

The Act for Civil Construction Projects in Roads and Transportation Sectors through the Participation of Banks and other Financial and Monetary Resources of Iran

Single Article- The Ministry of Roads and Transportation has been authorized to transfer financing and implementation of civil construction plans and projects in Roads and Transportation Sector to company(ies) that are specifically established for this purpose with participation of banks, companies, institutions, other financial and monetary resources as well as natural persons that according to the Statute and relevant laws are allowed to invest and participate in such activities.

In turn, the Ministry of Roads and Transportation is obliged to transfer the operating profits of the projects and plans subject of this law to the relevant company until depreciation of project expenses by maintaining government's ownership for a certain period which will be passed by the Council of Ministers.

Note 1- Construction, maintenance and operating the projects and plans subject of this law will be exclusively in accordance with the terms and conditions which are determined by the Ministry of Roads and Transportation. The mentioned Ministry will carry out direct supervision on the implementation of the aforementioned terms and conditions.

Note 2- The quality of supervising the implementation, operation, rental rate of constructions, pricing services and the procedure of collecting the revenues of plans and projects will be in accordance with the regulations of a by-law which will be passed by the Council of Minister within two months from the binding date of this law proposed by the Ministry of Roads and Transportation, Ministry of Budget and Planning, Ministry of Economic Affairs and Finance and the Central Bank of the Islamic Republic of Iran.

Note 3- The total costs (including direct and overhead expenses), as well as the implementation and maintenance costs of the projects and plans subject of this law will be depreciated within the period of transferring operating profits as confirmed by the appointed auditor from the Ministry of Economic Affairs and Finance and depreciated costs will be included in the acceptable expenditures of the relevant company as corporate tax.

If for some unforeseen reasons the projects and plans operations are suspended, the financial resources which had been spent will be compensated by the government.

Note 4- Implementation of the above-mentioned plans and projects does not contradict with other duties of the government in the implementation of civil construction plans and projects for public interests and the contents of this law are exercised in cases when there are another parallel routes or otherwise constructed to serve as an alternative for the users as they have the right to choose for using and paying for the tolls.

The present law consisting of a Single Article and four Notes has been passed by the Parliament in its Session on Sunday, November 15, 1987 and was enforced by the Guardian Council on October 31, 1987.

Single Article - The following text as Note 5 has been added to the Act for Civil Construction Projects in Roads and Transportation Sectors through the Participation of Banks and other Financial and Monetary Resources of Iran, passed on November 15, 1987.

Note 5- During the operating period of freeways, if the annual revenue earned by operation services is less than eighty five percent (85%) of the annual revenue predicted in the income-expenditure report appended to the contract, the difference maximum up to twenty five percent (25%) of the anticipated revenue will be paid to the investor from the earning of freeways.

The present law consisting of a Single Article has been passed by the Parliament in its Session on Wednesday, February 28, 2001 and was enforced by the Guardian Council on March 7, 2001.

Note 6- In case The Ministry of Roads and Urban Development with participation of the private sector embark on Highway to freeway conversion in routes with technical and economic feasibility and without any alternate route through observing all safety and technical specifications, by the time of construction of alternate route, it is only allowed to receive transfer, maintenance and operation costs of highway to freeway conversion via tolls.

Emblem
The President
The Resolution of the Council of Ministers

In the Name of God
Ministry of Roads and Urban Development
Ministry of Economic Affairs and Finance
Management and Planning Organization

The Council of Ministers in its session dated April 5, 2015 on the proposal number 45853/100/02 dated November 23, 2014 of the Ministry of the Roads and Urban Development and according to the Principal 138 of the Islamic Republic of Iran Constitution, passed the administrative bylaw of the Act for the Civil Construction Projects in Roads and Transportation Sectors through the Participation of Banks and other Financial and Monetary Resources of Iran and subsequent amendments as follows:

The Administrative Bylaw of the Act for Civil Construction Projects in Roads and Transportation Sectors through the Participation of Banks and other Financial and Monetary Resources of Iran

Article 1- In the present by-law, the terms contain the following meanings:

- (a) **Act:** The Act for the Civil Construction Projects in Roads and Transportation Sectors through the Participation of Banks and other Financial and Monetary Resources of Iran—passed in 1987 and subsequent amendments
- (b) **The Ministry:** Ministry of Roads and Urban Development
- (c) **Civil Construction Plan:** A series of operations and specific services based on technical-economic feasibility studies within a certain period and by a certain budget to realize the objectives pursued in the Civil Construction Plans for all sectors of transportation including infrastructure, fleet, maintenance and operation as fixed investment containing the associated unfixed expenditures during the study and implementation. Each civil construction plan might consist of several civil construction projects.
- (d) **The Contractor (company):** A company which is established to finance and implement the civil construction plan or project (as joint venture or transfer) in accordance with the contents of this by-law.

- (e) **Financial Resources:** The funds provided through stockholders' equity, the facilities received from or undertaken by the banks or investment institutions, and raised by selling project shares or securities and other financial instruments.
- (f) **Operating Profits:** Collecting revenues in [IR] Rials currency from facilities and services raised from full implementation of the civil construction plan or project.
- (g) **Participation or Transfer Period:** The overall duration of building civil construction plan or project and the operating period
- (h) **Construction Period:** The duration of planning, design, land ownership, implementation, temporary delivery, overcoming the shortcomings and starting the testing operation.
- (i) **Operating Period:** The duration of participation or transferring the operating profits from starting the operation up to full depreciation of the project expenses or settling with the partner
- (j) **MoU (Memorandum of Understanding):** A document drawn up by the Ministry and the company shareholders before the establishment of the company and concluding the contract.
- (k) **Contract:** A contract between the Ministry and the contractor (participation or transfer) for financing and implementing civil construction plan or project
- (l) **Participation Package:** A set of projects in transportation sector, auxiliary installations and other profitable projects that have been defined in the adjacent lands of related project beyond city boundaries and will be included in the investment agreement by the two parties

Article 2- In exercising the authorities enacted by law in transferring the plan or project, The Ministry acts as follows:

A- First model: Financing, implementing, operation and transfer

B- Second model: Financing, implementing, leasing and transfer

Note- In the contracts performed according to the second model, the civil construction plan or project, after completion, will be put under control of the Ministry in Hire-Purchase term

Article 3- In the contract, the entire duties and authorities of the project executive and operating party, according to circumstance, will be undertaken and put under the responsibility of the contractor until full completion of the project.

Article 4- The duties and authorities of the project executive in Articles 2 and 3 will be managed and exercised by the executive body exactly according to the duties and authorities carried out in the civil construction projects from construction funds.

Article 5- On any of the plan and projects included in the participation or transfer plan, the following topics must be studied, either by the Ministry or the contractor, and technical documents and papers shall be approved by the Ministry or its representative:

- a. Initial studies
- b. Feasibility studies
- c. Risk Assessment studies
- d. Environmental studies
- e. Economic feasibility studies
- f. Technical studies in the first stage
- g. Technical studies in the second stage
- h. Level 0 time schedule
- i. Land ownership plan
- j. Supply plan for machineries, equipments and specific materials
- k. Financial plans including balance sheet (income and expenditure account), capital depreciation and investment returns, cash flow in construction and operation processes
- l. Implementation structure
- m. Operational system and determining service level and maintenance
- n. Operational structure

Note- The service description and the framework of presenting aforementioned studies in this Article will be notified based on the guidelines approved by the Ministry of Roads and Urban Development.

Article 6- The estimation of earnings anticipated by participation should, in minimum, contain the information on [IR] Rials estimations of the quantities related to the following items during participation period or transfer of operating profits, according to the growth rate proportionate to each title and based on the results of economic feasibility studies of the plan or project:

- a. Earnings from selling services
- b. Earnings from received tolls in the place
- c. Earnings from using lands located in the boundaries of plan or project
- d. Earnings from auxiliary installations beyond the boundaries of plan or project
- e. Earnings from long-term leasing of the plan or project to the Ministry
- f. Earnings from advertisements including billboards
- g. Earnings from investments in adjacent lands of the plan or project predicted in the participation or transfer package following the relevant regulations.

