

**NATURAL GAS MARKET LAW  
(LAW ON THE NATURAL GAS MARKET AND AMENDING THE LAW  
ON ELECTRICITY MARKET)**

**Law No.** : 4646

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**PART ONE  
General Provisions**

**SECTION ONE  
Objective, Scope, Definitions and Authority**

**Objective**

**Article 1.-** This Law concerns with liberalization of the natural gas market and thus formation of a financially sound, stable and transparent markets along with institution of an independent supervision and control mechanism over the same, so as to ensure supply of good-quality natural gas at competitive prices to consumers in a regular and environmentally sound manner under competitive conditions.

**Scope**

**Article 2.-** The Law covers the import, transmission, distribution, storage, marketing, trade and export of natural gas and the rights and obligations of all real and legal persons relating to these activities.

**Definitions**

**Article 3.- The terms used in this Law are defined as follows;**

- 1) **Ministry:** Ministry of Energy and Natural Resources,
- 2) **Minister:** Minister of Energy and Natural Resources,
- 3) **BOTAŞ:** Petroleum Pipeline Corporation,
- 4) **Authority:** Energy Market Regulation Authority,
- 5) **Board :** Energy Market Regulation Board,
- 6) **Legal Entity (company):** Private or public legal entities established to conduct the functions of generation, transmission, distribution, wholesale, importation, exportation, trading and storing of natural gas in accordance with the provisions of this Law,
- 7) **Natural Gas:** All natural hydrocarbons in gaseous state, generated or can be generated from the ground and other states of gas been liquefied and pressurized or physically processed by various methods ( Liquidated Petroleum Gas - LPG) in order to present to the market,
- 8) **Generation:** The extraction of natural gas from the underground natural gas fields in Turkey in accordance with the Petroleum Law no. 6326 dated 7 March 1954, its refinement, purification and transportation to the transmission lines by gathering lines,,
- 9) **Generation Company (operator):** Legal entity engage in generation activities in Turkey,
- 10) **Transmission:** Natural gas delivery by gas pipeline networks excluding gathering lines used for generation purposes and distribution networks, or by delivery equipment for liquidated natural gas (LNG),
- 11) **Transmission Company:** Legal entity engaging in transmission activities,
- 12) **Distribution:** Transfer of natural gas for purposes of delivery to clients through local gas pipeline network and its retailing,

- 13) City:** The whole constructed areas located within the boundaries of a Municipality or a Metropolitan Municipality,
- 14) Distribution Company:** Legal entity authorized to carry out natural gas distribution and transportation activities through local gas pipeline system within a specified city,
- 15) Wholesale:** Wholesale of the natural gas to the distribution companies and free consumers,
- 16) Wholesale Company:** Legal entity engaging in wholesale of natural gas without involving in transmission or distribution activities within or out of the system,
- 17) Free Consumer:** A real person or legal entity that is free to enter into a natural gas sales and purchase agreement with any generation, import, distribution or wholesale company within the country,
- 18) Non-Free Consumers (Subscriber):** A real person or legal entity that has to purchase natural gas for their own use from the distribution companies,
- 19) Storage:** Storing the natural gas as in gaseous or liquidated natural gas (LNG) in order to meet daily or seasonal fluctuations, and to cover any natural gas shortage in case of insufficiency or absence of supply,
- 20) Storage Company:** Legal entity authorised to engage in natural gas storage activities,
- 21) Liquidated natural gas (LNG) facility:** Facilities used for liquidation for the purpose of transporting and storing in liquid state, for discharge storage and re-gasification of natural gas,
- 22) Storage facility:** A storage facility except those utilised for generation, of which a legal entity has the ownership or operation right and which is specifically used to store the natural gas as LNG or gaseous state,
- 23) System:** The facility and the equipment established to perform the functions of generation, transmission, storage and distribution of natural gas ,
- 24) System user:** A real person or legal entity who purchases or supplies gas or does transit gas transmission through the system,
- 25) Connected system:** System reciprocally connected to each other and forming the whole system,
- 26) Direct line:** Natural gas pipeline feeding a free consumer in a manner of forming a connected system, transfer of the natural gas between the cities through special vehicles, sale it by lowering the pressure where the transmission networks are not available,
- 27) Local gas pipeline:** All the distribution lines to be constructed and operated by the distribution company which shall distribute natural gas within the city,
- 28) Distribution network:** The natural gas distribution facilities and pipelines operated by a distribution company within its specified area,
- 29) Vertically integrated legal body:** Legal entity that involves in two or more of the following activities: natural gas generation, transmission, distribution, import, export, storage or sale,
- 30) Delivery Contract:** The contract executed between the system users or those acting on behalf of them and transmission companies or between the storage company and transmission companies or in between the transmission companies for hand-over of natural gas,
- 31) Transportation contract:** The contract executed between the system users and transmission companies for the purpose of transportation of the natural gas,
- 32) Import Company:** Legal entity engaging in natural gas procurement activities in LNG or gas state from abroad for the sale of the natural gas to wholesaling companies, free consumers or export companies or for direct sales to abroad,
- 33) National transmission network:** High pressured pipelines that are the part of the

National transmission system,

**34) National transmission system:** The system formed by both the national transmission network providing natural gas transmission throughout the country and distribution, storage, liquidation, gasification of the liquidated gas and other similar transmission facilities,

**35) Export Company:** Legal entity that markets gas which it has purchased from generation and wholesale or import companies to abroad,

**36) Market activity:** Purchase, sale or trading of natural gas and service activities and the other operations performed as part of the foregoing including transmitting, distributing, wholesaling, importing, exporting, storing in the LNG facilities as liquid state or in the underground or ground facilities as gas or compressed gas state,

**37) Tariff :** Regulations covering natural gas transmission, distribution, storage as LNG or gas state and sales and fees, terms and conditions of the services related therewith,

**38) License:** Permission certificate given to legal entities by the Board to engage in market activities respectively for each market activity in accordance with this Law;

**39) Certificate:** Permit given by the Board to real persons or legal entities who will engage in natural gas activities demonstrating that such person or legal entity is competent to design, construct, revise, maintain, repair, control, consult or conduct similar services for the facilities which shall take part in the system,

**40) User Union:** Organized industry zones and cooperatives which meet their members' natural gas needs through the distribution network under their ownership,

**41) Compressed natural gas:** The pressurised state of the natural gas,

**42) Horizontally integrated legal entity:** A legal entity that conducts at least one the following activities natural gas generation, transmission, distribution, importation, exportation, storage or sale and at the same time conducts another activity excluding the natural gas sector.

## **SECTION TWO**

### **Natural Gas Market Activities, Construction and Service Activities, General Rules for Licenses and Certificates**

#### **Natural Gas Market Activities**

##### **Article 4.–**

- 1) It is obligatory for the legal entities to obtain necessary licenses to engage in natural gas market activities under this Law.
- 2) The Authority shall respond to the license application of legal entities which would be involved in the natural gas market within sixty days following the application date. In case of rejection of the license application, the Authority shall inform the applicant about the rejection decision together with its reasoning.
- 3) If private legal entities which would be involved in the market are to be established as joint stock or limited liability companies pursuant to the provisions of the Turkish Commercial Code no. 6762, dated 29 June 1956, all the shares must be registered. The capitals of these companies and other issues which must be included in their articles of association shall be governed by a regulation.
- 4) Natural gas market activities are as follows:
  - a) Import: Procurement of the natural gas through import is allowed under an import license.

