PPP model in Infrastructure

13 March 2017

European Bank
for Reconstruction and Development

Contents

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Implementation of PPP model in Infrastructure: Turkey Case

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European Bank
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Contents

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Introduction

Market snapshot

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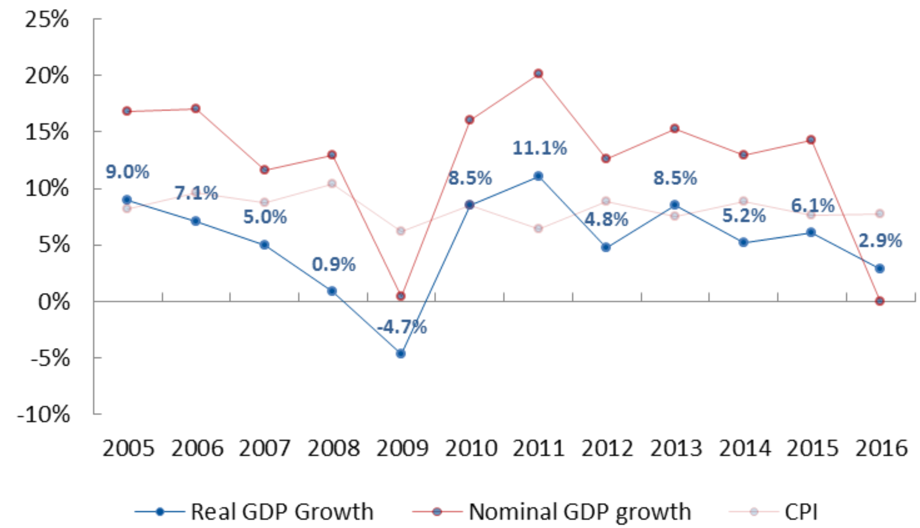
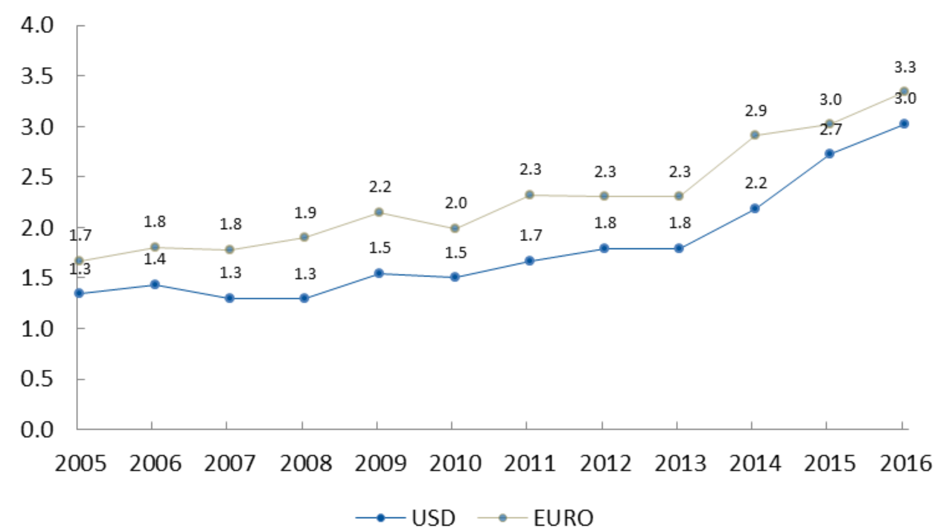
TURKEY MACROECONOMIC INDICATORS	2016
Population	79.8 million
Labour force	30.5 million
GDP	USD 856 billion
GDP per capita	USD 10,807
Disposable household income	USD 16,873
Total exports	USD 141 billion
Total imports	USD 198 billion
Foreign Direct Investment	USD 12 billion
# of companies with foreign capital	52,574
Average GDP growth rate (2006 – 2016)	5.0%
Estimations **E17:** 2.6% **E18:** 3.0% **E19:** 3.5%, **E20:** 3.8% **E21:** 3.8%	
Average inflation rate (2006 – 2016)	8.2%
Estimations **E17:** 10.1% **E18:** 9.1% **E19:** 8.5%, **E20:** 7.9% **E21:** 7.5%	
Average TRLUSD (2006 – 2016)	1.86
Average TRLUSD (2016)	3.02
Year-end TRLUSD (2016)	3.53

Major Import Partners

China (12.8%); Germany (10.8%); Russia (7.6%); USA (5.5%); Italy (5.1%); France(3.7%); S. Korea (3.2%); India (2.9%); Spain (2.9%); United Kingdom (2.7%)

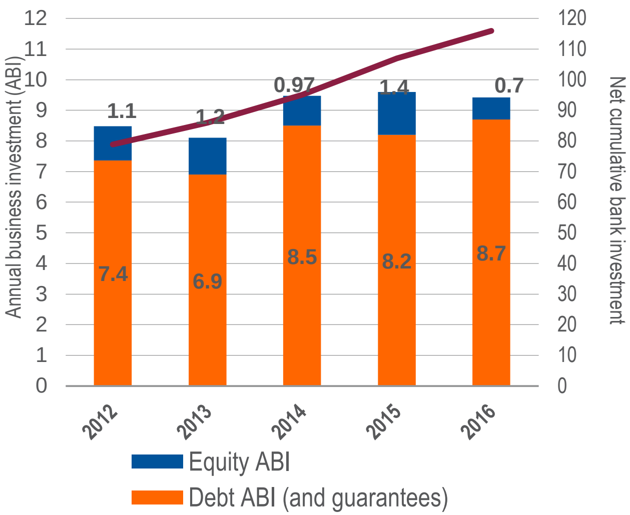


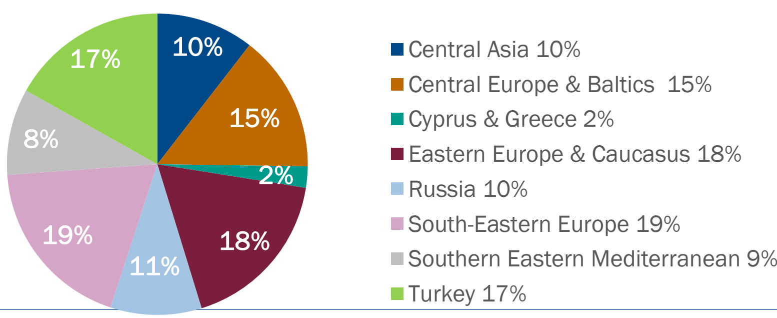


EBRD business snapshot

EBRD Global	YE2016
Number of projects to date	4,723
Net cumulative Bank investment	€ 116 bn
Private Share	76 %

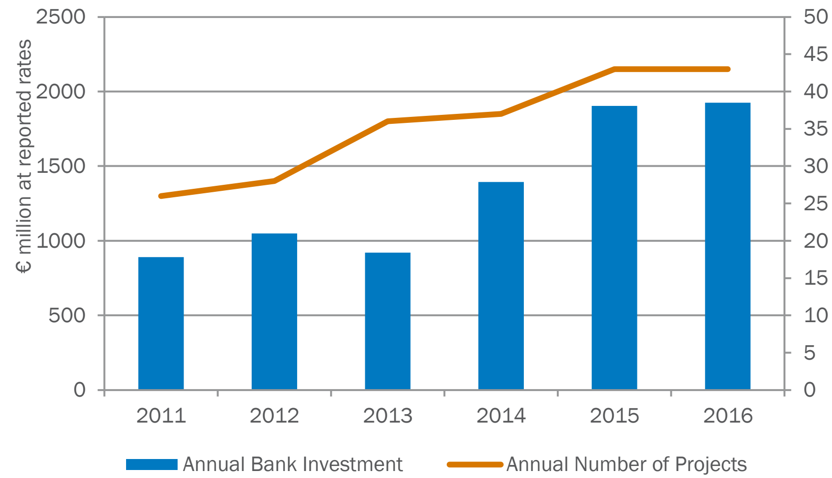
NCBI = Net Cumulative Bank Investment

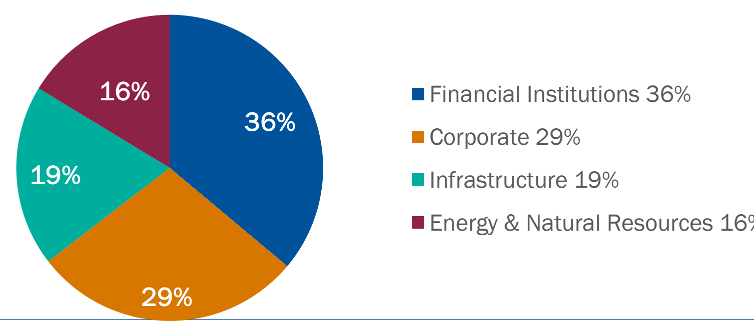




EBRD Turkey	YE2016
Number of projects to date	217
Net cumulative Bank investment	€ 9 bn
Private Share	98 %

Annual Bank Investment and number of projects





EBRD priorities in Turkey

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Operational Priorities (2015 – 2019)

i. Enhancing **energy security and sustainability** by supporting sector reform, promoting energy efficiency and renewable energy

ii. Improving the **quality of infrastructure** via commercialisation and private sector participation

iii. Scaling up **private sector competitiveness** through innovation and improved corporate governance

iv. Promoting **regional and youth inclusion**, as well as **gender equality**, to support long-run growth potential

v. Deepening **capital and local currency money markets**

Decentralised business model

- 3 offices : Istanbul, Ankara, Gaziantep
- **90 staff on the ground**
- Includes: bankers, syndications, lawyers, engineers, technical assistance specialists

Capital mobilisation

- EBRD's €9 bn investment in Turkey has additionally mobilised €20 bn in total capital.
- *"Every EBRD euro is supplemented by €2.3 from other sources"*

Investment opportunities and business drivers for Infrastructure in Turkey

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INFRASTRUCTURE

- Emerging economy presents a **need for infrastructure investment** in various industries including transportation. This includes:

    i. Increasing the length of **high speed rail lines** from **900 km to 10,000 km**

    ii. Expansion of the **motorway network** from **2,200 km to 7,500 km**

    iii. Increasing passenger capacity at **airports** to **400 million from 165 million**

    iv. Reaching **32 million TEU** from 27 million TEU handling capacity for **container transport**

    v. Achieving a hospital facilities management PPP programme covering up to **60 new hospital facilities** with 50,000 high-quality hospital beds at a total investment cost of up to € 12 Bn.

Contents

Turkish Infrastructure / PPPs
MOTORWAYS/TUNNELS/BRIDGES

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Main Features of Turkish PPP Highways

- Since 2003, 13,000km of the target 15,000km were constructed and opened to traffic under the Government Road Action Plan in Turkey. These investments have been procured, implemented and financed by the state authorities.

PPP road construction and operations programme

- The relevant authority for the Turkish Motorway PPPs is the Ministry of Transportation.
- **Eurasia Tunnel as the blueprint and flagship** was the first project implemented with new BOT/ PPP model. After the Eurasia Tunnel, with similar BOT model, 3 PPP bridge/road tenders and 4 motorway projects have been carried out to date (pls. see the next table).
- These large motorway BoTs have all necessary state support to make them bankable and financeable, including:
    i. Minimum Revenue Guarantee
    ii. Limited FX risk
    iii. Step-in Rights and Direct Agreement
    iv. Termination Compensation and Debt Assumption
    v. International Arbitration

EBRD involvement and support

- EBRD played key role and led the process of negotiations with the Turkish State in the development of "Direct Agreement and Debt Assumption Agreement for Eurasia Tunnel Project
- Eurasia Tunnel provided a very good example for expansion of private sector participation in the provision of capital, as well as project management, construction and operational expertise in the country, which to date has funded its road network expansion predominantly through state budget funds (or sovereign backed borrowing).

