



The Cairo Regional Centre for
International Commercial Arbitration

***An Outline About BOT
Projects and
Ways of Settlement of
their Disputes***

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I – BOT System, Old and New

BOT is a system that depends on the private sector to finance the infrastructure projects which were undertaken and financed traditionally by the public sector.

In BOT projects private companies are given concessions to build and operate facilities that would normally be built and operated by the government. The facilities might be power plants, airports, toll roads, tunnels or water treatment plants. The private companies would be responsible for financing and designing the project. At the end of the concession period, the private company returns ownership of the project to the government in most projects although this would not be always be the case.

BOT concept has its historical roots in the concession systems of the nineteenth and early twentieth centuries. However, BOT projects of today differ so significantly from the old concessions.

Unlike the old concessions, modern BOT arrangements are designed and implemented as having the partnership of both public and private sectors, with private sector finance and efficiency in management serving the public interest.

BOT projects offer significant potential for technology transfer and local capability building and developing national capital markets, as well as a many other benefits. It has many advantages and is a viable alternative in most countries to the more traditional approach using sovereign borrowings or budgetary resources. However, unlike a fully privatized approach, the government retains strategic control over the project, which is transferred back to the public sector at the end of the concession period.

Most BOT projects are first identified by the host government. Through a published request for proposals the host government requests for bids to have a particular project delivered on a BOT basis.

It is also possible, however, for a project opportunity to be identified first by a private company or investor, who will propose it to the host government. A number of successful BOT projects have been realized through this way.

Many developing countries have begun to promote infrastructure projects on BOT basis.

Examples of this are the BOT projects undertaken in Egypt according to the following Laws :-

- 1- Law no. 100/1996 amending law no 12/1976 establishing the Egyptian Authority of Electricity.
- 2- Law no. 229/1996 amending law no. 84/1968 concerning Public Roads.
- 3 - Law no. 3/1997 concerning airports.
- 4- Law no. 22/1998 amending law no 1/1996 concerning Ports .

It may be concluded that BOT system, it is an attractive approach because it gains the private sector financing that would not otherwise be available for infrastructure projects. This would accelerate the development of important projects that would otherwise have to wait for government resources to become available.

The BOT projects require time to develop and negotiate. They require host governments involvement and support. They require a suitable political and economic climate, political stability, a defined and stable legal and regulatory environment and a freely convertible currency, as well as other elements that are appropriate for foreign investment generally.

II – Factors to Guarantee the Success of BOT Projects

To guarantee the success of BOT projects, the following factors must be realized:

- 1-The project must be financially sound, feasible and affordable.**
- 2-The risks of the project must be manageable.**
- 3-There must be strong government support.**
- 4-The legal framework must be stable.**
- 5-The administrative framework must be efficient.**
- 6-The bidding procedure must be fair and transparent.**
- 7-BOT transactions should be structures so as to be accomplished within a reasonable time and at a reasonable cost.**
- 8-The sponsors must be experienced and reliable.**

9-The sponsors must have sufficient financial strength.

10-The construction contractors must have sufficient experience and resources.

11-The project risks must be allocated rationally among the parties.

12-The financial structure must provide the lenders adequate security.

13-The currency, foreign exchange and inflation issues must be solved.

14-The BOT contractual framework must be coordinated and must reflect the basic economics of the project.

15-The public and the private sectors need to cooperate on a win-win basis.

16-There should be a sound way for peaceful and quick settlement of disputes.

III - Settlement of Disputes Arising from BOT Project

The peaceful and quick settlement of BOT projects disputes may be realized under the auspices of the Cairo Regional Centre for International Commercial Arbitration which is an independent non-profit making international organization . Its leading role aims at contributing to, and enriching the progress of economic development in both Asian and African Countries. In this regard, specialized services are being constantly and consistently provided to prevent or help settle international trade and investment disputes, through fair operations of expeditious and economical procedures. This constitutes a wholly integral dispute-resolution mechanism which employ various effective processes of arbitration. It implies also other Alternative Dispute Resolution techniques (ADR) such as conciliation , mediation and technical expertise.

The UNCITRAL Rules which are applied by the Cairo Centre, are distinguished by their flexibility in the arbitration procedures as they provide the parties the freedom to choose the arbitrators, the arbitration location, the arbitration language, the rules of procedures and the applicable law .

Some few provisions were added to the Rules of the Centre to cope with the development that occurred in modern contracts and modern arbitration requirements . Between which is the provision including the rules of appointing arbitrators in multi party arbitration if the parties fail to agree on it. These provisions are effective January 1, 1998. This particular provision was provided for in the Centre's Rules to face the problem of appointing arbitrators in multi party arbitrations especially in BOT and construction projects .

All kinds of International trade and investment disputes may be settled peacefully under the Cairo Center's Rules of Arbitration, Conciliation, Mediation, Technical Expertise, Mini Trials or Claim Review Boards.

As for the disputes arising from BOT projects, they may be best settled under the UNCITRAL Rules.

The Centre would suggest a clause of arbitration in BOT contracts that would include the application of the UNCITRAL Rules. The clause may provide for a panel of arbitrators that may be formed at the beginning of the project in which parties nominate the arbitrators who would be provided by copies of all the documents, and all necessary information about the progress of the

work step by step to settle the disputes that may arise at any time during the period of executing the project . This would save the parties the time and expenses of formulating an arbitral tribunal in each case to begin studying the documents of the projects and the system of work.

The peculiarities in each BOT project may require that the clause of arbitration includes some additional elements that may be necessary in one type, and would not be standard elements in other clauses included in other BOT projects .