



ICLG

The International Comparative Legal Guide to:

Oil & Gas Regulation 2017

12th Edition

A practical cross-border insight into oil and gas regulation work

Published by Global Legal Group, in association with Ashurst LLP, with contributions from:

Advokatfirmaet Simonsen Vogt Wiig AS

Ashurst LLP

Blake, Cassels & Graydon LLP

Bloomfield Law Practice

Bowmans

CMS Bulgaria

Cogan & Partners LLP

Estudio Randle

Gjika & Associates Attorneys at Law

Iranpour & Associates

Jeanet

Josh and Mak International

Koep & Partners

Miranda & Associados, Sociedade de Advogados R.L.

Mohamed Ridza & Co.

Moravčević, Vojnović and Partners

Noerr

Pachiu & Associates

Project Lawyers

Rodríguez Dávalos Abogados
(Consultores en Energía RDA, S.C.)

Rolim, Viotti & Leite Campos Advogados

Schoenherr

SSEK Legal Consultants

Türkoğlu & Çelepçi

Ughi e Nunziante – Studio Legale

Windahl Sandroos & Co.

glg
global legal group



global legal group

Contributing Editors

Geoffrey Picton-Turbervill & Julia Derrick, Ashurst LLP

Sales Director

Florjan Osmani

Account Directors

Oliver Smith, Rory Smith

Sales Support Manager

Paul Mochalski

Editor

Sam Friend

Senior Editor

Rachel Williams

Chief Operating Officer

Dror Levy

Group Consulting Editor

Alan Falach

Group Publisher

Richard Firth

Published by

Global Legal Group Ltd.
59 Tanner Street
London SE1 3PL, UK
Tel: +44 20 7367 0720
Fax: +44 20 7407 5255
Email: info@glgroup.co.uk
URL: www.glgroup.co.uk

GLG Cover Design

F&F Studio Design

GLG Cover Image Source

iStockphoto

Printed by

Stephens & George
Print Group
December 2016

Copyright © 2016
Global Legal Group Ltd.
All rights reserved
No photocopying

ISBN 978-1-911367-30-7

ISSN 2051-3348

Strategic Partners



General Chapters:

1	The UK Energy Act 2016: on Land and Under the Sea – Michael Burns & Justyna Bremen, Ashurst LLP	1
2	A Legal Analysis of the New Iranian Petroleum Contract – Farhad Iranpour & Julia Derrick, Iranpour & Associates / Ashurst LLP	8
3	Developments in the North American Oil and Gas Sector – John P. Cogan, Jr. & Carlos Morán, Cogan & Partners LLP	13

Country Question and Answer Chapters:

4	Albania	Gjika & Associates Attorneys at Law: Gjergji Gjika & Oltion Toro	17
5	Argentina	Estudio Randle / Cogan & Partners LLP: Ignacio J. Randle & Carlos Morán	26
6	Austria	Schoenherr: Bernd Rajal & Azra Dizdarevic	37
7	Brazil	Rolim, Viotti & Leite Campos Advogados: Luis Gustavo Miranda & Elise Calixto de Souza	48
8	Bulgaria	CMS Bulgaria: Kostadin Sirlishtov & Pavlin Stoyanoff	57
9	Canada	Blake, Cassels & Graydon LLP: Kevin Kerr & Christine Yick	68
10	Croatia	Schoenherr: Bernd Rajal & Petra Šantić	80
11	Denmark	Windahl Sandroos & Co.: Bo Sandroos	96
12	France	Jeanet: Thierry Lauriol & Valeria Vidoni	104
13	Gabon	Project Lawyers: Jean-Pierre Bozec	125
14	Greenland	Windahl Sandroos & Co.: Bo Sandroos	134
15	Indonesia	SSEK Legal Consultants: Fitriana Mahiddin & Syahdan Z. Aziz	141
16	Italy	Ughi e Nunziante – Studio Legale: Roberto Leccese & Andrea Marega	150
17	Malaysia	Mohamed Ridza & Co.: Mohamed Ridza Abdullah & Mohamad Nazran Basirun	165
19	Mexico	Rodríguez Dávalos Abogados (Consultores en Energía RDA, S.C.): Jesús Rodríguez Dávalos & Raúl Fernando Romero Fernández	176
19	Namibia	Koep & Partners: Irvin Titus & Nangula Nafuka	185
20	Nigeria	Bloomfield Law Practice: Kunle Obebe & Bode Adegoke	196
21	Norway	Advokatfirmaet Simonsen Vogt Wiig AS: Bjørn-Erik Leerberg	205
22	Pakistan	Josh and Mak International: Aemen Zulfikar Maluka & Pir Abdul Wahid	214
23	Poland	Noerr: Paweł Żelich & Bartosz Ostrowski	227
24	Portugal	Miranda & Associados, Sociedade de Advogados R.L.: Diogo Xavier da Cunha & Margarida Tabora Gonçalves	237
25	Romania	Pachiu & Associates: Laurentiu Pachiu & Raluca Mustaciosu	249
26	Serbia	Moravčević, Vojnović and Partners in cooperation with Schoenherr: Miloš Laković & Aleksandra Petrović	262
27	Slovenia	Schoenherr: Petra Smolnikar & Miša Tominec	272
28	South Africa	Bowmans: David Forfar & Luke Havemann	282
29	Turkey	Türkoğlu & Çelepçi in cooperation with Schoenherr: Levent Çelepçi & Murat Kutluğ	291
30	United Kingdom	Ashurst LLP: Geoffrey Picton-Turbervill & Julia Derrick	299
31	USA	Cogan & Partners LLP: John P. Cogan, Jr. & James A. Cogan	320

