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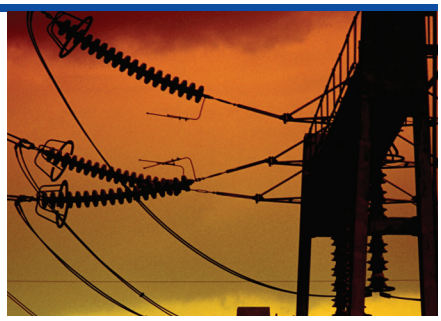

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Recent Changes in Legislation

Board Resolutions of the Energy Market Regulatory Authority

The Turkish Energy Market Regulatory Authority ("**EMRA**") has recently issued the following Board Resolutions regarding the electricity and natural gas markets:[1]

- EMRA adopted a list of requested documents for preliminary license applications, license applications and other transactions, such as share transfer approval applications to EMRA. For any of these applications, applicants are no longer required to submit their trade registry records, articles of associations, or criminal records of their shareholders.
- Reference pre-construction periods (now preliminary license period) for coal-fired power plants and reservoir-type hydropower plants have been increased from 30 months to 36 months. For the remaining types of power plants, the former standard reference period of 22 months has been changed varying between 24 months to 36 months depending on the installed capacity of the power plant.
- The total unit investment amounts have been increased for coal, hydro and wind power plant projects and decreased for solar power plant projects. The revised amounts will have an impact on the costs of these projects as the performance bond amount and the minimum capital requirement for a particular project are calculated based on the total unit investment amount.
- The method of calculation of the performance bonds remains unchanged. However, the upper limit of the first performance bond, which must be submitted to EMRA during the licensing process (which is now required to be submitted during the preliminary license application), has been increased from TL 1 million to TL 5 million.
- EMRA announced the license fees applicable in the electricity market in 2014.
    i. The electricity market license fees applicable for 2013 remain unchanged for 2014.
    ii. As per the two-stage licensing structure of the new Electricity Market Law for generation licenses, a preliminary license applicant is now required to pay a preliminary license fee at the preliminary license application stage, and to pay a separate license fee at the license application stage. The preliminary license fee is equal to the generation license fee.
    iii. As for the generation of electricity based on indigenous natural resources and renewable energy resources, only 10% of the license issuance fee and license amendment fee is payable at both preliminary license and generation license stages.
- EMRA reduced the eligibility threshold in the electricity market from 5.000 kWh to 4.500 kWh effective from 30 January 2014. Therefore, customers whose annual power consumption is more than 4.500 kWh are now considered as eligible customers and thus entitled to choose their electricity suppliers.
- EMRA also reduced the eligibility threshold in the natural gas market from 300.000 m3 to 100.000 m3 for residential consumers.

Amendments to the Health PPP Law

The Turkish health sector has recently undergone major reforms, which were initiated by the adoption of the health transformation program by the Ministry of Health in 2003. The construction and renovation of integrated health facilities through the PPP model constituted a crucial part of such reform package. Since 2009, the Ministry of Health has been conducting tenders and contract negotiations for more than 20 health PPP projects with an estimated investment amount of approximately USD 10 billion. These projects are currently at different stages varying from pre-qualification to financing.

On 9 March 2013, a new law governing the health PPP projects was enacted by the Parliament ("**Health PPP Law**"). It repealed and replaced the previous statutory basis of the health PPP projects with the aim of ensuring continuance of the pending health PPP projects by remedying the deficiencies determined in a decision of the Council of State.

On 1 March 2014, the Health PPP Law has been amended by Law No. 6527. The recent amendments provide a clear legal basis for the Ministry of Health to amend the previously signed project agreements. Accordingly, if an amendment is needed for some reasons, including a very broad reason such as "the emergence of a situation that affects the implementation of the PA and its schedules", the Ministry of Health would be authorized to make such amendments to the project agreements. If, however, the contract value of the project (i.e., the bid amount) will also change as a result of such amendment, then it can only be made (i) if there is a force majeure event, extraordinary situation or other reasons which are not attributable to the contractor, and (ii) with the approval of the High Planning Council.

This amendment was awaited by the Ministry of Health, sponsors and potential lenders for amending the already signed project agreements of certain health PPP projects. The enactment of the law is expected to accelerate the financing process of such projects.

1 The resolutions can be found at the following links: electricity and gas

Draft Legislation

Draft Law Amending the Law on the Protection of Competition

A draft law amending the Law on the Protection of Competition No. 4054 was submitted to the Turkish Parliament on 24 January 2014 and is currently reviewed at the relevant sub-committees of the Parliament. The draft law basically aims at bringing the Turkish competition legislation in parallel to the EU competition rules. Some of the major amendments under the draft law are the introduction of the *de minimis* rule for the agreements and concerted practices of minor importance which do not appreciably restrict competition, and replacement of the "dominance test" with the "significant impediment to effective competition test" in the control of concentration between undertakings.

