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Araştırma Makalesi

BRINGING MINING RIGHTS AS CAPITALS TO THE TRADING COMPANIES FROM THE PERSPECTIVE OF VALUATIONS OF LICENSES¹

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Abstract

It is an undeniable fact that mining rights are at an important economic level nowadays. Considering this characteristic, the Code is stipulated in the Turkish Commercial Code; "Mining licenses" and "other rights with an economic value like this" among the elements of property that can be brought as the same capital, allowing all mining rights to bring as a capital of the trading companies. In the No. 3213 Mining Law in effect, Article 6, the possession of mineral rights can only be recognized to commercial companies with real or legal personality. The prerequisite for mining rights to be undertaken as capital is the absence of any limited property right, seizure and interim injunction on it. In this respect, mining rights are valued by experts who will be appointed by the commercial courts. When the rights of mining are written as capital in the company's articles of incorporation, it is requested that the relevant rights holder apply the General Directorate of Mining and Petroleum Affairs (MAPEG) before the registration and annotate the mine register of the right of the relevant mine as capital. At this point, unlike the Code, the annotation/registration of the transfer process foreseen by the mandatory provision of the Mining Law should also be conducted. In this study, the process of bringing mineral rights as capital is analyzed, especially by emphasizing the perspective of valorization of licenses. In this way, it is aimed to help to conduct the aforementioned process within the mining license transfer in the minimum time and the actual monetary value.

¹ This study was produced by developing and revising Taşkın Yıldız's bachelor's thesis dated 2016 in Istanbul Beykent University Faculty of Law.

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RUHSATLARIN DEĞERLEMESİ BAKIŞ AÇISINDAN MADEN HAKLARININ TİCARET ŞİRKETLERİNE SERMAYE OLARAK KONULMASI²

Öz

Günümüzde maden haklarının önemli derecede ekonomik değeri olduğu artık yadsınmaz bir gerçektir. Bu özelliği göz önünde bulunduran Kanun Koyucu Türk Ticaret Kanunu'nda; aynı sermaye olarak konulabilecek malvarlığı unsurları arasında "maden ruhsatnameleri" ve "bunun gibi ekonomik değeri olan diğer haklar"ı da sayarak, tüm maden haklarının ticaret şirketlerine aynı sermaye olarak konulmasına imkân tanımıştır. Yürürlükteki 3213 sayılı Maden Kanunu, 6. maddesinde maden hakkı sahibi olabilme imkânını yalnızca gerçek ve tüzel kişiliğe sahip ticaret şirketlerine tanımıştır. Maden haklarının sermaye olarak taahhüt edilebilmesi için ön şart, üzerinde herhangi bir sınırlı aynı hak, haciz ve tedbir bulunmamasıdır. Bu doğrultuda maden haklarına asliye ticaret mahkemeleri tarafından atanacak bilirkişilerce değer biçilir. Maden haklarının şirket esas sözleşmesine sermaye olarak yazılmasında, tescilden önce ilgili hak sahibi tarafından Maden ve Petrol İşleri Genel Müdürlüğü'ne (MAPEG) başvurularak ilgili maden hakkının sermaye olarak konulduğunun maden siciline şerh verilmesi istenmelidir. Bu noktada - Türk Ticaret Kanunundan farklı olarak Maden Kanunu'nun emredici hükmü gereği-öngörülen devir işleminin şerh/tescili de gerçekleştirilmelidir. Bu çalışmada maden haklarının sermaye olarak getirilmesi süreci özellikle ruhsat değerlemesi bakış açısı vurgulanarak açıklanmıştır. Böylece maden ruhsat devri içerisinde söz konusu sürecin asgari zamanda ve ruhsatın gerçek parasal değerinde gerçekleşmesine yardımcı olunması hedeflenmiştir.

Anahtar Kelimeler: Maden hakkı, Maden hukuku, Maden rezervi, Maden ruhsatı, Maden varlıklarının değerlendirilmesi.

INTRODUCTION

For the realization of the mining activities, the investor must be entitled to mining rights. In Turkey, mining rights are classified according to the rights of discovery, exploration, and operation. After the discovery and exploration periods, the operation period starts with the registration of the proved mine. According to Article (Art.) 6 of the Turkish Mining Law No. 3213³, mining rights shall be granted to the Turkish citizens that are qualified to enjoy civil rights, companies that are legal entities established in accordance with the laws of Turkish Republic and whose statute prescribes that mining is included in their field of activity, public

² Bu çalışma Dr. Taşkın Yıldız'ın İstanbul Beykent Üniversitesi Hukuk Fakültesi'ndeki 2016 tarihli "Maden Haklarının Ticaret Şirketlerine Sermaye Olarak Konulması" başlıklı lisans bitirme tezinin geliştirilmesi ve revize edilmesi suretiyle üretilmiştir.

³ Official Gazette, (1985). Mining Law No. 3213. Official Gazette date: 15/06/1985, issue no: 18785.

economic enterprises that are authorized on this matter and their entities, affiliates, and associates and other public institutes, establishments and administration (Yıldız, 2020a, p. 2, 263; Yıldız & Kural, 2020).

Mining in Turkey in terms of ownership "domanial system" and "regalian system" is valid. The domanial system considers mines as public property and gives the government the right to explore and operate. In the regalian system, it obtains the right to operate if it fulfills its obligations with the condition of financial and technical competence, to a certain extent, which locates the mine as public property (Yıldız, 2013a, p. 1962). The person who has explored and discovered the mine also has the right to priority (Fındıkgil, 1966). In the domanial system, the concept of mining rights includes activities for the exploration and operation of mines. At the same time, it includes the establishment of the necessary facilities for operating the mines. Mining right, which is accepted as a real right, becomes valid by gaining an independent asset by being registered into the mine registry, and it is possible to transfer it through inheritance and bring it as a share in (circular) trading companies (Telli, 1989, p. 97). Article 127 of the Turkish Commercial Code (TCC) numbered 6102⁴ acknowledged that mining rights could be brought to the trading companies among the assets that could be brought to the capital, with the clause "mining licenses and other rights having similar economic value".

It is not enough for the rights to have economic value, to bring them as capital. These rights must also be transferable rights. Therefore, it is undoubted that the transfer of rights related to mining activities to trading companies as capital requires a assignment transaction (Uçkan, 1982, p. 110, 118; Topaloğlu, 2013, p. 46; Egemen, 2018, p. 22). The extracting of the mines, which are under the rule of the state, by third parties is allowed only under certain conditions. In this regard, compliance with form is essential in mining law. The assignment transaction should also be done as prescribed by the legislator (Uçkan, 1983, p. 97). Thus, in the scope of the transfer procedure stipulated by the legislation in Turkish law, mining rights can be brought in as capital, and it is possible to transfer them.

