

Turkish Energy & Infrastructure

In this Issue...

Recent Changes in Legislation

1. Amendments to the Electricity Market Balancing and Settlement Regulation and the Day-Ahead Market Offers
2. Presidential Circular Regarding Nuclear Power Plant Projects
3. Additional Transmission Fee for 2020
4. EMRA Board Decision on Independent Auditing of Natural and Legal Persons Operating in the Energy Market
5. Principles and Procedures for the Spot Pipeline Gas Import
6. Amending Regulation on Financial Restructuring
7. Interest Free Banking – Participation, Development and Investment Banks
8. Presidential Decision on Project Based State Aids for Investments
9. Communiqué on Equity Based Crowdfunding

Draft Legislation

1. Draft Regulation Amending the Electricity Market Subsidiary Services Regulation
2. Draft Regulation on the Acceptance of Electricity Generation and Electricity Storage Facilities
3. Draft Amendments to the Regulation on Increasing Efficiency in the Use of Energy Resources and Energy

Court Decisions

Decision of the Supreme Court of Appeals Grand General Assembly on the Unification of Judgments on Application of the

Initially Requested Interest in the Case of Increase of the Disputed Matter with an Amendment Petition

Article

Turkish Wealth Fund: What happened so far and what are the next steps?

Other Recent Developments

1. Medium Term Fiscal Plan
2. The Turkish Data Protection Board Decisions
3. Establishment of the General Directorate of Borrowing
4. Reconstruction of Energy and Natural Resources Investments Monitoring and Coordination Board
5. Recent Developments on Health Public Private Partnership Projects

Recent and Upcoming Conferences & Events

1. IPFA Turkey: Challenges in Renewable Financing – YEKA Projects and Outlook Post 2020
2. ITOTAM Istanbul Arbitration Days: Panel on the Monetary Aspects of International Arbitration
3. SHURA Energy Transition Center: Introduction of the Report on Financing Energy Transition in Turkey
4. SOLAR Istanbul 2020: Solar Energy, Storage, E-Mobility and Digitalization Exhibition and Conference
5. IRENEC 2020: 10th International Renewable Energy Conference

Recent Changes in Legislation

Amendments to the Electricity Market Balancing and Settlement Regulation and the Day-Ahead Market Offers

The Regulation Amending the Electricity Market Balancing and Settlement Regulation (“**Amending Regulation**”) and the Energy Market Regulatory Authority Board Decision¹ Amending the Procedure and Principles Regarding the Structure and Evaluation of Day-Ahead Market Offers (“**Amending Board Decision**”) were both published in the Official Gazette No. 30857 dated 9 August 2019. Both the Amending

Regulation and the Amending Board Decision made certain amendments to the provisions regarding offers in the day-ahead market. The Amending Regulation also introduced novelties in the electricity market including, *inter alia*, unrequited market transactions and the participation of nuclear power plants to the settlement mechanisms.

Amendments to the Day-Ahead Market Offers

The definitions of block purchase and sale offers were amended so as to correspond to an active electric energy purchase/sale offer that includes a single price for the time period subject to the offer and an amount that may differ based on settlement period. The definition of flexible sale offers was also amended accordingly and the concept of flexible purchase offers was introduced in

¹ EMRA Board Decision No. 8706 dated 11 July 2019.

a parallel manner. In line with these changes, definitions such as offer duration and offer time period were also included to the Electricity Market Balancing and Settlement Regulation².

Unrequited Market Transactions

The Amending Regulation introduced a new concept, namely “unrequited market transactions” which are defined as transactions exceeding the transaction amounts determined under the “Unrequited Market Transactions Method” which is to be prepared by the market operator (“EPIAŞ”) in accordance with the trading volume of the market participants. The Amending Regulation provides that sanctions to be implemented by EPIAŞ to market participants conducting unrequited market transactions shall be regulated under the Unrequited Market Transactions Method which is to be prepared and announced on EPIAŞ’ website. Bilateral agreement notifications considered as unrequited market transactions shall also be cancelled in accordance with the provisions of the Unrequited Market Transactions Method.

Participation of Nuclear Power Plants

The Amending Regulation sets forth that the participation of energy generated from nuclear power plants during the test period before preliminary acceptance to the settlement mechanism shall be carried out following the completion of the preliminary acceptance of the said plant’s unit(s) in accordance with the Nuclear Power Plants Project and Acceptance Regulation³. In addition, unit(s) in the testing period and unit(s) in the operation period shall be recorded under separate categories of the same entity in order to ensure that the settlement calculations are done separately.

Effective Date

The provisions regarding the amendments to the day-ahead market structure and offers came into force as of 1 September 2019; whereas the amendments related to unrequited market transactions became effective as of 1 October 2019. The rest of the provisions came into force as of the publication date of the Amending Regulation, i.e., 9 August 2019.

Presidential Circular Regarding Nuclear Power Plant Projects

The Presidential Circular No. 2019/17 and dated 15 August 2019 regarding Nuclear Power Plant Projects (“**Presidential Circular**”) was published in the Official Gazette No. 30860 dated 16 August 2019. Under Turkish law, such circulars are issued to guide, clarify, or call attention to a certain subject or implementation of a regulation.

Accordingly, the Presidential Circular, addressing the relevant public authorities, was issued in order to draw attention to the significance of the successful and secure completion of the current nuclear power plant projects. The Presidential Circular urges relevant public authorities to show the utmost care in carrying out their responsibilities in a timely manner for works and transactions before them regarding the realization of nuclear power plant projects coordinated by the Ministry of Energy and Natural Resources. The Presidential Circular also emphasizes that all kinds of support and convenience will be provided to ensure the completion of the nuclear power plant projects without a delay.

Additional Transmission Fee for 2020

With the Energy Market Regulatory Authority’s (“EMRA”) Board Decision No. 8854 regarding tariffs, additional transmission fee to be implemented in 2020 has been determined as 0.5% of the transmission tariff of the national transmission company, Türkiye Elektrik İletim Anonim Şirketi (“TEİAŞ”). The additional transmission fees will be calculated by TEİAŞ on a monthly basis and deposited into the EMRA’s account until the 25th of the following month.

