ÇAKMAK

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Turkish Energy & Infrastructure

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Recent Changes in Legislation

Amendments to the Title Deed Law and Certain Other Laws

Omnibus Law No. 7181 Amending the Title Deed Law and Certain Other Laws ("**Law No. 7181**") was published in the Official Gazette No. 30827, dated 10 July 2019. The Law No. 7181 introduced certain important changes to the Title Deed Registry Law No. 2644[1] ("**Title Deed Law**") and Zoning Law No. 3194[2] ("**Zoning Law**") along with certain other laws. The highlights of the amendments under the Law No. 7181 are as follows:

1. Amendments to the Title Deed Law

- The Law No. 7181 introduced a new article which now allows execution of agreements for the transfer of ownership of an immovable in counterparts, if the parties to such agreement are abroad and/or present at a different title deed registry. The principles and requirements for such transactions will be determined at a later stage by a separate regulation. This amendment aims to facilitate the transfers before title deed registries, which caused many complications in practice due to the need of physical attendance of the parties (or their validly empowered proxies) at the same title deed registry where the subject matter immovable is registered before. The amendment will enter into force on 1 January 2020.
- Another addition to the Title Deed Law by the Law No. 7181 provides that the title deed registries will now issue official notifications to all parties affected by an error in the cadastral exercises or transactions before title deed registries. The parties will be granted a 30-day period to affirm the correction of the error. If the parties fail to provide their consents within such time period, the title deed

[1] Published in the Official Gazette No. 2892, dated 29 December 1934.

[2] Published in the Official Gazette dated 9 May 1985 and No. 18749.

registry will correct its records *ex-officio*, and the parties will be eligible to litigate such correction within 60 days of a secondary receipt, this time notifying the completion of the correction.

- An amendment was introduced to Article 883/2 of the Turkish Civil Code No. 4721[3], which provides that mortgages established for a definite term shall be deregistered with the application of the owner of the immovable upon expiry of such definite term, provided that an execution office does not notify the relevant title deed registry on an enforcement proceeding initiated for the foreclosure of such mortgage in 30 days starting from its expiration. In addition, the Law No. 7181 introduced a Provisional Clause to the Title Deed Law stating that such 30-day period commences with the Law No. 7181's date of entry into force, i.e., 1 January 2020, for the mortgages that expire prior to that date.
- The Law No. 7181 abolished the requirement under the Title Deed Law mandatorily requesting passport sized photographs of natural persons executing official deeds or agreements at title deed registries, either on behalf of themselves or acting as proxies.

2. Amendments to the Zoning Law

- One amendment to the Zoning Law provides that the privately-owned immovable used for development readjustment shares (*düzenleme ortaklık payı*) under implementation zoning plans are to be expropriated; however, the owners may apply for permission from the relevant authorities to establish a private-facility over those immovable in accordance with their intended purpose under the zoning plans until the expropriation process is completed. That being said, no construction may be made if the relevant legislation does not permit any construction over those immovable, despite the fact that the already constructed buildings may be preserved until the expropriation process concludes. The expropriation process for such immovable must be completed within five years, and such term may only be extended once for an additional year. The Ministry of Environment and Urban Planning ("**Ministry of Environment**") will issue a regulation detailing the procedures and requirements for this purposes.
- An addition to Article 37 of the Zoning Law stipulates that open-air parcels may be operated as parking lots by conducting certain alterations on the parcels, with the consent of its owners and by obtaining the required permits from relevant authorities.
- Another important addition to the Zoning Law sets forth that owners of buildings bearing the risk of collapsing will be notified by the relevant municipalities within three days following the detection of the risk. If the owners may not be reached to officially serve such notifications, the notification will be published on the website of the relevant administration for a period of 30 days, and the notification will be deemed served on the expiry of such 30 days. If the owners fail to remedy the danger such building possesses within 30 days of the serving of the notification, the relevant municipality will demolish such building and collect the expenses from the owners with a 20% additional fee of the expenses.
- Lastly, upon the suggestion of the Ministry of Environment, the President is now authorized to determine the borders and coordinates of a parcel having multiple owners if (i) there is a discrepancy between the records and the actual ground of such parcel, (ii) such parcel had been divided in practice without reflecting/correcting such division in the records, and/or (iii) the owner of such parcel is different from the users, and if such disputes may not be resolved by individual lawsuits.

The Law Amending Income Tax Law and Certain Other Laws

Law No. 7186 Amending Income Tax Law and Certain Other Laws ("**Law No. 7186**") was published in the Official Gazette No. 30836 (*bis*), dated 19 July 2019. Important novelties that the Law No. 7186 brought to the Health PPP Law No. 6428[4], Banking Law No. 5411[5], Capital Markets Law No. 6362[6], and Electricity Market Law No. 6446[7] are summarized below:

1. Amendments to the Health PPP Law

a. Contract Price Definition

The Health PPP Law already provides that the term "Price" means the total price to be paid to a contractor in consideration of availability of the facilities ("**Availability Price**") and provision of the services.

The Law No. 7186 additionally brought a definition for the term "Contract Price" which states that the Contract Price means the total net present value of the Price to be paid during the operational term. The calculation method for the "net present value" is to be provided under the secondary legislation.

b. Decrease in the Contract Price

Article 4(9) of the Health PPP Law states that the project agreements can be amended with the approval of the Minister of Health in case (i) a force majeure event, state of emergency or any other event which affects implementation of the agreement occurs, or (ii) an amendment is required in order to ensure due implementation of the agreement.

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3 Published in the Official Gazette No. 24607, dated 8 December 2001.
4 Published in the Official Gazette No 28582, dated 9 March 2013.
5 Published in the Official Gazette No. 25983 (*bis*), dated 1 November 2005.
6 Published in the Official Gazette No. 28513, dated 30 December 2012.
7 Published in the Official Gazette No. 28603, dated 30 March 2013.

