



FEASIBILITY STUDY. PPP PROJECT ASSESSMENT

PPP PROJECTS COURSE

FEASIBILITY STUDY

Feasibility study (FS) means technical, financial, economic, legal and environmental assessment and evaluation of key risks and viability of a PPP project (PPP Law 2012, no definition in the PPP Law 2019).



Legal Analysis in the FS. PPP Dialysis Project

DIALYSIS CENTRES: LEGAL STATUS

- General overview of public dialysis centres
- General overview of private dialysis centres
- Collaboration experience between public authorities/public healthcare organisations and private dialysis centres



Legal Analysis in the FS. PPP Dialysis Project

REGULATION APPLICABLE TO DIALYSIS CENTRES

- **GENERAL OVERVIEW OF THE APPLICABLE LEGISLATION**

- Status of MoH (Ministry of Health) regulations
- Changes in regulation applicable to dialysis centers

- **TECHNICAL REGULATION**

- Registration and certification of equipment and pharmaceuticals
 - General technical regulation requirements
 - Registration of equipment and pharmaceuticals with DMS (Department of Medical Supplies of the MoH)
 - Confirmation of compliance (certification of the equipment and pharmaceuticals)

Legal Analysis in the FS. PPP Dialysis Project

- **GENERAL OVERVIEW OF THE APPLICABLE LEGISLATION**
 - Sanitary and epidemiological rules and standards (SRSs)
 - SRSs applicable to dialysis centers
- **ACCREDITATION**
 - Accreditation of private healthcare organisations (including dialysis centers)
 - Peculiarities of accreditation of dialysis centers
- **LICENSING**
 - Licensing of medical activities
 - Licensing of a foreign legal entity
 - Licensing of dialysis centers
 - Peritoneal dialysis

Legal Analysis in the FS. PPP Dialysis Project

EMPLOYMENT AND QUALIFICATION REQUIREMENTS

- Hiring requirements for medical personnel
- Attestation and registration requirements for medical personnel
- Additional attestation of medical personnel working in private healthcare organisations
- Continuing professional development of medical personnel
- Restrictions on hiring of medical personnel for private organisations
- Requirements for foreign qualifications of medical personnel

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- Requirements for medical personnel who are foreign nationals or stateless persons
- Employment contracts
- Working time of medical personnel
- Minimum salary
- Termination of employment
- Options for termination and transfer of medical personnel from public and municipal healthcare organisations to the private partner



Legal Analysis in the FS. PPP Dialysis Project

PAYMENTS FOR THE DIALYSIS SERVICES

- State Guarantee Program (SGP)
- Payments for dialysis services

PROCUREMENT

- Procurement by public healthcare organisations
- Procurement by private healthcare organisations

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ENVIRONMENTAL REGULATION

- Requirements of legislation on environmental protection applicable to the PPP Project
- Waste management requirements

INTERNATIONAL EXPERIENCE IN PPP AND PPC (public-private collaboration)

Legal Analysis in the FS. PPP Dialysis Project

PPP LEGAL FRAMEWORK

GENERAL OVERVIEW OF THE PPP LEGISLATION

- Regulatory framework for PPP
- Changes to regulatory framework for PPP
- Lack of experience in implementing the PPP Law and other legal acts related to PPP, as well as no experience in structuring PPPs
- Unstable legislation of the KR

Legal Analysis in the FS. PPP Dialysis Project

PROJECT IMPLEMENTATION OPTIONS

APPLICABLE PPP MODELS

- PPP models under KR law

PUBLIC PROCUREMENT (OUTSOURCING) AS AN OPTION

- Application of the public procurement rules

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PPPA (PPP AGREEMENT)

PUBLIC PARTNER

- Definition and number of public partners
- MoH and MHIF (Mandatory Health Insurance Fund) as public partners in the PPP Project

PRIVATE PARTNER

- Definition of private partner, participation of several persons on the side of the private partner
- Foreign legal entity



