

Obtaining Natural Gas Import License in Turkey

Introduction

The natural gas market in Turkey is regulated under the Natural Gas Market Law No. 4646 (the “Law”). The Law draws the background of the license regulation in the natural gas market. Specific conditions and provisions pertaining to the licenses are set forth within the Natural Gas Market License Regulation (the “Regulation”).

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Pursuant to the Law, legal entities to be engaging in operation in the natural gas market are obliged to obtain a license from the Energy Market Regulatory Authority (“EMRA”). Depending on the particular area of operation in the market, the type of license also varies. There are seven different types of licenses issued by EMRA, namely; import license, transmission license, storage license, wholesale license, distribution license, compressed natural gas (CNG) license, and export license.

Within this article, firstly, general conditions regarding the licenses are represented, and then, the regulation of natural gas import license is analyzed.

General Conditions of Licenses

The license is an authorization issued by EMRA, for each market activity, to legal entities in order for them to operate in the market. Legal entities must obtain licenses for each market activity and for each facility used to conduct the market activities. The term of the license can be minimum 10 years, and maximum 30 years.

Once a license is issued for a legal entity, this license cannot be transferred to a third party under any condition. However, in case of a merger of legal entities, the licenses possessed by the merging companies automatically transfer to the transferee legal entity by way of total subrogation. After an investigation is made by EMRA to ascertain that the transferee legal entity has no inconveniency to obtain a license, upon a decision given by EMRA, relevant licenses are amended and registered in the name of the transferee legal entity. Furthermore, if banks and/or finance institutions provide limited or irrevocable project financing to the related licensee, within the scope of the loan agreements between each other, the related banks and/or finance institutions may request from EMRA, together with their justification, that another legal entity be granted the related license on the condition that the obligations of the licensee, within the framework of the Regulation, are wholly undertaken. The legal entity proposed by such institutions shall be granted the license on the condition that it complies with the obligations set forth in the Regulation.

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Within the Regulation, it is also prohibited for the licensee to transfer its rights under the relevant license to third parties without the permission of EMRA. Therefore, in case such a transfer is envisaged, firstly the permission regarding the transfer must be obtained from EMRA.

License Application

Both Turkish and non-Turkish energy companies may apply for a license. In cases where a legal entity to be engaging in market activities is established as a joint stock company or a limited liability company under Turkish law, all of its shares must be issued in the form of registered shares.

In order to be granted the relevant licenses required for the market activities, legal entities shall file applications with EMRA by submitting the documents annexed to the Regulation. Documents prepared for the license application shall be submitted in a sole file. However, a legal entity may apply for more than one license at once. It should be noted that the fact that a legal entity had previously applied for a license does not have any effect on a new license

application; therefore, all documents required for an application must be submitted with a new license application in such a case.

The assessment regarding whether or not the documents submitted in the application file are in compliance with the applicable legislation is completed in 10 days and the results are notified to the applicant legal entity in writing.

Finally, upon an application is ascertained to have been submitted in compliance with the application principles, the applicant legal entity is requested to deposit 1% of the license fee in the bank account of EMRA within 10 days commencing from the date of receipt of the notification. After such amount is deposited in the bank account, the examination process of the application commences. However, the fact that the application is under the examination of the Authority does not purport that the license is certainly to be granted.

The examination and assessment of the application by EMRA shall be concluded within 60 days commencing from the date of application; and the decision regarding the application shall be communicated to the applicant within this period of time.

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Import License

Import companies shall conduct the activity of importing natural gas, in LNG or in gaseous form, for the purpose of selling it to wholesale companies, eligible consumers or export companies or directly exporting it. Import companies are obliged to obtain a separate license for each import arrangement they enter into, and may purchase natural gas from production companies, wholesale companies and import companies. EMRA may give permission for the natural gas import from the countries other than those with which agreements have already been concluded by BOTAŞ Petroleum Pipeline Corporation ("BOTAŞ"), by evaluating the applications within the scope of the principles and procedures to be determined by taking into consideration the formation of a competitive environment in the market, the obligations arising from already existing agreements and export connections. In addition to this, no new gas purchase agreement can be concluded by any import company with the countries which have already

signed agreements with BOTAŞ, until the expiration of the term of these agreements.

