

**Appendix 16 Notice Regarding the Approval of
Foreign Investment Concession Projects**

Appendix 16 Notice Regarding the Approval of Foreign Investment Concession Projects

(BOT Notice- 1995)

Infrastructure and basic industry is the bottleneck_ which has a long history in China national economic development. In order to improve the situation, according to China industrial policy, the direction of foreign investment should be adjusted and shifted to infrastructure and basic industry. Besides the modes of joint ventures, cooperative companies and companies with sole capital , the Chinese Government plans to adopt the Build-Operate-Transfer (BOT) mode to carry out infrastructure projects with foreign investment based upon overseas experience. For the success of this trial, the following aspects shall be noticed:

1. **Concession Project**, as referred to in this Notice, is a BOT infrastructure project with foreign investment. The Government grants such a project to a **project company** established by the foreign investor for a certain period through a **concession agreement**. The Project Company is responsible for the financing, construction, operation and maintenance of the project. After the end of the concession period, the Project Company shall transfer the project facility to the Government without being paid any compensation.

2. During the concession period, the Project Company has the ownership of the project facility, the right of financing, design, construction, equipment procurement, operation and collecting tolls for the concession project, and the obligation of maintaining the project facility. The Government has the right to monitor, inspect, and audit the concession agreement, and to correct and punish any behavior which is contrary to the concession agreement.

3. For the successful implementation of a concession project in China, during the concession period the Project Company is allowed to increase the toll rate or extend the concession period if it is effected by a change in Chinese Government policy. The national government guarantees the exchange and overseas remittance of foreign exchange to be used for the Project Company[] loan capital, interest and benefit. However, the Project Company shall assume the risk of financing, construction, procurement, operation and maintenance. The Government shall not supply a guarantee of fixed rate of investment return. Domestic financial institutions and domestic non-financial institutions shall not provide guarantees for project financing.

4. Given that concessions are new in China, they shall be done in a step-by-step fashion. During the trial period, the construction scope of a concession shall be set as follows:

- * fire power station- 2 X 300,000 Kw or above;
- * hydraulic power station- 250,000 Kw or above;
- * high class highway- 30 km to 80 km;
- * independent bridge, independent tunnel and city water supply project-1000 meters and above.

5. The selection of a trial concession project shall be screened from the local level to the central level, and the project selected shall be a project listed in national

medium-term and long-term planning. The **pre-feasibility study report** for the selected candidate trial project shall be provided by the provincial (regional, municipality) planning committee, together with the industry authority, according to the existing planning administration system. That report shall be inspected initially by the industry authority and approved by the State Planning Commission (now State Development Planning Commission). When it is necessary, the report may be approved by the State Council. The contents of the pre-feasibility study report shall include the outline of the project, including technical, engineering and environmental protection aspects. In addition, the following aspects shall be strongly stressed:

- * market supply and demand analysis;
- * total investment scope;
- * the outside situation;
- * economic and financial analysis;
- * expected toll charge standard;
- * principle for change in toll rate;
- * concession period;
- * principle of sharing risk;
- * planned supply to be provided by the Government, and its obligation to the project; etc.

6. After the approval of the Pre-Feasibility Report, the local government concerned is responsible for the preparation of **pre-qualification and bidding documents**. The overseas investors shall be selected through open bidding. The Bidding Evaluation Committee, which is organized by the State Planning Committee with members from the industry authority and local government, and with technical, economic and legal consultants, is responsible for the inspection of bidding documents, pre-qualification of investors, bid evaluation, etc.

7. The local government responsible for the trial concession project shall assist the winner (of the bidding procedure) with the approval of the Company's Articles of Association by the Ministry of Foreign Trade and Economic Cooperation, and with the business registration procedure.

8. After the approval of the concession agreement by the State Planning Committee (now the SDPC) (and approval by the State Council when it is necessary), the SDPC shall entrust the provincial (regional, municipality) government concerned or industry authority concerned to enter into a concession agreement with the Project Company. Such agreement shall be effective from the date that it is signed.

9. For the success of a trial concession project, the SDPC shall set up a standing agency to be in charge of the organization, routine management (???) and coordination of the project.

At present, the SPC (now SDPC) is preparing Provincial Regulations for Foreign Investment Concession Projects_ which will be published and implemented after approval by the State Council.

August 21, 1995