

No.RW/NH-33044/35/2019
Government of India
Ministry of Road Transport & Highways
(S&R Zone)

No.1, Parliament Street, Transport Bhavan, New Delhi-110001

Dated: 18th December, 2019

To

1. Chairman, National Highway Authority of India, Plot No. G-5&6, Sector-10, Dwarka, New Delhi.
2. The Principal Secretaries/ Secretaries of all States/ UTs PWD dealing with National Highways, other centrally sponsored schemes and state schemes.
3. All Chief Engineers of the MoRT&H
4. All Regional Officers/ ELOs of the MoRT&H
5. The Engineer-in-Chief and Chief Engineers of all States/ UTs PWD dealing with National Highways, other centrally sponsored schemes and state schemes.
6. All Project Directors, Project Implementation Units of MoRT&H

Sub: Conciliation & Settlement Mechanism for Contractual Disputes in Contract Agreements with the Contractors/ Concessionaires/ Consultants in respect of Ministry's Projects - Panel of Independent Experts and constitution of conciliation committee-Reg.

1. **Objective:**

A well-developed road infrastructure, especially National Highways network is a crucial factor for the economic growth of the country. The National Highways besides providing seamless connectivity between various places, also generates direct & indirect employment. Considering the importance of National Highways for Nation building, the Ministry of Road Transport & Highways has already enhanced the pace of development and construction of National Highways in the entire country through its various executing agencies including National Highways Authority of India (NHAI), State PWDs, Highways & Infrastructure Development Corporation Limited (NHIDCL) etc. These agencies are entering into various contract agreements with the Contractors/ Concessionaires/ Consultants on behalf of Ministry, for implementing the Highway projects in various modes [Item Rate, BOT(Toll), BOT(Annuity), Hybrid-Annuity, EPC, OMT, etc]. Several disputes have been arising under these contract agreements which are not only involving exorbitant legal costs, but also causing diversion of precious human resource of both parties involved in disputes. The early and out-of-court settlement/ resolution of disputes is in the interest of all the stakeholders and Nation's progress.


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2. **Background:**

- 2.1 NITI Aayog while communicating decision of Cabinet Committee on Economic Affairs (CCEA) vide its two OM's No. 14070/14/2016-PPPAU dated 5th September 2016, one being titled "*Initiatives on the measures for revival of the Construction Sector - Reg.*", directed all the concerned Departments/ Ministries/ PSUs to expeditiously examine the initiatives contained therein and take action for their implementation. The initiatives, inter alia, include establishing a system of conciliation of disputes for amicable settlement through appointment of Conciliation Committees comprising of independent experts in order to ensure speedy disposal of pending or new cases. Niti Ayog above OM is attached as Annexure-A.
- 2.2 National Highways Authority of India (NHAI), the principal executing arm of this Ministry, following the aforesaid decisions of CCEA and provisions of Arbitration & Conciliation Act, 1996, has already developed a procedure for conciliation/ amicable settlement of disputes with the Contractor Agency (reference to Contractor Agency made herein includes Concessionaire/ Consultant Agency) in respect of its projects. Accordingly, a panel of Independent Experts was constituted and three Conciliation Committees of Independent Experts (CCIEs) were established comprising members from the panel for conciliation of disputes of NHAI's projects.
- 2.3 The Ministry, considering NHAI's well established procedure of conciliation of disputes, decided that the dispute matters for the projects of Ministry being executed through State PWDs and PIUs/ ROs of the Ministry (hereinafter called Ministry's projects) may also be referred to the Conciliation Committees of the NHAI. The consent of all the three CCIEs comprising nine members have been obtained for referring those disputes. The Standard Operating Procedure (**Annexure-1**), for Ministry's projects, would be adhered to for referral of cases and conciliation proceedings. There have been constituted three CCIEs, the details of their members are as follows:
- i. **CCIE-1** : Sh. Pradeep Kumar IAS (Retd.), Sh. Jagdish Khattar Ex MD MUL, Sh. A.V. Sinha Ex. DG MoRTH
 - ii. **CCIE-2** : Justice I.P. Vasishth (Retd.), Sh. A.K. Upadhyay IAS (Retd.), Sh. V.V. Ranganathan.
 - iii. **CCIE-3**: Sh. Vijay Chhibber, Retd. IAS, Sh. B. N. Singh, Retd. DG, Sh. N. R. Dash, Retd. Addl. Controller General (MOD).
3. The broad Terms & Conditions and the Terms of Reference of the Conciliation Committees are enclosed as Annexure-2. The procedures and methodologies has also been evolved by Conciliation Panel on its first meeting for undertaking the functions by the Committees which are at Annexure-3. The procedures and methodologies so developed shall be deemed to be applicable in conciliation proceedings for Ministry's projects as well. The NHAI may arrange for the required infrastructure, secretarial assistance and logistic support to the Conciliation Committee. The expenses on such arrangements shall be reimbursed by Ministry on half yearly basis.


