The Turkish Update

This is the Third Quarter 2009 Edition of our email news service – The Turkish Update. This edition provides concise summaries of sector-specific legal developments in Turkey in July, August and September 2009 and includes brief articles on current "Hot Topics" in Turkish law.

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Part 1 - Legal developments

Banking and Finance

Finance companies can extend foreign currency indexed loans: Various amendments to the Communiqué No. 2008-32/34 on Protection of Turkish Currency came into effect on 11 July 2009. The amendments enable "finance companies" (as referred to in the Banking Law (Law No. 5411)) to extend foreign currency indexed loans to real persons and legal entities. "Finance companies" can only extend these loans to real persons if those loans are for "commercial and occupational purposes".

New measures for gold, silver and platinum loans: The amendments to the Communiqué No. 2008-32/35 on Protection of Turkish Currency made on 24 July 2009 introduced various new measures:

- Banks may extend gold, silver and platinum loans only to clients producing and trading precious metals.
- Banks may extend gold, silver and platinum loans by indexing them against the relevant precious metal (i.e. paying a cash amount equivalent to the value of the relevant precious metal on the extension date). In such a case, Turkish resident borrowers can only borrow in Turkish Liras. However, borrowers living abroad may borrow in Turkish Lira or a foreign currency. The former version of the Communiqué did not allow banks to issue this loan (as the bank always had to deposit the precious metal with the borrower).

Corporate and Commercial (including capital markets)

New tender offer communiqué: The official gazette published the Communiqué Serial IV, No. 44 (the Tender Offer Communiqué) of the Capital Market Board (CMB) on 2 September 2009. The CMB has cancelled the rules on tender offers in a previous general Communiqué and has replaced them with the specific, clearer and more-detailed Tender Offer Communiqué.

The Tender Offer Communiqué makes the following key changes:

- The threshold which triggers a compulsory tender offer is now a change in the management control of a public company. This change might be by gaining (directly or indirectly) 50 per cent or more of the share capital or voting rights of that company (the threshold under the previous rules was 25 per cent).
- It defines "management control" as a person (either acting alone or in concert with other people) holding (directly or indirectly) 50 per cent or more of the share capital or voting rights of a public company. Regardless of the shareholding percentage mentioned above, "management control" would include holding privileged shares that grant a right to appoint/propose a simple majority of the board of directors.
- It deletes some of the compulsory tender offer exemptions (such as general assembly approval with a certain majority). However it also introduces some new exemptions (such as (i) sharing equally of the management control of a public company by two or more shareholders and (ii) an intra-group transfer of management control shares).
- It changes some of the time periods about pricing compulsory tender offers. For example, under the new Communiqué, the price of a tender offer cannot be below the maximum price paid for the same shares six months before the tender offer. This time period used to be three months.
- It sets out the principles on interest and exchange rates which might apply to a tender offer price.
- It regulates voluntary tender offer rules more clearly and in more detail. The new Communiqué clearly provides that an investor can make a voluntary tender offer for all or a part of the shares of the public company.
- It sets out the public disclosure principles in tender offers more clearly and in more detail.

Future editions of the Turkish Update will comment on these key changes in more detail, but meanwhile please let us know if you have further questions on the changes carried out by the Tender Offer Communiqué.

CMB introduces two new investment instruments.:

- (1) Intermediary institution warrant. The Official Gazette published the CMB's Communiqué Serial III, No. 37 on 21 July 2009. This Communiqué sets out the principles of registration and selling/buying of intermediary institution warrants. The Communiqué defines an "intermediary institution warrant" as a security which provides its holder a right to sell/buy an underlying asset or an "indicator" (i.e. in security indexes set up by the CMB) at a determined price between two specific dates. Intermediary institutions (including licensed brokerage companies and banks) can issue this instrument based on a share(s) in the Istanbul Stock Exchange 30 Index or (if CMB specifically approves) convertible foreign currency, precious metals, goods or internationally recognised indexes.
- (2) Securities secured by assets. The Official Gazette published the CMB's Communiqué Serial III, No. 38 on 12 September 2009. This Communiqué sets out the principles of issuing and trading of securities secured by assets. The Communiqué defines such securities as a debt instrument which certain assets and receivables secure. These assets and receivables include consumer loans, commercial loans, receivables arising from financial and leasing agreements, receivables arising from exports, and receivables arising from the sale of houses by the Housing Development Administration of Turkey. Banks, financing companies, companies eligible for financial leasing, real estate investment trusts and public institutions eligible to issue securities can issue such securities.

