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Examining the Contractual Methods and Patterns of Financing Infrastructure Projects with Emphasis on Build, Operation, Transfer Contracts

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ABSTRACT

In infrastructure projects, the government can solve the problem of financing projects by using its internal resources and direct costs or by concluding contracts that are accompanied by financing in addition to the implementation of the project. This article tries to supply different types of these contracts including Construction, Operation and Transfer (BOT), Buyback, Joint Venture and Engineering, Procurement, Construction Finance (EPCF) with emphasis on BOT contracts since these contracts are becoming increasingly important due to the difficulties of developing countries in financing projects using government direct costs. The results of this article indicate that in each of the infrastructure projects, a specific type of these contracts may be applied and none of these methods are weak or strong on their own. The financing method which can provide the interests of the contact parties is variable depending on the nature of the project or intended pattern and the political and economic conditions ruling the host country. BOT's method is increasing in developing and financing infrastructure projects of developing countries which are in dire need of financing projects. It should be noted that this article is written in a descriptive-analytical manner.

Keywords:

Financing methods, infrastructure projects, BOT contracts, developing countries.

1. Introduction

Nowadays, using capital in infrastructure projects is of great significance. Governments (especially developing governments) are reluctant to fund 100 percent of their own infrastructure projects because of a variety of reasons and usually tend to contractual methods that can both implement and fund the project. Some methods can be mentioned such as buyback, build, operation and transfer contracts, joint venture and contracts of designing and supplying of goods. It is not possible to easily provide the capital needed to implement large projects due to the special situation of developing countries and financial crises in these countries. Therefore, choosing the appropriate financing method for projects is an issue of importance. In other words, most of consumers, manufacturing and trading companies, and governments do not have the accessible financial resources to achieve their goals, pay off their debts, or other transactions, and must earn the money they need for their operations in various ways. The process by which economic agents obtain this amount of funds and the method chosen is called financing. In many projects, the issue of financing is considered noticeably by government officials due to matters such as the large amount of capital required, the high sensitivity of the project in terms of political, economic and security issues, the unwillingness to foreigners' presence and their investment, In a number of projects, the required funds can be provided by government support and credits, but important and infrastructure projects of the country which cannot be fully funded by the government, such as oil, gas, petrochemical and many other industrial projects, basically need foreign investment and facilities of foreign banks and institutions for their infrastructure development.

Thinking of a solution to provide the required financial resources for the project is one of the initial steps to ensure the completion of the project. Choosing the appropriate method of financing in the project feasibility stage, all cases and demands of different sectors involved in the project such as the project host country, the industry related to the project, contractors, buyers, suppliers, lending banks, the issue of risks and in general all the sectors involved in the project must be taken into consideration and then the appropriate method must be picked out in accordance with the preference and importance of each of them. In addition, it should be noted that the applied structure of project financing in one country may not be effective because of differences in its laws and conditions, while it is used effectively in another country. The important point is choosing the correct form of financing method according to the conditions of each project and the host country of the project. The appropriateness of the applied financing methods with the nature of the project and the activities is one of the most influential factors on the final financial results of the project implementation.

This article tries to examine these methods, their characteristics, features and the importance of each in achieving the purpose.

Joint Venture

Historically, foreign direct investment in developing countries has generally been in the form of 100% foreign-owned subsidiaries. Recently, however, an increasing number of new investments are in the form of joint venture with the participation of local (public or private) and foreign partners in the ownership. Numerous factors are involved in the growth of joint ventures with the participation of local and foreign partners in the ownership. One of these factors is that some developing countries may have enacted laws that prohibit 100% foreign ownership, or incentive programs provided that local partners participate in the ownership; But the more important factor in this regard is the growing awareness of foreign investors about the benefits they can gain by sharing local ownership (whether private or public) in the ownership. Among these benefits, some of the companies' shares are tangible (non-cash), including land, capital, trained staff, knowledge of the local language, familiarity with local markets and suppliers, and business conditions. Some intangible benefits include the made goodwill with employees, customers, and the government, and reduction of the likelihood of nationalization or discriminatory regulations (Pakdaman, 1384:11).

On the other hand, by partnering with the private sector or a foreign investor, the public sector can apply knowledge, expertise and risk sharing between the contract parties as well as financing the project. In fact, it can be said that these contracts are a win-win for the parties.

