

## **A Brief Overview of the Licenses and Permits in the Turkish Mining Sector**

Gencin Kaya KAYIKCI  
Associate / GSI Meridian

Last years have witnessed some amendments and changes in Turkish legislation regarding mining regime in Turkey. Article of the Mining Law which puts the Mining Activities Permit Regulation into effect has been abolished by Constitutional Court , while several articles of the Mining Permits Regulation was granted a stay of execution. Also the Law Regarding Amendments on Mining Law and other Certain Laws, numbered 5995 has been approved by the Grand National Assembly of Republic of Turkey on June 10, 2010 but has not been put into force yet.

In the light of the above, the licenses and permits regime in the Turkish Mining Sector has been examined as per the Mining Law numbered 3213 which is still in effect.

**Legal Basis:** Licenses and permits in the Turkish mining sector are regulated under; the Mining Law (numbered 3213 and dated June 15, 1985), the Regulation on the Implementation of Mining Law (dated February 3, 2005) and the Mining Activities Permit Regulation (dated June 21, 2005)

Under the Turkish Mining Law, mines have been divided into five (5) groups which are subject to different terms and conditions on licensing principals and procedures. It should be noted from the outset that the licenses determined in the Mining Law are granted for a specific group of mines among those five (5) groups and a license received for a specific group may not provide a right to its holder for the other groups. However, the Mining Law allows for multiple licenses involving different categories of minerals in the same area.

According to Article 6 of the Mining Law, mining rights can be defined as the licenses and permits for prospecting and operating mines and can only be granted to the following real or legal persons; (i) Turkish citizens; (ii) legal entities incorporated under the laws of the Republic of Turkey, including legal entities having foreign shareholders, provided that the articles of association of such legal entities shall contain a mining operation clause; and (iii) authorized public entities and administrative bodies.

## **TYPES OF LICENCES**

The three (3) types of licenses granted for prospecting and operating the mines stated under the laws of the Republic of Turkey are as follows; (i) *prospecting license*, enabling its holder to carry out prospecting activities in a specific area; (ii) *operation license*, enabling its holder to carry out operational activities within the same area as stated in the prospecting license; and (iii) *operation permit*, enabling its holder to operate a specific mine as specified in the operation license.

### **Prospecting License**

Prospecting activities can be defined as all mining activities other than those carried out for production. As an exception, the prospecting licensee shall have a right to carry out production and sale activities in respect of maximum 10% of the proved mine reserves within the prospecting license period in the event the prospecting licensee applies to the General Directorate of Mining Affairs (*Maden İşleri Genel Mudurlugu*) with the prospecting activity report.

**Terms and Procedure for Prospecting License:** The application for prospecting license shall be made to the General Directorate of Mining Affairs for the mining groups other than group I (a). For the group I (a) mines the application shall be made to the relevant Provincial Special Administration (Il Özel İdaresi). Prospecting licensees are obliged to submit a prospecting activity report to the General Directorate of Mining Affairs within two (2) years upon the obtainment of such license, as provided in Annex 5 of the Regulation on the Implementation of Mining Law. In case of non compliance with such provision, the prospecting license guarantee provided by the prospecting licensee shall be recorded as revenue. The term of the prospecting license is three (3) years and may be extended for a period of two (2) years upon the demand and submission of the second prospecting activity report by the prospecting licensee.

### **Operation License**

**Terms:** Operation license may only be obtained if the prospecting activities are carried initially. The operation license shall be granted to the prospecting licensee for the proved, potential and feasible mine reserve area determined during the prospecting period for a period of at least ten (10) years upon the evaluation of the aforementioned documents by the General

Directorate of Mining Affairs. The term of the operation license may be extended for at least three (3) years upon the application of the holder of the prospecting License and operation license with a new operation project however, such term cannot exceed sixty (60) years. The Council of Ministers is authorized to grant an extension more than sixty (60) years.