Council of Ministers changed the limits for issuing debt instruments: The Official Gazette published the Council of Ministers' decision (dated 3 August 2009, numbered 2009/15344) on 3 September 2009. This decision provides that a public company cannot issue debt instruments which are of a value that is more than 10 times its equity capital shown in its externally-audited financial statements for the last accounting period. For a non-public company, the same limit is six times its equity capital. The limits for issuing such a debt instrument to the public (as opposed to private sales to institutional investors or private individuals) are half of the limits mentioned previously.

Council of Ministers changed the registration fees for capital markets instruments: The Official Gazette published Council of Ministers' decision (dated 3 July 2009, numbered 2009/15330) on 4 September 2009. This decision provides different registration fee ratios based on the capital markets instrument being offered. This is contrary to the previous decision which provides a fixed registration fee ratio of 0.2 per cent for any capital market instrument.

Competition

New guidelines on vertical agreements: The Turkish Competition Board (TCB) published New Guidelines on Vertical Agreements in August 2009. This legislation aims to explain in more detail how the vertical agreements should be evaluated under the Block Exemption Communiqué on Vertical Agreements No. 2002/2 (Block Exemption Communiqué). In 2007 the TCB legislated that only undertakings with less than a 40 per cent market share could apply the Block Exemption Communiqué (which narrowed the scope of this Communiqué). The new Guidelines detail and clarify the conditions under which vertical agreements of undertakings with a market share above the 40 per cent threshold can benefit from an individual exemption under Law No. 4054 on the Protection of Competition.

Investigation against the nine largest banks of Turkey: On 25 August 2009, the TCB launched an investigation against the nine largest banks of Turkey, namely Türkiye Garanti Bankası A.Ş., Akbank T. A.Ş., Türkiye İş Bankası A.Ş., Yapı ve Kredi Bankası A.Ş., Türkiye Vakıflar Bankası T.A.O., Finans Bank A.Ş., Denizbank A.Ş., Yapı ve Kredi Bankası A.Ş. (as the successor of Koçbank A.Ş.) and T. Halk Bankası A.Ş. (as the successor of Pamukbank T. AŞ.). The TCB has announced that it launched an investigation following collusion claims for these banks about the rebates they offer to public and private institutions on salary payments. The same day, the TCB announced that it declined complaints which were made against Garanti Bankası AŞ., Akbank T. A.Ş. and HSBC Bank A.Ş. due to lack of evidence. The complaints concerned alleged collusion re: paying salary rebates to personnel of the Ministry of Culture and Tourism.

Investigation against Dogan group companies: On 18 September 2009, the TCB announced that it has launched an investigation against DoŞan Yayın Holding A.Ş., Hürriyet Gazetecilik ve Matbaacılık A.Ş., DoŞan Gazetecilik A.Ş., BaŞımsız Gazeteciler Yayıncılık A.Ş. and DoŞan Daily News Gazetecilik ve Matbaacılık A.Ş. The investigation aims to find out whether these companies have breached the Competition Act throughout their sales of advertisement spots in the written media (newspapers).

Investigation against 19 companies in automotive business: On 30 September 2009, the TCB announced that it has launched an investigation against 19 companies active in automotive business. TCB launched this investigation based on the claims that these companies have been sharing target and stock information and sales and price strategies since 2006.

Investigation against the Turkish Pharmacists' Association: On 30 September 2009, the TCB announced that it had launched an investigation against the Turkish Pharmacists' Association. The TCB announced that they launched this investigation because there were allegations that the Turkish Pharmacists' Association was deciding the buy conditions of the pharmacies outside the market. The Turkish Pharmacists' Association had previously called the members of the Association to boycott some drug manufacturers and importers for decreasing the discounts and terms offered to pharmacies.