Prior to the Law No. 7186, change in the Price/Contract Price was not allowed under these circumstances. The Law No. 7186 amended Article 4(9) of the Health PPP Law in order to allow to make decreases in the "Contract Price" within the scope of the changes in the project agreements under the above mentioned circumstances. In addition, it paves the way for readjustment of the base and ceiling values determined for the Availability Price under the project agreements.

c. Existing Projects

The Law No. 7186 states that mentioned amendments will be applicable for the existing projects which have been tendered and/or contracted before its effective date.

2. Amendments to the Banking Law – Financial Restructuring

The Banking Regulation and Supervision Agency has already issued the Financial Debts Restructuring Regulation to assist troubled borrowers to restructure their loans, mainly due to devaluation of the Turkish Lira. In addition, Financial Restructuring Framework Agreement has been prepared and signed with the relevant creditor institutions. However, the need for a law on the financial restructuring, which would serve as the legal basis for the Regulation and the Framework Agreement, has been long discussed in the market.

The Law No. 7186 added "Temporary Article 32" to the Banking Law No. 5411 in order to provide a legal ground for financial restructuring ("**Restructuring Article**"). Important novelties that are brought by the Restructuring Article can be summarized as follows:

- In addition to the banks, financial leasing, factoring and finance companies, and other financial institutions; special purpose vehicles and investment funds that are established by the creditors for debt collection purposes are also listed as creditors.
- It is explicitly provided that write-offs of the principle amount and other receivables or reduction of collaterals for the purposes of financial restructuring do not constitute embezzlement.
- Certain tax exemptions and other incentives are introduced, such as exemption to (i) the stamp tax, (ii) the resource utilization support fund, (iii) the banking and insurance transaction tax, (iv) and other levies and charges including the legal charges. However, if the debts of a debtor become subject to financial restructuring again within two years, mentioned tax exemptions and incentives will not apply.

The Restructuring Article will be effective for two years following its effective date (19 July 2019) and the President is authorized to extend this period for another two years.

3. Amendments to the Capital Markets Law

The Law No. 7186 added paragraph (4) to the Article 31 of Capital Markets Law No. 6362 in order to extend the scope of documents which show acknowledgement of debt under the Article 68(1) of Bankruptcy and Enforcement Law No. 2004. Accordingly, the documents issued by the Central Securities Depository of the Turkish capital markets (MKK) and given to the beneficiaries due to default of the issuers regarding relevant debt instruments will be deemed as acknowledgement of debt. This amendment became effective on 19 July 2019.

4. Amendments to the Electricity Market Law

a. Extension for Connection Agreements of License-Exempt Power Plants

The Law No. 7186 added "Temporary Article 25" to the Electricity Market Law No. 6446 in order to provide 120-day time extension for completion of the license-exempt renewable energy based generation facilities which have an installed capacity up to 5 MW and which have not been completed in due time. This amendment became effective on 19 July 2019.

b. Extension for Renewable Energy and Domestic Coal Based Facilities

The Law No. 7186 added "Temporary Article 26" to the Electricity Market Law No. 6446 in order to extend the validity periods of the rights and obligations arising from the transfer agreements and electricity sale agreements of the renewable energy resource area projects and domestic coal power plants which have been previously tendered out. This time extension provides an additional 36 months for completion of the relevant projects. The amendment became effective on 19 July 2019; however, it will be applicable as of 17 January 2019.

The Law Amending the Decree No. 635 and Certain Laws

The Law No. 7176 Amending the Decree No. 635 and Certain Laws ("**Law No. 7176**") was published in the Official Gazette No. 30799, dated 12 June 2019 and became effective on the same date. Among others, the Law No. 7176 amended the Mining Law No. 3213[8] ("**Mining Law**") and Geothermal Resources and Natural Mineral Waters Law No. 5686[9] ("**Law No. 5686**").

The major amendments made by the Law No. 7176 are as follows:

- It is explicitly set forth that the novelties to State royalty ratios brought with the Law No. 7164 Amending the Mining Law, Certain Laws and

[8] Published in the Official Gazette No. 18785, dated 15 June 1985.

[9] Published in the Official Gazette No. 26551, dated 13 June 2007.

Statutory Decrees[10] ("**Law No. 7164**") will not apply to the statement, accrual and collection of the State royalties pertaining to the year 2018. Under the Law No. 7164 published on 28 February 2019, the royalty payment ratio for Group II(b) minerals was increased from 4% to 4,5%; and for Group IV minerals, except for gold, silver, platinum, copper, lead, zinc, chrome, aluminum and uranium oxide, the royalty payment ratio was increased from 2% to 3%.

- For the purpose of prevention of cost increases in underground mining works, the coal prices can now be taken into consideration whilst determining the amount of subsidies. These subsidies are provided for (i) the royalty holders that executed agreements, which were effective as of 11 September 2014 and are still in force, within the scope of the Public Procurement Contracts Law No. 4735[11] for the underground mining works of the public institutions and the royalty holders operating as per royalty agreements executed under the Mining Law, and (ii) the natural persons and private legal entities that are operating underground mining sites for lignite and hard coal only, and the royalty holders of the subsidiaries of the public institutions that are operating underground mining sites as per royalty agreements, which were effective as of 11 September 2014 and are still in force.
- For minerals having their resource and reserve reports prepared by the General Directorate of Mineral Research and Exploration before 28 February 2019, finder's right in favor of the General Directorate of Mineral Research and Exploration will be issued if an application is filed in this regard to the General Directorate of Mining and Petroleum Affairs at the latest within six months following the effective date of the Law No. 7176, i.e., 12 June 2019.
- In the case of an overlap of multiple investments falling within the scope of the Law No. 5686, the committee to be established for resolution of overlaps has been rearranged and the Ministry of Energy and Natural Resources has been authorized to resolve the matter after taking the opinion of the relevant ministry. A similar regulatory change was also introduced to the Mining Law with the Law No. 7164. Under the Law No. 7164, the committee that was required to be established as per Article 7 of the Mining Law in the case of an overlap of multiple investments had been abolished with the aim of reducing bureaucratic barriers, and the respective committees' powers were transferred to the Ministry of Energy and Natural Resources in order to facilitate the process.

