

Recent Changes in the Legislation On License-Exempt Electricity Generation

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The Regulation Amending the License-Exempt Electricity Generation Regulation (the “Amending Regulation”)¹ has been issued by the Energy Market Regulatory Authority (“EMRA”) and became effective on 23 March 2016. The Amending Regulation provides several important changes in relation to license-exempt electricity generation projects as explained below.

Main Features of the Amending Regulation

1. Share Transfer Restrictions

The Amending Regulation prohibits the transfer, directly or indirectly, of the shares of the license-exempt generation facility owners at the construction stage of the project. Accordingly, merger with other legal entities, demerger, and share transfer before the temporary acceptance of the generation facilities are prohibited while share transfers at the operation stage are permitted. This amendment will be applicable to both existing and future projects.

2. Minimum Consumption Requirement

Prior to the Amending Regulation, there was no minimum own electricity consumption requirement for license-exempt generation facilities. However, the Amending Regulation requires that the license-exempt generation facilities must consume at least 1/30 of their total generation amount. This amendment shall not be applicable to projects which had obtained the right to receive a call letter and which were published on the website of the relevant distribution company before 23 March 2016.

3. Restriction on the Installed Capacity of the Projects

Prior to the Amending Regulation, there was no restriction regarding the number of the license-exempt generation facilities to be established by the same individual or legal entity in the same transformer area. However, the Amending Regulation provides that maximum 1 MW capacity can be allocated to any individual or legal entity from the same group of companies for license-exempt generation projects in the same transformer area.

¹ License-Exempt Generation Communiqué was also amended by the Communiqué Amending the Implementing Communiqué of the License-Exempt Electricity Generation Regulation in line with the Amending Regulation. The amending communiqué has been published in the Official Gazette 29662; dated 23 March 2016.

Furthermore, the Amending Regulation states that the distance between a license-exempt electricity generation facility and the transformer that it will be connected to cannot 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.

Similar to the minimum consumption requirement, these amendments shall not be applicable to the projects which were published on the website of the relevant distribution company before 23 March 2016.

4. Incentives

The Amending Regulation does not change the purchase and price guarantees currently available to license-exempt generation facilities based on renewable energy resources. Therefore, these facilities will continue to benefit from such incentives as well as the domestic equipment utilization incentive. Accordingly, excess electricity produced by license-exempt electricity generation facilities that are based on renewable resources must be purchased by the relevant authorized supply company based on the price guarantee regulated under the Renewable Energy Law No. 5346 for the first 10 years of operation. In addition, license-exempt generation facilities can benefit from the domestic equipment incentive provided under the Renewable Energy Law for the first 5 years of their operation.

However, please note that EMRA has prepared two draft regulations for further amending the license-exempt generation legislation in March 2016 (the "Draft Amendments"). The Draft Amendments do not envisage any change to the price and purchase guarantees for excess power, but do envisage removing the domestic equipment utilization incentive for license-exempt projects.

Conclusion

The main purpose of the Amending Regulation is to limit the use of license-exempt generation right as a tool to engage in electricity trade as an alternative licensed generation activities. For this purpose, it restricted the number of license-exempt projects that the same individual or legal entities from the same group of companies could develop. As a result, while the same individual or legal entity could have, for example, 10 solar power plants with 1 MW installed capacity each, and could sell almost all of the electricity generated by such power plants to the relevant distribution company prior to the Amending Regulation, now the same individual or company group cannot have more than 1 MW license-generation capacity in the same transformer area, and the electricity it consumes must be at least 1/30 of the electricity it generates. However, while making such changes, the Amending Regulation protected the vested rights of the existing projects by limiting its applicability to future projects – those that were not published on the website of the distribution companies prior to the date it became effective.

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