



PROVISIONS GOVERNING THE BUILD–OPERATE–TRANSFER (BOT) CONTRACT FOR THE DEVELOPMENT AND INVESTMENT OF WAQF PROPERTIES UNDER LAW N⁰. 06-25

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Abstract:

The Algerian legislator introduced, under the new Waqf Law, the Build–Operate–Transfer (B.O.T) contract as a mechanism for the development and investment of Waqf properties through the implementation of major projects that benefit the Waqf. This contract addresses the Waqf's need for financial resources required to invest in its properties, particularly immovable properties. It is also regarded as a form of public works contract through which the State develops the infrastructure necessary to meet public needs when it is unable to finance such major projects from its own budget, thereby resorting to private or foreign capital to finance their implementation.

The BOT contract did not appear in Algerian legislation as a direct investment mechanism until the enactment of the new Waqf Law. However, the legislator did not lay down detailed provisions governing this contract. Accordingly, this study relies on the general rules of law and draws comparisons with similar financing and contractual arrangements relating to Waqf properties in order to examine the legal nature, conditions and legal effects of the B.O.T contract between its two parties, namely the authority responsible for Waqf and the investor or project company. It further addresses the contractual obligations and rights of both parties, the modes of termination of the contract, and the transfer of the project to the Waqf administration. This study therefore seeks to contribute to the efforts aimed at establishing and regulating the legal framework governing the B.O.T contract as a mechanism for the exploitation, development and investment of Waqf properties.

Keywords: Waqf properties, exploitation, development, investment, construction, operation, transfer.

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Introduction

The diversity of endowment properties, including agricultural, urban, industrial, tourism, and undeveloped land, necessitates that the authority responsible for endowments diversify the mechanisms for utilizing, developing, and investing all these properties. This involves bringing them into operation to maximize their profitability, thereby enhancing their value and increasing the endowment's potential, making it a viable contributor to the economy and enabling it to fulfill its intended role in social solidarity.

The legislator has already outlined the methods for developing and utilizing endowment properties of all types, particularly those designated for urban development. Specifically, the previous law on endowment properties, Law No. 01-07, stipulated the procedures for their utilization (Algeria, 1991). Which stipulated the observatory and restoration and reconstruction contracts as mechanisms for exploiting and investing endowment properties with an urban purpose, in addition to Executive Decree No. 18-213, which specifies the conditions and methods for exploiting endowment properties intended for the implementation of investment projects (Algeria, 2018), Who organized the exploitation contract.

As for the new Law No. 25-06 concerning endowments, it stipulated several new contracts, including the Build-Operate-Transfer (BOT) contract, as a new entry in the list of named contracts under which endowment properties can be developed and invested. However, it did not include the exploitation contract, which is governed by the aforementioned specific regulatory text. The BOT contract is considered uncommon in the field of endowment exploitation, given its association with major infrastructure projects undertaken by the state through concession mechanisms, BOT projects, and other means.

The Build-Operate-Transfer (BOT) system allows endowments to benefit from financing and expertise in implementing investment projects, while simultaneously preserving ownership of the endowment property. The unique nature of this contract, when applied to endowment properties, lies in its subjection to the general provisions of the BOT contract on the one hand, and to the specific rules for protecting and investing endowment funds on the other. This



contract is considered relatively new as a means of developing and investing endowment properties, though its legal provisions are not explicitly defined.

This may be left to regulation or to the general provisions governing it within the framework of public works, as stipulated by national or comparative legislation, or as included in relevant jurisprudence. During our study of this topic, we found several previous studies addressing the BOT contract in Algerian legislation, although the latter does not explicitly address this contract except through some indirect applications, such as water concessions and highways.

Most of these studies have applied it to similar structures, while only a few have applied it to the subject matter of the contract as endowment property with its own unique characteristics. National properties, which are typically subject to this contract, have not been thoroughly examined in detail. This necessitates a different approach to our study.

To understand the concept of this contract, define its specific provisions, and explore the financing advantages it offers in light of the unique characteristics of the endowed property to which it pertains, we posed the following question: What are the provisions of the Build-Operate-Transfer (BOT) contract and their implications for the specific nature of endowed properties, as well as its role in their development and investment?

To answer this question, we employed both analytical and descriptive methodologies. This research paper is divided into three sections. The first section addresses the concept of the BOT contract, the second examines its essential elements, and the final section explores its implications and termination mechanisms. Finally, we present some findings and recommendations.

First axis: The concept of the Build-Operate-Transfer (BOT) contract

The Build-Operate-Transfer (BOT) contract is a mechanism for utilizing and developing endowment properties and projects. It involves the participation of the national or foreign private sector in financing, completing, operating, and managing the project for a specified period before handing it over to the authority responsible for

endowments. To understand the implications of this multifaceted contractual model, it is necessary to define its concept through its most important jurisprudential and legal definitions, then identify its most prominent characteristics that distinguish it from other contracts, and finally determine its legal nature.

First: Defining the Build-Operate-Transfer (BOT) Contract

To arrive at a comprehensive definition of the BOT contract, we must first understand its technical definition, followed by its legal and jurisprudential definitions, as outlined below:

1- The Technical Definition of the BOT Contract:

The Build-Operate-Transfer contract is abbreviated as the BOT contract. The term BOT is an acronym for the three English words: "Build," meaning construction; "Operate," meaning operation and exploitation; and "Transfer," meaning transfer or conversion. The equivalent term in French is Construire-Exploiter-Transférer (C.E.T.) (Waddah, 2010). Some observations have been raised regarding the precision of these terms. Some prefer the term "establishment" rather than "construction," because the investor's role is not limited to construction but also includes the necessary studies and procedures for establishing and financing the project. Similarly, the term "utilization" is preferred over "operation," because the investor does not merely operate the project but also utilizes its resources and revenues during the agreed-upon period. Finally, the term "handover" is more accurate than "transfer" or "conversion," because the investor does not acquire ownership of the endowment facility but rather undertakes its establishment and operation during the contract period and is then obligated to hand it over to the contracting authority upon the expiration of that period (Al-Bahji, 2008).

