

# GEDİK & ERAKSOY

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## *Turkish Electricity Market - Restructured*

*The Turkish National Grand Assembly enacted a new Electricity Market Law numbered 6446 (the New Law) on 14 March 2013. Surprisingly, the New Law did not abolish the former Electricity Market Law numbered 4628 (the “Former Law”), but instead reorganised the Former Law to regulate the powers and duties of the Energy Market Regulatory Authority (EMRA) under a new title, “Law on the Structure and Duties of the Energy Market Regulatory Authority”. Novelties introduced to the Turkish electricity market by the New Law are, among others, new types of licences, new regulatory authorities and a new licensing system.*

### **PRE-LICENSING SYSTEM FOR GENERATION COMPANIES**

One of the most significant changes adopted by the New Law is the pre-licensing system. Companies willing to generate electricity will initially go through the pre-licence process to operate a generation facility in Turkey. In this pre-licence phase, companies are expected to obtain the necessary permits, approvals, licences and any other documents required for the investment and construction for the facility, obtain ownership or easement right of the site where the contemplated generation site will be located, and perform any other obligations required by EMRA. This process used to be a phase, which the licence applicants need to go through while applying for the actual generation licence. With the New Law, this phase is set on more solid grounds. Any new company, willing to become a market player, will initially obtain a pre-licence and will be provided a certain period of time to complete the requirements listed above. At the end of the pre-licence period, the pre-licence of the company will be converted to a licence if the requirements are fulfilled to EMRA’s satisfaction. EMRA holds the sole discretion for not issuing a licence if it resolves that there is a missing approval or document in the application of the relevant applicant.

The maximum term of the pre-licence period will be 24 months, except that it may be extended if there has been a force majeure event or by EMRA for a period not exceeding 12 months. This limited time period may cause difficulties for applicants as the two most onerous requirements of the pre-licence process: obtaining the environmental impact assessment certificate from the Ministry of Environment and Urbanisation for the contemplated project and obtaining ownership or easement rights over the project site, particularly the privately owned parcels may take longer than the period permitted.

The New Law also sheds light on what the implications of the New Law will be on the on-going generation licence applications. Generation licence applications which were not already granted by EMRA on the date of publication of the New Law, *i.e.*, 30 March 2013, shall be regarded as pre-licence applications and are required to follow the steps envisaged for the pre-licence period.

The Electricity Market Licence Regulation entered into force on 2 November 2013 aligning the secondary legislation with the New Law and specifying the requirements and the relevant procedures for obtaining pre-licences and licences.

## ***A NEW PRIVATE ENTITY TO TAKE OVER THE NEWLY REGULATED MARKET ACTIVITY: “MARKET OPERATION”***

The aim of the Former Law was to liberalise the Turkish electricity market from what initially used to be in the hands of the public entities and the government. As an instant switch from public monopolies to free and competitive market would be regarded as a huge step to take in one go, the Former Law was prepared to be a step on the way to the full liberalisation of the Turkish electricity market. Once the Former Law served its purpose and the markets and its participants adapted to the new semi-liberal system, EMRA and the government did not hesitate in introducing market operation as a market activity which is envisaged, under the New Law, to be carried out by a private joint stock corporation, Enerji Piyasaları İşletme Anonim Şirketi (Energy Market Operation Corporation),(**EPIAŞ**). According to the statements of the Vice Chairman of the Energy Council of the Union of Chambers and Commodity Exchanges of Turkey, “*Borsa İstanbul Anonim Şirketi (formerly known as Istanbul Stock Exchange, BİST) and Türkiye Elektrik İletim Anonim Şirketi (Turkish Electricity Transmission Corporation, TEİAŞ) will each hold 30% stake of EPIAŞ and the remaining 40% of EPIAŞ’ share capital will be privately owned.*”

The New Law defines the market operation as an operation of organised wholesale electricity markets and the financial settlement of the activities conducted in these markets. Market operation activities are currently carried out by BİST and TEİAŞ. EPIAŞ, with a market operation licence to be issued by EMRA, will carry out the market operation activities, except for the markets under the supervision and control of BİST and TEİAŞ. In addition, EPIAŞ will take over the balancing and settlement activities, which are currently carried out by the Market Financial Settlement Centre (**PMUM**) held within the organization of TEİAŞ. Once EPIAŞ is incorporated (*i.e.*, its articles of association is registered with the trade registry), the electricity markets, which will be operated by EPIAŞ, BİST and TEİAŞ will be determined, as currently the duty allocation among these authorities are not yet settled.

