

# Legislation review

## Public Private Partnerships Experience in Turkey Legal Perspective

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# Public Private Partnerships Experience in Turkey Legal Perspective

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# PPPs in Turkey-1

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It is not new in Turkey and Turkey's history of enactment of PPPs goes back to the Ottoman times.

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The First one is the Law Concessions for the Public Benefit dated 1910 (*Menafii Umumiyyeye Müteallik İmtiyazat Hakkında Kanun*)

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The last one is Law No. 6428 Concerning the Construction of Facilities, Renovation of Existing Facilities and Purchasing Service by the Ministry of Health by Public Private Partnership Model

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The implementation of the various models of the PPP applied in a long period during the law history of Turkey, but as yet there remains no comprehensive PPP legislation to regulate the general rules and legal structure of PPP models.

# PPPs in Turkey -2

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PPPs are finding implementation area in Turkey for a long time in its various models but they are not called PPPs.

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BOT is normally one of the models of the PPPs but Turkey has a special law called BOT Law.

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For the last applications in the Health sector the model is BLT model but the law called PPP Law.

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BOT models are used for a long a time and the government has more experiences about that. But the new PPP model BLT is only for the Health Sector and from the beginning it was very problematic.

# PPPs in Turkey - 3

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The law No.6428 was published on **9 March 2013** and entered into force on this date.

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The aim of the law is to regulate the general and basic principles of PPP Law.

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The model of the PPP is BLT mentioned in the Law.

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PPP Law Art.2/1 lays down that the land of health PPP projects will be in the full property and ownership of the administration and there will not be any transfer of the ownership rights of the lands to the project company . A servitude right established max.30 years excluding the fixed investment term, free of charge.

# PPPs in Turkey -4 ( Tender Process )

The PPP Law has its own tender procedure and it is further clarified that the acts and transactions to be made under the PPP Law are not subject to the State Procurement Law No. 2886 or the Public Procurement Law No. 4734. Therefore, the healthcare PPP tenders will be held only in accordance with the procedures and principles set out under the PPP Law.

During the course of the tenders, the administration will be under an obligation to ensure the **transparency, competition, equal treatment, credibility, confidentiality, public control and efficient usage of the public resources.**

Tender issue needs the approval and authorization of the Supreme Planning Council.

Three tender types are possible

- open tender (All applicants)
- tenders by certain pre-qualified bidders( Applicants which are invited as a result of a preliminary assessment.
- negotiation tender method ( if there is not any proposal after the first two method, urgent need(disaster , eathquake etc,))

Acceptance will be based on , the most economically advantageous offer.

# PPPs in Turkey -5 ( PPP Contracts)

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According to Art.4(1) of the Health PPP Law , the PPP contract is subject to private law provisions and the contract term is determined by the administration not exceeding thirty years excluding the fixed investment period determined in the contract according to the properties of the premises and the feasibility report.

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Contract period is determined by the administration not to exceed thirty years.

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The Private side of the PPP contract is responsible at the end of the contract period to transfer the healthcare facilities without any payment to the administration in the form of good operating, well-maintained and useable condition, free of all charges.

# PPPS in Turkey - 7 (Dispute Resolution Procedure)

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As a rule; any dispute arising out of or relating to the contract shall be finally settled by Turkish Commercial Courts instead of Turkish Administrative Courts pursuant to Turkish laws.

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However, parties are also entitled to choose arbitration provided that the Turkish laws be applied to the merits of the dispute and the arbitration be held in Turkey, in accordance with Turkish International Arbitration Law.



# Sample Projects from Turkey

Gebze – İzmir Motorway ( BOT )

Istanbul 3th Airport Projesi ( BOT)

Kayseri Integrated Health Campus( BLT)

Mersin Integrated Health Campus (BLT )

Ankara Etlik Integrated Health Campus (BLT )

**Thank you for listening**