

Iran Mining Industry Presentation - Mining Investment

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Overview

- Part 1 – Common types of investment provided to mining companies
- Part 1a – Mining Joint Ventures
- Part 2 – Categories of investors and who is active
- Part 3 – Due Diligence from an investor's perspective
- Part 4 – Actions required to prepare for mining investment/finance

Note: Iranian law input provided by Atieh & Associates, Tehran

Overview

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- Part 1 – Common types of investment provided to mining companies
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About Simmons & Simmons cont'd

- Our team of experienced mining lawyers are involved in all aspects of the metals and mining industries.
- Our lawyers work with sponsors, financiers, major contractors and trading companies in relation to all of their business needs including equity and debt investment arrangements, asset purchase, development, concession, processing, transportation, supply, offtake and operation and maintenance agreements, mergers and acquisitions, corporate and contractual joint ventures and all forms of financing.

“They organised the process well and they were very efficient”

Chambers UK 2015

“Strong across a broad spectrum of corporate mining work”

Chambers UK 2016

Part 1: Common types of investment provided to mining companies

- Equity (minority and majority stakes) – key documentation will typically include share subscription and/or share purchase and shareholders’ agreements. (See below regarding mining joint ventures.)
- Debt Finance
 - corporate debt
 - bridging facilities
 - project finance
- Convertibles
- ‘Alternative Finance’
 - royalties (single up-front or staged payment by a royalty finance provider in return for a percentage of revenue (net or gross) generated from the sale of product from the mine over a period (often the life of the mine))

Part 1: Common types of investment provided to mining companies (continued...)

- stream and pre-pays (single up front or staged payment in return for the right to buy product from the mine at a reduced price – usually over a fixed period)
- there are certain funds and companies that specifically focus on providing ‘alternative’ finance. (See Part 2 below re market players)
- Equipment/vendor finance (may be available on major items of plant/machinery)
- Development finance institution (DFI) and Export Credit Agency (ECA) finance may be available

Part 1a: Mining Joint Ventures

Purpose and Structure

- Typical mining JV:
 - one party has the mining licence(s)
 - another has the ability to fund and/or the technical expertise

- Corporate or contractual JV?
 - contractual JV not unusual at exploration stage, less usual at exploitation
 - may depend on whether parties plan to separately float the JV entity at a later date
 - optimal structure/form from a tax perspective?

- Purpose of the JV:
 - in respect of one specific mining asset?
 - option for both parties to add other assets later

Part 1a: Mining Joint Ventures (continued...)

Key Contributions

- Party A:
 - transferring the licences

- Key issues:
 - how will any mining assets contributed to the JV be valued?
 - due diligence (see later comments in Part 3)
 - is the party giving the assets to give the other party any reps or warranties?
 - consents acquired

Part 1a: Mining Joint Ventures (continued...)

Key Contributions (cont...)

- Party B:
 - Provide financing for the development of the mining assets

- Key issues:
 - who is the operator?
 - how is the financing provided?
 - timetable for development and who bears the risk of delays?

Part 1a: Mining Joint Ventures (continued...)

Key Issues

- Conditions to the setting up / operation of the JV:
 - licences / permits being granted?
 - pre-feasibility study being completed?
 - regulatory approvals being received?

Part 1a: Mining Joint Ventures (continued...)

Key Commercial Terms

- Allocation of shares
 - firm allocation vs. firm in
 - royalties
 - up-front transfer payments of licence transfers
 - will assets contributed / contracts entered into (e.g. offtake agreement) impact on entitlement to JV's profits or responsibility for its losses?

Part 1a: Mining Joint Ventures (continued...)

Financing

- Financing of the JV:
 - proportions and structure of finance?
 - subsequent contributions:
 - pro-rata?
 - who decides if further funding is required?
 - can decision be blocked by any party unwilling to finance?
 - what happens if one of the parties defaults?
 - can additional mining assets be contributed in lieu of cash?
 - anti-dilution clauses

Part 1a: Mining Joint Ventures (continued...)

Decision Process

- Decision making and control:
 - 50/50 or majority / minority JV?
- Reserved matters (certain key contracts, project financing etc.)
- Who makes the decision to bring a project to the next stage?
- Deadlock:
 - on all issues or pre-agreed issues?
 - how resolved?
 - rights on deadlock? (termination, put option, right to buy?)

Part 1a: Mining Joint Ventures (continued...)

Key Issues

- Fair dealing:
 - restrictions on majority party entering non arm's length contracts with the JV (e.g. off-take agreements)?
 - restrictions on the parties from exploiting information gained by the JV for their own benefit?
 - obligation to refer other opportunities /projects to the JV?

Part 1a: Mining Joint Ventures (continued...)

Transfer of interests

- Transfer of interests:
 - interests transferable?
 - pre-emption rights before sale to third party?
 - drag-right in a majority / minority JV? (tag right?)
 - right or options to acquire other party's interest in the future?

