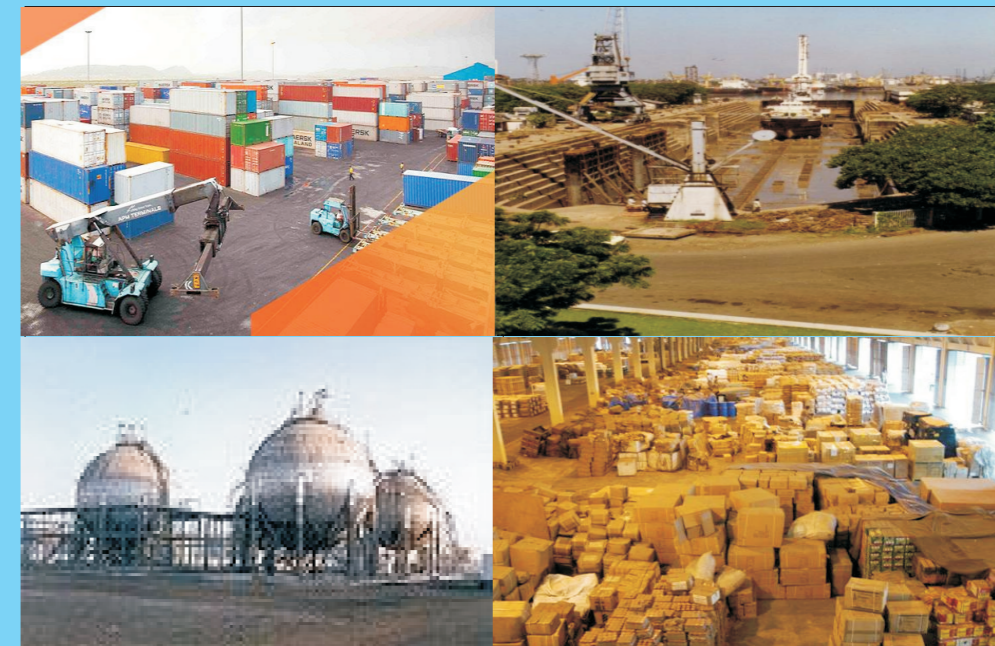


LAND POLICY

GUIDELINES FOR MAJOR PORTS - 2014



Government of India
Ministry of Shipping
January, 2014

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Foreword



The Union Cabinet has approved 'Policy Guidelines for Land Management by Major Ports' formulated by Ministry of Shipping. This is a Major Policy initiative, providing for a transparent mechanism for allotment of land in the possession of the Major Ports.

The present Policy initiative is a marked improvement over the previous efforts and I am confident that it will act as a catalyst for attracting investments in the Major Port sector. The Major Ports will now be able to leverage their land banks for attracting dedicated cargo and bolster their business prospects. This will also greatly benefit the Government Departments/PSUs and Statutory Authorities as the Policy prescribes a special dispensation for such entities. I would request all the Major Ports to take advantage of the Policy Guidelines and expedite the process of land allotment for various commercial activities in the Port.

I would like to compliment the Officers of the Ministry for their efforts in formulating the Policy Guidelines.

(G.K. Vasan)

मिलिंद देवरा
MILIND DEORA



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January 13, 2014

MESSAGE

Policy Guidelines for 'Land Management by Major Ports' 2014 is a product of past experience and an outcome of extensive consultative process with different stakeholders. It will enable the Major Ports to allot land on lease/licence basis for various commercial ventures, which is expected to increase the throughput of Ports.

The Policy is a Major milestone for the sector and I am confident that the Major Ports will lease/licence land within the broad parameters laid down therein to satisfaction and benefit of all Port users.

I take this opportunity to appreciate the efforts of the officials involved in the exercise and also, expect that it will benefit all stakeholders.

(MILIND DEORA)

Preface

Major Ports in the country have between them 2.64 lakhs acres, which is a Major resource that can be leveraged for commercial advantage. The Policy Guidelines formulated for land management will provide the necessary regulatory framework for land allotment and other Port specific practice like waterfront charges/way-leave permissions etc. The endeavour of the Policy is to enable the Ports to carry out leasing and licensing of Port land in a transparent manner. Discretionary powers have been reduced and tender-cum-auction methodology has been prescribed as the dominant method of allotment. The thrust of the Policy has been to maximize the realisation for the Port by linking the value of the land resources with the prevailing market rates.

I expect Major Ports to take advantage of the present guidelines, which are going to complement their efforts at improving their business prospects. The approval of the Policy has lifted one of the major impediments to the growth of the Ports and has provided a level-playing field to them vis-a-vis the non-Major privately owned Ports.

Dr. Vishwapati Trivedi
Secretary to the Government of India

POLICY GUIDELINES FOR LAND MANAGEMENT BY MAJOR PORTS, 2014

1. BACKGROUND

Land is one of the important resources with the Port Trusts to promote their business and accommodate the increasing traffic at the ports. As per the provisions contained in Sub-Section (1) of Section 34 of the Major Port Trusts Act, 1963, Ports are empowered to lease out land for a period up to 30 years and in case the period of lease is for more than 30 years, prior approval of the Central Government is necessary. The relevant portion of this Sub-Section is reproduced below:-

“Provided further that no contract for the acquisition or sale of immovable property or for the lease of any such property for a term exceeding thirty years and no other contract whereof the value or amount exceeds such value or amount as the Central Government may from time to time fix in this behalf, shall be made unless it has been previously approved by the Central Government.”

2. To regulate allotment of land, the Ministry of Shipping has been issuing guidelines from time to time. In the competitive environment that the ports operate, continuous review of these guidelines is imperative.

3. During the year 2003, a Committee on Port Land Policy was set up under Chairman, JNPT to examine among other things, the legal provisions, instructions issued periodically and to recommend a draft Land Policy which was simple, clear, unambiguous and easy to implement. The Committee submitted its report which was examined by the Ministry and the land policy guidelines were issued in the year 2004.
4. The salient features of Land Policy, 2004 were as under:-
 - (a) Land inside custom bond area was to be given on Licence basis for 11 months at Schedule of Rates. No sale or lease of land was permitted.
 - (b) Land outside custom bond area was to be given on lease (or) licence by inviting tenders.
 - (c) Land was to be leased only on upfront basis (or) annual lease basis. In case of annual lease, port was required to keep 5 years rent (or) 25% of total lease rent for duration of lease as security whichever is lower.
 - (d) Method of working out Schedule of Rates, market value of land, reserve price etc., were provided.
5. Thereafter, during the year 2009, Ministry of Shipping constituted a Committee under the Chairmanship of Additional Secretary & Financial Adviser with Chairmen of a few major ports, Managing Director, IPA and Joint Secretary (Ports) as Members, and the above Committee was given the following mandate:-
 - (a) to re-look at the policies which are directly having a bearing on the functioning of Major Ports; and

- (b) to recommend various steps for increasing efficiency of the ports and encourage private enterprise in functioning of major ports with a view to provide efficient and economic end to end solutions to the ultimate customers.
6. The Committee Report was examined and deliberated upon in the Ministry after which a 'draft Land Policy' was prepared. This draft Land Policy was put up on the web-site of the Ministry inviting comments and suggestions. After examining the suggestions, the Ministry issued the Land Policy 2010.
7. The salient features of Land Policy 2010 are as under:-
- Policy applicable to Major Port Trusts and Ennore Port except to land relating to Gandhidham Township of Kandla Port Trust.
 - Allotment of land inside custom bound area on (a) licence basis for 11 months (b) medium term lease basis upto 10 years for certain port related structures like conveyors, silos, pipelines etc.
 - Land outside custom bound area through competitive bidding process with reserve price as 6% of market value of plot.
 - Provisions for administrative reforms like computerisation of land management system and e-payment included.
 - Terms & conditions of way leave permission included.
 - Licence Fee for water area as 50% of licence fee of abutting land.

- In case of annual lease rent proposals, security deposit was reduced as one year lease rent.
 - A new clause was introduced for considering the leases beyond 30 years and for a maximum period of 99 years, to be finalised by an Empowered Committee comprising Secretary (Shipping), AS&FA (Shipping), JS, Ministry of Finance and concerned Adviser of Planning Commission.
8. Later a Draft Policy for land management by Major Ports 2012 was prepared by the Ministry and circulated to various stakeholders for comments and was also put up on the website of the Ministry inviting comments and suggestions. Simultaneously, Inter-Ministerial consultations were also done. Based on the inputs received, the “Policy Guidelines for land management by Major Ports, 2014” was finalised. The said guidelines have been approved by the Union Cabinet on 2/01/2014.
9. **Objectives** - The main objectives of the Policy are:-
- a) To ensure that land resources are put to optimum use as per the approved Land Use Plan with focus on retaining /attracting port traffic;
 - b) To ensure that optimum value is realized by licensing / leasing Port land through a transparent tender-cum-auction methodology.
 - c) The policy prescribes the procedure for revision of rates to enable maximum resource generation for the Ports and the methodology for regular updating of the rates in line with the market value

- d) The policy also recognizes the need for special dispensation for cases relating to educational and security purposes.
10. Scope: The policy is applicable for all Major Port Trusts and Ennore Port Limited except for the land relating to the Township areas of Kandla, Mumbai and Kolkata Ports for which separate policy will be formulated.
11. Empowered Committee Mechanism: There shall be an empowered Committee comprising of AS&FA (Shipping), Joint Secretary (Ports), Joint Secretary of the Department of Economic Affairs, and the concerned Adviser of the Planning Commission, for discharge of such functions as are allotted to it under this policy.
12. These policy guidelines for land allotment would be applicable to all new *PPP* projects also. For such projects, approval of the project by the competent authority will be taken as approval for the licence of the land component of the project.
13. **Land Use Plan:**
- Every Major Port shall have a Land use plan covering all the land owned and/or managed by the Port. Such plans shall be approved by the Board and a copy would be forwarded to the Government. Any proposal for revision of land use plan shall be finalized by the Board only after considering the objections and suggestions received from the various stakeholders. Land use plan of major ports shall be reviewed by the Board at least once in every five years.

