

## Overview of Mining in Turkey (2015)

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### Overview

#### **1. Provide an overview of the recent developments in the exploration and extraction of mineral resources in your jurisdiction.**

Despite having a range of minerals, some significant reserves and government support for investment in mining activities, Turkey's mining potential is largely untapped. 77 out of the 90 minerals that are traded worldwide can be extracted in Turkey. Turkey has rich or very rich deposits for 50 of those minerals.

Turkey's strong tectonic and magmatic history has resulted in these rich underground reserves. The most important minerals explored and extracted in Turkey are: boron salt, perlite, marble, pumice, feldspar, bentonite, barite, magnesite, sodium sulphate, rock salt, trona, gypsum, strontium salts, sepiolite, zeolite, olivine, asbestos, dolomite, emery, and lignite. Other minerals extracted and explored in Turkey include chromium, copper, zinc, lead, silver and gold.

Turkey has:

- 72% of global boron reserves.
- 33% of global marble reserves.
- 2.5% of global industrial raw materials.

In spite of this, Turkey's mineral potential is largely untapped and unexplored with total mining production having increased by 7% in the last decade. For example, there has been no drilling in Turkey's entire southeastern region since the 1980's, despite the huge mineral wealth in the area.

A favourable tax regime, established infrastructure for geologic research and the quality of data provided by the General Directorate of Mineral Research and Exploration make Turkey a good investment choice for mining activities.

Governmental institutions provide additional investment support in mining activities. A Council of Ministers decision dated 2012/3305 set the scope of a new investment incentive programme for investors with several new mechanisms and opportunities (see Question 9).

Revenues from mineral sales have gradually increased over the years, reaching TRY14.7 billion in 2013, compared to TRY1.9 billion in 2004 (MENR Activity Report 2013). In 2014, Turkey imported 20.98 billion tons of minerals worth US\$4.10 billion, at the same time exporting 36.87 billion tons of minerals worth US\$4.85 billion (MENR Energy and Natural Resources Evaluation Report 2015).

Research and exploration to seek new coal deposits has accelerated to lessen the dependency on foreign energy production. There has also been new investment in coal-fired thermal power plants. As a result:

- Between 2005 and 2012, total coal reserves increased by 5.8 billion tons.
- As of 2013, the total capacity of coal-fired plants was 12.563 MW, comprising 20% of the national domestic capacity.

The privatisation of coalmines and coal-fired thermal power plants is a hot topic in the mining sector, particularly in the Afşin-Elbistan region, which holds an estimated 46% of Turkey's total coal reserves. The Ministry of Energy and Natural Resources (Enerji ve Tabii Kaynaklar Bakanlığı) (MENR) aims to open these previously untapped coal reserves and is currently conducting negotiations with different countries and companies to do so.

## Regulatory structure

### Regulation

#### 2. Describe the regulatory framework for the exploration and extraction of mineral resources.

##### Regulatory framework

The main legislation applicable to the exploration and extraction of mineral resources is the Mining Law No. 3213, of 15 June 1989 (Mining Law). The Mining Law has been amended from time to time. The most recent amendment was made on 18 February 2015 by Law No. 6592 (Amendment Law).

Secondary legislation related to the Mining Law includes:

- Regulation on the Implementation of Mining Activities, published in the Official Gazette No. 27751, dated 6 November 2010 (Implementation Regulation).
- Regulation on Mining Activity Permits, published in the Official Gazette No. 25852, dated 21 June 2005 (Permits Regulation).

Other primary and secondary legislation related to mining activities includes:

- Environmental Law.
- Environmental Impact Assessment Regulation.
- Workplace Opening and Operation Licences Regulation.
- Health and Safety Measurements for Mining Workplaces Regulation.
- Control of Air Pollution from Industry Regulation.
- Control of Soil Pollution Regulation.
- Control of Hazardous Waste Regulation.
- Control of Water Pollution Regulation.
- Wild Life Protection Regulation.
- Regulation on Regenerating the Lands destroyed by Mining Activities Back to Nature.

##### Regulatory authorities

The Ministry of Energy and Natural Resources (MENR) is the main governmental body authorised to issue secondary legislation concerning mining activities such as regulations and communiqués. MENR is responsible for preparing and implementing energy policies, plans, and programmes in co-ordination with related government institutions.

