

# GEDİK & ERAKSOY

December 2013

## *Renewable Energy: A Quick Guide to Turkish Regulatory Framework*

*Turkey has experienced a significant economic growth over the last decade; therefore, the need for energy production has grown significantly. Given the relatively dependent nature of the Turkish energy market, the Turkish regulators aim to increase the domestic production to control the current account deficit as well as keep the carbon emission levels relatively stable. Turkish renewable energy production is now being strongly incentivised for private parties through government subsidies, license discounts, tax incentives and enabling and facilitating a less burdensome procedure for land allocation to boost renewable energy generation.*

The term renewable energy sources is defined in two different pieces of Turkish energy legislation: (a) the Law No. 5346 on the Use of Renewable Energy Resources for Generating Electricity (the **Renewables Law**) defines renewable energy resources as non-fossil energy resources such as wind, solar, geothermal, biomass, biogas including landfill gas, wave, drift, tide and hydroelectric power plants (**HEPP**) which are channel-type or river-type or whose reservoir area is less than 15 kilometre squares.

### **PROCEDURES:**

**Generation License:** According to the new Turkish Electricity Market Law numbered 6446, entered into force on 30 March 2013, (the **Law**) and the Electricity Market License Regulation which entered into force on 2 November 2013 (the **License Regulation**), enacted in line with the new Law, generating electricity in the Turkish market requires an electricity generation license to be obtained from the Energy Market Regulatory Authority (**EMRA**). EMRA recently enacted the License Regulation determining the detailed requirements of the regulatory approval process to obtain a pre-license and license.

Legal entities applying for a generation license must be formed as a joint stock corporation (*anonim şirket*) or a limited liability partnership (*limited şirket*) in accordance with the Turkish Commercial Code numbered 6102 (the **TCC**). Other than the publicly held entities, all of the shares of such legal entities must in registered form.

**Step 1 Pre-License Application:** Applicants should apply to EMRA by submitting the pre-license application petition form attached to the new License Regulation together with the required information and documents, which are determined by EMRA's decision regarding "the list of documents and information required for pre-license and license application" numbered 4709-7 and published in Official Gazette dated 28 November 2013 and numbered 28835. During the pre-license application, the following criteria must be satisfied: (i) submission of a bank letter of guarantee in the amount of TRY 10,000 for each MW and with a maximum limit of TRY 5,000,000 determined in under the EMRA's decision numbered 4709-6 and published in Official Gazette dated 28 November 2013 and numbered 28835; (ii) the minimum share capital

of the company must exceed 5 % of the investment amount; (iii) the payment of the pre-license fee; (iv) amendment to the articles of association of the company to prohibit change in its shareholding structure during the pre-license period.

Furthermore, generation facilities based on solar and wind energy must apply within the period specified in the regulation and present a wind/solar measurement of a term of at least one year in the last three years for the proposed site. Applicants for (i) generation facilities based on geothermal energy are required to submit a document evidencing land allocation; (ii) HEPPs are required to submit a water usage agreement (*su kullanma hakkı anlaşması*) or a document evidencing the right to execute such agreement; and, (iii) wind and solar plants owning the project site are required to evidence that they are the proprietor of the project site.

**Step 2 EMRA and Turkish electricity transmission Company (*Türkiye Elektrik İletim A.Ş. – TEİAŞ*)**

**Evaluation:** When the application file is complete and accepted for evaluation by EMRA, the General Directorate of Renewable Energy will evaluate the project technically and send it to TEİAŞ or the relevant distribution company for the grid connection opinion. The grid connection and voltage level is determined by TEİAŞ and/or the relevant distribution company.

