

The Role of Public-Private Partnership Contracts in Tourism Industry Development

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Abstract

Tourism industry is the largest service industry in the world that can bring numerous economic, cultural and social benefits for countries. Tourism development and enjoying the revenues of this industry entails building the facilities needed in which, unfortunately, most governments do not have sufficient expertise and capital. Private sector investment through different patterns of public-private partnership is an effective contractual approach, which provides conditions where both the public and private sectors can proffer their own capabilities to the project in order to maximize efficiency, at the same time that it supplies the project's needed capital. In this study, the approach adopted by some countries regarding public-private partnership contracts in tourism industry and also Iranian regulations have been investigated. It appears that, according to the characteristics of the partnership agreements, in case of the required legal bases being provided, this method has appropriate capabilities for using in tourism projects, particularly in sample areas of tourism.

Keywords: Public-Private Partnership, Tourism, Investment, Investment Contracts, Private Sector, Sample Areas of Tourism.

Introduction

Today, tourism with more than one third of total of service trade is known as a dynamic, currency creating and developing industry around the world (WTO, 1998). In addition to the considerable cultural and social impacts, tourism services can also help increase income, employment, income value and tax revenues economically and have an effective role in the reduction of poverty, especially in developing countries. Tourism, as the world's largest service industry (AP, 1998), has been seriously considered by various countries and has experienced steady and increasing growth in recent years. This industry has close correlation with development (UNCTAD, 1998). This has turned tourism into one of the main objectives

and aspects for commercial and social development and has transformed its investment development into one of significant concerns of governments.

Investment in tourism does not merely involve establishing hotels, restaurants, shopping and entertainment centers, but also transportation related projects, including the construction and reconstruction of airports, railways, ports and communication lines are all placed in the territory of this investment and directly correlated with it. This is despite the fact that the government budget constraints, particularly in developing countries, prevent the substantial investments made in this industry in many cases (Teker, 2012).

The length of the construction and implementation of projects by governments is another problem which severely questions the economical justification of governmental economic plans. Usually, in government management, concern for the completion of the plan in the prescribed period is not necessary and most projects take a long time to reach completion, due to various problems such as low budgets, technical and administrative problems, and the long decision-making process. This problem more obviously appears in the field of tourism. Tourism industry is an industry which is rapidly evolving and becoming new. Needs and wishes of the applicants are also constantly changing and being updated.

To these examples, the following must also be added: Non-competitiveness of establishing installations by the government, lack of financial and managerial autonomy necessary to carry out the project, the impossibility of considering inflation in providing services tariffs, lack of appropriate procedure of evaluating governmental organizations and not requiring response for the provision of services. The above-mentioned factors have led the governments to the conclusion that for achieving higher efficiency and less expenditure, the only solution is to exploit financial and managerial power of the private sector.

On the other hand, investment, particularly in some areas, requires special facilities, services and licenses which the private sector alone cannot provide it. Implementing some of these projects has special significance for the government and its complete assignment to the private sector might delay or negate the project, due to factors such as jobbery of the private sector or the existence of some risks. Accordingly, the complete assignment of the plan to the private sector is not feasible as well and governments themselves practically prefer to participate in such projects as well, both to ensure their good performance and apply direct supervision on the project and to better manage and control it in case of the occurrence of risks such as political risks.

Resorting to new innovations and new ways of financing can be considered as an appropriate method of attracting private investors to co-invest in projects related to public services, including in the tourism sector.

The Use of Public-Private Partnership Contracts in Infrastructure Plans and Public Services

Since the beginning of the 1990s, the use of public-private-partnership (PPP) contracts was taken into consideration in many countries and throughout years, governments more severely continue to encourage further private sector partnership in infrastructure and service projects through partnership methods (Darr, 2008). Currently, many of the developing and developed countries use this method for conducting various projects on national and domestic levels.

Due to the features and capabilities that exist in the public and private sectors each, the partnership and collaboration of these two sectors and the integration of their capabilities with each other and the division of existent risks can have a significant impact on optimal implementation of infrastructure projects and public services.