It should be noted here that the obligation of obtaining separate licenses for each import arrangement and the conditions pertaining to the restrictions stated above do not apply to the import of LNG. Additionally, with an amendment made in the Law and put into force on March 27th, 2018, this exemption has been granted to the companies importing CNG and spot pipeline natural gas as well. Nevertheless, within the said amendment, EMRA has been granted the authority to determine the amount of spot pipeline gas to be imported within a year and the modus operandi pertaining thereto, by taking into consideration the opinion of the Ministry of Energy and Natural Resources on the matter. In this regard, it should be expected that EMRA will conduct assessments and reach conclusions by considering the demand as well as the quantity of the natural gas already being imported by BOTAŞ.

4 Import companies may transfer, by means of sales contracts, the natural gas they import or obtain by local purchase to the wholesale companies, export companies, distribution companies, CNG sales companies and to eligible consumers in Turkey; or, on the condition that they obtain export licenses, they may export it. However, any such transfer to export companies shall not eliminate the commitments of the import company within the scope of its license.

Conditions for Import Companies

Pursuant to the Law, below conditions must be met by the legal entities applying for import license:

- I. Technical and economical capability for the import of the natural gas,
- II. Availability of definite information and guarantee regarding the source, reserves, generation facilities and transmission system of the natural gas to be imported,
- III. Having obtained the commitment and guarantees as required by EMRA from the legal entities which are to conduct storage activity as regards to reaching the capability

to store, in the national territory for 5 years, an amount corresponding to 10% of the natural gas to be imported every year,

- IV. Capability to contribute to the improvement and security of national transmission system, and accordingly, to provide financial support to the investments of the legal entities to be made for the improvement of the system.

However, except for the condition as regards to the possession of the technical and economical capability for the import of the natural gas, the conditions listed above do not apply to the companies importing LNG. Furthermore, as stated above, with an amendment made in the Law and put into force on March 27th, 2018, this exemption has been granted to the companies importing CNG and spot pipeline natural gas as well.

Obligations for Import Companies

The annual quantity of natural gas which any import company imports under one or more import licenses may not exceed 20% of the total estimated national consumption in that calendar year as determined and announced by EMRA every year in January. Additionally, the sales of an import company under one or more import license may not exceed 20% of the estimated natural gas consumption amount announced by EMRA for the current year. Such estimation is calculated by deducting the quantity of natural gas, which the import company consumes directly or through its subsidiaries, from the net national consumption remaining after deduction of losses.

In case the import companies submitted a preliminary contract or a covenant regarding that they shall provide underground storage in 5 years for the specific amount of natural gas they import in every calendar year as determined by EMRA, they are obliged to submit to EMRA the lease agreements to be concluded with the storage companies. Furthermore, import companies must also notify EMRA of all information and documents pertaining to their import contracts, as may be requested by EMRA.

In cases where an import company is selling natural gas to distribution companies and where the abovementioned storage capacity is inadequate for this, the relevant import company shall be given a time of 5 years, commencing from the date the license has been granted, to take the necessary measures related to the storage. If the storage facilities in the country are still inadequate at the end of such period, this period may be extended by up to 2 years by EMRA. Moreover, in cases where an import company is selling natural gas to eligible consumers and where the abovementioned storage capacity is inadequate, the relevant import company shall be given a 5 years' period, commencing from the date the license has been granted, to take the necessary measures related to storage. If storage facilities in the country are still inadequate at the end of such period, this period may be extended by a decision of EMRA.

Wholesale Companies' Obtainment of Import License

Wholesale companies must, for the purpose of importing natural gas, obtain an import license upon meeting all conditions required. Upon the EMRA's affirmative decision, an import license may be granted to the applicant.

Wholesale license of the import license applicant shall be converted into an import license following the application of the licensee to renounce its wholesale license and the approval of EMRA of such request. As is the case with other companies engaging in the activity in the market, wholesale companies must deposit the fee for the import license in the bank account of EMRA. However, the fee paid for the wholesale license is not deductible in such a case. In other words, the application fee paid for the wholesale license does not affect the obligation of paying an application fee for the import license.

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