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Energy: Oil & Gas 2021

Turkey

Law & Practice
and
Trends & Developments

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Law and Practice

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1. GENERAL STRUCTURE OF PETROLEUM OWNERSHIP AND REGULATION

1.1 System of Petroleum Ownership

Under the Turkish Petroleum Law No 6491, the term “petroleum” includes crude oil and natural gas.

Petroleum resources in Turkey are owned by, and are at the disposal of, the state. However, upstream interests are granted by way of licences with definite terms. In such cases, exploration licence and production lease holders must pay the state a one-eighth share (12.5%) as royalty for petroleum produced from an exploration or production area. Furthermore, under the Turkish Petroleum Law, petroleum right-holders are entitled to export 35% of the total crude oil and natural gas produced in the fields discovered after 1 January 1980 for onshore activities and 45% for offshore activities, but the remaining yield and the total amount of crude oil and natural gas produced in the fields discovered before 1 January 1980 as well as the petroleum products generated from such crude oil and natural gas are required to be retained in Turkey in order to address domestic demand.

1.2 Regulatory Bodies

The Ministry of Energy and Natural Resources (*Enerji ve Tabii Kaynaklar Bakanlığı*, or MENR) is the central governmental body in charge of the energy sector and responsible for the determination and implementation of energy policies, as well as the transit passage of petroleum.

The General Directorate of Mining and Petroleum Affairs (*Maden ve Petrol İşleri Genel Müdürlüğü*, or GDMPA) is the main service unit/department of MENR and the regulatory authority for all mining and upstream petroleum activities. Presidential Decree No 4 on the Organisation of Affiliated,

Related and Associated Institutions and Organisations with Ministries and Other Institutions and Organisations regulates the authorities and responsibilities of GDMPA, which mainly consist of the issuance and monitoring of permits and licences for the investigation, exploration and production of petroleum, along with mining-related authorities and responsibilities.

The Energy Market Regulatory Authority (*Enerji Piyasası Düzenleme Kurumu*, or EMRA) is the agency that regulates and monitors energy market activities, grants licences to conduct market activities (such as the distribution of petroleum) and has the authority to impose administrative fines and cancel licences due to non-compliance with applicable legislation. EMRA's organisation, authority and responsibilities are governed by the Law Regarding Organisation and Functions of Energy Market Regulatory Authority, No 4628.

1.3 National Oil or Gas Company

The Turkish Petroleum Pipeline Corporation (*Boru Hatları ile Petrol Taşıma Anonim Şirketi*, or BOTAŞ) is a state-owned economic enterprise involved in the construction and operation of oil and gas pipelines. BOTAŞ does not have any authority to regulate market activities. The legislation governing the activities of BOTAŞ includes the Statutory Decree Regarding State Economic Enterprises No 233. Its activities include construction; the transfer or lease of pipelines for the transportation of petroleum, petroleum products and natural gas; and the transportation, purchase and sale of petroleum, petroleum products and natural gas. BOTAŞ is subject to the Natural Gas Market Law No 4646 and Petroleum Market Law No 5015 with respect to its operations.

The Turkish Petroleum Corporation (*Türkiye Petrolleri Anonim Ortaklığı*, or TPAO) is another state-owned economic enterprise involved in exploration, drilling and natural gas storage,

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as well as investing in crude oil and natural gas activities. The legislation governing the organisation of TPAO is the Statutory Decree Regarding State Economic Enterprises No 233. TPAO's activities include the importation and exportation of crude oil, natural gas and petroleum products, and the distribution and marketing of petroleum as defined under the Petroleum Market Law No 5015.

TPAO's former subsidiary TP Petrol Dağıtım A.Ş (TPDD) is involved in fuel distribution activities and was privatised at the end of 2016.

1.4 Principal Petroleum Law(s) and Regulations

Petroleum-related upstream activities are mainly regulated by the Turkish Petroleum Law No 6491, whereas downstream activities are primarily regulated by the Petroleum Market Law No 5015, the Natural Gas Market Law No 4646 and the Liquefied Petroleum Gas (LPG) Market Law No 5307. The main laws regarding petroleum activities are summarised as follows.

- The Turkish Petroleum Law No 6491 provides procedures and principles for the regulation, promotion and supervision of petroleum exploration and production activities (both onshore and offshore) in Turkey. The law regulates investment guarantees, exploration licences, production leases, royalties and incentives, and aims to ensure that petroleum resources in Turkey are rapidly, continuously and effectively explored, developed and produced, while preserving national interest.
- The Petroleum Market Law No 5015 regulates and provides guidance, oversight and supervisory activities to ensure and improve the safe and regular operations of the petroleum markets and upstream activities. The law sets out provisions on licensing requirements and regulates EMRA's authority in relation to the petroleum market.

- The Law on Transit Passage of Petroleum through Pipelines No 4586 (*Petrolün Boru Hatları ile Transit Geçisine Dair Kanun*) regulates the transit passage of petroleum and other hydrocarbons through pipelines, as well as procedures for the expropriation of lands, safety measures for the prevention of accidents, and insurance specific to transit petroleum pipelines.
- The Natural Gas Market Law No 4646 covers the importation, transmission, distribution, storage, marketing, trade and exportation of natural gas, the licensing requirements for these activities and the rights and obligations of all natural and legal persons involved in these activities.
- The Liquefied Petroleum Gas (LPG) Market Law No 5307 (*Sıvılaştırılmış Petrol Gazları (LPG) Piyasası Kanunu ve Elektrik Piyasası Kanununda Değişiklik Yapılmasına Dair Kanun*) covers the distribution and trade of LPG, the licensing requirements for the distribution, transmission, storage, dealership and other LPG canister-related activities (such as production, filling, examination, maintenance and repair), and the rights and obligations of market players with respect to these activities.
- The Regulation on the Implementation of the Turkish Petroleum Law (*Türk Petrol Kanunu Uygulama Yönetmeliği*) regulates the procedures and principles for petroleum survey, exploration, production, reporting, taxation, supervising and licensing.
- The Petroleum Market Licence Regulation (*Petrol Piyasası Lisans Yönetmeliği*) covers EMRA's functions, responsibilities and authorities with regard to licensing procedures, activities in the petroleum market, and the rights and obligations of petroleum market licence holders.
- The Liquefied Petroleum Gas (LPG) Market Licence Regulation (*Sıvılaştırılmış Petrol Gazları (LPG) Piyasası Lisans Yönetmeliği*) covers the LPG licensing procedures and

the supply process of LPG procured from domestic and foreign sources to the market in a safe, secure and competitive manner, and determines the qualifications of responsible managers, tanker drivers and other related personnel.

- The Natural Gas Market Licence Regulation (*Doğal Gaz Piyasası Lisans Yönetmeliği*) covers the principles regarding licensing procedures and the cancellation, termination and renewal of natural gas licences.

2. PRIVATE INVESTMENT IN PETROLEUM: UPSTREAM

2.1 Forms of Allowed Private Investment in Upstream Interests

Due to Turkey's liberalised energy regime, the state-owned oil company, TPAO, no longer has the exclusive right to explore and produce petroleum. Private entities are entitled to acquire permits, licences and leases for upstream activities, mainly for the investigation, exploration and production of petroleum. Upstream activities are also open to foreign participation.

As per the Turkish Petroleum Law, three major types of licences and permits are required to conduct upstream activities:

- an investigation permit;
- an exploration licence; and
- a production lease.

The investigation permit grants the right to survey the land by gathering data from the ground or air through topographic, geological, geophysical, geochemical and similar methods for petroleum exploration purposes, and by performing drilling works in order to gather geological information. This permit does not grant its holder the right to drill an oil well or appraisal wells.