This method refers to a type of business cooperation which the parties jointly take the responsibility of managing a specific activity and share in the profits and losses. This type of cooperation is widespread worldwide. The formation of joint ventures between domestic companies of a country with each other or domestic and foreign companies has been a common topic in the last two decades. In countries, especially developing countries, there is a great tendency for cooperation and joint production with major global manufacturers, and this tendency has led to the creation of about 75% of joint ventures between companies of different nationalities (Bastani, 1390: 54).

Some others define "J.V." as follows: "J.V." is the partnership of two or more people to perform a

particular project or commitment applying specific skills, capital and reserves, merits, experiences and legal knowledge of each other. "J.V." is usually created for performing a specific project and activity for a limited period of time, and the partnership and assistance of the parties can be in the form of cash capital and money, services, physical capital such as machines, equipment or intellectual rights such as patents, registered exclusive rights, concession and a combination of them. According to article 2 of the Law on Encouragement and Protection of Foreign Investment (adopted in 2002), the parties of a joint venture contract might be individuals, legal entities, governments or government institutions, and these agreements can be bilateral or multilateral.

Jean Shapira, a French jurist, defines a joint venture as follows: "It is a legal framework of a partnership in which potential risks and management are divided among the parties. This partnership can have the form of a real company or it can be in the form of a contract without a legal entity or it can be finally, a company attached to a business and service contract (Hakimian, 1385: 37).

One of the first major contracts that Iran has concluded with foreign companies in the form of a joint venture is the contract of 1345 between Iran Petrochemical Company and Amoko International Company. The purpose of this joint venture was to build and operate a petrochemical complex on Khark Island by using natural gas. For this purpose, the two parties established an Iranian company called Khomko. The Iranian company's responsibility was to produce and market its products. The two mentioned companies owned and managed the Khumco equally and the initial capital, which was seven million dollars was paid equally by Iran Petrochemical Company and Amoko. According to the contract, Khomko purchased the necessary gas for the petrochemical complex from the National Iranian Oil Company and, with the help of technique and management of both joint venture parties produced and sold petrochemical products. The profit was distributed in the form of dividends after paying taxes to the Iranian government (Piran, 1389: 193-194).

One of the most important joint venture contracts is the contracts related to the exploration of oil, and companies and oil countries working in this field have created J.V. In the international arena of oil activities due to the high cost of these projects and the high technical aspect of these projects. The first J.V. oil contract was signed between the State Oil Company of Egypt and the Italian company ENI in February 1975, and in August of the same year the Italian company concluded a contract with the National Iranian Oil Company (financing methods for technical and Engineering projects, 1388: 17).

2. The most important features of the joint venture Contractual relationship

"Joint Venture" is anyway based on a contract; Even in cases which is organized in the form of a trading company, the principle of a company establishment, the partners' relations with the company and the probable transactions between them, the rules regarding the transfer of shares, prohibition of partners' competition with the company, the way and amount of Increasing capital in the future, the way of resolving disputes and termination of cooperation, are the issues that must be resolved in accordance with the contract of Joint Venture. So in general the joint venture is based on a contract.

Specific activity: A "joint venture" is formed for a specific activity and the specificity of the field of activity is not enough; Rather specific economic and geographical dimensions must be considered.

Joint control: In the framework of a joint venture, the parties work together to carry out specific activities. In fact, the active involvement of the parties in the management of "Joint Venture" is one of its distinguishing features. If one of the parties refuses to take an active part in the management despite participating in the financing and sharing in the profits of the activity, the established relations cannot be analyzed in the name of "joint venture". This distinguishes the joint venture from joint stock companies, in which many shareholders do not play an active role in the management of the company after providing part of the company's capital. This feature also distinguishes the joint venture from financing or similar contracts in which the bank or lender refuses to interfere in the management of the company after providing part of the business capital.

Share in profit and loss: The ratio of this partnership is insignificant. The important point is the principle of partnership. Thus, cases that one party performs part of the activity at the request of the other party and in return for a fee, cannot be called a "joint venture". This distinguishes the joint venture from sub-contracting relationships and the provision of technical assistance and so on.