EMRA Board Decision on Independent Auditing of Natural and Legal Persons Operating in the Energy Market

The Energy Market Regulatory Authority (“EMRA”) revised the list of legal persons subject to independent auditing obligation with its Decision No. 8857 adopted on 26 September 2019 (“**Decision No. 8857**”). Decision No. 8857 entered into force on 1 October 2019, on the same date it was published in the Official Gazette and amended the previous Decision No. 5507 dated 3 March 2015 on the same subject.

With its Decision No. 8857, EMRA limited the scope of license holders who will be subject to the independent auditing requirement. Accordingly, in the electricity market, only legal persons who hold generation licenses, distribution licenses or supply licenses whose tariffs are subject to regulation must be independently audited. As per its previous decision, legal persons who hold a generation pre-license, a wholesale license or a retail license were also subject to independent auditing. With regards to the legal persons operating in the natural gas market, it is set out that only the holders of distribution licenses, storage licenses whose tariff is subject to regulation and transmission (pipeline) licenses will be subject to the independent auditing requirement. Previously, legal persons operating in the natural gas market with wholesale, import or export licenses were also subject to independent auditing. With this amendment, the relevant legal persons have been exempted from the independent auditing requirement.

² Published in the Official Gazette No. 27200 dated 14 April 2009.

³ Published in the Official Gazette No. 30659 dated 18 January 2019.

Principles and Procedures for the Spot Pipeline Gas Import

New Rules on the Spot Pipeline Gas Import

I. The status quo

Currently, BOTAŞ (the State-owned natural gas utility) and seven private importers import pipeline gas to Turkey under the long-term contracts based on oil-indexed prices. The private importers only import the Russian gas under their contracts with Gazprom Export LLC (“**Gazprom**”). In addition to the Russian gas, BOTAŞ also imports pipeline gas from Iran and Azerbaijan.

Until the amendments introduced to Provisional Article 2 of the Natural Gas Market Law No. 4646⁴ (“**NGML**”) in March 2018, this status quo were enshrined under this Article. As such, if BOTAŞ already has a pipeline import contract with a country, it was not possible to conclude a new import contract with such country. The amendment in March 2018 provided exceptions to this prohibition. Now, the market players can also import spot pipeline gas from such countries if they obtain a spot pipeline import license from Turkey’s energy watchdog, the Electricity Market Regulatory Authority (“**EMRA**”).

II. The deterioration of the status quo

During the period where the market had been waiting for the secondary legislation in relation to the spot pipeline gas imports, the Turkish natural gas sector (particularly the private importers) experienced operational and economic difficulties. This mainly stemmed from the following:

- sharp devaluation of Turkish Lira against the hard currencies;
- abolition of the compromises provided by BOTAŞ and Gazprom that had enabled the private importers to derive profits⁵;
- increase in LNG⁶ imports;
- the ambiguities which resulted from the arbitral awards rendered against certain private importers in the arbitration proceedings initiated by Gazprom⁷.

Under these circumstances, in 2019 (i) two private importers failed to take any gas from Gazprom; and (ii) all other private importers could only take around 1 bcm, a quantity that is way below these importers’ annual take-or-pay⁸ obligations.⁹

III. The new principles

In such difficult times, where Turkey was also expected to reveal its position in view of the approaching expiration of certain Gazprom import contracts in 2021¹⁰ as well as the initiation of the new cross-border TANAP and Turkish Stream pipelines, in September 2019, EMRA published its Principles and Procedures for the Spot Pipeline Gas Import (“**Principles**”) ¹¹.

The key aspects of the Principles are as follows:

- The market players (including the existing importers) can participate in the spot pipeline gas import scheme provided that they obtain a spot pipeline import license from EMRA.
- The capacity for spot import will be determined based on yearly, quarterly, and monthly tenures. Daily and intra-daily will also be possible. However, for these, BOTAŞ is expected to improve its electronic infrastructure until 1 June 2020.
- 30% of the gas available for capacity reservation will be allocated for yearly reservation. This ratio is 40% for quarterly and %30 for monthly reservations.
- While determining the maximum quantity for the capacity reservation, EMRA will consider the annual take obligations of the pipeline gas importers under their long term contracts so that they will not be adversely affected from the spot pipeline gas trade.
- In case of multiple interests for the same capacity, EMRA will launch a tender whereby the bidder placing the highest fee will be entitled to import the subject capacity.
- The spot gas importers must start to import their reserved capacities within a certain period of time (i.e., 30 days for yearly, 15 days for quarterly, and

⁴ Published in the Official Gazette No. 24390 dated 2 May 2001.

⁵ Gazprom, the ultimate supplier of the gas supplied to all private importers, determines the gas prices in USD. In turn, the importers make payments in USD. While BOTAŞ also purchases from Gazprom in USD, BOTAŞ sells gas in TL with subsidized prices. Due to its significant market power, BOTAŞ’s tariffs for distribution companies and eligible consumers provide benchmark prices for its competitors. The problems arising from the difference between the BOTAŞ prices and the Gazprom import price used to be remedied either by BOTAŞ or Gazprom. Namely, either BOTAŞ increased its reference prices or Gazprom discounted the price it applied to the private importers which provided the private players a margin to compete with BOTAŞ prices. Contrary to this background, BOTAŞ and Gazprom stopped to adopted this flexible approach for the private wholesalers and importers since mid-2017. As a result, the private players’ supply prices were higher than the benchmark BOTAŞ prices leading to the inability of the private importers to compete with BOTAŞ prices.

⁶ Enerji IQ, a market periodical, reported that, in comparison with 2018, in 2019, (i) the pipeline gas imports decreased by 16%;

(ii) whereas the LNG imports increased by 14%. (Energy IQ, 2019-42 / 359, 31 October 2019).

⁷ Gazprom initiated price review arbitrations during late 2016 and early 2017 against Turkish private importers where Gazprom claimed the retroactive removal of the 10.25% discounts applied under its import contracts as of 1 January 2017. Gazprom prevailed in these lawsuits. Gazprom also initiated the same arbitration against BOTAŞ; however, the parties then settled and Gazprom withdrew its claims.

⁸ These take-or-pay clauses provide that the importers make a minimum payment for the gas that they failed to take from their contractually agreed minimum annual quantities.

⁹ Energy IQ, 2019-44, 14 November 2019.

¹⁰ The following import contracts with Gazprom will expire by 2021: BOTAŞ (4 bcm), Avrasya (0.5 bcm), Bosphorus (0.75 bcm), Enerco (2.5 bcm), Shell: (0,25 bcm).

