

**Kingdom of Cambodia**

**National Religion King**

**Royal Government of Cambodia**

No. 11/ANK/BK

**Anukret**

**on Build-Operate-Transfer (BOT) Contract**

- Referring to the 1993 Constitution of the Kingdom of Cambodia;
- Referring to Reach Kret of September 24, 1993 on the Appointment of the First Prime Minister and the Second Prime Minister of the Royal Government of Cambodia;
- Referring to the Reach Kret of November 1, 1993 on the Formation of the Royal Government of Cambodia;
- Referring to Reach Kram No. 02/NS/RKM/94 of July 20, 1994 promulgating the Law on the Organization and Functioning of the Council of Ministers;
- Referring to Reach Kram No. 03/NS/94 of August 5, 1994 promulgating the Law on Investment of the Kingdom of Cambodia;
- Referring to Reach Kret No. NS/RKT/1094/83 of October 24, 1994 on the Reorganization of the Composition of the Royal Government of Cambodia;
- Referring to the Reach Kram No. NS/RKM/1096/18 of January 24, 1996 on the Establishment of the Ministry of Economy and Finance;
- Referring to Reach Kret No. CS/RKT/0897/147 of August 7, 1997 on the Reorganization of the Composition of the Royal Government of Cambodia;
- Pursuant to the Proposal of the Senior Minister and the Minister of Economy and Finances;
- Pursuant to the approval of the Council of Ministers of December 18, 1997.

It is hereby decided

## **Chapter 1**

### **General Provisions**

Article 1:

A Build-Operate-Transfer (BOT) project is a concession contract in which a Principal, grants a concession to a Concessionaire who is responsible for the construction and operation of a facility over the period of the concession before finally transferring the facility, at no cost to the Principal, as a fully operational facility.

#### Article 2:

This Anu-kret shall cover only for project where the State or public legal entities as a Principal and private legal entities as concessionaire. It shall not cover for project between private individuals.

A ministry, institution and competent authority responsible for related infrastructure projects shall have the power on behalf of the Royal Government of Cambodia to enter into a BOT contract pursuant to the terms and conditions as stipulated in this Anu-kret.

Beside the State, State owned legal entities shall also have the power to enter into a BOT contract pursuant to the terms and conditions as stipulated in this Anu-kret.

#### Article 3:

Only infrastructure projects declared by the Council for the Development of Cambodia or an entity authorized by the Royal Government of Cambodia can be the subject of a BOT contract.

Those infrastructure projects shall cover the following:

Electricity power plants, roads and highways for vehicles, ports, telecommunication networks, railroads, residential development, hospitals, schools, airports, stadiums, tourism resorts, new cities, hydropower stations, dams, factories, clean water production plants and solid waste processing.

The infrastructure construction costs incurred within the framework of a BOT project shall be entirely borne by the Concessionaire.

The contract shall clearly stipulate the performance bond secured by the concessionaire.

#### Article 4:

The contract shall define the supervisory authority of the Royal Government of Cambodia or other legal entities in the event of default of the Contract by the Concessionaire.

The BOT contract shall grant the concessionaire's sole management rights over the infrastructure project for a maximum period of 30 years which can be extended pursuant to the terms and conditions stipulated in the Contract.

The concessionaire shall be responsible for any cost related to the operation of the infrastructure as defined in the Contract.

The contract shall define the modalities for collecting revenues in which the Concessionaire has the authority to do so. The internal rate of return of the Concessionaire shall be subjected to the prior approval of the Royal Government of Cambodia or any other legal entity granting the concession.

The Concessionaire shall pay royalties or partial revenues to the Royal Government of Cambodia or the concession's legal grantor as stipulated in the contract.

Article 5:

The Concessionaire shall transfer the related infrastructure projects and facilities in good operational conditions to the Royal Government of Cambodia or the concession's legal grantor at no cost.

Such transfer shall be done at the latest at the expiration date of the management period as stipulated in the contract.

Article 6:

The ministry or a public legal entity could enter into a BOT contract with physical or legal person of Khmer or foreign nationality or with the consortium which was established by the above mentioned persons.

Shall be considered as Khmer legal entity any company whose shares of at least 51% are held by Khmer legal or physical person(s).

Article 7:

The Concessionaire shall be allow to transfer its rights arising under the BOT contract to a third party pursuant to the following conditions:

1. At least thirty percent (30%) of the total investment facilities stipulated in the contract have been completed.
2. The Concessionaire shall be jointly liable with the third party for the completion of the project as stipulated in the contract.
3. Such transfer shall be subjected to the approval of the Royal Government of Cambodia or of any concession legal grantor.