Turkish Infrastructure / PPPs

MOTORWAYS/TUNNELS/BRIDGES

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TRANSPORT PPP PROJECTS IN TURKEY

Project Name	Type	Consortium Awarded	Total Project Cost	Length of Motorway	Tender Date	Financing Closed	Operation Started
Eurasia Tunnel	Tunnel	Yapi Mrk-SK Group	USD 1.2 BN	N/A	2008	2012	Dec-16
Gebze-Izmir	Bridge + Motorway	Astaldi-Nurol-Makyol	USD 9.6 BN	423 KM	2012	2015	Jun-16
Third Bridge	Bridge + Connecting Roads	Astaldi-IC Holding	USD 3.2 BN	60 KM	2012	2014	Aug-16
Dardannelles	Bridge + Motorway	Yapi Mrk-SK Group-Limak-Daemler	EUR 3.0 BN	85 KM	2017	2018 (F)	2023 (F)
North Marmara Motorway 1 (Anatolia)	Motorway + Connecting Roads	Limak - Cengiz	USD 1.5 BN	187 KM	2016	2018 (F)	2021 (F)
North Marmara Motorway 2 (Europe)	Motorway + Connecting Roads	Kolin - Kalyon	USD 1.5 BN	149 KM	2016	2018 (F)	2021 (F)
Candarli-Izmir	Motorway + Connecting Roads	IC Ictas - Astaldi - Kalyon	EUR 360 MN*	76 KM	2017	2018 (F)	2021 (F)
Ankara-Nigde	Motorway + Connecting Roads	ERG - Seza	USD 1.0 BN	330 KM	2017	2018 (F)	2021 (F)

*The winning bid is TRY 1,437,995,305. This has been converted to EUR with TRY/EUR FX rate of 4.00x.

Turkish Infrastructure / PPPs

MOTORWAYS/TUNNELS/BRIDGES- Case Study (Eurasia Tunnel)

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yapı merkezi

SK E&C

EBRD Sustainability Award 2015
Infrastructure Deal of the Year

Industry Recognition 2012
Infrastructure Deal of the Year

PFI AWARDS 2012

BORROWER:	Avrasya Tuneli Isletme Insaat ve Yatirim A.S.
SPONSORS:	Yapi Merkezi and SK E&C Group
TYPE OF PPP CONTRACT:	Build – Operate – Transfer (BOT) (30.5y concession incld. 55m construction period)
ADMINISTRATION/ GRANTOR	Ministry of Transportation, General Directorate of Railways, Seaports and Airports Construction, Republic of Turkey (DLH)
EBRD FINANCE:	€137.2 million (equivalent of USD 150 million)
TYPE OF FINANCE:	Senior Loan
TOTAL PROJECT COST:	€ 1,139.3 million
YEAR:	2012
OTHER SENIOR LENDERS:	EIB (USD 150m), KEXIM (USD 250m) Direct Facilities SMBC, Standard Chartered, Mizuho under Kexim Cover (USD30m) and Ksure Cover (USD180m)
PROJECT DESCRIPTION:	The project is a design, finance-build-operate and transfer concession for the Istanbul Strait Road Tube Crossing. Become operational in December 2016, earlier than schedule.
IMPACT:	▪ It was an advanced BOT model developed for large infrastructure projects, having direct agreement with Ministry of Transport and Debt assumption by Turkish Treasury in case of termination. This model has used later on for all motorway/bridge/tunnel projects in Turkey.

Turkish Infrastructure / PPPs

MOTORWAYS/TUNNELS/BRIDGES- Minimum Revenue Guarantee

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Minimum Revenue Guarantee mechanisms

- **State minimum revenue guarantee** ('SG') by the relevant government authority as PPP contract grantor on behalf of Turkish Republic, with 2 components (pls see Annex 1 for more detailed information):

    i. Minimum number of usage/traffic or minimum volume guarantees

    ii. Fixed toll fee or passenger fee

- The primary beneficiary of the guarantee is the PPP company and not the lenders.
- No outright loan guarantees.

Protection against FX Risk

- Toll fees/ passenger fees/ usage fees are determined in hard currency (USD or EUR) at the tender stage
- The protection against FX risk in three different levels (pls see Annex 1 for more detailed information):

    i. No FX Risk

    ii. Limited FX Risk

    iii. Additional Protection against devaluation risk

Turkish Infrastructure / PPPs

MOTORWAYS/TUNNELS/BRIDGEs- Direct Agreement & Termination

Step in Rights Given to Lenders and Direct Agreement

- Very first examples of step-in rights in the port privatisations by inserting a clause in the concession agreements but no direct agreement between lenders and the government authority,
- Introduction of Step-in rights thorough direct agreement with the relevant government authority in Eurasia Tunnel BoT Project
- Direct agreements are governed in Turkish Law.

Debt assumption

- The debt assumption in the case of the termination of the concession due to project company default and risk events.
- Under the worst case scenario, the debt will be assumed by the sovereign
- Debt Assumption agreements are governed in English law and subject to international arbitration

Termination Compensation

- Termination compensation is the "worst case" risk mitigation for the lenders. 3 alternative models were used:
  - i. There is no termination compensation in airport projects, except for 3rd airport project.
  - ii. In port privatisations, limited compensation mechanism in certain cases i.e. force majeure
  - iii. Developed forms of termination compensation mechanism cover all 3 termination cases:
    - a) termination due to Risk Event (incld. Administrator default): Lenders are paid back in a pre-agreed number of installments.
    - b) termination due to Force Majeure Event: Turkish Republic assumes the debt
    - c) termination due to the default of the project company: Turkish Republic assumes the debt
- Since 2016, a haircut for the termination cases due to project company default (i.e. 85% of the outstanding loan and accrued interest in the case of termination due to project company default is assumed)

Contents

Turkish Infrastructure / PPPs
HOSPITALS

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Main Features of Turkish PPP Hospitals

- **29 new hospitals with 42,000 high-quality hospital beds for of up to €14bn**. To date, 21 projects under the Programme with a total construction cost of EUR 10.8 billion awarded. 12 of the 21 projects have successfully reached financial close representing construction costs of EUR 7.2 billion.
- Facility Management only. Clinical services remain with MoH.
- 28-28.5 years PPP projects with construction up to 3-3.5 years, and operation of 25 years. In case earlier completion, operation period extended by the period between the actual completion date and the completion date foreseen.
- Availability Payment and Service Payments in TL throughout the operation period.
- Service payments will be exclusively for the Project Company during the first five years of the operational phase, followed by market testing every 5 years

Modernisation of Healthcare Network

- With this PPP Programme, the MoH aims of brand new, high standard healthcare infrastructure by 2023 (100th anniversary of the Republic) and modernisation &renewal of existing infrastructure
- The Ministry of Health (‘MoH’) is dedicated to transform the Turkish Health Care Infrastructure to Western standards.

EBRD involvement and support

- EBRD Board approved a framework envelop of up to €950m debt or equity to Turkish Hospital PPPs (6.7% of the Programme)
- EBRD played a key advisory role over 24 months to make the PPP contracts bankable through policy dialogue with MoH and sponsors
- EBRD also provides **technical cooperation support to MoH**:
    i. development of Value for Money Methodology
    ii. Establishment of a PPP Contract Implementation and Monitoring unit
- **To date, 8 projects signed u**nder the Framework with an investment of circa (ca. € 585m).
- Mobilisation 1.7x EBRD finance.
- Involvement of various foreign sponsors: Astaldi and Salini (Italy), Meridiam (France), Samsung (Korea), Vamed (Austria), Sojits (Japan), General Electric (USA)

Turkish Infrastructure / PPPs

HOSPITALS- Case Studies (Etlik Hospital PPP Project)

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TÜRKERLER

ASTALDI

BORROWER:	Ankara Etlik Hastane Saglik Hizmetleri A.S.
SPONSORS:	Astaldi (51%) – Turkerler (49%)
TYPE OF PPP CONTRACT:	Design – Build – Finance – Lease - Transfer (DBFLT)
PROJECT DESCRIPTION:	Design, construction, equipping, financing and maintenance of an integrated health campus in Adana, Turkey.
NUMBER OF BEDS:	3,566
TOTAL PROJECT COST:	€1.1 bn
TYPE OF FINANCE:	Project Financing/Senior Loan
EBRD FINANCE:	€ 125 m A-Loan/€ 131 m B-Loan
DEAL SIGNED:	2015
LENDERS:	EBRD, IFC, BSTDB, DEG (A- Lenders) – Credit Agricole, Unicredit, Banca IMI, Deutsche Bank(B-Lenders) – Isbank, TSKB, Akbank (Commercial Lender).
IMPACT:	▪ The largest public-private project to be financed to date under the Turkish government's €14 bn programme to build or expand about 29 hospitals across the country in collaboration with the private sector. ▪ The giant complex is expected to deliver better hospital facilities for the Turkish capital and central Anatolia, a region with about 12 million people.

Turkish Infrastructure / PPPs

HOSPITALS- Case Studies (Adana Hospital PPP Project)

European Bank for Reconstruction and Development

RÖNESANS HOLDİNG

meridiam infrastructure

Industry Recognition 2014
Euromoney Project Finance
European PPP Deal of the Year

IJGlobal Awards 2014

BORROWER:	ADN PPP Saglik Yatirim A.S.
SPONSORS:	Ronesans (40%) – Meridiam (40%) – Sila (10%) – Sam (10%)
TYPE OF PPP CONTRACT:	Design – Build – Finance – Lease - Transfer (DBFLT)
PROJECT DESCRIPTION:	Design, construction, equipping, financing and maintenance of an integrated health campus in Adana, Turkey.
NUMBER OF BEDS:	1,550
TOTAL PROJECT COST:	€542 m
TYPE OF FINANCE:	Project Financing/Senior Loan
EBRD FINANCE:	€ 115 m A-Loan/€ 100 m B-Loan
DEAL SIGNED:	2014
LENDERS:	EBRD, IFC, DEG, Proparco (A- Lenders) – KDB, BBVA, HSBC, Siemens (B-Lenders) – SMBC (Commercial Lender).

IMPACT:

- The complex financing consists of senior loans provided by several multilaterals as well as international commercial banks who lend on similar terms, together with offering the longest tenor to date for the social infrastructure market in Turkey.
- The project is one of the first hospital facilities management PPPs in Turkey to reach financial closure, setting a benchmark for international best practice.
- It is also a pioneer project for the Turkish government's €12bn Hospital PPP Programme.

Turkish Infrastructure / PPPs

HOSPITALS- Case Studies (Elazig Hospital PPP Project)

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meridiam

RÖNESANS HOLDİNG

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MIGA Multilateral Investment Guarantee Agency WORLD BANK GROUP

PFI AWARDS 2016

BORROWER:	ELZ Saglik Yatirim A.S. / ELZ Finance
SPONSORS:	Ronesans (43.75%) – Meridiam (36.25%) – Sila, Sam and TTT (20%)
TYPE OF PPP CONTRACT:	Design – Build – Finance – Lease - Transfer (DBFLT)
PROJECT DESCRIPTION:	DBFLT of an integrated health campus in Elazig, Turkey.
NUMBER OF BEDS:	1,038
TOTAL PROJECT COST:	€360m
TYPE OF FINANCE:	Project Bond
EBRD FINANCE:	€89m via two contingent liquidity instruments
DEAL SIGNED:	December 2016
LENDERS:	Credit enhancers: EBRD and MIGA ; Enhanced bondholders: MUFG, Siemens, ICBC, Intesa Sanpaolo, Proparco and FMO; Unenhanced bondholders: IFC

IMPACT:

Because of the EBRD's and MIGA's innovative credit enhancement, this transaction has resulted in several first time events, including:

- **Turkey's first greenfield project bond**
- **Turkey's first PPP financing with a 20-year maturity**
- **Turkey's first "green and social bond", aligning with the COP21 global commitment to support emerging countries' Sustainable Development Goals.**

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Turkish Infrastructure / PPPs

HOSPITALS- Case Studies (Konya Hospital PPP Project)

YDA

Project Finance Deal of the Year

Bonds & Loans AWARDS TURKEY 2017

BORROWER:	ATM Saglik Konya Yatirim ve Isletme A.S.
SPONSORS:	YDA (100%)
TYPE OF PPP CONTRACT:	Design – Build – Finance – Lease - Transfer (DBFLT)
PROJECT DESCRIPTION:	DBFLT of an integrated health campus in Konya, Turkey.
NUMBER OF BEDS:	838
TOTAL PROJECT COST:	€ 548 m
TYPE OF FINANCE:	Project Financing/Senior Loan
EBRD FINANCE:	€ 67.5 m A-Loan/€ 80 m B-Loan
DEAL SIGNED:	2015
LENDERS:	EBRD, Islamic Development Bank, BSTDB, (A-Lenders) – Unicredit, Siemens (B- Lenders)
IMPACT:	▪ It is the first hybrid project financed under both conventional financing and sharia-complaint Islamic financing under a dual-tranche structure.

