

Streamlining permits

An amendment to the mining law is intended to make mining more efficient



BY ŞEBNEM ÖNDER

ON JANUARY 15, the Turkish Constitutional Court decided to cancel provisions of the country's mining law regarding environmental permits. This resulted in the country's authorities suspending the issuance of certain environmental permits, especially forest permits.

The potential gap in the legislation, as well as the practical necessity for the amendment of other provisions of the mining law, laid the groundwork for changes that were enacted by the government on June 24.

The main purpose of the amendment was to fill the gaps caused by the Constitutional Court decision, and to regulate environmental permits. However, the amendment includes many other provisions so that mining activities can be conducted in a more efficient and effective manner.

ENVIRONMENTAL PERMITS

The previous structure, whereby the General Directorate of Mining Affairs (GDMA) was the co-ordinator of the environmental permits, did not work and caused many problems.

The amendment now aims to regulate each and every permit by its own special law, to ease and clarify the uncertainties in obtaining permits, to prevent the restriction of mining activities by secondary legislation and to avoid the discretionary practices of governmental authorities.

The amendment provides the following:

- Mining activities can be restricted only by laws and the Ministry of Energy and Natural Resources;
- The public authorities will inform the GDMA of the co-ordinates of special protection areas, such as military areas, national parks, preserved forests and coastlines;
- The permits required within a license area will be listed and registered with the GDMA;
- The Ministry of Environment and Forestry shall, subject to its legislation, grant permits for mining activities in the state forests; and

■ A board, established under the chairmanship of the state minister to which the State Planning Organization is affiliated, will be responsible for making decisions on existing projects if the mining activities become impossible due to an interaction with other projects.

ROYALTIES, DEPOSIT AND INCENTIVES

The amount of the security deposit has been increased from 0.3% to 1.0% of the annual license fee per hectare. The royalty for gold, silver and platinum has been increased to 4.0%, and the royalty for dimensioned and natural stones, which are processed into a final product in the facilities of the licence holder, has been reduced to 1.0%.

According to the amendment, the payment of 50% of the royalty will not be required if production comes from an underground operation, or if minerals are processed into metals in Turkey (excluding gold, silver and platinum).

In addition, the previous incentive of processing extracted ores domestically (to provide additional value to the Turkish economy) in exchange for cancellation of the 50% payment still applies. Accordingly, gold, silver and platinum mines qualifying for the previous incentive will still benefit.

The mining law further provides that the royalty will be levied with an additional fee of 30% for mining activities conducted on state-owned lands.

It is still not clear whether such addition will be calculated based on the whole production or on a pro-rata basis based on the size of the state-owned lands within the license area.

MINING ACTIVITIES

The amendment reinstated the former application for sand and gravel licensing, which requires that the licenses for such mines shall be issued by the special provincial administrations and not by the GDMA.

The term of the licenses issued for energy, metal and industrial minerals, as well as radioactive minerals, has been extended to seven years.

In order to prevent the holding of exploration

licenses in an ineffective manner, the amendment introduces a three-step exploration period: a pre-exploration period; a general exploration period; and a detailed exploration period.

Furthermore, the amendment grants authority to the GDMA to suspend any mining activities that cause a threat to the safety, health or property of the general public. It does not, however, provide any criteria for the GDMA to use such authority, but gives the GDMA discretionary authority.

ILLEGAL PRODUCTION

The amendment has increased the penalties to be applied in the event of illegal mine production and transportation.

The amendment also increases the role of technical supervisors, and makes it clear that technical personnel shall be personally liable for their declarations and reports.

LIABILITY OF ROYALTY HOLDERS

The amendment provides that the liabilities arising from the Labor Law and health and safety regulations shall be borne by the royalty holder.

This provision may cause ambiguities in practice since, according to the labour law, the license holder (as the owner of the work) and the royalty holder (as the contractor) are jointly liable for employees working in the license area.

CONCLUSION

The amendment will certainly mitigate past problems. However, it is still not clear whether the relevant governmental authorities are co-ordinated in such a manner as to ease the mining regulatory process in Turkey.

A clearer picture will be evident once the regulations governing the details are published. Until these regulations enter into force, the non-conflicting provisions of the regulations will continue to be in effect, with most of the changes brought about by the amendment not being applied in practice until new regulations are issued.