Amendments to the Legislation Concerning License-Exempt Renewable Energy Based Electricity Generation

Legislation on license-exempt electricity generation has been changed by

(i) the Regulation on License-Exempt Electricity Generation, published in the Official Gazette and became effective on 12 May 2019, ("**License-Exempt Regulation**") which repeals and replaces the previous regulation on the same, and

(ii) the Communiqué Repealing the Implementation Communique on License-Exempt Electricity Generation, published in the Official Gazette and became effective on 12 May 2019, which repeals the previous communiqué on the same[12] ("**License-Exempt Communiqué**").

Important changes brought by the License-Exempt Regulation and the License-Exempt Communiqué concerning the renewable energy based electricity generation facilities with a capacity up to 5 MW, which are exempt from the licensing requirement under Article 14 of the Electricity Market Law No. 6446[13] and the President Decision No. 1044 and dated 9 May 2019[14] ("**Facilities**") are summarized below:

1. Increased Minimum Consumption Requirement

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

2. Excess Electricity

The License-Exempt Regulation does not change existing purchase and price guarantees. Accordingly, the authorized supply companies are under the obligation to purchase excess electricity generated by the Facilities, based on the price guarantee provided under the Renewable Energy Law No. 5346 for the first 10 years of operation.

(i) Default of the Relevant Supply Company in Payments: Previously, the interest rate stated under Article 51 of Law No. 6183 Concerning Procedures for Collection of Public Receivables[15] (currently 2%) was applicable for defaults of the authorized supply companies in excess electricity

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10 Published in the Official Gazette No. 30700, dated 14 February 2019.

11 Published in the Official Gazette No. 24648, dated 22 February 2002.

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

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

14 Published in the Official Gazette No. 30770, dated 10 May 2019.

15 Published in the Official Gazette No. 8469, dated 28 July 1953.

payments. The License-Exempt Regulation increased this rate by two times.

(ii) Monthly Settlement: The License-Exempt Regulation additionally introduced a new monthly settlement process for the excess electricity. This new settlement method is expected to allow the Facilities to utilize from the excess electricity that they generate on holidays and protect them from price fluctuations.

3. Distance Requirement

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

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

4. New Restriction for Solar-Based Facilities

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

5. Step-in Rights of the Lenders

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

6. Supervision and inspection

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

7. Implementation of the Changes for the Existing Facilities

Pursuant to Provisional Article 2 of the License-Exempt Regulation, continuing procedures and new requests regarding the Facilities for which (i) the right to receive a call letter has been granted, (ii) a call letter has been received, or (iii) a system connection agreement has been signed prior to the effective date of the License-Exempt Regulation (12 May 2019), shall be concluded in accordance with the License-Exempt Regulation.

Amendments to the Electricity Market Licensing Regulation

The Regulation Amending the Electricity Market Licensing Regulation ("**Amending Licensing Regulation**") came into force via its publishing in the Official Gazette No. 30826, dated 9 July 2019. The Amending Licensing Regulation is in conformity with the draft published by Energy Market Regulatory Authority ("**EMRA**") which was addressed in the 2019 Spring Issue of our Newsletter.

The main purpose of the amendments is to accelerate the licensing procedures by using electronic means of communication. Accordingly;

- EMRA will establish an electronic platform ("**EMRA Application System**") and the applications related to preliminary license and license will be made using this platform. EMRA will further determine the types of applications that will be required to made in writing and the applications to be made using the EMRA Application System will be allowed to be made in writing until 31 December 2019.
- Applicants and license holders will be required to appoint an authorized person to use the EMRA Application System and notify EMRA accordingly.
- They will also be required to register with the National Electronic Notification System ("**UETS**") to receive the notifications to be made by EMRA. Preliminary license holders and license holders will need to fulfil such registration requirement within six months as of the entry into force of the Amending Licensing Regulation, even if they do not intend to make any applications before EMRA.

Amendments to the Electricity Market Export and Import Regulation

The Regulation Amending the Electricity Market Export and Import Regulation was published in the Official Gazette No. 30859, dated 15 June 2019 and became effective on the same date. Important changes brought by this Regulation are as follows:

- Electricity import and export activities between the governments are now carried out by Elektrik Üretim A.Ş. (**"EÜAŞ"**) instead of Türkiye Elektrik Ticaret ve Taahhüt A.Ş. (**"TETAŞ"**). EÜAŞ is now also entitled to carry out electricity import and export activities as well as electricity trade off within the scope of the intergovernmental agreements.
- In addition to the capacity allocation-related tenders announced by the system operator, supply license holders, which are willing to export electricity through interconnected line capacity, can now participate in the capacity allocation-related tenders announced by the international organizations pursuant to Article 8(4) of the Electricity Market Law No. 6446 for the purpose of export of the electricity.

The said international organizations are entitled to determine the amount of the security for this tender process. Furthermore, the capacity to be allocated to a supply license holder cannot exceed its operational installed capacity amount.

- In case of multiple applications to the same line, applications will be also notified to the system operator in order to be decided.

The Regulation on Procedures and Principles for Execution of Water Usage Agreements Concerning Generation Activities in the Electricity Market

The Regulation on Procedures and Principles for Execution of Water Usage Agreements Concerning Generation Activities in the Electricity Market ("**Water Usage Regulation**") was published in the Official Gazette No. 30802, dated 15 June 2019 and became effective on the same date. This Regulation brought certain changes to the water usage agreements executed between General Directorate of State Hydraulic Works ("**DSİ**") and license holders and abolished the Regulation on Procedure and Principles for the Execution of Water Usage Agreement Concerning Generation Activities in Electricity Market ("**Abolished Water Usage Regulation**") which was published in the Official Gazette No. 29274, dated 21 February 2015. The novelties brought by the Water Usage Regulation are summarized below:

- The applicant for the license of electricity generation facilities based on hydraulic resources shall submit the letter of guarantee at least for three years at the application stage and this practice was also valid under the Abolished Water Usage Regulation. However, another letter of guarantee at least for two years before the provisional acceptance is now also required under the Water Usage Regulation. In case the final acceptance cannot be obtained in due time under the letter of guarantee, the applicant shall require to renew the letter of guarantee or submit a new letter of guarantee.
- The letter of guarantee shall be recorded as revenue and in addition to the applicant company, the Water Usage Regulation imposes that its direct or indirect shareholders, chairman and members of the board of directors or managers of the company cannot apply again for such project, in case;
  - (i) the applicant does not submit the feasibility study, the revised feasibility study and/or additional report in due time,
  - (ii) the applicant renounces to complete the application,
  - (iii) the application for the pre-license is refused, cancelled or deemed to not being made by the Energy Market Regulatory Authority ("**EMRA**").
- Unlike the Abolished Water Usage Regulation's provisions, it is not required to execute a water usage agreement for license-exempt hydraulic generation facilities.
- The Water Usage Regulation does not provide any evaluation period for the feasibility study by DSİ which was the 90 day-period under the Abolished Water Usage Regulation; however, it limits the period granted for the submission of the additional report up to 30 days.
- The Water Usage Regulation also brought a new payment schedule concerning facility cost to be paid to DSİ and states that the first milestone of the payment shall be deposited after five years following the provisional acceptance of the facility is completed.
- The Water Usage Regulation brought certain new obligations imposed on the license and/or pre-license holder of the hydraulic generation facility, and those additional obligations are to;
  - (i) not change the commercial title of the company until the notice concerning its qualification to execute the water usage agreement is served to EMRA,
  - (ii) not change, directly or indirectly, the corporate structure of the company except for the reasons concerning the inheritance and bankruptcy and provisions foreseen under the Electricity Market Licensing Regulation, not transfer its shares, refrain from the transactions in the same nature with the transfer of shares, incorporate such obligations under the articles of association of the company until the issuance of the license,
  - (iii) obtain permit, license, approval and perform all other obligations under the applicable law concerning activity to be performed as per the water usage agreement.
- The municipalities may apply for the installation of hydraulic power plants under the legislation of license-exempt generation up to 300 kW installed capacity, while the Abolished Water Usage Regulation has remained silence on the limitation for the installed capacity.
- The scope of license-exempt generation activities of municipalities is extended under the Water Usage Regulation. While municipalities were only applying for the installation of hydraulic power plants over the dam used for drinking water, water-distribution pipeline or waste water-distribution pipeline pursuant to the Abolished Water Usage Regulation; they may apply for the installation of hydraulic power plants over any hydraulic resources located within the municipal boundaries and approved by DSİ under the Water Usage Regulation.

- The companies, more than 50% of shares of which are held by municipalities may also apply for the installation of hydraulic power plants within the context of license-exempt generation; however, such application is limited to only certain hydraulic resources, i.e., the dam used for drinking water, water-distribution pipeline or waste water-distribution pipeline. The Abolished Water Usage Regulation did not regulate the subsidiaries of the municipality as the market participant within the context of the Water Usage Regulation.
- The offer for the contribution to hydraulic resources is limited to TRY 10,000/MWh at minimum, whereas this minimum amount was determined as TRY 1,000/MWh under the Abolished Water Usage Regulation.

The Regulation Amending the Petroleum Market Licensing Regulation

The Regulation Amending the Petroleum Market Licensing Regulation[16] ("**Amending Licensing Regulation**") was published in the Official Gazette No. 30826, dated 9 July 2019 and except for specific amendments, it became effective on the same date. The amendments and novelties brought by the Amending Licensing Regulation are as follows:

- Definitions of national marker, production, producer and dealership organization have amended. Minimum five dealership requirement to constitute a dealership organization is abolished.
- License holders are clearly obliged to ensure the capital thresholds stated in Article 3 of the Amending Licensing Regulation and previous capital thresholds are doubled. The doubled thresholds will become effective as of 1 January 2020.
- In the lube oil licensing applications, production competence score for the facilities that are subject to applications is increased to 55%, in case the facilities aim to produce base oil from waste lube oil. This novelty will become effective as of 1 January 2020. However, the facilities which have lube oil license as of 9 July 2019 and aim to produce base oil from waste lube oil, have to submit their capacity reports including 55% production competence score, until 1 January 2020.
- From now on, Energy Market Regulatory Authority ("**EMRA**") does not have to notify the relevant parties in writing, regarding the licensing process.
- Licenses will be cancelled in cases of finalization of the bankruptcy, termination of the legal entity due to any reason including merger and acquisition and distributor license holders' failure to constitute the dealership organization within the prescribed time.
- Refinery license holders are obliged to comply with procedures and principles determined by the Board of EMRA, in their local crude oil purchases.
- Lube oil license holders are obliged to comply with the standards and technical regulations for the production and export of lube oil and for the facilities that aim to produce base oil from waste lube oil, and to obtain TSE Service Competence Certificate that are specified in the Article 9 of the Amending Licensing Regulation. Lube oil license holders cannot produce or use the productions that are not stated in the capacity report, for the production purposes.
- Dealership organization is recomposed. Distribution license holders have to constitute a dealership organization with at least 10 dealers within the first three months, at least 25 dealers within the first six months and at least 50 dealers within the first year, as of the license date. If the numbers of dealers drop to the below of these thresholds, the distribution license holders have to reach the required threshold again within 30 days. Existing distribution license holders are obliged to constitute such dealership organization as of 1 January 2020.
- Licenses of the dealers without station will not be issued as of 9 July 2019 and existing licenses of the dealers without station will not be extended.

The Regulation on the Initiation of Enforcement Proceedings Regarding Monetary Claims Arising from Subscription Agreements

The Regulation on the Initiation of Enforcement Proceedings Regarding Monetary Claims Arising from Subscription Agreements ("**Enforcement Proceedings Regulation**") was published in the Official Gazette No. 30788, dated 29 May 2019. The implementation scope of the Enforcement Proceedings Regulation consists of general enforcement proceedings to be initiated to collect the outstanding debts under subscription agreements, including the ones that are regulated by the Consumer Protection Law[17], without receiving a court order first.