An exploration licence gives its holder the right to explore within the area defined in the licence.

Upon the discovery of a petroleum reserve for commercial production, an exploration licence holder should apply for a production lease that entitles the licence holder to develop and produce petroleum in the area defined in the licence, and to transport and trade the petroleum to downstream licensees that hold a petroleum market activity licence issued by EMRA.

GDMPA is the authority in charge of applications for these licences.

2.2 Issuing Upstream Licences/ Obtaining Petroleum Rights

GDMPA issues an investigation permit upon the execution of an agreement between the applicant and GDMPA, which sets forth the permit terms and conditions, the character of the applicant's activities, and the rights and obligations of the applicant.

Exploration licences may be granted for onshore and offshore petroleum exploration. Exploration licence applications for grids available for petroleum exploration are published and announced in the Official Gazette, and all applications regarding the available areas, including business and investment plans, should be submitted to GDMPA. Exploration licences are based on map sections on a scale equal to 1/50,000 or 1/25,000. Applicants should provide a bank letter of guarantee to GDMPA in an amount equal to 2% of their total investment; this rate is 1% for offshore activities.

GDMPA examines applications and performs an overall analysis of the applicant's business, investment plans, financial status, technical capacity, human resources, experience in the energy sector and achievements, if any. Upon its review, GDMPA issues its decision within a maxi-

mum period of 60 days. The maximum term for an exploration licence is five years for onshore activities and eight years for offshore activities, with a right of extension (up to nine years and 14 years, respectively).

Applications for production leases are also submitted to GDMPA. Production leases are granted for a maximum term of 20 years, which may be extended twice, up to ten years each time. Except for force majeure events, production lease holders are required to carry out their activities during the licence term without any interruption, or risk being exposed to administrative fines under the Turkish Petroleum Law.

In addition to the above-mentioned sector-specific licences, environmental permits (eg, an environmental impact assessment report, environment permit and licence certificate) may also be required in order to conduct exploration and production activities. In addition, a workplace opening and operating licence should be obtained from the relevant municipality or governorship (depending on the location).

2.3 Typical Fiscal Terms under Upstream Licences/Leases

There are two types of guarantees; namely, an investment guarantee and a loss and damages guarantee, which petroleum right holders should provide to GDMPA in the form of bank letters of guarantee.

Exploration licence applicants for onshore areas are required to provide an investment guarantee in an amount corresponding to 2% of the total investment required to realise the work programme, submitted together with their applications. If, however, the exploration licence application is in relation to an offshore area, the amount of the guarantee will be equal to 1% of the total investment. The amount of the investment guarantee corresponding to the annually

realised rate of the committed work programme is returned to the petroleum right-holder at the end of the relevant period.

Investigation permit holders, exploration licence holders and production lease holders are required to provide collateral to secure compensation for any damages that might be caused during their petroleum-related activities. The amount of the loss and damages guaranteed to be paid per hectare is:

- 5/10,000 of the required application fee for investigation permit applicants;
- 1/1,000 of the required application fee for exploration licence applicants; and
- 5/1,000 of the required application fee for production lease applicants.

The president has the authority to increase or decrease this rate by 50%. This guarantee is returned to the licence holder one year after the announcement of the termination of the relevant petroleum licence in the Official Gazette, provided that no loss or damage has occurred and that no third-party claims have been made regarding this guarantee.

At the production stage, explorers or operators should also pay the state share (*devlet hissesi*) in cash on a monthly basis, which is equal to an eighth (12.5%) of the petroleum produced from the area subject to the production lease.

2.4 Income or Profits Tax Regime Applicable to Upstream Operations

Income generated from petroleum activities is subject to corporate tax. Petroleum right-holders must make the necessary withholdings and declarations, as required under Income Tax Law No 193 (*Gelir Vergisi Kanunu*) and Corporate Tax Law No 5520 (*Kurumlar Vergisi Kanunu*). As per the Turkish Petroleum Law, the sum of the taxes that a petroleum right-holder is liable to pay or

withhold should not exceed 55% of the licensee's taxable income.

Moreover, if a licensee imports materials, tools, fuel and transfer vehicles to be used for petroleum activities or procures such items from a domestic provider, the licence holder will be exempt from custom duties and levies and stamp tax, unless GDMPA categorises these items as being unsuitable or the president decides otherwise.

2.5 National Oil or Gas Companies

Expired production leases are not automatically returned to TPAO; these sites may be auctioned by GDMPA. However, TPAO has the right of first refusal in respect of such fields; therefore, MENR should initially confirm with TPAO whether it wishes to acquire the fields. If TPAO's response is in the affirmative, the fields should be returned to TPAO.

As a state-owned entity, TPAO is subject to a simplified procedure for expropriation compared to private investors. TPAO files its expropriation requests directly with GDMPA, and GDMPA conducts the expropriation in favour of TPAO, provided MENR approval is obtained.

2.6 Local Content Requirements Applicable to Upstream Operations

The current legislation does not impose any requirements for the use of local goods and services, local employment or training programmes in upstream operations.

2.7 Requirements for a Licence/Lease-Holder to Proceed to Development and Production

The exploration licence holder has to notify GDMPA of any petroleum discovery made during the term of the exploration licence. GDMPA will then review the discovery application and register the discovery or reject the application. If

GDMPA registers the petroleum discovery submitted by the licence holder, the licence holder will be entitled to apply for the grant of a production lease.

Upon the registration of the discovery of petroleum, but before the grant of the production lease, the licence holder is under an obligation to continue with the production of the petroleum, develop the petroleum field and sell the petroleum produced. These activities will constitute the basis for the production lease. The licence holder must then submit a plan for the development of all discoveries in the petroleum field to GDMPA within six months of the registration date of the discovery with GDMPA.

Production leases are granted by GDMPA for a maximum term of 20 years, commensurate with the applicant's business and financial investment plans. If production does not commence within one year or is suspended at any stage and not resumed within the 180-day period granted by GDMPA, the relevant production lease will be cancelled.

In general, all administrative acts are subject to judicial review in Turkey, including the decisions of state authorities and administrative fines imposed by such authorities. MENR usually tries to find an amicable solution in any disputes that arise.

According to the Turkish Petroleum Law, all objections made by applicants or licensees, and all disputes arising between them, should be directed to MENR, which then concludes these applications. However, MENR's decisions on licence applications, investigation permits, exploration licences or production leases can be challenged before the Council of State (*Danıştay*), which will act as the court of first instance for the relevant dispute.

2.8 Other Key Terms of Each Type of Upstream Licence

Please refer to **2.1 Forms of Allowed Private Investment in Upstream Interests**, **2.2 Issuing Upstream Licences/Obtaining Petroleum Rights** and **2.3 Typical Fiscal Terms under Upstream Licences/Leases** for a general overview of upstream licences.

Petroleum right-holders may relinquish their exploration licences, either in whole or in part, with at least one month's prior notice, and their production leases with at least three months' prior notice, by filing an application to GDMPA and notifying any other public institutions that are associated with the relevant field. Any rights arising from the exploration licence or the production lease expire for the relinquished field on the date of such application.

Upon termination of their rights, petroleum right-holders must reinstate the field to its previous condition. In addition, the licence holders must compensate fully and make necessary payments to the owner of the land for all losses incurred, as well as depreciations in production (eg, agricultural yield) or operating income to which the owner would originally be entitled.

Licence holders are allowed to export 35% of the petroleum, crude oil, natural gas and petroleum products generated from commercial discoveries made after 1 January 1980 if such products are produced onshore, and 45% if such products are produced offshore.

