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Turkish Energy & Infrastructure

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Recent Changes in Legislation

Statutory Amendments Regarding Compulsory Mediation

The Law No. 7155 on the Initiation of Enforcement Proceedings Regarding Monetary Claims Arising from Subscription Agreements ("**Law**") was published in the Official Gazette No. 30630 dated 19 December 2018. In addition to providing a new procedure for enforcement proceedings arising from subscription agreements and making several amendments[1] to the Enforcement and Bankruptcy Law[2], the Law introduced a new article to the Turkish Commercial Code[3] ("**TCC**") requiring a compulsory mediation procedure for certain lawsuits.

The Law introduced a new article in the TCC which requires that a party must seek mediation before initiating a legal proceeding before the courts for certain commercial disputes. The lawsuits that are subject to this compulsory mediation are commercial lawsuits defined under the TCC and other laws that relate to monetary claims for receivables and compensation. The Law does not set forth any limitations regarding the monetary value of the matter in dispute.

Seeking mediation for disputes subject to compulsory mediation is regulated as a cause of action (*dava şartı*), meaning that if a party files a lawsuit subject to compulsory mediation without first having applied for mediation, the lawsuit will be rejected by the courts based on procedural grounds, without considering the merits of the case. However, the provisions regarding compulsory mediation will not be applied if there is an arbitration agreement between the parties or if

[1] These amendments basically (i) allow making inquiries and performing attachments through the National Judiciary Informatics System (UYAP), and (ii) revise the concordatum provisions to prevent abuse of the process by the debtors. The amendments to the Enforcement and Bankruptcy Law became effective as of 19 December 2018. However, concordatum proceedings pending as of the effective date will not be affected of these amendments.

[2] Published in the Official Gazette No. 2128, dated 19 June 1932.

[3] Published in the Official Gazette No. 27846, dated 14 February 2011.

application to arbitration or to any other alternative dispute resolution method is required by law.

The amendments regarding compulsory mediation for commercial lawsuits became effective as of **1 January 2019**. The lawsuits pending before the courts as of the effective date will not be affected by these provisions.[4]

The Law Amending the Mining Law, Certain Laws and Statutory Decrees

The Law Amending the Mining Law, Certain Laws and Statutory Decrees ("**Law**") was published in the Official Gazette No. 30700 and dated 28 February 2019 and became effective on the same date. The Law provided changes to certain regulations pertaining to the electricity, natural gas, and petroleum markets as well as renewable energy resources. The highlights of the Law are:

- Capacity increase in renewable energy power plants has been allowed; however, they will not benefit from the Renewable Energy Resources Support Mechanism (*YEKDEM*),
- Review of forestry permit applications with respect to wind energy related investments has been limited to 60 days, and the land permit fee will be discounted by 50%,
- A "national interest" qualification has been added to Article 1 of the Mining Law No. 3213[5] ("**Mining Law**"), which sets forth that the Mining Law shall regulate the expropriation and operation of minerals as well as the granting and abandonment of mining rights ***in line with the national interests***,
- The national electricity generation corporation (*EÜAŞ*) has been authorized to purchase coal from the coal reserves that have been allocated to the companies which have been authorized to operate a generation plant together with the associated coal reserves within the scope of the Law No. 3096 on the Authorization of Enterprises other than Turkish Electricity Authority for Power Generation, Transmission, Distribution and Trading[6],
- The committee that is established as per Article 7 of the Mining Law in case of an overlap of multiple investments has been abolished with the aim of reducing bureaucratic barriers, and the respective committees' powers have been transferred to the Ministry of Energy and Natural Resources,
- The amount of state royalty exemption applied for the ores that are processed within Turkey has been decreased to 40% for gold, silver and platinum ores, whereas it will continue to be 50% for other minerals,
- Applications for the extension of operation licenses need to be submitted to the General Directorate of Mining and Petroleum Affairs ("**MAPEG**") at least six months before expiration of the license period; however, this provision does not apply to the licenses that will expire within one year following the effective date of the Law,
- Probable reserve areas will be separated from the operation licenses if those areas are not converted to obvious reserve areas in ten years in Group IV mines and five years in others,
- MAPEG will be able to grant mining rights to "specialized government institutions" without tender specifically for the building of plants and the production of by-products and end products to decrease the volume of imports,
- The administrative sanctions imposed within the scope of the Law Amending the Liquefied Petroleum Gas Law and Electricity Market Law No. 5307[7] and Petroleum Market Law No. 5015[8] have been increased on the grounds that they do not conform with the principle of justice and equity pursuant to the Constitutional Court decision numbered 2015/109 E. and 2016/28 K,
- In the determination of petroleum prices, suppliers are now able to reflect their entire petroleum transmission expenses and tolls to the price. Previously only 50% of the transmission expenses could have been reimbursed from purchasers,
- The domestic petroleum producers are aimed to be protected by changing the base model for determination of the price from the Ras Gharib model to the more up-to-date Arab Heavy model for the petroleum heavier than 26 API,
- Energy Market Regulatory Authority ("**EMRA**") has been allowed to introduce quantitative barriers such as number of branches or storage capacity to support new entries into the fuel oil market, and
- EMRA has been authorized to request letters of guarantee from license holders of the petroleum market.

