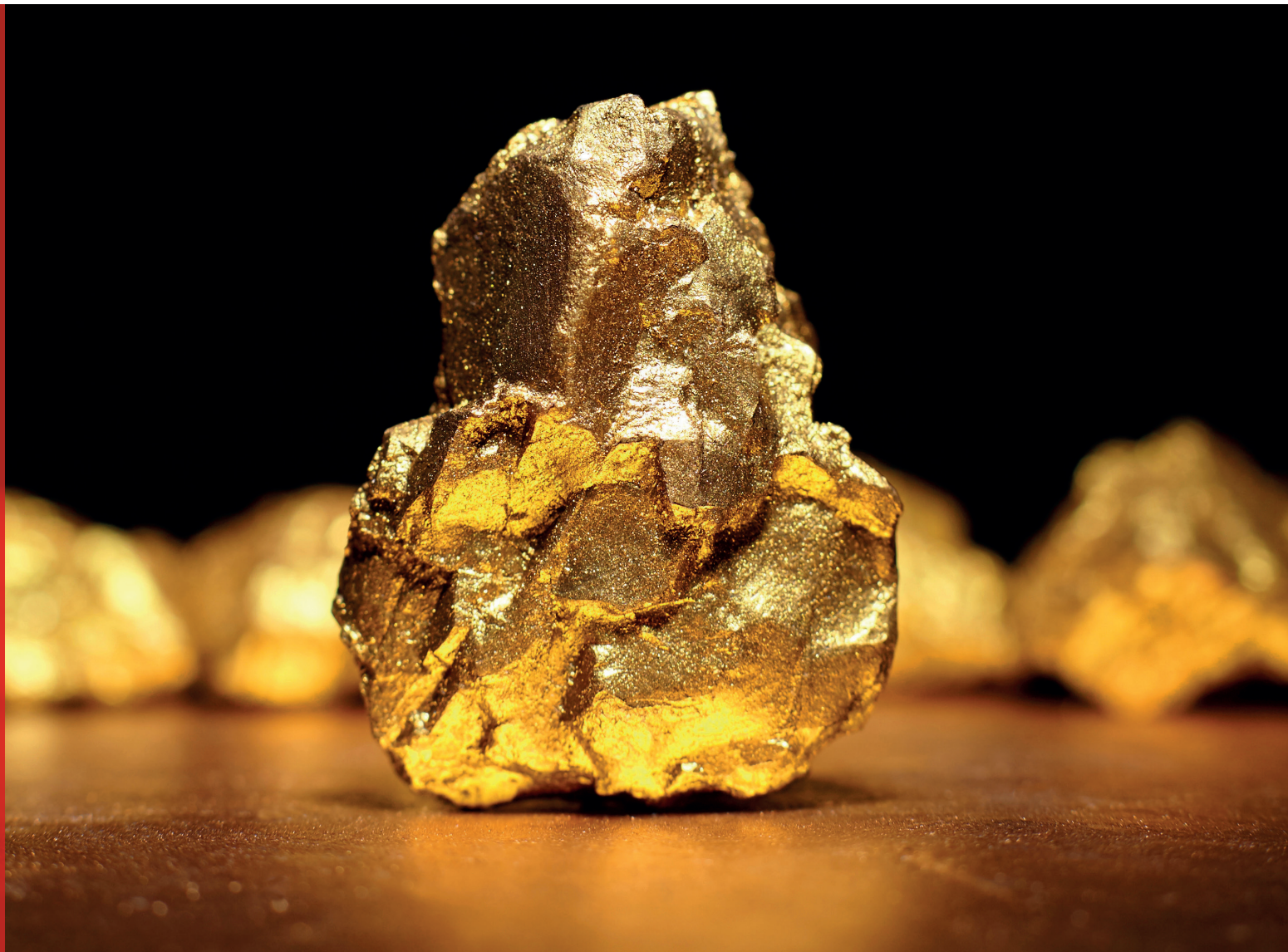


# Mining in Turkey

Ten things to know



# Mining in Turkey

**Turkey benefits from a highly varied geology: it holds 2.5 per cent of the world's industrial mineral resources and produces approximately 60 different metals and minerals that are commercially viable for exploitation. Healthy commodity prices and changes in the Turkish investment regime, together with a series of amendments to the mining legislation have resulted in an increase in mining and mineral exploration activity in the country with a particular emphasis on copper, gold, nickel and zinc.**

Mining represents approximately 1.33 per cent of Turkey's GDP.

