

Turkey's mining regime

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[Published in the Mining Journal Special Turkey Publication, p. 7-8.]

Under Turkey's mining regime, 'underground resources' are subject to the exclusive ownership and disposition of the State and are not considered a part of the land where they are located. According to the regime established by the mining legislation, the State delegates its right for exploration and operation to individuals or companies for specific periods by issuing licences subject to royalty payments to the State.

Turkey's mining regime is mainly governed by the Mining Law No. 3213 of 1985, amended by Law No. 5177 of June 2004 to provide foreign investors as well as local investors with a more investment-friendly environment. The implementation regulation of the new Mining Law, enacted in February 2005, repeals the previous regulation.

Mining licences

Only Turkish citizens and the companies established under Turkish laws specifically for mining purposes are entitled to hold mining rights. Foreign capital companies established in Turkey for mining purposes are entitled to hold mining rights as they are deemed Turkish companies.

The Mining Law categorises minerals in five groups:

- sand and gravel;
- marble and other similar decorative stones;
- salts in solution form that can be obtained from sea, lake and spring waters;
- energy, metal and industrial minerals; and
- precious metals and gem stones.

The General Directorate of Mining Affairs (GDMA), a unit of the Ministry of Energy and Natural Resources, is the authorised body to regulate the mining activities and issue mining licences.

Exploration Licence/Certificate. The first step to engage in mining activities is to apply for an exploration licence or certificate (the licence issued for the fifth group is named "certificate" in the legislation). The right of priority in the application process is based upon the date of application. The term of an exploration licence is three years; however, this period may be extended for some minerals for an additional two years.

Operation Licence. Before the end of the exploration licence period, the licence holder must apply for an operation licence. The term of an operation licence for first group minerals may not be less than five years and for other groups may not be less than ten years, whereas the term of an operation certificate (issued for the fifth group) may not be less than five years. The term of an operation licence/certificate may be extended. However, the period of the licence may not exceed 60 years starting from the date of licence. Only the Council of Ministers is authorised to extend the term after the end of 60 years.

Operation Permit. In addition to an operation licence, an operation permit is required to start production activities. Separate operation permits are required for different types of minerals within the same area covered by one operation licence. An operation licence

covers the area in which the mining activities will be conducted and provides the legal right to use the licensed area whereas the operation permit gives the licence-holder the right to operate the mine. The duration of the operation permit is limited to the duration of the operation licence.

Transfer of mining rightsA mining licence may be transferred to those qualified under the Mining Law and the transfer must be registered at the GDMA.

Parties may also execute a royalty agreement rather than transferring the licence. Under a royalty agreement, the holder of the mining licence grants the right of operation of the mine to the operator for a certain period in exchange for a royalty payment. However, such agreement does not result in the legal transfer of the mining licence. After the amendment made in 2005, registration of a royalty agreement at the mining registry is no longer possible. Accordingly, unlike the practice in the past, the royalty agreement shall operate to bind its parties contractually. Such a contract does not form a part of the official record at the GDMA. Accordingly, third parties can no longer rely on the assumption that royalty agreements would be a part of the official record. Upon termination, expiration or abandonment of a mineral licence, all assets will be transferred to the State; the licence area will be automatically opened to new activities and the licence will be tendered through public auction.

Exclusivity of Turkish courts

Any matter related to the operation of mines is within the exclusive jurisdiction of the Turkish courts. Contractual obligations of the parties not related to the mining rights may be freely determined by the parties in accordance with the principle of freedom of contract.

Royalty

The licence-holder must pay a royalty to the State for the extracted minerals. The royalty rate is determined by the value of the raw material at the extraction point. The rate is 4% for first and fifth group minerals, and 2% for other groups.

Engineer for record

The operation licence-holder must assign at least one mining engineer of minimum five years of experience as a technical supervisor to oversee the mine extraction activities. Companies employing at least 30 workers or companies employing at least 15 workers and operating an underground mine, are obliged to employ a permanent technical supervisor.

Duties and security deposits

In order to guarantee the license holder's obligations arising from the license and for services provided by the GDMA, the license holders are required to provide a security deposit and annual duty for each license. The amount is determined annually by the Ministry of Finance.

Surface rights

The ownership of mineral rights does not cover the ownership of the immovable properties where the mineral resources are located. Therefore, it is necessary to create a usufruct or easement right over the mineral exploration area in order to carry out any mining activities. Other legal options to utilise privately-owned lands are purchasing, leasing and, if no other option is available, having the land expropriated.

The legal options to use State-owned land are purchasing, leasing and establishing a usufruct right. Mining operations to be conducted on State-owned land are not subject to any payment for usage of such land. In this case, the royalty will be levied by an additional 30% of the royalty.

In order to simplify the permitting process, a regulation has been issued to govern the permitting process specifically for mining activities. Under this regulation, the GDMA, in

addition to other relevant authorised bodies, is authorised to follow the applications regarding the permits required for mining. Such requirements include a range of social and environmental studies and permits covering, for example, forests, pastures, water resources, and impacts on communities.

Licences issued before the amendment of the Mining Law

Pursuant to the recent amendment, an application must be filed with the GDMA for an operation permit after obtaining the permits with respect to environment and surface rights. Previously, operation permits were issued together with the operation licence. Accordingly, most of the licence-holders did not obtain all of such permits prior to the issuance of the operation permit.

The licence-holder is obliged to commission the mine within one year after receiving the operation permit. Failure to start operation within one-year is subject to a penalty of a 10% royalty on the projected production quantity for each year of not operating.

Where operation permits have been issued prior to the amendment of the Mining Law, the licence-holders are entitled to apply for a temporary suspension of their rights until they obtain the necessary permits before the commencement of the operation.

Summary

The amendment of the Mining Law is a good step in the right direction, and is a genuine effort to reduce bureaucracy and encourage investment. However, even though many past deficiencies are addressed under the new Mining Law, there are still areas where clarifications are needed. Regulations to implement the Mining Law have been recently enacted and inter-agency consultations are under way to clarify the roles of different government bodies. It is also expected that certain clarifications will be brought by virtue of the practice of the relevant authorities. Therefore, time is needed to establish a well-functioning system and a cautious approach is recommended during this period.

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