14. **Land Allotment Policy:**

Land can be allotted either on licence or lease basis as per the approved Land use Plan/Zoning.

- 14.1 The expression “Lease” shall have the meaning assigned to it as in Section 105 of the Transfer of Property Act, 1882 . Accordingly, lease is defined as transfer of a right to enjoy immovable property, made for a certain time, expressly provided for, in consideration of a price paid or promised, or of money to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.
- 14.2 The expression “licence” shall have the same meaning assigned to it as in Section 52 of the Indian Easements Act, 1882. Accordingly, licence is defined as a right granted to another person by the grantor, to do or continue to do upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property.
- 14.3 The word “Port” and “Board” wherever used in the policy directives connote “Port Administration” and ‘Board of Trustees/ Directors’ respectively.

15. Custom bond area:

15.1. Fresh allotment of land:

- a) The land inside custom bond area, which is required on an immediate basis, shall be given on licence basis only and no lease may be permitted. Wherever feasible, such licence shall be issued only by inviting competitive tenders. The guidelines laying down the detailed procedure in this regard shall be framed and approved by the Board of the Port. The licence may be granted upto a maximum period of 11 months and shall be at the bid value discovered through the tender-cum-auction, wherever feasible and would be approved by the Board. In cases, where the tender-cum-auction is not possible, land can be allocated on licence basis at the latest market value which would be the value notified under para-18 (c). However, allotment of land by not resorting to tender-cum-auction methodology should be exercised as an exception.

- b) The Port may also allot land inside the Custom bond area for activities vital to Port operations or for those which clearly aid Port activities and sea trade, such as, setting up of duty free shop, communication centres, parking facilities, passenger facilities like shopping centres, cyber cafes, health clubs etc. and security related activities. The tenure of license for such land will be decided by the respective Port Trust Boards and such tenure shall not exceed 5 years. All

such proposals should, however, have the necessary statutory and/or administrative approvals. Land is to be allotted through tender-cum-auction methodology through a competitive bidding process over the reserve price of such plots which shall be worked out by the Land Allotment Committee of the Port and approved by the Port Trust Board. Land can also be allotted on nomination basis to CPSUs/SPSUs for activities that are vital to Port operations or which clearly aid port activities at the latest market value which would be the value notified under para-18 (c).

15.2. Renewal of existing land leases:

Even though it would be ideal that land inside custom bond area is allotted on licence basis only, it is observed that some major Ports have allotted land on long term lease basis inside the custom bond area before the land policy guidelines issued in the year 2004 came into force and original lessees have created permanent structures on the land. The procedure outlined in Para 16.3 will also be adopted for renewal of lease of such lands inside the custom bond area.

16. Outside Custom bond area:

16.1 Licence of land:

Normally, land outside custom bond area shall be given on lease basis only. However, in specific cases, for reasons to be recorded in writing, land can be given on licence basis only for Port related activities. Licence of land outside custom

bond area will also be governed by the same methodology and conditions as are applicable in case of land inside custom bond area, as spelt out in Para 15 above.

16.2. **Fresh Leases:**

- (a) Land should be leased only in accordance with the land use plan.
- (b) Land can be leased up to a maximum cumulative period of 30 years by the Port with the approval of the Board. Renewal of leases beyond thirty years and for a maximum cumulative period of 99 years should be recommended by the Port Trust Board after satisfying itself that the same is required to be renewed and that the Port does not require the said land for its own use. Renewals will be granted through the Empowered Committee mechanism subject to the approval of the Government and renewals will be limited to a maximum cumulative period of 99 years.
- (c) In certain cases the lessee may require land for capital intensive investment like tank-farms, refineries etc. The Port, may at its option decide to fix the tenure of lease for a period which is more than 30 years. Such proposals are to be submitted with the recommendations of the Board to the Empowered Committee for its approval. The Port in its land-use plan should identify land which can be allotted on long-term lease basis, i.e. for a tenure of 30 years and beyond.

- (d) Land shall be leased through tender -cum -auction methodology through a competitive bidding process over the reserve price of such plots which shall be worked out by the Land Allotment Committee of the Port and approved by the Port Trust Board and by TAMP. At the tender -cum -auction stage, depending upon its financial requirement, the Port may decide to invite bids either on- (i) Upfront basis, where the bidding parameter is the one-time upfront payment offered by the bidder for the lease period and a nominal lease rent of Rs. One per square metre to be collected every year for the currency of lease period, or; (ii) Premium basis, quoted by the bidder over and above the Reserve Price in terms of the annual lease rent, calculated as per the provisions of para-18(b). While leasing out land on upfront basis, the Board shall fix the Reserve Price which would be the NPV of the sum total of annual lease rentals calculated as per Para 18(b), escalated annually at the rate approved by the Board as indicated in para 18(c). The discount factor would be the longest term G-sec rate as per the latest RBI Bulletin. In both cases, the Port shall keep equivalent of two years rentals as security deposit.
- (e) A Land Allotment Committee shall be constituted by the Port Trust Board consisting of Deputy Chairman of the Port, and Heads of Departments of Finance, Estate and Traffic. The Land Allotment Committee will finalise the Reserve Price as per the methodology explained above and in Para 18(b).

- (f) In respect of PPP projects, the annual lease rent based on updated/latest market value with the approved rate of annual escalation would be indicated to the bidders at the bidding stage itself. With respect to land allotted for captive facilities, the lease rentals for the land allotted shall be recovered from the user as per the annual lease rental based on market value notified as per Para-18(c), with the approved rate of annual escalation. The lease rental, as well as the rate of annual escalation would be approved by the Port Trust Board.
- (g) For Government schools and colleges, land can be allotted by the Port Trusts on nomination basis provided allotment is in the interest of the Port Trusts. The land allotted to such entities to be used exclusively for the purpose for which it has been allotted and under no circumstances, the usage can be changed. In case the leased land is not used for the purpose it is granted, the lease to be terminated and the land so allotted to be resumed by the Port. No transfer/sub-letting of such lease will be permitted. Concession upto 75% on the annual lease rent arrived at on the basis of updated/latest market value may be granted to government schools and colleges.
- (h) Land can also be allotted on nomination basis to Government Departments, Statutory Local Bodies, Statutory Authorities/Autonomous Organisations under State/ Central Ministries, Central Public Sector Undertakings (CPSUs), State Public Sector Undertakings (SPSUs) and security agencies like State Police, CISF, Coast Guard and Navy, subject to the

availability of land and on the basis of updated/latest market value notified in accordance with Para 18(c). In cases where any CPSU/SPSU/Statutory Authority enters into Joint Ventures (JV) with private party/parties and the said CPSU/SPSU/Statutory Authority is the lead promoter and has the largest share-holding in the said JV, Port Trust Board may decide to allot land to them also on nomination basis with the approval of the Port Trust Board after incorporating appropriate safeguards. Concession may be granted to security agencies and Government Departments only upto 50% of the annual lease rent. However, in respect of land to be allotted to government departments which are essential to the functioning of the Port like customs, electricity department, health department and for core security functions, concession upto 75% of the annual lease rental can be considered by the port. But such concession can be given for only small extent of land required for core operational purposes imperative for Port functioning and not otherwise. The issue of granting concession and the quantum may be decided on a case to case basis by the Port Trust Board, after recording the reasons in writing.

- (i) When entering into a joint venture for improving Port connectivity or Port development with any public authority, land required for such projects, valued at its updated/latest market value may constitute the equity of the Port in such joint ventures.

- (j) The Port Trusts should not entertain any proposal for allotment of land to religious institutions or for religious purposes or to political institutions.