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PROJECT COMPANY

- Right of the private partner to establish the project company
- Project company with public participation
- Appointment of the project company

SUBJECT MATTER OF THE PPPA

- Subject matter of the PPPA

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CONTRACT TERM

- Alteration of the PPPA's term

FINANCIAL TERMS

Payments for dialysis services

- Budgeting
- Special fund
- Miscellaneous financial terms
- Currency of payments to the private partner
- Indexation
- Availability payments/shadow toll

Legal Analysis in the FS. PPP Dialysis Project

PUBLIC AND PRIVATE PARTNERS' OBLIGATIONS

- Rights and obligations of the public and private partners specified in the PPP Law

PUBLIC FINANCIAL SUPPORT

- Types of public financial support and their availability in practice
- Preferential loans
- Bank guarantees
- Guarantees securing performance of the public partner's obligations
- Tariff subsidies
- Direct co-financing (providing part of financial means necessary for the PPP Project implementation)

Legal Analysis in the FS. PPP Dialysis Project

- Tax exemptions, and/or suspensions, and/or extension of terms as prescribed by the KR laws
- Customs duties exemptions, and/or suspensions, and/or extension of terms as prescribed by KR laws

PUBLIC ECONOMIC SUPPORT

- Types of public economic support and their availability in practice
- Rights to movable or immovable property other than the PPP facility
- Assistance with obtaining licenses, permits and consents
- Easement over movable and immovable property held in public (state and/or municipal) ownership

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- Right to collect fees/tariffs and to receive proceeds from other types of activities not directly related to the PPP Project
- Preferential rates of lease payments for use of public (state and/or municipal) property
- Exclusive right to engage in activities specified in the PPPA in accordance with KR laws
- Other types of public economic support not inconsistent with the KR laws



Legal Analysis in the FS. PPP Dialysis Project

TRANSFER OF IMMOVABLE PROPERTY RIGHTS

- Transfer/grant of land rights to the private partner for the PPP Project
- Grant of land to the private partner but not to the project company
- Preparing land-use planning and other documentation
- Approval of the Planning Documentation by the competent government and/or local self-government authorities
- Formation of the land plot at the stage of selecting the private partner
- Chargeability of temporary land use rights
- Land lease agreement

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- Reimbursement of expenses incurred by the MoH when drafting/preparing Planning Documentation
- Limited land rights of foreign persons
- Possible prohibition on pledge of state or municipal property
- Grant of right to state and municipal immovable property
- Term of lease agreement for municipal land plots

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TRANSFER OF RIGHTS OVER MOVABLE PROPERTY

- Grant of rights over movable property
- Possible restriction on pledge of state or municipal property

MONITORING PROCEDURE AND PERFORMANCE MANAGEMENT

- Authorities responsible for monitoring and performance management of PPPs
- MHIF monitoring requirement
- Private partner's reporting obligations
- Monitoring procedure and performance management

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QUALITY CONTROL

- Quality control by the MAC (Medical Accreditation Commission)
- Quality control by the MoH, SanEpidSupervision (Sanitary and Epidemiological Supervision – Department of prophylactics and state sanitary and epidemiological supervision), State Inspectorate for Environmental and Technical Safety of the Government (SIETS)
- Quality control by the MHIF
- Quality standards for dialysis



Legal Analysis in the FS. PPP Dialysis Project

FORCE MAJEURE AND SPECIAL EVENTS

- Force majeure
- Special events

TAXES

- Overview of taxes applicable to the private partner
- Exemption from VAT on supplies of goods, works, services, made by the private partner and/or project company in the process of implementing the PPPAs to be approved by the Government
- Taxation of amounts received under Single Payer System

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CUSTOMS REGULATION

- General overview of customs regulations applicable to the private partner
- Deferred payment and/or payment by installments of customs duties is permitted only in accordance with the Customs Union Treaty establishing grounds, conditions and procedure for alteration of customs duties payment period
- No deferred payments and/or payment by installments of VAT on import is allowed without a prior decision of the Government

