



The Jurisprudential and Economic Foundations of Build-Operate-Transfer (BOT) Contracts and their Role in Managing Liquidity in Islamic Banks

Ahmad Asad Muhmoud Ibrahim^{1*}, Ahmed M. Alsaad²

¹ Department of Islamic Banking and Finance, Bahrain Institute of Banking and Finance.
Building 1456, Road 4034, Block 340, Manama, Kingdom of Bahrain.
Corresponding Author: asad@bibf.com

² Yarmouk University, Jordan.

Received: 11/04/2025

Accepted for publication: 14/10/2025

Published: 15/12/2025

Abstract

This paper examines the jurisprudential and economic foundations of Build–Operate–Transfer (BOT) contracts and evaluates their role as a Shari‘ah-compliant mechanism for managing excess liquidity in Islamic banks. Using a descriptive and analytical methodology, the study traces the historical emergence of BOT-type arrangements, clarifies their legal nature within contemporary concession and public–private partnership (PPP) frameworks, and outlines the main contractual parties, phases, and variants (such as BOOT, DBFO, and related models). On the Shari‘ah side, the paper analyses classical and modern fiqh discussions and positions of leading Shari‘ah bodies, showing that BOT structures can be accommodated as composite contracts built primarily on *istiṣnā‘* and *ijārah*, supported by the general principle that the default rule in transactions is permissibility. Attention is given to the *maqāṣid al-Shari‘ah* (objectives of Islamic law) served by BOT, including the provision of public utilities, preservation and development of assets, risk sharing, and promotion of real-sector investment. Economically, the study argues that conventional, debt-based financing contributes only limitedly to added value and national production, whereas BOT contracts are intrinsically tied to the creation, operation, and eventual transfer of productive infrastructure. When deployed by Islamic banks, BOT arrangements enable the mobilisation of surplus liquidity into large-scale projects through instruments such as sukuk issuances, syndicated financing, and dedicated investment funds, while transferring construction and operational risks to specialised private entities and preserving final public ownership of strategic assets. The paper concludes that, under appropriate Shari‘ah structuring and regulatory support, BOT contracts can serve as an effective tool for liquidity management in Islamic banks, simultaneously advancing sustainable development, providing fiscal relief to governments, and enhancing the social utility of Islamic finance.

Keywords: Build–Operate–Transfer (BOT); Islamic banks; Islamic finance; Public–private partnerships (PPP); Shari‘ah-compliant contracts; Sukuk.



1. Introduction

Praise be to Allah, the Lord of all worlds, and prayers and peace be upon the noblest of messengers, our master and prophet Muhammad, and upon his family and companions.

Islamic law (Sharia) clarifies which transactions are prohibited and delineates them explicitly, while all other transactions are considered permissible (halal). The fundamental principle in transactions is permissibility, which provides flexibility in accommodating the new types of transactions that emerge in human life. Human beings, by nature, are progressive and seek means to facilitate their lives through relationships with others. Through contracts and transactions, they need to discipline such relations. Among these needs is the establishment of projects that secure general public necessities, such as transport, education, healthcare, and large-scale projects requiring significant capital, which may exceed the capacity of the States to provide. Consequently, states often turn to large companies or banks to finance these projects and services.

Infrastructure projects and their facilities are the backbone of economic and social development worldwide. Without adequate infrastructure, the desired process of development cannot progress. The establishment or modernization of infrastructure is a fundamental pillar of development, particularly in transport, communication, and service sectors.

Most countries, especially developing ones, strive to adopt new project management methods, particularly for large-scale projects aimed at providing robust infrastructure—such as airports, seaports, road networks, electricity grids, and other public utilities. These projects often require contracting with individuals or private-sector companies, which establish, operate, and finance the projects through a modern application known as the Build-Operate-Transfer (BOT) system. This system involves construction, operation, and eventual transfer of ownership.

This system is defined as: “A framework through which public investment projects are financed, constructed, managed, and maintained by the private sector—either a single private company or a consortium of local or international companies—via a project company. The project company undertakes construction, implementation, management, and maintenance for a specified concession period granted by the host state, enabling the company to recover its project costs and achieve a satisfactory return on investment. Upon completion of the concession period, the project company transfers ownership of the project’s assets to the state in good condition, without restrictions or conditions.”

The BOT system involves two primary parties: the host State and the project-executing company. The modes of engaging with the Build-Operate-Transfer system vary, yielding multiple forms that share common content but differ in implementation. All variations focus on financing, establishing, managing, and operating infrastructure projects, as well as industrial and residential complexes, and land reclamation, thereby forming practical applications for investment models under BOT systems.

The significance of this topic lies in the fact that the BOT system represents a form of international investment that emerged in developed countries in response to specific needs. From a legal and economic perspective, the BOT model represents a modern concession-based infrastructure delivery mechanism rather than a mere contractual technique. Contemporary legal scholarship emphasizes that BOT arrangements are designed to allocate financing, construction, and operational risks to private investors for a defined concession period, while preserving the public nature of infrastructure assets through eventual transfer to the state (Eventia, 2017). This dual character, private execution combined with public ownership objectives, places BOT contracts within the broader family of public utility concession and public–private partnership (PPP) frameworks, rather than conventional procurement contracts.

This system has increasingly gained relevance under the effects of globalization, which accelerates the dissemination and unification of many economic policies and practices. This contractual system achieves two simultaneous objectives (McCarthy and Tiong, 1991):

- Implementing large-scale projects efficiently and within the specified timeframe.
- Relying on local and foreign private sector financing.

Thus, the importance of these contracts becomes evident. This system reduces the financial burdens and associated risks on the state. It assists countries with limited investment capacity in establishing projects that require substantial funding, without straining their budgets with debt. After completion, the project is transferred to the government at the end of the contract and becomes State property. The executing company benefits financially according to the agreement, typically through fees collected from users of the project facilities. This mechanism allows investors to cover project costs, operating expenses, and maintenance, while obtaining the desired profit. Using this approach, several modern countries have successfully developed



public facilities and ensured a comfortable life for their citizens.

