

## **TRANSFERABILITY OF UNLICENSED SOLAR POWER PLANTS**

Energy Market Regulatory Authority (“EMRA”) has published a Draft Regulation to amend the provisions in the Regulation on Unlicensed Electricity Generation in Turkish Electricity Market on 26 November 2015. As is known, the Regulation on the Unlicensed Electricity Generation in the Electricity Market (“Regulation”), which was published in Official Gazette dated 02.10.2013, No. 28783 and became effective on the same day, regulates the principles to be applied to real or legal persons who produce electrical power without any obligation to obtain a license or to establish a company.

According to the Article 29/1 of the Regulation, *power plant cannot be transferred to another real person or legal entity before the temporary approval of the project*. However, practically, the investor who wishes to transfer his right at any stage of the investment sets up a company, obtains all the legal permits on behalf of that company, and then transfers the shares of the company to the third parties, since there is no provision to restrict share transfers under the Regulation. Consequently, even though a direct transfer of the unlicensed electricity generation right is prohibited; indirect transfer is possible and applicable. However, the Draft Regulation proposes to insert a new paragraph regarding share transfers into the Article 31 of the Regulation titled “Other Provisions”.

According to the Draft Regulation, *share transfer is prohibited from the date of application to establish a generation facility under the scope of the Regulation until the provisional acceptance of that generation facility is carried out. The notification regarding the share transfer shall be given to the local Grid Operator one month before the share transfer. The company whose shares are transferred shall submit all necessary documents regarding its current shareholding structure to the local Grid Operator following the share transfer transaction within ten business days*. In other words, direct or indirect transfer of the unlicensed power projects will not be possible before

provisional acceptance. Thus, the transfer of projects within an SPV will be the same as the projects owned by a real person.

The Draft Regulation proposes to insert another paragraph into the Article 31 of the Regulation, titled “Other Provisions”. According to this paragraph, the *real persons or legal entities, listed below, would not perform any unlicensed production activities under the Regulation.*

- *Direct and indirect shareholders of the distribution companies and the authorized supplier companies.*
- *Persons employed by the distribution companies and the authorized supplier companies, or their direct or indirect shareholders,*
- *Legal entities of which those real or legal persons, listed under above (a) and (b), are directly or indirectly shareholders.*

Another significant change under the Draft Regulation is the insertion of a new paragraph into the Article 6 of the Regulation, titled “Connection Principles”. According to the Draft Regulation, *regardless of the number of end users or consumers in the area, at each transformer center maximum 1 MW capacity for the generation facility based on the renewable energy sources shall be allocated to any real or legal person or to legal entities of which those real or legal persons are directly or indirectly shareholders of.* This means that any one (real person or legal entity) can only hold directly or indirectly the right of unlicensed power plant capacity maximum up to 1 MW at each transformer center. The current Regulation does not include such limit. According to the Article 5/4 of the Regulation, *building multiple power plants based on renewable energy resources for one consumption facility can be allowed if there is enough capacity within the distribution system. For each consumption facility, the total installed capacity of each power plant based on renewable energy resources cannot be over than 1 MW.* As it is seen, the Draft Regulation brings a new limitation for the ownership of unlicensed SPPs.

The Draft Regulation has not been approved by the EMRA, yet. The EMRA has collected public opinion until the end of working hours on 4 December 2015. Accordingly, the EMRA will evaluate the comments and finalize the process. At the end of the process, the Draft Regulation may be approved by the Board of EMRA in line with the proposal or with some changes. It may also be rejected completely.

There is no evidence how the transition period will take place or how rights of existing companies or people shall be protected.

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