Article 7- The revenue streams, the base price and the growth rate of each should be presented in the economic feasibility and financing program documents and, following relevant regulations, should meet the Ministry's approval.

Article 8- The contract including the agreement and relevant appendices containing, at minimum, the below items should be prepared as a unified document that after being signed by the parties is valid and serves as guide to action:

- a. Agreement based on approved format
- b. General terms
- c. Specific terms
- d. Summary of technical and engineering studies performed by the time of concluding the participation or transfer contract
- e. The placement map of the plan or project
- f. Certificate of confirming environmental assessment studies by Iran Environment Protection Organization in projects subjected to the environmental evaluation in accordance with the law
- g. Final document on risk assessment studies
- h. List of required insurance policies by determining the beneficiaries and introducing responsible persons to receive them
- i. Balance sheet (income and expenditure account)
- j. Cost estimations as described in Article 5
- k. The revenue estimations as described in Articles 6 and 7
- l. The administrative structure of design and construction
- m. The administrative structure of operation
- n. List of binding circulars in design, construction, operation, leasing and transfer
- o. Other permits and necessary confirmations at the discretion of the Ministry.

Article 9- The applicant(s) for participation or transfer can present their offers in two ways:

- a. In case of availability of documents and papers subject of Article 8, they can complete and present worksheet (form) of proposal by studying them.
- b. The documents and papers subject of Article 7 are prepared by the applicant(s) and after the Ministry's approval, the proposal is presented by completing the worksheet (form)

Note: In case 'b' and in case of exchanging the participation or transfer contract, the expenses incurred by the participation body in preparing mentioned documents and papers will be registered as eligible expenses.

Article 10- After studying and ascertaining the potential ability of applicant(s) for participation or transfer in the civil construction plan or project subject of application, The Ministry will notify the applicants in writing on the Ministry's principal agreement for concluding participation or transfer contract.

Article 11- The applicant(s) for participation or transfer should embark on establishing the company within two months from the date of receiving the principal agreement on the part of the Ministry in order to conclude participation or transfer contract and in getting the permit for transferring the benefits of operating party from the civil construction plan or project subject of application.

Article 12- The companies established for implementing Article 11 will be Joint Stock Company.

Article 13- the contents [of contract] for Contractor Company will be limited to the following:

- a. Financing, implementation, operation and transfer
- b. Financing, implementation, leasing and transfer of a plan or a project

Article 14- The duration of Contractor Company is limited and is based on the construction and operating period up to the full depreciation of the costs of civil construction plan or project subject of participation or transfer

Article 15- The fund/capital of Contractor Company should equal to 30% of total estimation stipulated in the approved technical studies of civil construction plan or project.

Article 16- While financing, the contractor company is allowed to implement the plan or project subject of contract independently by observing related rules and regulations or transfer it to qualified construction companies.

Article 17- Responsible companies for planning, design, supervision, construction, quality management and similar services, through the contractor's consent and in accordance with contents of Article 16, must hold reliable qualification certificates issued by relevant authorities approved by the Ministry.

Article 18- Any transfer in the share of Contractor Company should be done by written confirmation and approval of the Ministry.

Article 19- The auditing of Contractor Company during participation or transfer period will be the responsibility of the auditor, who is chosen and approved by the Ministry of Economic Affairs and Finance.

Article 20- The Ministry will be authorized to conclude contract after submitting the registration certificate of company (the Contractor) and getting the resolution of the Council of Ministers.

Article 21- In all contracts of construction and installation operations in civil construction plans and projects subject of the law, the “General Regulations and Terms of Contracts” passed by the Ratification Council of Second Development Plan, and its subsequent amendments and changes as well as the circulars and guidelines issued during Fifth Development Plan will be used by virtue of Article 23 of Planning and Budget Act, its subsequent amendments and changes and the resolutions of the Ministry of Roads and Urban Development.

Article 22- The application and exercise of the process mentioned above includes the contract signed by the Ministry and the contractor company or the contracts that are concluded by the contractor with developer in implementing the participation or transfer contract for the purpose of construction, maintenance and renovation of the plan or project subject of participation or transfer.

