

GEDİK & ERAKSOY

November 2016

Overhaul of Turkish PPP Legislation

After having successfully implemented massive healthcare and transport projects in the last five years, the Republic of Turkey is now working on an overhaul of the applicable legislation. Amendments to Law No. 6428, which is applicable to hospital PPPs and drafting an umbrella PPP law, which is planned to be used in all sectors, are the two items on respective ministries' agendas.

Amendments to Healthcare PPP Legislation

Currently, the Law No. 6428 on Construction and Renovation of Healthcare Facilities and Procurement of Services under Public Private Partnership Model (the **Law No. 6428**) governs the public private partnership (**PPP**) projects implemented by the Ministry of Health. Law No. 6428 has been published in 2013, when the first wave of healthcare PPPs have already been tendered under a different set of legislation and then amended in early 2014 in order to allow amendments to the project agreements.

As a result of amendments to the project agreements, healthcare PPP projects are now considered to be bankable by both local and international financiers. In addition, certain points, such as the calculation of termination on compensation, limits on availability and service deductions, etc., which are unique to Turkish healthcare PPPs are considered by many financiers to be more favourable than the PPP schemes used in other European countries.

It is understood, however, that the Ministry of Health is now considering amending the risk allocation structure set out under Law No. 6428. Although a draft of the amendment law has not been made public, the ministry states that amendments will include:

- a new variation procedure simplifying the Ministry of Health's ability to approve the contract variations;
- limitations on the calculation of the compensation on termination due to force majeure or for the project company's default; and
- tax exemptions at the sub-contractor level.

We would expect that the proposed amendments, in particular calculation of the compensation on termination, would not be applicable to the projects which have been tendered before the amendments. However, obviously a further risk assessment and bankability analysis will be needed if the current risk allocation is reformed.

Draft "Umbrella Law"

Almost simultaneously with the Ministry of Health's efforts to amend Law No. 6428, the Ministry of Development is also working on a new umbrella PPP law to cover projects in all sectors, including transport, healthcare, education, justice, etc.

PPP legislation in Turkey is highly fragmented and there are a number of different sector-specific PPP laws. While the sector-specific approach brings in more tailor made solutions for each sector, lack of a common understanding and practice in different ministries is considered to be the down side.

In order to introduce a common approach to the PPP projects and create a PPP body, the former governments have developed a draft umbrella PPP law. This draft, however, has not been issued. We note that the Ministry of Development is now working on a new draft.

It is also understood that the umbrella law will provide comprehensive provisions under a single piece of legislation and it is aiming to standardise both the legislation and implementation of the PPP projects.

In addition, new PPP models will also be set out under the umbrella law and the contracting authorities will be free to use the model they prefer in each of the PPP Projects. Accordingly, the same contracting authority (e.g. the Ministry of Health), will be able to use different models (e.g. build-lease-transfer or build-operate-transfer) in different PPP projects. In other words, the procurement model will be chosen by the relevant contracting authority itself on a project basis instead of the current sector-specific approach.

We also understand that maturation of the draft umbrella law will take some time and until a new single legislation is issued, current fragmented approach will continue to be the case in Turkish PPP market.

Gedik & Eraksoy Avukatlık Ortaklığı

Büyükdere Caddesi, River Plaza
Bahar Sokak, No: 13 Kat: 17
Levent, Istanbul
Turkey

Tel +90 212 371 2950
Fax +90 212 371 2955

www.gedikeraksoy.com

© Gedik & Eraksoy Avukatlık Ortaklığı 2016. This document is for general guidance only and does not constitute definitive advice.



Hakkı Gedik
Partner, Gedik & Eraksoy

Contact
Tel +90 212 371 2953
hakki.gedik@gedikeraksoy.com



Gökhan Eraksoy
Partner, Gedik & Eraksoy

Contact
Tel +90 212 371 2952
gokhan.eraksoy@gedikeraksoy.com