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## **NATURAL GAS MARKET LAW**

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### **PART ONE**

#### **General Provisions**

#### **CHAPTER ONE**

#### **Purpose, Scope, Definitions and Authority**

##### **Purpose**

**ARTICLE 1 - (1)** The purpose of this Law is to establish a financially sound, stable and transparent natural gas market by liberalizing the natural gas market, and to ensure the independent regulation and supervision of this market with the objective of supplying high quality, uninterrupted, affordable and environmentally-friendly natural gas to consumers in accordance with competitive principles.

##### **Scope**

**ARTICLE 2 - (1)** This Law covers the import, transmission, distribution, storage, marketing, trading and export of natural gas and the rights and obligations of all individuals and legal entities with respect to these activities.

##### **Definitions**

**ARTICLE 3 - (1)** The following definitions shall apply in the implementation of this Law:

- 1) Ministry: The Ministry of Energy and Natural Resources;
- 2) Minister: The Minister of Energy and Natural Resources;
- 3) BOTAŞ: Petroleum Pipeline Company;
- 4) Authority: Energy Market Regulatory Authority;
- 5) Board: Energy Market Regulatory Board;

6) Legal Entity (company): A public law or private law legal entity established in accordance with the provisions of this Law for carrying out the functions of natural gas production, transmission, distribution, wholesale, import, export, trade and storage;

7) Natural Gas: Natural hydrocarbons in gaseous form that are or can be extracted from underground and the liquefied, pressurized or any other form of those gases subjected to any physical processing (excluding Liquefied Petroleum Gas-LPG) to be supplied to the market;

8)<sup>1</sup> Production: Extraction of natural gas from underground deposits to the surface, cleaning, refinement and transmission thereof to transmission lines and/or the distribution network through gathering lines within the scope of the Turkish Petroleum Law No. 6491 and dated 30/05/2013;

9) Production facility (operator): A legal entity engaged in production activity in Turkey;

10)<sup>2</sup> Transmission: The transportation of natural gas other than through gathering lines exclusively assigned to production and through gas pipeline networks other than distribution networks or through liquefied natural gas (LNG) transportation excluding LNG transport activities within the scope of an export license;

11) Transmission company: A legal entity carrying out transmission activities;

12) Distribution: The transportation and retail sale of natural gas through the regional gas pipeline network for the purpose of delivery to customers;

13)<sup>3</sup> City: Areas within the borders of a municipality or a metropolitan municipality and the entirety of urban areas;

14) Distribution company: A legal entity authorized to carry out the distribution and transportation of natural gas through the regional gas pipeline in a designated city;

15) Wholesale: Sale of natural gas to distribution companies and eligible consumers;

16) Wholesale company: A legal entity engaged in the wholesale of natural gas without carrying out transmission or distribution activities within or outside the system;

17) Eligible consumer: An individual or legal entity free to execute natural gas purchase-sale agreements with any domestic production company, import company, distribution company or wholesale company;

18) Captive consumers (subscriber): Individuals and legal entities required to purchase natural gas from distribution companies for their own use;

19) Storage: The storage of natural gas in the form of liquefied natural gas (LNG) or in gaseous state for the purpose of compensating for daily and seasonal fluctuations and remedying natural gas shortage arising from decreases in or suspension of natural gas procurement;

20) Storage company: A legal entity authorized to carry out natural gas storage activities;

21) Liquefied natural gas (LNG) facility: Facilities used for liquefying, draining, storing and regasifying natural gas for the purposes of transportation and storage thereof in liquid form;

22) Storage facility: A facility assigned to the storage of natural gas as LNG or gas and owned or operated by a legal entity, excluding those utilized in production;

23) System: The facility and equipment installed in order to carry out the production, transmission, storage and distribution of natural gas,

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<sup>1</sup> Amended pursuant to Article 6 of the Law No.7257, dated 25 November 2020.

<sup>2</sup> Amended pursuant to Article 6 of the Law No.7257, dated 25 November 2020.

<sup>3</sup> Amended pursuant to Article 8 of the Law No.6719, dated 4 June 2016.

24) System user: An individual or legal entity purchasing or procuring natural gas to the system or carrying out transit gas transportation through the system;

25) Interconnected system: A mutually connected, integrated system;

26) Direct line: A natural gas pipeline feeding an eligible consumer in such a way to create an interconnected system, the intercity transportation of natural gas through special vehicles, the sale thereof in places not accessible to the transmission network by lowering its pressure;

27) Regional natural gas pipeline: All distribution lines to be operated by the distribution company that shall carry out the intra-city natural gas distribution;

28) Distribution network: The natural gas distribution facilities and pipelines operated by a distribution company in a designated zone;

29) Vertically integrated legal entity: A legal entity carrying out two or more of production, transmission, distribution, export, import, storage or sale activities of natural gas;

30) Delivery agreement: The agreement executed for the delivery and transfer of natural gas between system users or their representatives and transmission companies, a storage company and transmission companies, or among transmission companies;

31) Transportation agreement: The agreement executed for the transportation of natural gas between system users and transmission companies;

32)<sup>4</sup> Import company: A legal entity carrying out the crossborder importation of LNG, compressed natural gas (CNG) or natural gas in gaseous form;

33) National transmission network: High pressure pipelines making up a part of the national transmission system;

34) National transmission system: The system comprising of the national transmission network which enables countrywide natural gas transmission and the facilities for distribution, storage, liquefaction, gasifying of liquefied gas and other similar transmission facilities;

35) Export company: A legal entity marketing the natural gas it has purchased from production companies, wholesale companies or import companies abroad;

36) Market activities: Activities comprising of the purchase, sale or service of and commercial transactions regarding natural gas including its transmission, distribution, wholesale, import, export and storage in LNG facilities as liquid or storage in underground or aboveground facilities as gas or condensed gas;

37) Tariff: Arrangements covering prices, terms and conditions in relation to the transmission, distribution and storage of natural gas in the form of LNG or gas and sale thereof and related services;

38) License: The permit granted to legal entities in accordance with this Law to operate within the market;

39) Certificate: The permit issued by the Board indicating the adequacy of individuals and legal entities to carry out the design, construction, revision, maintenance, repairs, inspection, consultancy and similar services of facilities to be included in the system belonging to legal entities who engage in natural gas activities;

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<sup>4</sup> Amended pursuant to Article 6 of the Law No.7257, dated 25 November 2020.

40) User association: Organized industrial zones and cooperatives meeting the natural gas needs of their members through distribution networks owned by them;

41) Compressed natural gas: Natural gas in pressurized form;

42) Horizontally integrated company: A legal entity carrying out both at least one of the production, transmission, distribution, export, import, storage or sale activities of natural gas and another activity not included in the natural gas sector at the same time;

43)<sup>5</sup> Organized natural gas wholesale market (OTSP): Markets where license holders utilizing the natural gas system carry out natural gas trading and balancing transactions, natural gas markets requiring future physical delivery, and markets governed by the Board where other natural gas market transactions to be determined by the Board shall be carried out;

44)<sup>6</sup> Supply of last resort: Supply of gas by the authorized license holders within the scope of the method determined by the Board to consumers who have not been supplied gas due to reasons such as bankruptcy of companies supplying natural gas to the consumers, cancellation of their licenses and/or their default as a result of failing to fulfill their obligations under the organized wholesale natural gas market during the agreement term or to consumers who have not been supplied gas despite qualifying as an eligible consumer.

## **CHAPTER TWO**

### **Natural Gas Market Activities, Construction and Service Activities, General Principles of Licenses and Certificates**

#### **Natural gas market activities**

**ARTICLE 4 - 1)** Legal entities who shall carry out natural gas market activities pursuant to this Law must obtain the required licenses;

2) The Authority shall respond to license applications made by legal entities who shall operate in the natural gas market within maximum 60 days from the application date. In the event that the license application is rejected, the applicant shall be informed of the rejection together with the grounds of rejection;

3) In the event that private law legal entities that shall carry out market activities are established as joint stock companies or limited liability companies in accordance with the provisions of the Turkish Commercial Code no. 6102 dated 13/1/2011, all of their shares shall be registered shares. The required share capital amount of these companies and matters required to be included in the articles of association of these companies shall be set forth under a regulation.

4) Natural gas market activities comprise of the following:

a) Import: The import of the natural gas shall be carried out in accordance with an import license.

Legal entity applicants for import licenses must meet the following conditions:

1) Having the technical and economic power to carry out imports;

2) Having definite information and guarantee on the source, reserves, production facilities and transmission systems of the natural gas to be imported;

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<sup>5</sup> Amended pursuant to Article 6 of the Law No.7257, dated 25 November 2020.

<sup>6</sup> Amended pursuant to Article 6 of the Law No.7257, dated 25 November 2020.

3)<sup>7</sup> Obtaining the required undertakings and guarantees to be determined by the Authority from the legal entities qualified to perform storage activities, who shall make available the domestic underground storage capacity within five years to store a certain ratio of imported natural gas to be annually determined by the Board;

4) Being eligible to contribute to the improvement and security of national transmission system and being able to provide economic support to the investments of legal entities for the improvement of the system for such purposes.