In fact, public-private partnerships are long-term contractual arrangements between public sector and private sector entities that are specifically aimed at financing, design, implementation and operation of infrastructure and service installations (Asian Development Bank [ADB], 2008). The features of such contracts are partnership in investment, risk, responsibilities and revenues between the parties involved. Its aim is to deliver a specific project or services which have traditionally been financed by the public sector (International Monetary Fund [IMF], 2011), nevertheless, for some reasons, the government decides to accomplish it in partnership with the private sector. Basically, the involvement of both sides of the partnership contracts is considered a necessity (Grigorescu, 2008). The contract subject includes the establishment of installations and their operation based on the attributes and the period stipulated in the contract.

Generally, in this method, rather than directly implementing the project, the government transfers the "privilege" of establishment and operation of a project to a private host company for a specific period of time; the project could, for example, be the establishment of an airport, the development of ports or the manufacturing of entertainment centers or hotels. The company is responsible for supplying and collecting the necessary capital (wholly or partially) and designing the project. During operation of the project, the company holding a privilege which is supposedly called "Project Company" or "consortium," withdraws its initial capital and expected profit, which is determined based on the preliminary agreement with the state sector, from the sale of project services or goods and typically returns the management of installations to the state sector at the end of the privilege period, as its conditions are specified in the contract. As might be expected, in some methods, the ownership of the project installations will always remain owned by the private sector (practically until the end of the project's useful life).

Obligations of each of the partners may vary from project to project. In some models of partnership, the private partner typically comes in various aspects of service delivery, whereas in another model merely has a minimal role and, as an instance, is only involved in project construction. Certainly, it should be noted that despite the changes which may occur in the role and responsibilities of each party, the total role and responsibilities of the government will not alter drastically (Teker, *ibid.*). In this method, the private sector can take a heavy burden from the shoulders of the government by accepting the risk of establishment and operation and costs in complex projects. One of the principles of allocating risk is that the risk should be transferred to the party who could manage it better and at lower cost (Yescombe, 2011). Accordingly, the public sector should identify project risks in the partnership process and make decisions regarding their transfer.

In any case, this method makes it possible for both public and private sectors to combine their specific skills with each other and to obtain good results, the conclusion that none of the parties alone could achieve (Akintoye, 2008). Of other effects of the public and private sector partnership the following can be mentioned: Reduction of superfluous administrative bureaucracy and acceleration of the decision-making process (Allen, 2001), use of the latest and more efficient technology, reduction of the final costs of services provided, improvement of the construction capability, repair and maintenance, prevention of unnecessary and indiscriminate uses due to the payment of service cost by users (Falamarzi, 2009), greater efficiency in the use of available resources.

Public-Private Partnership Contracts in Tourism Projects

One of the projects in which the use of public-private partnership contract has been the focus of countries is the projects related to tourism industry. Investment in tourism industry demands specific requirements due to the specific characteristics of this industry. In tourism industry, lack of optimal utilization of capacities or failure to provide optimum services sometimes damages the structure of a country's tourism irreversibly. Benefiting from technologies and current knowledge is specifically addressed in tourism, in order to provide services and enjoy an efficient and powerful management. Accordingly, special attention has been given to decision making apropos the method of establishment, renovation or improvement of tourist facilities in which the use of technical and managerial skills are of extraordinary importance. The private sector can normally handle such tasks well, because of the capabilities and the professionals it possesses.

At the same time, government initiative is considered a necessity for attracting investors in tourism projects and creating a sense of confidence in the investor. This is the government which must take the first steps, provide the necessary contexts for investment and introduce investment opportunities, facilities and legal supports to the investor in any instance. In addition, due to the features of this industry, investment in tourism projects occasionally requires spending abundant budget in remote and impassable regions which, nevertheless, possess unique characteristics for tourist attraction. The provision of public facilities and services, from communication lines to water and electricity and etc., makes it essential for government to be involved in implementing these projects.

Countries' Approach to Partnership Contracts in Tourism Projects

Today, the world developed economies are increasingly applying public-private partnership contracts in various fields; from the construction of urban and inter-urban roads to the renovation and revival of urban distressed areas and from upgrading the infrastructure installations to establishing and improving the recreational and accommodation centers. The developing countries have also recognized the significance of these contracts and endeavor to seriously utilize this method in various projects. In a way that the total value of projects conducted within the framework of public-private partnership contracts has been over 880 billion dollars since 1985, a figure that is rising as well. Of the most leading countries using the partnership method, Canada, Britain, China, Australia, America, India, Malaysia, Singapore, Turkey and the Czech Republic can be named. As is seen, the developing countries have also recognized the importance of such contracts and are among the leading countries in the use of partnership contracts.