2- The Jurisprudential Definition of the BOT Contract:

The Build-Operate-Transfer (BOT) contract has sparked jurisprudential debate regarding its nature and content, resulting in several definitions. Among the most prominent is that it is a public project financed, constructed, operated, and managed by a private sector entity for a specified period, in exchange for the right to exploit it and benefit from its revenues during this period. Ownership then reverts to the contracting entity or authority, and the project is handed over to them in good condition upon the contract's expiration. It has



also been defined as a concession granted by the state or a public legal entity, including, in this case, the authority responsible for endowments (waqf), through a contract with a private legal entity. This concession allows the private entity to construct, operate, and exploit a public facility for a specified period under the supervision of the public entity, in exchange for benefiting from its revenues during the contract term. The facility is then handed over to the state or public entity upon the contract's expiration, free of financial obligations and in accordance with the agreed-upon terms.

3- Definition of the BOT Contract in International Reports:

The UNCITRAL Legislative Handbook defines a Build-Operate-Transfer (BOT) contract as a project in which a private entity, under a concession, finances, constructs, operates, and commercially exploits an infrastructure facility for a specified period, after which ownership reverts to the contracting authority. The United Nations Commission on International Trade Law (UNCITRAL) defines it as: a method of project financing whereby the government grants an investor a concession to finance, construct, operate, and exploit the project for a period sufficient to recover costs and generate reasonable profits, after which ownership reverts to the government upon the expiration of the concession (Maher, 2015). The United Nations Industrial Development Organization (UNIDO) defined it as a contractual commitment whereby the private sector undertakes the design, financing, construction, operation, maintenance, and management of the facility for a specified period, recovers investment costs and generates revenue, and then hands it over to the state (Dhrifi, 2010). These definitions agree that the Build-Operate-Transfer (BOT) system is based primarily on three phases: construction, operation and exploitation, and finally, handover of the project to the state or contracting authority.

4- The Legal Definition of the BOT Contract:

Prior to the recent amendment to the Endowments Law, the legislator did not provide an explicit definition of the Build-Operate-Transfer (BOT) contract. However, its content was alluded to within certain provisions related to concessions and project exploitation, particularly in the areas of water, investment, roads, and irrigation infrastructure. These provisions included the elements of this contract:

financing, completion, operation, and maintenance of the project for a specified period, followed by its transfer or handover to the public entity. The legislator has explicitly adopted this contract in the new Waqf Law No. 25-06 as one of the mechanisms for exploiting and investing public Waqf properties or the charitable share in a joint Waqf. Article 79 of it defines it as “a contract by which an investor or several investors undertake to complete a project on the Waqf property, finance it, operate it and maintain it for a specified period during which they recover their expenses and make profits, then transfer the building without compensation to the authority in charge of Waqfs.”

Second: Characteristics of the Build-Operate-Transfer (BOT) Contract

The BOT contract is distinguished by several characteristics that set it apart from other contracts. The most important of these characteristics are listed below:

It is a reciprocal contract:

1- The BOT contract is a reciprocal contract binding on both parties.

The investor receives the project's revenues during the contract period, while the endowment (represented by the authority responsible for endowments) receives the project upon its expiry. This entails reciprocal obligations. The administrative body is obligated to enable the investor to complete the project, while the investor is obligated to finance, complete, operate, and maintain it, and then hand it over according to the agreed-upon terms after the contract period ends.

2- It is a long-term contract

The Build-Operate-Transfer (BOT) contract is a long-term contract, as the obligations of its parties are fulfilled in successive stages, including project completion, financing, operation, maintenance, and utilization, making time a crucial element. The contract duration is determined according to the nature and size of the project, ensuring the investor recovers their costs and achieves a suitable return from its operation. The contract then ends upon the expiry of the agreed-upon term, and the investor is obligated to hand over the project to the authority responsible for its management according to the terms specified in the contract.



3- It is linked to major projects

The B.O.T. contract is often associated with infrastructure projects of public importance that meet the basic needs of society and provide services to citizens. These projects require large capital investments that the state or the authority responsible for endowments may find difficult to provide. Therefore, they resort to the private sector for financing, implementation, and operation, thus reducing the financial burden while maintaining oversight of the project and ensuring the continuity of service. This includes, in particular, public utilities, public works, and transportation sectors, among others, for the state, and various developmental endowment projects that the authority responsible for endowments deems worthwhile and finances through this contract (Smith, 2018).

4-It is an administrative contract of a special nature

The BOT contract is characterized as an administrative contract of a special nature due to the specific nature of its parties. It is concluded between the state or one of the public legal entities, such as the authority responsible for endowments, on the one hand, and an investor from the private legal entity on the other. The latter often takes the form of a project company, and the public entity grants this concession to the investor and supervises and monitors the project, while the investor is obligated to complete, finance, operate, and exploit it according to the conditions specified in the contract.

5- It is a private financing contract

One of the most important characteristics of a BOT contract is that the investor finances the project, thus relieving the authority responsible for endowments of the financial burdens associated with completing large-scale projects that require substantial capital. Therefore, the contracting investor places great importance on the technical and economic feasibility of the project and its ability to generate the necessary revenues to cover the investment and profits during the operating period.

It is clear that resorting to this type of contract stems from the lack of financial resources of the endowment, which prevents the realization of its investment and growth aspirations. Thus, this contract becomes a means of establishing investment projects on endowment property without the endowment incurring any financial

losses. The investor constructs the project according to the agreed-upon specifications, then operates and benefits from it for a period specified in the contract, allowing them to recover their expenses and the expected profits. They then transfer the project to the authority responsible for endowments free of charge, who can then manage it according to any suitable formula they deem appropriate.

