

## A Study on the Successful Implementation of Infrastructure Projects through BOT

Abbas Borzouei

Faculty of Theology, Hakim Sabzevari University, Khorasan Razavi, Iran  
Email: [a.borzoei@hsu.ac.ir](mailto:a.borzoei@hsu.ac.ir)

### Abstract

The Infrastructure projects have the major role in the development and growth of each country's economic development. In the past, these projects were financed by the government. However, due to population growth and greater demand for constructing and developing these projects and on the other hand an increase in costs and expenses of preparing these projects, government facing lack of funding and public deficits, the necessity of paying attention to the health and education sectors, have made governments to think up a new way for financing the project without public budget. One method of financing is borrowing which was not successful. Another approach is non-borrowing method, which is based on an investment or participating in investment, through which one of its ways is BOT method (building, operating and transferring), whereby, financing and construction of the project will be delegated to private or foreign investors. Successful implementation of this method depends on multiple factors Such as government support, dividing project risks between the parties to the BOT contract, using strong and experienced consortium, caring about priority projects and political, economic and legal stability.

**Keywords:** BOT, Investor, success

### Introduction

Projects and the infrastructure installations plays critical role in the growth and development of countries. On one side, due to inadequate infrastructure and lack of coordination and balance between installation and growth and development of countries in the past decades, and on the other side the inability of governments to finance these installations and pay more attention to the welfare and health of population growth has necessitated governments finding a place to finance local infrastructure projects that are often costly and risky which results in turning to new methods of financing including conventional methods of BOT (building, operating and transferring) and its derivatives. According to this, in one phrase, the BOT and its forms are as a public-private partnership in infrastructure projects and it's even some kind of limited privatization in others' view point (Jeffrey, 2002).

### Research background

Although some recognize the historical background of BOT projects in the construction of the Suez Canal over 195 km long in 1869 (Kata, 2002) or privatization program of TurgutOzal by Turkey's prime minister in 1984 or construction of canals and bridges in France in the 17th century or the Channel between England and France in the 18th century (laree, 2004), BOT projects has been used in earnest in the 1960s.<sup>2</sup> And in a few decades, several BOT projects have been successfully carried out and some projects have also failed. Experience shows that many factors affect the success or failure of BOT projects. (Jeffrey, 2002).

Some authors and writers, according to experiences, consider the following factors contributed to the success of BOT projects:

1. Developed economic -Finance -legal framework
2. Avoiding delays and excessive costs
3. Comprehensive Feasibility Study
4. Project management skills and the use of experts
5. having a local and national partner
6. stability and political support(from the invested government)
7. Facilities and sponsors
8. acceptable rate of inflation, currency exchange and interest
9. innovation and technology (Tee Young, 1995)

Zhang is an expert in the field of BOT projects noted that there are five important factors as critical success factors for BOT that each include a smaller number of factors such as favorable investment environment, Economic feasibility, the reliable Concessionaire consortium with strong technical power, the confident financial package, Appropriate allocation of risk through contractual arrangements with Confidence (Zhang, 2004, p. 23).

Some find five guns framework necessary for successful implementation of BOT projects and private- public partnerships. These five factors include identifying suitable projects as the first essential step, paying careful attention to certain aspects and concerns such as goals, having a political impact, provision of funds and project management skills, considering local and state participation in infrastructure investment by investors, to provide a predictable level of profit, maintain existing relationships with project partners (Tee Young, 1992).

### **Build-Operate-Transfer (BOT)**

Truth is that the first serious BOT project was the project of Harbor Cross tunnel that the idea of that was produced in Hong Kong in 1960s that has been built before the expected time in three years that the operation period was set for 30 years that this period was finished in 2002 and now the project is granted to the government of Hong Kong. This project is the most popular BOT project in the world that has been succeeded and had been financing by foreign private sectors and successful implementation of this project had continued 4 more tunnel projects in this country. After that project, some countries such as China and Philippines have ratified BOT and have used this method.

Also, some experts by studying and interviewing some participants in successful projects, find the most crucial success factors for maintaining a sustainable project in these facts:

- 1- Consortium should have enough experts with acceptable experience, excellent performance and good reputation.
- 2- Having favorable and reassuring trend that help project shareholders in a strict time frame.
- 3- Innovative ways of financing and capital increase means that the consortium should have an appropriate successful strategy.