Part 1a: Mining Joint Ventures (continued...)

Termination

- Any circumstances in which the joint venture will terminate (e.g. loss of a licence / permit, insolvency of a party)?
- Circumstances where a party can terminate (e.g. change of control, material breach of the JVA)?
- Effects of terminations:
 - licences go back to the initial holder?
 - right to acquire the other party's interest? At what price?
 - effect on contracts entered into by the parties with the JV and assets contributed to JV?

Part 1a: Mining Joint Ventures (continued...)

Key Issues

- Valuation of interest on exit:
 - adjustment if sale due to breach?
 - formula?
 - discount for remaining interest?
 - who decides the valuation?

Part 2: Categories of investors and who is active

- Resources focused private equity funds.
- Certain organisations specifically focus on arranging royalties or streams/pre-pays
- Some commercial banks remain active in financing mining projects
- DFIs and ECAs
- Equipment / vendor finance providers
- Sometimes EPC providers will also provide finance (equity and/or debt) to a project if it means they will be guaranteed the EPC works

Part 2: Categories of investors and who is active (cont...)

- Opportunities to meet investors:
 - Major conferences (Mines & Money London, Hong Kong etc)
 - China Mining (Tianjin)
 - Diggers and Dealers (Perth)
- Industry publications / communications will help you to identify currently active players:
 - e.g. Mining Journal, daily updates sent out by mining brokers / analysts
- International advisers (legal, technical and accounting) may also be able to help identify potentially interested investors for particular project opportunities

Part 3: Due Diligence from an investor's perspective

- When arranging any of the aforementioned types of finance investors are likely to carry out a 'red flag' due diligence on the corporate group and the underlying assets being acquired
- Key matters that will be diligenced
 - status / validity of all key mining (exploration and production) licences and any other material licences / permits (inc. key environmental permits)
 - material commercial contracts
 - agreements relating to the purchase of key companies and assets
 - documents evidencing clean title to key real estate
 - claims involving the asset / group of companies
 - solvency of the Group
 - compliance with tax regulations
 - major liabilities of the relevant company/ies to past and present employees
 - relationships with NGOs and local community

Part 4: Actions required to prepare for mining investment/finance

- Ensure that all key mining and environmental licences / permits are up to date and no material breaches
- Ensure no breaches of material regulations / laws
- Try and have any material disputes resolved. If that is not possible:
 - International arbitration is recommended to resolve disputes between investors under a shareholders' or JV agreement, using either ICC, LCIA or UNCITRAL
 - any finance provider may seek indemnities and/or hold back investment proceeds until the dispute is resolved
 - insurance may alternatively need to be taken out by the company or finance provider (if the risk is insurable)

Part 4: Actions required to prepare for mining investment/finance (continued...)

- Try to ensure that the company has no material breaches outstanding under any of its key agreements
- Have your advisers carry out 'bankability' analysis of any offtake (as well as streaming/pre-pay and possibly other material) agreements
- If security will need to be given then consider what assets are available to be secured and which (if any) existing holders of security may be willing to release or share their security or take lower-ranking security
- Put in place and maintain appropriate insurance policies
- Ensure strong links (and initiatives) are in place with local communities and NGOs

Part 4: Actions required to prepare for mining investment/finance (continued...)

- Start to prepare an organised data room containing all key documents (licences, agreements, mining data etc) to be made available to finance providers
- Have a form of confidentiality agreement ready to send to finance providers before sharing any confidential/commercially sensitive information

Mining Industry Case Studies

- **Abu Dhabi Water and Electricity Authority (ADWEA)** on the construction of the Sohar aluminium smelter in Oman valued at US\$1bn
- **A major international company** on the financing of the \$2.1bn (nickel and cobalt) Ambatovy project in Madagascar
- **The French Government** on the Koniambo (US\$2bn) and Goro (US\$1.9bn) mining projects in New Caledonia
- **A mining investment fund** on mining (including iron ore, copper and gold) royalty financings
- **First Quantum Minerals Limited** on their mining projects in the Democratic Republic of Congo and Mauritania, including negotiations with the government and international litigation

Mining Industry Case Studies (cont.)

- **Mining companies** on the possible acquisition and development of iron ore projects in Mozambique, the Republic of Congo and Cameroon
- **WestLB AG** on a US\$120m secured structured pre-export financing and its syndication in request of a copper mine in Papua New Guinea.
- **Macquarie and Liberum** on a £55m share placing for Sirius Minerals PLC
- **Fiji** a major Chinese state owned enterprise on its investment in an AIM listed mining company with assets in Fiji
- **Sumatra Copper & Gold** on the financing and development of its copper and gold mining projects in Indonesia and in relation to its local partnering arrangements
- **A private mining company** on the development of a major bauxite mine/alumina refinery in Guinea, including port and railway infrastructure

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