¹¹ Published in the Official Gazette No.30893 dated 19 September 2019.

10 days for monthly reservations.) Otherwise, they will lose their rights to these capacities.

IV. What's next?

The Principles provide that the yearly capacities will be announced by 1 November that precedes the relevant gas year. For 2020, however, EMRA decided¹² that it will not announce yearly capacities for 2021 and only quarterly and monthly capacities will be available in the next year.

This is not surprising as more must be done to initiate the spot pipeline gas imports. For this end, comprehensive amendments must be introduced to BOTAŞ's Network Code (aka "ŞİD"). More importantly, the essential terms surrounding this import should be revealed (*i.e.*, the exporter country, the contractual basis between the importer and the exporter, the basis for gas allocation in the delivery point, and of course "the price" of the spot gas).

Nevertheless, this is a very exciting development for the Turkish natural gas market. If successful, the spot pipeline gas import might enable the market players to (i) be relieved from the stringent terms of the current long-term import contracts with Gazprom, (ii) position themselves according to the foreseeable gas demand parameters and avoid the "take-or-pay" issues; and (iii) purchase gas based on the currently cheaper spot gas prices when compared with the oil-indexed prices under the Gazprom import contracts.

Amending Regulation on Financial Restructuring

Regulation Amending the Financial Debts Restructuring Regulation ("**Amending Regulation**") was published in the Official Gazette No. 30886 dated 12 September 2019 (*bis*) and entered into force on the same date. The Amending Regulation mainly aims to reflect the novelties that have been introduced by Provisional Article 32 of Banking Law No. 5411 ("**Provisional Article**")¹³ which entered into force on 19 July 2019.

The significant amendments are as follows:

- In line with the Provisional Article, the definition of creditor institutions covers non-resident banks and financial institutions directly providing loans to borrowers, multinational banks and institutions directly investing in Turkey, and special purpose vehicles and investment funds established by these creditors for debt collection. In this context, the above-mentioned international creditors may participate in a financial restructuring process without being subject to the creditor institutions' consent or any decision quorum.
- The Amending Regulation explicitly underlines the "reasonable time" requirement which is also stated under the framework agreements. It states that the financial restructurings which do not enable the

borrower to repay its debts within a reasonable time are not accepted within the scope of the Amending Regulation. Therefore, the relevant tax exemptions and incentives under the Provisional Article will not be applicable to these restructurings.

- Financial restructurings that have been conducted outside the scope of framework agreements before 19 July 2019 will not be accepted within the scope of the framework agreements to be signed in accordance with the Amending Regulation. This means that the tax exemptions and incentives will not be applicable to these restructurings.

Interest Free Banking – Participation, Development and Investment Banks

The Communiqué on Compliance with the Principles and Standards of Interest-Free Banking was published in the Official Gazette No. 30888 and dated 14 September 2019 ("**Communiqué**") and entered into force on the same date. The Communiqué provides the principles and procedures regarding the interest-free banking for participation, development and investment banks.

- The banks have to establish an independent advisory committee (i) to decide principles and standards of interest-free banking and (ii) to pursue the compliance with these principles and standards.
- The advisory committee shall consist of at least three members. At least 2/3 of the members must (i) reside in Turkey (ii) have a license degree in theology or a similar field or a master degree or PhD in the field of the interest free banking and (ii) have a three-year experience in the interest free banking sector.
- The activities of the banks within the scope of interest free banking will also be audited by internal audit teams of the banks.
- The banks are required to efficiently inform their clients regarding (i) the products and services provided within the scope of the interest free banking standards and principles and (ii) their rights and obligations arising from contracts on the interest free banking activities.

Presidential Decision on Project Based State Aids for Investments

The Presidential Decision amending the Decision on Project Based State Aids for Investments ("**Decision**") was published in the Official Gazette No. 30906 and dated 2 October 2019. With the Decision, the Minister of the Industry and Technology has been empowered to execute an investment project agreement with a minimum amount of 5 billion Turkish Liras with investors defined under the Law No. 4875 on Direct Foreign Investments and dated 5 June 2003. The Decision also sets forth that the investment project agreements that

¹² EMRA Board Decision No. 8912 dated 31 October 2019.

¹³ Please [click here](#) to see our previous Newsletter for our note on the Provisional Article.

can benefit from the said State aid must pertain to fully new investment projects.

Communiqué on Equity-Based Crowdfunding

General principles and procedures of the crowdfunding mechanism were laid out with the amendment dated 5 December 2017 to the Capital Markets Law No. 6362 dated 30 December 2012 (“**Capital Markets Law**”). The Capital Markets Law defines “crowdfunding” as a collection of money from the public via crowdfunding platforms for financing of a project or a start-up in accordance with the rules set by the Capital Market Board (“**Board**”) without being subject to the provisions on investor compensations. To elaborate on the crowdfunding mechanism, the Board issued the long-awaited Communiqué III-35/A.1 on Equity-Based Crowdfunding (“**Communiqué**”) which was published in the Official Gazette No. 30907 dated 3 October 2019.

1. Crowdfunding Platforms Are Required to Be Listed by the Board in Order to Engage in Activities Under the Communiqué

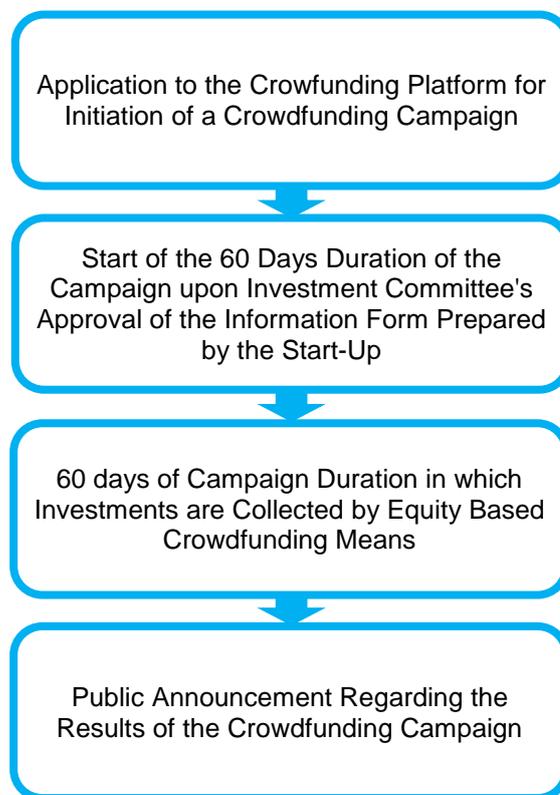
To be listed by the Board, crowdfunding platforms shall fulfill requirements set forth under the Communiqué, the most important of which can be summarized as follows:

- Platforms shall have a share capital of at least TL 1,000,000 all paid-up, be established as a joint-stock company and the type of shares of the crowdfunding platforms shall be registered shares;
- Trade name of the crowdfunding platform shall include the inscription “Crowdfunding Platform”. Furthermore, the articles of association of the platform shall state that the platform exclusively engages in crowdfunding activities;
- Shareholders and members of the board of directors shall meet the requirements provided under the Communiqué; and
- Crowdfunding platform shall establish an investment committee in accordance with the Communiqué.

