



April- June 2023

This JSA Highways & Logistics Newsletter focuses on key developments undertaken in the Indian roadways and logistics sector between April - June 2023.

Relief measures to contractors on account of COVID

The Ministry of Road Transport and Highways (“**MoRTH**”) issued a circular dated May 4, 2023 extending certain relief measures, available to the contractors/developers of Hybrid Annuity Model (“**HAM**”) / Engineering Procurement Construction (“**EPC**”) projects in the road sector, until March 31, 2024. The relief measures include:

1. Schedule G/H of the relevant HAM/ EPC contracts pertaining to the release of portion of contract price for different stages of construction, will continue to remain relaxed allowing contractor/developer monthly payments for completed work as per specifications.
2. The competent departmental authority will continue to make direct payments to the approved subcontractors for the works completed to the approved subcontractors and wherever the competent authority is of the view that such direct payments are required for the early completion of works.
3. Performance security for all existing contracts will remain reduced from 5-10 % to 3% of the contract value, excluding the disputed contracts (whether commenced or completed). All tenders /contracts issued/ concluded till March 31, 2024 will have a reduced performance security value. However, as per the circular, to ensure quality of work being executed, the project executing agencies have been advised to ensure that in case of abnormally low bids, additional performance security is realized as per the latest guidelines provided by Department of Expenditure, Ministry of Finance.

The circular clarifies that retention money is a part of the performance security till construction period. Hence, release of retention money may be continued in proportion to the work already executed and no reduction of retention money may be made from the bills raised by the contractor till March 31, 2024. The circular states that for HAM/Build Operate Toll (“**BOT**”) contracts, performance guarantee may be released on pro-rata basis, as provided in the contract, if concessionaire is not in breach of the contract.

[Source: [*Notification dated May 4, 2023*](#)]

Clarifications for accommodation of public utility services along national highways

The MoRTH issued a clarification dated April 17, 2023, (“**Clarification**”) amending the policy circular dated November 22, 2016 (“**Policy Circular**”) in relation to permissions and right of way granted for laying down optical fiber cables and telecom cables. The key amendments to the Policy Circular are as follows:

1. The Clarification allows horizontal directional drilling without casing/ conduit pipe for petroleum products pipelines crossing national highways, provided certain safety precautions and codes mentioned in the Clarification are complied with.
2. The Policy Circular stated that the public utilities' license fee/ lease rental for using highway land would be 33% of the fee prescribed for industrial utilities. However, as per the Clarification, this condition has been done away with, and the following new fee calculation method for both sectors has been prescribed:
 - a) License fee for industrial utilities = Utilized National Highway Land Area X prevailing circle rate of land per unit area X 10% per annum

Utilized National Highway Land Area will include projection of utility on ground including area of support system / tower.
 - b) License fee for public utilities = Utilized National Highway Land Area X prevailing circle rate of land per unit area X 1.5% per annum, subject to a minimum of INR 10,000 (Indian Rupees ten thousand), with 6% annual increment.

Utilized National Highway Land Area will include area of support system / tower but will not include projection of utility on ground.

For both of the above, the fee has to be deposited in advance.
3. The Clarification removes the classification for the purpose of computation of license fees which bifurcated utilities between: (a) localized infrastructure facilities such as towers, repeaters and junction boxes; and (b) other utilities.
4. There will be no license fee payable for optical fiber cables crossing national highways through horizontal directional drilling.

[Source: [Clarification dated April 17, 2023](#)]

Draft Motor Third Party Premium and Liability Rules, 2023-24

MoRTH in consultation with Insurance Regulatory and Development Authority of India (“IRDAI”) notified the draft Motor Third Party Premium and Liability Rules, 2023-24 (“**Draft Insurance Rules**”) on June 14, 2023 whereby the base premium rates for motor vehicle third party insurance has been proposed for various types of vehicles for public comments and consultation.

As per the Draft Insurance Rules, a 15% discount on the premium is proposed for buses for educational institutions, 50% discount on premium is proposed for private cars which are registered as vintage cars, a discount of 15% is proposed for electric vehicles (EVs) and a discount of 7.5% for hybrid EVs.