However, it is believed that contributing factors to the success of BOT are: Establishing an appropriate legal framework to support private sector participation, Preparing evaluation center for BOT contracts to provide consulting services to sales organizations, infrastructure projects and investment firms, Commitment to finance and facilitate, Guaranteeing minimum income from contracts For the protection of investors and prevent potential losses to continue contract, Reducing administrative barriers, Being projects on priority, Adequate financial and technical strength of investor, Using reliable technology in the project, and Holding transparent and fair tender for the selection of the private partner and investor (Eshaghi, Aghajani, zorouki, 2012).

## Significance of the study

Truth is that many factors affect the success of BOT projects, but the success factors presented by researchers on hadn't been mentioned all aspects of the success or any success factors and depending on the experience of researchers, has covered specific aspects or factors. In fact, specific organization for these criteria based on that model to evaluate success has not been done yet. Some have noticed success factors in the tendering authority and some projects environment, etc. while the success factors beyond the interests of each factor must be defined within the project. In a way that all factors of the project have achieved its goal and it has become to a win-win deal, the factors that controlling them correctly will be sustainable condition for projects and expected profits for all project elements (Eshaghi, Aghajani, zorouki, 2012). Considering all point mentioned above, by reviewing some BOT projects, it has been successfully done. Also, by reviewing some projects that have been failed, we will reach to this conclusion that on one hand, failure in project has strong economic and social costs on contracting parties and especially on public sector and on the other hand, success in project will follow the interests of the parties (Eshaghi, Aghajani, zorouki, 2012). On this basis, factors that can play a role in the success of BOT projects will be presented on the next chapter.

## Some successful factors of BOT projects

### *The support of host government (invested)*

The support of host government (invested) plays a vital role in the success of BOT projects.

By reviewing some successful tunnel building projects that have followed BOT methods, these lessons are elicited: the project in order to attract private investment must give reasonable rate of return on investment, there must be a suitable mechanism to determine the regulation of road morbidity rates, the project needs a reliable, efficient and strong consortium, that is necessary to have an experienced, competent and fair public official, The project will require a strong and technically competent consortium, Non-corrupt government is a key factor in the success of BOT, Frequent and rapid changes in the composition of the government is a threat for BOT projects, A non-corrupt official's supervisor and co-managing BOT contracts is required, Upon entering the BOT contract, Host government must its provisions and fulfill its promises, BOT projects is a business decision that should not be mixed with politics (Tom,2000)

Because not only the host government licenses the project, but also is the final owner of the facilities of the project and also is forced to oversee the implementation of the agreement of the granted privilege of operation and is in charge of political and legal stability to ensure the long-term presence of private sector that this will follow the promotion of private investments in host governments (UNCITRAL, 1995).

Some experts believe that BOT projects are regarded as a public-private partnership and if one of the partners in a partnership, do not stay in charge of its responsibilities, there will be no result in that partnership; conversely, may labor and cost progressively become increased. Therefore, the BOT contract parties should come together and work together to ensure the project will succeed (Lam Bardo, 2002) . One of the most important examples of government partnership is the support of government in the political, social and legal aspects.

In fact, the support of the host government as one of the parties in BOT, is essential and necessary to the project. And if the government is willing in promoting the participation of the private - public sector and Cooperating in carrying out some of the infrastructure projects such as road, powerhouse, airport, based on BOT, increasing the interest and willingness of the private sector, whether domestic or foreign, and lenders. This follows financing and holding the project ASAP with the best quality and required performance (UNIDO, 282:1996)

Regarding infrastructure projects that used to be run by the public sector and government and now the private - public sector by the way of BOT wants to be replaced with the role of the public sector and government in financing and holding infrastructure projects, the support of government in political aspect is more needed. In other words, for a successful implementation of the projects, the role of host government should not be missed. Because the government is responsible for operating licenses of the project consortium and setting foreign exchange policy, economic and Custom and providing financial and non-financial incentives, and by creating a safe legal environment and limiting cases of confiscation and expropriation can provide confidence for a foreign investor (Torabi and Vafaeerad, 2012). On this basis, for a successful implementation of BOT projects, and to provide more confidence and strong motivation for the investors to invest, governments have provided significant encouragement and support levers such as guaranteeing products or services of producing, guaranteeing fuel supplies, guaranteeing against expropriation or nationalization, providing and ceding land to investors, Permission to the transfer of capital and profits abroad, currency conversing, exempting tax, etc. in fact, experiences have shown that projects such as the project of building canal in Hong Kong that government supported the project at least in political aspect, finally these projects succeeded. Or for a tangible example, in the heavy project of the north to south road that is 850 km long that has been implemented by the BOT method, Malaysian government has been committed

