

No. NH/24035/23/94-PL

Dated, the 21st October, 1997

To

The Secretaries/Chief Engineers of States/Union Territories, Public Works Department (dealing with National Highways and other Centrally Sponsored Schemes); Director General (Works), Central Public Works Department; Director General Border Roads; Chairman, National Highways Authority of India

Subject : Revised guidelines for private investment in National Highway Projects

As you are aware, as part of the emphasis placed by the Government on Infrastructure Development, further policy initiatives have been taken recently for attracting more private investment in development of National Highways. In view of this, the guidelines circulated earlier for private investment in National Highway projects have further been updated/augmented. A copy of the revised guidelines as above is enclosed as *Appendix I* for your reference and guidance.

2. It is suggested that above mentioned guidelines on BOT projects may be circulated to all concerned at your end for taking up more and more projects depending upon their feasibility and viability.

Appendix-I

[Enclosure to Ministry's Circular No. NH/24035/23/94-PL dated, the 21st October, 1997]

(FIRST REVISION, SEPT. 1997)

GUIDELINES FOR PRIVATE INVESTMENT IN NATIONAL HIGHWAY PROJECTS

1. BACKGROUND

India has a vast network of National Highways (NHs) totalling to 34,608 km connecting important towns, cities, ports and industrial centres of the country.

Industrialisation of the country has induced a traffic growth of 8 to 12 per cent per year on many sections of National Highways and this growth trend is expected to continue. While the traffic on National Highways has been growing at a rapid pace, it has not been possible for the Government to provide matching funds, due to competing demands from other priority sectors. This has led to a large number of deficiencies in the network. Many sections of the NHs are in need of capacity augmentation by way of widening, grade separation, construction of bypasses, bridges and expressways, etc. Many bridges are in need of replacement. The traffic movement on NHs is also hindered due to a large number of Rail-Road crossings where road traffic has to per force stop due to the frequent gate closures. The overall scenario on the highways has led to economic losses by way of longer turn around time for the vehicle fleet, rising vehicle operating costs and dissipation of human energy in the driving. This calls for urgent remedial measures.

To motivate the inflow of resources for the development, maintenance and management of NHs and to improve their efficiency, productivity and quality of service and to bring in competitiveness in providing highway services to road users, the Government of India, in consonance with its general policy of liberalisation/globalisation of country's economy, welcomes private investment in National Highways, and hopes that this measure would help in improvement of the existing highways and bring in the latest technology and improved management techniques. The users are already accustomed to pay fee for use of bridges on National Highways for the last two decades by way of fees on bridges.

Other highway projects have also been awarded to private sector recently and the experience gained in the process has been utilised in framing these guidelines.

2. DEMAND SCENARIO

(A) Existing Network

The deficiencies in the existing National Highway network (as on 1.4.1996) and estimated cost of their removal are as given below. These works are required to be completed within a period of 10 to 15 years.

S.No.	Category of Work	Length/No.	Rupess Estimated cost (1.4.96 prices)
(1)	Widening of single-lane to two-lanes, including strengthening of pavement	5200 km	5,200 cr.
(2)	Widening of 2-lane roads to 4-lane or wider	14,000 km	42,000 cr.
(3)	Widening of pavement (2-lane equivalent) and construction of paved shoulders	15,000 km	9,000 cr.
(4)	Construction of bypasses	40 Nos.	2,000 cr.
(5)	Construction of bridges	470 Nos.	1,000 cr.
(6)	Miscellaneous and road safety works	L.S.	5,000 cr.
	Total		64,200 cr.
(B)	Expressways		
	Construction of Expressways on new alignments	2000 km	16,000 Cr.
	Total (A) + (B)		80,200 Cr.
		Say	80,000 Cr.

3. AREAS OF PRIVATE INVESTMENT

Categories of projects identified for private investment are given in the following Table:-

S.No.	Category of projects	Indicated Quantum
Existing Network		
(1)	Widening from 2-lanes to 4-lanes	4000 km
(2)	Major bridges	50 Nos.
(3)	Railway over bridges	50 Nos.
(4)	Elevate sections through urban areas	To be identified
(5)	Interchanges	To be identified
(6)	Bypasses	30 Nos.
New Network		
(7)	Expressways	1000 km

4. LEGAL FRAMEWORK

4.1. The functions relating to development, maintenance and management of National Highways are carried out by the Central Government under the Provision of National Highways Act, 1956. The Act has been amended in June, 1995 to permit private sector participation, relevant extracts which are reproduced below:

Section 8(A)

(1) Notwithstanding anything contained in the Act, the Central Government may enter into an agreement with any person in relation to the development and maintenance of the whole or any part of National Highway.

(2) Notwithstanding anything contained in the Section 7, the person referred to in sub-section (1) is entitled to collect and retain the fees at such rates, for services or benefits rendered by him as the Central Government may, by notification in the Official Gazette, specify having regard to the expenditure involved in building, maintenance, management and operation of the whole or part of such National Highway, interest on the capital invested, reasonable returns, the volume of traffic and the period of such agreement.

(3) A person referred to in sub-section(1) shall have powers to regulate and control the traffic in accordance with the provisions contained in Chapter VIII of the Motor Vehicles Act, 1988 on the National Highway forming subject matter of such agreement, for proper management thereof.

(4) Whoever commits mischief by doing any act which renders or which he knows to be likely to render any National Highway referred to in sub-section (1) of Section 8A impassable or less safe for travelling or conveying property shall be punished with imprisonment of either description for a term which may extend to five years or with a fine or with both.

4.2. Rules have been framed under the amended NH Act laying down the procedure for collection of fee by any person or Government on sections of NHs including permanent bridges developed by the entrepreneur or the Government respectively. The copies of these Rules are appended at *Annexure-I* and *Annexure-II*. The enterprise would be allowed to collect the fees as per the agreement in accordance with these Rules.

