



REPUBLIKA E SHQIPËRISË

ENERGY REGULATORY AUTHORITY

BOARD

DECISION

No. 235, dated 26.11.2021

ON

APPROVING THE “REGULATION ON THE PROCEDURES AND TERMS FOR RECEIVING AUTHORIZATION FROM ERE TO CHANGE THE LEGAL STATUS OF THE LICENSEE OR TO REPLACE THE PARTNER/SHAREHOLDER IN CHARGE OF THE INTERESTS OF THE LICENSEE AND TO ESTABLISH THE QUOTAS / SHARES OF THE PARTNER / SHAREHOLDER THAT CONTROLS THE INTERESTS OF THE LICENSEE AS A MEANS TO GUARANTEE THE FULFILLMENT OF OBLIGATION/S TO THIRD PARTIES ”

Based on article 16, article 20, letter “g”, as well as article 51, point 2, letter “a”, of Law no. 43/2015 “On Power Sector”, as amended; article 13 of Law no. 102/2015, “On Natural Gas Sector”, as amended; article 26 of the “Rules for ERE Organization, Operation and Procedures” approved with ERE Board Decision no. 96, dated 17.06.2016, Energy Regulatory Authority (ERE) Board on their meeting dated 26.11.2021, after reviewing report Protocol no. 144/7, dated 23.11.2021 prepared by the Working Group, “On approving the “Regulation on the procedures and terms for receiving authorization from ERE to change the legal status of the licensee or to replace the partner/shareholder in charge of the interests of the licensee and to establish the quotas / shares of the partner / shareholder that controls the interests of the licensee as a means to guarantee the fulfillment of obligation/s to third parties ”,

Observed that:

- ERE Board with decision no. 163, dated 12.07.2021, decided to open the procedure to review and approve the Regulation on the procedures and terms for receiving authorization from ERE to change the legal status of the licensee or to replace the partner/shareholder in charge of the interests of the licensee”.
- ERE with official letter Protocol no. 6/20 dated 14.07.2021, published the announcement in the print media on opening this procedure and submitted the official letter Protocol no. 844 dated 22.07.2021 to the interested parties: the Ministry of Infrastructure and Energy, Competition Authority, Energy Community Secretariat, KESH company, TSO company, DSO company, Universal Service Supplier (FSHU company), the Albanian Association of

Electricity Suppliers (AAES), Foreign Investors Association of Albania (FIAA), Albanian Renewable Energy Association (AREA), Albanian Centre for Energy Regulation and Conservation (ACERC), National Agency of Natural Resources, Trans Adriatic Pipeline AG Albania, ALBGAZ company, ALBPETROL company, PHOENIX PETROLEUM company, CGC company, BALKGAZ company, to receive an opinion regarding the proposed amendments.

- TSO company through official letter protocolled at ERE with Protocol no. 844/1, dated 29.07.2021 and ALBGAZ company via official letter protocolled at ERE with Protocol no. 844/4, dated 27.08.2021, informed that they have no further comments or suggestions regarding this draft.

- AREA Association, through official letter protocolled at ERE with Protocol no. 844/2 dated 09.08.2021, proposed to specify / clarify what is implied by the change of the partner / shareholder who controls the interests of the company (article 4), as well as to specify the term / validity that documents and statements issued by other bodies shall have from the moment of submitting the request at ERE (Article 5, point 4). These proposals were taken into consideration and are reflected in the above mentioned articles in the Regulation.

- KESH company through official letter protocolled at ERE with Protocol no. 844/3 dated 12.08.2021, presented at ERE their suggestions / proposals mainly regarding the title of the regulation, clarifications and additions regarding the setting of quotas / shares as a means to guarantee the fulfillment of the obligation / s, as proposed in (letter c) of Article 2); explanations of definitions (Article 4); document submission form (point 4, of article 5); required documentation (Articles 6 and 7); including an article specifying the necessary documentation for granting the authorization for setting the quotas / shares of the licensee as a means for guaranteeing the fulfillment of the obligation / s towards the third parties; the validity of the authorization and informing ERE on the progress of the transfer according to the authorization granted (Article 9); defining administrative violations and misdemeanors. These proposals / suggestions have been partially considered and reflected in the adaptation of the above mentioned articles in the Regulation.

