

# Petroleum Law Implementation Regulation

10 April 2014

## Introduction

The Turkish Petroleum Law Implementation Regulation<sup>1</sup> (“**Implementation Regulation**”) became effective on 22 January 2014. It is aimed to implement the Turkish Petroleum Law No. 6491<sup>2</sup> (the “**Petroleum Law**”), which entered into force on 11 June 2013 and repealed the Petroleum Law No. 6326 of 16 March 1954 (“**Repealed Law**”).

The Petroleum Law has not directly repealed the secondary legislation prepared based on the Repealed Law; i.e. the Petroleum By-Law.<sup>3</sup> The Petroleum Law envisages that until the issuance of the new secondary legislation, the current provisions of the Petroleum By-Law that are not contrary to Petroleum Law will continue to be implemented. Nevertheless, since the Implementation Regulation as the new secondary legislation entered into force, the provisions of the Petroleum By-Law should not apply as of the effective date of the Implementation Regulation.

## Main Features of the Implementation Regulation

### Petroleum Registry

Petroleum rights arising out of or in connection with research, exploration and operation licenses are required to be registered in the petroleum registry of the General Directorate of Petroleum Affairs (“**GDPA**”). Any and all changes in the petroleum rights including the termination of such rights are also recorded to such

registry. The Implementation Regulation envisages that petroleum right registrations and any change in these rights, such as extension of time, will be registered to the petroleum registry, and provides for the forms and applicable procedures for registration applications.

### Research Permits

The Implementation Regulation sets forth that a research permit shall be issued by GDPA in accordance with Article 5 of the Petroleum Law. The exploration and/or operation licenses issued for a part of the area for which a research permit is requested do not constitute an obstacle for research permit issuance. The research permit applicant shall pay TL 0.5 per hectare for once within 60 days following the commencement of the review process of GDPA. Additionally, if the application is deemed to be acceptable, the applicant shall further deposit to GDPA a guarantee in the amount of 0.05 % of the research permit charge per hectare within 15 business days following notification of decision regarding the application. In the case that said amounts are not deposited in due time, the applicant will be deemed to have withdrawn its application.

### Exploration Licenses

As for exploration licenses, the first application made for an area shall be announced in the Official Gazette. Following this announcement, additional applications can be made before GDPA.



**Dr. Cem Çağatay Orak**  
Partner



**Nigar Gökmen**  
Associate



**Nur Doğan**  
Intern

<sup>1</sup> Published in the Official Gazette No. 28890 dated 22 January 2014.

<sup>2</sup> Published in the Official Gazette No. 28674 dated 11 June 2013.

<sup>3</sup> Published in the Official Gazette No. 20224 dated 17 July 1989.

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The business and investment plans of the applicants (including the first applicant) must be submitted to GDPA within 90 days following the announcement. The applications shall be assessed by GDPA in accordance with the criteria provided under the Implementation Regulation. If the application is accepted, the applicant shall further deposit a guarantee in the amount of 0.1% of the exploration license charge per hectare to GDPA within 15 business days following notification of the acceptance decision. Following the payment of this amount, an exploration license will be issued. If this guarantee is not duly deposited, the applicant will be deemed to have withdrawn its application. The exploration license shall be announced in the Official Gazette, and within 30 days following this announcement, the exploration license holder shall deposit another guarantee, namely investment guarantee in the amount of 2% of the investment amount for onshore activities and 1% of the investment amount for offshore activities. In the case that the said guarantee amount is not duly deposited, the license shall be cancelled by GDPA.

### Operation Licenses

In order to obtain an operation license, an application must be made to GDPA. If the application is accepted, the applicant shall further deposit a guarantee in the amount of 0.5% of the operation license charge per hectare to GDPA within 15 business days following notification of decision. If the said amount is not deposited in due time, the applicant will be deemed to have withdrawn its application.

Exploration and operation licenses can also be issued by auction sale method by GDPA. The relinquished areas can also be licensed with auction method upon the consent of the Minister of Energy and Natural Resources.

### Special Requirements of the Petroleum Law and the Implementation Regulation

Pursuant to the Petroleum Law, the petroleum right holders are required to avoid endangering the environment and community, and thus required to utilize proper facilities and equipment. Articles 46 and 24 of Implementation Regulation provides for details of such liabilities such as protection of the air, soil and water quality from pollution. In addition, pursuant to Article 24 of the Implementation Regulation, the petroleum right holder shall reinstate the area and shall evacuate it within 6 months upon the expiry of the easement right. If the reinstatement is not realized within the aforementioned period, the property will be transferred to the landlord and the damages shall be compensated by the petroleum right holder. Article 46 of the Implementation Regulation envisages that petroleum operations

cannot be performed without the permission of the Minister of Energy and Natural Resources in military forbidden zones and security zones, in the areas close to the borders of the Country up to 1 km, 60 meters to the schools, sanctuaries, hospitals, libraries, and facilities such as highways or railways.

