

# Ministry of Shipping Proposes New Model Concession Agreement for Port Sector

The Ministry of Shipping has proposed a new Model Concession Agreement (MCA) for the Port Sector. The proposed MCA will replace the existing Model Concession Agreement which came into existence in January, 2008. The proposed MCA has taken into account the suggestions provided in various reports by Member Planning Commission (2010), Indian Ports Association (IPA-2015) and Kelkar Committee Report (2015).

The objectives of the revised Model Concession Agreement are following:

- a) More equitable allocation of project risks.
- b) Provisions to handle unforeseen circumstances.
- c) Removing ambiguity in existing provisions.
- d) To attract more private sector investment.

The salient changes proposed in the Revised Model Concession Agreements are:

1. **Change in equity holding to provide exit route:** The revised MCA has proposed that the Concessionaire shall hold 51 per cent equity until 3 years after Commercial Operation Date (COD) and 26 per cent thereafter for another 3 years. Hence, the private party would be free to exist after 6 years from COD. The Concessionaire may approach the Concessioneing Authority to waive the equity holding requirement during the second 3 year term if performance parameters have been achieved during the first three year period.
2. **Providing for refinancing provision in MCA:** This amendment is aimed at facilitating availability of low cost long term funds to Concessionaire so as to improve the financial viability of the projects and is based on the Model Triartite Agreement approved by Department of Economic Affairs. Under this, the Concessionaire can issue Bonds on completion of one year of operation for refinancing of debt, this will in result in optimization of the finance cost of the projects.
3. **Amendment in Definition of “Change of Law”:** As per the current MCA, change in law excludes
  - (i) Imposition of standards and condition arising out of TAMP guidelines, Environmental Law & Labor laws, and

- (ii) Increase and imposition of taxes, duties, etc. for compensating the Concessionaire. As these can materially affect the viability of the project the proposed MCA states that the Concessionaire shall be compensated for all changes in law except imposition of “New Direct Tax”. This will help the Concessionaire to get compensation for all material changes in law.
4. **Provision for mid-term review of concession:** It is proposed that concessions may be reviewed by a Review Board (or any such competent authority) under applicable laws at the end of 15 years from COD to arrive at required mitigation measures. The triggers and nature and quantum of mitigation measures will be as per guidelines issued by the Government in this regard.
  5. **Approval of Discounts on Ceiling Rates for the Purpose of Recovery of Revenue share:** Presently, revenue share is payable on Gross Revenue, calculated as per tariff ceilings even if Concessionaire has to allow discount to keep the charges competitive. With a view to have a balanced risk allocation, it is proposed that Concessionaire shall be entitled to approach Port to consider and approve discounts on ceiling traffic and revenue share shall be paid on the approved discounted tariff of the approved revenue share. Cargo storage charges will be excluded while computing Gross Revenue for the purpose of Revenue Sharing.
  6. **Provision for Commercial Operations before COD:** It is proposed to permit operations before COD on project specific terms and conditions about level of operations and payment to the port; this will lead to better utilization of assets provided by the Port in many projects.
  7. **Improved Utilization of Project Assets and Higher Productivity:** Presently, Concessionaire is required to operate the Project as least as per scope of work. In order to avoid any ambiguity, it’s now been specified that the Concessionaire is free to deploy higher capacity equipment/facilities for higher productivity and improved utilization of Project assets.
  8. **Grievance Redressal System:** The proposed MCA will have a Grievance Redressal System where the Concessionaire shall create a Grievance Redressal Portal in their website with adequate monitoring system and timelines for redressal.
  9. **Applicable Tariff Guidelines:** This provision is to give an option to Concessionaire to adopt changed/revised Tariff guidelines as and when issued by the Government. It is

proposed that private party will have option to adopt new or revised guidelines within 90 days of publication in official gazette.

**10. Provision for Additional Land, Utilities & Services: Presently the charges payable by the Concessionaire** for additional land, utilities and services are equal to 200 per cent of the scale of rates, as per the proposed MCA provisions have been made for providing additional land, utilities and services during operation period and required for Project Operations on payment of 120 percent of the applicable scale of rates.

**11. Replacement of “Actual project Cost” with “Approved Project Cost”:** Presently, if the Actual Project cost, certified by statutory auditors, is higher than the earlier estimates, Concessioning Authority may increase the project cost. However, the procedure for the same is not prescribed. It is proposed to replace the Actual Project Cost with Approved Project Cost and prescribe procedure for approval. The Concessionaire shall submit statement of actual capital cost incurred on the project as certified by statutory auditors within a period of 90 days of issue of completion certificate. If the cost is more than the Estimated Project Cost or cost incorporated in Financing Plan, it shall be referred to the Independent Engineer for his comments on (i) reasonability of expenditure and (ii) need of expenditure to provide project facilities and services as per Scope of Work. The Concessioning Authority will take a decision on approving the enhanced cost taking into account the Report of the Independent Engineer.

The proposed changes in the Model Concession Agreement have been uploaded on the official website ([www.shipping.nic.in](http://www.shipping.nic.in)) of the Ministry of Shipping for seeking comments of the stakeholders.

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