

No. NH-24028/14/2014-H (Vol II) (E-134863)
Government of India
Ministry of Road Transport & Highways
(Highways Section)
Transport Bhawan, 1, Parliament Street, New Delhi-110001

Dated: 23 May, 2022

Office Memorandum

Subject: Changes in the Model Concession Agreement of BOT(Toll) project permitting the change of ownership from existing 2 years to 1 year after Commercial Operation Date (COD) - reg

The undersigned is directed to say that proposal regarding amendment in the provisions relating to change in ownership clauses in the MCA of BOT(Toll) project was considered by the Inter-Ministerial Committee (IMC) in the meeting held on 01.04.2022. IMC concurred with the proposal permitting change of ownership from 2 years to 1 year after COD. Subsequently, the proposal has been approved by the Hon'ble Minister (RT&H) subject to the following conditions:

- (a) The eligibility condition for change of ownership request will be issuance of COD/issuance of completion certificate and completion of punch list items. The period of 1 year will be reckoned from date of completion of punch list.
 - (b) The concessionaire should not be in default of
 - (i) payment of premium to NHAI, if applicable
 - (ii) O&M obligations
2. Accordingly, necessary clauses in the MCA of BOT (Toll) project have been amended and are attached herewith as **Annexure**.



(Sushant Sudan)

Deputy Secretary to the Government of India
Telephone No. 011-23724515

To

1. Chairperson, NHAI
2. ADG (Nodal), Road Wing, MoRTH
3. MD, NHIDCL

Copy to

1. Secretary, Department of Economic Affairs
2. Secretary, Department of Financial Services
3. Secretary, Department of Legal Affairs
4. CEO, NITI Aayog

Copy also to

1. PS to Hon'ble Minister (RT&H)
2. Sr. PPS to Secretary (RT&H)
3. Sr. PPS to Additional Secretary (Highways)
4. Director (Technical), NIC, MoRTH to upload this OM on the website of MoRTH

Amendment in the MCA of of BOT(Toll) project permitting the change of ownership from existing 2 years to 1 year after COD

S.No	Existing Clause	Proposed Clause
1	5.3.1 The Concessionaire shall not undertake or permit any Change in Ownership, except with the prior approval of the Authority .	<p>5.3.1 The Concessionaire shall not undertake or permit any change in Ownership, except with the prior approval of the Authority and subject to following conditions:</p> <p>(i) no objections from the Senior Lenders.</p> <p>(ii) The eligibility condition for change of ownership request will be issuance of COD/ issuance of completion certificate and completion of punch list items.</p> <p>(iii) The concessionaire shall not be in default of</p> <p>(i) paying premium to NHAI if applicable</p> <p>(ii) O&M obligations</p>
2	<p>7.1(k)</p> <p>It shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.3 and that the {selected bidder/Consortium Members}, together with {its/their} Associates, hold not less than 51% (fifty one percent) of its issued and paid up Equity as on the date of this Agreement, and that no member of the Consortium whose technical and financial capacity was evaluated for the purposes of the pre-qualification and short-listing in response to the Request for Qualification shall hold less than 26%(twenty-six percent) of Equity during the Construction Period and two Years thereafter;</p>	<p>7.1(k)</p> <p>It shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.3 and that the {selected bidder/ Consortium Members}, together with {its/their} Associates, hold not less than 51% (fifty one percent) of its issued and paid up Equity as on the date of this Agreement, and that no member of the Consortium whose technical and financial capacity was evaluated for the purposes of the pre-qualification and short-listing in response to the Request for Qualification shall hold less than 26%(twenty-six percent) of Equity during the Construction Period and <u>one</u></p>

		<u>year</u> thereafter. The period of 1 year will be reckoned from date of completion of punch list.
3.	<p>Definitions:</p> <p>“Change in Ownership” means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible holding of the {Selected bidder/ Consortium Members ,together with [its/their] Associates, in the total Equity to decline below 51% (fifty-one percent) thereof During Construction Period and two years thereafter; provided that any material variation (as compared) to the representation made by the Concessionaire during the bidding process for the purposes of meeting the minimum conditions of eligibility or for evaluation of its application or Bid, as the case may be ,) in the proportion of the equity holding of {the selected bidder/any Consortium Member} to the total Equity, if it occurs prior to completion of a period two years after COD, shall constitute change in Ownership:</p>	<p>Definitions:</p> <p>“Change in Ownership” means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible holding of the {Selected bidder/ Consortium Members, together with [its/their] Associates, in the total Equity to decline below 51% (fifty-one percent) thereof During Construction Period and <u>one year</u> thereafter; provided that any material variation (as compared) to the representation made by the Concessionaire during the bidding process for the purposes of meeting the minimum conditions of eligibility or for evaluation of its application or Bid, as the case may be ,) in the proportion of the equity holding of {the selected bidder/any Consortium Member} to the total Equity, if it occurs prior to completion of a period <u>one year</u> after COD, shall constitute change in Ownership:</p>
