

# Conducting Mining Exploration Activities under Turkish Law

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According to Turkish Law, underground resources are subject to the exclusive ownership and disposition of the State and are not deemed as part of the land in which they are located. Pursuant to Article 4 of the Mining Law (*published in the Official Gazette dated June 15, 1985 and numbered 18785*) (Law No. 3213) (the “**Law**”), property rights over the land exclude any existing minerals. According to Article 6 of the Law, mining rights can be defined as the licenses and permits for prospecting mines, that can only be granted to the following persons and entities: (i) Turkish citizens; (ii) legal entities incorporated under the laws of Turkey, including legal entities having foreign shareholders, provided that the articles of association of such legal entities shall contain a relevant clause which authorize the entity for mining operations; (iii) public entities; and (iv) administrative bodies. Consequently, there is no distinction between the mining rights that may be acquired by local investors and those that may be acquired by foreign investors provided that the foreign investors establish a legal entity in Turkey.

Pursuant to Article 168 of the Constitution of the Republic of Turkey (*published in the Official Gazette dated November 9, 1982 and numbered 17863*) (Law No. 2709) (the “**Constitution**”) and Article 4 of the Law, mines shall be controlled and disposed by the State. Mining activities may be conducted on the land by purchasing or leasing from private persons. In addition, Mining Activities Permit Regulation (*published in the Official Gazette dated June 21, 2005 and numbered 25852*) (“**Permit Regulation**”) sets forth the procedures and rules regarding the mining exploration and operation activities within the forest areas; areas allocated for the purpose of protection and development of wildlife; hunting areas; special environment protection areas; national parks and any other similar areas; agricultural areas; pastures; and any other protected areas.

## Mining Activities in the Land Subject to Private Ownership

### Establishing Easement or Usufruct Rights on the Land

An Easement right is a limited right in rem which grants its holder the power to use, to benefit from, or both to use and to benefit from a property. A usufruct right is also an easement right which grants its holder the powers to use and to benefit from a property.

According to the Expropriation Law (published in

the Official Gazette dated November 8, 1983 and numbered 18215) (Law No. 2942) (“**Expropriation Law**”), the price of easement or usufruct rights shall be determined by the experts to be appointed by the Ministry of Energy and Natural Resources General Directorate of Mining Affairs of Turkey (“**MIGEM**”). According to Article 71/3 of the Regulation on Application of Mining Activities (published in the Official Gazette dated November 6, 2010 and numbered 27751) (“**Application Regulation**”), the license holder may not use the land on which easement or usufruct rights are granted outside of its purpose. Moreover, the land must be abandoned on the date of expiration in order to be in harmony with the environment.

The license holder is bound to indemnify for damages in the field within the scope of easement or usufruct rights. At the expiration of an exploration period, if an operation request is present, the period of easement or usufruct rights may be extended, provided that such extended period does not exceed the period of operation. Otherwise, the establishment of new easement or usufruct rights may be requested.

Nonetheless, in accordance with Article 123 of the Application Regulation, conducting mining activities within the areas at distances of horizontally 60 (sixty) meters from buildings subject to private ownership, and 20 (twenty) meters from courts, orchards and gardens may be actuated upon the written consent of the owner of such property. Any surface area approved by MIGEM, to which the subterranean mining activities correspond, is not subject to aforementioned limitations. MIGEM is entitled to determine different distances for each activity type in accordance with the mining activities' size, operation method, safety measures, and topographical and geological structures of the land. According to Article 46 of the Law, in the event that the owner of property within the boundaries specified does not consent to the mining activity, permission for mining may nevertheless be granted through the establishment of easement rights by the Ministry of Energy and Natural Resources of Turkey. This process is known as expropriation.

### Expropriation of Land

According to Article 46 of the Law, if the landowners and miners fail to reach an agreement during the operation license issuance phase, the land may still be taken away, or expropriated, upon the request of the operation license holder and the Ministry of Energy and Natural Resources of Turkey. This decision will be made if the public interest's benefit outweighs the private owner's interests. In such a case, the land shall be investigated by a committee assigned by MIGEM. According to Article 73/2 of the Application Regulation, the decision shall be rendered through evaluation of all technical and social factors such as; operation project and reserve amounts of the mine in the land whose expropriation is requested; advantages and disadvantages that production of the mines will entail for the economy of the region and the country; production possibilities in areas within the license field and outside of the area whose expropriation is requested as per the reserve amount; alter-

native production areas in the region; losses that will be incurred to the property owner; respect relating to the property owner's economical activities after expropriation and how they will be effected from expropriation; and the relations between the area whose expropriation is requested and the environment.

