

Projects & Procurement - Turkey

How to obtain a licence for conducting mining activities

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Introduction

In recent years, in line with increasing demand and to meet existing potential, the government has streamlined and improved mining laws and regulations. However, a circular issued by the Prime Ministry in June 2012 has significantly slowed down the process through which a company can acquire a mining licence. Circular 2012/15⁽¹⁾ requires ministry approval for all transactions relating to state-owned lands. Following its enactment, in 2013 only 84 mining licences were granted out of a total 5,577 licence applications.

This update offers a general overview of the regulatory framework for conducting mining activity in Turkey and details the licensing and permitting principles and procedures.

Obtaining mining rights

Mining activities in Turkey are regulated through three pieces of legislation:

- the Mining Law (3213);⁽²⁾
- the Implementation Regulation on Mining Activities;⁽³⁾ and
- the Mining Activities Permit Regulation.⁽⁴⁾

The government published an amendment to the Mining Law in 2010 to bring mining regulations into line with international standards. The main aim of the amendment is to establish international production and operation standards.

According to Article 168 of the Constitution, underground resources are subject to the exclusive ownership and disposition of the state and the rights for prospecting and operating such natural resources are vested in the state. However, the state is entitled to transfer its rights to a real person or legal entity for defined periods of time, provided that the transfer is permitted by law.

The Mining Law regulates in detail the basis and procedures for prospecting and operating mines. Under Article 4 of the law, mines are under the authority and disposal of the state and are not subject to private ownership rights. However, in accordance with Article 6 of the law, rights can be granted for mining (in the form of licences and permits to conduct mining activities, including the operation of mines), but only to the following persons and entities:

- Turkish citizens;
- legal entities incorporated under the laws of Turkey, including legal entities with foreign shareholders, provided that the articles of association of such legal entities contain a relevant clause that authorises the entity to undertake mining operations;
- public entities; and
- administrative bodies.

This effectively means that any foreign investor can establish a Turkish company in Turkey and thereby obtain mining rights. There is no restriction that foreign investors be partial or full owners of a Turkish company before performing mining activities in Turkey, provided that all permits and licences required by law have been obtained by such investors.

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Responsibility for compliance, control and supervision of mining operations lies with the Ministry of Energy and Natural Resources and the ministry's General Directorate of Mining Affairs. Furthermore, prospecting for the operation, licensing, supervision and evaluation of mining projects falls under the authority and disposition of the ministry. Licences for some mining activities are given by special provincial administrations and by municipalities in adjacent regions.

Although the Mining Law does not require approval by the Prime Ministry before a mining licence will be issued, as from June 16 2012 the circular made such approval mandatory, along with all other actions relating to state-owned lands.

All mining rights must be registered with the Mining Registry, which is kept by the general directorate, in accordance with Article 38 of the Mining Law. The registration of mining rights with the registry is compulsory and set out in the Constitution. The registry is open to the public and the persons concerned may not assert that they had no knowledge of the registry records for matters that must be registered by operation of law.

Licences

Under the Mining Law, the extraction of minerals in Turkey is divided into six groups,⁽⁵⁾ each of which is subject to different terms and conditions in relation to licensing principles and procedures. Licences determined by the Mining Law are granted for a specific group of minerals among those six groups – a licence received for a specific group may not provide its holder with the right for other groups. However, the Mining Law allows for multiple licences involving different groups of minerals in the same area.

The three types of licences granted for prospecting and operating mines under the laws of Turkey are:

- a prospecting licence, enabling the holder to carry out prospecting activities in a specific area;
- an operation licence, enabling the holder to carry out operational activities within the same area as stated in the prospecting licence; and
- an operation permit, enabling the holder to operate a specific mine as specified in the operation licence.

Prospecting licence

A prospecting licence is issued for mineral prospecting activities in a specific area. An application for a prospecting licence must be made to the general directorate in accordance with the Implementation Regulation on Mining Activities.

According to the implementation regulation, a preliminary survey report and a prospecting project (both in the forms specified in the Mining Regulation) must be submitted to the general directorate once a prospecting licence application receives the go-ahead.

The preliminary survey report includes general information (eg, the reasons behind the choice of the target area, the mine(s) that will be explored in the area, regional geological studies and maps). The prospecting project covers:

- the project's content and activity adequacy (ie, the minimum number and type of activities that must be performed under the mining regulation during exploration);
- the minimum total investment amount, as required by the mining regulation;
- the schedule for the project; and
- the financial sufficiency of the applicant.

According to the implementation regulation and Article 17 of the Mining Law, the term of prospecting licences is divided into three periods:

- the pre-prospecting period;
- the general prospecting period; and
- the detailed prospecting period.

If any of these prospecting periods is completed before the expiry of the time limits set forth under Article 17 of the Mining Law, the project company may proceed to the next phase without waiting for the relevant period to end, provided that the conditions stated under the relevant legislation have been fulfilled.

Pre-prospecting period

The first year following the application for a prospecting licence is termed the 'pre-prospecting period'. During this period, the project company must submit a pre-prospecting activity report that demonstrates the investment expenses regarding pre-

prospecting activities and states that the activities indicated in the prospecting licence have been completed. The pre-prospecting activity report must also include a resource and/or reserve report and information relating to the activity adequacy of the project. The project company must provide detailed information regarding its investment expenses and make at least 40% of the investment amount specified under the Mining Regulation during this period.

General prospecting period

Project companies fulfilling the above obligations will be granted a general prospecting period for one to two years, depending on the group of minerals concerned. A general prospecting activity report must be submitted regarding the mine resource indicated in the mine prospecting project and the investment expenses concerning the prospecting activities carried out during this period by the end of the general prospecting period. The general prospecting activity report must also include a resource and/or reserve report and information relating to the activity adequacy of the project. The project company must provide detailed information regarding its investment expenses and make at least 40% of the investment amount specified under the Mining Regulation during this period.