Import companies must obtain separate licenses for each import connection to be made. Import companies shall notify the Authority of the agreement term, time extensions, anticipated annual and seasonal import volumes and changes in those volumes stipulated under their import agreements and obligations related to the security of the system set out in the agreements and renewals thereof.

Import companies may either transfer the natural gas they have imported to the domestic wholesale or export companies by virtue of a sale agreement, or market it to eligible consumers or overseas provided that they obtain an export license. However, any transfer to export companies shall not affect the undertakings of the import company within the scope of its license.

The annual natural gas volume imported by any import company may not exceed twenty per cent of the national gas consumption estimation for the relevant year as determined by the Authority.

The import company is obliged to provide any information and documents related to all executed agreements.

<sup>8</sup>Depending on whether the underground natural gas storage capacity in Turkey is sufficient to enable all import companies to fulfil their obligations regarding the storage of annual natural gas import volumes, the Board shall be authorized to determine the ratio of the annual natural gas imported by import companies to their five-year domestic storage obligation, so as not to be exceeded twenty per cent of the current underground storage capacity in Turkey. The procedures and principles regarding storage obligations of import companies shall be determined by the Board.

b) Production: Natural gas exploration and production activities shall be carried out in accordance with the Petroleum Law No. 6326. Exploration and operation licenses shall be issued by the General Directorate of Petroleum Affairs. Production activity shall not be regarded as market activity.

Production companies may market natural gas produced to wholesale companies, export companies, distribution companies or eligible consumers, provided that they obtain a wholesale license. Production companies may sell natural gas directly to eligible consumers, provided that the sale volume does not exceed twenty per cent of the national consumption estimation for the relevant year to be determined by the Authority, and the remaining natural gas volume may be supplied to import companies, distribution companies or to the market through wholesale companies. Production companies with export licenses may export the gas they produce.

In order to obtain sale and export licenses, production companies shall be obliged to meet the license conditions specified in sub-paragraphs (e) and (f).

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<sup>7</sup> Amended pursuant to Article 9 of the Law No.6719, dated 4 June 2016.

<sup>8</sup> Inserted pursuant to Article 9 of the Law No.6719, dated 4 June 2016.

<sup>9</sup> The produced natural gas shall be transported in accordance with the transportation and delivery agreements to be executed with transmission companies. In the event that the production center is remote to the interconnected system, the produced natural gas may be transmitted with a direct line and sold to the eligible consumers by the production companies without being subject to the requirement of forming an interconnected system. However, this shall be subject to the decision of the Board in consideration of economic and technical conditions. In the event that the Board resolves that the transmission of produced natural gas through the transmission network is not technically or economically suitable and the producer wholesale company fulfills its obligations, a connection shall be established to the distribution network by the production company and the produced natural gas shall be primarily purchased by the distribution company. Where necessary, the Board shall determine the natural gas price to be purchased within this scope. Additionally, production companies may sell the natural gas they have produced to other consumers without carrying out intra-city distribution activities, where the production capacity of their produced natural gas is lower than the amount referred to in sub-paragraph (1) of paragraph (a) of article 8. The transmission and storage rights of production companies in the existing facilities shall be reserved. The exercise of these rights shall be subject to subparagraphs (c) and (d).

<sup>10</sup> Natural gas producing domestic and foreign companies and branches of foreign firms in Turkey with petroleum rights shall be granted wholesale licenses without being subject to storage requirements, with the purpose of marketing and exporting their produced natural gas to wholesale companies, export companies, distribution companies or eligible consumers.

Production companies are obliged to comply with the regulations to be issued by the Authority on matters such as tariffs, delivery rules, gas quality, gas supply and seasonal changes.

c) Transmission: Legal entities carrying out transmission activities shall be obliged to comply with the following:

1) Where the system allows them to do so, transmission companies shall connect the users wishing to connect to the system to the most suitable network within twelve months in accordance with the criteria to be determined by the Authority;

2) The user may inform the Authority in the event that the transmission company refuses the system entry request. If it is determined by the Authority that the transmission company has violated the network operation regulation, the transmission company shall carry out the system entry connection of the user in line with the Board's decision;

3) The Authority shall pay utmost importance to ensuring that the transmission is uninterrupted by examining the system entrance requests of users and the system operation is unhindered in accordance with the requirements of this Law;

4) Transmission companies shall provide each other with all technical information determined by the Authority so that they are able to carry out coordinated works with other transmission companies carrying out transmission activities for ensuring secure and efficient operation;

5) Transmission companies shall be responsible for fulfilling the required arrangements and any other service for system sections owned by them in order to ensure the natural gas flow and operation of the system. Additionally, transmission companies shall take all measures with

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<sup>9</sup> Inserted pursuant to Article 7 of the Law No.7257, dated 25 November 2020.

<sup>10</sup> Inserted pursuant to Article 27 of the Law No.6491, dated 30 May 2013.

regard to secure, productive and cost-efficient gas transmission over the lines under their responsibility and fulfill other matters set out in this Law;

6) Transmission companies must obtain licenses from the Board in order to commence their activities. The fines set out in this Law shall be imposed on transmission companies violating the operation of the system;

7) Transmission companies shall execute a transportation agreement with the import company, the wholesale company, the production company and the export companies. Additionally, transmission companies shall execute delivery agreements with the production company, eligible consumers, the storage company and other transmission companies. Procedures and principles determined by the Authority shall be complied with respect to the existing and future agreements and no provision preventing or disrupting the operation of the system shall be included therein;

8) The Board shall examine and approve the national transmission network investment program prepared with regard to the transit natural gas transmissions by transmission companies;

9) The existing and planned national transmission network as well as the parts under construction shall belong to BOTAŞ. New transmission pipelines to be constructed by a transmission company in a way to form an interconnected system with the existing lines shall be operated by other transmission investor companies provided that the ownership thereof belongs to the relevant transmission company. Other rights and obligations of transmission companies shall be set forth under a regulation to be issued by the Authority.

d) Storage of natural gas: Legal entities carrying out storage activities shall comply with the following:

1) Legal entities must be granted a license from the Board to carry out natural gas storage activities underground or aboveground in the form of gas or LNG. Storage activities cannot be carried out without the aforementioned license. Legal entity license applicants must comply with the conditions set forth under a regulation to be issued.

Legal entity applicants for storage licenses must meet the following conditions:

aa) Having the required technical and economic capacity for storage;

bb) Undertaking to manage the entirety of the storage capacity under their disposal in a way to facilitate the system operate in a coordinated and secure manner;

cc) Undertaking to impartially and equally manage the entirety of the storage capacity under their disposal subject to system limitations.

2) According to Law no. 6326, in the event that operation license holder companies file an application to the Authority after obtaining the approval of the General Directorate of Petroleum Affairs to use the underground natural gas deposits from which they produce natural gas for storage purposes, the relevant part of the operation license shall be converted to a storage license, subject to the approval of the Board. However, the production company must evidence in its application that it meets the requirements for storage licenses. In the event that the company commences storage activities, it shall maintain separate storage activities from the production activity by separating the accounting thereof.

In the event that requests made to the storage company are refused and system users inform the Authority thereof, the Authority may require the company to provide the requested service if it determines that the storage company is in violation of the existing procedures and

principles and license conditions after carrying out examinations and inspections. Penal sanctions set out in this Law shall be applicable for these violations.

3)<sup>11</sup> For existing or future storage license applications, information including but not limited to city, district, village, neighborhood, block, parcel of the area subject to the application shall be announced on the website of the Authority. In the event that another application for a natural gas storage license to operate in the same announced place is made within the term specified in the announcement, license applications shall be evaluated based on the criteria to be determined by the Board, provided that the legal entity applicants fulfill required conditions to obtain a storage license. If more than one application remains as a result of this evaluation, a competition shall take place between these legal entities based on the license fee auction principle. However, an application where the ownership of at least half of the properties located in the area proposed for the storage activity belongs to the license applicant legal entity and/or its shareholders and/or a right to use and/or an easement or any other permits that enable the carrying out of storage activities have been granted over at least half of the properties located in the proposed area for the storage activity in favor of the license applicant legal entity and/or its shareholders, this shall be accepted and other applications shall be refused. The announcement of the application, the application criteria and the procedures and principles relating to the competition shall be set forth through a regulation.

e) Wholesale: Wholesale companies to carry out wholesale activities to eligible consumers must be granted a license from the Board. Export license holder companies shall not be obliged obtain a wholesale license. These companies may carry out wholesale activities with their export license.

Legal entities wishing to carry out wholesale activities must indicate their natural gas source and the transportation conditions under which they shall make sales, and that they have sufficient technical and economic power and the required storage capacities to help system operate securely and must also provide other undertakings and guarantees set forth in the regulations to be able to obtain the license.

The following principles shall be complied with in the regulation of the natural gas wholesale activities:

1) Legal entities making natural gas sales to distribution companies shall make the required supply planning and take storage measures in order to meet the seasonal minimum natural gas withdrawals of the customers, and with that purpose submit lease agreements to be executed with storage companies to the Authority within the period to be determined by the Authority. A five-year period from the issuance date of the license shall be granted for taking the required storage measures. This period may be extended for two years if the storage facilities in Turkey have not reached the sufficient level.

Moreover, the Board shall be authorized to annually designate the storage amounts aimed at balancing the following year's seasonal density for each city, according to the climate figures and take the required measures.

