

DESCRIPTION OF THE NOTES

For purposes of this “Description of the Notes,” the term “Company” refers only to Mongolian Mining Corporation, a company incorporated with limited liability under the laws of the Cayman Islands, and any successor obligor on the Notes, and not to any of its Subsidiaries. Each Subsidiary of the Company which guarantees the Notes is referred to as a “Subsidiary Guarantor,” and each such guarantee is referred to as a “Subsidiary Guarantee.”

The Notes are to be issued under an indenture (the “Indenture”), to be dated as of the Original Issue Date, among the Company, the initial Subsidiary Guarantors, as guarantors, and Deutsche Bank Trust Company Americas, as trustee (the “Trustee”).

The following is a summary of certain provisions of the Indenture, the Notes, the Subsidiary Guarantees, the Security Documents and the Intercreditor Agreement. This summary does not purport to be complete and is qualified in its entirety by reference to all of the provisions of the Indenture, the Notes, the Subsidiary Guarantees, the Security Documents and the Intercreditor Agreement. It does not restate those agreements in their entirety. Whenever particular sections or defined terms of the Indenture not otherwise defined herein are referred to, such sections or defined terms are incorporated herein by reference. Copies of the Indenture will be available on or after the Original Issue Date during normal office hours at the corporate trust office of the Trustee at Deutsche Bank Trust Company Americas, Trust & Agency Services, 60 Wall Street, MS NYC60-2710, New York, New York 10005.

Brief Description of the Notes

The Notes are:

- general obligations of the Company;
- effectively subordinated to secured obligations of the Company (other than to the extent of the Collateral securing the Notes), to the extent of the value of the assets serving as security therefor;
- senior in right of payment to any existing and future obligations of the Company expressly subordinated in right of payment to the Notes;
- at least *pari passu* in right of payment with all other unsecured, unsubordinated Indebtedness of the Company (subject to any priority rights of such unsubordinated Indebtedness pursuant to applicable law);
- guaranteed by the Subsidiary Guarantors on a senior basis, subject to the limitations described below under the caption “– The Subsidiary Guarantees” and in “Risk Factors – Risks Relating to the Subsidiary Guarantees and the Collateral”; and
- effectively subordinated to all existing and future obligations of the Non-Guarantor Restricted Subsidiaries (defined below).

In addition, on the Original Issue Date, subject to the limitations described in “Risk Factors – Risks Relating to the Subsidiary Guarantees and the Collateral,” the Notes will be secured by a pledge of the Collateral as described below under the caption “– Security” and will:

- be entitled to a first priority Lien on the Collateral (subject to any Permitted Liens and the Intercreditor Agreement) and shared on a *pari passu* basis among the holders of the Notes,

the lenders of the New Standard Bank Facilities Agreement and any other creditors with respect to Permitted Pari Passu Secured Indebtedness incurred by the Company; and

- rank effectively senior in right of payment to unsecured obligations of the Company with respect to the value of the Collateral pledged by the Company securing the Notes (subject to any priority rights of such unsecured obligations pursuant to applicable law).

The Notes will mature on March 29, 2017, unless earlier redeemed or repurchased by the Company pursuant to the terms thereof and the Indenture.

The Indenture allows additional Notes to be issued from time to time (the “Additional Notes”), subject to certain limitations described under “– Further Issues.” Unless the context requires otherwise, references to the “Notes” for all purposes of the Indenture and this “Description of the Notes” include any Additional Notes that are actually issued. The Notes will bear interest at 8.875% per annum from the Original Issue Date or from the most recent interest payment date to which interest has been paid or duly provided for, payable semi-annually in arrears on March 29 and September 29 of each year (each an “Interest Payment Date”), commencing September 29, 2012.

Interest on the Notes will be paid to Holders of record at the close of business on March 14 and September 14 immediately preceding an Interest Payment Date (each, a “Record Date”), notwithstanding any transfer, exchange or cancellation thereof after a Record Date and prior to the immediately following Interest Payment Date. In any case in which the date of the payment of principal of or premium (if any) or interest on the Notes (including any payment to be made on any date fixed for redemption or purchase of any Note) is not a Business Day in the relevant place of payment, then payment of principal or premium (if any) or interest need not be made in such place on such date but may be made on the next succeeding Business Day in such place. Any payment made on such Business Day shall have the same force and effect as if made on the date on which such payment is due, and no interest on the Notes shall accrue for the period after such date. Interest on the Notes will be calculated on the basis of a 360 day year comprised of twelve 30-day months.

The Notes will be issued only in fully registered form, without coupons, in denominations of US\$200,000 and integral multiples of US\$1,000 in excess thereof. No service charge will be made for any registration of transfer or exchange of Notes, but the Company may require payment of a sum sufficient to cover any transfer tax or other similar governmental charge payable in connection therewith.

All payments on the Notes will be made in U.S. dollars by the Company at the office or agency of the Company maintained for that purpose in the Borough of Manhattan, The City of New York (which initially will be the corporate trust administration office of the Trustee, currently located at Deutsche Bank Trust Company Americas, Trust & Agency Services, 60 Wall Street, MS NYC60-2710, New York, New York 10005, Attn: Corporates Team Deal Manager – Mongolian Mining Corporation, with a copy to: Deutsche Bank Trust Company Americas, c/o Deutsche Bank National Trust Company, Trust & Agency Services, 100 Plaza One, Mailstop JCY03-0699, Jersey City, New Jersey 07311, Attn: Corporates Team Deal Manager – Mongolian Mining Corporation), and the Notes may be presented for registration of transfer or exchange at such office or agency; *provided* that, at the option of the Company, payment of interest may be made by check mailed to the address of the Holders as such address appears in the Note register maintained by the Registrar or by wire transfer. Interest payable on the Notes held through DTC will be available to DTC participants (as defined herein) on the Business Day following payment thereof.

The Subsidiary Guarantees

On the Original Issue Date, all of the Company's Subsidiaries will be Restricted Subsidiaries, and the initial Subsidiary Guarantors will consist of Mongolian Coal Corporation Limited, Mongolian Coal Corporation S.à.r.l., Energy Resources Corporation LLC, Energy Resources LLC, Energy Resources Mining LLC and Transgobi LLC. All of the Restricted Subsidiaries that are not Subsidiary Guarantors are collectively referred to herein as the "Non-Guarantor Restricted Subsidiaries."

The Company may at its option at any time cause any Restricted Subsidiary to become a Subsidiary Guarantor by causing such Restricted Subsidiary to execute and deliver to the Trustee a supplemental indenture to the Indenture pursuant to which such Restricted Subsidiary will guarantee the payment of the Notes.

Although the Indenture contains limitations on the amount of additional Indebtedness that the Non-Guarantor Restricted Subsidiaries may incur, the amount of such additional Indebtedness could be substantial. In the event of a bankruptcy, liquidation or reorganization of any Non-Guarantor Restricted Subsidiary, the Non-Guarantor Restricted Subsidiary will pay the holders of its debt and its trade creditors before it will be able to distribute any of its assets to the Company. See "Risk Factors – Risks Relating to the Notes – We are a holding company and payments with respect to the Notes are structurally subordinated to liabilities, contingent liabilities and obligations of our subsidiaries that do not guarantee the Notes."

As of December 31, 2011,

- the Company and its consolidated subsidiaries had approximately US\$561.7 million of consolidated indebtedness outstanding, of which approximately US\$478.2 million was secured;
- the Company and the Subsidiary Guarantors had approximately US\$478.2 million of secured indebtedness outstanding; and
- the Non-Guarantor Restricted Subsidiaries had approximately nil of consolidated indebtedness outstanding.

In addition, as of December 31, 2011, the Company and its consolidated subsidiaries had US\$94.9 million of capital commitments and contingent liabilities, including US\$54.2 million at the Non-Guarantor Restricted Subsidiaries.

The Subsidiary Guarantee of each Subsidiary Guarantor:

- is a general obligation of such Subsidiary Guarantor;
- is effectively subordinated to secured obligations of such Subsidiary Guarantor (if any, other than to the extent of the Collateral securing the Notes), to the extent of the value of the assets serving as security therefor;
- is senior in right of payment to all future obligations of such Subsidiary Guarantor expressly subordinated in right of payment to such Subsidiary Guarantee;
- ranks at least *pari passu* with all other unsecured, unsubordinated Indebtedness of such Subsidiary Guarantor (subject to any priority rights of such unsecured, unsubordinated Indebtedness pursuant to applicable law); and

- is effectively subordinated to all existing and future obligations of the Non-Guarantor Restricted Subsidiaries.

In addition, subject to the limitations described in “Risk Factors – Risks Relating to the Subsidiary Guarantees and the Collateral,” the Subsidiary Guarantee of each Subsidiary Guarantor Pledgor (defined below) will:

- be entitled to a first-ranking security interest in the Collateral (subject to any Permitted Liens and the Intercreditor Agreement) pledged by such Subsidiary Guarantor Pledgor, as described below under “– Security” and shared on a *pari passu* basis by holders of the Notes, the lenders of the New Standard Bank Facilities Agreement and any other creditors with respect to Permitted *Pari Passu* Secured Indebtedness incurred by such Subsidiary Guarantor Pledgor; and
- rank effectively senior in right of payment to the unsecured obligations of such Subsidiary Guarantor Pledgor with respect to the value of the Collateral securing such Subsidiary Guarantee (subject to any priority rights of such unsecured obligations pursuant to applicable law).

The Company will cause each of its future Wholly Owned Restricted Subsidiaries which, directly or indirectly, own any mining deposits or reserves or any mining license (other than with respect to the Baruun Naran mine), as soon as practicable but in any event within five days after becoming a Restricted Subsidiary, to execute and deliver to the Trustee a supplemental indenture to the Indenture pursuant to which such Restricted Subsidiary will guarantee the payment of the Notes.

Notwithstanding the foregoing, the Company will not be obligated to cause any Restricted Subsidiary to guarantee the Notes to the extent such guarantee could reasonably be expected to give rise to or result in any conflict with or violation of applicable law (or risk of personal or criminal liability for the officers, directors, managers or shareholders of such Restricted Subsidiary). Each Subsidiary of the Company that guarantees the Notes after the Original Issue Date is referred to as a “Future Subsidiary Guarantor” and, upon execution of the applicable supplemental indenture to the Indenture, will be a “Subsidiary Guarantor.”

Under the Indenture, and any supplemental indenture to the Indenture, as applicable, each of the Subsidiary Guarantors will jointly and severally guarantee the due and punctual payment of the principal of, premium, if any, and interest on, and all other amounts payable under, the Notes and the Indenture, subject to the limitations set forth herein. The Subsidiary Guarantors will (1) agree that their obligations under the Subsidiary Guarantees will be enforceable irrespective of any invalidity, irregularity or unenforceability of the Notes or the Indenture and (2) waive their right to require the Trustee to pursue or exhaust its legal or equitable remedies against the Company prior to exercising its rights under the Subsidiary Guarantees. Moreover, if at any time any amount paid under a Note or the Indenture is rescinded or must otherwise be restored, the rights of the Holders under the Subsidiary Guarantees will be reinstated with respect to such payments as though such payments had not been made. All payments under the Subsidiary Guarantees are required to be made in U.S. dollars.

Under the Indenture and any supplemental indenture to the Indenture, as applicable, each Subsidiary Guarantee will be limited to an amount not to exceed the maximum amount that can be guaranteed by the applicable Subsidiary Guarantor without rendering the Subsidiary Guarantee, as it relates to such Subsidiary Guarantor, voidable under applicable law relating to fraudulent conveyance, fraudulent transfer, financial assistance, corporate benefit, capital maintenance or similar laws affecting the rights of creditors generally. In respect of any Subsidiary Guarantor incorporated under the laws of Luxembourg (each, a “Luxembourg Subsidiary Guarantor”), the maximum liability of such Luxembourg Subsidiary Guarantor will be limited so that the maximum amount payable by it under

the Notes or the Indenture, shall at no time exceed the Maximum Amount notwithstanding any provision of the Notes or the Indenture. Any Subsidiary Guarantee of any Subsidiary Guarantor may include specific provisions limiting such guarantee to the extent such guarantee could reasonably be expected to give rise to or result in any conflict with or violation of applicable law (for risk of personal or criminal liability for the officers, directors, managers or shareholders of such Restricted Subsidiary). By virtue of these limitations, a Subsidiary Guarantor's obligations under its Subsidiary Guarantee could be significantly less than amounts payable with respect to the Notes, or a Subsidiary Guarantor may effectively have no obligation under its Subsidiary Guarantee. If a Subsidiary Guarantee were to be rendered voidable, it could be subordinated by a court to all other indebtedness (including guarantees and other contingent liabilities) of the applicable Subsidiary Guarantor and, depending on the amount of such indebtedness, a Subsidiary Guarantor's liability on its Subsidiary Guarantee could be reduced to zero.

The obligations of each Subsidiary Guarantor under its respective Subsidiary Guarantee may be limited, or possibly invalid, under applicable laws. See "Risk Factors – Risks Relating to the Subsidiary Guarantees and the Collateral – The Subsidiary Guarantees may be challenged under applicable bankruptcy, fraudulent transfer, insolvency or similar laws which could impair the enforceability of the Subsidiary Guarantees."

Release of the Subsidiary Guarantees

A Subsidiary Guarantee given by a Subsidiary Guarantor may be released in certain circumstances, including:

- upon repayment in full of the Notes;
- upon a defeasance or satisfaction and discharge as described under "– Defeasance – Defeasance and Discharge"; or "– Satisfaction and Discharge";
- upon the designation by the Company of a Subsidiary Guarantor as an Unrestricted Subsidiary in compliance with the terms of the Indenture;
- upon the sale of Capital Stock of a Subsidiary Guarantor (other than Energy Resources LLC) in compliance with the terms of the Indenture (including the covenants described under the captions "– Certain Covenants – Limitation on Sales and Issuances of Capital Stock in Restricted Subsidiaries," "– Certain Covenants – Limitation on Asset Sales," and "– Consolidation, Mergers and Sale of Assets") resulting in such Subsidiary Guarantor no longer being a Wholly Owned Restricted Subsidiary, so long as (1) the proceeds from such sale are used for the purposes permitted or required by the Indenture; (2) if such Subsidiary Guarantor is no longer a Restricted Subsidiary upon such sale, such Subsidiary Guarantor is simultaneously released from its obligations in respect of any of the Company's other Indebtedness or any Indebtedness of any other Restricted Subsidiary and neither the Company or any Restricted Subsidiary guarantees or provides credit support for any Indebtedness of such Subsidiary Guarantor upon such sale, unless the Company or such Restricted Subsidiary could have incurred the Indebtedness represented by such guarantee or credit support under the Indenture on the date of such release after giving pro forma effect to such sale and release and (3) if such Subsidiary Guarantor remains a Restricted Subsidiary upon such sale, any outstanding Indebtedness of such Subsidiary Guarantor for money borrowed which is owed to any Person other than the Company or any Restricted Subsidiary is repaid in full prior to the release of the Subsidiary Guarantee of such Subsidiary Guarantor, unless such Subsidiary Guarantor could have incurred such Indebtedness under the Indenture as a Restricted Subsidiary that is not a Subsidiary Guarantor on the date of such release after giving pro forma effect to such sale and release;

- upon the merger or consolidation of any Subsidiary Guarantor with and into the Company or a Wholly Owned Subsidiary Guarantor (or a Wholly Owned Restricted Subsidiary that becomes a Subsidiary Guarantor concurrently with the transaction) that is the surviving Person in such merger or consolidation, or upon the liquidation of such Subsidiary Guarantor following the transfer of all or substantially all of its assets to the Company or a Wholly Owned Subsidiary Guarantor (or a Wholly Owned Restricted Subsidiary that becomes a Subsidiary Guarantor concurrently with the transaction); or
- as described under “– Amendments and Waivers.”

No release of a Subsidiary Guarantor from its Subsidiary Guarantee shall be effective against the Trustee or the Holders until the Company has delivered to the Trustee an Officers’ Certificate stating that all requirements relating to such release have been complied with and that such release is not prohibited by the terms of the Indenture.

Under the circumstances described below under the caption “– Certain Covenants – Designation of Restricted and Unrestricted Subsidiaries,” the Company will be permitted to designate certain of its Subsidiaries as “Unrestricted Subsidiaries.” The Company’s Unrestricted Subsidiaries will generally not be subject to the restrictive covenants in the Indenture and will not guarantee the Notes.

Security

The Company has agreed, for the benefit of the Holders, to pledge all of the Capital Stock of Mongolian Coal Corporation Limited owned by the Company and to cause the initial Subsidiary Guarantor Pledgor to pledge all of the Capital Stock of Mongolian Coal Corporation S.à.r.l. owned by the initial Subsidiary Guarantor, in each case on a first-priority basis (subject to Permitted Liens and the Intercreditor Agreement) on the Original Issue Date pursuant to share mortgages or share charges on the applicable Capital Stock of such Restricted Subsidiaries (the “Share Charges”) in order to secure the obligations of the Company under the Notes and the Indenture and of such initial Subsidiary Guarantor Pledgor under its Subsidiary Guarantee.

The initial Subsidiary Guarantor Pledgor is Mongolian Coal Corporation Limited.

The Collateral will secure on a pari passu basis (i) the obligations of the Company under the Notes and the Indenture and of the Subsidiary Guarantor Pledgors under the Subsidiary Guarantees; (ii) the obligations of the Company under the New Standard Bank Facilities Agreement and (iii) any Permitted Pari Passu Indebtedness. See “– Intercreditor Agreement.”

The Company has also agreed, for the benefit of the Holders, to pledge, or cause each Subsidiary Guarantor to pledge, the Capital Stock owned directly by the Company or such Subsidiary Guarantor of any Person that is a Restricted Subsidiary and that directly or indirectly holds the mining license in relation to the Ukhaa Khudag mine (other than Persons organized under the laws of Mongolia) (each such Person, an “Ukhaa Khudag Restricted Subsidiary”) after the Original Issue Date, promptly upon such Person becoming an Ukhaa Khudag Restricted Subsidiary, to secure the obligations of the Company under the Notes and the Indenture, and of such Subsidiary Guarantor under its Subsidiary Guarantee, in the manner described above.

Each Subsidiary Guarantor that pledges Capital Stock of a Restricted Subsidiary after the Original Issue Date is referred to as a “Future Subsidiary Guarantor Pledgor” and, upon giving such pledge, will be a “Subsidiary Guarantor Pledgor.”

The value of the Collateral securing the Notes, the Subsidiary Guarantee of the Subsidiary Guarantor Pledgor and any other Indebtedness secured by the Collateral under the Intercreditor

Agreement will likely not be sufficient to satisfy the Company's and the Subsidiary Guarantor Pledgor's obligations under the Notes and the Subsidiary Guarantee of the Subsidiary Guarantor Pledgor, and the Collateral securing the Notes and such Subsidiary Guarantee may be reduced or diluted under certain circumstances, including the issuance of Additional Notes and the incurrence of other Permitted Pari Passu Secured Indebtedness and the disposition of assets comprising the Collateral, subject to the terms of the Indenture and the Intercreditor Agreement. See "– Release of Security" and "Risk Factors – Risks Relating to the Subsidiary Guarantees and the Collateral – The value of the Collateral will likely not be sufficient to satisfy our obligations under the Notes, the New Standard Bank Facilities Agreement and other Permitted Pari Passu Secured Indebtedness."

No appraisals of the Collateral have been prepared in connection with this offering of the Notes. There can be no assurance that the proceeds of any sale of the Collateral, in whole or in part, pursuant to the Indenture, the Intercreditor Agreement and the Security Documents or the Intercreditor Agreement following an Event of Default, would be sufficient to satisfy amounts due under the Notes, the Subsidiary Guarantees of the Subsidiary Guarantor Pledgors or other Indebtedness secured by the Collateral. Some or all of the Collateral will be illiquid and may have no readily ascertainable market value. Accordingly, there can be no assurance that the Collateral would be sold in a timely manner or at all.

So long as no Payment Default has occurred and is continuing, and subject to the terms of the Security Documents and the Indenture, the Company and any Subsidiary Guarantor Pledgor, as the case may be, will be entitled to exercise any and all voting rights and to receive, retain and use any and all cash dividends, stock dividends, liquidating dividends, non-cash dividends, shares or stock resulting from stock splits or reclassifications, rights issues, warrants, options and other distributions (whether similar or dissimilar to the foregoing) in respect of Capital Stock constituting Collateral.

Permitted Pari Passu Secured Indebtedness

On or after the Original Issue Date, the Company and any Subsidiary Guarantor Pledgor may create Liens on the Collateral *pari passu* with the Lien for the benefit of the Holders and the lenders under the New Standard Bank Facilities Agreement to secure Indebtedness of the Company (including Additional Notes) or any Subsidiary Guarantor Pledgor and any Pari Passu Subsidiary Guarantee of a Subsidiary Guarantor Pledgor or guarantee of the Company with respect to such Indebtedness of such Subsidiary Guarantor Pledgor (such Indebtedness of the Company, any Subsidiary Guarantor Pledgor and any such Pari Passu Subsidiary Guarantee or guarantee of the Company with respect to such Indebtedness of such Subsidiary Guarantor Pledgor, "Permitted Pari Passu Secured Indebtedness"); *provided that* (1) the Company or such Subsidiary Guarantor Pledgor was permitted to Incur and secure such Indebtedness under the Indenture and the New Standard Bank Facilities Agreement; (2) the holders of such Indebtedness (other than Additional Notes) or their representative or agent, become party to the Intercreditor Agreement; and (3) the Company and such Subsidiary Guarantor Pledgor deliver to the Trustee and the Shared Security Agent (as defined below) an Opinion of Counsel and Officers' Certificate with respect to compliance with the conditions stated in (1) and (2) above. The Trustee and/or the Shared Security Agent, as the case may be, will be permitted and authorized, without the consent of any Holder, to enter into any amendments to the Security Documents, the Intercreditor Agreement or the Indenture and take any other action necessary to permit the creation and registration of Liens on the Collateral to secure Permitted Pari Passu Secured Indebtedness in accordance with this paragraph and the terms of the Indenture (including, without limitation, the appointment of any collateral or security agent under the Intercreditor Agreement referred to below to hold the Collateral on behalf of the Holders, the lenders under the New Standard Bank Facilities Agreement and the holders of Permitted Pari Passu Secured Indebtedness (the "Shared Security Agent")).

Except for certain Permitted Liens and Permitted Pari Passu Secured Indebtedness, the Company and its Restricted Subsidiaries will not be permitted to Incur any other Indebtedness secured by all or

any portion of the Collateral without the consent of each Holder of the Notes then outstanding and the lenders under the New Standard Bank Facilities Agreement.

Intercreditor Agreement

To regulate the application of proceeds of enforcement of the Collateral and the application of proceeds of enforcement of the guarantees provided by the Subsidiary Guarantors with respect to the Notes and the Company's and the Subsidiary Guarantors' obligations under the New Standard Bank Facilities Agreement (together the "Shared Guarantees"), the Company, the Subsidiary Guarantors, Standard Bank, the trustee of the Notes and the Shared Security Agent (among others) will enter into on or prior to the Original Issue Date an intercreditor agreement (as amended, waived, restated, replaced and/or supplemented from time to time, the "Intercreditor Agreement"). Neither the Trustee nor the Shared Security Agent shall have any liability to any Holder for so entering into the Intercreditor Agreement. The Intercreditor Agreement is governed by English law and sets out, among other things, the application of proceeds of enforcement of the Collateral and the Shared Guarantees and customary intercreditor provisions governing similar debt instruments. By accepting a Note, Holders shall be deemed to have agreed to, and accepted the terms and conditions of, the Intercreditor Agreement.

Ranking and priority

The Intercreditor Agreement will provide that that the obligations of the Company and the Subsidiary Guarantors to the agent, lenders, arranger and security trustee in each case under the New Standard Bank Facilities Agreement (together the "Senior Finance Parties"), the Holders and the Trustee (together the "Notes Parties") and certain other creditors in relation to any Permitted *Pari Passu* Secured Indebtedness that have acceded to the Intercreditor Agreement (the "*Pari Passu* Finance Parties" and together with the Senior Finance Parties and the Notes Parties, the "Secured Parties"), shall rank *pari passu* in right of payment and without any preference between them save to the extent that such liabilities are secured by security other than the Collateral.

The Intercreditor Agreement will provide that the Collateral shall rank and secure the indebtedness under the New Standard Bank Facilities Agreement indebtedness, the Notes and any Permitted *Pari Passu* Secured Indebtedness (collectively, the "Secured Obligations") *pari passu* and without any preference between them.

Payments

The Company and the Subsidiary Guarantors are entitled to make payments under the Notes, the New Standard Bank Facilities Agreement and any Permitted *Pari Passu* Secured Indebtedness at any time in accordance with the terms of the relevant documents entered into in relation to the Secured Obligations (the "Secured Party Documents") until the occurrence of an acceleration event under the Intercreditor Agreement (an "Acceleration Event"). After the occurrence of an Acceleration Event, repayments or prepayments of any obligations under the Secured Party Documents are to be made to the Shared Security Agent for application in accordance with the terms of the Intercreditor Agreement.

Turnover

Subject to certain limited exceptions in the Intercreditor Agreement, if at any time prior to the date on which all obligations under the Secured Party Documents are fully paid and discharged, any Secured Party receives or recovers the proceeds of, *inter alia*, any enforcement of any Collateral or the Shared Guarantees except in accordance with the provisions described below under “– Application of Proceeds,” that Secured Party will:

- in relation to receipts and recoveries not received or recovered by way of set-off:
 - hold an amount of that receipt or recovery equal to the amount owed to such Secured Party (or if less, the amount received or recovered) on trust for the Shared Security Agent and promptly pay that amount to the Shared Security Agent for application in accordance with the terms of the Intercreditor Agreement; and
 - promptly pay an amount equal to the amount (if any) by which the receipt or recovery exceeds the amount owed to such Secured Party to the Shared Security Agent for application in accordance with the terms of the Intercreditor Agreement; and
- in relation to receipts and recoveries received or recovered by way of set-off, promptly pay an amount equal to that receipt or recovery to the Shared Security Agent for application in accordance with the terms of the Intercreditor Agreement.

