

Amendments Made in the Electricity Market Licensing Regulation

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I. Introduction

Electricity Market Licensing Regulation (“Regulation”), introduced by Energy Market Regulatory Authority (“EMRA”), regulates (i) pre-licensing and licensing procedures and (ii) rights and liabilities of pre-license and license holders in the Turkish electricity market.

The Regulation has been recently amended by EMRA with the Regulation Amending the Electricity Market Licensing Regulation (“Amendment Regulation”). The Amendment Regulation has been published in the Turkish Official Gazette on December 23, 2015 and entered into force on its publication date.

II. Significant Amendments

The significant amendments made to the Regulation are as follows:

- Legal notifications can be served through registered electronic mail to legal entities in accordance with the Notification Law. In this respect, (i) pre-license or license holder legal entities and (ii) legal entities which applied for pre-license or license are required to inform EMRA of their registered electronic mail addresses until February 23, 2016 unless they have already done so.
- Previously, only letters of guarantee was acceptable by EMRA during pre-license and license applications, now alternatively it is possible to submit “cash in TL currency” instead of a letter of guarantee.
- If EMRA deems appropriate the transfer of an electricity generation license holder’s rights and liabilities to another legal entity (*provided that the transferee has the same shareholding structure with the transferor*), EMRA will determine certain liabilities of the new legal entity and will grant a certain time period. In case such requirements are not fulfilled by the new legal entity within the granted time period, the transfer application will be rejected by EMRA.

Furthermore, if following the pre-license and/or license application, in case any of the applicant legal entity’s (i) shareholders, (ii) board members (*for joint stock companies*) and (iii) directors (*for limited liability companies*) become prohibited from respectively being shareholders, board members and directors in the legal entities applying for licenses within the 3 (three) years following the license cancellation date, EMRA shall grant 90 (ninety)

days for such circumstance to be remedied. Otherwise, the legal entity's pre-license and/or license application will be rejected.

- For pre-license applications as to establishment of "national coal" based generation plants, the share capital of the applicant company shall be increased to (i) 1% of the total investment amount provided by EMRA for pre-license application, and (ii) 5% of the total investment amount provided by EMRA for license application.
- The outcome of the environmental impact assessment ("EIA decision") shall have been obtained and submitted to EMRA while making the pre-license applications. Pre-license applications based on wind, solar, hydraulic or geothermal energy are exempt from such requirement.

The EIA decision as to applications based on wind, solar, hydraulic or geothermal energy should be obtained within the pre-license period. Within 90 (ninety) days following EMRA's decision as to issuance of a pre-license, the pre-license holder shall apply to the relevant authority for the EIA decision.

Legal entities, whose pre-license applications are at the assessment by EMRA as of the date of the Amendment Regulation, shall be obliged to obtain the EIA decision and submit it to EMRA until December 23, 2017.

- EMRA will complete its review on the pre-license application documents within 20 (twenty) days upon submission of the documents. Before the amendment, EMRA had 10 (ten) days for reviewing the pre-license application documents.
- In case there is a missing document and/or information among the pre-license application documents based on "wind and solar energy", such applications will be returned to the applicant without any further evaluation. For other pre-license applications, in case of a missing document and/or information, an additional 15 (fifteen) days will be granted to the applicant to complete the missing document and/or information.
- After obtaining an electricity generation license on a land, also landowners may apply for establishing a generation plant on this land without a license and such application can be accepted provided that (i) the General Directorate of Renewable Energy approves the technical assessment and (ii) such generation plant does not affect the electricity generation license and any other licensed generating plant.
- Requirement for obtaining relevant opinions from relevant authorities during the pre-license period in accordance with the Regulation on Prohibited Military Zones and Safety Zones has been removed from the Regulation.

- A wind energy based license holder shall be obliged to take the relevant measures requested by Turkish Armed Forces and/or Turkish National Security Organization as to wind turbines which have impact on the relevant systems of these institutions.
- Quality standard certificates which will be submitted to EMRA have been determined based on the license types as follows:
 - Transmission license holders shall be obliged to submit quality standard certificates, to be issued by a certification authority accredited by the Turkish Accreditation Agency, for TS EN ISO 9001, TS ISO 10002, TS 18001 and TS EN ISO 14001 standards.
 - Market operation license holders shall be obliged to submit quality standard certificates, to be issued by a certification authority accredited by the Turkish Accreditation Agency, for TS EN ISO 9001, TS ISO 10002 and TS 18001 standards within 24 (twenty four) months after obtaining the license.
 - Distribution license holders shall be obliged to submit quality standard certificates, to be issued by a certification authority accredited by the Turkish Accreditation Agency, for TS EN ISO 9001, TS ISO 10002, TS 18001 and TS EN ISO 14001 standards within 24 (twenty four) months after obtaining the license.
 - Supply license holders shall be obliged to submit quality standard certificates, to be issued by a certification authority accredited by the Turkish Accreditation Agency, for TS EN ISO 9001, TS ISO 10002, TS ISO/IEC 27001 standards within 24 (twenty four) months after obtaining the license.
- Parties already holding licenses as of the date of the Amendment Regulation shall be obliged to submit the applicable quality standard certificates to EMRA until December 23, 2017.
- License holder legal entities shall make relevant notifications to EMRA as to their activities in accordance with provisions of the Regulation on Notifications in the Energy Market.
- The exceptions as to circumstances which are not deemed as changes in pre-license holder's shareholding structure have been extended. In this respect, change of direct or indirect shareholding structures in the pre-license holder company due to (i) public offering of the license holder or its direct or indirect legal entity shareholders and (ii) exercise of a right of first refusal are no longer deemed as change of shareholding structure.
- In case EMRA approves a license holder legal entity's merger or spin off transaction and determines any liability, it will also provide certain time period for fulfilment of such

requirements. In case such requirement is not fulfilled within the granted time period, EMRA will cancel such approval as to the merger or spin off transaction.

- For the year 2017, the procedure for pre-license applications as to establishment of wind energy based generation plant will be as follows:
 - Turkish Electricity Transmission Corporation (“TEİAŞ”) will inform the wind energy based generating plant capacity for the year 2017, for the following 5 (five) years and 10 (ten) years to EMRA within 3 (three) months as of December 23, 2015.
 - As of TEİAŞ’s notification, within first 5 (five) days in the following sixteenth month, EMRA will accept the pre-license applications as to establishment of generation plant wind energy based.

III. Other Amendments

Other than the amendments summarized above, some other provisions of the Regulation as to amendment procedures of pre-licenses and licenses, license fees, recording guarantees as revenue have also been revised. Some provisions of the Regulation have been clarified and simplified in terms of wording.

Also, Appendix - 1 (*Petition for License Application*) and Appendix - 2 (*Petition for Pre-license Application*) have been updated. An Appendix - 3 (*Petition for Pre-license/License Amendment Application*) has been added to the Regulation.

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