**Procedure:** The operation licensee must apply to the General Directorate of Mining Affairs to obtain necessary permits stipulated under Article seven (7) of the Mining Law within three (3) months commencing as of the issuance date of the operation license. In case the operation licensee fails to apply to the General Directorate of Mining Affairs within the said period, the guarantee shall be recorded as revenue and a further period of three (3) months shall be provided to the operation licensee for application. If non compliance continues within the additional three (3) months period, the operation license shall be revoked. Thereafter, within fifteen (15) days as of the issuance date of the permits required, the operation licensee is granted an operation permit. Such permit is granted only for the proved mine reserves area which is determined during the prospecting period. Operation activities must be started to be carried out within one (1) year commencing as of the date of the operation permit. In case the operation activities do not commence within such one (1) year period, 10% of the production amount shall be paid as the state right for each year of inactivity. The terms of the aforementioned necessary permits and an operation permit shall be the same as the term of an operation license and in case an extension is granted to an operation license, the term of such permits too shall be extended accordingly.

## **REVOCATIONS OF LICENSES**

The relevant license (prospecting or operation license depending on the stage of the mining activities) shall be revoked on condition that one of the following circumstances occur:

- (i) the provisions of the Article seven (7) of the Mining Law are violated three (3) times within five (5) years;
- (ii) either the license holder hinders the implementation of the Mining Law by factitious or misleading declarations or unjustly acquires a right (3) times within five (5) years;

- (iii) the inspection report issued to the Ministry of Energy and Natural Resources states that the license holder has factitious or misleading declaration, and such violation occurs three (3) times within five (5) years;
- (iv) the guarantees that are increased to be recorded as revenue are not deposited within six (6) months by the relevant licensee;
- (v) the mine that is included under the scope of the relevant license has not been economically processed;
- (vi) the prospecting licensee does not carry out sufficient prospecting activities within the prospecting license period or the prospecting licensee does not apply for the operation license prior to the expiry date of the prospecting license; and
- (vii) save for the force majeure and extraordinary situations, the operation license which have been used for less than three (3) years within the operation license term of five (5) years.

The mining activities that have been performed in accordance with the operating permit to be granted by the General Directorate of Mining Affairs cannot be halted unless otherwise is specified under the laws and regulations. However, other than the aforementioned revocation circumstances, under the Turkish Administrative Law, public authorities are generally entitled to terminate an agreement entered with a private party or a right granted to the same at any time even if the private party does not have any negligence or fault on his part, provided that there is a public policy consideration. This entitlement is a derivation of the public authority's right to make unilateral changes. However, in such cases of ungrounded termination by discretion, public authority is required to compensate all losses and damages incurred by the private party.

### **TRANSFER OF THE LICENSES**

Turkish Mining Law does not allow to divide neither the prospecting license nor operation license but they can be transferred by the General Directorate of Mining Affairs to individuals or legal persons carrying the conditions in Article six (6) of the Mining Law, provided that, in order to perform such transfer, the annual fees of those licenses and the state right arising there from shall be fully paid, and sale and operation activity information forms

prepared for the period until the transfer date shall be submitted to the General Directorate of Mining Affairs.

The transferee of the relevant license shall deposit the guarantee to be computed and a transfer fee amounting to the annual fee of the license. In case of such transfer, all permits under the Article (seven) 7 of the Mining Law and obligations arising from such permits shall stay valid and be transferred to the transferee. It should be noted that the operation permit cannot be transferred pursuant to Article 27 of the Mining Law, while operating license can be transferred in whole in accordance with the aforementioned procedures. Accordingly, the transferee of the operating license is required to acquire a new operation permit.

### **CURRENT ISSUES**

As also mentioned above; first of the two current issues that are significant to point out is; the Council of Ministers has prepared and put into effect the Mining Activities Permit Regulation in terms of Article (seven) 7 of the Mining Law. However, such article has been abolished by Constitutional Court (Numbered 2004/70 E. and 2009/7 K. and dated January 15, 2009). The mentioned decision has been published in the Official Gazette (dated June 11, 2009 and numbered 27255) and shall come into force in one (1) year as of the publication date. Besides, several articles of the Mining Permits Regulation was granted a stay of execution by the resolution of the Mutual Chamber of 6th and 8th Chambers of the Council of State (dated February 10 and numbered 2008/6285). Second is that the Law Regarding Amendments on Mining Law and other Certain Laws, numbered 5995 has been approved by the Grand National Assembly of Republic of Turkey on June 10, 2010 but has not been put into force yet. The effective date of such law has been stated as its publication date on the Official Gazette.