Regulations and procedures were streamlined and laws governing the economics of mining joint ventures with foreigners were improved. These more favorable laws created an attractive atmosphere for foreign investors.

## 01 State ownership of minerals and metals

Under mining legislations and the Turkish constitution, all minerals are under the ownership and dominion of the state and are not considered to be the property of the landowner where they are found.

The state has the right to explore and extract these minerals; the state may transfer those rights to a person or legal entity for a specific period and subject to payment of a royalty and compliance with all relevant licensing requirements.

## 02 Mining legislation

Mining activities in Turkey are regulated by the Mining Law No 3213 dated 15 June 1985 (the Mining Law), together with the Regulation on Mining dated 11 December 2022 (the Mining Regulation), which repealed the Regulation on Mining dated 2017.

The Mining Law was significantly amended in 2010. The changes targeted the regulation of exploration activities to ensure greater investment commitment, requiring investors to demonstrate their ability to make financial investments through a more detailed and monitored licensing regime. The amendments also aimed to improve protection for Turkey's

natural environment and wildlife through the introduction of restrictions on the areas available for mining, and to improve the administration of mining licensing to make it easier for the government to control unlicensed mining activities.

The Mining Law was also amended in 2015 in relation to the transfer of rights agreements with license holders and third parties. According to the amended Mining Law, all mine lease agreements, the so-called "royalty agreements" (*rödovans sözleşmesi*), are now subject to the approval of the General Directorate of Mining and Petroleum Affairs (MAPEG) organized under the Ministry of Energy and Natural Resources (MENR). Without the above-mentioned approval, mining activities conducted on the basis of a royalty agreement will be suspended. Regarding the coal mines, except for governmental authorities and public bodies, execution of royalty agreements in relation to production is no longer allowed.

The new Mining Regulation has been enacted recently in December 2022, providing, among other things, detailed provisions regarding royalty agreements. One important provision relates to changes in the ownership of license holders, explained in detail below.

The Law Amending the Mining Law and Certain Laws and Decrees numbered 7164 entered into effect on 28 February 2019, which introduced amendments to increase the operational efficiency of existing mining sites.

## 03 Mining licences

MENR is the ministry responsible for overseeing the mining sector. MAPEG issues licenses and regulates mining activities.

The Mining Law requires a separate mining license to be issued for each relevant group of minerals to be mined, and the licensing procedure for each group is slightly different.

The applicable groups specifically set out under the Mining Law are: (i) sand and gravel ("Group I" minerals); (ii) marble and other similar decorative stones ("Group II" minerals); (iii) mineral salts from seas, lakes and fresh waters ("Group III" minerals); (iv) energy, metal, industrial and radioactive minerals ("Group IV" minerals); and (v) precious/gem stones ("Group V" minerals).

A license obtained for a specific group does not provide a right to its holder to mine for minerals in another group. The area over which an exploration license can be granted is limited, up to a maximum of 2,000 hectares for Group IV minerals.

Under Turkish mining law, there are three main instruments issued by MAPEG to approve prospecting and operating mines: (i) an exploration license (*arama ruhsati*) (which enables the holder to carry out exploration activities in a specific area); (ii) an operation license (*işletme ruhsati*) (which enables the holder to carry out operational mining activities); and (iii) an operation permit (*işletme izni*) (which enables the holder to operate a specific mine in relation to a specific operating license). As mentioned, the procedure differs for each group of minerals – the explanation below applies generally to Group IV minerals (including gold, silver, copper, lead, zinc and manganese).

MAPEG may also grant a "right of discovery" (*buluculuk hakkı*) to the license holder who discovers proven reserves (in contrast to probable reserves).

### Exploration licenses

A person who wishes to explore for minerals in any region of Turkey must first apply for an exploration license. When submitting this application, the applicant must pay an application fee (as announced by MAPEG annually) and provide documents attesting to the financial capability.

Exploration consists of the following sequential periods: pre-exploration, general exploration, detailed exploration, and if approved, feasibility.

The first year following the issue of an exploration license is a pre-exploration period during which the license holder must file a report which demonstrates that the minimum activities set out in the pre-exploration activity report, a template of which is included in Annex 10 of the Mining Regulation have been completed. The license holder also has to provide detailed information regarding its investment costs.

