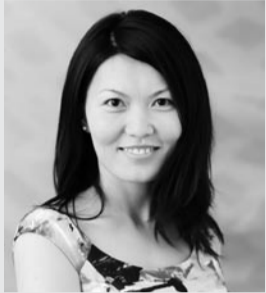


LEGAL ADVISORY COLUMN

Risks foreign investors should take into account while investing into Kyrgyzstan's mining sector

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The mining sector in Kyrgyzstan is one of the leading sectors which continues attracting substantial amount of foreign investment mainly due to perspectives that Kyrgyz mineral resources can offer, high global market prices for mineral resources, and comparatively liberal subsoil and tax laws.

Liberal legal framework in the mining sector allows foreign investors to obtain subsoil use rights with no foreign ownership restriction or prohibition. Kyrgyz laws do not have local content requirements such as employment of Kyrgyz citizens only or supply of services and goods by local suppliers or mandatory share of the state in exploration and mining projects as some neighboring countries do. Current tax rates such as bonus and royalty rates are considered reasonable by many foreign investors.

While there are many advantages in doing business in the mining sector there are 3 major risks which should be taken into account and possibly minimized while investing into the mining sector of Kyrgyzstan. These major risks are political, title (legal) and social risks.

Investments into the mining sector are considered high risk, large and long-term investments which require political stability and certainty. The history of independent Kyrgyzstan has demonstrated the opposite: a number of large foreign investments were subject to political risks as a result of forceful takeover of power, constant changes of government and its structure, shift

of political power from one group to another; all this are factors of political instability in the country and especially in such highly politicized sector as the mining sector. Political risks can be minimized by avoiding already politicized projects, minimizing the involvement of political figures in the project, be it the employment of a former politician or open support of the project by one or another political group. As politicians rise and fall in Kyrgyzstan quite often the same happens to projects which are associated with them.

Legal risks are mainly associated with the security of title. To ensure that title to the project is secure and there is no legal basis for annulment of exploration and mining rights of a foreign investor, a thorough due diligence of the project and ownership history of the project should be conducted before investing into the project. During the legal due diligence a special attention should be given to the following issues: whether the mining rights have been properly granted by the state; who were the previous owners of the project and whether their rights to the mining asset were legally terminated; whether there is a potential dispute related to the project; or whether the project company complied with its minimum work commitments. Negative response to one or all of the above questions may lead to challenging the title or validity of the title to the mining project.

It should be taken into account that despite absence of political and legal risks, and the government being supportive of the mining project, if the mining company and project are not supported by lo-

cal population residing in the region where the mine is located the project might not be operable even though a foreign investor has a blessing of the state. Therefore, assessment of social risks before investing into the Kyrgyz mining sector is no less important than the political and legal risks outlined above.

Recent protests of local communities in the form of road blocks, attacks on employees and property of mining companies have led to suspension of activities of some exploration and mining companies for an indefinite period of time. Thus if foreign investors plan to invest into a mining project in Kyrgyzstan they should carefully review the position of local communities towards the operation of their mining company and the level of the risk associated with inability to gain the local communities backing.

It's worth noting that the new government announced its 100-day plan which includes reform of policy and laws applicable to the mining sector. It is expected that the legislative reform will lead to transparency in granting mining rights, better protection of title, minimization of arbitrary state interference into operation of mining companies, while increasing the role and interests of communities affected by mining, promoting active use of auctions in granting mining rights and introducing new taxes with the aim to increase the state's income from mining activities.

Hopefully, the planned changes will help minimize the risks described above and make the Kyrgyz mining industry more attractive to foreign investors for the benefit of the Kyrgyz economy.