5. POLICY MAKING BODY

All policy matters relating to National Highways are decided by the Ministry of Surface Transport, reference to Government in these guidelines shall generally mean the Central Government in the Ministry of Surface Transport (MOST).

6. IMPLEMENTING AGENCY

The Central Government has decided that the policy of privatisation of the National Highways will be implemented by the National Highways Authority of India (NHAI). In exceptional cases, the Central Government may also assign the functions of Implementing Agency (IA) to the States. Therefore, reference to IA in these guidelines will generally mean NHAI, and the State Public Works Department, in exceptional cases.

7. ENTERPRISE

A reference to Enterprise in these guidelines will mean the successful bidder with whom the Government and the Implementing Agency have entered into an agreement for developing, maintaining and operating any NH project.

8. IDENTIFICATION OF PROJECTS FOR PRIVATE INVESTMENT

The following principles will generally be observed in identification of NH projects for private investment:-

- (1) Project is one of the approved projects of MOST.
- (2) Project is capable of yielding adequate Economic Internal Rate of Return (EIRR) and Financial Internal Rate of Return (FIRR). The Government Investment on the items mentioned in Guideline 9 will be treated as zero cost investment, in the calculations for FIRR.

9. GOVERNMENT SUPPORT

9.1. The Government will carry out all preparatory works as detailed below for the projects identified for private investment and meet the cost of following items:

- (1) Detailed Feasibility Study
- (2) Land for Right-of-way and enroute facilities
- (3) Clearance of the Right-of-Way land: Relocation of utility services, cutting of trees, resettlement and rehabilitation of the affected establishments, removal of all encroachments.
- (4) Environmental Clearances.
- (5) In case of ROB's clearance from Railways to allow private enterprise to build the ROB under Railways' supervision and fixing of GAD and charges payable to Railways.
- (6) Where design is left to the enterprise, giving details of standards and bore-hole logs at bridge sites, etc.

9.2. Depending upon the financial viability of a project, the Government may recoup its investment on the above items from the project.

10. OTHER FACILITATING MEASURES

- (a) Import of Bitumen is now permitted under Open General Licence (OGL)
- (b) Import duty has been exempted on identified high quality construction plants and equipments.
- (c) In case of projects which are on the verge of financial viability, suitable traffic support/guarantees could be considered on case-to-case basis.

11. TAX/FISCAL CONCESSIONS/OTHER CONCESSIONS

11.1. Concession Available for Enterprise Undertaking any Project

In the case of an enterprise (the enterprise is owned by a company registered in India or by a consortium of such companies) carrying on the business of developing, maintaining and operating any infrastructure facility, hundred per cent of the profits and gains derived from such business for the initial 5 assessment years and thereafter, thirty per cent of such profits and gains are exempted from Corporate Tax. This tax concession may be availed of by the enterprise in any ten consecutive assessment years falling within a period of twenty assessment years beginning with the assessment year in which the enterprise begins operating and maintaining infrastructure facility. The meaning of infrastructure is given in Section 80-IA (12) (ca) of the Income Tax Act, 1961 and includes a road, highway and bridge.

11.2. Concessions Available for Lenders/Investors

- (1) As an incentive to financial institutions to provide finance for the infrastructure projects, deduction upto 40 per cent of their income derived from financing of these investments is available provided the amount is kept in a special reserve.
- (2) Exemption for Infrastructure Funds from Income Tax on the incomes from dividends, interest on long term capital gains of such funds or companies from investments in the form of shares or long term finance in any enterprise set-up to develop, maintain and operate an infrastructure facility.
- (3) Subscription to equity shares or debentures issued by a public company formed and registered in India and the issue is wholly and exclusively for the purpose of developing, maintaining and operating an infrastructure facility, will be eligible for deductions under Section 88 of the Income Tax Act, 1961, which permits deduction equal to 20 per cent of the amount subscribed, from the amount of tax payable by the subscriber. In case of such investment, the limit of Rs.60,000/- per year under Section 88 has been raised to Rs.70,000.

11.3. Other Concessions

11.3.1. Housing and other developmental activities can be made integral part of BOT highway projects to enhance the viability of projects on case-to-case basis. Profits from such activities made integral part of BOT highway projects, would be treated as income from infrastructure projects. for the purpose of tax exemption/ concession provided these are ploughed back to the development of Roads on BOT basis (including repayment of long term debt from the projects) within a period of three years.

11.3.2. Real estate development would constitute an important source of revenue for the Enterprise and would, therefore, be an important input in price determination. As such, it would be firmed up and included as a part of Bid Documents in case such development is envisaged for a particular BOT project.

11.3.3. The layout of such development shall be finalised by the enterprise with the approval of the IA in accordance with the parameters stated in the bidding documents. The enterprise may be required to obtain necessary clearances from appropriate authorities, based on pre-determined criteria.

11.3.4. In some cases, Implementing Agency may opt to undertake such real estate development as a part of the project. In such a situation, the bidding documents would exclude real estate development and leave it to the Implementing Agency. In appropriate case, Implementing Agency may project accrual of income from such real estate development and use it for subsidising toll charges that may otherwise seem unsustainable. Alternatively, Implementing Agency may assign real estate development to a third agency on the basis of competitive bidding. Depending upon the circumstances of each case, detailed bid conditions would be evolved in consultation with the concerned Ministries and agencies and the same would be included in the bid documents.

11.3.5. NHAI/Govt. of India can provide Capital grants upto 40 per cent of project cost to enhance viability of the projects on case-to-case basis.

11.3.6. NHAI can participate in equity upto 30 per cent.

12. FOREIGN INVESTMENT

12.1. Government has recently decided to permit automatically Foreign Direct Investments upto 74 per cent equity for road and bridge construction as a part of infrastructure. Foreign Direct Investment (FDI) proposals beyond that would be considered by the Foreign Investment Promotion Board, on case-to-case basis.