**Step 3: Granting of Pre-License and Obligations during the Pre-License Period:** Upon obtaining both the General Directorate of Renewable Energy approval and TEİAŞ's affirmative grid connection opinion, EMRA issues the pre-license for the applicant. During the pre-license period, the following permits and administrative procedures must be obtained and/or completed:

- All land utilisation rights;
- Approval of zoning permit;
- Preliminary project approval;
- Application for the system connection agreement and system utilisation agreement with TEİAŞ or the relevant distribution company;
- Opinions regarding Regulation on Military Forbidden Zones and Security Zones from the Turkish Armed Forces Chief of Staff (*Genelkurmay Başkanlığı*);
- Technical interaction permit for wind based power plants (applications must be submitted to the relevant authorities within 180 days following the granting of the pre-license);
- Environmental Impact Assessment Decision, (applications must be submitted to the relevant authorities within 90 days following the granting of the pre-license);
- Construction license for the generation facility or other documents in lieu of such license or submission of a document proving that no construction license is required for the generation facility; and
- Wind/solar based power plant royalty agreement (if required), (*RES/GES Katkı Payı Anlaşması*) executed with TEİAŞ.

**Step 4 License Application:** The applicant must complete the abovementioned procedures in order to apply for a generation license. Furthermore, the applicant is required to satisfy the following criteria: (i) submission of an additional bank letter of guarantee, which is determined between 2% to 6% of the total investment amount depending on the installed capacity, in accordance with EMRA's decision numbered 4709-6 and published in Official Gazette dated 28 November 2013 and numbered 28835; (ii) submission of a completion plan for the construction process (*termin planı*); (iii) payment of the license fee; (iv) amendment of the articles of association to reflect the restrictions on share transfers and mergers in accordance with the

new License Regulation; and (v) increasing the minimum share capital of the applicant to exceed 20% of the total investment amount.

**Step 5 Granting of License:** EMRA shall, within 45 days of concluding that the required permits and administrative procedures of the applicant for the pre-license period have been completed, issue the relevant generation license and announce its decision on its website together with the trade name of the licensee, the type of the license and its duration.

Pursuant to the new License Regulation, generation pre-licenses can be granted for a maximum of 24 months and may be extended to 36 months depending on the resource and installed capacity. Generation licenses can be granted for a minimum of ten years and a maximum of 49 years.

**RER Certificate:** In order to benefit from the incentives under the Renewables Law, a renewable energy generation facility must hold a renewable energy resource certificate (the **RER Certificate**), which is issued by EMRA. The RER Certificate will be valid for the term of the generation license of the relevant generation company.

#### Required Permits:

- *Environmental permits:* If applicable for the relevant facility, the operators may need to obtain: (i) an environmental impact assessment (**EIA**), (ii) an environmental permit certificate (*Çevre İzin Belgesi*), which shall include relevant water discharge, emission and noise permits, and (iii) with respect to waste-collection and recycling, an environmental license certificate, in each case issued by the Ministry of Environment and Urbanization.

**Table 1: Threshold for EIA Applications**

	HEPPs	Wind	Geothermal	Solar
<b>Mandatory EIA</b>	$P \geq 25$	Having 20 or more turbines	$P \geq 25$ MW	Having a facility site of 20 hectares or more
<b>Selection and Election Process</b>	$1 < P < 25$	Having between 5 and 20 turbines	$5 \leq P < 25$ MW	Having a facility site of 2 hectares or more but less than 20 hectares
P denotes installed power. Source: The Regulation on EIA, dated 3 October 2013 published in Official Gazette N. 28784of 3 October 2013.				

- *Operational permits:* In order to start generating electricity certain other operational licenses are required under different legislations, such as the workplace opening and operation license issued by the relevant special provincial administration (*İl Özel İdaresi*) or the relevant Municipality (*Belediye*); or an operation certificate issued by the relevant District Office of Ministry of Labour and Social Security (*Çalışma ve Sosyal Güvenlik Bakanlığı İl Müdürlüğü*).

Other than the environmental permits and operational permits, based on the type of the power plant certain constructional and administrative permits may also be required.