Enforcement

The first priority Liens and security interests (subject to any Permitted Liens and the Intercreditor Agreement) in the Collateral will be granted to the Shared Security Agent. The Shared Security Agent will hold such Liens and security interests in the Collateral granted pursuant to the Security Documents with sole authority as directed by the Secured Parties in accordance with the Intercreditor Agreement. The Shared Security Agent has agreed to act as security agent on behalf of the Secured Parties under the applicable Security Documents, to follow the instructions provided to it under the Intercreditor Agreement and to carry out certain other duties.

The Shared Security Agent shall refrain from enforcing the Collateral unless it receives enforcement instructions from either the Trustee, the agent of the Senior Finance Parties or the representative of holders of any Permitted Pari Passu Secured Indebtedness (each an “Agent”). An enforcement action is an instruction from an Agent to the Shared Security Agent to enforce the Collateral and is not to be construed to include any instruction from an Agent not to enforce the Collateral.

If there are conflicting enforcement instructions from any Agent in respect of the enforcement of the Collateral, the Shared Security Agent shall act in accordance with the first enforcement instruction it receives. Pursuant to the Intercreditor Agreement, the Trustee, the facility agent under the New Standard Bank Facilities Agreement and the representative of any Permitted Pari Passu Secured Indebtedness will be entitled to give instructions to the Shared Security Agent to foreclose the Collateral, upon the occurrence of a continuing event of default under the applicable finance document. In the event of any conflict between any enforcement instructions, the Shared Security Agent shall act in accordance with the first enforcement instruction it receives. If the preference of the holders of the Notes at such time is not to foreclose the Collateral, or if foreclosure may not at such time be in the best interest of the holders, the holders will not be able to instruct the Shared Security Agent to refrain from acting. In addition, other than with respect to enforcement instructions and other circumstances as described under the Intercreditor Agreement, creditors representing 50% or more of the indebtedness subject to the Intercreditor Agreement shall be entitled to give any instruction (other than enforcement instruction) which will override any conflicting instruction given by any other party.

If the indebtedness of the Notes at such time constitutes less than 50% of the indebtedness subject to the Intercreditor Agreement, the holders of the Notes will not be able to override any prevailing instruction, and such prevailing instruction may not be in the best interest of the holders of the Notes.

Application of Proceeds

In general, all amounts from time to time received or recovered by the Shared Security Agent in connection with the realization or enforcement of all or any Collateral or otherwise paid to the Shared Security Agent for application pursuant to the provision under this “– Application of Proceeds” (the “Recoveries”) shall be held by the Shared Security Agent on trust to apply them at any time as the Shared Security Agent (in its discretion) sees fit, to the extent permitted by applicable law, in the following order of priority:

first, in discharging any sums owing to the Shared Security Agent, or any receiver or delegate;

second, pari passu and pro rata in or towards payment of all costs and expenses incurred by the Secured Parties in connection with any realization or enforcement of the Collateral;

third, in payment to:

- (i) the agent on behalf of the Senior Finance Parties on its own behalf and on behalf of the Senior Finance Parties;
- (ii) the Trustee on its own behalf and on behalf of the Notes Parties; and
- (iii) in respect of any Permitted Pari Passu Secured Indebtedness, the relevant representative for holders of such Permitted Pari Passu Secured Indebtedness Agent on its own behalf and on behalf of the relevant Permitted Pari Passu Secured Finance Parties,

for application towards the discharge of the (a) indebtedness under the New Standard Bank Facilities Agreement, (b) the Notes and (c) any Permitted Pari Passu Secured Indebtedness, on a *pro rata* basis between paragraphs (a), (b) and (c) above;

fourth, if none of the Company or the Subsidiary Guarantors is under any further actual or contingent liability under any Secured Party Document, in payment to any person to whom the Shared Security Agent is obliged to pay in priority to any of the Company or the Subsidiary Guarantors; and

fifth, the balance, if any, in payment to the Company or the relevant Subsidiary Guarantor.

The Trustee and the Shared Security Agent may decline to foreclose on the Collateral or exercise remedies available if it does not receive indemnification and/or security to its satisfaction. In addition, the Trustee’s ability to foreclose on the Collateral may be subject to lack of perfection, the consent of third parties, prior Liens and practical problems associated with the realization of the Trustee’s Liens on the Collateral. Neither the Trustee nor any of its officers, directors, employees, attorneys or agents will be responsible or liable for the existence, genuineness, value or protection of any Collateral securing the Notes, for the legality, enforceability, effectiveness or sufficiency of the Security Documents or Intercreditor Agreement, for the creation, perfection, priority, sufficiency or protection of any of the Liens, or for any defect or deficiency as to any such matters, or for any failure to demand, collect, foreclose or realize upon or otherwise enforce any of the Liens or Security Documents or any delay in doing so.

The Security Documents provide that the Company and the Subsidiary Guarantor Pledgors will indemnify the Trustee, the Shared Security Agent or any of their respective officers, directors, employees, attorneys or agents for all liabilities, obligations, losses, damages, penalties, actions,

judgments, suits, costs, claims, expenses or disbursements of any kind imposed against the Trustee or the Shared Security Agent arising out of the Security Documents except to the extent that any of the foregoing are finally judicially determined to have resulted from the gross negligence or willful misconduct of the Trustee or the Shared Security Agent.

This section, “– Enforcement,” shall be subject to any amendments to the Security Documents or the Indenture to permit the creation of Liens on the Collateral to secure Permitted Pari Passu Secured Indebtedness in accordance with “– Permitted Pari Passu Secured Indebtedness” above.

Release of Security

The security created in respect of the Collateral granted under the Security Documents may be released in certain circumstances, including:

- upon repayment in full of the Notes;
- upon defeasance and discharge of the Notes as provided below under the caption “– Defeasance – Defeasance and Discharge”;
- upon certain dispositions of the Collateral in compliance with the covenants described under “– Certain Covenants – Limitation on Sales and Issuances of Capital Stock in Restricted Subsidiaries” or “– Certain Covenants – Limitation on Asset Sales” or in accordance with the provision described under “– Certain Covenants – Consolidation, Merger and Sale of Assets”;
- with respect to security granted by a Subsidiary Guarantor Pledgor, upon the release of the Subsidiary Guarantee of such Subsidiary Guarantor Pledgor in accordance with the terms of the Indenture;
- with respect to Capital Stock of a Subsidiary Guarantor constituting Collateral, upon the transfer of all such Capital Stock to the Company or Wholly Owned Subsidiary Guarantor (or a Wholly Owned Restricted Subsidiary that becomes a Subsidiary Guarantor concurrently with the transaction), *provided* that concurrently or immediately subsequent to such transfer, the transferee creates a first priority Lien on such Capital Stock (subject to Permitted Liens and the Intercreditor Agreement) for the benefit of the Holders;
- with respect to Capital Stock of a Ukhaa Khudag Restricted Subsidiary constituting Collateral, if such Collateral no longer constitutes Capital Stock of a Ukhaa Khudag Restricted Subsidiary; or
- in whole or in part, with the requisite consent of the Holders in accordance with the provisions described under “– Amendments and Waivers.”

Further Issues

Subject to the covenants described below, the Company may, from time to time, without notice to or the consent of the Holders, create and issue Additional Notes having the same terms and conditions as the Notes (including the benefit of the Subsidiary Guarantees and the Collateral) in all respects (or in all respects except for the issue date, issue price and the date and/or amount of the first payment of interest on them and, to the extent necessary, certain temporary securities law transfer restrictions) (a “Further Issue”) so that such Additional Notes may be consolidated and form a single class with the previously outstanding Notes and vote together as one class on all matters with respect to the Notes; *provided* that the issuance of any such Additional Notes shall then be permitted under the “– Certain Covenants – Limitation on Indebtedness” covenant described below and the other provisions of the Indenture; and *provided further* that Additional Notes will not be issued under the same CUSIP, ISIN or Common Code as the Notes unless such Additional Notes are fungible with the Notes for United States federal income tax purposes.

In addition, the issuance of any Additional Notes by the Company will be subject to the following conditions:

- (1) the Additional Notes shall be secured and guaranteed under the Indenture and the Subsidiary Guarantees and any other Security Documents to the same extent and on the same basis as the Notes outstanding on the date the Additional Notes are issued; and
- (2) the Company shall have delivered to the Trustee an Officers' Certificate, in form and substance satisfactory to the Trustee, confirming that the issuance of the Additional Notes complies with the Indenture and is permitted by the Indenture.

Optional Redemption

At any time and from time to time on or after March 29, 2015, the Company may at its option redeem the Notes, in whole or in part, at a redemption price equal to the percentage of principal amount set forth below, plus accrued and unpaid interest, if any, on the Notes redeemed, to (but not including) the applicable redemption date, if redeemed during the 12-month period commencing on March 29 of any year set forth below:

Period	Redemption Price
2015	104.4375%
2016	102.2188%

At any time and from time to time prior to March 29, 2015, the Company may at its option redeem the Notes, in whole or in part, at a redemption price equal to 100% of the principal amount of the Notes plus the Applicable Premium as of, and accrued and unpaid interest on the Notes redeemed, if any, to (but not including), the redemption date.

In addition, at any time and from time to time prior to March 29, 2015, the Company may at its option redeem up to 35% of the aggregate principal amount of the Notes with the Net Cash Proceeds of one or more sales of Common Stock of the Company in an Equity Offering at a redemption price of 108.875% of the principal amount of the Notes, plus accrued and unpaid interest on the Notes redeemed, if any, to (but not including) the redemption date; *provided* that at least 65% of the aggregate principal amount of the Notes issued on the Original Issue Date remains outstanding after each such redemption and any such redemption takes place within 60 days after the closing of the related Equity Offering.

The Company will give not less than 30 days' nor more than 60 days' notice of any redemption. If fewer than all of the Notes are to be redeemed, the Trustee or the Registrar will select Notes for redemption as follows:

- if the Notes are listed on any securities exchange, in compliance with the requirements of the principal securities exchange on which the Notes are then listed; or
- if the Notes are not listed on any securities exchange, on a pro rata basis, by lot or by such other method as the Trustee or the Registrar deems fair and appropriate, and in accordance with the procedures of DTC.

However, no Note of US\$200,000 in principal amount or less shall be redeemed in part. If any Note is to be redeemed in part only, the notice of redemption relating to such Note will state the portion of the principal amount to be redeemed. In the case of Certificated Notes, a new Note in

principal amount equal to the unredeemed portion will be issued upon cancellation of the original Note. On and after the redemption date, interest will cease to accrue on Notes or portions of them called for redemption.

Repurchase of Notes upon a Change of Control

Not later than 30 days following a Change of Control, the Company will make an Offer to Purchase all outstanding Notes (a “Change of Control Offer”) at a purchase price equal to 101% of the principal amount thereof plus accrued and unpaid interest, if any, to (but not including) the Offer to Purchase Payment Date.

The Company has agreed in the Indenture that it will timely repay all Indebtedness or obtain consents as necessary under, or terminate, agreements or instruments that would otherwise prohibit a Change of Control Offer required to be made pursuant to the Indenture. Notwithstanding this agreement of the Company, it is important to note that if the Company is unable to repay (or cause to be repaid) all of the Indebtedness, if any, that would prohibit repurchase of the Notes or is unable to obtain the requisite consents of the holders of such Indebtedness, or terminate any agreements or instruments that would otherwise prohibit a Change of Control Offer, it would continue to be prohibited from purchasing the Notes. In that case, the failure by the Company to purchase tendered Notes would constitute an Event of Default under the Indenture.

Certain of the events constituting a Change of Control under the Notes will also constitute an event of default under certain other debt instruments of the Company or its Subsidiaries. Future debt of the Company may also (i) prohibit the Company from purchasing Notes in the event of a Change of Control, (ii) provide that a Change of Control is a default or (iii) require repurchase of such debt upon a Change of Control. Moreover, the exercise by the Holders of their right to require the Company to purchase the Notes could cause a default under other Indebtedness, even if the Change of Control itself does not, due to the financial effect of the purchase on the Company. The ability of the Company to pay cash to the Holders following the occurrence of a Change of Control may be limited by the Company’s then existing financial resources. There can be no assurance that sufficient funds will be available when necessary to make the required purchase of the Notes. See “Risk Factors – Risks Relating to the Notes – We may not be able to repurchase the Notes upon a Change of Control.”

The definition of Change of Control includes a phrase “all or substantially all” as used with respect to the assets of the Company. No precise definition of the phrase has been established under applicable law, and the phrase will likely be interpreted under applicable law of the relevant jurisdictions based on particular facts and circumstances. Accordingly, there may be a degree of uncertainty as to the ability of a Holder to require the Company to repurchase such Holder’s Notes as a result of a sale of less than all the assets of the Company to another person or group.

Notwithstanding the above, the Company will not be required to make a Change of Control Offer following a Change of Control if a third party makes the Change of Control Offer in the same manner, at the same times and otherwise in compliance with the requirements set forth in the Indenture applicable to a Change of Control Offer made by the Company and purchases all Notes validly tendered and not withdrawn under such Change of Control Offer.

Except as described above with respect to a Change of Control, the Indenture does not contain provisions that permit the Holders to require that the Company purchase or redeem the Notes in the event of a takeover, recapitalization or similar transaction.

No Mandatory Redemption or Sinking Fund

There will be no mandatory redemption or sinking fund payments for the Notes.

Additional Amounts

All payments of principal of, and premium (if any) and interest on, the Notes or under the Subsidiary Guarantees will be made without withholding or deduction for, or on account of, any present or future taxes, duties, assessments or governmental charges of whatever nature imposed or levied by or within any jurisdiction in which the Company, a Surviving Person (as defined under the caption “– Consolidation, Merger and Sale of Assets”) or an applicable Subsidiary Guarantor is organized or resident for tax purposes or any jurisdiction from or through which payment is made (or any political subdivision or taxing authority thereof or therein) (each, as applicable, a “Relevant Jurisdiction”), unless such withholding or deduction is required by law or by regulation or governmental policy having the force of law. In the event that any such withholding or deduction is so required, the Company, a Surviving Person or the applicable Subsidiary Guarantor, as the case may be, will pay such additional amounts (“Additional Amounts”) as will result in receipt by the Holder of each Note of such amounts payable under the Notes or the Subsidiary Guarantees as would have been received by such Holder had no such withholding or deduction been required, except that no Additional Amounts shall be payable:

- (a) for or on account of:
 - (i) any tax, duty, assessment or other governmental charge that would not have been imposed but for:
 - (A) the existence of any present or former connection between the Holder or beneficial owner of such Note and the Relevant Jurisdiction other than merely holding such Note or the receipt of payments thereunder or under a Subsidiary Guarantee, as the case may be, including, without limitation, such Holder or beneficial owner being or having been a national, domiciliary or resident of such Relevant Jurisdiction or treated as a resident thereof or being or having been physically present or engaged in a trade or business therein or having or having had a permanent establishment therein;
 - (B) the presentation of such Note (in cases in which presentation is required) more than 30 days after the later of the date on which the payment of the principal of, premium, if any, and interest on, such Note became due and payable pursuant to the terms thereof or was made or duly provided for, except to the extent that the Holder thereof would have been entitled to such Additional Amounts if it had presented such Note for payment on any date within such 30 day period;
 - (C) the failure of the Holder or beneficial owner to comply with a timely request of the Company, a Surviving Person or any Subsidiary Guarantor addressed to the Holder to provide information concerning such Holder’s or beneficial owner’s nationality, residence, identity or connection with any Relevant Jurisdiction, if and to the extent that due and timely compliance with such request would have reduced or eliminated any withholding or deduction as to which Additional Amounts would have otherwise been payable to the Holder; or
 - (D) the presentation of such Note (in cases in which presentation is required) for payment in the Relevant Jurisdiction, unless such Note could not have been presented for payment elsewhere;
 - (ii) any estate, inheritance, gift, sale, transfer, personal property or similar tax, assessment or other governmental charge;

- (iii) any withholding or deduction that is imposed or levied on a payment to an individual and is required to be made pursuant to European Council Directive 2003/48/EC or any other Directive implementing the conclusions of the ECOFIN Council meeting of November 26-27, 2000 on the taxation of savings income or any law implementing or complying with, or introduced in order to conform to, such Directive;
 - (iv) any tax, duty, assessment or other governmental charge which is payable other than by deduction or withholding from payments of principal of or interest or any premium on the Notes or payments under the Subsidiary Guarantees; or
 - (v) any combination of taxes, duties, assessments or other governmental charges referred to in the preceding clauses (i), (ii), (iii) or (iv); or
- (b) to a Holder that is a fiduciary, partnership or person other than the sole beneficial owner of any payment, to the extent that such payment would be required to be included for tax purposes in the income under the laws of a Relevant Jurisdiction of a beneficiary or settlor with respect to the fiduciary, or a member of that partnership or a beneficial owner who would not have been entitled to such Additional Amounts had that beneficiary, settlor, member or beneficial owner been the Holder thereof.

As a result of these provisions, there are circumstances in which taxes could be withheld or deducted but Additional Amounts would not be payable to some or all Holders of Notes.

Whenever there is mentioned in any context the payment of principal, premium or interest in respect of any Note or any Subsidiary Guarantee, such mention shall be deemed to include payment of Additional Amounts provided for in the Indenture to the extent that, in such context, Additional Amounts are, were or would be payable in respect thereof.

Redemption for Tax Reasons

The Notes may be redeemed, at the option of the Company or a Surviving Person (as defined under the caption “– Consolidation, Merger and Sale of Assets”), as a whole but not in part, upon giving not less than 30 days’ nor more than 60 days’ notice to the Holders (which notice shall be irrevocable), at a redemption price equal to 100% of the principal amount thereof, together with accrued and unpaid interest (including any Additional Amounts), if any, to the date fixed by the Company or the Surviving Person, as the case may be, for redemption (the “Tax Redemption Date”) if, as a result of:

- (1) any change in, or amendment to, the laws (or any regulations or rulings promulgated thereunder) of the jurisdiction in which the Company or a Surviving Person is organized or resident for tax purposes (or any political subdivision or taxing authority thereof or therein) (a “Relevant Taxing Jurisdiction”) affecting taxation; or
- (2) any change in the existing official position, or the stating of an official position, regarding the application or interpretation of such laws, regulations or rulings (including a holding, judgment or order by a court of competent jurisdiction),

which change or amendment becomes effective on or after (i) with respect to the Company, the Original Issue Date or (ii) with respect to a Surviving Person organized or resident for tax purposes in a jurisdiction that was not a Relevant Taxing Jurisdiction prior to the date on which the Surviving Person becomes a Surviving Person, the date such Surviving Person becomes a Surviving Person with respect to any payment due or to become due under the Notes or the Indenture, the Company or such

Surviving Person is, or on the next Interest Payment Date would be, required to pay Additional Amounts, and such requirement cannot be avoided by the taking of reasonable measures by the Company or such Surviving Person; *provided* that no such notice of redemption shall be given earlier than 90 days prior to the earliest date on which the Company or such Surviving Person would be obligated to pay such Additional Amounts if a payment in respect of the Notes were then due.

Prior to the mailing of any notice of redemption of the Notes pursuant to the foregoing, the Company or a Surviving Person, as the case may be, will deliver to the Trustee at least 30 days but not more than 60 days before the Tax Redemption Date:

- (1) an Officers' Certificate stating that such change or amendment referred to in the prior paragraph has occurred, describing the facts related thereto and stating that such requirement cannot be avoided by the Company or such Surviving Person, as the case may be, by taking reasonable measures available to it; and
- (2) an Opinion of Counsel or an opinion of a tax consultant, in either case, of recognized standing with respect to tax matters of the Relevant Taxing Jurisdiction, stating that the requirement to pay such Additional Amounts results from such change or amendment referred to in the prior paragraph.

The Trustee shall accept such certificate and opinion as sufficient evidence of the satisfaction of the conditions precedent described above, in which event it shall be conclusive and binding on the Holders.

Any Notes that are redeemed will be cancelled.

Open Market Purchases and Cancellation of Notes

The Company may purchase Notes in the open market or by tender or by any other means at any price, so long as such acquisition does not otherwise violate the terms of the Indenture, the Security Documents or the Intercreditor Agreement, if any; *provided* that all Notes redeemed or repurchased by the Company or any of its affiliates may not be reissued or resold.

Certain Covenants

Set forth below are summaries of certain covenants contained in the Indenture.

Limitation on Indebtedness

- (a) The Company will not, and will not permit any Restricted Subsidiary to, Incur any Indebtedness (including Acquired Indebtedness); *provided* that the Company and any Subsidiary Guarantor or any Finance Subsidiary may Incur Indebtedness (including Acquired Indebtedness) and any Non-Guarantor Restricted Subsidiary may Incur Permitted Subsidiary Indebtedness (including Acquired Indebtedness) if, after giving effect to the Incurrence of such Indebtedness or Permitted Subsidiary Indebtedness, as applicable, and the receipt and application of the proceeds therefrom, the Leverage Ratio would be positive but less than 3.5 to 1.0 until December 31, 2014 and 3.0 to 1.0 thereafter. Notwithstanding the foregoing, the Company will not permit any Restricted Subsidiary to Incur any Disqualified Stock (other than Disqualified Stock held by the Company or a Subsidiary Guarantor, so long as it is so held).
- (b) Notwithstanding the foregoing, the Company and, to the extent provided below, any Restricted Subsidiary, may Incur each and all of the following ("Permitted Indebtedness"):

- (1) Indebtedness under the Notes (excluding any Additional Notes and any Permitted Pari Passu Secured Indebtedness of the Company) and each Subsidiary Guarantee;
- (2) any Pari Passu Subsidiary Guarantee by any Subsidiary Guarantor or any guarantee by the Company of any Permitted Pari Passu Secured Indebtedness;
- (3) Indebtedness of the Company or any Restricted Subsidiary outstanding on the Original Issue Date excluding Indebtedness permitted under clause (b)(4) of this covenant;
- (4) Indebtedness of the Company or any Restricted Subsidiary owed to the Company or any Restricted Subsidiary; *provided* that (x) any event which results in any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any subsequent transfer of such Indebtedness (other than to the Company or any Restricted Subsidiary) shall be deemed, in each case, to constitute an Incurrence of such Indebtedness not permitted by this clause (b)(4), and (y) if the Company or any Subsidiary Guarantor is the obligor on such Indebtedness (and such Indebtedness is not owed to the Company, a Subsidiary Guarantor or a Finance Subsidiary), such Indebtedness must be unsecured and expressly be subordinated in right of payment to the Notes, in the case of the Company, or the Subsidiary Guarantee of such Subsidiary Guarantor, in the case of a Subsidiary Guarantor;
- (5) Indebtedness (“Permitted Refinancing Indebtedness”) issued in exchange for, or the net proceeds of which are used, to refinance, refund, replace, exchange, renew, repay, defease, discharge or extend (collectively, “refinance” and “refinances” and “refinanced” shall have a correlative meaning), then outstanding Indebtedness (or Indebtedness repaid substantially concurrently with but in any case before the Incurrence of such Permitted Refinancing Indebtedness) Incurred under clause (a) or clause (b)(1), (b)(2), (b)(3), (b)(7), (b)(14) or (b)(15)(i) of this covenant and any refinancings thereof in an amount not to exceed the amount so refinanced (plus premiums, accrued interest, fees and expenses); *provided* that (A) Indebtedness the proceeds of which are used to refinance the Notes or Indebtedness that is *pari passu* with, or subordinated in right of payment to, the Notes or a Subsidiary Guarantee shall only be permitted under this clause (b)(5) if (x) in case the Notes are refinanced in part or the Indebtedness to be refinanced is *pari passu* with the Notes or a Subsidiary Guarantee, such new Indebtedness, by its terms or by the terms of any agreement or instrument pursuant to which such new Indebtedness is issued or remains outstanding, is expressly made *pari passu* with, or subordinate in right of payment to, the remaining Notes or such Subsidiary Guarantee or (y) in case the Indebtedness to be refinanced is subordinated in right of payment to the Notes or a Subsidiary Guarantee, such new Indebtedness, by its terms or by the terms of any agreement or instrument pursuant to which such new Indebtedness is issued or remains outstanding, is expressly made subordinate in right of payment to the Notes or such Subsidiary Guarantee at least to the extent that the Indebtedness to be refinanced is subordinated to the Notes or such Subsidiary Guarantee, (B) such new Indebtedness, determined as of the date of Incurrence of such new Indebtedness, does not mature prior to the earlier of the final maturity date of the Notes and the Stated Maturity of the Indebtedness to be refinanced, and the Average Life of such new Indebtedness is at least equal to the remaining Average Life of the Indebtedness to be refinanced or more than 180 days after the final maturity date of the Notes and (C) in no event may Indebtedness of the Company or any Subsidiary Guarantor be refinanced pursuant to this clause (b)(5) by means of any Indebtedness of any Restricted Subsidiary that is not a Subsidiary Guarantor;