[Source: [Draft Insurance Rules, 2023-24](#)]

Proposal to set up control rooms for monitoring issues on national highways due to heavy rains

On June 27, 2023, the MoRTH issued an office memorandum to set up a control room for monitoring issues impacting national highways on account of heavy rainfall. The control room will be made operational with immediate effect and the terms of reference of the officers in the control room will include: (a) receiving calls from the public and government agencies and informing the concerned implementing agencies to resolve the issue; (b) monitoring electronic media platforms for any issues arising on national highways on account of heavy rainfall; (c) receiving input/ collect information from regional officers in relation to any problems being faced on the national highways.

As per the office memorandum, the officers in the control room will ensure that any information relating to blockage or damage to national highways on account of rainfall will be brought to the notice to the concerned regional officers. The control room will also keep a record of all calls received by them in chronological order.

[Source: [Office Memorandum dated June 27, 2023](#)]

All India Tourist Vehicles (Permit) Rules, 2023 notified

The MoRTH notified the All India Tourist Vehicles (Permit) Rules, 2023 on April 18, 2023 ("**Tourist Vehicles Rules**"). superseding the All India Tourist Vehicles (Authorisation or Permit) Rules, 2021.

Some of the key provisions of the Tourist Vehicles Rules are as follows:

1. An All India Tourist Permit will only be granted to a tourist vehicle of a tourist vehicle operator. The application for a permit or for renewal of a permit has to be made electronically on the portal maintained by the relevant state transport authority and the prescribed fees has to be paid depending upon the capacity of the tourist vehicle.
2. If the relevant state transport authority does not make a decision within 7 (seven) days of receipt of application for a permit, the All India Tourist Permit will be deemed to have been granted to the applicant.
3. An exception has been created whereby for battery operated tourist vehicle and tourist vehicle driven on methanol or ethanol fuel, the All India Tourist Permit will be issued without payment of any fee.
4. A tourist vehicle will not be granted the All India Tourist Permit after the vehicle has completed 12 (twelve) years from the date of first registration of the vehicle. However, in the case of diesel vehicles registered in the National Capital Territory of Delhi, the All India Tourist Permit will not be granted after the vehicle has completed 10 (ten) years from the date of its first registration.
5. No person will use the registered tourist vehicle for the transport of tourists individually or in a group, unless the person has a valid All India Tourist Permit.
6. Tourist vehicles which have been granted All India Tourist Permit under these rules must prominently display the words "All India Tourist Permit" on rear left side of the vehicle in white letters against a blue background along with the validity of the permit.
7. A tourist vehicle plying under the All India Tourist Permit, will have to carry for a minimum period of 1 (one) year, a list of tourists in electronic form or in physical form, along with the details of origin and the destination of each tourist. The tourist vehicle operator must maintain electronic records of the tourists, including journey details, and these records must be made available to the jurisdictional transport authority or any other law enforcement officer on demand.
8. The All India Tourist Vehicle Permit may be cancelled if: (a) the permit holder ceases to own the vehicle covered by the All India Tourist Permit; (b) uses or causes or allows a tourist vehicle to be used in contravention to the provisions of Tourist Vehicles Rules or the Motor Vehicles Act, 1988; (c) the holder of the All India Tourist Permit acquires the citizenship of any foreign country; and (iv) the permit holder obtained the All India Tourist Permit by fraud or misrepresentation.
9. A permit issued under the Motor Vehicles (All India Permit for Tourist Transport Operators) Rules, 1993 or the All India Tourist Vehicles (Authorisation or Permit) Rules, 2021 will remain in force for the validity period of the permit as if they were issued under the Tourist Vehicles Rules.

[Source: [All India Tourist Vehicles \(Permit\) Rules, 2023](#)]

Highway contractors permitted to convert bank guarantees to insurance surety bonds

The MoRTH, vide circular dated May 31, 2023 has approved changes to the standard bidding documents for EPC, HAM and BOT (Toll) projects, including e-bank guarantee and surety bonds as forms of performance security, following changes to the General Financial Rules, 2017.

Further, MoRTH has declared that any instrument submitted by a highway contractor as a bid security and/or performance security may now be replaced by insurance surety bond. It is also clarified that physical bank guarantees can be accepted as bid security or performance security if e-bank guarantees cannot be furnished.