Turkish Infrastructure / PPPs

HOSPITALS- Contractual Structure

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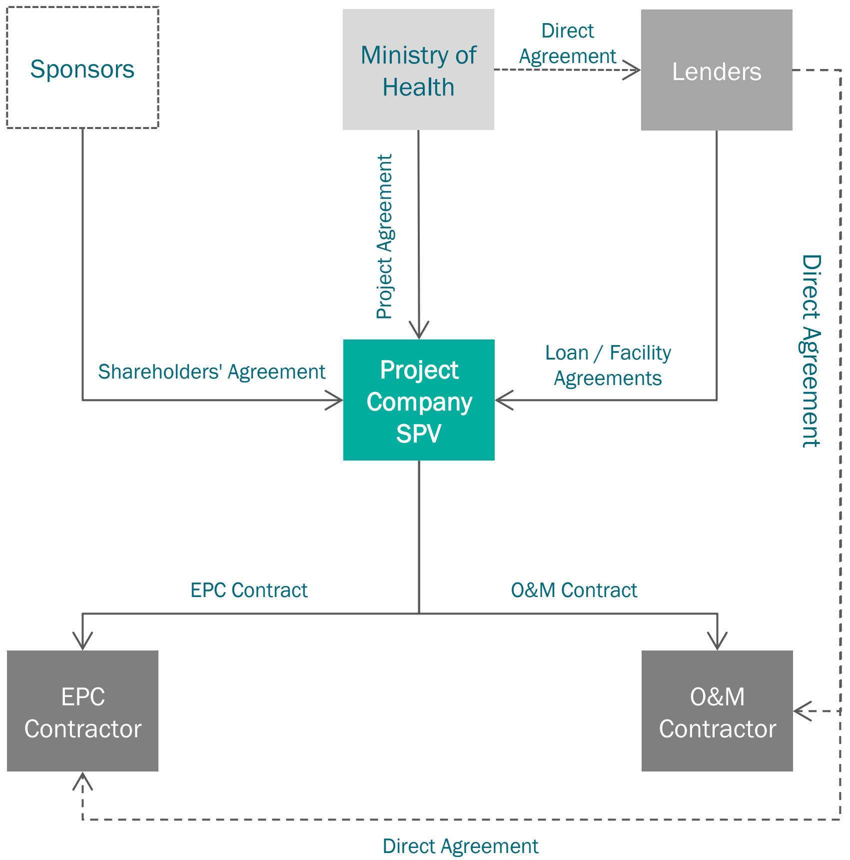
CONTRACTUAL STRUCTURE

The SPV will be responsible for:

- Financing, design, construction, operation and transfer of the Project
- Supply of medical equipment and other services to the facilities
- Furnishing, maintenance and repair of all relevant facilities
- Operation of commercial facilities (optional, within the health facility premises and such other part of the Land designated as commercial areas)

REVENUE STRUCTURE

- **Revenues** to cover capital costs, maintenance and other volume and non volume services
- **Availability Payments; subject to inflation and FX adjustment;** collected in TRL; **independent** from the occupancy rate of the hospital
- **Service Payments** in TRL for the delivery of services, independent from the level of actual demand
  - i. **Non-Volume Services Payments:** Services not contingent on volume / occupancy / consumption or utilization and are subject to inflation adjustment
  - ii. **Volume Services Payments:** Although dependent on actual volume / occupancy / consumption or utilization, MoH guarantees minimum 70% occupancy ratio of the hospital
- **Adjustment for inflation** of Volume Support Services Payments and Non-Volume Services Payments is based on the average of consumer price index ('CPI') and producer price index ('PPI') throughout the project life
- **Commercial revenues** are optional and terms and conditions are to be determined by the Project Company



Turkish Infrastructure / PPPs

HOSPITALS- Services

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Types of Services

Services	Category	Vol. Guarantee	Pricing Adjustment	P1/P2	Market testing
Building and Land Services	Non Volume	-	Inflation adjustment	P1	once a 5 year
Extraordinary Maintenance & Repair Services	Non Volume	-	Inflation adjustment	P1	-
Common Services Management Service	Non Volume	-	Inflation adjustment	P1	once a 5 year
Furnishing Services	Non Volume	-	Inflation adjustment	P1	once a 5 year
Grounds and Garden Maintenance Services	Non Volume	-	Inflation adjustment	P1	once a 5 year
Clinical Equipment Support Services	Non Volume	-	Inflation adjustment	P1	once a 5 year
Imaging Services	Volume Clinical Support	70%	SUT Indexation	P2	once a 5 year
Laboratory Services	Volume Clinical Support	70%	SUT Indexation	P2	once a 5 year
Sterilization and Disinfection Services	Volume Clinical Support	70%	SUT Indexation	P2	once a 5 year
Rehabilitation Services	Volume Clinical Support	70%	SUT Indexation	P2	once a 5 year
Waste Management	Volume Support	70%	Inflation adjustment	P2	once a 5 year
Linen & Laundry Services	Volume Support	70%	Inflation adjustment	P2	once a 5 year
Catering Services	Volume Support	70%	Inflation adjustment	P2	once a 5 year
Cleaning Services	Non Volume	-	Inflation adjustment	P2	once a 5 year
HIMS	Non Volume	-	Inflation adjustment	P2	once a 5 year
Security Services	Non Volume	-	Inflation adjustment	P2	once a 5-year
Patient Orientation & Company/Reception/Help Desk/Portering	Non Volume	-	Inflation adjustment	P2	once a 5-year
Pest Control Services	Non Volume	-	Inflation adjustment	P2	once a 5-year
Car Parking Services	Non Volume	-	Inflation adjustment	P2	once a 5-year

Turkish Infrastructure / PPPs

HOSPITALS- Revenue Indexation for Inflation and FX changes

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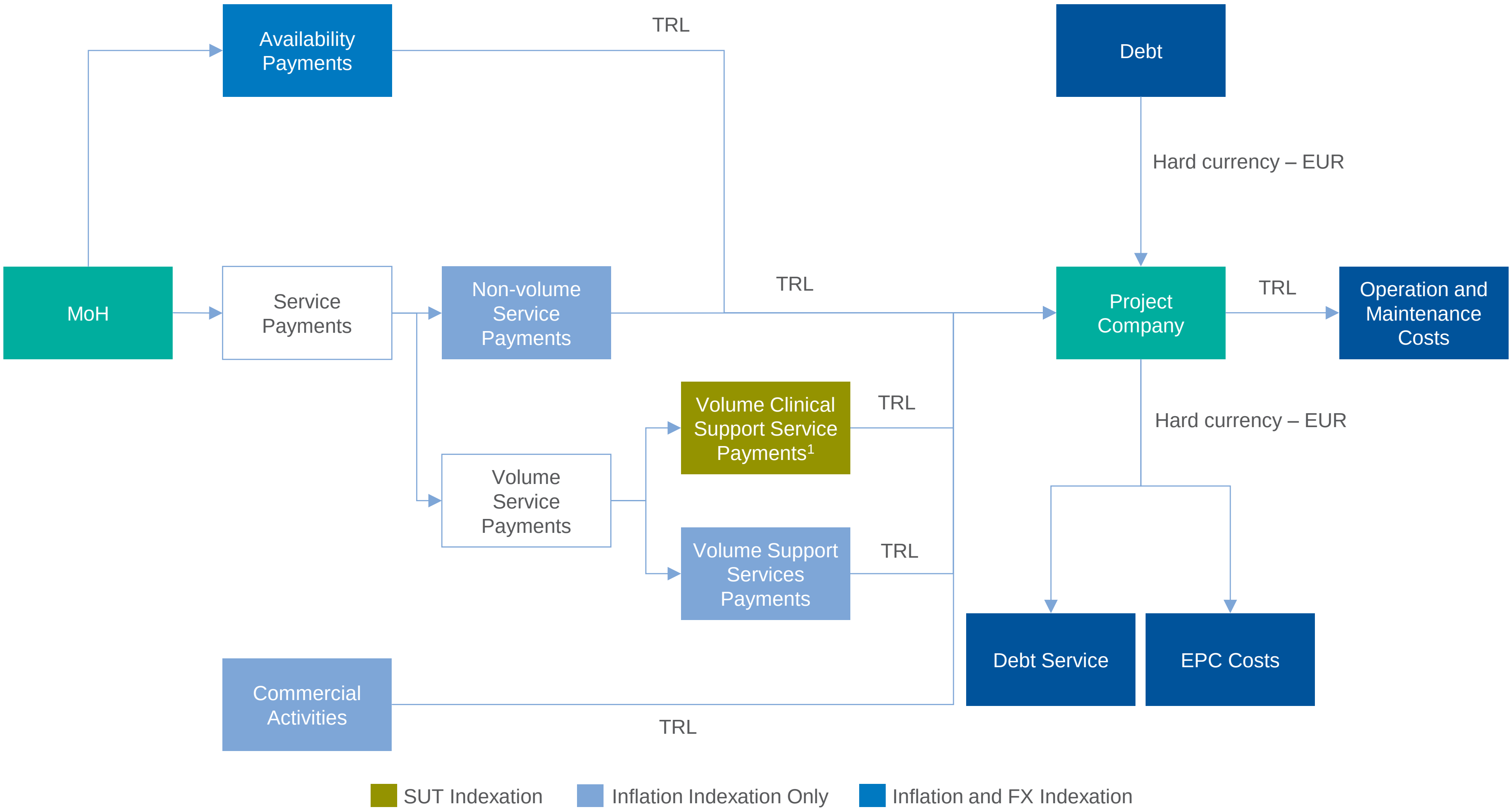

1. Volume Clinical Support Service Payments are set by the Social Security Institution Health Services Pricing Commission based on Social Security Institution Health Practice Regulation.

Turkish Infrastructure / PPPs

HOSPITALS- Revenue Indexation for Inflation and FX changes

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Indexation Mechanish: Inflation

- The payments indexed for inflation are:
  i. The Availability Payments ('AP');
  ii. Volume Support Services Payments;
  iii. Non-volume Services Payments;
  iv. Within Volume Clinical Support Services Payments, Sterilization & Disinfection Services and a portion of Imaging Services will also be indexed for inflation

Indexation Mechanish: Fx Devaluation

- Availability Payments have some protection against devaluation as well, based on the adjustment from the Bid Date :
  i. If there is depreciation of TRL rates, there are two scenarios applicable, depending on the extent to which cumulative TRL depreciation exceeds cumulative inflation from Bid Date:
    a. If the difference exceeds 25%, Project Company benefits from the difference between cumulative TRL devaluation and cumulative inflation minus 12.5%
    b. If the difference is below 25%, the Project Company benefits from half the difference
    c. In all cases the AP is still fully indexed for inflation as above and if TRL appreciates relative to Bid Date rates there is no FX adjustment to the AP
- In all cases, the new Availability Payment shall not be less than the preceding Availability Payment both in TRL and in hard currency (For further details, please refer to Annex 2)

Turkish Infrastructure / PPPs
HOSPITALS- State Guarantee for the Payments

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The Ministry of health (the administration) as Counterparty and guarantor for the payments

- The MOH is acting for and representing the Turkish State under the project agreements concluded in connection with PPP hospital projects.