16.3. **Renewal of Existing Leases:**

- (a) In cases of renewal of existing leases with or without renewal option, the Port should verify if the land is required for its own use. If it is so required, the Port shall take possession of the land on expiry of lease.
- (b) If the land is not required by the Port for its own use, the Port should then check whether the land use is consistent with the land use plan and whether the lessees are not in default. Thereafter, if it is so, the following procedure will be adopted for renewal of lease of land outside the custom bond area.
- (c) During the process of renewal of existing leases, the Port is required to differentiate between those lease-agreements that stipulate automatic renewal and those that do not provide for such automatic renewal at the end of the lease-period. In cases of renewal of existing leases, without automatic renewal option at the end of the lease-term, the land will be put to tender-cum-auction with the first right of refusal to be extended to the existing lessee. The existing lessee should be allowed to match the H-1 bid. If any structures has been constructed by the earlier lessee on the leased land, it would be valued by a third party valuer to be agreed upon by the Port Trust and the earlier lessee and the successful bidder

has to remit the value of the structures which would be passed on to the previous lessee. The bidding and auction would be only on the reserve price of the land. With a view to dissuade non-serious bids, EMD for a valid bid should be fixed at 10% of the updated/latest market value of the land being put on tender. If the only bidder is the existing lessee, the annual lease rental would be determined on the basis of the updated/latest market value notified as per Para 18(c) or the price quoted by the existing lessee in the tender-cum-auction, whichever is higher.

- (d) In respect of lease agreements with automatic renewal option, the lease can be renewed by the Port Trust Board by treating it as a fresh lease at the updated/latest market value, notified as per Para 18(c).
- (e) No renewal clause is to be provided in the lease-agreements entered into after coming into effect of these guidelines.
- (f) Any renewal of lease to the original party over and above the existing period is to be approved by the Board, provided that the cumulative lease period does not exceed 30 years.
- (g) Any extension beyond 30 years and for a maximum period of 99 years has to be recommended by the Port Trust Board and the same will be examined and scrutinized by the Empowered Committee which would satisfy itself regarding the justification for such extension and competitiveness of the rate at which such

extension is to be granted. Thereafter, approval will be granted by the Government.

- (h) After the expiry/termination of lease and despite receiving the notice thereof, or forfeiture of lease on account of change of user, assignment etc., if the lessee continues to occupy it unauthorizedly, the lessee shall be liable to pay compensation for wrongful use and occupation at three (3) times the annual lease rent based on updated/latest market value, till vacant possession is obtained by the Port. In cases of land allotted on upfront basis, the equivalent annual lease rent would be calculated on pro-rata basis.
- (i) For existing leases, at the time of expiry/termination of lease, the lessee shall remove all structures at his own cost under the following conditions:-
 - (a) Within three (3) months of expiry/termination, if Port decides not to re-auction that land; or,
 - (b) Three months after tender-cum-auction, if the existing lessee was not successful.

Beyond this period, the lessee shall be liable to pay compensation for wrongful use and occupation at three (3) times the annual lease rent, till vacant possession is obtained. In cases of land allotted on upfront basis, the equivalent annual lease rent would be calculated on pro-rata basis. If the Port so decides, for reasons to be recorded and approved by the Port Trust Board, it may also take over the structures after third party

valuation of the assets with the concurrence of the lease holder. In case removal of structures is to be carried out by the Port, it would be at the cost of the lessee.

- (j) The process of renewal of existing leases should be initiated by the respective Ports well in advance, before the term of lease expires. The automatic renewal of existing leases should be preferably done within three months of receipt of such application for renewal. Liability to pay compensation for wrongful use by the lessee will not arise, if the delay in renewing such leases is wholly attributable to the Port.
- (k) In respect of old leases, where the terms of lease stipulate automatic renewal at pre-determined rates, such cases are to be reviewed by the Board on a case to case basis from the point of view of the reasonability of such terms of renewal, including the rates. In such cases, the endeavour should be to migrate to lease rentals based on latest market value.

17. General - Applicable to existing and new leases:

- (A) The lessee may be allowed to transfer the lease as per extant laws after obtaining prior approval of the Board of Trustees provided the transferee takes over all the liabilities of the original lessee/ allottee. Such transfer shall be for the remaining duration of the lease and in accordance with the Land Use Plan of the Port. Before allowing such transfer, the Port shall recover:-

(i) In case of leases granted on upfront basis

In case of those lands which were originally given on lease on upfront- rental basis, the transfer as per extant laws may be allowed subject to the transferee agreeing to pay the following:-

- (a) An undertaking for payment of the upfront rental as calculated on pro-rata basis for the balance period; and
- (b) A fee equal to 50% of the pro-rata upfront rental payable upto the time of transfer.

(ii) In case of leases granted on annual lease rent basis

In case of leases granted on annual lease rent basis transfer may be allowed subject to:-

- (a) An undertaking for payment of the annual lease rental for the balance period, and
- (b) A fee equivalent to 50% of the total lease rent payable by the original lessee upto the time of transfer.

- B. The lessee may be allowed to sublet/partially sublet the leased premises to another party for the same purpose for which it was originally allotted. Also, such subletting shall be in accordance with the Land Use

Plan and before allowing this, the Port shall recover 50 % of the rent charged by the lessee from the sub-lessee for the entire period of sub-lease irrespective of the fact whether land was originally allotted on upfront basis or annual rental basis. It is clarified that the original lessee would continue to remain responsible for payment of lease rent and for adherence to the terms and conditions of lease. However, in respect of leases which shall be entered into after the coming into effect of these guidelines, in cases where, the lessee is not able to utilize the entire land leased to him, the portion of the lease premises not required by him should be surrendered and no subletting shall be permitted.

- C. All proposals for transfer / subletting should be evaluated by the Land Allotment Committee and thereafter approved by the Board of Trustees.
- D. NOC can be granted for mortgage of leasehold land, along with the permissible structures erected by the lessee thereon in favour of reputed financial institutions/ scheduled banks, subject to the Port retaining the first charge on them. The Board of Trustees may permit the mortgage on collection of a nominal fee commensurate with the size and lease value of the land to be fixed by the Trust Board. All proposals for grant of NOC for mortgage may be duly recommended by the Land Allotment Committee and approved by the Chairman of the Port.

- E. Each lease agreement should specifically provide for termination of lease, if the leased land is not utilized for the purpose for which it is allotted, within two years of the allotment, or such shorter period as may be fixed at the time of approval of the lease.

However, this period of two years can be extended by the Board maximum upto one more year from the date of physical possession of land in respect of security/ government agencies only. Similarly, each lease agreement should specifically provide for surrender of lease, subject to prior notice by the lessee at least 6 (six) months in advance.

- F. After the expiry/termination of lease or forfeiture of lease on account of change of user assignment, etc., if the lessee continues to occupy it unauthorized, the lessee shall be liable to pay compensation for wrongful use and occupation at three times the annual lease rent, irrespective of the fact whether land was originally allotted on up front basis or annual rent basis, till vacant possession is obtained. In cases of upfront bidding, the annual lease rent would be determined on pro-rata basis
- G. If a lessee breaches/ violates any provision of Lease Agreement, the Port Trust Board would reserve the right to impose appropriate penalty on the lessee or cancel the lease depending upon the nature/ magnitude of breach / violation. Such penalty may be imposed after giving a reasonable opportunity to the lessee to present his case.

- H. The Port would have the option to prescribe Minimum Guaranteed Traffic/ Minimum Guaranteed Revenue as conditions for fresh leases, if deemed fit.
- I. Licence fee for water area would be 50% of licence fee of abutting land.
- J. The Port Trust Board shall have the right to resume possession of the leased land in public interest before expiry of lease period. In such cases, subject to availability of land, the lessee may at the discretion of the Port Trust Board be given an option to relocate activities in another suitable location to be offered by the Port, as per the land use plan.
- K. The Port Trust Board shall fix objective eligibility criteria for qualification of bidders, such as net-worth, tax certifications and non-pendency of mutually admitted Port dues.
- L. In respect of land situated adjoining to Defence Installations as defined in Works of Defence Act, 1903, prior concurrence of the Local Defence Authority will be required.
- M. Transfer of lease should not be permitted where land has initially been allotted on nomination basis or at concessional rates of lease rent.
- N. In respect of a case where the transferor extracts premium on the transfer of the lease, 50% of such premium is to be paid to the Port Trust.

18. **Market Value of land / Reserve Price:**

- (a) Land Allotment Committee may normally take into account the highest of the factors mentioned herein below to determine the latest market value of Port land. In case the land allotment committee is not choosing the highest factor, the reasons for the same have to be recorded in writing.
 - (i) State Government's ready reckoner of land values in the area, if available for similar classification/ activities.
 - (ii) Highest rate of actual relevant transactions registered in last three years in the Port's vicinity (the vicinity of the Port is to be decided by the respective Port Trust Boards), with an appropriate annual escalation rate to be approved by the Port Trust Board.
 - (iii) Highest accepted tender-*cum-auction rate* of Port land for similar transactions, updated on the basis of the annual escalation rate approved by the Port Trust Board.
 - (iv) Rate arrived at by an approved valuer appointed for the purpose by the Port.
 - (v) Any other relevant factor as may be identified by the Port.
- (b) The Land Allotment Committee shall, while recommending the latest Market Value for any land would normally take into account the highest of the

factors mentioned in Para 18 (a) above. Reserve Price in terms of the annual lease rent would be considered as a percentage of the latest market value determined in accordance with Para 18(a) above, and would in no case be less than 6% of the latest market value, to be fixed by the Port Trust Board.