Further copies of this book and others in the series can be ordered from the publisher. Please call +44 20 7367 0720

Disclaimer

This publication is for general information purposes only. It does not purport to provide comprehensive full legal or other advice. Global Legal Group Ltd. and the contributors accept no responsibility for losses that may arise from reliance upon information contained in this publication. This publication is intended to give an indication of legal issues upon which you may need advice. Full legal advice should be taken from a qualified professional when dealing with specific situations.

Turkey

Levent Çelepçi



Murat Kutluğ



Türkoğlu & Çelepçi in cooperation with Schoenherr

1 Overview of Natural Gas Sector

1.1 A brief outline of your jurisdiction's natural gas sector, including a general description of: natural gas reserves; natural gas production including the extent to which production is associated or non-associated natural gas; import and export of natural gas, including liquefied natural gas (LNG) liquefaction and export facilities, and/or receiving and re-gasification facilities ("LNG facilities"); natural gas pipeline transportation and distribution/transmission network; natural gas storage; and commodity sales and trading.

Turkey has very limited natural gas resources, as a result of which the internal consumption requirement is almost exclusively met with imported gas, be it in the form of pipeline gas or LNG. Turkey's main import partner is Russia, which is the source of 55% of imported gas. Pipeline gas constituted 84%, while LNG represented 16% of total imported gas in 2014.

Due to limited production, a very small quantity of gas is exported, with one single destination, which is Greece.

Currently, storage capacity corresponds to less than 10% of the annual imported quantity.

The main market player in the gas market is the State-owned Boru Hatları İle Petrol Taşıma A.Ş. ("BOTAŞ"), which has realised approximately 84% of the total gas imported into the country in 2015.

1.2 To what extent are your jurisdiction's energy requirements met using natural gas (including LNG)?

Although declining, natural gas still plays an important role in terms of Turkey's energy requirements. 38% of total electricity production was based on natural gas in 2015, while hydroelectric accounted for 26%, coal 28% and wind power 4.5%.

1.3 To what extent are your jurisdiction's natural gas requirements met through domestic natural gas production?

Domestic gas production in Turkey is quite limited, covering approximately 1.2% of total consumption. Turkey's gas requirements are mainly met through imported gas. The main countries from which gas is imported into the country are the Russian Federation (55%), Iran (16%), Azerbaijan (13%), Algeria (8%) and Nigeria (3%).

1.4 To what extent is your jurisdiction's natural gas production exported (pipeline or LNG)?

As a natural consequence of the fact that Turkish natural gas production is very limited and the internal consumption requirement can only be met through imported natural gas, Turkey exports a relatively small quantity to Greece. The quantity exported in 2015 amounts to 0.6 bcm. Currently, there are nine licensed legal entities having an export licence, and the only one which was active in 2015 was BOTAŞ.

2 Overview of Oil Sector

2.1 Please provide a brief outline of your jurisdiction's oil sector.

Oil consumption in 2013 was approximately 33.1 million tons, which marked an increase of 5.7% compared to the previous year, and is expected to increase in upcoming years. Given the very limited amount of oil production (around 7% of total demand), such demand is being met by imported oil to a great extent.

It is expected that demand for oil will grow in alignment with GDP growth.

Currently, the Turkish Petroleum Company ("TPAO") is a major player in the oil exploration process. The liberalisation of the petroleum sector was evidenced by the Petroleum Law dated 11 June 2013 ("Petroleum Law"), which introduced several incentives for oil exploration. The new law is set to liberalise upstream activities by limiting the dominant market position of the TPAO.

2.2 To what extent are your jurisdiction's energy requirements met using oil?

The percentage of domestic energy needs met by oil (including LPG) is 28%. It is foreseen that the share of oil will remain relatively stable until at least 2023, when the share of oil is predicted to be around 26%.

2.3 To what extent are your jurisdiction's oil requirements met through domestic oil production?

Domestic production covers 7% of internal demand. Turkish crude oil reserves reached 312 million barrels in 2014, marking a slight increase from 296 million barrels in 2013. In the event that no new

discoveries are made, and based on current production/consumption statistics, the existing crude oil reserves will be exhausted in 17 years.

2.4 To what extent is your jurisdiction's oil production exported?

Although Turkey's production of liquid fuels has increased since 2004, it is much less than what the country consumes each year. TPAO is the dominant exploration and production entity in Turkey. In 2013, TPAO produced 34,000 b/d of crude oil, accounting for 73% of the total crude oil production in Turkey. Petroleum products exported reached 9,286,007 tons, marking an increase of 11.28% compared to 2013.