- (6) Indebtedness Incurred by the Company or any Restricted Subsidiary pursuant to Hedging Obligations designed solely to protect the Company or any Restricted Subsidiary from fluctuations in interest rates, currencies or the price of commodities and not for speculation;
- (7) Indebtedness Incurred by the Company or any Restricted Subsidiary (A) representing Capitalized Lease Obligations or (B) for the purpose of financing (i) all or any part of the purchase price of real or personal property, assets or equipment to be used in the ordinary course of business by the Company or a Restricted Subsidiary in the Permitted Business, including any such purchase through the acquisition of Capital Stock of any Person that owns such real or personal property, assets or equipment which will, upon such acquisition, become a Restricted Subsidiary or (ii) all or any part of the purchase price or the cost of development, construction or improvement of real or personal property, assets or equipment to be used in the ordinary course of business by the Company or a Restricted Subsidiary in the Permitted Business; *provided, however*, that in each case (A) the aggregate principal amount of such Indebtedness shall not exceed such purchase price or cost, (B) such Indebtedness shall be Incurred no later than 180 days after the acquisition of such property, asset or equipment or completion of such development, construction or improvement, and (C) on the date of the Incurrence of such Indebtedness and after giving effect thereto, the aggregate principal amount outstanding of all such Indebtedness (including Capitalized Lease Obligations) permitted by this clause (b)(7) (together with refinancings thereof) does not exceed an amount equal to the greater of (x) US\$100 million (or the Dollar Equivalent thereof) and (y) 5% of Total Assets;
- (8) Indebtedness Incurred by the Company or any Restricted Subsidiary with respect to workers' compensation claims or claims arising under similar legislation, or in connection with self-insurance obligations or similar requirements, or bid, performance or surety bonds (in each case other than for an obligation for borrowed money);
- (9) Indebtedness Incurred by the Company or any Restricted Subsidiary constituting reimbursement obligations with respect to letters of credit or trade guarantees, performance and surety bonds and similar instruments issued in the ordinary course of business to the extent that such letters of credit or trade guarantees, performance and surety bonds and similar instruments are not drawn upon or, if drawn upon, to the extent such drawing is reimbursed no later than the 30 days following receipt by the Company or such Restricted Subsidiary, as applicable, of a demand for reimbursement;
- (10) Indebtedness of the Company or any Restricted Subsidiary arising from agreements providing for indemnification, adjustment of purchase price, earn-out or other similar obligations, or from guarantees or letters of credit, surety bonds or performance bonds securing any obligation of the Company or any Restricted Subsidiary pursuant to such agreements, in any case, Incurred in connection with the disposition of any business, assets or Restricted Subsidiary (other than guarantees of Indebtedness Incurred by any Person acquiring all or any portion of such business, assets or Restricted Subsidiary for the purpose of financing such acquisition); *provided* that the maximum aggregate liability in respect of all such Indebtedness shall at no time exceed the gross proceeds actually received by the Company or any Restricted Subsidiary from the disposition of such business, assets or Restricted Subsidiary;
- (11) Indebtedness of the Company or any Restricted Subsidiary arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn

against insufficient funds in the ordinary course of business; *provided, however*, that such Indebtedness is extinguished within five Business Days of Incurrence;

- (12) guarantees by the Company or any Restricted Subsidiary of Indebtedness of the Company or any Restricted Subsidiary that was permitted to be Incurred by another provision of this covenant;
 - (13) Indebtedness Incurred by the Company and any Restricted Subsidiary under the Credit Facilities (including amounts under the New Standard Bank Facilities Agreement) in an aggregate principal amount at any one time outstanding not to exceed the greater of (x) US\$420.0 million (or Dollar Equivalent thereof) and (y) 15% of Total Assets, in either case, less the aggregate amount of all Net Proceeds of Asset Sales applied by the Company or any Restricted Subsidiary to permanently repay any such Indebtedness pursuant to the covenant described under the caption “– Limitation on Asset Sales”;
 - (14) Indebtedness of the Company or any Restricted Subsidiary in an aggregate principal amount outstanding at any time (together with refinancings thereof) not to exceed US\$20.0 million (or the Dollar Equivalent thereof);
 - (15) (i) so long as the Railway Entities are Restricted Subsidiaries, Railway Project Indebtedness in an aggregate principal amount at any one time outstanding (together with refinancings thereof) not to exceed US\$500 million (or the Dollar Equivalent thereof) (and any Railway Completion Guarantee in respect of such Railway Project Indebtedness) and (ii) if at any time any Railway Entity that owns, directly or indirectly, the railway tracks of the Railway Project does not constitute a Restricted Subsidiary as a result of the sale, transfer or other disposition of the majority of the equity interests in such Railway Entity to the Government of Mongolia or Persons controlled by the Government of Mongolia in compliance with clause (k) of the definition of “Asset Sale,” any Railway Completion Guarantee in respect of Railway Project Indebtedness in an aggregate principal amount at any time outstanding not to exceed an amount equal to (A) US\$500 million (or the Dollar Equivalent thereof) multiplied by (B) the percentage of the direct equity interest in such Railway Entity owned by the Company or the relevant Restricted Subsidiary (it being understood that any outstanding Railway Completion Guarantee in excess of such amount shall be reduced to be in compliance with this clause (15)(ii)); and
 - (16) (i) Indebtedness of a Finance Subsidiary that is guaranteed by the Company to the extent the Company is permitted to Incur such Indebtedness under this covenant and (ii) any guarantee by a Subsidiary Guarantor of any Indebtedness of a Finance Subsidiary so guaranteed by the Company.
- (c) For purposes of determining compliance with this “Limitation on Indebtedness” covenant, in the event that an item of Indebtedness meets the criteria of more than one of the types of Indebtedness described above, including under the proviso in the first sentence of clause (a) of this covenant, the Company, in its sole discretion, shall classify (and divide) and, other than with respect to Indebtedness Incurred under clause (b)(13) of this covenant, from time to time may reclassify (and divide), such item of Indebtedness.
 - (d) For the avoidance of doubt, Indebtedness under the Existing Credit Facilities and the New Standard Bank Facilities Agreement (i) will be deemed to have been incurred on the Original Issue Date as “Credit Facilities” under clause (b)(13) of this covenant, (ii) will not

be deemed Indebtedness outstanding on the Original Issue Date for purposes of clauses (b)(3) and (b)(5) of this covenant (but may be refinanced as “Credit Facilities” in accordance with clause (b)(13) thereof) and (iii) may not be otherwise reclassified for purposes of determining compliance with the covenant described under the caption “Limitation on Incurrence of Indebtedness.”

- (e) For purposes of determining compliance with any U.S. dollar denominated restriction on the Incurrence of Indebtedness under this “Limitation on Indebtedness” covenant, the Dollar Equivalent principal amount of Indebtedness denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was Incurred, in the case of term Indebtedness, or first committed, in the case of revolving credit Indebtedness; *provided* that if such Indebtedness is Incurred to refinance other Indebtedness denominated in a foreign currency, and such refinancing would cause the applicable U.S. dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such U.S. dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed the principal amount of such Indebtedness being refinanced. Notwithstanding any other provision of this covenant, the maximum amount of Indebtedness that may be Incurred pursuant to this covenant shall not be deemed to be exceeded solely as a result of fluctuations in the exchange rates of currencies. The principal amount of any Indebtedness Incurred to refinance other Indebtedness, if Incurred in a different currency from the Indebtedness being refinanced, shall be calculated based on the currency exchange rate applicable to the currencies in which such refinancing Indebtedness is denominated that is in effect on the date of such refinancing.

Limitation on Restricted Payments

The Company will not, and will not permit any Restricted Subsidiary to, directly or indirectly (the payments or any other actions described in clauses (a) through (d) below being collectively referred to as “Restricted Payments”):

- (a) declare or pay any dividend or make any distribution on or with respect to the Company’s or any Restricted Subsidiary’s Capital Stock (other than dividends or distributions payable solely in shares of the Company’s or any Restricted Subsidiary’s Capital Stock (other than Disqualified Stock or Preferred Stock) or in options, warrants or other rights to acquire shares of such Capital Stock) held by Persons other than the Company or any Restricted Subsidiary;
- (b) purchase, call for redemption or redeem, retire or otherwise acquire for value any shares of Capital Stock (including options, warrants or other rights to acquire such shares of Capital Stock) of the Company, any Restricted Subsidiary or any direct or indirect parent of the Company held by any Persons other than the Company or any Restricted Subsidiary;
- (c) make any voluntary or optional principal payment, or voluntary or optional redemption, repurchase, defeasance, or other acquisition or retirement for value, of Subordinated Indebtedness (excluding any intercompany Indebtedness between or among the Company and any Restricted Subsidiary); or
- (d) make any Investment, other than a Permitted Investment;

if, at the time of, and after giving effect to, the proposed Restricted Payment:

- (A) a Default has occurred and is continuing or would occur as a result of such Restricted Payment;
- (B) the Company could not Incur at least US\$1.00 of Indebtedness under the proviso in the first sentence of clause (a) of the covenant described under the caption “– Limitation on Indebtedness”; or
- (C) such Restricted Payment, together with the aggregate amount of all Restricted Payments made by the Company and its Restricted Subsidiaries after the Original Issue Date, shall exceed the sum (without duplication) of:
 - (i) 50% of the aggregate amount of the Consolidated Net Income of the Company (or, if the Consolidated Net Income is a loss, minus 100% of the amount of such loss) accrued on a cumulative basis during the period (taken as one accounting period) beginning on the first day of the semi-annual fiscal period during which the Notes are first issued and ending on the last day of the Company’s most recently ended semi-annual fiscal period for which consolidated financial statements of the Company (which the Company shall use its reasonable best efforts to compile in a timely manner) are available (which may include internal consolidated financial statements); plus
 - (ii) 100% of the aggregate Net Cash Proceeds received by the Company after the Original Issue Date as a capital contribution to its common equity or from the issuance and sale of its Capital Stock (other than Disqualified Stock) to a Person who is not a Subsidiary of the Company, including any such Net Cash Proceeds received upon (x) the conversion of any Indebtedness (other than Subordinated Indebtedness) of the Company into Capital Stock (other than Disqualified Stock) of the Company, or (y) the exercise by a Person who is not a Subsidiary of the Company of any options, warrants or other rights to acquire Capital Stock of the Company (other than Disqualified Stock), in each case after deducting the amount of any such Net Cash Proceeds used to redeem, repurchase, defease or otherwise acquire or retire for value any Subordinated Indebtedness or Capital Stock of the Company; plus
 - (iii) an amount equal to the net reduction in Investments (other than reductions in Permitted Investments) that were made after the Original Issue Date in any Person resulting from (w) payments of interest on Indebtedness, dividends or repayments of loans or advances by such Person, in each case, to the Company or any Restricted Subsidiary (except, in each case, to the extent any such payment or proceeds are included in the calculation of Consolidated Net Income), (x) the unconditional release of a guarantee provided by the Company or any Restricted Subsidiary after the Original Issue Date of an obligation of another Person, (y) the net cash proceeds from the sale of any such Investment (except to the extent such proceeds are included in the calculation of Consolidated Net Income) or (z) from redesignations of Unrestricted Subsidiaries as Restricted Subsidiaries, not to exceed, in each case, the amount of Investments made by the Company or a Restricted Subsidiary after the Original Issue Date in any such Person; plus
 - (iv) the amount by which Indebtedness of the Company or any Restricted Subsidiary is reduced on the Company’s consolidated balance sheet upon the conversion or exchange (other than by a Subsidiary of the Company) subsequent to the Original Issue Date of any Indebtedness of the Company or any Restricted Subsidiary convertible or exchangeable into Capital Stock (other than Disqualified Stock) of the

Company (less the amount of any cash, or the Fair Market Value of any other property, distributed by the Company or any Restricted Subsidiary upon such conversion or exchange).

The foregoing provision shall not be violated by reason of:

- (1) the payment of any dividend or redemption of any Capital Stock within 60 days after the related date of declaration or call for redemption if, at said date of declaration or call for redemption, such payment or redemption would comply with the preceding paragraph;
- (2) the redemption, repurchase, defeasance or other acquisition or retirement for value of Subordinated Indebtedness of the Company or any Subsidiary Guarantor with the Net Cash Proceeds of, or in exchange for, a substantially concurrent Incurrence of Permitted Refinancing Indebtedness;
- (3) the redemption, repurchase or other acquisition of Capital Stock of the Company or any Subsidiary Guarantor (or options, warrants or other rights to acquire such Capital Stock) in exchange for, or out of the Net Cash Proceeds of a substantially concurrent capital contribution or sale (other than to a Subsidiary of the Company) of, shares of Capital Stock (other than Disqualified Stock) of the Company (or options, warrants or other rights to acquire such Capital Stock); *provided* that the amount of any such Net Cash Proceeds that are utilized for any such Restricted Payment will be excluded from clause (C)(ii) of the preceding paragraph;
- (4) the redemption, repurchase, defeasance or other acquisition or retirement for value of Subordinated Indebtedness of the Company or any Subsidiary Guarantor in exchange for, or out of the Net Cash Proceeds of, a substantially concurrent capital contribution or sale (other than to a Subsidiary of the Company) of, shares of Capital Stock (other than Disqualified Stock) of the Company (or options, warrants or other rights to acquire such Capital Stock); *provided* that the amount of any such Net Cash Proceeds that are utilized for any such Restricted Payment will be excluded from clause (C)(ii) of the preceding paragraph;
- (5) (x) the payment of any dividends or distributions declared, paid or made by a Restricted Subsidiary payable or (y) the redemption, repurchase, defeasance or other acquisition by a Restricted Subsidiary of any shares of its Capital Stock (including options, warrants or other rights to acquire such shares of Capital Stock), in each case on a pro rata basis or on a basis more favorable to the Company, to (or by) all holders of any class of Capital Stock of such Restricted Subsidiary, a majority of which is held, directly or indirectly through Restricted Subsidiaries, by the Company;
- (6) a Permitted Investment under clause (1) of the definition thereof in the Capital Stock of a Restricted Subsidiary held by a minority shareholder which Investment increases the proportion of the Capital Stock of such Restricted Subsidiary held, directly or indirectly, by the Company;
- (7) the repurchase, redemption or other acquisition or retirement for value of any Capital Stock (including options, warrants or other rights to acquire such shares of Capital Stock) of the Company or any Restricted Subsidiary held by an employee benefit plan of the Company or any Restricted Subsidiary, any current or former officer, director, consultant, or employee of the Company or any Restricted Subsidiary (or permitted transferees, authorized representatives, estates or heirs of any of the foregoing), *provided* that the aggregate price

paid for all such repurchased, redeemed, acquired or retired Capital Stock may not exceed US\$1.0 million (or the Dollar Equivalent using the Original Issue Date as the date of determination) in any twelve-month period;

- (8) any purchase, repurchase, redemption, defeasance or other acquisition or retirement for value of Disqualified Stock of the Company or Preferred Stock of a Restricted Subsidiary made by exchange for or out of the Net Cash Proceeds of the substantially concurrent sale of Disqualified Stock of the Company or Preferred Stock of a Restricted Subsidiary, as the case may be, that, in each case, is permitted to be incurred pursuant to the covenant described under “– Limitation on Indebtedness” and that in each case constitutes Permitted Refinancing Indebtedness; *provided* that the amount of any such Net Cash Proceeds that are utilized for any such Restricted Payment will be excluded from clause (C) of the preceding paragraph;
- (9) repurchases of Capital Stock deemed to occur upon the exercise of stock options if such Capital Stock represents a portion of the exercise price thereof;
- (10) cash payments in lieu of the issuance of fractional shares in connection with the exercise of warrants, options or other securities convertible into or exchangeable for Capital Stock of the Company; provided that the amount of payments made pursuant to this clause does not exceed US\$2.0 million (or the Dollar Equivalent thereof) in any calendar year; or
- (11) any Restricted Payment in an aggregate amount, taken together with all other Restricted Payments made in reliance on this clause (11), not to exceed US\$10.0 million (or the Dollar Equivalent thereof);

provided that, in the case of clause (2), (3), (4) or (8) above, no Default shall have occurred and be continuing or would occur as a consequence of the actions or payments set forth therein.

Each Restricted Payment permitted pursuant to clause (1) (but only to the extent that dividends are paid to Persons other than the Company or a Wholly Owned Restricted Subsidiary) of the preceding paragraph shall be included in calculating whether the conditions of clause (C) of the first paragraph of this “– Limitation on Restricted Payments” covenant have been met with respect to any subsequent Restricted Payments.

The amount of any Restricted Payments (other than cash) will be the Fair Market Value on the date of the Restricted Payment of the asset(s) or securities proposed to be transferred or issued by the Company or the Restricted Subsidiary, as the case may be, pursuant to the Restricted Payment. The value of any assets or securities that are required to be valued by this covenant will be the Fair Market Value. The Board of Directors’ determination of the Fair Market Value of a Restricted Payment or any such assets or securities must be based upon an opinion or appraisal issued by an accounting, appraisal or investment banking firm of recognized international standing if the Fair Market Value exceeds US\$10.0 million (or the Dollar Equivalent thereof).

Not later than the date of making any Restricted Payment in excess of US\$10.0 million (or the Dollar Equivalent thereof), the Company will deliver to the Trustee an Officers’ Certificate stating that such Restricted Payment is permitted and setting forth the basis upon which the calculations required by this “– Limitation on Restricted Payments” covenant were computed, together with a copy of any fairness opinion or appraisal required by the Indenture.

Limitation on Dividend and Other Payment Restrictions Affecting Restricted Subsidiaries

- (a) Except as provided below, the Company will not, and will not permit any Restricted Subsidiary to, create or otherwise cause or permit to exist or become effective any encumbrance or restriction on the ability of any Restricted Subsidiary to:
- (1) pay dividends or make any other distributions on any Capital Stock of such Restricted Subsidiary owned by the Company or any other Restricted Subsidiary;
 - (2) pay any Indebtedness or other obligation owed to the Company or any other Restricted Subsidiary;
 - (3) make loans or advances to the Company or any other Restricted Subsidiary; or
 - (4) sell, lease or transfer any of its property or assets to the Company or any other Restricted Subsidiary.
- (b) The provisions of paragraph (a) do not apply to any encumbrances or restrictions:
- (1) existing in agreements as in effect on the Original Issue Date, or in the Notes, the Subsidiary Guarantees, the Indenture, the Security Documents, or under any Permitted Pari Passu Secured Indebtedness of the Company or any Subsidiary Guarantor Pledgor or Pari Passu Guarantee of any Subsidiary Guarantor, and any extensions, refinancings, renewals or replacements of any of the foregoing agreements; *provided* that the encumbrances and restrictions in any such extension, refinancing, renewal or replacement, taken as a whole, are no more restrictive in any material respect than those encumbrances or restrictions that are then in effect and that are being extended, refinanced, renewed or replaced;
 - (2) encumbrances or restrictions imposed by Indebtedness permitted to be Incurred under Credit Facilities or any guarantee thereof in accordance with the “– Limitation on Indebtedness” covenant; *provided* that in the case of any such encumbrances or restrictions imposed under any Credit Facilities, such encumbrances or restrictions are no more restrictive in any material respect taken as a whole than those imposed under any Existing Credit Facility and the New Standard Bank Facilities Agreement as of the Original Issue Date;
 - (3) existing under or by reason of applicable law, rule, regulation, license, concession, approval, decree or order issued by any government or any agency thereof;
 - (4) with respect to any Person or the property or assets of such Person acquired by the Company or any Restricted Subsidiary, existing at the time of such acquisition and not incurred in contemplation thereof, which encumbrances or restrictions are not applicable to any Person or the property or assets of any Person other than such Person or the property or assets of such Person so acquired, and any extensions, refinancings, renewals or replacements thereof; *provided* that the encumbrances and restrictions in any such extension, refinancing, renewal or replacement, taken as a whole, are no more restrictive in any material respect than those encumbrances or restrictions that are then in effect and that are being extended, refinanced, renewed or replaced;

- (5) that otherwise would be prohibited by the provision described in clause (a)(4) of this covenant if they arise, or are agreed to in the ordinary course of business, and that (x) restrict in a customary manner the subletting, assignment or transfer of any property or asset that is subject to a lease or license, (y) exist by virtue of any Lien on, or agreement to transfer, option or similar right with respect to any property or assets of the Company or any Restricted Subsidiary not otherwise prohibited by the Indenture or (z) do not relate to any Indebtedness, and that do not, individually or in the aggregate, detract from the value of property or assets of the Company or any Restricted Subsidiary in any manner material to the Company or any Restricted Subsidiary;
- (6) with respect to a Restricted Subsidiary and imposed pursuant to an agreement that has been entered into for the sale or disposition of all or substantially all of the Capital Stock of, or property and assets of, such Restricted Subsidiary that is permitted by the “– Limitation on Sales and Issuances of Capital Stock in Restricted Subsidiaries,” “– Limitation on Indebtedness” and “– Limitation on Asset Sales” covenants;
- (7) with respect to any Restricted Subsidiary and imposed pursuant to an agreement that has been entered into for the Incurrence of Indebtedness permitted under clause (a) in respect of Permitted Subsidiary Indebtedness or clause (b)(7), (b)(14) or (b)(15) of the “– Limitation on Indebtedness” covenant if, as determined by the Board of Directors, such encumbrances or restrictions (x) are customary for such types of agreements and (y) would not, at the time agreed to, be expected to materially and adversely affect the ability of the Company to make required payments on the Notes and any extensions, refinancings, renewals or replacements of any of the foregoing agreements; *provided* that the encumbrances and restrictions in any such extension, refinancing, renewal or replacement, taken as a whole, are no more restrictive in any material respect than those encumbrances or restrictions that are then in effect and that are being extended, refinanced, renewed or replaced;
- (8) restrictions on cash or other deposits or net worth imposed by customers under contracts entered into in the ordinary course of business;
- (9) existing in customary provisions in joint venture agreements and other similar agreements permitted under the Indenture, to the extent such encumbrance or restriction relates to the activities or assets of a party to such joint venture and if, as determined by the Board of Directors, (A) the encumbrances or restrictions are customary for a joint venture or similar agreement of that type and (B) the encumbrances or restrictions would not, at the time agreed to, be expected to materially and adversely affect the ability of the Company to make the required payments on the Notes; or
- (10) customary provisions contained in agreements evidencing Liens incurred in accordance with the “Limitation on Liens” covenant.

Limitation on Sales and Issuances of Capital Stock in Restricted Subsidiaries

The Company will not sell, and will not permit any Restricted Subsidiary, directly or indirectly, to issue or sell, any shares of Capital Stock of a Restricted Subsidiary (including options, warrants or other rights to purchase shares of such Capital Stock) except:

- (1) to the Company or a Restricted Subsidiary;
- (2) to the extent such Capital Stock represents director's qualifying shares or is required by applicable law to be held by a Person other than the Company or a Restricted Subsidiary;
- (3) the sale of all of the shares of Capital Stock of a Restricted Subsidiary if permitted under, and made in accordance with, the “– Limitation on Asset Sales” covenant;
- (4) the issuance or sale of Capital Stock of a Restricted Subsidiary (which remains a Restricted Subsidiary after any such issuance or sale); *provided* that the Company or such Restricted Subsidiary applies the Net Cash Proceeds of such issuance or sale, to the extent required, in accordance with the “– Limitation on Asset Sales” covenant; and
- (5) the issuance or sale of Capital Stock of a Restricted Subsidiary that does not remain a Restricted Subsidiary after such issuance or sale; *provided* that (a) the transaction complies with the “– Limitation on Restricted Payments” covenant and (b) the Company applies the Net Cash Proceeds of such issuance or sale, to the extent required, in accordance with the “– Limitation on Asset Sales” covenant.

Notwithstanding the foregoing, a Restricted Subsidiary may issue Common Stock to its shareholders on a pro rata basis or on a basis more favorable to the Company and its Restricted Subsidiaries.

Limitation on Issuances of Guarantees by Restricted Subsidiaries

The Company will not permit any Restricted Subsidiary which is not a Subsidiary Guarantor, directly or indirectly, to guarantee any Indebtedness (“Guaranteed Indebtedness”) of the Company or any other Subsidiary Guarantor, unless (1) such Restricted Subsidiary, as soon as practicable but in any event within five days thereafter, executes and delivers a supplemental indenture to the Indenture providing for an unsubordinated Subsidiary Guarantee of payment of the Notes by such Restricted Subsidiary, whereupon it shall become a “Subsidiary Guarantor” and (2) such Restricted Subsidiary waives and will not in any manner whatsoever claim, or take the benefit or advantage of, any rights of reimbursement, indemnity or subrogation or any other rights against the Company or any other Restricted Subsidiary as a result of any payment by such Restricted Subsidiary under its Subsidiary Guarantee until the Notes have been paid in full.

If the Guaranteed Indebtedness (A) ranks *pari passu* in right of payment with the Notes or any Subsidiary Guarantee, then the guarantee of such Guaranteed Indebtedness shall rank *pari passu* in right of payment with, or subordinated to, the Subsidiary Guarantee or (B) is subordinated in right of payment to the Notes or any Subsidiary Guarantee, then the guarantee of such Guaranteed Indebtedness shall be subordinated in right of payment to the Subsidiary Guarantee at least to the extent that the Guaranteed Indebtedness is subordinated to the Notes or the Subsidiary Guarantee.

Limitation on Transactions with Shareholders and Affiliates

The Company will not, and will not permit any Restricted Subsidiary to, directly or indirectly, enter into, renew or extend any transaction or arrangement (including, without limitation, the purchase, sale, lease or exchange of property or assets, or the rendering of any service) with (a) any holder (or any Affiliate of such holder) of 10% or more of any class of Capital Stock of the Company or (b) with any Affiliate of the Company (each an “Affiliate Transaction”), unless:

- (1) the Affiliate Transaction is on terms that are no less favorable to the Company or the relevant Restricted Subsidiary than those that would have been obtained in a comparable arm’s-length transaction by the Company or the relevant Restricted Subsidiary with a Person that is not such a holder or an Affiliate of the Company; and
- (2) the Company delivers to the Trustee:
 - (A) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of US\$5.0 million (or the Dollar Equivalent thereof), a Board Resolution set forth in an Officers’ Certificate certifying that such Affiliate Transaction complies with this covenant and such Affiliate Transaction has been approved by a majority of the disinterested members of the Board of Directors; and
 - (B) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of US\$15.0 million (or the Dollar Equivalent thereof), in addition to the Board Resolution required in clause (2)(A) above, an opinion issued by an accounting, appraisal or investment banking firm of recognized international standing as to the fairness to the Company or such Restricted Subsidiary of such Affiliate Transaction from a financial point of view.

The foregoing limitation does not limit, and shall not apply to:

- (1) any employment or compensation agreement (whether based in cash or securities), officer or director indemnification agreement, severance or termination agreement or any similar arrangement entered into by the Company or any Restricted Subsidiary with their respective officers, directors or employees and payments pursuant thereto, including the payment of reasonable fees and reimbursement of expenses, in each case in the ordinary course of business;
- (2) transactions between or among the Company and any Wholly Owned Restricted Subsidiary or between or among Wholly Owned Restricted Subsidiaries;
- (3) any Restricted Payment (other than a Permitted Investment) not prohibited by the “– Limitation on Restricted Payments” covenant;
- (4) any sale of Capital Stock (other than Disqualified Stock) of the Company;
- (5) the payment of compensation to officers and directors of the Company or any Restricted Subsidiary pursuant to an employee stock or share option scheme, so long as such scheme is in compliance with the listing rules of The Stock Exchange of Hong Kong Limited;

- (6) transactions with a Person (other than an Unrestricted Subsidiary of the Company) that is an Affiliate of the Company solely because the Company, directly or indirectly, owns Capital Stock in, or controls, such Person or solely because the Company or one of its Subsidiaries has the right to designate one or more members of the Board of Directors or similar governing body of such Person;
- (7) loans or advances to officers, directors or employees in the ordinary course of business not to exceed US\$5.0 million (or the Dollar Equivalent thereof) at any one time outstanding; and
- (8) any agreement between any Person and an Affiliate of such Person existing at the time such Person is acquired by or merged into the Company or any of its Restricted Subsidiaries; *provided* that such agreement was not entered into in contemplation of such acquisition or merger.