The acquisition of the mineral assets in mining enterprises is conducted in two ways. The first one is through purchase and the second one is through exploration (Kustra & Kubacki, 2009; Yolcu & Sağlam, 2014; Yardımcıoğlu et al., 2014). The first stage in mining activities is mine exploration activities. The exploration license costs includes all expenses related to the determination of the ore, such as making the topographic maps required for obtaining the exploration license, wages of the technical and other personnel sent to the mine site, and the drilling costs, as well as, taxes, duties, and charges such as exploration license fee, stamp tax (Uygun, 2014a, p. 111). When transferring/selling the license to

⁴ Official Gazette, (2011). TCC no. 6102. Official Gazette date: 14/02/2011, issue no: 27846.

someone else, the exploration license holder should consider all these costs as the cost value.

Similarly, producing mining by obtaining an operating license is much less costly than taking production by taking over the license from the license holder. Thus, private enterprises operating in the sector prefer this method. If the license of the field to be produced belongs to other enterprises, it is usually rented for royalty instead of purchasing (Uygun, 2014a, p. 111). However, transfer of the mines, which are proved to be highly economically operable by proving their existence, is also common. In such cases, the value calculation of the mining right becomes important. As mentioned above, this transfer can take place during the exploration or operating period.

Thus, the transfer of mining rights freely is an important issue for sustainable mining and license assurance⁵. The mining right, which is only capable of transfer, has commercial value (Topaloğlu, 2014, p. 66).

Evaluation of a mining project is a long and complicated process from exploration phase to operation phase (Varol et al., 2019, p. 39). In this period, not only the project expenditures but also several expenditures on the matter of determining whether the mineral asset is feasible are required to be made (Köse & Kahraman, 2009; Ünver, 2017, p. 25). In addition, if we consider the operation phase by adding it to this phase, mining activity brings along great monetary/financial problems. The fact that the rights related to the mining activity can be brought to the trading companies as capital can provide a wide solution to this problem. Because, if the mining right holders, who cannot use their right due to financial impossibilities, bring this right to the trading companies operating in the field of mining as capital, this impossibility will be removed, thus mining investments will be somewhat encouraged. These natural riches of Turkey with a rich diversity of minerals and their evaluation through financially stronger companies will contribute to the development of the industrialization and development movement of the mining sector (Uçkan, 1982, p. 129). Mining licenses are not accepted as collateral to obtain finance from banks. The mining sector expects that legislative regulations towards accepting mining licenses as collateral are made urgently (Dinçer, 2020). Mineral reserves are among the most important assets for any mining company (Njowa & Musingwini, 2018). In the valuation of mineral assets and their projects (Guj & Chandra, 2019; Hazra et al., 2019; CIM, 2021) not only the mineral deposit or sales value (Saraç, 2008; Tatar et al., 2015), but also the factors such as the risk factors in the country where mining will be conducted, the license factor (Bastida, 2001, p. 32; Trench et al., 2014; Fraser Institute, 2021; Yıldız, 2020b; 2020c; 2021), the marketing factor (competition analysis, analyses regarding price comparison), technical factors (geotechnical factors such as geological and structural data of mine, open-pit

⁵ See on the mining license assurance (Topaloğlu, 2011; 2019b).

stability), market quality factor, the environmental and occupational health safety that is likely to be in the production stage of the mine have an impact. In Turkey, there is no standard set on the matter of valuation of mining licenses yet. Studies regarding this matter continue within the scope of National Resources and Reserves Reporting Committee of Turkey (UMREK). For instance, Valmin Code contains guideline and suggestions for independent auditors in the world. Within this scope, the following methods and factors are used in the valuation (Valmin Committee, 2015; Tuğrul, 2021):

- Prospecting/exploration costs: A calculation is made on how much was spent for mineral asset in the past and/or how much will be spent in the future.
- Joint venture method: It is calculated how much the venturer spends and/or is planning on spending on mineral asset.
- Geological methods: Mineral asset value is determined by assigning value to various technical factors which are determined beforehand.
- Comparative value: Mineral asset value is determined by being compared with the sales price of other similar projects.
- Income method: The possible future cash flows of the mineral asset value obtained from the project are calculated.

In this study, the process of bringing mining rights to capital was explained. Thus, it was aimed to provide the use of this opportunity more widely and effectively by mining investors. In the study, the subject from the perspective of valorization of license was analyzed in particular. In this way, it was aimed to help to conduct the process of bringing the mineral rights as capital within the mining license transfer period in the minimum time and the actual monetary value. The scope of the study is:

- In Section 2, information about the investing capital debt in trading companies, its quality, and its significance is given.
- In Section 3, asset components and their scope that can be invested as money capital and capital in kind are respectively explained.
- In Section 4, the process of bringing mineral rights as capital to the companies is explained one by one. Firstly, the qualities and conditions of bringing mineral rights as capital within the scope of legislation are presented. Next, the matter of valorizing mineral rights by experts is analyzed especially from the viewpoint of valorization of license. Following, the other processes of bringing mineral rights as capital to the companies such as annotation of bringing as a capital, Notification or request for registration to mine registration are explained within the scope of the legislation.

INVESTING CAPITAL DEBT IN TRADING COMPANIES

In joint-stock companies and limited liability companies, the fulfillment of debt obligations constitutes one of the most important debts of the shareholders. This debt is up to the amount of capital the shareholder has committed. The Turkish Commercial Code provides for sanctions against the likelihood that an obligation to make capital will not be fulfilled in an incorporated or anonymous company. If the partner does not fulfill the debt, the company may either follow the execution against the default partner or choose the way to collect of the default interest together with the capital debt. In case the capital commitment is not fulfilled, the company will even have the right of squeeze-out for partnership.

In this study, because there are slight differences between the Joint-Stock and the Limited⁶ companies in terms of the capital contribution and sanctions to be imposed, the legislation will be announced through the joint-stock companies which are more common in mining companies. The Turkish Commercial Code contains some differences in the arrangements for shareholders that fail to fulfill capital commitments with limited liability companies, compared to joint-stock companies⁷. The source needed for the purposes of the joint ventures to fulfill their purposes and activities is called *capital*. *Capital* is one of the most important elements of the company contract. Without capital commitment, it is not possible being a participate to a company.

