Article

RBI revises prudential norms on "Advances to Infrastructure sector"

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Note

The Reserve Bank of India (RBI) vide its notification dated *March 18, 2013*[1] has revised the "***Prudential Norms on Advances to Infrastructure Sector***" to include the user charges from public-private partnership (PPP) projects as security against the debt due to lenders to the extent assured by the project authority under the Concession Agreement. This move by the apex bank of India is aimed to boost '*infrastructure financing*'[2], especially for the growth in road and power sector. RBI has eased the norms for treating bank loans as secured finance even in the absence of collaterals. However, the debt is considered secured subject to the conditions articulated below.

Firstly, the user charges, toll, or tariff payments are to be kept in an escrow account where senior lenders have priority over withdrawals by the concessionaire. Second, there must be sufficient risk mitigation, such as pre-determined increase in user charges or increase in concession period, in case project revenues are lower than anticipated.

Third, the conditions says that the lenders are required to have right of substitution in case of concessionaire default and also to trigger termination in case of default in debt service. Further the conditions articulate that upon termination, the project authority has an obligation of compulsory buy-out and repayment of debt due in a pre-determined manner. It also mentioned that in all such cases, banks must satisfy themselves about the legal enforceability of the provisions of the tripartite agreement and factor in their past experience with such contracts.

This change has been brought based on the recommendations of the Deepak Parekh committee on infrastructure financing, which is expected to help the new projects based on Build-Operate-Transfer **(BOT)** basis as well. Explaining the reasons behind the move, the RBI also said, "It has been brought to our notice that most of the projects in India are user-charge based for which the Planning Commission has published Model Concession Agreements **(MCAs)**. These have been adopted by various Ministries and State Governments for their respective PPP projects and they provide adequate comfort to the lenders regarding security of their debt".

[1] http://www.rbi.org.in/scripts/NotificationUser.aspx?Id=7896&Mode=0

[2] financial assistance given by a bank or financial institution to an entity to undertake a project for developing the "infrastructure" of a country is termed as 'infrastructure financing'

Note

It was observed, that asset created by bank finance cannot be pledged or mortgaged to the bank in infrastructure projects but certain rights to receive annuities and toll collection from the assets can be hypothecated to the lenders.

The 'Prudential Norms on Advances to Infrastructure Sector' issued in April 23, 2010[3] allowed banks to treat annuities under BOT model in respect of road and highway projects and toll collection rights, where there are provisions to compensate the project sponsor if a certain level of traffic is not achieved, as tangible securities. This was subject to the condition that banks' right to receive annuities and toll collection rights are legally enforceable and irrevocable.

The revised norms are expected to give a lot of comfort to the banks for financing the infrastructure project as the definition of secured loan stands modified and to support the infrastructure sector in India.

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[3] http://www.rbi.org.in/scripts/NotificationUser.aspx?Id=5619&Mode=0