2) Following the effective date of this Law, legal entities wholesaling natural gas to eligible consumers shall provide their customers with the gas inlet within the seasonal, daily and hourly flexibility limits. It is compulsory for wholesalers to reach required supply and storage capacities and they also must take the required storage measures within five years from the issuance date of their license. For that purpose, they shall submit the lease agreement to be

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<sup>11</sup> Inserted pursuant to Article 206 of the Law No.6111, dated 13 February 2011.

executed with storage companies to the Authority. This period may be extended if the storage facilities in Turkey do not reach the sufficient level.

3) Legal entities wholesaling natural gas shall procure the transmission, storage and system balancing capacities able to meet the expected demand within the period specified by the Authority.

4) The wholesale company shall execute sale agreements with the import company or the export company or eligible consumers or the distribution company and freely determine the prices. Trade secrets cannot be disclosed to third parties other than the Authority or misused.

5) Wholesale companies must be granted import licenses in order to import natural gas

6) The total yearly sale amount of a single wholesale company cannot exceed twenty percent of the national consumption estimation for to the relevant year, as determined by the Authority.

7) Wholesale companies can make sales throughout the country without being subject to any regional limitations.

f) Export of natural gas: Legal entities wishing to export imported or domestically produced natural gas shall obtain an export license from the Board. Further to the requirements set out in the Regulation to be issued, companies wishing to obtain an export license must also meet the following conditions:

1) Evidencing that they are technically and economically competent;

2) Indicating the destination country of natural gas export and the means of transport for the exported natural gas;

3) Guaranteeing that they shall refrain from disrupting the operation of the system or the national demand due to the export, that they shall also indemnify the damages and losses arising out of any violation of the system's security and taking out compulsory insurance policies to cover the potential damages and losses arising in connection therewith.

However, transmission companies operating transit lines shall be exempted from the guarantee conditions referred to in subparagraph (3) of this section.

<sup>12</sup> Legal entities wishing to export LNG can carry out LNG transportation activities provided that such activities are recorded in their licenses and they refrain from carrying out domestic delivery activities.

g) Intra-city distribution of natural gas: Intra-city natural gas distribution service shall be granted to the company, which wins the tender to be run by the Authority for a term to be determined by the Authority by taking into account matters such as level of development, consumption capacity and number of consumers, as well as ownership of the regional natural gas distribution network.

The tender made by the Authority for any specified city shall be published in the Official Gazette. Bids submitted by the companies participating in the tender shall be evaluated in accordance with the procedures and principles referred to in the regulations to be issued, and the winning company shall be awarded a distribution license and conferred the title of the authorized distribution company for distribution activities in the relevant city.

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<sup>12</sup> Inserted pursuant to Article 7 of the Law No.7257, dated 25 November 2020.

<sup>13</sup> In the event that there are no bidders in a distribution license tender held in cities where the natural gas transmission lines have been constructed by BOTAŞ despite an announcement having been made thrice, the Authority shall grant a distribution license upon application to the joint stock company to be established by the relevant special provincial administration or municipality, which shall be conferred the title of the authorized distribution company for distribution activities in the relevant city.

Distribution license holding legal entities shall comply with the provisions in this Law relating to distribution licenses and the procedures and principles to be determined by the Authority. Distribution license holder legal entities may transfer the distribution network under their ownership to another legal entity before their license term expires.

In the event that a distribution company with an expired license requests from the Authority renewal of the the relevant intra-city distribution license one year before the end of the license term, the Board may grant a second distribution license with regard to the economic and technical capacity of the company, service quality, subscriber satisfaction as well as other matters to be set forth under a regulation to be issued by the Authority. If the license term of the license holder is not extended due to the foregoing considerations, the Authority shall announce another tender for the relevant city and grant the distribution license to the legal entity that has submitted the most appropriate bid for the operation and ownership of the existing network. The network fee shall be collected and paid to the previous license holder by the Authority.

The Authority shall lead, inspect and monitor the distribution activities of the distribution company with ownership and, where necessary, purchase these services from certificate holder individuals and legal entities subject to this Law at the expense of the distribution company. Procedures and principles of tenders relating to intra-city distribution of natural gas, evaluation criteria and other matters that should be included in the license shall be regulated by a regulation.

Intra-city distribution companies which have obtained a distribution license from the Board are obliged to invite the municipality or the special provincial administration located in their city of authorization, to be the ten percent shareholder of the distribution the company without requiring any capital contribution. This shareholding can be increased by up to ten per cent, provided that the increased share capital is paid in. However, this increase shall only be possible when the company is not indebted to the Treasury and has not requested an additional loan or if the company does not use a Treasury guaranteed loan for this purpose following the discharge of the loan.

In the event that the municipality or a company owned by the municipality does not purchase shares or purchases shares that do not grant power to appoint at least one board member, the Authority may request the intra-city distribution company to make arrangements to grant the municipality the right to be represented in the board of directors or audit committees in accordance with the Article 275 of the Turkish Commercial Code No. 6762.

<sup>14</sup> Distribution companies may carry out natural gas distribution activities through LNG or CNG feeding method in zones where there pipelines do not reach. Distribution companies may either directly make the LNG or CNG facility investments or carry out these activities through service procurement. However, distribution companies cannot carry out LNG or CNG sales directly. In case of emergency or force majeure, existing transmission and distribution

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<sup>13</sup> Inserted pursuant to Article 114 of the Law No.6552, dated 10 September 2014.

<sup>14</sup> Inserted pursuant to Article 7 of the Law No.7257, dated 25 November 2020.

networks can be fed with LNG or CNG. License holders carrying out LNG and CNG activities shall meet demands of transmission and distribution companies in case of emergency and force majeure. The procedures and principles for the foregoing shall be determined by the Board.

Obligations of distribution companies are follows:

1) Natural gas distribution companies shall establish delivery control centers for distribution networks. However, this shall not be a condition in the cities that are determined by the Authority as having insufficient consumption capacity.

2) Distribution companies shall be obliged to connect the consumers within their zone of responsibility to the system, upon their request. However, the obligation to connect depends on whether the system under the disposal of the company has the capacity enabling connection and whether the consumer fulfills the actions under its obligation and set out in the distribution regulation, and whether the connection is technically and economically possible in accordance within the procedures and principles it shall determine. In the event that there is a dispute on that matter, the Board shall determine whether connection is technically and economically feasible.

3) Users whose application have been refused shall inform the Authority thereof. If it is determined that principles referred to in this article are violated after the distribution company submits its statement of defence to the Board, the company shall comply with the decision of the Board on the matter.

4) Distribution companies may have have existing interior installations or those constructed by their consumers for natural gas use, including residential, commercial and industrial consumers, inspected through their own technical personnel or inspection companies. If it is determined that the interior installation does not comply with the interior installation regulation to be published, the company may refuse to supply gas or suspend the supply of gas. If the consumer makes the installation compliant and reapplies, the same process shall be repeated. Distribution companies shall not be responsible for the damages and losses that may arise due to unauthorized modifications on the interior installation, improper use and misuse, use of incorrect or damaged equipment, installations that do not comply with the project and lack of its upkeep.

5)<sup>15</sup> Distribution companies are permitted to hold distribution licenses in only two cities throughout the country. However, this number can be increased through a Board decision, with regard to matters such as the level of development of the cities, their consumption capacity and their user numbers. The designated scope of the distribution zones of companies can be redefined or expanded without a tender by the Board, taking into account technical and economic necessities, so as not to exceed the borders of the city. In the event that distribution companies operating within the provincial border of a city that is outside the scope of the distribution zone do not request to expand the distribution zone for the relevant city, a distribution license tender may be organized for the relevant city, if deemed appropriate by the Board. In the event that multiple distribution companies operating within the borders of the same city request an expansion, the Board shall give priority to the distribution company with the higher total number of subscribers in the entire distribution zone. The Board may divide a city into multiple distribution zones with defined borders in accordance with the population density and may organize tenders for each zone separately. Natural gas distribution companies shall be authorized to carry out natural gas distribution activities within the distribution zone

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<sup>15</sup> Amended pursuant to Article 9 of the Law No.6719, dated 4 June 2016.

specified in their licenses and obliged to carry out distribution activities in all zoned areas of the cities within the distribution zone.

6)<sup>16</sup> Distribution zones can be merged under a single license, or existing distribution zones can be divided into multiple license areas, if requested by the distribution license holder legal entities and deemed economically and technically appropriate by the Board. While evaluating the merging requests of distribution companies, the integrity of the network and regional proximity in terms of operational productivity shall be taken into account. The procedures and principles regarding implementation shall be set forth in a regulation to be issued by the Board.

7)<sup>17</sup> Upon request and consent of organized industrial zones, natural gas distribution companies can carry out distribution activities in organized industrial zones by making network and connection line investments for these organized industrial zones. The procedures and principles regarding the conditions under which these activities can be carried out shall be determined by the Board in accordance with the opinions of the Ministry and the Ministry of Industry and Technology. Investments and operating expenses to be made by distribution companies in accordance with the determined procedures and principles shall be taken into account in their tariffs.

