

# Draft Implementation Regulation on Mining Zones

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August 2017

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Following the introduction of the term “mining zone” to Mining Law No. 3213 (the “**Mining Law**”) in May 2017, the General Directorate of Mining Affairs (the “**Mining Department**”) announced on its official website the Draft Implementation Regulation on the Principles and Procedures Applicable to Mining Zones (the “**Draft Regulation**”) to receive public opinion on the draft.

**The principles and procedures can be summarized as follows:**

## I. The Mining Zone Concept

With an amendment to Article 29 of the Mining Law in May 2017, the concept of a “mining zone” was introduced to the Turkish mining regime, whereby the holders of adjacent mining licenses can request a merger of their licenses under a single license and the announcement of a consolidated mining zone in the respective area. This aims to improve the environmental and social consequences of mining operations in adjacent license areas, as well as ensuring the efficient operation of mineral reserves.

It is noteworthy that the relevant provisions of neither the Mining Law nor the Draft Regulation restrict the mining zone implementation to a specific group of mines. Accordingly, although the need for introducing the “mining zone” concept had originated in relation to minerals belonging to Groups I and II, the introduced implementation applies to all mineral groups.

The Mining Department has now announced the Draft Regulation that elaborates on the principles and procedures to be pursued for the mining zones implementation.

## II. Pre-requisites for Establishment of Mining Zones

Pursuant to amended Article 29 of the Mining Law, a mining zone can be established with the proposal by the Mining Department and the approval of the Ministry of Energy and Natural Resources (the “**Ministry**”). The Mining Department can make a proposal for the establishment either *ex officio* pursuant to its own inspections or upon request by (i) the holders of adjacent mining licenses requesting a merger under a single license and legal entity or (ii) the relevant Governorate and/or one or more license holders in a specific region requesting the economical and efficient operation of mineral reserves.

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The Draft Regulation sets forth the pre-requisites for the establishment of a mining zone as follows:

- a) The subject licenses must be adjacent and/or close to each other with a distance up to 500 meters;
- b) The subject licenses must belong to the same group or to the same subsection of a group under the Mining Law;
- c) There must be resources that can be made subject to joint operation and planning,
- d) Due to the proximity of the relevant licenses, the slope angle and steps of their open pit operations must pose a danger, and it must be impossible to implement the operation projects separately due to the operations reaching the respective license borders, posing a risk to operational safety;
- e) There must be a reserve that cannot be operated subject to license boundaries;
- f) In the case of multiple operation licenses, the annual average of emission values of dust and particles arising from transportation, explosion, breaking-sieving, etc. conducted during operations must exceed twice or more the environmental standards; and
- g) The joint operation of the subject mines must be deemed necessary due to their proximity to urban areas or for environmental reasons.

It is not clear in the Draft Regulation whether the above listed criteria are of a cumulative nature or whether the satisfaction of one or more of the items would in fact be sufficient for the establishment of a mining zone. However, our interpretation of the relevant Article and the other provisions of the Draft Regulation is that the above listed conditions must be met cumulatively for the establishment of a mining zone.

Upon evaluation of the foregoing pre-requisites, the Mining Department can either (i) reject the request or (ii) initiate the procedures and studies for the determination of borders of the mining zone, at the end of which the proposed zone will be submitted to the Ministry for approval. If approved by the Ministry, the mining zone will be announced in the Official Gazette of the Republic of Turkey.

### **III. Merger of Subject Licenses**

After the announcement of the mining zone in the Official Gazette, the Mining Department will give the relevant license holders a period of 6 months, starting from the date of the announcement, for merger of their licenses under a single legal entity.

If all license holders can reach an agreement on joint operation, their licenses will be merged under a single mining license held by one legal entity, where the shareholding of each license holder will be determined *pro rata* based on the reserves subject to its original license.

If not all of the license holders can reach an agreement on joint operation, a merger of the licenses can still be requested by the holders of licenses pertaining to at least 50% of the reserves in the subject zone. The licenses of the parties who do not participate in the merger will be cancelled and their investment costs will be compensated by the legal entity holding the merged license. The unclaimed areas remaining from the cancelled licenses will be consolidated with the merged license to be tendered out later by the Mining Department.

If the quorum of license holders requesting the merger cannot reach 50% of the reserves within the proposed zone, on the other hand, or if the legal entity to hold the single merged license does not duly make the necessary payments for the merger, the Mining Department will cancel all licenses within the announced mining zone, which will be tendered out later, as in the foregoing scenario.

The Draft Regulation is silent on the stage of mining licenses that can be merged for the establishment of a mining zone, *i.e.* whether they should all be operation licenses, or whether there can also be licenses at exploration stage within a mining zone. Although there is not an explicit provision on this, we understand that all licenses to be merged for the establishment of a mining zone must in fact be operation licenses, based on the inclusion of the newly introduced provisions on mining zones in Article 29 of the Mining Law governing mining operation licenses and the fact that a single license will be issued for the operation of the respective zone.

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## IV. Formation of Mining Zone Commissions

In cities where mining zones are established, a "Mining Zone Commission" will be formed by the relevant Governorate upon notification of the mining zone by the Mining Department. In metropolitan municipalities, the mining zone commissions will operate under the Investment Supervision and Coordination Departments of the respective Municipalities; whereas in other cities, they will be affiliated with the respective Special Provincial Administrations.

The income of mining zones will be composed of 0.5% of the pit head sale revenue generated from the relevant zone and will be deposited in a special account to be opened for such purpose by the relevant Governorate. All expenses incurred by the mining zone commissions for the operation of the respective zones will be paid from these designated accounts.

From an operational point of view, the primary responsibilities of the mining zone commissions will be: (i) to supervise the mining operations in accordance with the operation plans and projects submitted to the Mining Department; (ii) to monitor the effects of mining operations on the environment and make the necessary proposals for mitigating the risks; and (iii) to control the workplace health and safety measures implemented by the respective operators. All operations of the mining zone commissions will be subject to review by the Mining Department. We understand from the relevant provisions of the Draft Regulation that the Mining Department responded to the public request for closer supervision of mining operations primarily by establishing the mining zone commissions with the above referenced scope of authorities.

## V. Miscellaneous

- The Draft Regulation prohibits the operation of mineral reserves within mining zones by royalty agreements; all existing royalty agreements, if any, pertaining to areas within announced mining zones will be automatically cancelled as of the date of the mining zone's announcement in the Official Gazette.
- The Draft Regulation allows for the restriction or relocation of operations pertaining to mines under Group I (*i.e.*, sand, gravel, clay tile, cement tile or marl) and II (a) (*i.e.* grounded forms of stones, such as calcite, limestone, granite, which are used in ready mixed concrete and asphalt) of the Mining Law on the specific grounds listed in its Articles 16 and 17.

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