2. Origin of the Contract

The term B.O.T. is an acronym derived from the first letters of three words: Build, Operate, and Transfer. It is not a legal term per se, but rather a practical term that emerged from the evolution of investment methods, project financing systems, and the diversification of economic development models.

The first person to use this term was the Turkish Prime Minister Turgut Özal¹ in the early 1980s². Although B.O.T. projects began under this name around the mid-1980s, various countries had long adopted policies to rely on the private sector for infrastructure projects.

Some scholars argue that France was a pioneer in this field, having developed the Le Concession des Services Publics (public utilities concession) system, which, in concept and legal nature, is essentially an application of the B.O.T contract. In 1782, the French government granted the concession for water distribution in Paris to a private company, the Périé Brothers. The company expanded rapidly, but political events at the time affected the agreement, leading the city of Paris to revoke the concession after the French Revolution. The concession system gained significant traction in France after 1830 and was later extended to Spain, Italy, and Germany³.

Arguably, the first and most famous BOT-type project in the world was the Suez Canal, established through a concession contract signed in 1854 between the Egyptian government and the Compagnie Universelle du Canal Maritime de Suez, headed by Ferdinand de Lesseps. The canal was inaugurated in 1869 with a concession period of ninety-nine years, which was terminated earlier than scheduled following its nationalization in 1956. However, the Suez Canal was not an isolated case. Comparable concession-based arrangements resembling modern BOT structures were implemented in several countries during the nineteenth and early twentieth centuries. In France, public utility concessions (concessions de services publics) were widely used for water supply, canals, and urban infrastructure, allowing private operators to finance, build, and operate facilities before transferring them back to public authorities. In the United Kingdom, private companies constructed and operated toll roads, bridges, and railways under long-term concession agreements. Similarly, in the United States, privately financed toll roads, canals, and later railroads were developed through concessionary frameworks that enabled investors to recover costs through user fees. These historical precedents demonstrate that BOT-type arrangements have deep roots in international practice and evolved as pragmatic responses to fiscal constraints faced by governments, long before their formal recognition as modern public-private partnership models (Auriol and Picard, 2011)⁴⁻⁵⁻⁶.

The United States has been familiar with the B.O.T. system since the Industrial Revolution, when roads were built and operated by the private sector in exchange for user fees. The federal government encouraged private investment in road and bridge construction under the Federal-Aid Highway Act, which was signed into law on December 18, 1956. This approach was reinforced under President Bill Clinton, who issued Decision No. 12893 on December 28, 1994, to promote investment through the B.O.T. system.

Developing countries also adopted this system. For instance, the Philippines enacted Law No. 7718 of 1994, “the Foreign Investment Act of the Philippines,” which amended sections of the previous law, No. 6957 of 1990, entitled “Law Allowing Financing, Construction, Operation, and Maintenance of Infrastructure Projects by the Private Sector.” Under this system, the Philippine government established a gas turbine power station in 1989.

The B.O.T. system also appeared in Hong Kong, where the Hong Kong Energy Corporation built a gas station and began operations in the Hong Kong tunnel in 1986, at a cost of \$442 million. Similarly, South Vietnam used B.O.T. to construct an underwater tunnel beneath the Saigon River.

¹ See: http://moc.gov.kh/laws_regulation/ank-bot.htm

² See: <http://en.wikipedia.org/wiki/Build-Operate-Transfer> , p.1

³ Larry D. Qi & Susheng Wang, BOT Contracts: Incentives and Efficiency, pp. 1, 4, 16.

⁴ OECD – Public-Private Partnerships and Concessions (Historical Background):

⁵ OECD – Public-Private Partnerships and Concessions (Historical Background):
<https://www.oecd.org/governance/public-private-partnerships>

⁶ OECD – Public-Private Partnerships and Concessions (Historical Background):
<https://www.oecd.org/governance/public-private-partnerships/>



Arab countries were not isolated from the B.O.T. system. In Egypt, the first serious application of B.O.T projects occurred in the mid-1990s through the Ministry of Electricity, driven by several factors: rising demand for electricity across sectors—especially industrial and urban—necessitating the addition of new power plants totaling 3.9 million kW by 2010 at an estimated cost of \$2.7 billion, rising external debt of the Egyptian Electricity Authority (about 2.14 billion Egyptian pounds), reluctance of some foreign lenders to provide loans without private sector participation, and availability of foreign currency liquidity in Egyptian banks willing to finance private-sector-implemented electricity projects.

To create a suitable legal environment, the Egyptian government amended certain laws, including Law No. 100 of 1996, which modified Law No. 12 of 1976 that established the Egyptian Electricity Authority. This was followed by Cabinet Resolution No. 4 of 1998 regarding the Sidi Krir steam power plant. Other Egyptian ministries adopted the same approach, including the Ministry of Transport, which issued Law No. 269 of 1996 amending provisions of Law No. 84 of 1968 on public roads and Law No. 3 of 1997 regarding airport concessions, as well as Law No. 22 of 1998 adding provisions to Law No. 1 of 1996 on specialized ports.

The maritime transport sector in Egypt also gained significant experience in B.O.T. investments, with both the General Authority for Roads, Bridges, and Land Transport and the National Authority for Tunnels implementing B.O.T. projects.⁷

Lebanon followed a similar path. On 3 August 1994, a B.O.T. contract was signed between the Lebanese government and France Télécom International (FTMI) to implement and operate a cellular telephone project for a period of ten years. On 7 February 1996, Lebanon's Public Investment Promotion Corporation signed a B.O.T contract with Mohammed Abdul Mohsen Al-Kharafi & Sons, a Kuwaiti company, to finance and operate parking facilities at Beirut International Airport for fifteen years, after which the facilities were returned to the Lebanese state in good condition.⁸

Kuwait also adopted the B.O.T system in various projects, notably the development of the international airport and the construction and operation of the Sulaiyah sewage treatment plant in 2001.⁹

In Syria, B.O.T. contracting began for major projects. On 12 February 2001, the Syrian General Telecommunications Corporation signed a B.O.T. contract with Investcom Global Ltd. to establish a GSM cellular phone network. The Ministry of Transport launched numerous B.O.T projects, including the Free Zone Port on the Syrian coast and the construction of new quays at Tartous and Latakia ports, as well as the operation of existing quays and yards under B.O.T contracts.