1- In the law of Promotion and Protection Foreign Investment ratified in 2001, For example, guarantees against expropriation and nationalization, The right of transferring capital and profits interests abroad, Transferring funds to other, Overdue Payment of installments guaranteed by the Government if the ban and stop the execution of the financial agreement If legislation or government decisions Ensuring the protection of investors buying the product as examples of the subject has been predicted.

If traffic in this road (to get toll) is lower than expected to pay back reduction in interest rates and foreign exchange (during the operation) Compensation costs to the project company (investor). Or for example; Pakistan in the project of Karachi power plan had committed itself to atone in case of devaluation of currency in that country and reduction of electricity paid by the buyer to the investor of the project. And conversely, in some projects like the project of transportation in Thailand, not only the government did not support the project of Bangkok Air Rail, but also put obstacle in the way of project, the project was delayed and the contract was terminated and the project was been left unfinished. (Kumaraswamy, 2001).

The overall, government support can take many forms and any actions to improve investment climate in infrastructure projects held by government can be considered the support of government that these supports sometimes legal appears with permitting the infrastructure projects get developed by the private sector, and sometimes it is an economic support. Overall, support of government can be in appropriate legal, economic and political aspects. This support must be an integral part of Government plans to attract private investment in Infrastructure projects (UNCITRAL,2001)

### ***The possibility of holding the project***

The government which has long-term and short-term plans in the context of the construction of infrastructure projects, should provide on priority plan for the infrastructure projects and due to their strengths and weaknesses, particularly in the financial perspective and the ability to support, government should entrust private sector (both domestic and foreign) to control and management of infrastructure projects. If the project is going to take place with the method of BOT, before the project takes place, there should be a research on possibility of holding the project and how the

project will take place(in which way) to evaluate if the desired project will be held by the BOT approach (Khazaee, 2004).

To make holding the project possible, first, there should not be any problems in financial and economic aspects in the project. Second, practically the project must be possible to be held. Then, service costs or prices paid by consumers as the purchase of goods or services produced or provided shall be recoverable (UNIDO, 282, 1996).

In fact, before choosing the method of BOT and implementing it by the private sector (both foreign and domestic), the government caring about the risks and different factors which exist during the project must ensure if the investor is financially able to implement the project or not? Or to see the capital return in a reasonable way and not more than that is possible or not? In addition, to see if giving and providing service is unacceptable quality or not? And from on the other hand to see if the project is possible in some aspects such as engineering, designation, financial, environmental influences and legal dimensions or not? The function that government of Hong Kong by financial, technical and legal advisors in implementation of the Tunnel project did ( Kamaraswami, 2001).

The possibility of implementing the project as much as clear to ensure the host government and sponsors of the project that the project will succeed in all the functioning time. Nevertheless, the study of being successful must be done very clearly and financial and economic performance of the project in different circumstances must be clearly shown. And this study must show the stable source of income in anticipated operational period which is as much that makes possible to pay back loans and debts and cover the expenditures and operating costs of the project and will have reasonable rate of return on investment for the investor's and also In case of changes or unexpected events and accidents, compensate for losses due to these factors (Unido, 283:1996 )

### ***Selecting on priority project***

Bare many a lot in diversity that includes airports, roads, power plants, water and sewage systems, subways, railways, bridges, tunnels, and so on. In addition, government authorities generally are faced with a list of the projects that the implementation of those in all types of BOT projects need the investment of private sectors (Khazaee, Khanzadi, Afshar, 2012). But, there might be no necessity to implement the projects by Bot and private sectors. Or, the government is not able to support some projects taking place at the same time, on the other hand implementation of all projects is not able to follow the method of BOT and its different types. Nevertheless, considering the necessity of the most important projects in different areas, and possibility of supporting it and legal permission to implement the project by BOT, the host government is responsible to list on priority and appropriate infrastructure projects and select the investor and grant him to implement the project. After making sure if the chosen BOT project has the priority, then it deserves to be supported by the government and then government is in charge of implementing that project. Sponsors and lenders with the confidence and encouragement will seriously follow their favorite projects and will have strong motivation for the project and its financing.(UNIDO, 1996,282). And then there will be no reason to implement the unimportant projects, because they definitely will fail and this will waste the finances and time of the investors and the host government ( Lam Bardo, 2002).

