

PPP LEGAL ISSUES IN TURKEY

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



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



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

History of the PPPs in Turkey

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

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

For the last applications in the Health sector the model is BLT model but the law called PPP Law. First of all in the literature there is conceptual complexity.

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.

To ensure that certain contracts of concessionary nature to become private law contract 1999 change in the Constitution provided and added a paragraph to Article 47 titled “Nationalisation and Privatisation” which reads

- “Those investments and services carried out by the State, State economic enterprises and other public entities which could be performed by or delegated to real persons or legal entities through private law contracts are determined by law.”

The Constitution states in the added paragraph the principle of legality.

- Again Article 7 of the Constitution lays down that
- “The authority to legislate belongs to the Grand National Assembly of Turkey on behalf of Turkish nation. This authority cannot be transferred.”

Therefore, it is imperative that any such authorization to regulate the matter should emanate from a “Law” as defined by the Constitution

Although the constitutional rule, the first PPP Law (Additional Article 7) was enacted on 14.07.2005 and the implementing By Law published on 22.07.2006 which regulates PPP in Healthcare Services in a greater detail.

It provided a broad authority to the Ministry of Health to determine all details of PPP projects.

As the Ministry of Health has no authority to legislate a law it regulated these details through by laws instead of a law passed by the Parliament.

Turkish Association of Medical Doctors brought an action against the Ministry of Health and the Primeministry relating to the three PPP Projects and demanded:

i- **the annulment and suspension of the execution of the Bid** and the core provisions of **the By law** on the legal basis that these issues can only be determined in a law by the Parliament not by Ministry of Health pursuant to Article 47 of the Constitution;

ii- the Council of State (Danıştay) apply to the Constitutional Court for **the annulment of the Additional Article 7.**

Council of State (“*Danistay*”) ruled that:

i- apply to the Constitutional Court for the annulment of the Additional Article 7 of the Law considering it is against the Constitution;

ii- the bid contained a provision, i.e., transfer of the premises that are not connected to healthcare premise for non-medical commercial services. This is against the law and thus the execution of the bid be suspended.

While the cases were pending, the Turkish Parliament has adopted the new law to boost Healthcare PPP Projects before the judgement of the Constitutional Court.

The law numbered 6428, called *“The Law on Construction and Renewal of Facilities and Provision of Healthcare Services through Public Private Partnership Model”* has been enacted.

Following the enactment of the new PPP Law, the Constitutional Court on 6 June 2013 ruled that since the subject matter of the provision claimed to be unconstitutional has been reenacted by the New PPP Law, there remains no subject to be decided upon. The suspension of the execution of the previous Law was refused on the same ground.

The Health PPP Law No.6428

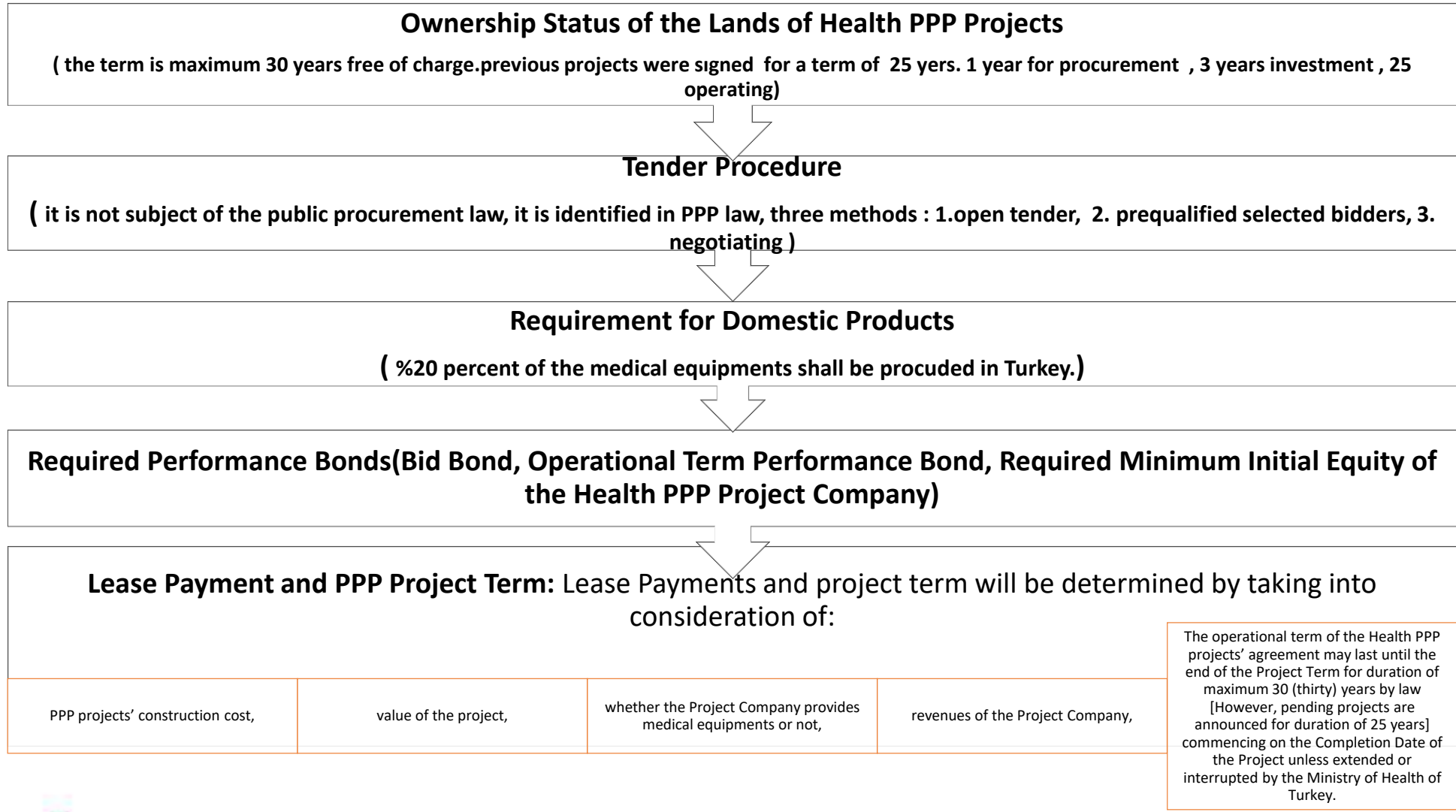
The law No.6428 was published on **9 March 2013** and entered into force on this date.