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4. The possibility of non-availability of any one of the members of a Committee in any proceedings cannot be ruled out. As such, the Committee comprising of the other two members shall be competent to proceed in the matter and the proceedings of the Committee shall not be vitiated if one of the three members is not present in the deliberations of the Committee. In such case, when the parties sign the settlement agreement, at least two conciliators shall authenticate the same and the conciliation proceedings shall be considered valid and the settlement agreement binding on the parties.
5. The Conciliation process shall be conducted under Part III of the Arbitration and Conciliation (Amendment) Act, 2015. The Conciliation & Settlement Committee would either be able to resolve and settle the dispute(s) between the parties, or the process may fail. In case of failure of the conciliation process at the level of the Conciliation Committee, the parties may withdraw from conciliation process and take recourse to the laid down legal process of arbitration/ Courts. In the event of the conciliation proceedings being successful, the parties to the dispute would sign the written settlement agreement and the conciliators would authenticate the same. Such settlement agreement would then be binding on the parties in terms of Section 73 of the Arbitration and Conciliation (Amendment) Act, 2015.
6. Follow-up action by Ministry on the recommendations of the CCIE:
 1. The Ministry would honour and implement the recommendations/ decisions of the Conciliation Committee of Independent Experts.
 2. Once the recommendation/ decision of the CCIE is received, Ministry's Regional Officer, of concerned State/ Chief Engineer, State PWD shall inform the Ministry along with the brief details of dispute by the party, claim amount, settlement amount etc., within 7 working days.
 3. The concerned Project Zone of the Ministry shall process the proposal for obtaining the concurrence of IFD followed by approval of the Competent Authority for settlement reached at the level of CCIE bringing out following details:

S. No.	Brief of the Dispute by the Party	Claim Amount	Settlement Amount	Level of Settlement [DG(RD)&SS / Conciliation Committee]

4. The concerned Regional Officer of the Ministry/ Chief Engineer (NH) PWD and the authorized representative of the Contractor Agency shall take prompt action to fulfil their respective obligations for signing of the settlement agreement between Chief Engineer (NH), State PWD or as the case may be and the Contractor Agency, including withdrawal of the case(s) pending before the Arbitration Tribunals/ Courts, preferably within a period of 30 days. The payments due from one party to

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the other party as per the settlement shall be made by either party within a period of 30 days of completion of the obligations by the parties.

7. Procedure in cases already pending before the Arbitral Tribunals/ Courts:

- 7.1 In cases of disputes pending before the Arbitration Tribunals or the Courts, the Regional Officer/ Chief Engineer (NH), PWD of concerned state shall make an offer to the Contractor Agency to come forward and explore the possibilities of conciliation through the Conciliation Committee of Independent Experts as per template communication enclosed as **Annexure-1B**. Wherever the parties to the dispute(s) agree to invoke the good offices of the Conciliation Committee, the concerned Regional Officer shall inform the concerned Project Zone within 7 days. The concerned Project Zone will make an appropriate reference to the Conciliation Committee with approval of DG (RD)&SS, upon which the Committee shall proceed to examine such reference(s). However, wherever the parties agree to reach out to the Conciliation Committee, they shall be required to keep the proceedings pending before the Arbitral Tribunals/ Courts in abeyance.
- 7.2 It may be noted that this is an alternate dispute resolution mechanism being put in place by the Ministry and if the Contractor Agency is not willing to take recourse to this process or has any reluctance, whatsoever, in this behalf, there is no compulsion and they are to follow the provisions as per the law.
8. This issues with the approval of Hon'ble Minister (RTH).