The *capital* is committed by the partners and stakeholders in the trading companies. Capital investment is a matter of company establishment or capital increase (Topaloğlu, 2013, p. 43-44).

Additionally, *capital investment* is a debt that each partner has to pay the other partners. Every partner is under the obligation to raise capital, and the *capital* brought must be of the value and quality required by the company's business activity. If there is no contrary provision in the company contract, then the partners need to bring "fund" in equal value (Bahtiyar, 2015, p. 33; Turkish Law of Obligations Art. 621/II).

In the Turkish Commercial Code, a *joint-stock company* is a company that is specified and divided into shares and is solely responsible for its assets due to its liabilities. Also, it is stated that the shareholders are solely responsible for the shares they are pledged to and the company.

In accordance with this provision, the liability of joint-stock company's shareholders is limited to the capital that it promises to bring into the company.

⁶ The TCC included some differences compared to joint-stock companies in its regulations regarding partners who do not fulfill their capital commitment with limited companies. For these differences, see TCC Art. 529/2 and Art. 530/1-2.

⁷ Also see (TCC Art. 529/2 ve TCC Art. 530/1-2).

Therefore, the liability of shareholders for debts exceeding the committed *capital* amount does not arise.

Investing the capital for the company is essential for the joint-stock company and for the protection and full fulfillment of the committed capital. Because the joint-stock company can fulfill its activities and realize its objectives, in virtue of by bringing the promised capital to the company. Furthermore, if the capital debt is not fulfilled, there are sanctions stipulated by the legislation. Apart from all these, bringing the capital to the company which is invested by founding real or legal persons in these companies is very important both in terms of corporate legal personality and the obligee.

Because the shareholders are a limited liability for company debts in joint-stock companies, the company capital is a guarantee for obligee (Çelik, 2012, p. 76). However, in very exceptional cases, for example, if work is done with very low capital, this could lead to the delusion of third persons, and it might show the loss of corporate personality benefits. Thus, even the assets of partners can be utilized. Also, see for detail about the loss of corporate personality benefits (Topaloğlu, 2010, p. 2085). In the joint-stock companies, there are many arrangements for the protection and procurement of the capital due to the importance that the capital carries, especially for the corporate entities and obligee. Determination of the minimum capital amount in the establishment of joint-stock companies (TCC Art. 33), The obligation to fully commit the capital (TCC Art. 335), Determination of the maximum period to be able to execute the cash capital commitments (TCC Art. 344), Granting the authority to unilaterally request registration for title to the company on the immovable capital commitments (TCC Art. 128/6), Banning the company from undertaking its own shares (TCC Art. 388), determination of the value of the same capital commitments by experts (TCC Art. 343), can be shown as an example of a few of these regulations.

The effect of the capital contribution is two-phased, namely promissory transactions (borrowing) and acquisitive transaction (saving). There are some types of capital that characterize these stages. If only the capital of the immovables registered⁸ in the title shall be mentioned, let us briefly mention the application based on this:

According to Turkish Commercial Code article 128/3, the provisions of the partnership agreement, including the immovable property and the commitment to bring the same right on it, are valid without reference to the official form. So there is no need to issue an official deed in notary public. Only after the mentioned commitment, approve the signatures on the contract by a notary, is sufficient. In the case of immovable property or the same right of capital, the registration condition is required for the company to be able to save them, and it is arranged that the

⁸ See also about adding the real estate registered in the land registry to the capital (Özdamar, 2006).

registration request will be made immediately and independently in the relevant registry (Bahtiyar, 2015, p. 51-52). In joint-stock companies, the capital contribution obligation must be paid within one month.

ASSET ELEMENTS TO BE UTILIZED AS CAPITAL

In Turkey, *cash* and *capital in-kind* can be brought as an equity in joint-stock and limited liability companies. The amount of capital committed by partners in accordance with the provisions of the Turkish Commercial Code can be learned from the original contract. Components of assets that can be brought into the capital; *cash*, *capital in-kind* as the shares of the receivables, negotiable instruments and capital companies, intellectual property rights, movable and all kinds of immovables, rights of utilization and use of movable and immovable properties, commercial enterprises, transferable electronic media which are used rightfully, fields, values such as names and signs, *mining licenses*, and *other economic rights such as these are all kinds of values that can be transferred* and assessed in cash. Service acts, personal labor, commercial reputation, and non-traded receivables can not be *capital* (TCC Art. 342/I, 581/I). Therefore, all capital elements except the money are called the capital in-kind. However, it should be noted that there should be no limited property right, seizure and interim injunction above the mentioned values which can be brought as *capital in-kind*⁹.

According to the Turkish Commercial Code, if the joint-stock company is established with 100% equity capital, the *simple entry* is foreseen. If the *capital in-kind* is brought in the foundation of joint-stock company, *qualified entry* is foreseen. The difference between *qualified entry* and *simple entry* is that there is an expert examination phase-in *qualified entry*. Accordingly, when the *capital in-kind* is placed in the company, this capital is written as the *capital in-kind* value in the main contract. It should be noted that since the findings of the experts are of a public nature, the legislator attaches importance to this and has arranged it.

Assets That Can Be Placed As Monetary

Turkish Commercial Code no. 6102 brings a separate provision that has been stipulated in Article 344 of the Code for cash capital shares different from the former¹⁰ Turkish Commercial Code. Accordingly, at least 25% of the nominal value of the monetary pledged shares in specie is paid before registration, and the rest shall be paid within 24 months following the registration of the company. All of the deduction bonuses of the shares are paid before the registration. Unpaid portion of the capital was provided to be forgotten on condition that the capital

⁹ The TCC allows for the establishment of interim injunction by the founders of the company to fulfill capital in-kind commitments in joint-stock companies (Çelik, 2011, p. 31). In such a case, mining rights, one of the capital in-kind elements, cannot be brought to mining enterprises as capital.

¹⁰ Official Gazette, (1956). Turkish Commercial Code No. 6762. Official Gazette date: 09/07/1956, issue no: 9353.

debt, which was not paid before the payment, was paid within 24 months following the registration. In this way, the *protection of the capital* principle is supplied (Moray, 2014, p. 131-132). In the legislation, it is envisaged that some company types can only be established with cash capital. For example, companies such as banks, intermediary institutions, investment trusts, insurance/reinsurance companies, and financial leasing, factoring, and financing companies can be established only with cash capital. The capital in-kind can not be invested in the establishment of these companies (Yavuz, 2015, p. 90). Therefore, it can be said that mining rights can not be the capital of these companies.