- The Administration may transfer the Project Agreement. However, in case of such transfer, no amendment without the consent of the Project Company :
    - Contract Term
    - Availability Payments
    - Scope of the Services undertaken by the Project Company; and
    - Similar provisions

- MoH guarantee covers all payments under the Project Agreement in case of such transfer

the Availability Payments is under the guarantee of the Administration

- The Availability Payments is under the guarantee of the Administration

- The Administration is required to take all precautions to ensure that sufficient allowance is allocated for the payment of the Availability Payments during the term of the Project Agreement

Turkish Infrastructure / PPPs
HOSPITALS- Termination Compensation

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TERMINATION COMPENSATION REGIME

- The termination compensation regime with the respective termination events:
  - Administration Events of Default;
  - Project Company Events of Default;
  - Voluntary Termination (mutually agreed);
  - Force Majeure;
  - Failure to obtain construction licenses within 24 months from Land Transfer;
  - Suspension of Works for more than 180 days;
  - Expropriation or nationalisation;
  - Termination of the Project Agreement due to a court decision.
- Termination compensation mainly includes the principal amount, interest, hedging, all financing costs (For further details, please refer to Annex 2)
- Any termination compensation in respect of equity should be first used for the repayment of the outstanding amounts under the finance documents.

Turkish Infrastructure / PPPs
HOSPITALS- Direct Agreement & Step-in Rights

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Direct Agreement

- A draft funders' direct agreement (FDA) is included in the Project Agreement as a template and the actual funders' direct agreement is to be negotiated with the Lenders in each Project.
- Any dispute arising from the FDA shall be resolved by arbitration under the Rules of the International Chamber of Commerce (ICC Rules).

Termination compensation under direct agreement

- In case of breach of the Project Agreement by the Project Company or by the Administration, if so directed by the Lenders' agent, the Administration shall pay any sums due to the Project Company to an account specified by the Lenders' agent.
- The FDA also states TRL payments for the termination compensation however, Central Bank of Republic selling exchange rates to be considered during conversion of the TRL amount to hard currency in order to avoid any potential loss of Lenders arising from exchange rate differences.
- The termination compensation is exempt from any set-off, tax or deductions (For further details, please refer to Annex 2)

Obligations of the Administration

- In case of a Project Company's Event of Default, the Administration cannot terminate the Project Agreement without notifying the Lenders as defined in the FDA. The notification shall include the proposed termination date and the grounds of termination.
- If the Lenders accelerate the financing so that the Project Company becomes obliged to repay all outstanding debt, the FDA will contain provisions setting out the circumstances in which the Administration will terminate the Project Agreement.

Turkish Infrastructure / PPPs
HOSPITALS- Direct Agreement & Step-in Rights

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Obligations of the Lenders

- In case of an enforcement event (acceleration of the loan under the finance documents) the Lenders' representative shall serve a notice to the Administration on details of the enforcement event.
- Lenders' representative shall also send a notice to the Administration five business days before its issuance of step-in notice.

Step-in rights

- In case of continued breach of the Project Agreement after a termination notice, the Lenders' representative may serve a "Step-in Notice" on the Administration appointing a representative to assume jointly with the Project Company the rights and obligations under the Project Agreement.
  - The Administration shall deal with the representative instead of the Project Company.
- The Lenders representative may serve a step-in notice during:
  - The period which Project Company Event of Default is continuing; whether or not termination notice is served to the Project Company; or
  - The required period.
- After an enforcement event or during the step-in period provided that event of default under the Project Agreement is continuing, the Lenders' representative may procure for the transfer of the entire share capital in the Project Company to a "Suitable Substitute Investor" (approved by the Administration).
- The Lenders' representative may, at any time, serve a step-out notice resulting in the termination of its obligations and rights to and against the Administration
- For further detailed information on the Project Agreement, please refer to Annex 2.

Contents

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Turkish Infrastructure / PPPs

MOTORWAYS/TUNNELS/BRIDGES

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Main Features of Turkish PPP Highways

- In 2003, the General Directorate of Highways began implementing a programme of extension of dual carriageways in the country in accordance with the Government Road Action Plan.
- The main objectives are to reduce the number of traffic accidents and improve the pavement quality of the road network
- To date approximately 13,000km of the target 15,000km were constructed and opened to traffic. These investments have been procured, implemented and financed by the state authorities.

EBRD involvement and support

- **Eurasia Tunnel** was the first project implemented with new BOT model with Turkish Treasury support through debt assumption.
- The concession tender for the Eurasia Tunnel (the Project) awarded to the consortium led by Turkish Yapi Merkezi and the Korean construction company SK Group.
- EBRD provided USD 150 million with an 18-year tenor 67 month grace period, as part of a Senior Debt Facility which is the part of the debt financing package of USD 952 million.
- Eurasia Tunnel provided for expansion of private sector participation in the provision of capital, as well as project management, construction and operational expertise in the country, which to date has funded its road network expansion predominantly through state budget funds (or sovereign backed borrowing).
- Also it broadened and further consolidated the benefits of private sector involvement in the transfer of benefits in terms of cost efficiency and timely delivery of a large infrastructure investment.
- The project won 2015 EBRD Sustainability Award for Environmental & Social Best Practice.

PPP road construction and operations programme

- The relevant authority for the Turkish Motorway PPPs is the Ministry of Transportation.
- After the Eurasia Tunnel, with similar BOT model, 3 PPP bridge/road tenders and 4 motorway projects have been carried out to date (pls. see the next table).
- Eurasia Tunnel BOT project provides a blueprint for the subsequent projects in transportation in Turkey in terms of the PPP structuring with the participation of international financial institutions and foreign commercial banks.
- These large motorway BoTs have all necessary state support to make them bankable and financeable, including:
  - i. Minimum Revenue Guarantee
  - ii. Limited FX risk
  - iii. Step-in Rights and Direct Agreement
  - iv. Termination Compensation and Debt Assumption
  - v. International Arbitration

Turkish Infrastructure / PPPs

MOTORWAYS/TUNNELS/BRIDGES- Minimum Revenue Guarantee

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Minimum Revenue Guarantee

- State minimum revenue guarantee ('SG') mechanisms are common in transport PPPs. Under these SGs, the relevant government authority acts as PPP contract grantor on behalf of Turkish Republic.
- SGs provided to the project company have two components as:
    - i. Minimum number of usage/traffic or minimum volume guarantees (e.g. vehicles in the case of motorways/tunnels/bridges PPPs and passengers in the case of airports). The volume guarantee results in the Minimum Revenue Guarantee level which eliminates the traffic risk in the project structure.
    - ii. Fixed toll fee or passenger fee (i.e. the fee which is charged to the vehicle or passenger who uses the infrastructure). SG is provided in the form of a payment by the relevant government authority to the project company to top up the revenue shortfall when the traffic revenues realized are below minimum traffic guarantee.
- The primary beneficiary of the guarantee is the PPP Project company and not the lenders.
- These SGs offer less protection than outright loan guarantees.
- Should the PPP company's costs not be managed properly, there would still be a risk of payment default on the loan because of insufficient cash flow.
- Examples for projects with SGs: Eurasia Tunnel, Gebze- Izmir Motorway project, 3rd Bridge Project, 3rd airport project, Sabiha Gokcen Airport project, Cukurova Airport Project

Protection against FX Risk

- Toll fees/ passenger fees/ usage fees are determined in hard currency (USD or EUR) at the tender announcement stage.
- The protection against FX risk is implemented in three different levels:
    - i. No FX Risk: It is mainly used in the airport projects. Passenger fees are paid in hard currency to the project company and therefore project company carries no FX risk. In some cases, the fees are indexed to the inflation for the relevant hard currency on an annual basis
    - ii. Limited FX Risk: it is mainly used in tollroad projects (i.e. motorways, bridges and tunnels). In such case, the toll fees are fixed in hard currency, adjusted for the inflation of hard currency at the beginning of every calendar year and converted to local currency based on the rate at the beginning of each calendar year.
    - iii. Additional Protection against devaluation risk: Additional protection against devaluation may be provided by the relevant authority in such a way that the project company has the right to adjust the toll fees in case the devaluation goes above a certain level (e.g. a devaluation more than 5-10% in the first six month of the calendar year). Such additional adjustments against devaluation further mitigate the FX risk (Example to such additional protection is Eurasia Tunnel Project).
- Given that the financing raised by the Project Company will likely be denominated in hard currency, such mechanism aims to protect Lenders from potential devaluations in the local currency which could negatively impact the cash flows available to service debt and equity returns.

Turkish Infrastructure / PPPs

MOTORWAYS/TUNNELS/BRIDGEs- Direct Agreement & Termination

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There was no step-in rights, debt assumption and termination compensation in the transportation projects until 2005, especially in airport projects until recently.

Step in Rights Given to Lenders and Direct Agreement

- Very first examples of step-in rights were introduced in the port privatisations by inserting a clause in the concession agreements in 2005-2006 but there was no direct agreement between lenders and the government authority, which was making the implication of step-in rights difficult for the lenders. (Examples; Mersin Port, Iskenderun port, Bandirma port privatisations in the form of transfer of operating rights for 36years).
- Introduction of Step-in rights thorough direct agreement with the relevant government authority has been made in Eurasia Tunnel BoT Project back in 2008-2012. EBRD has played key role in the development of the template direct agreement for Eurasia Tunnel, which is later used in all the large sized toll road/ bridge projects (e.g. Gebze-Izmir BoT project and 3rd bridge project) as well as 3rd airport project.
- Direct agreements are governed in Turkish Law.

Debt assumption

- The debt assumption is governed by the Debt Assumption Agreement which provides for the process of debt assumption in the case of the termination of the concession due to project company default and risk events.
- Thus, although the Lenders may be exposed to time delays related to cure periods and the processing of termination, ultimately under the worst case scenario, the debt will be assumed by the sovereign (i.e. Turkish Treasury).
- EBRD has played key role in the development of the template debt assumption agreement for Eurasia Tunnel, which is later used in large sized toll road/ bridge projects.
- Debt Assumption agreements are governed in English law and subject to international arbitration

Termination Compensation

The termination regime of the concession agreement and related compensation to the lenders provides the "worst case" risk mitigation for the lenders, lowering significantly the overall project risk. 3 Alternative models used are:

i. There is no termination compensation in airport projects, except for 3rd airport project.

ii. In port privatisations in the form of transfer of operating rights, there is limited compensation mechanism in certain cases such as force majeure (in the form of payment of the concession fee for the remaining years of the concession at the date of termination).

iii. Developed forms of termination compensation mechanism have been first developed for Eurasia Tunnel project and later implemented in Gebze-Izmir and 3rd Bridge projects. It includes specific provisions for termination under three potential scenarios:

   a. termination due to Risk Event (incld. Administrator default);

   b. termination due to Force Majeure Event;

   c. termination due to the default of the project company.

- In case of the concession termination (except for the termination due to the Administration default) the Concession Agreement provides for the assignment of the obligations back to the Turkish State. In such a case, the Republic of Turkey acting through the Turkish Treasury, will assume the Borrower's rights and obligations under the financing agreements.
- In the case of termination dues to administration default, Turkish treasury pays back lenders in a pre-agreed number of installments.
- Very recently since 2016, Turkish Treasury started implementing haircut for the termination cases due to project company default (i.e. debt assumption for the 85% of the outstanding loan and accrued interest in the case of termination due to project company default (incld. Dardanelles Bridge, etc).)