Yours faithfully,

 18.12.19
(Md. Shadab Imam)
AEE, MORTH
For DG(RD)&SS

Copy to:

1. All Technical Officers at the Headquarters
2. Sr. PPS to Secretary (RTH),
3. PPS to Special Secretary/ PPS to DG (RD) &SS,
4. PS to AS&FA, PS to ADG
5. NIC-with request to upload on the Ministry's portal.

Standing Operating Procedure (SoP) for referring the dispute matter to a CCIE for conciliation

The following procedure given hereunder shall be adopted for referral of disputes in Ministry's projects to CCIEs established in NHAI for conciliation.

1. There is a provision in BOT/ EPC projects to refer the dispute to the Chairman of the Authority and the Chairman of the Board of Directors of the Contractor for amicable settlement. On receipt of a reference from the Contractor Agency as per provision in the agreement for conciliation of disputes through a meeting between DG (RD)&SS and the Chairman of Board of Directors of the Contractor Agency, the concerned CE in-charge of the Project Zone shall send a response within 10 working days thereby inviting the Concessionaire/ Contractor/ Consultant to depute a team of their representatives to interact with the concerned Project Zone of Ministry. The template response is attached herewith as **Annexure-1A**.
2. The concerned CE in-charge of the Project Zone of the Ministry will obtain and examine the correspondence/ documents of either parties relating to the disputes, preferably within 30 days, hold discussions with the team of the Concessionaire/ Contractor/ Consultant on one side and the Regional Officer along with CE (NH) PWD of the concerned State on the other, to crystallise the issues; prepare the agenda containing the gist on each dispute; fix up a meeting of the DG (RD)&SS and the Chairman of Contractor Agency; circulate the meeting notice and the agenda.
3. Thereafter, the DG (RD)&SS and the Chairman of Contractor Agency may meet on the date fixed, discuss the agenda and explore the possibilities of conciliation/settlement. The conciliation may be successful or partially successful or may fail. Whatever be the outcome, the concerned Project Zone will issue the minutes with the approval of DG (RD)&SS after the meeting, clearly indicating the outcome/ conclusions along with the reasons on each dispute/ claim.
4. In the event of the conciliation between the parties, represented by DG (RD)&SS and the Chairman of Contractor Agency, being successful, the concerned Project Zone shall obtain approval of the Competent Authority for fulfilling of obligations of authority as arrived at, through the conciliation.
5. In cases, where the conciliation is partially successful or failed, the Ministry shall offer the other party in prescribed format (**Annexure-1B**) to refer the matter to the Conciliation Committee of Independent Experts (CCIE) as the conciliation is intended to be one consolidated package of settlement. Subject to consent of the

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other party and with the approval of Secretary (RTH), the matter would then be referred to a CCIE.

6. Upon receipt of consent of the Contractor Agency for reference to the CCIE, both parties (Ministry being represented by DG(RD)&SS) may jointly select one out of the three established CCIEs and submit a joint letter to the selected committee for referring the dispute for conciliation of the claims to it. The consent of the Ministry on one hand, and that of the Contractor Agency on the other, for conciliation shall also be deemed to be their consent to the methodology/ Standard Operating Procedure approved by the panel of conciliators.
7. The concerned Regional Officer of the Ministry / Chief Engineer (NH) PWD shall deal with conciliation/amicable settlement cases through Conciliation Committee of Independent Expert (CCIE) and shall be responsible for overall coordination of the Ministry's cases.
8. The concerned Chief Engineer (Project Zone) shall attend all the meetings of CCIEs and Ministry's Regional Officer and/or Chief Engineer (NH), State PWD may be called for the meeting / clarifications on the issues, if required.


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Annexure-1A

No. _____

Date: _____

Template Letter to be sent to the Concessionaire/ Contractor/ Consulting party

From:

Transport Bhawan, Parliament Street 1,
New Delhi 110001

To

Subject: Your reference dated _____ regarding the Dispute in the project _____ for a meeting at the level of DG (RD) &SS and your Company Chairman for settlement.

