

# The Rights and Obligations for the Owner of Mine Operation License

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## ABSTRACT

According to article 38 of Iran's civil law, the owner of the land is the owner of the above of land and the underground of the earth of the mentioned land. Mines are parts of the earth, on the ground or under the ground. We know that some natural resources can be created again but mine are not such resources. From the legal point there are some ideas about the owner of the mines. Although the ownership of the mines for private persons is limited, from the economy point we can not only permit to the government for using the mines.

**Keywords:** Law, Obligations, Mine, Operation, Law of Mine.

## Introduction

Although according to article 38 of the civil Law of Iran and article 167 of the mentioned law the owner of the land is the owner of mine in that land using the mine needs special permission.

## Hypothesis

The hypothesis of this article is that the private companies should have more roles in the operation in the mines.

## Questions

Does the codes which are related to mine operation in Iran need amendment?

What are the rights and obligations of the Owner of Mine Operation License in Iran?

## Research Method

The method of this study is analysis of the codes related to smuggling in Iran by paying attention to interpretations made by Iranian

lawyers and also analysis of the statistics related to smuggling. The information and data for this study gathered by codes, journals, books and internet.

## Definitions

We need to describe some definitions first:

a- Mine

Some storage in or on the earth which using of that storage is profitable.

b- Using mine's license

The foperation on mine needs a license from industry and mine ministry. The mentioned license is for special time and cannot have the following items:

1. Specifications of the mine
2. Application of the person who want to operate on the mine
3. Application and the design of the operation.
4. The time of operation

**C- Material of the mine**

Material of the mine are as bellow:

First class such as salt (in water and stone form), plaster, sand...

Second class: metals such as gold, iron, zinc, cobalt, copper ...

Nitrates, phosphates, sulfates.

Mica, graphite, talk, quarts, kaolin, stones for decoration stones with high values such as ruby, turquoise, diamonds...

Oil, gas, product from oil, pitch

Radioactive materials.

**D-Agreement for operation**

Agreement for operation is a license for nongovernmental institutes and for special time

**Rights for the Owner of the Operation License****The Right for the Mineral Body**

The mineral body is belonging to the owner of the mine. The owner of the mine or his/her representatives can use the mineral body, but first they should inform the ministry of industry and mine.

Pay attention that the owner of the mine has priority to use the mineral body. I mean the owner can use the mineral body to the depth which is determined by the customs.

The owner of land will not pay the right of the government according to article 10(1) (a) of the operation of mine Law.

**Ownership's Profit for the Mine Owner**

Ownership's profit for the mine owner is some money which is paid to the government for operation in the mine, copy right, trade mark or technological knowledge.

According to the article 44 of the constitutional code of Iran in order to reducing the operation of the government and increasing the operation of non-governmental institutes and people, the government try to share people and private institutes in mines and industries.

For the mentioned reason the license for the operation in mines belonged to the government, then the government let the private persons to use the mine, so the government can get the ownership profit from the person who operate in the mine.

So the ownership profit is like a relation between the government and the private persons who operate in the mine.

From the economic theory the ownership profit or royalty for the mines is equal to the price which the market will pay to the mentioned resource:

As I noted earlier the ownership profit for operate in the huge mine or those mines which only the government has the right to operate in them is only related to the government, but the ownership profit for the small mine can be belonged to the private person, I mean the owner of the mine.

According to article 14 of operation of mine code of Iran, the person who operates in the mine should pay some money of the material in the mine to the government.

The money which we describe above is different from the ownership profit and is called governmental right.

Pay attention that even the governmental organs operate in mine, are obliged to pay the governmental right to the government. But the ownership is some money which is paid to the owner of the license which for the huge mine the owner of the license is government.

As a whole the financial relation between the government and the owner of the mine company has four aspects which is listed below:

The ownership profit which is called royalty.

Special right of the government which is called special tax.

**Corporate tax**

Some money from the profit which should be given to the government.

Pay attention that the 4<sup>th</sup> item of the above items is for the time that the governmental

organs are the person who operate in the mine.

In Iran royalty is not assessed yet and the special tax is lower than other parts of the world.

In every country some factors is used to determine the royalty special tax and corporate tax.

I mean according to geographical parts of the world the factors which is used to determining the price of the royalty, special tax and corporate tax is different.

### **The Land of the Mine**

If the mine is located in the land of another person, operating organ in the mine should pay rent to the owner of the mine.

The mentioned rent is determined by judicial if any dispute happens.

If the owner of the land refuses to get the money, the money will transfer to box of the document record organization.

Pay attention that the mentioned rent is paid only if the belonged to the owner of land is in the condition of use, not every structure is entitled to pay the rent.

### **Special Tax**

The government should transfer the special tax to the governmental account every three months.

### **Rights of the Government**

According to the article 1 of the Iran's oghaf code (1983) every land and buildings which is related to vaghf (An Islamic rules in which the owner of the land or the building transfer the profit of the ownership to special people or every people) should not change the use of the land and the use which is determined by the owner should be noted.

If the mine is located in the land which is related to vaghf, some money should be transfer for vaghf.

Pay attention that there is no difference whether the person who operate in mine is governmental or non-governmental institute.

The operating company in the mine should provide a comprehensive report to show its operation.

According to the article 35 of the Executive Procedure for operation in mines, the company which operates in the mine should provide an operation report at the end of the Hejri Shamsi year, to the government.

The government, determine the royalty and special tax according to the mentioned report.