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4 For more detailed information on the novelties brought by the Law, please **click here** to see our Client Alert on this matter.

5 Published in the Official Gazette No. 18785, dated 15 June 1985.

6 Published in the Official Gazette No. 18610, dated 19 December 1984.

7 Published in the Official Gazette No. 27754, dated 13 March 2015.

8 Published in the Official Gazette No. 25322, dated 20 December 2013.

Resolution dated 16 October 2018 of the Personal Data Protection Board on Advertising Notifications/Calls

The Personal Data Protection Board's ("**Board**") resolution dated 16 October 2018 and numbered 2018/119[9] ("**Resolution**") on advertising notifications/calls has been published in the Official Gazette dated 1 November 2018 and numbered 30582. In accordance with Article 15(6) of the Law on the Protection of Personal Data[10] ("**Law**"), the Board must adopt a resolution and publish it, in the event it is determined upon complaint or *ex officio*, that the violation of the Law is prevalent. The Board considered that the reaching out to customers or potential customers without obtaining their explicit consent for advertising purposes by means of SMS, e-mail and calls is a prevalent violation and adopted this Resolution accordingly.

It is resolved by the Board that:

- Unless the explicit consent is obtained and the processing conditions set forth under Article 5 of the Law are fulfilled, the operations of (i) data controllers who send SMS or e-mails or make calls for advertising purposes, and (ii) the data processors who use such personal data for sending SMS or e-mails or make calls for advertising purposes on behalf of the data controllers shall be immediately ceased.
- Data controllers are obliged to take all necessary technical and organizational measures for providing an appropriate level of security in order to prevent unlawful processing of personal data and unlawful access to personal data. The data controller and data processers will be jointly liable for taking such measures if personal data are processed by a third party on behalf of the data controller.
- Pursuant to Article 18 of the Law, administrative fines will be imposed on the data controllers who violate the Law through the above-mentioned acts.
- Since the personal data that are subject to processing may have been obtained illegally, these operations will be notified to public prosecutors in accordance with Article 136 of the Criminal Law No. 5237[11] and Article 136 of the Criminal Procedure Law No. 5271[12].

Foreign Currency Restrictions

On 13 September 2018, the determination of payment obligations in a foreign currency or indexed to a foreign currency for certain contracts executed between individuals and legal persons resident in Turkey was prohibited by Presidential Decision No. 85 Amending the Decree No. 32[13] ("**Foreign Currency Restriction**"). Afterwards, the Ministry of Finance set out some exemptions to the Foreign Currency Restriction with the Communiqué No. 2018-32/51[14] as amended by the Communiqué No. 2018-32/52[15] ("**Communiqué**").

The restricted contract types and relevant exemptions are summarized below. Contract types that are not listed below are not subject to the Foreign Currency Restriction.

1) Sale and lease contracts concerning immovable properties

Payment obligations under sale and lease contracts concerning immovable properties executed between individuals and legal persons resident in Turkey cannot be determined in a foreign currency or indexed to a foreign currency except for the contracts listed below:

(i) Lease contracts signed by the contractors or sub-contractors within the scope of projects performed under the tenders, agreements and international agreements that the public authorities are party to and under which the payment obligations are determined in foreign currency (or indexed to foreign currency).

(ii) Sale and lease contracts signed by the parties listed below as the buyer or lessee:

- **(a)** Turkish residents who are not Turkish nationals,
- **(b)** Turkish companies with foreign shareholders having equal to or more than 50% share stakes,
- **(c)** branches, liaison offices and representation offices of foreign companies,
- **(d)** companies in free trade zones concerning their activities in free trade zones, and
- **(e)** Turkish companies jointly or solely controlled by foreign companies.

