

FOCUS ON MINING IN IRAN

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Legal Briefings - By **Andrew Cannon, Partner, Paris, Adam McWilliams, Senior Associate, London and Naomi Lisney, Associate, Paris.**

IN BRIEF

Iran is among the world's top 10 most resource-rich countries. While primarily known for its hydrocarbons, the country is also home to some 68 minerals together reportedly worth \$700 billion, with more than 37bnt (**billion tonnes**) of proven reserves and 57bnt of potential reserves, which include considerable deposits in coal, iron ore, copper, lead, zinc, chromium, barite, uranium and gold. The Sarcheshmeh mine in Iran holds the second's largest copper deposits in Asia, accounting for 25.3% of Asian reserves and around 6% of global reserves.

SUMMARY

Mining currently only plays a minor role in the Iranian economy; however, the Iranian leadership is actively seeking to promote growth in its mining sector to reduce its dependency on oil. According to the Iranian Mines and Mining Industries Development & Renovation Organization (**IMIDRO**), it has, through subsidiary companies, invested more than \$10 billion in upstream and downstream mining projects since its establishment in 2001, and currently has \$9 billion invested in 29 projects, including steel, aluminium, rare earth elements, copper and gold mines.

At the Iran-EU Conference on Trade & Investment, held on 23-24 July 2015 in Vienna, Austria, Mehdi Karbasian, Deputy Minister and Chairman of IMIDRO, said Iran will require a further \$20 billion in investment for its mining sector by 2025. He invited foreign and private sector investment, introducing the incentives already introduced in Iran, and expressing IMIDRO's support for foreign investment. According to the Financial Tribune, an Iranian daily publication, Mr Karbasian has indicated that several European banks expressed interest in financing Iranian projects during the conference in Vienna, and that meetings were held with Swiss, German and Austrian companies to discuss investment in Iran's mining sectors.

The Trade & Investment conference came less than 10 days after the announcement in the early hours of 14 July 2015 that an agreement had been reached in Vienna between Iran and China, France, Germany, Russia, the UK and the US on a Joint Comprehensive Plan of Action (**JCPOA**). The JCPOA provides for a very significant lifting of nuclear-related UN, EU and some US sanctions subject to certain legislative approvals and verification by the International Atomic Energy Agency (**the IAEA**) that Iran has complied with key nuclear-related commitments described in the JCPOA.

Under the JCPOA, all nuclear-related UN and EU sanctions, as well as certain US nuclear-related sanctions applicable to non-US persons and activity (the so-called 'secondary sanctions'), will be lifted from the point at which the IAEA verifies that Iran has implemented the agreed nuclear-related measures (**Implementation Day**). Hundreds of individuals and entities (including the state-owned National Iranian Oil Company) are also to be removed from the US Treasury Department's Office of Foreign Assets Control's (**OFAC**) List of Specially Designated Nationals and Blocked Persons (**SDNs**), as well as from the EU lists of entities and individuals subject to asset freezing measures.

In the meantime, the limited sanctions relief which had already been implemented following the Joint Plan of Action of November 2013 has been extended through Implementation Day. This includes the waivers in respect of secondary sanctions relating to the purchase or acquisition of gold and precious metals by Iran or the Government of Iran which apply where no SDNs are involved and subject to certain restrictions on the funds which Iran can use for such purchases.

Hooman Khajehnasiri, a senior manager with the Iran-based services company Iran Europe Industrial & Trading Group, told Mining Weekly that many mining company executives have, since the signing of the JCPOA, visited Iran to find out about opportunities in the country. As Mining Weekly reports, Mr Khajehnasiri noted further that the prospective lifting of sanctions will enable companies to import mining and mineral processing technologies, as well as general equipment, to Iran with less administrative and legal challenges, and that this will assist in improving the productivity of existing mining operations.

RISK MANAGEMENT IN THE RUN-UP TO IMPLEMENTATION DAY

As noted above, the prospective sanctions relief will not be implemented until the IAEA has verified Iran's compliance with its nuclear commitments under the JCPOA. This is currently expected to occur in Spring 2016. While companies will be keen to start exploring possible future business opportunities in Iran in the meantime, they will need to continue to monitor the position closely and to seek specific legal advice in relation to any potential transactions to ensure they remain compliant with the relevant sanctions regimes.

The key to managing risks under sanctions laws is conducting appropriate risk-based due diligence, both on proposed contractual counterparties (partners, intermediaries, suppliers, customers, etc) and transaction structures. This will include ensuring that the identities of all individuals and entities with whom any dealings are envisaged are known and screened against the relevant sanctions lists, as well as ensuring that discussions do not extend beyond the scope of what is currently allowed by the relevant sanctions regimes.

Foreign companies' ability to enter into any negotiations, and what (if anything) may be agreed, will depend on the nature and identity of the proposed counterparties, the industry sector and the type and structure of transaction intended.

It should be noted that, in guidance published on 18 October 2015, OFAC stated that it will continue to vigorously enforce all sanctions currently in place, and made clear that this could include sanctioning contracts that are contingent on the implementation of the JCPOA sanctions relief.

POST-IMPLEMENTATION DAY

Even after Implementation Day, US persons and entities (which include, in addition to US citizens, 'green card' holders, and entities organised under the laws of the US or any jurisdiction within the US and any person in the US, any entity owned or controlled by a US person) will continue to be generally prohibited from conducting transactions with Iran, including any transactions of the types permitted pursuant to the JCPOA, unless licensed to do so by OFAC. In particular, US persons and entities will continue to be prohibited from conducting transactions with IMIDRO.

Accordingly, companies will need to be particularly careful where they have US affiliates, important support functions based in the US, or US directors or employees working in their business, in which case they should consider putting in place appropriate controls to avoid creating risks under US law.

Certain EU sanctions will also remain in place, for example the arms embargo and non-nuclear sanctions linked to the human rights situation in Iran.

Moreover, the JCPOA contains a mechanism for UN sanctions to 'snap back' into place if a dispute, for example regarding ongoing Iranian compliance with IAEA obligations, is not resolved favourably within a given timescale and the UN Security Council does not vote otherwise. The US and the EU may also re-impose sanctions if they determine that Iran has not met its nuclear commitments.

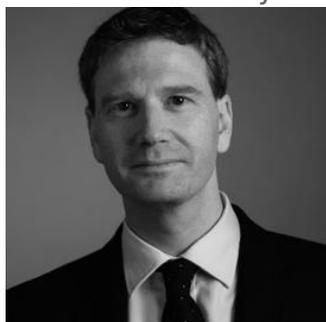
OPPORTUNITIES AND CHALLENGES

Despite its mineral wealth, Iran is one of the least explored resource-rich countries on Earth. It also has a relatively skilled workforce by regional standards. The prospective lifting of sanctions in Iran has accordingly caught the attention of many foreign investors and global mining firms, and for good reason. Research firm BMI Research provides a positive outlook for Iran's mining sector, but warns that growth there will be limited for at least three to five years, as a result of years of underinvestment and ageing infrastructure.

Investors will be keen to see how the Iranian government's expressed desire to develop its mining sector will be reflected in its actions and the terms it is willing to offer after implementation of the JCPOA sanctions relief. Companies should be aware that if they decide to invest or operate in Iran, they will need to develop and implement robust strategies to ensure that they remain compliant not only with sanctions, but also with other key international standards such as the UN Guiding Principles on Business and Human Rights. There will clearly be ongoing risks of many kinds. Nonetheless, miners and investors alike are rightly taking a renewed look at a country previously off-limits to mineral development and investment.

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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