The following conditions are sought in the legal entities applying for import license;

- 1) Technical and economical capability for import,
- 2) Availability of definite information and guarantee regarding the source, reserves, generation facilities and transmission system of the natural gas to be imported,
- 3) having obtained such commitment and guarantees as required by the Authority from the legal entities which shall conduct storage activity concerning the ability to store an amount corresponding to 10% of the natural gas to be imported every year, in the national territory for five years,
- 4) capability to contribute to the improvement and security of national transmission system, and accordingly, to provide economic support to the investments of the legal entities to be made in improvement of the system.

The import companies must obtain licenses for each import contract respectively. The import companies must inform the Authority of the terms of the contracts, as stated in their import contracts, extension of the terms, envisaged annual and seasonal import amounts and the changes in such amounts and the obligations related to the security of the system which are stated in the contracts or in any extension thereof.

Import companies may market the imported natural gas to the free consumers abroad provided that they have obtained an export license as well as transferring the natural gas to the wholesale companies or export companies within the country through sales contract. However, the transfer made to the export companies may not release the liabilities of the importing company under its license.

Annual natural gas amount procured through import by any import company may not exceed 20% of the national gas consumption forecast to be determined by the Authority.

The import company must submit any information and documentation requested by the Authority relating to all contracts executed by the import company.

- b) Generation:** The natural gas exploration and generation activities are carried out in accordance with Petroleum Law No. 6326. Generation activities are not regarded as market activities. The exploration and operation licenses are granted by the General Directorate of Petroleum Affairs.

Generation Companies, provided that they hold a wholesale license, may market the generated gas to wholesale companies, import companies, distribution companies or free consumers. The generation companies are allowed to sell such amount directly to the free consumers, as may not exceed 20% of the national consumption forecast to be determined by the Authority in relation to the current year, and the remaining natural gas to the market through import companies, distribution companies or wholesale companies. The generation companies may export the generated gas provided that they obtain export license.

The generation companies must satisfy the license requirement as provided in paragraphs (e) and (f) above in order to obtain sale and export licenses.

The generated natural gas shall be transported under the transportation and delivery contracts to be executed with the transmission companies. In case the generation centre is far from the connection system, the generation companies may transmit the generated

gas through direct line and sell to the free consumers without the need for the generated gas to form a connected system. However, such matter depends on the decision of the Board to be given by taking into consideration the economical and technical conditions. Furthermore, the generation companies may sell the generated natural gas to the other consumers without conducting a distribution activity within the city, in case the generation capacity of the generated natural gas is lower than the amount stated in subparagraph (1) of paragraph (a) of Article 8. The rights of the generation companies in the existing facilities regarding transmission and storage are reserved. This right shall be exercised subject to the provisions of the paragraphs (c) and (d).

Generation companies are obliged to comply with the regulations to be issued by the Authority regarding tariffs, delivery rules, gas quality, gas supply and seasonal changings.

- c) Transmission: Legal entities to engage in transmission activities are obliged to comply with the following provisions.
- 1) The transmission companies are obliged to connect the users upon demand, to the most appropriate network within 12 months provided the system allows, subject to the criteria determined by the Authority.
  - 2) In the cases where the transmission company rejects the request of the user to enter the system, the user may inform the Authority about the issue. If it is determined by the Authority that the transmission company violated the regulation related with the network process, the transmission company shall make the connection of the user to enter the system pursuant to the decision of the Board.
  - 3) The Authority shall make utmost efforts for transmission activities not to be hindered by examining the requests of the users to enter the system and to ensure that the running of the system is not hindered by taking into consideration the provisions of this Law.
  - 4) The transmission companies have to provide each other all necessary technical information determined by the Authority in order to ensure a coordinated exercise for more effective and secured operation with other transmission companies who engage in transmission activities.
  - 5) The transmission companies shall be responsible for their parts with respect to necessary arrangements to be made for the flow of natural gas and operation of the system, as well as performance of other necessary services. Further, the transmission companies must take any measure for safe, secured and effective gas transmission in a cost- effective way through the lines under their responsibility and fulfil the other conditions set forth herein.
  - 6) The transmission companies must obtain a license from the Authority to engage in transmission activities. The penalties defined herein shall be imposed on the companies who violate the system running.
  - 7) The transmission companies shall enter into a transportation contract with the import company, wholesale company, generation company and export company. The transmission companies further enter into a delivery contract with the generation company, free consumer, storage company and other transmission companies. The procedures and principles determined by the Authority shall be taken into account for the contracts entered into or to be entered into and no provision may be included that would prevent or hinder the system running.
  - 8) The national transmission network investment programmes developed by taking into

consideration the transit natural gas transmission shall be subject to examination and approval of the Board.

- 9) The national transmission network or any part thereof which is already existing, or planned, or under construction shall belong to BOTAS. The new pipelines to be constructed by the transmission companies which will together form a connected system with the existing lines for the purpose of transmission shall be operated by other investing transmission companies provided that the former they shall have the ownership. The other rights and liabilities of the transmission companies shall be established by regulations to be issued.
- d) Storage of the natural gas: Legal entities who will engage in storage activities are obliged to comply with the following provisions.

- 1) The legal entities must obtain license from the Board to engage in ground and underground storage activities for natural gas in gas or LNG state. Any storage activity without such license is hereby prohibited without such licence. Legal entities which are to apply for a license shall satisfy the conditions as per the regulation to be issued.

The conditions, which the legal entities applying for storage licence shall satisfy, are as follows;

**aa)** to have technical and economical capability to carry out storing,

**bb)** to undertake to manage all the storage capacities under their possession in such manner as contributing to safe and coordinated operation of the system,

**cc)** to undertake that the services to be extended by the storage facilities under their possession shall be rendered in an unbiased and equal way in so long as the system is available.

- 2) According to the Law no. 6326, in case the companies holding operation licence, apply to the Authority following the General Directorate of Petroleum Affairs' approval for the utilisation as a gas storage of the underground natural gas bed from where natural gas is generated, the relevant part of the operation licence shall be converted to a storage license, if it is found appropriate by the Board. However, the generation company should document with its application to the Authority that it is eligible for the storage license. If the company starts storage activities, it shall carry out the same as a separate activity by keeping the accounts respectively.

In the event of the rejection of the requests made to the storage company and that the system user has informed the Authority of the situation, and in the event that the Authority discovers, by making necessary examinations and audits, that the storage company has breached the licence terms and the procedures and principles in effect, it may force the storage company to provide the requested service. The penalties under this Law shall be imposed due to such breach

- 3) (Supplementary Subparagraph: Law No. 6111 dated 13 February 2011, Article 206; Official Gazette No. 27857 dated 25 February 2011) In the existing and future storage license applications information regarding the province, subprovince, village, suburb, block and plot of the subject location of the application shall be announced over the internet page. In the event of another application being made for natural gas storage license for operation at the subject location of the announcement within the period to be designated in the announcement, evaluation of the licence applications shall be carried out on the basis of the criteria to be determined by the Board, providing that the applicant legal entities fulfil the requirements for issuance of the storage license. In the event of there being several applications after said evaluation, a competition shall be made between said legal entities based on

increment of the license price. However, in the event of minimum one half of the site on which the storage activities being under the ownership of the license applicant or its shareholders and/or the applicant legal entity and/or its shareholders holding the rights of utilization and/or easement and/or any other rights over the subject location for storage activities so as to provide for realization of the storage activities, then said application shall be accepted and other applications shall be rejected. Procedures and guidelines related with the application announcement, evaluation criteria and competition shall be arranged in a regulation.

- e) Wholesale: The wholesale companies must obtain license from the Board to engage in wholesale activities to the free consumers. It is not obligatory for the legal entities holding import license to obtain a wholesale license. They may carry out natural gas wholesale activities with the import license.