Sir,

Kindly refer to your above cited reference on the subject cited above. It is agreed to refer the matter for consideration of the DG(RD) &SS and Chairman of your Company for settlement of the dispute. However, in order to arrive at any proposed conciliation, it would be useful if the team from the Ministry and your Company/ firm discuss and crystallise the issues in advance of the proposed meeting.

2. You are, therefore, requested to discuss the issues/ disputes with the Ministry team led by the CE (Project Zone- ____) of the Ministry on a date mutually convenient.

Yours Sincerely,

(_____)
SE (Zone-____), MoRTH

Copy to:

1. DG (RD) &SS.
2. RO, _____ It is requested to ensure that all correspondence/ documents relating to the subject along with index may please be furnished to the CE (Project Zone) within 7 days of this letter.
3. CE (NH), It is requested that all correspondence/ documents relating to the subject along with index may please be furnished to the CE (Project Zone) within 7 days of this letter.
4. Independent/ Authority Engineer,


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Letter to be sent to all the Concessionaires/ Contractors/ Consultants in Ministry's Projects

No.

Date:

Subject: Establishment of Conciliation Committees of Independent Experts (CCIEs) in terms of the provisions contained in Part-III of the Arbitration & Conciliation(Amendment) Act, 2015 for conciliation of disputes pertaining to Ministry's projects.

Dear Sirs,

I have been directed to inform you that the Ministry has decided to refer any contractual disputes between the Ministry on the one hand and the Concessionaires/ Contractors/ Consultants working for the Ministry on the other, to the Conciliation Committees of Independent Experts for conciliation/ settlement of disputes constituted for the purpose.

2. The Standard Operating Procedures (SoP) for conciliation and settlement of disputes through the conciliatory process and the constitution of the Conciliation Committee of Independent Experts (CCIE) is contained in the Policy Guidelines issued by this Ministry on the subject. It may be noted that the scope of the CCIE pervades across disputes before, during or after the Arbitral process.

3. The Ministry would be agreeable to refer all the cases filed by it before the Hon'ble Courts challenging the Arbitral Awards with appropriate request to the Hon'ble Courts for holding the proceedings in these matters in abeyance for such time as may be taken by the Conciliation Committee of Independent Experts for settlement of the related disputes in case you are agreeable to the same.

4. Further, in case you are agreeable to refer the disputes presently under Arbitral proceedings to the said Committee(s), you may also take recourse to this conciliatory and settlement route with appropriate request to the Arbitral Tribunals to hold the proceedings in abeyance till such time the said dispute(s) is/ are considered by the Conciliation Committee.

5. Please take note that by giving your consent/ willingness to refer the dispute(s) to the Conciliation Committee, you are also confirming your acceptance of the conciliation process as contained in the Policy Guidelines of Ministry dated, more specifically to the provisions contained in Sections 63 and 64 of the Arbitration and Conciliation(Amendment) Act, 2015, and that it meets the requirements on "conciliation" under the Act *ibid*.

6. Accordingly, you are requested to indicate your consent/ willingness in this behalf at the following address:

The Regional Officer (State-_____),
Address: _____
E-mail: _____
Contact No. _____

Yours Sincerely,

The Regional Officer (State-_____),

Copy to,
1.DG (RD) &SS


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Broad Terms and Conditions and Terms of Reference of Conciliation Committees of Independent Experts