3 Development of Oil and Natural Gas

3.1 Outline broadly the legal/statutory and organisational framework for the exploration and production ("development") of oil and natural gas reserves including: principal legislation; in whom the State's mineral rights to oil and natural gas are vested; Government authority or authorities responsible for the regulation of oil and natural gas development; and current major initiatives or policies of the Government (if any) in relation to oil and natural gas development.

Oil and gas exploration and exploitation activities, which constitute upstream activities, are generally regulated under the Petroleum Law. It should always be noted that Turkey is a contracting party to many conventions and international agreements with regards to the international oil and gas market. In this respect, certain international agreements to which Turkey is a party, such as the International Convention on Readiness, Response and Cooperation With Regards To Oil Pollution and Its Annexes dated November 27, 1992 (London) and the International Agreement on Establishment of an International Fund Regarding the Indemnification of the Damages Caused by Oil Pollution dated November 27, 1992 (London).

The General Directorate of Petroleum Affairs ("GDPA") is the relevant authority in respect to upstream activities, including exploration and exploitation permitting processes.

3.2 How are the State's mineral rights to develop oil and natural gas reserves transferred to investors or companies ("participants") (e.g. licence, concession, service contract, contractual rights under Production Sharing Agreement?) and what is the legal status of those rights or interests under domestic law?

All oil and natural gas resources in Turkey are owned by the State. Through a licensing system managed by GDPA, specific licences are granted to applicant companies. Please refer to the responses under question 3.3 below for further explanations on different types of licences. Such licences are subject to administrative laws and regulations. The Council of State has jurisdiction, as a court of first instance, in respect to challenges brought against decisions of the Ministry of Energy and Natural Resources ("MENR"), which reviews objections and disputes with respect to the issuance of such licences or their implementations.

3.3 If different authorisations are issued in respect of different stages of development (e.g., exploration appraisal or production arrangements), please specify those authorisations and briefly summarise the most important (standard) terms (such as term/duration, scope of rights, expenditure obligations).

The Petroleum Law sets forth that a research permit shall be issued by GDPA, which would entitle its holder to carry out certain research activities. The exploration and/or operation licences issued for a part of the area for which a research permit is requested do not constitute an obstacle for research permit issuance. The research permit applicant shall pay TL 0.5 per hectare within 60 days following the commencement of the review process of GDPA. Additionally, if the application is deemed to be acceptable, the applicant shall further deposit to GDPA a guarantee in the amount of 0.05% of the research permit charge per hectare within 15 business days following notification of the decision regarding the application. In the case that said amounts are not deposited in due time, the applicant will be deemed to have withdrawn its application. Apart from the research permit, there are two main types of licences required for exploration and operation activities.

Exploration Licences

As for exploration licences, the first application made for an area shall be announced in the Official Gazette. Following this announcement, additional applications can be made before GDPA. The business and investment plans of the applicants (including the first applicant) must be submitted to GDPA within 90 days following the announcement. The applications shall be assessed by GDPA in accordance with the criteria provided under the implementation regulation. The exploration licence shall be announced in the Official Gazette, and within 30 days following this announcement, the exploration licence holder shall deposit another guarantee, namely an investment guarantee, in the amount of 2% of the investment amount for onshore activities and 1% of the investment amount for offshore activities. In the case that the said guarantee amount is not duly deposited, the licence shall be cancelled by GDPA.

Exploration licences shall be initially issued for a period of five years for onshore and eight years for offshore, with a possibility of extension up to nine years for onshore and 14 years for offshore exploration activities.

Operation Licences

In order to obtain an operation licence, an application must be made to GDPA. If the application is accepted, the applicant shall further deposit a guarantee in the amount of 0.5% of the operation licence charge per hectare to GDPA within 15 business days following notification of the decision. If the said amount is not deposited in due time, the applicant will be deemed to have withdrawn its application.

Exploration and operation licences can also be issued by an auction by GDPA. The relinquished areas can also be licensed with the auction method upon the consent of MENR.

3.4 To what extent, if any, does the State have an ownership interest, or seek to participate, in the development of oil and natural gas reserves (whether as a matter of law or policy)?

According to the Turkish Constitution, natural resources belong to the State, along with the right to explore and exploit these resources (*Article 168, Turkish Constitution*). The State can delegate these rights to persons or corporate bodies for a certain period of time.

3.5 How does the State derive value from oil and natural gas development (e.g. royalty, share of production, taxes)?

Exploration and/or exploitation licence holders must pay as royalty to the Turkish State 12.5% of the value of the petroleum they have produced. The royalty amount shall be calculated once the expenses (i.e. income tax, corporate tax, other applicable taxes and charges, etc.) are deducted from the market price of the produced petroleum. Furthermore, the total taxation of a company engaged in exploitation, together with taxes withheld on behalf of its shareholders, cannot exceed 55%.