The Tartous Port Company issued a B.O.T. project on 8 September 2005 to construct a quay and requested price offers for additional quays on 25 January 2006. In Damascus, in January 2008, a B.O.T. contract was signed with the Syrian Holding Company to develop a comprehensive city centre project, including a conference center, administrative offices, a five-star hotel, shopping centres, cinemas,¹⁰ and parking facilities.¹¹

Finally, Jordan modernized, expanded, and developed Queen Alia International Airport under a B.O.T contract, and Turkey implemented Istanbul International Airport through a B.O.T agreement.

3. Definition of the B.O.T. Contract and Its Forms

3.1. Definition of the B.O.T. Contract

A B.O.T. contract is a contractual relationship concluded between the State and a private sector entity, which supervises the project. The contract typically involves the construction (usually infrastructure) and management of the project for a specified period at the private entity's own expense and risk, without the government incurring any cost. The private entity recovers its expenses from its own capital, repays any financing, and distributes profits to its shareholders. At the end of the contract period, the supervising company transfers the project to the government in good and usable condition.

The project operates under the supervision and oversight of the State or one of its agencies, and the investor is obliged to

⁷ See: <http://en.wikipedia.org/wiki/Build-operate-transfer>, p.1

⁸ See: <http://www.worldbank.org/html/fpd/water/wstoolkits/Kit3/kit3-21.html>

⁹ Build-Own-Operate-Transfer (BOOT) Projects, <http://www.mcmullan.net?eclj/BOT.html>

¹⁰ Al-Bashbishi, Amal Najah, Build-Operate-Transfer System, Kuwait, Arab Planning Institute, B.O.T Journal on Development Issues in Arab Countries, No. 32, August 2004, Year 3, p.10

¹¹ Ibid, p.11



transfer ownership of the project to the State at the end of the contract without compensation.

B.O.T. projects refer to public projects financed by local or foreign private sector entities, which design, construct, and manage the project for a predetermined period. During this period, the contractual relationship between the State and the executing company (the project company) is based on a concession contract, allowing the project company to earn revenue from the project during the concession period. Upon completion, the project company transfers the project assets to the government in good condition, as agreed upon in the contract, without any payment from the government¹².

From the perspective of international investment law, BOT contracts are commonly classified as a distinct category of international investment contracts rather than ordinary commercial agreements. Legal scholarship emphasizes that BOT arrangements raise fundamental questions regarding their legal nature, particularly whether they should be characterized as administrative contracts, private commercial contracts, or contracts of a special legal nature.

Comparative legal analysis reveals that BOT contracts frequently incorporate elements of public law, owing to their connection with public utilities and state sovereignty, alongside private law mechanisms related to financing, operation, and risk allocation. Consequently, a growing body of legal literature supports the view that BOT contracts constitute contracts of a special legal nature, governed by a hybrid legal regime that integrates both public and private law considerations, depending on the governing legal system and contractual terms. Legal doctrine further explains that the classification of BOT contracts cannot be resolved through a single rigid criterion. Instead, contemporary jurisprudence adopts a dual-standard approach that combines both legal and economic considerations. Under this approach, a BOT contract may acquire its international and legal character not merely due to the nationality of the contracting parties, but rather because of its direct connection to international economic interests, long-term development objectives, and cross-border capital flows. This functional approach provides greater flexibility in assessing BOT contracts and reflects their practical role in international investment frameworks¹³.

3.2. Form of B.O.T. Contracts

B.O.T. contracts (Build, Operate, and Transfer) come in various forms. These derived contracts differ from the main B.O.T. contract in some or all of their elements, as follows: ¹⁴

- Build, Own, Operate, and Transfer (B.O.O.T):

This variation, commonly referred to as BOOT, differs from the classic B.O.T model in that the private party contracting with the grantor owns the project assets during the concession period and then returns them. Ownership affects project financing and the suitability of the private party for the contract.

- Design, Build, Finance, and Operate (D.B.F.O):

In this model, the project executor designs, finances, and operates the project in accordance with government regulations. The government receives compensation for the land and a share of project revenues as a concession fee and may transfer the concession to another investor with appropriate compensation.

- Build, Own, Lease, and Transfer (B.O.L.T):

Under this contract, the State entrusts the investor to build, operate, and lease the project to third parties during the term of the contract. This allows the investor to cover costs and earn profits from lease revenues while obliging the investor to transfer the project to the state at the end of the contract.

- Lease, Renovate, Operate, and Transfer (L.R.O.T):

Here, the executing entity leases the project, renovates it, operates it, collects its revenues, and returns the project to the State

¹² Naif, Abdul Latif, Public Utilities Commitment Contracts – BOT (Build, Operate, Transfer)

¹³ Legal adaptation of international investment contracts (the B.O.T and Franchise contracts as a model), ELBAHITH for Academic Studies, Volume: 80 / Issue: 80 / Year: 2008 / Page: 214

¹⁴ Al-Islambouli, Dr. Ahmad Muhammad Khalil, The Islamic Legal Perspective on the Build, Operate and Transfer (BOT) Model, King Abdulaziz University, 2012, p.19



at the end of the lease period.

- Build, Transfer, and Operate (B.T.O):

In this type, the government contracts with a private investor to build the project or public facility and then transfers ownership to the government. The government then contracts separately to operate and manage the project during the concession period, allowing the government to retain initial ownership. Common applications include hotels.

- Build, Own, and Operate (B.O.O):

The investor finances, builds, and operates the project for the duration of the contract, but is not obligated to transfer ownership to the State. Ownership remains with the investor until the project reaches the end of its useful life, at which point the government compensates the owners for their shares.

- Modernize, Own, Operate, and Transfer (M.O.O.T):

This model applies to existing projects requiring modernization with technology unavailable to the state. The investor owns the project during the modernization phase, shares revenues with the state, and eventually transfers the project back to the government.