Legal Format: As mentioned; In a joint venture, the relationship between the parties is based more than anything else on the contract between the two parties; But this does not mean that "joint ventures" are not in any particular legal framework. Depending on the location, the joint venture may use a variety of legal frameworks, such as a corporation or partnership, or a consortium, or operates solely in accordance with a contract that is recognized by the local law formally. Anyway the format taken, whether it is just a contract or has another format, must be selected from the legal

institutions of the host country. (Bastani and Rezaie, 1387: pp. 6-8)

2.1. Reasons for formation of joint ventures

The most important motivations for formation of joint ventures may be summarized as follows:
Merger of capitals to implement and finance a project

Integration of technical knowledge and experiences in different fields to develop a new product

Integration of commercial experiences and marketing capabilities of the domestic partner with the technical knowledge and capital of the foreign partner to supply products in the domestic market

Reducing political risk for the foreign partner through involvement of a domestic company

Observance of the regulations of the investee country regarding the necessity of partnership of domestic nationals or prohibition of acquisition of maximum shares of the companies by foreign nationals (ibid, P 15)

2.2. Types of joint ventures

Joint venture has various types, each formed based on its special necessities and the legal regulations of the country(s) where it is formed; however, joint ventures can be totally divided into two types:

2.2.1. Contractual Joint Ventures

A group of joint ventures are established without any common investment and hence, without establishment of a common enterprise. In this type of joint venture whereby each partner undertakes without any contribution a part of the joint activity according to the corresponding contract usually assigns the supervision of the entire activity to a common management committee; however, the parties each in whose own name and responsibility fulfill a part of the activity. This type of joint ventures are usually formed based on a cooperation contract or joint activity contract without establishment of a new enterprise by the parties to implement the contract. For this reason, this type of joint ventures are referred to as the “Contractual Joint Ventures”.

2.2.2. Corporate Joint Ventures

In contrast, there is another type of JV in which the parties establish a new busines enterprise to cooperate with each other and to realize common goals. They concentrate their contributions in this enterprise and the concerned activity is directed through the said enterprise. This type is referred to as the Contribution Joint Venture and/or Capital Joint Venture and/or Corporate Joint Venture.

Despite the former type, in this type of business partnership, the wills of the parties to cooperate emerges in form of establishment of a company and for this reason, this type of partnership is principally much more durable than that of contractual type. Of course, entering such a partnership does not necessarily require establishment of a new business company. One or more partners may sometimes enter the existing business company. This is basically realized through transfer of some shares and/or increase of capital. (ibid, PP 8-12)

3. Buyback

Prior to advent of money, transactions were usually conducted in terms of barter. By the formation of complex banking systems and development of several forms of money, cash transactions were developed significantly; however, buybacks have been developed considerably such that some people believe that the value of these transactions comprises about 25 to 50% of the total world trade. Buybacks are those transactions in which one of the transaction parties supplies goods, services, technology or any economic value to the other party and in return, the first party buys an agreed quantity of goods, services, technology or any other economic value from the second party. In this way, there is a legal relationship among the said contracts in two ways; one the one hand, conclusion of contract(s) is pending on conclusion of contract(s) and on the other hand, buyback is a general term comprising various methods in export transaction which are related to each other, one of which is concluded in the exporting country and the other in the importing country. In other words, buyback refers to the transactions in which one of contract parties offers goods, services, technologies and facilities of economic value to another party and in return, the first party to contract purchases the agreed quantity of goods, services and/or technology from the second party accordingly. Such trade is regarded as a significant method for the countries which face difficulty in their cash payments (Izadi Far, 2010-113-114).

One of the instances of mutual trade transactions is called buyback. Defining this transaction, one may state that the buyback is a collection of contractual methods in one of which production facilities are provided with the other party and in return, the said party undertakes to purchase the whole or a part of products arising from the contractual facilities from another party accordingly. Hence, it may be stated that the buyback refers to the technology and the factory in return for the contractual obligation of the seller for purchase of the products manufactured from equipment and technology. In other words, mutual agreement of parties undertaken by the investor to repurchase of the manufactured products as result of enforcement of the buyback. This kind of transaction

and investment is a combination of the factory and trade operations that is paid at transaction price not in foreign currency instead by delivery of the manufactured product. Buyback method has been first used by the countries with concentrated economy (socialistic countries) to access the technology and know-how of industrial countries and to offer their manufactured goods to the markets of industrial countries. The most significant and largest examples of the buyback have been concluded between Russia, the countries of the Eastern Europe and China and industrial countries. Nowadays, buyback is not limited to the socialistic countries; instead, a lot of countries all over the world use this method as well (ibid 115).