- After the completion of the term imposed, there are no other comments or suggestions submitted by other interested parties.

For all of the above mentioned, ERE Board

Decided:

1. To approve the “Regulation on the procedures and terms for receiving authorization from ERE to change the legal status of the licensee or to replace the partner/shareholder in charge of the interests of the licensee and to establish the quotas / shares of the partner / shareholder that controls the interests of the licensee as a means to guarantee the fulfillment of obligation/s to third parties ”
2. License, Authorization and Supervision Directory shall inform the interested parties about ERE Board Decision.

This decision enters into force 15 days after the publication in the Official Gazette.

About this decision may be required its review at ERE within 7 calendar days and may be complained on Tirana Administrative Court within 30 calendar days for the licensees in Power Sector and within 45 calendar days for the licensees in Natural Gas Sector, from the day of its publication on the Official Gazette.

This decision shall be published on the Official Gazette.

CHAIRMAN

Petrit AHMETI

“REGULATION ON THE PROCEDURES AND TERMS FOR RECEIVING AUTHORIZATION FROM ERE TO CHANGE THE LEGAL STATUS OF THE LICENSEE OR TO REPLACE THE PARTNER/SHAREHOLDER IN CHARGE OF THE INTERESTS OF THE LICENSEE AND TO ESTABLISH THE QUOTAS / SHARES OF THE PARTNER / SHAREHOLDER THAT CONTROLS THE INTERESTS OF THE LICENSEE AS A MEANS TO GUARANTEE THE FULFILLMENT OF OBLIGATION/S TO THIRD PARTIES

**FIRST PART
GENERAL PROVISIONS**

**Article 1
Authority**

This regulation is drafted in conformity with article 20, letter “g” of Law no. 43/2015 “On Power Sector”, as amended; law no. 102/2015 “On natural gas sector”, as amended; the “Regulation on ERE organization, operation and procedures”, approved with ERE Board Decision no. 96, of date 17.06.2016, as well as the respective license conditions to exercise the activities on power and natural gas sectors.

**Article 2
Purpose**

The purpose of this regulation is to define the procedure, the required documentation, and the terms for issuing the authorization from ERE for the licensee that shall submit the request for:

- a) amending the legal status of the licensee;
- b) amending the partner/shareholder that controls the interests of the licensee through the sale, donation, inheritance or any other disposition of the licensee's quotas or shares;
- c) the set of the quotas/shares of the licensee as means to guarantee the fulfillment of the obligation/obligations to the third parties (mortgage, encumbrance, pledge or any other availability), when from the execution of this obligation it results that it is changed the partner/ shareholder that controls the interests of the licensed undertaking.

**Article 3
Scope**

This regulation shall be implemented for all the licensee on power and natural gas sectors, who submit the request to receive the authorization by ERE to amend the legal status of the licensee, amend the partner/shareholder that controls the interests of the licensee and set the quotas/shares of the partner/shareholder that controls the interests of the licensee as means to guarantee the fulfillment of the obligation/obligations to the third parties.

Article 4
Definitions

On this regulation the phrases as follows shall have these meanings:

- a) "Power sector law" shall mean Law no. 43/2015 "On Power Sector", as amended.
- b) "Natural gas law" shall mean Law no. 102/2015 "On Natural gas Sector", as amended.
- c) "ERE Board" shall mean ERE decision-making body, composed of five members appointed according to the procedures provided by Law no.43/2015 "On Power Sector" as amended.
- d) "ERE" shall mean the regulatory authority of power and natural gas sector, that operates in conformity with Law no. 43/2015 "On Power Sector", as amended and Law no. 102/2015 "On Natural Gas sector", as amended.
- e) "License" shall mean a right granted to a person to exercise the activity on power and natural gas sector, in conformity with the provisions of power Law and natural gas Law.
- f) "Licensee" shall mean a person that has the right to be equipped with a license to exercise an activity on power and natural gas sectors, in conformity with the provisions of Law no. 43/2015 "On Power Sector" as amended, and Law no.102/2015 "On natural gas sector", as amended.
- g) "Procedure" shall mean the activities, performed for the implementation of the effective law.
- h) "Quota/shares transferring" shall mean any action by which shall be established any sale, donation, lending, transferring mortgage, pledge agreement or any other availability agreement of the quota or shares of the licensee, when from this transferring it is changed the partner/shareholder that controls the interests of the licensee.
- i) "The partner/shareholder that controls the interests of the licensee" shall mean the partner or the shareholder that owns the necessary percentage to determine the decision-making in the licensed undertaking. For any kind of quota or shares transferring that changes this percentage it is necessary ERE authorization.