- (c) The Port Trust would make a proposal as outlined in para 18(a) to TAMP for fixing the market value of the land. The TAMP would notify the market value of the land after following due process of consultation with stake holders within 45 days of receipt of the proposal. The Port Trust Board will fix a rate of annual escalation which would not be less than 2%.

19. Right of Way permission:

The Right of Way permission for laying pipelines/conveyors etc., from jetties to the tank farms within & outside port area shall be given with approval of the Board. It shall neither be a lease nor a license. As far as possible, the pipeline should be permitted only underground. There shall not be any allotment of land to a party for giving Right of Way permission. As far as possible, these shall be laid on common user basis and if the same pipeline is required by any other party, it shall be spared, on such terms as agreed between the parties and the Port Trust Board. The parties shall have to abide by the conditions specified by the Port. An indicative list of guidelines/ conditions for Right of way permission is at Annexure to this document. The Policy for giving the Right of way permission and the terms and conditions shall be formulated by the respective Port Trust Boards.

20. **Transparency and Accountability Provisions:**

- (i) All proposals for transfer of leases, change of purpose/ use, mortgage of land, Right of Way permission etc shall be recommended by the Land Allotment Committee and approved by the Port Trust Board.
- (ii) The allotments through tender-cum-auction shall preferably and progressively be done through e-tendering.
- (iii) All financial transactions related to land shall be made with authorized banks on e-payment basis.
- (iv) Details of updated/latest market value assessed by Ports should be displayed on their websites. All matters relating to land bank belonging to a Port, including location and availability should be placed on their website.
- (v) Any proposal for fresh lease/ licence or renewal of existing lease/licence should be placed in the public domain and reasonable time provided for inviting comments / suggestions of the public.
- (vi) Any proposal for revision of the land use plan shall be published in the website of the Port Trust inviting objections and suggestions and shall be finalised by the Board after considering the objections and suggestions received.

- (vii) In case of any ambiguity or doubt arising in regard to any provision, the Ministry of Shipping would have the powers to interpret and clarify the same within the overall framework and spirit of these guidelines.

- (viii) In case of any difficulty arising in implementing these guidelines, the Ministry of Shipping would have the powers to relax the provisions in these Guidelines, in public interest, within the overall framework and spirit of the guidelines.

BROAD TERMS AND CONDITIONS FOR ISSUANCE OF RIGHT OF WAY PERMISSION FOR LAYING PIPELINES/CONVEYORS ETC.

1. The parties shall be allowed to lay pipelines/conveyors etc., on right of way basis and on purely temporary basis.
2. Only permission shall be given. There shall not be any allotment of land to the party nor is to be construed to be a lease or licence.
3. Facility compensation or right of way charges shall be paid by all parties. For the purpose of Right of way leave charges, the area occupied by pipelines shall be calculated based on the diameter and length of those pipelines. In case of multi-layer stacks, the physical area occupied by the multilayer pipeline/conveyor stacks shall be considered and the respective users shall be billed accordingly. As far as underground pipelines are concerned, if the users establish that the possession of surface area above the underground cross-country pipelines is not physically with them, the area occupied by such pipelines shall be considered as 50% of the diameter and length, for the purpose of levy of Right of Way charges.
4. As far as possible, the pipelines may be laid on common-user basis. If any other party wants to use the pipelines, they may be given permission on such terms as agreed to between the Parties and the Port Trust Board.

5. One time Supervision charges as a percentage of the cost of laying of pipelines/conveyors etc. in the port limits shall be paid by all the parties to the Port Trust. The charges would be applicable even if the supervision is done by a third party.
6. Each Port Trust Board would formulate and approve their own policy for one time supervision charges, MGT and additional compensation charges if any for granting way leave permission.
7. The Port Trust shall ensure that the wharfage and all other charges due to be paid by the party, shall be paid to the Port Trust for the cargo handled through the pipelines.
8. All statutory permissions including that of explosives and fire-safety etc., shall be obtained by the parties concerned from the respective authorities.
9. Port Trust shall reserve the right to direct the parties to remove the pipelines modify or re-route the pipelines in the exigencies or interest of the Port and the Party shall carry out the same at their own cost.
10. The party shall indemnify the Port Trust against all kinds of damages, loss to Port property, personnel etc., caused due to laying, maintenance and operation of pipelines.
11. The party shall follow all the relevant rules of the Port Trust and other statutory authorities such as the Chief Controller of Explosives, Nagpur and also provisions of other relevant statues etc.

12. The party shall take adequate safety measures and arrange for patrolling of their pipelines round the clock at their own cost.
13. The Port Trust shall not be held responsible for any loss, damages, pilferage etc., of the products from pipelines.
14. Other usual operating conditions as laid down by the Port Trust would apply.

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GOVERNMENT OF INDIA
MINISTRY OF SHIPPING
(PORTS WING)

No.PD-13017/2/2014-PD.IV

Dated 17th July, 2015

To,

The Chairmen of All Major Port Trusts,
CMD, Kamarajar Port.

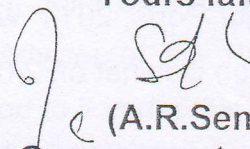
Subject: Policy Guidelines for Land Management 2014-clarifications
reg.

The undersigned is directed to refer to the above subject and to say that the Policy Guidelines for Land Management 2014 were issued to all Major Ports for implementation. However, Indian Ports Association, an apex body of Major Ports, have highlighted certain difficulties and sought some clarifications and suggested some changes and there were also other suggestion from different stakeholders to improve the Land Policy Guidelines.

2. Accordingly, Ministry, vide Order dated 8th August, 2014 constituted a two member committee comprising of DG(Shipping) and Sri R.C.Sinha, Advisor to examine those suggestions and furnish a report. As per the provisions of para 20 (vii) of the Land Policy Guidelines, 2014, in case of any ambiguity or doubt regarding any provision, Ministry of Shipping has powers to interpret and clarify within the overall framework and spirit of the guidelines. Similarly, Para 20 (viii) of the guidelines empowers the Ministry of Shipping to relax the provisions of these Guidelines, in public interest, within the overall framework and spirit of the guidelines, in case of difficulties in implementation.

3. Accordingly, some of the provisions of the Land Policy Guidelines, 2014 have been modified/changed to provide greater clarity and to ease the implementation of the Policy Guidelines by the Major Ports. The Land Policy Guidelines, 2014, thus amended are issued for implementation with immediate effect under Section 111 of MPT Act, 1963.

Yours faithfully,



(A.R.Sengupta)

Under Secretary to the Government of India

Tel. No. 23311659

**Policy Guidelines for Land Management by Major Ports, 2014 –
Clarifications and amendments - regarding**

1. **BACKGROUND**

Land is one of the important resources with the Port Trusts to promote their business and accommodate the increasing traffic at the ports. As per the provisions contained in Sub-Section (1) of Section 34 of the Major Port Trusts Act, 1963, Ports are empowered to lease out land for a period up to 30 years and in case the period of lease is for more than 30 years, prior approval of the Central Government is necessary. The relevant portion of this Sub-Section is reproduced below:-

“Provided further that no contract for the acquisition or sale of immovable property or for the lease of any such property for a term exceeding thirty years and no other contract whereof the value or amount exceeds such value of amount as the Central Government may from time to time fix in this behalf, shall be made unless it has been previously approved by the Central Government.”

2. To regulate allotment of land, the Ministry of Shipping has been issuing guidelines from time to time. In the competitive environment that the ports operate, continuous review of these guidelines is imperative.
3. Accordingly a Draft Policy for land management by Major Ports 2012 was prepared by the Ministry and circulated to various stakeholders for comments and was also put up on the website of the Ministry inviting comments and suggestions. Simultaneously, Inter-Ministerial consultations were also done. Based on the inputs received, the “Policy Guidelines for land management by Major Ports, 2014” was finalised. The said guidelines have been approved by the Union Cabinet on 2/01/2014.

These guidelines were issued to all Major Ports for implementation. However, Indian Ports Association, an apex body of Major Ports, have

highlighted certain difficulties and suggested some changes and there were also suggestions from different stakeholders to improve the Land Policy Guidelines.

Thereafter, Ministry, vide Order dated 8th August, 2014 constituted a two member committee comprising of DG(Shipping) and Sri R.C.Sinha, Advisor to examine the suggestions and furnish a report. Based on the report, the revised guidelines have been framed, The Revised Land Policy guidelines, issued under Section 111 of MPT Act, 1963 are as follows:

4. **Objectives**- The main objectives of the Policy are:-
 - a) To ensure that land resources are put to optimum use as per the approved Land Use Plan with focus on retaining /attracting port traffic;
 - b) To ensure that optimum value is realized by licensing / leasing Port land through a transparent tender-cum-auction methodology.
 - c) The policy prescribes the procedure for revision of rates to enable maximum resource generation for the Ports and the methodology for regular updating of the rates in line with the market value
 - d) The policy also recognizes the need for special dispensation for cases relating to educational and security purposes.

