



Oyu Tolgoi LLC

Human Resources and Capability Development

HR-I.1: Separation of Employment Procedure

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Introduction

1. Procedure Number

This document is known as *HR-I.1: Separation of Employment Procedure*.

2. Purpose

The purpose of the Separation of Employment Procedure is to establish guidelines for managing the end of the employment relationship and the departure of employees from the Company, and to ensure all departing employees are treated fairly and in accordance with the law.

Procedure

1. Overview

This procedure sets out legal conditions and entitlements that apply when the employment relationship between the Company and employee ends. It aims to ensure employees are treated fairly and in accordance with the Company's values, and that business and legal obligations are satisfied. This procedure provides a clear understanding of the process involved in managing separation under various circumstances; and the roles and responsibilities of all parties.

Both an employee and the Company have the right to terminate employment relationship.

1.1. Grounds of termination of employment

Employment may be terminated upon the following grounds:

- 1.1.1 Both parties' mutual agreement on termination of employment;
- 1.1.2 Death of employee or employer;
- 1.1.3 Expiration of employment contract or non-extension;
- 1.1.4 Requirement of authorized Government entities as per law;
- 1.1.5 Re-employment of an employee who has been dismissed unfairly;
- 1.1.6 Military call to active duty;
- 1.1.7 Proven criminal acts by court;
- 1.1.8 Employment termination at the initiative of an employer or an employee.

In all instances, separation of employment procedures will be followed to ensure compliance with relevant Mongolian laws and legislations and contractual obligations.

1.2. Payments due at Termination

Where an employee is terminated for any reason they will be entitled to:

- 1.2.1 payment for any accrued but unpaid annual leave;
- 1.2.2 payment of any outstanding reimbursement for business related expenses incurred by the employee.

There will be no payments for any other unused leave entitlements (including Sick Leave).

Wherever the Company is required to provide a notice period in relation to a termination it may, at its discretion, require an employee to attend work and perform their duties for all, part, or none of this period.

An employee's final pay will be reduced to recover any salary advance, any overpayment, previously paid not accrued annual leave, and personal or unexplained/reconciled charges made to a corporate credit card or other amounts owed to the Company.

1.3. Return of Company Property

Employees are expected to immediately return all Company property to their leader when their employment terminates.

Any final payment due may be reduced by the value of any unreturned Company property.

In some cases, legal prosecution may be commenced in relation to unreturned Company property.

2. Employee Initiated Termination

An employee may voluntarily terminate his/her employment with the Company under following reasons:

- a. resignation (resignation at will; resignation due to ill health)
- b. retirement at employee initiative (retire permanently or retire to begin taking pension benefit from Social Insurance whilst employed with the Company)

2.1. Resignation

Employees may terminate their employment at any time by providing their leader with 30 calendar days' notice in writing. The employee may be released earlier with the agreement of their leader. If an employee fails to give the relevant period of notice, the Company may withhold monies due to the employee up to an amount equal to the notice period.

Employees who are working out a period of notice of termination and are absent from duty without providing reasonable excuse to the Employer, will be deemed to have abandoned their employment and will not be entitled to pay in respect of the balance of the period of notice. Where an employee is on an approved leave, the termination notice period may be served concurrently with this leave.

Should an employee wish to withdraw their resignation, acceptance of such withdrawal will be at the sole discretion of the Company.

Where an employee decides to resign for medical reasons the company will support that employee to apply for any Social Insurance or other benefits that they may be entitled. Leaders and Human resources may ensure that employees who choose to resign because

of ill health are fully aware of the options available to try and endeavour to retain employees in employment, such as adjustments to the job, phased returns and redeployment.

The resignation of an employee on the basis of illness or injury will be managed by Human Resources.

The employee's immediate leader is accountable for ensuring that the separation date is communicated to Human Resources and Payroll as soon as possible following the receipt of notification of resignation.

2.2. Retirement

Retirement will occur where an employee has reached the legislated retirement age and qualifies for the payment of a pension from the Social Insurance fund and expresses their desire to retire.

Employees who wish to retire have the option to:

- a. retire permanently; or
- b. with the agreement of the company, retire to begin collecting a pension benefit from Social Insurance Fund, whilst remaining employed with the Company.