12.2. External commercial borrowing is permitted upto 35 per cent of project cost for Rupee expenditure.

13. CONCESSION PERIOD

The concession period comprises (i) the construction period which will be project specific and (ii) the period during which the enterprise is permitted to levy fee and is liable for maintaining the facility which will be determined on competitive bidding basis and may be upto a maximum of 30 years. The concession period may be extended suitably, to cover any Force Majeure Conditions. In the event the enterprise completes construction of project before expiry of the period specified in (i) it will be entitled to collect user fee from traffic during the balance period available from construction period, at the rates applicable for the year of opening the facility for traffic. In case the enterprise delays completion of the project beyond the period specified for construction, its fee collection period will get reduced correspondingly.

14. FEE

14.1. The maximum fee rates leviable on completed 4-lane sections and approved by the Cabinet have already been circulated (copy enclosed at *Annexure-III*). However, different fee rates for other projects, like, bypasses, bridges, ROBs, etc., can be levied depending upon the project cost and the traffic levels.

14.2. The revision of the fee may be allowed every year following commissioning of the facility linked to the Wholesale Price Index (WPI).

15. PROJECT CONSTRUCTION

The enterprise is to complete the project within the period specified for construction, conforming to the standards and specifications prescribed in the agreement and to the satisfaction of Implementing Agency. Any delay in completion of the project will be to the account of the enterprise unless such delay can be directly attributed to the Government and/or Implementing Agency. Delays occurring on account of Government/Implementing Agency would entitle the Enterprise to an appropriate extension in the construction period and/or to such other compensation as the Bidding conditions may specify. Time and Cost overruns are the responsibility of the enterprise and no price escalation shall be allowed on this account.

16. HANDING OVER LAND TO ENTERPRISE

The land meant for highway construction and enroute highway related facilities would be given to the enterprise on a lease or other suitable form for the concession period. However, mortgaging or subleasing or securitisation of this land for raising finances would not be allowed. The enterprise is free to licence the enroute highway related facilities to any one for the period(s) limited to the concession period. Any expenditure on stamp duty documentation, etc. for this purpose shall be borne by the enterprise. The ownership of the land continues to be vested in the Government. It is, however, preferable to offer the land to the enterprise on appropriate licence on suitable terms to meet the above requirements.

17. BID SECURITY

Bids for the project will be accompanied by a bid security bond which will be of an amount equal to 1 per cent of the project cost.

18. PERFORMANCE SECURITY

18.1. The successful enterprise will be required to furnish a performance security bond of an amount equal to 3 per cent of the cost of project. Such bond would be discharged after 25 per cent of the works have been completed.

18.2. The enterprise would have to furnish a maintenance performance bond amounting to 1 per cent of the project cost within one month of opening of the facility. The maintenance bond shall be made valid till two years after the end of the concession period.

18.3. The enterprise have to deposit the supervision charges @ 4 per cent of project cost to the implementing agency. Further, in case of works to be implemented under the control of other departments, like, Railways, pre-agreed departmental/supervision charges will have to be paid by the enterprise to the concerned Department.

19. TERMINATION OF CONCESSION

19.1. In the event of termination of a Concession Agreement for any reason attributable to the Government/Implementing Agency, the enterprise will be compensated for all the costs incurred by it on the project plus interest thereon at the rates indicated in the bidding documents. In addition, the bidding conditions may also include payment of suitable liquidated damages to be calculated on the basis of predetermined principles. The objective of such damages would be to provide comfort and assurance to the Enterprise that the Concession Agreement would not be terminated in an arbitrary manner.

19.2. If the Concession agreement has to be terminated due to inability of the enterprise to fulfill its obligations, the Government's liability towards the enterprise will be restricted to an amount not greater than 95 per cent of the debt secured to project assets that would stand transferred to the Government/Implementing Agency upon such termination. Where necessary, the bidding conditions may stipulate other forms of termination payment as may be required in accordance with international norms and practices.

20. PROJECT COMPONENTS

(1) Highway construction, as per the scope which may be finalised by the Implementing Agency based on a detailed feasibility study.

(2) Highway related facilities, enroute, as may be identified by Implementing Agency in the bidding documents:

- Restaurants
- Motels
- Rest/Parking Areas
- Loading/unloading terminals for cargo.
- Warehouses/godowns
- Vehicle repair facilities
- Shops for vehicle components

- Restaurants
- Hotels/Motels
- Insurance and medical facilities
- Commercial and residential complexes

For the above facilities will normally be acquired by the Implementing Agency. The enterprise will be free to license out such establishments to any one for the period(s) limited to the concession period, and enjoy revenue from them during the concession period.

(3) The enterprise would be permitted to allow displaying of advertisements/hoardings within the right-of-way and outside, in accordance with the extant policy of the Government on the subject matter, and enjoy revenue from such activities during the concession period. The bid conditions would specify the details of permissible advertisements/hoardings so as to enable the bidders to quantify the likely revenue stream.

21. IMPLEMENTATION STEPS

21.1. Broad Stages

- (1) Completion of the preparatory works as outlined in guideline 9.1 for the identified projects
- (2) Finalisation of Bidding Documents
- (3) Invitation of Bids
- (4) Pre-bid Conference
- (5) Evaluation of Bids
- (6) Award of Concession
- (7) Signing of the Agreement

As far as possible the bidding documents should give the concession agreement format and leave very little for negotiations before signing of agreement.

21.2. The Implementing Agency shall preliminarily identify the projects to be considered for taking-up under BOT scheme mainly based on traffic levels. After obtaining approval in principle for taking-up the project under BOT Scheme, a detailed feasibility study shall be conducted by the Implementing Agency which shall encompass different aspects, like, financial viability of the project, firming up of detailed scope, integrating commercial development activities with the project depending upon the need. In case of smaller projects (costing upto Rs. 100 crore) in case the Implementing Agency considers that separate feasibility study is not required, detailed scope of the project shall be got approved from the Government. Thereafter, steps 2 to 7 of para 21.1 shall be followed taking approval of the Government at various stages.