5. **Scope:** The policy is applicable for all Major Ports except for the land relating to the Township areas of Kandla, Mumbai and Kolkata Ports for which separate policy will be formulated. Kamarajar Port Limited may follow the principles of this Land Policy but will not be covered by TAMP jurisdiction . These guidelines supersede all previous guidelines issued on the subject.

6. **Empowered Committee Mechanism:** There shall be an empowered Committee comprising of AS&FA (Shipping), Joint Secretary (Ports), Joint Secretary of the Department of Economic Affairs, and the concerned Adviser of the Planning Commission, for discharge of such functions as are allotted to it under this policy.

7 These policy guidelines for land allotment would be applicable to all new *PPP* projects also. For such projects, approval of the project by the competent authority will be taken as approval for the licence of the land component of the project.

8. **Land Use Plan:**

The Land Policy Guidelines are applicable for all purposes provided under MPT Act 1963. Every Major Port shall have a Land use plan covering all the land owned and/or managed by the Port. Such plans shall be approved by the Board and a copy would be forwarded to the Government. Any proposal for revision of land use plan shall be finalized by the Board only after considering the objections and suggestions received from the various stakeholders. Land use plan of major ports shall be reviewed by the Board at least once in every five years.

9. **Land Allotment Policy:**

Ports are empowered to lease/licensing out land based on the approved land use plan/Zoning of the port and within the framework of MPT Act 1963

9.1 The expression “Lease” shall have the meaning assigned to it as in Section 105 of the Transfer of Property Act, 1882 . Accordingly, lease is defined as transfer of a right to enjoy immovable property, made for a certain time, expressly provided for, in consideration of a price paid or promised, or of money to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

9.2 The expression “licence” shall have the same meaning assigned to it as in Section 52 of the Indian Easements Act, 1882. Accordingly, licence is defined as a right granted to another person by the grantor, to do or continue to do upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property.

9.3 The word “Port” and “Board” wherever used in the policy directives connote “Port Administration” and ‘Board of Trustees/ Directors’ respectively.

9.4 **Licence of Land:**

Port will formulate the guidelines for License of land within and outside customs bonded Area in accordance with the land use plan of the port and the spirit of the Land Policy Guidelines and get them approved at the Board level. The Ministry of Shipping should be kept informed of the guidelines.

10. Custom Bond Area:

10.1. **Fresh allotment of land:**

(a) The land inside custom bond area, which is required on an immediate basis, shall be given on licence basis only and no lease may be permitted. Wherever feasible, such licence shall be issued only by inviting competitive tenders. The guidelines laying down the detailed procedure in this regard shall be framed and approved by the Board of the Port. The licence may be granted upto a maximum period of 11 months and shall be at the bid value discovered through the tender-cum-auction, wherever feasible and would be approved by the Board. In cases, where the tender- cum-auction is not possible, land can be allocated on licence basis at the latest SoR which would be the value notified under para-13 (c). However, allotment of land by not resorting to tender-cum- auction methodology should be exercised as an exception.

(b) The Port may also allot land inside the Custom bond area for activities vital to Port operations or for those which clearly aid Port activities and sea trade, such as, setting up of duty free shop, communication centres, parking facilities, passenger facilities like shopping centres, cyber cafes, health clubs etc. and security related activities. The tenure of license for such land will be decided by the respective Port Trust Boards and such tenure shall not exceed 5 years. All such proposals should, however, have the necessary statutory and/or administrative approvals. Land is to be allotted through tender-cum-auction

methodology through a competitive bidding process over the reserve price of such plots which shall be the updated SoR notified by TAMP. Land can also be allotted on nomination basis to CPSUs/SPSUs for activities that are vital to Port operations or which clearly aid port activities at the latest SoR which would be the value notified under para-13 (c).

10.2. **Renewal of existing land leases:**

Even though it would be ideal that land inside custom bond area is allotted on licence basis only, it is observed that some major Ports have allotted land on long term lease basis inside the custom bond area before the land policy guidelines issued in the year 2004 came into force and original lessees have created permanent structures on the land. The procedure outlined in Para 11.3 will also be adopted for renewal of lease of such lands inside the custom bond area.

11. **Outside Custom Bond Area:**

11.1 **Licence of land:**

Normally, land outside custom bond area shall be given on lease basis only. However, in specific cases, for reasons to be recorded in writing, land can be given on licence basis only for Port related activities. Licence of land outside custom bond area will also be governed by the same methodology and conditions as are applicable in case of land inside custom bond area, as spelt out in Para 10 above.

11.2. **Fresh Leases:**

- (a) Land should be leased only in accordance with the land use plan.

- (b) Land can be leased up to a maximum cumulative period of 30 years by the Port with the approval of the Board. Renewal of leases beyond thirty years and for a maximum cumulative period of 99 years should be recommended by the Port

Trust Board after satisfying itself that the same is required to be renewed and that the Port does not require the said land for its own use. Renewals will be granted through the Empowered Committee mechanism subject to the approval of the Government and renewals will be limited to a maximum cumulative period of 99 years.

- (c) In certain cases the lessee may require land for capital intensive investment like tank-farms, refineries etc. The Port, may at its option decide to fix the tenure of lease for a period which is more than 30 years. Such proposals are to be submitted with the recommendations of the Board to the Empowered Committee and Ministry for its approval. The Port in its land-use plan should identify land which can be allotted on long-term lease basis, i.e. for a tenure of 30 years and beyond.

- (d) Land shall be leased through tender -cum -auction methodology through a competitive bidding process over the reserve price of such plots which shall be the updated SoR notified by TAMP. At the tender -cum -auction stage, depending upon its financial requirement, the Port may decide to invite bids either on- (i) Upfront basis, where the bidding parameter is the one-time upfront payment offered by the bidder for the lease period and a nominal lease rent of Rs. One per square metre to be collected every year for the currency of lease period, or; (ii) Premium basis, quoted by the bidder over and above the Reserve Price in terms of the annual lease rent, calculated as per the provisions of para-13(b). While leasing out land on upfront basis, the Board shall fix the Reserve Price which would be the NPV of the sum total of annual lease rentals calculated as per Para 13(b), escalated annually at the rate approved by the Board as indicated in para 13(c). The discount factor would be the longest term G-sec rate as per the latest RBI Bulletin. In both cases, the Port shall keep equivalent of two years rentals as security deposit.

- (e) A Land Allotment Committee shall be constituted by the Port Trust Board consisting of Deputy Chairman of the Port, and Heads of Departments of Finance, Estate and Traffic. The Land Allotment Committee will finalise the Reserve Price as per the methodology explained above and in Para 13(b).
- (f) In respect of PPP projects, the annual lease rent based on latest SoR with the approved rate of annual escalation would be indicated to the bidders at the bidding stage itself. With respect to land allotted for captive facilities, the lease rentals for the land allotted shall be recovered from the user as per the annual lease rental based on latest SoR notified as per Para-13(c), with the approved rate of annual escalation. The lease rental, as well as the rate of annual escalation would be approved by the Port Trust Board.
- (g) For establishment of common utilities by local bodies like sewage plant, Government Schools and colleges and hospitals, etc, land can be allotted by the Port Trusts on nomination basis provided allotment is in the interest of the Port Trusts. The land allotted to such entities to be used exclusively for the purpose for which it has been allotted and under no circumstances, the usage can be changed. In case the leased land is not used for the purpose it is granted, the lease to be terminated and the land so allotted to be resumed by the Port. No transfer/sub-letting of such lease will be permitted. Concession upto 75% on the annual lease rent arrived at on the basis of updated SoR may be granted to government schools and colleges. Concession in lease rent can be provided by the Port Trust Board as provided under para 11.2 (h) for establishment of common utilities by local bodies like sewage plant, hospitals, etc provided they are in accordance with approved master plan of the city and the land is not required for the Port's own use.
- (h) Land can also be allotted on nomination basis to Government Departments, Statutory Local Bodies, Statutory Authorities/Autonomous Organisations under State/ Central Ministries, Central Public Sector Undertakings (CPSUs), State Public Sector Undertakings (SPSUs) and security agencies like State Police,

CISF, Coast Guard and Navy, subject to the availability of land and on the basis of updated SoR. In cases where any CPSU/SPSU/Statutory Authority enters into Joint Ventures (JV) with private party/parties and the said CPSU/SPSU/Statutory Authority is the lead promoter and has the largest share-holding in the said JV, Port Trust Board may decide to allot land to them also on nomination basis with the approval of the Port Trust Board after incorporating appropriate safeguards. Concession may be granted to security agencies and Government Departments only upto 50% of the annual lease rent. However, in respect of land to be allotted to government departments which are essential to the functioning of the Port like customs, electricity department, health department and for core security functions, concession upto 75% of the annual lease rental can be considered by the port. But such concession can be given for only small extent of land required for core operational purposes imperative for Port functioning and not otherwise. The issue of granting concession and the quantum may be decided on a case to case basis by the Port Trust Board, after recording the reasons in writing.

- (i) When entering into a joint venture for improving Port connectivity or Port development with any public authority, land required for such projects, valued at the latest SoR may constitute the equity of the Port in such joint ventures.
- (j) The Port Trusts should not entertain any proposal for allotment of land to religious institutions or for religious purposes or to political institutions.

