

Recent Amendment To Mining Law

March 2015

The awaited amendment to Mining Law No. 3213¹ (the “**Mining Law**”) was published in the Official Gazette on 18 February 2015.

An initial draft had been submitted and then withdrawn from the Parliament’s agenda for further consideration, especially with regard to work place health and security regulations in the mining sector and the significant increases in the State royalty amounts which has been criticized strongly by stakeholders in the sector. A new draft had then been prepared and submitted to Parliament on 30 December 2014. Upon adoption by the Parliament and ratification by the President respectively, the amendment (the “**Amendment**”) to the Mining Law has now entered into force starting from its publication in the Official Gazette.

Some of the major changes introduced by the Amendment are as follows:

Supervision of Operation Activities

The Amendment introduces supervision by specialized entities of the compliance of mining operations with the applicable legislation and the operation plan submitted by the relevant license holders to the General Directorate of Mining Affairs (the “**General Directorate**”). According to the Amendment, specialized legal entities will be authorized by the General Directorate to conduct such supervisions and prepare technical documents for submission to the General Directorate such as operation plans and projects.

The Amendment also abolished activity and sales information reports; and instead, a single report referred to as the “operation activities report” has been introduced as a combination of the two.

Royalty Agreements

Another very significant change brought by the Amendment is the prohibition of the operation of underground coal mines by royalty agreements. According to the Amendment, license holders of underground coal mines, except for public authorities, can no longer have third parties operate their license areas through royalty agreements. Royalty agreements for other mines, on the other hand, have been made subject to the approval of the Ministry of Energy and Natural Resources.

The Amendment also provides for a temporary provision for existing royalty agreements, whereby requiring that the General Directorate is notified of existing royalty agreements within three months upon entry into force of the Amendment; otherwise, operations under the relevant royalty agreements will be suspended. According to the same provision, term extension requests by license holders of underground coal mines whose royalty agreements have not been terminated will not be accepted.

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¹ Published in the Official Gazette No. 18785 dated 15 June 1985.

Financial Obligations and Royalty Payments

The Amendment introduces a new license fee that is to be calculated based on the relevant license groups and sizes instead of the previously used fixed annual fees. The new fees will be applicable to existing licenses starting from 1 January 2016. The amount of State Royalties for Group IV mines such as gold, silver and platinum are set forth further in an annex to the Mining Law, and provide for increasing State Royalty percentages (from 2% to 16%) depending on the London Stock Exchange's price per ounce during the relevant production period.

Forfeiture of Deposited License Securities

This sanction is abolished by the Amendment. Instead, administrative fines varying from TL 10,000 to TL 50,000 are envisaged for license holders breaching their obligations under the Mining Law. Deposited securities of existing license holders will be returned upon their payment of the new license fees starting from 1 January 2016.

Cancellation Sanction for Non-Production

The Amendment removes the cancellation sanction for operation license holders who fail to make any production for three years within a period of five years for the first time and subjects such failure to an administrative fine of TL 50,000. The cancellation sanction will be applied only in the case of license holders that fail for the second time to make any production for three years within a period of five years upon application of the administrative fine.

Completion of Necessary Permits within Three Years

The disputed cancellation sanction envisaged for operation license holders who cannot complete, within three years, the environmental permits and surface rights necessary for the issuance of an operation permit, such as environmental impact assessment affirmative approval, work place opening and operation permit and surface rights, is abolished. Instead of cancellation, an administrative fine of TL 50,000 is envisaged for each year of delay in obtaining the relevant permits. Licenses for which no operation permit has been issued due to the failure in obtaining the relevant environmental permits and surface rights will not be extended beyond their initial terms.

Pursuant to Temporary Article 22 of the Amendment, an administrative fine of TL 30,000 will be imposed on holders of operation licenses who have applied for but not yet obtained the environmental permits and surface rights necessary for their operations pursuant to Article 7 of the Mining Law as of the date of the Amendment.

Feasibility Period for Group IV Mines

The Amendment provides for an additional "feasibility period" subsequent to the detailed exploration period for mines belonging to Group IV (b), (c) and (ç) (including gold, silver and platinum). Exploration license holders for Group IV (b), (c) and (ç) mines who apply with justified reasons for the necessity of a further feasibility study will be entitled to an additional "feasibility period" of two years if their application is found appropriate by the General Directorate.

Transfer of Licenses

The Amendment subjects the transfer of licenses, which had previously been within the authority of the General Directorate, to the approval of the Minister of Energy and Natural Resources. The license transfer fee is increased as well.