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1 Types of legal entities operating in the electricity market

Legal entities that will operate in electricity market must be established as “Joint Stock Company” (“JSC”; Anonim Şirket “A.Ş.” in Turkish) or “Limited Liability Company” (“LLC”; Limited Şirket “LTD” in Turkish). Shares of Joint Stock Companies apart from stock exchange securities, must be registered. Information which must be included in a Company’s Articles of Association (“AoA”) are specified within the electricity market regulation.

2 Licensing obligations

Depending on the type of activities in electricity market, legal entities must obtain a specific license for each type of activity such as generation, transmission, distribution, wholesale, retail, exportation, importation and market-operations. Apart from exceptions in the relevant regulation, obtained licenses cannot be transferred.

Pre-license application is required for the legal entities who will operate in generation activity. In general, pre-licenses are issued for 24 months at most, but can be extended up to 36 months.
3 Options of restructuring in the electricity market

Apart from exceptions in the relevant regulation, such as direct/indirect shareholding structure changes of the pre-license holder legal person due to Initial Public Offering and legal persons who are given the pre-license in relation to the establishment of facilities within the scope of International Treaties, prior to obtaining the license, pre-license holders are not allowed to change their shareholding structure or transfer their shares nor undertake any activity that can lead to similar results.

The direct or indirect acquisition, by a real person or a legal entity, of shares that amount to at least 10% of the capital of a license holder legal entity (5% for publicly traded companies), share transfers that result in a change in the controlling power of the shareholding structure in legal entity and putting lien on shares of license holder legal entities whose tariffs are regulated along with putting account lien on these legal entities are subject to Electricity Market Regulation Authority’s (“EMRA”) approval at each time. However, direct/indirect changes in the shareholding structures of listed companies or companies whose shareholders are listed, limited to quoted shares, are exempt of EMRA’s approval.

Mergers or demergers are subject to EMRA pre-approval and in case the merger or demerger processes cannot be finalized within 6 months as from the date of obtaining the approval, the approval will be invalid and restructuring process cannot continue.
For pre-license applications; it is mandatory to submit the revised AoA specifying that the minimum share capital of the company is increased to 5% and 1% of the total investment amount envisaged by EMRA for generation plants and for domestic coal fired/nuclear power plants, respectively.

On the other hand for license applications; it is mandatory to submit the revised AoA specifying that the minimum share capital of the company is increased to 20% and 5% of the total investment amount envisaged by EMRA for generation plants and for domestic coal fired/nuclear power plants, respectively.

Additionally, applications of distribution license, market operation license and supply licenses of the incumbent supplier companies, minimum share capital amount is determined by EMRA, whereby at least TL 2,000,000 of share capital is required for supply license applications.

The aforementioned legal entities are required to pay at least 25% of the nominal value of the subscribed capital before the registration, whereas the remaining amount will be paid within 24 months following the date of registration as per the relevant provisions of the Turkish Commercial Code (“TCC”).

Additionally, legal entities are obliged to pay a surcharge of 0.04% over their initial share capital or incremental part of their share capital to the Turkish Competition Board.
Despite the fact that some electricity generation activities are incentivized with reduced Corporate Income Tax ("CIT") rate, in general no CIT exemption is provided for legal entities operating in the electricity market. Therefore, the general CIT rate of 20% applies on taxable profits of such legal entities. However, as mentioned under “Investment Incentive System” part, certain kinds of generation can benefit from reduced CIT rate.

Dividend distribution is possible after the deduction of previous year losses and setting aside legal reserves. General WHT rate on dividend distributions is 15%, however the local rate may be reduced further under tax treaties.

Build–Operate–Transfer (BOT) is a financing model for projects requiring high amount of capital investment. In scope of BOT model, investment costs (including profits that will be derived) are reimbursed through the purchase of goods and services produced during the operation period of the project company by the relevant Authorities or by those who benefit from these services.

The tax treatment of privileged companies that are introduced with regulations such as BOT may differ from that of regular legal entities.
The sales of electricity is subject to general Value Added Tax (“VAT”) rate of 18% and VAT base consists of usage fee along with other taxes and funds. The delivery of goods and services performed, during the investment period, to the project company within the scope of BOT projects shall be exempt from VAT, provided that their notice of tender or assignment is published prior to 31 December 2023. On the other hand, VAT incurred by the suppliers in relation to their VAT exempt delivery of goods and services shall be considered as deductible VAT and any excess VAT that cannot be recovered through deduction will be refunded upon request.