11.3. **Renewal of Existing/Earlier Leases:**

- (a) In cases of renewal of existing/earlier leases with or without renewal option, the Port should verify if the land is required for its own use. If it is so required, the Port shall take possession of the land on expiry of lease.
- (b) If the land is not required by the Port for its own use, the Port should then check whether the land use is consistent with the land use plan and whether the lessees are not in default. Thereafter, if it is so, the following procedure will be adopted for renewal of lease of land outside the custom bond area.

- (c) During the process of renewal of existing/earlier leases, the Port is required to differentiate between those lease-agreements that provide for renewal and those that do not provide for such renewal at the end of the lease-period. In cases of renewal of existing leases, without renewal option at the end of the lease-term, the land will be put to tender-cum-auction with the first right of refusal to be extended to the existing lessee. The existing lessee should be allowed to match the H-1 bid. If any structure has been constructed by the earlier lessee on the leased land, it would be valued by a third party valuer to be agreed upon by the Port Trust and the earlier lessee and the successful bidder has to remit the value of the structures which would be passed on to the previous lessee. The bidding and auction would be only on the reserve price of the land. With a view to dissuade non-serious bids, EMD for a valid bid should be fixed at 10% of the latest SoR of the land being put on tender. If the only bidder is the existing lessee, the annual lease rental would be determined on the basis of the latest SoR notified as per Para 13(c) or the price quoted by the existing lessee in the tender-cum-auction, whichever is higher. The provision of first right will also apply to expired lease (possession has been taken by the Port) also in addition to existing leases.
- (d) In respect of lease agreements with renewal option, the lease can be renewed by the Port Trust Board by treating it as a fresh lease at the latest SoR notified as per para 13(c).
- (e) No renewal clause is to be provided in the lease-agreements entered into after coming into effect of these guidelines.
- (f) Any renewal of lease to the original party over and above the existing period is to be approved by the Board, provided that the cumulative lease period does not exceed 30 years.

- (g) Any extension beyond 30 years and for a maximum period of 99 years has to be recommended by the Port Trust Board and the same will be examined and scrutinized by the Empowered Committee which would satisfy itself regarding the justification for such extension and competitiveness of the rate at which such extension is to be granted. Thereafter, approval will be granted by the Government.
- (h) After the expiry/termination of lease and despite receiving the notice thereof, or forfeiture of lease on account of change of user, assignment etc., if the lessee continues to occupy it unauthorisedly, the lessee shall be liable to pay compensation for wrongful use and occupation at three (3) times the annual lease rent based on the latest SoR, till vacant possession is obtained by the Port. In cases of land allotted on upfront basis, the equivalent annual lease rent would be calculated on pro-rata basis.
- (i) For existing leases, at the time of expiry/termination of lease, the lessee shall remove all structures at his own cost under the following conditions:
 - (a) Within three (3) months of expiry/termination, if Port decides not to re-auction that land; or,
 - (b) Three months after tender-cum-auction, if the existing lessee was not successful.

Beyond this period, the lessee shall be liable to pay compensation for wrongful use and occupation at three (3) times the annual lease rent, till vacant possession is obtained. In cases of land allotted on upfront basis, the equivalent annual lease rent would be calculated on pro-rata basis. If the Port so decides, for reasons to be recorded and approved by the Port Trust Board, it may also take over the structures after third party valuation of the assets with the concurrence of the lease holder. In case removal of structures is to be carried out by the Port, it would be at the cost of the lessee.

- (j) The process of renewal of existing leases should be initiated by the respective Ports well in advance, before the term of lease expires. The automatic renewal of existing leases should be preferably done within three months of receipt of such application for renewal. Liability to pay compensation for wrongful use by the lessee will not arise, if the delay in renewing such leases is wholly attributable to the Port.
- (k) In respect of old leases, where the terms of lease stipulate automatic renewal at pre-determined rates, such cases are to be reviewed by the Board on a case to case basis from the point of view of the reasonability of such terms of renewal, including the rates. In such cases, the endeavour should be to migrate to lease rentals based on latest market value.

12. **General- Applicable to existing and new leases:**

- (A) The lessee may be allowed to transfer the lease as per extant laws after obtaining prior approval of the Board of Trustees provided the transferee takes over all the liabilities of the original lessee/ allottee. Such transfer shall be for the remaining duration of the lease and in accordance with the Land Use Plan of the Port. Before allowing such transfer, the Port shall recover:-

(i). In case of leases granted on upfront basis

In case of those lands which were originally given on lease on upfront- rental basis, the transfer as per extant laws may be allowed subject to the transferee agreeing to pay the following:-

- (a) An undertaking for payment of the upfront rental as calculated on pro-rata basis for the balance period; and
- (b) A fee equal to 50% of the pro-rata upfront rental payable upto the time of transfer.

(ii). In case of leases granted on annual lease rent basis

In case of leases granted on annual lease rent basis transfer may be allowed subject to:-

- (a) An undertaking for payment of the annual lease rental for the balance period, and
 - (b) A fee equivalent to 50% of the total lease rent payable by the original lessee upto the time of transfer.
- B. **Subletting** :The existing lease holder may be allowed to sublet/partially sublet the leased premises to another party for the same purpose for which it was originally allotted. Also, such subletting shall be in accordance with the Land Use Plan and before allowing this, the Port shall recover 50 % of the rent charged by the lessee from the sub-lessee for the entire period of sub-lease irrespective of the fact whether land was originally allotted on upfront basis or annual rental basis. It is clarified that the original lessee would continue to remain responsible for payment of lease rent and for adherence to the terms and conditions of lease. However, in respect of leases which shall be entered into after the coming into effect of these guidelines, in cases where, the lessee is not able to utilize the entire land leased to him, the portion of the lease premises not required by him should be surrendered and no subletting shall be permitted. Port Trust shall refund proportionate lease rental when allotted on upfront premium basis. It is further clarified that leased premises also includes structures built on lease land for the purpose of recovering of subletting fee. Exemption from collecting subletting fee may be given in case of FTZ/SEZ wherein the business model is based on subletting only.
- C. All proposals for transfer / subletting should be evaluated by the Land Allotment Committee and thereafter approved by the Board of Trustees.
- D. NOC can be granted for mortgage of leasehold land, along with the permissible structures erected by the lessee thereon in favour of reputed financial institutions/ scheduled banks, subject to the Port retaining the first charge on them. The Board of Trustees may permit the mortgage on collection of a nominal fee

commensurate with the size and lease value of the land to be fixed by the Trust Board. All proposals for grant of NOC for mortgage may be duly recommended by the Land Allotment Committee and approved by the Chairman of the Port.

- E. Each lease agreement should specifically provide for termination of lease, if the leased land is not utilized for the purpose for which it is allotted, within two years of the allotment, or such shorter period as may be fixed at the time of approval of the lease. However, this period of two years can be extended by the Board maximum upto one more year from the date of physical possession of land in respect of security/ government agencies only. Similarly, each lease agreement should specifically provide for surrender of lease, subject to prior notice by the lessee at least 6 (six) months in advance and refund of proportionate upfront premium if the land was leased on upfront basis. Even in existing leases, in cases of premature surrender of lease, proportionate upfront premium to be refunded by the Port if the land was leased on upfront basis.
- F. After the expiry/termination of lease or forfeiture of lease on account of change of user assignment, etc., if the lessee continues to occupy it unauthorized, the lessee shall be liable to pay compensation for wrongful use and occupation at three times the annual lease rent, irrespective of the fact whether land was originally allotted on up front basis or annual rent basis, till vacant possession is obtained. In cases of upfront bidding, the annual lease rent would be determined on pro-rata basis
- G. If a lessee breaches/ violates any provision of Lease Agreement, the Port Trust Board would reserve the right to impose appropriate penalty on the lessee or cancel the lease depending upon the nature/ magnitude of breach/ violation. Such penalty may be imposed after giving a reasonable opportunity to the lessee to present his case.
- H. The Port would have the option to prescribe Minimum Guaranteed Traffic/ Minimum Guaranteed Revenue as conditions for fresh leases, if deemed fit.

- I. Licence fee for water area would be 50% of licence fee of abutting land.
- J. The Port Trust Board shall have the right to resume possession of the leased land in public interest before expiry of lease period. In such cases, subject to availability of land, the lessee may at the discretion of the Port Trust Board be given an option to relocate activities in another suitable location to be offered by the Port, as per the land use plan or refund of proportionate upfront premium if the land was leased on upfront basis.
- K. The Port Trust Board shall fix objective eligibility criteria for qualification of bidders, such as net-worth, tax certifications and non-pendency of mutually admitted Port dues.
- L. In respect of land situated adjoining to Defence Installations as defined in Works of Defence Act, 1903, prior concurrence of the Local Defence Authority will be required.
- M. Transfer of lease should not be permitted where land has initially been allotted on nomination basis or at concessional rates of lease rent.
- N. In respect of a case where the transferor extracts premium on the transfer of the lease, 50% of such premium is to be paid to the Port Trust.