The government determined them in every three months of the year. So it is very important that the report is provided completely, truly and in good faith.

The head of the operating company himself should sign the report.

The sign of the technical responsible is also needed. The mentioned report should be sealed at the end.

As we noted earlier because the government determine royalty and special tax according to the operation in every three months, the mentioned report, should show the operation of the mine in every three months of the year separately.

The operating company should keep a copy from the operation report for their company and send the report to the organization which is related to the mines and industries ministry.

The report should have the items which are listed below:

Capacity of the operation, the way in which the operation is done.

Exploration and the operations is done during the exploration.

Storage of the minerals and the Bill of landing of the mineral materials.

The map of the Iran which the mine is located in, and the topographic map of the land.

The mean carat of the mineral materials and the possibilities and actual storage of the mineral material in the mine.

The table of costs and incomes, the fixed costs and investment and the incomes acquired from selling the mineral materials.

Information about the humane resources and the rate and capacity of the mine production.

### **Mineral materials in the region of the mine**

Estimating of the production and sale for the next year.

The company which operates in mine should keep the data and information in a notebook in their company.

Every mine and its branches should record the data and information which is related operation in mine at the end of each Hejri Shamsi year in Iran the companies which are operating in mines , or use other natural resources such as woods should pay the tax to the government.

If any company fail to pay the mentioned money which is some percent of their production and sale, it will be obliged to pay fine, which is determined as a percent of the tax.

If the tax is money only (and not material for example) the judicial system can obliged the company which do not pay the tax to pay fine for delaying to pay tax, according to the article 221 of the civil procedure of Iran.

The judge should determine the mentioned tax according the contract between the party, which in our case are the government and the operating company and also with paying attention to article 712 of civil procedure.

It is good to know that the mentioned article, I mean article 712 of Iran's civil procedure determine the fine as 12 percent in every year.

The articles 719, 721, 723, 724, 725, 726 of the Iran's civil procedure of the 1939 were related to the fine which is determined for delaying for payment of the money.

In the claims which are related to the payment, If some money was accepted in the

contract between the parties to be paid, if the debtor delay to pay the money addition to the fine, I mean 12percent which is obligatory according the law, as a whole the fine cannot be more than 12 percent which is obligatory by law.

If their contract accepted the money less than 12 percent of the payment the judge should make an award according to their contract, I mean the lower fine.

According to the article 721 of the last civil procedure of Iran if there was no item in their contract which deal with the fine and determining it, 12 percent is used.

According to article 725 of the mentioned law the loss which is happens for delaying do not need to be prove and only delay for the payment is sufficient for making an award against the person who delay to pay the money.

The mentioned article, and article 719 of the civil procedure noted that, in claims dealing with money the fine determined 12 percent of the dept.

After revolution in Iran, the article 719 and 712 of the last civil procedure recognized against Islamic religion and become null and void.

As I mentioned earlier, in those articles the fine determined 12 percent of the dept.

There were some ideas which support those article and some ideas which refuse them and believe that the mentioned articles are against the religion for some years.

In the 2000 Shoray-e Negahban (a body which supervise the legislation in Iran) , put an end to those challenge and refuses the rules of the mentioned 2 articles , so the courts refuse to make an award in order to determine the fine. So no fine for delay was accepted in the Iran's law.

But shorayenegahban in the case of fine for delaying the depth of banks, declared that:

"If the banks in their contracts make a condition declaring that if the managers fail

to pay their debt to the bank, they will be obliged to pay 12 percent of the debt.

As we have seen shoray-e negahban confirm 12 percent which was determined as fine for delaying to pay the money.

The money should be paid to the mine and industries ministry according to article 14, 14(1) and 14(2) and also article 20 and 25 of the law for the mentioned ministry is obligatory and fail to pay the rights of the government will have the fine which is 3 percent of the money should be paid to the government.

According to the article 48 of the general computation of the country law of Iran (1987/8/23 HejriShamsi) the money listed above recognized as the direct tax of the government.

The money for royalty, special tax and other money which should be paid to mines and industries ministry of the Islamic republic of Iran, addition to the money which should be paid if any delay happens for the payment are determined in a table in the executive procedure of the mines and industries ministry of Iran.

Another item that I like to note here is that, the government is obliged to make a special box in the mines and industries ministry to cover all of the losses because of not to reach to the resources, are at least cover some of those losses.

Sanctions for not to operate the obligations of the mine operator

We should know that before the revolution in Iran, getting the license for operation in mines was so hard, but nowadays private operators in mines and private companies which operate in mines in all countries of the world are increasing and the governmental organs cannot operate in all of the mines and other resources within the country.

In recent 30-40 years some works are done in Iran in order to make better situation

for private company to operate in mines and other natural resources.

Although the conditions became much better there are some problems which should be solved.

One of those problems is related to the method used in operation in the mine and protection of them.

We know that we need rules and law to determine the rights and obligations.

## Conclusion

According to the mentioned matters and paying attention that mines are common wealth of the society and use of them is according to the special rules of the law.

So use of the mines should be under supervision of the law, but this fact that the mines are belong to the government should not reduce the capacity of the private companies to operation the mines.

The owner of the license to use the mine has some right and obligations against the government and third persons according to the law.

As a conclusion of the above items the government should let the private companies to operate in the mine and the mentioned companies should pay the taxes and other rights of the government because the special rights of the government and the mines are common wealth which are belonged to all of the people of the country and if the owner of the license fail to fulfillment those obligations, is responsible according to the law and some sanctions is determined in law for this responsibility.

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