The General Directorate of Mining Affairs (Maden İşleri Genel Müdürlüğü) (GDMA) is the body authorised to issue mining licences and to implement applicable legislation.

The General Directorate of Mineral Research and Exploration (Maden Tetkik ve Arama Genel Müdürlüğü) (GDMRE) is a body within MENR. It conducts scientific and technological research on mineral exploration and geology.

# Ownership

## 3. How are rights to the mineral resources held, and who holds those rights?

All minerals are owned by the state, not by the owners of the land where they are found (Article 4, Mining Law). The state has the exclusive right to explore and operate facilities related to minerals. It may transfer those rights to a real person or legal entity for a specific period of time, subject to payment of royalties and compliance with all relevant licensing requirements.

The state may (*Article 14, Mining Law*):

- Authorise third party private persons to carry out mining activities.
- Provide permits and licences to state institutions and organisations to carry out mining activities within the scope of the Mining Law.

The General Directorate of Mining Affairs (GDMRE) is authorised to carry out exploration activities without being subject to any licence requirements, although it may choose to obtain licences to the extent provided under law (Article 47, Mining Law).

## Authorization

## 4. What are the key features of the leases, licenses or concessions which are issued under the regulatory regime? Can these rights be leased by the right-holder?

Lease/ licence/ concession term

**Mining** licences. The Mining Law envisages that mining activities be conducted under a licencing regime. The Mining Law treats all minerals as having economic and commercial value and subject to licensing procedures (Article 2, Mining Law). Petroleum, gas, geothermal, and water resources are excluded from the scope of the Mining Law and are regulated by other legislation.

The licensing procedure, fees and the permits required for mining activities depend on the mineral group involved. The Mining Law outlines five mineral groups, with some categories split into detailed sub-groups:

- 1st group: sand and gravel rocks used in construction and road building, other rocks used in cement and ceramic industries.
- 2nd group: calcite, dolomite, limestone, granite, andesite, and basalt which are used in ready mixed concentrate and asphalt production. Marble, travertine, andesite, basalt and similar rocks used in integrated cement making.
- 3rd group: salts in solution form obtained from the sea, lake, or spring water. Carbon Dioxide (CO<sub>2</sub>) gas (except for in areas with geothermal, petroleum and natural gas).
- 4th group: energy, metal, and industrial minerals listed under the Mining Law including: kaolin, sodium, potassium, lithium, calcium, magnesium, chlorine, nitrate, iodine, boron salts, pumice, gold, silver, platinum, copper, lead, zinc, iron, pyrite, manganese, chromium, radioactive minerals and other radioactive substances.
- 5th group: precious metals and gemstones such as: diamonds, sapphires, ruby, beryllium and emerald.

The state can grant mining rights to the following (Article 6, Mining Law):

- Turkish citizens who have the benefit of civil rights.
- Companies incorporated under Turkish law whose articles of association allow them to carry out mining activities.
- Authorized public entities and institutions and their affiliated subsidiaries.

There are two main types of licences for prospecting and operating mines:

- Exploration licences.
- Operation licences.

Anyone to whom the state can grant mining rights may apply for an exploration or operation licence, see Question 5.

**Lease (rödöfans).** A mining licence holder may execute lease agreements with third parties, provided the Ministry of Energy and Natural Resources (MENR) approves. The third party has administrative, financial and legal obligations under labour law and occupational health and safety regimes relating to mining activities. However, under the Mining Law, the licence holder remains liable.

Underground coal facilities are prohibited from executing lease agreements (*Provisional Article 7, Mining Law*).

### Fees

Licence fees are payable for mining licences (Article 13, Mining Law). Licence fees consist of:

- An annual licence fee.
- The application fees payable on the grant of a licence.

A new licence fee system is in operation from 2015. The fees for 2015 are:

- **Exploration license.** The annual fee for an exploration licence is TRY887.
- **Operation license.** Between TRY5,329 and TRY17,766, depending on the term of the operation licence
- **License application fee.** TRY2,200 for either an operation or exploration licence.