Employees who wish to retire must provide their Leader with at least 30 calendar days' notice of their retirement. The notice must be in writing and must specify the date of their retirement and whether they are retiring permanently or retiring to begin collecting a pension benefit from Social Insurance Fund. Early retirement will be managed in line with relevant laws and legislations.

2.2.1. Payment at Retirement

When an employee retires, either permanently or to start collecting a pension, they will be paid a retirement allowance equal to three month's average earnings.

The retirement payment will only be made once. If an employee retires to collect a pension the allowance will be paid at the time this occurs. It will not be paid again when their employment is subsequently ended permanently.

2.2.2. Retirement to collect a pension

An employee may only retire to collect a pension with the approval of their General Leader. General Leaders must consult with Human Resources when deciding whether to approve a request. Employees may be required to undergo a medical examination to determine ongoing fitness for duty, prior to approval being granted.

Where a request to retire to collect a pension is approved the employee's current employment contract will be terminated and the employee will be required to sign a new contract. All service under the old contract will be recognised by the Company for the calculation of employee entitlements.

The Company will not make the unemployment and health components of regular Social Insurance contributions for employees who have retired to collect a pension as per the

Social Insurance Law. Other Social Insurance contribution components will be paid as normal.

3. Company Initiated Termination

3.1. Overview

The Company may terminate an employee's employment for the following reasons including:

- 3.1.1 Employer's business entity or organisation, or a branch or unit thereof, has been dissolved, or the job or position within it has been abolished, or the number of employees has been reduced;
- 3.1.2 Determined that the employee cannot meet the requirements of the job or position due of lack of professional qualifications or skill, or health reasons;
- 3.1.3 Employee reached 60 years of age and is eligible to receive a pension;
- 3.1.4 Employee repeatedly violated the employer's disciplinary rules or committed serious violation which, by terms of the employment agreement, would automatically terminate the labour relations;
- 3.1.5 Employee who is responsible for assets or money of the employer has acted wrongfully and, as a result, has lost the trust of the employer;
- 3.1.6 Employee is elected and assigned to perform other salaried work within the employer's organisation;
- 3.1.7 Other grounds set forth in the contract of employment;

Prior to any decision or discussion with an employee in relation to termination of employment, the leader must seek advice from Human Resources.

All decisions to terminate employment must be approved by the President and CEO of the Company.

Where a definite decision to terminate employment has been made, the final day of work will be the date on which the employee has handed over his/her duties and responsibilities.

In line with the Equal Employment Opportunity Policy, the Company cannot terminate employment for any reason associated with a nominated area of discrimination, such race, sex, religion, national origin, physical disability, age, political affiliation etc.

Employment termination is prohibited from being based on the following grounds:

- A. where an employee is performing specified duties on behalf of a State; organization for a period of not more than 3 months;
- B. where an employee is pregnant or requesting to take maternity leave;
- C. where an employee is on annual leave;
- D. where an employee is on paid sick leave;
- E. where ownership or management of the company is changed;
- F. where the employee is participating in discussions or negotiations in connection with the entrance into any collective agreements or bargaining, or other associated activities;
- G. where the employee has been ordered to attend military active duty by the army activation committee;

3.2. Unsatisfactory Performance and Disciplinary Violations

Employment may be terminated for continued unsatisfactory performance or behaviour. The steps outlined in the Company's Performance management and disciplinary procedure must be followed prior to termination being considered.

An employee who is terminated due to unsatisfactory performance will be provided with one calendar month of notice of termination.

3.3. Misconduct and Summary Dismissal

Summary dismissal is dismissal without notice. The Company can dismiss an employee without notice when it believes on reasonable grounds that the employee has behaved or conducted themselves in a manner that is sufficiently serious to justify immediate dismissal.