Telecommunications

Number Portability Regulation published on 2 July 2009: Following the decision by the Information and Communication Technologies Authority (ITCA) to allow subscribers to keep their mobile numbers when switching from one operator to another in 2008, the ITCA published the Number Portability Regulation. The aim of this Regulation is to set out rules and procedures on carrying out number portability in the Turkish market. Please let us

know if you want further information on the detail of this Regulation.

Spectrum Management Regulation published on 2 July 2009: Following the Electronic Communication Law's introduction of detailed rules on spectrum management, the ITCA has issued the Spectrum Management Regulation. The Regulation provides fundamental principles of spectrum management in the Turkish telecoms market. According to the Regulation, the ITCA is the sanctioned body to carry out all formalities on national frequency planning, grant of frequencies, international frequency coordination and registration. The Regulation states that those who wish to install and manage radio equipment or systems must have their frequency assignment and registration procedures approved by the ITCA. The Regulation also includes rules on the permission for the installation and use of radio, radio licences, granting satellite position, coded and cryptographic communications, and spectrum overseeing and inspection.

Access and Interconnection Regulation published on 8 September 2009: This Regulation replaces the former Interconnection Regulation of 2007 and harmonises its rules with the general framework set forth under the Electronic Communication Law. While introducing a new approach on "access and interconnection obligation" of the operators with significant market power, the Regulation does not bring a major change on the interconnection and access tariffs. Please let us know if you want further information on the detail of this Regulation.

Pharmaceuticals

Regulation Amending the Regulation on the Pharmacies and Pharmacy Services published on 23 July 2009: The Regulation provides details on the use of electronic prescriptions and allows pharmacies and patients to keep and access their prescription records electronically.

Decree Amending the Decree on the Pricing of Medicinal Products for Human Use published on 18 September 2009: The Changes introduced by the Decree resulted in price falls for both patented and generic drugs. According to the newly-adopted medicine pricing regime the Price Valuation Commission will determine "reference produce" prices every three months which relevant companies can use to calculate pharmaceutical prices. Please let us know if you want further information on the details of this Decree and the new pricing regime.

Employment

Regulation on Health and Safety Departments in Workplaces and Common Health and Safety Units: Published on 15 August 2009. Sets out principles and procedures in health and safety departments in workplaces; and common health and safety units that can provide services to Turkish companies with more than 50 employees.

Regulation on Workplace and Employee-Related Notices to State Authorities: Published on 21 July 2009. This legislation concerns notices (about the workplace and an employee's social security) which are made to the Social Security Authority. From now on, the law will count any such notices as also served to the Turkish Employment Authority and District Offices of the Ministry of Labour and Social Security.

Ministerial Decision No. 2009/15129: Published on 2 July 2009. The decision enables employers to extend the period in which they can officially suspend/decrease the workload of employees by six months

Insurance

Regulation on Private Pensions Intermediaries: Published on 29 August 2009, this legislation sets out principles and procedures on becoming a private pensions intermediary. It also contains various information on intermediaries' operations, working principles, exams, trainings, licences, etc.

Regulation on Insurance Auditing Board of Under-Secretariat of Turkish Treasury: Published on 21 August 2009. Regulates several issues, including:

(i) organisation and duties of the Insurance Auditing Board, which may conduct any audit, investigation and research on its duties and authorities under the Insurance Law;

(ii) authorities, duties and responsibilities of the related personnel working at the Insurance Auditing Board; and

(iii) recruitment of the personnel and officials to the Insurance Auditing Board.

Real Estate

Amendments to the Law on Condominium No. 634: Under this amending law dated 7 July 2009, Land Registries must make certain changes to their records. The changes include the registration of a ownership/sale right on a condominium that is being partially built on a parcel of land. The amending law also contains principles and procedures on how to make these changes.