2.9 Requirements for Transfers of Interest in Upstream Licences

There are two types of transfers:

- licence transfers upon the expiry of their terms; and

- share transfers, which would result in a change of control in a company that holds a petroleum licence or lease.

The transfer of upstream licences upon the expiry of their terms will be made in accordance with the procedure detailed in **2.5 National Oil or Gas Companies**.

If share transfers lead to a change of control in the licensed entity, both the transferor and the transferee should file an application to GDMPA, prior to the proposed transfer, together with their reasoning for the proposed transfer. GDMPA will review the application and send it to MENR together with its opinion. If MENR provides its consent to the transaction, the closing for the transfer of shares should be completed before the end of the calendar year in which MENR issued its consent. Evidentiary documentation showing such a change should be provided to GDMPA.

Exploration licences and production leases, as well as petroleum rights arising from them, may be subject to encumbrances in favour of third parties, provided that the prior consent of GDMPA has been obtained and that these pledges are registered with the petroleum registry kept by GDMPA.

The grant or transfer of exploration licences and production leases, as well as the establishment of any encumbrances on them, must be published in the Official Gazette and registered with the petroleum registry.

GDMPA may refuse to give its consent to the transfer of shares, licences or leases, or to the establishment of any encumbrance over the shares of a licensed entity or over the transfer of licences, due to reasons such as a lack of experience or a lack of financial and technical capacity.

2.10 Legal or Regulatory Restrictions on Production Rates

Currently, upstream operations in the oil and gas business do not make up a significant portion of the Turkish market, as production rates are not very high. In line with the existing level of operations, no legal or regulatory restrictions are imposed on production rates. On the contrary, upstream activities are supported through various arrangements and incentives. Furthermore, Turkey is not a member state of the Organization of the Petroleum Exporting Countries (OPEC) or OPEC+ and therefore is not subject to OPEC quotas, OPEC+ or other restrictions.

3. PRIVATE INVESTMENT IN PETROLEUM: MIDSTREAM/ DOWNSTREAM

3.1 Forms of Allowed Private Investment in Midstream/Downstream Operations

According to the Petroleum Market Law and the Natural Gas Market Law, a licence is required in order to perform market activities regulated under such legislation. Licence applications are made to EMRA. Licensees are entitled to benefit from the expropriation process if required by the licensed activities. Please see **3.10 Rules for Third-Party Access to Infrastructure** for details on the legal framework for expropriation.

The Natural Gas Market Law states that BOTAŞ is the owner of all existing, under-construction or planned sections of the national natural gas transmission networks. However, the law permits new transmission companies to be licensed to construct new pipelines, to form a connected system with the existing lines for the purpose of transmission, and to operate such newly constructed pipelines. As the only natural gas

transmission licensee, BOTAŞ is effectively a monopoly in transmission activity.

While the Natural Gas Market Law provided for the full opening of the market to private companies in 2009, BOTAŞ maintains its dominant position in the importation of natural gas in Turkey. Pursuant to current legislation, import companies cannot enter into new gas sale and purchase contracts (except for the purchase of LNG, compressed natural gas (CNG) and spot LNG) with countries that have effective gas sale and purchase contracts with BOTAŞ until such contracts expire. New entrants are not, at present, allowed to import gas from countries with which BOTAŞ has contracts, such as Russia, Azerbaijan, Turkmenistan and Iran. This restriction on executing contracts with BOTAŞ's existing counterparties is not applicable for LNG, CNG and spot LNG imports. A further requirement was imposed on BOTAŞ, in order to decrease its dominant role in the market: to launch tenders until 2009 in order to transfer BOTAŞ's existing natural gas purchase agreements to third parties for their access to the import system, entirely or partially. Various takeover tenders have been realised over the past few years, and, as a result, private investors' market share in natural gas imports has been announced as more than 20%.

BOTAŞ cannot execute a new natural gas purchase contract until the share of gas imported by BOTAŞ falls to 20% of the yearly national consumption. In addition, in order for a private company to import gas from other companies with which BOTAŞ does not have a contract, consent is required from the Energy Market Regulatory Authority Board (the "EMRA Board").

Until and unless such restrictions on natural gas import activities are restructured and adapted to the current realities of market activity, BOTAŞ will continue to be a significant and dominant player in natural gas importation.

Since the liberalisation process started in the 1990s, the most significant type of off-takers of natural gas for power generation purposes have been natural gas combined cycle power plants. The build operate (BO), build operate transfer (BOT) and transfer of operation (TOR) models were all utilised in the development of these facilities. In 2001, EMRA was given the mandate to issue licences for electricity generation plants, succeeding the former state monopoly. As per the information provided on MENR's official website, natural gas-fired plants constituted about 27.2% of the total capacity of commissioned electricity generation facilities as of the end of September 2020, with an installed capacity of 26,041 MW.

3.2 Rights and Terms of Access to Any Downstream Operation Run by a National Monopoly

In the natural gas market, companies holding transmission licences are not permitted to discriminate between third parties of equal status. Such companies may reject third-party access requests only on the basis of the grounds exhaustively listed under the Natural Gas Market Law.

Third-party access to the transmission network and the activities of natural gas storage facilities is regulated under the Transmission Network Operation Regulation (*Doğal Gaz Piyasası İletim Şebekesi İşleyiş Yönetmeliği*) and the BOTAŞ Transmission Network Operation Principles (*İletim Şebekesi İşleyiş Düzenlemelerine İlişkin Esaslar*) (the "Network Code"). In line with the Network Code, BOTAŞ operates the transmission network and manages and co-ordinates the access of third parties to it. In order to access the network, a connection agreement must be entered into between BOTAŞ, as the sole transmission licensee and owner of the existing national transmission network, and the respec-

tive import, wholesale, generation or export company.

Following the connection agreement, a standard-form transportation contract should be entered into for the transportation of the gas through the transmission system, as well as for capacity allocation at an entry or exit point. The Network Code sets out detailed technical criteria and formulae for the calculation of tariffs applicable to the natural gas transmission activities of third parties.

3.3 Issuing Downstream Licences

In order to conduct oil and gas market activities, licence applications should be made to EMRA, which will issue a final decision within a maximum of 60 days from the application date. If the relevant department of EMRA determines that the application is complete, it will notify the applicant to deposit the application fee in an amount corresponding to 1% of the licence fee.

Following payment, EMRA will review and evaluate the licence applications. EMRA will then prepare a report on its evaluation and submit it to the EMRA Board, which is the decision-making body of EMRA for licence applications, and for rendering the final decision on licence applications.

3.4 Typical Fiscal Terms and Commercial Arrangements for Midstream/Downstream Operations

As per the Petroleum Market Licence Regulation, the EMRA Board annually determines the specific revenue share (*gelir payı*) that should be paid by processing licence holders (as explained in **3.8 Other Key Terms of Each Type of Downstream Licence**) engaged in the production of biodiesels to refinery holders. The rates determined by the EMRA Board for 2021 are as follows:

- gasoline and ethanol supplied by gasoline – TRY5.26/m³;
- gas oil – TRY5.26/m³;
- aviation fuel – TRY5.26/m³;
- naphtha fuel – TRY5.26/m³;
- distilled maritime fuel – TRY5.26/m³;
- excess maritime fuel – TRY5.59/m³; and
- types of fuel oil – TRY5.59/m³.

Licence holders not engaged in the production of biodiesels are not required to pay any income share.

However, all licence holders should pay a contribution share (*katılma payı*) to EMRA on an annual basis in two equal instalments, except those that have free user licences. The amount of contribution shares is calculated by multiplying the total net sales of the licensee made in the relevant year by the annual contribution ratio as decided by the EMRA Board each year.