8)<sup>18</sup> In the event that the region where a building with a building registration certificate granted within the scope of the Zoning Law No. 3194 and dated 3/5/1985 is located does not have an implementation zoning plan or roads have not been made available for use in accordance with the zoning legislation despite having an implementation zoning plan, network investments can be made in this region by natural gas distribution companies provided that the relevant municipality undertakes through a municipal council decision to bear all costs related to the displaced part of the investment when the network to be built in this region needs to be displaced within 10 years from the construction date.

9)<sup>19</sup> In the event that a natural gas distribution company requests investments to be made by the local municipality in new expansion zones to be added to the distribution zones, no fees shall be collected from the relevant distribution company under the name of guarantee, supervision service fee, covering fee, ground breaking fee, debris disposal fee and under similar names and the top coverings of the infrastructure excavation area shall be made by the relevant municipality free of charge.

h) Distribution and transmission of compressed natural gas: Legal entities shall obtain licenses in order to carry out activities of natural gas purchase from the wellhead, the national transmission network or the intra-city distribution system and compression and filling thereof into pressurized containers, inter-city transportation of compressed natural gas through special vehicles and its sale by lowering its pressure in the places where transmission networks are unable to access. The legal entities carrying out this activity must comply with the license conditions set out in the relevant regulations and must also guarantee the security and conformity of the facilities and equipment within the scope of their operations with the Turkish Standards and/or the standards accepted by the European Union.

### **Construction and service activities**

**ARTICLE 5** – Import companies, export companies, transmission companies, storage companies, distribution companies and eligible consumers to operate in the natural gas market

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<sup>16</sup> Inserted pursuant to Article 9 of the Law No.6719, dated 4 June 2016.

<sup>17</sup> Inserted pursuant to Article 61 of the Law No.7033, dated 18 June 2017.

<sup>18</sup> Inserted pursuant to Article 7 of the Law No.7257, dated 25 November 2020.

<sup>19</sup> Inserted pursuant to Article 7 of the Law No.7257, dated 25 November 2020.

may execute construction and services agreements with individuals and legal entities which have obtained a certificate from the Authority. Natural gas related construction and service activities cannot be carried out by persons without certificates.

Certificates relating to interior installation and service lines shall be granted by official and private companies and local distribution companies authorized by the Authority, in the name of the Authority. The Authority shall respond to certificate applications made to the Authority by individuals and legal entities within sixty days.

Those aiming to carry out services such as the following must be granted a certificate from the Authority in order to do so:

- a) Feasibility, study, project, consultancy, examination and supervision;
- b) Construction;
- c) Service, maintenance, repairs.

Those wishing to carry out construction and service activities shall apply to the Authority in accordance with the regulation to be prepared by the Authority. Those who satisfy the competency conditions set out in the said regulation shall be granted certificates.

Individuals or legal entities to carry out construction and service activities shall operate in accordance with the regulation prepared and the communiqués to be issued by the Authority.

Those who have been granted certificates from distribution companies in the field of interior installation and service lines to operate in the field of construction and service shall be inspected by distribution companies. However, they may also be inspected by the Authority upon the application of the consumers. The procedures and principles of application of the consumers to the Authority shall be set out in a regulation.

### **General principles of licenses and certificates**

**ARTICLE 6** - The procedures and principles governing the licenses and certificates issued by the Board within the scope of this Law and the minimum provisions to be included in licenses and certificates are as follows:

a) Procedures and principles governing the licenses and certificates:

1) Legal entities who shall engage in market activities must obtain separate licenses for each activity before commencing their activities. If these activities shall be carried out from multiple facilities, separate licenses must be obtained for each facility.

2) The same legal entity with multiple licenses or legal entities carrying out the same activity in multiple facilities must keep separate accounting records for each activity or facility subject to license.

3) License or certificate application procedures and principles, the rights and obligations of the license and certificate holder legal entities, assignment of the license holder's rights, amendment, terms and extension of licenses, surrendering of a license or certificate by its holder, and license and certificate fees to be determined depending on the type of activity and volume of natural gas transmitted, distributed and stored shall be set forth in a regulation.

4) Licenses and certificates shall be issued for a minimum of ten and a maximum of thirty years at a time.

5) Legal entities must pay fees to obtain, renew, amend, and copy licenses and certificates as well as the certificate and annual license fees determined by the Board, to the Authority.

6) License holder legal entities shall keep their facilities, legal books and records ready for inspection by the Authority, submit those for inspection when so requested by the Authority, and timely provide any kind of information and documentation that the Authority may request in the course of carrying out its activities.

b) The licenses must include the following provisions at minimum:

1) Groups and categories relating to individuals and legal entities to whom services shall be provided within the scope of the license and provisions determining the types of activities to be carried out.

2) Provisions stating that the holder of a distribution or transmission license shall provide individuals and legal entities possibility to access to and use of the system without any discrimination between users of the system with the same capacity.

3) Provisions regarding the methods designating pricing principles set out in this Law and pricing principles applicable to natural gas sales to subscribers taking into account the market requirements, and implementing the formulae for inflation adjustments in these prices, and the provisions regarding the audit thereof.

4) Provisions ensuring that the license holder provides the Authority with complete and accurate information and with respect to sales to subscribers, provisions mandating that the distribution license holder purchase natural gas from the most affordable source and where necessary, provide evidence that it has purchased natural gas from the most affordable source.

5) Rules on charging service costs and provisions including the principles regarding the implementation of the measures to minimize operational losses in accordance with the regulation.

6) Provisions regarding the cancellation and termination of the license.

7) Provisions regarding the amendment of the license.

8) Provisions regarding fees that the license holder shall be obliged to pay to the Authority and payment conditions.

9) Provisions regarding the conditions for permitting others to use the facility and/or facilities owned or used by the license holder in line with the purposes of the license where necessary.

10) Provisions regarding the obligation of the license holder to comply with all instructions given by the Board.

11) Provisions regarding the activities that are not subject to the Board's permission within the scope of the license.

12) Provisions specifying which disputes concerning the activities under the license shall be resolved by the Board.

13) Provisions regarding the expiration period of the rights and obligations set out in the license, and conditions and circumstances under which they shall be rendered invalid.

14) Provisions aimed to ensure that the services are performed in accordance with the technical requirements.

c) Certificates must at least include the following at minimum:

1) Groups and categories relating to individuals and legal entities to whom services shall be provided within the scope of the certificate and provisions determining the types of activities to be carried out,

2) Provisions regarding the cancellation and termination of the certificate.

3) Provisions regarding the amendment of the certificate.

4) Provisions regarding fees that the certificate holder shall be obliged to pay to the Authority and payment conditions.

5) Provisions regarding the obligation of the certificate holder to comply with all instructions given by the Board and regulations.

6) Provisions regarding the activities that are not subject to the Board's permission within the scope of the certificate.

7) Provisions specifying which disputes on the activities under the certificate shall be resolved by the Board.

8) Provisions regarding the expiration period of the rights and obligations set out in the certificate, and conditions and circumstances under which they shall be rendered invalid.

9) Provisions aimed to ensure that the activities are carried out in accordance with the technical requirements.

d) Expiration of license or certificates: License and certificates shall expire at the end of their terms if they are not extended by the Board in accordance with the method specified in the license or certificate, or automatically in case of the bankruptcy of the individual or legal entity license or certificate holder, and only upon approval of the Board in case the license or certificate holder individual or legal entity wishes to terminate the license or certificate.

## **CHAPTER THREE**

### **Protection and Promotion of Competition, Disclosure of Information, Accounting Separation, Designation of Eligible Consumers and Exceptions for System Entry**

#### **Protection and promotion of competition, disclosure of information and accounting separation**

**ARTICLE 7 – a)** The principles regarding the protection and promotion of competition are as follows:

1) The matters related to freedom of competition, abuse of dominance and mergers and acquisitions regulated in the Law No. 4054 on Protection of Competition dated 7.12.1994 shall also apply to legal entities operating in the natural gas market.

2) Except for the production companies in Turkey, no legal entity is permitted to sell more than twenty percent of the national natural gas consumption estimation for the relevant year as determined by the Authority. This rate shall be calculated by subtracting the volume of gas consumed by the company directly or through companies of which it is majority shareholder, from the net national consumption volume remaining after deducting losses. In case this ratio is exceeded, the necessary measures shall be taken by the Authority.

3)<sup>20</sup> Any legal entity engaged in natural gas market activities may become a shareholder of only one of the legal entities operating outside of its field of activity, however, it cannot

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<sup>20</sup> Amended pursuant to Article 17 of the Law No.5784, dated 9 July 2008.

establish a separate company. It shall not have the right to directly or indirectly exercise control over more than half of the capital or commercial assets or more than half of the voting rights of the legal entity of which it has become a shareholder, or the right to appoint more than half of the members of the audit committee, board of directors or corporate bodies authorized to represent the legal entity, or to manage their affairs. It cannot become a shareholder of any legal entity operating in its field of activity or establish a company. The provision of this article shall not apply to the existing subsidiaries of BOTAŞ, companies it shall establish for international projects and its future subsidiaries.