3.6 Are there any restrictions on the export of production?

Petroleum right holders are entitled to export a certain amount of the petroleum and natural gas (35% for onshore and 45% for offshore) that they produce in fields discovered after 1 January 1980. The remaining part and the whole petroleum and natural gas produced in the fields discovered before 1 January 1980 shall be reserved for domestic use. The Council of Ministers has the authority to regulate the procedures and principles on the redetermination and implementation of these ratios.

3.7 Are there any currency exchange restrictions, or restrictions on the transfer of funds derived from production out of the jurisdiction?

GDPA approval is required for right holders to transfer funds derived from their production. Prior to the transfer, rights holders shall deduct taxes, fees and royalties that are yet to be accrued.

3.8 What restrictions (if any) apply to the transfer or disposal of oil and natural gas development rights or interests?

To transfer an upstream oil or gas licence, the licence holder (transferor) and transferee must jointly apply to GDPA. The rights covered by upstream licences are recorded in the oil registry, which is maintained by GDPA. Both of the parties must provide detailed documents, maps and information about the proposed transfer to GDPA for its consideration.

3.9 Are participants obliged to provide any security or guarantees in relation to oil and natural gas development?

There are two types of collaterals that are required under the Petroleum Law:

- Collateral for Investment: The Law requires an applicant for an exploration licence to provide a bond equal to 2% of the financial commitment in the business plan as submitted in the licence application. For offshore exploration where the financial investment would be higher, the rate is reduced to 1% of the total investment amount.
- Collateral for Loss and Damages: The payment of an additional collateral before obtaining a petroleum right in order to cover any potential loss and damages that may occur during the petroleum activities is compulsory. The rate for search permits is 0.0005% of the search charge, 0.0001% of the exploration licence charge for exploration licences, and 0.005% of the operation licence charge for operation licences.

3.10 Can rights to develop oil and natural gas reserves granted to a participant be pledged for security, or booked for accounting purposes under domestic law?

Yes, rights to develop oil and natural gas reserves granted to a participant can be pledged for security subject to prior approval by GDPA. The pledges would need to be registered in the Petroleum Register kept by GDPA.

3.11 In addition to those rights/authorisations required to explore for and produce oil and natural gas, what other principal Government authorisations are required to develop oil and natural gas reserves (e.g. environmental, occupational health and safety) and from whom are these authorisations to be obtained?

Entities active in the energy sector must obtain an environment licence and environment permit from the Ministry of Environment and Urban Planning (*Article 7, Environmental Permit and Licence Regulation published in the Official Gazette dated 10 September 2014, No. 29115*). Requirements for environment licences are determined by considering the activity of a given business. Collectively, these permits and licences contemplate:

- Emissions.
- Discharges.
- Dangerous material discharges.
- Waste collection.
- Recycling matters.

These environment permits and licences must be obtained before operations begin. They are different to the EIA reports and related positive or negative decision from the Ministry of Environment and Urban Planning.

3.12 Is there any legislation or framework relating to the abandonment or decommissioning of physical structures used in oil and natural gas development? If so, what are the principal features/requirements of the legislation?

There are no specific provisions in Turkish legislation addressing decommissioning requirements, although upstream licence holders are required to return the land to its former condition (*Article 22(3), Petroleum Law*). While legislation is silent on the decommissioning requirements, the obligation to comply with environmental rules remains, along with the obligation to avoid endangering society and the environment. When an entity operating in the upstream market wishes to decommission its facilities, the entity must arrange for its rights to be deregistered from GDPA's petroleum registry (*Article 21, Petroleum Law*).

If a licensee ceases its activities, it must notify the relevant authority three months before its suspension (*Article 18, Environmental Permit and License Regulation*).

Since decommissioning generally involves closing a place of business, the employer must also notify the relevant tax office of the decommissioning, as well as other institutions, such as the social security and district labour offices.

3.13 Is there any legislation or framework relating to gas storage? If so, what are the principle features/requirements of the legislation?

Natural Gas Law No. 4646 (“Natural Gas Law”) regulates the natural gas market in terms of import, transmission, distribution,

storage, marketing, trade and the export of natural gas and the rights and obligations of all real and legal persons relating to these activities is the principal legislation in Turkey.

4 Import / Export of Natural Gas (including LNG)

4.1 Outline any regulatory requirements, or specific terms, limitations or rules applying in respect of cross-border sales or deliveries of natural gas (including LNG).

Cross-border sales or deliveries of natural gas can be performed either by importing natural gas into Turkey or exporting natural gas from Turkey.

There are certain important limitations in terms of importing pipeline gas into Turkey. As a matter of fact, the Natural Gas Law prohibits companies, other than BOTAŞ, to import pipeline gas from those countries with which BOTAŞ has an existing supply contract. New import contracts from such countries will only become possible when BOTAŞ contracts expire.

