GEDİK & ERAKSOY

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New Petroleum Law of Turkey

The new Petroleum Law entered into force on 11 June 2013 (the ***Petroleum Law****) and abolished the previous legislation which was enacted in 1954. As one might expect, it introduces various new provisions regarding petroleum exploration and production operations in Turkey, with the aim of liberalising the petroleum sector in the country.*

In order to achieve that, the Petroleum Law minimises bureaucracy, simplifies application procedures, incentivises exploration and production operations, reduces the cost associated with such operations and fosters a competitive environment.

Overview of Petroleum Production in Turkey

Turkey is not an oil-rich country and it produces approximately 45,000 barrels of petroleum per day. To put it into context, this is 200 times less than Saudi Arabia's production capacity although the number of operating wells is around the same. On the other hand, demand for imports of crude oil in the country is 624,000 barrels a day which makes Turkey the world's 14th biggest petroleum importer. This position, in conjunction with the fluctuations in petroleum prices, impacts Turkey's current account deficit given the dependant nature of the country to import activities.

Petroleum Regions and Permits for Primary Investigations

The Petroleum Law divides the Turkish territory into two regions, onshore and offshore. The latter is then separated into territorial waters and non-territorial waters.

The Petroleum Law enables permit holders to obtain an investigation permit and to conduct geological and geophysical investigations on petroleum fields for a fee calculated as TL 0.5 per hectare. The collected information can be used by the permit holder for a period of eight years before it becomes publicly available.

Exploration Activities and Licensing Process

Onshore exploration licenses are granted for five years whereas offshore licenses are granted for eight years. The term of the onshore and offshore licenses can be extended for two and three years, respectively, provided that the licensees submit a new drilling and investment plan and provide further collateral corresponding to 2% of their new investment. However, the term of the extended onshore licenses cannot exceed nine years and offshore licenses cannot exceed 14 years in any case.

The application procedure for exploration licenses is also simplified. Pursuant to Article 7 of the Petroleum Law, if a license application is made, the field which is the subject of that applicable will be announced and other investors are able to make applications for the same field for a period of 90 days. Upon expiration of such period, all of the applications will be assessed based on the investment plan and financial capacity of the investors.

Investors must provide collateral for the exploration license which corresponds to 2% of the investment made in an onshore field and 1% of the investment made in an offshore field, within 30 days of the issuance of the exploration license or an extension given for a license.

Operation Licenses

Operation licenses are issued for the exploration, production and sale of petroleum if a petroleum rights holder discovers petroleum in the licensed fields during its exploration activities. The operation license is granted for 20 years which can be extended twice for 10 years provided that the new production plan of the licensee is approved. Upon expiration of operation licenses, the production fields will be tendered by the state unless state-run Turkish Petroleum Company (**TPAO**) would like to operate such fields.

State Royalty & State Right

The state royalty (*devlet hissesi*) is defined as the amount to be paid to the state based on the petroleum produced by a petroleum right holder. The Petroleum Law maintains the previous position whereby the petroleum rights holders are obliged to pay to the state an amount equivalent to one-eighth of the petroleum extracted by them in any given field. However, the royalties will be calculated based on the market prices for crude petroleum and the wholesale prices for natural gas, which differs from the use of pit top prices as set out in the previous legislation. The Petroleum Law also abolishes the payment of the state right (*devlet hakkı*) which was taken as a fixed fee over the exploration and production activities conducted on a particular petroleum field.

Abandonment of the Field

Petroleum rights holders may abandon their permits and licenses, partially or as a whole, by making an application at least one month in advance (for investigation permits and exploration licenses) and at least three months in advance (for operation licenses), and by informing the governmental authorities and organisations related with the field, if any.

The ownership of any movable or immovable property that is not removed by the petroleum rights holders from the field within six months after termination the operation and exploration licenses will pass to the owner of the field whom could be a legal or natural person or in certain cases the state.

Tax Burden and Other Incentives

Although the earlier drafts of the legislation referred to a lower threshold, the Petroleum Law stipulates that the taxes that the petroleum rights holders are liable to pay and the income tax which they are liable to withhold on behalf of their shareholders will not exceed 55% of their net profits. If the petroleum rights holders have other business activities that are not related to petroleum business, accounts of these activities will be kept separately and such activities will be taxed differently.

The Petroleum Law exempts certain directly imported or domestically delivered imported equipment related to petroleum activities from customs duties and levies. The documents executed for such import purposes as well as any other agreement to be executed in relation petroleum exploration and operation activities are also exempt from stamp tax.

Foreign employees will be exempt from the standard work permit regulations for a period of six months and can work in Turkey by obtaining a residence permit.

Prohibitions, Limitations and Other Requirements

Petroleum rights holders must provide collateral before obtaining petroleum rights in order to cover loss and damage to the environment or individuals. Collateral amounts are calculated based on hectares and correspond to 0.05% of the levy for investigation permits, 0.1% of the levy for exploration licenses and 0.5% of the levy for operation licenses which can be further increased or decreased by 50% if the Council of Ministers deems necessary.

Petroleum rights holders are allowed to export 35% of the petroleum produced in onshore fields and 45% of the petroleum produced in offshore fields, provided that the relevant fields were discovered after 1 January 1980. The remaining portion of petroleum extracted from these fields as well as the petroleum produced in the fields discovered before 1 January 1980 must be allocated to domestic needs and consumption. These thresholds can be further increased or decreased by the Council of Ministers if it deems necessary.

Penalties and Administrative Measures

Administrative monetary penalties vary between TL 10,000 and TL 500,000 and cover damage incurred as a result of dangerous petroleum activities or levied due to conducting petroleum transactions or investigations without obtaining the appropriate license or permit. The operations may be terminated temporarily, from 90 days to 180 days, upon the occurrence of certain circumstances set out in the Petroleum Law and the license may be cancelled if the licensee does not remedy the situation within a 90 day notice period.

Position of the TPAO and Related Criticism

By contrast to the previous legislation, the Petroleum Law does not include any privileges for TPAO over other exploration companies. Limitation on the number of licensees that TPAO may hold per region has been removed and the investors do not need to partner with TPAO for offshore activities anymore.

It appears that the incumbent government aims to transform TPAO into a company that can operate flexibly in international markets, potentially leading to the privatisation of TPAO in the future. However, this has been heavily criticised by opposition groups on the grounds that the Petroleum Law would put TPOA in a weaker position and it is designed with the aim of encouraging the search for petroleum in Turkey sufficient regard to Turkey's national interests. The latter argument was the reason behind the veto of the previous version of the draft legislation enacted in 2007 by the then-president of Turkey.

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