The legal entities that wish to engage in wholesale activity must evidence from where it shall procure the natural gas and by which transportation conditions it shall sell the natural gas, and prove that it has sufficient technical and economical power and necessary storage capacity for the purpose of operating the system safely and further provide other guarantees and undertakings stated in the regulations, in order to obtain licence.

The following principles must be observed in regulating the wholesale trade of the natural gas.

- 1) The legal entities performing natural gas sale to the distribution companies must draw up supply schedules as necessary and take measures for adequate storage in order to meet maximum seasonal natural gas demand of the customers and to present the lease contracts executed with the storage companies for this purpose, to the Authority within the period determined by the Authority. For the purpose of taking necessary measures storage for a five year period from the date of licence, shall be granted. Such period may be extended by a Board decision for two years in case the storage facilities in the country do not reach to a sufficient capacity.  
Besides, according to climatic indicators each year, the Board is authorised to determine the storage quantities to be maintained with a view to balance the intensive seasonal demand of the following year for each city and to take necessary measures.
- 2) Following the effectiveness of this Law, the legal entities engaged in wholesale trading of natural gas to free consumers must provide gas entrance to their customers within the seasonal, daily and hourly flexibility ranges. The wholesalers must reach the required supply and storage capacity and must also take necessary storage measurements within the five year period following the date of licence. For this purpose, they shall submit to the Authority the lease contracts to be executed with the storage companies. Such term may be extended in case the storage facilities in the country do not reach to a sufficient level.
- 3) The legal entities making wholesale of natural gas must attain the transmission, storage and system balancing capacities in order to meet the expected demand within a period determined by the Authority.
- 4) The wholesale company shall enter into sales contract with the import or export companies or free consumer or distribution companies and freely determine the fees. Commercially confidential information may not be disclosed to third parties, except for the Authority and may not be abused.
- 5) The wholesale companies must obtain an import license in order to import natural gas.

- 6) The total gas amount sold by each wholesale company in one year may not exceed 20% of the national consumption forecast determined for the current year by the Authority.
  - 7) The wholesale companies may sale all over the country without any regional restriction.
- f) Export of natural gas: Legal entities that wish to export the natural gas imported or generated within the country, to abroad shall obtain an export license from the Authority. The companies asking for a licence should fulfil the conditions determined in the regulations to be issued and the followings requirements;
- 1) to prove that it has technical and economical sufficiency,
  - 2) to inform to which county and by which transportation vehicles it shall export the natural gas,
  - 3) to provide guarantee to the effect that the export process will not intervene in operation of the system nor satisfaction of the natural gas demand of the country and towards recovery of any loss or damage which may occur if the system security is violated by the company, and to provide insurance coverage as compulsory for the loss and damage defined in this paragraph. However, the transmission companies operating transit lines shall be exempted from the guarantee condition stated in the subparagraph no (3) of this paragraph
- g) City natural gas distribution: The city natural gas distribution service shall be granted to the company which wins the tender announced by the Authority within a license term to be determined by the Authority including the possession of the local natural gas distribution network taking into consideration some issues such as the development level of the city the consumption capacity and the number of users. Tender to be announced by the Authority for a specific city shall be announced in the Official Gazette. The bids of the companies for the tender shall be evaluated under the procedures and principles determined in the regulations to be issued and then the distribution licence shall be granted to the winner company and such company shall be authorised as the distribution company to engage in distribution activities of that city.

The legal entities holding distribution licences are obliged to observe the provisions of this Law in relation to the distribution licence and the procedures and principles to be determined by the Authority. The legal entity holding a distribution licence may sell the distribution facility which is under its ownership to another legal entity before the expiry of the licence term.

In case the distribution company, whose licence term has been expired, requests from the Authority to renew its city distribution licence one year before the expiry of the licence term, the Board may grant a second distribution licence by taking into consideration the technical and economic power, service quality of the company, its subscribers' satisfaction and other issues to be determined by the regulations to be issued by the Authority. In case the licence term of the licence holder is not extended based on the above reasons, the Authority shall announce a new tender for the relevant city and grant the distribution licence to the legal entity which proposed the most appropriate bid for the operation and possession of the existing network. The price of the network shall be collected by the Authority and be paid to the previous licence holder. The Authority shall direct, supervise, monitor, observe the distribution activities of the distribution company having ownership and may purchase such services from the real persons or legal entities holding a certificate that are subject to this Law with the relevant cost to be borne by the latter, when deemed necessary.

The procedures and principles and the evaluation criteria of tender for distribution of the natural gas within the city, and other issues necessary to be included in the license shall be governed by regulations. The city distribution company obtaining the distribution license from the Authority must offer a partnership at a rate of 10% to the municipality or the municipal company within the city in which it is authorised without the need to provide any capital. Such capital rate may be increased at a rate of maximum 10% provided that the equivalence has been paid. However such increase may be made only if there is no debt to the Treasury and additional credit is not requested or after the discharging of credit debts to the Treasury, loans under the Treasury guarantee are not provided for this purpose.

In the case that the municipality or municipal company do not acquire any share or acquire share insufficient to nominate at least one board member, the Authority may request from the city distribution company to arrange necessary regulations that shall enable the municipality be represented in the board of directors and board of audit of the companies, in accordance with the Article 275 of the Turkish Commercial Code No.6762.

Liabilities of the distribution companies are as follows:

- 1) Natural gas distribution companies shall establish a dispatch control centre for the distribution networks. However such condition shall not be required in the cities where it is determined by the Authority that the consumption capacity is insufficient.
- 2) Distribution companies shall be liable to connect the consumers to the system if it is requested by the consumers under their liability. However, the liability to make connections shall be subject to the capacity of the system under the control of the company that enables the connection, and the consumer's fulfilment of requirements on its part as per by the distribution regulation and the technical and economical availability of the connection under the terms and conditions to be determined. The Board shall determine whether or not the connection is technical and economical, in case of a dispute.
- 3) The user whose connection request is rejected shall inform the Authority. In case the Board determines the violation of the principles stated in this article after the testimony of the distribution company regarding the issue, the company is obliged to comply with the Board decision regarding the issue.
- 4) Distribution companies may get their technical experts or supervision companies working on behalf of them to control the existing internal installation or the installation built by the consumers including houses, business places or industries for the natural gas utilisation. If the internal installation is not in compliance with the internal installation regulation to be published, the company may reject to supply gas or cut off the gas being supplied. The same procedures shall be applied in the event that the consumer re-applies after the appropriate re-installation. The distribution companies shall not be liable from the damages and losses which may arise from modifications made in the internal installation without permission, inappropriate and bad usage of the internal installation, usage of wrong and broken equipment, constructing installation out of the scope of the project and the disorder of the installation.
- 5) **(Amended article: Law No. 5367 dated 16 June 2005 - Article 1; Official Gazette no. 25856 dated 25 June 2005)** The distribution companies may have license only for two cities within the country. However, such number may be increased by a Board decision by taking into consideration some issues such as the development level of the city, the consumption capacity and the number of users. The coverage of the designated distribution regions of the distribution companies may be rearranged

by the Board in a way that provincial borders are not exceeded with due consideration of the technical and economical requirements. The Board may divide a city in more than one distribution region the borders of which are to be determined according to the density of population and award the contract separately for each region.