Assets that Can be Placed as Capital In-kind

In Article 342 and 343 of the Turkish Commercial Code, it is reorganized that elements of property assets which can be brought as the capital in-kind and the valuation of these elements. According to Article 342 of the Code, the assets that can be brought as the capital in-kind are stated as follows: *“Items of property, including intellectual property rights and virtual environments, which have no limited property right, seizure and interim injunction on them, can be assessed and transferred from cash, can be brought as capital in-kind. Service acts, personal labor, commercial reputation, and non-promissory claims can not be capital.”*

Provisions of the company contract, which include the debt as immovable property as capital or the establishment of an in-kind right that exists or will be established on immovable property, are valid without reference to the official form. In the event of the borrowing of an investment of economic value other than money or the movable asset, the company may directly save on its property as an owner from the moment it becomes a legal person. As mentioned in Section 2; in the case of the immovable property or any other such right being brought as capital, it is necessary to register in the title register so that the company can save on them. Declarations of registration of property and other similar rights to title deeds register and other notifications to be made to other registers shall be made by the register of commerce independently and immediately. The Company reserves the right to make unilateral requests.

The first activity that has to be done in relation to the capital in-kind to be set as capital is to *evaluate* this wealth. According to Article 343 of the Turkish Commercial Code, *evaluate* is explained. According to this, capital in-kind invested and the enterprises and wealth to be taken over during the establishment are valued by the experts who are appointed in the commercial court of the place where the company headquarters is located. One of the presumptions brought by Article 131 of the Code in terms of capital debt is the capital invested is considered to be accepted as concerned with the values that are to be determined by the expert. *In the appraisal report*, it is stated that the valuation method applied is the fairest and the most appropriate choice for everyone in terms of the characteristics of the concrete event; The realities of the receivables set as capital, their validity and their conformity to Article 342 are determined, their collectibility and their full value;

The amount of shares to be allocated in respect of each asset that is made in-kind and the provision of Turkish Lira (TL)¹¹ shall be explained according to the satisfactory justifications and the necessity of the accounting principle.

Capital in-kind shall be deemed in case of when the immovables that are included in the company contract or with the values determined by the expert in the articles of association are annotated title fully to be the intellectual property rights and other valuables, if exist to the registry, if they are recorded in accordance with this provision, and if they are bailed to a reliable person. The registration of the private register will remove the willingness (TCC Art. 128). The trade registry manager is obliged to examine whether the relevant annotations are brought and/or whether the necessary transactions have been conducted (Yavuz, 2015, p. 91). This provision is designed to protect the non-monetary value of the capital and ensure that the company does not encounter any problems during the establishment phase (Moray, 2014, p. 131).

Founders and stakeholders may appeal against this report. The court's approved expert report is the mandatory (TCC Art. 343, 578). The value approved by the court and judged by the expert on the capital in-kind is shown in the company contract. Unless otherwise agreed in the Company's contract, it is the presumption that the ownership of the assets invested as capital belongs to the company and the transfer of rights to the company (Yavuz, 2015, p. 91).

MINING RIGHTS AS A CAPITAL IN THE COMPANIES

According to the Trade Registry Regulation (Egemen, 2018, p. 25), during the application regarding the registration of the joint-stock company and the registration of the capital increase;

- a) valuation reports prepared by the expert appointed by the court to determine the value of the mining license,
- b) letter to be obtained from the mine registry regarding that there is no restriction on the capital in-kind,
- c) document showing that annotation is given to the mine registry,
- d) Contracts concluded with the company being established, the founders and other persons, and contracts related to the organization, including the contract for the transfer of the license, must be submitted to the Registry of Commerce. In addition, after it is stated that there is capital in-kind in the company through the Central Registration System (MERSIS), the mining license value must be entered as the amount of capital in-kind (Egemen, 2018, p. 25).

Simultaneous with the trade registry manager's acceptance of the mining license, which has legal elements, as capital, the submission of the registration to

¹¹ 1 USD = 6.85 TL (15/04/2020) (CBRT, 2020).

the Mine registry is notified with all the bases (articles of partnership, valuation report, registration information, etc.) in writing. After the notification is made, the license holder will no longer be able to transfer the license to third parties. Since there is no provision in the legislation with the notification of the trade registry manager that the license is transferred directly to the assets of the company, the assignment transaction must be made in the Mine Registry. This assignment transaction is made according to the Mining Law. Assignment transaction request is sent to the Ministry after the assignment transaction fee is taken in accordance with the Article 5/2 of the Mining Law. The assignment transaction is completed with the approval of the Minister, and the process shall be completed (Egemen, 2018, p. 25).

The Nature and Conditions of Investing Mining Rights as Capital

Nowadays, it is now an undeniable fact that mining licenses are at an important level of economic value. This is because these licenses permit the operation of mines by passing certain authorization procedures. *Mining rights*; The permits granted for the exploration, exploitation, and operation of mines and the financial means granted to those who assist in the exploitation of mine deposits (Mining Law, Art. 3). *Mineral rights* in this framework; includes exploration and operation mining licenses and (The limits of the operating license are narrowed down by the reduction of the proved reserves¹²) operating permits according to the Mining Law. Considering this feature, the legislator counts the values to be committed as "capital" in the Turkish Commercial Code without limitation. In Article 127/j, the mining licenses are stated specially.

In addition, in Turkish Commercial Code Article 127/I-i, besides "mining licenses," "and other rights with an economic value like this," inscription was also used. In this framework, mining licenses and other rights related to mining can be brought as capital in joint-stock companies and limited liability companies. Therefore, if it is not specifically mentioned in the Code, even in this case, it is necessary not to hesitate that the mining licenses/rights can be brought as capital (Kesici et al., 2016, p. 1; Egemen, 2018, p. 22). On the other hand, it is difficult to say that the phrase "mining licenses" in the heading of Turkish Commercial Code, Decree No. 127/1-i, is used very accurately¹³. Because the *license* is a document

¹² For the definitions of "reserve", "proved reserve", "probable reserve", and "possible reserve" in Turkey, see (Kahriman, 1993, p. 23, 36; Ersoy & Yünsel, 2008; Bumin & Kutluay, 2013, p. 5-6).