There is a transition period for introducing the new fee system (Provisional Article 21, Amendment Law). Under the transitional provisions, current licence holders need not comply with the new fee system until 1 January 2016. Therefore, for holders of current licences, the former fee system still applies for 2015.

The fee system before 2015 involved licence fees and security deposits. The Ministry of Finance determined the fees annually depending on the mineral type and licence type. Under the new system, security obligations are abolished and all fees are included under a single licence fee system. In the new system, two fee charts attached as annexes to the Mining Law determine the minimum licence fees for each licence type. The licence fees will increase each year in line with the annual revaluation rate determined by the Tax Procedural Code No. 213.

The licence fee depends on the specific mining project's group and area. The minimum annual licence fees from 2015 are:

- TRY1,000 for exploration licences.
- TRY10,000 for operation licences.

The minimum fees are multiplied according to parameters for different mineral groups.

If licence fees are not paid in full, an administrative fine of TRY20,000 applies. A licence is cancelled if the full licence fee is not paid within three months of an administrative fine.

### Liability

Licence holders' liabilities under the Mining Law depend on the licence and type of mineral concerned.

- Examples of a licence holder's obligations include:
- Payment of the annual licence fee at the due time.

- Payment of royalties depending on the type of the mineral.
- Submitting technical and financial reports to the relevant authorities, including the General Directorate of Mining Affairs (GDMA).
- Complying with the technical and employment related obligations stipulated under the Mining Law, such as hiring an engineer to technically supervise the activities.
- Making applications for the necessary permits in due time and in a manner acceptable to the relevant state institutions.
- Providing accurate statements to authorities under the Mining Law.

Failure to comply with these obligations attracts administrative fines ranging from TRY20,000 to TRY50,000. The authorities are also empowered to suspend or revoke the licence depending on the nature of the breach.

Under some circumstances, a breach may be considered a criminal offence and additional penalties can apply. Breaches may also lead to sanctions under other regulations or legislation, such as Labour Law and Occupational Health and Safety Law.

### Restrictions

- Mining is a strictly regulated area and many restrictions apply. There are also licence and permit procedures. Restrictions and regulations include:
- Mining rights can only be granted to Turkish citizens or legal entities established under Turkish law (see Question 8).
- Mining activities in certain areas must be established by a regulation of the Council of Ministers, by obtaining the opinion of the related ministries (Article 7, Mining Law). These areas include forests, preservation forests, forestation zones, land hunting areas, private protection zones, national parks, natural parks, natural monuments, nature protection zones, agriculture, field and culturally protected zones, water catchments, coastal areas and coastlines, territorial waters, tourism regions, cultural and tourism preservation and development zones, forbidden military zones and construction planning zones and neighbouring areas. Permits for these areas may also be subject to different requirements and approvals from the authorities.
- MENR may restrict specific areas in licence applications, considering factors including the area of activity, type of the mineral and environmental effects (Article 7, Mining Law).
- The consent of MENR is required for mining activities in areas reserved for public service, public interest, or within 60 metres distance to those areas. Mining activities within 60 metres of buildings and within 20 metres of privately owned lands must receive permission from the proprietors (Article 7, Mining Law). Consent from related persons must be obtained to carry out mining activities in privately owned areas.
- Underground coal facilities are not allowed to execute lease agreements with third parties in relation to leasing their rights under a licence (Provisional Article 7, Mining Law).

## 5. How are such leases, licenses or concessions awarded?

All minerals in Turkey are under the sovereignty and disposition of the state not of the landowner where they are found (see Question 3). Accordingly, the state grants rights to explore and operate mines for specific periods and areas. Applications for licences are sent to the General Directorate of Mining Affairs (GDMA) which grants licences. Licence fees and annual royalties are payable (see Question 9).

### Exploration license

An exploration licence grants the holder the right to carry out mineral exploration activities. Those eligible to apply for mining rights (see Question 3) must first apply for an exploration licence to begin any mining activities.

The Mining Law outlines different application and permit procedures for different mineral groups (see Question 4). For instance, an operation licence is directly granted for minerals listed under Group 1, Group 2(a) and 2(c); there is no requirement to obtain an exploration licence first.