(iii) Lease contracts of duty-free shops.

(iv) Lease contracts of rest areas certified by the Ministry of Culture and Tourism.

[9] Published in the Official Gazette No. 30582 dated 1 November 2018.

[10] Published in the Official Gazette No. 29677 dated 7 April 2016.

[11] Published in the Official Gazette No. 25611 dated 12 October 2004.

[12] Published in the Official Gazette No. 25673 dated 17 December 2004.

[13] Published in the Official Gazette No. 30534 dated 13 September 2018.

[14] Published in the Official Gazette No. 30557 dated 6 October 2018.

[15] Published in the Official Gazette No. 30597 dated 16 November 2018.

2) Sale or lease contracts concerning vehicles

Payment obligations under sale and lease contracts concerning vehicles executed between individuals and legal persons resident in Turkey cannot be determined in a foreign currency or indexed to a foreign currency except for the contracts listed below:

(i) Lease contracts concluded before 13 September 2018,

(ii) Sale contracts concerning commercial vehicles used for passenger transportation concluded before 13 September 2018, and

(iii) Sale and lease contracts concerning construction vehicles.

3) Financial lease contracts

The payment obligations under financial lease contracts executed between real and legal persons resident in Turkey cannot be determined in a foreign currency or indexed to a foreign currency except for the contracts listed below:

(i) Financial lease contracts concerning movable and immovable properties concluded before 13 September 2018,

(ii) Financial lease contracts concluded within the scope of Articles 17 and 17/A of the Decree No. 32 on the Protection of the Value of Turkish Currency[16], and

(iii) Financial lease contracts related to ships as defined under the Law Amending the Decree No. 491 and Turkish International Ship Registry Law[17].

4) Service contracts

Payment obligations under service contracts executed between real and legal persons resident in Turkey cannot be determined in a foreign currency or indexed to a foreign currency except for the contracts listed below:

(i) Service contracts including consultancy, agency and transportation contracts

- **(a)** concluded with persons who are not Turkish nationals,
- **(b)** relating to exportation, transit trade, sales and deliveries deemed as exportation, and services and activities generating foreign currency income,
- **(c)** under which the service will be performed abroad, or
- **(d)** relating to services starting or ending abroad.

(ii) Service contracts relating to hardware and software produced abroad, including license contracts.

(iii) Service contracts signed by the parties set out below as the owner or employer:

- **(a)** Turkish companies with foreign shareholders having equal to or more than 50% share stakes,
- **(b)** branches, liaison offices and representation offices of the foreign companies,
- **(c)** companies in free trade zones concerning their activities in free trade zones, and
- **(d)** Turkish companies jointly or solely controlled by foreign companies.

(iv) Transportation services contracts.

5) Labor contracts

Payment obligations under labor contracts executed between individuals and legal persons resident in Turkey cannot be determined in a foreign currency or indexed to a foreign currency except for contracts

(i) executed with employees who are not Turkish nationals,

(ii) executed by either the Turkish companies with foreign shareholders having equal to or more than 50% share stakes or the foreign companies' branches, liaison offices and representation offices,

(iii) to be performed in abroad,

(iv) signed by Turkish companies jointly or solely controlled by foreign companies, or

(v) signed with ship's crew.

6) Construction contracts

Payment obligations under the construction contracts executed between individuals and legal persons resident in Turkey cannot be determined in a foreign currency or indexed to a foreign currency except for the construction contracts that involve costs in foreign currency.

7) Capital market instruments

Capital market instruments are subject to the Foreign Currency Restriction except the ones that are issued (i) based on the contracts under which the payment obligations are determined in foreign currency and (ii) before 13 September 2018. In addition, the issuance of capital market instruments subject to the Capital Markets Law[3] (including foreign capital market instruments, depositary receipts, and foreign investment fund shares) and the obligations related to their issuance, sale, and

[16] These articles basically state that only the persons generating foreign exchange income may obtain foreign currency loans.

[17] Published in the Official Gazette No. 23913 dated 21 December 1999.

purchase and relevant transactions are not subject to the Foreign Currency Restriction.

8) Contracts concluded by public institutions

The contracts, except immovable property sale contracts and labor contracts, signed within the scope of the projects performed under the tenders, agreements and international agreements that the public authorities are party to and under which the payment obligations are determined in foreign currency (or indexed to foreign currency) and all of the sub-contracts executed with third parties in this context are exempt from the restrictions under the Communiqué.