3.3. *Parties and Pillars of the Contract*

Several parties are involved in a B.O.T. contract, each with specific roles and responsibilities concerning the project.

- The Government or its Authorized Agency (Government Agency):

The government, or the agency representing it, is responsible for ratifying the contract. Its duties include:

- Granting the second party (the project sponsor) approval to build, operate, and lease the project for the agreed period.
- Supervising and controlling all project activities and services.

- The Project Sponsor (Sponsor):

The sponsor is the party responsible for the project, typically consisting of a group of financiers willing to invest in and fund the project. The sponsor may take the form of an institution, a company, a limited liability company, or a consortium. The sponsor is responsible for the financial aspects of the project during its construction and operational phases.

- The Financier (Investor):

In large-scale projects, financing is often provided by a consortium of banks that extends loans to the project sponsors. Banks usually require financial guarantees for the project and may agree to cover any cost overruns not included in the original agreement. It is essential to define the expected project financing at all stages to assess and manage risks and evaluate the impact on the loans.

- The Contractor:

The contractor, which may be a company or an individual within the sponsor consortium, is responsible for constructing the project. The contractor ensures project completion within the agreed-upon timeframe, budget, and specifications, and bears full responsibility for project risks.

- The Operation and Maintenance Contractor:

This entity signs a contract with the project sponsor to operate and maintain the project for the long term and may include members of the sponsor consortium. The key responsibility is to operate, maintain, and fulfil the requirements stipulated in the operation and maintenance agreement throughout the contract period.



- Transfer of Ownership:

Upon contract completion, the project is transferred to the State. Conditions for transferring the project to the government often include an offtake agreement, in which the government agrees to purchase the project output—whether water, electricity, or medical services—at an agreed price and quantity. The project sponsor remains financially responsible during the construction and operational phases. The sponsor ensures project completion on time, within budget, and according to agreed specifications while assuming all associated risks. The sponsor signs the operation and maintenance contract with the government for the contract's long term, possibly including members of the project consortium.

4. Jurisprudential Foundations

Contemporary Shari'ah literature does not treat BOT contracts as a single nominate contract with a fixed legal characterization. Rather, jurists have proposed multiple approaches to the fiqhī classification (takyīf fiqhī) of BOT arrangements. These include viewing BOT as a composite and newly emergent contract ('aqd mustahdath murakkab), as well as drawing analogies with established Shari'ah contracts such as istiṣnā', ijārah, ju'ālāh, and time-bound partnership structures. Other scholarly approaches emphasize public interest considerations (maṣlaḥah) and concessionary principles, particularly where BOT contracts are used to develop public infrastructure and utilities. Authoritative Shari'ah bodies and senior jurists have explicitly addressed BOT-type arrangements (Noor et al., 2014). The International Islamic Fiqh Academy and the Al-Baraka Fiqh Symposium have discussed the permissibility of BOT applications, particularly in relation to public utilities and waqf development, subject to compliance with Shari'ah rules governing ownership, liability, contractual clarity, and risk allocation. Prominent scholars, including Abdul Wahab Abu Sulayman and Muhammad Taqi Usmani, have emphasized that BOT contracts may be deemed Shari'ah-compliant when structured through valid underlying contracts, most notably istiṣnā' for construction and ijārah for operation, while avoiding ribā-based financing and excessive gharar. Islamic jurisprudence has devoted increasing attention to the Shari'ah characterization (takyīf fiqhī) of BOT contracts, recognizing them as part of the broader category of modern and composite contracts. Classical jurists did not explicitly address BOT; however, contemporary scholars have demonstrated that its underlying structure finds support within established Islamic legal principles through analogy, synthesis, and foundational maxims.

Prominent fiqh studies conclude that BOT contracts may be accommodated within Islamic law through multiple juristic approaches, including classification as a composite contract that combines istiṣnā' for construction, ijārah for operation, and transfer of ownership upon completion, or as a newly emergent contract validated by the principle that the original rule in transactions is one of permissibility (Noor and Yunus, 2014)¹⁵. The Build-Operate-Transfer (B.O.T) contract comprises four primary agreements:

- Construction Contract
- Operation Contract
- Maintenance Contract
- Transfer of Ownership Contract (returning the project to its owners).

Each of these main contracts has precise specifications and conditions agreed upon by the contracting parties. These details are meticulously recorded in the agreements, ensuring that no aspect of the project is left unchecked. Upon closer examination, each of these four contracts may include multiple subcontracts, such as:

- Construction Contract: The term “construction” is not limited to literal building, but encompasses establishing a project according to its nature, whether it is a building, canal, bridge, highway, or similar infrastructure. Construction requires tangible resources and, therefore, involves subcontracts for procurement, leasing, warranties, insurance, and other related agreements. It also necessitates specialized skills and crafts, including architectural planning, engineering, electricity, plumbing, carpentry, and decoration, among others.

¹⁵ *Journal of Dirāsāt: Shari'ah and Law Sciences*, 44(4), 2017. “The Build–Operate–Transfer (B.O.T.) Contract in Islamic Jurisprudence. Page 241.



- Operation and Maintenance Contracts: These require defining the project's conditions, precise descriptions, and public usage fees, which must be documented in the agreement to ensure a clear transfer of the project to local stakeholders.

