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REFORM OF TURKEY'S PUBLIC HEALTHCARE SYSTEM

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REFORM of Turkey's public healthcare system is a top priority of the Turkish government. To date, the government has made regulatory changes to improve services and access for patients under Turkey's national healthcare scheme. Aware that very substantial capital investment in new hospital facilities is needed to achieve its goals, the government has launched an ambitious PPP scheme for the healthcare sector with the promulgation of a healthcare PPP regulation in 2006 (the "Regulation") and recent tenders for 15 integrated hospital projects throughout Turkey[1]. These 15 projects represent more than 25,000 beds and total capital investment costs of more than $5 billion; each will replace an existing hospital with a new healthcare complex. The PPP scheme is a welldesigned one inspired by close study of European counterparts, in particular the UK scheme[2], many of whose commercial and legal features we see here.

Under the Turkish scheme, administered by a department of the Ministry of Health (the "Administration"), investors will finance, construct (or renovate, as the case may be), furnish, supply, operate and maintain the hospitals. The Ministry of Health will remain responsible for providing medical services but the project company will provide certain clinical support and other support services in these new hospitals. Clinical support services could include imaging, laboratory, sterilization and rehabilitation and other support services would include building maintenance, cleaning, utilities management, information management, grounds maintenance, reception, car park, waste management, laundry and catering. The project company is also entitled to offer commercial services if the proposed services are compatible with a hospital environment.

The Administration is entitled to determine the construction and operation periods for each hospital based on the project's feasibility, but the operation period for the first projects tendered has been 25 years after completion of construction. At the end of the operation period, the project company must hand the hospital back to the Administration in good working order.

The Regulation foresees payments to the project company that include a rental payment in consideration of the project company constructing the hospital and making it available, and service payments for providing the clinical and other support services. Most of the services will be classified as "non-volume" services and the project company will not take volume risk on them as it will be paid for them at a guaranteed occupancy rate. A few of them will be classified as volume services, and, with respect to these, the project company's payments will be indexed to the volume of services provided. The Regulation also contemplates that rental and service payments will be adjusted annually for inflation. The Administration makes all the payments (except for those for commercial services) and all payments are denominated in Turkish Lira. Because funding for the projects is expected to be in foreign currency, the Ministry of Health has recently amended the Regulation to mitigate foreign currency risk. Payments are guaranteed by the Ministry of Health and the Regulation imposes upon the Ministry the obligation to ensure that its working capital budget includes sufficient allocations for hospital PPP projects.

The Ministry of Health is rightly focused on assuring a high quality of uninterrupted service in these new hospitals, so each project has detailed service requirements governing the performance of the project company. The Administration will be entitled to assess service failure points and penalties for project company's service failures after an initial grace period. Accrual of a designated number of service points will have various payment and other contractual consequences for the project company.

Those described above and many other features of the scheme (elements of risk allocation, the existence of direct agreements between the Administration and lenders, the private law status of the project agreements) are designed to create a model that will appeal to sponsors and that can be financed on a limited recourse basis. Some question marks remain concerning the Regulation's allocation of certain other risks such as force majeure and its treatment of compensation in certain termination events and these must be resolved during final contract negotiations.

We have seen in other markets that for PPP hospital projects to be successful over the long term, the requirements of all different stakeholders need to be held in a delicate balance. This includes the needs of staff, patients, the public sector, lenders, contractors and investors. In Turkey, the presence of clear political will and investor and contractor interest should help ensure the success of the first wave of Turkish hospital PPP projects if the lending community is able to finance them on terms that make the projects feasible for their stakeholders.

The healthcare PPP scheme demonstrates Turkey's commitment to improving its provision of public services and its need for public private partnerships to do so. Turkey started down the road to cooperation between the public and private sectors in infrastructure much earlier than many other countries – the mid 1980's – by championing the first build-operate-transfer (BOT) program for private investment in power generation. Turkey has since found successful ways to accelerate private investment in infrastructure in power and other sectors using models contained in different legislation. Turkey's drive to improve public services would benefit from a single PPP law that offers a coherent framework for public private partnership across sectors. The government has prepared a draft of this law, and it is awaiting further action.

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