

ADVISORY ON TOLL INCREASE

The Toll Authority has responsibility for monitoring the Concession Agreement and regulating the toll industry in accordance with the terms of the Toll Roads Act in order to ensure compliance to the terms. In light of this please see the requirements of the Agreement and the Act as it relates to a toll increase. All application for toll increase should therefore be considered against the backgrounds of the Act and the Concession Agreement.

The Concession Agreement of November 21st 2001 and the Toll Roads Act of 2002 generally govern the toll road and provide the guidelines for the varying of toll charges.

By virtue of the Concession Agreement the toll road Developer is generally entitled to an increase of toll in two circumstances:

- Once every twelve months effective July 1st each year; and
- Where the increase in the Jamaica CPI of the preceding period (which shall be calculated by annualizing the increase in the Jamaican Consumer Price Index (CPI) over the most recent 6 months) exceeds twenty five percent (25%) per annum, the Developer may apply for an increase of the toll levels at any month end when the increase in the Jamaican CPI in the period since the most recent toll increase has been greater than 5%. (*See Clause 22 of the Concession Agreement and Clause 5 of the 2008 Amended Tolling Policy in Schedule 15 of the Concession Agreement*).

The toll levels for any period are set by the Developer in accordance with the Capped Toll level for that period. This Capped Toll Level is calculated based on the formulae outlined in Clause 5.2 of the Tolling Policy in Schedule 15; the formulae is linked to the exchange rate and the US and Jamaica CPI.

Below is a summary of the process for adjusting the toll charges:

1. An application for the adjustment in toll charges must be made to the Toll Regulator who is appointed under the Toll Roads Act and carries out his function by virtue of the Toll Roads Act and the Concession Agreement; currently the Toll Regulator is Mr. Dunbar McFarlane.
2. Where the toll levels set by the Developer are at or below the Capped Toll Level for that period and the application is in accordance with the terms of the Tolling Policy and all relevant laws, the Toll Regulator **may approve** them and upon such approval the Toll Levels shall be implemented.
3. However prior to granting permission the Toll Regulator must obtain the written approval of the Minister. It has been customary however for this approval to be sought from Cabinet. The Toll Roads Act (section 23) alludes to discretion in approval while the Concession Agreement in Clause 22.3 and Schedule 15 speaks more specifically to this discretion and the consequences for exercising it.

Implications for failure to approve the application and grant the toll increase are as outline below:

- Clause 22.3 of the Concession and Clause 1.3 of Schedule 15 state that where the approval is not provided on the relevant date at the levels that the Developer requested, the Developer can require the Grantor (NROCC) to pay compensation for lost revenue for the period in which the actual toll levels are below those requested. This may arise either due to delays in implementing, insistence that a lower rate is charged or where the request is completely refused.
4. Where the decision has been made to proceed with the increase, the Minister by notice in a daily newspaper informs the public and or interest group of the intent and invites them to make and submit submissions concerning the proposed increase.
 5. After due consideration is given to such submissions, an Order is made for the increase to be implemented.