Third: The Legal Nature of the Build-Operate-Transfer (BOT) Contract

The complex nature of the BOT contract, with its inherent overlap between public and private law, raises questions regarding its legal classification. This has led to differing legal opinions on its categorization. Therefore, we will examine the legal nature of this contract by determining whether it is considered an administrative contract, a private law contract, or an international trade contract, in light of various legal perspectives.

1- It is an Administrative Contract

Proponents of this view argue that the BOT contract is an administrative contract because, in its modern form, it is linked to concession, partnership, and public works contracts. Furthermore, it is concluded by a public entity, is connected to the operation of a public utility, and can include exceptional conditions not typically found in private law contracts, all in the interest of the public good. This trend is based on the availability of the most important criteria of an administrative contract in a B.O.T. contract, namely that one of its parties is a public legal entity, that it relates to the operation of a public utility, which is the endowment project in this case, and that it includes exceptional conditions not common in private law contracts. Accordingly, the administration in this contract has some powers required by the nature of the endowment project, such as the powers of supervision, guidance, modification and termination in accordance with the law and the terms of the contract, in order to ensure the proper functioning of the facility and the achievement of the public interest, provided that the project reverts to the endowment upon the expiry of the contract period.

According to the Algerian legislator, this contract is considered a purely administrative contract in view of its parties on the one hand and in view of the rules applied to it, and its disputes are subject to



administrative courts based on the organic criterion stipulated in Articles 800 and 801 of the Code of Civil and Administrative Procedures (Algerian Code of Civil and Administrative Procedures, 2008, Arts. 800-801).

2- It is a private law contract

Some legal scholars consider the Build-Operate-Transfer (BOT) contract to be a private law contract, basing this on several arguments, including:

a- The absence of exceptional conditions: According to this view, the contract does not contain any exceptional conditions unusual in private law contracts, which negates its classification as an administrative contract.

b- Disputes arising from it generally fall under the jurisdiction of the ordinary courts, unless the contract includes an arbitration clause, in which case the matter is resolved according to the agreement of the parties.

c- The balance of obligations is based on the exchange of rights and obligations between the administration and the investor, achieving contractual equilibrium, without the administration enjoying the exceptional privileges that characterize administrative contracts.

d- The investment nature of the BOT contract means that some of its provisions are subject to investment law, given that the investor is engaged in an economic activity aimed at generating profit. (e) The connection of BOT projects to construction and investment activities carried out professionally gives them a commercial character, thus justifying their subjection, according to the nature of the activity, to the provisions of commercial law. Based on the aforementioned justification, this view holds that the Build-Operate-Transfer (BOT) contract is closer to private law contracts, as it is fundamentally based on the principle of freedom of contract and a balance between the interests of the parties, despite the presence of the state or another public legal entity as a party.

2- It is an international trade contract

Some legal scholars consider Build-Operate-Transfer (BOT) contracts to fall under the category of international trade contracts, as they involve a state or public entity and a foreign investor, and are based on the investment of capital and expertise that may extend

beyond national borders. The jurist Pierre Regli argued for the international character of these contracts based on the foreign status of the private party (Regli, 1995). Those who subscribe to this view have adopted two criteria for classifying a BOT contract as an international contract:

A- A legal criterion

A contract is considered international if its legal elements are linked to more than one legal system, such as the nationality or domicile of the parties, the place of conclusion and execution of the contract, and the applicable law. The language of the contract and the currency used in fulfilling the obligations may also be added to this list. However, this criterion is criticized for its broad scope, as the presence of a single foreign element may be sufficient to confer international status upon the contract.

B- Economic criterion

A contract is considered international when it results in the transfer of capital, goods, or services across borders, or is linked to the interests of international trade in such a way that its effects and interests exceed the economic scope of a single country.

However, this criterion has been criticized for the lack of clarity in the dividing lines between domestic economic activity and activity of an international nature. Therefore, it can be said that the international character of the B.O.T. contract is not necessarily derived from the presence of a foreign party only, but is determined by looking at a set of legal and economic elements that reveal the connection of the contract to more than one country or more than one legal system.

Fourth: The Extent of the Possibility of Distributing Ownership Elements in a BOT Contract

The nature of ownership rights in an investment project built on endowment land is complex. Does ownership revert to the endowment before the contract expires, as it is considered an appendage to the original land, or does it belong to the investor during the construction and operation period until its transfer? Furthermore, can it be classified as a real right, granting the investor full ownership of the constructed facilities, or only a usufruct right? This will be clarified below:



Legislative systems generally consider what is completed under a Build-Operate-Transfer (BOT) contract to be state property, with the project owner only having a usufruct right during the contract period. Given the absence of specific regulations for this contract in national legislation, except for concessionary applications which researchers consider similar to BOT contracts, we find that the legislator usually stipulates the duration of the concession contract, the possibility of establishing mortgages on these facilities, and the inheritance of this right in the event of the death of the beneficiary project owner. All of this makes it either full ownership of the facilities or, at the very least, a usufruct right derived from the endowment's ownership rights, as is evident in the contract. The privilege granted to holders of a private work permit for public national property, under Article 69 bis of Law 90-30 as amended and supplemented, stipulates that, unless otherwise provided by law, the holder of such a permit has a real right to the structures, buildings, and real estate-related equipment they construct. This right grants the permit holder, for the duration of the permit, the powers and obligations of an owner (Law No. 90-30, 1990, Art. 69 bis).

This aligns with established legal precedent, which considers a necessary consequence of a leasehold right to be a real right to the leased land. If a leaseholder erects structures on the land, these become their absolute property without the need for any specific provision or agreement. This contrasts with the case of a tenant, where anything built or planted on the leased property remains the property of the landlord unless the parties agree otherwise.