In addition, the requirements of clause (2) of the first paragraph of this covenant shall not apply to (i) Investments (other than Permitted Investments) not prohibited by the “– Limitation on Restricted Payments” covenant, (ii) transactions pursuant to agreements in effect on the Original Issue Date and described in this offering memorandum, or any amendment or modification or replacement thereof, so long as such amendment, modification or replacement is not materially more disadvantageous to the Company and its Restricted Subsidiaries than the original agreement in effect on the Original Issue Date, (iii) transactions with customers, clients, suppliers, contractors, other service providers or purchasers and sellers of goods and services or lessors or lessees and (iv) any transaction between or among the Company and any Restricted Subsidiary that is not a Wholly Owned Restricted Subsidiary; *provided* that (a) in the case of clause (iii), such transaction is entered into in the ordinary course of business and (b) in the case of clause (iv) none of the minority shareholders or minority partners of or in such Restricted Subsidiary is a Person described in clauses (a) or (b) of the first paragraph of this covenant (other than by reason of such minority shareholder or minority partner being an officer or director of such Restricted Subsidiary).

Limitation on Liens

The Company will not, and will not permit any Restricted Subsidiary to, directly or indirectly, incur, assume or permit to exist any Lien on the Collateral (other than Permitted Liens).

The Company will not, and will not permit any Restricted Subsidiary to, directly or indirectly, incur, assume or permit to exist any Lien of any nature whatsoever on any of its assets or properties of any kind, whether owned at the Original Issue Date or thereafter acquired, except Permitted Liens, unless the Notes are secured equally and ratably with (or, if the obligation or liability to be secured by such Lien is subordinated in right of payment to the Notes, prior to) the obligation or liability secured by such Lien, for so long as such obligation or liability is secured by such Lien.

Limitation on Sale and Leaseback Transactions

The Company will not, and will not permit any Restricted Subsidiary to, enter into any Sale and Leaseback Transaction; *provided* that the Company or any Restricted Subsidiary may enter into a Sale and Leaseback Transaction if:

- (a) the Company or any Restricted Subsidiary could have (1) Incurred Indebtedness in an amount equal to the Attributable Indebtedness relating to such Sale and Leaseback Transaction under the covenant described under the caption “– Limitation on Indebtedness” and (2) incurred a Lien to secure such Indebtedness pursuant to the covenant described under the caption “– Limitation on Liens,” in which case, the corresponding Indebtedness and Lien will be deemed incurred pursuant to those provisions;
- (b) the gross cash proceeds of that Sale and Leaseback Transaction are at least equal to the Fair Market Value of the property that is the subject of such Sale and Leaseback Transaction; and
- (c) the transfer of assets in that Sale and Leaseback Transaction is permitted by, and the Company applies to the extent required the proceeds of such transaction in compliance with, the covenant described under the caption “– Limitation on Asset Sales.”

Limitation on Asset Sales

The Company will not, and will not permit any Restricted Subsidiary to, consummate any Asset Sale, unless:

- (a) no Default shall have occurred and be continuing or would occur as a result of such Asset Sale;
- (b) the consideration received by the Company or such Restricted Subsidiary, as the case may be, is at least equal to the Fair Market Value of the assets sold or disposed of (determined on the date of the contractual agreement for the Asset Sale);
- (c) except in the case of a Permitted Railway Asset Swap, at least 75% of the consideration received consists of cash, Temporary Cash Investments or Replacement Assets; *provided* that in the case of an Asset Sale in which the Company or such Restricted Subsidiary receives Replacement Assets involving aggregate consideration in excess of US\$15.0 million (or the Dollar Equivalent thereof), the Company shall deliver to the Trustee an opinion as to the fairness to the Company or such Restricted Subsidiary of such Asset Sale from a financial point of view issued by an accounting, appraisal or investment banking firm of recognized international standing. For purposes of this provision, each of the following will be deemed to be cash:
 - (A) any liabilities, as shown on the Company’s most recent consolidated balance sheet, of the Company or any Restricted Subsidiary (other than contingent liabilities and liabilities that are by their terms subordinated to the Notes or any Subsidiary Guarantee) that are assumed by the transferee of any such assets pursuant to a customary assumption, assignment, novation or similar agreement that releases the Company or such Restricted Subsidiary from further liability; and

- (B) any securities, notes or other obligations received by the Company or any Restricted Subsidiary from such transferee that are promptly, but in any event within 60 days of closing, converted by the Company or such Restricted Subsidiary into cash, to the extent of the cash received in that conversion.

Within 360 days after the receipt of any Net Cash Proceeds from an Asset Sale, the Company or any Restricted Subsidiary may apply such Net Cash Proceeds to:

- (1) permanently repay Senior Indebtedness of the Company or any Restricted Subsidiary or any Indebtedness of a Restricted Subsidiary that was secured by the assets that were the subject of such Asset Sale (and, if such Senior Indebtedness repaid is revolving credit Indebtedness, to correspondingly reduce commitments with respect thereto) in each case owing to a Person other than the Company or a Restricted Subsidiary; or
- (2) develop or acquire Replacement Assets; *provided* that this clause (2) shall be satisfied if the Company or Restricted Subsidiary (i) enters into a definitive agreement committing to invest the relevant amount in Replacement Assets within 360 days of the receipt of such Net Cash Proceeds and (ii) actually invests such amount in Replacement Assets within 180 days after the 360 day period.

Any Net Cash Proceeds from Asset Sales that are not applied or invested as provided in clauses (1) and (2) in the immediately preceding paragraph will constitute “Excess Proceeds.” Pending the final application of any such Net Cash Proceeds, the Company may temporarily reduce revolving credit borrowings or otherwise invest such Net Cash Proceeds in any manner that is not prohibited by the terms of the Indenture.

Excess proceeds of less than US\$15.0 million (or the Dollar Equivalent thereof) will be carried forward and accumulated. When accumulated Excess Proceeds equals to or exceeds US\$15.0 million (or the Dollar Equivalent thereof), within 10 days thereof, the Company shall make an Offer to Purchase Notes having a principal amount equal to:

- (i) accumulated Excess Proceeds, multiplied by
- (ii) a fraction (x) the numerator of which is equal to the outstanding principal amount of the Notes and (y) the denominator of which is equal to the outstanding principal amount of the Notes and all *pari passu* Indebtedness similarly required to be repaid, redeemed or tendered for in connection with the Asset Sale, rounded down to the nearest US\$1,000. The offer price in any Offer to Purchase will be equal to 100% of the principal amount plus accrued and unpaid interest to the date of purchase, and will be payable in cash.

If any Excess Proceeds remain after the consummation of an Offer to Purchase, the Company or any Restricted Subsidiary may use such Excess Proceeds for any purpose not otherwise prohibited by the Indenture. If the aggregate principal amount of Notes and any other *pari passu* Indebtedness tendered into (or required to be prepaid or redeemed in connection with) such Offer to Purchase exceeds the amount of Excess Proceeds, the Notes and such other *pari passu* Indebtedness will be purchased on a pro rata basis based on the principal amount of Notes and such *pari passu* Indebtedness tendered (or required to be prepaid or redeemed) (with such adjustments as may be deemed appropriate by the Company so that only Notes in denominations of \$200,000, or an integral multiple of \$1,000 in excess thereof, will be purchased). Upon completion of any each Offer to Purchase, the amount of Excess Proceeds will be reset at zero.

Limitation on the Company's Business Activities

The Company will not, and will not permit any Restricted Subsidiary to, directly or indirectly, engage in any business other than a Permitted Business; *provided, however*, that the Company or any Restricted Subsidiary may own Capital Stock of an Unrestricted Subsidiary or joint venture or other entity that is engaged in a business other than a Permitted Business as long as any Investment therein was not prohibited when made by the covenant under the caption “– Limitation on Restricted Payments.”

Maintenance of Insurance

The Company will, and will cause each Restricted Subsidiary, to maintain insurance with reputable and financially sound carriers against such risks and in such amounts as is customarily carried by similar companies engaged in similar business to the Permitted Business in the jurisdictions in which the Company or such Restricted Subsidiary conducts its businesses, including, without limitation, property and casualty insurance.

Use of Proceeds

The Company will not, and will not permit any Restricted Subsidiary to, use the net proceeds from the sale of the Notes, in any amount, for any purpose other than (a) in the approximate amounts and for the purposes specified under the caption “Use of Proceeds” in this offering memorandum (it being understood that the use of proceeds may be reallocated as specified in “Use of Proceeds”) and (b) pending the application of all of such net proceeds in such manner, to invest the portion of such net proceeds not yet so applied in cash or Temporary Cash Investments.

Designation of Restricted and Unrestricted Subsidiaries

The Board of Directors may designate any Restricted Subsidiary to be an Unrestricted Subsidiary; *provided* that (a) no Default shall have occurred and be continuing at the time of or after giving effect to such designation; (b) neither the Company nor any Restricted Subsidiary guarantees or provides credit support for the Indebtedness of such Restricted Subsidiary; (c) such Restricted Subsidiary has no outstanding Indebtedness that could trigger a cross-default to the Indebtedness of the Company or any other Restricted Subsidiary; (d) such Restricted Subsidiary does not own any Disqualified Stock of the Company or Disqualified or Preferred Stock of another Restricted Subsidiary or hold any Indebtedness, or any Lien on any property, of the Company or any Restricted Subsidiary, if such Disqualified or Preferred Stock or Indebtedness could not be Incurred under the covenant described under the caption “– Limitation on Indebtedness” or such Lien would violate the covenant described under the caption “– Limitation on Liens”; (e) such Restricted Subsidiary does not own any Voting Stock of another Restricted Subsidiary, and all of its Subsidiaries are Unrestricted Subsidiaries or are being concurrently designated as Unrestricted Subsidiaries in accordance with this paragraph; and (f) the Investment deemed to have been made thereby in such newly designated Unrestricted Subsidiary and each other newly designated Unrestricted Subsidiary being concurrently redesignated would be permitted to be made by the covenant described under the caption “Limitation on Restricted Payments.

The Board of Directors may designate any Unrestricted Subsidiary to be a Restricted Subsidiary; *provided* that (a) no Default shall have occurred and be continuing at the time of or after giving effect to such designation; (b) any Indebtedness of such Unrestricted Subsidiary outstanding at the time of such designation which will be deemed to have been Incurred by such newly designated Restricted Subsidiary as a result of such designation would be permitted to be Incurred by the covenant described under the caption “– Limitation on Indebtedness”; (c) any Lien on the property of such Unrestricted Subsidiary at the time of such designation which will be deemed to have been Incurred by such newly designated Restricted Subsidiary as a result of such designation would be permitted to be Incurred by the covenant described under the caption “– Limitation on Liens”; (d) such Unrestricted Subsidiary is not a Subsidiary of another Unrestricted Subsidiary (that is not concurrently being designated as a Restricted Subsidiary); and (e) if such Restricted Subsidiary is a Wholly Owned Subsidiary which, directly or indirectly, own any mining deposits or reserves or any mining license (other than with respect to the Baruun Naran mine), such Restricted Subsidiary shall upon such designation execute and deliver to the Trustee a supplemental indenture to the Indenture by which such Restricted Subsidiary shall become a Subsidiary Guarantor. Notwithstanding the foregoing, the Company will not be obligated to cause any Restricted Subsidiary to guarantee the Notes to the extent such guarantee could reasonably be expected to give rise to or result in any conflict with or violation of applicable law (or risk of personal or criminal liability for the officers, directors, managers or shareholders of such Restricted Subsidiary).

Notwithstanding the provisions of this covenant “Designation of Restricted and Unrestricted Subsidiaries,” in no event shall Energy Resources LLC be designated as an Unrestricted Subsidiary so long as the Notes are outstanding.

Government Approvals and Licenses; Compliance with Law

The Company will, and will cause each Restricted Subsidiary to, (a) obtain and maintain in full force and effect all governmental approvals, authorizations, consents, permits, concessions and licenses as are necessary to engage in the Permitted Business, (b) preserve and maintain good and valid title to its properties and assets (including mining and land-use rights) free and clear of any Liens other than Permitted Liens and (c) comply with all laws, regulations, orders, judgments and decrees of any governmental body, except to the extent that failure so to obtain, maintain, preserve and comply would not reasonably be expected to have a material adverse effect on (1) the business, results of operations or prospects of the Company and its Restricted Subsidiaries, taken as a whole, or (2) the ability of the Company or any Subsidiary Guarantor to perform its obligations under the Notes, the relevant Subsidiary Guarantee or the Indenture.

Anti-Layering

The Company will not, and will not permit any Subsidiary Guarantor to, Incur any Indebtedness if such Indebtedness is contractually subordinated in right of payment to any other Indebtedness of the Company or such Subsidiary Guarantor, as the case may be, unless such Indebtedness is also contractually subordinated in right of payment to the Notes or the applicable Subsidiary Guarantee, on substantially identical terms. This does not apply to distinctions between categories of Indebtedness that exist by reason of any Liens or guarantees securing or in favor of some but not all of such Indebtedness.

Suspension of Certain Covenants

If, on any date following the date of the Indenture, the Notes have an Investment Grade Rating from both of the Rating Agencies and no Default or Event of Default has occurred and is continuing (a “Suspension Event”), then, beginning on that day and continuing until such time, if any, at which the Notes cease to have an Investment Grade Rating from either of the Rating Agencies, the provisions of the Indenture summarized under the following captions will be suspended:

- (1) “– Certain Covenants – Limitation on Indebtedness”;
- (2) “– Certain Covenants – Limitation on Restricted Payments”;
- (3) “– Certain Covenants – Limitation on Dividend and Other Payment Restrictions Affecting Restricted Subsidiaries”;
- (4) “– Certain Covenants – Limitation on Sales and Issuances of Capital Stock in Restricted Subsidiaries”;
- (5) “– Certain Covenants – Limitation on Issuances of Guarantees by Restricted Subsidiaries”;
- (6) “– Certain Covenants – Limitation on Sale and Leaseback Transactions”;
- (7) “– Certain Covenants – Limitation on Asset Sales”; and
- (8) “– Certain Covenants – Limitation on the Company’s Business Activities.”

During any period that the foregoing covenants have been suspended, the Board of Directors may not designate any Restricted Subsidiary as an Unrestricted Subsidiary pursuant to the covenant described under the caption “– Certain Covenants – Designation of Restricted and Unrestricted Subsidiaries” or the definition of “Unrestricted Subsidiary.”

Such covenants will be reinstated and apply according to their terms as of and from the first day on which a Suspension Event ceases to be in effect. Such covenants will not, however, be of any effect with regard to actions of the Company or any Restricted Subsidiary properly taken in compliance with the provisions of the Indenture during the continuance of the Suspension Event and, following reinstatement, (1) the calculations under the covenant described under the caption “– Certain Covenants – Limitation on Restricted Payments” will be made as if such covenant had been in effect since the date of the Indenture except that no Default will be deemed to have occurred solely by reason of a Restricted Payment made while that covenant was suspended and (2) all Indebtedness incurred during the Suspension Period will be classified to have been incurred or issued pursuant to clause (b)(3) of the covenant described under the caption “– Certain Covenants – Limitation on Indebtedness.” Upon the occurrence of a Suspension Period, the amount of Excess Proceeds shall be reset at zero. There can be no assurance that the Notes will ever achieve an Investment Grade Rating or that, if achieved, any such rating will be maintained.

Provision of Financial Statements and Reports

- (a) So long as any of the Notes remain outstanding, the Company will furnish to the Trustee and furnish to the Holders upon request, as soon as they are available but in any event not more than 10 calendar days after they are filed with The Stock Exchange of Hong Kong Limited or any other securities exchange on which the Company's ordinary shares are at any time listed for trading, true and correct copies of any financial or other report in the English language filed with such exchange; *provided that*, if at any time the ordinary shares of the Company cease to be listed for trading on a recognized securities exchange, the Company will file with the Trustee and furnish to the Holders:
- (1) as soon as they are available, but in any event within 90 calendar days after the end of each fiscal year of the Company, annual reports containing, and in a level of detail that is comparable in all material respects to that included in this offering memorandum, the following information: (i) audited consolidated balance sheets of the Company of the end of the two most recent fiscal years and audited consolidated income statements and statements of cash flow of the Company for the two most recent fiscal years, including complete footnotes to such financial statements and the audit report of a member firm of an internationally recognized firm of independent accountants on the financial statements; (ii) an operating and financial review of the audited financial statements, including a discussion of the results of operations, financial condition, Consolidated Adjusted EBITDA (as presented in this offering memorandum) and liquidity and capital resources of the Company, and a discussion of material recent developments and material commitments and contingencies and critical accounting policies; and (iii) description of the business, management and shareholders of the Company (on a consolidated basis);
 - (2) as soon as they are available, but in any event within 60 calendar days after the end of the first semi-annual fiscal period of the Company, semi-annual reports of the Company containing the following information: (i) an unaudited condensed consolidated balance sheet as of the end of such semi-annual period and unaudited condensed consolidated statements of income and statements of cash flow of the Company for the most recent semi-annual fiscal period ending on the unaudited condensed consolidated balance sheet date, and the comparable prior year period, together with condensed footnote disclosure, reviewed by a member firm of an internationally recognized firm of independent accountants together with the review report thereon; and (ii) an operating and financial review of the unaudited financial statements, including a discussion of the results of operations, financial condition, Consolidated Adjusted EBITDA (as presented in this offering memorandum) and liquidity and capital resources of the Company, and a discussion of material recent developments and material changes in commitments and contingencies and critical accounting policies since the most recent annual report; and
 - (3) promptly after the occurrence of (i) any Material Acquisition or Disposition or restructuring, (ii) any senior executive officer changes at the Company or change in auditors of the Company or (iii) any other material event not in the ordinary course of business, solely with respect to this sub-clause (iii), that the Company announces publicly, a report containing a description of such event.

- (b) In addition, so long as any of the Notes remain outstanding, the Company will provide to the Trustee (1) within 120 days after the close of each fiscal year, an Officers' Certificate stating the Leverage Ratio with respect to the two most recent semi-annual fiscal periods and showing in reasonable detail the calculation of the Leverage Ratio, including the arithmetic computations of each component of the Leverage Ratio, together with a certificate from the Company's external auditors verifying the accuracy and arithmetic computation; and (2) as soon as possible and in any event within 10 days after the Company becomes aware or should reasonably become aware of the occurrence of a Default, an Officers' Certificate setting forth the details of such Default or default, and the action which the Company proposes to take with respect thereto.
- (c) Further, the Company and each Subsidiary Guarantor have agreed that, for as long as any Notes are "restricted securities" within the meaning of Rule 144(a)(3) under the Securities Act, during any period in which the Company or such Subsidiary Guarantor is neither subject to Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), nor exempt from reporting pursuant to Rule 12g3-2(b) thereunder, the Company or such Subsidiary Guarantor, as the case may be, will supply to (i) any Holder or beneficial owner of a Note or (ii) a prospective purchaser of a Note or a beneficial interest therein designated by such Holder or beneficial owner, the information specified in, and meeting the requirements of Rule 144A(d)(4) under the Securities Act upon the request of any Holder or beneficial owner of a Note.

Events of Default

The following events will be defined as "Events of Default" in the Indenture:

- (a) default in the payment of principal of (or premium, if any, on) the Notes when the same becomes due and payable at maturity, upon acceleration, redemption or otherwise;
- (b) default in the payment of interest on any Note when the same becomes due and payable, and such default continues for a period of 30 consecutive days;
- (c) default in the performance or breach of the provisions of the covenants described under the caption "-- Consolidation, Merger and Sale of Assets," or the failure by the Company to make or consummate an Offer to Purchase in the manner described under the captions "-- Repurchase of Notes upon a Change of Control" or "-- Certain Covenants -- Limitation on Asset Sales" or the failure by the Company to create, or cause its Restricted Subsidiaries to create, a first priority Lien on the Collateral (subject to any Permitted Liens and the Intercreditor Agreement) in accordance with the covenant described under the caption "-- Security";
- (d) the Company or any Restricted Subsidiary defaults in the performance of or breaches any other covenant or agreement in the Indenture or under the Notes (other than a default specified in clause (a), (b) or (c) above) and such default or breach continues for a period of 30 consecutive days after written notice of such default or breach to the Company by the Trustee or the Holders of 25% or more in aggregate principal amount of the Notes;
- (e) there occurs with respect to any Indebtedness of the Company or any Restricted Subsidiary having an outstanding principal amount of US\$15.0 million (or the Dollar Equivalent thereof) or more in the aggregate for all such Indebtedness of all such Persons, whether such Indebtedness now exists or shall hereafter be created, (1) an event of default that has caused the holder thereof to declare such Indebtedness to be due and payable prior to its

Stated Maturity and/or (2) a failure to pay principal of, or interest or premium on, such Indebtedness when the same becomes due (subject to the applicable grace period in the relevant documents);

- (f) one or more final judgments or orders for the payment of money are rendered against the Company or any Restricted Subsidiary and are not paid or discharged, and there is a period of 60 consecutive days following entry of the final judgment or order that causes the aggregate amount for all such final judgments or orders outstanding and not paid or discharged against all such Persons to exceed US\$15.0 million (or the Dollar Equivalent thereof) (in excess of amounts which the Company's insurance carriers have agreed to pay under applicable policies) during which a stay of enforcement, by reason of a pending appeal or otherwise, is not in effect;
- (g) an involuntary case or other proceeding is commenced against the Company or any Significant Subsidiary (or any group of Restricted Subsidiaries that together would constitute a Significant Subsidiary) with respect to it or its debts under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect seeking the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of the Company or any Significant Subsidiary (or any group of Restricted Subsidiaries that together would constitute a Significant Subsidiary) or for any substantial part of the property and assets of the Company or any Significant Subsidiary (or any group of Restricted Subsidiaries that together would constitute a Significant Subsidiary) and such involuntary case or other proceeding remains undismissed and unstayed for a period of 60 consecutive days; or an order for relief is entered against the Company or any Significant Subsidiary (or any group of Restricted Subsidiaries that together would constitute a Significant Subsidiary) under any applicable bankruptcy, insolvency or other similar law as now or hereafter in effect;
- (h) the Company or any Significant Subsidiary (or any group of Restricted Subsidiaries that together would constitute a Significant Subsidiary) (1) commences a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or consents to the entry of an order for relief in an involuntary case under any such law, (2) consents to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of the Company or any Significant Subsidiary (or any group of Restricted Subsidiaries that together would constitute a Significant Subsidiary), or for all or substantially all of the property and assets of the Company or any Subsidiary (or any group of Restricted Subsidiaries that together would constitute a Significant Subsidiary), or (3) effects any general assignment for the benefit of creditors;
- (i) (a) the entity holding the mining license in relation to the Ukhaa Khudag mine ceases to be, directly or indirectly a Wholly Owned Restricted Subsidiary or a Subsidiary Guarantor or (b) the mining license for the Ukhaa Khudag mine ceases to be valid and effective or wholly owned by the Company or a Subsidiary Guarantor;
- (j) any Subsidiary Guarantor denies or disaffirms its obligations under its Subsidiary Guarantee or, except as permitted by the Indenture, any Subsidiary Guarantee is determined to be unenforceable or invalid or shall for any reason cease to be in full force and effect;
- (k) any default by the Company in the performance of any of its obligations under the Security Documents or the Indenture, which adversely affects the enforceability, validity, perfection or priority of the applicable Lien on the Collateral or which adversely affects the condition or value of the Collateral, taken as a whole, in any material respect; or

- (l) the Company denies or disaffirms its obligations under any Security Document or, other than in accordance with the Indenture and the Security Documents, any Security Document ceases to be or is not in full force and effect or the Trustee ceases to have a first priority security interest in the Collateral (subject to any Permitted Liens and the Intercreditor Agreement).

If an Event of Default (other than an Event of Default specified in clause (g) or (h) above) occurs and is continuing under the Indenture, the Trustee or the Holders of at least 25% in aggregate principal amount of the Notes, then outstanding, by written notice to the Company (and to the Trustee if such notice is given by the Holders), may, and the Trustee at the request of such Holders shall, declare the principal of, premium, if any, and accrued and unpaid interest on the Notes to be immediately due and payable. Upon a declaration of acceleration, such principal of, premium, if any, and accrued and unpaid interest shall be immediately due and payable. If an Event of Default specified in clause (g) or (h) above occurs with respect to the Company or any Significant Subsidiary (or any group of Restricted Subsidiaries that together would constitute a Significant Subsidiary), the principal of, premium, if any, and accrued and unpaid interest on the Notes then outstanding shall automatically become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Holder.

The Holders of at least a majority in principal amount of the outstanding Notes by written notice to the Company and to the Trustee may on behalf of all Holders waive all past defaults and rescind and annul a declaration of acceleration and its consequences if:

- (x) all existing Events of Default, other than the non-payment of the principal of, premium, if any, and interest on the Notes that have become due solely by such declaration of acceleration, have been cured or waived; and
- (y) the rescission would not conflict with any judgment or decree of a court of competent jurisdiction.

Upon such waiver, the Default will cease to exist, and any Event of Default arising therefrom will be deemed to have been cured, but no such waiver will extend to any subsequent or other Default or impair any right consequent thereon.