In addition to the abovementioned provisions, the Communiqué also regulates activities of the crowdfunding platforms established abroad. Within this context; crowdfunding transactions that the residents in Turkey participate through platforms established abroad, accounts opened abroad for this purpose, cash and other assets sent to such accounts shall be outside the scope of this Communiqué provided that no advertising and marketing activities are made in relation with the same to residents in Turkey. However, in case of any of the conditions such as (i) opening of a workplace in Turkey, (ii) creating a website in Turkish, (iii) promotion and marketing activities regarding the crowdfunding activities made directly and/or through persons or institutions established in Turkey; such activities will be considered to address residents of Turkey and the provisions of this Communiqué shall apply.

2. Campaign Processes to Collect Funds Through Crowdfunding

There are four main steps in the course of the crowdfunding process, as set out below:



During the duration of the campaign process, the investors’ contributions will be gathered at a secured bank account by an escrow officer (Takasbank or any other escrow agent identified under the Communiqué III-56.1 on Principles Regarding Portfolio Safekeeping Services and Institutions Performing Such Services published in the Official Gazette No. 28695 dated 2 July 2013), who will also (i) transfer the funds to the start-up, if the campaign manages to gather the target amount, or (ii) return the funds to the investors, if the process fails.

Importantly, the Communiqué clearly underlines that only start-ups conducting activities related to technology and/or manufacturing can apply to the crowdfunding platforms to request for funds from potential investors in return of offering their shares.

3. Membership to the Crowdfunding Platform and Campaign Principles for the Investors

Investors willing to partake in the fund collection process through crowdfunding shall become members of crowdfunding platforms. Within the scope of the membership, crowdfunding platforms and investors shall execute a membership agreement.

The Communiqué also determines certain limits for the investors during the campaign process. In this regard, the annual maximum investment amount by non-qualified investors are determined as TL 20,000, or 10%

of the investors' annual net income, in any case, capped with TL 100,000. On the other hand, the Board does not determine an investment limit for qualified investors, who are defined under the legislation issued by the Board for venture capital investment partnerships.

4. Prohibited Activities

The Communiqué further regulates prohibited activities for crowdfunding platforms:

- Crowdfunding platforms cannot act as intermediaries for loan or lending by interest or pledge of any kind under any name or interest, and cannot engage in crowdfunding activities for any capital market instrument other than equity crowdfunding.
- Crowdfunding platforms cannot carry out crowdfunding activities for the purchase and sale of real estate based rights and the development of real estate projects and participation in start-ups.
- Crowdfunding platforms cannot conduct crowdfunding activities aimed at collecting funds for natural and real persons settled abroad in order to raise funds from persons residing in Turkey.
- Crowdfunding platforms cannot make evaluations, analyses and comments to investors in relation to start-ups or projects as investment advice.
- Crowdfunding platforms cannot act as intermediaries in secondary market transactions regarding shares except for wide authorized brokerage houses.

Draft Legislation

Draft Regulation Amending the Electricity Market Ancillary Services Regulation

On 28 August 2019, the Energy Market Regulatory Authority ("EMRA") published the Draft Regulation Amending the Electricity Market Ancillary Services Regulation ("Draft Regulation") on its website for public opinions until 16 September 2019.

The Draft Regulation brings (i) regional capacity transportation service and (ii) regional energy supply service as two new subsidiary services to be used in order to meet regional capacity and energy needs. Furthermore, the Draft Regulation repeals the provisions regarding the regional capacity rental service which has been found to be ineffective and inefficient.

1. Regional capacity transportation service

- Provisions on the regional capacity transportation service enable the transportation of electricity generation facilities between regions. The national transmission company, Türkiye Elektrik İletim Anonim Şirketi ("TEİAŞ") will determine the regional capacity needs and initiate tenders to delegate the services for such needs.

- Transportation tender will be made through the transported capacity cost.
- The transported capacity cost will be paid per MW to the generation license holders who are willing to transport their existing capacities.

2. Regional energy supply service

- Provisions on the regional energy supply service enable the supply of energy from the generation facilities established in the regions where existing capacity cannot be used effectively. TEİAŞ is authorized to initiate tenders to delegate such services upon prior approval of EMRA. The regional energy supply service can be tendered for a period of one year at the most.
- The generation license holders who will participate in such tenders shall give an offer for energy unit price (to be added to the variable cost component determined by EMRA).
- If market clearing price generated during the hours of generation schedule issued by TEİAŞ is lower than the energy unit price to be added to the variable cost component, the difference will be paid by TEİAŞ to the related license holder.

Draft Regulation on the Acceptance of Electricity Generation and Electricity Storage Facilities

On 23 September 2019, General Directorate of Energy Affairs of the Ministry of Energy and Natural Resources published the Draft Regulation on the Acceptance of Electricity Generation and Electricity Storage Facilities ("Draft Regulation") on its website for public opinion until 14 October 2019. The Draft Regulation proposes significant changes to the Electricity Generation Facilities Acceptance Regulation¹⁴ ("Present Regulation") by means of acceptance types and procedures, while other provisions concerning competent acceptance authorities and the responsibilities of license holders remain unchanged.

The novelties suggested by the Draft Regulation can be summarized as follows;

- Acceptance regime regulated in the Present Regulation is abolished and concepts of preliminary acceptance and temporary acceptance are removed. Instead, only one concept and procedure named "the acceptance" will be adopted. The acceptance requires the same requisites as the temporary acceptance.
- The partial acceptance, *i.e.*, an acceptance of a limited number of units, can also be conducted in parallel with the Present Regulation. However, the Draft Regulation regulates that the capacity to be considered as the basis for acceptance will be the electrical capacity of each unit as depicted in the generation license.

