

Renewable Energy Based License-Exempt Electricity Generation

Recent Changes in the Legislation

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Legislation on license-exempt electricity generation has been recently changed by

- (i) the Regulation on License-Exempt Electricity Generation, published in the Official Gazette and became effective on 12 May 2019, (“Regulation”) which repeals and replaces the previous regulation on the same,
- (ii) the Communiqué Repealing the Implementation Communiqué on License-Exempt Electricity Generation, published in the Official Gazette and became effective on 12 May 2019, which repeals the previous communiqué on the same¹ (“Communiqué”), and
- (iii) President Decision No. 1044 and dated 9 May 2019, published in the Official Gazette and became effective on 10 May 2019 (“President Decision”).

Main Features of the Changes

This Alert summarizes important changes brought by the Regulation, the Communiqué and the President Decision concerning the renewable energy based electricity generation facilities with a capacity up to 1 MW, which are exempt from the licensing requirement under Article 14 of the Electricity Market Law No. 6446 (“Facilities”).

1) Increased Maximum Capacity

Pursuant to Article 14 of the Electricity Market Law No. 6446, the President is authorized to increase the maximum capacity limit of the Facilities up to five times. Based on this authority, the President Decision increased the maximum capacity limit from 1 MW to 5 MW. This increased capacity is applicable only for the Facilities, which are granted with the right to receive a call letter for system connection agreement after 10 May 2019.

2) Increased Minimum Consumption Requirement

The Regulation provides that installed capacity of the Facilities cannot be more than the capacity of the associated consumption facility stated under the relevant system connection agreement. Previously, it was allowed to establish the Facilities with a maximum installed capacity up to 30 times of the capacity of the associated consumption facility.

3) Excess Electricity

The Regulation does not change existing purchase and price guarantees. Accordingly, the authorized supply companies are under the obligation to purchase excess electricity generated by the Facilities,

¹ The Communiqué does not include any provision other than the one repealing the previous communiqué. The Regulation states that all of the references that are made to the repealed communiqué under the legislation, shall be deemed as made to the Regulation.

based on the price guarantee regulated under the Renewable Energy Law No. 5346 for the first 10 years of operation.

- a. **Default of the Relevant Supply Company in Payments:** Previously, the interest rate stated under Article 51 of Law No. 6183 Concerning Procedures for Collection of Public Receivables (currently 2%) was applicable for defaults of the authorized supply companies in excess electricity payments. The Regulation increased this rate by two times.
- b. **Monthly Settlement:** The Regulation additionally introduced a new monthly settlement process for the excess electricity. This new settlement method is expected to allow the Facilities to utilize from the excess electricity that they generate on holidays and protect them from price fluctuations.

4) Distance Requirement

Previously, the distance between a Facility and the transformer that it will be connected to could not be more than (i) 5 km air distance and 6 km project distance for the Facilities with an installed capacity equal to or less than 0.499 MW and (ii) 10 km air distance and 12 km project distance for the Facilities with an installed capacity between 0.5 MW and 1 MW.

The Regulation repealed this requirement; however, the Facilities still must be within the distribution region of the associated consumption facility.

5) New Restriction for Solar-Based Facilities

The Regulation provides that the solar energy based Facilities can only be established as rooftop and facade installations. Therefore, ground mounted solar power plants are no longer exempt from the licensing requirement.

6) Step-in Rights of the Lenders

Previously, step-in right of the lenders was recognized as an exception for facility transfer prohibition that is applied until temporary acceptance of the Facilities. The Regulation repealed this exception. Therefore, transfer of the Facilities is no longer possible until the temporary acceptance, even if the lenders have the right to request the transfer under their financing agreements.

7) Supervision and inspection

The Regulation authorizes Energy Market Regulatory Authority for supervision and inspection of the Facilities, instead of the relevant network operator or authorized supply company. The authority and duty of the relevant network operator or authorized supply company in this scope is now limited to reporting.

8) Implementation of the Changes for the Existing Facilities

Pursuant to Provisional Article 2 of the Regulation, continuing procedures and new requests regarding the Facilities for which (i) the right to receive a call letter has been granted, (ii) a call letter has been received, or (iii) a system connection agreement has been signed prior to the effective date of the Regulation (10 May 2019), shall be concluded in accordance with the Regulation.

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