22. FEASIBILITY STUDIES

The Implementing Agency, in the first instance will have a feasibility study carried out for the project identified for private investment. The feasibility study will establish the scope of the project, lay down standards and specification for its construction, finalise alignment and determine requirement of land, prepare plan for the re-location/shifting of utility services, cutting of trees, prepare social assessment of the project, identify Rehabilitation and Resettlement issues, Carryout traffic forecast, identify the requirement of highway-related facilities including their locations, Carryout economic and financial viability of the project after assessing the benefits to the users and determining the user fee structures, for different funding options, and various related aspects. The feasibility study will also address the risks of project appropriately. The study may indicate the possibilities/opportunities of real estate development. The Implementing Agency will make available the feasibility study to any interested bidder and may charge appropriate fee for the same.

23. BIDDING DOCUMENTS

The bidding documents will, inter-alia include the terms and conditions of the agreement, rights and responsibilities of the parties, remedies, scope of project and its description, standards and specifications, implementation schedule, operation and maintenance standards, during or the end of the concession period, as the case may be. Consequences of closure of the project by the enterprise and termination of the agreement by Government. The preparation of bidding documents shall address various risks of the project appropriately, by properly allocating them between the parties. The documents shall be got prepared by the Implementing Agency and

given to the interested bidders atleast one month before the closing date for submission of the bids, after due approval of the documents by the Government.

24. INVITATION OF BIDS

24.1. The projects will be classified into the following categories:

Category-I: Railway Over-Bridges, Bypasses, Bridges and Interchanges, each project costing less than or equal to Rs. 100 crores as per the feasibility study.

Category-II: All projects relating to 4-laning and Expressways and the projects relating to Bypasses and Bridges each, costing more than Rs. 100 crores.

24.2. For the Category-I, projects costing upto Rs.100 crores, bids will be received in two covers one cover containing the 'technical bid' and the other containing the 'financial bid'. The financial bid of only those bidders which meet the minimum technical standards (to be made known in advance) will be considered for further evaluation. The evaluation criteria will be stated clearly in the Bid documents.

24.3. For the Category-II, projects as well as Category-I projects costing above Rs.100 crore, two stage bidding process will be followed. In the first stage, proposals will be invited from bidders for short listing. Financial Bids in the second stage, will be invited only from the short-listed bidders. While inviting proposals for short-listing of the bidders, the criteria for short-listing would be made known and the bidding documents would clearly stipulate the criteria for evaluation of the financial bids.

24.4. The technical bids for Category-I projects, or the proposals for short-listing of the bidders for Category-II projects will be evaluated keeping in view inter-alia:

- (a) Experience of the enterprise
- (b) Experience of the contractors/consultants
- (c) Capacity of the enterprise to raise funds from the market
- (d) Financial strength of the enterprise
- (e) Quality and adequacy of the organisational and institutional arrangements proposed for implementation

24.5. The technical bid in respect of Category-I projects and the proposal for short-listing of the bidders for the Category-II projects will be evaluated and finalised by the Committee by the Implementing Agency. Such evaluations will be based on the criteria indicated to the bidders while inviting their offers.

The period of validity of the bid will be as laid down in the bidding documents for specific project. The advertisement for inviting the bids for the Category-I projects will be issued in at least two national English daily newspapers, two national Hindi newspapers, and at least one paper in regional language. For Category-II projects, the advertisement will be issued in the newspapers applicable for category-I projects. In addition, the advertisement will also be issued in India/Abroad. The bids will be invited from domestic as well as international bidders.

25. EVALUATION OF FINANCIAL BIDS

Evaluation of financial bids will be carried out on the principle of least cost to the user.

26. AWARD OF THE CONCESSION

After evaluation of the bids and approval of the award by the Government, a letter of acceptance of the bid will be issued by the Implementing Agency in favour of the successful bidder. The letter of acceptance will, inter-alia, specify the formalities to be completed by the successful bidder for signing of the agreement. If the successful bidder is required to furnish performance security, or any other guarantee, etc. prior to the signing of the concession agreement, it shall be so stated in the letter of acceptance.

27. BANKABILITY OF THE AGREEMENT

27.1. In case the bidder floats a separate company to implement the project, after the same has been awarded to the bidder, the bidder has to undertake full responsibility for all the Acts, commissions and omissions of the

company so floated as the entrepreneur. In such cases the agreement has to be signed both by the bidder as well as the enterprise.

27.2. Efforts have to be made to make the agreement bankable. In this connection, it needs to be specified that in case of termination of the agreement due to force majeure or otherwise, the payments due and payable to the entrepreneur would be paid by the Government in the first instance directly to the lenders to the entrepreneur. The lenders would also have the option of taking over the rights and responsibilities of the entrepreneur on terms mutually agreed with the Government. Further, it shall be specified that the enterprise authorises the Government irrevocably to make the payment directly to the lenders which would be deemed to be the payments made to the enterprise.

27.3. It shall be specified that the enterprise shall open an escrow account and credit all the revenues from the project and the funds raised for the project to the same before drawing funds from it. This account would be open to inspection to the lenders as well as Government so as to be transparent and lend comfort to the lenders.

28. **SIGNING OF AGREEMENT**

The draft of the concession agreement would have been provided to the bidders prior to the bidding, which shall, inter-alia, include the form of agreement. The concession agreement shall be signed by the successful bidder and the Implementing Agency and the Central Government.