### ***Choosing investors and appropriate shareholders (consortium)***

Choosing the most appropriate investor and sponsor for the project is one of key factors in the success of the project that takes place by the tender process and this process of choosing investors and appropriate shareholders plays the role of identifying goals, providing expected conditions for the tender, evaluating suggestions of participants in the tender, and finally negotiating and setting contract and granting the right of operating the project to the winner company (Kamara Wami, 2001).

Since the investor (company of the project or consortium) under the BOT contract, takes charge of establishing the project and financing it, it must ensure the government in technical ability, experience and financial capability of its company. Although in the financial aspect, the investor company gets a lot of loans from banks and credit institutions to be financially prepared, governments and lenders make the company of the project responsible to take the charge of preparing for most needed finance. This makes the companies of the project responsible for the project and avoids cutting the process of implementing project by the investors. On the other side, lenders in financing the BOT project, pay much attention to choose a project company to evaluate the management and implementation of the project by the company of the project in technical and experience aspects. Because of not implementing the project and or delay in implementing the project or poor implementation of the project and prolonging duration of construction and prolonging in operating and lack of income from the project by the company of the project will cause the lack of paying back the installments of loans paid by lenders. On this basis, the successful quintet project of Hong Kong relates to use of strong, popular and experienced consortium. (Tom, 2001)

### **Having a clear tender and overcoming obstacles**

Holding the tender in a transparent and fair way is one of the most important strategies for applying BOT. because it's not able to expect a private sector to spend its time and finances on an expensive suggestion in a way that circumstances in the project do not end to success. (Gholikandi, Hosseinalipor, Taherri, 2001)

Since in the laws of most countries the regulations of state trading was predicted that choosing investor and setting contract with it must happen by the tender, after making the decision of implementing the project, government must provide tender.

The tender stage is considered as an important step in the BOT contract in a way that if the tender is not clear, fair investors of private (both foreign and domestic) will not care for taking part in the tender and spending their time and finances , because they know which companies will be the winners. Criteria of evaluating participants in the tender should be defined precisely, clearly and free from ambiguity and should take place openly and with fairness and impartiality.

1- The government of Hong Kong as a successful government in BOT projects area, after making the decision of implementing the project by BOT, made a notebook of needed information about the project and the tender which included subjects like priorities, tender frame, plans, suggestions to evaluate the tender, the cost of taking part in the tender, the length of the tender and some general information and gave it to the organizations and companies which wanted to take part in the tender on free. (Zang , 1999). And the lessons and experiences gained by the first successful BOT project in Hong Kong (Cross-Harbour Tunnel) has helped the government of Hong Kong to plan and hold structured process of selecting competitive bidding in implementation of BOT in that country (Zang, 2002) . Participants of the tender were being announced by the ads in Hong Kong national newspaper and then after asking for more information by participant, government explained the details to all participants. The government creates a tender evaluation committee to evaluate the bid. In the project related to Road, the chairman of the committee chosen by government is from central office of transportation, and other members of the committee are the Financial Administration, highways agencies, transportation agency and other related organizations that each of these sectors are responsible for their specialized work areas and plan up the potential proposals and evaluate meeting the conditions set by the government. The transportation committee is in charge of evaluating answers to questions asked by the participants in the tender. Tender Participants will negotiate with the Government to reach to the best contract that is worth for all the

people like decreasing the cost of project and tolls (Karamaswami, 2001). By giving Revising recommendations and keeping negotiations by participants in the tender, there will be improvement in the tender and after the final evaluation, the executive committee will be responsible to choose the best participant to have the more negotiations on the final conditions of BOT contract. The issue is worth noting is that the entire is monitored process By the Independent commission against corruption (ICAC) that in the recent years, this commission has played a key role in reducing corruption in Hong Kong.