Energy and Infrastructure (including oil and gas and electricity)

Regulation on Amending the Electricity Market Licensing Regulation: Published in the Official Gazette on 30 September 2009. Legal entities applying to EMRA for a licence will have to send EMRA a Positive Environmental Impact Assessment Decision if the Environmental Impact Assessment Regulation applies to them.

Generation companies that hold licences or companies that received an approval from EMRA for their licences need to file an application to the relevant authority (to get a Positive Environmental Impact Assessment Decision) within 60 days of the effective date of the Amending article (i.e. by the end of November 2009). Otherwise, EMRA will impose the sanctions in Article 11 of the Electricity Market Law (which include fines or in extreme cases terminating relevant licences). EMRA will either revoke the licences of the generation companies that do not get a Positive Environmental Impact Assessment Decision within 300 days of such legislation or reject their licence applications.

Privatisation of Baskent Dogalgaz Dagitim A.S. on the agenda: The Privatisation Supreme Council (the Council) has decided that the privatisation scope and programme will cover the sale of the shares of the Ankara Metropolitan Municipality Presidency (the Municipality) in Baskent Dogalgaz Dagitim A.S. (the Company) under:

(i) the letter of the Privatisation Administration Presidency (the Administration) dated 2 July 2009 and numbered 4588;

(ii) the Provisional Article 3(e) of the Natural Gas Market Law No. 4646; and

(iii) the Privatisation Law No. 4046.

After the Council's decision date, the Municipality will transfer 80 per cent of the Company's shares to the Administration without any cost and further duty. Then, the link between the Company and the Municipality will disappear and the Administration will hold the Company. The relevant shares' privatisation will take place through a "sale" method. Please let us know if you want further information on this proposed privatisation.

Privitisation of Menderes Elektrik Dagitim A.S on the agenda: Additionally, the Privatisation Administration included in its programme Menderes Elektrik Dagitim A.S.'s privatisation through a "sale" method based on:

(i) the Privatisation Supreme Council's decision dated 23 July 2009 and numbered 2009/47; and

(ii) the Privatisation Administration Presidency's letter dated 13 July 2009 and numbered 4763.

The Privatisation Supreme Council wishes to finish the privatisation by 31 December 2010. Please let us know if you want further information on this proposed privatisation.

Mining

Amendment in the Mining Legislation: Published in the Official Gazette on 19 August 2009. The parliament added a temporary article into the Mining Activities Permit Regulation. It specifies that until a new arrangement on mining in forests takes place, the Regulation on Permits to be Issued in Areas Considered as Forests will regulate the necessary permits. These include the necessary permits for mining exploration and operation in forests, conservation forests and forestation regions.

Media

Turkish Radio and Television Authority – Regulation on Advertisements: Published in the Official Gazette on 26 August 2009. The new legislation introduces principles and procedures on advertisements on radio, television and other media that are under the regulatory scope of the Turkish Radio and Television Authority. The legislation includes principles on (i) the content, (ii) implementation and (iii) determination of length and prices related to advertisement broadcasts. It also allows the broadcast of advertisements in foreign languages and introduces principles on such broadcasts.

Part 2 - "Hot Topics"

Scroll down to view all the Hot Topics or click on the headings below to shortcut directly to your preferred topic:

Turkish resident real persons cannot secure foreign currency loans or foreign currency indexed loans from abroad (and other recent amendments to the legislation on protecting Turkish currency)

Background and introduction

Law No. 1567 on Protection of Turkish Currency (the **Law**) came into effect on 25 February 1930. The Law vested the Turkish Council of Ministers (the Council) with the authority to set up regulatory measures for protection of the value of Turkish currency. Based on this authority, the Council adopted the Decree No. 32 on Protection of Turkish Currency which came into effect on 11 August 1989 (the **Decree**). The Law, the Decree and various Communiqués of the Central Bank of Turkey (the **Central Bank**) set out the fundamental principles on domestic and international exchange of currencies, precious metals, goods and capital in Turkey.

