



# Changes in Project Ownership in Licensed Power Plants

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Electricity generation has been a dynamic sector attracting significant investor interest since the early stages of market liberalization in Türkiye. In addition to greenfield projects, it is common for operational power plants to undergo changes in ownership. These changes may occur through asset transfers or transfer of shares in the license holder company. In this article, we explore the various methods of changing project ownership in licensed power plants, along with the regulatory constraints applicable to such transactions.

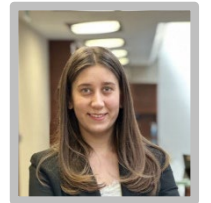


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## Change of Project Ownership Through Share Transfer

As a commercial activity, electricity generation is performed under a license granted by the Energy Market Regulatory Authority of the Republic of Türkiye (“**EMRA**”). The license is issued shortly before the construction phase, while the preliminary procedures required for an investor to qualify for a license (such as acquiring land use rights, finalizing zoning plans, and obtaining project approvals) are conducted under a preliminary license.

Given that companies holding preliminary licenses or generation licenses are predominantly established as special purpose vehicles, the most common method of transferring a project is not through the direct transfer of the power plant itself, but through the transfer of all shares in the project company. However, such transfers are subject to regulatory constraints. In some cases, they are strictly prohibited, while in others, they may require prior approval or notification.



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### **Share Transfer Restrictions During the Preliminary License Period**

Given the national security considerations and the public interest inherent in electricity generation, the efficient allocation of limited grid capacity is of paramount importance. In this context, EMRA introduced stringent restrictions on share transfers during the preliminary license period. These restrictions aim to prevent the preliminary licenses being treated as tradable commodities and to ensure that the power plants are developed and commissioned in a timely manner.

The table below summarizes the relevant provisions of the Electricity Market License Regulation ("**Regulation**") concerning direct or indirect changes in shareholding structure of entities holding a preliminary license:

Case	Applicable rule
Death or bankruptcy of the shareholder	Transfer is unrestricted; mandatory notification to EMRA within 6 months of the transfer.
Changes in the shareholding structure of the publicly traded shares of public legal entities or the publicly traded shares of the shareholder of a legal entity that has a public legal entity shareholder	Transfer is unrestricted; mandatory notification to EMRA within 6 months of the transfer.
The power plant being developed within the scope of international agreements	Transfer is unrestricted; mandatory notification to EMRA within 6 months of the transfer.
Indirect shareholding changes in the shareholding structure of the preliminary license-holder due to changes in the shareholding structure of its shareholders established abroad	If the change is 10% or more, EMRA approval is required. If below 10%, the transfer is unrestricted. In any event, mandatory notification to EMRA within 6 months of the change in shareholding structure.
Changes in the shareholding structure of the preliminary license-holder and its direct or indirect legal entity shareholders within the scope of public offering of the shares of the preliminary license-holder	Transfer is unrestricted; mandatory notification to EMRA within 6 months of the transfer.
Changes in the shareholding structure of the preliminary license-holder due to changes in the shares among the existing shareholders of the preliminary license-holder based on the exercise of the pre-emptive rights of the shareholders	Transfer is unrestricted; mandatory notification to EMRA within 6 months of the transfer.
Changes that result in all indirect shareholders included in the preliminary license of the preliminary license-holder becoming direct shareholders without changing their shareholding ratios and changes that result in all direct shareholders becoming indirect shareholders without changing their shareholding ratios	Direct changes are subject to EMRA approval. Indirect changes are subject to EMRA approval if the change is 10% or more. If below 10% and indirect, the change is unrestricted. In any event, mandatory notification to EMRA within 6 months of the change in shareholding structure.

Changes in the structure of the preliminary license holder that is included in the privatization program due to the sale or transfer of its public shares	Transfer is unrestricted; mandatory notification to EMRA 6 months of the transfer.
Changes in the shareholding structure of the preliminary license-holder that do not constitute a change of control	<p>Direct changes are subject to EMRA approval.</p> <p>Indirect changes are subject to EMRA approval if the change is 10% or more.</p> <p>If below 10% and indirect, the change is unrestricted.</p> <p>In any event, mandatory notification to EMRA within 6 months of the change in shareholding structure.</p>
Changes in the shareholding structure of the preliminary licenses-holder, more than half of whose capital is directly or indirectly owned by public institutions and organizations, arising from capital increase and/or change of shareholders, provided that no new shareholder other than those qualifying as public institutions or organizations is introduced into the shareholding structure	<p>Direct changes are subject to EMRA approval.</p> <p>Indirect changes are subject to EMRA approval if the change is 10% or more.</p> <p>If below 10% and indirect, the change is unrestricted.</p> <p>In any event, mandatory notification to EMRA within 6 months of the change in shareholding structure.</p>
Within the scope of the Turkish Commercial Code, changes in the shareholding structure of the preliminary license-holder, arising from the acquisition of its own shares by the preliminary license-holder and its direct and indirect legal entity shareholders	<p>Direct changes are subject to EMRA approval.</p> <p>Indirect changes are subject to EMRA approval if the change is 10% or more.</p> <p>If below 10% and indirect, the change is unrestricted.</p> <p>In any event, mandatory notification to EMRA within 6 months of the change in shareholding structure.</p>
Acquisition of shares in the preliminary license-holder by foreign legal entities or by Turkish legal entities controlled by foreign legal entities, in each case, using foreign resources	<p>Direct changes are subject to EMRA approval.</p> <p>Indirect changes are subject to EMRA approval if the change is 10% or more.</p> <p>If below 10% and indirect, the change is unrestricted.</p> <p>In any event, mandatory notification to EMRA within 6 months of the change in shareholding structure.</p>
Direct or indirect changes in the shareholding structure of the preliminary license holder due to share transfers among spouses and their first-degree relatives having direct or indirect shareholding in the preliminary license holder	Direct changes are subject to EMRA approval.

