



भारतीय राष्ट्रीय राजमार्ग प्राधिकरण

(सड़क परिवहन और राजमार्ग मंत्रालय)

National Highways Authority of India

(Ministry of Road Transport and Highways)

जी-5 एवं 6, सेक्टर-10, द्वारका, नई दिल्ली-110075

G-5 & 6, Sector-10, Dwarka, New Delhi-110075

दूरभाष / Phone : 91-11-25074100/25074200

फैक्स / Fax : 91-11-25093507 / 25093514

NHAI/Policy Guidelines/Concession Fee during subsistence of Force Majeure/2017

(No. 8.4.16/2017 Dated, the 10th August, 2017)

(Decision taken on File No.NHAI/CMC/EC Agenda/2017/6/9)

Sub: Payment of concession fee during subsistence of force majeure and interpretation of relevant clauses relating to force majeure in the concession agreement.

As approved by the Executive Committee in its 310th meeting on 13.07.2017 vide item no.310.21, the payment of concession fee during subsistence of force majeure and interpretation of relevant clauses relating to force majeure in the concession agreement is to be regulated in the following manner:

1 For OMT Concessions:-

- a) In case of occurrence of Force Majeure event, the Concessionaire shall be exempted from payment of Concession Fee. However, the existence of Concession during that period will continue uninterrupted keeping in view that Concession Fee is an annual obligation, though it is payable monthly. This is also in accordance with clause 5.1 and 26.11 of OMT Concession Agreement.
- b) Since the Concession Agreement provides for extension of Concession Period in such a scenario, the Concessionaire shall be required to pay the Concession Fee during the extended period as applicable at that time. The Concession Fee during the extended period shall be calculated based on the provisions of Clause 21.1 of the Concession Agreement.
- c) In case the Concessionaire is able to collect some user Fee, then the extension of the Concession Period would take into account the portion of user Fee collected and therefore, the Concessionaire shall be required to pay proportionate Concession Fee with respect to the Fee collected by it. Further it shall pay Concession Fee during the extended period, which shall be calculated based on the provisions of Clause 21.1 of the Concession Agreement.
- d) Force Majeure Costs payable will be in accordance with the Clause 26.7 of the Concession Agreement and for determining such costs information contained in the Financial Package may be relied upon to the extent it is relevant.

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2 For BoT Concessions:

- a) In case of occurrence of Force Majeure event the Concessionaire shall be exempted from payment of Concession Fee. However the existence of Concession during that period will continue uninterrupted keeping in view that Concession Fee is an annual payment. This is also in accordance with clause 5.1.1 and 34.11 of BOT Concession Agreement. Clause 26.2.1 also needs to be kept in view.
 - b) Since the Concession Agreement provides for extension of Concession Period, the Concessionaire shall be required to pay the Additional Concession Fee / premium during the extended period. The Additional Concession Fee / premium during the extended period shall be calculated based on the provisions of Clause 26.2 of the Concession Agreement.
 - c) In case the Concessionaire is able to collect some user Fee, then the extension of the Concession Period would take into account the portion of user Fee collected and therefore, the Concessionaire shall be required to pay proportionate Additional Concession Fee / premium with respect to the Fee collected by it. Further it shall pay Additional Concession Fee / premium during the extended period, which shall be calculated based on the provisions of Clause 26.2 of Concession Agreement.
 - d) Force Majeure Costs payable will be in accordance with the Clause 34.7 of the Concession Agreement and for determining such costs information contained in the Financial Package may be relied upon to the extent it is relevant.
3. For both OMT & BOT projects, the manner of calculation of additional concession fee waived off during force majeure and payable during the extended period should be clearly brought out.
4. All concerned are required to take necessary action accordingly.
5. This issues with the approval of Competent Authority.


(A K Sadhu)

Chief General Manager (Coordination)

To

All Officers of HQ / ROs / PIUs / CMUs / Site Offices.