Given the brevity of Article 79 of Law No. 25-06 concerning endowments in detailing the provisions of this contract, we can draw an analogy from the provisions of the previous Endowments Law No. 91-10, which has been repealed. Article 26 bis 2 stipulates that the holder of the usufruct right has the right to benefit from the building or planting and to bequeath it. It is clear from this that the usufructuary does not own the structures but only has the right of usufruct. This aligns with Article 25 of the same law, which states that any alteration to the building or planting affects the endowed property, and the endowment remains legally valid regardless of the nature of the alteration. This ruling was reaffirmed by the legislator in Article

34 of the new Endowments Law (Law No. 25-06, 2006, Art. 34; Law No. 91-10, 1991, Arts. 25, 26 bis 2).

In this regard, the Egyptian legislator stipulated in Article 1002 of the Civil Code (Egyptian Civil Code, 1948, Art. 1002)... It states that "the monopolist owns completely what he has built, planted, or otherwise created, and he may dispose of it alone or in conjunction with the right of monopoly." The same text of this article is found in the Qatari legislator's Article 1036 of the Civil Code (Qatari Civil Code, 2004, Art. 1036).

Similarly, the Jordanian legislator adopted Article 1253, which stipulated that "the buildings erected by the monopolist and the trees he plants on the monopolized land shall be his property, and it is permissible to sell them, dedicate them as a waqf, bequeath them, and inherit them from him" (Jordanian Civil Code, 1976, Art. 1253).

Based on the foregoing, and given the possibility of subletting during the project's execution and operation, the investor, as the project owner in a BOT contract, possesses a real right derived from the endowment's ownership. This right entitles them to benefit from the facilities, dispose of them, establish a mortgage on them within the contract's term, and bequeath them upon their death, unless the heirs wish not to complete the contract.

This necessitates that the Build-Operate-Transfer (BOT) contract be officially registered and publicized, as it pertains to the real right derived from the endowment's ownership, namely, the right of usufruct. This provision remains valid even for those who consider BOT a long-term lease, in accordance with Article 15 of Order No. 75-74 concerning the preparation of the general land survey and the establishment of the land registry, which obliges the drafter of the lease contract to publicize it if its term is equal to or exceeds 12 years (Order No. 75-74, 1975, Art. 15).

The second axis: The elements of a Build-Operate-Transfer (BOT) contract

The elements of a Build-Operate-Transfer (BOT) contract are consent, subject matter, and cause, as these are substantive elements in all contracts. Additionally, there is the formal requirement, as it is a named contract pertaining to real estate. Given the nature of this contract, which was introduced by the legislator under the new Waqf



Law, which did not specify its particular elements, we will deduce them based on its specific characteristics. This will be explained below:

First: Parties to the BOT Contract

The BOT contract pertaining to Waqf properties involves two main parties: the authority responsible for Waqfs, represented by the local Department of Religious Affairs and Waqfs or the Minister centrally, as applicable, on the one hand, and the investor owning the project on the other. We will detail the two parties to the contract as follows:

1- The Authority Responsible for Waqfs

Article 8 of Law No. 25-06 concerning Waqfs defines the authority responsible for Waqfs as the body qualified to manage, administer, exploit, and develop public Waqfs. Article 93 of the same law also stipulates that the authority responsible for The endowments authority is responsible for concluding contracts related to public endowments (Law No. 25-06, 2025, Arts. 8, 93). In this contract, the authority responsible for endowments represents the endowment in the B.O.T. contract, provided that the trustee of the endowment is Muslim due to the devotional nature of the endowment. This condition was adopted by the majority of Maliki and Hanbali jurists, and the legislator adopted it without qualification (Al-Dardir, 1986, Vol. 4, p. 78; Ibn Qudamah, 1997, Vol. 6, p. 185).

A question arises regarding the regulatory authority that the authority responsible for endowments held, given Article 94 of this law, which stipulates that "contracts related to the exploitation, development, and investment of public endowment properties shall be drawn up by a qualified public officer." The legislator did not clarify who this public officer is. Is it the notary public office, or is it the director of religious affairs and endowments, who is granted the status of a public officer and is responsible for drafting contracts related to endowments, their exploitation, and development?

Pending the issuance of the new implementing regulations for this law, we can refer to Executive Decree N°. 14-70, which specifies the conditions and procedures for leasing endowment lands designated for agriculture. Article 9 of this decree stipulates that the Director of

Religious Affairs and Endowments is responsible for drafting lease agreements related to the use of public endowment lands.

We can also refer to Article 25 of Executive Decree No. 18-213, which specifies the conditions and procedures for utilizing endowment properties intended for investment projects. This article authorizes the authority responsible for endowments to prepare the usage agreement. As for Executive Decree N°. 00-336 dated October 26, 2000, which established the written attestation document to prove endowment ownership and the conditions and procedures for its issuance, Article 6 thereof authorizes the Director of Religious Affairs and Endowments to draft and issue the attestation of registration of endowment property. This official certificate is subject to registration with the Registration and Stamp Inspectorate and publication procedures with the Land Registry Office in whose territorial jurisdiction the endowment property is located.

Naturally, in accordance with what has been mentioned, the local Director of Religious Affairs and Endowments or the Minister at the central level can be a public official responsible for preparing endowment contracts, similar to the Director of State Property in his capacity as a notary public. The existing practice remains in effect, or these contracts can be drawn up before a legally authorized notary public office to perform these tasks if the anticipated regulations stipulate otherwise.