- h) Distribution and transmission of compressed natural gas: The legal entities which shall engage in compressing of natural gas by purchasing from exploitation facilities, national transmission network or city distribution system and filling to special pressurized containers, transporting the pressurized national gas by special vehicles between cities, and selling it by reducing its pressure in the areas where the transmission network is not available, should obtain license from the Board for these activities. The legal entities that shall engage in such activities should satisfy conditions stated in the relevant regulations in order to obtain license and guarantee that the facilities and the equipment to be employed in their activities shall be conformity with the Turkish Standards and/or the standards accepted by the European Union and be safe

### **Construction and service activities**

**Article 5.**– The import, export, transmission, storage, distribution and wholesale companies and free consumers which shall engage in activities in the natural gas market may enter into construction and service contracts with real persons and legal entities who have obtained a certificate from the Authority. No real person or legal is allowed to take part in natural gas installation or service activities unless the said certificate is obtained.

The certificates related with the internal instalment and service lines shall be issued by the public or private companies authorised by and on behalf of the Authority and the city distribution companies. The Authority shall process the applications and reply accordingly, filed by the real persons or legal entities to obtain licence, with in sixty days. Those who shall engage in services such as

- a) feasibility studies, project development, consulting, supervision and audit,
- b) construction,
- c) service, maintenance and repair,

are obliged to obtain a certificate from the Authority for those activities. Those who desire to engage in construction and service activities shall apply to the Authority as per the regulation to be prepared by the Authority. Those who satisfy the capacity requirements set forth by such regulation shall be granted a certificate. The real persons or legal entities which shall engage in construction and service activities should carry out the activities in accordance with the regulation to be prepared and the communiqué to be issued by the Authority.

Those who have obtained certificates from the distribution companies to engage in construction and service activities for internal installation and service lines shall be supervised by distribution companies. They may also be supervised by the Authority upon the application of consumers. The procedures and principles for the customers to apply to the Authority shall be governed by a regulation

### **General principles of licences and certificates**

**Article 6.**– The procedures and principles subject to which the licenses and the certificates to be granted by the Authority under this Law, and the provisions that must be included in such licenses and certificates at a minimum are as follows:

- a) The procedures and principles that the licenses and certificates shall be subject to, are as follows:
  - 1) Legal entities which will engage in market activities must obtain a license for each

activity and for each facility respectively, if the said activities are to be conducted in more than one facility, before starting operation.

- 2) A legal entity which holds more than one license or a legal entity that conducts the same activity in more than one facility, must keep separate accounting records for each activity or facility subject to a license.
  - 3) The procedures and principles governing license and certificate applications and the rights and obligations of legal entities holding a license and a certificate, assignment of the rights of a license holder, amendments to and duration of license, duration extensions and the events of cancellation of a license or a certificate by its holder, and the type of activity and the license and certificate fees to be determined according to the amount of natural gas transmitted, distributed and stored, shall be governed by a regulation.
  - 4) Licenses and certificates shall be granted for at least ten years and a maximum of thirty years whenever issued.
  - 5) Legal entities must pay to the Authority the fees to be determined by the Board for obtaining, renewing amending, issuing a copy of a license or a certificate and the certificate and annual license fees.
  - 6) Legal entities holding a license must keep their facilities, legal books and records available for the auditing of the Board, and must make them available for auditing when requested by the Board, and must provide the Board in a timely manner with all kinds of information and document required by the Board in order to perform its activities.
- b) The provisions which must be included in licenses at a minimum are as follows:
- 1) Provisions that define the groups or categories regarding real persons and legal entities which will be provided services under a license and the types of activities to be performed.
  - 2) Provisions stating that a holder of a distribution or transmission license shall provide the real persons and legal entities with the opportunity to have an access to and the use of the system without making any discrimination between system users having equal capacity.
  - 3) Provisions regarding the methods to be applied in determining the pricing principles stated in this Law, the pricing principles to be applied to the sale of natural gas to the subscribers taking into consideration the requirements in the market and provisions with respect to the application of the formulas regarding the adjustments of the fees as may be necessary due to inflation and provisions with respect to auditing of the same.
  - 4) Provisions ensuring that a license holder shall give complete and correct information to the Board, the distribution licence holder shall procure natural gas from the most economical source, for the purposes of selling the same to subscribers and when deemed necessary, shall prove that it affected the most economical purchase.
  - 5) The rules to prevent reflection of service costs and the principles regarding measures to be applied in order to reduce the operation losses to the minimum, pursuant to the regulation.
  - 6) Provisions regarding the cancellation and termination of a license.
  - 7) Provisions regarding the amendment to a license.
  - 8) Provisions regarding the fees payable by a license holder to the Board and the terms of such payment.
  - 9) Provisions regarding the conditions in relation to the utilization by other persons of the facility and/or facilities owned or operated by the license holder in accordance with the purposes of the license, when deemed necessary.
  - 10) Provisions regarding the obligations of the license holder to comply with all

- instructions given by the Board.
- 11) Provisions regarding the activities that can be conducted within the scope of the license without the consent of the Board.
  - 12) Provisions regarding which disputes related with the activities within the scope of the license shall be settled by the Board.
  - 13) Provisions regarding under which terms, conditions and circumstances the rights and obligations arising from the license shall be invalid.
  - 14) Provisions which will provide for the performance of service in accordance with technical requirements.
- c) The provisions which must at least be included in certificates are as follows:
- 1) Provisions that define the groups or categories of real persons and legal entities which will receive services under a certificate and the types of activities to be performed.
  - 2) Provisions regarding the cancellation and termination of a certificate.
  - 3) Provisions regarding the amendment of a certificate.
  - 4) Provisions regarding the fees payable by a certificate holder to the Authority and the terms of such payment.
  - 5) Provisions regarding the obligations of the certificate holder to comply with all instructions given by the Board.
  - 6) Provisions regarding the activities that can be conducted within the scope of the certificate without the consent of the Board.
  - 7) Provisions regarding which disputes related with the activities within the scope of the certificate shall be settled by the Board.
  - 8) Provisions defining the terms, conditions and circumstances, under which the rights and obligations arising from the certificate shall be invalid.
  - 9) Provisions which will provide for the performance of activities in accordance with technical requirements.
- d) Expiry of licenses and certificates: Licenses and certificates shall automatically expire at the end of their term if such term is not extended by the Board under the method determined in the license or certificate or upon the bankruptcy of the real person or the legal entity holding a license or certificate, and shall expire upon the approval of the Board in the case that the real person or the legal entity holding a license or certificate wishes to revoke from the license.

### **SECTION THREE**

#### **Protection and Development of the Competition, Data Presentation, Separation of Accounts, Definition of Free Consumer and Exceptional Cases of Entry Into System**

#### **Protection and development of the competition, data presentation, separation of accounts**

##### **Article 7.–**

- a) The principles for the protection and development of the competition are as follows:
- 1) The provisions concerning the freedom of competition, non-abuse of dominant position, mergers and acquisitions set forth in Law No. 4054 Concerning Protection of Competition dated 7 December 1994 shall also apply to legal entities, which shall perform activities in the natural gas market.
  - 2) No legal entity except for the generation companies in Turkey may sell more than twenty percent of the national natural gas consumption forecast determined by the Authority for the current year. Such rate shall be calculated by subtracting the gas

amount consumed directly by the company itself or through the companies majority capital of which belong to the company, from the net national consumption amount remaining after deducting the losses. The necessary measures shall be taken by the Authority in case such rate is exceeded.