29. **EXCEPTIONAL CIRCUMSTANCES AND FORCE MAJEURE**

29.1. The circumstances, such as, wars, invasion, armed conflict, or act of a foreign enemy, riot, insurrections, acts of terrorism, sabotage criminal, damage or threat of such act, nuclear explosion, radioactive or chemical contamination, any effect of the natural elements, including geological conditions which it was not possible to foresee and to resist, strike of exceptional importance, etc. are beyond the control of either party to the agreement and may cause genuine failure or delay in complying with any obligations under the agreement between the parties. In such events, the Government may suitably extend the concession period sufficiently to compensate the enterprise to offset its losses caused due to any exceptional circumstances. The Enterprise may be required to take out an insurance covering its assets against the risks of damage and providing protection against loss of revenue as a result of occurrence of any exceptional circumstances.

29.2. In case of BOT projects, the financial liability of the Government would be limited, except in cases where the continued collection of tolls by the developer is frustrated by a change in policy of the Govt or force majeure, such as, a law and order situation. In such cases, the concession agreement, which is tripartite agreement between, the developer, the implementing agency and the Central Government would have to provide for a suitable compensation consistent with international norms and practices. As the developer cannot sell the National Highway and recover his assets in the event tolling is suspended, there cannot be any private investment in the road sector unless such compensation is agreed to. Details of the force majeure clauses, that would be incorporated in the concession agreement would be in due course finalised and standardised in consultation with Ministry of Finance, and with the help of experts/consultants. In principle, such clauses would be based on a few and balanced allocation of risks among the participants, reflecting the proposition that risks would be allocated to the entities that are best placed to manage them. It would also be necessary to strike a balance between the need to minimise Government's contingent liability on the one hand and providing acceptable levels of security and comfort to investors and tenders on the other hand.

30. **MANAGEMENT OF THE HIGHWAY STRETCH**

For the purpose of proper management of the highway stretch built through private investment, the enterprise will have powers to regulate and control the traffic on the highway stretch forming part of the agreement between the Government and the enterprise. In order to reduce interference from other authorities, no sales tax and octroi barriers will be established on the highway stretch, but properly designed unified check barriers may be allowed at the inter-state borders, located outside the right-of-way with proper entry/exit layouts.

31. REGULATORY FRAMEWORK

31.1. The Implementation Agency will carry out the Regulatory functions, the upper limit of the user fee applicable for the initial year will be stipulated in the agreement, together with the fee revision formula applicable for the subsequent years and appropriate upper limit of fees shall be notified by the Government from time to time. The enterprise will be free to charge less than such notified fee. The Implementing Agency will ensure that the highway facility is available to all the users on equal terms and no user is charged more than the notified fee, or harassed in any manner or subject to any unfair or restrictive practices. The implementing agency will also ensure that the highway stretch is maintained to the proper standards. The Implementing Agency may carry out surprise and periodic checks, and for any default of the enterprise, suitable penalties on the defaulting enterprise may be imposed by the Implementing Agency in accordance with the concession agreement. Cost of testing, quality assurance, etc., is to be met by the entrepreneur and suitable programme for the same shall be made in this regard.

31.2. The enterprise will be obliged to protect the national interests, like, national security whenever necessary and required. They will abide by various statutory requirements relating to protection of environment, safety, etc., and also abide by the directives issued by the Government/Implementing Agency in this regard from time-to-time, in accordance with the provisions of the Concession Agreement or the Laws in force.

32. TRANSFER OF THE PROJECT TO THE GOVERNMENT

For the purposes of transfer, the project will consist of the assets built within the right-of-way and the junction/inter-section areas (guidelines 20(1)) and the enroute highway related facilities (guideline 20(2)). At the end of the concession agreement, the project in sound condition shall be transferred by the enterprise to the Government free of any cost. The standards to which the project will conform to at the time of its transfer to the Government will be laid down in the concession agreement. Even after the transfer of the project to the Government, the Implementing Agency will continue to exercise control on the highway related developments at the entry/exit points (guideline 20(3)) and the advertisements.

33. DISPUTE RESOLUTION

Day-to-day decision on the implementation of the agreements will be made by the Steering group. Any dispute between the Implementing Agency, the Government and the enterprise will be settled under the provisions of Indian Arbitration and Conciliation Act, 1996.

Annexure-I

MINISTRY OF SURFACE TRANSPORT

(Roads Wing)

NOTIFICATION

New Delhi, the 6th February, 1997

GSR. 62(E).—In exercise of the powers conferred by section 9 read with section 8A of the National Highways Act, 1956 (48 of 1956), the Central Government hereby makes the following rules for collection of fees by any person for the use of section, of any National Highway/permanent bridges/temporary bridges on National Highways, namely:—

1. Short title:—(i) These rules may be called the National Highways (Collection of Fees by any person for the use of section of National Highways/permanent bridge/temporary bridge on National Highway) Rules, 1997.

(ii) They shall come into force on the date of their publication in the Official Gazette.

2. Definition:— In these rules, unless the context otherwise require—

(a) 'mechanical vehicle' means any laden or unladen vehicle designed to be driven under its own power, including a motor vehicle, as defined in clause (28) of section 2 of the Motor Vehicles Act of 1988 (59 of 1988).

- (b) 'section of National Highway/permanent bridge/temporary bridge' means that length of National Highway/permanent bridge/temporary bridge on National Highway notified by the Central Government in Official Gazette for the development/maintenance of which an agreement has been entered into between the Central Government and any person.

3. Agreement and rate of fee:—(1) The Central Government may enter into an agreement with any person in relation to the development and maintenance of the whole or any part of a National Highway/permanent bridge/temporary bridge on National Highway as it may decide, whereby the person may be permitted to invest his own funds for the development/maintenance of a section of National Highway/permanent bridge/temporary bridge and to collect and retain the fees at agreed rates from different categories of mechanical vehicles for an agreed period for the use of the facilities thus created, subject to the terms and conditions of the agreement and these Rules.

(2) The rates of fees and the period of collection shall be decided and shall be specified by notification in the Official Gazette by the Central Government having regard to the expenditure involved in building, maintenance, management and operation of the whole or part of such section, interest on the capital invested, reasonable return, the volume of traffic and the period of such agreement

(3) On completion of the period of collection of fees by the person, as per the agreement, all rights pertaining to the section/permanent bridge/temporary bridge on National Highway shall be deemed to have been taken over by the Central Government and that Government shall continue with the collection of fees as notified from time-to-time.