In parallel to the foregoing, natural gas licence holders are also required to pay contribution shares to EMRA.

Tariffs and pricing policies in petroleum and natural gas activities are determined by EMRA under the Petroleum Market Pricing System Regulation (*Petrol Piyasası Fiyatlandırma Sistemi Yönetmeliği*) and the Natural Gas Market Tariffs Regulation (*Doğal Gaz Piyasası Tarifeler Yönetmeliği*), respectively.

3.5 Income or Profits Tax Regime Applicable to Midstream/Downstream Operations

Downstream licence holders do not benefit from a special tax regime.

The only special tax incentive available is for activities involving the transportation of foreign crude oil and natural gas through transit pipelines and the construction and modernisation of

pipelines; as such, these activities are exempt from value-added tax in accordance with the Value Added Tax Law No 3065.

3.6 Special Rights for National Oil or Gas Companies

BOTAŞ's natural gas-related receivables are subject to the Law on Collection of Public Receivables No 6183 (*Amme Alacaklarının Tahsili Usulü Hakkında Kanun*), which allows them to benefit from special treatment in terms of debt collection. However, private market players do not benefit from such a mechanism.

Furthermore, the relevant legislation imposes a restriction on the scope of market activities that may be conducted by licence holders. Accordingly, a natural gas market licensee performing activities in the natural gas market may only participate in one of the legal entities performing activities in a field other than its own field of activity. A licensee, however, cannot participate in any legal entity performing activities in its field of activity, nor establish a separate company. However, such a restriction is not applicable to BOTAŞ or its existing or future subsidiaries.

Please see **3.1 Forms of Allowed Private Investment in Midstream/Downstream Operations** regarding BOTAŞ's dominant status in relation to natural gas importation activities.

3.7 Local Content Requirements Applicable to Midstream/Downstream Operations

In parallel to upstream operations (as explained in **2.6 Local Content Requirements Applicable to Upstream Operations**), there are no requirements for the use of local goods and services, local employment or training programmes in downstream operations.

3.8 Other Key Terms of Each Type of Downstream Licence

Pursuant to the Petroleum Market Licence Regulation, licences granted by EMRA may be summarised as follows:

- refinery licence holders are entitled to store and process petroleum;
- processing licence holders are entitled to produce new products from petroleum and other petrochemical products, except for the production of lube oil, and may also alter the quantity and quality of the product and operate a processing facility;
- lube oil licence holders are entitled to produce lube oil in the lube oil production facilities;
- storage licence holders are entitled to provide storage services and operate a storage facility;
- transmission licence holders are entitled to transfer petroleum via pipelines and operate a transmission facility;
- eligible consumer licence holders are entitled to acquire heating oil, fuel oil and diesel from distributor licence holders;
- bunker fuel delivery licence holders are entitled to procure bunker fuel from refineries, distributors and other bunker fuel delivery licence holders from Turkey and abroad;
- distributor licence holders are entitled to distribute fuel to dealers, conduct wholesale of fuel to eligible consumers, transport fuel through pipelines to plants located near storage facilities and import certain types of fuel;
- dealership licence holders are entitled to supply fuel (except for LPG), solely from their own distributors and third-party dealers; and
- transportation licence holders are entitled to transport petroleum through vehicles.

The Petroleum Market Law imposes a national petroleum storage (*ulusal petrol stoğu*) obligation, in order to secure the availability of petro-

leum against fluctuations in supply. To that end, refinery, fuel oil and distributor licence holders are required to store fuel products in the amount of 20 times the daily average supply of the previous year in their own storage facilities.

Except for refinery licences, there are no domestic supply requirements. In the case of refinery licences, licensees are required to prioritise the procurement of crude oil from local producers as opposed to foreign suppliers.

All licences are granted up to a maximum of 49 years. Licence holders must file a written or electronic application with EMRA for an extension to the licence term between two and six months prior to the expiry of the licence term.

Licences are terminated by the decision of the EMRA Board; among others, upon the occurrence of the following events:

- bankruptcy of the licence holder;
- dissolution of the legal entity licence holder;
- death of a natural person licence holder;
- suspension of operations of refinery licence holders for a term of more than six months, except due to force majeure events or on reasonable grounds; or
- receipt of a termination request from a licence holder (except from refinery licence, transmission and storage licence holders).

In the case of a voluntary termination, refinery, transmission and storage licensees would be subject to the following additional requirements:

- refinery licence holders should complete the takeover of facilities and stock inventory in relation to national petroleum storage and income accounting;
- transmission licence holders should inform their dealers as well as EMRA at least three months prior to ceasing their activities; and

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- transmission and storage licensees should submit documents to EMRA indicating that all commitments towards third parties have been satisfied.

Unless terminated earlier due to the foregoing termination grounds, licences terminate upon the expiry of the licence term.

The legislation further imposes insurance obligations on licensees to cover different risks. As per the Natural Gas Market Licence Regulation, the types of licences and authorities granted are summarised as follows.

- Import licence holders are entitled to sell natural gas to wholesale companies, eligible consumers or export companies, or to procure LNG from abroad in order to sell directly to companies located outside Turkey. Importers must obtain a separate licence for each import connection.
- Transmission licence holders are entitled to plan, construct and operate the transmission system. They are also responsible for connecting users to a suitable transmission line, and for making the necessary arrangements for the natural gas flow and operation of the system.
- Storage licence holders are entitled to operate, construct and design the underground and above-ground storage and LNG facilities.
- Wholesale licence holders are entitled to sell natural gas to export companies, eligible consumers, CNG companies, importers, distributors and other wholesale companies.
- Distribution licence holders are entitled to sell and deliver natural gas to retail consumers and eligible consumers by providing access to the distribution system.
- CNG licence holders are entitled to compress natural gas, fill the CNG into pressurised pots and sell the contained CNG. Moreover, licence holders are authorised to transport

CNG by means of special vehicles to cities that are out of reach of the transmission network.

- Export licence holders are entitled to buy natural gas from production, wholesale or export companies, and to market the natural gas to foreign buyers.

Natural gas market licences terminate upon the expiry of the term of the licence, the bankruptcy of the licence holder or a request for termination of the licence by the licence holder (except for refinery, transmission and storage licences).

Natural gas market licences are granted for a term ranging between 10 and 30 years. Licensees may file an extension request with EMRA between nine months and one year prior to the expiry of the relevant licence. Similar to the petroleum market requirements, natural gas market players should also maintain sufficient insurance coverage against possible risks that may arise during their activities.

3.9 Condemnation/Eminent Domain Rights

In respect of publicly owned land, petroleum or natural gas licence holders may submit a request to EMRA to establish property rights other than ownership over publicly owned property (such as usufruct rights, servitude rights or construction rights), or to lease the publicly owned property required for the licensed activities on a long-term basis. If EMRA approves the licence holder's request, it will then procure the establishment of such rights in favour of the licence holder according to the needs of the project. Licence holders are required to pay the costs for the grant of those rights, and the term of such rights will be limited to the licence term.

If, however, the land is private property, an expropriation process would need to be trig-

gered, equivalent to the common law process of eminent domain.

Both the Petroleum Market Law and the Natural Gas Market Law allow the expropriation of private property if it is required for licensed activities. Under the Petroleum Market Law, land rights necessary for petroleum activities where private property is affected should, in principle, be acquired through negotiation between the licensees and the landowners. If this is not possible, land rights may be acquired through expropriation. According to the Natural Gas Market Law, expropriation proceedings may be initiated to perform relevant natural gas market activities.