9) Contracts of air transportation companies and enterprises

The Communiqué explicitly states that the contracts (except the contracts for the sale or lease of immovable properties and labor contracts) signed by (i) commercial airway enterprises, (ii) companies providing technical maintenance services with respect to aircrafts, and (iii) establishments providing ground services in airports, enterprises established by the companies providing ground services in airports, and companies in which the establishments providing ground services in airports hold 50% or more of the shares are exempt from the Foreign Currency Restriction.

The Regulation Regarding the Determination of Investment Areas

The Regulation regarding the Determination of Investment Areas ("**Regulation**") was published in the Official Gazette on 1 December 2018 numbered 30612 and came into force upon its publication. The Regulation sets forth principles and procedures to determine suitable areas to establish investment areas such as organized industrial zones, industrial areas, technological development zones, free zones, industrial sites; and to realize the infrastructure investments for such areas which are deemed to be suitable.

Pursuant to the Regulation, investment areas shall be determined by the Ministry of Industry and Technology ("**Ministry**"), which are (i) in conformity with the environmental plans and master development plans and (ii) either owned by the Treasury or not deemed as forestry areas or beyond the scope of licensing.

Within this context, a site selection survey (*yer seçimi etüdü çalışması*) shall be conducted by the Ministry as well. Within this framework, all kinds of information, documents and maps required for the selection of areas shall be obtained by the Ministry from the central and local organizations of related offices and institutions. Afterwards, this site selection survey report shall be sent to the General Directorate of Industrial Zones ("**Directorate**"). If the Directorate approves the site selection survey report, such report will be shared with the related institutions designated in the Regulation's annex to receive their opinion. If these institutions do not respond within 30 days, they shall be deemed to have given a positive opinion. In this case, the location of an investment area shall be finalized and the Directorate shall notify the institutions of the finalized location of the investment area.

Furthermore, to enable the correct utilization of investment areas of which boundaries are finalized, a footnote shall be entered by the governorship prohibiting the sales, transfer and disposition to third parties, as long as infrastructure or plants are not constructed in accordance with allocation standards regarding the investment area.

The status of investment areas shall be determined by the Ministry or upon request as organized industrial zones, industrial areas, technological development zones, or industrial sites. A further site selection process shall not be required if the utilization of investment areas is deemed to be appropriate upon applications made to the Ministry electronically. However, applications to form free zones differ from the abovementioned process. These applications shall be made to the Trade Ministry. If applications are found appropriate by the Trade Ministry, the location and boundaries of free zones to be formed at selected sites shall be determined in accordance with the Law No. 3218[18].

New Regulation on Notification via Electronic Means

The Regulation on Notification via Electronic Means ("**Regulation**") was published in the Official Gazette No. 30617 dated 6 December 2018 and became effective as of 1 January 2019, abolishing the former Regulation on Notification via Electronic Means dated 19 January 2013 ("**Former Regulation**"). Although the Former Regulation obliged joint stock companies, limited liability companies and limited partnerships divided into shares to be notified electronically, implementation never became widespread in practice since setting up a substructure for such kind of technical notification took time.

The Regulation provides for a National Electronic Notification System ("**NENS**") to be established and managed by Posta ve Telgraf Teşkilatı Anonim Şirketi ("**PTT**") through which the electronic notification transactions will be carried out. PTT is responsible to establish, provide security for, and operate the NENS.

Scope of the Implementation

The Regulation requires notifications within the scope of the Notification Law[19] addressed to the following public

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

[19] Published in the Official Gazette No. 10139 dated 19 February 1959.

and private legal entities and individuals to be made electronically:

- Public administrations set out under the charts of I, II, III, and IV attached to the Public Finance Management and Control Law No. 5018[20], and circulating capital enterprises affiliated with such administrations; and local administrations defined under Law No. 5018
- Other public institutions and organizations established by private laws; and funds and surety funds established by law
- Public economic enterprises and affiliates, administrations and institutes of those enterprises
- Other partnerships, more than 50% of the shares of which are held by the public
- Public professional organizations and supreme institutions
- All kinds of private legal entities including those established by law
- Public notaries
- Lawyers registered to the bar
- Registered mediators and experts
- Other partnerships, more than 50% of the shares, public economic enterprises or administrations of which belong to the public; the unit to which those authorized to represent as proxy, before the judicial and administrative justice authorities; execution offices or arbitrators.