13. **Market Value of land and SoR:**

- (a) Land Allotment Committee may normally take into account the highest of the factors mentioned herein below to determine the latest market value of Port land. In case the land allotment committee is not choosing the highest factor, the reasons for the same have to be recorded in writing.
 - i. State Government's ready reckoner of land values in the area, if available for similar classification/ activities.

- ii. Highest rate of actual relevant transactions registered in last three years in the Port's vicinity (the vicinity of the Port is to be decided by the respective Port Trust Boards), with an appropriate annual escalation rate to be approved by the Port Trust Board.
- iii. Highest accepted tender-cum-auction rate of Port land for similar transactions, updated on the basis of the annual escalation rate approved by the Port Trust Board.
- iv. Rate arrived at by an approved valuer appointed for the purpose by the Port.
- v. Any other relevant factor as may be identified by the Port.

(b) The Land Allotment Committee shall, while recommending the latest Market Value for any land would normally take into account the highest of the factors mentioned in Para 13 (a) above. Reserve Price in terms of the annual lease rent would be latest SoR determined in accordance with Para 13(a) and 13 (c) and would in no case be less than 6% of the latest market value recommended by the Port Trust.

(c) The Port Trust would make a proposal as outlined in para 13(a) to TAMP for fixing the latest SoR of the land. The TAMP would notify the latest SoR of the land after following due process of consultation with stake holders within 45 days of receipt of the proposal. The Port Trust Board will fix a rate of annual escalation which would not be less than 2%. SoR would be refixed once in every 5 years by TAMP.

(d) **Reserve Price for Auction:**

The reserve be the latest SoR with due escalation for all leases within and outside the Custom Bonded Area.

14. **Right of Way permission:**

The Right of Way permission for laying pipelines/conveyors etc., from jetties to the tank farms within & outside port area shall be given with approval of the Board. It shall neither be a lease nor a license. As far as possible, the pipeline

should be permitted only underground. There shall not be any allotment of land to a party for giving Right of Way permission. As far as possible, these shall be laid on common user basis and if the same pipeline is required by any other party, it shall be spared, on such terms as agreed between the parties and the Port Trust Board. The parties shall have to abide by the conditions specified by the Port. An indicative list of guidelines/conditions for Right of way permission is at Annexure to this document. The Policy for giving the Right of way permission and the terms and conditions shall be formulated by the respective Port Trust Boards.

15. **Transparency and Accountability Provisions:**

- (i) All proposals for transfer of leases, change of purpose/use, mortgage of land, Right of Way permission etc shall be recommended by the Land Allotment Committee and approved by the Port Trust Board.
- (ii) The allotments through tender-cum-auction shall only be done through e-tendering.
- (iii) All financial transactions related to land shall be made with authorized banks on e-payment basis.
- (iv) Details of latest market value assessed by Ports should be displayed on their websites. All matters relating to land bank belonging to a Port, including location and availability should be placed on their website.
- (v) Any proposal for fresh lease/ licence or renewal of existing lease/licence should be placed in the public domain and reasonable time provided for inviting comments / suggestions of the public.
- (vi) Any proposal for revision of the land use plan shall be published in the website of the Port Trust inviting objections and suggestions and shall be

finalised by the Board after considering the objections and suggestions received.

(vii) In case of any ambiguity or doubt arising in regard to any provision, the Ministry of Shipping would have the powers to interpret and clarify the same within the overall framework and spirit of these guidelines.

(viii) In case of any difficulty arising in implementing these guidelines, the Ministry of Shipping would have the powers to relax the provisions in these Guidelines, in public interest, within the overall framework and spirit of the guidelines.

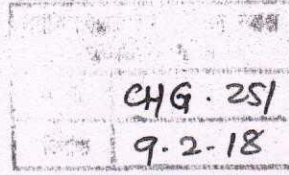
Broad Terms and Conditions for issuance of Right of way Permission for laying Pipelines/conveyors etc.

1. The parties shall be allowed to lay pipelines/conveyors etc., on right of way basis and on purely temporary basis.
2. Only permission shall be given. There shall not be any allotment of land to the party nor is to be construed to be a lease or licence.
3. Facility compensation or right of way charges shall be paid by all parties. For the purpose of Right of way leave charges, the area occupied by pipelines shall be calculated based on the diameter and length of those pipelines. In case of multi-layer stacks, the physical area occupied by the multilayer pipeline/conveyor stacks shall be considered and the respective users shall be billed accordingly. As far as underground pipelines are concerned, if the users establish that the possession of surface area above the underground cross-country pipelines is not physically with them, the area occupied by such pipelines shall be considered as 50% of the diameter and length, for the purpose of levy of Right of Way charges.
4. As far as possible, the pipelines may be laid on common-user basis. If any other party wants to use the pipelines, they may be given permission on such terms as agreed to between the Parties and the Port Trust Board.
5. One time Supervision charges as a percentage of the cost of laying of pipelines/conveyors etc. in the port limits shall be paid by all the parties to the Port Trust. The charges would be applicable even if the supervision is done by a third party.
6. Each Port Trust Board would formulate and approve their own policy for one time supervision charges, MGT and additional compensation charges if any for granting way leave permission.
7. The Port Trust shall ensure that the wharfage and all other charges due to be paid by the party, shall be paid to the Port Trust for the cargo handled through the pipelines.
8. All statutory permissions including that of explosives and fire-safety etc., shall be obtained by the parties concerned from the respective authorities.
9. Port Trust shall reserve the right to direct the parties to remove the pipelines modify or re-route the pipelines in the exigencies or interest of the Port and the Party shall carry out the same at their own cost.
10. The party shall indemnify the Port Trust against all kinds of damages, loss to Port property, personnel etc., caused due to laying, maintenance and operation of pipelines.

11. The party shall follow all the relevant rules of the Port Trust and other statutory authorities such as the Chief Controller of Explosives, Nagpur and also provisions of other relevant statues etc.
12. The party shall take adequate safety measures and arrange for patrolling of their pipelines round the clock at their own cost.
13. The Port Trust shall not be held responsible for any loss, damages, pilferage etc., of the products from pipelines.
14. Other usual operating conditions as laid down by the Port Trust would apply.



Indian Ports Association

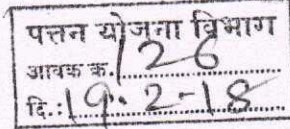


No. : IPA/GAD/Land management/2016-Vol.II

Dated : 8-2-2018

PCE - 19.2.18

The Secretary to the Govt. of India
Ministry of Shipping,
Transport Bhawan,
New Delhi - 110 001.



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Kind Attn : Shri Rameshwar Kumar, Under Secretary

Sub : Clarifications in Policy Guidelines for Land Management by Major Ports, 2014

Ref : 1) IPA's letter No. IPA/GAD/PLP/2010-Vol.V dated 22-12-2017
2) Ministry's letter No. PD-13017/3/2016-PD-V dated 16-1-2018
3) Ministry's letter No. PD-13017/2/2014-PD-V dated 22-1-2018

Sir,

The Governing Body in its 172nd meeting held on 10-10-2017 discussed the issue relating to clarification of Policy Guidelines for land management by Major Ports. The GB mentioned that on a discussion held in the PMO, the following recommendations of the Committee are required to be examined by MoS and IPA :

- Renewal at Concessional rates
- Renewal of leases for firms without tender-cum-auction
- Long Term lease in Customs bounded area
- Fixation of market value
- License fee for non-operational water area.

The Governing Body further mentioned that as per discussions with some Chairmen and Shipping Secretary, out of the above 5 points, first three points (i to iii) could be taken to the Cabinet for approval and the remaining 2 points (iv & v) which are not of prime importance, could be dropped from incorporation. Views/comments will be taken for the two points internally, if required.

Further, Video Conference (VC) was held by Secretary (S) on 12-1-2018 with all Port Chairmen regarding land issues, Infrastructure projects for award and completion in 2017-18 and steps taken for promotion of coastal shipping.

Subsequently, on the Land Policy Guidelines, Chairman, IPA & MbPT held a meeting in Mumbai on 17-1-2018 which was followed by the meeting taken by Secretary (S) on 18-1-2018 in IPA. Pursuant to the discussions held in the meeting of Secretary (S) on 18-1-2018, meetings and video conferences were held amongst Port Chairmen on 24th & 29th Jan, 2018. Accordingly, issues on Land Policy Guidelines requiring

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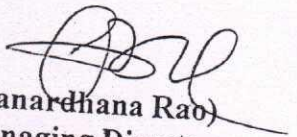
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clarification/relaxation under Clause 15(vii) & (viii) of Land Policy Guidelines, 2014 issued by the Ministry of Shipping vide letter No. PD-13017/2/2014-PD.IV dated 17-7-2015, have been brought out in the form of FAQs & Answers and attached herewith for consideration of the Ministry. In this connection, it is requested to consider and issue necessary clarifications/modifications to the Land Policy Guidelines, 2014/2015.

The FAQs and Answers has the approval of Chairman, IPA & MbPT.

