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Changes in the Unlicensed Electricity Generation Regulation

The Regulation on the Unlicensed Electricity Generation in the Electricity Market numbered 28783 and published in the Official Gazette dated 2 November 2013 regulating the terms of unlicensed electricity generation (the "**Regulation**") has been amended with the amendment adopted by the Energy Market Regulatory Authority (the "**EMRA**") and published in the Official Gazette on 23 March 2016 (the "**Amendment**"). The Amendment has brought some significant changes to the Regulation.

The Amendment introduces a maximum power allocation restriction whereby each natural person, legal entity or entities having such natural persons or legal entities as their direct or indirect shareholders active in wind or solar power generation, is allowed up to 1 MW capacity jointly in each substation. Together with this new restriction, group companies will no longer be allocated more than 1 MW of capacity for the same substation, regardless of the number of consumption facilities. In accordance with the relevant clause of the Amendment, legal entities active in wind or solar power generation should provide their shareholding structure (both direct and indirect) and in case of a misrepresentation, the letter calling for the signing of the connection agreement of such legal entity will be cancelled.

The twenty-first sub-paragraph of Clause 31 of the Regulation as amended by the Amendment introduces another restriction. According to the Amendment, (i) direct or indirect shareholders of distribution companies and authorized supplier companies (and first degree relatives of such shareholders); (ii) employees of the distribution companies and authorized supplier companies and the employees of the direct or indirect shareholders of such companies (and their first degree relatives); and (iii) legal entities or natural persons controlled by the entities mentioned in (i) and (ii) above, are no longer entitled to engage in wind or solar power generation unlicensed activities with an installed capacity exceeding 50 kW which are located in the same territory where they engage in distribution activities.

Legislative Highlights

- ✓ The Turkish Parliament took the draft Intellectual Property Law into its program and plans to enact it in 2016. The adoption of the draft IP Law will replace the several decrees governing intellectual property. The draft IP Law is prepared in accordance with EU law and practice and removes discrepancies between national law and international agreements of Turkey.

- ✓ On 30 March 2016, the Energy Market Regulatory Authority has updated and amended certain elements of the template agreements for use and connection to the electricity distribution system. Changes apply to the Distribution System Use Agreement, the Distribution System Connection Agreement for Consumers, as well as the Distribution System Connection Agreement for Legal Entities That Carry Out Production Activities.

Jurisdictional Highlights

- ✓ The Supreme Court of Appeals has rendered a recent award on November 18, 2015 that the condition of determination of the foreign state court with the jurisdiction agreement in parallel with Article 17 and 18 of Civil Procedure Code should be required for Article 47 of International Private and Civil Procedure Law. The provisions of an agreement providing for submission to the jurisdiction of foreign courts should indicate the foreign competent court with sufficient precision and referring to name of country regarding authorized court only is not deemed sufficiently precise and the name of the specific court must be stated in the contract.

One of the other significant changes in the Amendment is that the Amendment introduced new restrictions on the share transfers, mergers and spin-offs of the unlicensed generation facilities.

Share Transfers
The Regulation as amended by the Amendment prevents shareholders of the unlicensed facilities active in wind or solar power generation, which falls under subparagraph (c) of paragraph (1) of Clause 5 of the Regulation, to transfer their shares from the application date until the temporary acceptance of the facility. Failure to such provision results the cancellation of the letter calling for the signing of the connection agreement of such legal entity. Following the finalization of their temporary acceptance, the abovementioned generation facilities may transfer their shares. The relevant legal entity shall its final shareholding structure provide to the system operator within ten business days as of the finalization of the share transfer.

Mergers
Clause 31 of the Regulation amended by the Amendment stipulates that mergers of legal entities which own unlicensed facilities may only be subject to a merger process following the temporary acceptance of the unlicensed facility and provided that (i) together with a legal entity 100% of which is hold by themselves in case the legal entity having an unlicensed generation facility survives after the merger; and (ii) together with a legal entity having an unlicensed generation facility in case such legal entity survive after the merger. The relevant unlicensed generation facility shall apply to the relevant network operator one month prior to the merger.

Spin-Offs
Similarly, as the same requirements with the merger transactions, if an unlicensed generation facility intends to partially or fully spin-off, such operation shall be conducted as per the legislation in force. Please be informed that all unlicensed generation facilities subject to spin-off should have their temporary acceptances. The relevant unlicensed generation facility shall apply to the relevant network operator one month prior to the spin-off.

Key Changes by the Draft Intellectual Property Law

The "Co-Existence" provision is one of the major amendments brought by the draft IP Law. Currently, Article 7/1(b) of the Decree Law numbered 556 prevents registration of trademarks which are identical or indistinguishably similar with an earlier dated trademark. On the contrary, the draft IP Law enables the co-existence of identical and similar trademarks permissible. A consent letter from the senior trademark owner will enable the applicants to overcome a direct rejection.

Another important amendment is a clarification between well-known trademarks registered in Turkey and those which are not. Clause 6 of the draft IP Law grants a protection to well-known trademarks unregistered in Turkey in accordance with the Paris Convention. Accordingly, as per Clause 19 of the draft IP Law, where a trademark application is opposed and the trademark shown as the ground for opposition has been registered in Turkey, the applicant of the trademark application is entitled to request from Turkish Patent Institute that the opponent brings evidence to show genuine use of the trademark in Turkey or justified reasons for non-use. If the opponent party cannot submit evidence to prove the genuine use in Turkey, the opposition will be refused.

One of the major substantial changes is that opposed trademark owners will have a "non-use" defense. Accordingly, the opposed trademark owner will be able to challenge the opposition by requiring the opponent to submit evidence of genuine use of the trademark which is subject to the opposition. Unless genuine use is proven, the opposition will be rejected.

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Yours faithfully,
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