2- The Project Owner

The investor represents the private party in the BOT (Build-Operate-Transfer) contract. They are responsible for financing, completing, operating, maintaining, and managing the project according to the contract terms. The investor may be a private or public entity, whether Algerian or foreign, as understood from Article 92 of Law 25-06 concerning endowments (waqf). This article stipulates that "public endowment properties or the charitable share in a joint endowment may be exploited, invested in, and developed through self-financing, whether domestic or foreign, in accordance with the provisions of applicable legislation and regulations." In this regard, and referring to the Investment Law, we find that Article 5 of Law No. 22-18 defines the investor as any natural or legal person, Algerian or foreign, resident or non-resident. Thus, the provisions of



the Endowment Law are aligned with those of the Investment Law, the latter serving as the general framework for investment legislation in Algeria.

The investor must possess full civil rights, have a registered address, be legally competent to conduct the business activities of the investment project covered by the BOT contract, and have the financial capacity to finance and operate the project (Law N°. 22-18, 2022, Art. 5).

Since the Build-Operate-Transfer (BOT) contract is a complex contract that allows the investor to subcontract, there will naturally be other parties involved. However, the responsibility to the authority responsible for endowments remains ultimately with the investor who owns the investment project.

Second: The Subject Matter of the Build-Operate-Transfer (BOT) Contract

The subject matter of the Build-Operate-Transfer (BOT) contract is the investment of the endowment property allocated by the authority responsible for endowments for the project's completion.

This applies whether the endowment property is undeveloped land or a built property requiring development into a new project, which is then placed in the investor's hands to implement the investment project. The subject matter of the contract for the investor is the financing and expenditure on establishing the project until it becomes operational.

The investor must complete the project under the supervision of the authority responsible for endowments and then transfer ownership upon the contract's expiration. Naturally, according to general principles, the subject matter of the contract must be specific or determinable, feasible (not impossible), and lawful. Articles 92 to 94 of the Civil Code stipulate that the subject matter must be:

- 1- Specific or determinable and established in the contract itself or in a subsequent contract. The endowment land, for example, must be specific and its location, area, nature, and designated use must be clearly defined.
2. The subject matter of the project must be feasible, not impossible. If it includes conditions that are impossible to fulfill, the contract is void.

3. The subject matter of the project must be legitimate, meaning the land must be undisputed endowment land, and the project to be built must not violate the law or the provisions of Islamic Sharia, nor should the subject matter of the obligation be contrary to public order and morals (Civil Code, 1975, Arts. 92–94).

Third: The Reason for a Build-Operate-Transfer (BOT) Contract

The fundamental reason for a BOT contract is the objective the endowment authority aims to achieve through entering into this contract. In this case, the reason is to invest in the endowed property by establishing an endowment project, as dictated by the nature and allocation of the property and the urgent need to utilize and develop the endowment through such a project, particularly when the endowment authority is unable to manage it itself.

As for the other contracting party, the project owner, their reason is the desire to generate profit from operating the project upon its completion and commissioning. This profit is generated throughout the contract period, which allows for the recovery of their initial investment and the expected profits and benefits, thus fulfilling their desired objective. The motivation for such a contract may also include both financial and moral aspects, stemming from the intention to contribute to the development of the endowed property for the sake of reward from God Almighty (Al-Sanhuri, 1952, Vol. 1, p. 340).

Third: Formalities of the Build-Operate-Transfer (BOT) Contract

The Build-Operate-Transfer (BOT) contract is a named contract involving financial rights between its two parties: the endowment (represented by the authority responsible for endowments) on one side, and the investor owning the project on the other. It must be a formal contract. The legal basis for this formality, according to general principles, is found in Articles 324 bis 1 of the Civil Code, which stipulate that "In addition to contracts that the law requires to be in a formal form, contracts involving the transfer of ownership of real estate, real estate rights, commercial or industrial premises, or any of their components, or the assignment of shares in a company or stakes therein, or agricultural or commercial lease contracts, or contracts for the management of commercial premises or an industrial establishment, must be in a formal form under penalty of nullity." Similarly, Article 467 of the Civil Code stipulates that a lease must be



in writing and have a fixed date; otherwise, it is void. Therefore, this transaction must be formalized according to the required legal requirements. In this regard, Article 94 of the Endowments Law No. 25-06 stipulates that contracts relating to the exploitation, investment, and development of public endowment properties shall be drawn up by a qualified public official.

By analogy to the provisions governing exploitation contracts under Executive Decree No. 18-213, Article 5 of that decree stipulates that exploitation shall be established by an administrative contract between the authority responsible for endowments and the investor. This decree includes a standard terms and conditions document that must be attached to the contract, whether the exploitation is granted through bidding or by mutual agreement.

Even if we consider the BOT (Build-Operate-Transfer) contract to be a long-term lease, it will still be subject to registration in accordance with Article 17 of Ordinance No. 75-74 concerning the preparation of the general land survey and the establishment of the land registry. This naturally applies to this contract, which is an official contract subject to registration (Ordinance No. 75-74, 1975, Art. 17).

Third Axis: Implications of the Build-Operate-Transfer (BOT) Contract

A Build-Operate-Transfer (BOT) contract for endowed property creates reciprocal rights and obligations between the parties.

These relate to the project's phases, including its completion, financing, operation, and utilization, culminating in its transfer upon contract expiration.

The investor is obligated to complete, maintain, and utilize the project, then transfer it to the endowment authority upon contract termination. In return, the authority is obligated to enable the investor to utilize the property, monitor project implementation, oversee its development, and ensure it fulfills its designated purpose.

Once the BOT contract is concluded for endowed property, reciprocal rights and obligations arise between the endowment, represented by its governing authority, and the investor who owns the project.

This contract, being a fixed-term agreement, then expires. The obligations, rights, and termination procedures will be outlined below.

First: Obligations Arising from the BOT Contract

Naturally, each contract creates several obligations for both parties. These obligations may be for one party but are, conversely, rights for the other.

