

COVID-19 related measures on the mining sector

29 April 2020

Background

While the uncertainty caused by the COVID-19 outbreak continues to disrupt global trade, forcing companies to take critical decisions to protect their businesses, mining companies are also among those affected by the outbreak as the restrictions to encourage social distancing cause a slowdown in the mining sector.

In our previous COVID-19 updates, we have discussed the consequences of the outbreak on the regulatory obligations of the [electricity](#), [petroleum](#), and [natural gas](#) market licence holders, force majeure provisions under relevant pieces of legislation and the measures taken by the government to alleviate the effects of the outbreak. Unlike these sectors and their respective regulations, the Mining Law No. 3213 (the **Law**) did not provide for sufficient remedies available to mining licence holders (the **Licence Holders**) in a force majeure scenario. Further, the force majeure events listed in the earlier version of the Law was very limited and pandemics was not explicitly recognised as a force majeure event.

In the absence of effective legal remedies in place, the government was quick to take action and introduce new measures to provide economic relief to the Licence Holders in an attempt to ensure the smooth functioning of mining operations during the outbreak.

Force majeure provisions

Prior to the amendments, force majeure was only defined by reference to a non-exhaustive list of events under the Law including: floods, fires, earthquakes and firedamp explosions. The Law only outlined a single remedy in case of an occurrence of a force majeure event: allowing the temporary suspension of the activities of mining operations for the affected Licence Holders. However, Law No. 7226 on Amending Certain Laws published in the Official Gazette dated 26 March 2020 (the **Blanket Law**) amended the Law by introducing an additional provision in respect of force majeure events for mining sector.

Amendments introduced by the Blanket Law

Following the above-mentioned amendment, the Ministry of Energy and Natural Resources (the **Ministry**) is authorised to:

- (a) postpone deadlines for the performance of financial liabilities or submission of financial declarations by the Licence Holders;
- (b) split existing financial liabilities of the Licence Holders into instalments;
- (c) determine which financial liabilities of the Licence Holders are exempt from performance; and
- (d) declare an event as force majeure in respect of a region, city, province, district or a group exposed to natural disaster.

However, the Ministry is required to receive a separate assessment from the Ministry of Treasury and Finance in respect of items (a) and (b) above.

The amendments to the Law also stipulate that the time limitations and prescription periods in respect of suspended financial liabilities will also be suspended during this period.

The above-mentioned remedies will be solely applicable on the condition that the relevant force majeure event is evident or proven or certified by the related parties.

The Ministry's Announcement on the extension of certain deadlines

Based on the authorities provided in the amended version of the Law, on 21 April 2020, the Ministry announced the first set of financial measures by introducing the extension of deadlines to certain regulatory obligations of the Licence Holders. In this regard, the Ministry has:

- (a) extended the deadlines for submitting certain declarations, such as investigation reports, exploration projects, annual reports and business projects (each of which were to be submitted by the end of April) to 30 September 2020; and
- (b) postponed the deadlines for payments of the following financial liabilities until 28 December 2020:
 - (i) state right (*devlet hakkı*); and
 - (ii) licence fees (*ruhsat bedelleri*).

Conclusion

In light of the recent amendments to the Law and the new authority granted in favour of the Ministry to ensure the functioning of mining operations during the COVID-19 outbreak, we suggest that Licence Holders closely monitor the Ministry's announcements in anticipation of new measures where deadlines in respect of further financial obligations may be subject to postponement.

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