Draft Law Amending the Natural Gas Market Law

A draft law amending the Natural Gas Market Law No. 4646 is reported to be in the agenda of the Council of Ministers. It remains yet unknown when the draft will be submitted to the Turkish Parliament and will be enacted. Under the draft law, BOTAŞ is designated as the national system operator to be in charge of curing imbalances in the system whereas the Energy Markets Operation Co. (EPİAŞ) and/or Borsa İstanbul (Istanbul Stock Exchange), depending on the type of transaction, will be responsible for market operations and financial settlements between the market participants. Therefore, the proposed system is envisaged to function similarly to the electricity market. The draft law also enables standard natural gas contracts and derivatives to be traded at Borsa İstanbul. Finally, the draft law requires BOTAŞ to legally unbundle its transmission, storage and LNG facility operation activities by 1 January 2015.

Articles

Priority in Multiple License Applications in the Energy Markets

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Introduction

The issue of multiple license applications for the same area in the electricity, natural gas and petroleum markets has gained more importance with the significant increase in private sector investments in Turkish energy markets over the last years. Accordingly, more detailed regulations have recently been introduced in the relevant legislation on this subject by the Turkish Parliament and the Energy Market Regulatory Authority ("**EMRA**").

The issue of multiple license applications on the same area mainly arises in two forms: Firstly, there may be more than one investor desiring to invest on the same natural resource. For instance, applications to establish a power plant on the same river or wind power plant at the same area create such sort of intersection. Similarly, since the salt solution stratums constitute convenient platforms for underground storage of natural gas and the number of these kind of geographical locations is quite limited, interested investors usually target the same area and overlap becomes inevitable.

In the second type of overlap, there may be more than one investor desiring to invest on the same geographical area but in different markets. In such cases, it becomes a question of energy policy that the legislative and/or the regulatory authority should decide which investment is deemed more important and should therefore prevail from public benefit perspective. From the investors' perspective, it is of utmost importance in terms of foreseeability and legal security that multiple application cases are regulated with clear and transparent rules in advance in both types of overlaps.

Priority in multiple applications is regulated in various pieces of legislation, in particular the Electricity Market Licensing Regulation[2] ("**EMLR**"), the Natural Gas Market Licensing Regulation[3] ("**NMLR**") and the Petroleum Market Licensing Regulation[4] ("**PMLR**"). One can observe that an analogy has been drawn among such regulations, especially with the amendments introduced by EMRA on 7 December 2008 and 31 January 2013. Furthermore, there are regulations which handle the issue on the basis of a particular market activity. The Regulation on the Selection of Applicants for Natural Gas Storage Activity in the Same Area[5] ("**Natural Gas Storage Regulation**"), which entered into force in 2012, and the Competition Regulation on the Preliminary License Applications for Wind and Solar Power Plants[6] are regulations of this kind. Increase in the number of such regulations point to the fact that the problem has become more significant in conjunction with the increasing number of investments and that it has become a necessity from the regulator's perspective to clarify the applicable rules.

This article analyzes the order of priority for multiple license application firstly in each market separately, and then in the context of overlaps between different markets.

I. Priority in Multiple Applications in the Electricity Market

Article 14 of EMLR regulates the priority right in the event that there exist more than one application on the same area in the electricity market.

Pursuant to Article 14(2)(b) of EMLR, in the event that the area subject to application does not constitute an area allocated under an international treaty or subject to preparations for a nuclear power plant by MENR, the preliminary license applications can be categorized into two general groups as follows: (i) natural gas fired applications; and (ii) non-natural gas fired applications. As a general rule, "non-natural gas fired" applications have priority over "natural gas fired" applications. For "non-natural gas fired" applications; the order of priority is domestic coal, imported coal and renewable resources respectively. Pursuant to Article 14(2)(c)(2), in the event that there exists an overlap among the applications based on the

2 Published in the Official Gazette No. 2880 9 dated 2 November 2013.

3 Published in the Official Gazette No. 24869 dated 7 September 2002.

4 Published in the Official Gazette No. 25495 dated 17 June 2004.

5 Published in the Official Gazette No. 28211 dated 21 February 2012.

6 Published in the Official Gazette No. 28843 dated 6 December 2013.

same resource (i.e., domestic coal, imported coal or renewable resource), the order of priority shall be determined in accordance with the timing of application to EMRA.

Although Article 14(2)(c)(2) of EMLR sets forth, as a general rule, that applications based on renewable resources will be evaluated in accordance with the respective application dates, there also exist specific regulations regarding the order of priority for certain renewable resource types. Article 15(3)(ç) envisages a tender procedure by Turkish Electricity Transmission Company ("**TEİAŞ**") for wind and solar plants in the event that there exist multiple applications for the connection to the same connection point and/or connection area. Pursuant to this provision, if an applicant is the owner of the area, other application(s) shall be rejected. The tender to be made by TEİAŞ, on the other hand, is regulated by the Competition Regulation on the Preliminary License Applications for Wind and Solar Power Plants. Pursuant to such Regulation, the applicant who offers to pay the maximum contribution fee per unit MW wins the tender and enters into a Contribution Agreement with TEİAŞ. A similar tender is also envisaged with regards to hydroelectric power plants. Pursuant to Article 29 of Electricity Market Law[7] and the Regulation on the Principles and Procedures for Executing a Water Usage Right Agreement[8], General Directorate of State Hydraulic Works (DSI) is entitled to select the legal entity with whom the water usage right agreement will be executed for the purposes of obtaining a preliminary license for hydraulic resources. Accordingly, among the applications whose feasibility studies were accepted as appropriate, the legal entity who offers to pay the maximum annual hydroelectric contribution fee per unit of MW shall be notified to EMRA by the General Directorate of State Hydraulic Works for the execution of the agreement.