Following the expropriation process, under both the Petroleum Market Law and the Natural Gas Market Law, the State Treasury becomes the owner of the property, which usually allocates the land directly to the licence holder by the granting of a contractual usage right or property right other than ownership over the relevant land.

3.10 Rules for Third-Party Access to Infrastructure

Currently, BOTAŞ is the only natural gas transmission licensee and the sole owner of the existing transmission network. Please see **3.1 Forms of Allowed Private Investment in Midstream/Downstream Operations** and **3.2 Rights and Terms of Access to Any Downstream Operation Run by a National Monopoly** for details on private parties' access to the transmission network.

A large portion of state-owned distribution companies have been privatised (some have yet to be finalised), with a notable exception being the distribution company in İstanbul (*İstanbul Gaz Dağıtım Sanayi ve Ticaret Anonim Şirketi*, or İGDAŞ). EMRA is responsible for granting dis-

tribution licences for the supply of gas to cities with no natural gas distribution network. As BOTAŞ's transmission network reaches a new city, EMRA organises a natural gas distribution licence tender for that city. Access to the distribution network is regulated separately under the Natural Gas Distribution and Customer Relations Regulation (*Doğal Gaz Piyasası Dağıtım ve Müşteri Hizmetleri Yönetmeliği*). Distribution companies are required to connect all consumers within their designated region upon request. A connection agreement between the parties is executed and the technical connection and service lines are established. Subscription agreements, transportation service agreements and delivery services agreements may also be executed between the distribution companies, natural gas market licensees and retail consumers (including eligible consumers).

3.11 Restrictions on Product Sales into the Local Market

Pursuant to the Petroleum Market Law and the Petroleum Market Licence Regulation, a refinery, distributor or dealership licence is required in order to conduct the distribution and/or sale of petroleum. Under the Natural Gas Market Law, the wholesale and distribution of natural gas is permitted by obtaining licences for such activities from EMRA.

Refinery licence holders are obliged to store petroleum/petroleum products equivalent to 20 times the daily average supply in storage facilities in order to satisfy the national petroleum storage obligation. Furthermore, distribution licence owners are obliged to have the technical capacity, equipment and financial capability to satisfy annual white product (gasoline and diesel oil) sales in the amount of 60,000 tons.

Under the Natural Gas Market Law, the annual amount of imported natural gas held by any wholesale company cannot exceed 20% of the

annual national gas consumption forecast, which is determined by EMRA on an annual basis.

Import licence holders may conduct the wholesale of natural gas without obtaining a separate wholesale licence. To that end, it is sufficient for such legal entities to inform EMRA about their suppliers of natural gas and the types of transportation methods they intend to use, as well as their technical and financial capabilities.

A producer of natural gas is entitled to sell the gas it produces directly to eligible consumers, as long as the volume of gas sold in such a manner does not exceed 20% of the national consumption forecast, as determined by EMRA, for that year. It may sell the excess quantity of natural gas to import companies, distribution companies or wholesale companies. Producers may also export the gas produced, if they obtain an export licence. As for restrictions concerning significant off-takers from the oil and gas markets, concurrent ownership limitations and unbundling requirements apply to electricity generation and distribution licensees, which are licensed under Electricity Market Law No 6446 and secondary legislation issued by EMRA.

3.12 Laws and Regulations Governing Exports

The Turkish Petroleum Law imposes an export capacity restriction: only 35% of petroleum, crude oil, natural gas and petroleum products produced onshore and 45% of petroleum, crude oil, natural gas and petroleum products produced offshore may be exported. The remaining yield must be retained in Turkey to fulfil domestic demand. Furthermore, the Natural Gas Market Licence Regulation mandates that exportation cannot interrupt local need or the supply system, which becomes relevant especially in the transfer of natural gas via pipelines. Exporters of natural gas must adhere to the technical specifications introduced by EMRA, taking into

account the capacity of the transmission network and the export exit points.

In respect of natural gas exportation, if a petroleum right-holder producing natural gas wishes to export its production, it should obtain a natural gas wholesale licence. Any other party wishing to export natural gas must obtain an export licence from EMRA. Accordingly, export licence holders are entitled to buy natural gas from production, wholesale or export companies, and to export the natural gas to foreign buyers.

As per the Petroleum Market Licence Regulation, crude oil and petroleum products may be exported freely. However, publicly available records reveal that no crude oil is currently being exported, solely petroleum products. In order to export petroleum products, various export authorisations must be obtained from the relevant state authorities, including GDMPA and EMRA, depending on the type of activity.

Pursuant to the LNG Market Licence Regulation, LNG distribution licence holders and refinery licence holders are entitled to export LNG; and LNG export licence holders will also be entitled to transport LNG provided that such transportation right is annotated to their licences.

There are no taxes or duties applicable for the exportation of these products. On the contrary, if export companies have purchased these products from local parties by paying VAT or special consumption tax, there are incentives available for the export companies to have these taxes reimbursed.

3.13 Requirements for Transfers of Interest in Downstream Licences

The Petroleum Market Licence Regulation and the Natural Gas Market Licence Regulation prohibit the transfer of downstream licences, but both provide for an exception in favour of pro-

ject lenders (ie, banks and other financial institutions). Accordingly, depending on the terms and conditions of the financing agreements, lenders are entitled to request EMRA to reissue the subject matter licence in the name of another legal entity, provided that all the initial licence holder's undertakings in relation to the licence are transferred to that third party and the new licensee satisfies the criteria sought for licence applicants within the scope of the above-mentioned regulations.

4. FOREIGN INVESTMENT

4.1 Foreign Investment Rules

Applicable to Investments in Petroleum

Applications for downstream oil and natural gas licences can only be filed by Turkish companies. That said, there is no limitation that prevents a Turkish licensee company from being wholly or partly owned by foreign individuals and/or legal entities.

The Foreign Direct Investments Law No 4875 (*Doğrudan Yabancı Yatırımlar Kanunu*) provides that all companies established in Turkey are accepted as Turkish companies, regardless of the nationality of their shareholders. It also sets forth that foreign investors must be treated the same as domestic investors. As such, foreign direct investments cannot be expropriated or nationalised, except as justified by public interest and only against payment of compensation and in accordance with the due process of law, which is available to Turkish citizens and foreign investors alike.

International arbitration is frequently used as a method of dispute resolution. Turkey is a signatory to both the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the Convention on Settlement of Investment Disputes between States

and Nationals of Other States. In addition, Turkey has executed bilateral investment treaties with 98 countries, 76 of which are currently in force, including with the United States; all European Union member states, excluding Ireland; all OECD member countries, except Iceland, Canada, Norway and New Zealand; a number of Asian countries, such as China, Japan and the Republic of South Korea; and Middle Eastern countries such as Lebanon and Iran.

5. ENVIRONMENTAL, HEALTH AND SAFETY (EHS)

5.1 Principal Environmental Laws and Environmental Regulator(s)

Environmental Law No 2872 and its secondary regulations are the main pieces of legislation that govern environmental matters. In addition, the Turkish Petroleum Law, the Petroleum Market Law, the Regulation on the Implementation of the Turkish Petroleum Law, the Petroleum Market Licence Regulation and the Natural Gas Market Law impose rules and standards relating to environmental protection, as follows.

- Environmental Law No 2872 – all related parties must prevent, stop and take necessary precautions to mitigate the effects of pollution. The law sets forth a strict liability rule.
- The Turkish Petroleum Law – petroleum right-holders must not commit any dangerous act (as defined under the legislation) directly or indirectly during the conduct of petroleum operations.
- The Petroleum Market Law – persons who conduct petroleum market activities should take all necessary precautions to prevent damage to the environment and notify public authorities in the event of any risk of damage to the environment.