All exploration licences are awarded through a tender process (Article 16, Mining Law). The exceptions to this are licences relating to the minerals listed in Group 2(b) and Group 4. Licences in these groups are evaluated on a first come, first served basis and are not subject to a tender process.

After making the first application, applicants must pay a tender fee. The tender fee depends on the mineral group involved. Following payment, the GDMA issues the exploration licence, provided:

- A mining exploration project is submitted.
- The documents showing full payment of the exploration licence fee.

All exploration licences are registered in the Mining Register kept by the GDMA.

The exploration licence grants the right to explore minerals within the territory defined under the licence. Exploration licences grant the holder a one year preliminary exploration period and additional one year general exploration period (the general exploration period is two years for Group 4 minerals).

The GDMA will cancel an exploration licence if the holder does not apply for an operation licence before the end of the general exploration period. Administrative fines can be imposed if the licence holder fails to comply with certain obligations under the Mining Law.

### Operation license

An operation licence grants the holder the right to operate a mine. After complying with the obligations under the exploration licence, an application can be made for an operation licence. Having the exploration licence is a pre-requisite for applying for an operation licence.

To apply for an operation licence, the applicant must present a detailed operation project to the GDMA before the exploration licence period expires. The applicant must also provide documents showing the operation licence fee has been paid in full and the applicant's financial capability to realise the project.

The term of an operation licence depends on the project (Article 24, Mining Law). However, the period cannot exceed ten years or five years for minerals listed in Group 1(a). The total licence term cannot exceed 30 years for Group 1, 40 years for Group 2, and 50 years for other mineral groups. The GDMA can extend the term of a specific licence. The Council of Ministers is authorised to extend the maximum period of the licences.

### Operating permit

An operating permit is required following the grant of an operation licence. A mine must hold an operation permit to operate. An operating permit is different from an operating licence. To obtain an operating permit, authorisations listed under Article 7 of the Mining Law must be obtained from various administrative institutions within three years of the grant of the operation licence (Article 24( 11), Mining Law). The authorisations are:

- **Environmental impact assessment (EIA) (çevresel etki de?erlendirmesi) decision.** Mining operations above the thresholds listed in Annex I and II to the Environmental Impact Assessment Regulation must obtain an "EIA positive" or an "EIA not required" decision. The operating licence holder must apply within three months of obtaining the operation licence. Applications are made to any one of the city governance, the GDMA, or Turkish Ministry of Environment and Forestry authorities depending on the type of project.
- **Workplace opening and operation licence.** This licence allows the holder to open and operate mineral production facilities.
- **Authorizations required for mining on certain types of land.** If the mining operations occur on certain types of land, the licence holder must apply for authorisation within three months of obtaining the operation licence. Applications can be made either to the city governance, the GDMA, or the relevant administrative authority for mining activities. The types of land that require authorisation include:
- forest, protection forest and afforestation areas;

- wildlife protection and development areas, hunting lands;
- special environmental areas;
- national parks, natural monuments and nature reserve areas;
- agriculture lands;
- pasture;
- land where there are immovable cultural and natural assets requiring protection;
- drainage basins;
- coastal areas, shorelines, territorial waters;
- tourism regions, areas, centres, tourism protection and development regions;
- military forbidden zones; and
- zoning and adjacent areas.

## Environment

### 6. What are the main ongoing requirements for environmental protection?

An environmental impact assessment (EIA) is required to conduct mining activities that fall within the scope of the Environmental Impact Assessment Regulation. Mining licence holders that are above the thresholds listed in Annex I or II to the Environmental Impact Assessment Regulation must obtain an affirmative EIA report, or a decision that an affirmative EIA report is not required in the circumstances. (Environmental Law).

In general, the projects that require an affirmative EIA report are listed in Annex I to the EIA Regulation. EIA reports are obtained from organisations authorised by the government to undertake environmental assessments.

Annex II of the EIA Regulation lists certain projects that are subject to an "elimination criteria" which means the projects listed in Annex II are not automatically obliged to obtain an affirmative EIA report. Instead, those projects must first provide a Project Introduction File to the ministry describing the environmental effects of the project. If the ministry reviews the Project Introduction File and decides that an EIA is required in these circumstances, the project must then obtain an affirmative EIA report. Therefore, mining projects are effectively exempt from the EIA process if:

- They are not listed under either Annex I or Annex II.
- They are listed under Annex II and the Ministry decides that an affirmative EIA report is not required in the circumstances.