Detailed prospecting period

The Mining Law stipulates a detailed prospecting period for the fourth (ie, metal and industrial minerals) and sixth (ie, radioactive minerals and substances) groups of minerals, for which a filing must be made before the expiry of the general prospecting period. This period grants project companies an additional four-year prospecting period. During this period, a detailed prospecting activity report (including a resource and/or reserve report and indicating the activities conducted during the appropriate year) must be submitted annually. The minimum amount of investment made by the project company during the relevant year must be at least 20% of the investment amount set forth under the Mining Regulation.

Each year, within two months of submission of the report, the general directorate will decide whether the detailed prospecting period will be extended for another year. In the event that the report is not submitted and/or the project company does not apply for an operation licence until the end of the prospecting licence period, the guarantee amounts stipulated by the Mining Regulation will be registered as revenue and the prospecting licence will be cancelled.

Operation licence

For many of the groups of minerals (II(b), III, IV and VI), in order to obtain an operation licence, the project company must realise the conditions set out for a prospecting licence, together with:

- an activity report including information related to the mine reserve;
- an operation project in the form set forth in the Implementation Regulation on Mining Activities; and
- documentation evidencing that the application fee is fully paid.

The validity of the operation licence will be determined in accordance with the visible and probable reserve and the prepared project. Apart from those licences required for the I(a) and V groups of minerals, the term of such operation licence may not be less than 10 years from the submission of a feasibility study or development plan to the general directorate. The term of the operation licence can be extended, provided that the conditions stated under the implementation regulation are met. The extension periods differ based on:

- the use of the mine;
- whether the project company has carried out production in its own facility; and
- the production average.

This term will not normally exceed 60 years. However, the Council of Ministers is authorised to grant an extension in certain circumstances. Production is generally required for a licence to be maintained and extended. However, the rate of production required in some cases has been minimal.

Operation permit

In addition to the operation licence, additional special permits are required, in accordance with Article 7 of the Mining Law, with regard to projects located in areas with distinctive qualities (eg, forestry zones, hunting zones, special preservation zones, national parks, natural parks, agricultural zones, tourism zones, military forbidden zones and urban development and construction zones). The rules and principles with regard to such special permits are set out under the Mining Activities Permit Regulation, but they are also subject to Prime Ministry approval, pursuant to the circular.

According to Article 9 of the permit regulation, if the project is subject to environmental impact assessment, the project company must submit an environmental impact

assessment report, as regulated under the Environmental Impact Assessment Regulation,⁽⁶⁾ to the Ministry of Forestry and Water Affairs within the periods specified in the permit regulation.

The term of an operation permit is the same as that of an underlying operation licence. If an extension is granted to an operation licence, the term of the permit will also be extended accordingly. If the licence is transferred to another person, all of the obtained permissions and corresponding obligations will be valid under the same circumstances. The relevant governorate must be notified of the transfer.

As set forth under the licensing regulations, depending on the specifications, the project may also be subject to a reconstruction permit, an occupancy permit, a carbon credit, a discharge permission or any other permission that might be compulsory in order to carry out the project.

Invalidity

Under Article 33 of the Mining Law, if prospecting and operation licences become invalid due to termination, expiry or withdrawal, the wells, galleries and reinforcement facilities constructed for their protection will be transferred to the state without indemnification having to be paid to the project company.

Financial obligations

Several financial obligations are associated with mining rights and are regulated under Articles 14 and 15 of the Mining Law. According to Article 14 of the law, the state can receive between 1% and 4% of the value of extracted ore from the project company (depending on the group of minerals) as a government right. This government right is distributed among:

- the provincial administration of the place to which the licence relates (25%);
- infrastructural investment for the place to which the licence relates (25%); and
- the Treasury (50%).

However, if the produced minerals are processed within Turkey, the government right of 50% for the current output (under Article 9) need not be paid, as part of the mining incentive scheme. According to Article 15, where a mine is operated by a person or entity other than the finder of such mine, the operator must pay the finder 1% of the value of the extracted ore as a finders' fee.

The Municipal Revenues Act (2464)⁽⁷⁾ further stipulates (in Article 97*bis*) that where a mining operation is carried out within the borders of a municipality or within the adjacent areas, 0.2% of the operator's annual sales must be paid to the relevant municipality, as a municipality charge, in addition to certain other fees specified in the Mining Law. As a general rule, the municipality charge must be paid by the holder of the operation licence to the relevant municipality at the same time as payment of the government right (on June 30).

Mine lease agreements

Mining operations must be conducted by real or legal entities according to the general principles stated above. Alternatively, the operation of mines can be conducted by executing a lease agreement between the licence holder and the operator. In a mining lease agreement, the prospecting licence will be assigned by the licence holder, in return for which rent is collected. This agreement is not subject to the approval or consent of the general directorate.

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Endnotes

(1) Published in the *Official Gazette* on June 16 2012.

(2) Published in the *Official Gazette* on June 15 1985.

(3) Published in the *Official Gazette* on November 6 2010.

(4) Published in the *Official Gazette* on June 21 2005.

(5) In summary, the six groups are as follows:

- sand and gravel (Group I);
- marble and other similar decorative stones (Group II);
- salts in solution that can be obtained from aqueous solutions (Group III);
- metal and industrial minerals (Group IV);

- precious metals and gem stones (Group V); and
- radioactive minerals and substances (Group VI).

(6) Published in the *Official Gazette* on October 2 2013.

(7) Published in the *Official Gazette* on May 29 1981.

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