

Energy & Natural Resources - Turkey

Licence exemption for solar panel facilities

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Introduction

Although most of the activities in the Turkish energy market are performed under licences obtained from the Energy Market Regulatory Authority (EMRA), there are also some activities exempt from such licences. This update focuses on the licence exemption provided to solar energy generation facilities with a maximum 1 megawatt (MW) installed capacity (Small Generation Facilities) under the existing legislation.

According to the Regulation on Licence-Exempt Generation,⁽¹⁾ other licence-exempt generation facilities include:

- emergency groups;
- isolated generation facilities with no connection to transmission or distribution systems;
- generation facilities based on renewable energy resources that consume all of the produced energy without providing any energy to a transmission or distribution system, with the generation and consumption point in the same location;
- cogeneration facilities which meet the required efficiency value defined by the Ministry of Energy and Natural Resources;
- micro-generation plants;
- generation facilities established to operate with municipal solid waste treatment plants and sludge disposal facilities;
- production facilities established by legal entities, 50% or more of which is owned directly or indirectly by the municipality (if possible technically and if deemed appropriate by the State Hydraulic Works).

Unlicensed Small Generation Facilities

Application

Small Generation Facilities are allowed to generate electricity without being subject to a generation licence issued by EMRA. However, they still have to be qualified for the licence exempt generation and in this respect they must apply to distribution companies or organised industrial site distribution licence holders in their region to obtain the relevant approval.

No company formation requirement applies to licence-exempt electricity generation. Therefore, parties or Turkish branches of foreign companies can establish a Small Generation Facility without establishing a company in Turkey.

Each Small Generation Facility must be connected to a consumption unit. It is not clear from the existing legislation whether the same party or legal entity can establish multiple Small Generation Facilities and sell the excess power. A party or legal entity has to obtain an electricity generation licence if the solar energy generation facility it owns has, for instance, a 15MW installed capacity. However, as per the current legislation, there is no restriction prohibiting the same party or legal entity of having 15 different solar energy generation facilities each with a maximum 1MW installed capacity and through which it reaches a 15MW installed capacity in total, without the necessity of obtaining a generation licence. Although there is no clarity under the relevant legislation, there is no restriction on a party or legal entity having multiple solar energy generation facilities each with a maximum 1MW installed capacity without the necessity of obtaining a generation licence, provided that each facility has a separate electricity subscription number. However, objections may be raised against a party or legal entity establishing multiple Small Generation Facilities due to the abuse of licence exemption right granted for Small Generation Facilities as the practice is new and not clearly settled.

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Capacity limit

In order to be eligible for the exemption, the installed capacity of the Small Generation Facility should not exceed 1MW. The Council of Ministers is authorised to increase the installed capacity limit to 5MW, but no such increase has yet been introduced.

Expropriation

EMRA will not expropriate Small Generation Facilities (as opposed to licensed generators/distributors if deemed necessary) and facilities may be established on public or treasury-owned lands provided that permits are obtained from the relevant institutions.

The National Property General Communiqué details the easement right and the use permit to be provided to small generation facilities on treasury-owned lands.⁽²⁾ The maximum periods for the easement right or the use permit will be:

- 20 years for small generation facilities with up to 500 kilowatts (kW) installed capacity; and
- 30 years for small generation facilities with installed capacity between 500kW and 1MW.

Further, an 85% discount will apply to the easement right or the use permit fee, provided that the respective facility starts operating before December 31 2020. The generation facilities established on treasury lands will be transferred free of charge to the Treasury at the end of the easement right or the use permit period.

Sale of excess power

Generated electricity may be sold to third party buyers through bilateral agreements or through the grid (System) operated by Turkish Electricity Transmission Company. The sale of electricity to third parties through bilateral agreements is prohibited. However, any excess power generated and not used by the Small Generation Facilities can be sold to the System through the authorised distributor of each region.

Incentives

Small Generation Facilities can benefit from the incentive and support mechanisms provided for renewable energy plants under the Renewable Energy Law.⁽³⁾ Excess power generated by Small Generation Facilities will be sold to the System at the feed-in tariff of \$133 per MW hour for the first 10 years of operation and domestic component incentives – if available – will also be added to the tariff.

Small Generation Facilities are covered by the support mechanism through the relevant distribution company (ie, the application is submitted by the distribution company on behalf of Small Generation Facilities). They must submit a certificate to the relevant distribution company that states the applicable tariff according to the Regulation on Domestic Components.⁽⁴⁾ Small Generation Facilities can benefit from the domestic component incentive for five years following provisional acceptance.