In our country, the first contract using the buyback method was concluded between the National Iranian Oil Company (N.I.O.C) and Conoco Company (an American company). Before this contract put into effect, it was annulled during the presidency of Clinton due to the sanction imposed on Iran by the U.S.A. Total Oil Company of France signed the Conoco Contract under quite different conditions. In practice, the said company put the first project of this type into operation.

In Iran, the buyback method has been used as a means of non-borrowing investment method i.e. in fact, a revised model of buyback in other countries in proportion of the interests and demands of the nation, motivating the foreign oil companies to bring their capital, technology and know-how to Iran. The inviolable principle of the countries' interests and necessity for exploration and development of oil and gas fields and reserves and sustainable and multilateral development require that the concept of legal and contractual nature and legal position of the buyback will be discussed (ibid 115-118).

3.1. Legal Nature of Buyback Contracts

In consideration of complexity of conclusion of these contracts and due to various relevant and irrelevant contract groups to buyback projects and concerning the fact that the projects are not jointly willing to be committed in form of definite contracts in internal law, these transactions do not exactly conform to any of legal formats of the nation. However, this shall not cause cancellation of transaction in line with the principle of rule of will. Instead, it is considered as an independent contractual obligation with specific legal nature and the corresponding effects and decrees and like other indefinite contracts, general rules of contracts will be applied if the governing law is the Iran's Law. In fact, buyback does not conform to the regulatory governing definite contracts. Foundation and nature of these contracts comprise the principle of freedom of the said contracts in internal law (Article 10 of Civil Code) and international trade law. According to the said principle, the right of tradesmen are identified to decide freely on who will provide their goods and services and/or to whom they may offer such goods and services and free agreement on the provisions of their individual transactions (Sadeghi, 2009, 125).

From legal aspects, these transactions shall meet the conditions stipulated by the legislator in order to be considered as authentic such as requirement for bidding and formalities for its approval. In this regard, these transactions shall be classified in formality contracts and failure to meet these formalities shall annul this kind of transaction accordingly. Any change or conversation of contract is pending on mutual agreement. Unilateral termination or cancellation of contract is made in such cases where the government is the investor and in exceptional cases by citing the permanent right of the government of its natural resources and proving the advantage of nationalization, expropriation, confiscation, compensation for damage, indemnification and fair compensation. In last case, the condition of violation does not affect the contract and it results in cancellation of condition (ibid 127).

3.2. Main goals of the mutual transaction

The main goal of these contracts is to guarantee the government sovereignty of oil and gas resources and maintenance of government supervision of oil and gas operations as it has stipulated in the Constitutional Law, Oil Act 1974 and Oil Act 1987. Another goal of these contracts is to achieve foreign currency and expertise needed for the costly, risky and complicated measure for implementation of oil and gas projects. Hence, in buyback contracts, responsibility of financing and implementation of development operations is only assumed by the foreign oil company. However, in some cases, buyback contract has been assigned to the partnership in investment comprising local and international oil companies (Ebrahimi & Shiravi, 2008).

4. EPCF Contracts

Implementation of industrial infrastructure projects has been highly extended in developing countries in the recent years such that nowadays many activities which are in progress especially in oil industry are carried out by using this method. The said method is one of modern methods for implementation of projects that is called "Turnkey" method. In this method, private sector undertakes designing and construction of installations as well as conduction of the corresponding operations during a fixed period. However, public sector finances the project. In common EPC contracts, the employer or public sector carries out a part of design (basic design) and the