The Natural Gas Law foresees a reduction of BOTAŞ' market share to below 20% of the total internal consumption of natural gas. In view of reaching such goal, BOTAŞ launches tenders from time to time for assigning part of its existing supply contracts. As a pre-requisite to participate in such tenders, applicants are required to hold an import licence and also obtain the preliminary consent of the selling entity. Despite the objective determined in the Natural Gas Law, in 2014, 79.77% of the imports (pipeline gas and LNG combined) have been done by BOTAŞ.

Legal entities that wish to export the natural gas imported or generated within the country abroad must also obtain an export licence from the Energy Market Regulatory Authority ("EMRA"). The company asking for a licence should prove that it has the technical and economical capability and inform on which country and by which transportation vehicles it shall export the natural gas, to provide a guarantee to the effect that the export process will not intervene in operation of the system nor satisfaction of the natural gas demand of the country and towards recovery of any loss or damage which may occur if the system security is violated by the company, and to provide insurance coverage as compulsory for the loss and damage.

5 Import / Export of Oil

5.1 Outline any regulatory requirements, or specific terms, limitations or rules applying in respect of cross-border sales or deliveries of oil and oil products.

The Petroleum Law provides that there are no further additional licence requirements needed in respect of the cross-border sales or deliveries of oil and products for holders of oil refinery licences, oil distribution licences or bunker delivery licences.

6 Transportation

6.1 Outline broadly the ownership, organisational and regulatory framework in relation to transportation pipelines and associated infrastructure (such as natural gas processing and storage facilities).

To build and operate pipelines, the following must be obtained:

- The necessary licence from the Turkish Energy Market Regulatory Authority.
- A construction licence from the relevant public authority.
- An Environmental Impact Assessment (EIA) Report from the Ministry of Environment and Urban Planning.

Depending on the nature of the pipeline project, other additional requirements may be imposed, such as specific approvals from BOTAŞ.

Quality standard regulations outline the types of the materials which must be used to build the facilities and pipelines.

Parties involved in transporting oil and gas through Turkey via pipeline must obtain an authorisation certificate from EMRA.

6.2 What governmental authorisations (including any applicable environmental authorisations) are required to construct and operate oil and natural gas transportation pipelines and associated infrastructure?

Please refer to question 6.1 for the government authorisations required to construct and operate oil and natural gas transportation pipelines and the associated infrastructure.

6.3 In general, how does an entity obtain the necessary land (or other) rights to construct oil and natural gas transportation pipelines or associated infrastructure? Do Government authorities have any powers of compulsory acquisition to facilitate land access?

By private agreement, expropriation or by obtaining leasehold rights from the Government either through easements or land allocation permits. If the applicant has an exploitation licence, the authority to request the expropriation is GDPA; if the applicant has a transmission licence, the authority is EMRA. At the end of the expropriation process, the expropriated land is registered in the name of the Treasury and an easement agreement is granted to the applicant.

6.4 How is access to oil and natural gas transportation pipelines and associated infrastructure organised?

Please see question 6.6.

6.5 To what degree are oil and natural gas transportation pipelines integrated or interconnected, and how is co-operation between different transportation systems established and regulated?

With respect to natural gas, the network and distribution system is regulated by the Network Code.

6.6 Outline any third-party access regime/rights in respect of oil and natural gas transportation and associated infrastructure. For example, can the regulator or a new customer wishing to transport oil or natural gas compel or require the operator/owner of an oil or natural gas transportation pipeline or associated infrastructure to grant capacity or expand its facilities in order to accommodate the new customer? If so, how are the costs (including costs of interconnection, capacity reservation or facility expansions) allocated?

BOTAŞ has long held a monopoly role in Turkey and it was not until 2007 that a party besides BOTAŞ could access the BOTAŞ transmission network.

The Natural Gas Market Law provides that connection and transmission tariffs are set by EMRA, rather than third parties negotiating with the company owning the transmission network (*Article 11(1) and 11(2), Natural Gas Market Law*). Third parties can apply to EMRA if a dispute arises with BOTAŞ regarding access to the transmission network (*Article 16, Transmission Network Operation Principles, published in the Official Gazette No. 25561, dated 22 August 2004*).

Parties wishing to use the BOTAŞ transmission network must first apply for a capacity allocation at an entry and exit point. Entities wishing to transport gas through a transmission or distribution pipeline owned by another licensee must enter a standard transportation contract with the licensee (*Transmission Network Operation Regulation, published in the Official Gazette No. 24918, 26 October 2002; BOTAS Transmission Network Operation Principles, published in the Official Gazette, 1 September 2004*).

6.7 Are parties free to agree the terms upon which oil or natural gas is to be transported or are the terms (including costs/tariffs which may be charged) regulated?

A standard transportation contract needs to be entered into with BOTAŞ.

7 Gas Transmission / Distribution

7.1 Outline broadly the ownership, organisational and regulatory framework in relation to the natural gas transmission/distribution network.

With respect to transmission, the transmission network is owned and operated by BOTAŞ.

With respect to distribution, tenders are launched either by the relevant municipalities or by the Privatization Administration in respect of each province. Currently, 72 provinces in the country out of a total of 81 have access to natural gas. The aim is that, by the end of 2015, natural gas will reach 76 provinces.

