



## Public-Private Partnerships in Turkey

The term “Public Private Partnership” (“**PPP**”) refers to a long-term, contractual partnership between public and private sector agencies (“**Partner**”), specially targeted towards financing, designing, implementing and operating infrastructure facility services that were traditionally provided by the public sector.

The first systematic programme aimed at encouraging PPPs was introduced in the United Kingdom, with the establishment of the “PFI-Private Finance Initiative” in 1992. In a PPP, each Partner agrees to share responsibilities related to implementation and/or operation and management of a project. This collaboration or partnership is built upon the areas of expertise of each Partner, based on the allocation of:

- resources
- risks
- rewards
- responsibilities

PPP investment models were first implemented in motorways, roads and other infrastructure projects. More recently, these models have been implemented in school and hospital constructions. The global volume and number of PPPs have increased significantly since the 1990s and many countries such as the UK, Spain and Italy have started to implement PPP models for project financing. As of the end of 2006, the investment volumes of private sector entities in public projects reached EUR 63.7 billion in the UK, EUR 6.5 billion in Italy and EUR 2.5 billion in Spain.

PPP models vary from short-term simple management contracts (with or without investment requirements) to long-term and complex BOT projects. The most common PPP models are as follows:

- (i) Build-Operate-Transfer (“**BOT**”): BOT is a PPP model where a construction is built, financed and operated by the private sector and then transferred to the relevant public authority after a specific period of time determined under the BOT agreement between the Parties. The BOT

model is more commonly implemented in complicated long-term projects such as highway constructions, power plant and water treatment facilities.

- (ii) Build-Operate ("BO"): In BOs, the construction is built and operated by the private sector. Differing from the BOT model, in BOs the facility's ownership is not transferred to the relevant public authority. This model is commonly implemented in power plant facilities.
- (iii) Transfer of Operational Rights ("ToR"): This is a PPP model where the relevant public authority transfers its operating rights to the private sector for a certain period and under certain conditions. The proprietary rights are not transferred. Only the operating rights of a certain facility are granted to the private sector.
- (iv) Build-Lease Model ("BL"): In a BL, the private sector finances and builds a facility on a land and subsequently leases this facility to the relevant public authority. This model is more commonly used in healthcare facilities.

## 1. PPPs in Turkey

Historically, concessions given to the private sector date back to the "Law on Concessions Related to Public Services" enacted in 1910, which is the still primary legislation for PPP projects in Turkey. This law provides only a very general, non-detailed framework applicable to PPP projects. During the 1980s, PPP projects became more prominent. Since the late 1980s and early 1990s, several pieces of legislation have been enacted with regard to PPPs. These are as follows:

- Law No. 3096 on the Generation, Transmission, Distribution and Trade of Electricity by Third Parties Other than the Turkish Electricity Authority, enacted on 19 December 1984.
- Article 33 of the Law No. 5335 regarding the transfer of operation rights of airports and passenger terminals by the State Airport Authority, enacted on 27 April 2005.
- Law No. 3465 on the Construction, Maintenance and Operation of Highways, enacted on 2 June 1988.
- Law No. 3996 on the Realization of Certain Projects under the Build-Operate-Transfer (BOT) Model, enacted on 13 June 1994.
- Law No. 4046 on Privatization, enacted on 27 November 1994.
- Law No. 4283 on the Establishment and Operation of Electricity Generation Plants and Energy Sales under the Build-Operate (BO) Model, enacted on 19 July 1997.
- Law No. 5396 on the Health Sector under the Build-Lease (BL) Model, enacted on 15 July 2005.

Although Turkish authorities already have experience in several aspects of PPPs, thanks to the several BOT and BO projects realized since the early 1990s, there still remains an unbalanced risk between the public and private sectors and a lack of political, economic and legal stability. Apart from energy and airport terminal projects, participation of the private sector has not increased as much as it had been expected to increase.

As mentioned above, the BOT model has been commonly used in several projects in Turkey. The most well-known BOT projects can be listed as the Marmaray Bosphorus Tunnel, the Zafer Airport in Kütahya, Istanbul - Izmir Motorway Project, the Göcek Tunnel Motorway Service Stations the Çeşme Marina in İzmir, the Yuvacık power plant in Kocaeli, the Birecik power plant in Şanlıurfa, the Suçatı power plant in Kahramanmaraş, and the Yamula power plant in Kayseri.

As a result of the search for alternative PPP models, Law No. 5396 on the Health Sector under the BL model, was enacted on 15 July 2005. Law No. 5396 sets forth the principles on construction and renovation of health facilities under the BL model. Subsequent to Law No. 5396, the Regulation on the Health Facilities to be Constructed in Return for Lease and Renovation of Health Facilities in Return for Operation of the Services and Areas Other than the Medical Service Areas, entered into force in 2006. The İkitelli Integrated Health Campus, Kayseri Integrated Health Campus and Ankara Bilkent Integrated Health Campus are some of the recent healthcare projects that will be financed under the BL model.

## **2. Draft Law on PPPs**

Among the problems with the current framework surrounding PPP projects is the lack of a specific responsible state authority to govern PPP projects and a systematic general legislation to regulate these projects. After years of discussion, the Draft Law on Fulfilment of Investments and Services through Public and Private Partnerships ("**Draft Law**") was prepared with an aim to create a stable legal base for PPP projects in Turkey. The Draft Law proposes to revoke all of the existing laws and regulations mentioned above, and to standardize the provisions applicable to all models (i.e., BOT, BO, ToR), by improving them in line with international best practices and in appreciation of the public and private sectors' roles as equal partners. It also proposes to establish a central state authority to supervise and promote PPP projects. The main novelties proposed under the Draft Law are as follows:

- (i) The Draft Law defines PPP models as investment models where public and private sectors share the cost, risk and rewards in delivering a service or facility for the public.
- (ii) The scope of the Draft Law includes agriculture, irrigation, mining, manufacturing, energy, transportation, communication, information technology, tourism, real estate, municipal services, health, security, general administration infrastructure investments and services etc.

- (iii) The Draft Law combines all PPP related legislation. Accordingly, all of the legislation mentioned above will be abolished when the Draft Law becomes effective. As a result, the Draft Law will be the only law governing PPP Model projects.
- (iv) The Draft Law defines the available PPP models as the following: Build-Operate-Transfer (BOT); Build-Operate (BO); Build-Lease; and Transfer of Operation Rights (ToR).
- (v) The Draft Law provides that public interest and economic and social prosperity are the main principles of a PPP model. According to the Draft Law, public administrations can only execute PPP models that fall within their fields of activity.
- (vi) Public administrations that intend to carry out a PPP project must apply to the State Planning Organization with a preliminary study and a tender strategy. Following the affirmative approval of the State Planning Organization, in order to receive a tender authorization with respect to the planned PPP model, the administrations will have to apply to the High Planning Council.
- (vii) The Draft Law proposes the establishment of a central authority responsible for monitoring PPP projects. The name of this authority is proposed as the "Public and Private Partnership General Directorate", which will be established within the State Planning Organization.

### **3. Conclusion**

The Draft Law, which was drafted by the State Planning Organization in November 2007, is at a relatively early and premature state. It has not yet even been brought to the Parliament's agenda. It is envisaged that this Draft Law will take some time to finalize. No timescale has been set. We believe that late next year would be the soonest we could realistically expect to see the Draft Law in the Parliament's agenda for any discussion and agreement, since there are a number of political issues to overcome first.

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