

## **BOT Law**

### **Law of Republic of Azerbaijan**

#### *On Implementing through Special Financing Investment Projects for Construction and Infrastructure Facilities*

This Law, in accordance with Sub-Sections 11, 12, and 13 of Part 1 of Section 94 of the Constitution of the Republic of Azerbaijan, establishes legal and economic grounds to implement through special financing investment projects for construction and infrastructure facilities.

### **Chapter 1. General Provisions**

#### **Section 1. Purpose of this Law**

The purpose of this Law consists of ensuring implementation based on special financing of investment projects for construction and infrastructure facilities listed in Sub-Section 3.1 of this Law.

#### **Section 2. Key Definitions**

2.0. Key definitions used in this Law express the following meanings:

2.0.1. **special financing** – financing of investment projects for construction and infrastructure facilities listed in Sub-Section 3.1 of this Law according to the "Build-Operate-Transfer" model;

2.0.2. **"Build-Operate-Transfer" model** (hereinafter, "**BOT**") – reimbursing to the investor investment costs (including profit to be made) of investment projects for construction and infrastructure facilities listed in Sub-Section 3.1 of this Law by consumers' or authorised body's procuring goods and services the investor produces;

2.0.3. **investor** – resident and non-resident legal entities, their branches or permanent establishments, carrying out investment activity according to the Law of the Republic of Azerbaijan "On Investment Activity";

2.0.4. **authorised body** – the relevant executive authority entitled to enter into an agreement to ensure implementation under the "BOT" model of investment projects for construction and infrastructure facilities listed in Sub-Section 3.1 of this Law and to take over the facility upon completion of the agreement term;

2.0.5. **cooperative assistance** – a financial aid determined based on an agreement between the parties and given by the authorized body in the cases where

it is impossible to reimburse by consumers in the form of fees fully or partially the costs of an investor under an investment project and taking into account losses of the investor;

2.0.6. **fees** – amount paid under an agreement by the authorised body or consumers in exchange for goods and services produced as a result of an investment under the "BOT" model.

### **Section 3. Scope of this Law**

3.1. This Law establishes legal grounds for attracting investment for construction (building, maintenance repair and overhaul, reconstruction, restoration), operation, and transfer based on a financing under the "BOT" model of the following construction and infrastructure facilities and similar facilities:

3.1.1. bridges, tunnels;

3.1.2. water reservoirs, water treatment facilities, systems of irrigation, potable water and house wastewater, as well as of sewerage, including gas trunk lines, underground gas depots, intercity gas grids;

3.1.3. press and conference centers as well as educational, medical, cultural, and touristic facilities;

3.1.4. commercial buildings, wholesale markets, factories, and plants;

3.1.5. sport centers, dormitories, recreational and entertainment parks;

3.1.6. industrial parks, high-technology parks, agricultural parks, automated control systems based on high technologies and other systems in the field of information technologies;

3.1.7. warehouses for storage of agricultural produce and other facilities of this type;

3.1.8. facilities and heating systems running on geothermal energy and waste heat, enterprises engaged in generation, transmission, distribution, and sale of electricity;

3.1.9. highways, expressways, railroad and rail systems, train station complexes, stations, funicular and elevating systems, logistics centers, underground and aboveground automobile parking, metro lines and stations;

3.1.10. special economy zones, sea- and airports used for civil purposes, complexes comprised of cargo, passenger transportation and yacht ports.

3.2. Relations upon implementation through special financing of investment projects for construction and infrastructure facilities are governed, along with this Law, by the Constitution of the Republic of Azerbaijan, Civil Code of the Republic of Azerbaijan,

and other legal and regulatory acts, as well as international agreements the Republic of Azerbaijan acceded to.

3.3. Upon finding in the international agreements the Republic of Azerbaijan acceded to provisions different from this Law, the provisions of such international agreements apply.

3.4. Relations upon implementation through special financing of investment projects for construction and infrastructure facilities in the Alat free economy zone are governed by the Law of the Republic of Azerbaijan "On Alat Free Economy Zone".

3.5. If design of construction and infrastructure and similar facilities listed in this Section is a type of activity listed in the schedule to the Law of the Republic of Azerbaijan "On Environmental Impact Assessment", an environmental impact assessment (EIA) document subject to the state ecological examination must be prepared.

