

Projects & Procurement - Turkey

New licensing regime for greenfield power generation projects

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[Introduction](#)

[Previous licensing regime](#)

[New licensing regime](#)

[Transition period](#)

Introduction

The new Electricity Market Law (6446) was passed on March 30 2013, setting forth a new licensing regime for greenfield power generation projects.

The new law abolished the previous Electricity Market Law (4628) and the licensing regime applicable thereunder. However, until the Energy Market Regulatory Authority (EMRA) issues secondary regulation based on the new law, the secondary regulation enacted pursuant to the previous law will remain in effect (so long as it does not conflict with the new rules). The new law requires EMRA to issue the new regulation by the end of September 2013. EMRA has submitted a draft regulation setting forth the details of the new licensing regime for public opinion and collected feedback on the terms and provisions.

Previous licensing regime

The previous licensing regime comprised four stages, each of which was a prerequisite of the subsequent stage. EMRA would issue the generation licence to a project company only if the prerequisites of all stages were successfully fulfilled. These stages were:

- preliminary review of the licence application;
- payment of 1% of the licence fee;
- evaluation and assessment of the technical and financial aspects of the proposed project by EMRA; and
- satisfaction of certain conditions, such as raising the share capital of the project company to the required minimum, amending the articles of association of the project company and obtaining a decision on whether an environmental impact assessment (EIA) affirmative decision was required for the project.

On satisfaction of the abovementioned conditions, the generation licence issued by EMRA would indicate the licence term and set:

- a deadline to complete any relevant work before commencement of construction of the project on the land chosen for the project, such as expropriation (if relevant) (ie, the pre-construction term); and
- an ultimate deadline to complete construction of the project and commence commercial operations (ie, the construction term).

Under the previous licensing regime, the pre-construction term was considered part of the total term of the generation licence, together with the construction term. Accordingly, many licences were granted to companies that lacked the necessary funding or technical knowledge to build and operate the projects. Shareholders of such projects that held licences sought investors, partners and funding (equity or debt) after such licences were granted to them.

New licensing regime

Details of the new licensing regime will be finalised by EMRA on the evaluation of feedback obtained from the public. However, to encourage those that are actually capable of realising a project to obtain generation licences and to eliminate licence

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holders with no funding to complete the investment, the new law divides the licensing regime into two phases.

From now on, applicants must first obtain a pre-generation licence from EMRA, which will be valid for a maximum of 24 months. The term of a pre-generation licence will depend on the type and source of the project and its planned installed capacity to complete the required pre-construction works (eg, obtaining the necessary land usage rights, obtaining permits or approvals relating to zoning, obtaining the opinion of the general staff for projects with a planned installed capacity of 50MW or more and the construction licence). EMRA may grant an additional term corresponding to half of the initial term of the pre-generation licence if additional time is required, based on the type and source of the project and the planned installed capacity. Based on the draft licensing regulations, the total term of a pre-generation licence can therefore be a maximum of 36 months. The project company will be issued a generation licence only if it completes all relevant work by the end of the term of its pre-generation licence.

Applicants for a pre-generation licence from EMRA must also submit a bank letter of guarantee in an amount as decided by EMRA, based on the planned installed capacity of the project. According to the draft licensing regulations, the amount of this bank letter of guarantee can correspond to a maximum of 5% of the total investment amount. However, EMRA will be entitled to determine any amount up to this threshold at its discretion. The bank letter of guarantee will be forfeited if the holder of the pre-generation licence fails to:

- comply with EMRA's requirements;
- complete the required pre-construction works within the term of the pre-generation licence; and
- apply to EMRA to obtain a generation licence before the expiry of the pre-generation licence's term.

Furthermore, the share capital of the company applying to EMRA to obtain a pre-generation licence for its project must correspond to at least 5% of the total investment amount, with the exact amount to be determined by EMRA.

Shareholders of a project company will be prohibited from selling their stake or changing the shareholding structure directly or indirectly in any way during the term of the pre-generation licence. Once a project company receives a generation licence for its project, its shareholders will then become eligible to sell stakes in the project companies, subject to the necessary prior approvals by EMRA.

Transition period

The new law grants existing generation licence holders that have not yet fulfilled their pre-construction term liabilities until September 30 2013 to fulfil such liabilities. Otherwise, EMRA will cancel the relevant generation licences. For those licence holders whose pre-construction terms had not expired by the effective date (March 30 2013), an additional six-month period will be added to the end of their pre-construction term. According to the draft licensing regulations, EMRA will initiate proceedings in connection with the addition of such six-month period to generation licence holders' pre-construction terms following the issuance of the new licensing regulation.

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