If an Event of Default occurs and is continuing, the Trustee may (but shall not be obligated to) pursue, in its own name or as trustee of an express trust, any available remedy by proceeding at law or in equity to collect the payment of principal of and interest on the Notes or to enforce the performance of any provision of the Notes or the Indenture. The Trustee may maintain a proceeding, subject to the Intercreditor Agreement, even if it does not possess any of the Notes or does not produce any of them in the proceeding. In addition, if an Event of Default occurs and is continuing, the Shared Security Agent may, and shall upon request of Holders of at least 25% in aggregate principal amount of outstanding Notes, subject to the Intercreditor Agreement, foreclose on the Collateral in accordance with the terms of the Security Documents and take such further action on behalf of the Holders with respect to the Collateral as the Shared Security Agent deems appropriate or is directed by the Holders of at least 25% in aggregate principal amount of outstanding Notes. See “– Security.”

The Holders of at least a majority in aggregate principal amount of the outstanding Notes may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee. However, the Trustee may refuse to follow any direction that conflicts, or the Indenture or the Security Documents with law or the Indenture that may involve the Trustee in personal liability, or that the Trustee determines in good faith may be unduly prejudicial to the rights of Holders not joining in the giving of such direction and may take any other action it deems proper that is not inconsistent with any such direction received from Holders. A Holder may not institute any proceeding, judicial or otherwise, with respect to the Indenture or the Notes, or for the appointment of a receiver or trustee, or for any other remedy under the Indenture or the Notes unless:

- (1) the Holder has previously given the Trustee written notice of a continuing Event of Default;
- (2) the Holders of at least 25% in aggregate principal amount of outstanding Notes make a written request to the Trustee to pursue the remedy;
- (3) such Holder or Holders provide the Trustee indemnity and/or security satisfactory to the Trustee against any costs, liability or expense to be incurred in compliance with such request;
- (4) the Trustee does not comply with the request within 60 days after receipt of the request and the indemnity and/or security; and
- (5) during such 60-day period, the Holders of a majority in aggregate principal amount of the outstanding Notes do not give the Trustee a direction that is inconsistent with the request.

However, such limitations do not apply to the right of any Holder to receive payment of the principal of, premium, if any, or interest, and any Additional Amounts, if any, on, such Note or to bring suit for the enforcement of any such payment, on or after the due date expressed in the Notes, which right shall not be impaired or affected without the consent of the Holder.

Two Officers of the Company must certify to the Trustee in writing, on or before a date not more than 120 days after the end of each fiscal year, that a review has been conducted of the activities of the Company and its Restricted Subsidiaries and the Company's and its Restricted Subsidiaries' performance under the Indenture and the Security Documents and that the Company and its Restricted Subsidiaries have fulfilled all obligations thereunder, or, if there has been a default in the fulfillment of any such obligation, specifying each such default and the nature and status thereof. The Company will also be obligated to notify the Trustee in writing of any default or defaults in the performance of any covenants or agreements under the Indenture and the Security Documents. See "– Provision of Financial Statements and Reports."

Consolidation, Merger and Sale of Assets

The Company will not consolidate with, merge with or into another Person, permit any Person to merge with or into it, or sell, convey, transfer, lease or otherwise dispose of all or substantially all of its and its Restricted Subsidiaries' properties and assets (computed on a consolidated basis) (as an entirety or substantially an entirety in one transaction or a series of related transactions), unless:

- (a) the Company shall be the continuing Person, or the Person (if other than it) formed by such consolidation or merger, or with or into which the Company consolidated or merged, or that acquired or leased such property and assets (the "Surviving Person") shall be (x) a corporation organized and validly existing under the laws of the Cayman Islands, the British Virgin Islands, Luxembourg, Mongolia or Hong Kong or any jurisdiction thereof and (y) shall expressly assume, by a supplemental indenture to the Indenture, executed and delivered to the Trustee, all the obligations of the Company under the Indenture and the Notes and the Security Documents, as the case may be, including the obligation to pay Additional Amounts with respect to any jurisdiction in which it is organized or resident for tax purposes, or from or through which payment is made, and the Indenture and the Notes and the Security Documents, as the case may be, shall remain in full force and effect;
- (b) immediately after giving effect to such transaction, no Default shall have occurred and be continuing;
- (c) immediately after giving effect to such transaction on a pro forma basis, the Company or the Surviving Person, as the case may be, could Incur at least US\$1.00 of Indebtedness under the proviso in the first sentence of clause (a) of the covenant described under the caption "- Certain Covenants - Limitation on Indebtedness";
- (d) the Company delivers to the Trustee (1) an Officers' Certificate (attaching the arithmetic computations to demonstrate compliance with clause (c)) and (2) an Opinion of Counsel, in each case stating that such consolidation, merger or transfer and such supplemental indenture complies with this provision and that all conditions precedent provided for in the Indenture relating to such transaction have been complied with;
- (e) each Subsidiary Guarantor, unless such Subsidiary Guarantor is the Person with which the Company has entered into a transaction described under this covenant, shall execute and deliver a supplemental indenture to the Indenture confirming that its Subsidiary Guarantee shall apply to the obligations of the Company or the Surviving Person in accordance with the Notes and the Indenture; and
- (f) no Rating Decline shall have occurred.

No Subsidiary Guarantor will consolidate with or merge with or into another Person, permit any Person to merge with or into it, or sell, convey, transfer, lease or otherwise dispose of all or substantially all of its and its Restricted Subsidiaries' properties and assets (computed on a consolidated basis) (as an entirety or substantially an entirety in one transaction or a series of related transactions) to another Person (other than the Company or another Subsidiary Guarantor), unless:

- (A) such Subsidiary Guarantor shall be the continuing Person, or the Person (if other than it) formed by such consolidation or merger or that acquired or leased such property and assets shall be the Company, another Subsidiary Guarantor or shall become a Subsidiary Guarantor concurrently with the transaction;

- (B) immediately after giving effect to such transaction, no Default shall have occurred and be continuing;
- (C) immediately after giving effect to such transaction on a pro forma basis, the Company could Incur at least US\$1.00 of Indebtedness under the proviso in the first sentence of clause (a) of the covenant described under the caption “– Certain Covenants – Limitation on Indebtedness”;
- (D) the Company delivers to the Trustee (1) an Officers’ Certificate (attaching the arithmetic computations to demonstrate compliance with clause (C)) and (2) an Opinion of Counsel, in each case stating that such consolidation, merger or transfer and the relevant supplemental indenture complies with this provision and that all conditions precedent provided for in the Indenture relating to such transaction have been complied with; and
- (E) no Rating Decline shall have occurred;

provided that this paragraph shall not apply to (1) any sale or other disposition that complies with the “Limitation on Asset Sales” covenant or any Subsidiary Guarantor whose Subsidiary Guarantee is unconditionally released in accordance with the provisions described under “The Subsidiary Guarantees – Release of Subsidiary Guarantees” and (2) a consolidation or merger of any Subsidiary Guarantor with and into the Company or any other Subsidiary Guarantor, so long as the Company or such Subsidiary Guarantor survives such consolidation or merger.

Nothing in the Indenture will prevent any Restricted Subsidiary that is not a Subsidiary Guarantor from consolidating with, merging into or transferring all or substantially all of its properties and assets to the Company, a Subsidiary Guarantor or any other Restricted Subsidiary. The Company may consolidate or otherwise combine with or merge into an Affiliate incorporated or organized for the purpose of changing the legal domicile of the Company, reincorporating the Company in another jurisdiction in compliance with clause (a)(x) of the first paragraph under this “– Consolidation, Merger and Sale of Assets” covenant or changing the legal form of the Company.

Although there is a limited body of case law interpreting the phrase “substantially all,” there is no precise established definition of the phrase under applicable law. Accordingly, in certain circumstances there may be a degree of uncertainty as to whether a particular transaction would involve “all or substantially all” of the property or assets of a Person.

The foregoing provisions would not necessarily afford Holders protection in the event of highly leveraged or other transactions involving the Company or the Subsidiary Guarantors that may adversely affect Holders.

No Payments for Consents

The Company will not, and shall not permit any of its Subsidiaries to, directly or indirectly, pay or cause to be paid any consideration, whether by way of interest, fee or otherwise, to any Holder for or as an inducement to any consent, waiver or amendment of any of the terms or provisions of the Indenture or the Notes unless such consideration is offered to be paid and is paid to all Holders that consent, waive or agree to amend such term or provision within the time period set forth in the solicitation documents relating to such consent, waiver or amendment. Notwithstanding the foregoing, in any offer or payment of consideration for, or as an inducement to, any consent, waiver or amendment of any of the terms or provisions of the Indenture or the Notes in connection with an exchange offer, the Company and any Restricted Subsidiary may exclude (i) Holders or beneficial owners of the Notes that are not institutional “accredited investors” as defined in subparagraphs (a)(1), (2), (3) or (7) of Rule 501 under the Securities Act, and (ii) Holders or beneficial owners of the Notes in any jurisdiction where the inclusion of such Holders or beneficial owners would require the Company or any Restricted Subsidiary to comply with the registration requirements or other similar requirements under any securities laws of such jurisdiction, or the solicitation of such consent, waiver or amendment from, or the granting of such consent or waiver, or the approval of such amendment by, Holders or beneficial owners in such jurisdiction would be unlawful, in each case as determined by the Company in its sole discretion.

Defeasance

Defeasance and Discharge

The Indenture will provide that the Company will be deemed to have paid and will be discharged from any and all obligations in respect of the Notes on the 183rd day after the deposit referred to below, and the provisions of the Indenture, the Security Documents and the Intercreditor Agreement will no longer be in effect with respect to the Notes (except for, among other matters, certain obligations to register the transfer or exchange of the Notes, to replace stolen, lost or mutilated Notes, to maintain paying agencies and to hold monies for payment in trust) if, among other things:

- (a) the Company has (1) deposited with the Trustee (or its agent), in trust, money and/or U.S. Government Obligations or any combination thereof that through the payment of interest and principal in respect thereof in accordance with their terms will provide money in an amount sufficient to pay the principal of, premium, if any, and accrued interest on the Notes on the Stated Maturity of such payments in accordance with the terms of the Indenture and the Notes and (2) delivered to the Trustee an Opinion of Counsel or a certificate of an internationally recognized firm of independent auditors to the effect that the amount deposited by the Company is sufficient to provide payment for the principal of, premium, if any, and accrued interest on, the Notes on the Stated Maturity of such payment in accordance with the terms of the Indenture;

- (b) the Company has delivered to the Trustee (1) either (x) an Opinion of Counsel of recognized standing with respect to U.S. federal income tax laws which is based on a change in applicable U.S. federal income tax law occurring after the Original Issue Date to the effect that beneficial owners will not recognize income, gain or loss for U.S. federal income tax purposes as a result of the Company's exercise of its option under this "Defeasance and Discharge" provision and will be subject to U.S. federal income tax on the same amounts and in the same manner and at the same times as would have been the case if such deposit, defeasance and discharge had not occurred or (y) a ruling directed to the Company or the Trustee received from the U.S. Internal Revenue Service to the same effect as the aforementioned Opinion of Counsel, and (2) an Opinion of Counsel of recognized international standing to the effect that the creation of the defeasance trust does not violate the U.S. Investment Company Act of 1940, as amended, and after the passage of 123 days following the deposit, the trust fund will not be subject to the effect of Section 547 of the United States Bankruptcy Code or Section 15 of the New York Debtor and Creditor Law; and
- (c) immediately after giving effect to such deposit on a pro forma basis, no Event of Default, or event that after the giving of notice or lapse of time or both would become an Event of Default, shall have occurred and be continuing on the date of such deposit or during the period ending on the 183rd day after the date of such deposit, and such defeasance shall not result in a breach or violation of or constitute a default under, any other agreement or instrument to which the Company or any Restricted Subsidiary is a party or by which the Company or any Restricted Subsidiary is bound.

In the case of either discharge or defeasance, each of the Subsidiary Guarantees will terminate.

Defeasance of Certain Covenants

The Indenture further will provide that the provisions of the Indenture will no longer be in effect with respect to clauses (c), (d)(1) and (f) under the first paragraph and clauses (C), (D)(1) and (E) under the second paragraph under "Consolidation, Merger and Sale of Assets" and all the covenants described herein under "- Certain Covenants," other than as described under "- Certain Covenants - Government Approvals and Licenses; Compliance with Law" and "- Certain Covenants - Anti-Layering," clause (c) under "Events of Default" with respect to such clauses (c), (d)(1) and (f) under the first paragraph and clauses (C), (D)(1) and (E) under the second paragraph under "Consolidation, Merger and Sale of Assets" and with respect to the other events set forth in such clause, clause (d) under "Events of Default" with respect to such other covenants and clauses (e) and (f) under "Events of Default" shall be deemed not to be Events of Default upon, among other things, the deposit with the Trustee (or its agent), in trust, of money, U.S. Government Obligations or a combination thereof that through the payment of interest and principal in respect thereof in accordance with their terms will provide money in an amount sufficient to pay the principal of, premium, if any, and accrued interest on the Notes on the Stated Maturity of such payments in accordance with the terms of the Indenture and the Notes, the satisfaction of the provisions described in clause (b)(2) of the preceding paragraph and the delivery by the Company to the Trustee of an Opinion of Counsel of recognized standing with respect to U.S. federal income tax matters to the effect that beneficial owners will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such deposit and defeasance of certain covenants and Events of Default and will be subject to U.S. federal income tax on the same amounts and in the same manner and at the same times as would have been the case if such deposit and defeasance had not occurred.

Defeasance and Certain Other Events of Default

In the event the Company exercises its option to omit compliance with certain covenants and provisions of the Indenture as described in the immediately preceding paragraph and the Notes are declared due and payable because of the occurrence of an Event of Default that remains applicable, the amount of money and/or U.S. Government Obligations on deposit with the Trustee will be sufficient to pay amounts due on the Notes at the time of their Stated Maturity but may not be sufficient to pay amounts due on the Notes at the time of the acceleration resulting from such Event of Default. However, the Company and the Subsidiary Guarantors will remain liable for such payments.

Amendments and Waiver

Amendments Without Consent of Holders

The Indenture, the Intercreditor Agreement, or any Security Document may be amended, without the consent of any Holder, to:

- (a) cure any ambiguity, defect, omission or inconsistency in the Indenture or the Notes, the Intercreditor Agreement, or any Security Document;
- (b) comply with the provisions described under “Consolidation, Merger and Sale of Assets”;
- (c) evidence and provide for the acceptance of appointment by a successor Trustee or Shared Security Agent;
- (d) add any Subsidiary Guarantor or any Subsidiary Guarantee or release any Subsidiary Guarantor from any Subsidiary Guarantee as provided or permitted by the terms of the Indenture;
- (e) add any Subsidiary Guarantor Pledgor or release any Subsidiary Guarantor Pledgor as provided or permitted by the terms of the Indenture;
- (f) provide for the issuance of Additional Notes in accordance with the limitations set forth in the Indenture;
- (g) add additional Collateral to secure the Notes or any Subsidiary Guarantee and create or register Liens on such additional Collateral;
- (h) in any other case where a supplemental indenture to the Indenture is required or permitted to be entered into pursuant to the provisions of the Indenture without the consent of any Holder;
- (i) effect any changes to the Indenture in a manner necessary to comply with the procedures of DTC or any other applicable securities depository or clearing system;
- (j) permit Permitted Pari Passu Secured Indebtedness (including, without limitation, permitting the Trustee and the Shared Security Agent to enter into any amendments to the Security Documents, the Intercreditor Agreement or the Indenture and take any other action necessary to permit the creation and registration of Liens on the Collateral to secure Permitted Pari Passu Secured Indebtedness, in accordance with the Indenture);
- (k) make any other change that, in the good faith opinion of the Board of Directors, does not materially and adversely affect the rights of any Holder;

- (l) conform the text of the Indenture, the Notes or the Subsidiary Guarantees, the Security Documents or the Intercreditor Agreement to any provision of this “Description of the Notes” to the extent that such provision in this “Description of the Notes” was intended to be a verbatim recitation of a provision in the Indenture, the Notes or the Subsidiary Guarantees, the Security Documents or the Intercreditor Agreement; or
- (m) to make any other change that would provide any additional rights or benefits to the Holders.

Amendments With Consent of Holders

Amendments of the Indenture, the Intercreditor Agreement, or any Security Document may be made by the Company, the Subsidiary Guarantors and the Trustee with the consent of the Holders of not less than a majority in aggregate principal amount of the outstanding Notes, and the holders of a majority in principal amount of the outstanding Notes may waive future compliance by the Company with any provision of the Indenture or the Notes, the Intercreditor Agreement, or any Security Document; *provided, however*, that no such modification, amendment or waiver may, without the consent of each Holder affected thereby:

- (a) change the Stated Maturity of the principal of, or any installment of interest on, any Note;
- (b) reduce the principal amount of, or premium, if any, or interest on, any Note;
- (c) change the currency, time or place of payment of principal of, or premium, if any, or interest on, any Note;
- (d) impair the right to institute suit for the enforcement of any payment on or after the Stated Maturity (or, in the case of a redemption, on or after the redemption date) of any Note or any Subsidiary Guarantee;
- (e) reduce the above stated percentage of outstanding Notes the consent of whose Holders is necessary to modify or amend the Indenture;
- (f) waive a default in the payment of principal of, premium, if any, or interest on the Notes;
- (g) release any Subsidiary Guarantor from its Subsidiary Guarantee, except as provided in the Indenture;
- (h) release any Collateral, except as provided in the Indenture, the Intercreditor Agreement and the Security Documents;
- (i) reduce the percentage or aggregate principal amount of outstanding Notes the consent of whose Holders is necessary for waiver of compliance with certain provisions of the Indenture or for waiver of certain defaults;
- (j) amend, change or modify any Subsidiary Guarantee in a manner that adversely affects the Holders, except as permitted by the Indenture;
- (k) amend, change or modify any provision of any Security Document, the Intercreditor Agreement or any provision of the Indenture relating to the Collateral, in a manner that adversely affects the Holders, except in accordance with the other provisions of the Indenture, such Security Document or such Intercreditor Agreement;

- (l) reduce the amount payable upon a Change of Control Offer or an Offer to Purchase with the Excess Proceeds from any Asset Sale or change the time or manner by which a Change of Control Offer or an Offer to Purchase with the Excess Proceeds from any Asset Sale may be made or by which the Notes must be repurchased pursuant to a Change of Control Offer or an Offer to Purchase with the Excess Proceeds from any Asset Sale;
- (m) change the redemption date or the redemption price of the Notes from that stated under “– Optional Redemption” or “– Redemption for Tax Reasons”;
- (n) amend, change or modify the obligation of the Company or any Subsidiary Guarantor to pay Additional Amounts; or
- (o) amend, change or modify any provision of the Indenture or the related definition affecting the ranking of the Notes or any Subsidiary Guarantee in a manner which adversely affects the Holders.

Satisfaction and Discharge

The Indenture will be discharged and will cease to be of further effect as to the Notes issued thereunder, when either:

- (a) all Notes theretofore authenticated and delivered, except lost, stolen or destroyed Notes which have been replaced or paid and Notes for whose payment money has theretofore been deposited in trust, have been delivered to the Trustee for cancellation; or
- (b)
 - (1) all Notes not theretofore delivered to such Trustee for cancellation have become due and payable by reason of the making of a notice of redemption or otherwise, will become due and payable within one year or are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company and the Company or any Subsidiary Guarantor has irrevocably deposited or caused to be deposited with such Trustee as trust funds in trust solely for the benefit of the Holders, cash in U.S. dollars, U.S. Government Obligations, or a combination thereof, in such amounts as will be sufficient without consideration of any reinvestment of interest to pay and discharge the entire indebtedness on Notes not theretofore delivered to the Trustee for cancellation for principal, premium, if any, and accrued interest to the date of maturity or redemption;
 - (2) no Default or Event of Default (other than that resulting from borrowing funds to be applied to make such deposit and any similar and simultaneous deposit relating to other Indebtedness and, in each case, the granting of Liens in connection therewith) with respect to the Indenture or the Notes issued thereunder shall have occurred and be continuing on the date of such deposit or shall occur as a result of such deposit and such deposit will not result in a breach or violation of, or constitute a default under the Credit Facilities or any other material agreement or instrument (other than the Indenture) to which the Company or any Subsidiary Guarantor is a party or by which the Company or any Subsidiary Guarantor is bound (other than that resulting from borrowing funds to be applied to make such deposit and any similar and simultaneous deposit relating to other Indebtedness and, in each case, the granting of Liens in connection therewith);
 - (3) the Company has paid or caused to be paid all sums payable by it under the Indenture; and

- (4) the Company has delivered irrevocable instructions to the Trustee under the Indenture to apply the deposited money toward the payment of the Notes at maturity or the redemption date, as the case may be.

In addition, the Company must deliver an Officers' Certificate and an Opinion of Counsel to the Trustee stating that all conditions precedent to satisfaction and discharge have been satisfied.

Unclaimed Money

Claims against the Company for the payment of principal of, premium, if any, or interest, on the Notes will become void unless presentation for payment is made as required in the Indenture within a period of six years.

No Personal Liability of Incorporators, Stockholders, Members, Officers, Directors or Employees

No recourse for the payment of the principal of, premium, if any, or interest on any of the Notes or for any claim based thereon or otherwise in respect thereof, and no recourse under or upon any obligation, covenant or agreement of the Company or any of the Subsidiary Guarantors in the Indenture, or in any of the Notes or the Subsidiary Guarantees or because of the creation of any Indebtedness represented thereby, shall be had against any incorporator, stockholder, member, officer, director, employee or controlling person of the Company or any of the Subsidiary Guarantors or of any successor Person thereof. Each Holder, by accepting the Notes, waives and releases all such liability. The waiver and release are part of the consideration for the issuance of the Notes and the Subsidiary Guarantees. Such waiver may not be effective to waive liabilities under any applicable law.

Concerning the Trustee and the Paying Agent

Deutsche Bank Trust Company Americas is to be appointed as Trustee under the Indenture and as registrar ("Registrar") and paying and transfer agent (the "Paying Agent") with regard to the Notes. Except during the continuance of a Default, the Trustee will not be liable, except for the performance of such duties as are specifically set forth in the Indenture. If an Event of Default has occurred and is continuing, the Trustee will use the same degree of care and skill in its exercise of the rights and powers vested in it under the Indenture as a prudent person would exercise under the circumstances in the conduct of such person's own affairs.

The Indenture contains limitations on the rights of the Trustee, should it become a creditor of the Company or any of the Subsidiary Guarantors, to obtain payment of claims in certain cases or to realize on certain property received by it in respect of any such claims, as security or otherwise. The Trustee is permitted to engage in other transactions with the Company and its Affiliates; *provided, however*, that if the Trustee acquires any conflicting interest, it must eliminate such conflict or resign.

If the Company maintains a paying agent with respect to the Notes in a member state of the European Union, such paying agent will be located in a member state of the European Union that is not obligated to withhold or deduct tax pursuant to European Council Directive 2003/48/EC or any other directive implementing the conclusions of ECOFIN Council meeting of November 26-27, 2000 on the taxation of savings income, or any law implementing or complying with, or introduced in order to conform to, such Directive or such other directive.

Subject to the Intercreditor Agreement, DB Trustees (Hong Kong) Limited will initially act as shared security agent (the “Shared Security Agent”) under the Security Documents in respect of the Security over the Collateral. The Shared Security Agent, acting in its capacity as such, shall have such duties with respect to the Collateral pledged, assigned or granted pursuant to the Intercreditor Agreement and the Security Documents as are set forth in the Intercreditor Agreement and the Security Documents. Under certain circumstances, the Shared Security Agent may have obligations under the Security Documents that are in conflict with the interests of the Holders. Neither the Shared Security Agent or the Trustee will be obligated to exercise any rights or powers conferred under the Intercreditor Agreement or any of the Security Documents for the benefit of the Holders, unless such Holders have offered to the Shared Security Agent/Trustee indemnity and/or security satisfactory to the Shared Security Agent/Trustee against any loss, liability or expense. Furthermore, each Holder, by accepting the Notes will agree, for the benefit of the Trustee and the Shared Security Agent that it is solely responsible for its own independent appraisal of and investigation into all risks arising under or in connection with the Security Documents and has not relied on and will not at any time rely on the Trustee or the Shared Security Agent in respect of such risks.

Book-Entry; Delivery and Form

The certificates representing the Notes will be issued in fully registered form without interest coupons, Notes sold in offshore transactions in reliance on Regulation S under the Securities Act will initially be represented by one or more permanent global notes in definitive, fully registered form without interest coupons (each a “Regulation S Global Note”) and will be deposited with Deutsche Bank Trust Company Americas as custodian for, and registered in the name of a nominee of, DTC for the accounts of Euroclear and Clearstream.

Notes sold in reliance on Rule 144A will be represented by one or more permanent global notes in definitive, fully registered form without interest coupons (each a “Restricted Global Note”; and together with the Regulation S Global Notes, the “Global Notes”) and will be deposited with Deutsche Bank Trust Company Americas as custodian for, and registered in the name of a nominee of, DTC.

Each Global Note (and any Notes issued for exchange therefor) will be subject to certain restrictions on transfer set forth therein as described under “Transfer Restrictions.”

Ownership of beneficial interests in a Global Note will be limited to persons who have accounts with DTC (“participants”) or persons who hold interests through participants. Ownership of beneficial interests in a Global Note will be shown on, and the transfer of that ownership will be effected only through, records maintained by DTC or its nominee (with respect to interests of participants) and the records of participants (with respect to interests of persons other than participants). Beneficial owners may hold their interests in a Global Note directly through DTC if they are participants in such system, or indirectly through organizations which are participants in such system.

Euroclear and Clearstream will hold interests in the Global Notes on behalf of their participants through DTC.

So long as DTC, or its nominee, is the registered owner or holder of a Global Note, DTC or such nominee, as the case may be, will be considered the sole owner or holder of the Notes represented by such Global Note for all purposes under the Indenture and the Notes. No beneficial owner of an interest in a Global Note will be able to transfer that interest except in accordance with DTC’s applicable procedures, in addition to those provided for under the Indenture and, if applicable, those of Euroclear and Clearstream.

Payments of the principal of, and interest on, a Global Note will be made to DTC or its nominee, as the case may be, as the registered owner thereof. Neither the Company nor any of the Subsidiary Guarantors, the Trustee nor the Paying Agent will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests in a Global Note or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

The Company expects that DTC or its nominee, upon receipt of any payment of principal or interest in respect of a Global Note, will credit participants' accounts with payments in amounts proportionate to their respective beneficial interests in the principal amount of such Global Note as shown on the records of DTC or its nominee.