¹³ In general, *license* is a document that is subject to obtaining legal permission to operate, use, and transfer. It is a document that indicates that something has been permitted from the authority. Therefore, according to Uçkan, when expressing the bringing of the economic value rights to the trading companies as capital, it would be appropriate to use the expression of the economic value rights, such as "the rights related to the mining activity" instead of the word *mining licenses*. Thus, the real purpose can be better determined (Uçkan, 1982, p. 112-113).

showing that someone actually has the right to exploration or operate a mine. However, the value to be brought to the trading companies as capital is not a *license* but a *mining right* that forms the subject of the license. In addition, a mineral right bearing economic value other than licenses/permits is also a *discovery right*. *Discovery* is defined in Mining Law Article 3; "Reveal of a mineral deposit as specified in the regulation in any license period." According to the Mining Regulation¹⁴ it is determined that if the mine site has a specific grade and the amount of the mine is suitable for a facility, it is decided that the mine and that the seeker is a discoverer of that mine. The discovery right is 1% of the sales amount of mine per day. With a different understanding from the period of the Mining Law no. 6309¹⁵ as envisaged by the Mining Law now in force, even if the exploration license was subsequently canceled for any reason, a situation has arisen the right of discovering continues (Yıldız, 2013b, p. 1985; Chamber 8 of Council of State, day 14/10/1991 and Main 1991/116, Decision 1991/1594). In addition, *discovery right* is an important incentive for exploration.

It is necessary to acknowledge that the discovery right and the operation permit can be brought as capital in companies due to the "*other rights like economic value*" inscription mentioned in the related article of Turkish Commercial Code. Considering of these opinions, it would have been more appropriate for the Code to take the form of "mining rights" instead of "mining licenses."

It is necessary to mention the conditions in the Mining Law before proceeding to the procedure in the Turkish Commercial Code concerning the commitment of mining rights as capital. Thus, it is not possible to commit mining rights as capital in the event of illegality to mine law.

In Article 6/1 of the Mining Law, mining rights were stipulated to be given to companies with a legal entity established in accordance with the Turkish Republic Laws written in the status of mining. However, as a result of the amendment made in Article 7 of the Law No. 7164¹⁶, in Article 6 of the Mining Law, the phrase "that it is written in its status that the company is able to mining" has been removed from the provision that says "*to the companies having legal personality established according to laws of Republic of Turkey that it is written in its status that the company is able to mining...*" which determines the right to own mine. Hence, in the application of license, assignment transaction, and in the company's main contracts while entering the mine tenders, the obligation to have a clause for mining companies in their main contracts was removed. Additionally, an

¹⁴ Official Gazette, (2017). Mining Regulation. Official Gazette date: 21/09/2017, issue no: 30187.

¹⁵ Official Gazette, (1954). Mining Law No. 6309. Official Gazette date: 11/03/1954, issue no: 8655.

¹⁶ Official Gazette, (2019). Law No. 7164. Official Gazette date: 28/02/2019, issue no: 30700.

amendment was made in accordance with the Article 371(2) of the Turkish Commercial Code, which abolished the *ultra vires* principle (Topaloğlu, 2019a, p. 51; 2019c, p. 570). It is necessary and sufficient to establish the company in accordance with the Laws of the Republic of Turkey. Thus, companies established in accordance with Turkish laws and registered in any trade registry in Turkey are considered as Turkish companies.

So, first of all, the company to which the *mineral rights* will be invested as *capital* must be a *trading company* with legal personality. Mineral rights can not be granted as capital to ordinary companies that do not have legal personality in Turkish law. The Mining Law does not permit mining rights to be set as capital in ordinary companies and to be operated by ordinary companies. One of the main principles of mining law is to ensure that the mines can be operated in the most rational way. For this, the *mining rights* are ordered not to be shared and to be treated as a whole in the Article 5 of the Mining Law, For this reason, it is not possible for a *mining right* to be divided privily or jointly registered on behalf of at least two ordinary corporate partners and to be registered in the mining register on behalf of the partners. Hence, it becomes clear that mining rights can not be brought as capital in ordinary companies. As a consequence of the granting of a mining license to a person, a contract that deals with the transfer of the right of mining to an ordinary partnership are null and void (Topaloğlu, 2013, p. 45). Although Article 7 of the Turkish Commercial Code stipulates that mining licenses can also be brought as capital, an ordinary partnership can not have *mining right* since in Article 6 of the Mining Law it is stated mining rights can be given to real and legal personality and there is no legal personality (Bahtiyar, 2015, p. 32).

According to Turkish Commercial Code, the prerequisite for the *mining right to be undertaken as capital* is that there is no limited property right, seizure and interim injunction on it. *Licenses*, which are mortgage, an interlocutory injunction in any way, can not be committed as capital. The procedure to be followed to be admitted to the Registrar's Office as the capital in-kind of mining right without any restrictions on it is stated in Article 128/2.

Not only in the establishment of the company but also in capital increase mining rights can be placed as capital in-kind. In this case, provisions relating to the establishment apply comparatively. For this, the expertise of the mine is valued, the mine register is annotated, and the mining right is capitalized in the original contract. With the registration of the capital increase, the register of commerce shall be notified of the registration of the mining right in the mine register on behalf of the company (Topaloğlu, 2013, p. 47). This process will be evaluated in the following subheadings.

Evaluate of Mining Rights by Experts

According to the Turkish Commercial Code Article 128/2, the *evaluation process* will be performed first so that the license can be evaluated as capital. After

the evaluation process, *gloss to register* will be done. The evaluation process of the license will be done in the framework of the procedure in Article 343. According to Article 343 of the Turkish Commercial Code, "The capital in-kind invested to and the business to be acquired at the time of establishment shall be valued by the experts appointed in the commercial court of the place where the headquarters of the company shall be located. The purpose is to prevent the creditors from reaching a wrong opinion by ensuring that the mining rights included in the company's assets are included in the balance sheet with their real value. The trade registrar does not regard *mining rights* not considered by the expert in the original contract as the capital in-kind. This means that the company's articles of incorporation, which includes *mining right* granted as capital without the expert report, will not be registered in the trade register, nor will the registration of the license on the name of the company will not be requested in the mine register.

The expert committee to conduct this evaluation must consist of engineers and financial advisors who can master the issue. In the appraisal report on the *mining rights* of the expert; The existence, validity and legal limitations of the *mining right* invested as a capital; The amount of shares of the company to be allocated for the *mining rights* and the provision of TL shall be explained on the grounds of justification and the necessity of the accountancy principle.