In addition to the EIA process, there is a special regulation for land that is damaged as a result of the mining activities (Regulation on Regenerating the Lands Damaged by Mining Activities Back to Nature). The purpose of this regulation is to redress the negative effects of mining activities. Within two years of completing mining operation activities, licence holders must return the land back to the state it was in before mining activities began. Certain terms and conditions stipulate how this should occur.

## Health and safety

### 7. What are the main ongoing requirements for compliance with health and safety regulations?

As an employer, mining operators must comply with:

- **The Labour Law No. 4857 ( Labour Law).** The Labour Law sets out minimum requirements for employee working conditions. For example, it prohibits overtime work for the workers working in underground mines, except in force majeure and emergency situations (Article 41, Labour Law).

- **The Law on Occupational Health and Safety No. 6331 ( Law on Occupational Health and Safety)** . The Law on Occupational Health and Safety stipulates employer obligations for providing a healthy and safe working environment for employees. The requirements include providing training and information to employees, adjusting security measures to changing conditions, making risk assessments and forming emergency and evacuation plans.

Workplaces are classified in the legislative framework according to their hazard levels. All mining activities are classified as very hazardous or hazardous (Workplace Hazard Classification List, published in the Official Gazette on 29 March 2013). The Law on Occupational Health and Safety envisages additional obligations for workplaces with these levels of hazard classification. For example, employers must employ occupational safety specialists, workplace doctors and for very hazardous workplaces with more than ten employees, other healthcare personnel (Article 6, Law on Occupational Health and Safety).

Employees cannot be employed in a hazardous or very hazardous workplace unless they obtain a health report stating their eligibility for the working conditions. If employers fail to fulfil the risk assessment obligation, the working activities will be suspended.

- **Regulation on the Health and Safety Measurements for Mining Workplaces** (published in the Official Gazette No. 28770, dated 19 September 2013) for the protection of employee health and safety for mineworkers (Mining Safety Regulation).
- **Mining Safety Regulation.** In addition to the general regulations in the bullets above, health and safety measures for mining employees are specifically regulated under the Mining Safety Regulation. The conditions of mining sites and employer responsibilities are regulated in detail. Some mining-specific health and safety requirements are that:
  - mining sites should be designed, operated, and maintained properly to protect workers' safety;
  - employers must compose safety instructions in a comprehensible manner;
  - employers must compose a health and safety report, and update it as necessary. The report should determine the risks of the workplace (including psycho-social risks) and develop a plan for applying legal requirements and safety measures; and
  - employers must take necessary measures for explosions, form an emergency plan and ready escape vehicles, as well as maintain a proper communication and signal system within the mining site. These measures include establishment of a "life line" in underground mining facilities, specifications of which is listed in a detailed manner under the Mining Safety Regulation Annex 3.
- **Annexes to the Mining Safety Regulation.** These outline minimum requirements of open mine sites, underground mine sites and sites where minerals are extracted through drilling.

At least one mining engineer must be employed during mining operation activities in licenced areas, except for areas where mining activities are carried out with regard to the fountainhead salt (Article 31, Mining Law). Licence holders are also required to employ engineers from other sciences in addition to the mining engineer. Mining activities must be carried out under the supervision of such engineers.

- **The Regulation on Workplace Opening and Operating Licences.** This specifically addresses mining facilities that use explosives during their operations. Such workplaces are not entitled to obtain a workplace licence unless they take the necessary legislative safety measures for using explosives and hazardous materials.

From 26 January 2015, the Council of Ministers requires employers to insure staff performing production or production preparation processes against work accidents.

## Foreign ownership

8. Are there any restrictions concerning the foreign investment and ownership of companies engaged in the exploration and extraction of mineral resources in your jurisdiction?

- Mining rights can be granted to (Article 6, Mining Law):
- Turkish citizens qualified to enjoy civil rights.
- Companies incorporated under Turkish laws whose articles of association allow them to carry out mining activities.
- Authorized public entities and institutions and their affiliated subsidiaries and associates.