Article 23- The entire authorities in concluding the contract:

- a. Stipulated in Article 6 of the “General Terms of the Contracts” titled as supervision in implementation
- b. Stipulated in Articles 4 and 5 of the “General Terms of the Contracts” titled as “supervisory body” and “resident supervisors”
- c. Mentioned in other terms of contract, “General Terms of the Contracts” and subsequent amendments as specified in Article 22 of this by-law on technical supervision, the supervisory body and resident supervisor will be organized and exercised exclusively by and through the Ministry as the legal substitute and representative of the contractor.

Article 24- The Ministry has exclusive responsibility and duty in exercising the law on appointing consultant engineers, monitoring the supervisory personnel, approving the maps and amending technical specifications within the framework of laws and regulations.

Note- The expenses of appointing the consultant engineers, monitoring supervisory personnel, approving the maps and amending technical specifications will be funded from the development budget of the Ministry.

Article 25- In enforcing the law, the entire obligations and authorities of the employer, subject of clause A and its Note stipulated in Article 28 of the general terms of the Contract will be the responsibility of the Ministry.

Article 26- For the civil construction plans and projects which are included in the category of approved development plans, prior to concluding the contract and acquiring the ownership, the Ministry is obliged to make the arrangements stipulated in clause A and its Note in Article 28 of "General Terms of the Contract" from development budget to assure that those subjects would cause no delay or stop in implementation during construction period for the contractor.

Article 27- For the civil construction plans and projects subject of clause B, Article 13, the arrangements in clause A and its Note stipulated in Article 28 of "General Terms of the Contract" will be performed by the Ministry and at the contractor's expense. These expenses will be considered in the expenditures of the plan or project subject of participation or transfer.

Article 28- The temporary or final delivery of the plans or projects subject of the law will be assigned to a commission consisting of the representative of responsible unit from the Ministry for signing participation contract, the representative of the contractor company, representative of the supervisory body, the representative of contractor (if it is legally independent from the contractor company) and representative of the operating body which operate the project (according to circumstance, the Roads Maintenance and Transport Organization, Railway of IRI, Ports and Maritime Organization, Iran's Airports Corporate Holding Company or Department of Rural Roads). This commission is a substitute of the commission subject of Article 39 of "General Terms of the Contract".

Article 29- During the operating period, the affairs related to the performance and procurement of services which must be provided to maintain entire building/constructions in their initial state according to the maps and specification of the civil construction plan or project, as mentioned in the temporary delivery minutes and the administrative documents (construction), will be classified under "civil construction plan or project maintenance" and will be considered the duty and responsibility of the contractor company and the costs of performing these affairs will be included in the costs and expenses of the civil construction plan or project subject of participation or transfer.

Article 30- During operating period, the affairs related to re-construction of any operations within the construction period which have been already predicted in the civil construction plan or project will be classified under "renovation" and shall be under the responsibility and duty of the

contractor company; and the costs of performing such affairs are included in the costs of the civil construction plans or projects subject of participation or transfer.

Note- Due to possible differences between real costs of renovation and the amounts predicted in initial financial balance sheet (appended to the contract), the financial balance sheet shall be modified with the real costs of renovation expenses and the report of changes must be signed by the two parties.

Article 31- During operating period, the contractor company is responsible for organizing administrative-official affairs for getting the operating profits from civil construction plan or project subject of participation or transfer and the costs and expenses of this task will be considered as part of expenses of civil construction plan or project subject of participation or transfer.

Article 32- After approving the report of overcome shortcomings, and performing the formalities of temporary delivery and issuance of testing operation permit, the contractor company will be allowed to start collecting the operating profits from the plan or project subject of participation or transfer.

Note- Issuance of testing operation permit is the duty of commission subject of Article 28.

Article 33- On leasing the auxiliary buildings/constructions of the civil construction plan or project to a third party through leasing contract, the rental rates should not be less than the rate determined by the Ministry. In enforcing this order, the Ministry should consider the rental rate of similar buildings/constructions by inquiry one month before the start of a three-year operating period, prepare the table of minimum rental rate of the buildings/constructions of civil construction plan or project and by practicing twenty percent reduction, notify it to the contractor company.