One of the biggest problems in the tendering is that it's time consuming and expensive that most of the time makes lack of taking part in the tendering by investors. In a way that if the host government and the tender holder hold the tender in a reasonable time frame and cost to choose the investor, the private investor (both foreign and domestic) will have greater willingness to participate in the bidding in the BOT infrastructure projects. In some same tenders that government had made it long and time consuming in the same BOT infrastructure projects that there was no result, investors and sponsors and also lenders and some other people in the project like construction contractors, Suppliers of materials and equipment and operators had no willingness to take part in the project and finally the project ended to failure. In the past, long interval between announcing the BOT project and its final, was a big obstacle on the way of project that made investors and sponsors be unwillingness. So that the host government should adopt a uniform and transparent process and use the standard sample protocols and make needed edits and make the tendering less time consuming (UNIDO,1996,283).

Lack of transparency, lack of competitive bidding and the lack of comprehensive planning in granting concessions, makes problems such as the project untenable, protracted conflicts and failure to achieve the goals, led to the creation of these problems in some projects like HUB electricity project in Pakistan, Jakarta toll road projects in Indonesia, Indonesia power plant project, Dabhol project in India and HopeWell project in Thailand and Indonesia (KaramasWami,2001).

#### ***Political and economic stability***

Aside from Green agreement Lights with host governments on investment in infrastructure projects of BOT, existence of a favorable investment environment with Political, economic, financial and legal stability is initial component conditions of investment and is precondition of domestic and foreign investors. (UNIDO, 1996,286)

BOT projects as well as other forms of foreign investment require a stable political and economic environment and in some cases where risk and political risk is high, and even in those projects that are financially and technically efficient, they may not consider themselves to attract investors and lenders and those who have not accepted political credibility using methods of financing such as BOT and its derivatives business and finance and commonly do not reach to much success. Political stability is so important for successful implementation of BOT projects that even political risk insurance and also government ensure cannot be considered an appropriate replacement for a stable political environment (Koak, 2002). For example, in the five successful projects in Hong Kong, Political stability and government support has played an important role. In projects such as air-rail transport systems in Bangkok- Thailand, frequent changes of government, political conflict in Thailand's Cabinet and lack of government support for the project caused interruptions in its performance and ultimately the BOT contract has been terminated. (Haldey,1995)

#### ***The government and community idea consensus in projects***

Some experts consider the willingness of governments in implementing projects by the method of BOT and some other methods such as BOO (Building, Ownership and Operation) and BOOT (Building, Ownership, Operation and Transfer) as a trend towards the privatization and even

some consider these projects as a limited privatization. On this basis, with considering the effects of privatization and the particular effects of this contract on society and consumers and services of BOT projects, totally it is expected to have consensus on the issue of privatization and Special Projects in the government and society not to result delay in project. Lack of consensus of the host government (investment) and people and negative public reaction to the project and its products causes long delays in starting projects and poor structuring in BOT project and increasing risks in it and postponement and even failure. The examples can be HUB electricity project in Pakistan, Dabhol project in India, Shajiao B in China , Tenaga in Malaysia and GAT electricity in Thailand the because of the reasons mentioned above ended to long postponements in initiation and implementation of the project and sometimes to termination of contract and imposition of fees and costs (Zang,2002).

#### ***Existence of a non-corrupt government manager***

The host government (invested) as a party of BOT project and in one phrase the most important party in implementing the project which has benefit in both terms of economic and legal interests and plays important role in the timely and accurate implementation of the project. Paperwork reduction in preparations of Project, planning documents, avoiding political and administrative conflict in government agencies plays important role in successful implementation of the project.

Since the issue of BOT projects include Infrastructure projects such as airports, railways, subways, roads, power and water plant, etc, that is very important in economic and financial aspects, and it is essential to have safe principals and members in moral and financial aspects and they do not use unfair and non-experienced officials in implementation of the project to keep the project away of lacking in quality and quantity. And, the more the system and government is safe and non-corrupt, the more the project will succeed and economic political and economic corruption in the host government will be catastrophic for BOT projects and it causes granting the project to an incompetence and inaptitude that will end to a clear failure. The experience of successful countries such as Hong Kong, Malaysia and China shows that these countries had serious efforts to combat corruption in the implementation of infrastructure projects. Interestingly, for example, in infrastructure projects in Hong Kong, responsible committee for BOT projects, was a committee to fight corruption (Tom,2001) Unlike the HUB electricity project in Pakistan that Negotiations for the coordination lasted about 9 years that the manager of the project was caught red handed because the fact of corruption.