If the report is found to be in conformity with the procedure and the law, the value determined shall be the value of the license in the main capital. Another point to note here is that the sum of the other capital shares committed by the amount to be incurred after the appraisal process exceeds the capital amount required for the establishment of the company. The mentioned total amount is 50,000 TL in the principal capital system and 100,000 TL in the registered capital system. Otherwise, the company will not be established because it does not carry legal requirements (Kesici et al., 2010, p. 1-2; Egemen, 2018, p. 24). Often, since these amounts are above the amount of the license fee, there is no legal capital deficiency situation in the capital companies where the mining licenses are brought as capital. However, legislation in the future may foresee the amount of capital requirements higher than now.

Expert report approved by the court is certain. The expert report is entitled to the right of objection through the commercial court of first instance. Because the expert report bears qualification of an official nature, it is subject to the provisions of the Turkish Penal Code¹⁷ concerning official crime forgery of official documents in the legislation. According to Article 551 of Turkish Commercial Code, the experts, which rate higher than the comparative price and differentiates the nature or status of the right of the mineral in evaluation, has to compensate for the loss.

¹⁷ Official Gazette, (2004). Turkish Penal Code No. 5237. Official Gazette date: 12/10/2004, issue no: 25611.

Therefore, the most important problem arises during the determination of mining rights value. In particular, it is also difficult to determine the value of mining exploration licenses in terms of an expert. Thus, the right earned by the exploration license is a document of authorization of exploration activity. Searching for a non-existent and neutral entity is targeted. More than half of the exploration activities are ineffective. For this reason, the valuation of an exploration license can have quite speculative consequences. It is difficult to say that the figures obtained in this matter are objective and scientific contents. However, since the present mining law appraises the license under the definition of *license cost*, an assessment can be made from this license price (Günay, 2016, p. 89-90). Also, due to mineral exploration costs, the exploration license already has a cost and value. In the later stages of mining, mining investors also pay exploration or operation license fees every year. Thus, the license fees and other expenses made for the mining activities must be considered in the value calculation of the mining right.

In the purchase of company share or in business combinations, in the valorization made for mine sites that are among the corporate assets, applying depreciation within the scope of Article 316 of Tax Procedure Law¹⁸ is (AGÜB, 2020, p.15) an expectation of the mining sector. In the mining right value calculation, regarding the amortization of the activated costs of mines, the regulation in Article 316 of Tax Procedure Law is as follows: *“License costs or cost values of mines and quarries that have lost their material value due to the decrease in the ore in the operation period are removed by considering their size and quality upon the application of the relevant parties. This process is conducted at the rates to be determined by the Ministry of Finance and Industry, separately for each mine or quarry”*.

As seen, “franchise fee” is not a concept that is clearly defined by tax laws. Also, as can be understood from the text of the law, the amortization amount is calculated over the “license cost or cost values related to the mine.” According to the opinion and practice adopted by the Ministry of Finance, the exploration license cost refers to the expenses incurred due to obtaining and keeping the exploration license including exploration expenses. Expenses for activities such as prospecting, geological mapping, sampling, geophysical research, drilling, opening of splitting/gallery, which are not intended to mine production, should also be considered within the exploration cost. In other words, all of the expenses made until the operation permission is obtained should be evaluated within the franchise fee and exploration cost (Çalışaneller, 2009; Yolcu & Sağlam, 2014, p. 99-100).

The operation right in accordance with the provisions of the Mining Law is that the person/company who discovery the mine has the right to extract the ore

¹⁸ Official Gazette, (1961). Tax Procedure Law No. 213. Official Gazette date: 10/01/1961, issue no: 10703.

from the site where the mine is located and to make the above-ground and underground facilities required for the mine to be extracted for a certain period of time, provided that the license is obtained (Uygun, 2014b, p. 265). In this regard, the cost of operation right can be defined as the sum of the payment paid to the operation license/permit holder and the expenses based on this price, in exchange for the acquisition of the mining right from the owner or the state, in accordance with Article 262 of the Tax Procedure Law¹⁹. In case the operation right is purchased together with some facilities, since the economic values such as facility, building, machinery will be depreciated according to general provisions, the values related to them should be deducted from the total amount (Yolcu & Sağlam, 2014, p. 100). The most important factor in the calculation of depreciation in minerals is to determine the total values of mines that suffer losses in their material values due to the decrease in ore. This factor shows the concept “Reserve” in the mining terminology. The other factor to be recognized as an expense in depreciation application is franchise fee or exploration cost. According to this, the costs of minerals consist of the total acquisition fees and the expenses based upon acquisition (Özmen, 2011, p. 69). Thus, The Ministry of Finance and Industry generally determines these rates on the basis of the following principles:

- 1) Possible/proved reserve is considered,
- 2) Franchise fee or exploration costs are taken as basis (Yolcu & Sağlam, 2014, p. 100).

Thus, the amortization amounts to be calculated over the cost values of tangible and intangible assets are determined by estimating the economic life of these assets. For which periods and at which rates the cost values of the operation rights that are activated as assets subject to amortization will be shown as an expense, are determined based on the total and extracted reserve amounts in the mining areas. The amount to be obtained by dividing all the cost values of the license, or until the license is obtained, by proved or possible reserve is calculated. As a result, the amount of depletion to be calculated every year is determined by multiplying this amount by the annual production amount (Uygun, 2014b, p. 264, 274).

From these explanations, it is understood that the important issue regarding the value of the mining right is to determine the amount and monetary value of the mineral reserve. Perhaps reserve detection is one of the most critical problems of the mining sector in terms of financial law.

As a result of the increase in international trade and the globalization of the world in recent years, mining investments have also been the subject of international investments. For this reason, the need to standardize a

¹⁹ In Article 262 of Tax Procedure Law, the cost price is defined as: “*Cost price refers to the total of the payments made by means of gaining economic asset or increasing the value and all kinds of expenses based upon these.*”

search/resource/reserve to be accepted by all parties involved in mine investment both internationally and globally (Such as JORC, PERC, IN43-101) are formed in such a way that there are very few differences between them. And these are also gathered under an organization called CRIRSCO (UMREK, 2019). For mines in Turkey, international banking, finance and investor organizations can be obtained as by the nature of the data, finding partners in the projects from international investors or for receiving project loans from international banks and financial institutions; source and reserve estimates are derived and reported in a system that is compliant with standards (such as JORC, NI-43-101) and similar standards (CRIRSCO) that are generally accepted by international stock exchanges, banks, and financial circles. With the Additional Article 13 of Law No. 6745²⁰, in the process of harmonization with mineral exploration and reporting rules in international standards, it was aimed to establish the Turkey Earth Sciences Data and Core Data Bank under the coordination of the MAPEG and within the General Directorate of Mineral Research and Exploration. In addition, UMREK was established with Additional Article 14, and with this commission, it was aimed to establish the infrastructure of the transition to the international standard reporting system.