¹⁴ Published in the Official Gazette No. 29524 dated 6 November 2015.

- The provisions of the Present Regulation concerning the safe operation report which must be renewed in every five years are abolished.
- Acceptance regime and application procedures concerning the acceptance of electricity storage facilities will be separately regulated in principles and procedures to be issued by the Ministry of Energy and Natural Resources.
- The Present Regulation will be abolished and the Electricity Facilities Acceptance Regulation¹⁵ will no longer be applicable to the electricity generation facilities. Any reference made to the aforementioned regulations concerning the electricity generation facilities will be deemed to have been made to the Draft Regulation.
- Any application for the acceptance of electricity generation facilities initiated before the effective date of the Draft Regulation will be conducted and evaluated in accordance with the Present Regulation. The Draft Regulation will enter into force on January 1st of 2020.

Draft Amendments to the Regulation on Increasing Efficiency in the Use of Energy Resources and Energy

The draft amendments (“**Draft Amendments**”) to the Regulation on Increasing Efficiency in the Use of Energy Resources and Energy¹⁶ were published on the official website of the Ministry of Energy and Natural Resources (“**Ministry**”) on 8 October 2019; and was open for public opinion until 9 November 2019.

The main novelties proposed with the Draft Amendments can be summarized as follows:

- Calculation methods for energy density are determined. The energy density will be calculated by $(100/Y_i \cdot \ddot{U}FE^{17})$ with the year 2015 prices instead of $(1/\ddot{U}FE^{18})$ with the year 2000 prices.
- Public buildings, commercial and service buildings and industrial enterprises that are obliged to assign an energy manager, and organized industrial zones and industrial enterprises that are obliged to establish energy management units, will set up the TS EN ISO 50001 Energy Management System latest by the end of year 2023 and certify the same.
- Data insertions, registration procedures, applications and notifications will be carried out through ENVER portal (the Ministry’s energy management information system).
- Energy surveys will be mandatory for the businesses whose total annual energy consumption

is over 1000 TEP¹⁹. The industrial enterprises who wish to benefit from efficiency-enhancing project supports will have the right to apply for the Efficiency-Enhancing Project.

- For receiving support payments, implementation of efficiency projects within 2 years starting from the commencement date of the relevant projects will be mandatory.
- Energy surveys will be mandatory for thermal power plants with at least 20 MW installed capacity.
- Training procedures of energy efficiency experts will be changed.

Court Decisions

Decision of the Supreme Court of Appeals Grand General Assembly on the Unification of Judgments on Application of the Initially Requested Interest in the Case of Increase of the Disputed Matter with an Amendment Petition

Supreme Court of Appeals Grand General Assembly on the Unification of Judgments (“**Grand General Assembly**”) rendered a unification of judgments decision (“**Decision**”) on 24 May 2019, and the decision was published in the Official Gazette No. 30901, dated 27 September 2019.

The contentious issue discussed in the Decision was whether interest can be ruled for the increased part of the receivable in the case of an amendment of pleading in the absence of a separate interest request by the plaintiff later in its amendment petition. The Grand General Assembly decided, with the majority of votes, that the interest request raised in the initial claim of the plaintiff shall apply to the increased part of the matter in dispute as well if;

- (i) there is a partial lawsuit filed from the beginning with a request for interest,
- (ii) the matter in dispute can be subject to an increase by an amendment petition,
- (iii) the initial amount of the matter in dispute is increased by an amendment of pleading, and
- (iv) no interest is requested separately for the increased part in the amendment petition.

The Grand General Assembly based its decision on the reasoning that the amendment petition only pertains to an increase in the requested receivable amount; thus, all previous requests relating to that receivable must apply to the increased part of the matter in dispute as well.

¹⁵ Published in the Official Gazette No. 22280 dated 7 May 1995

¹⁶ Published in the Official Gazette No. 28097 dated 21 October 2011.

¹⁷ Domestic Producer Price Index of the relevant sector

¹⁸ Producer Price Index of the relevant sector

¹⁹ Tons of Oil Equivalent (TOE)

Article

Turkish Wealth Fund: What happened so far and what are the next steps?

1. Turkish Sovereign Wealth Fund

As explained in detail in our Summer 2016 and Winter 2017 Issues²⁰, the Sovereign Wealth Fund of the Republic of Turkey (“Fund”) has been established as a state-owned investment fund and incorporated as a joint-stock company pursuant to the Law No. 6741 on the Formation of the Asset Management Joint Stock Company of Turkey and Amendments to Specific Laws (“Law”)²¹. The main purpose of the Fund is to expedite the growth of capital markets and to be instrumental in funding of major infrastructure projects in Turkey.

Following the transition from parliamentary representative system to presidential system in Turkey, the Fund became affiliated to the President of the Republic of Turkey. Under this new regime, authorities granted to the Council of Ministers and the Prime Minister in respect of the Fund (*i.e.*, approval of the Fund’s investment plan, transfer of the Treasury resources to the Fund, appointment of auditors etc.) passed to the President as well.

Also, the Board of Directors of the Fund has been changed and the President of the Republic of Turkey has been appointed as the Chairman of the Board. The current composition of the Board of Directors of the Fund is as follows²²:

Board of Directors of the Fund	
President Recep Tayyip ERDOĞAN	Chairman
Minister of Treasury and Finance Berat ALBAYRAK	Deputy Chairman
Salim Arda ERMUT	Board Member
Hüseyin AYDIN	Board Member
M. Rifat HİSARCIKLIOĞLU	Board Member
Prof. Dr. Erişah ARICAN	Board Member
Fuat TOSYALI	Board Member
Zafer SÖNMEZ	Board Member and Managing Director

2. Rights and Assets Transferred to the Fund

Since its establishment in 2016, the Fund’s portfolio has been extended to include the following assets²³:

- 49.12% of the shares in Türk Hava Yolları A.O.,
- 51.11% of the shares in Türkiye Halkbankası A.Ş.,
- 49% of the shares in Türkiye Denizcilik İşletmeleri A.Ş.,