[Source: [MoRTH Circular dated May 31, 2023](#)]

NHAI aims to create 10,000 km of digital highways by end of FY 2024-25

National Highways Authority of India (“NHAI”) has announced that it aims to develop around 10,000 (ten thousand) km of optic fibre cables (“OFC”) infrastructure across the country by FY 2024-25. This project is proposed to be implemented by NHAI through its subsidiary National Highways Logistics Management Limited (NHLML). The proposal at the moment is to develop utility corridors along the highway stretches where the OFC can be laid down and established. It has been announced that approximately 1,367 (one thousand three hundred sixty seven) km on Delhi - Mumbai Expressway and 512 (five hundred twelve) km on Hyderabad - Bangalore corridor will act as the pilot routes for this initiative.

With the creation of digital highways, the Government of India hopes to implement telecom technologies like 5G & 6G in remote parts of India and fulfill the larger goal of digital transformation of the country. The government’s plan is to lease out the OFC network on a fixed price allotment mechanism on ‘Open for All’ basis. The finer details of the policy for allotment will be decided by the Department of Telecommunications and Telecom Regulatory Authority of India.

[Source: [PIB](#)]

NHAI issues its first Sustainability Report

NHAI, on June 5, 2023 announced its first ever sustainability report highlighting the green initiatives it has undertaken during the financial year 2021-22. Some of the initiatives which have been showcased in the report are as follows:

1. NHAI has been using recycled materials for national highway construction. Use of fly-ash and plastic waste in construction has increased over the last 3 (three) years. NHAI has encouraged the use of recycled asphalt (RAP) and recycled aggregates (RA) in highway construction.
2. Green House Gas (GHG) emissions from energy consumption, operations, transport and travel measured in Metric Tonnes CO2 equivalent /km constructed saw a decline of 9.7% in FY 2020-21 and 2% in FY 2021-22.
3. On the operations front, energy intensity in Giga Joules/km has reduced by 37% in FY 2020-21 and 27% in FY 2021-22.
4. Around 2.74 crore saplings were planted by NHAI till 2021-22 to offset direct emissions from the vehicles.
5. NHAI has partnered with different stakeholders such as State Rural Livelihood Mission (SRLM), Self Help Groups, CSR partners and NGOs to collaboratively organize plantation drives. In July 2022, NHAI organized a nationwide plantation drive and planted around 1,10,00,000 (one lakh ten thousand) plants in a single day through simultaneous plantations at 114 (one hundred fourteen) identified locations across the country.
6. It is expected that with the issuance of this report, new avenues for infrastructure financing known as ‘Green Finance’ can be availed of.
7. The full report can be accessed at the following link.

FASTag Payments Enabled at Entry Points of Tiger Reserve

Indian Highways Management Company Limited (IHMCL), a subsidiary company of NHAI for the dedicated purpose of carrying out electronic tolling has signed a memorandum of understanding with the Nagarjunasagar-Srisailem Tiger Reserve. The tiger reserve is located in the states of Andhra Pradesh and Telangana.

The initiative aims to provide FASTag based payment system at entry points of the tiger reserve and will extend the benefit of collection of Ecosystem Management Coordination (EMC) fee via FASTag at various entrance points of the reserve. It is hoped that by enabling the FASTag system at the entry points, long queues and delays can be avoided and tourists can be allowed to savor the natural beauty and wildlife of these areas without hassles.

[Source: [PIB](#)]

NHAI launches a knowledge sharing platform with a view to a collaborative approach

With a view to take a more collaborative approach in highways development, the NHAI has launched a 'Knowledge Sharing' platform which is hosted on its website. Experts and citizens who want to share knowledge and insights related to topics such as road design, construction, road safety, environment sustainability and related fields will be able to do so by making submissions on the portal.

The submissions from citizens and experts can be in the form of video clips, power point presentation and PDF files. The suggestions and information uploaded on this platform will be reviewed by NHAI officials and will be evaluated for implementation.

The knowledge sharing platform of NHAI can be accessed at the following [link](#).

NHAI empowers Project Directors to rectify accident-prone spots

The NHAI, on June 16, 2023, issued guidelines delegating powers to the Project Directors of NHAI to *suo moto* undertake rectification of accident prone zones up to an amount of INR 10,00,000 (Indian Rupees ten lakhs) provided that these spots or zones have been identified by the State Police Chief or by the District Road Safety Committee.

Further the guidelines has empowered the concerned Regional Office to implement short-term measures, costing more than INR 10,00,000 (Indian Rupees ten lakh) and up to INR 25,00,000, (Indian Rupees twenty five lakh) to rectify accident prone spots.