- 3) **.- (Amended article: Law no. 5784 dated 26 July 2008- Article 17; Official gazette No. 26948 dated 26 July 2008)** Any legal entity performing activities in the natural gas market may participate in only one of the legal entities performing activities in a field other than its own field of activity. Such legal entity, however, may not establish a separate company. However, it may not directly or indirectly obtain the majority of the capital or commercial assets of the legal entity it has participated in nor have the right to use the majority of voting rights nor have the right to assign the majority of the members of the audit board or board of directors nor the bodies authorised to represent the company, nor the rights regarding the management of business of such company. It may not participate in any legal entity performing activities in its field of activity or establish a company. This article shall not be applicable for the existing subsidiaries, companies and subsidiaries of BOTAS to be established for international projects

*(Former wording: The rights of BOTAS regarding its existing participations shall be reserved.)*

- b) Legal entities performing activities in the natural gas market shall be liable to provide information on their activities. The scope of the information to be provided and the authorities to whom the information shall be provided are stated below.
- 1) Transmission companies engaged in the natural gas transmission and conveyance control, storage companies operating LNG facilities and underground storage facilities, distribution companies engaged in urban distribution activity, generation and import companies supplying natural gas shall be liable to provide sufficient information regarding their activities to other companies performing activities in the same field for the safe and effective operation of natural gas system.
  - 2) The scope of the information mentioned in this article shall be determined by regulations to be issued promptly by the Authority following the date of effectiveness of this Law.
  - 3) The parties performing activities in the natural gas market shall be liable to keep the commercially sensitive information and documentation confidential. However, they shall not be held responsible for the information they shall furnish to the Competition Authority and to the relevant authorities due to the inquiries initiated by the Authority.
  - 4) The legal entities performing activities in the natural gas market shall not use the confidential information which has been obtained during natural gas purchase and sale, by themselves or through supervising, supervised or affiliated legal entities for their own interest or for the benefit of their affiliated companies.
- c) It is obligatory that the legal entities performing activities in more than one field of activity in the natural gas market shall have separate accounts.
- d) It is essential that the distribution companies shall purchase maximum fifty percent of the gas that they shall distribute within one year from one legal entity and the Board is authorised to increase and decrease such amount by taking into consideration the establishment of a competitive environment.

#### **Determining free consumer and exceptional cases of entry into the system**

**Article 8.–**

a) The free consumers shall be determined according to the following classification.

- 1) Consumers purchasing natural gas of more than one million cubic meter per year and the user unions,
- 2) Companies purchasing natural gas for electrical energy generation,
- 3) Co-generation facilities generating electricity and heat,
- 4) Companies producing natural gas in Turkey to be used in generation activity have the free consumer status. However, the Board shall determine the limits for being a free consumer every year until all consumers become free consumers. The Board shall closely follow the implementation of the classification stated this Article. It is not obligatory that the distribution companies shall supply natural gas to the subscribers which are outside their responsibility region. The wholesale companies shall be free whether or not to sell natural gas to such consumers.

b) The Board is authorised to determine the limits of annual consumption amount required to be qualified as a free consumer for the purposes of encouraging the development level of cities, and gas consumption, and the infrastructure investments in cities at the licence granting stage only. Legal entities engaged in the natural gas market activities shall be liable to allow those requesting system connection in accordance with the system entry conditions determined in this Law. Legal entities engaged in natural gas market activities may reject the system entry requests of other legal entities or free consumers only in case of insufficient capacity or in case such entities fail to perform their obligations upon entry into the system, or in case they are likely to be charged to pay serious financial and economic damage due to their existing contracts.

In case system entry is rejected due to serious economic problems arising from insufficient capacity or public service liabilities or existing contracts, the Authority shall promptly be informed of such situation together with its reasoning. The Board shall notify its decision to the parties within three months upon investigating whether or not there exists lack of capacity or connection, or any other obstacle according to the criteria set forth in this Law and the regulations to be enacted.

System entry cannot be rejected if the user requesting system entry undertakes the necessary expenses to eliminate the lack of capacity or connection.

In case the system entry is rejected due to serious economical and financial problems arising from the provisions of existing contracts of the legal entities involved in the market, the transmission company may request from the Board to cancel temporarily the system entry obligation upon application by the other legal entity in difficulty to the Authority due to the contract it has executed, and such transmission company submits to the Board the measures it has planned for the resolution of the problem together with the necessary information to the Board. The Board shall grant a decision on the application within two months.

In case the request with respect to the temporary cancellation of the system entry obligation is rejected by the Board, the transmission company must connect such real person or legal entity to the system.

**PART TWO**

**Miscellaneous Provisions**

**SECTION ONE**

**Sanctions and the Procedure on the Implementation of the Sanctions, Preliminary Investigation, Inquiry and Right of Legal Action and Tariffs**

### **Sanctions and the procedure on the imposition of the sanctions**

**Article 9.– (Amended article: Law no. 5728 dated 23 January 2008- Article 491; Official gazette No. 26781 dated 8 February 2008)** The Authority shall impose the following sanctions and penalties to such real persons or legal entities performing activities in the natural gas market, as continue to breach the regulations despite written warning by the Authority:

- a) In cases where information or examination at the premises is requested by the Authority, if it has been determined that the information provided upon request is incorrect, incomplete or misleading or if no information has been provided, or an examination at the premises has not been made available, a fine of three hundred fifty thousand Turkish Liras shall be imposed and a notification shall be issued for the submission of correct information and/or making available an examination at the premises within seven days. It shall be requested from the relevant real persons or legal entities that the documents shall be submitted accurately and/or an opportunity of examination shall be provided with respect to the default situations which can be easily corrected.
- b) In case it has been determined that a failure in complying with the provisions of this Law or enacted regulations, instructions, and communiqués, has occurred a fine of three hundred fifty thousand Turkish Liras shall be imposed and a notification shall be issued for the payment of such fine within thirty days.
- c) In case it has been determined that a failure in performing any of the general principles and obligations under a license or certificate has occurred, a fine of three hundred fifty thousand Turkish Liras shall be imposed and a notification shall be issued to correct the situation within thirty days.
- d) In case any misleading document or misleading information is given or the Board has not been notified of any change in the conditions based on which a license or certificate has been issued with respect to the requirements for a license or certificate application and granting of such license or certificate, a fine of five hundred thousand Turkish Liras shall be imposed and a notification shall be issued for the correction of such incompliance within thirty days.
- e) In case misleading information is given with regard to an affiliate relation during the license application or a failure to comply with the prohibition regarding affiliate relations during the term of activities has occurred, a fine of five hundred thousand Turkish Liras shall be imposed and a notification shall be issued to correct such affiliate relation within thirty days.
- f) In case it has been determined that an activity is being performed in the market outside the scope of a license, a fine of six hundred thousand Turkish Liras shall be imposed and a notification shall be issued to stop such activity which is outside the scope of the license or any contrary activity within fifteen days.
- g) In case it has been determined that the conditions which form the basis for granting a license or certificate have ceased to exist during the performance of the activities, the license or certificate shall be cancelled. However, in case it has been determined that such conditions have never existed from the beginning, a fine of six hundred thousand Turkish Liras shall be imposed together with the cancellation of the license or certificate.

In case actions requiring above fines are not corrected or such actions are repeated despite written notification, the fines shall apply as double the amount of the previous fine each time. The previous fines shall not be taken into consideration for the purpose of increasing the fines if the same action that necessitates administrative fines are not repeated within two years as from the date of the imposition of such fines. However, in case the same action has been repeated within two years, the total amount of fines so doubled may not exceed twenty percent of the net sale revenue of the relevant legal entity

as shown in its balance sheet of the previous financial year. The Board may cancel the license or certificate if the fines reach such level.

In case of cancellation of a license or certificate, the Board shall take the necessary measures to prevent the interruption of the service until a new license or certificate will have been issued.