7.2 What governmental authorisations (including any applicable environmental authorisations) are required to operate a distribution network?

Please see the reply to question 7.1.

7.3 How is access to the natural gas distribution network organised?

Access to the natural gas distribution network is organised by the Natural Gas Distribution and Customer Relations Regulations.

7.4 Can the regulator require a distributor to grant capacity or expand its system in order to accommodate new customers?

Urban development must be considered when expanding the system to accommodate new customers. EMRA may intervene to enforce expansion requirements.

7.5 What fees are charged for accessing the distribution network, and are these fees regulated?

Connection fees must not exceed 260 Turkish Liras (“TRL”) (approximately EUR 84) for the first 100 metres, plus TRL 1.7 (approximately EUR 0.55) for each additional metre. A security deposit is charged, equal to TRL 287 (approximately EUR 93).

7.6 Are there any restrictions or limitations in relation to acquiring an interest in a gas utility, or the transfer of assets forming part of the distribution network (whether directly or indirectly)?

Yes, transfer of shares of a distribution company which exceeds 10% of the share capital of such distribution company needs to be approved by EMRA.

8 Natural Gas Trading

8.1 Outline broadly the ownership, organisational and regulatory framework in relation to natural gas trading. Please include details of current major initiatives or policies of the Government or regulator (if any) relating to natural gas trading.

Natural gas trading is regulated under the Natural Gas Market Licensing Regulation. In order to trade natural gas in gaseous and liquid form, a wholesale licence is required from EMRA; a compressed natural gas licence is needed from EMRA for trading compressed natural gas.

8.2 What range of natural gas commodities can be traded? For example, can only “bundled” products (i.e., the natural gas commodity and the distribution thereof) be traded?

Natural gas can be traded in gaseous, liquid and compressed form.

9 Liquefied Natural Gas

9.1 Outline broadly the ownership, organisational and regulatory framework in relation to LNG facilities.

LNG import has been regulated as a market activity by the Natural Gas Market License Regulation and Natural Gas Market Law. Accordingly, the import, storage and trade of LNG is subject to specific licences and permits. Pursuant to the Natural Gas Market Law, these market activities may be done by private sector companies within the scope of opening the natural gas market to competition. Licence application processes have been set forth by the Natural Gas Market Licence Regulation.

Turkey receives LNG mainly from Nigeria and Algeria. According to the statistics of EMRA, 7.862m m³ of LNG have been imported in

2012, which corresponds to 17% of the total natural gas imports of Turkey. Despite the fact that the natural gas market has been opened to competition, LNG import activities have been done by BOTAŞ to a large extent.

9.2 What governmental authorisations are required to construct and operate LNG facilities?

A storage licence is required to be obtained from EMRA. In addition, the following authorisations are required:

- An EIA report.
- An environmental permit.
- A workplace and operating licence.

9.3 Is there any regulation of the price or terms of service in the LNG sector?

The prices and terms of service in the LNG sector are regulated by the guidelines of BOTAŞ and Ege Gas LNG Terminals.

9.4 Outline any third-party access regime/rights in respect of LNG facilities.

As per the guidelines, a third party can be granted co-usage rights. A third party wishing to have co-usage rights must enter into a standard form terminal utilisation service agreement with BOTAŞ and Ege Gas LNG Terminals describing the services required.

10 Downstream Oil

10.1 Outline broadly the regulatory framework in relation to the downstream oil sector.

Downstream activities are regulated by the Petroleum Market Law.

10.2 Outline broadly the ownership, organisation and regulatory framework in relation to oil trading.

Distributors/oil companies must obtain distributorship licences, whereas dealers must obtain dealership licences from EMRA, in order to conduct their business.

11 Competition

11.1 Which governmental authority or authorities are responsible for the regulation of competition aspects, or anti-competitive practices, in the oil and natural gas sector?

The Turkish Competition Authority plays an important role in ensuring the oil and natural gas sectors are competitive. EMRA, however, also regulates competition aspects in the oil and natural gas sector.

11.2 To what criteria does the regulator have regard in determining whether conduct is anti-competitive?

Competition law prohibits concerted practices and abuse of dominant position.

11.3 What power or authority does the regulator have to preclude or take action in relation to anti-competitive practices?

Competition law prohibits concerted practices and abuse of dominant position. Those who are decided to have infringed the law are asked to submit their second defence in writing to the Competition Board within 30 days. Upon receiving the defence arguments, the Board experts authorised to carry out the investigation submit their additional views in writing within 15 days, and this must also be notified to all the Board members and parties concerned. The parties may reply to these views within 30 days. In cases where the parties have justified reasons, this time period may be extended only once for another 30 days.

Reply of the parties not made within the specified time period is not taken into consideration.

A hearing is held if the parties concerned have requested so in their defence or reply petitions. On the other hand, the Board may also decide on a hearing on its own initiative. The hearing is held within at least 30 days and no longer than 60 days after the end of the investigation stage. The invitations for the hearing are sent to the related parties within at least 30 days before the date of the hearing.