3.6 If the existing facilities listed in Sub-Section 3.4 of this Law meet the ecological requirements for environmental impact criteria, no environmental impact assessment (EIA) document is required for reconstruction of them or replacing at them existing plant and machinery, however, documents (emission limit (EL), discharge limit (DL), ecological passport) issued for these facilities by the body (institution) designated by the relevant executive authority must be revised considering the requirements of environmental protection and technical legal and regulatory acts.

3.7 If, upon operation of the existing facilities listed in Sub-Section 3.4 of this Law, terms of use of natural resources do not meet the ecological requirements for environmental impact criteria or upon implementation of technologies and technological methods different from those set out in the original design, an ecological impact assessment (EIA) must rerun in relation to such operation.

3.8 Upon determination of a cross-border impact as a part of an environmental impact assessment (EIA) for facilities listed in Sub-Section 3.4 of this Law, issues of assessment of cross-border impacts are resolved according to international agreements the Republic of Azerbaijan acceded to.

## **Chapter 2. Basics of Operation within "BOT" Model Framework**

### **Section 4. Requirements for Agreements Entered into under "BOT" Model**

The relevant executive authority determines the terms of implementing within the "BOT" model framework by investors of investment projects for construction and infrastructure facilities listed in Sub- Section 3.1 of this Law, requirements before the investors depending on types of construction and infrastructure facilities, peculiarities and terms of agreements made, rules for determining value of goods and services to be procured as a result of investing.

## **Section 5. Liability and Compensation for Damages**

5.1. An investor is liable for designing, financing, constructing (building, maintenance repair and overhaul, reconstruction, restoration), and commissioning of a construction and infrastructure facility undertaken by the investor in the time period established under the agreement.

5.2. An agreement must include provisions for compensating damages resulting from an investor's failure to comply with contractual undertakings.

## **Section 6. Time Period**

6.1. Upon determining in an agreement a period of implementing an investment project for construction and infrastructure facilities undertaken by an investor, a period to return investment costs (including profit to be made) and repay loans taken for the investment as well as peculiarities of the project, amount of the investment, and principles of operating the facilities are considered.

6.2. A term of an agreement entered into according to the "BOT" model may not exceed 49 years.

## **Section 7. Determination of Value**

7.1. With the exception of goods and services, prices for which are regulated by the state, a value of goods and services produced as a result of investing under the "BOT" model is determined by an agreement of the parties considering types, quantity of consumption and use, quality, and safety of goods and services and other criteria.

7.2. Based on an agreement of the parties, the authorised body may undertake a guarantee obligation according to the Civil Code of the Republic of Azerbaijan to procure up to a certain level goods and services produced by an investor.

7.3. Sub-Sections 7.1. and 7.2 of this Law apply to the cooperative assistance.

## **Section 8. Transfer**

Construction and infrastructure facilities that are subject of investment projects carried out by an investor under this Law are transferred free of all debt and obligations in the condition fit, having due regard for depreciation, for designated use under management of the authorised body upon completion of the term provided for in an agreement.

## **Section 9. Repurchase for Needs of State**

Construction and infrastructure facilities established (built, renovated and restored, reconstructed) according to the "BOT" model may, upon agreement of the parties and full payment of costs of the facilities and profit to be made, be repurchased for needs of state prior to the time period provided for in an agreement.

## **Section 10. Sovereign Guarantee**

10.1. A sovereign guarantee is issued for the discharge of obligations undertaken before the investors under an agreement made according to the "BOT" model.

10.2. Upon early termination of an agreement at the initiative of an investor, the authorised body is discharged from the obligations undertaken by<sup>1</sup> an investor under such investment project.

## **Section 11. Exemptions**

An investor carrying out investment projects under the "BOT" model for construction and infrastructure facilities listed in Sub-Section 3.1 of this Law is exempted from the state duties and assessments in relation to such activity.

## **Chapter 3. Closing Provisions**

### **Section 12. Liability for Breaching this Law**

Persons breaching the requirements of this Law are liable under the Civil, Administrative Violations, and Criminal codes of the Republic of Azerbaijan.

### **Section 13. Transiting Provisions**

13.1. The provisions of the Law of the Republic of Azerbaijan "On State Procurement" do not apply to investment projects under special financing.

The provisions of this Law do not apply to investment projects carried out under agreements made according to the "BOT" model prior to the effective date of this Law.