the rights and duties of individuals and organizations. Criminal law not only prohibits specific actions, such as fraud or theft but also imposes fines or imprisonment as punishment for breaking the law.

Suggested Discussion or Assignment Questions:

1. What are the operational, ethical, and legal problems described in the article?
2. What are the underlying causes? How could Minera have avoided these issues?
3. What is the social responsibility of mining operations with regards to sustainability of their mining operations?
4. Is Minera or any of the Minera employees violating the organizations pledge with regards to the United Nation's Global Compact?
5. Who are the stakeholders in this case?
6. What possible economic, social, and ethical factors have helped create the referenced "resource curse?"
7. If Matt is contacted by Khan Industries what is his potential liability under the Foreign Corrupt Practices Act? Does the Alien Tort Claims Act pose any issue for Matt?
8. Does either Matt or Lee have an ethical or legal obligation to resign?
9. What are Matt's legal protections if he reports any suspected illegal activity. Should Matt report Lee? To whom could he report?
10. Does Lee have any obligation to report Matt's alcohol issues?

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EXHIBIT 1

The UN Global Compact's ten principles in the areas of human rights, labour, the environment and anti-corruption enjoy universal consensus and are derived from:

- The Universal Declaration of Human Rights
- The International Labour Organization's Declaration on Fundamental Principles and Rights at Work
- The Rio Declaration on Environment and Development
- The United Nations Convention Against Corruption

The UN Global Compact asks companies to embrace, support and enact, within their sphere of influence, a set of core values in the areas of human rights, labour standards, the environment and anti-corruption:

Human Rights

- Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; and
- Principle 2: make sure that they are not complicit in human rights abuses.

Labour

- Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;
- Principle 4: the elimination of all forms of forced and compulsory labour;
- Principle 5: the effective abolition of child labour; and
- Principle 6: the elimination of discrimination in respect of employment and occupation.

Environment

- Principle 7: Businesses should support a precautionary approach to environmental challenges;
- Principle 8: undertake initiatives to promote greater environmental responsibility; and
- Principle 9: encourage the development and diffusion of environmentally friendly technologies.

Anti-Corruption

- Principle 10: Businesses should work against corruption in all its forms, including extortion and bribery.

Source: Retrieved on June 20th, 2014, from:

<https://www.unglobalcompact.org/aboutthegc/TheTenprinciples/index.html>