contracting company undertakes continuation of design (conceptual design and detailed design), procurement and supply of all equipment and construction project independently and/or through partnership with the persons who are parties to relationship with the said company. However, in Turnkey method or complete EPC, the contractor is responsible for design, procurement and construction and another party to contract (the employer) accepts delivery of an accomplished project according to what has been agreed (Huse, 2002-17). In EPC, the contractor is required to have the ability to work according to the parameters concerned by the buyers of their service. On the whole, it may be stated that EPC contracts put forth the entire three stages of engineering, supply of goods and equipment and project construction in a project. In this method of project implementation, despite some restrictions for the employer, upon transfer of the entire activities of the project such as design, supply equipment, measures related to construction, installation and commissioning to the contractor, employer will be released from any responsibilities in this regard. In our country, the employers' tendencies in implementation of projects through EPC contract have increased in the recent years due to its main advantage, namely assurance of the final price and date of project completion. Another advantage of EPC method is to prevent from insignificance of responsibility and risk division. in EPC contracts, responsibility is basically requested from one institute. In other words, responsibility is not split. Hence, the responsibility for performance, testing, efficiency and equipment are fully borne by the contractor (Farshadfar, 2011: 61). Some of the advantages and disadvantages of EPC method are listed below. Some of the most important advantages of this method are as follows:

Assurance of employer from the final price and fixed date of project completion.

Employer works with only one contractor.

These projects progress quickly and the corresponding payments shall be duly made upon work progress.

Financing is carried out more easily in this method.

Construction and innovation capabilities are promoted inside the nation.

Transfer of a major part of risk to the contractor in fulfillment of project.

More assurance of construction costs.

Delays arising from changes and claims decrease.

In the recent years however, employers have asked EPC contractors to take the role of a financer in the projects due to poor finance of projects. In the recent years, this problem has increased in the projects, especially in the developing countries that suffer from poor economic structure in which the main reason of delay in construction of projects was the nonfinance of the projects. Should the contractor play the role of a financer in the project, he will naturally request for more payment and he will also receive from the project employer the interest of his money and the bank interest of his cash contribution to the project.

5. BOT contracts

Achievement of economic growth and development is possible only in the light of investing in economic infrastructural projects. Infrastructural projects were traditionally in the domain of public sector and were financed, constructed and operated by the government. Most of the developing countries are no longer able to meet the increasing demands in economic infrastructural sector. They need macro capital, foreign currency, advanced technology and efficient management to construct infrastructural projects. Therefore, without active attendance of business parties from industrial countries and without partnership of the public sector, these governments are not able to meet the increasing demands in the economic infrastructural sector. BOT contract is one of the mechanisms addressed by the developing countries to eliminate investment problem in infrastructural projects. (Shiravi, 2005, P 8)

BOT stands for Build, Operate and Transfer. In a conventional BOT contract, a project is constructed by a private company based on the permit issued by the government. After construction, the project will be operated by that company for a while and then, after expiration of contract period, the project will be transferred to the government which is a party to the contract. In other words, a government grants a concession a private consortium comprising private companies so that the said consortium undertakes and builds an infrastructural project according to the corresponding the contract and to operate the project for a period in consideration of the costs and expenses it has incurred. After expiration of contract period, the project and its operation right will be transferred to the government free of charge (ibid, P 10)

5.1. Main parties of a BOT project

The main parties of BOT project are as follows:

The investee government: Government is one of the main parties to BOT contract that in its territory permits to a private consortium to undertake and finance an infrastructural project and to operate the same for a period after construction.

In practice, one of the government institutions or companies directly undertakes the responsibility of the project, negotiates regarding the contract and finally conclude the contract. Supervision of project implementation is assigned to the same government institution.

Consortium: The second party to a BOT contract includes a number of private companies that jointly undertake the responsibility of financing, construction, implementation and operation of the project in terms of a consortium. There is a partnership contract among the said companies according to which the contribution and share of each company in the consortium will be specified.

Lenders: Contributions of the companies that form the consortium are usually insufficient for implementation of the project and financial resources shall be obtained through banks and finance institutions. Providing financial resources for the project is among the duties of the consortium which may comprise of domestic or foreign financial resources and/or a combination of both.

EPC contractors: EPC (Engineering, Procurement and Construction) contracts are usually concluded between a consortium and a contractor for construction of a project. The consortium assigns to its subcontractor the duties of design and engineering of the project, procurement of equipment, machinery, tools, required materials, construction of project, installation of equipment and machinery and finally launching the project according to EPC Contract.

Suppliers of raw materials: In BOT projects, raw materials such as sand, gravel, fuel and the ones shall be supplied by the consortium. The raw materials may be necessary during the operation and it is required that the consortium duly concludes the necessary contracts with suppliers.

Buyers of products: Those to whom the project products are finally sold may the end users or private/public companies that have guaranteed to purchase the products.