1. The CCIEs established in NHAI shall be deemed to be established by Ministry for the purposes of resolving disputes in respect of Ministry's projects. The Panel of Independent Experts forming CCIEs shall be valid for the period co-terminus with its validity for settlement of disputes in NHAI.
2. The Conciliation process will be conducted under Part III of the Arbitration and Conciliation (Amendment) Act, 2015.
3. A member of the CCIE shall be paid a fee of Rs. 50,000/- a sitting + Rs. 5000/- for Local Transport charges for each day of proceedings. An out-station member shall be reimbursed the air-fare in addition. Applicable taxes, if any, shall also be reimbursed as per actuals. NHAI may reimburse the members of CCIE for sittings in respect of conciliation of disputes pertaining to Ministry's projects. Ministry shall reimburse NHAI the aforesaid amount of reimbursement on half yearly basis.
4. The procedures and methodologies (enclosed at **Annexure-3**) evolved by Conciliation Panel on its first meeting for undertaking the functions by the Committees shall be deemed to be applicable in conciliation proceedings for Ministry's projects as well.
5. The CCIE shall hold its day-to-day sittings at a suitable place at New Delhi/ Dwarka and may hold as many sittings every month as it deems appropriate keeping in view the volume of work at its disposal. It is expected that the conciliation-cum-settlement proceedings shall be completed in each case within 5 sittings in a period of not more than six months from the day the reference is made to the CCIE. In case any particular dispute requires more than 5 sittings, the same may be held at the discretion of the Committee with a cap on payment of fee for 5 sittings.
6. The CCIE may give its recommendations on amicable settlement separately for each contract.
7. The CCIE shall develop its own procedures/ processes for dealing with matters referred to it. However, for the understanding of the parties, it may be noted that the procedure of CCIE may not be treated as alternate arbitration proceedings, where both parties come with Statement of Claims/ Defence, arguments/ counter arguments, rejoinders, written submissions, etc., aided by their respective lawyers. The forum of


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CCIE is a settlement forum, where mutual give and take constitutes the essence, rather than strict legal positions of the parties. Hence, the parties are expected to be brief and to the point before the Committee with regard to their respective stands and view the exercise in the spirit of conciliation/ settlement.

8. Based on the experience gained in the course of Conciliation Proceedings, the Conciliation Committee may suggest/ recommend advisories to the Ministry from time to time for improvement in its Contract Management Systems.


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Procedure/ Methodology evolved by Panel for conciliation through Conciliation Committee

1. The procedure for conciliation shall be as per prescribed in Sections 61 to 81 of the Arbitration and Conciliation (Amendment) Act, 2015 (hereinafter referred to as 'the Act') with the following further clarifications:

1.1 Application and Scope (in furtherance to the provisions contained in Section 61 of the Act): Application and Scope of Conciliation shall be before, during or after the arbitral process. The Ministry on one hand, and the Contractor Agency on the other, shall be deemed to have consented to opt for conciliation under the Act *ibid* by giving their consent for conciliation as per these policy guidelines. The consent of the parties shall also be deemed to be their consent for the procedure prescribed herein.

1.2 Commencement of Conciliation Proceedings in terms of Section 62 of the Act: Conciliation Proceedings shall commence when the parties submit the following to the Conciliation Committee:

(i) A letter, jointly signed, consenting to conciliation, which may also indicate the option for either of the three committees constituted;

(ii) Brief statements of the issues/ dispute(s) to be taken up for conciliation;

(iii) Inform, in writing, the Conciliators and the other party of the name, address and contact details of the person(s) who will represent them. The person(s) representing the Ministry shall be duly authorized by the DG (RD)&SS. The person representing the Contractor Agency shall be a Senior Executive and a regular employee of the company, supported by a Board Resolution and a Power of Attorney, duly authorized to enter into a Conciliation Agreement. The parties will not be permitted to bring professional lawyers for conciliation; and

(iv) Copy of joint application filed before the Arbitral Tribunal/ Court to keep the proceedings on hold for a minimum of 180 days, if applicable.

1.3 Number of Conciliators and Appointment of Conciliators (in terms of Sections 63 & 64 of the Act): The consent of parties to proceed with conciliation and settlement of dispute(s) through the constituted CCIEs shall be deemed to fulfil the conditions prescribed under Section 63 and Section 64 of the Act.

2. Administrative Assistance (in furtherance of Section-68 of the Act): The Conciliation Committee shall be assisted by such expert technical and secretarial assistance as it may require for efficient discharge of its functions. The NHAI may provide arrangements for the same to the satisfaction of the Committees. The expenses on such arrangements shall be reimbursed by Ministry on half yearly basis.


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3. Costs of Conciliation and Deposits:

3.1 In terms of Sections 73 and 79 of the Act, the NHAI may, in the first instance, incur all expenditure on the conciliation proceedings including payment of fees to the conciliators, provision of office space, expenditure on dedicated expert and secretarial assistance and other incidental expenses. The other party (Concessionaire/ Contractor/ Consulting Agency) shall also deposit an advance amount in the form of a Demand Draft for Rs. 5.0 Lakh, drawn in favour of NHAI, to commence the conciliation proceedings. The expenses so incurred by NHAI on conciliation of Ministry's project shall be reimbursed by Ministry on bi-monthly basis.