The mentioned enforcement proceedings must be initiated through the Central Enforcement System[18] (*Merkezi Takip Sistemi*). Otherwise the request for initiation of the proceeding shall be rejected by the relevant enforcement office. The Enforcement Proceedings Regulation elaborates on how this process works and what steps to follow to continue with the proceedings including the objection procedures.

16 Published in the Official Gazette No. 30826, dated 9 July 2019.

17 Published in the Official Gazette No. 28835, dated 28 November 2013.

18 The Central Enforcement System was first introduced by the Law No. 7155 on the Initiation of Enforcement Proceedings Regarding Monetary Claims Arising from Subscription Agreements Please **click here** to see our Client Alert for more detail on the Law No. 7155.

Moreover, the Enforcement Proceedings Regulation sheds light on the details regarding the procedures of registering an attorney as an authorized representative within the Central Enforcement System.

The Enforcement Proceedings Regulation governs the proceedings up until the attachment stage. Therefore, the rest of the proceedings will be subject to the general rules set out in the Enforcement and Bankruptcy Law[19].

The Enforcement Proceedings Regulation became effective as of 1 June 2019. However, it is not applicable to the enforcement proceedings pending as of its effective date.

Draft Legislation

Draft Principles and Procedures on Examination Regarding Temporary Investment Obligations of Natural Gas Distribution Companies Subject to Expansion in Distribution Region

Natural gas distribution companies have temporary investment obligations under their distribution licenses, tender specifications and the relevant legislation including the Natural Gas Market Law[20] and the Natural Gas Market Distribution and Customer Services Regulation[21]. On 2 July 2019, Energy Market Regulatory Authority ("**EMRA**") published draft principles and procedures on examination regarding the investment obligations of natural gas distribution companies which are subject to expansion in their distribution region (the "**Draft Procedures**").

The scope of the examination foreseen by the Draft Procedures mainly focuses on (i) investment commencement minutes, (ii) minutes relating to first gas supply, (iii) application drawings demonstrating medium and low-pressure distribution pipes, (iv) scalar medium data of the maps showing current distribution network whose investment is completed, and (v) information and documents concerning investments whose production cannot be realized due to the specified force majeure events. The examinations shall be performed on behalf of EMRA by two independent firms authorized by EMRA's Decision No. 1995/1 dated 29 January 2009[22] based on these documents.

Pursuant to the Draft Procedures, upon submission of the relevant minutes to the EMRA within three working days following the completion of the relevant investment obligations, the distribution company shall request an examination of its investment obligations. Subsequently, the distribution company shall sign a contract with one of the authorized firms for either on-site or off-site examination in accordance with EMRA's decision. The examination report to be prepared shall be evaluated by the commissions within the Natural Gas Market Department of EMRA.

This Draft Procedures is also applicable to the companies, whose expansions have been completed and investment obligation terms have expired before the effective date of the Draft Procedures. In this regard, those companies shall sign a contract with one of the authorized firms within two months following the effective date of the Draft Procedures in order to have an on-site examination report.

Draft Amendments to the Procedures and Principles Regarding the Operation of the Organized Natural Gas Wholesale Market

The Draft Amendments to the Procedures and Principles Regarding the Operation of the Organized Natural Gas Wholesale Market ("**Draft Amendments**") as proposed by the market operator EPİAŞ was published on the official website of the Energy Market Regulatory Authority ("**EMRA**") on 24 July 2019 and was open for public opinion until 2 August 2019.

The Draft Amendments mainly foresee changes arising from the newly introduced concept of "Weekly Products". Accordingly, the Draft Amendments define Weekly Products as "*Products pertaining to various delivery periods for the following week which can be subject to transactions within the trade interval determined under these Procedures and Principles*". Indeed, due to this proposed amendment, the current transactions carried out at the Continuous Trade Platform (*Sürekli Ticaret Platformu*), i.e., the electronic platform operated by EPİAŞ, are suggested to be separated under two categories: (i) Daily Products and (ii) Weekly Products.

The Draft Amendments further govern the details of the trade opening and closing periods for the anticipated transactions mentioned above. Accordingly, it is suggested that the current trade interval period will be continued to be applied for transactions of Daily Products; while the trade opening and closing for Weekly Products will be 08:00 AM Monday and 17:00 PM Friday, respectively. The Draft Amendments also envisage certain provisions regarding the determination of swaps, delivery periods, and calculation of advance payments for Daily and Weekly Products.

Draft Amendments to the Electricity Market Licensing Regulation and Regulation on Documentation and Support of Renewable Energy Sources

On 30 July 2019, Energy Market Regulatory Authority ("**EMRA**") published the draft amendments to the Electricity Market Licensing Regulation[23] and the Regulation on Documentation and Support of

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19 Published in the Official Gazette No. 2128, dated 19 June 1932.
20 Published in the Official Gazette No. 24390, dated 18 April 2001.
21 Published in the Official Gazette No. 24925, dated 3 November 2002.
22 These firms are Istanbul Uygulamalı Gaz ve Enerji Teknolojileri Araştırma Mühendislik Sanayi Ticaret A.Ş. (UGETAM) and S&Q Mart Kalite Güvenlik Sanayi ve Ticaret A.Ş. (S&Q MART).
23 Published in the Official Gazette No. 28809, dated 2 November 2013.