Transfer of Small Generation Facility

Small Generation Facilities can be transferred to other real or legal parties, provided that the facility has received provisional acceptance from the Turkish Electricity Distribution Company (TEDAŞ).

Parties must apply to the distribution company before the transfer. The distribution company will finalise the transfer application within 30 days provided that the documents that it may require are complete and accurate. The transfer process will not be valid for distribution companies unless the transferee executes the connection contract and system usage contract with the relevant distribution company.

In cases of limited or non-recourse project funding by banks or financial institutions for Small Generation Facilities, banks or financial institutions can request the transfer of the Small Generation Facility to another real or legal party if the funding contract is violated by providing a reasoned notification to the distribution company, provided that the transferee will undertake all of the liabilities due to the Small Generation Facility. In such cases, the transferee shall sign connection and system usage contracts with the relevant distribution company for the transfer of the Small Generation Facility.

Approval process

Despite the general exemption from licensing, Small Generation Facilities must still obtain approval from the relevant distribution company for grid connection and system usage. In accordance with the Communiqué on Licence-Exempt Generation,⁽⁵⁾ Small Generation Facilities must submit the following documents to the distribution company:

- a standard form attached to the Regulation on Licence-Exempt Generation for grid connection applications;
- a title deed, lease agreement or document showing the public or treasury permit pertaining to the site;
- a single-line diagram with the technical specifications of the small generation facility;
- receipt of payment of the application fee (the application fee is determined on an annual basis by EMRA);
- an original or notarised copy of the document obtained from the Ministry of Food, Agriculture and Livestock or its provincial or district directorates for applications other than solar energy based roof plants, which confirms that the installed small generation plant does not damage the agricultural integrity of farmlands, specific product farmlands, planted farmlands, irrigated agricultural fields

- and other agricultural lands;
- an electricity subscription number if the consumption facility is established, otherwise a construction licence or other related documents;
- documents relating to environmental compliance (all generators must submit an 'environmental impact assessment not necessary' decision or an 'environmental impact assessment affirmative' decision or a letter confirming that the facility is outside the scope of the Regulation on Environmental Impact Assessment); and
- the distribution company may request certification of the suitability of the plant area for the installed capacity in the event that the plant area is clearly far from the generally accepted criteria.

In evaluating generation facilities' applications for licence exemption, distribution companies consider the following criteria in sequence:

- whether the facility uses renewable energy resources;
- whether the facility is a cogeneration facility;
- whether the applicant's power consumption for the past year is higher than other applications;
- whether the generation facility and consumer facility are in the same region;
- whether the application is subject to consumption merge;
- if the applicant has no previous successful applications; and
- the date of the application, if multiple applications fulfil the previous criteria.

Applicants which are approved will receive an 'invitation to sign the connection agreement'. They must then apply to TEDAŞ for project approval within 90 days of receipt of the invitation and submit such approval to the distribution company within 180 days of receipt of the invitation. The distribution company may grant a three-month extension for the submission of project approval and may also ask for additional information and documentation.

The distribution company will sign a connection agreement with the applicant within 30 days of the complete submission of the required documents. General terms and conditions applicable to all connection agreements are determined by EMRA.

The provisional approval of Small Generation Facilities to be connected at high voltage must be completed within two years of signing the connection agreement, while for Small Generation Facilities to be connected at low voltage it must be completed within one year. If commissioning does not occur within these timeframes, except in the case of *force majeure*, the connection agreement becomes void. Depending on the capacity of the Small Generation Facility, the TEDAŞ General Directorate or regional coordinator is responsible for granting provisional approval. The system usage agreement will be signed with the distribution company within one month following approval and the Small Generation Facility will then commence operating.

For further information on this topic please contact [Çağdaş Selvi](#) or [Eda Yaşar](#) at Bilgiç Attorney Partnership by telephone (+90 212 386 1305), fax (+90 212 269 3835) or email (cselvi@bhukuk.com or eyasar@bhukuk.com). The Bilgiç Attorney Partnership website can be accessed at www.bhukuk.com.

Endnotes

(1) *Official Gazette*, 28783, October 2 2013.

(2) *Official Gazette*, 28906, February 7 2014.

(3) *Official Gazette*, 25819, May 18 2005.

(4) *Official Gazette*, 27969, June 19 2011.

(5) *Official Gazette*, 28783, October 2 2013.

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