Mineral rights are granted to a single real person, or legal entity. Mineral rights are rights given for mineral exploration, detection, and the operation of minerals. They include the financial rights provided to those who assist in detecting mineral deposits.

Foreign persons and companies are permitted to establish a company in Turkey. Companies established by foreign capital in accordance with the Turkish Commercial Code No. 6102 are deemed to be Turkish companies and treated no differently to companies established with local capital or participants. No restrictions apply to foreign shareholdings for companies engaged in exploration and extraction of mineral resources in Turkey. Therefore, Turkish companies with foreign capital may also benefit from mineral rights.

## Tax

### 9. What payments, such as taxes or royalties, are payable by interest holders to the government?

#### Payments

**Royalties.** The licence holder must pay an annual royalty to the government for the extracted minerals (Article 14, Mining Law). The royalty is based on the annual total sales of raw ore (pithead sale price). The royalty also differs depending on type of mineral:

- 4% for Group 1(a) mines of the market sale price of the sized or washed mineral as determined by the governorship or provincial special administration.
- 4% for Group 1(b) mines.
- 4% for Group 2(a) and 2(c) mines.
- 4% for Group 2(b) mines, calculated over the market sale price at the pit in accordance with the characteristics of the natural stone and its region.
- 1% for Group 3 fountainhead salts and 5% for the other mines in Group 3.
- 8% for radioactive minerals in Group 4, except uranium oxide. For gold, silver, platinum, lead, zinc, copper, aluminium, chrome and uranium oxide the royalty amounts differ between 2% to 16%. A royalty of 2% applies to the remaining minerals in Group 4.
- 4% for Group 5 mines.

The annual royalty paid by operation permit holders must be at least equal to the lowest price announced for mining licences. However, this does not apply to the royalty calculated in relation to fountainhead salts.

Royalties which are not paid in due time are subject to default interest (Article 14, Mining Law).

**Municipality charges.** In addition to the royalty, where a mining operation is carried out within the borders of a municipality or within the adjacent areas, 0.2% of the operation permit holders' annual sales must be paid to the relevant municipality as a municipality charge (Article 90, Implementation Regulation).

**Finders' fee.** Where a person or entity other than the finder of such mineral extracts the mineral, the operator/extractor must pay the finder 1% of the extracted ore's value as a finders' fee (buluculuk hakkı) (Article 15, Mining Law).

**Tax.** A licence holder's earnings obtained through mining operations are subject to income and corporate tax. However, certain tax incentives are provided for mining activities:

- Deliveries and services made to individuals or legal entities engaged in gold and silver exploration and extraction activities are exempt from value-added tax (Article 13 (c), Valued Added Tax Law No. 3065, dated 25 October 1984).
- All mine operation activities (except investments in Group 1 mines, crushed stone operations, and mining extraction and processing investments to be carried out in Istanbul), are accepted as primary investments. As such, the following incentives apply (Council of Ministers Decree No. 2012/3305):
  - VAT exemption for imported machinery and equipment to be used for the mining investment operations;
  - a customs duty exemption for imported machinery and equipment to be used for the mining investment operations;
  - corporate income tax allowance;
  - social security premium support for seven years (towards the employer's share);
  - reduced interest rates for investment credits; and
  - land allocation priority.
- Investments in coal hoisting have also begun to benefit from the incentives listed above (Council of Ministers Decree No. 2013/4763).

### Incentives

Various incentives are available to licence holders. For instance, where Group 4(c) minerals are produced by underground operation methods, or are refined to metals at a licence holder's plant in Turkey only 50% of the royalty is payable (Article 14, Mining Law). Gold, silver and platinum are excluded from this incentive.

Parties who create additional added value by processing the minerals they have produced at their facilities are not required to pay 50% of the royalty that applies to the quantity of minerals processed at those facilities (Article 9, Mining Law). The 50% discount does not apply to minerals listed in Group 1, Group 2(a) and 2(c) or to stone chips and any kinds of raw materials used in structures such as rough structure, dam, pond, harbour, road. The Council of Ministers is entitled to apply a further discount based on the mineral type and location of the mine up to 25% of the royalty amount (Article 14, Mining Law).

