

## NEW BUILD-OPERATE-TRANSFER RULES

# Govt looks to ease traffic density, termination risks

Privatised highway construction model has been a flop, prompting reforms

DHRUVAKSH SAHA

New Delhi, 19 January

The National Highways Authority of India (NHAI) has proposed sweeping reforms to its privatised highway construction model, Build Operate Transfer (BOT), to attract more interest from private developers. This includes major changes in clauses on termination and change in road traffic density.

The proposed modifications also include various provisions to eliminate discrepancies such as the determination of termination payments, modifications in concession period based on actual traffic versus tolling groups of vehicles and actual traffic exceeding design capacity to be revisited. It has also proposed compensation for delays on the part of NHAI.

According to estimates, close to ₹45 trillion will be required for highway infrastructure creation in the long term. The Central government alone will not be able to meet this demand, officials said, adding that this is the reason that now is a crucial juncture to push for long-pending reforms.

The NHAI, in its proposed changes, is looking to ease the highway sector's woes for BOT projects by easing rules regarding termination, in line with the ministry's aim of "zero arbitration". If a BOT project is terminated during construction (on account of the contractor) or due to National Company Law Tribunal proceedings, 90 per cent of the debt due, deducting the insurance cover and value of work done, whichever is lower, will be paid.

"If the changes are made (as the proposal is at the inter-ministerial consultation stage), it is going to be an attractive proposal. They are looking into all aspects of past hindrances," said a senior executive from one of the country's leading highway operators. This, according to experts, will bring much-needed relief for banks and NBFCs to extend credit for projects.

## BUILDING BLOCKS

State	Number of projects	Kilometres	Cost (in ₹ crore)
Maharashtra	14	522	39,477
Uttar Pradesh	6	1,344	50,333
Tamil Nadu	4	737	26,051
Karnataka	5	759	16,775
Kerala	2	214	16,066

Source: NHAI



It also proposes to give concessionaires more autonomy with additional revenue if the traffic density is higher than 120 per cent of the projected revenue and give developers more leeway if changes in laws and other factors impact the traffic for the private players. These include relaxed rules regarding extension in the concession period of the highway in case of such situations.

According to NHAI Chairman S K Yadav, only seven of the current 706 national highway projects have been bid out under BOT.

Union minister Nitin Gadkari said the bottlenecks in the highway sector have often led to a complete wipeout of contractors and made competitive players hesitant to bid for projects. Meanwhile, certain issues continue to be unclear.

"When the permissible load capacity of vehicles is changed, it is not considered a 'change in law' in BOT provisions. When heavier vehicles are allowed on an NH, fewer vehicles will be needed to transport

goods, which has a negative impact on toll revenues, but the authority doesn't consider it valid for adjustment in the concession period. It must be looked into," an industry participant said.

Another executive said that there remains no clarity as to whether these renewed provisions will only be prospectively applied or can also be retrospectively applied to existing concession agreements for ongoing BOT projects.

One concern for the sector has also been the advent of competing roads, which is a major downside risk for BOT players who may stand to lose toll revenue.

Under the proposed rules, the authority would buy back the highway from the contractor if a competing road is being built.

"There should be a holistic long-term pipeline of all transport infrastructure being planned so that bidders can evaluate properly, as they stand to lose not just from competing roads but also modern rail and airport infrastructure," another executive said.