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- The Regulation on the Implementation of the Turkish Petroleum Law – petroleum right-holders must take all necessary measures to protect the environment and cultural assets, and comply with the respective petroleum procedures provided in the regulation to prevent any adverse impact on the environment.
 - The Petroleum Market Licence Regulation – persons who conduct petroleum market activities are obliged to refrain from any dangerous acts, and should take all necessary precautions to prevent any damage to the environment.
 - The Natural Gas Market Law – the law sets the policy goal of providing natural gas to consumers in a secure, competitive and cost-efficient manner without damaging the environment.
 - The Environmental Impact Assessment Regulation (*Çevresel Etki Değerlendirmesi Yönetmeliği*) – petroleum refineries, natural gas facilities, and petroleum, natural gas or chemical transportation systems or storage facilities are subject to an environmental impact assessment (EIA) process.
 - The Environmental Permit and Licence Regulation – facilities where petroleum market activities are conducted are required to obtain an environmental permit or an environmental permit and licence certificate prior to the commencement of their activities.
 - The Law Regarding the Principles of Emergency Intervention and Compensation of the Damages in Cases of Sea Pollution from Petroleum and Other Hazardous Materials No 5312 (the “Sea Pollution Law”) (*Deniz Çevresinin Petrol ve Diğer Zararlı Maddelerle Kirlenmesinde Acil Durumlarda Müdahale ve Zararların Tazmini Esaslarına Dair Kanun*) – as per the Sea Pollution Law, all vessels carrying petroleum products and all persons responsible for offshore facilities must take all necessary precautions to prevent damage. Furthermore, the public authorities must be informed of any hazardous materials carried in vessels that may pose a pollution risk.
 - The Law on the Transit Passage of Petroleum through Pipelines (*Petrolün Boru Hatları ile Transit Geçişine Dair Kanun*) – participants in pipeline projects are required to prevent environmental damage to the sea, air, lakes, flora, animals and other natural resources. In the event of any damage, the project participants are required to provide compensation.
 - The Regulation on Control of Soil Pollution and Contaminated Sites (*Toprak Kirliliğinin Kontrolü ve Noktasal Kaynaklı Kirlenmiş Sahalara Dair Yönetmelik*) – crude oil and natural gas production are regarded as potentially soil-polluting activities. Accordingly, facility owners/operators are required to cease any pollution-creating activities, to determine the effects of the pollution and to carry out activities in order to clean contaminated areas.
 - The Industrial Air Pollution Control Regulation (*Sanayiden Kaynaklı Hava Kirliliğinin Kontrolü Yönetmeliği*) – this regulation sets out the principles with which crude oil facilities, petroleum refineries and storage facilities should comply in relation to industrial air emissions.
- The main regulatory authority regarding environmental safety is the [Ministry of Environment and Urbanisation](#) (MoE), the primary responsibilities of which are the protection of the environment, the prevention of environmental pollution and the setting forth of standards and procedures for environmental safety.

5.2 Environmental Obligations for a Major Petroleum Project

Major petroleum projects are subject to an EIA process, and are also required to obtain certain environmental licences prior to commencement of their upstream and midstream operations, such as refinery operations. The Environmental Impact Assessment Regulation requires an EIA

report to be filed for certain projects, or an “EIA not required” decision to be issued for projects subject to the Selection and Screening Criteria (if applicable).

Accordingly, as per the Environmental Impact Assessment Regulation, projects that carry a high risk of environmental pollution are subject to an EIA process. With respect to projects falling within the scope of the regulation, unless an affirmative opinion or an “EIA not required” decision is issued, no approval, permit, incentive or usage licence can be issued. The MoE has the authority to evaluate the application and make the final decision.

In addition, as per the Environmental Permit and Licence Regulation, facilities engaged in certain petroleum activities, as detailed under Annexes I and II of the Environmental Permit and Licence Regulation, are required to obtain a temporary activity permit (*geçici faaliyet belgesi*) prior to the commencement of their activities. However, they should obtain an environmental permit (*çevre izni*) or environmental permit and licence certificate (*çevre izin ve lisans belgesi*) within a maximum period of one year following the issuance of the temporary activity permit.

Furthermore, in order to prevent any possible accidents, licensees are also required to comply with various obligations imposed under specific legislation throughout the conduct of their activities, summarised as follows:

- the Regulation on the Protection of Employees from the Dangers of Explosive Environments (*Çalışanların Patlayıcı Ortamların Tehlikelerinden Korunması Hakkında Yönetmelik*) states that employers should prepare a document that sets out the health and safety precautions to be adopted for the protection of employees due to possible explosions in such workplaces; and

- the Regulation Regarding the Prevention of Major Industrial Accidents and Mitigation of their Effects (*Büyük Endüstriyel Kazaların Önlenmesi ve Etkilerinin Azaltılması Hakkında Yönetmelik*) states that entities that keep hazardous substances should take all necessary precautions in order to mitigate the effects of major industrial accidents. Furthermore, the regulation requires operators of entities that store hazardous substances to prepare a major accident prevention policy document (*büyük kaza önleme politikası belgesi*) and submit that document to the MoE within one year of the commencement of their operations.

5.3 EHS Requirements Applicable to Offshore Development

The Sea Pollution Law and the Regulation on the Implementation of the Law Regarding the Principles of Emergency Intervention and Compensation of the Damages in Cases of Sea Pollution from Petroleum and other Dangerous Materials (the “Sea Pollution Regulation”) regulate marine safety and the prevention of marine pollution.

According to the Sea Pollution Law, offshore facilities are obliged to prevent any pollution or potential hazard, and should mitigate any damage in the event that a polluting event occurs and provide compensation in respect of all damage caused. Such facilities are also required to hold liability insurance for damages covered under the Sea Pollution Law. Otherwise, offshore facilities will not be permitted to conduct their activities.

5.4 Requirements for Decommissioning

As per the Turkish Petroleum Law and its secondary legislation, upon the expiry of an upstream licence, petroleum right-holders are required to reinstate the site to the physical status it held prior to the commencement of their upstream activities. Furthermore, if licence holders fail to

remove any of the movable or immovable properties located on the site within a six-month period following the expiry of their licences, ownership of the movable or immovable property left on the site will pass to the owner of the site.

5.5 Climate Change Laws

Turkey has undertaken a wide range of legislative initiatives and acceded to certain international agreements relating to climate change, the most significant of which are as follows:

- the Montreal Protocol, aimed at stopping the production of ozone-depleting substances;
- the Vienna Agreement for the Protection of the Ozone Layer;
- Law No 5627 on Energy Efficiency, aimed at promoting energy efficiency and preventing the waste of energy;
- the Regulation on the Increase of Energy Sources and Efficiency in Energy Use, promoting the efficient use of energy; and
- the Regulation on Reduction of Ozone-Depleting Substances.

As a non-EU member, Turkey has not taken steps to implement the EU Climate Change Package. However, Turkey recently became a party to the Kyoto Protocol, which shares the primary goals of the EU Climate Change Package, including a reduction in greenhouse gas emissions, increasing the proportion of energy produced from renewable energy resources and a reduction of energy consumption compared with projected levels by way of improving energy efficiency. Turkey is in the process of preparing legislation to conform to the requirements of the Kyoto Protocol, which will ultimately result in compliance with EU requirements. However, Turkey is no longer among the Annex II signatories. Therefore, Turkey's status under the Kyoto Protocol is limited to general undertakings without being bound by quantitative limitations on current emissions levels. Furthermore, Turkey remains

as one of the six countries that has signed but not ratified the Paris Climate Accords.