Due to the changes in the Turkish economic climate and varying political approaches, the Council has amended the Decree many times since its promulgation in 1989. The Council's latest amendments effective from 16 June 2009 are significant (the **2009 Amendments**). In particular, the Council has made some comprehensive changes to article 17 of the Decree (entitled "Loans"). We summarise some of the key changes to article 17 below:

1 Extension of foreign currency loans by Turkish banks and residents

The 2009 Amendments change the characteristics of the foreign currency loans described in article 17/b of the Decree, and introduce new types of foreign currency loan. Therefore, following the 2009 Amendments:

(a) Turkish Residents (defined broadly as "real persons and legal entities whose legal domicile is in Turkey, including the Turkish citizen employees, self-employed and individual business owners abroad") may extend commodity loans according to applicable import and export regimes.

(b) Turkish banks may extend foreign currency loans of the following types:

- Foreign currency loans for financing exports, export considered sales and deliveries. Please note the 2009 Amendments have cancelled the 18-month minimum term condition that previously applied to such loans. A circular of the Central Bank dated 22 June 2009 confirms this cancellation but notes the loans shall still be subject to the applicable tax legislation and the banks are responsible for ensuring that their clients are fully told about the tax implications of these loans.
- Foreign currency loans which are allowed by an investment incentive certificate of a borrower or for financing investment goods.
- Foreign currency loans which are provided to Turkish entrepreneurs engaged in business abroad, and to Turkish residents that have undertaken works through international or domestic tenders or defence industry projects approved by the Undersecretariat of Defence Industry.
- Foreign currency loans which are of USD$5 million or more and have an average term of more than one year. Please note the circular notes that Turkish banks can extend these loans to real

persons as well as legal entities. Another circular of the Central Bank dated 8 September 2009, allows Turkish banks to extend these loans in multiple tranches. However: (i) the first tranche of the loan must be at least USD$5 million; and (ii) the average term of the loan (taking all tranches into account) must be more than one year.

- Foreign currency loans which are for commercial or occupational purposes in exchange for certain security. Borrowers may provide foreign currency deposits held in Turkish banks and/or securities issued by or with the surety of the central administration or central bank of a member state of the Organisation for Economic Co-operation and Development as such security. However, the foreign currency loan amount cannot exceed the value of such security. The Central Bank's circular of 22 June 2009 states the relevant security must be secured by pledge or transfer agreement.
- Foreign currency loans which are permitted or set up by the Ministry associated with the Undersecretariat of Treasury.

Although new types of foreign currency loan are allowed under the 2009 Amendments, one consequence of the 2009 Amendments is that Turkish banks are no longer able to offer real persons foreign currency real property mortgages. This ensures that Turkish banks/borrowers are not exposed to foreign currency risk on the purchase of Turkish real property.

2 Extension of foreign currency indexed loans by Turkish banks to Turkish residents

On 16 June 2009, the Council included a new paragraph (e) in article 17 of the Decree stating that: "Banks may extend foreign currency indexed loans to Turkish residents for commercial or occupational purposes."

According to the Central Bank's circular of 22 June 2009, Turkish resident real persons must provide Turkish banks with:

- an official statement from the relevant professional organisation stating the relevant real person is engaged in commercial or occupational activities;
- their tax id number; and
- a written statement that the loan will be used for commercial or occupational purposes.

This circular also states the banks cannot extend the term of the foreign currency indexed loans that have been already extended to real person Turkish residents before the effective date of amendments to the Decree (i.e. 16 June 2009).

3 Limits on borrowing of foreign currency loans and foreign currency indexed loans by Turkish resident real persons

On 16 June 2009, the Council included a new paragraph (f) to article 17 of the Decree. According to this new provision, real person Turkish residents cannot secure foreign currency loans or foreign currency indexed loans in Turkey or from abroad, other than:

- foreign currency loans described in article 17/b of the Decree (as detailed in paragraph 1 above); and
- foreign currency indexed loans described in article 17/e of the Decree (as detailed in paragraph 2 above).

Based on this, Turkish resident real persons will not be able to secure foreign currency loans from abroad, effective 16 June 2009. The reasoning behind this outcome is the foreign currency loan types defined in article 17/b of the Decree can only be extended by Turkish residents.