### State Share

The Petroleum Law envisages that petroleum license holders are required to pay a state share in the amount of one eighth (1/8) of the petroleum produced under the exploration and operation license. According to the Implementation Regulation, state share shall be declared and accrued with a declaration to GDPA by petroleum license holders. The declaration must be submitted until the end of the twentieth day following the month during which petroleum production is realized and shall be paid to the relevant tax office until the end of the month in which the declaration is submitted. The state share will be paid in cash, unless the Ministry of Energy and Natural Resources requests payment *in rem*.

### Cash Transfer

As per the provisions of the Implementation Regulation, petroleum right holders must submit a declaration to GDPA which is prepared pursuant to Annex-40 (Transfer Declaration Application Form) of the Implementation Regulation to transfer the cash. The unpaid tax, duty and charges will be deducted from the current fund which will be transferred to abroad, and if the deducted amount is higher than the current fund then transfer cannot be performed in cash. The transfer requests shall be assessed by GDPA within 60 days following the request date. The transferor must inform GDPA within 10 days after the transfer is actually completed.

### Pending Projects and Vested Rights

The Petroleum Law and the Implementation Regulation set forth that the rights and requirements under the current exploration and operation licenses, which were issued before the entry into force of the Petroleum Law, will be reserved until expiry of their terms.

Adaptation of current licenses may be requested from GDPA within one year as from the effective date of the Petroleum Law, which is 11 June 2013. GDPA shall assess adaptation requests in accordance with adaptation criteria defined in Temporary Article 2 of Implementation Regulation. Accordingly, borders, licensed areas and activities performed until the adaptation request shall be taken into account. Furthermore, guarantee amounts requested for exploration and operation

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licenses shall be deposited to GDPA within 30 days following the date of the notification made to the petroleum right holder or its legal representative concerning the approval of the adaptation request. Following the deposition of the guarantee amounts, the adaptation shall be finalized by GDPA as well.

### Borders of the Areas

Article 16 of the Implementation Regulation limits the borders of exploration areas with 1/50.000 scaled plots in onshore and with 1/100.000 scaled plots in exclusive economic areas. The minimum exploration site shall consist of 1/25.000 scaled plot area. Concerning the determination of the borders for adjacent areas, the sea coast line and the provisions of Continental Waters Law No. 2674<sup>4</sup> and the Council of Ministers' Decree No. 82/4742 will be taken into consideration. Borders of the exploration areas in onshore shall be determined in accordance with their plot numbers.

The borders of operation areas shall be determined as 1/25.000 scaled plots by taking into consideration the area having the petroleum and these sites are limited with 1/50.000 scaled plot. The petroleum activities of different license holders may be merged upon the approval of GDPA.

### Transfer and Assignment of the Petroleum Rights

Transfer and assignment of the petroleum rights are possible in line with the Petroleum Law and the Implementation Regulation. An application must be made to GDPA for transfer and assignment and GDPA may reject such requests due to the incapability of the transferee. Article 8 of the Implementation Regulation sets forth that the decisions regarding transfer and assignment of petroleum rights must be published in the Official Gazette.

### Investigation on the Petroleum Operations

The Implementation Regulation introduces detailed provisions regarding the investigation and observation to be made by GDPA. In accordance with Article 40 of the Implementation Regulation, petroleum activities may be subject to investigation by GDPA. Petroleum right holders shall provide any document requested by GDPA and shall not refuse to give any information or document for the purposes of such investigations. If any decision is taken by GDPA as a result of the investigations, such decision shall be notified to the petroleum right holder. However, no time period is determined for these notifications under the Implementation Regulation.

### Share Transfer

Pursuant to the Petroleum Law, the transfer of share stakes which leads to a change in control is subject to the pre-approval of the Minister of Energy and Natural Resources. In such circumstances, parties shall apply to GDPA by submitting their justifications for the share transfer. By indicating its opinion, GDPA will submit the request to the Minister of Energy and Natural Resources for approval.

### Conclusion

The main purpose of the Petroleum Law and the Implementation Regulation is to ensure utilization of petroleum sources in an efficient and expeditious manner by promoting the involvement of national and foreign market players. The Implementation Regulation is expected to positively affect the interest of investors in the Turkish petroleum market, as several provisions of the Petroleum Law were inoperative without such regulation and GDPA has long awaited the issuance of the regulation to take further actions. However, its effects remain to be seen in practice especially upon implementation by GDPA.

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<sup>4</sup> Published in the Official Gazette No. 17708 dated 29 May 1982.