Possible grounds for summary dismissal may include, but are not limited to:

- A. Documented serious violation of safety regulations;
- B. Documented and proven failure to present to work in a fit state;
- C. Proven utilisation and distribution of illegal substances;
- D. Proven criminal acts, unlawful or malicious activities;
- E. Proven false and misleading statements, rumours, unsubstantiated innuendoes regarding Oyu Tolgoi LLC activities to parties outside the Company;
- F. Proven fraud activities;
- G. Proven cases of claiming false expenses;
- H. Proven undeclared conflict of interests;
- I. Proven intentional or negligent disclosure of confidential company information;
- J. Proven damage to company property; Negligent use of company equipment, material or property;
- K. Proven unauthorised use or misuse of company property and information for personal gain or profit;
- L. Possession and use of weapons or items qualifying a weapon (including firearms, knives, explosives, toxic and hazardous substances) at work premises, or vehicles of the Employer, and in/on the project site, buildings, facilities and structures, areas and territories owned, possessed and/or used by the Employer or while on business trip;
- M. Absence from work for more than 3 consecutive days with no legitimate excuse;
- N. Proven evidence of excessive use of power by employee which exceeded authorization granted under the rules, regulations, resolutions or proxy by the Employer.

The employee's General Leader and the VP Human Resources and Capability Development must review any summary dismissal and it must be approved by President and CEO of the Company.

3.4. Incapacity due to health

3.4.1. Termination due to Occupational Disease

Termination due to occupational disease (work related illness or injury) will be managed in accordance with the Companies Industrial Accident and Occupational Disease Rehabilitation and Injury Management procedures and relevant Mongolian legislation.

Leaders should seek advice from Human Resources in any case where an employee has or may have an occupational disease.

3.4.2. Medical Retirement

Medical retirement may occur when an employee has a non-work related medical condition that prevents them from performing the inherent requirements of their role, either permanently or for the foreseeable future.

3.4.3. Process

Where an employee's leader has concerns about the employee's performance or attendance and believes that these performance or attendance issues may relate to a physical or mental illness or injury, informal discussions between the Leader and the employee should generally be considered as a first step. This approach may provide an opportunity for the employee to volunteer information about their absence from duty or performance and any medical or other condition. Such information may assist in determining whether there is a problem, and if so, developing a plan to address it.

If performance or attendance issues remain unresolved after informal discussions or if the Company has a reasonable concern regarding the potential for a suspected or actual medical condition to threaten the safety of the employee or other employees, it may direct the employee to attend medical assessments. The purpose of these assessments will be to determine the employee's fitness for work. The assessments will be arranged and paid for by the Employer and may include physical, psychological and occupational assessments. Failure of an employee to comply with a direction to attend a fitness for duty assessment or to participate fully in that assessment will constitute misconduct and may result in disciplinary action.

An employee who has been referred to a fitness for duty assessment may request that the Company provide them with copies of the information provided to the assessor and any assessment reports or medical examination reports. The Company will provide copies of this information except where the assessor or doctor has indicated that the report should not be provided to the employee.

The employee's Leader, in consultation with Human Resources and HSE Leader, will consider any assessment reports and other relevant materials and propose a course of action to be taken.

Prior to making a decision to medically retire an employee particular consideration will be given to:

1. whether the employee can perform the inherent requirements of their role
2. whether the company can accommodate the employee's medical restrictions
3. whether a suitable alternate role is available

If an employee's medical restrictions cannot be accommodated and medical retirement is being considered the Company will refer the case to a Medical Labour Commission for consideration. Medical retirement can only occur where it is supported by the findings of this Commission.

Where a decision is made to medically retire an employee the company will support that employee to apply for and claim any Social Insurance or other benefits that they may be entitled to.

3.4.4. Payment for Medical Retirement

Employees who are medically retired are entitled to the payment of a medical retirement allowance in their final pay. This allowance will be equal to one month's average earnings.

3.5. Redundancy

From time to time the company may determine that a position or positions are no longer required and may abolish these positions. This may occur as a result of a structural change or as part of the normal business cycle.

Where an employee occupies a position on the date that it is abolished the Employer may terminate the employment of that individual on the basis of redundancy/retranchment.

All redundancies must be approved by President and CEO of the Company.

3.5.1. Process

When assessing structural or business changes that require a reduction in the number of positions, the Company will consider a range of options to limit the impact of redundancies including temporarily standing down employees from duty on idle time, redeployment, re-training, requesting employees to take leave, natural attrition and limiting external recruitment. Decisions on which positions are no longer required are to be based on organisational requirements not the individuals filling the positions. Unsatisfactory performance is not grounds for declaring a position redundant. An offer of redundancy cannot be used as a method for rewarding employees who are planning to retire or leave the organisation.

