

Turkey Introduces A New PPP Scheme For Waste Management Services Through Amendments To The Bot Law No. 3996

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The Omnibus Law No. 7410 Amending the Environment Law and Certain Laws was published in the Official Gazette numbered 31867 and dated 15 June 2022 (the “**Omnibus Law**”) and entered into force the same date.

The Omnibus Law introduces two new articles to the Law No. 3996 on the Performance of Certain Investments and Services under Build-Operate-Transfer Model (the “**BOT Law**”) which pave the way to implementation of the build-operate-transfer (“**BOT**”) model by local administrations such as municipalities, provincial private administrations, and the Turkish Environmental Agency with regards to waste management services and investments.

Waste Management Projects of the Local Administrations

As per the newly introduced Additional Article 3 of the BOT Law, local administrations will be able to implement BOT projects for performance of certain waste management services. These are services such as purification and recycling; processing and disposal of purification sludge; waste collection and transportation; waste processing, recycling and disposal facilities; and eyebolts and buoys. Local administrations will be able to procure the subject services from the private sector based on the BOT model with authorization periods longer than 10 years.

Furthermore, Additional Article 3 provides for local administrations to procure additional investments for the maintenance, repair, renewal, capacity increase or modernization of existing facilities carrying out the aforementioned public services by entering into operate-transfer arrangements with the private sector within the framework of the BOT Law.

Here are some highlights from the special PPP scheme provided by Additional Article 3:

- Additional Article 3 sets out an exemption to the authorization requirement. Local administrations will not be required to obtain the President’s authorization under Article 4 of the BOT Law for projects having a total investment value and/or operation service cost below TL 100 million (subject to annual escalation).

- Project companies will also be able to perform ancillary commercial services and investments related to the respective public services conducted through the BOT model provided that the following conditions are met: (i) the tender documentation of the relevant BOT project must include provisions to allow such arrangement, (ii) the relevant administration must have granted its approval to such ancillary services and (iii) the revenues obtained from such commercial services and investments must be distributed between the project company and the administration based on a pre-agreed ratio.
- Local administrations will be required to transfer the amounts to be paid to project companies to “Blocked Bank Project Accounts” which will operate as special accounts designated only for payments to be made within the scope of the respective projects. In case the local administration fails to make the necessary payments to the Blocked Bank Project Account, the outstanding amount (after certain deductions and subject to a ceiling amount set out in Additional Article 3(6)) will be paid by either the Ministry of Treasury and Finance or İlbank.
- Land usage rights to be granted in respect of these projects for a period shorter than 30 years will be treated as independent and continuing rights. This will allow such usage rights to be registered with the land registry as an independent immovable and made subject to certain security rights such as mortgage.

The Ministry of Environment, Urbanism and Climate Change, the Ministry of Treasury and Finance and the Directorate of Strategy and Budget will jointly prepare and announce a secondary legislation setting out the principles and procedures to apply, elaborating on matters such as the tender process, project agreements and the Blocked Bank Project Account.

BOT Projects of the Turkish Environmental Agency

Another novelty introduced by the Omnibus Law is the Additional Article 4 added to the BOT Law which vests the Turkish Environmental Agency with the authority to commission BOT projects related to the deposit-return systems for the reduction of packaging waste emissions as per the BOT Law. In addition, the amendments also provide for the implementation of the operate-transfer model for the abovementioned investments and projects of the Turkish Environmental Agency through the transfer of operating rights to private companies for periods more than 10 years in accordance with the BOT Law.

Other Practical Considerations on the New PPP Scheme

Debt Assumption

Article 11/A(2) of the BOT Law authorizes the administrations implementing the BOT model to assume the project company’s payment obligations arising out of any foreign financing and related derivative instruments entered into for the purposes of the respective BOT project in cases where the respective administrations are vested with early termination rights under the relevant project agreements. Such debt assumption mechanism will also be available to the BOT projects that may be commissioned by local administrations as per the newly introduced Additional Article 3 of the BOT Law.

Stamp Duty Exemption

According to Article 12 of the BOT Law, the transactions carried out by the relevant administrations as well as the project companies for consummation of the respective BOT projects are exempt from stamp duty. Transactions concluded for the purposes of the BOT projects implemented as per the newly introduced articles will also benefit from such exemption.

Conclusion

The amendments introduced with the Omnibus Law are part of the Turkish government's efforts to implement more environmentally conscious projects in the global combat against rising waste emissions. The amendments are expected to allow the local administrations to develop and implement waste management projects more effectively and in a bankable manner.

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