#### ***Not mixing the BOT project with politics***

The BOT project is an economic project rather than politic. (KamarasWami,2001) so it shouldn't be mixed with politics and government and political conflicts and party conflicts shouldn't affect the project and stop it.

#### ***Security and sufficient guarantees to lenders***

According to the BOT projects contract, In addition to the construction of the project (design, engineering and manufacturing), company of the project is in charge of procuring facilities and operating the project and financing the project that usually procuring the finances takes place from asking lenders that mostly are the banks (both foreign and domestic), credit institutions, etc. also, financing the project is very effective in success and failure and in acceleration or postponement of implementation of the BOT project. Further,considering the company of the project as the most important parties in the financing contract, in case of paying back the loans on time, lenders pay loan to the company of the project. And, if the company of the project do not keep implementing the project on, financial security to lenders will be provided. In this case there will be good conditions to support lenders in case of not returning the loan by the companies of the projects

like Mortgaging finances of the project company in favor of lenders, predicting the escrow account to repay the loan and interest and

***Determining the appropriate mechanism for the regulation and determination of income and revenues of the project and the desired rate of return for investors***

In general, depending on the project during the operation of the project and to provide the goods and services produced, price or income effect is achieved. For example, if the project is establishing a road, after implementation and initiating the operating the project that lasts about 15 to 20 years, toll is paid by consumers of the road and this will be as the benefit and financing the project. So that it is necessary to set a good strategy and a mechanism of persistent tolls by the government during entire project process in operating the project. For example, in WHE tunnel project in Hong Kong, there was set a group of mechanism for 9 kinds of vehicles that the main goal was to maintaining a low and stable level of toll, and it was predicted to increase the cost and toll after a particular time by the project company to enable them to achieve a reasonable return and profit on the investment (Zang, 2002, Tam, 2001). In other words, in the project of roads, the system of regulating toll should be set in a way that first, should be acceptable, logical, reasonable and digestible for users of the project, second, in the course of operating profit and return on investment, should bring it within reasonable limits and offset the provision of capital and profits. In fact, the rights of the users of the project and the Project Company and the Investor Rights should be included. For example, in the second phase of road transit project that will connect Malaysia and Singapore, Differences in the marginal rate of toll caused postponement in implementing the project and wasting supplies and in conclusion ended to length in negotiations between two operators of the project.

***The BOT project financial share in ensuring the company's capital projects***

The BOT project is being financed by the private sector and the project company as the state of financing the project, gains the needed capital by getting loans and financial share. The get loans from banks and credit institutes and financial share is gained in two ways: first, investors that only are investing as sponsors such as shareholders and institutional investors like insurance funds. Second, investors in the project that in addition of investing in the project, play important role in implementing and operating the project like Contractors, operators, host governments, multilateral credit agencies.

Usually, the government and lenders expect that the project company should prepare a part of the capital by itself that this has two advantages: the first one is reducing responsibility for debt and the second is Incentives for companies to complete projects on time and on characteristics budget (TEEyoung, 1997). That is because the lenders have not enough information about the project.

### **Legislation and regulation**

BOT infrastructure projects mainly are required in huge investment. The private sectors investors that finance the project and lenders to these investors will be ready to invest in a way that the get confident that the government will support then in financial aspects.

The first set of rules governs investments and other matters of general commercial host country's ruling, that are not related the project BOT, however, such laws facilitating the negotiation of project specific such as BOT and its implementation, which in the absence of such rules, negotiations get complicated and long and BOT contract's parties are forced to include the facts and circumstances of the contract documents (UNCITRAL 1995).

Commercial general laws of the host country is to support the rights of ownership of land and established rules for projects and measures such as expropriation and nationalization, protection

of intellectual property rights, contract rights, laws governing corporations such as establishment, registration, operation, ownership, transfer of shares of certain companies, etc. Comprehensive legislation on taxes, customs, labor and social security, tenders and choosing investor, Parent and the trustee and investment banking rules and insurance and living environment are considered among the rules governing the offices and activities in free commercial areas and each law that provides economic and commercial situation of host country to do the act of commencing and investment (Unido, 288: 1996).