Nevertheless, there exists no general rule in terms of the applications which do not fall into any of the domestic coal – imported coal – renewable resources categorization mentioned above. For instance, it is yet unclear how the priority will be determined with regards to a preliminary license application for a non-renewable hydroelectric power plant or for a nuclear power plant which is not subject to studies by MENR.

II. Priority in Multiple Applications in the Natural Gas Market

Article 4(4)(d)(3) of the Natural Gas Market Law No. 4646[9] and Article 9 of NMLR regulate the priority right in the event that there exist more than one application on the same area in the natural gas market.

Pursuant to 4(4)(d)(3) of the Natural Gas Market Law, in case there are multiple storage license applications for the same area, a tender will be held based on the license price, the criteria of which are to be determined by a regulation. Nevertheless; pursuant to the same article, in case the license applicant and/or its shareholders hold the ownership right or usage/easement or similar right enabling the storage activity on at least half of the immovable property, such application shall prevail. The Natural Gas Storage Regulation includes various criteria for the applicants, such as technical experience, financial capabilities and resources and envisages that a tender shall be held, based on the license price, among the applicants who meet such criteria.

Furthermore, NMLR envisages a slightly different mechanism on this issue. Pursuant to Article 9(2)(b), in the event of intersection of applications for underground natural gas storage and liquefied natural gas storage activities, the application for underground natural gas storage shall prevail. This provision is in compliance with the similar provisions in EMLR and PMLR. Nevertheless, neither Article 4(4)(d)(3) of Natural Gas Market Law, as explained above, nor Natural Gas Storage Regulation makes any distinction between underground storage license and liquefied storage license. Namely, the intersecting license types are simply referred to as "storage licenses"; however, it is not clear whether the rules shall apply in relation to the same type of storage license applications (such as underground storage-underground storage or liquefied natural gas-liquefied natural gas) or in relation to the different types of storage license applications. In the presence of Article 9(2)(b) of NMRL, it may be inferred that the Natural Gas Storage Regulation should be interpreted in accordance with this provision and should apply only in relation to the same type of storage license applications.

III. Priority in Multiple Applications in the Petroleum Market

Article 9 of PMLR regulates the priority right in the event that there exist more than one application at the same area in petroleum market. Pursuant to Article 9(2)(b)(2) of PMLR, in the event that there exist a refinery license application and a storage license application on the same area, the refinery license application shall prevail.

Pursuant to sub-paragraph (c) of the same paragraph, in the event that there exist more than one refinery or storage license application (namely, if a refinery license intersects with another refinery license application or a storage license application intersects with another storage license application), the earlier application shall prevail, and other applications shall be rejected.

7 Published in the Official Gazette No. 28603 dated 30 March 2013.

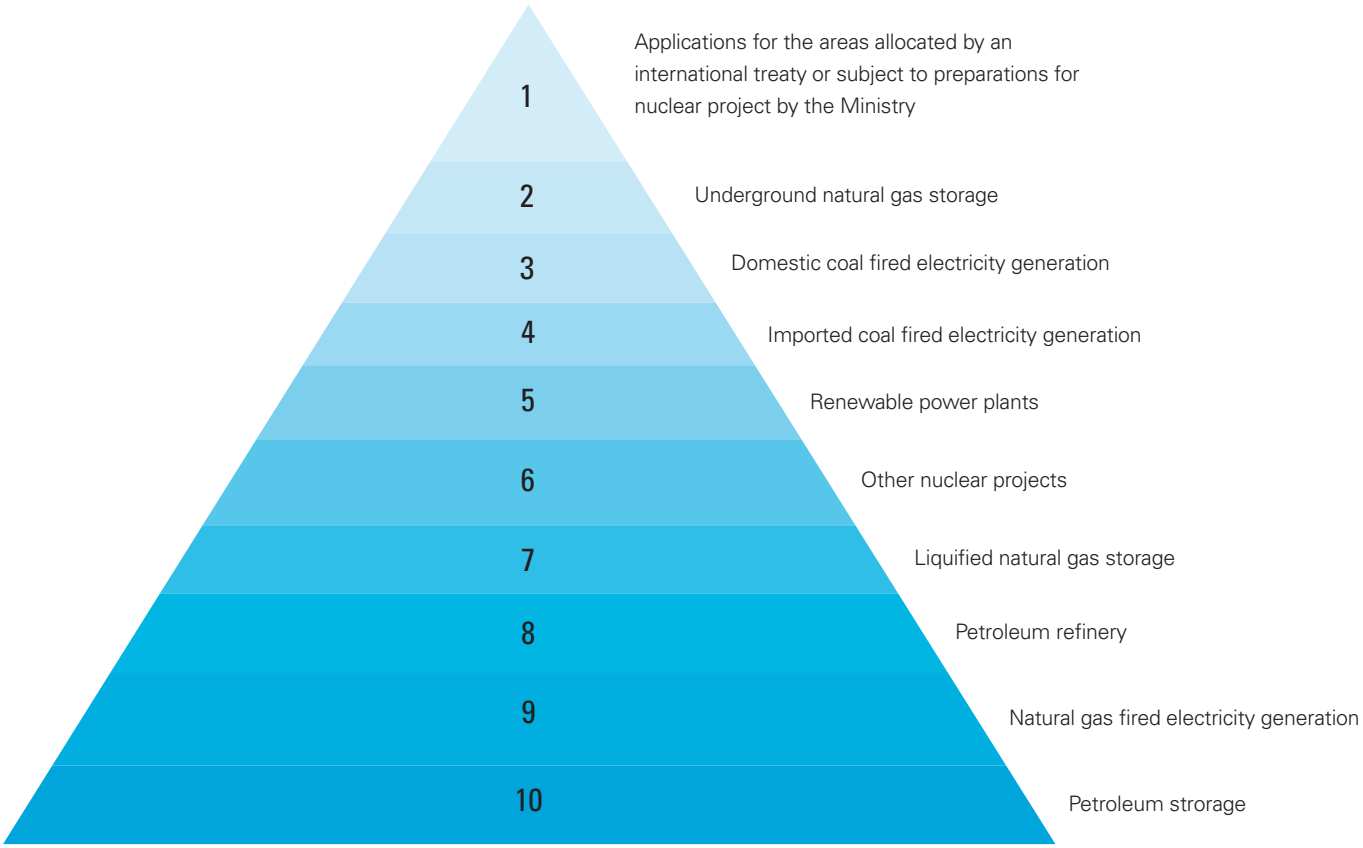
8 Published in the Official Gazette No. 25150 dated 26 June 2003.