Conclusion: protection of the Turkish currency and Turkish banks

Therefore, the 2009 Amendments protect the Turkish currency by ensuring that Turkish residents use Turkish banks for any foreign currency loan transactions.

Recent trends in Turkish renewable energy legislation

Thanks to its unique location and climate, Turkey enjoys diverse renewable energy resources including hydro, wind, solar, geothermal and biomass. However, despite its enormous potential, the currently-installed renewable capacity of Turkey[1] is low.

[1] Electricity capacity amounting to approximately 15,000 MW (including large-scale hydro-electricity generators which are not considered as renewable energy resources under the Renewable Energy Law) out of Turkey's currently installed capacity of 44,000

Below, we set out a summary of incentives under the current legislation and the Draft Renewable Law (the **Draft Law**) followed by our views on Turkey's approach towards renewable energy.

1 Current renewable energy legislation

1.1 Introduction

The Electricity Market Law No. 4628 sets out the general regulatory framework for electricity in the Turkish energy market. The Electricity Market Licensing Regulation (which focuses on rules and procedures relating to the licensing of these activities by the Electricity Market Regulatory Authority or **EMRA**) complements this law. With this in mind, the key piece of legislation about renewable energy is the Renewable Energy Law No. 5346.

1.2 Incentives under the Electricity Market Law/ Electricity Market Licensing Regulation

The legislation includes some investment incentives. These include:

- Legal entities which apply for licences to build electricity facilities using domestic natural resources and renewable energy resources currently only pay one per cent of the total licensing fee. These entities are also currently free from paying annual licence fees for the first eight years following the facility completion date.
- Renewable energy generators may buy electricity directly from private electricity wholesale companies if they do not exceed the annual average generation amounts mentioned in their licences for that calendar year.
- The state-owned electricity transmission company, TEIAS, and/or distribution licence-holding legal entities have the duty to give priority to renewable energy generators when connecting them to the grid.
- Retailer licence holders (Retailers) must give priority to energy produced through renewable energy resources. This rule applies when (i) the purchase price for electricity produced by renewable sources is equal to or lower than the sale price of TETAS (state-owned wholesaler) and (ii) there are no other cheaper supply alternatives.

1.3 Incentives under the Renewable Energy Law

The Renewable Energy Law covers certain investment incentives.[2] These include:

- **Fixed minimum price**: The Law sets a fixed range between a minimum price of 5.0 Euro cents and a maximum price of 5.5 Euro cents for electricity produced from renewable energy sources.
- **Compulsory purchase by Retailers**: Legal entities holding a retail sale licence must purchase a specified amount of electrical energy from RES certified generators (RES Certified Generators) which have not yet reached a total operation period of 10 years.
- **Incentives re: state-owned land**: Renewable energy generators enjoy an 85 per cent discount on the rent or costs related to getting a right of access/ use on state-owned land within the first 10 years of their investment and operation.

2 Draft Law

2.1 Introduction

Political discussions on the Draft Law are continuing and as a result the Turkish Parliament has not yet adopted the law (although many investors had hoped the Parliament would impose it earlier this year).

One reason behind the delay in the Draft Law's enforcement is the Turkish Treasury finds the proposed pricing incentives (based on feed-in tariff) too high. This is because state-owned entities such as TETAS and TEDAS make up most of the buyers in the electricity market.

2.2 Pricing incentives under feed-in tariff[3]

The feed-in tariff offers renewable energy generators favourable fixed minimum electricity sale prices. Therefore, under this system the prices of electricity produced from renewable resources will be pre-determined depending on the installed power generator. The fixed prices range from 7 to 25 Euro cents/kWh.

[2] Please note that the first two incentives below apply to facilities that start operation before 31 December 2011.

[3] Please note that a combination of the incentives in the Draft Law make up what is defined in the Draft Law as the RES Support Mechanism which is (in short) a system (outside of the spot market or realms of bi-lateral agreements) that renewable energy generators can opt into so as to obtain fixed pricing/payment benefits/protections.