From a jurisprudential perspective, a B.O.T. contract can be classified under several Islamic contract types, provided it avoids prohibited elements. These include:

- New Contract (عقد جديد)
- Manufacturing Contract (Istisna'a) predominance
- Analogy to Waqf reconstruction
- Lease (Ijara)

New Contract – B.O.T as a Modern Transaction: This contract is essentially a new, comprehensive contract composed of multiple types and stages, reflecting the Islamic legal principle: "The origin of transactions is permissibility." This principle is further clarified: "Contracts, conditions, and transactions are permissible unless explicitly prohibited by God; any act not forbidden is inherently allowed."¹⁶. Thus, modern transactions, such as B.O.T., fall under this principle, with additional detailed conditions for validity, including ensuring that all essential elements and terms are fulfilled, whether in the primary or subcontracts. The B.O.T. contract incorporates:

- Construction (requiring technical and engineering work across multiple disciplines)
- Operation
- Maintenance
- Transfer of ownership

Contract 1: Construction Contract (Muwakala / Istisna'a)

The Islamic Fiqh Academy of the Organization of Islamic Cooperation (OIC) defined this contract in Resolution No. 129(3/14), detailing the contractual and Sharia-compliant frameworks:

- Agreement on total cost based on detailed plans and specifications.
- Agreement on unit pricing per quantity and detailed drawings.
- Agreement on cost-plus-profit models, requiring transparent financial reporting by the contractor.

This contract is permissible under Islamic law, whether the contractor provides both materials and labour (Istisna'a) or labour only (Ijara), subject to agreed wages and Sharia conditions. Provisions may include:¹⁷

- Penalty clauses (unless due to force majeure)
- Deferred or installment payments
- Approval for modifications or additions, with or without additional compensation depending on prior agreement
- Liability for defects and adherence to contractual obligations
- Restrictions on subcontracting if personal execution is stipulated
- Warranty conditions, with permissible duration and scope¹⁸

¹⁶ *Journal of Dirāsāt: Sharī'ah and Law Sciences*, 44(4), 2017. "The Build–Operate–Transfer (B.O.T.) Contract in Islamic Jurisprudence. Page 241.

¹⁷ Decision No. 65(3/7) on Istisna' Contract, after the preamble:

First: The Istisna' contract, which concerns work or goods, is binding on both parties if all its pillars and conditions are met.

Second: Conditions of Istisna': (a) Specify the type, kind, quantity, and required specifications; (b) Specify the term.

Third: Payment can be deferred entirely or in installments for specific periods.

Fourth: It may include a penalty clause as agreed by the contracting parties, unless force majeure occurs. Decisions and Recommendations of the International Fiqh Academy affiliated with the Organization of Islamic Cooperation, Jeddah, 2nd Edition (Damascus: Dar al-Qalam, Jeddah: International Fiqh Academy, 1409 AH/1988), p.144.

¹⁸ Decisions and Recommendations of the 14th Session of the International Fiqh Academy, Doha, Qatar, 8–13 Dhu al-Qi'dah 1423 AH / 11–16 January 2003, p.7



Contract 2: Operation Contract (Ijara)

The operation phase allows the contractor to recoup expenses through usage fees from the public. This is an Ijara on labour, where the benefit of work is compensated. The contractor employs skilled personnel to manage the operation efficiently¹⁹.

Contract 3: Maintenance Contract (Ijara on Work)

Maintenance ensures the project remains functional and preserves its intended use until it is returned to the original owners. This is considered an independent contract within the broader B.O.T. framework.

Predominant Istisna'a Contract

The B.O.T contract's construction phase aligns primarily with Istisna'a, as the project cannot exist without it. This contract requires:

- A defined subject (the project) with specified materials and technical standards
- Agreed completion timeframe
- Known cost, consistent with the Islamic definition of Istisna'a: "A sale of a specified item to be manufactured for a known price."²⁰

The International Fiqh Academy's Resolution No. 65(3/7) (Jeddah, 1992) stipulates:

- Validity requires all elements and conditions to be met
- Detailed specifications of the manufactured item
- Clearly defined deadlines
- Deferred or instalment payment options
- Optional penalty clauses agreed upon by both parties²¹

Analogy to Waqf Reconstruction

B.O.T contracts may be analogized to Waqf (endowment) repair agreements when a waqf property deteriorates. Scholars permit reconstructing the waqf using private investment, after which the property is returned to its original function. Contemporary Sharī'ah scholarship further supports the legitimacy of BOT contracts by drawing analogies with classical jurisprudential precedents involving land rehabilitation, waqf development, and long-term usufruct arrangements. These precedents demonstrate that Islamic law has historically accommodated contractual structures whereby private parties invest resources, operate assets for a defined period, and ultimately return ownership to the original holder. Such analogies reinforce the view that BOT contracts, when free from ribā, excessive gharar, and unlawful conditions, are consistent with Sharī'ah objectives related to public interest, asset preservation, and equitable risk allocation²²

Lease (Ijara) Analogy

This contract is classified under the contract of (renting houses)²³, as there are texts in the Maliki school that provide numerous examples applicable to this categorization, including:

¹⁹ Abu Sulayman, Abdul Wahab Ibrahim, *Fiqh al-Mu'amalat al-Haditha with Introductions*, 1st Edition (Dammam: Dar Ibn al-Jawzi, 1426 AH), p.277

²⁰ Ibn 'Abidin, Muhammad Amin ibn 'Umar, *Radd al-Muhtar 'ala al-Dur al-Mukhtar* (Hashiyat Ibn 'Abidin), Beirut: Dar Ihya' al-Turath al-'Arabi, Vol. 4, p.212

²¹ International Fiqh Academy affiliated with the Organization of Islamic Cooperation – Jeddah, *Decisions and Recommendations of Sessions 1–10, Decisions 1–97*, 2nd Edition, edited by Abdul Sattar Abu Ghuddah (Jeddah: International Fiqh Academy, 1418 AH/1998), p.144

²² Hashiyat Radd al-Muhtar 'ala al-Dur al-Mukhtar, *Sharh Tanwir al-Absar*, 2nd Edition (Egypt: Mustafa al-Babi al-Halabi Library and Printing), Vol. 3, p.382, *Journal of Dirāsāt: Sharī'ah and Law Sciences*, 44(4), 2017. "The Build–Operate–Transfer (B.O.T.) Contract in Islamic Jurisprudence. Page 241-250

²³ The Malikis define rent (karā') as "the sale of usufruct of immovable property such as houses and lands," distinguishing it from Ijarah, which is "the sale of usufruct of movable property or services for consideration." See: Abu Abdullah Muhammad al-Ansari al-Rassa', *Sharh Hudud Ibn 'Arfa*, 1st Edition, edited by Muhammad Abu al-Ajfan and Taher al-Ma'muri (Beirut: Dar al-Gharb al-Islami, 1993), Vol. 2, pp.516, 524



“Ibn al-Qasim’s case: Ibn al-Qasim said regarding a man who said, ‘Give me your plot of land so that I may build on it for ten dinars, or with what it yields, on the condition that I occupy it each year for one dinar until I repay what I spent on it and repair it?’