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

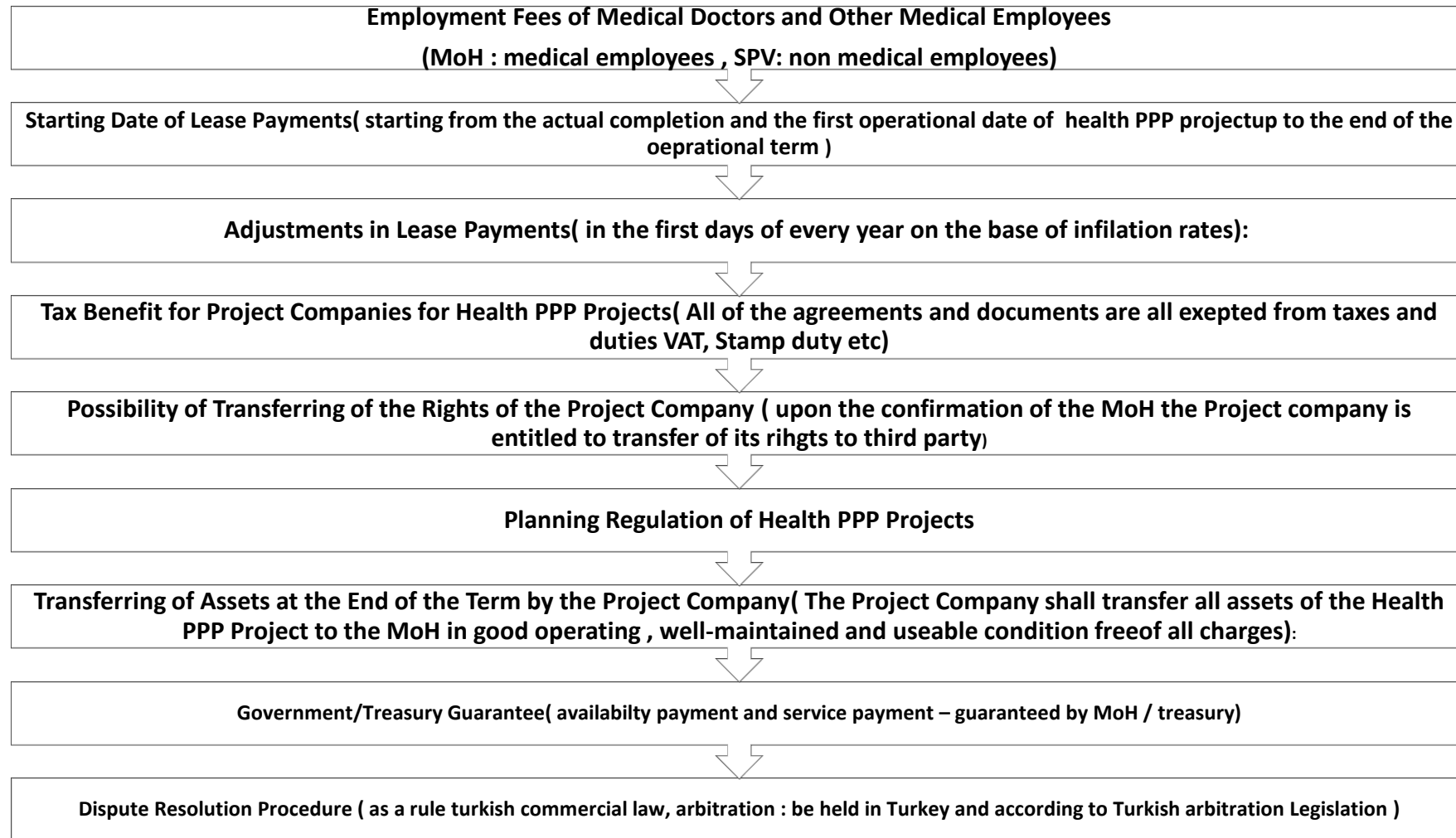
The model of the PPP is BLT mentioned in the Law.

