

Presidential Decree on Construction and Infrastructure Projects in Azerbaijan

April 28, 2016

The President of the Republic of Azerbaijan has approved a Law *On the Implementation of Special Financing for Investment Projects in Connection with Construction and Infrastructure Facilities*, dated 15 March 2016.

In essence, the new Law introduces options for the potential financing of *Build-Operate-Transfer* (BOT) projects.

The BOT model is defined in the Law as the payment, in accordance with agreements with the Ministry of Economy, by consumers of goods and services produced by investors (defined as resident and non-resident legal entities, their branches or permanent establishments), or the payment by the Ministry of Economy of investment expenses (including income earned) to investors in respect of certain investment projects listed in the Law.

Financing under the BOT model will apply to the construction (including current and capital repair, renovation and restoration), the operation and the transfer, *inter alia*, of the following facilities:

- bridges, tunnels;
- water reservoirs, water purification facilities, irrigation, drinking and household and sewage systems, main gas pipelines, underground gas storage facilities, intracity gas networks;
- press and conference centers, as well as educational, health, culture and tourist facilities;
- commercial buildings, wholesale markets, factories and industrial sites;
- sports centers, hostels, rest and entertainment parks;
- industrial, high technology and agricultural parks, automated management systems based on high technologies and other systems in the area of information technologies;
- enterprises on electricity generation, distribution and sale;
- highways and railways, bus station complexes, logistics centers, underground and surface parking lots, metro lines and stations;
- special economic zones, sea ports and airports used for civilian purposes, complexes consisting of cargo, passenger transportation, and yacht ports.

Investors will be responsible for the design, financing, construction (including current and capital repair, renovation and restoration), and use of the BOT project.

The President of Azerbaijan will determine the conditions for carrying out investment projects, the requirements to be met by investors, depending on the type of construction and infrastructure facilities, the terms and conditions of agreements to be concluded with investors and the rules for the determination of the value of goods and services

obtained as a result of investments.

Presumably several concepts introduced in the Law, e.g., cooperation assistance (defined as financial assistance provided further to an agreement with the Ministry of Economy where service fees do not completely or partially cover the expenses incurred by the investor) and service fees (defined as amounts paid by the Ministry of Economy or consumers for goods and services produced by the investor), will be detailed in forthcoming rules to be approved by the President.

A BOT agreement may be concluded for a term of up to 49 years. The term of the agreement will be determined depending on the period for the repayment of loans taken for the purpose of incurring investment expenses (including income earned), as well as the characteristics of the project, the investment amount and the principles for the management of the project.

The value of the goods and services produced under the BOT agreement (except for the value of goods and services regulated by the state) will be determined based on an agreement of the parties, taking into account their nature, amount of consumption or use, quality, safety and other criteria. Based on an agreement of the parties, the Ministry of Economy may provide a guarantee for the purchase of goods and services up to a certain limit.

After the expiration of the term of the agreement, these construction and infrastructure projects shall be transferred to the management of the Ministry of Economy free from any debt and obligations and suitable for use in accordance with their purpose, taking into account depreciation, and free of any charge.

In accordance with the agreement of the parties, prior to the expiration of the term of the agreement, the construction and infrastructure projects, may be repurchased from the investor for state needs with the coverage of all costs, including expected revenues from the project.

A state guarantee will be provided with regard to the contractual obligations undertaken to the investor. If the agreement is terminated at the initiative of the investor, the Ministry of Economy will not be responsible for obligations undertaken by the investor in respect of the investment project.

The investor will be exempt from state duties and charges in connection with the BOT investment project, and the law *On State Procurement* shall not apply to investment projects carried out on the basis of the special financing rules provided by the Law.

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