- 10% of the shares in Kayseri Şeker Fabrikası A.Ş.,
- 6.68% of the shares in Türk Telekomünikasyon A.Ş.,
- The total amount of the shares previously held by the Treasury in:
 - Türkiye Cumhuriyet Ziraat Bankası A.Ş.,
 - Türkiye Petrolleri A.O.,
 - Boru Hatları ile Petrol Taşıma A.Ş.,
 - Posta ve Telgraf Teşkilatı A.Ş.,
 - Türksat Uydu Haberleşme Kablo TV ve İşletme A.Ş.,
 - Borsa İstanbul A.Ş.,
- TCDD İzmir Port,
- Eti Maden İşletmeleri Genel Müdürlüğü,
- Çay İşletmeleri Genel Müdürlüğü (Çaykur),
- License to organize Piyango, Hemen-Kazan, Sayısal Loto, Şans Topu, On Numara, Süper Loto and other similar permitted lottery games played in return of cash for a duration of 49 years in accordance with the relevant legislation,
- Licenses to organize national horse races, rights and entitlements to joint betting on national or international horse races starting from 1 January 2018, together with the immovable properties as well as the buildings and facilities thereon that are assigned to the Ministry of Food, Agriculture and Livestock serving for the purpose of and actually used for organizing horse races, and
- Various immovable properties in Antalya, Aydın, İstanbul, Isparta, İzmir, Kayseri and Muğla previously owned by the Treasury.

3. Fund’s Continuing Projects and Agenda

The establishment purpose of the Fund is described as (i) to increase economic stability and contribute to the development of Turkey and (ii) to manage the public resources in a more efficient manner. In line with such purpose, the Fund can engage in a broad scope of activities including but not limited to investment, financing and management of public assets and is vested with the necessary authorities to do so. According to the public news, as of today, a total amount of TL 3.7 billion has been allocated by the Treasury to the Fund. In addition, the Fund is stated to have obtained loans from Eximbank and Halkbank for a total amount of TL 1,050 million and from a consortium including Citibank and ICBC for an amount of TL 1 billion. Further to its existing portfolio, below is a brief summary of the Fund’s continuing projects and the ones on its agenda:

²⁰ Please [click here](#) for Summer 2016 and [click here](#) for Winter 2017 issues of our Newsletter.

²¹ Published in the Official Gazette No. 29813 dated 26 August 2016.

²² Presidential Decisions published in the Official Gazette No. 30533 dated 12 September 2018.

²³ <http://turkiyevarliktfonu.com.tr/EN/Portfoy/5>

➤ Fund's Projects under the New Economy Program (Yeni Ekonomi Programı)

The Fund is set to make greenfield investments in petrochemicals and mining projects as well as energy generation from local sources in cooperation with the private sector or foreign capital as per the New Economy Program covering the period between 2020 and 2022. The Fund officials declared that their intention is to support projects aimed at reducing imports and input costs in the energy sector. In addition, the New Economy Program envisages that mineral exploration and drilling activities will continue rapidly and the reserves found as such will be brought into the economy with new business models and financing mechanisms under the leadership of the Fund. Also, for the first time, the Fund is contemplating to be involved in energy investments along with non-public market players. In all of the Fund's projects relating to petrochemicals, mining and energy generation from domestic sources, the priority will be the sustainable reduction of the current account deficit.

➤ Takeover of the Istanbul Finance Center

Zafer Sönmez, general manager of the Fund, declared on 29 August 2019 that the Fund will support acceleration of the Istanbul Finance Center Project. He added that the Fund aims to complete the Project by the end of 2021 or the beginning of 2022. The Fund will be the initial financial investor of the Project, which demonstrates an example to its wide range of involvements.

➤ Management Services Agreement for National Lottery Games between the Fund and the Sisal - Şans Joint Venture

The Fund decided to obtain professional management services for the national lottery games, the license of which is one of the assets at its portfolio. A management services contract on the basis of revenue sharing was signed by the Fund with the Sisal – Şans Joint Venture, who gave the best offer for professional management of the national lottery games, for a total term of 10 years. The Sisal - Şans Joint Venture, established with the participation of Demirören Holding subsidiary Şans Dijital ve İnteraktif Hizmetler Teknoloji Yatırım A.Ş. with 51% and the Italian Sisal S.p.A with 49%, has committed to increase revenues gained from the national lottery games to TL 9 billion 320 million in 2020.

➤ Fund's Contemplated Role as the Market Sustainability and Balance Fund

The Ministry of Treasury and Finance will issue government debt securities in a total amount of EUR 3.3 billion to strengthen the capital structure of public banks and EUR 400 million to strengthen the capital

structure of the participation banks. During this period, the Fund will play the intermediary role of the "Market Stability and Balance Fund" which was established on 1 April 2017 with the mission to improve the financial markets. Government debt securities will be issued to the Market Stability and Balance Fund, who will then create cash resources by selling the same to public banks. Thereafter, the said cash resources will be used by the Fund for the purchase of subordinated bonds issued by public banks or providing subordinated loans itself.

➤ Fund's Financial Innovations

Takasbank, which is a subsidiary of Borsa Istanbul and over 80% of whose shares are held by the Fund, announced a physically-backed, blockchain-based electronic gold transfer system named "BIGA". The bank stated that the studies for the said system had started in 2018 and the tests have been completed jointly with member banks Albaraka Türk, Garanti BBVA, Kuveyt Türk, Vakıfbank and Ziraat Bankası. BIGA enables transfer of digital gold while their physical equivalents are securely stored in Borsa Istanbul's safe deposit vaults. The bank further stated that the system is expected to ensure privacy in transactions which can be monitored only by the relevant parties and an official authority. BIGA, which means "one gram of gold" in Turkish, offers gold transactions 24 hours a day 7 days a week. Last year, the bank had developed another blockchain-based system for smooth flow of information among financial institutions.

➤ Cooperation with other Sovereign Wealth Funds²⁴

On 8 April 2019, the Russian Direct Investment Fund and the Fund inked a deal to form the Russia-Turkey Investment Fund whose special focus is stated to be the technology, healthcare and infrastructure sectors. The total size of the Russia-Turkey Investment Fund is expected to be EUR 900 million. We understand that the Fund will continue to seek cooperation opportunities with other sovereign wealth funds.

In light of the above and the next steps predicted to come, it appears that the Fund will become a prominent actor in the Turkish market which may offer new opportunities for the private sector to benefit from its wide range of support mechanisms. Time will show if the Fund will succeed in attaining its establishment purposes.