Solar power (both concentrated and photovoltaic) and biomass generation facilities can enjoy fixed electricity prices for their second 10 years of operation. This is unlike the ones that are using other renewable energy resources which may benefit from fixed prices for only their first 10 years.

Legal entities holding a renewable energy generation licence and wishing to benefit from this system have to pre-apply to EMRA by 31 October of the year before they wish to benefit. Generators included in the system shall remain for one year. However, following this one-year period it appears that they can then opt out and choose to sell electricity in the spot market with spot market prices.

2.3 Incentives through pooling of payments

The Draft Law provides that suppliers of electricity (as Electricity Market Law defines) must pay into a pool which PMUM (the Market Financial Settlement Centre – a division of TEIAS) manages. Renewable energy generators will be able more easily to collect their revenues from this pool.

The pool will perform to provide an effective off-take guarantee for all renewable energy generators that opt into this system since this will guarantee the sale of that renewable energy generator's electricity.

This incentive is broader than the compulsory buying incentive for Retailers under the current Renewable Energy Law (see the second bullet point under paragraph 1.3 above). This is because the term "Suppliers" (which the Draft Law refers to) is much broader than "Retailers" (which the Renewable Energy Law refers to) and includes Retailers, plus wholesalers, and generators (who sell to end-users/free consumers) etc. Therefore, eligible consumers choosing to buy electricity from sources other than Retailers (the Suppliers have a wider scope covering any such sources) will not dilute the effectiveness of the off-take guarantee in the Draft Law.

Finally, as the fixed electricity sale prices are higher than under the current legislation it is much more likely that RES Certified Generators will join in this pooling system.

2.4 Incentives due to use of components made in Turkey

Certain mechanical and/or electromechanical items in the generation facilities that are using renewable energy resources are manufactured in Turkey. In that case, the Draft Law provides the relevant generation plant will benefit from further incentives as well as the fixed minimum electricity sale prices in the feed-in tariff system. The incentives will last for five years from the date of its operation.

2.5 Other incentives

The Draft Law includes certain other incentives.

- Any legal person that has a licence and produces electricity within the scope of the Draft Law will benefit from a 90 per cent discount on the system usage tariffs for 10 years from the operation of the relevant facility.
- Certain small-scale renewable energy generation facilities, whose installed capacity is lower than 500 kWh and micro-cogeneration facilities may transfer their surplus energy to the distribution system and enjoys the pricing incentives of the RES Support Mechanism. This is true even if they have not opted in. Besides, depending on the energy transferring to the distribution system, electricity-producing facilities using photovoltaic solar energy will benefit from even more favourable prices for 15 years from the establishment of the relevant facility.

3 Conclusion

Turkey's signing the Kyoto Protocol shows Turkey's commitment to cleaner energy and highlights how important the investments in renewable energy are for Turkey. The Kyoto Protocol also enables emission trading (which is new for the Turkish market), which will strengthen the value of renewable energy investments.

Turkey's historical reliance on non-Turkish energy resources is costly to the Turkish economy and a dependency on them is risky (as political tensions can easily affect their supply). The most efficient and secure way to achieve the goal to diversify and increase internal supply is maximising domestic renewable energy resources.

The High Planning Council produced the Electricity Market and Supply Security Strategy Paper on 18 May 2009. According to this paper, Turkey targets to make the share of electricity produced by renewable resources amount to a minimum of 30 per cent of Turkey's entire electricity production. This is a figure to aim at but of course may change depending on various factors.

Clearly, Turkey cannot realise this target without further private investment. To that end, more investor-friendly laws will play a significant role in encouraging this investment and we believe that when the Turkish Parliament passes the Draft Law this will be a milestone towards that direction.

Necessary changes in broadcast media legislation are finally on the legislative agenda

Introduction: the need for change

People involved in the media sector in Turkey have been clamouring for change in the current broadcast media legislation (to reflect recent rapid technological changes and to provide a foreign investor-friendly legislative environment) for some time now.