9 Published in the Official Gazette No. 24390 dated 2 May 2011.

IV. Priority in Multiple Applications in Different Markets

Licensing regulations on electricity, natural gas and petroleum markets include parallel mechanism in relation to the priority order of applications in the event that there exist more than one application on the same area in different markets. According to such regulations, the priority order will be as follows:

Accordingly, the priority of the license or preliminary license applications in different markets should be evaluated in accordance with the ranking stated in the chart below.



Nevertheless, Article 6(9) of the Electricity Market Law states that "*In the event that a license application in relation to petroleum or natural gas market activities has been made on the area on which an electricity generation license application exists, the Board shall decide which application will be given priority by receiving the opinion of the Ministry.*" This provision requires that the opinion of MENR be received. Nevertheless, such a requirement does not exist in EMLR or any other licensing regulation mentioned above. Considering that it is not legally possible to restrict the scope of a statutory provision by means of a regulation, it can be argued that the provisions in the regulations regarding the intersections of electricity, natural gas and petroleum licenses are not in compliance with the Electricity Market Law.

Conclusion

Legislation on each of the energy markets includes parallel rules of priority in the event that there exist more than one application on the same area. These regulations should be considered as positive steps providing predictability and legal security in case of multiple applications.

Nevertheless, there are still issues which are open to criticism, such as the uncertainty about underground storage license and liquefied storage license applications in natural gas market and the incompliance of the regulations with the Electricity Market Law regarding the requirement to obtain the MENR's opinion as explained above.

Finally, please see as an Annex to this article a comparative chart showing the priority status in multiple applications.

