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Stay Order on the Tender Process for the Integrated Health Campus Projects

Under Turkish law, the PPP model in health services is regulated under the Principle Health Services Law (No.3359) (the “**Law**”). The supplementary article 7 of the Law (as adopted by the Law No.5396 amending the Law) sets forth the basic framework for the construction and renovation of the health facilities under the PPP model. The more comprehensive provisions for the implementation of the supplementary article 7 of the Law is provided for in the Regulation on the Construction of New Healthcare Premises Against Lease and the Renovation of Existing Healthcare Premises Against Operation of Non-Medical Services and Functional Areas of Activity (published in the Official Gazette dated 22 July 2006 and numbered 26236) (the “**Regulation**”).

The Ministry of Health of Turkey (the “**Ministry**”) has launched a number of tenders for the construction of integrated health campus projects under the PPP model in various cities in Turkey based on the Law and the Regulation. Among others, the tender process for Ankara Bilkent Integrated Health Campus, Ankara Etilik Integrated Health Campus and Elazığ Integrated Health Campus projects (together “**Health Campus Projects**”, and each a “**Health Campus Project**”) has been completed in 2011 and the contractors awarded such tenders and the Ministry have already proceeded with the next steps.

The Turkish Medical Association (*Türk Tabipler Birliği*) (the “**Association**”) filed lawsuits with the Council of State (*Danıştay*), among others, for the annulment of the tender process for each Health Campus Project and requested stay order (*yürütmenin durdurulması*) for the tender process of each Health Campus Project. The Association also requested the Council of State to bring an action for the annulment of the supplementary article 7 of the Law before the Constitutional Court.

The 13th Chamber of Council of State, upon its review, has issued a stay order for the tender process of each Health Campus Project. The Council of State pointed out that Article 7 of the Regulation and the tender specifications provides for the establishment of an easement right over Treasury’s property where health services will be carried out by the contractor. Further the same pieces of legislation sets forth that the contractor will also be entitled to operate "non-medical services" and "non-medical functional areas of activity" within the integrated health facilities to be constructed by the contractor (such as parking lots, hotels, restaurants, etc.) under the same easement right. However, the Council of State resolved that the establishment of the easement right over a property where such "non-medical services" and "non-medical functional areas of activity" will be carried out by the contractor for commercial purposes is not compliant with the nature of the said tenders. In other words, the Council of States decided that, under the said tender, the contractor may not be granted with the right to commercially operate the areas which do not have any connection with the health facility concept.

Finally, the 13th Chamber of Council of State has brought an action for the annulment of the supplementary article 7 of the Law before the Constitutional Court. The Council of State has based its filing with the Constitutional Court on the grounds that the article 7 of the Law grants the administrative body an exceedingly broad regulatory power on a wide range of issues (such as tender procedures or the scope of the implementation contract) which would normally be regulated by the legislative body.

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