Contents

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for Reconstruction and Development

Turkish Infrastructure / PPPs
HOSPITALS

European Bank
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Main Features of Turkish PPP Hospitals

- **29 new hospitals** with 42,000 high-quality hospital beds for of up to €14bn.
- To date, 21 projects under the Programme with a total construction cost of EUR 10.8 billion awarded. **12 of the 21 projects have successfully reached financial close** representing construction costs of EUR 7.2 billion.
- Facility Management only. Clinical services remain with the Ministry of Health (the MoH or Administration).
- 28-28.5 years PPP projects with construction up to 3-3.5 years, and operation of 25 years. In case the construction is completed earlier, the period between the actual completion date and the completion date foreseen in the Project Agreement is added to the Operation Period.
- Availability Payment and Service Payments in TL throughout the operation period
- Service payments will be exclusively for the Project Company during the first five years of the operational phase, followed by market testing every 5 years for some services to adjust to the market conditions (but no intention to take the services away from the Project Company)
- All of the works and services apart from the medical services will be undertaken by the Project Company and MoH will only concentrate on the provision of medical services

Modernisation of Healthcare Network

- With this PPP Programme, the MoH aims of brand new, high standard healthcare infrastructure by 2023 (100th anniversary of the Republic) and modernisation &renewal of existing infrastructure
- The Ministry of Health ('MoH') is dedicated to transform the Turkish Health Care Infrastructure to Western standards.

EBRD involvement and support

- EBRD Board approved a framework envelop of up to €950m debt or equity to Turkish Hospital PPPs (6.7% of the Programme)
- EBRD played a key advisory role over 24 months to make the PPP contracts bankable through policy dialogue with MoH and sponsors
- EBRD also provides **technical cooperation support to MoH:**
  - i. development of Value for Money Methodology
  - ii. Establishment of a PPP Contract Implementation and Monitoring unit
- **To date, 8 projects signed u**nder the Framework with an investment of circa (ca. € 585m).
- Mobilisation 1.7x EBRD finance.
- Involvement of various foreign sponsors: Astaldi and Salini (Italy), Meridiam (France), Samsung (Korea), Vamed (Austria), Sojits (Japan), General Electric (USA)

Turkish Infrastructure / PPPs

HOSPITALS- Revenue Indexation for Inflation and FX changes

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Indexation Mechanish: Inflation

- The following payments from the Administration are indexed for inflation
    - i. The Availability Payments ('AP');
    - ii. Volume Support Services Payments;
    - iii. Non-volume Services Payments;
    - iv. Within Volume Clinical Support Services Payments, Sterilization & Disinfection Services and a portion of Imaging Services will also be indexed for inflation (with the remaining services following SUT indexation).
- Inflation is calculated as the average of Turkey's consumer price index ("CPI") and producer price index ("PPI").
    - i. The revenue streams described above are fully indexed for cumulative inflation from Bid Date
    - ii. In the case of services subject to Market Testing, if Market Testing has occurred then indexation for inflation will be from the month prior to the month in which Market Testing was conducted.

Indexation Mechanish: Fx Devaluation

- Availability Payments will be revised each quarter in the first week and the respective amounts will be paid within seven business days of the first month in each quarter in advance.
- Availability Payments will be adjusted from the Bid Date based on the below conditions through a defined multiplier:
    - i. If there is depreciation of TRL rates, there are two scenarios applicable, depending on the extent to which cumulative TRL depreciation exceeds cumulative inflation from Bid Date:
        - a. If the difference exceeds 25%, Project Company benefits from the difference between cumulative TRL devaluation and cumulative inflation minus 12.5%
        - b. If the difference is below 25%, the Project Company benefits from half the difference
        - c. In all cases the AP is still fully indexed for inflation as above and if TRL appreciates relative to Bid Date rates there is no FX adjustment to the AP
- In all cases, the new Availability Payment shall not be less than the preceding Availability Payment both in TRL and in hard currency

Turkish Infrastructure / PPPs

HOSPITALS-Availibility Payment Calculation

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$$AP_s = \left(AP_0 \times \frac{g}{365} \times a\% \times \frac{\frac{CPI_{(s-1)} + PPI_{(s-1)}}{2}}{\frac{CPI_0 + PPI_0}{2}} \right) \times (1 - Deductions\ \%) \times CC$$

- AP_0: Annual Availability Payment agreed during bid phase
- g: # of operation days in the relevant 3 months period
- $a\%$: % of completion of the Works
- Inflation Adjustment
- CC: Corrective Coefficient

$$Deductions\ \% = \sum_{i=1}^{n} Xij \times (UF + URT + UCT)$$

- Xij: Correction factor based on significance level
- UF: Utilization Failure
- URT: Utilization Response Time defect
- UCT: Utilization Correction Time defect

CC (Corrective Coefficient):

$$if\ D > 1\ or\ D = 1\ and\ D - E \leq 0.25\ ; \quad CC = \frac{(D-E)}{2} + 1$$

$$if\ D - E > 0.25\ ; \quad CC = \big((D-E) - 0.125\big) + 1$$

$$D = \frac{FCB^{*}_{(D-1)}}{FCB_0} \quad ; \quad E = \left(\frac{\frac{CPI_{(D-1)} + PPI_{(D-1)}}{2}}{\frac{CPI_0 + PPI_0}{2}} \right)$$

AP(d)/ FX(d) >= AP(d-1)/FX(d-1) and AP(d)>=AP(0) at all times;

(*) FCB: Central Bank of Republic of Turkey buying rate

Subscript ‘0’ stands for the bid date numbers; subscript ‘D-1’ stands for the day predeeding the calculation date; subscript ‘S-1’ stands for the last month of the quarter preceeding the calculation date and s stands for the applicable period to be calculated on the calculation date

Turkish Infrastructure / PPPs
HOSPITALS- Service Payment Calculation

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Non Volume Service Payments

$$SP_{NV} = \left(\frac{g}{365} \times c \times \frac{\frac{CPI_{(s-1)} + PPI_{(s-1)}}{2}}{\frac{CPI_0 + PPI_0}{2}} \right) \times (1 - Deductions\ \%)$$

# of days in the relevant period

Monthly Service Payment

Inflation Adjustment

Volume Clinical Support Services Payments

$$SP_{VCS} = \sum_{i=1}^{n} (K_i \times P_i) + (K_i \times (1 + Y_i)) \times Z_i) \times (1 - Deductions\ \%)$$

Unit price per point

Transaction points

% change in unit price when there is additional volume

Additional quantity of utiliztion

Volume Support Services Payments

$$SP_{NV} = \sum_{i=1}^{n} (F_i \times M_i) + (F_i \times (1 + Y_i)) \times Z_i) \times \left(\frac{\frac{CPI_{(s-1)} + PPI_{(s-1)}}{2}}{\frac{CPI_0 + PPI_0}{2}} \right) \times (1 - Deductions\ \%)$$

Unit price per service

Estimated utilization / consumption

% change in unit price when there is additional volume

Additional quantity of utilization

Inflation Adjustment

Deductions

$$\sum_{i=1}^{n} Yij \times (SD + SRT + SCT)$$

Correction factor based on significance level

Service Failure in relation to a quality failure

Service Response Time defect

Service Correction Time defect

- **Volume Clinical Support Services Payments** are not adjusted for inflation nor FX but adjusted with SUT indexation whereas **Non Volume Service Payments and Volume Support Services Payments** benefit from the full Inflation Adjustment.

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Market Testing

- During the Operation Term, the Project Company shall perform or procure the performance of the Services either by itself or through its Sub-Contractors. It is envisaged by the Sponsors that all Services are to be provided by a Service Provider (O&M Contractor) who then enters into subcontracts for individual Services.
- The Project Company shall not in any way be responsible for the provision of the Clinical Services and for its consequences according to the Project Agreement.
- A general expense share of 5% of the relevant Service Payment shall be paid to the Project Company following the first 5 years of operation.
- All the Services are subject to Market Testing every five years starting from the 5th anniversary of the start of operations – except Extraordinary Repair and Maintenance Services.
  - The Service Payments to be adjusted after appointment of the preferred party as Service provider
- 12 months prior to the set Market Testing date, the Administration and the Project Company shall come together to agree on the Service requirements. The Administration shall bear all costs, fees and expenses associated with the Market Testing procedure.
- The Administration accepts and undertakes to keep the Project Company free from all kinds of claim, allegation and lawsuit that may be filed by third parties against the Project Company because of the Market Testing (if not caused by negligence or fault of the Project Company)

Non Performance

- If the Administration decides to replace the Sub Sub Contractor due to non-performance as defined in the Project Agreement, the Administration shall carry out the Market Testing of the relevant Sub Sub Contract and shall bear all costs, expenses and fees associated with the Market Testing procedure.
- If, following a Market Testing, the relevant Service Failure Point threshold in respect of the same Service is exceeded, the Administration shall be entitled to require the Project Company to procure the termination of the relevant Sub Sub Contract between the Service Provider and the Sub Sub Contractor. If the Project Company does not comply with this request within 60 (sixty) business days, the Administration can use its termination right under the Project Agreement
  - In addition, the Administration has the right to demand the Project Company to terminate the agreement of the Service Provider if the Service Provider exceeds the Failure Point thresholds defined in Project Agreement.

Turkish Infrastructure / PPPs
HOSPITALS- Performance and Deductions

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THE DEDUCTION MECHANISM, AS COMPARED TO PPP PROJECTS IN OTHER MARKETS, IS VERY FAVOURABLE AND ENHANCES BANKABILITY

- Deductions shall be determined according to the Project Agreement where a separate penalty scoring system is implemented for each Project:
  - Any Deduction to be made from the Availability Payment due to Utilisation Failure, shall, in each case, not exceed 10% of the Availability Payment for the relevant period.
  - The Deductions arising from Service Failures, shall be made on a monthly basis and are capped at 20% of the relevant Service Payment on each payment date.
- If one or more Utilisation Failure and one or more Service Failure arise in a Calculation Period as a result of the occurrence of the same event, the Deduction to be made shall be the higher of the Deductions calculated for each Failure.
  - Such Deduction shall be first applied to the relevant Service Payment and in any case subject to the relevant caps defined above.

- If more than one Service Failure is caused as a result of the same event, only one Deduction will be made and such Deduction shall be the greater of the Deductions calculated for each Service Failure.
- The Administration agrees that in relation to any amount that may be deducted from the Availability Payment due to Failure arising form the utilisation in respect of a Calculation Period, such amount, in any event will be capped to the maximum limit as defined above and shall be deducted by the Administration from the relevant Service Payments that are due on the Payment Date.
- In case a Deduction shall be applied with respect to a Utilisation Failure and if the amount to be deducted from a Service Payment is not sufficient to cover the Deduction, then the Administration shall make the Deduction from the Availability Payment that is due on the relevant Payment Date.
- No Deductions or revisions shall be made nor shall Failure Points be given at any time before the end of the Learning Curve Period (six months beginning from each Phase Actual Completion Date and three months from the date of the appointment of a new Sub Sub-Contractor in relation to a Service, following Market Testing).

Turkish Infrastructure / PPPs

HOSPITALS- State Guarantee for the Payments

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The Administration as Counterparty

- Under Turkish Constitution (Law No.2709) the public administration in the Republic of Turkiye is classified as central and local administration.
- The ministries which are part of the central administration of the Republic of Turkiye are not legally separate from the central administration. Under Turkish law, the legal entity of the State and the central administration is one and the same.
- Under the Law Regarding the Arrangement of the Public Finance and the Debt Management (Law No.4749) the Administration is in the list of public bodies representing the State legal entity.
- The Administration is acting for and representing the Turkish State under the project agreements concluded in connection with PPP hospital projects.