When the decision on expropriation is rendered, expropriation transactions shall be executed as per the provisions of the Expropriation Law. Expenditures and expropriation prices shall be borne by the operation license holder. The expropriated land shall be registered on behalf of the Republic of Turkey Prime Ministry Undersecretariat of Treasury ("**Treasury**") and allocated on behalf of the license holder to be used in mining activities as long as the license is in effect.

According to Article 73/4 of the Application Regulation, use of the land expropriated beyond the purpose of expropriation shall be deemed an unjust acquisition of right and the activities beyond the expropriation's purpose shall be ceased.

As per Article 73/5 of the Application Regulation, in case no activities or allocations are made by the License holder in the expropriated area in accordance with its purpose of expropriation within 5 (five) years as of the date of finalization of an expropriation price, the property owner or its inheritors may have their land returned, provided that the expropriation price is repaid along with accrued interest. In addition, according to Article 46 of the Law and Article 73/6 of the Application Regulation, in case the Ministry of Energy and Natural Resources of Turkey finds, or the license holder declares, that use of the real property for the purpose of expropriation is not required anymore, the expropriated real estate will be returned to its former owner provided that the current market value be determined in accordance with the procedures and principles under the Expropriation Law and be paid to the Treasury.<sup>1</sup> The Treasury shall notify the license-holder and the former owner of the real estate. In case the former owner does not intend to retrieve the real estate within 6 (six) months from the date of this notification, the real estate shall remain with the Treasury.

### Conducting Mining Activities on Land Subject to State Ownership

According to Article 4 of the Regulation on Adminis-

<sup>1</sup> According to the provision of the Treasury Regulation, Treasury shall be defined as legal entity of State in terms of the public bodies within the scope of the general budget.

tration of Treasury Real Estate (published in the Official Gazette dated June 19 2007 and numbered 26557) (“**Treasury Regulation**”), “places under the control and disposition of the State” constitute the places which are specified to be under the control and disposition of the State, or Government, as per the Turkish Civil Code (published in the Official Gazette dated December 8, 2001 and numbered 24607) (Law No. 4721) (“**Turkish Civil Code**”) and other legislation. The phrase “real estate under the Treasury’s private ownership” expresses real estate registered in the Land Registry Office under the name of the Treasury. As per the same article of the Treasury Regulation and Article 75 of the State Tender Law (published in the Official Gazette dated September 10, 1983 and numbered 18161) (Law No. 2886) (“**State Tender Law**”), the administration shall be entitled to request damages (“*ecrimisil*”) for occupation due to real persons’ or legal entities’ occupying or disposing real estate that are under the private ownership of the Treasury and places under the control and disposition of the State without consent of the administration regardless of whether any damages arise thereof or the occupying party is in fault.

However, no additional prices as rental fee or as damages for occupation may be received from the persons who conduct mining activities in the public areas that are under the control and disposition of the State, a list which shall be included below, which shall not be deemed as exhaustive, in line with the decisions of the Council of State. According to Article 46 of the Law “rental fee or damages for occupation shall not be received for the mining activities conducted in land under the Treasury’s private ownership or under the control and disposition of the State as of the date on which this Law enters into force” and thus, the precedent of the Council of State on not receiving damages for occupation has become a binding legal provision.

Article 122 of the Treasury Regulation clarifies the provision on not receiving/requesting rental fee or damages for occupation set forth under Article 46 of the Law and also specifies that such areas shall be deemed as allocated for mining activities and in case the area on which mining activities are conducted is under the private ownership of the Treasury or under the control and disposition of the State, no permissions within the scope of land ownership shall be required. Nevertheless, in order to conduct mining activities in the lands specified under Article 7 of the Law and under Permit Regulations, required permissions must be acquired from the relevant institutions. Within this scope, the legal status which may be ap-

plicable to land subject to the licenses which are under the control and disposition of the State or of the Treasury under various laws may be specified as follows, which shall not be deemed as an exhaustive list:

