

NEWSLETTER

May 2019

www.yazicilegal.com

Levent Mah. Yasemin Sok. No.13 Beşiktaş 34340 İstanbul T. +90 212 269 02 27 F. +90 212 269 02 28

E. info@yazicilegal.com

RECENT AMENDMENTS TO THE UNLICENSED ELECTRICITY GENERATION LEGAL FRAMEWORK

The Presidential Decree No. 1044 ("**Decree**"), amending the Council of Ministers Decision numbered 2013/5625 and dated November 18th, 2013 on Fees and Periods Applicable to Generation Facilities based on Renewable Resources and Local Content Addition, has been published in the Official Gazette numbered 30770 and dated May 10th, 2019; and entered into force on the same date.

In addition, the new Regulation on Unlicensed Electricity Generation in the Electricity Market, abolishing the Regulation on Unlicensed Electricity Generation in the Electricity Market dated 2013 ("**Former Regulation**") has entered into force upon its publication in the Official Gazette on May 12th, 2019 ("**New Regulation**").

Prominent changes introduced therewith may be summarized as follows:

- The maximum installed capacity limit set forth for generation facilities based on renewable energy resources that are exempt from the obligation to obtain an electricity generation license and establish a company has been increased from 1 MW to 5 MW by the Decree for those having received an invitation letter after May 10th, 2019.
- In terms of the connection principles, the Former Regulation stipulated that the installed capacity of unlicensed generation facilities based on solar or wind power shall not be higher than 30 times of the consumption facility's power specified in the system connection agreement associated with the relevant unlicensed generation facility. On the other hand, the New Regulation sets forth that the installed capacity of unlicensed generation facilities based on solar or wind power shall not be higher than the power amount indicated in the system connection agreement of the consumption facility associated with the relevant unlicensed generation facility. In this respect, such limit has been decreased by the New Regulation.
- The New Regulation introduces a monthly settlement method regarding the purchase of surplus electricity, which was highly anticipated by the solar sector. It is foreseen that the relevant grid operator will determine the excess electricity generated by the generation facilities to the grid on an hourly basis. This procedure is applicable to the generation facilities based on renewable resources

having received an invitation letter as of the entry into force of the New Regulation and whose generation and consumption take place at the same measurement point.

- Pursuant to the New Regulation, unlicensed generation facilities based on solar energy with a maximum installed capacity of 5 MW may henceforth only be realized as on-roof or façade modules.
- Under the Former Regulation, inspection and audit of unlicensed electricity generation facilities used to be carried out by the relevant grid operator and/or the designated supply company. With the entry into force of the New Regulation, such inspections and audits are foreseen to be conducted by the Energy Market Regulatory Authority directly or through the reports to be prepared by the relevant network operator and/or the designated supply company.

GUIDELINE ON PREPARATION OF DATA INVENTORY

On April 28th, 2019, the Turkish Data Protection Authority (“**TDPA**”) has published on its official website a guideline on preparation of data inventory by the data controllers (“**Guideline**”). In general terms, the guideline specifies the necessary stages and the minimum amount of information required for composing a data inventory. The Guideline also indicates recommendations in relation to data inventory and compliance with Turkish data protection legal framework as a whole.

Data controllers’ obligation to have a data inventory stems from the Regulation on Data Controllers Registry, published in the Official Gazette numbered 30286 and dated December 30th, 2017. As per the Regulation, data controllers being subject to a registration obligation with the Data Controllers Registry (“**Registry**”) are also required to have a data inventory. A data inventory should at least contain the following information by virtue of Article 4 of the Regulation: (i) purposes and legal grounds of processing personal data; (ii) data category; (iii) group of recipients to which the data is transferred; (iv) group of data subjects; (v) maximum data retention period necessary for the purposes of data processing; (vi) data to be transferred abroad; and (vii) technical and administrative measures adopted for data security.

The Guideline specifically advises the data controllers to consider certain instances composing the information included in the data inventory such as the following: responding to data subjects’ requests, registration with the Registry, fulfilling the obligation to inform and establishing data storage and destruction policies.

In its essence, preparation of a data inventory with the minimum content set forth by the Regulation is an obligation to be fulfilled by the data controllers. However, as highlighted in the Guideline, it also constitutes a useful reference, by providing a summary of the personal data they are processing in the course of their activities, which the data controllers should take into consideration in ensuring compliance with their obligations.