Chart Regarding the Priority Right in Multiple Applications in Energy Markets

		Electricity						Natural Gas		Petrolium	
		Projects under Int'l Treaties/Nuclear subject to Ministry studies	**Other Nuclear**	**Domestic Coal**	**Imported Coal**	**Renewable Energy**	**Natural Gas**	**Underground Natural Gas Storage**	**Natural Gas Storage in LNG Facility**	**Petroleum Refinery**	**Petroleum Storage**
Electricity	**Projects under Int'l Treaties/ Nuclear subject to Ministry studies**	First application prevails	Projects under Int'l Treaties / Nuclear under Ministry studies prevails	Projects under Int'l Treaties / Nuclear under Ministry studies prevails	Projects under Int'l Treaties / Nuclear under Ministry studies prevails	Projects under Int'l Treaties / Nuclear under Ministry studies prevails	Projects under Int'l Treaties / Nuclear under Ministry studies prevails	Projects under Int'l Treaties / Nuclear under Ministry studies prevails	Projects under Int'l Treaties / Nuclear under Ministry studies prevails	Projects under Int'l Treaties / Nuclear under Ministry studies prevails	Projects under Int'l Treaties / Nuclear under Ministry studies prevails
	Other Nuclear	Projects under Int'l Treaties / Nuclear under Ministry studies prevails	First application prevails	Domestic coal prevails	Imported coal prevails	Renewable prevails	Other nuclear prevails	Underground natural gas storage prevails	Other nuclear prevails	Other nuclear prevails	Other nuclear prevails
	Domestic Coal	Projects under Int'l Treaties / Nuclear under Ministry studies prevails	Domestic coal prevails	First application prevails	Domestic coal prevails	Domestic coal prevails	Domestic coal prevails	Underground natural gas storage prevails	Domestic coal prevails	Domestic coal prevails	Domestic coal prevails
	Imported Coal	Projects under Int'l Treaties / Nuclear under Ministry studies prevails	Imported coal prevails	Domestic coal prevails	First application prevails	Imported coal prevails	Imported coal prevails	Underground natural gas storage prevails	Imported coal prevails	Imported coal prevails	Imported coal prevails
	Renewable Energy	Projects under Int'l Treaties / Nuclear under Ministry studies prevails	Renewable prevails	Domestic coal prevails	Imported coal prevails	For solar/wind, owner of land prevails. If none of the applicants are the owner, a tender will be conducted. For other resources, first application prevails.	Renewable prevails	Underground natural gas storage prevails	Renewable prevails	Renewable prevails	Renewable prevails
	Natural Gas	Projects under Int'l Treaties / Nuclear under Ministry studies prevails	Other nuclear prevails	Domestic coal prevails	Imported coal prevails	Renewable prevails	First application prevails	Underground natural gas storage prevails	LNG storage prevails	Petroleum refinery prevails	Natural gas prevails
Natural Gas	**Underground Natural Gas Storage**	Projects under Int'l Treaties / Nuclear under Ministry studies prevails	Underground natural gas storage prevails	Underground natural gas storage prevails	Underground natural gas storage prevails	Underground natural gas storage prevails	Underground natural gas storage prevails	EMRA determines by a tender (based on license fee)	Underground natural gas storage prevails	Underground natural gas storage prevails	Underground natural gas storage prevails
	Natural Gas Storage in LNG Facility	Projects under Int'l Treaties / Nuclear under Ministry studies prevails	Other nuclear prevails	Domestic coal prevails	Imported coal prevails	Renewable prevails	LNG storage prevails	Underground natural gas storage prevails	EMRA determines by a tender (based on license fee)	LNG storage prevails	LNG storage prevails
Petroleum	**Petroleum Refinery**	Projects under Int'l Treaties / Nuclear under Ministry studies prevails	Other nuclear prevails	Domestic coal prevails	Imported coal prevails	Renewable prevails	Petroleum refinery prevails	Underground natural gas storage prevails	LNG storage prevails	First application prevails	Petroleum refinery prevails
	Petroleum Storage	Projects under Int'l Treaties / Nuclear under Ministry studies prevails	Other nuclear prevails	Domestic coal prevails	Imported coal prevails	Renewable prevails	Natural gas prevails	Underground natural gas storage prevails	LNG storage prevails	Petroleum refinery prevails	First application prevails

Petroleum Law Implementation Regulation

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Introduction

The Turkish Petroleum Law Implementation Regulation[10] ("**Implementation Regulation**") became effective on 22 January 2014. It is aimed to implement the Turkish Petroleum Law No. 6491[11] (the "**Petroleum Law**"), which entered into force on 11 June 2013 and repealed the Petroleum Law No. 6326 of 16 March 1954 ("**Repealed Law**").

The Petroleum Law has not directly repealed the secondary legislation prepared based on the Repealed Law; i.e. the Petroleum By-Law.[12] The Petroleum Law envisages that until the issuance of the new secondary legislation, the current provisions of the Petroleum By-Law that are not contrary to Petroleum Law will continue to be implemented. Nevertheless, since the Implementation Regulation as the new secondary legislation entered into force, the provisions of the Petroleum By-Law should not apply as of the effective date of the Implementation Regulation.

Main Features of the Implementation Regulation

Petroleum Registry

Petroleum rights arising out of or in connection with research, exploration and operation licenses are required to be registered in the petroleum registry of the General Directorate of Petroleum Affairs ("**GDPA**"). Any and all changes in the petroleum rights including the termination of such rights are also recorded to such registry. The Implementation Regulation envisages that petroleum right registrations and any change in these rights, such as extension of time, will be registered to the petroleum registry, and provides for the forms and applicable procedures for registration applications.

Research Permits

The Implementation Regulation sets forth that a research permit shall be issued by GDPA in accordance with Article 5 of the Petroleum Law. The exploration and/or operation licenses issued for a part of the area for which a research permit is requested do not constitute an obstacle for research permit issuance. The research permit applicant shall pay TL 0.5 per hectare for once within 60 days following the commencement of the review process of GDPA. Additionally, if the application is deemed to be acceptable, the applicant shall further deposit to GDPA a guarantee in the amount of 0.05 % of the research permit charge per hectare within 15 business days following notification of decision regarding the application. In the case that said amounts are not deposited in due time, the applicant will be deemed to have withdrawn its application.

Exploration Licenses

As for exploration licenses, the first application made for an area shall be announced in the Official Gazette. Following this announcement, additional applications can be made before GDPA. The business and investment plans of the applicants (including the first applicant) must be submitted to GDPA within 90 days following the announcement. The applications shall be assessed by GDPA in accordance with the criteria provided under the Implementation Regulation. If the application is accepted, the applicant shall further deposit a guarantee in the amount of 0.1 % of the exploration license charge per hectare to GDPA within 15 business days following notification of the acceptance decision. Following the payment of this amount, an exploration license will be issued. If this guarantee is not duly deposited, the applicant will be deemed to have withdrawn its application. The exploration license shall be announced in the Official Gazette, and within 30 days following this announcement, the exploration license holder shall deposit another guarantee, namely investment guarantee in the amount of 2% of the investment amount for onshore activities and 1% of the investment amount for offshore activities. In the case that the said guarantee amount is not duly deposited, the license shall be cancelled by GDPA.