We will outline the obligations of the investor-project owner and then the obligations of the authority responsible for endowments arising from this contract, as follows:

1- Obligations of the Investor-Project Owner

Upon the conclusion of the contract, the investor-project owner incurs several obligations required for the contract's time-bound execution. These include:

A- The obligation to construct, finance, and implement the project

The obligation to complete and finance the investment project is the first fundamental obligation of the project company in a Build-Operate-Transfer (BOT) contract for endowment properties. The company is required to complete the project according to the agreed-upon designs and specifications and within the specified timeframe. The project company or its contracted engineers may prepare the designs, taking into account the requirements set by the authority responsible for endowments. This obligation necessitates avoiding delays in completion, as these affect the remaining stages of the contract.

It also includes obtaining the necessary permits, such as the building permit, and then acquiring a certificate of conformity to enable the project to enter the operational phase. The investor is also personally obligated to execute the contract, given the importance of personal considerations in this type of contract. He may not assign the contract or substitute another investor in his place except in accordance with the terms and procedures stipulated in the contract and applicable legislation. When permitted by the terms and conditions, he may resort to subcontracting, provided that this does not affect his responsibility for fulfilling his original obligations (Law No. 25-06, 2025; Executive Decree N°. 18-213, 2018).



B- Commitment to Project Operation, Upgrading, and Maintenance

After the completion of the construction phase, the project owner is obligated to operate and manage the project in accordance with the terms agreed upon in the contract, ensuring its smooth operation and the continuity of its services. The contracts stipulate the project company's commitment to using modern technologies and methods in the project's completion and operation, along with training employees on their use when necessary.

This aims to enhance project efficiency, improve management and operation methods, guarantee quality utilization, and contribute to the transfer of expertise and modern technology. The investor is also obligated to maintain the project and its equipment throughout the operational period, undertaking all necessary maintenance, repairs, and upkeep to ensure its continued efficient operation until its transfer to the authority responsible for endowments upon the contract's expiration.

C- Project Transfer Obligation

Upon the expiry of the contract term, the investor is obligated to transfer the project to the Waqf Authority in accordance with the terms and procedures specified in the contract and the terms and conditions, ensuring the project's return to the entity responsible for managing and utilizing the Waqf.

1- Obligations of the Waqf Authority

The Waqf Authority is obligated to the investor holding the project in the BOT contract pertaining to Waqf properties as follows:

A- Handover of the Waqf Property

The Waqf Authority is obligated to hand over the Waqf property to the investor immediately upon the conclusion of the Build-Operate-Transfer (BOT) contract, as it represents the Waqf in the contractual relationship.

This is done through a handover report that confirms the property is placed at the investor's disposal to enable them to commence project implementation. This obligation is consistent with the provisions of contracts for the utilization of Waqf properties. The handover report also serves as proof of the Waqf Authority's fulfillment of its obligation to enable the investor to benefit from the

property subject to the contract (Executive Decree No. 18-213, 2018, Art. 12).

B- The obligation to provide administrative support to the investor

The authority responsible for endowments is obligated to provide administrative support to the project owner and facilitate their acquisition of the necessary licenses and procedures for project completion, within its jurisdiction and without replacing the competent departments and bodies.

This obligation aims to alleviate the burdens and administrative procedures on the investor.

Second: Rights Arising from the BOT Contract

Just as the BOT contract creates obligations for both parties, it also creates rights for both parties. We will explain these rights with respect to the investor (project owner) and then the authority responsible for endowments, as follows:

1- Investor Rights

The Build-Operate-Transfer (BOT) contract entails a set of rights for the investor, dictated by the nature of the contract and its duration. These can be summarized as follows:

A- The Right to Receive Financial Compensation

Obtaining financial compensation is one of the most important motivations for the investor to enter into a BOT contract.

Through financing, completing, and operating the project, the investor aims to recover their capital and generate profits. This compensation may take various forms, such as rent, cash payments, or fees received by the investor for operating the project (Executive Decree No. 18-213, 2018).

B- The Right to Guarantees and Privileges

The investor benefits from a range of guarantees aimed at protecting their investment and ensuring the project's continuity. The most important of these is protection against the expropriation or confiscation of the project without due process and fair compensation, thus guaranteeing the stability and continuity of the investment. Privileges include tax and fee exemptions. The investor is entitled to benefit from tax exemptions and incentives stipulated by law to encourage investment, provided the applicable conditions are met.



One of the most important advantages for the investor who owns the project is their right to maintain the financial balance of the contract, especially since the duration of the B.O.T. contract is long.

Circumstances may arise during its implementation that lead to an increase in the investor's burdens and an imbalance in the financial contract, which may justify their claim for compensation according to the law. Ensuring financial equilibrium is primarily achieved through the doctrine of the act of the prince and the doctrine of unforeseen circumstances. Under the doctrine of the act of the prince, if the administration takes a legitimate action that increases the investor's burdens or harms their contractual position, they may claim compensation, provided the necessary conditions are met.

The doctrine of unforeseen circumstances applies when exceptional and unexpected conditions arise after the contract is concluded, making the fulfillment of obligations burdensome to the point of threatening the contract's financial equilibrium. This justifies the administration's intervention to contribute to bearing the resulting burdens, in accordance with legal principles (Civil Code, 1975, Art. 107).

Regarding the expropriation of state-owned land in BOT contracts, it is permissible, when necessary, to request the expropriation of properties required for the project's completion or the establishment of easements upon them, in accordance with legal procedures and conditions.

However, when this contract pertains to endowment (waqf) properties, the expropriation of the properties and the project is only permissible with respect to the right of usufruct, because what is built upon the endowment becomes part of it and is considered an endowment. The project owner retains the right to benefit from it for the duration of the contract, as we established when classifying the nature of the contract.

C. The Right of Subletting

Subletting means that the investor who owns the project may subcontract, for example, by granting or delegating the execution of parts of the project to another person who has no connection to the authority responsible for endowments, or by using other companies or

institutions to execute or manage the project during the operational phase, or by subletting some or all of the project's assets to a lessee.