Article 34- The Ministry will set and specify the rate of operation services obtained from implementing the civil construction plan or project determined according to Articles 6 and 7 and has been used as the basis in estimating the anticipated revenue from participation in the income-expenditure studies of the civil construction plan or project as well as the duration of transferring the benefits and any changes in it.

Note- The toll road of vehicles in freeways and other charges receivable from the plans and projects relating to the participation or transfer (contract), subject of this law and by-law, according to Articles 7 and 8, will be implemented and received by the approval of

the Minister of Roads and Urban Development and notification of the Ministry and by observing the relevant laws and regulations.

Article 35- In collecting the [IR] Rials revenue from implementing civil construction plan or project, the contractor company should precisely follow the rates determined according to Article 34.

Article 36- The contractor company should prepare the procedure of receiving the Rials revenues from implementing civil construction plan or project and propose it to the Ministry after concluding the contract and within six months prior to commencement of operating period.

Article 37- The assessment, adjustment, final formulation and approving the collection procedures fall under the authority of a commission, consisting of the representatives of the Ministry of Roads and Urban Development, Ministry of Economic Affairs and Finance; and Management and Planning Organization, to be held according to the circumstance.

Article 38- The above mentioned commission in Article 37 should determine and approve the administrative procedures and arrangements for collecting the revenue of services earned from civil construction plan or project, subject of assessment, within three months from the date of meeting.

Article 39- The administrative process in the collection procedures as approved by the commission of Article 37 will be binding for both parties and must be carefully followed by and supervised in collecting Rials revenues from services subject of implementing the civil construction plan or projects.

Article 40- The commission subject of Article 37 is exclusively authorized to make any changes or modification in the administrative procedures of collecting Rials revenues.

Article 41- In the operation of civil construction plans or project, the contractor company should carefully follow the standards, instructions and regulations for operating the plan or project published by the Ministry and/or directly notified to the contractor company.

Note 1- The contractor company should observe the technical standards and contents of the guidelines and regulations issued by the Ministry in order to secure the level of service provisions based on the appendices to the contract.

Note 2- In case of transferring the plan or project based on clauses A and B in Article 2, the contractor company will be responsible for compensating the loss to natural persons

or legal entities incurred by its negligence in observing the contents of Note 1 of this Article.

Article 42- In case of accidents during operation process, the contractor company will be obliged to provide the first aid and emergency medical services for transferring the injured and the victims to the nearest clinic that has been equipped by the contractor, according to the demands of civil construction plan or project, and provide those services free of charge to the users of civil construction plan or project subject of participation.

Article 43- To facilitate supervision during operating period, the Ministry should prepare a minimum supervision plan for current practice as well as a plan on the operation approach according to each civil construction plan or project and notify it to the contractor company one month before start of operation.

Article 44- The contractor company is obliged to procure necessary facilities for good performance of current and scheduled supervision plans of the Ministry in supervising the operation.

Article 45- The contractor party should deposit 5% of the operating profits from implementing the civil construction plan or project (gross income) at the end of each year to a specific account which will be opened at the treasury office by the Ministry for this purpose to serve as the operation performance guaranty for the next year.

Article 46- The contractor company is obliged to calculate the guaranty for good performance of operation for the first year of operation by calculating 5% of the revenue of the first year stipulated in the income-expenditure or the civil construction plan or project report and while signing the minutes of temporary delivery, transfer that amount to the account mentioned in Article 45. The bank receipt will be appended to the temporary delivery minutes.

Article 47- If the contractor company shows negligence in fulfilling the obligations it has undertaken for the operating period according to the contract and/or act in a way that causes damages to the civil construction plan or project subject of participation or transfer and/or cause disorders or safety issues for operation process, the Ministry will send a written notice and after fifteen days from expiry date in the warning will independently perform those obligations in any manner it deems necessary and will deduct its cost plus 15% as compensation from the guaranty for good performance of operation subject of Article 45. The Ministry should notify the invoice

of expenses imposed to it within one month after the occurrence of those expenditures to the contractor.