Other Recent Developments

MEDIUM TERM FISCAL PLAN

The Medium Term Fiscal Plan pertaining to the period of 2020-2022 ("Fiscal Plan") prepared by the Ministry of Treasury and Finance was published in the Official Gazette No. 30914 dated 10 October 2019.

²⁴ <https://www.swfinstitute.org/news/71444/russian-and-turkish-sovereign-wealth-give-life-to-russia-turkey-investment-fund>; https://rdif.ru/Eng_fullNews/3999/

According to the Fiscal Plan, the main objective of economic policy for the next 3 years will be to maintain stability in the prices and the financial environment, and realization of the economic transformation with an emphasis on the manufacturing industry and to ensure a sustainable growth rate.

Some of the key objectives set forth under the Fiscal Plan are as follows:

- Upon review of the past year expenditures, inefficiency will be reduced in government spending and the expenditures will be mainly allocated to prioritized areas. The government will increase the effectiveness of public investments, expenditures, incentives and other forms of governmental support.
- The financial burden will be reduced by digitalizing the commercial life in order to utilize the public resources efficiently. The information systems will be integrated to enhance supportive mechanisms.
- A framework regulation will be enacted to ensure efficiency, productivity and integrity in the implementation of the Public-Private Partnership (“PPP”) model in Turkey. PPP projects will be planned and conducted by taking into account public obligations and the balance of the budget. Cost effectiveness will be prioritized.
- Immovable properties owned by the Treasury will be used to support investments, mainly in relation to agriculture, stockbreeding, education and tourism.
- Public investments will be aimed at the prioritized manufacturing, agriculture, tourism and defense sectors under the 11th Development Plan, to develop the R&D, digitalization, human resources, logistics and energy efficiency aspects of the referred sectors.
- The relations between public authorities and the private sector investments will be further enhanced.
- Public infrastructure investments will be realized in order to increase the production capacity and support the private sector investments which generate high added-value, increase the employment rates and reduce the current budget deficit.
- Current programs for public investments will be further reviewed and the projects which are not urgent and/or productive will be temporarily removed from the pipeline.
- Ineffective exceptions, exemptions and reductions will be removed gradually in order to strengthen justice in the tax system. In addition, tax legislations will be simplified.

THE TURKISH DATA PROTECTION BOARD DECISIONS

Registration of Foreign Companies and Liaison Offices with the Data Controllers’ Registry

Upon receiving an application requesting its opinion, the Turkish Data Protection Board (“Board”) clarified whether foreign companies and their branches and liaison offices must register with the data controllers’ registry, *i.e.*, VERBIS, with its Decision No. 2019/225 dated 23 July 2019, which was published on the official website of the Turkish Data Protection Authority on 7 October 2019.

Before providing its analysis specific to foreign companies and their branches and liaison offices, in addition to the definition provided in Article 3 of Law No. 6698 on Personal Data Protection²⁵ (“Law”), the Board firstly set out the following criteria suggested to be considered while determining a data controller:

- Having the authority to decide on:
 - purposes and means of data processing,
 - establishing and management of data recording system,
 - the initial acquiring of personal data and the legal basis thereof,
 - which personal data will be processed for which purpose,
 - methods of obtaining personal data,
 - types of personal data to be processed,
 - whose personal data will be processed,
 - whether the access right and other rights of data subjects are exercised,
 - whether personal data will be shared/transferred and whom the personal data will be shared/transferred,
 - the retention period of personal data.
- Having separate legal obligations from the headquarters and having independent terms and conditions applicable to data subjects.

In conclusion, the Board decided that:

- (i) the foreign company must be considered and registered as a data controller if that company is involved, directly or by way of its branches, in any kind of personal data processing activity in Turkey;
- (ii) the branch of a foreign company will be considered as a separate data controller, if such branch is

²⁵ Published in the Official Gazette No. 29677 dated 7 April 2016.

involved in personal data processing activity and meets at least one of the following criteria: (a) employing more than 50 employees, or (b) having an annual balance sheet value exceeding TL 25,000,000; and

- (iii) liaison offices are exempt from the registration obligation.

It is also remarkable that while evaluating the status of foreign companies' branches, the Board also referred to Article 3 of the General Data Protection Regulation ("GDPR") which provides for the extra-territorial scope of the GDPR and stipulates that data processing activities of a data controller or processor established in the European Union ("EU") will also be subject to the GDPR regardless of whether the processing activity takes place in or outside of the EU. The Board also highlighted Article 4(7) of the GDPR according to which having a legal personality is not a requirement for being a data controller. Accordingly, the Board reached to the conclusion that foreign companies' branches will be considered separately as data controllers. Therefore, it is understood that the GDPR and its applications will also be considered by the Board while issuing opinions.

Minimum Content Required to Be Included in a Data Breach Notification by a Data Controller

The Turkish Data Protection Board ("**Board**") stipulated the minimum content required to be included in a data breach notification made by a data controller to relevant persons with its Decision No. 2019/271 dated 18 September 2019, which was published on the official website of the Turkish Data Protection Authority on 15 October 2019.

The Board decided that a data breach notification to be made by a data controller to the relevant person must be made in clear and plain language and must set out at least:

- When the breach occurred,
- Which personal data have been affected by the breach in terms of the personal data categories (considering the personal data/sensitive personal data distinction),
- Possible consequences of the personal data breach,
- Measures taken or suggested to be taken in order to decrease the negative impacts of the breach, and
- Name and contact information of contact persons who will provide information to the relevant persons regarding the data breach or the communication channels (such as web address, call center etc.) of the data controller.

ESTABLISHMENT OF THE GENERAL DIRECTORATE OF BORROWING

The General Directorate of Borrowing under the Ministry of Treasury and Finance ("**GDB**") was established with the Presidential Decree No. 45 dated 11 September 2019, published in the Official Gazette No. 30886 dated 12 September 2019.

GDB has been established mainly for executing the State's domestic borrowing. In addition to that, GDB has been entitled to perform the following tasks:

- issuing treasury stock, government bonds and other domestic debt instruments; selling or instructing others to sell these instruments; determining their sale amounts, values and interest rates; and executing all their preparatory, contractual and other work,
- borrowing through bonds and similar instruments from international capital markets in the name of the Republic of Turkey in the capacity of debtor or guarantor; and executing all contractual work and negotiations thereof,
- executing any transaction through financial and derivative instruments existing in the financial markets for governing the liabilities arising from state debt,
- determining borrowing strategies and programs in cooperation with other related ministerial departments, and
- managing relations with investors as well as credit rating agencies within the scope of its duties.