The Company also expects that payments by participants to owners of beneficial interests in such Global Note held through such participants will be governed by standing instructions and customary practices, as is now the case with securities held for the accounts of customers registered in the names of nominees for such customers. Such payments will be the responsibility of such participants.

The Company expects that DTC will take any action permitted to be taken by a holder of Notes (including the presentation of Notes for exchange as described below) only at the direction of one or more participants to whose account the DTC interests in a Global Note is credited and only in respect of such portion of the aggregate principal amount of Notes as to which such participant or participants has or have given such direction. However, if there is an Event of Default under the Notes, DTC will exchange the applicable Global Note for Notes in certificated form ("Certificated Notes"), which it will distribute to its participants and which may be legended as set forth under the heading "Transfer Restrictions."

Although DTC, Euroclear and Clearstream are expected to follow the foregoing procedures in order to facilitate transfers of interests in a Global Note among participants of DTC, Euroclear and Clearstream, they are under no obligation to perform or continue to perform such procedures, and such procedures may be discontinued at any time. None of the Company, any of the Subsidiary Guarantors, the Trustee or the Paying Agent will have any responsibility for the performance by DTC, Euroclear or Clearstream or their respective participants or indirect participants of their respective obligations under the rules and procedures governing their operations.

If DTC is at any time unwilling or unable to continue as a depository for the Global Notes and a successor depository is not appointed by the Company within 90 days, the Company will issue Certificated Notes in registered form, which may bear the legend referred to under "Transfer Restrictions," in exchange for the Global Notes. Holders of an interest in a Global Note may receive Certificated Notes, which may bear the legend referred to under "Transfer Restrictions," in accordance with the DTC's rules and procedures in addition to those provided for under the Indenture.

The Clearing Systems

General

DTC, Euroclear and Clearstream have advised the Company as follows:

DTC. DTC is a limited-purpose trust company organized under the laws of the State of New York, a “banking organization” within the meaning of New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code, and a “clearing agency” registered pursuant to the provisions of Section 17A of the Exchange Act. DTC was created to hold securities of its participants and to facilitate the clearance and settlement of securities transactions among its participants in such securities through electronic book-entry changes in accounts of its participants, thereby eliminating the need for physical movement of securities certificates. DTC’s participants include securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations, some of whom own DTC, and may include the initial purchaser. Indirect access to the DTC system is also available to others that clear through or maintain a custodial relationship with a DTC participant, either directly or indirectly (“indirect participants”). Transfers of ownership or other interests in Notes in DTC may be made only through DTC participants. In addition, beneficial owners of Notes in DTC will receive all distributions of principal of and interest on the Notes from the Trustee through such DTC participant.

Euroclear and Clearstream. Euroclear and Clearstream hold securities for participating organizations and facilitate the clearance and settlement of securities transactions between their respective participants through electronic book-entry changes in accounts of such participants. Euroclear and Clearstream provide to their participants, among other things, services for safekeeping, administration, clearance and settlement of internationally-traded securities and securities lending and borrowing. Euroclear and Clearstream interface with domestic securities markets. Euroclear and Clearstream participants are financial institutions such as underwriters, securities brokers and dealers, banks, trust companies and certain other organizations. Indirect access to Euroclear or Clearstream is also available to others such as banks, brokers, dealers and trust companies that clear through or maintain a custodial relationship with a Euroclear or Clearstream participant, either directly or indirectly.

Initial Settlement

Investors’ interests in Notes held in book-entry form by DTC will be represented through financial institutions acting on their behalf as direct and indirect participants in DTC. As a result, Euroclear and Clearstream will hold positions on behalf of their participants through DTC.

Investors electing to hold their Notes through DTC (other than through accounts at Euroclear or Clearstream) must follow the settlement practices applicable to United States corporate debt obligations. The securities custody accounts of investors will be credited with their holdings against payment in same day funds on the settlement date.

Investors electing to hold their Notes through Euroclear or Clearstream accounts will follow the settlement procedures applicable to conventional Eurobonds in registered form. Notes will be credited to the securities custody accounts of Euroclear Holders and of Clearstream Holders on the Business Day following the settlement date against payment for value on the settlement date.

Secondary Market Trading

Secondary market trading between DTC participants will occur in the ordinary way in accordance with DTC rules. Secondary market trading between Clearstream participants and/or Euroclear participants will occur in the ordinary way in accordance with the applicable rules and operating procedures of Clearstream and Euroclear and will be settled using the procedures applicable to conventional eurobonds.

Cross-market transfers between persons holding directly or indirectly through DTC, on the one hand, and directly or indirectly through Clearstream participants or Euroclear participants, on the other, will be effected in DTC in accordance with DTC rules on behalf of the relevant European international clearing system by its U.S. depositary; however, such cross-market transactions will require delivery of instructions to the relevant European international clearing system by the counterparty in such system in accordance with its rules and procedures and within its established deadlines (European time). The relevant European international clearing system will, if a transaction meets its settlement requirements, deliver instructions to its U.S. depositary to take action to effect final settlement on its behalf by delivering or receiving Notes in DTC, and making or receiving payment in accordance with normal procedures for same-day funds settlement applicable to DTC. Clearstream participants and Euroclear participants may not deliver instructions directly to the U.S. depositaries.

Because of time zone differences, credits of Notes received in Clearstream or Euroclear as a result of a transaction with a DTC participant will be made during subsequent securities settlement processing and dated the Business Day following the DTC settlement date. Such credits or any transactions in such Notes settled during such processing will be reported to the relevant Clearstream participants or Euroclear participants on such Business Day. Cash received in Clearstream or Euroclear as a result of sales of Notes by or through a Clearstream participant or a Euroclear participant to a DTC participant will be received with value on the DTC settlement date but will be available in the relevant Clearstream or Euroclear cash account only as of the Business Day following settlement in DTC.

Notices

All notices or demands required or permitted by the terms of the Notes or the Indenture to be given to or by the Holders are required to be in writing and may be given or served by being sent by prepaid courier or by being deposited, first-class postage prepaid, in the United States mails (if intended for the Company or any Subsidiary Guarantor or the Trustee) addressed to the Company, such Subsidiary Guarantor or the Trustee, as the case may be, at the corporate trust office of the Trustee; and (if intended for any Holder) addressed to such Holder at such Holder's last address as it appears in the Note register.

Any such notice or demand will be deemed to have been sufficiently given or served when so sent or deposited and, if to the Holders, when delivered in accordance with the applicable rules and procedures of DTC. Any such notice shall be deemed to have been delivered on the day such notice is delivered to DTC or if by mail, when so sent or deposited.

Consent to Jurisdiction; Service of Process

The Company and each of the Subsidiary Guarantors will irrevocably (i) submit to the non-exclusive jurisdiction of any U.S. federal or New York state court located in the Borough of Manhattan, The City of New York in connection with any suit, action or proceeding arising out of, or relating to, the Notes, any Subsidiary Guarantee, the Indenture or any transaction contemplated

thereby and (ii) designate and appoint Law Debenture Corporate Services Inc., currently at 400 Madison Avenue, 4th Floor, New York, New York 10017, for receipt of service of process in any such suit, action or proceeding.

Governing Law

Each of the Notes, the Subsidiary Guarantees and the Indenture provides that such instrument will be governed by, and construed in accordance with, the laws of the State of New York. The Intercreditor Agreement will be governed by, and construed in accordance with, the laws of England. The pledge of the Capital Stock of Mongolian Coal Corporation Limited will be governed by, and construed in accordance with, the laws of Hong Kong. The pledge of the Capital Stock of Mongolian Coal Corporation S.à.r.l. will be governed by, and construed in accordance with, the laws of Luxembourg.

Definitions

Set forth below are defined terms used in the covenants and other provisions of the Indenture. Reference is made to the Indenture for other capitalized terms used in this “Description of the Notes” for which no definition is provided.

“*Acquired Indebtedness*” means Indebtedness of a Person existing at the time such Person becomes a Restricted Subsidiary or Indebtedness of a Restricted Subsidiary assumed in connection with an Asset Acquisition by such Restricted Subsidiary, whether or not Incurred in connection with, or in contemplation of, the Person merging with or into or becoming a Restricted Subsidiary.

“*Adjusted Treasury Rate*” means, with respect to any redemption date, the rate per annum equal to the semi-annual equivalent yield in maturity of the Comparable Treasury Issue, assuming a price for the Comparable Treasury Issue (expressed as a percentage of its principal amount) equal to the Comparable Treasury Price for such redemption date.

“*Affiliate*” means, with respect to any Person, any other Person (i) directly or indirectly controlling, controlled by, or under direct or indirect common control with, such Person, (ii) who is a director or officer of such Person or any Subsidiary of such Person or of any Person referred to in clause (i) of this definition or (iii) who is a spouse or any person cohabiting as a spouse, child or step-child, parent or step-parent, brother, sister, step-brother or step-sister, parent-in-law, grandchild, grandparent, uncle, aunt, nephew and niece of a Person described in clause (i) or (ii). For purposes of this definition, “control” (including, with correlative meanings, the terms “controlling,” “controlled by” and “under common control with”), as applied to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

“*Applicable Premium*” means with respect to a Note at any redemption date, the greater of (i) 1.00% of the principal amount of such Note and (ii) the excess of (A) the present value at such redemption date of the redemption price of such Note on March 29, 2015 (such redemption price being described in the first paragraph in the “– Optional Redemption” section exclusive of any accrued interest), plus all required remaining scheduled interest payments due on such Note through March 29, 2015 (but excluding accrued and unpaid interest to the redemption date), computed using a discount rate equal to the Adjusted Treasury Rate plus 50 basis points, over (B) the principal amount of such Note on such redemption date.

“*Asset Acquisition*” means (1) an Investment by the Company or any Restricted Subsidiary in any other Person pursuant to which such Person shall become a Restricted Subsidiary or shall be merged

into or consolidated with the Company or any Restricted Subsidiary or (2) an acquisition by the Company or any Restricted Subsidiary of the property and assets of any Person other than the Company or any Restricted Subsidiary that constitute substantially all of a division or line of business of such Person.

“*Asset Disposition*” means the sale or other disposition by the Company or any Restricted Subsidiary (other than to the Company or another Restricted Subsidiary) of (1) all or substantially all of the Capital Stock of any Restricted Subsidiary or (2) all or substantially all of the assets that constitute a division or line of business of the Company or any Restricted Subsidiary.

“*Asset Sale*” means any sale, transfer or other disposition of any assets (including by way of merger, consolidation or Sale and Leaseback Transaction and including any sale or issuance of Capital Stock by a Restricted Subsidiary) in one transaction or a series of related transactions by the Company or any Restricted Subsidiary to any Person; *provided* that “*Asset Sale*” shall not include:

- (a) sales, transfers or other dispositions of inventory, receivables and other current assets in the ordinary course of business;
- (b) sales, transfers or other dispositions of assets constituting a Permitted Investment or Restricted Payment permitted to be made under the covenant described under the caption “– Certain Covenants – Limitation on Restricted Payments”;
- (c) sales, transfers or other dispositions of assets with a Fair Market Value not in excess of US\$5.0 million (or the Dollar Equivalent thereof) in any transaction or series of related transactions;
- (d) any sale, transfer, assignment or other disposition of any property or equipment that has become damaged, worn out, obsolete or otherwise unsuitable for use in connection with the business of the Company or its Restricted Subsidiaries;
- (e) any transfer, assignment or other disposition deemed to occur in connection with creating or granting any Permitted Lien;
- (f) sales or other dispositions of cash or Temporary Cash Investments;
- (g) any transfer, termination, unwinding or other disposition of Hedging Obligations;
- (h) a transaction covered by the covenant under the caption “– Consolidation, Merger and Sale of Assets”;
- (i) any sale, transfer or other disposition of any assets by the Company or any Restricted Subsidiary, including the sale or issuance by the Company or any Restricted Subsidiary of any Capital Stock of any Restricted Subsidiary, to the Company or any other Restricted Subsidiary;
- (j) transfers resulting from any casualty or condemnation of property;
- (k) any sale, transfer or other disposition of any Capital Stock or other asset (other than the mining license for the Ukhaa Khudag mine or any direct or indirect equity interest in Energy Resources LLC or any other Person that holds the license for the Ukhaa Khudag mine) subject to any license or agreement that provides for Build-Operate-Transfer (the “BOT Agreement”) to the Government of Mongolia and any entity controlled by the

Government of Mongolia, prior to or upon expiration of the BOT Agreement; *provided* that any cash or Temporary Cash Investment must be applied in compliance with the covenant described under the caption “– Limitation on Asset Sales”;

- (l) disposition of Investment in joint ventures to the extent required by or made pursuant to buy/sell arrangements between the joint venture parties; *provided* that any cash, Temporary Cash Investment or other consideration received must be applied in compliance with the covenant described under the caption “– Limitation on Asset Sales”;
- (m) any surrender or waiver of contract rights or settlement, release, recovery on or surrender of contract, tort or other claims in the ordinary course of business; and
- (n) any Permitted Railway Asset Swap.

“*Attributable Indebtedness*” means, in respect of a Sale and Leaseback Transaction, at the time of determination, the present value, discounted at the interest rate implicit in such Sale and Leaseback Transaction, of the total obligations of the lessee for rental payments during the remaining term of the lease in such Sale and Leaseback Transaction, including any period for which such lease has been extended or may, at the option of the lessor, be extended; *provided, however*, that if such Sale and Leaseback Transaction results in Capitalized Lease Obligations, the amount of Indebtedness represented thereby will be determined in accordance with the definition of “Capitalized Lease Obligations.”

“*Average Life*” means, at any date of determination with respect to any Indebtedness, the quotient obtained by dividing (1) the sum of the products of (a) the number of years from such date of determination to the dates of each successive scheduled principal payment of such Indebtedness and (b) the amount of such principal payment by (2) the sum of all such principal payments.

“*Board of Directors*” means the board of directors elected or appointed by the stockholders of the Company to manage the business of the Company or any committee of such board duly authorized to take the action purported to be taken by such committee.

“*Board Resolution*” means any resolution of the Board of Directors taking an action which it is authorized to take and adopted at a meeting duly called and held at which a quorum of disinterested members (if so required) was present and acting throughout or adopted by written resolution executed by the requisite members of the Board of Directors.

“*Business Day*” means any day which is not a Saturday, Sunday, legal holiday or other day on which banking institutions in The City of New York, London or Hong Kong (or in any other place in which payments on the Notes are to be made) are authorized by law or governmental regulation to close.

“*Capital Stock*” means, with respect to any Person, any and all shares, interests, participations or other equivalents (however designated, whether voting or non-voting) in equity of such Person, whether outstanding on the Original Issue Date or issued thereafter, including, without limitation, all Common Stock and Preferred Stock, but excluding debt securities convertible into such equity.

“*Capitalized Lease*” means, with respect to any Person, any finance lease of any property (whether real, personal or mixed) which, in conformity with IFRS, is required to be capitalized on the balance sheet of such Person.

“*Capitalized Lease Obligations*” means the present value of minimum lease payments under a Capitalized Lease measured in conformity with IFRS.

“*Change of Control*” means the occurrence of one or more of the following events:

- (1) the direct or indirect sale, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the properties or assets of the Company and its Restricted Subsidiaries, taken as a whole, to any “person” (within the meaning of Section 13(d) of the U.S. Securities Exchange Act of 1934, as amended (the “Exchange Act”)), other than one or more Permitted Holders;
- (2) the Company consolidates with, or merges with or into, any Person (other than one or more Permitted Holders), or any Person consolidates with, or merges with or into, the Company, in any such event pursuant to a transaction in which any of the outstanding Voting Stock of the Company or such other Person is converted into or exchanged for cash, securities or other property, other than any such transaction where the Voting Stock of the Company outstanding immediately prior to such transaction is converted into or exchanged for (or continues as) Voting Stock (other than Disqualified Stock) of the surviving or transferee Person constituting a majority of the outstanding shares of Voting Stock of such surviving or transferee Person (immediately after giving effect to such issuance);
- (3) the Permitted Holders are the beneficial owners of less than 30% of the total voting power of the Voting Stock of the Company;
- (4) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act) is or becomes the “beneficial owner” (as such term is used in Rule 13d-3 of the Exchange Act), directly or indirectly, of the total voting power of the Voting Stock of the Company greater than such total voting power held beneficially by the Permitted Holders;
- (5) individuals who on the Original Issue Date constituted the Board of Directors (together with any new directors whose nomination or election was approved by a vote of at least a majority of the members of the Board of Directors then in office who were members of the Board of Directors on the Original Issue Date or whose nomination or election was previously so approved) cease for any reason to constitute a majority of the members of the Board of Directors then in office; or
- (6) the adoption of a plan relating to the liquidation or dissolution of the Company.

“*Clearstream*” means Clearstream Banking, société anonyme, Luxembourg.

“*Collateral*” means all collateral securing, or purported to be securing, directly or indirectly, the Notes or any Subsidiary Guarantee pursuant to the Security Documents, and shall initially consist of the Capital Stock of Mongolia Coal Corporation Limited and Mongolian Coal Corporation S.à.r.l., owned by the Company and the initial Subsidiary Guarantor Pledgor, respectively.

“*Commodity Agreement*” means any spot, forward contract, commodity swap agreement, commodity option agreement, commodity price protection or other similar agreement or arrangement designed to protect against fluctuations in commodity prices.

“*Common Stock*” means, with respect to any Person, any and all shares, interests or other participations in, and other equivalents (however designated and whether voting or non-voting) of such Person’s common stock or ordinary shares, whether or not outstanding on the Original Issue Date, and include, without limitation, all series and classes of such common stock or ordinary shares.

“*Comparable Treasury Issue*” means the U.S. Treasury security having a maturity comparable to March 29, 2015 that would be utilized, at the time of selection and in accordance with customary financial practice, in pricing new issues of corporate debt securities of comparable maturity to March 29, 2015.

“*Comparable Treasury Price*” means, with respect to any redemption date:

- (1) the average of the bid and asked prices for the Comparable Treasury Issue (expressed in each case as a percentage of its principal amount) on the third Business Day preceding such redemption date, as set forth in the daily statistical release (or any successor release) published by the Federal Reserve Bank of New York and designated “Composite 3:30 p.m. Quotations for U.S. Government Securities”; or
- (2) if such release (or any successor release) is not published or does not contain such prices on such Business Day, (a) the average of the Reference Treasury Dealer Quotations for such redemption date, after excluding the highest and lowest of such Reference Treasury Dealer Quotations or (b) if fewer than three such Reference Treasury Dealer Quotations are available, the average of all such quotations.

“*Consolidated EBITDA*” means, for any period, Consolidated Net Income for such period plus, to the extent such amount was deducted in calculating such Consolidated Net Income:

- (1) Consolidated Interest Expense;
- (2) income taxes (other than income taxes attributable to extraordinary and non-recurring gains or losses or sales of assets); and
- (3) depreciation expense, amortization expense and all other non-cash items reducing Consolidated Net Income (other than non-cash items in a period which reflect cash expenses paid or to be paid in another period), less all non-cash items increasing Consolidated Net Income (other than accrual of revenues in the ordinary course of business),

all as determined on a consolidated basis for the Company and its Restricted Subsidiaries in conformity with IFRS; *provided* that if any Restricted Subsidiary is not a Wholly Owned Restricted Subsidiary, Consolidated EBITDA shall be reduced (to the extent not otherwise reduced in accordance with IFRS) by an amount equal to (A) the amount of the Consolidated Net Income attributable to such Restricted Subsidiary multiplied by (B) the percentage ownership interest in the income of such Restricted Subsidiary not owned on the last day of such period by the Company or any Restricted Subsidiary.

“*Consolidated Interest Expense*” means, for any period, the amount that would be included in gross finance costs/interest expense on a consolidated statement of comprehensive income prepared in accordance with IFRS for such period of the Company and its Restricted Subsidiaries, plus, to the extent not included in such gross interest expense, and to the extent incurred, accrued or payable during such period by the Company and its Restricted Subsidiaries, without duplication, (i) interest expense attributable to Capitalized Lease Obligations and imputed interest with respect to Attributable Indebtedness, (ii) amortization of debt issuance costs and original issue discount expense and non-cash interest payments in respect of any Indebtedness, (iii) the interest portion of any deferred payment obligation, (iv) all commissions, discounts and other fees and charges with respect to letters of credit or similar instruments issued for financing purposes or in respect of any Indebtedness, (v) the net costs associated with Hedging Obligations (including the amortization of fees), (vi) interest accruing on Indebtedness of any other Person that is guaranteed by the Company or any Restricted Subsidiary proportionate to the extent that such Indebtedness is guaranteed or secured by a Lien on assets of the Company or any Restricted Subsidiary; (vii) any capitalized interest and (viii) all other non-cash interest expense; *provided* that interest expense attributable to interest on any Indebtedness bearing a floating interest rate will be computed on a pro forma basis as if the rate in effect on the date of determination had been the applicable rate for the entire relevant period.

“*Consolidated Net Income*” means, with respect to any specified Person for any period, the aggregate of the consolidated profit attributable to the equity shareholders of such Person for such period, on a consolidated basis, determined in conformity with IFRS; *provided* that the following items shall be excluded in computing Consolidated Net Income (without duplication):

- (1) the net income (or loss) of any Person that is not a Restricted Subsidiary or that is accounted for by the equity method of accounting, except to the extent of the amount of net income actually paid in cash to, or the amount of loss actually funded in cash by, the specified Person or a Restricted Subsidiary of the Person during such period;
- (2) the net income (or loss) of any Person accrued prior to the date it becomes a Restricted Subsidiary or is merged into or consolidated with the Company or any Restricted Subsidiary or all or substantially all of the property and assets of such Person are acquired by the Company or any Restricted Subsidiary;
- (3) the net income (but not loss) of any Restricted Subsidiary (other than a Subsidiary Guarantor) to the extent that the declaration or payment of dividends or similar distributions by such Restricted Subsidiary of such net income is not at the time permitted by the operation of the terms of its charter, articles of association or other similar constitutive documents, or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to such Restricted Subsidiary;
- (4) the cumulative effect of a change in accounting principles;
- (5) any net after-tax gains realized on the sale or other disposition of (A) any property or assets of the Company or any Restricted Subsidiary which is not sold in the ordinary course of business or (B) any Capital Stock of any Person (including any gains by the Company realized on sales of Capital Stock of the Company or any Restricted Subsidiary);
- (6) any non-cash expense, loss, income or gain relating to any change in fair value of convertible securities issued by the Company;
- (7) any non-cash expense, loss, income or gain relating to any change in fair value of share options and other equity based compensation;
- (8) any translation gains or losses due solely to fluctuations in currency values and related tax effects; and
- (9) any net after-tax extraordinary or non-recurring gains or (solely for the purposes of calculating Consolidated EBITDA) losses.

“*Credit Facilities*” means one or more debt facilities (including, without limitation, debt facilities made available under, or in accordance with, the New Standard Bank Facilities Agreement) or commercial paper facilities or indentures or trust deeds or note purchase agreements or Capitalized Lease Obligations, in each case, with banks or other institutional lenders or investors providing for revolving credit loans, term loans, receivables financing (including through the sale of receivables to such lenders or to other entities formed to borrow from such lenders against such receivables), letters of credit, bonds, notes, debentures or other corporate debt instruments or other financing, in each case, as amended, extended, restated, modified, supplemented, renewed, refunded, replaced or refinanced (whether upon or after termination or otherwise) (including by means of sales of debt securities to institutional investors) in whole or in part from time to time by one or more credit agreements, debt facilities or other agreement (and whether or not with the parties to the New Standard Bank Facilities

Agreement) without limitation as to the identity of the lenders or investors, or the maturity, terms, conditions, covenants or other provisions thereof.

“*Currency Agreement*” means any foreign exchange forward contract, currency swap agreement, currency hedge agreement, currency option agreement or other similar agreement or arrangement designed to protect against fluctuations in foreign exchange rates.

“*Deemed Railway Entity Investment*” means, on the date of any sale, transfer or other disposition of an equity interest in any Railway Entity in compliance with clause (k) of the definition of “Asset Sale,” which results in such Railway Entity no longer constituting a Subsidiary of the Company, the Fair Market Value of the Company’s remaining Investment in such Railway Entity after such sale, transfer or disposition; *provided* that the lesser of (x) such Fair Market Value of the Company’s remaining Investment and (y) the aggregate value of all Investments in such Railroad Entity by the Company or any Restricted Subsidiary prior to such sale, transfer or other disposition, valued at the time each such Investment was made shall not exceed an amount equal to US\$200 million (or the Dollar Equivalent thereof).

“*Deemed Road Investment*” means, on the date of any sale, transfer or other disposition of an equity interest in any Person that owns the toll road between the Company’s Ukhaa Khudag mine and Gashuun Sukhait in compliance with clause (k) of the definition of “Asset Sale,” which results in such entity no longer constituting a Subsidiary of the Company, the Fair Market Value of the Company’s remaining Investment in such entity after such sale, transfer or disposition.

“*Default*” means any event that is, or after notice or passage of time or both would be, an Event of Default.

“*Disqualified Stock*” means any class or series of Capital Stock of any Person that by its terms or otherwise is (1) required to be redeemed prior to the Stated Maturity of the Notes, (2) redeemable at the option of the holder of such class or series of Capital Stock at any time prior to the Stated Maturity of the Notes or (3) convertible into or exchangeable for Capital Stock referred to in clause (1) or (2) above or Indebtedness having a scheduled maturity prior to the Stated Maturity of the Notes; *provided* that any Capital Stock that would not constitute Disqualified Stock but for provisions thereof giving holders thereof the right to require such Person to repurchase or redeem such Capital Stock upon the occurrence of an “asset sale” or “change of control” occurring prior to the Stated Maturity of the Notes shall not constitute Disqualified Stock if (a) the “asset sale” or “change of control” provisions applicable to such Capital Stock are no more favorable to the holders of such Capital Stock than the provisions contained in “– Certain Covenants – Limitation on Asset Sales” and “Repurchase of Notes upon a Change of Control” covenants and such Capital Stock specifically provides that such Person will not repurchase or redeem any such stock pursuant to such provision prior to the Company’s repurchase of the Notes as are required to be repurchased pursuant to the “– Certain Covenants – Limitation on Asset Sales” and “Repurchase of Notes upon a Change of Control” covenants or (b) if the terms of such Capital Stock provide that such Person may not repurchase or redeem such Capital Stock pursuant to such provision unless such repurchase or redemption complies with the covenant described under “– Certain Covenants – Limitation on Restricted Payments.”