The pre-exploration period is followed by a general exploration period of two years for Group IV minerals and one year for other groups, in respect of which the license holder is required to submit the general exploration activity report, a template of which is included in Annex 11 of the Mining Regulation. Again, the license holder is required to invest a minimum amount during this period.

For Group IV mine exploration activities, prior to the expiry of the two-year general exploration period, an exploration license holder must submit the general exploration activity report that is prepared in accordance with the template set out in Annex 11 of the Mining Regulation. The approval of the general exploration report by MAPEG allows the license holder to enjoy an additional four-year detailed exploration period during which time it has to apply for an operating license and continue to meet annual reporting requirements, specifying the investments relating to the exploration activities and the proven reserves in the mine.

If the license holder needs to conduct feasibility studies in respect to certain Group IV minerals (energy, metal and industrial and radioactive minerals) following the end of the detailed exploration period, it must apply to MAPEG for an additional feasibility period of two years.

### Operation licenses

It is compulsory to carry out exploration activities in order to apply for an operation license and applicants must apply for an operation license before the expiry of the exploration license.

The validity of the operation license is determined by reference to the proven, probable and feasible mineral reserves determined during the exploration period – its term may not be less than 10 years except for Group I (a) minerals

(sand and gravel) for which the term is five years. This period can be extended and the total duration cannot exceed 50 years, without the consent of the President of the Republic.

The period is 30 years for Group I minerals, and 40 years for Group II minerals and the consent of the Minister must be sought for extensions.

### Operation permits

After being issued an operation license, the holder must make application to the relevant governmental authorities or MAPEG for various permits it requires to carry out operation activities. An operation permit is the final permit to be issued and will only be issued once all other permits have been obtained, including the operation license holder obtaining a positive environmental impact assessment (EIA) certificate (or a certificate confirming that EIA is not required), land ownership permits, workplace opening and operation licenses, forestry permits (if applicable) and other special permits. These must be obtained and submitted to MAPEG within three years from the effective date of the operation license in order to obtain the final operation permit. Failure to do so will result in a yearly administrative penalty and in case the operation permit is not obtained until the end of the operation license period due to the license holder's failure to obtain any of the above-mentioned permits, the term of the license cannot be extended.

Unlike an operation license, an operation permit will only be granted for the proven reserve areas. Probable reserve areas which are not turned into resource or reserve in accordance with the National Mine Resource and Reserve Reporting Code within 10 years for Group IV and within five years for other groups, are excluded from the scope of the permit.

Monetary fines will be imposed if production does not take place for more than three years within a five-year period for any reason other than force majeure and unexpected circumstances. The same penalties will also be imposed if the total amount of production in any three years within a five-year period falls below a certain level. Repetitive failure to hit the production targets may result in the cancellation of the operation license.

This requirement effectively requires production to occur under each operation permit which has been granted.

### Right of discovery

A certificate evidencing the right of discovery of a license holder may be issued at the request of the relevant license holder who declares to MAPEG any discovered proven reserves over the course of its exploration or operation licenses.

The discovery right amounts to 1 per cent of the annual mineral selling price. However, right of discovery does not apply to Group I, Group II and Group V minerals.

### Consolidation of licenses

Different licenses may be consolidated under a single license so long as all applicable license fees have been paid and all merged licenses have valid operational permits.

### Transfer of rights

Licenses may be transferred to individuals or legal entities fulfilling the eligibility criteria for license holders. The transfer is subject to the approval of MENR. The operation permit cannot be transferred separately from the operation license.

Although no such requirement exists under the Mining Law, according to the Mining Regulation, shareholding structure changes in a license holder exceeding 10 per cent of its share capital is subject to MENR's prior approval.

For the approval, the transferee and the transferor will simultaneously apply to MAPEG explaining the reasons for the transfer.

## 04 Rights of foreign investors and protection of nationals

Pursuant to the Mining Law, mining rights are only granted to Turkish citizens and Turkish legal entities. Although foreign national persons and foreign legal entities cannot directly own mining rights, there is no restriction on foreign persons and legal entities establishing Turkish legal entities and holding the shares directly. Investment in Turkish mining is encouraged and a number of incentive schemes are in place to support the growth of the industry – see below.

Employment laws regulating the employment of Turkish nationals apply to foreign nationals working in Turkey. Foreign nationals can work in Turkey after obtaining work and residence permits, and there are no nationality restrictions.

## 05 Government interest in the project

As a general rule, there is no free carry right or other requirement under Turkish law that a government entity holds an interest or share in a mining investment.