He said: If he specified the amount with which he will build it and what it will be per year, then it is permissible; and if he did not specify, then it is not valid.”

Muhammad ibn Rushd said: “This is like the case in the lease of houses reported by Ibn al-Qasim in his book on renting houses, and as he said, if he specified the amount for building but did not specify what it will be per year, the rent is unknown. If he specified what it will be per year but did not specify the building amount, the rent is known, but its duration is unknown. If he specified both, then the rent is known for a known term, and it is permissible.

It is permissible even if he did not specify the building type or purposes because the lessee is like an agent in that regard; if he builds the plot in the manner it is supposed to be built, he is bound as if he had delegated someone to buy cloth or a slave on his behalf; whatever is similar binds him. And if he specified the building and the number of years of occupancy, it is permissible.”²⁴

“He was asked by Malik regarding a man who leased a ruined plot on condition that he spend on it, and that the rent be thus and so. Malik said, “I think that the expenditure should be specified and deducted from the rent for the duration of the lease.” It was asked: Should the rent be in dirhams? He said: No, the parts should be: his expenditure is ten dinars, and the rent for twenty years is half a dinar per year, or less, or more, depending on the years and portions; accordingly, the lessee rents it, and the owner leases it.”

Muhammad ibn Rushd said: “This matter is correct and clear in meaning; because if the lessee rented the plot for ten years, one year for ten dinars on the condition that he builds the plot for the owner, if he stipulated that the expenditure be deducted from the rent, it is not permissible, because if the rent is not in cash, the set-off rule does not apply. Therefore, the expenditure must follow immediately, and he should pay rent according to the portion he occupied, step by step, as the law requires.”

Ibn al-Mawaz said: “And if the building is for the owner of the plot, and he specifies what is built and the cost, which is included in the rent, it is valid, like in al-Mudawwana; because if he spends more than the rent, the excess is advance from the lessee to the owner, and it counts as rent and advance.

Ibn al-Mawaz said: And if the building is for the lessee, there is no need to specify what is built or the expenditure, nor is it preferable to stipulate this in the original rent. If he builds, whenever he leaves, the owner may require the value of what he built to be given or order its dismantling.

And Ibn al-Mawaz said: If the building is for the lessee, it is not preferable to stipulate it in the original rent, because if it is stipulated, the rent occurs on the condition that the lessee takes the building value from the owner at the end of the lease period. This is due to uncertainty (gharar) and is not permissible. Additionally, it was not reported that the rent should be in dirhams if he spends dinars, and the expenditure should be kept separate from the rent. This is because it entails a lack of precision in accounting; the rent is only permissible for occupancy of the property on a step-by-step basis. For example, if he says: I lease your plot for twenty years for ten dinars, half a mithqal per year, provided I spend one hundred dirhams from my funds, it is a valid lease. Or if he says: I lease your plot for one hundred dirhams for twenty years, provided I spend ten dinars on it, it is a valid lease.”²⁵

Thus, operating the project under the Build-Operate-Transfer (BOT) contract and collecting fees from users who benefit from the project is akin to occupying the plot in exchange for building and using it. It represents the value of construction, and the recovery of the project’s capital and expected profits is akin to the benefit received by the occupant of the plot in exchange for its construction.”

²⁴ Ibn Rushd, Abu al-Walid al-Farabi, Al-Bayan wa al-Tahsil wa al-Sharh wa al-Tawjih wa al-Ta’liq fi Masa’il al-Mustakhrijah, edited by Ahmad al-Sharqawi Iqbal and Muhammad al-Haji (Beirut: Dar al-Gharb al-Islami, 1404/1984), Vol. 8, p.461

²⁵ Ibn Rushd, Al-Bayan wa al-Tahsil, Vol. 9, p.17



5. Role in Managing Excess Liquidity

This contract has become widespread in many contemporary countries. Its primary purpose is to secure the necessary funding for large-scale projects that require substantial financial resources, whether these projects belong to the State, institutions, or private companies. It also aims to involve Islamic banks in development plans and to benefit from their technical and financial expertise. This contract is concluded by two or more parties who agree to finance a facility or project, manage it for a specified period, recover the invested capital along with the expected return, and finally deliver the project in proper working condition to the concerned authority. As a result, the financial burden of establishing and constructing projects shifts from the public sector to the private sector, including management, operation, and revenue collection, until costs are covered and the private sector obtains an adequate return during the concession period. Ownership, management, and operation of the project are then transferred back to the public sector.²⁶

How is this contract used in financing?

Contractual Agreement: A contractual agreement is established between one or more Islamic banks and the party seeking financing (which may be governmental, corporate, or individual).

Project Award and Final Agreement: Once the project tender is awarded, the final contract is executed to determine the rights and obligations of all parties involved.

Project Duration: The project period, during which the financiers benefit, is agreed upon. At the end of this period, the project is delivered to the requesting party.

Procurement and Construction: The financing bank(s) enter into agreements with contractors and suppliers for the necessary project equipment. To avoid the impact of price fluctuations, a fixed amount is agreed upon for the equipment, and the project must be delivered in a condition suitable for use as stipulated.

Operation and Revenue Management: An operating company is contracted to manage and maintain the project and to collect the project's revenues, which are deposited into a designated account agreed upon by the parties.

Security and Documentation: The bank reserves the right to request all necessary guarantees to secure its rights, which may include state guarantees, mortgages, or joint guarantees from multiple parties. In the cases mentioned above, the bank's rights are preserved since the project is initially registered under its name and on its behalf. In other cases, proper documentation is required according to Islamic law or legal systems that do not contradict Shariah principles or established legal rules.