Renewable Energy Sources[24] on its website for public opinion until 23 August 2019. The important novelties provided under the draft are as follows:

- Definitions of (i) combined electricity generation facility, (ii) combined renewable energy based electricity generation facility, (iii) combined incineration electricity generation facility, (iv) electricity generation facility with an auxiliary resource, (v) main source, (vi) auxiliary source, and (vii) floating solar power plant ("**Floating GES**") will be added to Electricity Market Licensing Regulation. The electricity generation facilities stated in (i), (ii), (iii), and (iv) are defined as electricity generation facilities with multiple resources ("**Multiple Source Facilities**").
- Auxiliary sources used in the Multiple Source Facilities are deemed as a unit of the main source and will be evaluated under pre-license and/or license of the relevant facility together with the main source. That is to say, no additional pre-license and/or license will be required specifically to the auxiliary sources. Auxiliary sources cannot be converted to main sources in combined electricity generation and combined renewable energy based generation facilities.
- For the pre-license and license applications, installed capacities of the main and auxiliary sources will be considered together for calculation of the facility's total installed capacity. The same method will be used for the calculation of license fees and securities, as well.
- For the hydraulic sources, affirmative opinion of the General Directorate of State Hydraulic Works' ("**DSİ**") is required for the establishment of the Floating GESs and other renewable energy sources based generation facilities, on the field set out in the pre-licenses of hydraulic sources.
- For the combined electricity generation and combined renewable energy based generation facilities, liability to have a wind or solar measurement that is obtained within last eight years, will not be sought.
- The generation facilities with a single source can be converted into the Multiple Source Facilities both within the pre-license period or license period provided that (i) there will be no need to change the site of the facility, (ii) total installed capacity will not change, (iii) there will be no change in the connection type and point and voltage level, (iv) affirmative opinion of the Ministry of Energy and Natural Resources, General Directorate of Energy Affair for the wind and solar power based facilities, and affirmative opinion of DSİ for hydraulic power based facilities, is received after technical evaluation.
- In case electricity generation commences based on the auxiliary source before the main source becomes operational, the security which is submitted to EMRA, will not be returned. The electricity amount that is generated until the main source becomes operational will be deemed as test generation and no payment will be made as a consideration.
- Net energy amount generated in combined renewable energy based electricity generation facilities will be purchased within the scope of YEKDEM based on the minimum price of the renewable sources of the facility.
- If both of the sources of a generation facility with an auxiliary source are renewable, YEKDEM price will be the main source's determined price.
- The period of benefitting from YEKDEM cannot be extended when the generation facilities, which are operated within scope of YEKDEM, are converted into the generation facilities with an auxiliary resource or combined renewable energy based electricity generation facilities. Therefore, such a converted facility will benefit from YEKDEM for the new resource only during the remaining YEKDEM period.

Articles

The Honeymoon is Over: Turkey Limits the Electrical Capacity Increase Capabilities and Feed-In Benefits in Renewable Projects

2019 witnessed two important changes in the renewable projects in Turkey. First, the legislation provided that the new electrical capacities after 28 February 2019 cannot benefit from Turkey's renewable energy feed-in tariff; i.e., YEKDEM[25]. Further, TEİAŞ, the state-owned transmission system operator, provided limits to the maximum additional electrical capacities that can be allocated to each region in respect of the wind and solar projects. No additional capacities will be permitted in certain regions, such as the renewably rich Aegean region.

1. First Change: No feed-in for the new capacities after 28 February 2019.

The amendment introduced to Article 6(c) of the Renewable Energy Law[26] on 28 February 2019 provided that the increased capacities, for which a license amendment is made after 28 February 2019, shall not

[24] Published in the Official Gazette No. 28782, dated 1 October 2013.

[25] Renewable energy power plants can participate in the YEKDEM mechanism that mainly provides a guaranteed purchase price for the first 10 years of the operation, provided that such power plants are commissioned by 31 December 2020.

[26] The Law No. 5346 on the Use of Renewable Energy Resources for the Energy Generation Activities, published in the Official Gazette No. 25819, dated 18 May 2005.

benefit from YEKDEM. In other words, the existing capacity may benefit from YEKDEM, but the electricity output generated from such increased capacity can be sold on a merchant basis without the support of the feed-in tariff.

On 23 August 2019, amendments were introduced to the Electricity Market Licensing Regulation[27] and YEKDEM Regulation[28]. These clarified that only electrical capacity increases (but not the mechanical capacity increases) qualify as "capacity increase" for the purposes of Article 6(c) of the Renewable Energy Law. Therefore, the electrical capacities increased after 28 February 2019 will not benefit from YEKDEM.

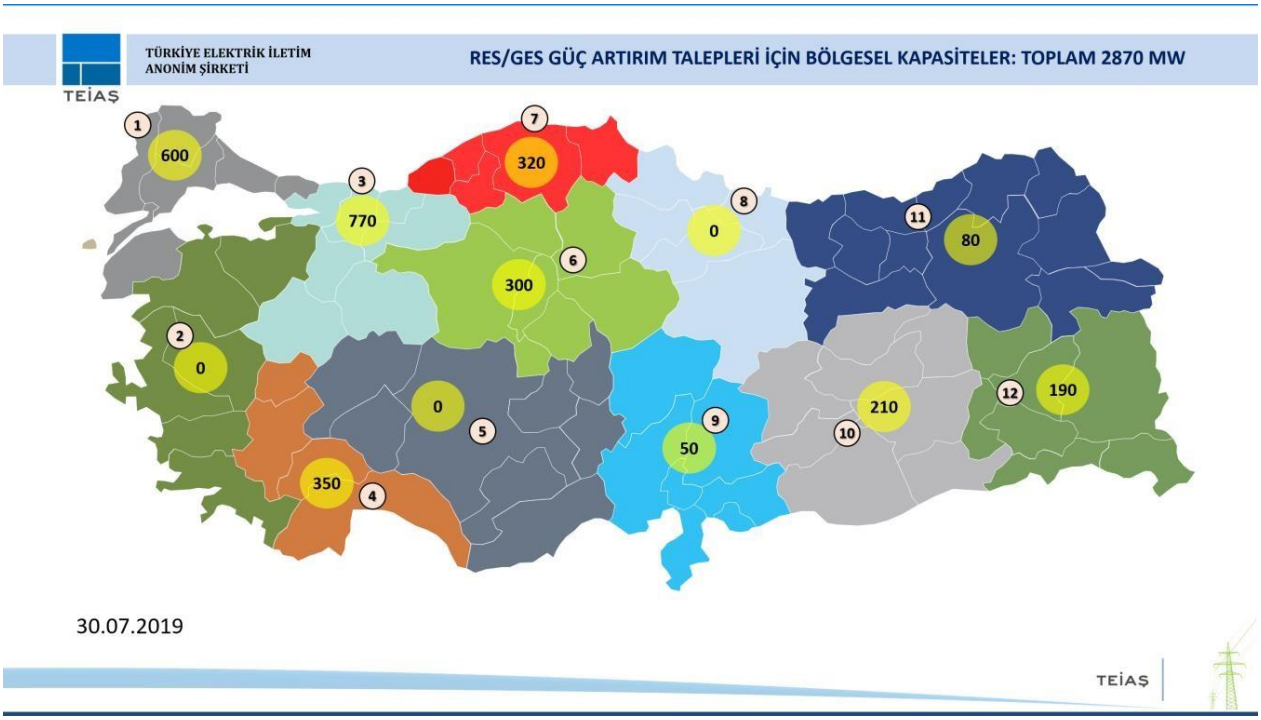
2. Second Change: Limitations on the Electrical Increase Capabilities