RECONSTRUCTION OF ENERGY AND NATURAL RESOURCES INVESTMENTS MONITORING AND COORDINATION BOARD

With the Presidential Circular No. 2019/16 dated 15 August 2019²⁶ ("**Circular**"), Energy Investments Monitoring and Coordination Board was renamed as Energy and Natural Resources Investments Monitoring and Coordination Board ("**Board**"). The Board is composed of representatives from public and private authorities, who are invited in light of the subject investments' nature to provide support with the permits required for energy investments.

The Circular, in addition to the authorities listed in the former Circular No. 2016/6²⁷, foresees further involvement by representatives of the following authorities: the Petroleum Pipeline Corporation of Turkey (BOTAŞ), General Directorate of Mineral Research and Exploration, and General Directorate of Mining and Petroleum Affairs. The Board's main duty will be to accelerate investment processes by ensuring coordination among the participating authorities.

²⁶ Published in the Official Gazette No. 30860 dated 16 August 2019.

²⁷ Published in the Official Gazette No. 29634 dated 24 February 2016.

RECENT DEVELOPMENTS ON HEALTH PUBLIC - PRIVATE PARTNERSHIP PROJECTS

Health PPP project auctions that have been announced for the Aydın City Hospital, Antalya City Hospital, Diyarbakır Kayapınar City Hospital, Ordu City Hospital, Samsun City Hospital, Denizli City Hospital, Trabzon City Hospital and İstanbul Sancaktepe Health Campus have recently been cancelled. Currently, there is no health PPP project in the pipeline.

Recent and Upcoming Conferences & Events

IPFA Turkey: Challenges in Renewable Financing – YEKA Projects and Outlook Post 2020

Çakmak Attorney Partnership hosted an event with IPFA (International Project Finance Association) at Raffles İstanbul on 17 October 2019, titled “Challenges in Renewable Financing, YEKA Projects and Outlook Post 2020”, with the attendance of sector leaders and experienced practitioners in the energy sector.



The event began with the opening speech of Dr. Zeynep Çakmak which was followed by the presentations of Ms. Günay Gökçen from IPFA and Mr. Değer Saygın from SHURA Energy Transition Center. The event continued with the panel discussion and Q&A moderated by Mr. Mustafa Durakoğlu with the participation of Mr. Alp Fahri, Ms. Yasemin Kuytak, Mr. Cahit Büyükbaş and Mr. Bayram Mercan as speakers. The participants discussed Turkey's progress in the field of renewable energy and its long-term strategies from different perspectives of the sector leaders.

ITOTAM ISTANBUL ARBITRATION DAYS: PANEL ON THE MONETARY ASPECTS OF INTERNATIONAL ARBITRATION

Çakmak Attorney Partnership, Peter & Partners and ITOTAM (Arbitration and Mediation Center of İstanbul Chamber of Commerce) jointly hosted a panel at İstanbul Chamber of Commerce on 20 September 2019 titled “İstanbul Arbitration Days, Monetary Aspects of International Arbitration: Rumors and Realities”.



The first session, which was moderated by Mr. Mesut Çakmak, had Mrs. Nazlı Dereli Oba, Dr. Wolfgang Peter, Dr. Franz Stirnimann and Mr. Konstantin Kristie, as panelists. The participants discussed expert appointment, general strategy of law firms in arbitration proceedings and budgeting for a legal case. The second session, which was moderated by Prof. Dr. İlhan Helvacı, the panelists Dr. Michael Feit, Prof. Dr. Ali Yeşilirmak, Mr. Tom Evans and Mrs. Ayşe Lowe touched upon the costs of enforcement of international arbitral awards and third party financing.

SHURA ENERGY TRANSITION CENTER: INTRODUCTION OF THE REPORT ON FINANCING ENERGY TRANSITION IN TURKEY

On 3 October 2019, SHURA Energy Transition Center introduced the Report on Financing the Energy Transition in Turkey and launched a panel regarding the same at Tekfen Tower, İstanbul. The report focuses on recent developments in energy transition from both global and local perspectives and also covers sectoral expectations as well as proposed actions to be taken in the energy market in Turkey. The panel discussion hosted speakers from a wide range of sectoral players both on the sponsor and financier sides.

SOLAR ISTANBUL 2020: SOLAR ENERGY, STORAGE, E-MOBILITY AND DIGITALIZATION EXHIBITION AND CONFERENCE

On 11-13 March 2020, Solar Istanbul 2020: Solar Energy, Storage, E-Mobility and Digitalization Exhibition & Conference will be held in Istanbul Congress Center with the support of the Ministry of Energy and Natural Resources and GUNDER, GUYAD and GENSED. Latest developments in energy storage systems, digitalization and electric transportation will be on the agenda of Solar Istanbul 2020.

IRENEC 2020 10TH INTERNATIONAL RENEWABLE ENERGY CONFERENCE

IRENEC 2020: 10th International 100% Renewable Energy Conference will be held on 15 - 17 April 2020 in Prof. Dr. Saylan Cultural Center, Istanbul. The conference will be organized by EUROSOLAR Turkey, the Turkish Section of the European Association for Renewable Energies and is expected to be an international platform to discuss the technical, economic, political aspects of the transition to 100% renewable energy.

Çakmak Attorney Partnership

Piyade Sokak, No. 18
C Blok, Kat:3, 06550
Çankaya, Ankara - Turkey

T +90 312 442 4680

Zorlu Center, D Lobisi, T3 Katı,
Daire 356, Levazım Mahallesi,
Koru Sokak No:2 34340
Beşiktaş İstanbul - Turkey

T +90 212 939 7560

This information is provided for your convenience and does not constitute legal advice. It is prepared for the general information of our clients and other interested persons. This should not be acted upon in any specific situation without appropriate legal advice and it may include links to websites other than the website.

Çakmak Attorney Partnership has no responsibility for any websites other than its own and does not endorse the information, content, presentation or accuracy, or make any warranty, express or implied, regarding any other website.

This information is protected by copyright and may not be reproduced or translated without the prior written permission of Çakmak Attorney Partnership.