In case the cancellation of a license for urban natural gas distribution has become compulsory, the Board shall cancel the license provided that it has taken the necessary measures so that the service shall not be interrupted. A tender shall be held on behalf of the license holder that owns such distribution facility for the sale of the said facility and determination of the new license holder within one hundred and twenty days. The procedures and principles in relation to the implementation shall be determined by regulations.

Administrative fines set forth in this Article shall never be stated as a cost item in the tariffs to be prepared by the legal entity that pays the relevant fine.

### **Right of preliminary investigation, inquiry and legal action**

**Article 10.**– The Board may decide, either ex officio or upon complaints or notices served to that effect, to initiate an inquiry directly or a preliminary investigation in order to determine whether or not it is necessary to initiate an inquiry.

The procedures and principles to be followed during the preliminary investigation and the inquiry shall be governed by a regulation to be enacted

**(Amended paragraph: Law no. 5728 dated 23 January 2008- Article 492; Official gazette No. 26781 dated 8 February 2008)** Legal actions against the decisions of the Board including the fines shall be directly heard in the Council of State. The Council of State shall treat such applications against the decisions as urgent matters.

### **Tariffs**

**Article 11.**– The procedures and principles regarding the tariffs issued to be approved by the Board under this Law, the determination and application of tariffs are as follows:

- 1) Connection Tariffs: The connection tariff principles to be determined by the Authority shall include the terms and conditions based on the principle of non-discrimination among free consumers which have equal standings for the connection to a transmission or distribution system which shall be included in the relevant connection agreements. The fees shall be freely determined by the parties within the framework of these principles. The fixed connection tariffs determined between the Authority and the distribution company shall apply to the subscribers.
- 2) Transmission and Storage Tariff: The Authority shall determine the tariffs regarding the transmission and supervision of conveyance. In the tariffs, the Authority shall take into consideration the transmission distance, the amount of transmitted gas and other factors it shall envisage. The legal entities performing the transmission and supervision of conveyance service shall notify then-tariffs to the Authority within the period specified by the Authority. The Authority shall determine new tariffs based on the tariffs notified to itself and the principles stated in this Article.

The transmission tariff to be prepared by the Authority shall include prices, terms and tariff conditions applicable without discrimination among all users with equal standings, benefiting from the transmission facility for the conveyance of the generated, imported or exported natural gas.

The Authority shall be authorised to determine the transit transmission tariffs according to procedures and principles different from those applicable to local transmission tariffs for the purposes of encouraging the transit transmission of the natural gas. The storage

tariffs shall be determined freely between the companies involved in storage business and the legal entities receiving the storage services.

The transmission and storage companies must prove to the Authority that they provide economical, effective and safe operation services.

- 3) Wholesale Tariff: The Authority shall determine the principles and conditions to be taken as basis for the natural gas sale tariffs. The sale prices, on the other hand, shall be determined freely within the framework of such principles by the parties involved in natural gas purchase and sale.
- 4) Retail Sale Tariff: Distribution companies must prove that they obtain gas from the cheapest source and that they operate effectively and safely; and they must fulfil this obligation within the license term. The retail sale prices and tariff principles consisting of unit purchase price of the natural gas, unit service cost, depreciation costs of the distribution company and other factors, shall be determined by the Authority. No price under any name can be requested from the consumers except for the retail sale price so established. The retail sale tariffs can be redetermined by taking into consideration the inflation and other issues, upon application of the distribution companies to the Authority. The Authority shall take into consideration the service cost, reasonable profitability that provides opportunity for investment, current natural gas purchase prices in the market and similar factors while determining such prices. The terms and conditions of the tariffs approved by the Board shall be binding upon all real persons and legal entities subject to such tariffs.

The rules and procedures applicable on failure of any real person or legal entity to effect the payments as required herein, including suspension of services in question shall be issued as a regulation.

**(Amended paragraph: Law No. 5784 dated 9 July 2008 - Article 18; Official Gazette no. 26948 dated 26 July 2008)** The Authority shall prepare a tariffs regulation for all kinds of tariffs within the framework of the principles stated in this Article.

Within the framework of this tariffs regulation, tariff proposals will be prepared by the relevant legal entities and submitted to the Authority. The Authority shall determine the price tariffs on the bases of financial data and tariff proposals of the relevant legal entities and of the market data. The relevant legal entities shall apply the tariffs approved by the Authority. The tariff principles and limits may be redetermined by the Authority taking into consideration the inflation and other issues.

The provisions of the legislation concerning the Liquid Fuel Price Stabilization Fund may not be applicable to the import and sale of the imported and local natural gas.

## **SECTION TWO**

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

#### **Miscellaneous provisions**

##### **Article 12.–**

- a) Expropriation; if the operations defined herein so necessitate, expropriation shall be carried out in accordance with the principles set forth in Expropriation Law No. 2942 dated 4 November 1983. A decision of necessity to be given by the Board in this respect shall have the effect of a decision for public benefit and the following procedures shall be carried out in accordance with the provisions of Expropriation Law.

The ownership of the expropriated property shall belong to the Treasury and the right of utilization to the legal entity that has paid the cost of such expropriation. Such rights of

utilization shall be a part of the relevant license or certificate, and shall be in force as long as such license or certificate remains in force.

In case of termination or cancellation of a license or certificate, the expropriation fees paid by the legal entities shall not be returned.

- b) Non In Rem Rights and Leasing;** In connection with their activities, the legal entities may request establishing a non in rem right on a state- owned land and leasing the same land at their own cost.

If the Board considers such request appropriate, the Authority decide on establishing a usufruct right, an easement, a construction right or a long-term lease in accordance with the relevant laws depending on the need.

The obligation to pay the cost of the right so acquired shall belong to the legal entity which took the transfer. Such right of utilization shall be a part of the relevant license or certificate, and it shall be in effect as long as the license or certificate remains in effect.

- c) Notification;** The notifications served on in accordance with this Law by the Authority are subject to the provisions of Notification Law No. 7201 dated 11 February 1959.
- d) (Amended paragraph: Law No. 5784 dated 9 July 2008 - Article 19; Official Gazette no. 26948 dated 26 July 2008)**

The capital, documents and every kind of assets of the Authority shall be considered as public property. The Chairman and members of the Board and the personnel of the Authority who commit a crime with respect to their duties shall be punished like civil servants. The crimes committed against the members and personnel of the Board shall be deemed to have been committed against a civil servant. The prosecutions with regard to the Chairman and members of the Board and the personnel of the Authority who commit a crime with respect to their duties shall be carried out according to the Law no. 4483 on Trial of Civil Servants and Other Public Officials.

- e)** Upon application of BOTAS or legal entities holding a license to be engaged in the natural gas market activity, the relevant administration may not stipulate that the natural gas storage, transmission and distribution lines shall be already designated in the urban development plan according to the Construction Law No. 3194 dated 3 May 1985, and it shall issue the necessary licenses following the registration of the natural gas transmission, distribution and storage facilities in the said plan, in conformity with the designs of facilities in question.
- f)** The provisions of Municipality Law No. 1580 and Law Concerning the Adoption With Amendments of the Statutory Decree No. 3030 dated 27 June 1984 Regarding the Management of Metropolitan Municipalities and other laws and statutory decrees which are in conflict with the provisions of this Law, shall not be applicable with respect to the import, sale, determination of sale price and distribution of natural gas.
- g)** Law No. 6183 Concerning the Procedures of Collection of Public Receivables shall be applied with respect to the receivables of BOTAS regarding natural gas.
- h)** Amongst the personnel subject to Republic of Turkey Retirement Fund, employed by the existing entities involved in the distribution of natural gas, persons who are willing shall continue with their relation with Republic of Turkey Retirement Fund.