Based on EMRA's decision No. 8704 and dated 11 July 2018, TEİAŞ provided limits to the electrical capacity increases in wind and solar projects[29]. Accordingly, EMRA may accept the electrical capacity increase demands up to the capacities permitted by TEİAŞ for each region.

No additional capacities are allowed in certain regions with the exception of the projects which have already completed their mechanical capacity installation. Such projects might be granted with an electrical capacity increase up to the half of the delta between their licensed mechanical and electrical capacities.

Why these have happened?

- *First change:* The legislator reasoned that there is a need to limit the increasing YEKDEM costs (which are based in US Dollars) to protect the customers that ultimately shoulder these costs as a result of the YEKDEM cost components.
- *Second Change:* TEİAŞ seems to have considered the actual need for new wind and solar capacities on a region by region basis. Please see below a map setting out TEİAŞ's regional limits to the electrical capacity increases. Regions 2 and 5, where most of the wind and solar power plants are currently located, are not granted with any additional capacity. On the other hand, the biggest capacities are allocated to the Marmara region (regions 1 and 3) presumably on the account of the fact that the regional supply of electricity is lower than the demand in these industrially most developed regions.



[27] Published in the Official Gazette No. 28809, dated 2 November 2013.

[28] The Regulation on Documentation and Support for Renewable Energy Resources, published in the Official Gazette No. 28782, dated 1 October 2013.

[29] The announcement of TEİAŞ dated 31 July 2019 was published on https://www.teias.gov.tr/tr/duyuru/resges-guc-artirim-taleplerine-iliskin-bolgesel-kapasiteler

Turkish Electricity Market is Ready to Initiate the Reliability Options

Electricity is sold in Turkish electricity market by way of mainly two methods: (i) the bilateral agreements; and (ii) the balancing mechanism[30]. Market participants may also trade electricity future contracts in İstanbul Stock Exchange (i.e., Borsa İstanbul A.Ş.), but physical delivery is currently not possible. However, this is about to change.

The recent amendments introduced to the electricity market legislation paved the way for Turkey's new reliability option market (*ileri tarihli fiziksel teslimat piyasası*) (the "**Market**") that will be operated by EPİAŞ, the operator of the organized electricity wholesale markets.

Under the reliability option scheme, the bidder offers the counterparty the option to procure electricity at a pre-determined strike price. A right strike price will enable the seller to be paid a pre-determined strike price higher than the applicable energy market spot price. In which case, for instance, a power plant must generate and supply such electricity even when there is a peak demand and/or when the system is stressed. Thereby, this market provides a reliability component to the system.

EMRA published the draft Market Operation Principles and Procedures for the Reliability Option Market ("**Principles**")[31] that is currently open for the views and comments of the interested parties. The Principles mainly provide the following:

- The Market is operated by EPİAŞ.
- Generation, transmission, distribution, and supply companies are eligible to participate in the Market.
- EPİAŞ will carry out settlement activities, and securities will be managed by EPİAŞ and Takasbank[32].
- The offers will be based on TRY/MWh.
- The transactions can pertain to certain territories, a delivery period (i.e., daily, weekly, monthly, and quarterly), or certain hours of the day (e.g., peak demand hours between 8.00 am and 8.00 pm).

Other Recent Developments

11th Development Plan

11th Development Plan, covering Turkey's economic and social policies to be put into practice from 2019 to 2023 ("**Development Plan**") was approved on 18 July 2019 by the decision of the Grand National Assembly of Turkey[33].

The goals and policies set forth in the Development Plan address a comprehensive list of areas and sectors including energy, mining and public investment policies. The main actions set forth in the Development Plan regarding these sectors, are as follows:

1. Energy

- For the electricity and natural gas markets, cost-based pricing will be adopted.
- Afşin-B Thermal Power Plant, Keban Hydroelectric Power Plant ("**HEPP"**), Karakaya HEPP and Hirfanlı HEPP will be rehabilitated. Ongoing projects such as, Akkuyu Nuclear Power Plant, Salt Lake Natural Gas Underground Storage Project and Kuzey Marmara Natural Gas Storage Extension Project, Tortum-Georgia Energy Transmission Line and TurkStream Onshore Section-1 Natural Gas Pipeline Construction Work will be completed. Work on the establishment of two new nuclear power plants will be continued.
- Nükleer Teknik Destek Anonim Şirketi will be put into operation.
- With the completion of Salt Lake Natural Gas Underground Storage Project and Kuzey Marmara Natural Gas Storage Extension Project, the total natural gas underground storage capacity will be increased to 10 billion cubic meters.
- Floating LNG Storage and Regasification Units ("**FSRU**") vessel will be procured and FSRU connect system will be completed.
- Renewable Energy Resource Areas ("**RERA**") and similar practices will be increased. National Green Building Certification System will be established. Unlicensed solar power plants and wind power plant applications will be expended.
- Cyber Security Operation Center will be established for operating the critically important energy infrastructure in a secure way.
- Efforts will be made to develop National Smart Grid Management System (National SCADA) to be used by the state owned entities operating in the energy sector.
- The installed capacity, which was 88,551 MW in 2018, will be increased to 109,474 MW. The share of renewable resources in electricity generation, which was 32.5% in 2018, will be increased to 38.8%.