Right to Transfer of The Administration

- According to the Project Agreement, the Administration may transfer the Project Agreement.
- However, in case of such transfer by the Administration, no amendment can be made to the following matters without the consent of the Project Company
  - Contract Term
  - Availability Payments
  - Scope of the Services undertaken by the Project Company; and
  - Similar provisions
- In addition to above, MoH guarantee covers all payments under the Project Agreement in case of such transfer

the Availability Payments is under the guarantee of the Administration

- Project Agreement includes a provision providing that complete and timely payment of the Availability Payments is under the guarantee of the Administration
- The Implementation Regulation on the Construction and Renovation of Facilities and the Procurement of Services through the Public Private Partnership Model published in the Official Gazette dated 9 and 10 May 2014 (the "Regulation") states that:
  - Availability Payments shall be made from the revolving fund enterprise budget of the Administration or the attached institutions and/or from the central management budget
  - The Administration is required to take all precautions to ensure that sufficient allowance is allocated for the payment of the Availability Payments during the term of the Project Agreement
- The Law Regarding the Revolving Fund to be Allocated to the Health Institutions Attached to the Ministry of Health and the Rehabilitation Facilities (Law No.209 published in the Official Gazette numbered 10702 and dated 9 January 1961) (the "Revolving Fund Law") states
  - The Administration and the institutions attached to it can establish revolving funds (Article 1)
  - The revolving fund consists of the profits of the institutions, donations and State subsidies (Article 2)

Turkish Infrastructure / PPPs
HOSPITALS- State Guarantee for the Payments

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New PPP Law

- In 2005, the Additional Article 7, which enables PPP projects to be carried out in the health sector, has been added to the Health Services Principal Law (Law No. 3359) published in the Official Gazette dated 15 May 1987 (the "Health Services Principal Law"). Subsequently, the Regulation on the Construction of Healthcare Facilities on a Build-and-Availability Basis and the Restoration of the Services and Areas in These Facilities Other Than Medical Service Areas on a Restore-and-Operate Basis (Council of Ministers Decree No. 2006/10655) (the "Regulation"), based on the Additional Article 7 of the Health Services Principal Law, entered into force on 22 July 2006.
- Upon the realization of the increasing importance of the PPP projects in the Turkish market, the Administration started to work on a draft law for healthcare PPP projects, setting out the principles regarding the realization of the health facilities within the framework of the PPP model in the health sector.
- Following the acceptance of this draft PPP law by the Parliament and approval of the President, the draft PPP law has been published in the Official Gazette on 9 March 2013 and became the law numbered 6428 entitled the Law Regarding the Procurement of the Construction, Renovation of the Facilities and Obtainment of Services Under Public Private Cooperation Model by the Ministry of Health and Amendments to be Made on Some Laws and Decrees in Force of Law (the "New PPP Law").
- The New Health PPP Regulation has also been issued and published in the Official Gazette on 9 May 2014 to set forth the principles and procedures of implementation of the New Health PPP Law. The New Health PPP Regulation authorizes the Ministry of Health to have private legal or natural persons construct required healthcare facilities according to preliminary project, preliminary feasibility report in the scope of PPP model, on land owned by the Treasury or Ministry of Finance by establishing superficies right for a term not exceeding 30 years.

Payments of MoH under Project Agreement

The New PPP Law states that both the Availability Payments and Service Payments shall be paid from the central Administration budget and/or the budget of the revolving fund enterprise of the Administration or its affiliates.

Turkish Infrastructure / PPPs
HOSPITALS- State Guarantee for the Payments

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for Reconstruction and Development

Central Administration Budgeting Process

Preparation of the central administration budget (which includes both general and special budget entities) is a long but transparent process. It involves the following stages:

- A medium term program is prepared by the State Planning Organization and approved by the Council of Ministers at the latest by the end of first week of September each year and published in the Official Gazette.
- A medium term fiscal plan is prepared by the Ministry of Finance (the '**MoF**') and approved by the High Planning Council at the latest by 15 September each year and published in the Official Gazette.
- In order to facilitate the preparation by the public administrations of budget proposals and investment programs, the MoF prepares a Budget Call & Budget Preparation Guide and the State Planning Organization prepares an Investment Circular and an Investment Program Preparation Guide at the latest by 15 September each year and published in the Official Gazette.
- Proposals for budget revenues and expenses are prepared by the public administrations (in our case MoH) with their justifications in accordance with the principles set out in the Budget Preparation Guide, and these are presented to the MoF at the latest by the end of September of each year.
- Investment proposals of the public administrations are presented to the State Planning Organization for its consideration at the latest by the end of September of each year.
- Following the presentation of the budget proposals to the MoF, discussions may take place between the public administrations and the MoF.
- After the High Planning Council discusses macroeconomic issues and the size of the budget, such discussion to end at the latest by the first week of October each year, the draft annual budget law and national estimated budget report prepared by the MoF is presented to the Parliament. This presentation must take place no later than 75 days before the end of the relevant fiscal year (i.e. usually on or around 15 October of the preceding year).
- The draft annual budget law is then debated and voted prior to the commencement of the new fiscal year.
- If for any reason the entry into force of the annual budget law is delayed, a temporary budget law must be enacted. However, this temporary budget law cannot stay in force for more than 6 months without an annual budget law being passed.
- In the event (i) there prove to be insufficient funds in the budget allocated to the public administrations within the central administration budget or (ii) expenses arise which were not anticipated at the time of enacting the budget, an additional budget may be allocated by legislative act.

Turkish Infrastructure / PPPs
HOSPITALS- State Guarantee for the Payments

European Bank
for Reconstruction and Development

Budget Allocations

Preparation of the central administration budget (which includes both general and special budget entities) is a long but transparent process. It involves the following stages:

- The budget allocations do not represent cash but are instead available lines in favour of the relevant public administration under which they may operate by making drawings. In order to ensure that the cash will be available to the relevant public administrations on the relevant payment dates, the system summarized below has been established so that the MoF remains in control of the actual cash made available to the public administrations as well as of the timing of payments. The MoF seeks to harmonize this process with the cash planning of the Treasury.
- Central budget entities (like the Administration) are required to prepare a detailed expenditure programme showing expenditures that can be made by the central budget entities on a monthly basis.
- Procedures and principles governing the preparation, approval, implementation and monitoring of the detailed expenditure programme is determined by the MoF with communiqués published each year. Public administrations cannot exceed their budget allocations. The allocations are required to be used in accordance the purpose identified in the annual budget law.

Remedies for Shortfalls

- If there are shortfalls in the budgets allocated to a public administration within the central administration budget, it can make transfers between the allocations under certain items within its budget - up to 5% of the allocation of one item can be transferred to another unless another limit is specified under the annual budget law. Any transfer higher than this amount requires passing of a new law but, in practice, the annual budget laws provide wide authority to the MoF so that these transfers can be made without passing a new law but with consent of the MoF. However, transfers cannot be made from certain items; ie personnel expenditures.
- The transfer of allocations between the budgets of the public administrations within the central administration is also possible but can only be made by law. However, here again, in practice, the annual budget laws provide a wide authority to the MoF so that these transfers can be made without passing a new law.
- A reserve allocation may be set aside in the budget of the MoF of up to 2% of the general budget allocation in order to (i) realize the services and objectives identified by the annual budget law; (ii) pay for any shortfall arising out of insufficient budget allocations; or (iii) perform the services that are not anticipated in the budgets (but which need to be budgeted and paid for);
    - This reserve allocation can be transferred to the entities with the general budget as well as to special budget entities listed in the annual budget law and the MoF is authorized to make the transfers from the reserve allocations. The MoF announces the type and amount of the reserve budget allocations and the public institutions which have benefited from the reserve budget within 15 days of the end of each fiscal year.

Turkish Infrastructure / PPPs
HOSPITALS- State Guarantee for the Payments

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for Reconstruction and Development

Revolving Fund

- The Regulation states that project agreements shall include a provision stating that complete and timely payment of the availability payments is under the guarantee of the Ministry of Health (Article 33 of the Regulation) and this provision is mirrored in the Project Agreement.
- The Law regarding the Revolving Fund to be allocated to Health Institutions and Rehabilitation Facilities Affiliated with the Administration (Law No.209) (the "Revolving Fund Law") states that the Administration and the institutions affiliated with it can establish revolving funds (Article 1). The revolving fund consists of the profits of the institutions, donations and State subsidies (Article 2).
- The Regulation suggested that if a revolving fund enterprise (the "Fund") is established within the relevant healthcare facility, the availability payments shall be made from the budget of that Fund. If no such Fund is established or the financial situation of the Fund does not allow it to meet the availability payment obligations, then the availability payments shall be made from allocation transferred to the account of the MoH Revolving Fund Central Accountancy (Article 34 of the Regulation). It further stated that the Administration is required to take all precautions to ensure that sufficient allowance is allocated in the relevant budget items of the revolving funds for periodic availability payments (Article 33 of the Regulation).
- However, according to Article 5 of the New PPP Law, the availability and service payments to the project company shall be made from the revolving funds of the Administration or its affiliated entities and/or from the central administration budget. Accordingly, it is important to understand the budgeting process to which the Administration is subject (i.e. the central administration budget process).

Turkish Infrastructure / PPPs

HOSPITALS- Termination Compensation

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NO DEBT ASSUMPTION

- Pursuant to Article 8/A of the Law on Regulating the Public Finance and Debt Management Law (Law No. 4749) (the '**Public Finance and Debt Management Law**'), the Council of Ministers is authorised to decide on the assumption by the Turkish Treasury of the financing provided from abroad for the investment and services and, if any, the financial obligations regarding the provision of this financing including the financial obligations resulting from the derivative products, the scope, element, and payment terms of the financial obligations subject to assumption and to regulate the procedure and principles regarding the confirmation, for the public administrations under the general budget upon the proposal of the Minister in charge of the Treasury and for the special budgeted administrations upon the request of the relevant Minister and proposal of the Minister in charge of the Treasury.
- However, Article 8/A of the Public Finance and Debt Management Law states that the provisions regarding taking the opinion of the Turkish Treasury on the draft implementation contracts prior to tender, partial assumption undertaking and debt assumption limit shall not apply to the projects, tenders of which have been announced prior to the date Article 8/A of the Public Finance and Debt Management Law has entered into force. However, this exemption does not include the requirement to obtain affirmative opinion of the Treasury prior to execution of the project agreement.
  - Furthermore, Temporary Article 1.1 of the New PPP Law states that the existing projects shall be completed in accordance with their tender specifications. Based on these, the Turkish Treasury have taken the view that the debt assumption is not available for the existing PPP healthcare projects due to the fact that concept of debt assumption was not available during the tendering phase of most of the existing PPP healthcare projects.

HOSPITALS- Termination Compensation

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TERMINATION COMPENSATION REGIME

- The termination compensation regime allows the debt providers and the Sponsors to cover their respective risks under the Project Agreement in accordance with the respective termination event. The reasons for termination according to the Project Agreement mainly include the following:
  - Administration Events of Default;
  - Project Company Events of Default;
  - Voluntary Termination (mutually agreed);
  - Force Majeure;
  - Failure to obtain construction licenses within 24 months from Land Transfer;
  - Suspension of Works for more than 180 days;
  - Expropriation or nationalisation;
  - Termination of the Project Agreement due to a court decision.
- Termination compensation mainly includes the principal amount, interest, hedging, all financing costs (break fees arising from hedging or other financing contracts) and the bridge loan:
  - The termination compensation amount to be paid by the MoH is exempt from any tax or other related liabilities and termination payments shall be made without any set-off, tax or charge deductions;
  - Project Agreement states that any termination compensation to be received by the Project Company in respect of equity should be first used for the repayment of the outstanding amounts under the finance documents.
- The Project Company is required to inform the MoH on the termination compensation amount in 20 business days after the termination date and in case of disputes, dispute resolution mechanism should apply.