4. Modalities of fee collection. — (1) The mode of fee collection shall be decided by the person referred to in sub-rule (1) of rule 3.

(2) A Table of fees authorised to be collected on any section of National Highway/permanent bridge/temporary bridge on National Highway shall put up by such person in a conspicuous place near a fee collection booth legibly written or printed in English, Hindi and the regional language of the area in which the National Highway is situated.

5. Incharge of fee collection:—(1) The person authorised to collect and retain the fee under these rules shall nominate an official as incharge of fee collection who shall be responsible to ensure that fees are collected at not more than the agreed rates, and the fee collection is smooth without causing undue hardship to the road users and all other matters connected with the fee collection on section of National Highway/permanent bridge/temporary bridge.

(2) The name, address and telephone number, if any, of the incharge of fee collection shall be displayed at suitable and conspicuous locations.

6. Verification of fee collection:—(1) It shall be the responsibility of the person referred to in sub-rule (1) of rule 3 to strictly ensure that all fees leviable are levied, fully collected and correctly maintained. The person shall submit certified and audited copies of the statements of fee collection at specified intervals as required under the notification for fee collection under sub-rule (2) of rule 3. The auditor shall be appointed by the Government.

(2) Central Government shall have the right to check the fee collection at any or all times through their designated officers.

7. Person to have rights to regulate traffic:—The person referred to in sub-rule (1) of rule 3 shall have powers to regulate and control the traffic, on such section of National Highway/permanent bridge/temporary bridge on National Highway relating to which he is authorised to collect fees under these rules, in accordance with the provisions contained in Chapter VIII of the Motor Vehicles Act, 1988 for proper management thereof.

[F.No. RW/NH-11012/1/95-DO-I]

A.D. NARAIN, Director General
(Road Development) & Addl. Secy.

Government of India
Ministry of Surface Transport (Roads Wing)
New Delhi, the 27th August, 1997

G.S.R(E)- In exercise of the powers conferred by section 9 of the National Highways Act, 1956 (48 of 1956) and in supersession of the National Highways (fees for use of permanent bridges) Rules, 1992 except as respects things done or omitted to be done before such supersession, the Central Government hereby makes the following rules to levy the fees for the use of sections of any National Highway or Bridges or both.

1. Short title extent and commencements

- (i) These rules may be called the National Highways (Fees for the use of National Highway Section and permanent Bridge-Public Funded Projects) Rules, 1997
- (ii) They shall come into force on the date of their publication in the Official Gazette

2. Definition

In these rules, unless the context otherwise requires-

- (a) 'Act' means the National Highways Act 1956 (48 of 1956)
- (b) "executing agency" means,
 - (i) In the case of those National Highways administratively placed under the charge of Border Roads Organisation, the Border Roads Development Board (hereinafter referred to as 'BRDB');
 - (ii) In the case of those National Highways or part thereof entrusted to National Highways Authority of India (hereinafter referred to as NHAI), the National Highways Authority of India;
 - (iii) In other cases the State Governments or Union Territory, the Administration to which such functions are delegated under section 5 of the Act;
- (c) "Mechanical Vehicle" means any laden or unladen vehicle designed to be driven under its own power including a motor vehicle as defined in clause (28) of Section 2 of Motor Vehicles Act, 1988 (59 of 1988);
- (d) "Franchisee" means a firm or a company or a person to whom the franchise to collect and retain the fee has been awarded through auction.
- (e) "Fee Inspector" means a person authorised by the executing agency concerned to collect fee in respect of any mechanical vehicle crossing a permanent bridge or using the National Highway Section and includes every Government employee posted on such bridge or National Highway Section in connection with the collection of fees.
- (f) "Form 'A'" means Form 'A' appended to these rules;
- (g) "Form 'B'" means Form 'B' appended to these rules;
- (h) "Form 'C'" means Form 'C' appended to these rules;
- (i) "Pay and Accounts Officer" means Pay and Accounts Officer (National Highway), Ministry of Surface Transport, New Delhi;
- (j) "permanent bridge" means a bridge with permanent structure the cost of which includes, the cost of bridge proper, approach roads, guide bunds and protective works, excluding the cost of toll booths which is more than Rs. 25 lakhs and upto Rs. 100 lakh for each, completed and opened to traffic on or after first day of April, 1976 but before the first day of May, 1992 and thereafter all the bridges costing more than Rs.100 lakhs on National Highway, which shall be notified separately for levy of fee collection, and
- (k) "National Highway Section" means continuous length of any National Highway or Bypass which shall be notified for separately levy of fee collection.
- (l) "Section Officer"/"Junior Engineer" means the officer of the State Public Works Department, (Roads and Building) or any other department dealing with National Highway having that designation or equivalent and being incharge of a particular road or permanent bridge located on a National Highway.

3. Rate of fee and its payment- These shall be levied and paid to the executing agency, on behalf of the Government of India, fee on mechanical vehicles for the use of National Highway Section or permanent bridge or both at the rates notified by the Central Government, in Official Gazette in respect of such National Highway Section or permanent bridge or both.

4. **Displaying of rates of fees** - A Table displaying rates of fees, rates authorised to be levied at any National Highway Section or permanent bridge or both shall be put up in a conspicuous place near the fee collection booths legibly written or printed, in English, Hindi, and the regional language of the area in which National Highway Section or permanent bridge or both are situated.

5. **Procedure for collection** - All fees levied under these rules shall be collected by the executing agency concerned department or through private contractors on the basis of competitive bidding on behalf of the Central Government.

6. **Collection of fees departmentally** - (1) The executing agency concerned shall make necessary arrangement for putting up adequate number of collection booths, operated manually or by automatic arrangement or by combination of both as may be considered suitable by the executing agency.