4)<sup>21</sup> The Board may authorize one or multiple license holders as suppliers of last resort in order to supply gas to consumers who cannot be supplied gas during the agreement term due to reasons such as the bankruptcy of the natural gas supplying companies, cancellation of their licenses and/or their default due to their failure to fulfil their obligations within the framework of the organized wholesale natural gas sale market or consumers who qualify as eligible consumers but can not be supplied gas. The procedures and principles regarding the designation of suppliers of last resort and the last resort supply fee shall be determined by the Board.

5)<sup>22</sup> In order to create a competitive environment in the market, the Board may encourage and/or mandate that a certain license holder or license holders trade natural gas in the amount or ratio determined by the Board through the organized natural gas wholesale market. Matters regarding the foregoing shall be set forth through a regulation.

<sup>23</sup> However, it is possible for distribution license holder legal entities that meet certain conditions to become shareholders of only one of the legal entities operating in their field of activity, if approved by the Board with regard to their technical and economic grounds. The conditions regarding shareholding and the procedures and principles regarding the implementation thereof shall be set forth through a regulation prepared by the Board.

b) Legal entities operating in the natural gas market are obliged to disclose information about matters related to their activities. The scope of the information to be provided and the authorities to be informed are set out below.

1) Transmission companies carrying out natural gas transmission and delivery control, storage companies operating LNG facilities and underground storage facilities, distribution companies engaged in intra-city natural gas distribution activities, production and import companies supplying natural gas shall be obliged to provide sufficient information to other companies operating in the same field in order to ensure the safe and efficient operation of the gas system.

2) The scope of the information specified in this article shall be determined in the regulations to be primarily issued by the Authority after the effective date of this Law.

3) Parties operating in the natural gas market are obliged to keep commercially sensitive information and documents confidential. However, they cannot be held liable for the information they give to the Competition Authority and the Authority for the purposes of their investigations.

4) Legal entities operating in the natural gas market cannot use confidential information they have directly acquired during natural gas trading or confidential information they have acquired through auditor, audited or affiliated legal entities for their own interests or for the interest of their affiliated companies.

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<sup>21</sup> Amended pursuant to Article 8 of the Law No.7257, dated 25 November 2020.

<sup>22</sup> Amended pursuant to Article 8 of the Law No.7257, dated 25 November 2020.

<sup>23</sup> Inserted pursuant to Article 10 of the Law No.6719, dated 4 June 2016.

c) Legal entities operating in multiple fields of the natural gas market shall separate their accounting.

d) As a principle, distribution companies must purchase a maximum of fifty percent of the gas they shall distribute within a year from a single legal entity, and the Board shall be authorized to increase or decrease this amount to ensure a competitive environment.

**Designation of eligible consumers and exceptions for system entry**

**ARTICLE 8** – Eligible consumers shall be determined in accordance with the classification below:

1) Consumers and user unions whose annual natural gas purchase volume exceeds one million cubic meters;

2) Companies purchasing gas for electricity generation;

3) Cogeneration facilities generating electricity and heat energy;

4) Production related consumption of facilities that produce natural gas in Turkey.

The Board, however, shall redefine the limit for qualifying as an eligible consumer every year until all consumers become eligible consumers.

The Board shall closely monitor the implementation of the classifications specified in this article. Distribution companies shall not be obliged to supply natural gas to subscribers outside their areas of responsibility. Wholesale companies shall be free to sell or refrain from selling natural gas to these consumers.

b) Exclusively at the licensing stage, the Board shall be authorized to designate the annual consumption volume limit required to qualify as an eligible consumer in order to encourage the development of cities, and gas consumption and infrastructure investments in cities. Legal entities engaged in natural gas market activities shall be obliged to permit system entry to those who wish to connect to the system in accordance with the system entry conditions specified in this Law.

Legal entities engaged in natural gas market activities may decline the requests of other legal entities and eligible consumers to enter the system only if they do not have sufficient capacity or they cannot fulfill their obligations if they enter the system; or they may incur serious financial and economic compensation liability due to their existing contracts.

In case the system entry request is rejected due to serious economic difficulties arising due to lack of capacity or service obligations or existing contracts, the rejection shall be immediately reported to the Authority with its grounds.

The Board shall investigate whether there is a lack of capacity or connection or any other obstacle according to the criteria specified in this Law and the regulations to be issued, and notify the parties of its decision within three months.

System entry cannot be refused if the necessary expenses to eliminate the lack of capacity or connection are incurred by the user requesting access to the system,.

If entry to the system is refused due to serious economic and financial difficulties arising from the existing contractual provisions of legal entities operating in the market, the transmission company may request the Board to temporarily lift the system entry obligation upon the application of the other legal entity in difficulty due to the contract it has signed, and shall submit the measures planned to solve the problem to the Board. The Board shall decide on the action to be taken on the request within two months.

However, if the request for the temporarily lifting of the system entry obligation is rejected by the Board, the transmission company shall be obliged to connect the requesting individuals and legal entities to the system.

## **PART TWO**

### **Miscellaneous Provisions**

#### **CHAPTER ONE**

#### **Sanctions and Enforcement Procedure for Sanctions, Right to Pre-Investigation, Investigation and Litigation and Tariffs**

##### **Sanctions and enforcement procedure for sanctions<sup>24</sup>**

**ARTICLE 9<sup>25</sup>** –*The Board shall impose the following sanctions and penalties to individuals or legal entities operating in the natural gas market who remain in violation of the law despite a written warning:*

a) With respect to requests for information or on-site inspections by the Board, where it is determined that the provided information is false, incomplete or misleading, or if no information is provided or the opportunity for an on-site inspection is not afforded, an administrative fine of three hundred and fifty thousand Turkish Liras shall be imposed and a warning to correctly provide the information or the inspection opportunity within seven days shall be made. However, for easily remediable faults, the relevant individuals and legal entities shall be required to submit the correct documents or provide the opportunity for inspection.

b) In the event that it is determined that the provisions of this Law and the regulations, instructions and communiqués in force have been violated, an administrative fine of three hundred thousand Turkish Liras shall be imposed and a warning shall be made to remedy the violation within thirty days.

c) In the event that it is determined that any of the general principles and obligations of the license or certificate have not been fulfilled, an administrative fine of three hundred and fifty thousand Turkish Liras shall be imposed and a warning shall be made for the rectification thereof within thirty days.

d) In the event that false documents are submitted or misleading information is provided about the required conditions for the license or certificate application and the issuance thereof, or if any changes in the conditions affecting the matters set forth in the license or certificate are not notified to the Board, an administrative fine of five hundred thousand Turkish Liras shall be imposed and a warning shall be made for rectification within thirty days.

e) In the event that misleading information is provided about affiliate relationships in the license application or any acts violating the prohibition of affiliate relationships take place during the activity period, an administrative fine of five hundred thousand Turkish Liras shall be imposed and a warning shall be made for the rectification of the affiliate relationship within thirty days.

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<sup>24</sup> (1) Please refer to the table at the end of the Law regarding the implementation of the fine amounts in this article as of 1/1/2021.

<sup>25</sup> Amended pursuant to Article 491 of the Law No.5728, dated 23 January 2008.

f) In the event that it is determined that market operations outside the scope of the license have taken place, an administrative fine of six hundred thousand Turkish Liras shall be imposed and a warning for the cessation of the out-of-scope or adverse activity within fifteen days shall be made.

g) In the event that it is determined that the conditions for granting the license or certificate have ceased to exist during the performance of the activities, the license or certificate shall be revoked. However, if it is determined that these conditions had not existed from the beginning, an administrative fine of six hundred thousand Turkish Liras shall be imposed in addition to the cancellation of the license or certificate.

In cases where the acts entailing the above administrative fines are not corrected or repeated despite warnings, each new administrative fine shall be imposed with a twofold increase from the previous fine amount. Previous fines shall not be considered where the same act entailing the administrative fine has not been committed within two years from the date of the previous fine. However, if the same act is committed within two years, the administrative fine amount to be applied with an increase cannot exceed twenty percent of the net sales revenue in the balance sheet of the legal entity subject to the fine for the previous fiscal year. The Board may cancel the license or certificate should the penalties reach this level.

In the event of cancellation of a license or certificate, the Board shall take the necessary measures to ensure that the service provided is not interrupted until the issuance of a new license or certificate.

In the event that it becomes compulsory to cancel the natural gas distribution license, the Board shall cancel the license after taking the necessary precautions to prevent the disruption of the services. A tender shall be held on behalf and account of the license holder within one hundred and twenty days for the sale of the distribution network owned by the license holder and the designation of the new license holder. The procedures and principles regarding the implementation of this provision shall be set forth through regulations.

Any administrative fines set out in this article shall in no way be included as a cost element in the tariffs to be prepared by the legal person paying the relevant fine.

### **Right to pre-investigation, investigation and litigation**

**ARTICLE 10** – The Board shall decide to open a direct investigation or to conduct a preliminary investigation to determine whether an investigation is required either *ex officio* or upon any notices or complaints it has received.

The procedures and principles to be followed in preliminary inspection and investigation shall be set forth by a regulation to be put into effect.

<sup>26</sup> A lawsuit can be filed against administrative sanction decisions in the competent administrative court. All kinds of lawsuits filed against the decisions of the Board shall be considered as priority.