Application for an Electronic Notification Address

The persons and entities who are obliged to obtain an electronic notification address, as listed above, must apply to PTT within **one month** starting from the effective date (i.e. 1 January 2019). Applications for private legal entities shall include a Central Registration System (MERSIS) number and system information. PTT shall form a unique and single electronic notification address within one month from the application date and register it within the NENS. Both public and private legal entities shall also determine **at least one and at most ten** primary process official(s) to carry out the activities regarding the electronic notifications on behalf of the entity and notify such authorization to PTT. The Regulation does not set forth any fee for obtaining an electronic notification address.

Issuing and Receiving Electronic Notifications

Persons or entities which are authorized to issue notifications shall prepare an electronic notification message and submit it to the NENS. The NENS will then deliver the notification to the addressee's electronic notification address via a time stamp. The notification shall be deemed as received at the end of the **fifth day** following the delivery of the electronic notification to the addressee's electronic notification address. The addressee can prefer to be informed by PTT via SMS or e-mail whenever an electronic notification is delivered. However, this message or e-mail is solely for informative purposes and has no effect on the validity of the actual electronic notification. Users will be able to access the electronic notification address through secured electronic signature, the e-Government Gateway, or through a password to be given by PTT. Electronic notification issuing services are subject to a fee which has just been determined on the PTT official website.

The NENS shall keep proof records of whether the electronic notification has reached to the addressee and inform the sender of the proof record promptly and no later than 24 hours. These proof records are accepted as material evidence unless otherwise proven.

Sanctions

It can be said that with the establishment of a centralized and well-functioning system, namely the NENS, the new Regulation aims to implement a widespread usage of a mandatory electronic notification system, as opposed to the failed implementation of the Former Regulation. However, the Regulation does not currently specify the sanctions for noncompliance. It may be expected that certain sanctions will be determined in the near future considering the wide scope of the Regulation.

The Law Amending the Environmental Law and Certain Other Laws No. 7153

The Law Amending the Environmental Law and Certain Other Laws No. 7153 ("**Law**")[21] has been published in the Official Gazette dated 10 December 2018 and entered into force on the same date. The Law amends certain provisions of (i) the Environmental Law No. 2872 ("**Environmental Law**")[22], (ii) the Zoning Law No. 3194 ("**Zoning Law**")[23], (iii) the Coastal Law No. 3621 ("**Coastal Law**")[24], and (iv) various other laws.

Significant amendments introduced under the Law are as follows:

- As for the Environmental Law:
  - Reduction of the consumption of plastic packing materials and plastic bags has been listed amongst the general scope and purpose of the Environmental Law, by also

[20] Published in the Official Gazette No. 25326 dated 24 December 2003.

[21] Published in the Official Gazette No. 30621 dated 10 December 2018.

[22] Published in the Official Gazette No. 18132 dated 11 August 1983.

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

[24] Published in the Official Gazette No. 20495 dated 4 April 1990.

introducing a new deposit scheme in relation to the foregoing.

- The Ministry of Environment and Urbanization ("**MoEU**") has been authorized to establish mandatory deposit practices as of 1 January 2021, in an attempt to avoid further pollution caused by plastics. Procedures and principles of administrative fines and the establishment of deposit schemes will be determined under regulations to be issued by MoEU.
- Administrative fines imposed for noncompliance in relation to exhaust gases have been increased, and MoEU has been determined as the competent body to file objections against such fines. That being said, the Ministry of Agriculture and Forestry ("**MoAF**") has been designated as the relevant governmental authority for imposing administrative fines to those damaging the biological diversity and wetland areas; therefore, MoAF has also been identified as the proper forum to raise objections on fines of this particular nature;
- MoEU has been tasked with the promotion of municipalities, special provincial administrations, institutions, organizations and enterprises for establishing zero-waste management operations.

☐ As for the Coastal Law:

- Energy transmission lines have now been allowed to be constructed on shores that fall under the scope of the Coastal Law, by virtue of construction plan decisions. Pursuant to the Zoning Law, those construction plans decisions are issued and executed by relevant municipalities;
- It has been permitted to construct renewable energy production plants over the areas on the sea that have been previously determined as renewable energy resource areas by virtue of construction plan decisions. Having said that, unlike construction plan decisions made for energy transmission lines, the Ministry of Energy and Natural Resources ("**MENR**") has been empowered to take those decisions regarding construction of renewable energy production plants, instead of municipalities.