HOSPITALS- Direct Agreement & Step-in Rights

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Direct Agreement

- A draft funders' direct agreement (FDA) is included in the Project Agreement as a schedule. This is a template and the actual funders' direct agreement is to be negotiated with the Lenders in each Project.
- The Administration accepts the independent nature of the FDA being separate from the Project Agreement, which protects the lenders from potential conflicts between the Project Agreement and the FDA.
- The Administration also provides reps and warranties on (i) it has taken all necessary actions to authorise its execution of FDA; (ii) duly execution of the FDA and FDA constituting its valid, legal and binding obligations.
- The Administration consents to the assignment of rights of the Project Company under the Project Agreement to the Lenders.
- Any dispute arising from the FDA shall be resolved by arbitration under the Rules of the International Chamber of Commerce (ICC Rules).

Termination compensation under direct agreement

- In case of breach of the Project Agreement by the Project Company or by the Administration, if so directed by the Lenders' agent, the Administration shall pay any sums due to the Project Company to an account specified by the Lenders' agent.
- The Administration accepts direct payment of the termination compensation to the Lenders Representative under the FDA.
- The FDA also states TRL payments for the termination compensation however, Central Bank of Republic selling exchange rates to be considered during conversion of the TRL amount to hard currency in order to avoid any potential loss of Lenders arising from exchange rate differences.
- The termination compensation is exempt from any set-off, tax or deductions.

Obligations of the Administration

- In case of a Project Company's Event of Default, the Administration cannot terminate the Project Agreement without notifying the Lenders as defined in the FDA. The notification shall include the proposed termination date and the grounds of termination.
- If the Lenders accelerate the financing so that the Project Company becomes obliged to repay all outstanding debt, the FDA will contain provisions setting out the circumstances in which the Administration will terminate the Project Agreement.

Turkish Infrastructure / PPPs
HOSPITALS- Direct Agreement & Step-in Rights

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Obligations of the Lenders

- In case of an enforcement event (acceleration of the loan under the finance documents) the Lenders' representative shall serve a notice to the Administration on details of the enforcement event.
- Lenders' representative shall also send a notice to the Administration five business days before its issuance of step-in notice.
- days of such day.

Step-in rights

- In case of continued breach of the Project Agreement after a termination notice, the Lenders' representative may serve a "Step-in Notice" on the Administration appointing a representative to assume jointly with the Project Company the rights and obligations under the Project Agreement.
  - The Administration shall deal with the representative instead of the Project Company.
- The Lenders representative may serve a step-in notice during:
  - The period which Project Company Event of Default is continuing; whether or not termination notice is served to the Project Company; or
  - The required period.
- After an enforcement event or during the step-in period provided that event of default under the Project Agreement is continuing, the Lenders' representative may procure for the transfer of the entire share capital in the Project Company to a "Suitable Substitute Investor" (approved by the Administration).
- The Lenders' representative may, at any time, serve a step-out notice resulting in the termination of its obligations and rights to and against the Administration.

Turkish Infrastructure / PPPs
HOSPITALS- Force majeure and Change in Law

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Force Majeure

- The Project Agreement sets out a non-exclusive list of events which constitutes FM including:
  - Acts of God;
  - Legal strikes or civil rebellion;
  - Epidemics;
  - Declaration of partial or general mobilisation;
  - War.
- Occurrence of an FM event is required to be certified by authorised institutions. The procedure of this certification is not regulated under legislation and the Project Agreement is silent on this point. This is the standard approach in Turkish concessions.
- The reliefs of the Project Company in case of FM under the terms of the Project Agreement are:
  - Relief from performance – no failure points would be deducted from the Availability Payments or Service Payments (if FM occurs on or after actual completion date);
  - Extension of the Project Agreement period;
  - Termination of the Project Agreement, if the parties cannot agree on the necessary amendments to the Project Agreement due to the FM for more than 180 days after suspension of works in case FM continues preventing the Project Company from fulfilling its obligations under the Project Agreement.

Changes in Law

- Consequences of change in law are regulated in the Project Agreement. In the event of such change, the following may be applied:
  - Adjustments to the Service Payments
  - Compensation to the Project Company
  - Amendments to the relevant provisions of the Project Agreement.
- The Project Agreement is subject to private law provisions.
- Parties to an agreement may determine the regime to apply in the event of change in law affecting the agreement without prejudice to imperative legal provisions.

Turkish Infrastructure / PPPs
HOSPITALS- Variations

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VARIATIONS

- During the Investment Term:
  - If Variation cost in respect to the relevant Sub Work item is less than or equal to 1% of the amount of the relevant Sub Work item, the Project Company shall implement this variation request by the Administration at its own cost. EPC cost assumptions in the financial model include a 1% buffer.
  - If Variation cost in respect to the relevant Sub Work item is more than 1% of the amount of the relevant Sub Work item, the Project Company has the optional right to accept or refuse to implement such Variation
    - In case the Project Company accepts such Variation request, it shall be entitled to get reimbursed for such increase as advanced payment; the Availability Payments shall be adjusted accordingly or the Project Company shall be reimbursed through monthly payments
- Total cumulative Variation request cannot be more than 20% of the Total Fixed Investment Sum.
- Variations as to the Services shall not cause any increase or decrease of more than 10% of the relevant Service Payment.
  - In case such a request causes an adjustment to Service Payments more than the aforementioned amount, the Project Company has the right to refuse the Variation request or request the Administration to implement Market Testing.
    - In case the Project Company refuses such Variation request, than the Administration shall be responsible for the provision of such Services.

Turkish Infrastructure / PPPs
HOSPITALS- Equity Regime

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EQUITY REGIME

- The Project Company is required to provide and maintain an equity equal to 20% of the Total Fixed Investment Sum during the Investment Term Acts of God;
  - In the event of any increase to the Total Fixed Investment Sum the amount of the equity shall not be less than 20% of the Total Fixed Investment Sum.
  - The Project Company shall increase the amount of its equity pro rata to the investment realised and at the end of the Investment Term, the amount of the equity of the Project Company shall be equal to 20% of the Total Fixed Investment Sum.
- Sale of Shares
  - The Project Agreement provides that the Administration shall be informed about all share transfers before the actual transfer of the shares.
  - Change of Control in breach of the provisions of the Project Agreement is a Project Company Event of Default.
    - A Change of Control until the end of 24 months following the Actual Completion Date requires the prior written consent of the Administration. Breach of this provision gives right to the Administration to terminate immediately with no remedy.
    - Any Change of Control after such 24-month period requires written consent of the Administration, such consent not to be unreasonably withheld or delayed. Breach of this provision may be remedied by the Project Company and gives right to the Administration to terminate immediately if the Project Company does not remedy it
  - The Shareholders Agreement and the Articles of Association of the Project Company may contain further restrictions (ie pre-emption rights).

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IPPF SUPPORT BY EBRD

Matthew Jordan Tank
Head of Policy and IPPF, Infrastructure

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IPPF scope and objectives

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- Preparation of bankable PPPs and commercialised public sector projects
- Directly funded by EBRD (Shareholders Special Fund)
- Applicable to all Countries of Operation of EBRD
- Dedicated IPPF Team within EBRD's Infrastructure Business Group

Why IPPF?

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To promote more efficient delivery of projects and improve quality

To strengthen local capacity for EBRD public sector clients

To deliver greater private sector investment

Delivery approach of IPPF

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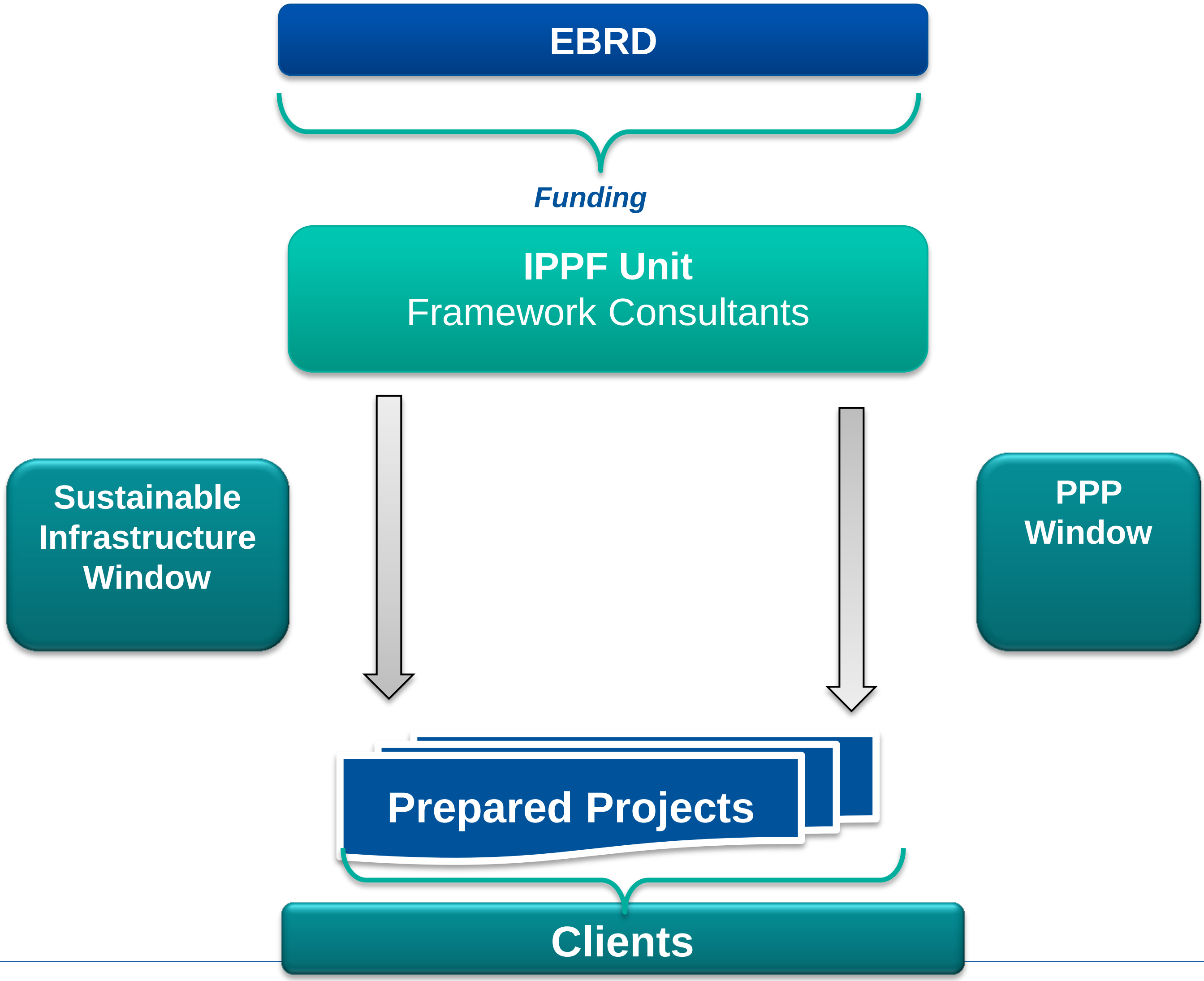
Quick mobilisation: 8 weeks from Request for Proposals to mobilisation of consultants

Sharp project focus: IPPF directly contracts and supervises Framework Consultants to drive results, with close interaction with Public Sector Clients

Reimbursability: Aligned incentives, with cost of preparation ***reimbursed by PPP concessionaire*** to IPPF and Public Sector Client upon successful financial close

IPPF architecture



Delivery approach of IPPF

European Bank
for Reconstruction and Development

For PPP Preparation:

Usage of 4 pre-selected Framework Consultant Consortia:
world-class quality, ready for mobilisation

KPMG (financial advisor)
Mott MacDonald (technical)
DLA Piper (legal)

PWC (financial advisor)
Arup (technical)
CMS Cameron McKenna (legal)

Mazars (financial advisor)
Ecorys (technical)
Allen & Overy (legal)

Castalia (financial advisor)
D'Appolonia (technical)
Clifford Chance (legal)

Delivery approach of IPPF

European Bank
for Reconstruction and Development

For Public Sector Project Preparation:

Usage of 4 pre-selected Framework Consultant Consortia:
world-class quality, ready for mobilisation

- WSP/PB
- Grontmij A/S (SWECO)
- WS Atkins
- Fitchner

Current PPP Projects under Implementation with IPPF

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Project type	Dry Port / Logistic PPP Project	Motorway PPP project
Region	Egypt	Belarus
CAPEX	EUR 110 mln	EUR 315 mln
IPPF funding mobilised	EUR 1.5 mln	EUR 1.7 mln
Transaction fee amount (Paid by the Public sector)	10% (EUR 150,000)	10% (EUR 170,000)
IPPF support - Scope of work	Technical Feasibility and Environmental / Social Impact studies	
	PPP Transaction structuring	
	Tender preparation	
	Tender support through to commercial and financial close	
IPPF Consultant Mobilisation	8 weeks	
Project preparation duration	6-12 months	6-12 months
Tender duration	6 months	6 months
Financial close process	6 months	6 months

Indicative process

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- Preliminary due diligence and discussion

Goal of 6 weeks

- Support program definition (scope of work, budget and work allocation)
- IPPF contribution agreement negotiation

1 week

- IPPF contribution agreement signing

8 weeks

- Consultancy team selection and contracting

Approx. 24 mo.