Sellers of spare parts and consuming materials: During the operation of project, consuming goods and spare parts shall be supplied. The consortium shall procure such spare parts and consuming goods through conclusion of the necessary contracts.

Operator contractors: The consortium usually assigns to the subcontractors the maintenance, repairs and operation of project. The subcontractors carry out the duties pertinent to maintenance of facilities, repair and operation on behalf of the consortium. (ibid, PP 10-12)

5.2. Basic features of BOT

A conventional BOT contract comprises the following elements:

- The government grants to the consortium the concession to construct an economic project.
- The government assigns to the consortium for a certain period the concession to operate the constructed economic project.
- The consortium is responsible to finance the project.
- The consortium is responsible to construct the project.
- The responsibility to operate the project during the specified period shall lie on the part of the consortium.
- The consortium recognizes the gains earned during the said period in return for the incurred costs.
- After expiration of the prescribed period, the project will be transferred to the concerned government free of charge.

5.3. Other forms of BOT contracts

BOOT: It stands for Build, Own, Operate, Transfer. The word “Own” has been used in the said term because the consortium takes possession of the material property existing in the project for the period specified in the contract and then, it transfers the same to the government. This difference in fact goes back to the form of contract, i.e., is the consortium permitted to use the project only during the specified period or it otherwise takes possession of the project. In this mechanism, the consortium owns the project upon operation.

BOO: It stands for Build, Own, Operate. In such contracts, the consortium is responsible to build and operate the project without having to assign the completed project to the government and/or public sector. The project will belong to the consortium and it is not obligated to transfer the project to the government after a while. In other words, operation by the consortium of the project is not limited to a certain period.

BOOS: It stands for Build, Own, Operate, Sale. In case in BOOS projects the consortium undertakes to sell the project to the government in consideration of a certain amount after expiration of a fixed period, it is called a BOOS project.

BLT: It stands for Build, Lease, Transfer. Should the consortium take possession of the project after its construction and it then leases the said project to the government or public sector for a certain amount and a fixed period and it transfers the said project after expiration of the said period, the BLT contract is referred to as BOLT which stands for Build, Own, Lease, Transfer.

BTO: It stands for Build, Transfer, Operate. If in a BOT contract, the parties decide to emphasize that the ownership of the project and its facilities and equipment will be transferred to the government upon completion of the contract and then, the government will grant to the consortium the concession of exclusive use of the project for a certain period, the term BTO is used.

Other terms used in this regard are as follows:

- Design, Build, Finance and Operate (DBFO)
- Modernize, Own and Transfer (MOT)
- Rehabilitate, Own and Operate (ROO)

Rehabilitate, Own and Transfer (ROT) Tavassoli Jahromi, Manouchehr, 2002, P 96)

If we want to review the common process of implementation of a project through BOT method from the beginning to the end, we can refer to the following eight phases:

1) Government decision: As the first step, the project should be defined and the financing method should then be chosen. After primary feasibility studies, project manager and his executive team who will be the representative of the employer should be introduced accordingly.
2) Government Preparation for Bid: A primary assessment is usually made to specify the contractors who enjoy the required expertise and experience to enter the bid. Then, bid documents should be drawn up where the role of expert and experienced legal advisor is undeniable in this respect. Project contract which is the most important part of bid documents, should be drawn up carefully due to long contract period. In bid documents, the criterion of the employer for evaluation of offers and choosing the winner should be indicated.
3) Preparation of bidders: In most cases, two or several participants who evaluate the ability to implement the project on a team basis more desirably, decide to cooperate in form of a consortium and/or a corporation. They also conduct feasibility studies and search for a potential corporation as the case may require. Finally, they provide their offer through the team leader.
4) Choosing: Evaluation of offers is made based on the criteria indicated. It is quite common that at this stage, the bidders will be informed of removing any ambiguity or adjustment in bid documents. After termination of evaluation and choosing the winner, the case of project assignment will be informed to the winner accordingly.
5) Execution preliminaries: The following measures should be taken during the announcement of winner and start of work. The project company shall be established on the due date and the amount of agreed upon shares shall be paid. usually, 10-30% of the capital required for implementation of the project is financed through contribution of the shareholders and this is one of the conditions of the banks to grant loan facilities. The text of loan contract, construction contract, equipment purchase contract, product purchase contract, insurance contract and operation and maintenance contract shall be finalized and signed. The roles of technical, financial and legal advisors are clear in negotiation and drawing up of any of the said contracts.
6) Execution: Executive operations shall be borne by the subcontractor of the contract although the subcontractor shall be responsible before the project company.
7) Operation: After completion of construction until the agreed upon date, operation and maintenance of the equipment subject of the project shall be borne by the project company. transfer of technology during the said period will be completed and the workers and experts of the host country will receive the required trainings and information.
8) Transfer: In the last stage and after expiration of the concession period during which the obtained credits and the corresponding interest have been principally depreciated and the shareholders of the project company have achieved the intended profit, ownership of the project will be transferred to the government or the general institution. On the date of transfer, the product output shall be at the level which has been already guaranteed. (ibid, PP 99-101)