### **Tariffs**

**ARTICLE 11** – The procedures and principles regarding the tariffs prepared to be approved by the Board, the determination and implementation of the tariffs within the scope of this Law shall be as follows:

1) Connection Tariffs: The connection tariff principles to be determined by the Authority shall include the provisions and conditions based on the principle of non-discrimination

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<sup>26</sup> Amended pursuant to Article 66 of the Law No.6352, dated 2 July 2012.

between eligible consumers who are equal for connection to the transmission system or a distribution system, which shall be included in the relevant connection agreements. Prices shall be determined freely by the parties within the framework of these principles. Fixed connection tariffs determined between the Authority and the distribution company shall be applicable to subscribers.

2) Transmission and Storage Tariff: The Authority shall determine the tariffs for transmission and shipment control. It shall take into account the transmission distance, the volume of gas delivered and other anticipated factors.

Legal entities providing transmission and shipment control services shall notify their tariffs to the Authority within the period to be determined by the Authority. The Authority shall determine the new tariffs based on the notified tariffs and the principles contained in this article.

The transmission tariff to be prepared by the Authority shall include the prices, provisions and tariff conditions to be applied without discrimination among all equal users who benefit from the transmission network for the transmission of produced, imported or exported natural gas.

The Authority shall be authorized to designate transit transmission tariffs according to different procedures and principles from domestic transmission tariffs in order to promote transit natural gas transmission.

Storage tariffs shall be determined freely between storage companies and legal entities receiving storage services.

Transmission and storage companies must demonstrate to the Authority that they provide economical, efficient and safely operated services.

3) Wholesale Tariff: The Authority shall determine the factors and conditions on which natural gas sales tariffs shall be based. Sales prices shall be determined freely by the parties trading natural gas in accordance with these principles.

4) Retail Sale Tariff: Distribution companies must prove that they obtain gas from the most affordable source and that they operate efficiently and safely, and they must comply with this obligation within the license period. Retail sale prices, which shall be composed of the unit gas purchase price, unit service fee, amortization charges and other factors of the distribution company, and the tariff principles shall be designated by the Authority. Consumers cannot be charged under any name other than the specified retail price. Retail tariffs can be redesignated in case distribution companies apply to the Authority, taking into account inflation and other factors. In the designation of these prices, the Authority shall take into account the service cost, a reasonable profitability permitting investment and the current natural gas purchase prices in the market and similar factors. The terms and conditions of the tariffs approved by the Board shall be binding on all individuals and legal entities subject to these tariffs.

The procedures and principles which includes the suspension of the service in question in the event a individual or legal entity fails to make any of the payments stipulated in this Law, shall be set out in a regulation.

<sup>27</sup> The Authority shall prepare a tariff regulation for all tariff types, in line with the principles specified in this article. Tariff proposals shall be prepared by the relevant legal entities and submitted to the Authority within the framework of this regulation. The Authority shall designate the tariffs based on the financial data and tariff recommendations of the relevant

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<sup>27</sup> Amended pursuant to Article 18 of the Law No.5784, dated 9 July 2008.

legal entities and market data. Relevant legal entities shall apply the tariffs approved by the Board. Tariff principles and limits can be readjusted by the Authority, taking inflation and other factors into consideration.

Provisions regarding the Fuel Price Stability Fund (*Akaryakat Fiyat İstikrar Fonu*) legislation shall not be applicable on the import and sale of imported and domestic natural gas.

## CHAPTER TWO

### Miscellaneous Provisions, Amended, Repealed and Inapplicable Provisions

#### Miscellaneous provisions

**ARTICLE 12** – a) Expropriation: In the event that it is required by the activities stipulated in this Law, expropriation shall be made in accordance with the principles specified in the Expropriation Law No. 2942 dated 4.11.1983. The decision of necessity to be taken by the Board on this issue shall be deemed as a decision of public interest and the subsequent process shall be carried out in accordance with the provisions of the Expropriation Law.

The ownership of the expropriated property shall belong to the Treasury and the right to its use shall belong to the legal entity paying the expropriation price. Rights to use shall be a part of the relevant license or certificate and shall remain valid as long as its validity period.

In the event of the expiration or cancellation of the license or certificate, the expropriation fee paid by the legal entities shall not be refunded.

b) Property rights other than ownership and leasing: Legal entities may request the establishment of property rights other than ownership over public lands and the lease thereof in relation to their activities, provided that the cost is borne by the relevant legal entity.

When this request is deemed appropriate by the Board, the Authority shall either choose to establish an usufruct right, an easement, or a construction right, or a long-term lease, as required by the relevant laws.

The transferee legal entity shall be obliged to pay the price of the right obtained in this way. Rights to use shall be a part of the relevant license or certificate and shall remain valid as long as its validity period.

c) Notifications: The notifications made by the Authority in accordance with this Law shall be made in accordance with the provisions of the Notification Law No. 7201 dated 11.2.1959.

d)<sup>28</sup> The funds, documents and all assets of the Authority shall be considered as State property. The President and the members of the Board and the personnel of the Authority who commit crimes related to their duties shall be punished as public officials. Crimes committed against Board members and personnel shall be deemed to have been committed against public officials. Investigations and prosecutions against the Chairman and members of the Board and the staff of the Authority who have committed crimes in relation to their duties shall be carried out in accordance with the Law No. 4483 on the Trial of Civil Servants and Other Public Officials.

e) Upon the application of BOTAŞ or legal entities licensed to engage in natural gas market activities, the relevant administration shall not require that the storage, transmission and distribution lines of natural gas to be pre-allocated in the zoning plan according to the Zoning

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<sup>28</sup> Amended pursuant to Article 19 of the Law No.5784, dated 9 July 2008.

Law dated 3.5.1985 and numbered 3194, and shall issue the necessary licenses by entering the natural gas transmission, distribution lines and storage facilities in the zoning plan in accordance with the project.

f) The provisions of the Law on Municipalities No. 1580 and the Law on the Amendment and Adoption of the Decree Law No. 3030 on the Management of Metropolitan Municipalities dated 27.6.1984 and the provisions of other laws and decree laws that are contrary to this Law shall not apply regarding the import, sale, sale price determination and distribution of natural gas.

g) The provisions of the Law No. 6183 on the Procedure for the Collection of Public Receivables shall apply to natural gas-related receivables of BOTAŞ.

h) Among the personnel employed in the existing organizations engaged in natural gas distribution who are members of the Turkish Retirement Fund (*T.C. Emekli Sandığı*), the memberships of those who wish to remain so shall be maintained.

#### **Amended, repealed and inapplicable provisions**

**ARTICLE 13** – (a) The expression “and lands required by the natural gas transmission, distribution and storage facilities and networks” has been inserted to follow the expression “tourist facilities” in the first paragraph of Article 64 of the State Procurement Law No. 2886, dated 8.9.1983.

b) Provisions of the Petroleum Law No. 6326 that are contrary to this Law shall not be applicable.

c) The Decree Law on the Use of Natural Gas dated 2.1.1990 and numbered 397 has been repealed.

### **CHAPTER THREE**

#### **Amendments to the Electricity Market Law**

**ARTICLE 14 – 20** – (Provisions herein are related to the amendments to the repealed Electricity Market Law No. 4628 dated 20.2.2001).

### **PART FOUR**

#### **Provisional Articles**

#### **Company establishment and transfer**

#### **ADDITIONAL ARTICLE 1<sup>29</sup>**

Pursuant to a Presidential Decision, separate companies may be established by the Ministry of Energy and Natural Resources and related state economic enterprises and their subsidiaries in areas where the Turkish branches of companies established abroad before the effective date of this article are located, in order to be subject to the provisions of this article and private law and to carry out the transactions specified in the second paragraph, provided that their field of activity, trade names, share capitals and shareholding remains unchanged. These companies shall commence their activities with the registration and announcement of their articles of association to be prepared in accordance with this article and the provisions of the Turkish

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<sup>29</sup> Inserted pursuant to Article 9 of the Law No.7257, dated 25 November 2020.

Commercial Code dated 13/1/2011 and number 6102 not in conflict with this article, and with regard to the opinion of the Ministry of Treasury and Finance.

Established companies may take over all kinds of rights, receivables, liabilities, movables and immovables, ships and vehicles, permits and licenses, intellectual and industrial rights, shares and partnerships in international organizations and companies, agreements and loan agreements, tools, equipment and materials, software and hardware, written and electronic records and other documents, the lawsuits and execution proceedings to which they are a party, their debts and personnel before the effective date of this article from the companies abroad with the protocols to be executed with these companies within six months at the latest after they commence their activities. Branches located in Turkey of the companies established overseas shall be dissolved without liquidation upon request with the completion of this transfer process. All transfer, assignment and succession transactions related to these transfers and the earnings arising from these transactions and all kinds of agreements, protocols and certificates to be issued in relation to these transactions shall be exempt from all kinds of taxes, duties, fees and similar financial obligations including stamp tax. The Minister of Energy and Natural Resources is authorized to eliminate the uncertainties that may arise regarding these transfer procedures and protocols. References to companies abroad in the relevant legislation shall be deemed to be made to companies established in Turkey, as applicable, following the completion of the transfer process.

Established companies shall be authorized to carry out the necessary activities domestically and abroad without being subject to the Law on the Participation of Public Institutions in Foreign Tenders No.2522 dated 11/9/1981, provided that such activities are within their scope of their business.

