

Changes to Unlicensed Electricity Generation Legislation in Turkey

The amendments to the Regulation and Communiqué Regarding Unlicensed Electricity Generation in the Electricity Market were published on 23 March 2016 (the "**Amendments**"). This note highlights the key issues arising from the Amendments.

Maximum Capacity Restriction

Save for rooftop PV installations, the Amendments restrict the maximum capacity allocated to an individual or a legal entity in a transformer area for unlicensed electricity generation from solar and wind resources to 1 MW, regardless of the number of associated electricity consumption facilities. This restriction extends to all legal entities of which the relevant individual or legal entity is a direct or indirect shareholder and the legal entities which are controlled by these.

The determination of the shareholding structure for the purposes of the above restriction will be based on the declaration of the relevant applicant. If such declaration turns out to be incomplete, incorrect or misleading, the invitation letter (for the grid connection agreement) held by the relevant legal entity/individual or the grid connection and/or use agreement will be cancelled.

Consumption Requirement

The Amendments require that the installed capacity of an unlicensed solar or wind power plant does not exceed 30 times the connection agreement capacity of the associated consumption facility. Effectively, this means that the associated consumption facility or facilities must consume at least 1/30 of the electricity generated by the relevant unlicensed generation facility.

Restricted Transactions During Construction

Share transfers in the legal entities that own of unlicensed solar and wind power plants are prohibited by the Amendments until the provisional acceptance of the relevant power plant by the Ministry of Energy and Natural

Resources. Any transfer in breach of this prohibition will trigger a cancellation of the legal entity's invitation letter (for the grid connection agreement). However, it is not clear if this restriction extends to indirect share transfers.

Additionally, mergers and partial or full de-mergers are prohibited for all legal entities owning an unlicensed generation facility until the provisional acceptance of the relevant facility.

Distance to the Connecting Grid

Pursuant to the Amendments, the distance between a generation facility and the relevant grid that it will connect to cannot exceed:

- (i) 5 km air distance and 6 km project design distance for facilities with an installed capacity up to 0.499MW; and
- (ii) 10 km air distance and 12 km project design distance for facilities with an installed capacity between 0.5 MW and 1MW.

Restrictions on Distribution and Authorised Supply Companies

The Amendments limit unlicensed generation activities based on solar and wind energy for the related parties of distribution and authorised supply companies to 50kW installed capacity within the distribution region of the related distribution company.

The related parties are specified as:

- (i) direct and indirect shareholders of distribution and authorised supply companies and first degree

relatives (if the direct or indirect shareholder is an individual);

- (ii) employees (and their first degree relatives) of: (1) distribution and authorised supply companies; and (2) direct and indirect shareholders of distribution and authorised supply companies; and
- (iii) legal entities controlled by individuals/legal entities mentioned in (i) and (ii) above.

Priority

In line with the latest changes to the Electricity Market Licensing Regulation that came into force on 23 December 2015, the Amendments suggest that applications for unlicensed activities in a generation facility area for which a preliminary or generation licence application has already been made will be rejected. If the application for an unlicensed activity is received first, different outcomes are stipulated depending on the type of energy source for which the preliminary or generation licence application has been made and the stage of the unlicensed activity application.

Protection of Existing Projects

The restrictions and requirements introduced by the Amendments in relation to (1) maximum capacity for each transformer area; (2) minimum consumption; (3) distance to the connecting grid; and (4) unlicensed generation activities of the related parties of distribution and authorised supply companies, will not be applicable to applications which are announced to be eligible for an invitation letter (for the grid connection agreement) before 23 March 2016.

Conclusion

Unlicensed electricity generation has increasingly been used as a tool for investment and trading rather than for the internal needs of entities generating such electricity and the electricity market has been anticipating changes to the unlicensed generation regime. The Amendments appear to be primarily directed at restricting unlicensed activities to ensure that they are not used to circumvent licensing requirements and only parties genuinely interested in realising the relevant investment can benefit from the unlicensed generation regime.

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