Pooling Resources and Sukuk Issuance: If some Islamic banks lack sufficient liquidity, multiple banks or Islamic financial companies may jointly participate in the project, or they may adopt an investment fund approach. Alternatively, a joint-stock company may be established for the project, and its shares may be offered for public subscription, provided that the company's founding contract and bylaws require that founders and shareholders transfer their shares to the public sector after the concession period ends. Another method involves issuing sukuk (Islamic bonds) to sell the service that the company will produce; each sukuk represents a precisely defined quantity of the produced service. The benefit from these sukuk is set for a future, defined period and is sold at a price lower than the immediate-use price of the same service.

²⁶ 'Ikrimah Sabri, "Build-Operate-Transfer (BOT) Contract in the Development of Waqf and Public Utilities," paper presented to the International Fiqh Academy, 19th Session, UAE, Sharjah, 2008; see also Abdul Sattar Abu Ghuddah, "Build-Operate-Transfer (BOT) Contract and its Application in Waqf and Public Utilities," 19th Session, UAE, Sharjah, 2008



The range of projects financed through this type of contract is broad, including:

- Electric power generation, distribution, and transmission projects
- Telecommunications (wired and wireless)
- Highway and expressway construction linking economic and urban zones
- Dams, irrigation networks, water pipelines and storage facilities
- Land, air, and sea transportation, as well as navigational canals ²⁷

6. Shariah Objectives of the Build-Operate-Transfer (B.O.T) Contract

For any contract, whether traditional or modern, to be valid, it must align with Shariah objectives and personal interests that do not conflict with Islamic legal principles. This is a fundamental criterion for the validity of contracts, both old and new. Therefore, it is necessary to evaluate the Shariah standard after verifying the contract's compliance with essential conditions, pillars, and its freedom from causes of corruption or nullity. The B.O.T. contract encompasses a set of Shariah-compliant objectives that achieve benefits for stakeholders. The well-being of stakeholders is of considerable importance in Islamic law: "The foundation of Shariah is wisdom and the welfare of human beings in their worldly and spiritual affairs. It is entirely based on justice, mercy, public interest, and wisdom. Any matter departing from justice to injustice, from mercy to its opposite, from benefit to harm, or from wisdom to futility is not part of Shariah. Shariah embodies Allah's justice among His servants, His mercy among His creation, His governance on earth, and His wisdom. It guides the insightful and heals all ailments, and the B.O.T contract integrates Shariah objectives in ways rarely achieved by other contracts, encompassing public welfare, individual benefit, and the growth of wealth."

Key Shariah Objectives of the B.O.T Contract:

Meeting societal needs: Contributing to human comfort and public welfare through systematic and well-executed projects.

Wealth development and lawful investment: Investing capital in projects beneficial to society, fostering economic growth.

Reducing financial burdens on States, especially those that are economically weak.

Preservation of assets: Maintaining property for extended use and sustained benefit.

Capacity building: Providing necessary expertise and training, developing communities in construction and maintenance, promoting self-reliance in future projects.

Establishing infrastructure: Facilitating large-scale projects that require substantial financing beyond the capacities of state budgets.

Engaging the private sector: Encouraging private investment in infrastructure development, with the government committing to purchase a minimum output, ensuring project costs are covered, and a reasonable profit is achieved.

Reducing market and credit risks: The state often acts as the sole client, minimizing financial exposure for private investors.

Promoting circulation of wealth: Facilitating economic activity among the state, private sector, and individuals, ensuring equitable distribution of financial opportunities.

Through these objectives, the B.O.T. contract:

- Ensures public welfare by providing liquidity for major state projects without depleting government reserves.
- Secures private benefits by enabling individuals and institutions to invest capital and earn returns.
- Generates employment opportunities, mitigating unemployment and its associated social risks, including crime, by providing stable incomes to workers and their dependents.

²⁷ See: 'Ikrimah Sabri, "Build-Operate-Transfer (BOT) Contract in the Development of Waqf and Public Utilities," 19th Session, UAE, Sharjah, 2008; see also Abdul Sattar Abu Ghuddah, "Build-Operate-Transfer (BOT) and Its Application in Waqf and Public Utilities," and Muhy al-Din, Ahmad, Application of BOT Contract in Waqf Development, and Taqi al-Din al-'Uthmani, Build, Operate and Transfer Contracts from a Shari'ah Perspective, and Atiyah, Abdul Qadir Muhammad, Commercial, Economic and Social Feasibility Studies of BOT Projects, and Ghanem, Muhammad, Infrastructure Projects under the BOT System.



In essence, the B.O.T contract harmonizes public interest, economic efficiency, and Shariah compliance, making it a strategic tool for sustainable development and wealth circulation in society.

7. Conclusion

This study has examined the jurisprudential and economic underpinnings of the Build-Operate-Transfer (BOT) model and its applicability as a Shariah-compliant instrument for financing large-scale development projects. The analysis reveals that traditional, debt-based financing contributes only marginally to real value creation and national output at the local level, whereas well-structured BOT arrangements are inherently linked to productive investment, risk sharing, and service provision. By reallocating the burden of financing, construction, and operation from the public to the private sector, BOT contracts enable governments to implement capital-intensive infrastructure projects without resorting to additional public debt, while preserving ultimate public ownership of strategic assets. From an Islamic finance perspective, BOT contracts can be framed through accepted Sharī'ah contracts, primarily *istiṣnā'* and *ijārah*, thus allowing Islamic banks to deploy excess liquidity in a manner consistent with both legal and ethical requirements. When properly structured, BOT arrangements not only fund projects that serve the public interest but also generate competitive returns for investors, thereby enhancing the economic function and social utility of capital.

In light of these findings, the paper recommends that Islamic banks gradually shift from predominantly debt-based instruments to genuine investment-based structures, with BOT playing a central role in their asset allocation strategies. The required capital can be mobilized through the issuance of BOT-backed sukuk and through syndicated participation by multiple Islamic financial institutions. Furthermore, the establishment of specialized investment funds dedicated to BOT projects would facilitate the pooling of substantial resources for financing major public and private initiatives. Activating and mainstreaming the BOT contract along these lines would substantially improve the management of excess liquidity in Islamic banks while advancing broader developmental and Sharī'ah objectives.