Numerous patterns and methods are utilized for partnership around the world and in each of them, government obligations and those of the private sector differ. Some patterns are more common in specific countries (1. As an example, private finance initiative (PFI) method can be noted which is popular in the UK) and some others are applied in a broader level of countries. Build-Operate –Transfer (BOT) and Build-Own-Operate (BOO) can be cited as two of the most common patterns of this method in the field of tourism.

As a practical example of public-private partnership contracts, the establishment of the seven-floor commercial center along with a public market in the city of Mandaluyong located in the Philippines can be pointed out. The government of this country passed the law of construction, operation and transfer in 1990. This law provided the legal basis required for the formation of public-private partnership method and allowed the performance of numerous projects including tourism projects through this method. Accordingly, a

commercial consortium comprising private companies announced readiness to carry out this project entitled “Marco Funder and Developer Corporate” (MFD). In India, the public-private partnership approval Committee (PPPAC) has alone ratified 226 offers with a cost over 224,466,151 Rupees since January 2006. All of these initiatives are on infrastructure development, especially in highways, ports, airports, resorts and tourism infrastructures, railways and sports stadiums. According to this report, nearly all of these contracts have been of BOT and BOO types (KPMG).

By investigating the international experiences of public-private partnerships, Irish experts concluded that, in this country as well, this model can be utilized in the areas of public transport, road construction, water and sewer systems, and public parking. Consequently, they proposed the building and launching of a series of pilot projects using this method to be submitted to the government. The government also approved the relevant legislation in August 1998, by placing conditions for the private sector entrance in these areas and established the public-private partnership projects headquarters in its financial department in the August of 1999 (Ter-Minassian, 2004).

The Vietnamese government has predicted a group of incentive measures for encouraging the private sector to participate in BOT projects. Measures such as:

- 1) Exemption from paying tolls and income tax for 4 years or an 8-year exemption for projects with higher significance that have been presented and encouraged by the government;
- 2) Exemption from customs duties on machinery and equipment required for the project (Ghiasabadi, 2011).

Using public and private partnership in Australia began since 1980 and has demonstrated an appropriate development ever since, such that, currently, this method is utilized for providing services in expansive fields including the establishment and operation of projects such as roads, airports and railways and also social infrastructure installations (schools, hospitals, jails etc.).

The key factors in public-private partnership development in Australia include:

- The belief of public sector executive directors in the private sector capability in management and various infrastructures,
- Existence of a clear procedure of financial supplying and equipping for large scale infrastructure projects
- Existence of an efficient network of departments and offices of public-private partnership in the states
- Providing appropriate interaction with domestic and foreign investors, contractors, suppliers of equipment and financing institutions.

As observed, BOT is the most common method of public-private partnership, particularly in tourism projects. In the framework of a BOT contract, the private sector is responsible for the construction of a project and takes the operation privilege and earning revenues from that for a specified time period after construction in order to compensate for the project construction expenditures. After the end of this time period, the said project will automatically be transferred to the contracting government (Shiravi, 2005). This method has been used in many countries, including Iran. The advantage of this method for government is that the private sector is committed to hand over the project to the government after a certain period. This makes it possible for the government to benefit from the project revenues in future. Needless to say, the government can proffer the project again to the private sector as a lease contract. (IMF, 2011).

Use of Partnership Contracts in Iranian Tourism Industry

The first law to have had a glimpse of one of the partnership methods is the “Law on Promotion and Protection of Foreign Investment.” In Article 3 of this law, the use of BOT contracts as a means of accepting foreign investment in all sectors of the economy has been stipulated. However, the law does not mention the public-private partnership contracts. Not unexpectedly, a law that would specifically address this issue in the tourism industry in Iran has not yet been passed. The only notable rule in this area is “executive bylaw of the formation and administration of sample areas of tourism” 2004, which, without reference to the partnership approach, has assigned the establishment of infrastructure and service installations in the tourism sample region (Article 7) and the implementation of the region’s approved projects to the private investor (Article 9). The public sector is also obliged to hand over state lands needed to build the region to the investor within two months (Article 6) and after the establishment of the region, offer its services to the investor in the region’s entrance. In this bylaw, the necessity for previous agreement between the private and public sectors and the determination of partnership method have not been pointed out and, basically, the government has, intentionally or unintentionally, avoided applying the term “partnership” for the implementation of projects in tourism sample region.