- As per Article 715 of the Turkish Civil Code, unowned places and properties whose benefits belong to the public shall be under the control and disposition of the State. Unless the contrary is proved, ownership of waters whose benefits belong to the public and places which are not suitable for agriculture, rocks, hills, mountains, glaciers and resources extracted from such may not be subject to private ownership.
- Real estate within the scope of the Coast Law (published in the Official Gazette dated April 17, 1990 and numbered 20495) (Law No. 3621) are under the control and disposition of the State as per Article 5 of the aforementioned law.
- Pursuant to Article 5 of the Law on Protection of Cultural and Natural Properties (published in the Official Gazette dated July 23, 1983 and numbered 18113) (Law No. 2863), cultural and natural immovable properties whose protection is required and which are known to exist in real estate, or whose existence in such will be revealed in the future, belonging to the State; public bodies and institutions and real estate under ownership of real persons and legal entities subject to private law provisions shall be deemed as properties of the State. Cultural and natural immovable properties whose protection is required are listed under Article 6 of the aforementioned law. Accordingly, cultural and natural immovable properties whose protection is required are as stated below:
  - Natural properties whose protection is required and real estate built before the end of the 19th century,
  - Real estate which have been built after the designated date, yet whose protection is deemed necessary by the Ministry of Culture and Tourism of Turkey given their importance and qualities,
  - Immovable cultural properties found in the protected area,
  - Due to their importance in our national history, buildings and designated areas of importance dating from the National War of Independence

and the establishment of Turkey, and the residences used by Mustafa Kemal Atatürk. These are protected regardless of when they were built.

- Types of pastures as defined under the Pasture Law (published in the Official Gazette dated February 28, 1998 and numbered 23272) (Law No. 4342), shall be under the control and disposition of the State as per Article 4 of the said law.
- As per the Law on Agricultural Reform Regarding Land Arrangement in Irrigation Areas (published in the Official Gazette dated December 1, 1984 and numbered 18592) (Law No. 3083), areas within the regions announced to be application fields or areas which are afterwards decided to be expropriated and which will be under the control and disposition of the State shall be under the control and disposition of the State.
- Real estate which is within the scope of the Law of Military Forbidden Zones and Security Zones (published in the Official Gazette dated December 22, 1981 and numbered 17552) (Law No. 2565) and whose sales are not approved by the Presidency of the General Staff shall be under the control and disposition of the Treasury.
- Real estate within the scope of the Forest Law (published in the Official Gazette dated September 8, 1956 and numbered 9402) (Law No. 6831) and the real estates transferred to the Ministry of Forestry and Water Works of Turkey as per the Law on Supporting the Implementation of Forest Villagers (published in the Official Gazette dated October 20, 1983 and numbered 18197) (Law No. 2924) shall be under the control and disposition of the State.
- As per Article 8 of the Law on Promotion of Tourism (published in the Official Gazette dated March 16, 1982 and numbered 17635) (Law No. 2634), places within the protection and development of culture and tourism regions and tourism centers which belong to the Treasury shall be allocated to the Ministry of Culture and Tourism become, thus under the control and dispose thereof.
- Real estate acquired through the means of “teferruğ” shall be under the control and dispo-

sition of the Treasury. Teferruğ is the Treasury’s unilaterally transferring, in return for a particular price, the ownership of the debtor’s immovable property to itself, which has been seized for the collection of the Treasury’s receivables in the event that no purchasers participate in the sale of such immovable property.

- Real estates which have been expropriated in accordance with the Expropriation Law shall be under the control and disposition of the State.

As a summary of the foregoing, lands under private ownership of the Treasury or under the control and disposition of the State will be deemed to be allocated for mining, and no charges for use of such places or no other payments for any reason may be demanded. On the other hand, permission of the Ministry of Energy and Natural Resources of Turkey is required for initiating mining activities in public areas allocated for public services or left for the benefits of the public. Moreover, mining activities within distances below 60 (sixty) meters from sanctuaries, schools, hospitals, libraries, highways, or railroads reserved for public services or for the benefits of the public may be conducted upon the consent of the Ministry of Energy and Natural Resources of Turkey.

It should also be noted that in case the license holder conducts mining expropriation operations in special lands specified in the provisions of Permit Regulations including, without limitation, forestry areas, wildlife protection areas, special environmental areas, national parks, cultivated areas, pasture areas, drainage areas, shorelines, wetland areas and military forbidden zones, the license holder shall apply and/or notify several authorized authorities and institutions including, without limitation, Regional Directorate of Forestry, Regional Directorate of Nature Conservation and National Parks, Regional Directorate of Environmental Protection Agency, Ministry of Agriculture and Regional Affairs, Ministry of Culture and Tourism, the Office of Commander in Chief, relevant governorships and other relevant institutions within the scope of the aforementioned, in accordance with the relevant legislation included, without limitation, those included herein. In addition, the mining expropriation operations which do not require land excavation such as prospection, geological mapping, sampling, and geophysics research can be conducted in specified areas without obtaining any permit or approval from relevant authorities.