One exception is the Turkish Central Bank's pre-emptive right on the domestic gold produced from ore. The Central Bank is free to exercise this right and notifies its decision to purchase (wholly or partially) or not to purchase through a Turkish bank, acting as the intermediary in this process. The payment for the purchased gold is made in Turkish Lira with reference to the applicable London Bullion Market Association (LBMA) prices.

Another exception is regulated under the Mining Law which grants Turkish Petroleum (Turkey's national company in hydrocarbon exploration, drilling, production, refinery) or an affiliate of Turkish Petroleum a free carry right of at least 10 per cent shareholding in the share capital of the license holder company for coccolith, sapropel and hydrogen sulfide extracted from the seas without any capital contribution requirement on Turkish Petroleum's side.

## 06 Financial capacity of the investor

The Mining Regulation introduces certain requirements in relation to the financial capacity of investors, setting out different amounts for separate mineral groups. Legal entity investors will evidence their financial capacity by providing a bank letter of guarantee equal to 70 per cent of the applicable amount and having a share capital equal to 30 per cent of the same.

For Group IV minerals, the financial capacity amount applicable to exploration licenses is approximately TL 774,015 (approximately US\$ 41,116), and the amount applicable to operation licenses is TL 2,580,048 (approximately US\$ 137,090) for gold, energy, metal and industrial and radioactive minerals.

## 07 Fees, taxes, duties and royalties and tax incentives

Licenses are subject to an application fee and an annual license fee that is adjusted every year.

A royalty fee ranging between 1 per cent and 15 per cent of the mineral selling price is also payable to the government annually. The percentage payable for gold, silver, platinum, copper, lead, zinc, chromium, aluminum and uranium oxide will range between 1 to 15 per cent depending on the US\$ per ounce amount. License holders can however obtain a royalty discount of 75 per cent for certain types of mineral if the minerals are processed at the license holders' plant within Turkey or 50 per cent if production is carried out by an underground operating method. The royalty discount for gold, silver and platinum is 40 per cent.

30 per cent of the license fee paid for operation licenses is set aside as collateral to ensure that the license holder complies with its environment-friendly plan submitted with the license application. This amount is returned back to the license holder following the mine reclamation.

The basic corporate income tax rate levied on business profits is 20 per cent, while dividends are subject to 10 per cent withholding tax if distribution is made to non-resident taxpayers.

Various incentive schemes are accessible for both local and foreign investors, and in most cases depend on the scale of the projected investment in Turkey, including the General Investment Incentives Scheme, the Regional Investment Incentives Scheme, the Priority Investments Incentive Scheme, and the Strategic Investment Incentives Scheme. Benefits include reductions in corporate tax, VAT exemptions, customs duty exemptions and interest payment support.

## 08 Lending into Turkey

As a risk management step taken to reduce the domestic foreign exchange exposure of Turkish corporates and individuals, certain amendments were introduced to the Turkish legislation. The amended rules provide restrictions for individuals to obtain foreign currency-indexed cash loans and foreign currency denominated cash loans. As for legal entities, the rules prohibit foreign currency-indexed cash loans, and limits, as a general rule, the extension of foreign currency-denominated cash loans to those legal entities with foreign currency income only. Legal entities with no foreign currency income can borrow foreign currency only if they or the borrowing fall within one of the exceptions provided in the legislation.

Exchange control restrictions require funding from foreign loans to be disbursed through a local bank account – this requires the borrower to have a bank account with a local bank in order to receive the loan proceeds (which can be immediately transferred to an offshore account if this is the preferred structure), and from which it will repay the loan. There are a number of possible exceptions to this requirement, including where the loan is provided by an export credit agency (ECA) for the payment of the import fees to be paid to the exporter located abroad.

Turkish law does not recognize security trustees, so a parallel debt structure is required for syndicated lending transactions.

Lenders who are not classified as “financial institutions” face additional stamp duty and interest withholding tax:

- Generally, ad valorem stamp duty of 0.948 per cent is payable on each separate finance and security document unless the lender is a financial institution. Stamp tax does not apply to loan transactions or security documents if the lender is a financial institution.
- Additional fees and charges arising from finance documents before notaries public and public registries will not apply if the lender/security holder is a financial institution.
- Withholding tax of 10 per cent applies to interest unless the recipient is a financial institution (in which case withholding is zero per cent).

The definition of “financial institution” for the purposes of stamp duty and withholding tax may differ.