With UMREK, it is aimed to conduct the researches conducted during exploration, research, and production and to analyze and test the produced data in the accredited laboratories in accordance with international standards and to report them by competent staff (QP/CP). In addition, with data being transparent and reliable, it is aimed to provide a unity of opinion among engineers, planners, miners, investors, and financial institutions in free-market conditions. UMREK will also provide to safe mining in the meantime (Demirkan, 2018, p. 1). Thus, the implementation of appropriate national reserves classification system in Turkey, in terms of financing of mining activities may also allow mining exploration activities in both the searchers need to be provided the incentive to expect after these operations (Yıldız, 2013b, p. 1992). In addition, the responsibility of expertise on the valuation of *mining rights* can also be eased.

Mining rights can be transferred in accordance with Article 5 of the Mining Law, and they can be pledged in accordance with Article 39, seized in accordance with Article 40, mortgaged in accordance with Article 42. For all these reasons, the mining rights will have to be *valued* in disputes. It is very difficult to identify an objective trading value, because it is a high-risk sector that is constructed within unknowns, such as trading value, for the valuation of mining rights. It is also not possible to talk about the value of a stock exchange as it does not have a stock exchange. According to the nature of mining rights, there are different elements than land ownership. In addition, according to Article 4 of the Mining Law, "mines

²⁰ Official Gazette, (2016). Law No. 6745 (The Law on Supporting Investments on a Project Basis and Amending Certain Laws and Decrees). Official Gazette date: 07/09/2016, issue no: 29824.

are under the jurisdiction and disposal of the state and are not subject to the ownership of the supply they are in." For this reason, the process of *value appraisal* is a question that must be solved in the context of mining law, not property law. An integral part of the operating license is the operating project. The authority of the registration holder is limited to the framework in this project. For these reasons, appraisal of mining rights should be determined by reports that they are tied. Minerals can be discovered in the underground or on the ground, but wherever they are discovered, they contain a volume, and therefore three dimensions. Reserve definitions; It is classified as proved, probable, possible as it is used to explain the mineral assets, and it is entirely three dimensions. For this reason, Günay proposed that the mining operating license should be issued according to the projects and reports, which are an integral part of the license, and the proved reserve should be taken as basis (Günay, 2015, p. 32-33; 2016, p. 88-89). In Turkey, reserve reports have started to be made based on UMREK. The widespread use of these reports will help mining investors to obtain financing more easily and at a lower cost, not just in the topics described above.

Annotation of Bringing As a Capital

In Turkish Commercial Code; A two-phased system is foreseen firstly as an "annotation," then "registration" system, for immovables, any other rights registered mining and trade register as capital. Accordingly, while appraising the mining right or, after the latest transaction is completed, it is necessary to complete the annotation process by the mining right holder. The *annotation* process is completed with the following of the procedure in the Mining Regulation. The *annotation* is about the mining right to be placed in a company to be established as an *capital in-kind*. Article 128/2 of the Turkish Commercial Code is as follows; "*The capital in-kind shall be deemed to be granted if the immovable property included in the company contract or with the values specified by the expert in the articles of association is declared title deed, intellectual property rights, and other values, if they are registered in private, registered in accordance with this provision, and are transferred to a reliable person.*" Accordingly, when a mining right is written as capital in the company's articles of incorporation, it must be requested by the rights holder to apply to the MAPEG and *annotate* the mine register of the right of the relevant mine as capital before it is registered in the trade register (Kesici et al., 2010, p. 2; Topaloğlu, 2013, p. 47; Egemen, 2018, p. 24).

The MAPEG shall issue an *annotation* certificate which encourages this matter after having accepted this request and performing the *annotation* process to the mine registry due to the open provision in Article 128/2 of the Turkish Commercial Code. This *annotation* to be processed in the mine register, does not allow mine ownership to move to the company. However, this process prevents the acquisition of rights by the good faith of the third parties in the period that will pass until the registration on behalf of the company (Topaloğlu, 2013, p. 47; Egemen, 2018, p. 23). As an intermediate result, the mining right, which is not covered by

any restrictions, shall be accepted as a capital by the trade registry director, together with the disposition of its value through the court of the first instance and the annexation of the capital commitment to the mine register. Otherwise, the trade registry director rejects the registration request. The trade registry manager shall be informed in writing of the registration of the mine registry together with all the supporting documents (company's articles of incorporation, valuation report, registry information, etc.) simultaneously with the acceptance of the *mining right* bearing the legal elements as capital. With the declaration, the owner of the *mineral rights* will no longer be able to transfer this right to the third person. As there is no provision in the legislation that the *mining right* will be transferred directly to the assets of the company together with the declaration of the trade registry authority, the "conveyancing" must be conducted in the mine register. The conveyancing will take place according to the mining law. According to Article 5/2 of the Mining Law, mining licenses and the discovering right *can be transferred*. According to the judgment, the transfer request will be sent to the Ministry of Energy and Natural Resources (MENR) after the receipt of the required transfer fee, and the conveyancing will be completed with the approval of the minister (Kesici et al., 2010, p. 2; Egemen, 2018, p. 25).

Notification or Request For Registration to Mine Registration

"Mineral Register" fulfills the function of publicity in the form and conditions envisaged in the transfer, transfer and registration of mineral rights, in which power unique to the title deed is created. While the mines are considered immovables according to Article 632 of the former Civil Code²¹, the *mines* are not considered as immovable in the new Civil Code No 4721²². Despite this change, *mine registry* fulfills the specified function. See for this opinion (Yıldız, 2013a, p. 1967-1973).

Investment of mining rights to trading companies as capital requires *conveyancing*. Article 5 of the Mining Law provides the official process for this *conveyancing*²³. The transfer of mining rights takes place at the MAPEG in accordance with the form specified in (Additional Form 21) the Mining Regulation. This form petition should be signed by the transferer of the mining right and the transferrer under the supervision of the competent officer. After the completion of

²¹ Official Gazette, (1926). Turkish Civil Code No. 743. Official Gazette date: 04/04/1926, issue no: 339.