AMENDMENTS ON THE COMMUNIQUÉ ON RESERVE REQUIREMENTS

The Communiqué Amending the Communiqué on Reserve Requirements (2019/7) has been published in the Official Gazette dated May 11th, 2019 and numbered 30771 for the purpose of supporting financial stability and due to the recent developments in the financial markets. With this amendment communiqué, the reserve requirement ratios for banks’ foreign currency liabilities have been increased by 100 basis points

for each maturity segment. Moreover, the ratio of the reserves for banks' Turkish Lira liabilities that can be set aside in foreign currency has been reduced from 40% to 30%.

Furthermore, the reserve requirement ratios for banks' foreign currency liabilities were increased by 200 basis points for foreign currency deposits and participation funds for each maturity segment with the entry into force (to be effective as of May 17th, 2019) of the Communiqué Amending the Communiqué on Reserve Requirements (2019/9) through the publication thereof in the Official Gazette dated May 28th, 2019 and numbered 30787.

A detailed list indicating the former and updated ratios of reserve requirements of the banks in foreign currency as of the date hereof is as follows:

<i>Deposits/Participation Funds</i> (excl. deposits/participation funds of foreign banks)	Former Reserve Requirement Ratio	New Reserve Requirement Ratio
a) Drawing, callable, up to 1-month maturity, 3-months maturity, 6-months maturity and 1-year maturity	12%	15%
b) 1-year and exceeding 1-year maturity	8%	11%
<i>Funds of borrowers</i>	12%	15%
<i>Other Liabilities</i> (incl. deposits/participation funds of foreign banks)		
a) Up to (and including) 1-year maturity	20%	21%
b) Up to (and including) 2-years maturity	15%	16%
c) Up to (and including) 3-years maturity	10%	11%
d) Up to (and including) 5-years maturity	6%	7%
e) Exceeding 5-years maturity	5%	5%

BANKING AND INSURANCE TRANSACTIONS TAX (“BITT”) ON FOREIGN EXCHANGE TRANSACTIONS

As per the Presidential Decree numbered 1106 (“**Decree**”) entering into force through its publication in the Official Gazette dated May 15th, 2019 and numbered 30775, the Council of Ministers Decision numbered 98/11591 regarding Article 33 of the Expenditure Tax Law has been amended.

It is provided that the BITT rate on the sale of foreign exchange by banks and authorized institutions has been increased to 0.1% of the sales value, which had been applied as 0% since 2008.

Please note that the following transactions are exempt from 0.1% BITT:

- Transactions between banks and exchange offices;
- Foreign currency sales made to the Turkish Ministry of Treasury and Finance; and
- Foreign currency sales made by the lender or intermediary bank to the loan borrower for the purpose of such foreign exchange loans' payment.

REGULATION ON THE PROCEDURE FOR INITIATION OF ENFORCEMENT PROCEEDINGS OF MONETARY CLAIMS ARISING FROM SUBSCRIPTION AGREEMENTS

The Regulation on the Procedure for Initiation of Enforcement Proceedings of Monetary Claims Arising from Subscription Agreements (“**Regulation**”) has been published in the Official Gazette dated May 29th, 2019 and numbered 30788, pursuant to the Law on the Procedure for Initiation of Enforcement Proceedings

of Monetary Claims Arising from Subscription Agreements numbered 7155 (“**Law**”), which introduced a special execution procedure for certain claims arising from subscription agreements.

In more specific terms, the enforcement proceedings without court judgement conducted by a lawyer and based on monetary claims arising from subscription agreements regulated under the Consumer Protection Law numbered 6502 or any applicable legislation or the goods or services provided to the consumers for the performance of such agreements whose consideration is reflected on an invoice are subject to such procedure introduced by the Law.

The Law provides a system, namely the Central Enforcement System (*Merkezi Takip Sistemi – (“MTS”)*) established and incorporated in the National Judiciary Informatics System (*UYAP*), where the enforcement proceedings in relation to such claims are to be carried out electronically until the attachment phase. Within this context, the Regulation sets forth the principles and procedures regarding the functioning of the MTS and addresses matters including, commencement and process of enforcement proceedings, objections to the payment order and completion of the proceedings over the MTS.

The Regulation will enter into force on June 1st, 2019, which is the same date as the effective date of the provisions introduced by the Law regarding the enforcement proceedings mentioned above.

This newsletter is prepared by YazıcıLegal. The information contained herein is for general information purposes only and does not constitute legal opinion. The receipt of the newsletter does not establish a representative-client relationship between the reader and YazıcıLegal. Should you require any assistance or further detail, please do not hesitate to contact us. If you do not wish to continue your subscription, please inform us by responding to this e-mail.

Yours faithfully,