SECOND PART
PROCEDURE OF SUBMITTING A REQUEST TO GRANT THE
AUTHORIZATION BY ERE

Article 5
Submission of the request

1. Procedure to grant the authorization by ERE to amend the legal status of the licensee, ament of the partner/shareholder that controls the interests of the licensee and sets the quota/shares of the partner/shareholder that controls the interests of the licensee as means to guarantee the compliance of the obligation/obligations to the third parties and starts with the submission from a licensee of the request for one or more of the cases as follows:
 - a) amendment of the legal status of the licensee;

Approved with ERE Board Decision no. 235, dated 26.11.2021

- b) amendment of the partner/shareholder that controls the interests of the licensee through the sales, donation, heritage or any other availability of the quota or shares of the licensee;
 - c) the set of the quota /shares of the licensee as means to guarantee the compliance of the obligation/obligations to third parties (mortgage, donation, pledge or any other availability), when from the execution of this obligation it results that the change of the partner/owner that controls the interests of the licensed undertaking.
2. The attached request and information shall be signed from the person/persons that have the power to represent the licensee.
 2. The licensee may appoint a legal representative to submit at ERE the application together with the respective documentation, and to follow the procedure to the issuance of the authorization by ERE for the transferring according to the request. On this case shall be submitted at ERE the granted procure or the authorization from the licensee for his/her representation.
 3. The documentation submitted from the licensee shall be on the Albanian language, shall be original, notarized photocopy or with electronic seal. The documents and declarations from the other bodies shall be granted not earlier than 1 month from the moment of submitting the request. All the application documentation shall be deposited and together with an electronic copy (CD or USB)
 4. Parts of the documentation that the licensee requires not to be open for publication, shall be specified at the request, together with the justification for not making them public. Otherwise, shall be considered that the applicant is not requiring such a limitation.

Article 6

Content of the request and necessary documentation to grant the authorization by ERE for the amendment of the legal status of the licensee

1. Any licensee that shall submit at ERE the request to grant the authorization by ERE for the amendment of the legal status shall include on his request, the required approach and form from this regulation, information/documentation as follows:
 - a) full name of the licensee;
 - b) the appropriate address of the licensee or/and of the authorized representative to follow this procedure at ERE, where shall be included the phone number and the e-mail address;
 - c) a description from the licensee for the reasons of amending the legal status, by defining the term of this amendment;
 - d) the historical extract of the commercial register of the licensee.

Approved with ERE Board Decision no. 235, dated 26.11.2021

2. The licensee shall liquidate all the regulatory payments to ERE.

Article 7

Content of the request and the necessary documentation to grant the authorization by ERE to amend the partner/shareholder that controls the interests of the licensee