On the other hand, as it is further explained in the subsequent part on investment incentives applicable in electricity market of this guide, electricity generation investments, in general, can benefit only from VAT and customs duty exemption in scope of general investments incentives. However, in case the investment is classified as a privileged investment and that the fixed investment is at least TL 3 BN, the investment can be re-classified as a strategic investment. In such a case, the project company may benefit from an additional VAT refund incentive, as explained below.

The VAT incurred in relation to the construction works and that cannot be recovered until the end of the relevant calendar year will be refunded to the project company (i.e. provided that the Investment Incentive Certificate is obtained) upon application made in the following year within the scope of Investment Incentive Certificate. Please note that this VAT refund incentive mechanism will be valid until 31 December 2023.

Additionally, delivery to financial leasing companies and delivery and financial leasing of these financial leasing companies of wind power plants with an output power between 50 kVA – 500 kVA, will be subject to reduced VAT rate of 1% provided that the financial leasing agreement is concluded after the date of 31 January 2015. Previously, the reduced VAT rate of 1% would be benefitted only by those wind power plants with 500 kVA output power.
Stamp Tax applies to a variety of documents such as contracts, agreements, letters of undertaking, deeds of settlement, letters of cancellation, letters of guarantee.

The general stamp tax rate is 0.948% for commercial agreements and 0.189% for rental agreements and the tax amount is capped at TL 1,797,117.30 per each original copy signed in 2016.

Under Stamp Tax Code, no specific exemption is provided for electricity market investments. However, under Electricity Market Law, certain stamp tax incentives are addressed for such investments. For instance; generation license holder legal entities shall benefit from stamp tax exemption over their documents signed in relation to the generation plant, provided that the documents are signed during the investment period and the operation starts for the first time before 31 December 2020. Additionally, transactions carried out with regard to the generation plant are exempt from fees.

Within the scope of BOT model all kinds of transactions made between governmental authorities and companies or by foreign companies are exempt from stamp tax and fees. This exemption specifically includes those transactions and documents relating to obtaining investment funding and relating to purchase of goods and services by the Project Company with the purpose of benefiting during the investment period.
Special consumption tax

Fuels that are used for the generation of electricity are exempt from Special Consumption Tax (“SCT”), under certain conditions as specified in this code.

Tax incentives on privatization process

Any income generated due to the take-overs, mergers, demergers and partial demergers of electricity distribution companies and/or electricity generation plant/companies in scope of privatizations is exempt from corporate income tax, provided that such transaction is realized prior to 31 December 2023.

On the other hand, all deliveries and services under the aforementioned scope are exempt from VAT. The VAT incurred in relation to the aforementioned deliveries and services will be treated as deductible VAT, however any excess amount will not be refunded.
Investment incentives applicable in the electricity market

In general, under the current investment incentives regime, electricity market investments can only benefit from general tax incentives which are VAT and Customs Duty exemptions.

Thereafter with the announcement of several government decrees, the investment incentives that shall be benefited by the investments in the electricity market have been expanded by including the below-mentioned investments;

• Electricity generation investments, where minerals specified in Article 2/4-b of Mining Code No. 3213 are used as input within the scope of a valid mining license and permission given by the Ministry of Energy and Natural Resources, have been included among Privileged Investments,

• Although electricity generation investments whose input is natural gas will benefit from general tax incentives which are VAT and customs duty exemption provided that such investments are granted with licenses from EMRA prior to 19 June 2012,

• Energy efficiency investments along with investments of electricity generation based on recycling the wasted heat have been included among Privileged Investments,

• Privileged investments with a fixed investment amount of at least TL 3 BN, will be considered as Strategic Investments.

• Turbine and generator manufacturing investments regarding renewable energy generation along with wing manufacturing investments regarding wind energy generation have been included among Privileged Investments with the Governmental Decree numbered 2015/8216 and dated 19.11.2015. This new regulation is in force as from 19.11.2015.
12 Generating electricity from renewable energy resources and incentives

Renewable Energy Resources (RES) are non-fossil energy sources such as wind, solar, geothermal, biomass, biogas (including landfill gas), wave, current and tidal energy resources together with hydraulic generation plants.

The legal entity holding generation license shall be granted by EMRA with a "Renewable Energy Resource Certificate" (RES Certificate) for the purpose of identification and monitoring of the resource type in purchasing and sale of the electrical energy generated from renewable energy resources in the domestic and international markets.