**Support Scheme:** The renewable energy resources support scheme is regulated by the Renewables Law and its secondary legislation (the Regulation on Renewable Energy Resources Certification and Support

(*Yenilenebilir Enerji Kaynaklarının Belgelendirilmesi ve Desteklenmesi*)), which aims to incentivise renewable energy resources (the **RES support**).

**INCENTIVES:**

**Pre-License and License Fee Incentives:** For generation facilities generating electricity from renewable resources under the License Regulation, the pre-license and license application fee is reduced to 10%, which was previously 1 % of the regular license fee. Pre-license and license application fees depend on the installed capacity of the relevant generation facility and are set out in Table 2 below for 2013. Please note that the license fees for the year 2014 will be announced by the end of December 2013, including the pre-license fees, which have not yet been determined by EMRA. The license fees are not perceived as unusually high by the international community as compared with other jurisdictions. Annual License fees are currently TRY 0.003 per kW, however, annual license fee is payable after the first eight years for generation facilities based on renewable resources.

**Table 2: 2013 EMRA pre-license and license fees**

Installed Capacity, “P(MW)”	License Fee (TRY)
0 < P ≤ 10 MW	5,000
10 < P ≤ 25 MW	10,000
25 < P ≤ 50 MW	15,000
50 < P ≤ 100 MW	25,000
100 < P ≤ 250 MW	50,000
250 < P ≤ 500 MW	100,000
500 < P ≤ 1000 MW	150,000
P > 1000 MW	250,000

Source: EMRA’s decision N.3978, dated 15 August 2012, published in Official Gazette N. 28392 of 25 August 2012 and EMRA’s decision N. 4710, dated 21 November 2013, published in Official Gazette N. 28835 of 28 November 2013.

**Priority in Procedure:** While assessing a license application, EMRA must prioritise the issuance of an opinion on interconnection for electricity generation companies holding a RES certificate.

**Feed-in Tariffs:** Pursuant to the Council of Ministers Decree No. 2013/5625, the generation facilities, which are or will be, operational by 31 December 2020 and holding a RER certificate will benefit from an incentivised new feed-in tariff as set forth in Schedule 1 of the Renewables Law. The feed-in tariff will be valid for 10 years following the commencement of the operations of the generation facility. The feed-in tariff eliminates the risk of imbalance within the system and also provides a better chance for financing, as creditors are assured that the generated output will be sold at the price determined in the feed-in tariff. The feed-in tariff is set out in Table 3 below.

**Table 3: Feed-in Tariffs for Energy Produced by Generation Facilities based on Renewable Energy Resources**

Type of generation facility producing renewable energy	Prices to be applied (USD Cent/kW)
Hydroelectric Power Plants	7.3
Wind Power Plants	7.3
Geothermal Power Plants	10.5
Biomass Power Plants	13.3
Solar Power Plants	13.3

Source: Renewables Law Schedule 1

**Pooling and Receiving Payment for Generation Facilities:** The Market Financial Settlement Centre (PMUM) announces the amount to be paid by the suppliers to the pool and provides the suppliers with the relevant invoices for each supplier. Following payment by the suppliers to the pool, PMUM distributes the amount collected to the legal persons, which are party to the RES support scheme, on a *pro rata* basis.

**Selling Guarantees:** Retail sellers must, subject to certain conditions, purchase electricity generated from renewable energy resources, which is fed into the national distribution grid. The amount of electricity purchased by the retail sellers will be deemed parallel to the electricity sold under the RES support scheme and will be added to the pool operated by PMUM.

**Subsidies for Using Machinery Produced in Turkey:** The renewable energy generation facilities using mechanical or electro-mechanical components manufactured in Turkey are eligible for a domestic components incentive. In order to be eligible for the incentive, the generation facility must be operational before 31 December 2020, as per the Council of Ministers Decree No. 2013/5625. The price incentive is valid for five years following the commencement of the operations of the generation facility. The domestic component incentive tariff is set out in Table 4.