5.4. Advantages and disadvantages of BOT

1) One of the most significant advantages of using this method for the government is that it transfers the risk of project implementation and operation to a private company. The private sector uses the insurance institute to modify the risk.
2) This plan will decrease the costs, administrative formalities and will consequently expedite the work.
3) Use of this method is regarded as one of the methods of technology transfer to the host country.
4) Use of this method provides the grounds for partnership of the private and public sectors and creates the right of supervision and final ownership for the government.
5) Use of this method is also advantageous to the foreign companies one of which is that the private company may receive incentives, exemptions and facilities from the host government.

The most important disadvantages of BOT contracts are as follows:

1) BOT has several complexities and complications and one of its major reasons is the existence of several people and BOT contracts.
2) The private company prescribes that it should gain a higher risk against risk acceptance.
3) Use of this method is followed by the risk of monopoly in private sector. For this purpose, in Clause (b) under Article 2 of the Law on encouragement and support of foreign investments, our legislator has prescribed that foreign capital shall be accepted for the purpose of development and it shall not threaten public interests. (Sadeghi, PP 134-137)

6. Conclusion

Considering the conditions governing money and capital market, one of the vital requirements of all the projects which are under construction in our country is the due and sufficient financing for administrating the project affairs. Success and/or failure of a project is to a high extent indebted to the required financing by the employer. When financing infrastructural projects, the most suitable way shall be always selected. Definition of the most suitable way varies in different projects and it may encompass any of the items such as minimum cost, highest profit, highest partnership share, latest date for refunding the debts, highest rate of technology transfer, lowest interest rate, best project construction structure and the ones.

One of the contractual models to recruit capital is BOT contracts. These contracts are today of a high importance to the experts in law and economics. Different countries and especially developing countries regard these contracts as an efficient means to recruit foreign capitals and use of private sector's management in infrastructural projects. In this type of contracts, the public sector assigns the construction of a project to the public sector and the latter shall return the project ownership to the public sector after construction and operation of the project. For a BOT contract to succeed, the government shall provide suitable economic, political and especially legal grounds for private investment. It seems that the country's legislator can open the way for investment by foreign investors by further examining these contracts and passing laws on such contracts because the only existing law regarding BOT contracts is the one on encouragement and support of investment which has partly dealt with these contracts. Hence, the foreign investors can be assured of investment through these contracts by enacting comprehensive and precise laws.

The success or failure of the BOT project depends largely on the level of government support. Because it can impact the BOT project through the project bidding tender, the signing of the concession agreement, the development of laws and regulations, tax, adjustments of foreign exchange policy, the government risk avoidance and so on. Therefore, our government should pay attention to the following issues in the use of BOT. First of all, in view of the special nature of the BOT project is different from the general commercial projects, the scale of the government's choice of projects should be large enough.[8] If the scale of the project is small, the proportion of investment accounted for a large proportion of the previous period, which will cause problems in financial feasibility. Secondly, about the reasonable distribution of risk, the government should bear some controllable risk, because if the project sponsors assume all the risk of the project, the charge for the project will exceed the capacity of the user and the government. Finally, the government should improve the legislative work of BOT project financing.

By careful consideration of the results of proposed financial model, the project sponsor and the project promoter can arrive at an acceptable and a reasonable agreement on the sharing of risks and the terms of concession. A BOT project as long term infrastructure cannot be successful without all three main parties' involvements. The financial aspects include the raising of finance, the assistance needed from the host government, the use of existing facilities, the retention of title and construction-cost overrun

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