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30 The balancing mechanism refers to the day-ahead, intra-day, and balancing power markets operated by EPİAŞ.

31 Published by EMRA on its web-site on 24 July 2019 and available for the public opinion until 15 August 2019.

32 Takasbank (i.e., the Central Settlement Bank (*Merkezi Takas ve Saklama Bankası*)) is an institution operating the payment and security transactions between electricity market participants.

33 The relevant decision of the Grans National Assembly of Turkey was published in the Official Gazette No. 30840 (*bis*), dated 23 July 2019.

2. Mining

- Exploration and production activities concerning local resources, which will be the basis of energy production, will be increased and local equipment production will be promoted. Priority will be given to the exploration of rare earth elements, boron and other mines with high economic potential. Lignite reserves will be prepared for the tender for plant establishment.
- Conformity with the environmental and work safety legislation will be increased.
- Infrastructure for carrying out approval, certificate and license processes on electronic environment will be developed. Bureaucratic burden will be eased to promote investments.
- Oil and natural gas seismic exploration and drilling activities in the seas, including Turkish Republic of the Northern Cyprus territorial waters, will be increased. It is aimed to increase the offshore drilling amount to 26 by the end of 2023.
- A mechanism for reducing the financial risks of private sector in will be developed. Mining Investment Partnership model will be formed.
- Mining exportation which was amounted to 3,4 billion dollars in 2018, is expected to reach 10 billion dollars in 2023.

3. Public Investment Policies:

- To increase activity and efficiency in Public – Private Partnership ("**PPP**") applications, a new framework regulation will be set forth. PPP's dispersed legislations and differing implementations of preparation/approval processes will be jointly regulated. Risk sharing in PPP applications will be carried out most appropriately. Local machine utilization for PPP projects will be ensured.
- Before developing new investment projects, expending for maintenance-repair and rehabilitation of the existing investments will primarily be evaluated in order to obtain the maximum benefit from the existing capital stock.
- To strengthen the public investment process, standardization will be ensured in all institutions covering local administrations for investment projects including PPP and capacity will be increased. Regarding the phases of public investments, specifically for PPP projects, standard guides will be prepared for preparation, tender and agreement issues. Institutional structure will be strengthened by means of forming a national PPP policy.
- Canal Istanbul, three-story Grand Istanbul Tunnel, Filyos Port Superstructure and Enterprise, Çandarlı Port Superstructure and Enterprise and some of the priority projects such as differing urban environment infrastructure are planned to be realized by PPP method. Additionally, projects that are carried out via PPP model such as 11 city hospitals with a total of 18.716-beds capacity and Gebze-Orhangazi-Izmir Highway, Kurtköy-Akyazı and Kınalı-Odayeri parts of North Marmara Highway, Malkara Çanakkale part of Kınalı-Tekirdağ-Çanakkale-Balıkesir Highway, Ankara-Niğde Highway, Aydın-Denizli Highway, 2nd Phase of Istanbul Airport, Çeşme Airport will be completed.
- The distribution of targeted sectors in total public fixed capital investments at the time of their plan will be as follows, from high to low; transportation (34.8%), other public services (25.1%), education (19.1%), agriculture (6.1%), energy (5.2%), technologic research (4.7%), health (4.3%), mining (3.2%), housing (1.1%), manufacturing (0.8%) and tourism (0.3%).

Projects in Pipeline

1. Health Public Private Partnership Projects:

- The tender bids have been received for the PPP projects of Aydın City Hospital, Antalya City Hospital, Diyarbakır Kayapınar Hospital, Ordu City Hospital, Samsun City Hospital, Denizli City Hospital, and Trabzon City Hospital during 2018. The auction date will be announced for these projects as the next step.
- The prequalification applications for İstanbul Sancaktepe City Hospital (4200 bed capacity) will be received on 11 November 2019.

2. Renewable Energy Resource Areas ("RERA"):

The results of the tenders that have been conducted regarding the four wind power projects in Balıkesir, Çanakkale, Aydın, and Muğla regions, each with a capacity of 250 MWe based on the RERA model are approved as of 22 July 2019.

3. Grand Istanbul Tunnel Project

The project design activities for the 3-Storey Grand Istanbul Tunnel Project are now completed the project is expected to be tendered through build-operate-transfer model in December, 2019.

Recent and Upcoming Conferences & Events

World Energy Strategies Congress and Exhibition

On 26-29 August 2019, Yildiz Technical University hosted World Energy Strategies Congress and Exhibition ("**WESCE 19**"), where scholars, government officials, sector leaders and experienced practitioners in the energy sector came together to discuss energy related matters. Dr. Cem Çağatay Orak, one of the partners of Cakmak Attorney Partnership spoke in the session on the Energy Law and IP Rights/Patents.

ITOTAM Istanbul Arbitration Days: Panel on the Monetary Aspects of International Arbitration

Çakmak Attorney Partnership will be hosting a panel with the Arbitration and Mediation Center of Istanbul Chamber of Commerce and Peter & Partners, a Switzerland-based law firm, on the "Monetary Aspects of International Arbitration". The panel will be held in İstanbul on 20 September 2019. For details, please see: https://www.itotam.com/GelecekSeminerler.aspx

Turkish Wind Energy Congress

On 5-6 November 2019, Turkish Wind Energy Congress will be held in Sheraton Hotel, Ankara with the participation of international and local sectoral leaders and governmental authorities. The Congress is organized by Turkish Wind Energy Association and supported by the Ministry of Energy and Natural Resources, Energy Market Regulatory Authority, and Wind Europe and Global Wind Energy Council. The Congress will focus on the development in wind energy production and the future of the field within the country.

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

Çakmak Attorney Partnership will host an event with IPFA in İstanbul on 17 October 2019 on Challenges in Renewable Financing, YEKA Projects and Outlook Post 2020. The Organization will focus on one of the primary driving force of renewable investment in Turkey, YEKA projects. The discussion is intended to cover the challenges faced by YEKA projects from financing, regulatory and technical perspectives and the future of renewable financing post 2020.

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