Operation Licenses

In order to obtain an operation license, an application must be made to GDPA. If the application is accepted, the applicant shall further deposit a guarantee in the amount of 0.5 % of the operation license charge per hectare to GDPA within

10 Published in the Official Gazette No. 28890 dated 22 January 2014.

11 Published in the Official Gazette No. 28674 dated 11 June 2013.

12 Published in the Official Gazette No. 20224 dated 17 July 1989.

15 business days following notification of decision. If the said amount is not deposited in due time, the applicant will be deemed to have withdrawn its application.

Exploration and operation licenses can also be issued by auction sale method by GDPA. The relinquished areas can also be licensed with auction method upon the consent of the Minister of Energy and Natural Resources.

Special Requirements of the Petroleum Law and the Implementation Regulation

Pursuant to the Petroleum Law, the petroleum right holders are required to avoid endangering the environment and community, and thus required to utilize proper facilities and equipment. Articles 46 and 24 of Implementation Regulation provides for details of such liabilities such as protection of the air, soil and water quality from pollution. In addition, pursuant to Article 24 of the Implementation Regulation, the petroleum right holder shall reinstate the area and shall evacuate it within 6 months upon the expiry of the easement right. If the reinstatement is not realized within the aforementioned period, the property will be transferred to the landlord and the damages shall be compensated by the petroleum right holder. Article 46 of the Implementation Regulation envisages that petroleum operations cannot be performed without the permission of the Minister of Energy and Natural Resources in military forbidden zones and security zones, in the areas close to the borders of the Country up to 1 km, 60 meters to the schools, sanctuaries, hospitals, libraries, and facilities such as highways or railways.

State Share

The Petroleum Law envisages that petroleum license holders are required to pay a state share in the amount of one eighth (1/8) of the petroleum produced under the exploration and operation license. According to the Implementation Regulation, state share shall be declared and accrued with a declaration to GDPA by petroleum license holders. The declaration must be submitted until the end of the twentieth day following the month during which petroleum production is realized and shall be paid to the relevant tax office until the end of the month in which the declaration is submitted. The state share will be paid in cash, unless the Ministry of Energy and Natural Resources requests payment *in rem*.

Cash Transfer

As per the provisions of the Implementation Regulation, petroleum right holders must submit a declaration to GDPA which is prepared pursuant to Annex-40 (Transfer Declaration Application Form) of the Implementation Regulation to transfer the cash. The unpaid tax, duty and charges will be deducted from the current fund which will be transferred to abroad, and if the deducted amount is higher than the current fund then transfer cannot be performed in cash. The transfer requests shall be assessed by GDPA within 60 days following the request date. The transferor must inform GDPA within 10 days after the transfer is actually completed.

Pending Projects and Vested Rights

The Petroleum Law and the Implementation Regulation set forth that the rights and requirements under the current exploration and operation licenses, which were issued before the entry into force of the Petroleum Law, will be reserved until expiry of their terms.

Adaptation of current licenses may be requested from GDPA within one year as from the effective date of the Petroleum Law, which is 11 June 2013. GDPA shall assess adaptation requests in accordance with adaptation criteria defined in Temporary Article 2 of Implementation Regulation. Accordingly, borders, licensed areas and activities performed until the adaptation request shall be taken into account. Furthermore, guarantee amounts requested for exploration and operation licenses shall be deposited to GDPA within 30 days following the date of the notification made to the petroleum right holder or its legal representative concerning the approval of the adaptation request. Following the deposition of the guarantee amounts, the adaptation shall be finalized by GDPA as well.

Borders of the Areas

Article 16 of the Implementation Regulation limits the borders of exploration areas with 1/50.000 scaled plots in onshore and with 1/100.000 scaled plots in exclusive economic areas. The minimum exploration site shall consist of 1/25.000 scaled plot area. Concerning the determination of the borders for adjacent areas, the sea coast line and the provisions of Continental Waters Law No. 2674[13] and the Council of Ministers' Decree No. 82/4742 will be taken into consideration. Borders of the exploration areas in onshore shall be determined in accordance with their plot numbers.

The borders of operation areas shall be determined as 1/25.000 scaled plots by taking into consideration the area having the petroleum and these sites are limited with 1/50.000 scaled plot. The petroleum activities of different license holders may be merged upon the approval of GDPA.

Transfer and Assignment of the Petroleum Rights

Transfer and assignment of the petroleum rights are possible in line with the Petroleum Law and the Implementation Regulation. An application must be made to GDPA for transfer and assignment and GDPA may reject such requests due to the

13 Published in the Official Gazette No. 17708 dated 29 May 1982.

incapability of the transferee. Article 8 of the Implementation Regulation sets forth that the decisions regarding transfer and assignment of petroleum rights must be published in the Official Gazette.

Investigation on the Petroleum Operations

The Implementation Regulation introduces detailed provisions regarding the investigation and observation to be made by GDPA. In accordance with Article 40 of the Implementation Regulation, petroleum activities may be subject to investigation by GDPA. Petroleum right holders shall provide any document requested by GDPA and shall not refuse to give any information or document for the purposes of such investigations. If any decision is taken by GDPA as a result of the investigations, such decision shall be notified to the petroleum right holder. However, no time period is determined for these notifications under the Implementation Regulation.