The Allowance Law No. 6245 dated 10/2/1954, the Vehicle Law No. 237 dated 5/1/1961, the State Procurement Law No. 2886 dated 8/9/1983, the Public Procurement Law No. 4734 dated 4/1/2002 excluding the provisions regarding the prohibition of penalties and tenders, the Public Procurement Contracts Law No.4735 dated 5/1/2002, the provisions of the Turkish Commercial Code No.6102 dated 13/1/2011 regarding the establishment and registration, contribution of share capital in kind and cash and automatic termination regarding capital and legal reserves, the Decree Law No. 233 dated 8/6/1984, the Decree Law No. 399 dated 22/1/1990, the Decree Law No. 527 dated 18/5/1994, the Decree Law No. 631 dated 4/7/2001 and the provisions of the relevant legislation regarding the recruitment of personnel to public institutions and organizations shall not be applicable with respect to these companies. However, the provisions of Article 9 of the Law on Supervision of the State Economic Enterprises and Funds by Grand National Assembly of Turkey dated 04.02.1987 and numbered 3346 relating to the supervision of the Grand National Assembly of Turkey shall be applicable. The employed personnel shall be subject to the Labor Law dated 22/5/2003 and numbered 4857 in the newly established companies.

The President shall be authorized to change the partnership structure of the established companies, to establish a company in Turkey or abroad, or to decide to make these companies majority shareholders in other companies.

**PROVISIONAL ARTICLE 1**– The preparation period shall refer to the period of twelve months from the date of publication of this Law. The Council of Ministers may extend this period up to six months for a single time.

The following shall apply within the preparation period:

Natural gas market activity carried out pursuant to a legal right, document, permit or authorization obtained before the effective date of this Law may continue for a maximum of twenty-four months from the effective date of the Law. The continuation of the aforementioned activities after this period shall depend on the permission to be obtained according to this Law.

In order to permit the continuation of the existing natural gas market activities in accordance with the provisions of this Law, the following shall be required:

- a) An application must be made to the Authority within twenty months from the effective date of the Law,
- b) The legal entity engaged in natural gas market activities must not be prohibited from conducting the activity in question.

During the preparation period, the selection by tender of the company to receive natural gas distribution authorization in cities, the submission of the selected company to the Council of Ministers for permission, the procedure for signing the authorization agreement with the Ministry and similar transactions shall take place in accordance with the communiqué to be prepared by the Ministry. The Ministry shall assign the General Directorate of BOTAŞ to carry out the said works. The authorization agreement to be signed between the Ministry and the permitted company shall enter into force upon the approval of the Council of Ministers and if it does not comply with the provisions of the legislation to be prepared by the Authority at the end of the preparation period, the Board shall transform the agreement into a distribution license by making the necessary changes in order to ensure compliance with the legislation. The distribution company that has signed an authorization agreement cannot object to this change.

According to this Law, no license or certificate shall be issued to any company wishing to engage in natural gas market activities until the end of the preparation period.

As of the effective date of this Law, the Ministry shall be authorized and responsible for settling disputes or resolving doubts regarding the implementation of the Law during the preparation period.

**PROVISIONAL ARTICLE 2<sup>3031</sup>**– After the publication of this Law, BOTAŞ shall not be able to enter into a new natural gas purchase agreement, except for liquefied natural gas (LNG) imports, until its imports fall to twenty percent of national consumption. Until 2009, when it reduces the total annual import volume to twenty percent of annual national consumption, BOTAŞ shall hold a tender for the transfer of its existing natural gas purchase or sale agreements in whole or in part, together with all their rights and obligations, to which other willing companies that qualify for an import license, which have been pre-approved for the transfer of agreements by the seller company, shall participate. Starting from the company that has been ranked first in the tender, BOTAŞ shall give consent to the participant legal entities one by one in order to negotiate with the seller party and to obtain vendor approval for the execution of the new agreement. The transfer shall become effective after the relevant legal entity concludes a new agreement with the seller for the amount to be transferred . However, in the event that the legal entities cannot conclude an agreement with the seller in the relevant tender, a separate tender shall be held, to which companies that qualify for an import license shall participate, which shall allow the transfer of the amount, provided that the winning importer company agrees to fulfill all foreign obligations of BOTAŞ and the transferred amount is not below the natural gas purchase price determined by bilateral agreements. Power plants operated under the Build-Operate or Build-Operate-Transfer models with Treasury guaranteed

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<sup>30</sup> Amended pursuant to Article 2 of the Law No.5367, dated 16 June 2005.

<sup>31</sup> Amended first sentence pursuant to Article 20 of the Law No.5784, dated 9 July 2008.

contracts must apply to the Undersecretariat of the Treasury and prove to the Board that they purchase their natural gas from the most affordable source by acting as prudent operators under market conditions and reflect the decrease in the purchase cost of natural gas in a way that shall result in a decrease in the electricity sale price, provided that they waive the relevant Treasury guarantees.

The amounts transferred by BOTAŞ in each calendar year cannot be less than ten percent of the total natural gas volume committed to be purchased on the effective date of the Law.

In addition, with respect to applications made for imports from countries other than the countries where BOTAŞ has existing agreements, the Board may allow the import by evaluating the applications within the framework of the procedures and principles to be determined by taking into account the establishment of a competitive environment in the market, obligations arising from existing contracts and export connections. However, new gas purchase agreements cannot be made by any importer company with countries where BOTAŞ has existing contracts until the expiration of these agreements. New import agreements can be concluded for the same volumes as of the termination date of the current agreements in question. However, if there is a domestic natural gas supply deficit for export purposes or if such deficit is determined by the Authority, new gas purchase connections can be made with the said countries.

<sup>32</sup> <sup>33</sup> However, these provisions shall not be applicable for liquefied natural gas (LNG), spot pipe gas and compressed natural gas (CNG) imports. In addition, in the import of spot liquefied natural gas (LNG), spot pipe gas and compressed natural gas (CNG), the conditions specified in the sub-paragraphs (2), (3) and (4) of the fourth provision of Article 4 and the first paragraph following the sub-paragraph (4) of this Law shall not be required. The permitted spot pipe gas import volume for a calendar year and the implementation method shall be determined by the Board with regard to the opinion of the Ministry.

<sup>34</sup> For liquefied natural gas (LNG) import licenses, the sixty-day period specified in the second paragraph of Article 4 of this Law shall be applied as thirty days.

According to the provisions of this Law, the vertically integrated legal personality of BOTAŞ, excluding distribution activity, shall remain intact until 2009. After this date, BOTAŞ shall be restructured in accordance with a horizontally integrated legal entity. Among the new legal entities formed as a result of the restructuring, only the company that concludes gas purchase and sale agreements and carries out import activities shall represent BOTAŞ and be referred to as BOTAŞ. The companies emerging as a result of the restructuring shall be privatized within two years, excluding the company engaged in transmission activities.

Accounting separation regarding the transmission, storage, sales and import activities of BOTAŞ shall be carried out within twelve months from the end of the preparation period.

Treasury guaranteed obligations of BOTAŞ shall be reserved.

**PROVISIONAL ARTICLE 3**– In intra-city distribution activities, the transition process shall be as follows:

a) The Ministry shall notify the Privatization Administration for the privatization of the Eskişehir and Bursa intra-city distribution enterprises and assets owned and operated by BOTAŞ within two months following the effective date of this Law. Privatization procedures shall be carried out by the Privatization Administration within a period of six months at the

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<sup>32</sup> Inserted pursuant to Article 20 of the Law No.5784, dated 9 July 2008.

<sup>33</sup> Amended pursuant to Article 50 of the Law No.7103, dated 21 March 2018.

<sup>34</sup> Inserted pursuant to Article 20 of the Law No.5784, dated 9 July 2008.

latest after the preparation period, considering the procedures and principles to be determined by the Authority and within the framework of the provisions of the Law on Regulation of Privatization Practices and Amendments to Certain Laws and Decree Laws dated 24.11.1994 and numbered 4046. It shall be obligatory to fulfill the obligations to the Municipality specified in the clause (g) of Article 4 of this Law and obtain an intra-city distribution license from the Board in order for the enterprises in the relevant cities to be transferred to legal entities by the Privatization Administration and commence the distribution activity.

b) Within three years from the effective date of this Law, the existing intra-city natural gas distribution legal entities whose ownership, operation and natural gas trade rights belong to a municipality or a municipal company shall be restructured by selling their publicly-owned shares in order to decrease their public shareholding to twenty percent or below without being subject to the repayment schedule of foreign debts or within three years from the date of the last principal payment of their Treasury guaranteed and transferable foreign debt, provided that the existing Treasury guaranteed and transferable debts are used in the prepayment and payment of the debts owed by the Treasury due to the undertaking of these debts.

c) The distribution activity currently being carried out by the municipality or the companies belonging to the municipality shall be carried out in accordance with the provisions of the distribution license to be issued by the Board within twenty four months from the effective date of this Law. The license to be prepared by the Authority shall be in compliance with the license form used in other cities. However, matters deemed as beneficial or obligatory to be included in the license according to the characteristics of the city of the relevant municipality or municipal company shall be evaluated by the Board and shall be incorporated in the license when necessary.

d) As of January 1, 2002, intra-city natural gas distribution companies shall be obliged to carry out accounting separation for distribution and sales activities within the company.<sup>35</sup>

e)<sup>36</sup> A new joint stock company shall be established by the Ankara Metropolitan Municipality to carry out natural gas distribution activities according to Law No. 6762 within three months from the effective date of this article, and all infrastructure facilities, assets, movables and immovables, rights, receivables and debts related to the inner-city distribution of natural gas owned and/or operated by the EGO General Directorate (*Ankara Elektrik ve Havagazi Müessesesi*) (excluding natural gas purchase payables to BOTAŞ as of the transfer date of the EGO General Directorate and the Treasury Guaranteed external loans provided to the EGO General Directorate by means of transfer of foreign debt within the scope of the promotion of natural gas and the distribution network), lawsuits and execution proceedings filed by and against the EGO General Directorate, and personnel subject to labor laws shall be transferred to the company within two months from the company's date of incorporation with a protocol to be executed between the EGO General Directorate and the company. Income arising from the transfer shall be exempt from corporate tax, the delivery of goods and performance of services within the scope of the transfer shall be exempt from value added tax, all transactions related to the transfer and all kinds of documents to be issued in relation thereto shall be exempt from all kinds of taxes, duties, fees and similar financial obligations including stamp tax. This company shall be granted a thirty-year distribution license by the Board.