	<p>Indirect changes are subject to EMRA approval if the change is 10% or more.</p> <p>If below 10% and indirect, the change is unrestricted.</p> <p>In any event, mandatory notification to EMRA within 6 months of the change in shareholding structure.</p>
Changes in the shareholding structure of the preliminary license-holder arising from the confiscation of its management by the Savings Deposit Insurance Fund	Transfer is unrestricted; mandatory notification to EMRA within 6 months of the transfer.
Changes in the shareholding structure of the preliminary license-holder licensed for Renewable Energy Resource Areas (YEKA)	Transfer is unrestricted; mandatory notification to EMRA within 6 months of the transfer.
Merger of the preliminary license-holder with all its assets and liabilities within its own or another legal entity	In all cases, it is subject to EMRA approval. If the transaction is not completed within 6 months after the approval is granted, the approval becomes invalid. If any obligation is included in the approval decision, a deadline is set.
Full or partial demerger of the preliminary license-holder	In all cases, it is subject to EMRA approval. If the transaction is not completed within 6 months after the approval is granted, the approval becomes invalid. If any obligation is included in the approval decision, a deadline is set.
Any change in shareholding structure of the preliminary license-holder other than those stated above	Prohibited. If a change occurs in the shareholding structure despite the prohibition or without EMRA approval, the preliminary license shall be canceled.

Notification appears to be sufficient for transactions not requiring approval under the Regulation. However, the List of Information and Documents Required for Preliminary License and License Amendment Applications and for Merger, Demerger, and Facility/Project Transfer Approval Applications, published by EMRA, sets out specific documentation to be submitted for assessing whether a proposed change in the shareholding structure of a preliminary license holder falls within the scope of the exceptions. Accordingly, the list implies that even in cases presumed to be exempt, an application must be submitted to EMRA prior to executing the relevant share transfer.

#### **Share Transfer Restrictions During the License Period**

In contrast to the preliminary license period, the license period marks the transition into the construction phase, following the completion of project development. As a result, concerns related to capacity allocation begin to diminish, and the regulatory approach to changes in shareholding becomes more flexible. Accordingly, the regulatory authority has adopted a less restrictive regime for legal entities holding generation licenses.

Pursuant to Article 52(2) of the Regulation, changes in the shareholding structure of legal entities holding electricity generation licenses -except for mergers and demergers- do not require prior approval from EMRA. However, such changes must be notified to EMRA within 6 months, and if applicable, a license amendment application must also be submitted within the same timeframe. Failure to comply with these obligations may lead to the imposition of administrative fines.

As for mergers and demergers, the same principles summarized above for preliminary license holders continue to apply during the license period.

## **Change of Project Ownership Through Asset Transfer**

The transfer of ownership of power plants through asset transfer requires the concurrent transfer of the associated preliminary license or generation license. Although the electricity market legislation generally prohibits the direct transfer of preliminary licenses and generation licenses, it provides exceptions under which certain transactions are not deemed to constitute a license transfer:

- The transfer of the rights and obligations under the Regulation by the preliminary license or generation license holder to another legal entity through a merger or demerger in accordance with the Turkish Commercial Code,
- The transfer of the rights and obligations under the Regulation by the license holder to another legal entity established with an identical shareholding structure, subject to EMRA's prior approval,
- The transfer of the power plant within the scope of the license to another legal entity through a transaction that results in a change in the right of use - such as sale, transfer or lease,
- In cases involving limited or non-recourse project financing by banks or financial institutions, the transfer of the power plant to another legal entity as a result of the notification of banks or financial institutions to EMRA based on the contract provisions, and EMRA finding the grounds for transfer appropriate, provided that the new legal entity undertakes all obligations under the original license,
- Upon the finalization of the sale through enforcement proceedings, transfer of the power plant to a legal entity applying for its purchase, provided that it fulfills the obligations under the application.

In each of the foregoing cases, a new preliminary license or generation license is issued by EMRA to the new owner of the power plant, which is treated as a continuation of the previous license.

## **Conclusion**

Changes in project ownership in licensed power plants can be effected through share transfers or asset transfers. In both cases, it is essential to carefully review the applicable restrictions and procedural requirements imposed by EMRA. It is critical to assess the technical, legal and administrative aspects with a comprehensive approach to ensure successful closing.