Share Transfer

Pursuant to the Petroleum Law, the transfer of share stakes which leads to a change in control is subject to the pre-approval of the Minister of Energy and Natural Resources. In such circumstances, parties shall apply to GDPA by submitting their justifications for the share transfer. By indicating its opinion, GDPA will submit the request to the Minister of Energy and Natural Resources for approval.

Conclusion

The main purpose of the Petroleum Law and the Implementation Regulation is to ensure utilization of petroleum sources in an efficient and expeditious manner by promoting the involvement of national and foreign market players. The Implementation Regulation is expected to positively affect the interest of investors in the Turkish petroleum market, as several provisions of the Petroleum Law were inoperative without such regulation and GDPA has long awaited the issuance of the regulation to take further actions. However, its effects remain to be seen in practice especially upon implementation by GDPA.

License Exempt Electricity Generation Opportunities in Turkey

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Introduction

As a rule, a license must be obtained to perform energy market activities in Turkey. However, the new Electricity Market Law No. 6446[14] ("**Electricity Market Law**") sets forth certain exemptions for the license requirement in generation activities. Although the legal basis for license exempt generation activities was set forth in 2007, the scope of the exemption has been considerably increased in 2013 as explained below.

The license exempt generation has an increasing importance in the Turkish power markets, especially for solar and wind power projects, because of the additional opportunities and incentives under the new Electricity Market Law and its implementing regulations.

Applicability of the Exemption to Renewable Energy Projects

Pursuant to Article 14 of the Electricity Market Law, among others, generation facilities based on renewable energy resources with a maximum installed capacity of 1 MW are exempted from the requirement to obtain a license from the Energy Market Regulatory Authority ("**EMRA**"). The Council of Ministers has the authority to increase this 1 MW installed capacity limit to 5 MW; however, the Council of Ministers has not increased that limit yet.

Advantages and Incentives

Exemption from the Company Formation Requirement

Pursuant to the License Exempt Generation Regulation[15] and the Communiqué Concerning the Implementation of License Exempt Electricity Generation Regulation[11], unlike the licensed electricity generation, there is no company formation requirement for license exempt electricity generation. Therefore, for example, Turkish branches of foreign companies can also engage in license exempt electricity generation without establishing a company in Turkey.

Possibility to Operate More than One Project

The same legal entity can operate more than one power plant without the need for establishing a separate special purpose vehicle ("**SPV**") for each project, on the condition that;

i. each of such projects' installed capacity cannot exceed 1 MW; and

ii. each license exempt generation facility must be connected to a consumption unit (there is no minimum consumption amount requirement for the consumption units).

Consequently, the same legal entity can establish, for example, 10 solar power plants with 1 MW installed capacity each, and sell almost all of the electricity generated by such power plants under the feed-in tariff regime as explained below.

Purchase and Price Guarantees

The electricity generated by license exempt generation facilities shall be purchased by the authorized retail sale company in the relevant distribution region. The following feed-in tariff applicable to the licensed renewable energy companies under Law No. 5346 Concerning the Usage of Renewable Energy Resources for Electricity Generation[16] ("**Renewable Energy Law**") shall be applicable to the sales by license exempt generation facilities as well:

Type of Facility	Feed-In Tariff (US dollar cents/KWh)
Hydropower	7.3
Wind	7.3
Geothermal	10.5
Solar	13.3
Biomass	13.3

Such purchase and price guarantees shall be applicable for the first 10 years of operation of the relevant license exempt generation facility.

14 Published in the Official Gazette No. 28603 dated 30 March 2013.

15 Published in the Official Gazette No. 28783 dated 2 October 2013.

16 Published in the Official Gazette dated 18 May 2005 No. 25819.

Domestic Manufacturing Incentive

License exempt generation facilities shall also benefit from the domestic manufacturing incentive provided under the Renewable Energy Law for the first 5 years of operation. The Domestic Production Regulation[17] includes a list of local components for each type of renewable energy resource and stipulates that at least 55% domestic manufacturing is required for a component to qualify as local component.

The domestic share support, which would be applicable on top of the above-stated feed-in tariff, is as follows:

Type of Facility	Total Domestic Share Support (US dollar cents/KWh)
Hydropower	2.3
Wind	3.7
Photovoltaic Solar	6.7
Concentrated Solar Power (CSP)	9.2
Biomass	5.6
Geothermal	2.7

Superficies Rights

Unlike the licensed generation, license exempt generation legislation does not envisage the possibility of land expropriation by EMRA/Ministry of Finance in favor of the project companies. However, the National Property General Communiqué[18] provides that a superficies right may be established on the lands owned by the Treasury for license exempt generation facilities based on renewable energy resources. The maximum periods for the superficies right shall be (i) 20 years for generation facilities with less than 500 kW installed capacity, and (ii) 30 years for generation facilities with installed capacity between 500 kW and 1 MW. In addition, an 85% discount shall be applied for the superficies right fee provided that the respective facility starts operation before 31 December 2020. The generation facilities established on Treasury lands shall be transferred to the Treasury at the end of the superficies right period.