Hearings are held in public. However, the Board may, on the grounds of protection of public morality or of trade secrets, decide to run closed sessions. Despite the possibility for closed sessions, experience shows that for the Board to decide to run a closed session, the parties have to submit strong arguments for such.

Hearings are presided over by the Chairman and in his absence by the Deputy Chairman. A hearing can only be held with the attendance of the Chairman or the Deputy Chairman and at least seven members of the Board. Hearings are to be concluded within no longer than five consequent sessions (several meetings held on the same day shall be considered as one session).

The final decision of the Competition Board is made on the same date and, if this is not possible, together with its reasoning within 15 days following the hearing.

11.4 Does the regulator (or any other Government authority) have the power to approve/disapprove mergers or other changes in control over businesses in the oil and natural gas sector, or proposed acquisitions of development assets, transportation or associated infrastructure or distribution assets? If so, what criteria and procedures are applied? How long does it typically take to obtain a decision approving or disapproving the transaction?

As per the *communiqué* of the Turkish Competition Authority that was published in the Official Gazette on 29 December 2012 and entered into force on 1 February 2013 governing the review process of the merger and acquisition transactions that are subject to the authorisation of the Turkish Competition Board, the thresholds that set the boundaries of notification requirements are as follows: (a) total turnovers of the transaction parties in Turkey exceed TRL 100 million (approximately EUR 28 million/USD 30 million), and turnovers of at least two of the transaction parties in Turkey each exceed TRL 30 million (approximately EUR 8.3 million/USD 8.9 million); or (b) in acquisition transactions, the asset or the operation that is subject to the acquisition and in merger transactions, at least one of the transaction parties has a turnover in Turkey exceeding TRL 30 million, and a global turnover of at least one of the remaining transaction parties exceeds TRL 500 million (approximately EUR 139 million/USD 150 million).

12 Foreign Investment and International Obligations

12.1 Are there any special requirements or limitations on acquisitions of interests in the natural gas sector (whether development, transportation or associated infrastructure, distribution or other) by foreign companies?

The Petroleum Law, which governs the production of natural gas, expressly permits foreign companies to apply for upstream activities, provided that they secure a local presence in Turkey.

12.2 To what extent is regulatory policy in respect of the oil and natural gas sector influenced or affected by international treaties or other multinational arrangements?

With respect to downstream activities, regardless of the origin of its shareholders, any company established in Turkey is eligible to be engaged in such activities. The oil and natural gas sector is fairly influenced by international treaties. Turkey is a party to several international treaties.

13 Dispute Resolution

13.1 Provide a brief overview of compulsory dispute resolution procedures (statutory or otherwise) applying to the oil and natural gas sector (if any), including procedures applying in the context of disputes between the applicable Government authority/regulator and: participants in relation to oil and natural gas development; transportation pipeline and associated infrastructure owners or users in relation to the transportation, processing or storage of natural gas; downstream oil infrastructure owners or users; and distribution network owners or users in relation to the distribution/transmission of natural gas.

EMRA is the authority responsible for resolving disputes between licence holders. Any administrative act is subject to judicial review in Turkey, including decisions as well as administrative fines. Once they have been notified of the decision, parties with a legitimate interest are allowed 60 days to apply to the authorised administrative court.

Actions against decisions made by MENR which affect the rights arising from research permits, exploration licences, or operation licences must be filed before the Council of State as the first instance court.

For administrative acts of EMRA, parties with a legitimate interest can file a suit before the administrative courts within 60 days following the notification.

According to the Article 45 of the Administrative Procedures Law, the final judgments of administrative courts may be appealed before District Administrative Courts within 30 days of the notification date. However, judgments in lawsuits where the subject matter does not exceed TRY 5,000 are considered definitive and cannot be appealed under any circumstances.

13.2 Is your jurisdiction a signatory to, and has it duly ratified into domestic legislation: the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards; and/or the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (“ICSID”)?

Yes, Turkey is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States.

13.3 Is there any special difficulty (whether as a matter of law or practice) in litigating, or seeking to enforce judgments or awards, against Government authorities or State organs (including any immunity)?

No. The Administrative Procedural Law sets forth the rules as to the lawsuits which may be filed against governmental authorities and/or State organs.

13.4 Have there been instances in the oil and natural gas sector when foreign corporations have successfully obtained judgments or awards against Government authorities or State organs pursuant to litigation before domestic courts?

There are no reported cases in Turkey.

14 Updates

14.1 Please provide, in no more than 300 words, a summary of any new cases, trends and developments in Oil and Gas Regulation Law in your jurisdiction.

New Natural Gas Tariff Regulation:

EMRA promulgated the new “**Tariff Regulation**” on 13 October 2016, which will come into force as of 1 January 2017, and which will replace the regulation enacted in 2002. The Tariff Regulation sets forth the legal framework for the determination of the tariffs applicable to: (a) connection; (b) transmission; (c) storage; (d) wholesale; and (e) retail activities.