Article 48- If due to the negligence of the contractor, the construction period exceeds the deadline in the contract, not only no interest will be accounted for the contractors' capital during delay, but also the interest of the Ministry's capital will be calculated (equal to the interest rate which has been passed for the contractor) and will be deducted from the profit of contractor as government compensation. If due to the above-mentioned delays and/or withdrawal of the contractor, the project stops, no interest will be calculated for the contractor from the suspension date of operations and the Ministry will be authorized to limit the contract and assign the project completion to other investment applicants. In such cases, after the completion of the project, it will be put under control of the new investor for return on capital and profit and after full return; the project will be delivered to the initial investor for operation.

Article 49- If the costs of plan are not depreciated at expiry date of transferring the operating profits, the duration of transferring operating benefit will be extended until full depreciation of project expenses.

Note- At the request of the contractor company and upon agreement of the Minister of Roads and Urban Development, the Ministry will be responsible for operation in the same manner as practiced in the cases when the expenses have not been depreciated and an amount equal to the depreciated expenses will be paid to the contractor from the revenues of plan or projects and/or other resources related to the Ministry of Roads and Urban Development based on preparing and exchanging appendix to the contract.

Article 50- The auditor appointed by the Ministry of Economic Affairs and Finance will be the authority in recognizing full depreciation of the civil construction plan or projects expenses subject of participation or transfer.

Article 51- After full depreciation of plan or project expenses, subject of participation or transfer, the contract will be terminated and the Ministry will be obliged to undertake operation of services resulted from implementing civil construction plan or projects subject of participation or transfer independently.

Article 52- In organizing the participation body, the Ministry will be allowed to make the arrangements and obligations related to the establishment of public joint stock companies by applicants after receiving permit of the Council of Ministers in each case.

Article 53- For the purpose of lowering the investment risk and encouraging investors to participate, the Ministry will be authorized to take compensatory measures during or after termination of participation or transfer period as specified in the contract for compensating lack of return on capital, based on the contents of contract.

Article 54- For each transportation sector, the Ministry will open a centralized account at the treasury to take action for getting accessibility right and thereby according to the determined rates in the contract and by considering the priorities embark on paying the installments of depreciating the capital and profit of the contractor's equity, the operating, maintenance, development, compensatory and possible actions expenses subject of Article 53, or otherwise to bind the contractor to keep the accounts during construction and operation and to submit their interim, six-month and annual financial and audited statements to the Ministry within two months from expiry of fiscal period in accordance with accounting standards and based on a uniform guideline proposed on the part of the Ministry.

Article 55- The contractor companies are not allowed to enter into transactions and registry items irrelevant to the scope of activities of company (construction and operation of the plan or project subject of participation or transfer contract) during the period of contract. They are prohibited to use the funds and budgets of the company for other purposes other than construction, maintenance and operation of the plan or project.

Article 56- For proper management of the changes in the contents of contract and solving possible disputes in interpreting the contents of the contract (agreement and all its appendices), the subject of arbitration and its performance will be reflected in the contract.

Article 57- The Ministry should prepare and release annual report on the performance of project or plan for the information of beneficiaries in the process of contract.

Article 58- The contract is an integrated whole articulated by independent parts and entering into any stage requires the confidence and documentation of fulfillment of previous stage. To guaranty the fulfillment of the agreements, it is necessary to define specific compensation for each part and for each party proportionate to their responsibility and the collection manner of compensation must be specified in the contract as well.

Article 59- This by-law replaces the administrative by-law of the Construction Projects Act in Roads and Transportation Sectors through the Participation of Banks and other Financial and

Monetary Resources of Iran, subject of resolution number H92T/4506 dated May 14, 1988 and its subsequent amendments.

Eshagh Jahangiri

Vice President

Signature

CC:

The Office of Supreme Leader, The Presidential Office, The Office of Head of the Judiciary, Office of Vice Presidents, Secretariat of Expediency Council, Legal Department of the Presidential Office, Department of Parliamentary Affairs in the Presidential office, Executive Department of the President, The Supreme Audit Court, Administrative Court of Justice, The Inspectorate Organization, Department of Laws of the Parliament, Department of formulation, refine and Release of Laws and Regulations, all ministries, organizations, governmental and public institutions, Islamic Revolution bodies, Official Gazette of the Islamic Republic of Iran, Secretariat of Government Information Council and Office of Council of Ministers