The investor remains responsible for the entire project before the authority responsible for endowments and bears full responsibility for any breach by the subcontractors.

The legislator has enshrined the issue of subletting in the investor's rights within the operating contract stipulated in Executive Decree N°. 18-213, particularly Articles 15 and 19 of the attached terms and conditions.

D- The right to assign the project

Assigning the project means that the investor disposes of the project and transfers his right of usufruct to another person who takes his place in his obligations and rights towards the authority in charge of endowments, considering that the investor is in possession of the usufruct, and that this right entitles him to dispose of it in a manner that transfers ownership. However, due to personal considerations related to the investor and his personal role in the project on the one hand, and to achieve the interest of the endowment on the other hand, some of the jurisprudence does not permit the issue of assignment except with the approval of the authority in charge of endowments, which authorizes this based on its study of the person or company that will succeed the investor assigning the project.

On the other hand, it is stipulated that the assignment should not take place during the construction phase, as it is unreasonable to assign the project during the building stage, since the prohibition of subletting necessitates the prohibition of assignment at this stage.

In this regard, we are pleased to reject, in principle, all subleases during the implementation phase of the investment project, as stipulated in Article 19 of Law No. 23-17, which specifies the conditions and procedures for granting economic property belonging to the private domain of the state for the implementation of investment projects.

Which stipulates that "the concession holder may not, during the period of completion of his investment project, lease any type of property under penalty of termination..." This same provision was enshrined in Article 19 of the repealed Executive Decree No. 09-152 The agreement stipulates that ownership of buildings and the real



estate rights arising from the concession may be transferred for the remaining term, provided that the buildings stipulated in the investment project are completed and legally inspected with a certificate of conformity (Law No. 23-17, 2023, Art. 19)

Executive Decree No. 09-152, 2009, Art. 19). The authority responsible for endowments (waqf) may exercise this right of pre-emption in the event of the project's sale to a third party. In this regard, we refer to Article 23 of Law 23-17 mentioned above, which authorizes the Algerian Investment Development Agency to exercise, on behalf of the State, the right of pre-emption over real estate transferred by the beneficiary of the industrial property.

1- Waqf Rights

Once the contracting procedures for the Build-Operate-Transfer (BOT) contract pertaining to waqf properties are completed, the authority responsible for waqfs acquires several rights, including the establishment, operation, and transfer of the project at the end of the contract. Other rights accompany the contract's execution, the most important of which are:

A- The Right of Oversight and Supervision

As a party to the BOT contract, the authority responsible for waqfs has the right to oversee and supervise the exploitation of the waqf property and the project's implementation. This ensures the investor's adherence to contractual obligations and the preservation of the waqf property.

This oversight takes several forms, the most important of which are:

- Monitoring compliance with planning and development regulations by verifying the issuance of a building permit and adherence to all relevant urban planning documents and procedures stipulated in the applicable legislation and regulations.
- If the endowed property is classified or protected, the authority intervenes to monitor its safety and prevent any damage or alteration to its nature and character, especially if it has archaeological or cultural value.
- Monitoring the extent to which the project has undergone the required environmental studies according to its nature, and

ensuring that its implementation does not commence until the necessary environmental approvals and permits are obtained (Law N°. 03-10, 2003).

B- The Right to Amend or Terminate the Contract

The authority responsible for endowments has the right to amend the contract whenever it deems it necessary, by mutual agreement of both parties, on the basis that the contract is binding on both sides and can only be amended by mutual consent. It can also impose penalties on the investor who owns the project by terminating the build-operate-transfer (BOT) contract if the investor breaches their contractual obligations or fails to fulfill them as agreed, particularly if the breach relates to the completion, financing, operation, or maintenance of the endowment property.

In this case, termination serves as a means of protecting the endowment property and ensuring its continued investment. Termination is not initiated directly, but rather according to legally prescribed procedures.

The investor is notified and given an opportunity to rectify the breach and fulfill their obligations. If non-compliance persists or the situation cannot be rectified, the authority responsible for endowments may take termination measures. The contract may also be terminated due to the death of the investor before the end of its term, if his heirs or those entitled to his rights choose not to continue implementing or exploiting the project, after they have been notified according to legal procedures and given the period stipulated to choose to continue or terminate the contract.

Thus, this right aims to ensure the continued exploitation of the endowment property and prevent it from remaining idle or exposed to deterioration (Civil Code, 1975, Art. 119; Executive Decree N°. 18-213, 2018).

Third: Expiration of the Build-Operate-Transfer (BOT) Contract

Given that the BOT contract is a time-bound contract, it can be either normally or abnormally expired, as we will explain below:

1- Expiration of the BOT contract upon the expiration of its term

The Build-Operate-Transfer (BOT) contract is a fixed-term contract, meaning it expires upon the end of the agreed-upon period and the fulfillment of the obligations arising from it. An agreement



may be reached to extend or renew its term in certain cases, particularly if this is due to a delay by the contracting party in fulfilling one of its obligations, such as a delay in handing over the property or enabling the investor to commence the project, provided that this results in a disruption of the agreed-upon period for operation.

A delay attributed to the administration may entitle the investor to compensation for any resulting damages, provided the conditions of contractual liability are met. However, if the delay is due to the investor, they bear the responsibility for their breach of contract according to general rules and the provisions of the terms and conditions.

The legal framework for the Build-Operate-Transfer (BOT) contract is practically similar to the exploitation contract stipulated in Executive Decree No. 18-213 (2018). This contract is defined as having a term of 15 to 30 years, renewable. However, renewal is not automatic but requires a new contract with new terms.

Upon the expiration of the contract term, the investor's exploitation of the project ends, and the project, including its facilities, equipment, and annexes, reverts to the authority responsible for endowments.