The second set of rules that are directly related to foreign investment, which are divided into two categories:

*A: The rules of general foreign investing:* The rules that are directly related to absorb foreign investment and along with the general rules of commerce, they play an important role to provide a good situation to absorb foreign investment. In this respect, initially constitution, some usual laws have predicted regulations such as entering investment , transferring of foreign capital and profits, compensation in case of expropriation and dispute settlement, tax and customs exemptions, provision of guarantees (Haddadi, 1996). Most countries include foreign investment law in its rules and in these laws regardless of the method of financing, general regulations governing foreign investment, including providing incentives and support are provided. In Iran, the first law about this was set in 1956 by the name of the law of supporting foreign investment which was enacted based on supporting and encouraging foreign investment and nowadays it is considered as an Iranian investment law . In this law, after definitions and examples of foreign capital and investment methods, facilitation and support of foreign investors, the same treatment as the domestic investors for expropriation and nationalization of the investment, ensuring guarantee capital, and the profit and Transfer abroad are discussed.

*B: Specific law BOT:* In addition to the general rules of trade and foreign investment law to attract foreign private capital the way of BOT ,BOT drafting specific legislation is necessary. This law has got lots of advantages including more facilitation to access the important laws of BOT projects ,preparing necessary answers relating to important issues and those which are involved in BOT projects noted the right of foreign investment ,ways of buying products and services, necessary guarantee, support and commitment to the goals and motivations of the government (UNIDO, 1996, 288). Some countries, such as China, the Philippines, Turkey, along with foreign investment law, have the special law BOT. And for example the BOT Law in the Philippines was adopted in 1990andamendedin 1994andat the time about 124projectsabout power producing and the like were financed through BOT (Sydney, 1996, 338). Or, in China, despite being the first foreign investment law was approved in 1979 (Times, 1999), special law of BOT was adopted in 1995 and amended in 1998 and it is the country's Guide BOT investment method (Smith, 2003) .

#### **To resolve disputes through non-judicial authorities**

Participants in BOT projects, including investors, lenders want to be assured that any differences in countries' favorably can be resolved to provide the host with an environment favorable for investors. The legal frame work of the host country should consider some basic rules: 1. guarantying the corporations and foreign investors about the access to courts and tribunals like domestic investment firms situation. 2. If the contract is appropriate, foreign entities have the choice of foreign law. 3.foreign judgments are enforceable., and 4. There should not be any barriers to access the non-judicial methods of dispute resolution (UNCITRAL, 2001).

In general, the methods of conflict resolution include negotiation, alternative methods, compromise, arbitration and judicial authorities. One of the non-judicial methods whose decisions are really needed to be done is judging which might be in a form of organizational judge or might be in a form of special judge like judging conflicts between the conflict of Iran and the U.S. and

institutional arbitration under the rules of arbitration of the International Chamber of Commerce or UNCITRAL arbitration rules or regulations relating to the settlement of investment disputes(ICSID)take place. One of the most noticeable points of foreign investors while signing a contract is that the honest source to resolve the conflicts is not merely the courts of host government and the possibility of connecting to judicial or non-judicial organization is possible through the judgment which attracts more trust to invest in host country . In Iran rights ,although on the line 19 of encouraging and supporting foreign investors enacted in 2001 and bilateral agreements of mutual support of investing Iran with other countries ,the possibility of resolving dispute has been predicted through negotiation and judgment ;However, after a long while international commercial arbitration Act, adopted on06.26.76, even of the New York Convention on their cognition and enforcement of arbitration provisions of Article 139 of the Constitution joined, which referred to disputes relating to the public and private is subject to the conditions attracting foreign investment is a major obstacle in the way.

### **Appropriate risk-taking and project risks between the parties**

BOT projects are considered risky projects due to political, economic, cultural, social and rightful reasons and fewer internal or external investors like to risk and invest, even if they like to invest ,they risk in a way that they can deal with possible danger or try to reduce the destructive effects and to a minimum it is assumed that the power to control and overcome the risks or to reduce the damaging effects to a minimum. According to this ,managing the risk and share it among the investors has got an important role in performing these projects successfully but the most important factor in risk system is that the agent from the project take the responsibility of risk (avoiding or deleting risk-reducing risk-risk acceptance-transmission risks) can be efficiently managed project risks to the successful BOT project to be divided by the three following questions of risk among participants in the project: (1) Who can control an easy, inexpensive and efficient risk? (2)Who takes most of the risk management? (3)Who has the greatest incentive to control risk? (Dolman, 40: 2000) In other words, logical distribution and management of project risks, a critical factor for the success of the project has been considered and it is initially necessary to identify project risks, and risk factors of the project are assigned(such as the host government, Projects, building contractors, operators, buyers, etc.) that are more able to tolerate (UNIDO, 290: 1996).