**Table 4: Additional Price Incentive for Generation Plants using components Manufactured in Turkey**

Type of Generation Plant	Components Produced in Turkey	Additional price incentive (USD Cent/kW)
<b>A: Hydroelectric Power Plant</b>	1. Turbine	1.3
	2. Generator and Power Electronics	1.0
<b>B: Plant Generating Electricity from Wind Energy</b>	1. Wing	0.8
	2. Generator and Power Electronics	1.0
	3. Turbine Power	0.6
	4. Entire Mechanical Components in Rotor and Nacelle Groups (Excluding Payments for Wing Group and Generator and Power Electronics)	1.3
<b>C: Plant Generating Electricity Photovoltaic (PV) Solar Energy</b>	1. Production of PV Panel Integration and Solar Structural Mechanics	0.8
	2. PV Modules	1.3
	3. Cells Constituting the PV Modules	3.5
	4. Inverter	0.6
	5. Material on the PV Module that Focuses Solar Ray	0.5
<b>D: Plant Generating Electricity from Condensed Solar Energy</b>	1. Radiation Collection Tube	2.4
	2. Reflector Surface Sheet	0.6
	3. Solar Tracing System	0.6
	4. Mechanical Parts of the Heat Storage System	1.3
	5. Mechanical Parts of the Tower Streamer Collecting Solar Rays	2.4
	6. Stirling Engine	1.3
	7. Panel Integration and Structural Mechanics of the Solar Panel	0.6
<b>E: Plant Generating Electricity from Biomass Energy</b>	1. Fluid-Bed Steam Boiler	0.8
	2. Fluid or Gas-Run Steam Boiler	0.4
	3. Gasification and Gas Cleaning Group	0.6
	4. Steam or Gas Turbine	2.0
	5. Internal Combustion or Stirling Engine	0.9
	6. Generator and Power Electronics	0.5
	7. Co-generation System	0.4
<b>F: Plants Generating Electricity from Geothermal Energy</b>	1. Steam or Gas Turbine	1.3
	2. Generator and Power Electronics	0.7
	3. Steam Injector or Vacuum Compressor	0.7
Source: Renewables Law Schedule 2		

### **Incentives for Land Allocation:**

- If a generation facility qualifying as a renewable energy facility under the Renewables Law is to be established on forest land or state-owned land, then the competent Ministry or the Ministry of Finance may, in exchange for remuneration, lease or establish servitude rights or usage rights on, or grant authorisation for the use of the land for purposes of the facility, the related access roads and the land to be used for the lines to transport energy up to the network connection point. If the relevant land is arable land, mountain pasture or a place of shelter, the allocation purpose of the said immovable properties may be changed and registered in the name of the Turkish Treasury (*Hazine*). The Ministry of Finance may, in exchange for remuneration, lease and establish servitude rights.
- The lease, servitude right and usage right fees to be paid by such generation company for the land of access roads and energy transmission lines up to the network connection point, including those to be transferred to the Turkish Electricity Transmission Company and distribution companies, will be discounted by 85 per cent during the first 10 years of the investment and operation phases, provided that the generation facility is operational and obtains a RES certificate by 31 December 2015. Such electricity generation facilities are also exempt from paying the forest villagers' development revenue (*Orman Köylüleri Kalkındırma Geliri*) and the forestation and erosion control revenue (*Ağaçlandırma ve Erozyon Kontrolü Geliri*).
- The Ministry of Finance may establish usage rights on state-owned lands located within the reservoir area of hydroelectric generation facilities within the scope of the Renewables Law, without any charge.
- Electricity generation facilities based on renewable energy resources may be constructed in national parks, natural parks, natural monument and natural conservation zones, preservation forests, wildlife protection areas and special environmental protection areas with the approval of the Ministry of Energy and Natural Resources and in natural, protected areas, with the approval of the relevant regional protection council.