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

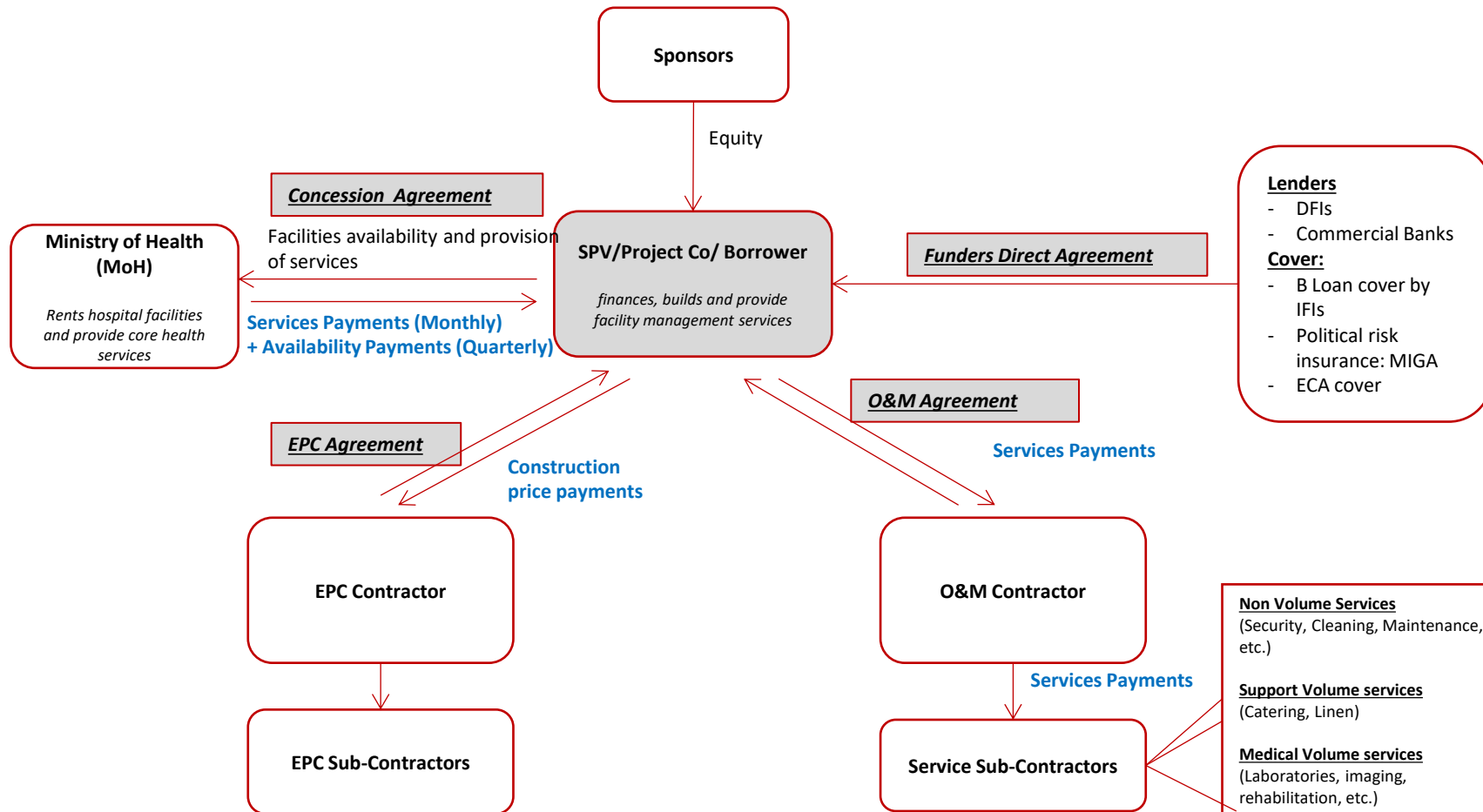
Main Legal Issues regulated by new Turkish Health PPP Law- 1



Main Legal Issues regulated by new Turkish Health PPP Law-2



Legal Structure



Thank You For Listening