Regulation Amending the Petroleum Market Licensing Regulation

The Regulation Amending the Petroleum Market Licensing Regulation ("**Amending Regulation**") was published in the Official Gazette No. 30633 dated 22 December 2018, and entered into force on the same date.

Novelties brought with the Amending Regulation to the Oil Market Licensing Regulation[25] ("**Regulation**") are summarized below:

- An online application system is now introduced for the application and amendment of Petroleum Market Licenses. The information and the documents requested by the Energy Market Regulatory Authority ("**EMRA**") can now be submitted either in written form or by means of electronic documentation.
- The official starting date of the application evaluation period, which was the date when the EMRA Central Documentation System receives the application documentation, is now replaced by the date of submission to EMRA.
- The Amending Regulation specifies the procedure with regard to the notices to be made to the application holders, for the outstanding documents during the application process. If such procedures are not followed or the required documents are not submitted, such applications will be deemed void.
- The Amending Regulation made uniform all the application periods to request an amendment of the license for any changes of information stated in the license, any supplement to the license or any elimination of information from the license, including any changes related to the distribution company registered in the dealership license, by setting it to two (2) months.
- The Amending Regulation updates the required documents to be submitted to EMRA with regard to the notification obligation of the companies in case of any changes related to their corporate structure, chairman and members of the Board of Directors, and the persons authorized to represent and bind the company.

Amendments to the Regulation on the Documentation and Support of Renewable Energy Resources

The Regulation Amending the Regulation on the Documentation and Support of Renewable Energy Resources ("**Amendments**") was published in the Official Gazette dated 9 October 2018 and No. 30560,

[25] Published in the Official Gazette No. 25495 dated 17 June 2004.

and became effective as of 1 January 2019. The Amendments brought a new definition and also introduced two new calculation methods in relation to the Renewable Energy Support Mechanism ("**YEKDEM**"). Accordingly:

- The term "Tender Regulation" has been included, which refers to the Tender Regulation on Preliminary License Applications for Building Generation Facilities based on Wind or Solar Energy[26],
- Two new formulas have been introduced, which are (i) the calculation of the YEKDEM income, and (ii) the compulsory participation fee of the market participants pursuant to the Tender Regulation, and
- The electricity consumption of the power plant will be set off and this will be taken into consideration in the calculation of the payment obligation ratio of the market participant under YEKDEM.

Amendments to the Transmission Network Operation Principles

The Amendments to the Transmission Network Operation Principles ("**Network Code**") (collectively the "**Amendments**") was published in the Official Gazette on 2 February 2019 and came into force upon its publication. The major novelties provided by the Amendments are as follows:

- Boru Hatları ile Petrol Taşıma Anonim Şirketi ("**BOTAŞ**") has been authorized to procure natural gas for the situations that lie outside of the cases of Emergency, Hard Day or Limited Capacity Day so as to take the necessary measures easier,
- In case there is a Gas Balancing Contract between BOTAŞ and a supplier, a calculation method of the imbalance of the market participant has been included to the Network Code,
- Concerning the events that the market participants cannot fulfill their point/regional target or cannot manage their general balance despite fulfilling their point/regional objective, the calculation method for the penalty imposed to them has been revised,
- The Incalculable Gas amount has been excluded from the calculation of the Gas for Internal Usage, which is affecting the balance of the market participant, to prevent possible invoice objections, and
- "Gas Balancing Contract signing" clause has been added to the provisions that BOTAŞ is not subject to being the owner of the existing national transmission grid, seeing that the vertically integrated company structure of BOTAŞ cannot execute a Gas Balancing Contract with itself.

Draft Legislation

New Draft Regulation on License-Exempt Activities in the Electricity Market

On 31 October 2018, the Energy Market Regulatory Authority ("**EMRA**") published a new Draft Regulation on License-Exempt Activities in the Electricity Market ("**Draft Regulation**") on its website for public opinions to be received until 30 November 2018. The Draft Regulation will repeal and replace the current License-Exempt Electricity Generation Regulation[27] ("**Regulation**"). We summarize below some of the significant changes that are planned to be brought under the Draft Regulation.

1) Energy Storage

Electricity storage is a relatively new concept in the Turkish electricity market. Although the current applicable legislation does not prevent such activities, the lack of a detailed regulatory basis for electricity storage has been one of the main discussions in the sector. The Draft Regulation seems to be the first anticipated step for a regulatory guideline on electricity storage activities in Turkey.