Prices determined in the below-mentioned table I will be applicable for 10 years for generation license holder legal entities subject to RES support mechanism, provided that operation has started between 18 May 2005 and 31 December 2015. Support mechanism has been extended to include generation license holder legal entities subject to RES support mechanism and with RES certificate; which will start operation from 1 January 2016 to 31 December 2020.

Table I

<table>
<thead>
<tr>
<th>Power Plant Type Based on Renewable Energy Resource</th>
<th>Tariff I (10 Years) Applicable Price (USD Dollar cent/kWh)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hydroelectric Power Plant</td>
<td>7,3</td>
</tr>
<tr>
<td>Wind Power Plant</td>
<td>7,3</td>
</tr>
<tr>
<td>Geothermal Power Plant</td>
<td>10,5</td>
</tr>
<tr>
<td>Biomass Power Plant (including landfill gas)</td>
<td>13,3</td>
</tr>
<tr>
<td>Solar Power Plant</td>
<td>13,3</td>
</tr>
</tbody>
</table>
Generation license holder real/legal persons who are benefiting from exempt generation under RES, will benefit from prices determined in table I for 10 years if they supply their surplus generated electricity to the power distribution system.

In scope of encouraging the utilization of domestic production, for generation plants that have started their operations prior to 31 December 2015, prices of Table II will be added to prices of Table I for 5 years starting from the operation date, provided that mechanics and/or electro-mechanic components are manufactured in Turkey. This incentive has been extended to include generation license holder legal entities which are in scope of RES supportive mechanism which will start operation from 1 January 2016 to 31 December 2020, provided that mechanics and/or electro-mechanic components are manufactured in Turkey.

**Table II (Domestic production)**

<table>
<thead>
<tr>
<th>Plant type</th>
<th>Domestic production</th>
<th>Local Additional Support (USD Dollar cent/kWh)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Hydroelectric Power Plant</strong></td>
<td>Turbine</td>
<td>1,3</td>
</tr>
<tr>
<td></td>
<td>Generator and Power Electronics</td>
<td>1</td>
</tr>
<tr>
<td><strong>Wind Power Plant</strong></td>
<td>Wing</td>
<td>0,8</td>
</tr>
<tr>
<td></td>
<td>Generator and Power Electronics</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Turbine Tower</td>
<td>0,6</td>
</tr>
<tr>
<td></td>
<td>Rotor and all mechanical parts of nacelle groups (Except payments for group of wings and generator and power electronics)</td>
<td>1,3</td>
</tr>
<tr>
<td><strong>Photovoltaic Solar Based Power Plant</strong></td>
<td>PV panel integration and solar structural mechanics manufacturing</td>
<td>0,8</td>
</tr>
<tr>
<td></td>
<td>PV modules</td>
<td>1,3</td>
</tr>
<tr>
<td></td>
<td>Cells constituting the PV module</td>
<td>3,5</td>
</tr>
<tr>
<td></td>
<td>Invertor</td>
<td>0,6</td>
</tr>
<tr>
<td></td>
<td>Material focusing the sunray on PV module</td>
<td>0,5</td>
</tr>
</tbody>
</table>
### Plant type

<table>
<thead>
<tr>
<th>Plant type</th>
<th>Domestic production</th>
</tr>
</thead>
</table>
| **Intensive Solar Energy Based Power Plant** | Radiation receiving tube: 2,4  
Reflecting surface panel: 0,6  
Sun tracking system: 0,6  
Mechanical parts of heat energy storage systems: 1,3  
Mechanical parts of the steam generating system which gathers sunray on the tower: 2,4  
Stirling engine: 1,3  
Panel integration and structural mechanics of solar panel: 0,6 |
| **Biomass Power Plant** | Steamboiler with fluidized bed: 0,8  
Liquid or gas fueled steam boiler: 0,4  
Gasification and gas purification group: 0,6  
Steam or gas turbine: 2  
Internal combustion engine or Stirling engine: 0,9  
Generator and power electronics: 0,5  
Cogeneration system: 0,4 |
| **Geothermal Power Plant** | Steam or gas turbine: 1,3  
Generator and power electronics: 0,7  
Steam injector or vacuum compressor: 0,7 |
All kinds of purchasing, selling, repairing and construction services directly related to basic and applied nuclear researches, either domestic or foreign, carried out in accordance with Turkish Atomic Energy Authority’s (TAEA) studies and Atomic energy program, are exempt from all kinds of taxes, duties and fees. On the other hand, exemption of all kinds of taxes, duties and fees on importations has been abolished. Besides, donations and aids to TAEA are exempt from all kinds of taxes, duties and fees.

