Expert Guide

Energy & Natural Resources

CorporateLiveWire

July 2013

CMS Cameron Mckenna - Simmons & Simmons LLP - Clifford Chance - Fasken

The New Playground for Electricity & Petroleum in Turkey

By Serra Başoğlu Gürkaynak & Ozan Karaduman

Turkey has been very active in terms of legislative changes relating to its energy market in the first half of 2013. A new law regulating the Turkish electricity market ("new EML") was enacted in March, followed by the long-awaited new Petroleum Law (the "NPL") in May.

This legislative activity is a part of Turkey's efforts to improve its energy regulations and to attract more investors in its energy markets. This article explains the most important aspects of the new EML and the NPL.

The New EML

The new EML repeals the Electricity Market Law of March 03, 2001 (the "previous EML"). The previous EML was in itself a reform, as it was the start of the liberalisation process of the Turkish electricity market. However, 12 years later, the previous EML clearly failed to respond to the various issues that arose along this liberalisation process. The new EML aims to fill in the gaps of its predecessor and introduces many changes in this regard. Below are some of the highlights of the new legislation:

Energy Markets Operating Corporation ("EPIAS")

The new law introduces a new corporation, EPIAS, in order to conduct market operations in a more effective way, and this will start on 30 September, 2013 and the marketplace welcomed this as a step forward for the liberalisation of the market. EPIAS will establish a stock exchange where electricity will be bought and sold and this will enable producers to determine a reference price and forecast prices for the longer term. The market also expects EPIAS to pave the way for a derivatives market based on the underlying power purchase contracts. However, it is still not clear how EPIAS will operate and what its shareholding structure will be. According to the new EML, a maximum 15% of the EPIAS shares can be held directly or indirectly by public institutions or companies with public capital, excluding the Istanbul Stock Exchange. This can be increased to a 30% by the Cabinet and the government may choose to establish a 30:70 structure held by the Turkish Electricity Transmission Company and Stock Exchange. However, the private sector believes that at least 40% of the shareholding should be owned by the market to ensure that EPIAS operates independently and responds to the needs of the investors.

Pre-License

Another novelty of the new EML is the "pre-license" mechanism; a two tier system established to facilitate all administrative and bureaucratic requirements. The previous EML required the issuance of the generation license by the Electricity Market Regulatory Authority ("EMRA"), in order to make certain other applications, ultimately delaying the process for generator companies to become operational. The pre-license procedure aims to solve this problem so when a company applies for a license, it will first be granted a pre-license with a maximum period of 24 months. With this pre-license, the company will have the right to make applications for various administrative permits, licenses and related documents as well as to acquire property rights and usage rights on the land plot where the facility will be built. If the necessary permits cannot be obtained over a period of 24 months, or the obligations specified by the EMRA cannot be fulfilled, the applicant will not be granted an electricity generation license.

Contest

An important change for the renewable energy sector is related to the contest principle when there is more than one application for the same area in the wind and solar energy licensing process. Under the new EML, the applicant who offers the highest contribution per kWh for a period of 20 years will win the contest as opposed to the previous system where the winner was the applicant who accepted the lowest price for the electricity it generated. The EML aims to grant licenses to the applicants who can make a serious investment.

Unlicensed Power Generation

One of the most welcome amendments in the new EML relates to unlicensed power generation. Under the previous EML, power plants using renewable energy resources with a maximum capacity of 500 kilowatts could generate electricity without obtaining a license. The maximum limit was constantly criticised for being extremely low. The new EML responded to the feedback from the market and increased the maximum capacity to one megawatt.

The new EML also introduced a new provision concerning unlicensed power generation. Regardless of capacity, if a power plant generating electricity from renewable energy resources is isolated from the transmission and distribution grid, it will be exempt from the requirement of obtaining a production license.

The NPL

The NPL replaced the former Petroleum Law ("FPL") which dated back to 1954. The FPL was a liberal and progressive legislation for that period in Turkey which led a nationalistic and conservative economic policy. Much has changed since then and Turkey has become a liberal state making efforts to apply the principles of the free market system. The petroleum explorations have also shown that Turkey has good potential of oil and gas both offshore and onshore. However, the investment required to fund exploration and to establish wells in the research areas created a need to attract private investment as the FPL was not investor-friendly enough to attract the required investment. The government therefore drafted the NPL to improve the regulations and to encourage investment in exploration and operation activities. Below is a brief summary of some of the highlights of the NPL:

- Turkish land, which was formerly divided into 18 petroleum regions, is divided into two sections: onshore and off-shore.

- A "search permit" allowing the companies to collect hydrocarbon data on the allocated fields is introduced. The General Directorate of Petroleum Affairs will keep the information obtained confidential for eight years. Although not explicitly stated by the NPL, the reasoning of the NPL shows that the intent is to enable the sale of the collected hydrocarbon data in Turkey or abroad.

- The term of the exploration license for onshore is increased from four years to five years with a possibility to extend to nine years. For off-shore, this period eight years with a possibility to extend to 14 years.

- Unlike the FPL, under the NPL, the companies applying for the exploration license are obliged to provide a guarantee in the amount of 2% of the investment for onshore and 1% for off-shore. This was introduced to provide the licenses only to those who are serious about making the necessary investment.

- Unlike the FPL where the state share to be paid by the oil manufacturer was calculated based on the wellhead prices, under the NPL it is calculated based on the local crude oil market price.

- It is not possible to apply for a new exploration license until 11 June, 2014.

These legislative changes were timely, if not late and were welcomed by investors. The government is likely to introduce further decrees and communiqués to detail the application of these amendments and continue to further liberalise the energy market to meet its 2023 progress goals.

Serra Başoğlu Gürkaynak is a partner and head of corporate and Ozan Karaduman is a senior associate at the leading Turkish law firm Mehmet Gun & Partners.

Serra Başoğlu Gürkaynak is a partner and head of Commercial and Corporate Law Department, leading the corporate and energy practices. She has previously worked with a golden circle global law firm in its New York and Istanbul Offices, focusing on mergers and acquisitions, bank finance transactions and energy projects, and as in-house at Sabanci Holding where she enhanced her transactional expertise acting for and advising the likes of Akbank, Enerjisa, Advansa and other subsidiaries of the group in cross-border mergers and acquisitions, energy and bank finance deals. Serra has significant expertise in the Middle East and CIS from her years as the head of legal for these jurisdictions at Coca-Cola.

A member of the Istanbul Bar and the New York Bar, Serra holds two LLM, degrees, one on corporate law from New York University and another on EU law from Brussels Free University (VUB). She is fluent in English and speaks French.

Serra Başoğlu Gürkaynak can be contacted via telephone on +90 212 354 00 00 and email at serra.gurkaynak@gun.av.tr

CORPORATE LiveWire