The new Tariff Regulation includes a provision which provides a certain flexibility in respect to the determination of tariffs applicable to gas transit pipelines. It will be possible for such tariffs to be determined differently than domestic tariffs. The purpose of such provision is to improve the feasibility of gas transit pipelines that are under development or being envisaged to be implemented in the near future.

Natural Gas Supply Security and Source Diversification:

Natural gas supply security constitutes a major policy issue for the Ministry of Energy. Within such framework, the Ministry is aiming to increase domestic storage capacity coupled with increasing source diversification, facilitated through the establishment of new LNG terminals. Within the next decade, five underground storage facilities will become operative. Currently, there are two LNG terminals in operation in Turkey. A third licence was granted in 2016.

**Levent Çelepçi**

Türkoğlu & Çelepçi
in cooperation with Schoenherr
Mim Kemal Öke Caddesi, Kristal Apt. 17
Kat. 2–3, TK-34367, Harbiye, Istanbul
Turkey

Tel: +90 212 230 1700
Fax: +90 212 230 3779
Email: l.celepci@schoenherr.eu
URL: www.schoenherr.eu

Levent Çelepçi is partner of Schoenherr and managing partner of the Istanbul office. He has a wide-ranging experience in national and international energy projects and has been active representing various clients of the firm in development of power plants, infrastructure projects and mergers and acquisitions. He has participated in the privatisation of public companies, such as energy production and distribution companies and facilities. His practice also focuses in representing foreign companies in public bids before the Turkish government and public institutions and companies.

**Murat Kutluğ**

Türkoğlu & Çelepçi
in cooperation with Schoenherr
Mim Kemal Öke Caddesi, Kristal Apt. 17
Kat. 2–3, TK-34367, Harbiye, Istanbul
Turkey

Tel: +90 212 230 1700
Fax: +90 212 230 3779
Email: m.kutlug@schoenherr.eu
URL: www.schoenherr.eu

Murat Kutluğ has been working at Schoenherr since 2011. Murat's main areas of practice include regulatory matter and corporate structurings. After graduation from Istanbul Bahçeşehir Law Faculty, Murat completed his mandatory legal trainee period in a reputable law firm in Turkey dealing mainly with project finance and M&A transactions. He also has work experience in well-known law firms located in London. He has been involved in several cross-border transactions and advised clients in major projects including privatisations and financing of development projects.

schoenherr

Schoenherr is a leading full-service law firm in Central and Eastern Europe. With 13 offices located in Belgrade, Bratislava, Brussels, Budapest, Bucharest, Chisinau, Istanbul, Ljubljana, Prague, Sofia, Vienna, Warsaw and Zagreb, as well as country desks for Albania, Bosnia-Herzegovina, Macedonia and Montenegro, Schoenherr provides its clients with comprehensive coverage of the CEE/SEE region.* More than 300 legal professionals work across borders in both a centralised and de-centralised manner, according to the individual client's needs and requirements. Quality, flexibility, innovation and practice-oriented solutions for complex assignments in the field of business law are at the core of the Schoenherr philosophy.

The energy industry is a complex and highly competitive sector. It is obvious that there is a need for professional advisers who understand the business of companies active in this sector, and who have the experience and capacity to handle complex international energy projects.

Schoenherr can assist you with a multi-disciplinary group of lawyers drawn from across the firm's broad international network that specialise in the specifics of the energy sector. The energy group comprises lawyers from all practice areas with a detailed understanding of the energy sector and of the needs of international energy clients. Sharing our knowledge and co-operating tightly between our practice groups and between our international offices, our energy group can help you to respond to the changes in the industry and to keep pace with market and regulatory developments.

Our lawyers are regularly involved in both international and domestic energy matters including transactions, development projects, mergers and acquisitions, privatisations, public private partnerships, regulatory matters, public procurement, strategic advice, competition matters and dispute resolution.

**Schoenherr is in compliance with the respective local legal standards and conduct rules in all countries; therefore, the local firm name may vary from jurisdiction to jurisdiction.*

Other titles in the ICLG series include:

- Alternative Investment Funds
- Aviation Law
- Business Crime
- Cartels & Leniency
- Class & Group Actions
- Competition Litigation
- Construction & Engineering Law
- Copyright
- Corporate Governance
- Corporate Immigration
- Corporate Investigations
- Corporate Recovery & Insolvency
- Corporate Tax
- Data Protection
- Employment & Labour Law
- Enforcement of Foreign Judgments
- Environment & Climate Change Law
- Family Law
- Fintech
- Franchise
- Gambling
- Insurance & Reinsurance
- International Arbitration
- Lending & Secured Finance
- Litigation & Dispute Resolution
- Merger Control
- Mergers & Acquisitions
- Mining Law
- Outsourcing
- Patents
- Pharmaceutical Advertising
- Private Client
- Private Equity
- Product Liability
- Project Finance
- Public Procurement
- Real Estate
- Securitisation
- Shipping Law
- Telecoms, Media & Internet
- Trade Marks
- Vertical Agreements and Dominant Firms



59 Tanner Street, London SE1 3PL, United Kingdom
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255
Email: info@glgroup.co.uk