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INSURANCE

- Insurance requirements

ANTIMONOPOLY REGULATION

- Antimonopoly regulation
- State and municipal preferences according to antimonopoly laws



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TERMINATION: EVENTS AND COMPENSATION

- Termination of the PPPA and compensation issues

BANKRUPTCY/LIQUIDATION

- Bankruptcy
- Liquidation

DISPUTE RESOLUTION

- Disputes resolution by international commercial arbitration
- Enforcement of foreign arbitral awards in the KR

Legal Analysis in the FS. PPP Dialysis Project

MECHANISMS OF PROTECTION OF PRIVATE PARTNER'S RIGHTS

GOVERNMENT PROTECTION GUARANTEED TO THE PRIVATE PARTNER UNDER THE PPP LAW

- Types of government protection guaranteed to the private partner under the PPP Law
- Public partner's non-interference in the business affairs of the private partner
- Protection of property of the private partner against nationalisation or any other similar process in accordance with KR laws
- Free possession, use and disposal of investments in the PPP Project and proceeds therefrom for the purposes consistent with KR laws

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- Free conversion of local currency into any foreign currency and free export or repatriation of the proceeds from the PPP Project
- Compensation for losses of the private partner resulting from illegal acts or omissions of public authorities or their officials
- Revision of the PPPA terms or early termination and compensation for losses resulting from changes in KR laws making the terms of the PPP Project less favorable for the private partner than the initial terms of the PPPA

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INVESTOR PROTECTION GUARANTEED UNDER THE LAWS (APART FROM THE PPP LAW) AND TREATIES OF THE KR

- Investor protection under KR laws (apart from the PPP Law)
- Investor protection under bilateral treaties
- Investor protection under multilateral treaties

FINANCING

- Financial institution
- Financial close

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FINANCING INSTRUMENTS

- Instruments of private financing of the PPP Project
- Loan
- Credit
- Bond offering
- Government loan
- Financial lease/Leasing
- Grant

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PERFORMANCE GUARANTEES

- Types of performance guarantees of private partner for financiers
- Pledge

ASSIGNMENT OF RIGHTS TO THE FINANCIAL INSTITUTION

- Assignment of rights of the private partner under the PPPA
- Direct agreement

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TENDER

PPP PROJECT PREPARATION

- Government/MoE (Ministry of Economy) approval of a proposal on initiating the PPP Project and Tender Documentation
- Lack of time frames for adoption by the MoH of the decision to initiate the PPP Project, notification and coordination of the decision to initiate the PPP with the MoE and MoF (Ministry of Finance)
- 30-day period limitation for adoption and coordination of the MoH's decision to appoint the tender commission, develop the tender rules and Tender Documentation

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- Composition of the tender commission
- Requirements for the number of bidders
- Making changes and additions to bids, tender rules and Tender Documentation during the tender process



Legal Analysis in the FS. PPP Dialysis Project

PRIVATE PARTNER SELECTION

- Lack of time frames for publishing the invitation to participate in pre-qualification
- 30-day period limitation for submission of bids for participation in pre-qualification
- Lack of provisions in legal acts allowing the tender commission to hold negotiations with the bidders
- Lack of provisions in legal acts allowing the public partner to make changes and additions to the draft PPPA after holding negotiations with the successful bidder
- 60-day period for executing the PPPA between the public and private partners

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- Requirement for MoH to evaluate the PPP Project impacts after holding negotiations with the private partner and receiving expert examination report and approval from the MoE and MoF

PRE-QUALIFICATION REQUIREMENTS

- Documents submitted by the bidders for the participation in the tender
- Evaluation of the bid and of compliance with the pre-qualification requirements

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BIDDING CRITERIA AND EVALUATION OF THE BIDS

- Criteria for selecting the successful bidder