#### **Amended, repealed and non-applicable provisions**

**Article 13.– a) (This article is regarding the Article 64 of the Law no. 2886 on Public Tender and appended to it).<sup>[1]</sup>**

**b)** The provisions of Petroleum Law No. 6326 which are in conflict with this Law may not be applicable.

**c)** The Statutory Decree No. 397 dated 2 January 1990 Concerning the Utilization of Natural Gas has been repealed.

### **SECTION THREE**

#### **The amendments to the Electricity Market Law**

**Articles 14–20-** (These articles are regarding the Electricity Market Law No. 4628 dated 20.2.2001 appended to it)

**SUPPLEMENTARY ARTICLE 1.-** Energy Market Regulation Authority is authorized and responsible for the application of Natural Gas Market Law as well as the implementation of this Law. The Energy Market Regulation Authority and the Board shall execute the duties, authorities and the regulations regarding the markets separately and in accordance with their laws due to the fact that the natural gas sector and electricity energy sector are markets different from each other.

**SUPPLEMENTARY ARTICLE 2.-** Energy Market Regulation Authority is authorized and responsible for; import, transmission, distribution, storage, trade and exportation of natural gas as well as granting licenses and certificates which define the rights and obligations of all real persons and legal entities regarding such activities, examining the market and system operation, formation, amendment and application and, inspection of distribution and customer service regulations; examining the prices reflecting costs and ensuring that the activities are conducted in accordance with Natural Gas Market Law.

For the purposes of enforcement of Natural Gas Market Law, inspection, supervision, guidance of activities of real persons and legal entities that will be performed within the scope of the licenses and certificates to be obtained from the Authority; the principles and provisions to be complied with and the scope and terms of such licenses and certificates, criteria for granting such licenses and certificates, and the terms thereof, method of determining their prices, their compliance with the environmental legislation, procedures of keeping the records, rights and obligations of license owners and other issues that may be deemed necessary for the regulation of the market, shall be determined by regulations.

The Authority shall prepare the regulations to be enacted upon decision of the Board in accordance with the Natural Gas Market Law, and long term programs upon taking the opinions of the legal entities performing activities in the market and the relevant entities and institutions.

### **SECTION FOUR**

#### **Temporary Provisions**

**TEMPORARY ARTICLE 1.-** The preparation term shall mean a period of twelve months beginning from the promulgation date of this Law. The Council of Ministers may extend this term only for once for another six months. Within the scope of preparation term: A natural gas market activity based on an acquired legal right, document, permission or authorisation prior to the effectiveness of this Law, can continue maximum for another twenty four months starting from the effectiveness date of this Law. The activities in question can continue only upon permission to be obtained as per this Law, after the said period. For the purposes of obtaining permission for the continuation of existing natural gas market activities within the framework of this Law, it is compulsory that;

- a) an application shall be made to the Authority within twenty months from the effectiveness date of this Law,
- b) There should not be any prohibition on performing the activities in question by the legal entity concerned.

Selection of the company by means of a tender, which will obtain authorization for the distribution of natural gas within the cities, submission of the selected company to the Council of Ministers in order to obtain a permission, execution procedure of authorization contract with the Ministry and similar procedures shall be carried out according to the communiqué to be enacted by the Ministry. The Ministry shall assign BOTAS General Directorate to carry out such procedures. The authorization contract to be executed between the Ministry and the Company to which a permission is being granted, shall become effective upon the approval of the Council of Ministers and at the end of the preparation term, if the contract proves to be inconsistent with the provisions of the legislation to be prepared by the Authority, the Board shall convert the contract into a distribution license by making required amendments therein in order to provide compliance with the legislation. The distribution company which has executed a permission contract may not object to such amendment. No license or certificate shall be granted to any company willing to become engaged in the natural gas market activities according to this Law until the end of the preparation term.

The Ministry shall be competent and authorised for the settlement of the disputes or clarification of the doubts related with the implementation of the Law within the preparation term, as from the effectiveness date of this Law.

**TEMPORARY ARTICLE 2.- (Amended first paragraph: Law No. 5367 dated 16 June 2005 - Article 2; Official Gazette no. 25856 dated 25 June 2005) (Amended first sentence: Law No. 5784 dated 9 July 2008 - Article 18; Official Gazette no. 26948 dated 26 July 2008)**

BOTAS, following the promulgation date of this Law, cannot execute a new natural gas purchase contract until its imports fall down to the twenty percent of the national consumption. Until the year 2009 and until the total annual importation amount is reduced to twenty percent of the annual national consumption, BOTAŞ shall hold a tender for transfer among the other companies, who are qualified for importation license and regarding whom a preliminary approval is received from the selling company for transfer of agreement, with regards to partial or complete transfer of the existing natural gas purchase or sale agreements along with all rights and liabilities. Starting with the winning company of the tender, BOTAŞ shall give content to the legal entities in order to provide for meeting with the seller party and obtaining the approval of the seller. The transfer shall come into force upon signing of a new agreement by the related legal entity with the seller party for the amount to be transferred. However, in the event of the legal entities not signing an agreement with the seller party, a separate tender shall be realized to provide for transfer of the amount, providing that the winning importer company accepts to fulfil all international liabilities of the BOTAŞ and that it is not below the natural gas purchase price which is specified in the bilateral agreements, among companies qualified for an importation license.

The Build Operate and the Build Operate Transfer model power plants which executed contracts with respect to which a Treasury guarantee has been issued, must prove to the Board that they, acting as a prudent operator, purchase the natural gas from the most economical source and reflect the decrease in the purchase cost of natural gas, in a manner to provide a decrease in the electricity sale price provided that a waiver from the Treasury guarantees shall be given by applying to the Undersecretariat of Treasury.

The amounts transferred by BOTAS in each calendar year cannot be less than ten percent of total natural gas amount which is to be purchased as guaranteed on the effectiveness date of this Law.

Moreover, the Board may give permission for import from the countries other than those within which contracts have already been executed by BOTAS by evaluating the applications within the framework of the procedures and principles to be determined by taking into consideration the formation of a competitive environment in the market, the obligations arising from existing contracts and export connections. However, no new gas purchase contracts can be executed by any import company with the countries which has already signed contracts with BOTAS, until the expiration of the term of these contracts. New import contracts can be executed for the same amounts following the expiration dates of such existing contracts. However, new gas purchase connections can be established with such countries with the purpose of exportation or in case lack of national natural gas supply occurs.

**(Supplementary Paragraph: Law No. 5784 dated 9 July 2008-5784, Article 20; Official Gazette No. 26948 dated 26 July 2008)** However, these provisions shall not be applicable for liquefied natural gas (LNG) importation. Moreover, in the spot liquefied natural gas (LNG) importation, the requirements specified under subparagraphs (2), (3) and (4) of paragraph (a) of item four of Article 4 of the Law and the first sentence following the subparagraph (4) thereof shall not be applicable. **(Supplementary Paragraph: Law No. 5784 dated 9 July 2008- Art. 20; Official Gazette no. 26948 dated 26 July 2008).** The period of sixty days specified under second paragraph of Article 4 of the law shall be applied as thirty days for the liquefied natural gas LL(NG) importation licenses.

According to the provisions of this Law, except for the distribution activities, the vertically integrated legal entity nature of BOTAS shall continue until the year 2009. After this date, BOTAS shall be restructured into a horizontally integrated legal entity. Among the legal entities to be formed as a result of restructuring, only the company which has the gas purchase and sale contracts and which will perform import activities shall represent BOTAS and shall be called BOTAS. Among the companies to be formed as a result of restructuring, the companies, other than the one involved in transmission activities, shall be privatised within two years.