2- Termination of the Contract Before its Term

This refers to the unusual termination of a Build-Operate-Transfer (BOT) contract due to the occurrence of a cause for termination that prevents the continuation of the contractual relationship. This may be due to force majeure, which renders the performance of obligations impossible, or by operation of law when a legal cause arises that results in the termination of the contract. Termination may also occur at the request of the investor or the contracting administrative body, in accordance with the terms and conditions specified in the contract's terms and conditions.

The authority responsible for endowments may terminate the contract unilaterally if the interests of the endowment so require, within the limits permitted by the contract and general rules, taking into account the effects of this action between the parties. The contract may also be terminated through judicial rescission upon the

fulfillment of its conditions, or by mutual agreement of the parties to terminate it before its expiry.

3- Termination of the Contract Due to the Destruction of the Investment Project

A BOT (Build-Operate-Transfer) contract may be terminated if the investment project subject to the contract is destroyed. In this regard, it is necessary to distinguish between partial and total destruction:

If the investment project is completely destroyed for any reason beyond the investor's control, Article 481 of the Civil Code (Civil Code, art. 481) stipulates that if the leased property is completely destroyed during the lease term, the lease is automatically terminated by law, due to the impossibility of resuming the investment project. The investor is liable if they caused the total destruction.

However, if the investment project is partially destroyed, resulting in a reduction in its usability to the same extent as before the destruction, and the destruction was not caused by the investor, the project owner, may request termination of the contract or a reduction of some of the obligations.

4- Termination of the contract by way of cancellation as a penalty for breach of obligations

The authority responsible for endowments has the right to cancel the B.O.T. contract if the owner of the investment project fails to fulfill their obligations. This can be justified by the provisions of the exploitation contract regulated by Executive Decree No. 18-213, where Article 18 (Executive Decree No. 18-213, 2018, art. 18) stipulates the authority responsible for endowments to cancel the exploitation contract unilaterally and at the investor's expense as a penalty for breach of obligations.

Similarly, the owner of the investment project has the right to request the termination of the contract if the authority responsible for endowments breaches its contractual obligations. This is stipulated in Article 119 of the Civil Code (Civil Code, art. 119), given that the BOT (Build-Operate-Transfer) contract is binding on both parties.

5- Death of the Project Owner Before the Contract Term Expires

In the event of the investor's death before the contract term expires for the endowed property, the contract does not expire.



Instead, the investor's heirs or beneficiaries have the right to choose between continuing the contract and proceeding with the project's completion or operation, or relinquishing the contract and requesting its termination, in accordance with the legally prescribed conditions and procedures and the terms and conditions of the contract.

When the authority in charge of endowments is notified of the death of the investor who owns the project, or becomes aware of the death, it begins to notify the heirs or those with rights of the need to choose between settling the legal status of the contract in their favor and continuing to implement the contract, or terminating the contract due to the death of their predecessor. This is in accordance with what is stipulated in Article 23 of the model terms and conditions of the exploitation contract regulated by Executive Decree No. 18-213 (Executive Decree No. 18-213, 2018, art. 23), which specifies the conditions and procedures for exploiting endowment properties intended for the implementation of investment projects.

Conclusion

From the foregoing, it is clear that the Build-Operate-Transfer (BOT) contract has become a means of developing, utilizing, and investing in endowment properties for the purpose of completing important investment projects when the endowment is unable to self-finance such projects. This contract is unique in its terms, provisions, and effects between the contracting parties, distinguishing it from other contracts used to develop and utilize endowment properties in other sectors.

Our findings indicate that the provisions governing this contract are derived from the general rules regulating it when it pertains to state-owned properties, considered a type of real estate ownership. The Endowments Law does not specify the details of the BOT provisions, which it addresses in a single article, leaving this to the sources of this contract in comparative legislation or to reference similar national legislation. Within this framework, this study has reached several conclusions, the most important of which are:

1- The Build-Operate-Transfer (BOT) contract is considered a long-term private lease contract applicable to endowment properties, as its foundation is construction, followed by operation, and then transfer.

2. The Build-Operate-Transfer (BOT) contract relieves the endowment of the difficulty in securing financing for the investment and development of its assets. Under this system, the private sector assumes this responsibility, and external financing may also be provided.
3. The Build-Operate-Transfer (BOT) contract is an administrative contract of a special nature, containing conditions not typically associated with the management and exploitation of endowment properties.
4. The BOT contract creates reciprocal obligations between the contracting parties: the authority responsible for endowments and the investor-project owner. These obligations are fulfilled throughout the contract's duration, as it is a time-bound agreement.
5. The project owner may sublet the project during its implementation or operation, unless the investor is personally responsible for all aspects of the project, given the importance of their involvement in its execution.

Finally, we can propose the following recommendations:

- 1- The necessity of intervening to regulate the provisions of contracts for the exploitation of endowment properties in general, and build-operate-transfer (BOT) contracts in particular, in conjunction with the issuance of the implementing regulations for the new endowment law.
- 2- Explicitly stipulating that the BOT contract grants the project owner a right of usufruct over the structures erected during its implementation. This right would entitle them to use it for mortgage financing and related transactions such as assignment and subletting, while adhering to the terms and conditions.
- 3- The contract duration must be determined based on a thorough evaluation study that allows the investor to recover the project financing expenses and generate profits, while simultaneously safeguarding the endowment's rights. This prevents the exploitation of the endowment for excessive profits due to the authorities' leniency in extending the contract's duration.
- 4- The endowment may seek to expedite the realization of certain financial gains by stipulating the payment of an annual fee upon the project's commencement of operations.



5- Stipulating the consensual termination of the Build-Operate-Transfer (BOT) contract at any stage of contract implementation, and that any termination due to the project owner's breach of his obligations must guarantee the full rights of the endowment, whether by agreement or judicial decree.

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