The Ministry of Energy and Natural Resources may give permission to state institutions and organisations to produce raw materials to be used in construction projects for roads, bridges, ponds, harbours, and dams. No royalty is required for such production (Article 14, Mining Law).

Privately owned real estate required for a mining operation's activities may be expropriated before the operation licence stage if the parties fail to reach an agreement and the Ministry of Energy and Natural Resources approves of the expropriation in the public interest (Article 46, Mining Law; Article 72, Implementation Regulation). Such expropriation incentive is not available for Group 1 minerals, stone chips, or any kinds of raw materials used in structures such as rough constructions, dams, ponds, harbours, and roads. An expropriation fee is payable. The amount of the fee depends on the area to be expropriated, and is determined by the Ministry considering the market value of similar areas. Private owners may challenge the amount determined by the Ministry and initiate lawsuits.

## 10. Does the government derive any other economic benefits from the exploration and extraction of the mineral resources?

The government derives no economic benefit other than from royalties and taxes (see Question 9).

The Mining Law does not provide for any special taxation of joint ventures. Therefore, the general rules for taxation of the joint ventures apply in the mining sector:

- Joint ventures established by participating in an already established commercial entity are taxed in accordance with the corporate taxation regulations.
- Joint ventures established as ordinary partnerships without a legal personality are not normally subject to corporate tax.
- In ordinary partnerships, unless otherwise agreed, the income and loss of the ordinary partnership are shared equally between the partners (Article 622 and 623, Turkish Code of Obligations No. 6098). The income and loss must be included and shown on the accounts of each individual partner.

Joint venture partners are individually subject to income tax or corporate tax on their income gained through mining activities depending on whether they are legal entities or real persons. However, Corporate Tax Law No. 5520 (Corporate Tax Law) provides that the partners of a joint venture established as an ordinary partnerships may request to be subject to corporate tax, provided that at least one of its partners is a legal person and is a corporate tax payer (Article 1, Corporate Tax Law). Accordingly, a joint venture established as an ordinary partnership may choose to pay corporate tax.

## **11. What taxes and duties apply to the import and export of mineral resources?**

Customs duties are payable on the import of mineral resources (Customs Law No. 4458). The Council of Ministers is entitled to determine the tax rates annually (Law on Tariff Schedule for Customs Entry, No. 474).

Minerals imported from the European Union or European Free Trade Association countries are exempt from customs tax because Turkey is a party to the European Union Customs Union.

The import of any kind of goods is subject to value added tax (Article 1, Value Added Tax Law Pursuant to Value Added Tax Law No. 3065 ( Value Added Tax Law)). However, services and deliveries made to parties carrying out activities of exploration, operation, enrichment and refining of gold, silver and platinum are exempt from value added tax (Article 13 (c), Value Added Tax Law).

A special provision in the Mining Law allows the Council of Ministers to request an additional payment on the import of coal and petroleum coke (Additional Article 3, Mining Law).

## **Reform**

## **12. Are there any plans for changes to the legal and regulatory framework?**

The most recent amendment to the Mining Law was issued on 18 February 2015 with Law No. 6592 (*Amendment Law*). The Amendment Law provided comprehensive changes to the Mining Law and procedures relating to mining activities.

The rationale behind the amendments was mainly to adapt the licence fee system and royalties to the needs of those active in the mining market. In this regard, the following amendments were introduced:

- The former licence fee system was changed to remove the system where the fees for security and licences were paid separately. The Amendment Law introduced one licence fee calculated on the basis provided in the annexes to the Mining Law. The change aims to prevent difficulties, delays and the additional bureaucracy of collecting these as separate amounts.
- Mineral groups were re-structured. Group 6 (which formerly listed radioactive minerals) was removed and these minerals are now listed under Group 4.
- Royalties were re-determined in line with the amended groups and the scope of royalties was changed.

- A fee was introduced for mining licence transfers, along with an obligation to obtain the approval of the Ministry of Energy and Natural Resources (MENR) for mining licence transfers.
- Administrative fines to be applied for breaches have been restructured and increased.
- The MENR's approval is now required for the execution of lease agreements.
- Underground coalmines are prohibited from executing lease agreements.

No further imminent changes are expected.

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