



# Changes in Project Ownership in License-Exempt Power Plants

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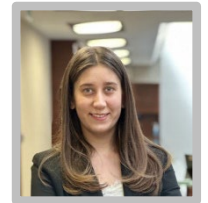
Investors may produce electricity for internal consumption without obtaining a preliminary license or generation license. In particular, industrial consumers with high electricity consumption are interested in taking over license-exempt projects to reduce their electricity costs and carbon footprints. Thus, changes in project ownership in license-exempt projects are as frequent as in licensed projects. In this article, we explore the various methods of changing project ownership in license-exempt power plants, along with the regulatory constraints applicable to such transactions.



Nazlı Başak Ayık  
Counsel

## Change of Project Ownership Through Share Transfer

The transfer of shares in a license-exempt producer has a limited scope of application compared to licensed producers. This is mainly due to the license-exempt generation being regulated as for self-consumption. License-exempt power plants are developed not by forming a separate company (Special Purpose Vehicle/SPV) for investment purposes, but by existing entities that already have their own electricity consumption and which obtain a connection agreement invitation letter. In this context, the company that owns the power plant is also an electricity consumer and produces electricity to meet its own consumption.



Gökçe Laleoğlu  
Associate

Changes in the shareholding structure of the legal entity that is entitled to an invitation letter to sign a connection agreement (or, as the case may be, party to the connection agreement) for license-exempt electricity generation are subject to the provisions of Article 37 of the Regulation on License-Exempt Electricity Generation in the Electricity Market (“**License-Exempt Regulation**”). In principle, share transfers are unrestricted. However, some specific circumstances are subject to certain restrictions:

#### **Power plants within the scope of Article 5(1)[c] of the License-Exempt Regulation**

For wind or solar power plants with an installed capacity of 1 MW or up to the maximum installed capacity determined by the President under Article 14 of the Electricity Market Law (currently 5 MW), any transfer of shares in the company holding the invitation letter (or, as the case may be, party to the connection agreement) is prohibited until the commissioning of the entire power plant. The following types of share transfers are permitted for these power plants:

- Changes in the ownership of shares due to inheritance,
- To the extent limited to publicly traded shares, changes in the shareholding structure of publicly traded legal entities and in the shareholding structure of legal entities having public traded shareholders arising from direct or indirect changes in such shareholder’s shares,
- Direct or indirect changes in the shareholding structure of the legal entity due to changes in the shares among the existing shareholders due to the exercise of the pre-emptive rights,
- Indirect shareholding changes in the shareholding structure of the legal entity due to changes in the shareholding structure of its shareholders established abroad,
- Direct or indirect changes in the shareholding structure of the legal entity within the scope of public offering of the legal entity and public offering of the shares of the direct or indirect shareholders of this legal entity,
- Direct or indirect changes in the shareholding structure of the existing shareholders of the legal entity, which do not result in a change of control in the shareholding structure of this legal entity, and
- Direct or indirect changes in the shareholding structure of the legal entity due to share transfers among spouses and their first-degree relatives having direct or indirect shareholding in this legal entity.

The share transfers listed above do not need to be notified to the grid operator. Grid operators review *ex officio* whether a share transfer has occurred during the stages of signing the connection agreement and preparing the commissioning minutes. If a share transfer is determined to have been conducted despite the conditions not being met, the connection agreement call letter or the connection agreement (as applicable) is cancelled, thereby terminating the right to produce license-exempt electricity.

#### **Merger and demerger transactions**

It is prohibited for the owners of all license-exempt power plants, to merge all of its assets and liabilities under its own legal entity or within another legal entity, or to demerge itself in whole or in part, until the commissioning of the related power plants. Cases where the legal entity remains the same and the share ratios do not change are exceptions to this prohibition and such transactions must be notified to the grid operator, and new connection and system usage agreements (as applicable) must be signed.

Grid operators review *ex officio* whether a merger or demerger is carried out without complying with the foregoing conditions, at the stage of signing of the connection agreement and the preparation of the commissioning minutes. If any discrepancies are identified, the license-exempt generation right may be cancelled.

## Change of Project Ownership Through Transfer of Power Plant

The general rule for the transfer of the license-exempt power plants is that the power plant must have been commissioned. The purpose of this approach is to prevent changes in ownership during the project phase that are motivated by resale, rather than the actual realization of the investment. Article 35, paragraph 1 of the License-Exempt Regulation, which stipulates the transfer of license-exempt power plants, is as follows:

*“Provided that it has been commissioned, a generation facility within the scope of this Regulation may be transferred through sale, transfer, or other arrangements, to a real or legal person wishing to generate electricity, who satisfies the conditions that provided for capacity allocation, including conditions arising from the status of the person wishing to transfer and this Regulation or related legislation. Generation facilities that have not been commissioned, except for those set out in the first paragraph of Article 11, may not be transferred under this paragraph.”*

The foregoing provision leads to the following conclusions regarding the conditions of transfer:

- The exception to the transfer prohibition prior to commissioning is the transfer of generation facilities based on renewable energy sources, which are authorized by the institution designated by the Ministry of Energy and Natural Resources under the first paragraph of Article 11 of the License-Exempt Regulation, and which are deemed suitable for the preparation of a type project up to 25 kW (including 25 kW), and whose production and consumption are connected to the same point up to the contract power specified in the connection agreement of their own consumption facility.
- Although the transfer of a commissioned power plant is unrestricted, the acquiring party must have the appropriate qualifications under the legislation. However, the meaning of the phrase *“conditions that provided for capacity allocation, including conditions arising from the status of the person wishing to transfer”* in the article is not clear. Matters such as the installed capacity and subscription type of the consumption facility to be associated with the generation facility should be taken into consideration when interpreting this phrase.

The grid operator determines whether the necessary conditions for transfer have been met. In this context, the following documents listed in the List of Information and Documents to be Submitted in Generation Facility Transfer Applications, issued by the Energy Market Regulatory Authority’s decision No. 8587 dated 16 May 2019, must be provided to the grid operator:

- Application letter to be submitted simultaneously by the transferring and acquiring parties,
- Authorization documents of the person(s) authorized to represent and bind the applicant legal entities,
- Information and documents demonstrating the shareholding structure of the transferor legal entity and, if applicable, the control relationship of the real or legal persons who are direct or indirect shareholders in the legal entity,
- Individual codes of the consumption facility/facilities of the acquiring party,

- Excluding roof-top applications, the document obtained under the Environmental Impact Assessment Regulation for projects exceeding the threshold values,
- The notarized facility transfer agreement signed by the transferring and acquiring parties, and
- The receipt or statement confirming that the transaction fee has been deposited into the relevant grid operator's account by either party.

For the transfer of the power plant, the transferring and acquiring legal entities must simultaneously apply to the relevant grid operator within the first 10 days of a month. The relevant grid operator will finalize the applications by the end of the billing period, provided that the required documents are complete and accurate, and shall notify the authorized supply company. The transfer process will become effective for the grid operator with the signing of the connection agreement and system usage agreement by the acquiring party. Applications with missing documents will not be taken into consideration, and the grid operator will notify the parties concerned of the deficiencies within 5 business days.

## **Conclusion**

As in licensed power plants, changes in license-exempt power plants can be effected through the transfer of shares of the generation facility owner company, merger or demerger, and transfer of the generation facility. In both cases, it is essential to carefully review the relevant restrictions and processes implemented by grid operators. It is critical to assess the technical, legal and administrative aspects with a comprehensive approach to ensure successful closing.