If the need arises to abolish some but not all of a group of the same or very similar positions the Company will select those positions that will be abolished and which employees will be made redundant. The selection of staff to be made redundant will not be made on the basis of age, sex, marital status, disability, race or ethnicity, sexual orientation, pregnancy or parental leave, or union membership or non-membership. To ensure this the Company will create and apply selection criteria. Human Resources will assist Leaders to create selection criteria that are:

- a. objective, and
- b. include consideration of past performance.

In applying this process the Company reserves the right to refuse redundancy for individuals in an affected business unit if their loss would adversely affect the performance of the business unit and/or they have skills the Company wants to retain.

Where a definite decision has been made to abolish a position the Company will provide the incumbent employee with written notice stating that their position will be abolished.

This written notice must be provided to the employee at least 45 days before the effective date of the bulk redundancy.

The Company, at its absolute discretion, may provide assistance to an employee who will be made redundant. This may include:

- a) vocational counselling
- b) limited re-training to upgrade skills
- c) time off work to attend job interviews
- d) outplacement and career planning assistance
- e) financial planning and/or retirement planning advice

At any stage during the notification period the Company may offer to redeploy an employee into a suitable alternate position. Redundancy entitlements will not apply when the employee is offered redeployment into such a position, regardless of whether the offer is accepted or rejected.

If an employee is advised that their position will be abolished and that they will be made redundant but, prior to the effective date of the redundancy, they:

- a. are terminated for poor performance, misconduct or other disciplinary related reasons; or
- b. are terminated upon expiry of a fixed-term contract; or
- c. resign, or
- d. retire; or
- e. abandon their employment

then

- 1) they will lose any entitlement to redundancy and any associated payments and benefits; and
- 2) their employment will be terminated for the relevant reason (as described above) effective on the relevant date.

3.5.2. Payment for Redundancy

In addition to any other payments employees who are made redundant are entitled to the payment of a redundancy allowance in their final pay.

Where one employee is being made redundant the payment will be a minimum one month of Average Earnings.

Where more than one employee is to be made redundant the amount will be negotiated with the effected employees, or their representatives, after they receive their notification of redundancy. All negotiations will be conducted by the Employee Relations team.

4. Death of Employee

Death of an employee shall automatically terminate the employment.

In the unfortunate circumstances of the death of an employee every consideration will be given to the family of the deceased. The Company may assist the family by providing financial assistance to cover pressing financial obligations arising from the death.

Notification of the death of an employee should be passed onto Human Resources by the relevant leader as soon as possible.

Where the death of an employee is due to an industrial accident it will be managed in line with relevant Mongolian laws and legislations and Company Health and Safety Policies and Procedures.

5. Abandonment of Employment

Employees who are absent from work for a continuous period exceeding three working days without justifiable reasons and notification to the Employer will be regarded as having abandoned their employment.

After three continuous working days have elapsed in relation to a particular employee's absence, the Company must give the employee notice that their employment will be terminated from the first date of absence unless an acceptable excuse for the absence is provided. Wherever possible this notice should be in writing and be sent to the employee at the address last known to the Company. The employee will be given a period of one week from the date the notice is first provided to respond to the Company and provide any excuse.

If the employee fails to respond or if they fail to provide an excuse that is acceptable to the Company, their employment will be taken to have ended from the first day of absence.

During a period of unexplained absence, the Company will endeavour to contact the employee to ascertain the cause of their absence and family member using the emergency contact information in case employee is not reachable.

6. Termination process

6.1. Separation Procedure

Leaders must notify human resources and payroll immediately when an employee indicates they will be ending their employment or when a decision is made by the company to end an employee's employment. This notification must include the identity of the employee, the reason for the termination and the final day of work.

On the final day of work the leader, with the support of HR, must complete the 'Termination Checklist with the employee. Any company property must be collected by the leader and then immediately returned to the appropriate departments (IT, finance, etc.) for disposal or re-use. The termination checklist completed by the leader, relevant department Leaders and by Human Resources must also be sent to Finance to enable the final payment to be calculated and paid.

Where separation of employment relates to an employee who is normally based at site or who is physically present at site on their last day of work, there may be additional requirements including inspection of accommodation and booking return flights that must also be met

6.2. Separation flow chart

Separation flow chart outlining detailed separation process must be followed. Flow chart is available from OT portal.

