

Amendment to the Environmental Impact Assessment Regulation

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A regulation amending the Environmental Impact Assessment Regulation (the “**EIA Regulation**”) has been published in the Official Gazette No. 30077 dated 26 May 2017 (the “**Amending Regulation**”) and entered into force on the same date. The Amending Regulation introduces a number of changes in respect of the environmental impact assessment (“**EIA**”) and makes significant additions to the scope of operations that are subject to the “*EIA Affirmative Approval*” and the “*EIA Is Not Required Decision*”.

The primary changes can be summarized as follows:

I. Scope

- The pre-construction period is now subject to the EIA.
- Several additions are made to the projects listed in Appendices I (*i.e.*, Projects subject to the EIA process) and II (*i.e.*, Projects subject to the selection and elimination criteria)¹. Appendix-I now includes, among others: (i) wind power plants with 20 or more turbines and/or an installed capacity of 50 MWm or more, (ii) solar power plants with a project site of 20 ha or more, and/or with an installed capacity of MWm or more, and (iii) open pit mines with an operation area (including both excavation and dumping areas) of 25 ha or more (regardless of the actual mining license area). Appendix-II now includes: (i) wind power plants with 5 or more turbines and/or with an installed capacity of 10-50 MWm, (ii) solar power plants with a project site of 2 ha or more, and/or with an installed capacity of 1-10 MWm, and (iii) open pit mines with an operation area (including both excavation and dumping areas) up to 25 ha (regardless of the actual mining license area).

¹ Under the EIA Regulation, the projects that are listed in Appendix-I of the EIA Regulation are presumed to have a more considerable impact on the environment, and the owners of those projects must therefore file an “EIA Application File” to the relevant governmental authority to obtain an “EIA Affirmative Approval”. On the other hand, if a project is listed in Appendix-II of the EIA Regulation, then a “Project Description File” must be filed by the project owners to obtain an “EIA Is Not Required Decision”. If, however, the authorities deem that the environmental impacts of such project must be further analyzed, then the applicant must follow the procedure envisaged for the projects listed in Appendix-I.

II. Capacity Increase

A. Capacity Increase in Projects Which Received an EIA Affirmative Approval

(i) If the capacity increase falls within the thresholds provided in Appendix-I of the EIA Regulation, it shall be subject to the review process under Article 8 of the EIA Regulation and the project owner shall submit an EIA application file or (ii) if the capacity increase falls within the thresholds provided in Appendix-II of the EIA Regulation, it shall be subject to the review process under Article 16 of the EIA Regulation and the project owner shall submit a project description file².

B. Capacity Increase in Projects Which Received an EIA Is Not Required Decision

A similar principle applies to projects which received an EIA Is Not Required Decision. The primary difference is that, in this case, the evaluation in respect of the thresholds in Appendices I and II shall be made based on the new cumulative capacity subsequent to the increase, *i.e.* the assessment cannot be made solely on the increase itself. This principle follows the policy already adopted by the Communiqué on the Planned Capacity Increases and/or Expansions in the Projects Having an EIA Affirmative and/or EIA Is Not Required Decision³.

III. Timing

- The issuance of an EIA Affirmative Approval or an EIA Is Not Required Decision is still a pre-requisite for the grant of any other administrative or environmental permits (including incentives) applicable to the projects which are subject to the EIA Regulation. Applications can, however, be made to the relevant authorities without waiting for the issuance of the EIA Affirmative Approval or the EIA Is Not Required Decision.
- A period of 90 (ninety) days will be granted to the applicants to cure EIA reports that are deemed incomplete.
- Certain time periods applicable in the EIA review process are shortened.

IV. Miscellaneous

- All studies in EIA reports will be examined by the relevant governmental authorities to verify whether they are sufficiently documented and supplemented with scientific data.
- The online EIA application and review process referred to as the “Online EIA Process Management System” is finally introduced. However, the principles and procedures for its implementation will be further announced by the Ministry of Environment and Urbanism.

² See footnote 1.

³ Published in the Official Gazette No. 29736 dated 8 June 2016.

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