1. Any licensee that submit at ERE the request to grant the authorization by ERE to amend the partner/shareholder that controls the interests of the licensee shall include on his request in the approach and form required by this regulation, the information as follows:
 - a) full name of the licensee;
 - b) appropriate address of the licensee or/and of the authorized person to follow this procedure at ERE, where shall be included the phone number and the email address;
 - c) a description from the licensee of the reasons to amend the partner/shareholder that controls the interests of the licensee;
 - d) the expected effect after the approval of the transferring and the impact of the transfer in performing the licensed activity;
 - e) the description of the proposed candidate to control the interests of the company, which includes the general information for the activity of the undertaking (if the controller of the licensee interests shall be a legal/natural person);
 - f) detailed information on the financial contribution that the proposed candidate shall give in exercising the activity to control the interests of the licensee;
 - g) declaration of the licensee that the quota /shares for which it is required the transferring are not set as means to guarantee any obligation to the third parties.
2. Attached to the request, except of the information according to the definitions of point 1 of this article, shall be submitted at ERE even the documentation as follows:
 - a) the historical extract of the commercial register of the licensee as well as the historical extracts of the commercial register of all partners/shareholders of the licensee, when they are legal/natural persons;
 - b) the historical extract of the candidate proposed to control the interests of the undertaking when this is a legal/natural person. When the controller of the licensee interest is a foreign undertaking shall be submitted the extract with the respective commercial data that are registered for this undertaking, translated version, submitted with the apostille stamp and the translation notification;
 - c) the decision of the leading bodies of the licensee to perform the transferring of the quota/shares, the transferring that amends the partner/shareholder that controls the interests of the licensee, as well as the respective leading bodies of the partners/shareholders of the licensee, when these are legal/natural persons;
 - d) decision of the undertaking governing bodies to which it is performed the transferring, where shall be shown the acceptance of this transferring. In cases where the transferring

Approved with ERE Board Decision no. 235, dated 26.11.2021

shall be to an individual partner, the written approval of this last one mentioned for the acceptance of this transferring. In both cases shall be shown the readiness of the candidate to which shall be the transferring to continue the licensed activity after the execution of the transferring;

- e) prior agreement signed with the bank, in case of encumbrance, mortgage etc of the quota/shares;
- f) the approval/notification of the respective state authoring, for the required transferring, if this is required by the legal acts of the state authority;
- g) the final decision (if any), where it is set the amendment of the main partner/shareholder of the licensee.

3. The licensee shall liquidate all the regulatory payments to the ERE.

Article 8

Content of the request and the necessary documentation to grant the authorization by ERE to set the quota/shares of the licensee as a means to guarantee the compliance of the obligation/obligations to the third parties (mortgage, encumbrance, pledge or any other availability)

1. Any licensee shall submit at ERE the request to grant the authorization by ERE to set the quota/shares of the licensee as a means to guarantee the compliance of the obligation/obligations to the third parties (mortgage, encumbrance, pledge or any other availability), where from the execution of this obligation it results that it is amended the partner/shareholder that controls the interests of the licensed company, shall include on his request, in the required form by this regulation, the information as follows:

- a) full name of the licensee;
- b) the appropriate address of the licensee and/or the authorized person to follow this procedure at ERE, where shall be included the phone number and email address;
- c) the description from the licensee on the reasons of setting the quota/shares of the licensee to guarantee the compliance of the obligation/obligations to the third parties;
- d) description of the obligations with which the licensee is charged and the consequences for failure to execute the obligation within the deadline and the definitions described on the preliminary agreement;
- e) declaration from the licensee that the quota/shares for which it is required the transferring are not set as guarantee of any other obligation to the third parties.

2. Attached to the request, except of the information described according to point 1 of this article, shall be submitted at ERE the information as follows:

- a) the historical extract of the commercial register of the licensee;
- b) decision of the governing bodies of the licensee to set the quota/shares of the licensee to guarantee the compliance of the obligation/obligations to the third parties;

Approved with ERE Board Decision no. 235, dated 26.11.2021

- c) prior agreement signed with the bank;
- d) the approval/notification of the responsible state authorities, if this is required from the legal requirements of the state authority;
- e) the final court decision (if any), to set the quota/shares of the licensee as means to guarantee the compliance of the obligation/obligations to the third parties.