“*Dollar Equivalent*” means, with respect to any monetary amount in a currency other than U.S. dollars, at any time for the determination thereof, the amount of U.S. dollars obtained by converting such foreign currency involved in such computation into U.S. dollars at the base rate for the purchase of U.S. dollars with the applicable foreign currency as quoted by the Federal Reserve Bank of New York on the date of determination.

“DTC” means The Depository Trust Company and its successors.

“Equity Offering” means (i) any underwritten primary public offering or private placement of Common Stock of the Company after the Original Issue Date to any Person other than a Wholly Owned Restricted Subsidiary or any Permitted Holder or (ii) any secondary public offering or secondary private placement of Common Stock of the Company beneficially owned by a Permitted Holder after the Original Issue Date, the net proceeds therefrom are contributed to the common equity capital of the Company; *provided* that the aggregate gross cash proceeds received by the Company from such transaction shall be no less than US\$20.0 million (or the Dollar Equivalent thereof).

“Euroclear” means Euroclear Bank S.A./N.V., as operator of the Euroclear System.

“Existing Credit Facilities” means (i) the US\$120 million loan pursuant to the loan agreement dated May 12, 2010, as amended and restated, between Energy Resources LLC and European Bank for Reconstruction and Development; (ii) the US\$36 million loan pursuant to the loan agreement dated August 11, 2010, as amended, between Energy Resources LLC and Nederlandse Financierings-Maatschappij Voor Ontwikkelingslanden N.V.; (iii) the US\$24 million loan pursuant to the loan agreement dated August 11, 2010, as amended, between Energy Resources LLC and Deutsche Investitions-und Entwicklungsgesellschaft mbH; and (iv) the US\$13 million loan pursuant to the loan agreement dated December 26, 2011, as amended, between Energy Resources LLC and Khaan Bank.

“Fair Market Value” means the price that would be paid in an arm’s-length transaction between an informed and willing seller under no compulsion to sell and an informed and willing buyer under no compulsion to buy, as determined in good faith by the Board of Directors, whose determination shall be conclusive if evidenced by a Board Resolution.

“Finance Subsidiary” means any Person who is Wholly Owned by the Company and who does not engage in any business activity except (1) the Incurrence of Indebtedness to Persons other than the Company or any Restricted Subsidiary from time to time to finance the operations of the Company and/or any Restricted Subsidiary, (2) the ownership of shares of another Finance Subsidiary, (3) activity related to the establishment or maintenance of that Person’s corporate existence, and (4) any other activity in connection with or incidental to activities referred to in clauses (1), (2) or (3).

“guarantee” means any obligation, contingent or otherwise, of any Person directly or indirectly guaranteeing any Indebtedness or other obligation of any other Person and, without limiting the generality of the foregoing, any obligation, direct or indirect, contingent or otherwise, of such Person (1) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation of such other Person (whether arising by virtue of partnership arrangements, or by agreements to keep-well, to purchase assets, goods, securities or services, to take-or-pay, or to maintain financial statement conditions or otherwise) or (2) entered into for purposes of assuring in any other manner the obligee of such Indebtedness or other obligation of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part); *provided* that the term “guarantee” shall not include endorsements for collection or deposit in the ordinary course of business. The term “guarantee” used as a verb has a corresponding meaning.

“Hedging Obligation” of any Person means the obligations of such Person pursuant to any Commodity Agreement, Currency Agreement or Interest Rate Agreement.

“Holder” means the Person in whose name a Note is registered in the Note register.

“IFRS” means International Financial Reporting Standards as in effect from time to time. All computations contained or referred to in the Indenture, to the extent applicable, shall be computed in conformity with IFRS applied on a consistent basis.

“*Incur*” means, with respect to any Indebtedness or Capital Stock, to incur, create, issue, assume, guarantee or otherwise become liable for or with respect to, or become responsible for, the payment of, contingently or otherwise, such Indebtedness or Capital Stock; *provided* that (1) any Indebtedness and Capital Stock of a Person existing at the time such Person becomes a Restricted Subsidiary (or fails to meet the qualifications necessary to remain an Unrestricted Subsidiary) will be deemed to be Incurred by such Restricted Subsidiary at the time it becomes a Restricted Subsidiary and (2) the accretion of original issue discount, the accrual of interest, the accrual of dividends, the payment of interest in the form of additional Indebtedness and the payment of dividends on Preferred Stock in the form of additional shares of Preferred Stock (to the extent provided for when the Indebtedness or Preferred Stock on which such interest or dividend is paid was originally issued) shall not be considered an Incurrence of Indebtedness. The terms “Incurrence,” “Incurred” and “Incurring” have meanings correlative with the foregoing.

“*Indebtedness*” means, with respect to any Person at any date of determination (without duplication):

- (1) all indebtedness of such Person for borrowed money;
- (2) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments;
- (3) all obligations of such Person in respect of letters of credit, bankers’ acceptances or other similar instruments;
- (4) all obligations of such Person to pay the deferred and unpaid purchase price of property or services, except Trade Payables;
- (5) all Capitalized Lease Obligations and Attributable Indebtedness;
- (6) all Indebtedness of other Persons secured by a Lien on any asset of such Person, whether or not such Indebtedness is assumed by such Person; *provided* that the amount of such Indebtedness shall be the lesser of (A) the Fair Market Value of such asset at such date of determination and (B) the amount of such Indebtedness;
- (7) all Indebtedness of other Persons guaranteed by such Person to the extent such Indebtedness is guaranteed by such Person;
- (8) to the extent not otherwise included in this definition, Hedging Obligations;
- (9) all Disqualified Stock issued by such Person valued at the greater of its voluntary or involuntary liquidation preference and its maximum fixed repurchase price plus accrued dividends (to the extent not included therein); and
- (10) any Preferred Stock issued by (i) such Person, if such Person is a Restricted Subsidiary or (ii) any Restricted Subsidiary of such Person, valued at the greater of its voluntary or involuntary liquidation preference and its maximum fixed repurchase price plus (to the extent not included therein) accrued dividends.

Notwithstanding the foregoing, “Indebtedness” will not include (i) any capital commitments, pre-sale receipts, deposits or advances from customers or any contingent obligations to refund payments (including deposits) to customers (or any guarantee thereof) in connection with mandatory obligations under or pending completion of a customer contract, (ii) obligations of the Company or a Restricted Subsidiary to pay the deferred and unpaid purchase price of property or services due to suppliers of equipment or other assets (including parts thereof) not more than one year after such property is acquired or such services are completed and the amount of unpaid purchase price retained by the Company or any Restricted Subsidiary in the ordinary course of business in connection with an acquisition of equipment or other assets (including parts thereof) pending full operation or contingent on certain conditions during a warranty period of such equipment or assets in accordance with the terms of the acquisition or (iii) obligations of the Company or any Restricted Subsidiary to pay for transportation in respect of its coal on the railway contemplated by the Railway Project pursuant to an off-take or similar agreement; *provided* that, in each case, such Indebtedness is not reflected as borrowings on the consolidated balance sheet of the Company (contingent obligations and commitments referred to in a footnote to financial statements and not otherwise reflected as borrowings on the balance sheet will not be deemed to be reflected on such balance sheet).

Notwithstanding the foregoing, in connection with the purchase by the Company or any Restricted Subsidiary of any asset or property to be used in the ordinary course of business by the Company or any Restricted Subsidiary in the Permitted Business (including any such purchase through the acquisition of Capital Stock of any Person that owns such asset or property, which will, upon such acquisition, become a Restricted Subsidiary), the term “Indebtedness” will not include post-closing payment obligations of the Company or such Restricted Subsidiary to which the seller may become entitled to the extent the amount of such payment is determined by a final closing balance sheet, final reserve assessment or a similar report or document or such payment depends on the performance of such asset or property after the closing; *provided, however*, that, at the time of closing, the amount of any such payment obligation is not determinable and, to the extent such payment thereafter becomes fixed and determined, the amount is paid within 360 days thereafter.

The amount of Indebtedness of any Person at any time shall be the outstanding balance at such time of all unconditional obligations as described above and, with respect to contingent obligations, the maximum liability upon the occurrence of the contingency giving rise to the obligation; *provided* that:

- (A) the amount outstanding at any time of any Indebtedness issued with original issue discount is the face amount of such Indebtedness less the remaining unamortized portion of the original issue discount of such Indebtedness at such time as determined in conformity with IFRS;
- (B) money borrowed and set aside at the time of the Incurrence of any Indebtedness in order to prefund the payment of the interest on such Indebtedness shall not be deemed to be “Indebtedness” so long as such money is held to secure the payment of such interest; and
- (C) that the amount of or the principal amount of Indebtedness with respect to any Hedging Obligation shall be equal to the net amount payable if such Hedging Obligation terminated at or prior to that time due to a default by such Person.

“*Intercreditor Agreement*” has the meaning set forth under “– Security.”

“*Interest Rate Agreement*” means any interest rate protection agreement, interest rate future agreement, interest rate option agreement, interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, interest rate hedge agreement, option or future contract or other similar agreement or arrangement designed to protect against fluctuations in interest rates.

“*Investment*” means:

- (i) any direct or indirect advance, loan or other extension of credit to another Person,
- (ii) any capital contribution to another Person (by means of any transfer of cash or other property to others or any payment for property or services for the account or use of others),
- (iii) any purchase or acquisition of Capital Stock, Indebtedness, bonds, notes, debentures or other similar instruments or securities issued by another Person, or
- (iv) any guarantee of any obligation of another Person to the extent such obligation is outstanding and to the extent guaranteed by such Person.

For the purposes of the provisions of the “– Certain Covenants – Designation of Restricted and Unrestricted Subsidiaries” and “– Certain Covenants – Limitation on Restricted Payments” covenants:

(i) the Company will be deemed to have made an Investment in an Unrestricted Subsidiary in an amount equal to the Company’s proportional interest in the Fair Market Value of the assets (net of liabilities owed to any Person other than the Company or a Restricted Subsidiary and that are not guaranteed by the Company or a Restricted Subsidiary) of a Restricted Subsidiary that is designated an Unrestricted Subsidiary at the time of such designation representing the percentage ownership of such Unrestricted Subsidiary at such time and (ii) any property transferred to or from any Person shall be valued at its Fair Market Value at the time of such transfer, as determined in good faith by the Board of Directors.

“*Investment Grade*” means a rating of “AAA,” “AA,” “A” or “BBB,” as modified by a “+” or “-” indication, or an equivalent rating representing one of the four highest Rating Categories, by S&P or any of its successors or assigns or a rating of “Aaa,” or “Aa,” “A” or “Baa,” as modified by a “1,” “2” or “3” indication, or an equivalent rating representing one of the four highest Rating Categories, by Moody’s or any of its successors or assigns or the equivalent ratings of any internationally recognized rating agency or agencies, as the case may be, which shall have been designated by the Company as having been substituted for S&P or Moody’s or both, as the case may be.

“*Leverage Ratio*” means, as of any Transaction Date, the ratio of (i) the aggregate amount of Indebtedness of the Company and its Restricted Subsidiaries on a consolidated basis outstanding on such Transaction Date to (ii) the aggregate amount of Consolidated EBITDA for the then most recent two semi-annual fiscal periods prior to such Transaction Date for which consolidated financial statements of the Company (which the Company will use its reasonable best efforts to compile in a timely manner) are available (which may include internal consolidated financial statements) (the “Two Semi-annual Period”). In making the foregoing calculation:

- (A) *pro forma* effect will be given to any Indebtedness Incurred or repaid during the period (the “Reference Period”) commencing on and including the first day of the Two Semi-annual Period and ending on and including the Transaction Date (other than Indebtedness Incurred or repaid under a revolving credit or similar arrangement (or under any predecessor revolving credit or similar arrangement) in effect on the last day of such Two Semi-annual Period), in each case as if such Indebtedness had been Incurred or repaid on the first day of such Reference Period; *provided* that, in the event of any such repayment, Consolidated EBITDA for such Two Semi-annual Period will not include any interest income actually earned by the Company or such Restricted Subsidiary during such Two Semi-annual Period in respect of the funds used to repay such Indebtedness;

- (B) *pro forma* effect will be given to Asset Dispositions and Asset Acquisitions (including giving *pro forma* effect to the application of proceeds of any Asset Disposition) that occur during such Reference Period as if they had occurred and such proceeds had been applied on the first day of such Reference Period;
- (C) *pro forma* effect will be given to asset dispositions and asset acquisitions (including giving *pro forma* effect to the application of proceeds of any asset disposition) that have been made by any Person that has become a Restricted Subsidiary or has been merged with or into the Company or any Restricted Subsidiary during such Reference Period and that would have constituted Asset Dispositions or Asset Acquisitions had such transactions occurred when such Person was a Restricted Subsidiary as if such asset dispositions or asset acquisitions were Asset Dispositions or Asset Acquisitions that occurred on the first day of such Reference Period; and
- (D) *pro forma* effect will be given to the creation, designation or re-designation of Restricted Subsidiaries and Unrestricted Subsidiaries as if such creation, designation or re-designation had occurred on the first day of such Reference Period;

provided that to the extent that clause (B) or (C) of this paragraph requires that *pro forma* effect be given to an Asset Acquisition or Asset Disposition (or asset acquisition or asset disposition), such *pro forma* calculation will be based upon the two full semi-annual fiscal periods immediately preceding the Transaction Date of the Person, or division or line of business of the Person, that is acquired or disposed for which financial information is available.

“*Liabilities*” means, with respect to a Luxembourg Subsidiary Guarantor, all existing liabilities (other than any liabilities owed to the direct or indirect shareholders of such Luxembourg Subsidiary Guarantor) incurred by such Luxembourg Subsidiary Guarantor and as reflected in the books of such Luxembourg Subsidiary Guarantor.

“*Lien*” means any mortgage, pledge, security interest, encumbrance, lien or charge of any kind (including, without limitation, any conditional sale or other title retention agreement or lease in the nature thereof or any agreement to create any mortgage, pledge, security interest, lien, charge, easement or encumbrance of any kind).

“*Material Acquisitions or Dispositions*” means any transaction that would require the preparation of *pro forma* financial information pursuant to Rule 11-01(a) or (b) of Regulation S-X promulgated under the Securities Act, assuming that such Rule is applicable to the Company.

“*Maximum Amount*” means, with respect to a Luxembourg Subsidiary Guarantor, an amount equal to 90% of the fair value of the assets of such Luxembourg Subsidiary Guarantor less the Liabilities at the time the guarantee or the indemnity is called.

“*Moody’s*” means Moody’s Investors Service, Inc. and its affiliates.

“*Net Cash Proceeds*” means:

- (a) with respect to any Asset Sale (other than the issuance or sale of Capital Stock), the proceeds of such Asset Sale in the form of cash or Temporary Cash Investments, including payments in respect of deferred payment obligations (to the extent corresponding to the principal, but not interest, component thereof) when received in the form of cash or Temporary Cash Investments and proceeds from the conversion of other property received when converted to cash or Temporary Cash Investments, net of
 - (1) brokerage commissions and other fees and expenses (including fees and expenses of counsel and investment banks) related to such Asset Sale;
 - (2) provisions for all taxes (whether or not such taxes will actually be paid or are payable) as a result of such Asset Sale without regard to the consolidated results of operations of the Company and its Restricted Subsidiaries, taken as a whole;
 - (3) payments made to repay Indebtedness or any other obligation outstanding at the time of such Asset Sale that either (x) is secured by a Lien on the property or assets sold or (y) is required to be paid as a result of such sale;
 - (4) appropriate amounts to be provided by the Company or any Restricted Subsidiary as a reserve against any liabilities associated with such Asset Sale, including, without limitation, pension and other post-employment benefit liabilities, liabilities related to environmental matters and liabilities under any indemnification obligations associated with such Asset Sale, all as determined in conformity with IFRS; and
 - (5) all distributions and other payments required to be made to minority interest holders in Subsidiaries or joint ventures as a result of such Asset Sale or the distribution of proceeds from such Asset Sale; and
- (b) with respect to any Asset Sale consisting of the issuance or sale of Capital Stock, the proceeds of such issuance or sale in the form of cash or Temporary Cash Investments, including payments in respect of deferred payment obligations (to the extent corresponding to the principal, but not interest, component thereof) when received in the form of cash or Temporary Cash Investments and proceeds from the conversion of other property received when converted to cash or Temporary Cash Investments, net of attorneys’ fees, accountants’ fees, underwriters’ or placement agents’ fees, discounts or commissions and brokerage, consultant and other fees incurred in connection with such issuance or sale and net of taxes paid or payable as a result thereof.

“*New Standard Bank Facilities Agreement*” means the debt facility with respect to borrowings by the Company set forth in that certain agreement dated March 8, 2012 and as amended and/or restated from time to time, among the Company and Standard Bank and such other banks and lenders as shall be or become parties thereto, including any related notes, bonds, debentures, guarantees, collateral documents, instruments, indenture, trust deed and agreements executed in connection therewith and, in each case, as amended, restated, modified, renewed, refunded, replaced or refinanced (whether upon or after termination or otherwise) in whole or in part from time to time in accordance with the provisions of clause (b)(13) of the covenant described under the caption “– Limitation on Indebtedness.”

“Offer to Purchase” means an offer to purchase the Notes by the Company from the Holders commenced by the Company mailing a notice by first class mail, postage prepaid, to the Trustee and each Holder at its last address appearing in the Note register stating:

- (1) the provision of the Indenture pursuant to which the offer is being made and that all Notes validly tendered will be accepted for payment on a pro rata basis;
- (2) the purchase price and the date of purchase (which shall be a Business Day no earlier than 30 days nor later than 60 days from the date such notice is mailed) (the “Offer to Purchase Payment Date”);
- (3) that any Note not tendered will continue to accrue interest pursuant to its terms;
- (4) that, unless the Company defaults in the payment of the purchase price, any Note accepted for payment pursuant to the Offer to Purchase shall cease to accrue interest on and after the Offer to Purchase Payment Date;
- (5) that Holders electing to have a Note purchased pursuant to the Offer to Purchase will be required to surrender the Note, together with the form entitled “Option of the Holder to Elect Purchase” on the reverse side of the Note completed, to the Paying Agent at the address specified in the notice prior to the close of business on the Business Day immediately preceding the Offer to Purchase Payment Date;
- (6) that Holders will be entitled to withdraw their election if the Paying Agent receives, not later than the close of business on the third Business Day immediately preceding the Offer to Purchase Payment Date, a facsimile transmission or letter setting forth the name of such Holder, the principal amount of Notes delivered for purchase and a statement that such Holder is withdrawing his election to have such Notes purchased; and
- (7) that Holders whose Notes are being purchased only in part will be issued new Notes equal in principal amount to the unpurchased portion of the Notes surrendered; *provided* that each Note purchased and each new Note issued shall be in a principal amount of US\$200,000 or integral multiples of US\$1,000 in excess thereof.

One Business Day prior to the Offer to Purchase Payment Date, the Company will deposit with the Paying Agent money sufficient to pay the purchase price of all Notes or portions thereof to be accepted by the Company for payment on the Offer to Purchase Payment Date. On the Offer to Purchase Payment Date, the Company shall (a) accept for payment on a pro rata basis Notes or portions thereof tendered pursuant to an Offer to Purchase; and (b) deliver, or cause to be delivered, to the Trustee all Notes or portions thereof so accepted together with an Officers’ Certificate specifying the Notes or portions thereof accepted for payment by the Company. In the case of Certificated Notes, the Paying Agent shall promptly mail to the Holders of Notes so accepted payment in an amount equal to the purchase price, and the Trustee shall promptly authenticate and mail to such Holders a new Note equal in principal amount to any unpurchased portion of the Note surrendered; *provided* that each Note purchased and each new Note issued shall be in a principal amount of US\$200,000 or integral multiples of US\$1,000 in excess thereof. The Company will publicly announce the results of an Offer to Purchase as soon as practicable after the Offer to Purchase Payment Date. The Company will comply with Rule 14e-1 under the Exchange Act and any other securities laws and regulations to the extent such laws and regulations are applicable, in the event that the Company is required to repurchase Notes pursuant to an Offer to Purchase.

To the extent that the provisions of any securities laws or regulations of any jurisdiction conflict with the provisions of the Indenture governing any Offer to Purchase, the Company will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under the Indenture by virtue of such compliance.

The materials used in connection with an Offer to Purchase are required to contain or incorporate by reference information concerning the business of the Company and its Subsidiaries which the Company in good faith believes will assist such Holders to make an informed decision with respect to the Offer to Purchase, including a brief description of the events requiring the Company to make the Offer to Purchase, and any other information required by applicable law to be included therein. The offer is required to contain all instructions and materials necessary to enable such Holders to tender Notes pursuant to the Offer to Purchase.

“*Officer*” means one of the executive officers of the Company or, in the case of a Subsidiary Guarantor, one of the directors or executive officers of such Subsidiary Guarantor.

“*Officers’ Certificate*” means a certificate signed by two Officers; *provided* that, with respect to any Subsidiary Guarantor having only one Officer, an “Officers” Certificate means a certificate signed by such Officer.

“*Opinion of Counsel*” means a written opinion from legal counsel which is acceptable to the Trustee that meets the requirements of the Indenture; *provided* that legal counsel shall be entitled to rely on certificates of the Company and any Subsidiary of the Company as to matters of fact.

“*Original Issue Date*” means the date on which the Notes are originally issued under the Indenture.

“*Pari Passu Subsidiary Guarantee*” means a guarantee by any Subsidiary Guarantor of Indebtedness of the Company (including Additional Notes), a Subsidiary Guarantor or Finance Subsidiary; *provided* that (i) the Company, such Subsidiary Guarantor or such Finance Subsidiary was permitted to Incur the Indebtedness to be guaranteed under the covenant described under the caption “– Certain Covenants – Limitation on Indebtedness” and (ii) such guarantee ranks pari passu with the Subsidiary Guarantee of such Subsidiary Guarantor.

“*Payment Default*” means (i) any default in the payment of interest on any Note when the same becomes due and payable, (ii) any default in the payment of principal of (or premium, if any, on) the Notes when the same becomes due and payable at maturity, upon acceleration, redemption or otherwise, (iii) the failure by the Company to make or consummate a Change of Control Offer in the manner described under the caption “– Repurchase of Notes upon a Change of Control,” or an Offer to Purchase in the manner described under the caption “– Certain Covenants – Limitation on Asset Sales” or (iv) any Event of Default specified in clause (e) of the definition of Events of Default.

“*Permitted Business*” means any business conducted by the Company and its Restricted Subsidiaries on the Original Issue Date as described in this offering memorandum, any other mineral resources extraction, processing, transportation or marketing business and other businesses reasonably related or ancillary thereto.

“*Permitted Holders*” means any or all of the following:

- (1) Mr. Odjargal Jambaljamts and Mr. Od Jambaljamts;
- (2) the estate, trust and spouse or any immediate family member of the Person specified in clause (1) or the legal representative of any of the foregoing;

- (3) any Affiliate (other than an Affiliate as defined in clause (ii) or (iii) of the definition of “Affiliate”) of either of the Persons specified in clause (1) of this definition; and
- (4) any Person both the Capital Stock and the Voting Stock of which (or in the case of a trust, the beneficial interests in which) are more than 80% owned by Persons specified in clauses (1) and (2) of this definition.

“*Permitted Investment*” means:

- (1) any Investment in the Company or a Restricted Subsidiary that is, directly or indirectly primarily engaged in a Permitted Business or a Person which will, upon the making of such Investment, become a Restricted Subsidiary that is, directly or indirectly primarily engaged in a Permitted Business or be merged or consolidated with or into or to transfer or convey all or substantially all its assets to the Company or a Restricted Subsidiary that is, directly or indirectly primarily engaged in a Permitted Business;
- (2) cash or Temporary Cash Investments;
- (3) payroll, travel and similar advances to cover matters that are expected at the time of such advances ultimately to be treated as expenses in accordance with IFRS;
- (4) stock, obligations or securities received in satisfaction of judgments;
- (5) an Investment in an Unrestricted Subsidiary consisting solely of an Investment in another Unrestricted Subsidiary;
- (6) any Investment pursuant to a Hedging Obligation designed solely to protect the Company or any Restricted Subsidiary against fluctuations in commodity prices, interest rates or foreign currency exchange rates and not for speculation;
- (7) receivables, trade credits or other current assets owing to the Company or any Restricted Subsidiary, if created or acquired in the ordinary course of business and payable or dischargeable in accordance with customary trade terms, including such concessionary trade terms as the Company or any Restricted Subsidiary considers reasonable under the circumstances;
- (8) any securities or other Investments received as consideration in, or retained in connection with, sales or other dispositions of property or assets, including Asset Dispositions made in compliance with the covenant described under the caption “– Certain Covenants – Limitation on Asset Sales”;
- (9) pledges or deposits (x) with respect to leases or utilities provided to third parties in the ordinary course of business or (y) otherwise described in the definition of “Permitted Liens” or made in connection with Liens permitted under the covenant described under the caption “– Certain Covenants – Limitation on Liens”;
- (10) Investments in securities or other obligations of trade creditors, trade debtors or customers received in compromise or settlement of debts created in the ordinary course of business, or pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of such trade creditor, trade debtor or customer, or as a result of foreclosure of or transfer of title with respect to any secured investment;
- (11) loans or advances to contractors, vendors, suppliers or distributors for the acquisition of assets or consumables or services in the ordinary course of business that are recorded as deposits or prepaid expenses on the Company’s consolidated balance sheet;

- (12) loans or advances to employees made in the ordinary course of business in an aggregate principal amount not to exceed \$5 million at any one time outstanding;
- (13) deposits made in order to comply with statutory or regulatory obligations to maintain deposits for workers, compensation claims and other purposes specified by statute or regulation from time to time in the ordinary course of business;
- (14) deposits made in order to secure the performance of the Company or any of its Restricted Subsidiaries and prepayments made in connection with the acquisition of real property or land use rights by the Company or any Restricted Subsidiary, in each case, in the ordinary course of a Permitted Business;
- (15) any guarantee of Indebtedness Incurred in accordance with the covenant “– Limitation on Indebtedness”;
- (16) repurchases of the Notes;
- (17) an acquisition of assets, Capital Stock or other securities by the Company or a Subsidiary for consideration to the extent such consideration consists solely of Common Stock of the Company;
- (18) any Railway Completion Guarantee permitted under clause (a) or (b)(15) of the covenant “Limitation on Indebtedness”;
- (19) any Permitted Railway Asset Swap;
- (20) any Deemed Railway Entity Investment and any Deemed Road Investment; and
- (21) if any Railway Entity is not a Restricted Subsidiary as a result of the sale, transfer or other disposition of an equity interest in such Railway Entity in compliance with clause (k) of the definition of “Asset Sale”, any Investment by the Company or a Restricted Subsidiary in such Railway Entity after such sale, transfer or other disposition; *provided* that the aggregate amount of all Investments (valued at the time each Investment is made) made under this clause (21) (less the reductions described in the following proviso) shall not exceed an amount equal to (i) (A) US\$120 million (or the Dollar Equivalent thereof) less (B) the aggregate amount of any Deemed Railway Entity Investment with respect to all Railway Entities multiplied by (ii) the percentage of direct equity interest in the Railway Entities owned by the Company or the relevant Restricted Subsidiary; *provided* further that such aggregate amount of all Investments with respect to any Railway Entity made under this clause (21) shall be calculated after deducting an amount equal to all reductions in such Investments since the date such Railway Entity was not Subsidiary resulting from:
 - (x) repayments of Investments made under this clause (21), in each case to the Company or any Restricted Subsidiary (except, in each case, to the extent any such payment or proceeds are included in the calculation of Consolidated Net Income), or
 - (y) such Investment, in whole or part, being sold or otherwise liquidated or repaid for cash (in which case such reduction will equal the lesser of (a) cash return of capital with respect to such Investment (less the cost of disposition, if any) and (b) the initial amount of such Investment).

