



BOT CONTRACTS

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While I was working as an attorney at Amit law firm, Pollak Matalon, I dealt with a class action suit filed against the State in respect of the VAT collected in addition to the toll amount on the use of Highway 6. In this context, we dealt with the issue of employing "Derech Eretz" By the State in a BOT transaction. After studying the subject in depth, I saw fit to bring a few words to the subject.

Definition of BOT contracts

BOT consists of combining the first letters of the three words Build, that is to say, Operate, meaning exploitation and transfer, meaning assignment. In fact, BOT has three contracts in one contract. This feature has made BOT contracts more complex, which adds to the importance of recognizing them from a legal point of view.

On the other hand, this type of contract is also part of public-private partnership contracts. The term BOT was first introduced in the 1980s. At that time, the Turkish government offered a multiplicity award. In this way, a specific company assumes the process of constructing and operating the project for a specified period, and then, after that period, proceeds with the necessary transfer of the project to the employer.

The purpose of the BOT contracts

The BOT contract is based on the assumption that the public sector is unable or unwilling to provide the necessary funding to implement an economic plan or infrastructure project. Consequently, it benefits from the conclusion of such contracts. The BOT contract allows governments to leverage the overall resources and capabilities of the domestic and foreign private sector to carry out infrastructure projects.

In many countries, laws such as the "Encouragement and Protection of Foreign Investment" Act, have covered the BOT contracts and provided the legal basis for the use of these contracts.

The Ministry of Energy, the Ministry of Roads and Urban Development and the Ministry of Petroleum are among the ministries that have seriously put into operation the BOT contracts and have contracted accordingly.

Features of the BOT Contract:

Although BOT contracts have significant differences, the essential features of a BOT contract can be summarized as follows:

The privilege of building an economic project will be awarded to the consortium by the government.

The privilege of using economic projects made by the government is assigned to the consortium for a specified period.

The consortium is responsible for project financing.

The consortium is responsible for the design, supply of goods, machinery and materials for the construction and commissioning of the project.

The responsibility for exploiting the project is within the mandated period by the consortium.

The consortium, through the sale of goods and services resulting from the operation of the project, recovers the capital, its interest and profits.

After the expiration of the time limit for exploitation, the project will be transferred to the government free of charge.

The consortium is obliged to use the project during its operation and until delivery. The consortium must, if necessary, make the necessary repairs or modifications at its own expense, as long as the project is technically sound and operational at the time of delivery.

Requirements for BOT contracts

Three factors can be considered as a prerequisite for BOT contracts. In the first place, the defined project must have economic justification, as its practical and perceived need is felt in the country.

The second factor is the willingness and determination of the government and the public sector to sign the contract and issue the necessary permits, as well as to ensure the security of investments in this project.

The third and last factor for concluding construction, operation and transfer contracts is the presence of investors and sponsors to take various project risks up to the operational stage.

The first two factors, which are generally related to the two main parties to the contract, usually exist, but the lack of sponsors, as the third pillar of the BOT contracts, in many cases, precludes the project from being implemented.

Often, international banks and investment companies are responsible for sponsoring and investing in BOT contracts. Persuading these institutes is often a difficult task. This problem is mainly due to the general risks of the project, although there are incentives.

Another deterrent to investors is the degree of profitability of the project. In fact, foreign investors often pay attention to the project and process, and profitability. Therefore, the importance of the first factor, which is the economic justification of the project, becomes double.

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