In this context, the MoE leads domestic climate change strategies and regulates the government's National Climate Change Strategy and Climate Change Action Plan. Accordingly, the MoE introduced voluntary carbon emission markets in late 2010 in compliance with the United Nations Framework Convention on Climate Change and the Kyoto Protocol. The MoE introduced international carbon emission trading schemes and adopted corresponding national regulations through a board, namely the Climate Change and Air Management Coordination Council. Currently, there is no binding emissions reduction undertaking on a national level, and carbon emissions trading proceeds on a voluntary basis.

5.6 Local Government Limits on Oil and Gas Development

As long as a producer holds the necessary licences and authorisations – whether market related (ie, upstream operations) or environmental, health and safety related – and complies with the terms and conditions of such licences as well as the applicable legislation in all respects, then neither the government nor the relevant state authorities are entitled to limit oil and gas development or restrict the operations of the licence holder.

6. MISCELLANEOUS

6.1 Unconventional Upstream Interests

Unconventional upstream activities (such as the exploration for and production of shale gas, shale oil, aquiclude gas, gas hydrates, bituminous coal and coal bed methane) are regulated under the Turkish Petroleum Law, the Regulation on Implementation of the Turkish Petroleum Law and secondary regulations. It is worth mention-

ing that the Law and secondary regulations do not explicitly define unconventional oil. Furthermore, there is no special regime for unconventional upstream interests. In the absence of a special regime, unconventional upstream activities will nevertheless be subject to the regime set forth for conventional upstream operations.

6.2 Liquefied Natural Gas (LNG) Projects

Activities concerning LNG fall within the Natural Gas Market Law as well as secondary legislation, namely the Natural Gas Market Licence Regulation, the LPG Market Licence Regulation (*Sıvılaştırılmış Petrol Gazları (LPG) Piyasası Lisans Yönetmeliği*), the Regulation on the Technical Regulations Applicable to the LPG Market (*Sıvılaştırılmış Petrol Gazları Piyasasında Uygulanacak Teknik Düzenlemeler Hakkında Yönetmelik*) and the Regulation on the Principles and Procedures for the Use of LNG Storage Facilities (*Sıvılaştırılmış Doğal Gaz Depolama Tesisi Temel Kullanım Usul ve Esaslarının Belirlenmesine Dair Yönetmelik*). In order to conduct LNG activities, companies are required to obtain a relevant licence from EMRA. Furthermore, the Regulation on the Procedures and Principles for the Use of LNG Storage Facilities governs the process for the establishment of LNG storage facilities.

Moreover, as per the Council of Ministers Decree No 2012/3305 (*Yatırımlarda Devlet Yardımları Hakkında Karar*), LNG investments amounting to a minimum of TRY50 million are entitled to benefit from various regional incentives, including a value-added tax exemption, a customs tax exemption, a tax deduction and advantages relating to social security premiums.

6.3 Unique or Interesting Aspects of the Petroleum Industry

In line with Turkey's goal of establishing a liberalised oil and gas market capable of competing with more cost-effective markets in other coun-

tries, various legislative instruments have been brought into force over the past decade.

These legislative instruments are aimed at establishing an environment conducive to the safe and secure supply of oil and gas from both domestic and foreign sources to consumers in Turkey under transparent and regulated market conditions. Furthermore, Turkey's geographical advantages allow it to extend to wider regions where there are large energy reserves, such as the Middle East and Asia, while at the same time serving as a safe, cost-efficient and non-stop energy transit corridor for Western markets. Despite the fact that production activities in the Turkish oil and gas markets are rather limited, Turkey long ago began to play a leading role as an internationally significant oil and gas transit state in major oil and gas pipeline transportation projects, some of which pass solely through, or terminate within, Turkish borders.

6.4 Material Changes in Oil and Gas Law or Regulation

There have been a number of changes to the oil and gas legislation over the past year. Firstly, Natural Gas Market Law No 4646 established an Organised Wholesale Natural Gas Market (*Organize Toptan Doğal Gaz Satış Piyasası*). Accordingly, EMRA is authorised to promote or oblige natural gas producers to sell a certain amount of natural gas on the Organised Wholesale Natural Gas Market. The Natural Gas Market Law expanded the definition of "production" activities by including direct transportation of natural gas to the distribution network. Furthermore, EMRA has been authorised to determine purchase priority among distribution companies if and when connection to the transmission network is congested due to technical or financial reasons.

Other legislative changes have also been introduced to separate LNG and CNG distribution

procedures. Distribution companies are now authorised to distribute LNG and CNG to feed in gas to areas that fall outside the distribution network. The natural gas importer concept is redefined in the law and, accordingly, importers are also authorised to import CNG.

Furthermore, through amendments to the Petroleum Market Law No 5015, petroleum distributors are now subject to certain procedural requirements, including the establishment of an internal audit system. Finally, administrative fines in both Natural Gas Market Law No 4646 and Petroleum Market Law No 5015 are adjusted upwards by 9.11% for 2021.

Overall, while there are still some anticipated legislative changes in the pipeline, especially with respect to crude oil supply by local producers, the past year's legislative agenda has been characterised by limited modifications of the existing system, rather than substantial systemic changes being introduced.

TURKEY LAW AND PRACTICE

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is Turkey's leading independent business law firm. Since its establishment in 1989, the firm has provided legal guidance to its clients on all aspects of international business law and is known as the firm that brought the "full-service law firm" concept to Turkey. The firm represents major multinational corporations, international financial institutions, agencies and other nota-

ble clientele in corporate, dispute resolution and commercial, and finance and projects areas. The Hergüner team is composed of approximately 140 individuals with a variety of educational and professional backgrounds. An 80-member legal team, 17 of whom are Hergüner partners, are involved in cases that require a full grasp of Turkish and cross-border jurisdictions, as well as different cultures and languages.

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Trends and Developments

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Turkey is reliant on external resources to meet its energy demand, despite being located adjacent to 60% of the world's entire proven oil and natural gas reserves. At the same time, since 2000, Turkey has been the second-largest economy after China in terms of increase in natural gas and electricity demand.

Turkey's energy strategy over the past few years has been shaped around diversifying resource availability in an attempt to strengthen its energy security. In conjunction with this objective, Turkey has focused on increasing the capacity of its transmission, distribution and storage facilities, and establishing new floating storage regasification units (FSRU), as well as prioritising cross-border crude oil and natural gas pipeline projects such as the Baku–Tbilisi–Ceyhan (BTC) oil pipeline and TurkStream natural gas pipeline that complement Turkey's policy vision to become an energy hub.

As per the strategic plan for 2019–23 announced by the Ministry of Energy and Natural Resources (MENR), Turkey envisions becoming an energy trade centre, as opposed to simply remaining a bridge or crossroads of converging energy markets. The Energy Markets Operator Company of Turkey (EPIAŞ) is launching its natural gas futures trading platform, building on its know-how and experience as an operator of natural gas and power exchanges.

Turkey is also looking to improve its position as an energy producer and investing in offshore exploration, an ambition that has been rewarded by the discovery of natural gas in the Black Sea.

An Important Discovery in the Black Sea, but Challenges Lie Ahead

As Turkey's oil and natural gas demand is primarily met through imports, the country has focused on oil and natural gas exploration activities to increase domestic production. Recent amendments to the Turkish Petroleum Law have introduced a number of incentives to create a more appealing upstream legal regime, including lowering royalty rates and the revision of the administrative monetary penalty scheme by replacing the prior fixed lump-sum fine scheme with monetary fines to be determined based on pro rata sales volume of the breaching entity.