- Project Preparation

PPP Window Reimbursement Approach
General principles

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- IPPF presents public sector client with draft 'Contribution Agreement'
- IPPF signs Contribution Agreement with public sector client, which includes a Transaction Support Fee (TSF)
- TSF is a lump sum amount set at 10% of the costs of IPPF provided support, paid at certain milestones
- IPPF calls off Framework Consultant under secondary competition
- Framework Consultants prepare PPP, working closely with public sector client, and supervised by EBRD
- Upon successful financial close, ***private sponsor (i.e., PPP contractor) reimburses***:
  - IPPF for cost of project preparation support, **and**
  - Public sector client for cost of Transaction Support Fee

Stand-alone IPPF 'fee plus reimbursement' approach for PPPs aligns incentives & creates value

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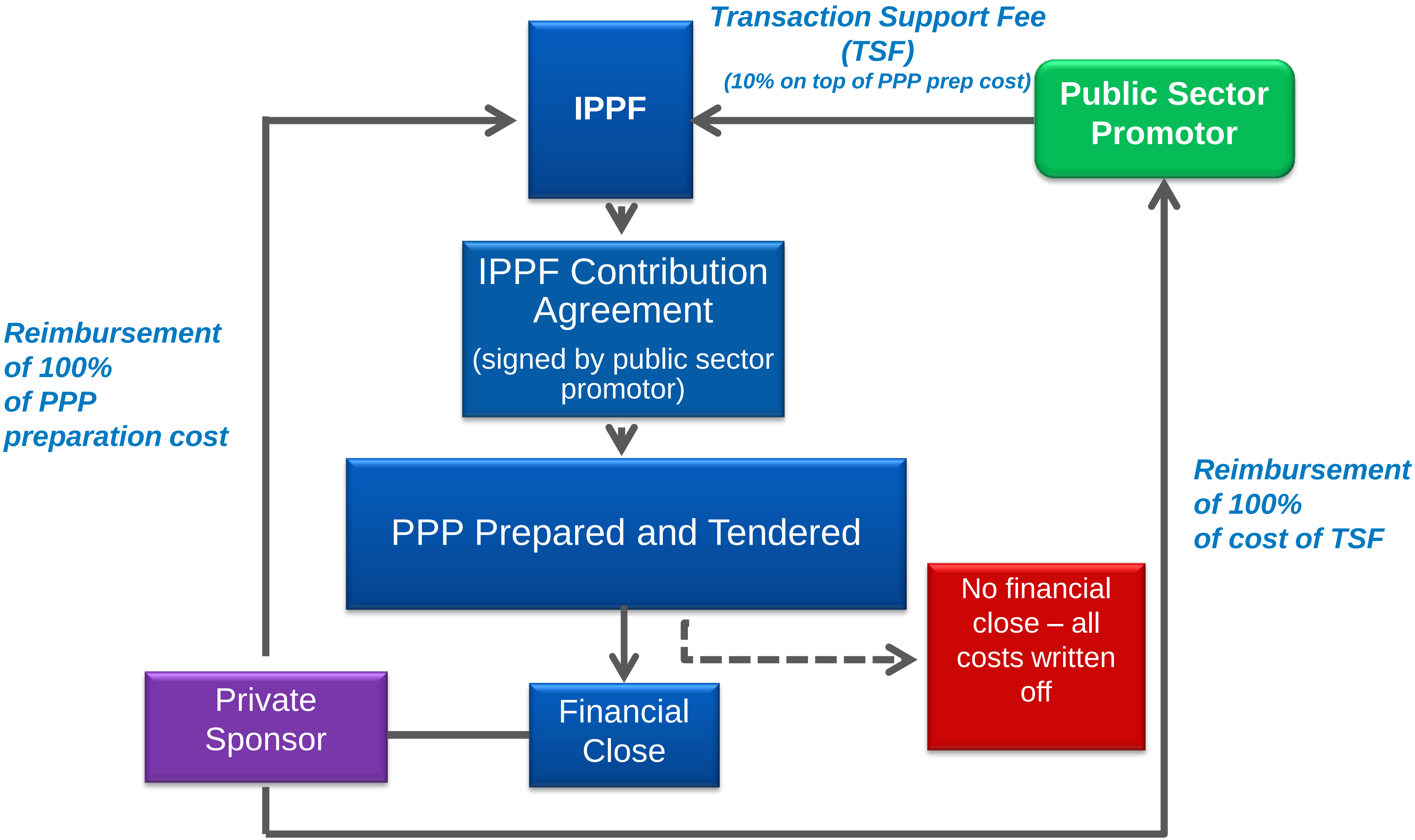

IPPF PPP Window Prospective Pipeline

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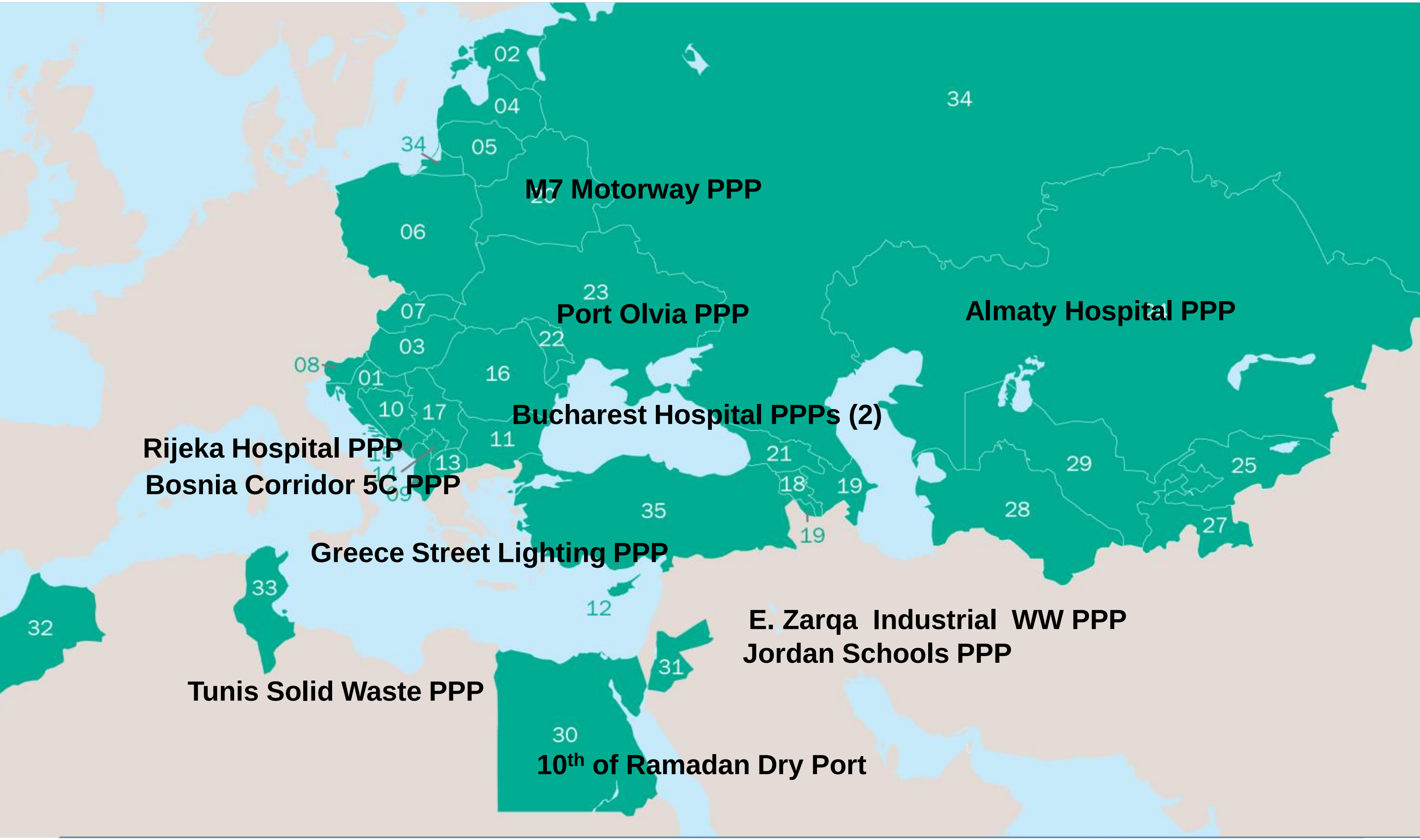

IPPF support ‘PPP Certification’ training for Public Sector clients

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CP3P
CERTIFIED PPP PROFESSIONAL

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1 PPP INTRODUCTION AND OVERVIEW

1. PPP INTRODUCTION AND OVERVIEW – APPENDIX A

SHARE:

ABOUT THE PPP CERTIFICATION PROGRAM GUIDE

PURPOSE AND BENEFITS

The PPP Certification Program Guide, referred to as the PPP Guide is the Body of Knowledge (BoK) on public-private partnerships (PPPs), will help public officials and their advisors implement efficient, sustainable PPPs. The PPP Guide is part of the family of CP³P credentials that, once mastered, enable PPP practitioners to achieve the title “Certified PPP Professional” under the auspices of the APMG PPP Certification Program. The APMG PPP Certification Program, referred to as the Certification Program is an innovation of the Asian Development Bank (ADB) , the European Bank for Reconstruction and Development (EBRD), the Inter-American Development Bank through its Multilateral Investment Fund (IADB through its MIF), the Islamic Development Bank (IsDB), the Public-Private Infrastructure Advisory Facility (PPIAF), and the World Bank Group (WBG).

Although the underlying principles of PPPs are the same everywhere, circumstances around the world dictate that government officials apply these principles in ways that are specific to their nation’s needs. The PPP Guide identifies the underlying principles and the elements of good practice that are applicable in most circumstances in emerging markets and developing economies, while recognizing the need for local variations. In this respect, the PPP Guide complements existing guidance materials on PPPs prepared by governments and international institutions, such as multilateral development banks (MDBs).

The primary focus of the PPP Guide is on emerging markets and developing economies, but much of it is also relevant to developed economies. Developed economies are at varying levels of maturity in their use of PPPs and may have become dependent on practices that have been tailored to their situations over time. They may benefit from knowledge of good

- www.ppp.apmg-international.com/ppp-certification-guide/about-ppp-guide

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