²² Official Gazette, (2001). Turkish Civil Code No. 4721. Official Gazette date: 08/12/2001, issue no: 24607.

²³ According to Article 5 of the Mining Law, "*Mining licenses and discovery rights can be assigned. Before the assignment transaction is made, the transaction fee, which is twice the license fee on the date when the exploration and operating licenses are assigned, is taken. The assignment is approved by the Ministry. The fact shall be registered at the mine registry. Assignment transaction shall be complete upon its annotation at the mine registry.*"

the signatures, the "conveyancing" process is completed by annotated the transfer process to the mine register by the officer of MAPEG affiliated to the MENR²⁴.

Trade register officer presented a document of annotation to mine register with the articles of partnership, shall be notified to the MAPEG for registration to the mine register of the relevant mining right simultaneously with registration with the company trade registry. According to Article 128/6 of the Turkish Commercial Code, the company has the right to request the registration of the MAPEG unilaterally. In the notification or request to be made to the MAPEG, the value determined by the expert on the right of the mine shall be included in the information such as the name of the company, mining right, register, and access numbers (Topaloğlu, 2013, p. 47).

Despite being a *gloss* on the mine register, The MAPEG shall immediately notify the relevant trade registry office if the *registration* can not be conducted on behalf of the company to the mining register because another right in rem has been established during the period before the "registration" is made. Upon notification, the trade registry office rejects the registration request of the company stating this as a justification (*Annunciation Concerning the Cooperation Between the Registers in the Amendment of the Structures and the Establishment of the Capital In-kind in the Companies Art. 4/6*).

The MAPEG, which takes the writing about the transfer to the company that invested mining right as a capital, is asked by the MENR for the fifth Article of the Mining Law before it is registered to the mine registry. After a positive opinion from the MENR, the mining right is registered in the mining register in the name of the company, which is invested as capital. If the MENR does not give approval to the transfer process by investing it as capital, MAPEG rejects the registration request and has to inform the trade registry office. In this case, since registration to the mine registry is required to perform legal transactions with the mining rights, mining rights will not be set as capital in the newly established company, and there will be a capital shortage issue. As it is known, the capital is a safeguard for the creditors and the third parties involved in the company that a joint-stock and limited liability company with the limited liability of their partners. For this reason, corporate law gives special importance to the protection of the capital. This deficiency should be eliminated by replacing the mining right, which is to bring as the capital with other substitute assets at the same value as the capital element. The trade secret officer must make a written notification to the partners to resolve the capital shortage. In spite of the written notification of the trade registry official, if the substitute capital element is not substituted for the mining right that can not be registered in the name of the company, or if capital reduction is not conducted pursuant to the Article 473 et al. of Turkish Commercial Code, this

²⁴ However, if the mining right is brought into the company as capital, it is necessary to be able to register the mining right in the name of the company (Topaloğlu, 2013, p. 46).

creates an organizational shortage. If this is not done within three months from the registration of the company in the trade registry, the buyer must obtain the required Article 353 of the Code, and the Ministry of Customs and Trade must file a lawsuit in the commercial court for termination of the company. After three months, the procedures stipulated in Article 376 et al. of the Code for the loss of capital according to the value of the mining right shall be applied.

As can be seen, if the MENR does not permit the registration of the mining right to be registered as a capital, it may occur from the termination of the company to bankruptcy. To prevent these negativities, the mining register must be submitted for approval to the MENR for registration before registration, in line with Article 128 of the Turkish Commercial Code. Thus, if the MENR does not approve the registration of the mining license as capital for the establishment of the mine in a gloss phase, the main contract of the company will not be registered in the trade registry and a negative result such as the establishment of the company with incomplete capital will arise. For this reason, Mining Regulation, it can be in place to put a ruling in the form of *“With the merger and division transactions in which the mining licenses of the trading companies are capitalized, the approval of the Ministry as provided for in Article 5 of the Mining Law is taken for the issuance of the annotation in the number 2 of the Article 128 of the Turkish Commercial Code. After the approval of the Ministry for gloss, it can not be submitted again to the approval of the Ministry for registration to the mine registry.”*

CONCLUSION AND SUGGESTIONS

Mineral rights, which are the appearance of mines as an economic right as underground fortunes, have been made possible as a consequence of both as a new Turkish Commercial Code and the regulations introduced in the Mining Law and related Regulations, as a capital in-kind in the establishment or capital increase. Also, as a result of the amendment in the Code, in the Turkish Commercial Code numbered 6102, it was possible to bring the discovering rights and operating permit which are not mentioned in the law, was called the "mining license and other rights," as the capital in-kind.

Mining rights also have some differences and similarities compared to others that can be brought up as the same capital in Turkish Commercial Code Article 127/I: Even though the *mining rights* are committed as the capital in-kind, there is no difference in the sanctions to be applied if this obligation is not fulfilled. All Turkish Commercial Code provisions are applied. However, while mining rights are being brought as the capital in-kind, in particular, the provision of the Mining Law, which is a special law, stipulates the necessity of transferring the mining right for registered as capital, there are some differences in applicability in terms of the Code. In addition, it is worth noting that the registration of the mining register in place of the trade registry is required for notification to the MAPEG for registration of this register, and the MAPEG must be consulted by the relevant

rights holder before being registered in the trade register, requests of annotation for the relevant mining right is registered as capital. The provision of a regulation stipulating that the approval of the Ministry stipulated in Article 5 of the Mining Law is requested at the time of the commentary will prevent legal problems to arise due to the inability to be registered in the mining register in the future.

Mineral rights that can be brought as a capital in-kind during the incorporation of a corporation are subject to the provisions of qualified procedures. Therefore, the mining rights are valued by the *experts* who are appointed in the commercial court of the main city where the company headquarters is located. The expert committee to conduct this valuation must consist of engineers and financial advisors who can master the issue. Revealing a national "reserves classification system" that conforms with CRIRSCO will facilitate the works of an expert about the value of the mine. By way of Law No. 7164, as a result of the amendment made in Mining law, it is laid down with legislation that the areas stated as a possible reserve in operation projects shall be rendered resource or reserve within 5-10 years according to UMREK. In this way, the determination of mineral reserves depending on UMREK will increase. Thus, the expenditures made during the license period can be shown as capital in company establishments or license transfers, and license holders can become even more advantageous. By considering the possible positive effect of reliable mineral reserve increase in the next years, it will be beneficial to conduct studies regarding the acceptance of mining licenses on different exploration phases as collateral by banks within the scope of UMREK.

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