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NEWSLETTER
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Changes in the Electricity Market License Regulation

The Electricity Market License Regulation numbered 28809 and published in the Official Gazette dated 2 November 2013 regulating the terms of pre-license and license and the rights and obligations of the pre-license and license holders (the "**License Regulation**") has been amended with the amendment adopted by the Energy Market Regulatory Authority (the "**EMRA**") and published in the Official Gazette on 23 December 2015 (the "**Amendment**"). The Amendment has brought some significant changes to the License Regulation.

As per the terms of the License Regulation the pre-license holders had to obtain and submit the Environmental Impact Assessment (*ÇED*) certificate (meaning either the "EIA approval certificate" or the "EIA not required" decision of the Ministry of Environment and Urbanisation of the Republic of Turkey) (the "**EIA Certificate**") during the pre-license term of 24months starting from the obtaining of the pre-license. Following the Amendment, the pre-license applicants for power plants other than wind, solar, hydroelectric or geothermal power plants will have to submit the EIA Certificate together with other documents required for the pre-license application, *i.e* at an earlier stage. However, the Amendment did not change this requirement of pre-license holders for wind, solar, hydroelectric or geothermal power plants and the EIA Certificate for such power plants is still to be submitted during the pre-license term. The companies whose pre-license applications are already being evaluated by the EMRA will have 24 months starting from 23 December 2015 to obtain and submit the EIA Certificate and in case of failure to do so (except for force majeure events) those applications will be rejected and the securities provided to the EMRA will be returned. The applications which the EMRA has not yet started to evaluate will directly be returned.

The Amendment has brought a new incentive for the coal power plants using domestic coal to produce electricity. The minimum share capital of a pre-license applicant company should be 1% (instead of 5%) of the total investment cost determined by the EMRA and the share capital of a license applicant company should be 5% (instead of 20%) of the total investment cost determined by the EMRA. This incentive was only foreseen for nuclear energy before the Amendment was adopted.

One of the other significant changes in the Amendment is that the military opinion requirement for the location of the power plant which was required to be submitted during the pre-license term has been removed from the License Regulation.

Legislative Highlights

- ✓ The BRSA has adopted certain amendments on 25 November 2015 as to the limitations on credit card instalments set forth in the Regulation on Bank Cards and Credit Cards which had been adopted on 22 October 2014. Pursuant to such amended limitations, the maximum number of instalments allowed for the purchase of major appliances and furniture and the instalments for the educational expenses have been increased from 9 months to 12 months. On the same date, with the amendment to the Regulation on Credit Transactions of the Banks, the loans extended for educational expenses, refinancing of such loans and the refinancing loans of mortgage loans has been removed from the scope of the limit on maximum loan terms.

- ✓ On December 2015, the monetary thresholds contained in the Consumer Protection Law and the Consumer Arbitration Committees Regulation for bringing a dispute onto consumer arbitration committees has been re-determined.

Jurisdictional Highlights

- ✓ The Constitutional Court has rendered its decision on November 12, 2015 to annul the following part of Article 13 of the Capital Markets Law on the grounds of breaching the ownership rights (*Constitutional Law Art.35*) and proportionality principle (*Constitutional Law Art.13*):

  "*…fund units cannot be redeemed. Capital market instruments which are not delivered until the end of the 7th year following the date when they started to be monitored on records shall be transferred to the ICC (Investor Compensation Center). The limited real rights on them shall be automatically regarded as terminated. They shall be sold within 3 months starting from the date when they have been transferred to the account of ICC.*"

Further, a new sub-paragraph on when the pre-license applications will be rejected by the EMRA has been added and the provision of the License Regulation dealing with the amendment of the pre-license has been replaced with a lot more detailed clause.

The Amendment has added two new exemptions on the share transfer restrictions (the requirement to obtain the EMRA's prior approval) of the pre-license holders: (i) direct or indirect changes in the shareholding structure within the scope of public offerings of the pre-license holder or its direct or indirect shareholders, and (ii) direct or indirect changes in the shareholding structure due to changes to shareholding between the existing shareholders upon the exercise of pre-emptive rights. Further, the EMRA approval will no more be required for the changes in the shareholding structure of the publicly traded companies and of the companies which have a publicly traded shareholder, to be limited to the listed shares. However, the Amendment has brought a new notification requirement to the license holders for all of the changes in the shareholding structure whether or not the EMRA's approval is required.

The Amendment has added clarifications to the relevant provisions of the License Regulation on the restriction regarding issuance of bearer shares and once more pointed out that all of the shares of the pre-license and license applicants and holders have to be in registered form and there has to be a provision about this in their articles of association.

One of the requirements contained in the License Regulation was that the pre-license holders should apply to TEİAŞ or the relevant distribution company for the system connection agreement and the system usage agreement during the pre-license term. The Amendment has removed the requirement for the system usage agreement and the pre-license holders will only have to apply for the system connection agreement during such term.

The Amendment increases the period during which the EMRA has to complete reviewing the application to 20 business days and states that the wind and solar energy applications having missing information and documents will be rejected without any cure period which formerly was 15 business days. The applications other than wind and solar energy will still be benefiting from the cure period. The Amendment further states, as to the mergers and spin-offs, that a certain period will be determined by the EMRA for the fulfillment of the obligations of the license holder, if there is any in the the EMRA approval decision, and that the EMRA's approval will be revoked in case those obligations are not fulfilled within such period.

Additionally, upon the adoption of the Amendment, the application dates for the wind energy has been changed from October to April and for the solar energy has been changed from October to November.

On a separate note we would like to add that the license and pre-license holders and the applicant must submit their registered email addresses to the EMRA within 2 (two) months starting from 23 December 2015.

Finally, it is worth to mention that Article 5(ç) of the License Regulation which gives a step-in right to the banks and the finance institutions which are providing financing to the license holders and allowing them to request the EMRA to transfer the license to another legal entity they will propose remains the same.

An exemption to the requirement of a written agreement for the payment institutions

The Regulation on Payment Services and E-Money Issuance (the "**Regulation**") had been adopted by the BRSA on mid-year 2014 with the aim (*among others*) to better the consumer protection due to increased daily use of payment services and is regulating the authorisation and operations of the payment institutions and e-money institutions and the e-money issuance. One of the requirements contained in the Regulation for the payment institutions to be able to collect money on behalf of the invoice issuers in terms of intermediation of invoice payments, is that there has to be a written agreement between the payment institutions and the invoice issuers.

The Regulation has been amended with the amendment published in the Official Gazette dated 26 December 2015 and an exemption to the written agreement requirement is included. According to the amended Article 5 of the Regulation, a written agreement between the payment institution and the invoice producer will not be required if each of the following conditions are fulfilled,

(i) the payment institution is obtaining outsourced services from a bank, and
(ii) such bank has an agreement with the invoice producer which contains explicit provisions authorizing the payment institution in order to act on behalf of the invoice producer.

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Yours faithfully,
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