3. The licensee shall perform all the regulatory payments to ERE.

Article 9
Review of the application

1. The review of the application to grant the authorization by ERE, according to the definitions of this regulation, shall be within 30 working days from its submission.
2. At any case, but not later than 5 working days from the submission of the request, ERE may require to the applicant to complete the observed missing documentation from the application or the submission of additional information within 10 working days from being informed of the missing documentation/information on its application.
3. If it is not completed the required documentation/information within the term defined on point 2 of this article, the request of the licensee for the authorization by ERE is not being registered and is returned to the applicant along with the other by-legal acts.
4. If the required documentation is not send according to the requirements of article 6,7 or 8 of this regulation, the term defined on point 1 of this article starts on the day of submitting the complete documentation/information from the applicant.
5. After the final analysis of the deposited documentation according to the definitions and terms of this regulation, the responsible structure shall submit to the Board a report, presenting the grant or nor of the authorization from ERE, accompanied with the respective justification, in conformity with this regulation and the effective legislation.
6. In case of the request failure, ERE shall inform the applicant regarding the refusal justification and give the necessary guidelines within 7 working days from taking the decision.
7. The applicant may submit the new application according to the requirements of this regulation and shall take into consideration ERE instructions.
8. In case of granting the authorization by ERE for the amendment of the legal status or the transferring of the quota, the licensee shall deposit at ERE the historical extract of the

Approved with ERE Board Decision no. 235, dated 26.11.2021

commercial register of the National Business Center, where shall be reflected this amendment/transferring.

**Article 10
Board Decision**

1. After the termination of the term defined on article 9 of this regulation, ERE Board shall take the decision to approve or refuse the request to grant the authorization by ERE, to amend the legal status, amend the partner/shareholder that controls the interests of the licensee and set the quota/shares of the partner/shareholder that controls the interests of the licensee to guarantee the compliance of the obligation/obligations to the third parties, supporting its decision on:
 - a) the completion and accuracy of the documentation submitted in conformity with what is defined on this regulation and/or the requests for additional information/documentation of ERE;
 - b) the report drafted by the person/persons charged from the respective structures;
 - c) the expected effect from the approval of the transferring and the effect of the transferring in improving the quality of service for the licensed activity;
 - d) the willingness of the candidate to which it is proposed the transferring to continue the licensed activity after the performance of the transferring.
 - e) the financial status of the proposed candidate for the transferring the continue the exercise of the licensed activity.
1. The Board may issue even a conditional decision, case by case according to the specifications of the application, by defining even a time frame to complete this condition.

**Article 11
Notification of the decision**

1. With the termination of the procedure to grant the authorization by ERE to amend the legal status of the licensee, the amendment of the partner/shareholder that controls the interests of the licensee and the set of the quota/shares of the partner/shareholder that controls the interests of the licensee to guarantee the compliance of the obligation/obligations to the third parties, ERE shall notify the licensee according to the definitions of the Regulation for ERE organization, operation and procedures.
2. For this decision shall be informed the respective State Authority in case of granting the authorization by ERE for a concessionary undertaking or that has an Authorization from the respective State Authorization.
3. ERE decision taken according to this regulation shall be published on the Official Gazette and on ERE official website.
3. On the contrary to ERE Board Decision to approve or refuse the request for granting the authorization by ERE according to the definitions of this regulation, may be required the

Approved with ERE Board Decision no. 235, dated 26.11.2021

review from ERE within 7 calendar days, and may be filled a complaint at the Administrative Court of Tirana, within 30 calendar days from the publication in the Official Gazette for the licensed undertakings in one of power sector activities, and within 45 calendar days from the publication of the decision in the Official Gazette, for the undertakings in one of natural gas activities.

Article 12

The right to be informed on the content of the authorizations registers granted from ERE

1. ERE shall publish on the internet official website the register of the authorizations, based on the respective effective legislation.
2. On this register shall be included the data as follows:
 - a) the name of the licensee;
 - b) NUIS (unique identification number of the undertaking);
 - c) number and data of ERE Board Decision to issue the respective authorization;
 - d) type of the issued authorization.
3. The access right to the accompanying documents file shall be issued to the persons with legal interest, as defined from the effective legislation.
4. Confidential information shall be handled in conformity with the definitions of the Regulation for the protection of the confidential information.

**THIRD PART
LAST PROVISIONS**

Article 13

Amendment of the regulation

This regulation is object of review with ERE Board Decision.

Article 14

Entry into force

This regulation is approved by ERE Board and enters into force 15 days from the publication on the Official Gazette.