In this context, the private investor, who can be a domestic or foreign investor based on the stipulation of this law, takes on the construction and operation of the project and the public sector is responsible for supplying the needed equipment such as water, electricity, gas and telephone until the entrance to the region.

Due to the fact that in this bylaw, the partnership method between the private and public sectors has not been stipulated, this question is raised whether the placed contract can be detected as a kind of public-private partnership contract? In other words, whether the government and private sector can be referred to as partnership in creating mutual obligations in order to carry out tourism sample region project?

In order to find the answer, it is necessary consider other available laws regarding the public-private method. For the first time in the country’s legislative history, section 126 of the 2013 Budget Law of the whole country explicitly refers to public-private partnership method in order to utilize non-governmental sector capacities. Top of this section requires all governmental institutions to use this method to begin the executive operations of projects and or large initiatives adopted by public companies. In article 5 of the executive bylaw, this paragraph has been pointed out that the relevant executive institution attempts the implementation of the contract with the established project company, in the framework of the rules and regulations. Needless to say, in this article, there is no reference to the requirement of mentioning the title of partnership contract and the determination of its type in the contract.

In tourism sample regions also determining the contract conditions and scheduling the implementation of different stages of the project and investor’s obligations will be according to the contract which will be concluded between the investor and Tourism and Cultural Heritage Organization. Of course, what is inferred from the function and action of the relevant governmental bodies and the investment company in the establishment of tourism sample region is the cooperation and mutual commitment to develop this region.

Another point that needs to be addressed is the type of public-private partnership contract in tourism sample regions.

To investigate this issue, it is necessary to determine whether the required lands in tourism sample regions are transferred to the investor so that its ownership always belongs to the

investor, or the intended region is merely assigned to the investor for the construction of the tourism sample region without having any ownership rights to that.

According to Article 6 “executive bylaw of the formation and management of tourism sample regions,” in areas for which the agreement of establishing tourism sample region is issued, the National Land and Housing Organization, Municipalities, country’s Forests, Rangeland and Watershed organization and other ministries and agencies concerned are required, according to Tourism and Cultural Heritage Organization demand, to concede the state lands required for creating the region to the investor within two months. In this article, only the concession of public lands to establish the sample region is spoken and it is not specified whether the meaning of this concession is the transfer of ownership or transfer of benefits or the establishment of an advantage for the investor. Certainly, clarifying this issue will have a decisive role in determining the type of partnership contracts relating to these regions. Accordingly, it is required that first the available legal procedure regarding partnership contracts and the type of such contracts in the existent laws of the country be considered to practice law in the partnership agreements and contracts in the existing rules to be considered and the possibility of impossibility of adapting this procedure to the placed contracts in tourism sample regions be evaluated.

Perhaps, it can be said that Section 3-126 of the 2013 Budget Law has clarified this issue. The paragraph reads: “The required land is provided by the executive administration based on the related rules and regulations and is proffered to the project company the type of operation for a maximum of fifty years of the project.” In this paragraph, the executive body is responsible to provide the relevant company with the required land for a certain period of time. Giving land for up to fifty years to the project company has also been specified in Note 8 to the 2014 budget bill which applies public-private partnership method. Durability and permanence cannot be inferred from determining the period for concession, even if the period is a long term; while one of the distinguishing characteristics of ownership is its permanence (Katoozian, 2001) and the majority of lawyers have known this attribute of ownership to be definite. It seems that the contract of conceding land to the project company is a long-term lease contract. Now it should be considered whether the contracts placed in tourism sample regions are also, similar to the said partnership contracts in the budget law, a kind of long-term lease contract or is intrinsically different than such contracts.

Prior to responding to this question, it must be noted that since “the bylaw of the formation and administer tourism sample regions” is regarded as a special law, it has considered arrangements for implementing contracts related to the sample regions. Article 8 of this bylaw has discussed the decisive concession of land to the natural and legal persons by the investor. land concession through lease contract, even for a long-term period, cannot be considered as a definitive concession. In addition, in the last part of article 8 of the bylaw, the presale of lands by the investor for supplying some infrastructure expenditures of the region has been pointed out. The possibility of pre-selling the lands by the investor leaves no doubt as to the investor being the owner. Evidently, the presale of the invested lands is possible if the investor themselves has ownership over the lands. Otherwise, the investor’s act would be considered an act of intrusion and sale of other’s property (Katoozian, 2002).