The separation of accounts of BOTAS regarding the transmission, storage, sales and import activities, shall be realized within twelve months following the end of the preparation term.

The obligations of BOTAS for which Treasury guarantees have been issued are reserved.

**TEMPORARY ARTICLE 3.-** Transition period for urban distribution activities shall be as follows:

- a) The Ministry shall notify the Head of the Privatisation Administration concerning privatisation of the Eskisehir and Bursa urban distribution enterprises and assets which are owned and operated by BOTAS within two months following the effectiveness date of this Law. The privatisation procedures shall be carried out by Head Office of the Privatisation Administration which shall take into consideration the procedures and principles to be determined by the Authority, and within the framework of Law No. 4046 dated 24 November 1994 on Regulation of the Privatisation Practices and Amending Certain Laws and Statutory Decrees latest within six months following the preparation term, at the latest. It is compulsory that the obligations towards the Municipality stated in paragraph (g) of Article 4 of this Law shall be performed in order for the transfer to legal entities of the enterprises located in the relevant cities by the Privatisation Administration and for the commencement of the distribution activity thereof and that an urban distribution license shall be obtained from the Board.
- b) The existing urban natural gas distribution legal entities of which the title, operation and the natural gas trading right are owned by municipality or a municipality owned company shall be restructured within three years starting from the effectiveness date of this Law, by transferring urban natural gas distribution network and licenses which they own or operate so

as such transfer will result in decreasing public shares to twenty percent or less, provided that the proceeds shall be used for the payment of the existing transferable (devirli) debts for which a Treasury guarantee has been issued and which belong to the Treasury, arising as a result of the assumption of such debts, without being subject to the re-payment schedule of external loans or within 3 years starting from the latest due date for capital payment of external transferable (devirli) debts for which a Treasury guarantee has been issued.

- c) The distribution activity currently carried out by the municipality or municipality owned companies shall be conducted according to the provisions of the distribution license to be executed with the Authority within twenty four months following the effectiveness date of this Law. The license to be prepared by the Authority shall be in accordance with the form of the license granted in other cities. However, the issues which are considered by the municipality or municipality owned company to be beneficial or compulsory according to the features of the city shall be included in the license following the evaluation of the Board if necessary.
- d) The companies involved in urban natural gas distribution must separate the accounts of distribution and sale activities as of 1 January 2002
- e) (Supplementary subparagraph: Law no. 5669 dated 25 May 2007 Article 1; Official Gazette No. 26550 dated 12 June 2007) Within a period of three months following enactment of this subparagraph, a new company with a joint stock company status shall be incorporated by the Metropolitan Municipality of Ankara in order to execute natural gas distribution operation pursuant to Law No. 6762 and all infrastructure facilities related with distribution of the natural gas in the city, assets, movable and immovable assets, rights, receivables and debts(excluding the debts of the EGO General Directorate to BOTAŞ related with the natural gas purchase debts until the transfer date and the foreign credits that are provided to EGO General Directorate for extension of the natural gas and the distribution network under the guarantee of the Treasury as a foreign borrowing) of the General Directorate of EGO (Ankara Electricity and City Gas Establishment) shall be transferred to the company including all litigations in favour and against, executionary actions and its personnel subject to the labour legislation within a period of two months as of the date of incorporation of the company with a protocol to be signed by the General Directorate of EGO and the company.

Yields from the transfer process shall be exempt from corporate tax while transfer of good and service performances under the transfer scope shall be exempt from value added tax and the all processes and all documents to be issued under said processes shall be exempt from all kinds of taxes, duties, charges and similar financial liabilities. A distribution license shall be issued to said company for a term of thirty years. In the first ten years of the validity term of the license, the unit service and redemption fee of the distribution company shall be YTL equivalent of 0.05555 USD/m<sup>3</sup> while the transportation fee shall be applied as YTL equivalent of 0.0077 USD/m<sup>3</sup>. Said fee shall be determined with the proposal of the company and approval of the Board as of the eleventh year and onwards. Minimum 80 percent of the company shall be privatised by the Metropolitan Municipality of Ankara pursuant to provisions of Law 4046 no later than two years after enactment of this paragraph. The yields from the privatization to be realized pursuant to this paragraph shall be exempt from corporate tax and the transfer of shares shall be exempt from all kinds of taxes, duties and charges including value added tax. In the event of privatization not being realized until said date, 80 percent of the shares of the distribution company shall be privatized by the Privatization Administration. In said case, the remaining amount after deduction of privatization expenditures and the payments made to the institutions under the following provisions, shall be transferred by the Privatization Administration to the Metropolitan Municipality of Ankara.

Principal debt amounts of General Directorate of EGO to BOTAŞ General Directorate

resulting from natural gas purchases until the date on which this subparagraph comes into force shall be paid to BOTAŞ General Directorate at once within a period of one month from the yields of privatization. Interests, subsidiary amounts and fines related with all debts due to BOTAŞ General Directorate until the date on which this subparagraph comes into force shall be deleted. Moreover, the amounts paid to the creditors by the Undersecretariat of Treasury within the framework of agreements regarding the foreign credits provided to the General Directorate of EGO for the natural gas application projects in the form of external borrowing under the Guarantee of the Treasury shall be paid from the privatization amount to the Treasury on the basis of the foreign currency used in the payments to the creditors based on foreign currency exchange sales rate of the Central Bank of Turkey in force on the date of the payment within a period of one month. Following effecting of the payment, all interests and default fines and subsidiaries and fines resulting from said credits, due to the Treasury shall be cancelled without being associated with the income and expenditure accounts of the budget.

The remaining yields of the privatization shall be recorded as income to the budget of the Metropolitan Municipality of Ankara and no sequestration or deduction processes can be applied by any public establishment based on debts of the Metropolitan Municipality or its subsidiaries. Said income of the Municipality shall be used to cover the compensation payments to be made as a result of loss of business that may occur as a result of privatization as specified under Articles 21 and 26 of the Law no. 4046 and the on-going Ankara Metro and Ankara traffic, transportation, water, sewage works and infrastructure investments related with thereof.

Municipal Council of the Metropolitan Municipality of Ankara shall be authorized in issues which are not covered in this law and the Law no. 4046, regarding privatization application.

**TEMPORARY ARTICLE 4.-** The Egypton natural gas purchase and sale agreement initialed by BOTAS prior to the effectiveness of this Law shall be finalized and held outside of the scope of this Law, in case a deficit of supply occurs as a result of the efforts of the Board to ensure an equilibrium between supply and demand.

**TEMPORARY ARTICLE 5. - (Supplementary Article: Law no. 4918 dated 08 July 2003 – Article 1; Official Gazette no. 25165 dated 11 July 2003)** The period designated in temporary article 3 for realization of the privatization processes after the preparation period of the urban distribution establishments and assets of Eskişehir and Bursa, under the ownership and operation of BOTAŞ shall be extended for a period of one year as of the end of said period.

#### **Effectiveness**

**ARTICLE 21.-** This law shall become effective on the date of its publication.

#### **Enforcement**

**ARTICLE 22.-** The provisions of this Law shall be executed by the Council of Minister

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<sup>[1]</sup> The words “and lands needed for the natural gas transmission, distribution and storage facilities and networks“ shall be added after the words “touristic facilities“ in the first paragraph of Article 64 of State Tender Law No. 2886 dated 8 September 1983