3.2 The NHAI may maintain the accounts of expenditure incurred on the conciliation proceedings on behalf of the Conciliation Committee. Upon termination of conciliation proceedings, the NHAI may render an account of the cost of conciliation, which shall finally be decided/ apportioned between/ among the parties as per the directions of the Conciliation Committee.

4. **Residuary matters:** The panel of Conciliators may decide on the procedures to be followed in respect of any residuary matters, including the review of this SoP from time to time, based on the experience gained in the process

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No. N-14070/14/2016-PPPAU
Government of India
National Institution for Transforming India (NITI Aayog)

NITI Bhawan, New Delhi
September 05, 2016

Office Memorandum

Subject: Initiatives on the measures for revival of the Construction Sector - regarding.

The construction sector has been facing a number of problems, mainly arising from the liquidity constraints caused on account of their payments not being released by the Government Departments/ Public Sector Undertakings (PSUs) pursuant to the arbitral awards. To discuss the problems of the construction sector, detailed deliberations/ consultations were held with the representatives of the construction industry, banks, major government PSUs and concerned Ministries/ Departments. Based on the above deliberations/ consultations, the NITI Aayog placed a proposal before the Cabinet Committee on Economic Affairs (CCEA) for its consideration suggesting various immediate and long-term measures required for addressing the issues ailing the construction sector. The CCEA, chaired by the Hon'ble Prime Minister, has considered the proposals of NITI Aayog in its meeting held on 31 August 2016 and approved the same for the revival of construction sector.

2. The NITI Aayog has separately issued instructions on the subject with regard to the immediate measures to be taken by all concerned. In addition to the said instructions, the CCEA has also directed that the following measures may be expeditiously examined by all the concerned Departments/ Ministries /PSUs:

- 2.1 Item-rate contracts, may be substituted by EPC (turnkey) contracts, wherever appropriate. Such contracts have been in vogue for over two decades in the developed world and ~~Planning Commission~~ (FIDIC - an International Federation of Consulting Engineers, known by its French acronym) has also published such contractual frameworks;
- 2.2 Model bidding documents and Model EPC contracts, suitably revisited or modified wherever required to suit the requirements of particular sectors, may be adopted by PSUs/ Government Departments for construction works;
- 2.3 Ministry of Finance has issued model bidding documents for RFQ, RFP etc. which may be adopted (with appropriate changes wherever required) in all sectors. Model EPC contracts have been developed for Highways and Railways and published by the erstwhile Planning Commission also. NHA has already adopted this document and all construction contracts are currently being structured on this model. NITI Aayog shall assist the concerned departments, wherever required, in this regard.


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- 2.4 The method of conciliation has proved more effective in settling disputes as per experience of some of the PSUs. All PSUs/ Departments issuing public contracts may consider setting up Conciliation Committees/ Councils comprising of independent subject experts in order to ensure speedy disposal of pending or new cases. Recourse to such conciliation may be open before, during or after the Arbitration proceedings. A provision to this effect would also need to be made in the Contract Agreements in future as a mechanism for resolution of disputes.
3. All the concerned Ministries/ Departments shall also communicate the above to their respective PSUs for taking necessary action on the aforesaid measures.

(A. Muthuvezhappan)
Director (PPPAU)

To

1. Secretaries of all the Ministries/Departments of Government of India.
2. Chairpersons/ CMDs/ MDs of all the Central Government PSUs.
3. Chairpersons/ CMDs/MDs/CEOs of all the Scheduled Commercial Banks.
4. Chief Executive, Indian Banks Association, Mumbai.
5. Shri Alok Tandon, Additional Secretary, Cabinet Secretariat, Rashtrapati Bhavan, New Delhi - 110001.
6. Dr. T. V. Somanathan, Joint Secretary, PMO, South Block, New Delhi - 110001.

Copy for information to:

1. PS to Vice Chairman/ PS to MoS/ PS to all Members
2. Sr. PPS to CEO/ PPS to Special Secretary