(2) There shall be posted a Fee Inspector, with necessary police guard to assist at either end of the National Highway section for permanent bridge who shall, be authorised to collect fee in respect of any mechanical, vehicle using the National Highway Section or permanent bridge or both, at the rates notified by the Central Government separately.

(3) There shall be provided at either end of the National Highway Section or permanent bridge or both together, a cross bar for securing the stoppage of mechanical vehicles.

(4) The Fee Inspector shall ensure at the cross bar that passage is not allowed to mechanical vehicles unless the fee leviable in respect thereof has been paid.

7. **Mode of collection of fee in case of departmental fee collection**

- (1) Every driver owner or person incharge of a mechanical vehicle shall, before crossing the National Highway Section or permanent bridge or having crossed it, stop his vehicle at the cross bar and pay the fee leviable in respect of the vehicles at the fee collection booths. The Fee Inspector shall in return, prepare a receipt in duplicate in Form 'A' and hand over one copy of the receipt to the driver or owner or person incharge of the mechanical vehicle.
- (2) Toll collection shall be done only at one place within a distance of 80 km from a point at the beginning of first National Highway Section or approach of entry of the first permanent bridge to be crossed under the jurisdiction of the same executing agency, regardless of number of projects falling within the length in order to facilitate free and unhindered movement of traffic. Where it is not feasible to do so, the number of collection points shall, be kept minimum and shall be decided with the approval of Central Government. The fee may be collected from the driver, owner or person incharge of a vehicle on the first National Highway Section or permanent bridge which is intended to be crossed by such vehicle. The driver, owner or person-in-charge of the vehicle holding the receipt of such payment shall be allowed to pass through other Sections and bridges of such Highway unhindered after showing the receipt to the Fee Inspector posted on other sections or bridges. Details of such Sections and bridges shall be displayed at a conspicuous place near the fee collection booths of the Sections or bridges covered under this sub-rule legibly written or printed in English, Hindi and the regional language of the area in which such Sections or bridges are situated.
- (3) The Fee Inspector shall on receipt of the fee notified by the Central Government fill up a receipt in duplicate in Form 'A' and deliver one copy thereof to the driver, owner or the person-in-charge of the vehicle in respect of which the fee has been paid and return the second copy for record.
- (4) When the same vehicle has to cross the National Highway Section or bridge more than once in a day, the user shall have the option to pay one and a half times of rate notified by the Government while crossing such sections or bridge in the first trip itself, or if the vehicle has to use the section or bridge frequently the vehicle owner can have a monthly pass on the payment of charges equal to 30 single rates.

8. **Remittance of fee collection in case of departmental fee collection**

- (1) The Fee Inspector on duty shall be responsible for the collection and safe custody of the amounts collected during his duty period. The Fee Inspector shall not leave the collection booth till his reliever takes over from him.
- (2) The Fee Inspector shall maintain a cash register as prescribed in Form 'B' and keep it posted up-to-date.
- (3) The Fee Inspector shall at the end of the period of his duty hand over the amount collected by him to his reliever after obtaining the signature of the latter in the relevant column of the cash register.
- (4) Every day between 16.00 hours and 17.00 hours the Fee Inspector on duty shall hand over the entire amount of the fee collected during the preceding 24 hours, to the Sectional Officer/Junior Engineer-in-Charge of National Highway Section or permanent bridge after obtaining his signature in the relevant column of the cash register.
- (5) The Sectional Officer/Junior Engineer-in-Charge shall keep the amounts of collection received from the Fee Inspector in the chest provided for the purpose at his office.

- (6) The Sectional Officer/Junior Engineer-in-Charge shall on every Saturday or if it happens to be a holiday, on the next working day, remit the amount received by him in respect of the week preceding the Saturday by a demand draft to the Pay and Accounts Officer. The Pay and Accounts Officer shall account the amounts so received in the relevant receipt head in his books.
- (7) The Sectional Officer/Junior Engineer-in-Charge shall maintain a register as prescribed in Form 'C' showing the remittance made to the Pay and Accounts officer and shall keep the register posted- up-to-date.
- (8) The Sectional Officer/Junior Engineer-in-Charge shall exercise supervision and control over the staff posted at the National Highway Section or permanent bridge in connection with the collection of the fees and maintain the proper accounts and records,
- (9) The Sub-Divisional Officer, in-charge of the National Highway Section or the permanent bridge shall pay surprise visits at least twice a month at the Offices of the Fee Inspector or the Sectional Officer/Junior Engineer-in-Charge to check that the collection and remittance of fees by the staff is being done in accordance with the provisions of these rules. He shall countersign the cash register and the other record maintained by the staff in token of such visit. Such visit, atleast once in three months shall also be made by the Executive Engineer of the State Public Works Department (Roads and Building) or by the officer of equivalent rank in any other department.

9. Fee collection through franchisee

- (1) In case the fee collection is to be done through the franchisee, the collection of fee and retaining such fee shall be auctioned under the instructions for specific periods as the Central Government may issue and the money shall be collected by the executing agency or his authorised representative as per the terms and conditions of the agreement executed for such purposes.
- (2) The mode of fee collection shall be decided by the franchisee referred to in sub-rule(1) with the approval of the Central Government.
- (3) A table of fees authorised to be collected on any National Highway Section or permanent bridge shall be put up by such franchisee in a conspicuous place near a fee collection booths legibly written or printed in English, Hindi and the Regional language of the area in which the National Highway is situated.
- (4) The franchisee authorised to collect and retain the fee under these rules shall nominate an official as in charge of fee collection who shall be responsible to ensure that fees are collected at not more than the notified rates and the fee collection is smooth without causing hardship to the road users and for all other matters connected with the fee collection on National Highway Section or permanent bridge.
- (5) The name, address and telephone number, if any, of such official incharge of fee collection shall to displayed at suitable and conspicuous locations.
- (6) The executing agency shall remit the auction money so collected from the franchisee by a demand draft to the Pay and Accounts Officer (National Highway), Ministry of Surface Transport, New Delhi. The Pay and Accounts Officer shall account for the amount so received in the relevant receipt head in his books.