The Draft Regulation defines electricity storage activities as "*activities regarding the storage of electricity energy into energy storage facilities and/or the transmission of the electricity stored in the energy storage facility to the network*" and further provides that electricity storage will be exempt from obtaining a license and incorporation. The Draft Regulation grants EMRA the authority to further regulate in detail the procedures and principles of this activity.

2) New Capacity Restriction for the Generation Facilities

According to the current Regulation, the installed capacity of renewable energy based generation facilities can be no more than 30 times the amount of the consumption facility associated to that generation facility.

The Draft Regulation foresees a stricter approach in the capacity restriction. Accordingly, the Draft Regulation provides that the installed capacity of renewable energy based generation facilities cannot be more than the power of the associated consumption facility set forth in the connection agreement.

As for the existing projects, the Draft Regulation does not provide any transitory rules applicable to the existing generation facilities or their associated consumption facilities. Since there are no clear provisions on what will

[26] Published in the Official Gazette No. 30065 dated 13 May 2017.

[27] Published in the Official Gazette No. 28783 dated 2 October 2013.

happen to the current installed capacities of the said facilities, one can, at least currently, assume these are legally acquired rights and should not be affected unless otherwise provided.

3) The Commission

The Draft Regulation introduces a new commission for the evaluation of the applications to be made for connection. Therefore, if the Draft Regulation becomes effective as it is, the commission will collect and examine the applications instead of the relevant network operator.

The commission is planned to consist of three members. TEİAŞ, TEDAŞ and the relevant network operator will each appoint one representative. The chairmen of the commission will be the TEİAŞ representative. The commission will decide by majority of votes when evaluating the applications.

Draft Amendment to the Communiqué on the Regulation of Retail Energy Sale Tariffs

On 15 November 2018, the Energy Market Regulatory Authority ("**EMRA**") published the "Draft Amendment to the Communiqué on the Regulation of Retail Energy Sale Tariffs ("**Draft Amendment**") on its website to receive public opinions until 30 November 2018. The Draft Amendments aim to bring similar provisions set forth under the Communiqué on the Regulation of Distribution System Revenue[28] concerning how electricity distribution companies' revenues generated from their users and third parties are required to be considered in tariff calculations.

The Draft Amendment lists the revenues which can be collected within the scope of fees approved by the Energy Market Regulatory Board or earned in return of a service provided to consumers or third parties by authorized supply companies as follows:

a) Donation income,

b) Penalty, fairness, security and compensation incomes,

c) Consultancy income,

d) Other revenues collected from unlicensed electricity generation facilities,

e) Revenue generated as a result of consumers' payments in installments made by credit cards within the scope of applicable legislation,

f) Rental income,

g) Revenue generated in return of additional services provided within the scope of the applicable legislation for the execution of a retail sale agreement,

h) Advertisement revenue,

i) Revenue generated from illegal electricity usage.

Accordingly, all of the revenues listed above except a certain percentage (percentage is blank under the Draft) of the ones stated in items (b), (c), (f) and (h) and all of the ones stated in items (e) and (g) shall be taken into consideration for revenue difference calculations.

Draft Communiqué on Crowdfunding

On 3 January 2019, the Capital Markets Board of Turkey ("**CMB**") published the Draft Communiqué on Crowdfunding[29] ("**Draft Communiqué**"), which was open for public views until 4 February 2019. After the crowdfunding definition had been introduced to Article 35/A.1 of Capital Market Law No. 6362[30] ("**Capital Market Law**") back in November 2017, the Draft Communiqué regulates the crowdfunding platforms and equity-based crowdfunding process.

Crowdfunding refers to a method of low-cost capital financing for startups and small/medium-sized companies by raising funds from the public in exchange of company shares. It is an increasingly popular alternative financing method globally. In particular, at times when the economic outlook is negative and bank financing is prohibitively costly, crowdfunding comes to the fore shifting the financier role from conventional banks to the masses. It also spreads risks among the target group and injects the household capital into investments, thereby fostering economic growth.

The Draft Communiqué's contemplated crowdfunding model operates on an "equity" basis (funding in exchange for shares in the company). Reward or donation based crowdfunding are not within the scope of the Draft Communiqué.

Crowdfunding Platforms

Under the Draft Communiqué, in order to engage in crowdfunding, a crowdfunding platform ("**Platform**") must be incorporated and listed by the CMB. A crowdfunding platform must meet, among others, the following criteria: (i) it must be established as a joint-stock company with a paid-in capital of at least TRY 1 million, (ii) its trade name must contain the term "Crowdfunding Platform", (iii) its shareholders and board members must meet the criteria set out in the Draft Communiqué, and (iv) it must establish an investment committee. In the event where a Platform no longer satisfies these conditions, it must notify the CMB within 2 days so as to be delisted.