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<sup>35</sup> (1) For the period stipulated in this article, see Provisional Article 5.

<sup>36</sup> Inserted pursuant to Article 1 of the Law No.5669, dated 25 May 2007.

<sup>37</sup> Once the license is granted, the applicable system usage fee (unit service and amortization fee) of the distribution company shall be the TL equivalent of 0,05555 USD/m<sup>3</sup>, and the applicable system usage fee (transportation fee) shall be the TL equivalent of 0,0077 USD/m<sup>3</sup>.

At least 80 percent of the company's shares shall be privatized by the Ankara Metropolitan Municipality in accordance with the provisions of the Law No. 4046 within two years at the latest from the effective date of this article. The revenue derived from the privatization pursuant to this paragraph shall be exempt from corporate tax, and the share transfer shall be exempt from all kinds of taxes, duties and charges including value added tax. If the privatization does not take place until this date, 80 percent of the shares of the distribution company shall be privatized by the Privatization Administration.

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<sup>39</sup> Within one month from the effective date of this paragraph, twenty percent of the shares of Başkent Doğalgaz Dağıtım Anonim Şirketi shall be included in the privatization scope and program by the Privatization High Council and privatized by the Privatization Administration in accordance with the provisions of the Law No. 4046, together with eighty percent of the shares previously included in the privatization scope and program, through the block sale method. The sixth and seventh paragraphs of the sub-paragraph (g) of sub-paragraph (4) of Article 4 of Law No. 4646 shall not be applicable on Başkent Doğalgaz Dağıtım Anonim Şirketi.

<sup>40</sup> The natural gas purchase principal debts of the EGO General Directorate until 25/5/2007 shall be paid to the BOTAŞ General Directorate primarily out of the amount remaining after the deduction of the privatization expenses incurred by the Privatization Administration from the revenue to be obtained through the share transfer agreement regarding the privatization of 100% shares of Başkent Doğalgaz Dağıtım Anonim Şirketi. The interest, accessories and penalties of all these debts that constitute the receivables of the BOTAŞ General Directorate shall be written off. From the amount remaining following the payment to BOTAŞ General Directorate, out of the Treasury Guaranteed external loans provided to the EGO General Directorate by means of transfer of foreign debt within the scope of the natural gas implementation projects, amounts paid to creditors by the Undersecretariat of Treasury within the framework of agreements shall be paid to the Treasury based on the payments made to creditors in foreign currency over the selling exchange rate of Central Bank of the Republic of Turkey valid on the date of payment. Following the payment, the Treasury's receivables arising from interest and delay penalties, accessories and penalties related to these loans shall be written off without being associated with the income and expense accounts of the budget. From the amount remaining following the payment to the Treasury, debts of Başkent Doğalgaz Dağıtım Anonim Şirketi recorded in its balance sheet, together with their interest and accessories to be calculated as of their payment dates shall be paid to Başkent Doğalgaz Dağıtım Anonim Şirketi as of the signing date of the share transfer agreement of the EGO General Directorate and Ankara Metropolitan Municipality. In the event that the purchase price in the share transfer agreement is paid to the Privatization Administration on a deferred basis, the payments to be made pursuant to this paragraph shall be made in accordance with the above-mentioned order as the revenues are collected.

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<sup>37</sup> Amended pursuant to Article 23 of the Law No.6353, dated 4 July 2012.

<sup>38</sup> Repealed pursuant to Article 23 of the Law No.6353, dated 4 July 2012.

<sup>39</sup> Inserted pursuant to Article 23 of the Law No.6353, dated 4 July 2012.

<sup>40</sup> Amended pursuant to Article 23 of the Law No.6353, dated 4 July 2012.

The remaining privatization revenue shall be transferred to the budget of the Ankara Metropolitan Municipality and no attachment or deduction can be made by any public institution on the grounds of other debts of the Metropolitan Municipality or its affiliated organizations. This income of the Municipality shall be primarily used for the severance payments to be made due to possible jobs lost resulting from the privatization, which are set out in Articles 21 and 26 of the Law No. 4046, and the ongoing Ankara Metro and Ankara Metropolitan traffic, transportation, water, sewerage and related infrastructure investments.

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**PROVISIONAL ARTICLE 4** – The Egyptian natural gas purchase and sale agreement, which was initialed by BOTAŞ before the effective date of this Law shall be executed and excluded from the scope of this Law in case a supply deficit arises as a result of the supply-demand balance studies to be carried out by the Board after the entry into force of this Law.

**PROVISIONAL ARTICLE 5<sup>42</sup> -**

The period stipulated in the Provisional Article 3 for the privatization of the Eskişehir and Bursa inner-city distribution facilities and assets, which are owned and operated by BOTAŞ, after the preparation period has been extended for one year from the end of this period.

**Enforcement**

**ARTICLE 21** – This Law shall enter into force on the date of its publication.

**Execution**

**ARTICLE 22** – The provisions of this Law shall be executed by the Council of Ministers.

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<sup>41</sup> Repealed pursuant to Article 23 of the Law No.6353, dated 4 July 2012.

<sup>42</sup> Inserted pursuant to Article 1 of the Law No.4918, dated 8 July 2003.

**TABLE ON THE ADMINISTRATIVE FINES SET OUT IN ARTICLE 9 OF THE  
LAW NO. 4646**

*(Pursuant to the Communiqué issued by the Energy Market Regulatory Authority published in the Official Gazette dated 12/12/2020 and numbered 31332, the administrative fines referred to in Article 9 of the Law no. 4646 shall be enforced from 1/1/2021 as set out in the table below.)*

| <b>RELEVANT PROVISION OF<br/>ARTICLE 9 OF THE LAW NO 4646</b> | <b>ADMINISTRATIVE FINE FOR THE<br/>YEAR 2021 (TRY)</b> |
|---|--|
| Subparagraph (a) of the first paragraph of Article 9          | 1,218,735  |
| Subparagraph (b) of the first paragraph of Article 9          | 1,044,625  |
| Subparagraph (c) of the first paragraph of Article 9          | 1,218,735  |
| Subparagraph (d) of the first paragraph of Article 9          | 1,741,051  |
| Subparagraph (e) of the first paragraph of Article 9          | 1,741,051  |
| Subparagraph (f) of the first paragraph of Article 9          | 2,089,265  |
| Subparagraph (g) of the first paragraph of Article 9          | 2,089,265  |

**TABLE SHOWING THE EFFECTIVE DATES OF LEGISLATION OR  
CONSTITUTIONAL COURT DECISIONS SUPPLEMENTING OR AMENDING THE  
LAW NUMBERED 4646**

| Number of Amending Law/Decree or Canceling Constitutional Court Decision | Amended or Cancelled Articles of Law No. 4646 | Effective Date                                |
|--|---|---|
| 4918   | PROVISIONAL ARTICLE 5                         | 11/7/2003 effective from the date of 2/5/2003 |
| 5367   | 4, PROVISIONAL ARTICLE 2                      | 25/6/2005                                     |
| 5669   | PROVISIONAL ARTICLE 3                         | 12/6/2007                                     |
| 5728   | 9, 10, 12                                     | 8/2/2008                                      |
| 5784   | 7, 11, 12, PROVISIONAL ARTICLE 2              | 26/7/2008                                     |
| 6111   | 4   | 25/2/2011                                     |
| 6352   | 10  | 5/7/2012                                      |
| 6353   | PROVISIONAL ARTICLE 3                         | 12/7/2012                                     |
| 6491   | 4   | 11/6/2013                                     |
| 6552   | 4   | 11/9/2014                                     |
| 6719   | 3, 4, 7                                       | 17/6/2016                                     |
| 7033   | 4   | 1/7/2017                                      |
| 7103   | PROVISIONAL ARTICLE 2                         | 27/3/2018                                     |
| 7257   | 3, 4, 7 Additional Article 1                  | 2/12/2020                                     |