### **Conclusion**

Basic projects have main roles in economic growth and development of country but since these projects need high expense, they cannot be supported due to the lack of the budget of government; So, they use the methods through which they can be financing the project herein by the riches of private section (internal and external).One of the most common methods to day is using the BOT method. However, since the various parties involved in this project and the other infrastructure projects are expensive and time consuming, the implementation of the project through BOT, is influenced by many factors, and because the failure to implement the project, the economic and social costs for all parties to the contract imposes the necessity of the factors that lead to successful projects and identify interests of all parties involved in the project of financing .The factors which help the performing the BOT project are various and researchers mention these factors from different aspects and in this article according to study and review of some projects which have been performed through BOT method successfully in the world consider some factors that the most important factors include the selection of investor and strong consortium through a fair and

transparent bidding-home state-division of project risks-political and economic stability-a transparent legal framework.

### References

- Eshaghi, D & Aghajani, H & Zoroki, Sh. (2012). Identification and prioritization of the factors affecting the success By. Av. Ty contracts(BOT) (Case study: Bandar Farid and Naknar), Quarterl Management Research Papers, 4, 226-212.
- Fishbein, G. & Babbar, (1996). Private financing of toll roads. RMC Discussion Paper Series 117, the World Bank, Washington D.C. pp:132-145
- Haddadi, M. (1996).The role of national legislation in attracting and supporting foreign investment, *Higher Education Campus*, Qom, 1, 117-114.
- Handley, P. (1997). A Critical view of the Build - Operate - Transfer Privatisation process in Asia". Asian Journal of public Administration , 19 ( 2 ) , 167-175 .
- Khazaei, G & AhmadI, L. (2005). The risk management of major projects based on BOT, Proceedings of the Second International Conference on Project Management, Industrial Group Arya, 1st edition.
- Khazaei, G & Khanzadeh, M. & Afshar, A. (2012). The ideal model of a successful multi-criteria evaluation of projects, BOT, structure and application of the model, Civil EngineeringTechnology, 2, 55-45.
- Klein, (1997) M Managing guarantee programs in support of infrastructure investment. World Bank Policy Research Working Paper No.1812, the World Bank, Washington D.C.
- Kumaraswamy M . M . & X . Q . Zhang (2001). Governmental role in BOT – led infrastructure development International Journal of project Management, 19,182-191.
- Larry, D . Q., & Susheng, W. (2004). BOT Contracts : Incentives and Efficiency. Hong Kong , pp.241-256.
- Levy Sidney, M. (1996). Build , Operate , Transfer : paving the way for tomorrow's Infrastructure . New York.
- Smith N., Zhang, H., & Zhu, Y. (2003). The Hubei power plant and its implications for the Chinese BOT market, International Journal of Project Management, 12, 142-149.
- Tam, CM . (2002) . Build – Operate – Transfer Model for infrastructure Developments in Asia : Reasons for Success and failures . International Journal of Project Management, 17( 6 ) , 377-382.
- Tiong , R , Yeo , K ,& McCarthy , S ( 1992). Critical successful factors in winning BOT Contracts , Journal of Construction Engineering and Management , ASCE , 118 ( 2 ), 185-195.
- Tiong L . K & Jahidul, A. (2010). Evaluation of proposals for BOT projects International Journal of Project Management, 15 (2) .
- Tiong , L . K . R . (1995). Competitive advantage of equity in B . O . T Tender . Journal of Management in Engineering , 121 (3).
- Torabi, T., & Vafaei-rad,M. (2010). Feasibility Study of BOT contracts in Tehran subway project, Transport and Development Quarterly, 43, 81-70.
- UNCITRAL (United Nations Commission On International Trade Law) (2001). Legislative Guide on Privately Financed Infrastructure Projects, NewYork,pp:136-152.
- UNCITRAL. (1995). Possible Future Work : Build – Operate – Transfer projects, Vienna .
- UNIDO ( United Nations Industrial Development Organization ) (1996 ) . Guide lines for Infrastructure . Development through - Build - Operate - transfer ( BOT) projects , Vienna.