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[28] Published in the Official Gazette No. 29567 dated 19 December 2015.

[29] http://www.spk.gov.tr/Duyuru/Goster/20190103/0.

[30] Published on the Official Gazette numbered 28513 dated 30 December 2012.

Limitations on Activities

A Platform is required to engage in crowdfunding activities exclusively. In addition, the Draft Communiqué prohibits, among others, the following activities for a Platform: (i) acting as an intermediary in lending transactions in exchange for consideration or collateral, (ii) any crowdfunding activity based on a capital markets instrument (except shares), (iii) any crowdfunding activity concerning trade of real estate or development of real estate projects, (iv) any fundraising activities from Turkish residents for companies whose registered office is outside Turkey, (v) acting as an intermediary for the share transactions in the secondary market, and (vi) any investment recommendation.

Eligibility Criteria

In order to apply for fundraising, a company must (i) engage in technology and/or production activities, (ii) have been established within the last two years as of the publication date of the information form, (iii) have financial statements in compliance with the Communiqué No. II-16.1 of the CMB[31], and (iv) have a registered website. Besides publicly listed companies, companies whose management control is held by another legal person, and companies in which a publicly listed company or a capital markets institution is a material shareholder are prohibited from participating in crowdfunding activities under this Draft Communiqué.

Fundraising Campaign Process

i. Upon the application of the company satisfying the aforementioned conditions, the fundraising process commences with the publication of the *information form* in the Platform's website. This form must include all material information on the company, rights and privileges on shares to be issued to the investors and must be approved by the investment committee.

ii. Investors[32] who wish to invest in the company must first evaluate the information form of the company and then execute a membership agreement with the Platform and submit a fundraising request to the Platform. Funds provided by the investors are kept by an escrow agent to be determined by the CMB until the completion of the campaign.

iii. Investors may exercise the right to revoke within 48 hours following the order of payment regarding fundraising by submitting a revoking notification to the Platform.

iv. Throughout the campaign process, the company shall inform the investors concerning any changes in the statements within the information form.

v. Once the funds are raised, the company will issue new shares corresponding to such funds by way of a capital increase, and the shares will be allocated to the investors and registered with the Central Securities Depository of Turkey prior to the transfer of funds to the company. The campaign process will be concluded when the funds are transferred to the company. If the targeted amount of funds cannot be raised as a result of the campaign, funds kept by the escrow agent will be returned to the investors.

vi. Similar to publicly listed companies, the company has disclosure requirements in relation to the material events listed in Article 22.

Recent and Upcoming Conferences & Events

Health Public Private Partnership ("PPP") Projects in the Pipeline

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 dutch 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 30 April 2019.

25th ICCI International Energy and Environment Conference

The 25th International Energy and Environment Conference supported by the Ministry of Energy and Natural Resources and the Energy Market Regulatory Authority will be held on 28-30 May 2019 in İstanbul, with the participation of both domestic and international energy sector leaders and governmental authorities. The conference will focus on the future energy sector structure as well as on renewable energy, cogeneration, new trends in electricity generation and electricity trade, maintenance and repair of the energy facilities, etc.

9th International 100% Renewable Energy Conference (IRENEC 2019)

The 9th International 100% Renewable Energy Conference supported by Renewable Energy Association of Turkey (EUROSOLAR Turkey) will be held in İstanbul, on 24-26 April 2019. The Conference will focus on global and local implementations and technologic developments in the field of renewable energy.

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31 Published on the Official Gazette numbered 28867 (1st Repeating Issue) dated 30 December 2013.

32 The Draft Communiqué classifies investors as qualified and non-qualified investors pursuant to definitions of the relevant CMB regulations. Non-qualified investors are allowed to invest a maximum amount of TL 20,000 in one calendar year.

Turkey 21st Petroleum and Natural Gas Congress and Exhibition

Turkey 21st Petroleum and Natural Gas Congress and Exhibition will be held in Ankara, on 27-29 March 2019 organized by the Turkish Association of Petroleum Geologists, the Chamber of Geophysics Engineers and the Chamber of Petroleum Engineers. The congress aims to discuss the transactions conducted in Turkey and its near geography regarding the research and production of hydrocarbon, the Petroleum Law and similar regulations, renewable energy issues, etc.

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