References

- Abu Ghuddah, A. S. (2008). *Build-Operate-Transfer (BOT) contract and its application in waqf and public utilities*. Paper presented at the 19th Session of the International Fiqh Academy, Sharjah, UAE.
- Abu Sulayman, A. W. I. (1426 AH). *Fiqh al-Mu'amalat al-Haditha with introductions* (1st ed.). Dammam: Dar Ibn al-Jawzi.
- Ahmed Muhammad Khalil al-Islambouli, A. (2012). *The Islamic legal perspective on the Build, Operate and Transfer (BOT) model*. King Abdulaziz University.
- Al-Ansari al-Rassa', A. A. M. (1993). *Sharh Hudud Ibn 'Arfa* (1st ed., M. Abu al-Ajfan & T. al-Ma'muri, Eds.). Beirut: Dar al-Gharb al-Islami.
- Al-Bashbishi, A. N. (2004). *Build-Operate-Transfer system*. *B.O.T Journal on Development Issues in Arab Countries*, (32), 10–11. Kuwait: Arab Planning Institute.
- Atiyah, A. Q. M. *Commercial, economic and social feasibility studies of BOT projects*.
- Auriol, E., & Picard, P. (2011). *A theory of BOT concession contracts*. *CEPR Discussion Paper Series*.
- Bank of Thailand. (2020). *Anukret on Build-Operate-Transfer (BOT): Sub-Decree No. 11 on Build-Operate-Transfer (BOT) contract*.
- Build-Own-Operate-Transfer (BOOT) projects. (n.d.). Retrieved from <http://www.mcmullan.net?eclj/BOT.html>



Decision No. 65(3/7) on Istisna' Contract. (1409 AH/1988). In *Decisions and recommendations of the International Fiqh Academy* (2nd ed.). Damascus: Dar al-Qalam; Jeddah: International Fiqh Academy.

Decisions and Recommendations of the 14th Session of the International Fiqh Academy. (2003). Doha, Qatar, 8–13 Dhu al-Qi'dah 1423 AH / 11–16 January 2003.

Eventia, R. C. (2017). *Legal principles in function and performance of BOT contract*. *Yuridika*, 32(3), 521–540.

Ghanem, M. *Infrastructure projects under the BOT system*.

Ibn 'Abidin, M. A. ibn 'U. (n.d.). *Radd al-Muhtar 'ala al-Dur al-Mukhtar (Hashiyat Ibn 'Abidin)* (Vol. 4). Beirut: Dar Ihya' al-Turath al-'Arabi.

Ibn Qayyim, S. al-D. A. A. M. ibn A. B. (1374 AH/1955). *I'lam al-Muwaqqi 'in 'an Rabb al-'Alamin* (Vol. 3, p. 14, M. M. al-D. Abdul Hamid, Ed.). Egypt: Al-Maktaba al-Tijariya al-Kubra.

Ibn Rushd, A. al-W. (1984). *Al-Bayan wa al-Tahsil wa al-Sharh wa al-Tawjih wa al-Ta'liq fi Masa'il al-Mustakhrijah* (A. al-Sharqawi Iqbal & M. al-Haji, Eds.). Beirut: Dar al-Gharb al-Islami.

Ibn Rushd, A. al-W. (n.d.). *Al-Bayan wa al-Tahsil* (Vol. 9, p. 17).

'Ikrimah Sabri. (2008). *Build-Operate-Transfer (BOT) contract in the development of waqf and public utilities*. Paper presented at the 19th Session of the International Fiqh Academy, Sharjah, UAE.

International Fiqh Academy. (1418 AH/1998). *Decisions and recommendations of sessions 1–10 (Decisions 1–97)* (2nd ed., A. S. Abu Ghuddah, Ed.). Jeddah: International Fiqh Academy.

Iraq Ministry of Commerce. (n.d.). *Anukret on Build-Operate-Transfer (BOT)*. Retrieved from http://moc.gov.kh/laws_regulation/ank-bot.htm

Journal of Dirāsāt: Sharī'ah and Law Sciences. (2017). *The Build-Operate-Transfer (B.O.T.) contract in Islamic jurisprudence*, 44(4), 241–250.

Larry, D. Q., & Wang, S. (n.d.). *BOT contracts: Incentives and efficiency*.

Legal adaptation of international investment contracts (the B.O.T and franchise contracts as a model). (2008). *ELBAHITH for Academic Studies*, 80(80), 214.

McCarthy, S., & Tiong, R. (1991). *Financial and contractual aspects of build-operate-transfer projects*. *International Journal of Project Management*, 9(4), 222–227.

Muhy al-Din, A. *Application of BOT contract in waqf development*.

Naif, A. L. *Public utilities commitment contracts – BOT (Build, Operate, Transfer)*.

Noor, A., & Yunus, S. M. (2014). *Application of the build, operate, transfer (BOT) contract as a means of financing development of waqf land: Malaysian experience*. *Arab Law Quarterly*, 28(2), 136–157.

Noor, A., Yunus, S. M., & Haron, M. N. (2014). *Build, operate and transfer (BOT) contract and its models from a Sharī'ah perspective*. *Arab Law Quarterly*, 28(4), 366–391.



EJIF European Journal of Islamic Finance

OECD. (2025). *Public-private partnerships and concessions (historical background)*. Retrieved from <https://www.oecd.org/governance/public-private-partnerships>

Taqi al-Din al-'Uthmani. *Build, operate and transfer contracts from a Sharī'ah perspective*.

Wikipedia. (2025). *Build–Operate–Transfer*. Retrieved from <http://en.wikipedia.org/wiki/Build-Operate-Transfer>

World Bank. (2025). *Water toolkit 3: Build–Operate–Transfer (BOT)*. Retrieved from <http://www.worldbank.org/html/fpd/water/wstoolkits/Kit3/kit3-21.html>