

# GEDİK & ERAKSOY

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## *Public-Private Partnerships for Education*

*Following the footsteps of the Ministry of Health, the Ministry of National Education (Milli Eğitim Bakanlığı, the MoNE) established its own public private partnership (PPP) scheme to develop education campuses under built-lease-transfer method.*

### **Speed Read**

The Decree Law No. 652 on Organization and Duties of Ministry of National Education (the **Decree Law**) sets out the main legal framework for the construction and operation of education campus facilities. Accordingly, education campuses which are deemed necessary by the MoNE may be constructed on the real properties owned by MoNE or the Treasury. The term of projects will be for a period not exceeding 49 years and the construction period will be maximum three years. The Decree Law envisages the projects be implemented under build-lease-transfer model and the MoNE will make periodic lease payments to project companies.

In order to set out details in connection with the educational PPP projects, the Regulation on Construction of Education Facilities in Exchange for Lease Payments and Renovation of Facilities in Exchange for Operation Rights of Non-Educational Areas (the **Regulation**) was published in the Official Gazette on 8 September 2012.

According to the publicly available information, the MoNE has planned to carry out 33 different campus projects. The first group of projects are planned to be implemented in Istanbul, Izmir, Adana, Kocaeli, Aydın, Şanlıurfa, Erzurum and Muğla.

### **Key Highlights**

#### *Scope of the Concession*

According to the Regulation and depending on the tender specifications of each project, concessions will include responsibilities with respect to design, financing, construction and maintenance of the facilities, provision of non-educational services such as catering, laundry, security, etc. and rights such as operation of the non-educational areas within the facilities such as parking lots, indoor-outdoor pools, restaurants and malls.

In accordance with the Constitution however, educational services will be provided by the civil servants employed by the government in these facilities and these services will not be included in the scope of concessions.

The Regulation also authorises the MoNE to have the existing education facilities renovated through granting operation rights of non-educational areas to the project companies.

### ***Bundling***

The Regulation also allows bundling of different facilities under the same project which may create more demand and interest in the educational PPPs. Since the investment amount of the education campuses is expected to be relatively low when compared to the healthcare PPP projects, bundling multiple facilities under the same project would create a more attractive portfolio.

In addition, bundling different facilities in the same project would increase the investment amounts and help the projects be eligible for debt assumption by the Treasury which is briefly discussed below.

### ***Payments***

The MoNE will make lease payments to the project companies comprising of availability payments for the facility and service payments for the provision of non-educational services. The revenues of the project company from non-educational areas are also taken into account for the calculation of the remuneration.

The Regulation also states that sufficient funds should be allocated to the MoNE's budget. However, the amount of total allocations to MoNEs annual budget cannot exceed 50% of the total capital expenses allocated in the MoNE's budget in any relevant year.

### ***Financing***

Pursuant to the Regulation, at least 20% of the total investment amount must be contributed by the sponsors as equity.

Further, the project company is required to provide financing for the project.

### ***Land***

The Regulation envisages a dual implementation with regard to real properties. Accordingly, real properties necessary for construction of educational facilities may be allocated by the MoF upon request of the MoNE. The MoF may grant construction rights over the real property free of charge for a period not exceeding 49 years.

The MoNE would be responsible to obtain the necessary permits and reports related to the real properties on which the construction rights will be granted in favour of the project companies. An annotation in the land registry will be made stating that such right and the relevant land cannot be used for any other purposes. In addition, the construction rights cannot be transferred without obtaining the prior consents of the MoF and the MoNE.

### ***Direct Agreement and Step in Right***

The Regulation does not explicitly provide execution of a direct agreement between lenders and the MoNE. Nevertheless, the definition of "lenders' step in right" implies execution of an agreement between lenders and the MoNE. According to the above mentioned definition, lenders of an educational PPP project may exercise their step in rights by replacing the project company with another entity.

### ***Debt Assumption***

Neither the Decree Law nor the Regulation makes a clear reference to debt assumption. However, the Treasury Debt Assumption Regulation which was issued in April 2014 makes Treasury debt assumption available for educational PPPs as well.

In order for an educational PPP project to benefit from Treasury debt assumption, among other conditions, the project agreement annexed to the tender specifications should clearly state availability of debt assumption. Therefore, the interested bidders should ensure that the relevant project includes availability of Treasury debt assumption in the tender specifications.

In addition, the total investment amount of a project should be at least TL500 million. We believe bundling of different facilities would help the projects to benefit from Treasury debt assumption.

The scope of debt eligible for assumption is financial obligations arising out of any foreign financing provided for the project including the costs of certain derivatives necessary to secure the financing.

Please also see our newsletter on the new Treasury Debt Assumption Regulation dated April 2014 from [http://www.gedikeraksoy.com/New\\_Debt\\_Assumption\\_Regulation\\_April\\_2014.PDF](http://www.gedikeraksoy.com/New_Debt_Assumption_Regulation_April_2014.PDF) for further details.

### ***Currency Mitigation***

Pursuant to the Regulation, lease payments will be escalated by a rate which is the arithmetic mean of consumer and producer price indices of the previous year.

If the project company provides financing denominated in a foreign currency and the increase in this currency exceeds the inflation rate calculated as above, then the lease payments would be multiplied with a correcting factor.

### ***Tax***

According to Value Added Tax Law<sup>1</sup>, delivery of goods and services to project companies is exempted from value added tax during the investment period. Contrary to the legislation applicable to the PPPs in other sectors in which the project companies benefit from exemptions from stamp tax and official charges, the Decree Law and the Regulation are silent on the application of or exemption from these taxes in education PPP projects.

### ***Termination***

Events leading to termination of project agreements are grouped in three clusters:

- the project company's default;
- the MoNE's default; and
- unilateral termination, force majeure, and mutual termination.

Regarding the MoNE's default and unilateral termination by the MoNE, the Regulation sets forth provisions authorising the MoNE to compensate the damages of the project company. The details of scope of damages and the procedure of remedy are left to be articulated in project agreements.

In case of the project company's defaults, aside from the events triggering immediate termination, the MoNE is required to send a notice in which a certain period of time is granted to the project company to remedy its defaults. If the project company fails to comply with the directives of the MoNE to remedy its defaults, the MoNE becomes entitled to terminate the project agreement.

In case of force majeure or mutual termination, if the education facility is constructed on real property allocated by the MoF, then the project company will not have any claims over buildings and facilities which should be transferred to the Treasury. If however the real property over which the facilities are constructed

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<sup>1</sup> Provisional Article 29.

belongs to the project company, MoNE may buy-out real property, facilities and equipment upon the consent of the project company.

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