

# Recent Amendments to the Mining Law

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The expected omnibus Law Amending the Mining Law, Certain Laws and Statutory Decrees (the “**Law**”) was published in the Official Gazette No. 30700 and dated 28 February 2019. In addition to several amendments to other legislation, the Law provides for significant changes to the Mining Law No. 3213<sup>1</sup> (the “**Mining Law**”).

## 1. Amendments to the Mining Law

### a. National Interest Qualification

A “national interest” qualification has been added to Article 1 of the Mining Law relating to the purpose of the respective Law. Pursuant to the amended wording, the Mining Law shall regulate the expropriation and operation of minerals as well as granting and abandonment of mining rights in line with the national interests.

### b. Changes in the State Royalty Regime

The royalty payment ratio for Group II(b) minerals has been increased from 4% to 4,5%; and for Group IV minerals, except for gold, silver, platinum, copper, lead, zinc, chrome, aluminum and uranium oxide, the royalty payment ratio has been increased from 2% to 3%.

The amount of state royalty exemption applied for the ores that are processed within Turkey has been decreased to 40% for gold, silver and platinum ores, whereas it will continue to be 50% for other minerals.

Finally, the amount of state royalty exemption for Group IV(c) minerals, which are domestically turned into metals in integrated facilities, has been increased from 50% to 75%.

### c. Amendments relating to Operation Licenses and Permits

#### i. Overlap of Multiple Investments

The committee that is established as per Article 7 of the Mining Law in case of an overlap of multiple investments has been abolished with the aim of reducing bureaucratic barriers, and the respective committees’ powers will be transferred to the Ministry of Energy and Natural Resources (“**Ministry**”) in order to facilitate the process.

<sup>1</sup> Published in the Official Gazette No. 18785, dated 15 June 1985.

*ii. Extension of Operation Licenses and Related Permits*

Applications for the extension of operation licenses shall be submitted to the General Directorate of Mining and Petroleum Affairs (“MAPEG”) at least six months before expiration of the license period; however, this provision does not apply to the licenses that will expire within one year following the effective date of the Law.

The Mining Law had already set forth that permits issued within the scope of mining activities and temporary facilities in connection with these activities, shall be valid throughout the entire term of the license period. The Law has now set forth that in the event of any extension to the license period, the permits obtained for that license shall be deemed automatically extended as well without the need for further action.

*iii. Annotation of Operation Permits*

For operation permits to be noticed easily and to prevent any reserve loss in mining areas whilst planning other investments, operation permits will be annotated in the land registry records.

*iv. Separation of Non-Utilized Proven Reserve Areas*

Probable reserve areas will be separated from the operation licenses if those areas are not converted into obvious reserve areas within ten years for Group IV minerals and within five years for others.

*v. Prohibition to Engage in Activities other than Mining*

Mining right holders are explicitly prohibited from undertaking any activity other than mining or build any facilities or infrastructures except for temporary facilities on mine sites. On mining areas, license holders, other real persons, legal entities or public institutions will be able to engage in commercial or industrial activities only with the permission of the Ministry.

**d. Introduction of the Right to Develop Proven Reserve Areas**

A new concept referred to as the “*right to develop proven reserve areas*” has been introduced. Accordingly, third parties can be entitled to receive a share from proven reserve areas that they have discovered as per an agreement with the license holder or MAPEG with respect to areas to be tendered.

The right to develop proven reserve areas and the finder’s right will be annotated in the mining register for informative purposes. Except for the complete termination of the license period, the incorporated right to develop proven reserve areas and the finder’s right will not be forfeited in cases of the transfer, abandonment or cancellation of the relevant license.

**e. Changes in the Administrative Fines and Sanctions**

*i. Misleading Statements*

Certain changes have been introduced to increase the administrative sanctions applicable to misleading statements by license holders and the technical personnel. If the misleading statements by a license holder or technical personnel are not corrected within two months, in addition to an administrative fine, the mining production activities will be ceased until the statements are corrected. Additionally, a mining license will be terminated if three misleading statements are detected within a period of three years.

An administrative fine has been introduced for technical personnel personally for any misleading statements they may give in relation with the operations.

*ii. Unauthorized Production*

The sanctions for unauthorized production have also been detailed and extended. In addition to seizure of the produced ores, the amounts of the administrative fines have been increased and an obligation has been imposed to pay state royalties for unauthorized production.

## f. Other Amendments

The condition for the legal entity mining right holders to explicitly include “operation of mines” into the scope of activities in their articles of association has been repealed.

The Mining Law had set forth that any royalty agreements entered into between license holders and third parties shall be approved by the Ministry. The Law changed the approving authority. From now on, royalty agreements between license holders and third parties will be subject to the approval of MAPEG instead of the Ministry. It is also explicitly set forth that MAPEG is not a party to the royalty agreements.

MAPEG has been authorized to grant mining rights to “specialized government institutions” without tender, specifically for the building of plants and the production of by-products and end products with the ultimate goal of decreasing the volume of imports.

## 2. Purchase of Coal by EÜAŞ

Although not an amendment to the Mining Law, the Law authorizes the national electricity generation corporation (EÜAŞ) to purchase coal from the coal reserves that have been allocated to the companies which have been authorized to operate a production plant together with the associated coal reserves within the scope of Law No. 3096 on the Authorization of Enterprises other than Turkish Electricity Authority for Power Generation, Transmission, Distribution and Trading<sup>2</sup>.

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<sup>2</sup> Published in the Official Gazette No. 18610, dated 19 December 1984.