The main piece of legislation regulating the radio/television broadcasting sector in Turkey is the Establishment of Radio and Television Companies and Their Broadcasts No. 3984 (the Current Law) which entered into force in 1994. Since then it has been amended over 20 times to try and keep pace with changes in the broadcast media sector but these amendments were simply not enough. However, last month the Radio Television Supreme Council (the Turkish broadcasting sector regulator) published a Draft Law on the Establishment of Radio and Television and Broadcast Services (the Draft Law) on its website (www.rtuk.gov.tr) which promises more comprehensive legislative changes. This article will provide an insight into some of the most significant proposed changes in the Draft Law.

The Draft Law is mainly based on the Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EEC (i.e. the Audiovisual Media Services Directive). On the other hand, many adaptations have been made to comply with the Turkish legislation during the preparations of the Draft and please note that other changes may yet be made before the Draft enters force.

Scope of application

The scope of application of the broadcast media legislation has been expanded. The Current Law is, in principle, only applicable for the broadcasts made from Turkey (i.e. the broadcasting signal erupts from Turkey). However, the Draft Law states that it is applicable if the broadcast is within the jurisdiction of the Republic of Turkey. Article 4 of the Draft Law sets out the circumstances where the Republic of Turkey has jurisdiction over a broadcast, which include:

(i) where the broadcaster has set up its main office (merkez büro) in the Republic of Turkey;

(ii) where the Republic of Turkey is the place where the broadcaster makes its editorial decisions;

(iii) where the Republic of Turkey is the principal location of the broadcaster's workforce; and

(iv) where the principal place of the broadcaster's operations is first started in the Republic of Turkey and the business of the broadcaster is closely connected with the Turkish economy.

The direct impact of this extension in scope is that now more broadcasting companies (which broadcast inside or outside of Turkey) will fall within the scope of Turkish broadcasting legislation.

Foreign ownership limits

Critics of the Current Law pointed out that it was not creating an investor-friendly environment for foreign investors interested in the Turkish broadcasting market. Under the Current Law, foreign persons/legal entities can (i) hold a maximum 25 per cent of the shares of a broadcasting company and (ii) are only able to own shares in one such company. Although some attempts were made in the Turkish Parliament to relax these limits, all of these attempts eventually proved futile.

The Draft Law makes another attempt to relax foreign ownership limits by allowing foreign persons/legal entities to (i) hold a maximum of 50 per cent of the shares in one broadcasting company; and (ii) hold shares in a second broadcasting company. We believe the relaxation in these ownership limits, which is on the legislative agenda, will encourage foreign investors to take a closer look at the Turkish broadcasting market.

Turkey's transition to digital terrestrial television

An important novelty brought by the Draft Law is that it carefully regulates Turkey's transition to Digital Terrestrial Television (DTT). Some of the important terms about this transition are as follows:

- The Draft Law introduces many definitions related to DTT, such as "multiplex" or "multiplex capacity".
- The Draft Law clarifies the timing of the transaction and sets out the process of granting a DTT multiplex capacity by a tender (which only broadcasters that have been broadcasting for at least one year can take part in). The Draft Law sets out a six-month period (from the date the Draft Law enters into force) for DTT frequency plan and implementation schedule preparations, and the DTT tender will be made within one year.
- Current broadcasters are allowed to continue their analogue terrestrial broadcasts until the DTT tender, and some of the analogue terrestrial broadcasters that win the DTT multiplex frequencies will also be allowed to continue analogue broadcasts for three years following the tender (based on their ranking in the tender and their analogue capacity).
- DTT broadcasts shall start by two years from the grant of the relevant frequencies and all analogue broadcasts in Turkey will switch off within three years from such grant.

Conclusion: when?

The date of enactment of the Draft Law remains a moot point, but the pressure is on as Turkey, as a part of the EU accession negotiations (under Chapter 10: Information Society and Media), has committed to unify its legislation with its EU counterparts by the end of December 2009. If the Draft Law is passed shortly, this should provide the legislative framework within which the Turkish broadcast media market can flourish in future years.

Further Information

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