Accordingly, it must be mentioned that the said concession in article 6 of this bylaw by the related executive bodies will not have any other meaning but the transfer of ownership to the investor. In the confirmation of this viewpoint, article 6, “Law of Development of Traveling and Tourism Industry” can be cited. Under this article, the urban land organization, municipalities, country’s forests and rangelands organization and other relevant ministries

and agencies are required to concede the land to the applicants for the establishment of tourism facilities with the introduction of cultural heritage organization, according to the regional or total price so as not to reduce public money. This subject is also reaffirmed in paragraph 2 of Article 22 of the law including articles to the law of arranging some financial regulations of government. In this article, the concession of the land required for establishing tourism facilities in regional or total price has been discussed.

Based on the said phrase in paragraph 1 article 22 of the law including articles to the law arranging some of the financial regulations of government, namely that only national land and housing organization is assigned, specifically among governmental organizations in charge of concession, to proffer the required lands to the investors on lease or on a five-year ownership condition, this meaning can be inferred that the purpose of the assignment by other concerned governmental organizations and bodies is no other than the transfer of ownership. Particularly since in these articles, the determination of property price according to the regional or total price is also mentioned. Due the fact that these laws have also been passed in the area of land concession for establishing tourism facilities, the unification of their criteria can be utilized to determine the concept of concession in tourism sample regions.

Based on this idea and by accepting the viewpoint of the transfer of ownership to the investor in tourism sample regions, the kind of public-private partnership contract placed in such regions can be discussed. It was said that in these regions, land ownership is transferred to the investor and the investor is obligated to construct and operate the project and is not required to transfer the project to the government after a certain amount of time. Accordingly, it seems that the said project structure is more consistent with BOO contracts. In such contracts, the project company is obligated to construct, financially supply and operate the project permanently and the project company has no obligation to transfer it to government. In other words, the project company operation of the project is not restricted to a certain time period (Shiravi, *ibid.*). The role of government in these contracts can be supplying the required land or applying needed supports such as the guaranteed purchase of services generated by the project. In this method, the project of contract subject is in a way that the government permanently transfers its ownership to the private sector for more encouragement of investors or absence of profitability of transferring project ownership for the government.

This transfer of ownership is not an absolute and unconditional transfer and the related organizations will do the concession through the reached agreement with the cultural heritage organization and on condition of establishing a tourism sample region. Needless to say, this conditional transfer does not damage the BOO contract; since in the conditional ownership, the investor is will be the owner of the assigned lands from the beginning and prior to setting the contractual conditions.

Conclusion

Today, tourism is the world largest service industry and is considered as the fastest economic section of the world. Consequently, it has been the serious focus of various countries. The development of this industry, in addition to spatial capacities and capabilities, is exceedingly dependent on the establishment of facilities, infrastructures and the required equipment. Providing this context requires abundant investment or the application of techniques or expertise which, in most instances, cannot be supplied by the government or the private sector alone. The public-private partnership method is an approach based on which the private sector with the partnership of the governmental sector takes on the planning,

construction financing and operation of a specific project with the objective of presenting public services. In this regard, the government also supports the private sector and provides equipment and facilities such as the project location, water, electricity and telecommunication facilities, tax exemption, etc. for the private sector.

In tourism industry, providing contexts for private-public partnership in each of the areas of public and private investment relevant to tourism industry can provide an appropriate context for the exploitation of expertise and new technologies in the field of tourism. Various examples of the occurrence of such contracts exist in tourism industry of different countries. BOT pattern is one of the most popular partnership methods in this area.

Despite appropriate capacities of this method and also great need of partnership method in costly and specialized projects of tourism industry, this method has still not found its place among Iran's national and regional large projects. Some regulations of the country have fleetingly worked with the partnership method, which, albeit an effective step, have been criticized as well. To be sure, using public-private partnership method in various projects including tourism requires abundant legal contextualization such as passing laws with an effective implementation guarantee and considering the place of private sector.

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