“*Permitted Liens*” means:

- (1) Liens for taxes, assessments, governmental charges or claims that are being contested in good faith by appropriate legal or administrative proceedings promptly instituted and diligently conducted and for which a reserve or other appropriate provision, if any, as shall be required in conformity with IFRS shall have been made;
- (2) statutory and common law Liens of landlords and carriers, warehousemen, mechanics, suppliers, repairmen or other similar Liens arising in the ordinary course of business and with respect to amounts not yet delinquent or being contested in good faith by appropriate legal or administrative proceedings promptly instituted and diligently conducted and for which a reserve or other appropriate provision, if any, as shall be required in conformity with IFRS shall have been made;
- (3) Liens incurred or deposits made to secure the performance of tenders, bids, leases, statutory or regulatory obligations, bankers’ acceptances, surety and appeal bonds, government contracts, performance and return-of-money bonds and other obligations of a similar nature incurred in the ordinary course of business (exclusive of obligations for the payment of borrowed money);
- (4) leases or subleases granted to others that do not materially interfere with the ordinary course of business of the Company and its Restricted Subsidiaries, taken as a whole;
- (5) Liens encumbering property or assets under construction arising from progress or partial payments by a customer of the Company or its Restricted Subsidiaries relating to such property or assets;
- (6) any interest or title of a lessor in the property subject to any operating lease;
- (7) Liens on property of, or on shares of Capital Stock or Indebtedness of, any Person existing at the time such Person becomes, or becomes a part of, any Restricted Subsidiary; *provided* that such Liens do not extend to or cover any property or assets of the Company or any Restricted Subsidiary other than the property or assets acquired; *provided further* that such Liens were not created in contemplation of or in connection with the transactions or series of transactions pursuant to which such Person became a Restricted Subsidiary;
- (8) Liens (other than Liens on the Collateral) in favor of the Company or any Restricted Subsidiary;
- (9) Liens arising from attachment or the rendering of a final judgment or order against the Company or any Restricted Subsidiary that does not give rise to an Event of Default;
- (10) (a) Liens securing reimbursement obligations with respect to letters of credit or trade guarantees, performance and surety bonds and similar instruments that encumber documents and other property relating to such letters of credit or trade guarantees, performance and surety bonds and similar instruments and the products and proceeds thereof, in each case exclusive of obligations for the payment of borrowed money or (b) Liens in favor of any bank having a right of setoff, revocation, refund or chargeback with respect to money or instruments of the Company or any Restricted Subsidiary on deposit with or in the possession of such bank;
- (11) Liens existing on the Original Issue Date;

- (12) Liens securing Indebtedness which is Incurred to refinance secured Indebtedness which is permitted to be Incurred under clause (b)(5) of the covenant described under the caption “– Limitation on Indebtedness”; *provided* that such Liens do not extend to or cover any property or assets of the Company or any Restricted Subsidiary other than the property or assets securing the Indebtedness being refinanced;
- (13) Liens (including extensions and renewals thereof) upon real or personal property, asset or equipment acquired after the Original Issue Date of the Company or any Restricted Subsidiary; *provided* that (a) such Lien is created solely for the purpose of securing Indebtedness Incurred under clause (b)(7)(B) of the covenant described under the caption “– Limitation on Indebtedness,” (b) such Lien is created prior to, at the time of or within 180 days after the later of the acquisition or the completion of development, construction or improvement of such property, (c) the principal amount of Indebtedness secured by such Lien does not exceed 100% of the cost of such property, development, construction or improvement and (d) such Lien shall not extend to or cover any property or assets other than such item of property and any improvements on such item;
- (14) Liens under the Security Documents, including, without limitation, any Liens on the Collateral securing any Permitted Pari Passu Secured Indebtedness;
- (15) easements, rights-of-way, municipal and zoning ordinances or other restrictions as to the use of properties in favor of governmental agencies or utility companies that do not materially adversely affect the value of such properties or materially impair the use for the purposes of which such properties are held by the Company or any Restricted Subsidiary;
- (16) Liens securing Indebtedness under any Hedging Obligation permitted to be Incurred under clause (b)(6) of the covenant described under the caption “– Certain Covenants – Limitation on Indebtedness”; *provided* that (i) Indebtedness relating to any such Hedging Obligations is, and is permitted under the covenant described under the caption “– Certain Covenants – Limitation on Liens” to be, secured by a Lien on the same property securing such Hedging Obligation or (ii) such Lien is encumbering customary initial deposits or margin deposits or are otherwise within the general parameters customary in the industry;
- (17) any interest or title of a lessor under any Capitalized Lease Obligation permitted to be Incurred under the Indenture; *provided, however*, that the Liens do not extend to any property or assets which is not leased property subject to such Capitalized Lease Obligation;
- (18) Liens on pledges or deposits under worker’s compensation laws, unemployment insurance laws or similar legislation, or good faith deposits in connection with bids, tenders, contracts or leases, or to secure public or statutory obligations, and other purposes specified by statute made in the ordinary course of business and not securing Indebtedness of the Company or any Restricted Subsidiary;
- (19) Liens on deposits made in order to secure the performance of the Company or any of its Restricted Subsidiaries in connection with the acquisition of real property or land use rights by the Company or any of its Restricted Subsidiaries in the ordinary course of business and not securing Indebtedness of the Company or any Restricted Subsidiary;
- (20) Liens to secure Indebtedness under the Credit Facilities Incurred or outstanding pursuant to clause (b)(13) under the caption “Limitation on Indebtedness”;
- (21) Liens on assets of a Non-Guarantor Restricted Subsidiary securing any Permitted Subsidiary Indebtedness of such Non-Guarantor Restricted Subsidiary permitted to be Incurred under clause (a) of the covenant “– Limitation on Indebtedness”;

- (22) Liens in favor of customs and revenue authorities arising by operation of law to secure payment of customs duties in connection with importation or exportation of goods in the ordinary course of business;
- (23) retention of title reserved by any seller of goods or any Lien imposed, reserved or granted over goods supplied by such seller, in each case in the ordinary course of business;
- (24) Liens on the Capital Stock of Unrestricted Subsidiaries or any Person that is not a Subsidiary of the Company solely to secure Indebtedness of Unrestricted Subsidiaries or such Person, in each case that is non-recourse to the Company or any Restricted Subsidiary, unless the Company or such Restricted Subsidiary could have incurred such Indebtedness under the Indenture on the date of incurrence of such Lien;
- (25) Liens with respect to minor survey exceptions, minor encumbrances, easements or reservations of, or rights of others for, licenses, rights of way, sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning or other restrictions as to the use of real property, not interfering in any material respect with the conduct of the business of the Company and its Restricted Subsidiaries;
- (26) Liens with respect to licenses or leases or subleases as licensor, lessor or sublessor of any of the Company's or its Restricted Subsidiaries property, including intellectual property, in the ordinary course of business;
- (27) Liens on the Capital Stock of any Finance Subsidiary or any loan extended by a Finance Subsidiary to the Company or any other Restricted Subsidiary; *provided* such Lien is for the benefit of the lenders relating to, or interests in, such Indebtedness Incurred by such Finance Subsidiary in compliance with the covenant “–Limitation on Indebtedness”;
- (28) Liens on the assets or Capital Stock of the Railway Entities (excluding assets or Capital Stock of any Restricted Subsidiary that is not a Railway Entity) and Liens on certain other assets relating to and necessary for the Railway Project (including, without limitation, the license to build (as the same may be amended and supplemented from time to time) and land use rights) owned by any Restricted Subsidiary (other than a Railway Entity), in each case securing any Railway Project Indebtedness or Railway Completion Guarantee permitted to be Incurred under the covenant “– Limitation on Indebtedness”;
- (29) Liens to secure Indebtedness permitted under clause (b)(14) under the caption “Limitation on Indebtedness”; and
- (30) Liens with respect to obligations of the Company or any Restricted Subsidiary that do not exceed US\$5.0 million (or the Dollar Equivalent thereof using the Original Issue Date as the date of determination) at any one time outstanding;

provided that Permitted Liens shall not include any Liens on the mining license for the Ukhaa Khudag mine or the Capital Stock of the entity holding the mining license for the Ukhaa Khudag mine.

“*Permitted Pari Passu Secured Indebtedness*” has the meaning set forth under “– Security – Permitted Pari Passu Secured Indebtedness.”

“*Permitted Railway Asset Swap*” means the concurrent purchase and sale or exchange of the Company’s equity interest in the Railway Project and the equity interest in the railway project that owns and operates the railroad between Tavan Tolgoi to Sainshand; *provided* that any cash or Temporary Cash Investment received must be applied in compliance with the covenant described under the caption “– Certain Covenants – Limitation on Asset Sales”.

“*Permitted Subsidiary Indebtedness*” means any Indebtedness of any Non-Guarantor Restricted Subsidiary; *provided* that, on the date of the Incurrence of such Indebtedness and after giving effect thereto and the application of the proceeds thereof, the aggregate principal amount outstanding of all Indebtedness of all Non-Guarantor Restricted Subsidiaries (but excluding the amount of any Indebtedness of any Non-Guarantor Restricted Subsidiary permitted under clauses (b)(4), (b)(6), (b)(8), (b)(9), (b)(10), (b)(11), (b)(12) and (b)(16) of the covenant described under the caption “– Certain Covenants – Limitation on Indebtedness”) does not exceed an amount equal to 15% of Total Assets.

“*Person*” means any individual, corporation, partnership, limited liability company, joint venture, trust, unincorporated organization or government or any agency or political subdivision thereof.

“*Preferred Stock*” as applied to the Capital Stock of any Person means Capital Stock of any class or classes that by its term is preferred as to the payment of dividends, or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such Person, over any other class of Capital Stock of such Person.

“*Railway Completion Guarantee*” means any guarantee, letters of credit, surety bonds or performance bonds or other similar obligations Incurred by the Company or any Restricted Subsidiary in respect of the Railway Project Indebtedness.

“*Railway Entities*” means any Person or its Subsidiaries established for the purposes of owning, constructing, operating and maintaining the railroad (including, without limitation, railway infrastructure, depot and workshops, rolling stocks and transshipment facilities and other items reasonably related thereto) between the Company’s Ukhaa Khudag mine deposit to Gashuun Sukhait.

“*Railway Project*” means owning, constructing, operating and maintaining of the railroad (including, without limitation, railway infrastructure, depot and workshops, rolling stocks and transshipment facilities and other items reasonably related thereto) between the Company’s Ukhaa Khudag mine deposit to Gashuun Sukhait.

“*Railway Project Indebtedness*” means any Indebtedness of the Railway Entities Incurred to finance all or any part of the cost of the Railway Project (including, without limitation, working capital); *provided* that such Indebtedness is non-recourse (other than pursuant to a Railway Completion Guarantee or any Permitted Lien securing any Railway Completion Guarantee, or any obligation of the Company or any Restricted Subsidiary to pay for transportation in respect of its coal on the railway contemplated by the Railway Project pursuant to an off-take or similar agreement) to the Company or any Restricted Subsidiary (other than the Railway Entities to the extent such Railway Entities constitute Restricted Subsidiaries).

“*Rating Agencies*” means (i) S&P, (ii) Moody’s and (iii) if S&P or Moody’s or both shall not make a rating of the Notes publicly available, one or more “nationally recognized statistical rating organizations,” as the case may be, within the meaning of Rule 15c3-I(c)(2)(iv)(F) under the Exchange Act, selected by the Company, which shall be substituted for S&P or Moody’s or both, as the case may be.

“*Rating Category*” means (i) with respect to S&P, any of the following categories: “BB,” “B,” “CCC,” “CC,” “C” and “D” (or equivalent successor categories); (ii) with respect to Moody’s, any of the following categories: “Ba,” “B,” “Caa,” “Ca,” “C” and “D” (or equivalent successor categories); and (iii) the equivalent of any such category of S&P or Moody’s used by another Rating Agency. In determining whether the rating of the Notes has decreased by one or more gradations, gradations within Rating Categories (“+” and “-” for S&P; “1,” “2” and “3” for Moody’s; or the equivalent gradations for another Rating Agency) shall be taken into account (e.g., with respect to S&P, a decline in a rating from “BB+” to “BB,” as well as from “BB-” to “B+,” will constitute a decrease of one gradation).

“*Rating Date*” means, in connection with actions contemplated under the caption “– Consolidation, Merger and Sale of Assets,” that date which is 90 days prior to the earlier of (x) the occurrence of any such actions as set forth therein and (y) a public notice of the occurrence of any such actions.

“*Rating Decline*” means, in connection with actions contemplated under the caption “– Consolidation, Merger and Sale of Assets,” the notification by any of the Rating Agencies that such proposed actions will result in any of the events listed below:

- (a) in the event the Notes are rated by both Moody’s and S&P on the Rating Date as Investment Grade, the rating of the Notes by either Rating Agency shall be below Investment Grade;
- (b) in the event the Notes are rated by either, but not both, of the Rating Agencies on the Rating Date as Investment Grade, the rating of the Notes by such Rating Agency shall be below Investment Grade; or
- (c) in the event the Notes are rated below Investment Grade by both Rating Agencies on the Rating Date, the rating of the Notes by either Rating Agency shall be decreased by one or more gradations (including gradations within Rating Categories as well as between Rating Categories).

“*Reference Treasury Dealer*” means each of any three investment banks of recognized standing that is a primary U.S. Government securities dealer in The City of New York, selected by the Company in good faith.

“*Reference Treasury Dealer Quotations*” means, with respect to each Reference Treasury Dealer and any redemption date, the average as determined by an investment banking firm of recognized international standing selected by the Company, of the bid and asked prices for the Comparable Treasury Issue (expressed in each case as a percentage of its principal amount) quoted in writing to such investment banking firm by such Reference Treasury Dealer at 5:00 p.m. on the fifth Business Day preceding such redemption date.

“*Replacement Assets*” means, on any date, property or assets (other than current assets) of a nature or type or that are used in a Permitted Business, including the Capital Stock of any Person holding such property or assets that is, directly or indirectly, primarily engaged in a Permitted Business and is or will become, upon the acquisition by the Company or any of its Restricted Subsidiaries of such Capital Stock, a Restricted Subsidiary.

“*Restricted Subsidiary*” means any Subsidiary of the Company other than an Unrestricted Subsidiary.

“*S&P*” means Standard & Poor’s Ratings Services and its affiliates.

“*Sale and Leaseback Transaction*” means any direct or indirect arrangement relating to property (whether real, personal or mixed), now owned or hereafter acquired whereby the Company or any Restricted Subsidiary transfers such property to another Person and the Company or any Restricted Subsidiary leases it from such Person.

“*Security Documents*” means, collectively, the pledge or charge agreements and any other agreements or instruments that, including the Indenture, may evidence or create any security interest in favor of the Shared Security Agent and/or any holder (or its representative or agent) of any Permitted Pari Passu Secured Indebtedness in any or all of the Collateral.

“*Senior Indebtedness*” of the Company or any Restricted Subsidiary, as the case may be, means all Indebtedness of the Company or such Restricted Subsidiary, as relevant, whether outstanding on the Original Issue Date or thereafter created, except for Indebtedness which, in the instrument creating or evidencing the same, is expressly stated to be subordinated in right of payment to (a) in respect of the Company, the Notes or (b) in respect of any Restricted Subsidiary that is a Subsidiary Guarantor, its Subsidiary Guarantee; *provided* that Senior Indebtedness does not include (i) any obligation to the Company or any Restricted Subsidiary, (ii) trade payables or (iii) Indebtedness Incurred in violation of the Indenture.

“*Significant Subsidiary*” means any Restricted Subsidiary that would constitute a “significant subsidiary” as defined in Article 1, Rule 1-02 of Regulation S-X, promulgated pursuant to the United States Securities Act of 1933, as such Regulation is in effect on the date of the Indenture.

“*Stated Maturity*” means, (1) with respect to any Indebtedness, the date specified in such debt security as the fixed date on which the final installment of principal of such Indebtedness is due and payable as set forth in the documentation governing such Indebtedness and (2) with respect to any scheduled installment of principal of or interest on any Indebtedness, the date specified as the fixed date on which such installment is due and payable as set forth in the documentation governing such Indebtedness, and shall not include any contingent obligations to repay, redeem or repurchase any such interest or principal prior to the date originally scheduled for the payment thereof.

“*Subordinated Indebtedness*” means any Indebtedness of the Company or any Subsidiary Guarantor which is contractually subordinated or junior in right of payment to the Notes or any Subsidiary Guarantee, as applicable, pursuant to a written agreement to such effect.

“*Subsidiary*” means, with respect to any Person, any corporation, association or other business entity (i) of which more than 50% of the voting power of the outstanding Voting Stock is owned, directly or indirectly, by such Person and one or more other Subsidiaries of such Person or (ii) of which 50% of the outstanding Voting Stock is owned, directly or indirectly, by such Person and which is “controlled” and consolidated by such Person in accordance with IFRS; *provided, however*, that with respect to clause (ii) the occurrence of any event (other than the issuance or sale of Capital Stock) as a result of which such corporation, association or other business entity ceases to be “controlled” by such Person under IFRS and to constitute a Subsidiary of such Person shall be deemed to be a designation of such corporation, association or other business entity as an Unrestricted Subsidiary by such Person and be subject to the requirements under the first paragraph of “– Designation of Restricted and Unrestricted Subsidiaries” covenant.

“*Subsidiary Guarantee*” means any guarantee of the obligations of the Company under the Indenture and the Notes by any Subsidiary Guarantor, subject to the limitations set forth therein.

“*Subsidiary Guarantor*” means any initial Subsidiary Guarantor named herein and any other Restricted Subsidiary which guarantees the payment of the Notes pursuant to the Indenture and the Notes; *provided* that Subsidiary Guarantor will not include any Person whose Subsidiary Guarantee has been released in accordance with the Indenture and the Notes.

“*Subsidiary Guarantor Pledgor*” means the initial Subsidiary Guarantor Pledgor and any other Subsidiary Guarantor that pledges Collateral to secure the obligations of the Company under the Notes and the Indenture and of such Subsidiary Guarantor under its Subsidiary Guarantee; *provided* that “Subsidiary Guarantor Pledgor” does not include any person whose pledge under the Security Documents has been released in accordance with the Security Documents, the Indenture and the Notes.

“*Temporary Cash Investment*” means any of the following:

- (1) direct obligations of the United States of America, any state of the European Economic Area, the United Kingdom, Japan, the People’s Republic of China, Singapore and Hong Kong or any agency of the foregoing; *provided* that such country or state is rated “AA” (or such similar equivalent rating) or higher by at least two nationally recognized statistical rating organization (as defined in Rule 436 under the Securities Act) (each such country or state a “Rated Country/State”), or obligations fully and unconditionally guaranteed by any Rated Country/State, in each case maturing within one year;
- (2) demand or time deposit accounts, certificates of deposit and money market deposits maturing within 180 days of the date of acquisition thereof issued by a bank or trust company which is organized under the laws of the United States of America or any state thereof, any state of the European Economic Area that is rated “AA” (or such similar equivalent rating) or higher by at least two nationally recognized statistical rating organization (as defined in Rule 436 under the Securities Act), the United Kingdom, Japan, Singapore or Hong Kong, and which bank or trust company has capital, surplus and undivided profits aggregating in excess of US\$500.0 million (or the Dollar Equivalent thereof) and has outstanding debt which is rated “A” (or such similar equivalent rating) or higher by at least one nationally recognized statistical rating organization (as defined in Rule 436 under the Securities Act) or any money market fund sponsored by a registered broker dealer or mutual fund distributor;
- (3) repurchase obligations with a term of not more than 30 days for underlying securities of the types described in clause (1) above entered into with a bank or trust company meeting the qualifications described in clause (2) above;
- (4) commercial paper, maturing within one year of the date of acquisition thereof, issued by a corporation (other than an Affiliate of the Company) organized and in existence under the laws of the United States of America, any state thereof or any foreign country recognized by the United States of America with a rating at the time as of which any investment therein is made of “P-1” (or higher) according to Moody’s or “A-1” (or higher) according to S&P;
- (5) securities, maturing within 180 days of the date of acquisition thereof, issued or fully and unconditionally guaranteed by any state, commonwealth or territory of the United States of America, or by any political subdivision or taxing authority thereof and rated at least “A” by S&P or Moody’s;
- (6) any mutual or money market fund that has at least 95% of its assets continuously invested in investments of the types described in clauses (1) through (5) above; and

- (7) demand or time deposit accounts, certificates of deposit, overnight or call deposits and money market deposits with (i) Standard Chartered Bank, Citibank, N.A., Hong Kong Branch, The Bank of East Asia Limited, Standard Bank Plc, Trade and Development Bank of Mongolia, Golomt Bank, Khan Bank, Xac Bank, Industrial and Commercial Bank of China, Bank of China, China Construction Bank, ING, HSBC and Deutsche Bank (or, in each case, any successor), (ii) any other bank or trust company organized under the laws of the People's Republic of China, Hong Kong, Mongolia or the United Kingdom, whose long-term debt rating by Moody's or S&P is "A2" or "A" or higher, respectively, or (iii) any other bank organized under the laws of the People's Republic of China, Hong Kong, Mongolia or the United Kingdom, provided that, in the case of clause (iii), such deposits do not exceed US\$10.0 million (or the Dollar Equivalent thereof) with any single bank or US\$30.0 million (or the Dollar Equivalent thereof) in the aggregate on any date of determination.

"*Total Assets*" means, as of any date, the total consolidated assets of the Company and its Restricted Subsidiaries measured in accordance with IFRS as of the last day of the most recent semi-annual fiscal period for which consolidated financial statements of the Company (which the Company shall use its reasonable best efforts to compile on a timely manner) are available (which may be internal consolidated financial statements); *provided* that only with respect to clause (b)(7) or (b)(13) of the covenant described under the caption "– Certain Covenants – Limitation on Indebtedness" and the definition of "Permitted Subsidiary Indebtedness," Total Assets shall be calculated after giving pro forma effect to include the cumulative value of all of the real or personal property, asset or equipment the acquisition, development, construction or improvement of which requires or required the Incurrence of Indebtedness and calculation of Total Assets thereunder, as measured by the purchase price or cost therefor or budgeted cost provided in good faith by the Company or any of its Restricted Subsidiaries to the bank or other similar financial institutional lender providing such Indebtedness.

"*Trade Payables*" means, with respect to any Person, any accounts payable or any other indebtedness or monetary obligation to trade creditors created, assumed or guaranteed by such Person or any of its Subsidiaries arising in the ordinary course of business in connection with the acquisition of goods or services and payable within 180 days.

"*Transaction Date*" means, with respect to the Incurrence of any Indebtedness, the date such Indebtedness is to be Incurred and, with respect to any Restricted Payment, the date such Restricted Payment is to be made.

"*Unrestricted Subsidiary*" means (1) any Subsidiary of the Company that at the time of determination shall be designated an Unrestricted Subsidiary by the Board of Directors in the manner provided in the Indenture and (2) any Subsidiary of an Unrestricted Subsidiary.

"*U.S. Government Obligations*" means securities that are (1) direct obligations of the United States of America for the payment of which its full faith and credit is pledged or (2) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America the payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America, which, in either case, are not callable or redeemable at the option of the issuer thereof at any time prior to the Stated Maturity of the Notes, and shall also include a depository receipt issued by a bank or trust company as custodian with respect to any such U.S. Government Obligation or a specific payment of interest on or principal of any such U.S. Government Obligation held by such custodian for the account of the holder of a depository receipt; *provided* that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the U.S. Government Obligation or the specific payment of interest on or principal of the U.S. Government Obligation evidenced by such depository receipt.

“*Voting Stock*” means, with respect to any Person, Capital Stock of any class or kind ordinarily having the power to vote for the election of directors, managers or other voting members of the governing body of such Person.

“*Wholly Owned*” means, with respect to any Subsidiary of any Person, the ownership of 100% of the outstanding Capital Stock of such Subsidiary (other than any director’s qualifying shares or Investments by foreign nationals mandated by applicable law or a minimum number of shares owned by a second shareholder as mandated by applicable law) by such Person or one or more Wholly Owned Subsidiaries of such Person.