The responsibilities of EPIAŞ are stipulated under the New Law, and they are amongst others: (i) carrying out the necessary activities in order to establish new markets within the organised wholesale electricity markets and presenting them to EMRA; (ii) if approved by EMRA, joining the international electricity markets as a party and becoming a partner or member of the international electricity market operating institutions established to that end; and, (iii) determining and presenting to EMRA the market operation tariffs within the scope of the principles set forth by EMRA.

## ***OTHER HIGHLIGHTS IN RESTRUCTURING OF THE TURKISH ELECTRICITY MARKET***

- Auto-production activities were carried out under a separate auto-production licence under the Former Law. The New Law has annulled the auto-production system and auto-production licences will now automatically be converted into generation licences. Current auto-production licence holders will not be required to take any action or pay a licence fee for such conversion, and a new generation licence will be issued *ex officio* within 6 months as from the publication of the New Law.
- In line with the unbundling of the distribution and retail sale activities in the electricity market as of 1 January 2013, the New Law stipulates that distribution companies cannot engage in any activity other than distribution in the electricity market. For this purpose, the New Law prevents the legal entities active in the market from becoming direct shareholders in distribution companies, and *vice versa*.
- Wholesale and retail sale licences will be combined and legal entities holding wholesale and retail licences will be issued a “supply licence” *ex officio* at no charge. Supply licence holders will be entitled to perform wholesale and/or retail sale activities for all eligible consumers with no regional restrictions. The eligible consumer threshold applicable for the year 2013 is 5000 kWh as per the EMRA decision dated 24 January 2013 and numbered 4250.

- A new concept of “authorised supply companies” has been introduced with the New Law. Retail sale activities, which used to be carried out by distribution companies, will now be carried out by authorised supply companies. Authorised supply companies engage in the sale of electricity to non-eligible consumers in the relevant distribution zone in accordance with retail sale tariffs approved by EMRA. Authorised supply companies are obliged to act as a “last source supplier” and provide electricity to eligible consumers, which do not procure electricity from any other supplier in the relevant distribution zone.
- The Provisional Article 4 of the New Law provides that, in order to form the necessary supply capacity in short term with sufficient replacements, certain incentives will be provided for the generation licence holders that will start operating for the first time until 31 December 2015. The Ministry of Finance is authorised to extend this period for five years. The incentives for such legal entities are as follows:
  - A 50% discount will be made on the distribution system usage fees of the generation facilities for five years starting from the date of their commencement of operation.
  - Within the investment period of the generation facilities, transactions carried out regarding the generation facilities will be exempt from duties and the documentation relating thereto will be exempt from stamp tax.
- The administrative sanctions applicable to entities active in the electricity market under the New Law have been increased within a range of 40%-50% compared to the Former Law.

As summarised above the New Law introduced numerous significant improvements in the structure and mechanisms established by the Former Law. Certain procedures carried out in practice are now set on solid grounds; responsibilities of the regulatory authorities and the active companies are regulated in a more clear-cut manner; and the new licencing system has provided clarifications for investors and expedited the application process. Nevertheless, Turkey’s dependency on foreign countries for oil and natural gas is still considered to be a major bump on the road to a competitive and fully liberal market. Although it is recently enacted, the New Law has received both positive and negative responses in terms of practicality and investor interest, as the New Law has been designed to protect the end users as much as the investors. This being said, investors and the market both agree that the New Law is a huge step towards a more liberal and transparent electricity market in Turkey.

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