6.3. Certificate of Service

When requested by an employee whose employment is ending the Company will provide a statement detailing:

- a. the dates the employee started and finished their employment with the Company
- b. the position they held at the date their employment ended
- c. the reason their employment ended etc.

6.4. Employee Assistance

Termination of employment, for any reason, can be a stressful event for everyone involved. In recognition of this all participants in the process, including leaders, HR representatives and individuals whose employment is ending may access the Employee Assistance Program at any stage of the process.

Leaders must ensure that they inform employees of their right to access this service during any meeting relating to the end of their employment.

6.5. Exit Interview

It is recognised that staff members who leave the Company are in a position to provide valuable perspectives on their overall working experience at Oyu Tolgoi.

Exit interview will be conducted in the event of an employee initiated termination.

In light of this, feedback may be sought from staff members who leave the Company. This feedback will be sought through the use of an online, written or verbal Staff Exit Surveys or Exit Interviews. Participation in any exit survey or interview is voluntary. Where requested by the employee their comments will be kept private. Information received through this process will be used to monitor staff satisfaction with the working experience at Oyu Tolgoi and identify key issues and ways in which the quality of the working experience might be improved.

6.6. End of Employment Medical Checks

In some cases the Company may require an employee to complete an end of employment medical check. This check may evaluate either general health or may test for specific health issues. The tests that may be administered include but are not limited to testing of hearing, sight, range of motion, lung capacity and chest x-rays.

Any "end of employment medical check" will be arranged and paid for by the Company. The results of post-employment medical checks will remain the property of the Company and will

be stored on an employee's personnel file. Former employees may review this information at any time by submitting a written request to Human Resources.

6.7. Record Keeping

Complete records must be kept in relation to any occasion that an employee leaves their employment with the company. This includes:

- Letters of resignation
- Notification of redundancy
- Disciplinary records (including investigation reports and evidence)
- Correspondence
- Termination notice
- Termination checklists
- Director resolutions
- Signed acknowledgement form which confirms the receipt of termination pack.

All documentation relating to termination will be stored in an employee's personnel file.

Roles and Responsibilities

1. Employee

The Employee is accountable for:

- providing notice in writing of intention to resign or retire;
- handing over duties and responsibilities;
- complying with directions to attend medical assessments;
- providing required documents for separation of employment due to ill health or military call to active duty; and
- returning all company property to their Leader prior to finishing their employment.

2. Leader

The Leader is accountable for:

- consulting with Human Resources prior to any decision to terminate employment or any discussion with an employee in relation to termination of employment. This extends to employees in a probationary period;
- confirming separation date with an employee in cases of resignation and retirement;
- ensuring an employee's separation date is communicated to Human Resources and Payroll as soon as possible following the receipt of notification;
- completing a termination checklist and forwarding the completed exit checklist to human resources and payroll;
- Collecting company property from the terminating employee and arranging for it to be returned to the relevant department;
- Following the 'Site Based Employees Separation Process when applicable; and
- Creating records of all decisions, meetings and actions relation to the termination of employment, for any reason and ensuring these are forwarded to HR for inclusion in the relevant individuals personnel file; and
- Providing the appropriate and correct information to other team members.

3. General Manager

The General manager is accountable for:

- authorising any decisions to allow retirement to collect a pension;
- authorising any decisions to terminate an employee for poor performance or behaviour;
- ensuring correct application and communication of this procedure with relevant leaders within their Division; and
- authorising any decisions to accommodate the employee's medical restrictions or providing suitable alternate role available for incapacity due to health.

4. Human Resources

Human Resources are accountable for:

- providing specialist advice and support to leaders and employees during the termination process;
- engaging internal or external services who can best provide pension advice to employees being retrenched;

- ensuring that relevant paperwork is completed and that the employee's records and employment contract are appropriately cross-referenced; and
- keeping and filing all correspondence relating to termination of employment.

5. Employee Relations

The Principal Advisor Employee Relations is accountable for:

- providing specialist advice and support to Leaders and HR during any termination process;
- negotiating redundancy payments;
- coordinating the provision of legal advice where necessary; and
- reviewing any requests for employer initiated terminations.

6. President and CEO

President and CEO is accountable for:

- authorising any termination made at the initiative of the employer; and
- authorising redundancies due to operational requirements.