Both, National Radioactive Waste Account (NRWA) and Decommissioning Account (DA), are prepared to cover the decommissioning costs of nuclear power plant. Additionally, transactions related to NRWA and DA are exempt from all kinds of taxes.

13 Nuclear energy investments and incentives
Depreciation

Investments in scope of Electricity Market Law are expensed through depreciation. Useful lives of fixed assets subject to depreciation are announced by the Ministry of Finance.

Depreciation of investments in scope of Build-Operate-Transfer (BOT) model is subject to a separate regulation. Fixed assets, subject to depreciation which will be transferred free of charge to the public authorities at the end of the concession period and which are depreciated within the scope of capital or improvement costs, will not be depreciated under general terms. Contrary to this, fixed assets which will not be transferred to public authorities at the end of the concession period will be subject to depreciation under the general terms.
Interests and foreign exchange differences, incurred during the investment period, regarding the funding of electricity market investments are added to the investment costs and will be expensed through depreciation along with relevant fixed asset. As for the interests and foreign exchange differences incurred during the operation period, it is left to the discretion of the taxpayers to either directly expense such amount during the relevant year or to capitalize them as part of the investment and expense through depreciation.

On the other hand, a new regulation that is restricting the deduction of the financial expenses from taxable income has been introduced and which is effective as of 1 January 2013. Accordingly, in cases where the external borrowings of a company exceeds its equity, up to 10% of the interest commission, delay charge, dividend, foreign exchange losses and the similar types of expenses incurred on the exceeding portion (i.e. except for the expenses that were included in the cost of ongoing investments) shall not be deducted from the corporate income tax base provided that the Council of Ministers takes a resolution in this regard.

However, as of the date the Council of Ministers has not yet determined the applicable ratio.
License holder legal entities, which sell electricity to final consumers, apply Electrical Energy Fund at 1% over electricity usage fee specified on their invoices issued.

License holder legal entities, which sell electricity to final consumers, apply TRT share at 2% over the electricity selling price. According to a recent Board Decision of EMRA, theft & loss amount is excluded from the sales price.

Additionally, consumers of electricity are liable for Electricity Energy Consumption Tax. The tax rate is determined as 5% on the electricity selling price. However, it is reduced to 1% for electricity consumed in manufacturing, production, transmission, loading, unloading, cooling and communication through wired and wireless telegraph and telephone.
Exportation and importation of electrical energy and tax implications

Importation and exportation of electricity from/to countries which have satisfied the international interconnection condition, can be made upon the approval of EMRA in accordance with the Ministry’s favorable opinion.

As per the relevant provisions of the VAT Code, for electricity importation and exportation, the amounts should be accrued on a monthly basis and at least once in a month customs declaration should be filed in order to realize importation or exportation. VAT paid on importation and specified in relevant customs receipt can be treated as deductible VAT in the period in which the customs receipt is recorded in the legal books. However, the input VAT is allowed to be deducted until the end of the calendar year in which such transaction is realized.

Importation of electricity and loans obtained for financing such importation will not be subject to Resource Utilization Support Fund (“RUSF”; “KKDF” in Turkish).
Pre-license or license holding companies performing generation or distribution activities in the electricity market, can apply for expropriation of immovable properties, which are essential for their business and owned by real/legal persons. This demand is evaluated by EMRA and if the request is approved, required expropriation procedures are realized by the Ministry of Finance for pre-license/license holder entities. Expropriation procedures for license holders operating as distributors will be realized by the Turkish Electricity Distribution Company (TEDC).

Expropriation costs and other expenses related to expropriation procedures should be covered by the pre-license or license holding companies which have applied for expropriation, under the Electricity Market Law.

The fact that whether the party, whose immovable property is expropriated, is a real person or legal person will determine the tax treatment of the expropriation income derived. In case the immovable property which is subject to expropriation is owned by a real person, expropriation income will be taxed as commercial income or capital gains. In case the immovable property which is subject to expropriation is owned by a legal person, expropriation income will be considered as taxable income and subject to Corporate Income Tax.

Pre-license or license holder legal entities which have applied for expropriation will be liable to pay the total of 4% title deed fees.

The liability for property tax of the owner of the immovable property will continue during the period of expropriation. Historical property tax liabilities are waived upon the completion of expropriation procedures. Since public administrations are permanently exempt from property tax, administrations are not liable to pay property tax after the expropriation.