In addition to the securities that may be given by any corporate borrower (pledge on shares or bank account, assignment of receivables, etc.) the Mining Law provides for two types of security arrangements for license and operation permit holders.

The Mining Law allows establishment of a pledge over ore extracted as a result of mining operations. The ore may be pledged at the request of the relevant license holder to, and upon registration with MAPEG. The delivery of the ore to the pledgee is not a prerequisite for the perfection of the pledge. Sale of the pledged ore is subject to the consent of the pledgee.

Mortgage on the mining facility is another type of security provided for an existing or future financing which the operation permit holder has received or will receive exclusively for the mining operations. The mortgage covers all equipment and facility required for the operation, including boreholes, furnaces, buildings, transport vehicles above or underground and equipment used for the extraction, cleaning, and smelting of ore.

## 09 Protection of the environment

Under the Environmental Law No 2872 dated 11 August 1983 (as amended in time) and the Environmental Impact Assessment Regulation dated 29 July 2022 (as amended in time), investors are required to undertake an environmental impact assessment in order to conduct certain mining activities that fall within the scope of the Environmental Impact Assessment Regulation.

The 2010 amendments to the Mining Law simplified the process for obtaining necessary environmental permits by preventing the restriction of mining activities by secondary legislation or discretionary practices by other governmental authorities. The 2010 amendments also give MENR the power to prohibit mining activities on certain types of land, provided that the vested rights of individuals are protected and the opinions of the relevant authorities in charge of the land are obtained.

Furthermore, public authorities are required to inform MAPEG of any special protection areas, for example military areas, national parks, preserved forests, and coastline areas.

The Mining Law and MAPEG regulate mining activities in such special protection areas.

## 10 Enforcement regime

In the event that a dispute arises between license holders in respect to the same area, MENR conducts an inspection of the projects and/or at the site. If MENR determines it is possible to perform separate mining activities in the same area, it determines the principles of how the separate activities should be conducted simultaneously. If it determines that carrying out separate activities is not possible, permission is granted to the first applicant for a mining right, who gets precedence over subsequent rights granted over the same area.

In order to enforce decisions of foreign civil courts and arbitral awards in Turkey, one must apply to the Turkish court for a recognition or enforcement decision. The main legislation on the enforcement of foreign civil court judgments and foreign arbitral awards in Turkey is the International Private and Procedure Law No 5718 passed in 2007. Turkey ratified the New York Convention in 1992, and ICSID Washington Convention in 1989.

Turkey is a party to 133 bilateral investment treaties (BITs) out of which 82 are in force. Investors from countries with which Turkey has concluded a BIT are advised to check the relevant treaty to see whether it provides for ICSID arbitration.

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**Contact**

If you would like further information please contact:



**Martin McCann**  
**Global head of business, London**  
 +44 20 7444 3573  
 martin.mccann@nortonrosefulbright.com



**Christophe Asselineau**  
**Partner, Paris**  
 +33 1 56 59 52 34  
 christophe.asselineau@nortonrosefulbright.com



**Nick Merritt**  
**Global head of infrastructure mining and commodities, Singapore**  
 +65 6309 5318  
 nick.merritt@nortonrosefulbright.com



**Felicity Brown**  
**Partner, London**  
 +44 20 7444 3167  
 felicity.brown@nortonrosefulbright.com



**Mark Berry**  
**Partner, London**  
 +44 20 7444 3531  
 mark.berry@nortonrosefulbright.com



**Ayşe Yüksel Mahfoud**  
**Global Head of Corporate, M&A and Securities New York and Istanbul**  
 +90 212 386 1310  
 ayse.yuksel@nortonrosefulbright.com



**Raj Karia**  
**Head of corporate, M&A and Securities – Europe, Middle East and Asia, London**  
 +44 20 7444 3374  
 raj.karia@nortonrosefulbright.com



**Utku Ünver**  
**Partner on secondment to Pekin Bayar Mizrahi Istanbul**  
 +90 212 359 5746  
 u.unver@pekin.com.tr



**Simon Cudennec**  
**Partner, Paris**  
 +33 1 56 59 52 47  
 simon.cudennec@nortonrosefulbright.com



**Damla Çay**  
**Associate on secondment to Pekin Bayar Mizrahi Istanbul**  
 +90 212 359 57 00  
 d.cay@pekin.com.tr



**Jon Perry**  
**Partner, London**  
 +44 20 7444 3252  
 jon.perry@nortonrosefulbright.com



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