7. OTSS

Oyu Tolgoi Shared Service is accountable for:

- Cancelling and destroying any corporate credit card held by the employee;
- advising payroll of relevant deductions from a terminating employee's final payment;
- calculating and making the final payment for an employee;
- transferring the final pay on time;
- ensuring that an employees' social insurance and health insurance books are completed and final notes are made with relevant social insurance office; and
- terminating the employee from RTBS.

8. Security

Security is accountable for:

- cancelling the employees building and facility access and destroying identification cards.

9. IT

IT is accountable for:

- Cancelling employee access to information technology systems.

Appendices

1. Definitions

In this procedure document the following outlines the key terms and their meanings:

- **Average Earnings** – means the average amount paid to an employee including
 - Base salary (guaranteed base salary set in the employment agreement);
 - Additional pay;
 - Additions;
 - Bonuses; and
 - Allowances (excluding reimbursed expenses).
- **“Company”** – The business units/functional groups of Oyu Tolgoi LLC;
- **Day** – means eight hours (for the purpose of calculating payments and allowances at separation);
- **Employee** – All regular full-time, part-time and casual employees unless otherwise specified;
- **Employee Initiated Termination** – Termination of the contract of employment by the employee. Reasons may include resignation and retirement;
- **Employer Initiated Termination** – Termination of the contract of employment by the employer. Reasons may include dismissal and retrenchment
- **Idle Time** – Time when, due to operational requirements, an employee is directed not to attend work and/or perform any work.
- **Medical Labour Commission** – a government formed committee whose purpose is to determine:
 - the nature of an illness or injury and any incapacity stemming from it; and
 - whether an illness or injury is work related or non-work related; and
 - the time off work required to treat and recover from an illness or injury.
- **Month** – for the purposes of calculating allowances due at termination means 169.6 hours (or 21.2 days of 8 hours duration).
- **Occupational Disease** – a work related illness or injury

2. Policy Review – Stakeholder Engagement

During the development of this procedure, all key stakeholders in Oyu Tolgoi LLC have been consulted and provided input where needed.

This stakeholder engagement will be different for each document, but for this procedure the following key stakeholders (including those in the wider Rio Tinto Group) were consulted prior to approval:

- Nadia Sodnom – Senior HR Manager
- Andrew Upfill – Site HR Manager
- Munkh-Orgil Lkhaasuren – Site HR Manager
- Nicolas Saunders- Principal Advisor ER

3. Mongolian Laws and Regulations Review

Through putting forward this procedure for review and approval, the policy owner acknowledges that a review of the implications of the implementation of this document under Mongolian laws and regulations for Oyu Tolgoi has been completed.

This review has identified the following Mongolian laws and regulations that are relevant to this procedure, and the implications of these laws and regulations has been included into the document.

- Labor law, 1999
- Law on Social Insurance, 1994
- Law on labour safety and hygiene, 2008
- Law on allowances payments, and benefits of Occupational Disease and Industrial Accident Fund, 1994
- Supreme Court interpretation of some provisions of Labour law, approved by the Supreme Court Resolution No: 33, 2006
- Procedure for calculating allowance of annual leave, 2000 (Order No.166 (annex 1) of the Minister of Health and Social Welfare)
- Guidance for granting annual leave, 2000 (Order No.166 (annex 1) of the Minister of Health and Social Welfare)
- Rules for registration and investigation of industrial accident and occupational diseases, approved by the Government resolution No: 14, 2009

4. Template and Standard Documents

- Termination flow chart ;
- Termination checklist;
- Template termination of employment letter;
- Template notification of retrenchment letter;
- Template Certificate of Service;
- Template Director's Resolution to terminate employment; and
- Exit Interview Questionnaire.



Document Information

File Name	HR-I.1: Separation of Employment Procedure
Description	Establishes guidelines for separation provisions in the event that an employee departs the Company.
Original Author(s)	Nicolas Saunders, Nadia Sodnom
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Revision History

Version	Revision Date	Author(s)	Revision Notes
1			
2			
3			

Document Approval

Date	Approver Name	Approver Signature	Company Seal Stamp
22/04/2013	<u>OT Policy Owner:</u> Nadia Sodnom Senior HR Manager Nicolas Saunders Principal Advisor ER		
22/04/2013	<u>Policy Approver:</u> Cameron McRae President and CEO	