The Turkish Petroleum Corporation (TPAO) has initiated an offshore exploration campaign and discovered what is estimated to be 320 billion cubic metres of natural gas reserves within the north-western part of the Turkish Exclusive Economic Zone in the Black Sea.

The exploration well is named Sakarya and has been identified as part of the Tuna-1 exploration zone. Sakarya is an extremely deep water well where a reserve was discovered 4,525 metres below the sea bottom at 2,000 metres' depth, which will call for specialist technical experience. The reserve is located 150 km off of Turkey's Black Sea coast and 100 km south of Romania's Neptun Deep Sea block, another natural gas field in the region that was previously discovered by OMV Petrom and ExxonMobil. One might expect that such geographic proximity will signal challenges for Turkey, similar to those issues faced in the Neptun block that led to a delay in development of the project.

Considering these circumstances, Turkey may require the resources and know-how of an experienced international offshore exploration and production (E&P) company to exploit this new discovery. The latest statements made by Turkey's minister of energy and natural resources support this expectation as the minister has emphasised that Turkey is open to co-operating with national and international companies experienced in the exploitation of deep water reserves. Nevertheless, the legal model for such co-operation is unclear as to whether it will be based on a production sharing model or a new stakeholder is to be introduced simply as a contractor for the Turkish Petroleum Corporation (*Türkiye Petrolleri Anonim Ortaklığı*, or TPAO).

Currently, the Turkish Petroleum Pipeline Corporation (BOTAŞ) imports natural gas to Turkey through two methods. In addition to the natural gas purchases of liquefied natural gas (LNG) from Algeria and Nigeria and natural gas imported from Russia, Azerbaijan and Iran through pipelines within the framework of long-term contracts, Turkey imports spot LNG from the USA and Qatar without entering into long-term contracts. Although the newly discovered reserve is far from meeting the entire demand of Turkey and/or effectively ending the need for imports, Sakarya is likely to increase Turkey's bargaining power in the renegotiation of longer-term contracts, as well as contributing to energy security of the country.

The Shale Gas Potential of Turkey

Shale gas is an important resource that can significantly decrease Turkey's import dependency.

Experts indicate that Turkey has a shale gas reserve of 679 billion cubic metres, mainly located in the south-eastern Anatolia and Thrace regions. This reserve may seem rather limited compared to other shale gas-rich countries such as the USA and China. Nevertheless, coupled

with the fact that MENR is working on exploring new reserve areas in Central and Eastern Anatolia, these limited reserves can help Turkey reduce its energy dependency in the long term.

If Turkey will peruse shale gas production, it will need to invest in the appropriate technology, mainly to make the process more cost-efficient. Imported and costly drilling equipment and the investments required for horizontal drilling and hydraulic fracturing are some of the factors that seem to hold back Turkey's venture into shale gas. However, co-operation between the private and public sectors can accelerate this process and promote investments. This would not only reduce Turkey's energy dependency but also give shale gas a tangible role in domestic energy production.

The Natural Gas Exchange and the Futures Market

Aside from exploration and production activities, Turkey is also taking important steps in terms of improving its role as an energy trade centre. A well-known move in this direction has been the commissioning of the Organized Wholesale Natural Gas Sales Market (the "Natural Gas Exchange") that was founded by the Energy Market Regulatory Authority (*Enerji Piyasası Düzenleme Kurumu*, or EMRA) to be operated by EPIAŞ in September 2018. According to EPIAŞ, from 2018 to 2020, the total trade volume of natural gas was 3.2 million cubic metres, the total transaction value hit TRY4.7 billion, and the DRP (daily reference price) averaged TRY1,460/1000 Sm³ (approximately USD170/1000 Sm³) in the natural gas exchange. Despite the recent establishment of the exchange in 2018, the above statistics are a sign that market players have confidence in the structure and operations of the market with EPIAŞ as a counterparty overseeing transactions.

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Another novelty to be introduced is the Natural Gas Futures Market, which is scheduled to become operational towards the end of 2021 and is planned to be operated by EPIAŞ like the Natural Gas Exchange. The Natural Gas Futures Market will facilitate the purchase and sale of natural gas futures contracts. The primary piece of legislation was enacted in March 2021 following a lengthy process involving different stakeholders, such as EMRA, EPIAŞ, BOTAŞ, private sector NGOs and market participants. Paired with the capacity increases created by international pipelines such as TurkStream, the Trans-Anatolian Natural Gas Pipeline (TANAP) and the newly established LNG facilities, the Natural Gas Futures Market may play a pivotal role in enabling the trading and hedging of natural gas inflows from different sources.

Oil and Gas Pipeline Projects

While Turkey's oil and natural gas production is low compared to its natural resource-rich neighbours, Turkey's unparalleled geographical position located at the junction of Europe, Russia and the Middle East gives Turkey strategic significance in becoming an energy transit centre between the eastern supply of oil and natural gas and the Western demand for these energy resources.

The TurkStream Gas Pipeline is a pioneer in terms of magnitude and strategic importance, bringing together Turkey and the Russian Federation. TurkStream started its operations and gas supply at the end of 2019 as planned and consists of a natural gas pipeline that starts from Anapa in Russia's Krasnodar Region, passes under the Black Sea, and lands ashore 100 kilometres north of Istanbul, in Kiyıköy. The project has a maximum technical design capacity of 31.5 billion cubic metres per annum, approximately half of which is to be delivered to BOTAŞ. After landing onshore to reach its receiving terminal in Kiyıköy on the Black Sea coast, the

pipeline finally moves natural gas further west to European markets.

Moreover, on 2 January 2020, a trilateral international agreement was signed between Greece, Israel and the (Greek Administration of) Cyprus to build a 1,900 km submarine pipeline to carry natural gas from the Eastern Mediterranean gas fields to Greece and Italy (EastMed). This trilateral co-operation later took an institutional form in September 2020 with the formation of the Eastern Mediterranean Gas Forum, which also includes Egypt, Jordan, France, Italy and Palestine. However, there are concerns regarding the commercial feasibility of the EastMed project, mainly due to the reliability and volume of the available reserve, the project requiring a long pipeline of 1,900 km passing through technically challenging marine areas, and a rather low natural gas price forecast that does not seem to justify the expensive infrastructure. Therefore, involved parties may consider a potential deviation in the planned route of the pipeline through Turkey to transmit Eastern Mediterranean gas to the west in a more commercially efficient manner.

Conclusion

While Turkey has experienced its share of problems following the global lockdowns in response to the fight against COVID-19 in 2020 and in the first half of 2021, the energy market is, and will remain, a top priority from Turkey's strategic perspective. Considering the country's potential for growth, it is expected that Turkey's energy use will grow by 50% over the next decade. Now that the new-normal post-COVID-19 is emerging, the Turkish market is very eager for new investments, which will inevitably feed into the country's increasing energy demand. This demand, coupled with the Turkish government's appetite for converting the country into an energy hub, will accelerate developments in the oil and gas sector in Turkey.

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Hergüner Bilgen Özeke Attorney Partnership is Turkey's leading independent business law firm. Since its establishment in 1989, the firm has provided legal guidance to its clients on all aspects of international business law and is known as the firm that brought the "full-service law firm" concept to Turkey. The firm represents major multinational corporations, international financial institutions, agencies and other nota-

ble clientele in corporate, dispute resolution and commercial, and finance and projects areas. The Hergüner team is composed of approximately 140 individuals with a variety of educational and professional backgrounds. An 80-member legal team, 17 of whom are Hergüner partners, are involved in cases that require a full grasp of Turkish and cross-border jurisdictions, as well as different cultures and languages.

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TURKEY TRENDS AND DEVELOPMENTS

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