Conclusion

License exempt electricity generation legislation in Turkey provides an important opportunity for investors, as it permits the same legal entity to operate more than one power plant without the need for obtaining a license or establishing a separate SPV for each project. Accordingly, the same legal entity can establish, for example, 10 solar power plants with 1 MW installed capacity each, and sell almost all of the electricity generated by such power plants under a feed-in tariff regime. Furthermore, additional incentives, such as domestic manufacturing incentive and 85% discount for superficies right fees, are also available to unlicensed generation facilities. The fact that both feed-in tariff and the domestic manufacturing incentive are indexed to US Dollars provides an additional comfort for investors (especially given the recent devaluation of Turkish Lira against foreign currencies) as compared to most other electricity generation projects that receive their income in Turkish Lira.

17 Published in the Official Gazette No. 27969 dated 19 June 2011.

18 Published in the Official Gazette No. 7 February 2014 No. 28906

Other Recent Developments

Recent Constitutional Court Decision regarding Hydropower Plants

On 24 January 2014, the Turkish Constitutional Court rendered a decision on the unconstitutionality claims against the new duties imposed on hydropower projects last year. On 18 April 2013, the Duties Law No. 6456 was amended to provide an additional duty for hydropower projects (which do not pay a tender fee or a water usage fee) in the amount of 1,5% of their gross revenues in the previous year. This requirement is applicable to all hydropower projects, including those already in operation as of the effective date of the law.

This law was heavily criticized by hydropower generation companies, and a lawsuit was filed before the Constitutional Court for its cancellation, with the reasoning that it is contrary to legal certainty and equality principles.

However, on 24 January 2014, the Constitutional Court rejected the cancellation claim based on the reasoning that the State has the authority to impose taxes on companies in operation as well.

This additional duty requirement is not applicable to hydropower companies that already pay a contribution fee or water usage fee. Therefore, those hydropower companies that do not pay such fees are now subject to a duty payment requirement in the amount of 1,5% of their gross revenues in the previous year.

Registered Electronic Notifications System

Pursuant to Article 7 of the Regulation on Electronic Notification, which was published in the Official Gazette No. 28533 dated 19 January 2013, notifications to joint stock companies (anonim şirket), limited liability companies (limited şirket) and companies with divided share capital (sermayesi paylara bölünmüş komandit şirket) by the following public authorities must be made by way of registered electronic notifications system:

i. Judicial institutions (courts and execution offices),

ii. Public institutions that are within the scope of the general budget and listed in schedule no. I; special budget institutions listed in the schedule no. II; regulatory and supervisory institutions listed in the schedule no. III; social security institutions listed in the schedule no. IV of the Public Financial Administration Law No. 5018,

iii. Special provincial administrations,

iv. Municipalities,

v. Administrative legal entities of villages,

vi. Bar Associations, and

vii. Notaries.

The Regulation on Electronic Notification came into force on 19 January 2013. However, it was not implemented in practice for a long time given that the technical infrastructure of the above-listed institutions was not entirely in place. Some of the relevant institutions have recently started to implement this new notifications system.

There is no explicit time limit as to the adoption of the registered electronic notifications system. Further, there is no specific sanction to be imposed on the companies for failure to obtain a registered electronic mail. The risk, however, is that such companies may be deemed to have received a notification although they have not actually received it. Therefore, it would be useful for joint stock companies, limited liability companies and partnerships with divided share capital to obtain registered electronic mails (through an application to the Turkish Post Telegraph and Telephone Administration ("**PTT**") or other authorized entities) in due course in order not to confront with problems regarding the service of notifications by public authorities.

Recent And Upcoming Conferences & Events

- 8 January 2014, Ankara: Av. Mustafa Durakoğlu, an associate attorney of Çakmak Avukatlık Bürosu, spoke on a panel entitled "*Nuclear Energy Projects and Environmental Impacts*" at the **International Law Congress** organized by the Ankara Bar Association.
- 27 January 2014, Istanbul: Av. Dr. Çağdaş Evrim Ergün, a partner of Çakmak Avukatlık Bürosu, spoke on a panel entitled *"Licensing and Permitting in Renewable Energy Projects"* at **SolarTech Turkey 2014** as part of Turkish Energy Week.
- 26 February 2014, Istanbul: Av. Mustafa Durakoğlu, an associate attorney of Çakmak Avukatlık Bürosu, spoke on the "*Management of Investments, Projects and Risks*" panel at the **2nd Renewable Energy Conference** organized by CTN Events.
- 12-13 March 2014, Istanbul: Av. Dr. Zeynep Çakmak, a partner of Çakmak Avukatlık Bürosu, spoke on a panel entitled *"What are the best sources of energy to concentrate project development on?"* at the **7th Annual Turkey Energy and Infrastructure Finance Conference** organized by Euromoney.
- 10 May 2014, Istanbul: Av. Dr. Cem Çağatay Orak, a partner of Çakmak Avukatlık Bürosu, will speak on the Turkish Petroleum Law at the **Oil & Gas Conference** organized by CTN Centre Group.
- 10 June 2014, Istanbul: Av. Dr. Çağdaş Evrim Ergün, a partner of Çakmak Avukatlık Bürosu, will speak on a panel entitled *"Healthcare PPPs in Turkey"* at the **Turkish PPP Investment Forum** organized by Elimu Communications.