[Source: [PIB](#)]

Implementation of Fire Alarm System in buses delayed

On January 27, 2022, MoRTH had extended the scope of AIS 135 on school buses and type III category buses for incorporating provision of fire protection in the passenger compartment of the buses. The timeline for implementation was January 27, 2023. However, on the basis of several representations and comments from various stakeholders, MoRTH on April 28, 2023, deferred the implementation of AIS 135 i.e., the fire alarm system, on school buses and type III category buses to October 1, 2023.

[Source: [Notification dated April 28, 2023](#)]

Conversion of fully built vehicles into adapted vehicles for Divyangjan

The MoRTH *vide* notification dated April 13, 2023, amended Rules 53A and 53B of the Central Motor Vehicles Rules, 1989 to allow for temporary registration of fully built vehicles to be converted or altered to adapted vehicles in order to allow *Divyangjan* persons to access such vehicles.

[Source: [Notification dated April 13, 2023](#)]

Draft notification for inclusion of provisions for BNCAP in the Motor Vehicles Act

The MoRTH vide a draft notification dated June 28, 2023, proposed a new Rule 126-E in the Central Motor Vehicles Rules, 1989 facilitating the implementation of the Bharat New Car Assessment Programme (“**BNCAP**”) on type Approved vehicles of category M1 from October 1, 2023. These would be vehicles used for the carriage of passengers, comprising not more than eight seats, in addition to driver’s seat.

BNCAP rating will provide consumers an indication of the level of protection offered to occupants by evaluating the vehicle in the areas of (a) Adult Occupant Protection (AOP) (b) Child Occupant Protection (COP) and (c) Safety Assist Technologies (SAT). The vehicle will be assigned a 1 (one) to 5 (five) star rating based on the scoring against various tests undertaken as per AIS 197.

Along with draft notification, MoRTH has also issued the Draft Procedure for Regulating Bharat New Car Assessment Programme and the Draft AIS 197.

[Source: [Draft Notification dated June 28, 2023](#)]

Highways & Logistics Practice

In the highways sector, JSA provides end to end assistance to its clients in all aspects of development and operations including but not limited to setting up of green field projects and documentation in respect thereof such as joint venture agreements, shareholders agreements, foreign direct investment approvals, project financing, EPC contracts, O&M contracts, vetting of tender documents including review of concession agreements and regulatory issues including competition, licensing and tariff matters before various regulatory fora.

JSA advises clients on across the spectrum of contractual, commercial, policy, regulatory and legal issues at all stages of the value chain in the logistics sector – infrastructure such as roads, railways, inland waterways, aviation, ports, and logistics parks, as well as services such as transportation, cold chain facilities, and warehousing. JSA has been regularly engaged in advising project developers, investors, suppliers and contractors on commercial/ transactional issues, advising financial institutions and borrowers in relation to financing transactions and dispute resolution (including arbitration, litigation and representation before various judicial fora).

This Newsletter has been prepared by:



Vishnu Sudarsan

Partner



Ashish Suman

Partner



Kartikeya GS

Partner



Ayan Sinha

Senior Associate



17 Practices and
24 Ranked Lawyers



16 Practices and
11 Ranked Lawyers



7 Practices and
2 Ranked Lawyers



11 Practices and
39 Ranked Partners
**IFLR1000 APAC
Rankings 2022**

Banking & Finance Team
of the Year

Fintech Team of the Year

Restructuring & Insolvency
Team of the Year



Among Top 7 Best Overall
Law Firms in India and
9 Ranked Practices

11 winning Deals in
IBLJ Deals of the Year

10 A List Lawyers in
IBLJ Top 100 Lawyer List



Banking & Financial Services
Law Firm of the Year 2022

Dispute Resolution Law
Firm of the Year 2022

Equity Market Deal of the
Year (Premium) 2022

Energy Law Firm of the
Year 2021



**Ranked #1
The Vahura Best Law Firms to
Work Report, 2022**

Top 10 Best Law Firms for
Women in 2022

For more details, please contact km@jsalaw.com

www.jsalaw.com



Ahmedabad | Bengaluru | Chennai | Gurugram | Hyderabad | Mumbai | New Delhi



This newsletter is not an advertisement or any form of solicitation and should not be construed as such. This newsletter has been prepared for general information purposes only. Nothing in this newsletter constitutes professional advice or a legal opinion. You should obtain appropriate professional advice before making any business, legal or other decisions. JSA and the authors of this update disclaim all and any liability to any person who takes any decision based on this publication.