*\*\* Recently, the Ministry of Forestry and Water Affairs prepared a draft communiqué on Ecosystem Assessments limiting the use of forest lands for energy investments. The draft communiqué stipulates that no license will be issued to generation facilities, which are built in reservoir areas of dams and ponds, gene preservation forests, preservation forests, seed stands and recreation areas. The draft communiqué provides for transitory clauses for generation facilities, which are already constructed or in the process of construction in such areas. Nevertheless, legal disputes may arise in connection with the provisions of the draft communiqué if it is enacted as is. Land available for renewable energy generation facilities, especially for wind generation facilities, will certainly decrease for new projects if the draft communiqué is enacted without any changes thereto.*

**Protection from Development and Zoning:** The Renewables Law prohibits the enactment of development or zoning plans which would affect the use and efficiency of the state or Treasury lands allocated to renewable energy.

**Further Rights and Incentives:** On the decision of the Council of Ministers, incentives may be granted for: (1) investments in generation facilities covered by the Renewables Law; and (2) procurement of electro-mechanical systems which are produced in the Republic of Turkey and are to be used in generation facilities covered by the Renewables Law ; (3) research, development and production investments on solar batteries and electric-producing units through condensing units; and (4) research and development investments regarding biomass electricity or fuel production.

**Operating Without a License:** The Regulation on Electricity Generation without a License enacted on 2 October 2013, has increased the capacity limit for generating electricity without a license to 1 MW, which

can be further increased to 5 MW, with the decision of the Council of Ministers for generation facilities using renewable resources. Generation facilities using the produced energy in their own facility are not subject to installed capacity limits. The regulation also allows for the transfer of generation facilities to third parties, provided that provisional acceptance of such facility has been obtained. The procedure for operating without a license is much less cumbersome compared to operating with a license. Facilities generating electricity within the limits set forth in the regulation need to apply to distribution companies within their region or to organised industrial zone distribution license holders. Incentives under the RES support scheme, including the feed-in tariff, are also applicable to renewable energy generation facilities operating without a license.

## **SHARE TRANSFERS**

**Prohibition of Change in the Shareholding Structure During the Pre-License Period:** Pursuant to Article 57 of the License Regulation, any share transfers and any transactions resulting in direct or indirect change in the shareholding structure or transfer of shares of a company during the pre-license period are prohibited, unless (i) the pre-license holder is a publicly traded company and the share transfer is limited to publicly traded shares, (ii) the pre-license is granted for the construction of facilities within the scope of an international treaty, or (iii) the share transfer is a change in the shareholding structure of a foreign shareholder of the pre-license holder, resulting in an indirect share transfer.

**Share Transfers During the License Period:** The following share transfers for generation companies are subject to the prior approval of EMRA as per the License Regulation:

- direct or indirect acquisition of shares representing at least 10% of the share capital of a closed company and 5% of the share capital of a publicly traded company; and,
- share transfers resulting in a change of control of the company, regardless of the change in the shareholding percentage of the shares.

In order to obtain EMRA's approval for the acquisition of shares of more than 10% of the share capital of a license holder company, the acquirer and its legal entity shareholders must provide EMRA with the relevant documents set forth in the License Regulation.

### **Gedik & Eraksoy Avukatlık Ortaklığı**

Kanyon Ofis Binasi, Kat 6,  
Office No: 1015 - 1023  
Büyükdere Caddesi No.: 185  
TR-34394 Levent, Istanbul  
Turkey

Tel +90 212 371 2950  
Fax +90 212 371 2955

[www.gedikeraksoy.com](http://www.gedikeraksoy.com)



**Hakkı Gedik**  
Partner, Gedik & Eraksoy

**Contact**  
Tel +90 212 371 2953  
hakkı.gedik@gedikeraksoy.com



**Gökhan Eraksoy**  
Partner, Gedik & Eraksoy

**Contact**  
Tel +90 212 371 2952  
gokhan.eraksoy@gedikeraksoy.com