10. Special conditions when sections or bridges built by Government are used for developing adjacent Build, Operate & Transfer Projects of private parties

To improve the financial viability of a Build, Operate & Transfer project as decided by the Competent Authority, the concessionaire may be allowed to collect and retain the fees so collected for the full concession period as agreed to in the specific agreement in respect of the facility offered to him under National Highways (collection of fee by any person for the use of section of National Highways/permanent bridges/temporary bridges on National Highways) Rule, 1997 and the facility shall revert back to the Government at the end of concession period and the collection of fee thereafter shall be governed by these rules.

(6) National Highways Section/permanent bridges built under public funding programme and offered for developing further contiguous sections of such National Highway as decided by the Competent Authority shall revert back to the Government at the end of the concession period and the collection of fee thereafter shall be governed by these rules.

11. Tenure of Fee Collection - The fee shall be collected in perpetuity by the executing agency.

12. Submission of returns

- (1) The executing agency concerned in case of departmental fee collection shall furnish returns in the first week of July, October, January and April of every year to the Pay and Accounts Officer containing.
 - (a) Monthwise consolidated statement showing the amount collected and remitted on account of fees proceeds in respect of each National Highway Section or permanent bridge alongwith the details of number and date of demand draft by which the amount has been remitted, and

- (b) Monthwise break-up of the expenditure incurred on each National Highway Section or permanent bridge by the executing agency required to be reimbursed on account of collection of the fees on the basis of actual expenditure incurred.
- (2) The Executing Agency concerned in case of fee collection through franchisee shall furnish to the Pay and Accounts Officer, National Highways, Government of India, Ministry of Surface Transport, New Delhi or any other officer so authorised, the details, regarding the franchise, the amount and the period for which the franchise has been awarded, immediately after the auction for fee collection through such franchisee.

13. **Furnishing of security in case of departmental fees collection** - Every Fee Inspector or the Sectional Officer/Junior Engineer-in-charge shall deposit a cash security of not less than Rs. 1000 by executing a security bond in the prescribed form as laid down in the Treasury Rules with the concerned Executive Engineer or the concerned officer of equivalent rank in any other department.

Form 'A'

[See Rule 7(1)]

R.No.

Receipt for payment of fee

Name of Section/Permanent Bridge

- (1) Description of mechanical vehicle with Registration number
- (2) Whether laden or unladen or with or without passengers
- (3) Time and date of outward journey
- (4) Name of driver and/or owner
- (5) Amount of fee paid

Signature of Fee Inspector

FORM 'B'

[See Rule 8(2)]

Cash Register

Serial No.	Date	Vehicle Number	Name of person paying the fee	Number of receipt by which fee paid	Amount of fee paid	Progressive figures of fee paid	Signatures of fee inspector	Signatures of successive inspector	Signatures of sanctional officer in-charge	Remarks
1	2	3	4	5	6	7	8	9	10	11

GOVERNMENT OF INDIA

MINISTRY OF SURFACE TRANSPORT (ROADS WING)

No. NH-24035/23/94-PL-Vol. III

Dated, the 22nd June, 1997

To

The Secretaries of PWD of all States/Union Territories (dealing with National Highways); Director General (Works), Central Public Works Department, Director General, Border Roads Organisation; Chairman, National Highways Authority of India

Subject : Toll Structures for 4-lane National Highways and other related issues.

Certain measures pertaining to toll structures for 4-lane National Highways and other related issues have recently been taken to attract more investments in the Highway Sector. These are detailed for your information in the following paras.

2. Toll rates on completed 4-lane National Highways annually indexed to Wholesale Price Index (WPI) shall be levied on case-to-case basis which may vary from area-to-area keeping in view the cost of project, financial viability and acceptability criteria, subject to the upper limit as given in the table below with effect from 1.7.1997.

Upper limit of toll structure for 4-lane National Highways

S.No.	Type of Vehicle	Toll rate (in Rupees per km)
1.	Car/jeep/van	0.4
2.	Light commercial vehicle (LCV)	0.7
3.	Truck and buses	1.4
4.	Heavy construction machinery and earth moving equipment	3.0

These rates shall be reviewed periodically by Government of India after every 3 years. Ministry of Surface Transport is authorised to levy higher rates of toll on expressways, major bridges, new bypasses, tunnels and in some exceptional cases (after obtaining approval of High Powered Committee) where so justified by level of traffic after competitive bidding process.

3. National Highways Authority of India/Govt. of India has been authorised to provide capital grants for BOT projects on National Highways not exceeding 40 per cent of the total cost of project.

4. The final decision regarding the quantum of such grants would be taken by the High Powered Committee set-up by Cabinet comprising representatives of Ministry of Finance, Ministry of Law, Planning Commission under the Chairmanship of Secretary, Ministry of Surface Transport, Government of India.

4. Further tax concession as detailed below have now been approved:-

- (i) The period for availing tax holiday/tax reduction for road infrastructure projects is being increased from 12 years to 20 years.
- (ii) The profits from Housing and other development activities which are an integrated part of BOT road projects would be treated as income from "infrastructure" projects for the purposes of tax exemptions/concessions provided, these profits are ploughed back to the development of roads (including repayment of long term debt for the project) on BOT basis within a period of 3 years.
- (iii) Exemptions from import duty on identified high quality construction plants and equipments used in the highway projects has been approved.

The steps for amending the relevant acts/notifications to give effect to the above are being taken separately by Ministry of Finance, Government of India.

5. The land required for Housing and other development activities which are an integral part of Highway projects would be considered as land required for Highway development and such acquisition would be treated as land required for "Public Purpose". Steps for amending the National Highways Act to this effect are being taken separately.