Article 8:

The State or the concession legal grantor shall have the sole to impose fines, suspension or rescind the BOT contract without compensation in the following cases:

- The Concessionaire is in bankruptcy proceedings.
- The Concessionaire fails to respect its main obligations as stipulated in a contract after repeated warnings by the Principal.
- The Concessionaire violates the laws and other regulations of the Kingdom of Cambodia.

## **Chapter 2**

### **Concessionaire Selection Procedures**

Article 9:

The selection of the Concessionaire for a BOT contract shall be conducted strictly through international or national (open or close) bidding process.

The selection shall be conducted through the negotiation procedure for the following cases:

1. The bidding process was not successful.
2. The project contains necessary specifications requiring the selection of a special concessionaire.
3. The special criteria for the infrastructure project require qualified concessionaire to meet these special criteria.

The selection procedures shall be as follows:

- a. For any contract in which the Royal Government of Cambodia is a party, there shall be a consensus between the Minister in charge of the related project, the Minister of Economy and Finance and the CDC.
- b. For any contract acted on behalf of a public legal entity by the supervising authority, the formality shall be made pursuant to a Prakas of the Minister of Economy and Finance.

Article 10:

For any contract approved on behalf of the Royal Government of Cambodia, the technical and financial selection of the Concessionaire shall be defined by:

1. a joint decision made between the Minister in charge of the related project, the Minister of Economy and Finance and the CDC for investment project costing less than or equal to 5 million dollars.
2. a decision of the Prime Minister pursuant to a joint proposal of the Minister in charge of the related project, the Minister of Economy and Finance and the CDC for investment project costing less than or

equal to 10 million dollars.

3. a decision of the Council of Ministers pursuant to a joint proposal of the Minister in charge of the related project, the Minister of Economy and Finance and the CDC for investment project costing more than 10 million dollars.

For contract approved on behalf of a public legal entity, the technical and financial selection of the Concessionaire shall be made by the supervising authority of that public legal entity.

After selecting the Concessionaire, the authority that approved the project shall issue a BOT license. The license shall be issued only against the Concessionaire depositing its security deposit pursuant to a Prakas of the Ministry of Economy and Finance on the implementation of this Anu-kret. The license shall define the rights and obligations of the parties to the BOT contract.

Article 11:

Based on the BOT license, it shall be prepared a detailed contract stipulating the rights and obligations of the contracting parties.

The contract shall be signed by:

- a. The Concessionaire and the Minister in charge of the related project, the Minister of Economy and Finance and the CDC for any contract approved on behalf of the Royal Government of Cambodia.
- b. The Concessionaire and the supervising authority of the public legal entity, the Minister of Economy and Finance and the CDC for any contract approved on behalf of the public legal entity.

The Concessionaire shall form his company and register it under the laws of the Kingdom of Cambodia for implementing the BOT contract. The company objectives shall conform to the BOT contract license.

The company shall comply with the applicable laws and regulations of the Kingdom of Cambodia.

### **Chapter 3**

#### **Responsibility under the BOT Contract and Dispute Resolutions**

Article 12:

The Concessionaire under the BOT contract may freely buy or transfer any necessary foreign exchange for the purpose of fulfilling the obligations under the contract and pursuant to the Law on Foreign Exchange Management No. CH/RKM/0897/03 of August 22, 1997.

Article 13:

The Concessionaire under the BOT contract shall be entitled to incentives and benefits as described in the Law on Investment promulgated by Reach Kram No. 03/NS/94 of August 5, 1994 and its implementing Anu-krets.

Article 14:

All disputes arising under this BOT contract shall be settled expediently and amicably through negotiations and arbitration in accordance with the terms of the specific contract.

#### **Chapter 4**

##### **Final Provisions**

Article 15:

Any BOT contract that was approved on behalf of the Royal Government of Cambodia or a public legal entity that are contrary to this Anu-kret shall be abrogated.

Article 16:

The implementing instructions for this *Anu-kret* shall be determined by a Prakas of the Minister of Economy and Finance in consultation with the Council for the Development of Cambodia.

Article 17:

The Co-Ministers in charge of the Office of the Council of Ministers, the Minister of Economy and Finance, ministers and secretaries of state, and provincial/municipal governors shall have the responsibilities to effectively implement this Anu-kret.

Article 18:

This Anu-kret shall enter into force from the date of its signature.

Phnom Penh February 13, 1998

First Prime Minister      Second Prime Minister

**Ung Huot**

**Hun Sen**

Has informed and Submitted to

First Prime Minister      Second Prime Minister

– Cabinet of the Royal Palace

**Keat Chhon**

– Secretariat of the National Assembly

Senior Minister in charge of Rehabilitation and

– Per Article 17

Development

- Cabinet of the First Prime Minister      Minister of Economy and Finance
- Cabinet of the Second Prime Minister
- Records.