Yours faithfully,


(A. Janardhana Rao)
Managing Director

Encl : As above

Copy to the Chairmen, Major Ports

FAQs on Land Issues as Proposed by IPA

I. CUSTOM BOND AREA - FRESH ALLOTMENT

1. Whether 2014 Policy Guidelines apply to transit cargo of the Port for which open and enclosed storage is provided by the Port without giving any license or lease of land?

Answer: The 2014 Policy Guidelines apply to the grant of land on lease or license basis. As this transit provisioning of land for warehousing/storage purposes for Port cargo is in the nature of a service, the provisioning of the same shall be as per the schedule of rates determined from time to time by the Tariff Authority for Major Ports in accordance with Section 42 and Section 48 of the Major Ports Act, 1963 ("MPT Act"). Hence, the provision of the 2014 Policy Guidelines do not apply to these services being provided by the Ports.

2. Whether as per Clause 15.1(a)¹ of 2014 Policy Guidelines and Clause 10.1(a)² of 2014 Policy Guidelines (as amended in 2015) ("2015 Policy Guidelines")³ a license can be given on an immediate basis, upto 11 months, without adopting the tender cum auction methodology?

Answer: Normally, licensing of land within Custom bond area should be done by following tender-cum-auction process. However, in respect of activities which support the cargo handling in the Port, land can also be

¹Clause 15.1(a)- The land inside custom bond area, which is required on an immediate basis, shall be given on license basis only and no lease may be permitted. Wherever feasible, such license shall be issued only by inviting competitive tenders. The guidelines laying down the detailed procedure in this regard shall be framed and approved by the Board of the Port. The license may be granted upto a maximum period of 11 months and shall be at the bid value discovered through tender-cum-auction, wherever feasible and would be approved by the Board. In cases where the tender-cum-auction is not possible, land can be allotted on license basis at the latest market value which would be the value notified under para – 18(c). However, allotment of land by not resorting to tender-cum-auction methodology should be exercised as an exception.

²Clause 10.1(a) - The land inside custom bond area, which is required on an immediate basis, shall be given on license basis only and no lease may be permitted. Wherever feasible, such license shall be issued only by inviting competitive tenders. The guidelines laying down the detailed procedure in this regard shall be framed and approved by the Board of the Port. The license may be granted upto a maximum period of 11 months and shall be at the bid value discovered through tender-cum-auction, wherever feasible and would be approved by the Board. In cases where the tender-cum-auction is not possible, land can be allotted on license basis at the latest SoR which would be the value notified under para – 13(c). However, allotment of land by not resorting to tender-cum-auction methodology should be exercised as an exception.

³In these FAQs, the original Policy Guidelines of 2014 is denoted as 2014 Policy Guidelines and the revised 2014 Policy Guidelines is denoted as 2015 Policy Guidelines.

given on an immediate basis at TAMP's notified SOR. These licences are given for a period not exceeding 11 months. It is also clarified that depending upon the requirements of the Ports for the activities in support of cargo handling, the port can re-allot land on a licensing basis upto 11 months on nomination basis at the current SOR with proper justification as per the guidelines framed by the Board.

3. Can land be allotted for more than 5 years for PPP projects and for PSUs / Government Bodies?

Answer: As per Clause 15.1(b)⁴ of 2014 Policy Guidelines and Clause 10.1(b)⁵ of 2015 Policy Guidelines, the tenure of land allotted to private entities should not exceed 5 years: However, for PPP projects, license can be granted in accordance with the provision of the Model Concession Agreement and with prior approval of the competent authority. PPPs generally have longer gestation period. Accordingly, granting PPP projects for a period of 5 years may not be feasible to achieve a return on investment. As one of the objectives of the 2014 Policy is *inter alia* to ensure optimum value realization by the Ports, the Shipping Ministry may clarify taking recourse to Clause 12⁶ of the 2014 Guidelines for the purpose of removal of doubt that land can be granted for more than 5

⁴Clause 15.1(b) - The Port may also allot land inside the Custom bond area for activities vital to Port operations or for those which clearly aid Port activities and sea trade, such as, setting up of duty free shop, communication centres, parking facilities, passenger facilities like shopping centres, cyber cafes, health clubs etc. and security related activities. The tenure of license of such land will be decided by the respective Port Trust Boards and such tenure shall not exceed 5 years. All such proposals should, however, have the necessary statutory and/or administrative approvals. Land is to be allotted through tender-cum-auction methodology through a competitive bidding process over the reserve price of such plots which shall be worked out by the Land Allotment Committee of the Port and approved by the Port Trust Board. Land can also be allotted on nomination basis to CPSUs/SPSUs for activities that are vital to Port operations or which clearly aid port activities at the latest market value which would be the value notified under para-18(c).

⁵Clause 10.1(b) - The Port may also allot land inside the Custom bond area for activities vital to Port operations or for those which clearly aid Port activities and sea trade, such as, setting up of duty free shop, communication centres, parking facilities, passenger facilities like shopping centres, cyber cafes, health clubs etc. and security related activities. The tenure of license of such land will be decided by the respective Port Trust Boards and such tenure shall not exceed 5 years. All such proposals should, however, have the necessary statutory and/or administrative approvals. Land is to be allotted through tender-cum-auction methodology through a competitive bidding process over the reserve price of such plots which shall be the updated SoR notified by TAMP. Land can also be allotted on nomination basis to CPSUs/SPSUs for activities that are vital to Port operations or which clearly aid port activities at the latest SoR which would be the value notified under para-13(c).

⁶Clause 12 - These policy guidelines for land allotment would be applicable to all new PPP project. For such projects, approval of the project by the competent authority will be taken as approval for the license of the land component of the project.

years for PPP projects in terms of Clause 20 (vii)⁷ of the 2014 Policy Guidelines and Clause 15 (7) (i)⁸ of the 2015 Policy Guidelines. It may also clarify that the projects given to PSUs e.g. Dry dock Yard being given to Cochin Shipyard by Mumbai Port will be treated as a PPP project for this purpose and land can be allotted for more than 5 years.

4. What are the charges to be levied for land given for PPP Projects?

Answer: As per Clause 16.2(f)⁹ of 2014 Policy Guidelines and Clause 11.2(f)¹⁰ of 2015 Policy Guidelines in respect of PPP Projects, the annual lease rent based on updated/latest market value will be approved and rate of annual escalation would be indicated to the bidders at the bidding stage itself. While the above charges have been provided for grant of land on PPP Projects outside the custom bond area (as per Clause 16.2(f) of 2014 Policy Guidelines and Clause 11.2(f) of 2015 Policy Guidelines), the same concept needs to be applied for grant of land for PPP Projects in custom bond area. The provisions contained in para 11.2(f) of the Land Policy Guidelines shall also be equally applicable for PPP projects undertaken within the Custom bond area. In case of such projects, approval of the project by the Competent Authority will be taken as approval for the licence of the land component of the project as provided in para 7 of the Guidelines. To avoid ambiguity, the Shipping Ministry may issue a clarification under Clause 20(vii) of the 2014 Policy and Clause 15(7)(i) of the 2015 Policy Guidelines that the provisions of PPP projects will be on the same lines as applicable to Projects outside custom bond area.

⁷Clause 20 (vii) - In case of any ambiguity or doubt arising in regard to any provision, the Ministry of Shipping would have the powers to interpret and clarify the same within the overall framework and spirit of these guidelines.

⁸Clause 15 (7) (i) – Same as 2014 Policy Guidelines.

⁹Clause 16.2(f) - In respect of PPP projects, the annual lease rent based on the updated / latest market value with the approved rate of annual escalation would be indicated to the bidders at the bidding stage itself. With respect to land allotted for captive facilities, the lease rentals for the land allotted shall be recovered from the user as per the annual lease rental based on the market value notified as per Para-18(c), with the approved rate of annual escalation. The lease rental, as well as the rate of annual escalation would be approved by the Port Trust Board.

¹⁰Clause 11.2(f) - In respect of PPP projects, the annual lease rent based on the latest SoR with the approved rate of annual escalation would be indicated to the bidders at the bidding stage itself. With respect to land allotted for captive facilities, the lease rentals for the land allotted shall be recovered from the user as per the annual lease rental based on the latest SoR notified as per Para-13(c), with the approved rate of annual escalation. The lease rental, as well as the rate of annual escalation would be approved by the Port Trust Board.

5. Can land be allotted for establishment of common utilities? And, if yes, what shall be the rate applicable for such land?

Answer: Land can be allotted to local / government bodies for establishment of common utilities like electricity, fire systems, waste management etc. outside custom bond areas as per the provisions of Clause 11.2 (g)¹¹ of the 2015 Policy Guidelines¹². The above provision for common utilities can be made applicable for custom bonded areas also. Hence, for the purpose of removal of ambiguity, the Shipping Ministry may issue a clarification in terms of Clause 20 (vii) of the 2014 Policy Guidelines and Clause 15 (7) (i) of the 2015 Policy Guidelines, that the allotment of land for common utilities like sewage plant, water supply, electricity supply can be done in custom bonded areas on the same lines as being given in outside custom bonded area.

6. Do the provisions contained in Clause No. 10.2 of the Land Policy Guidelines 2015 apply to the land allotted inside the Custom bond area on licence basis and renewed every year and lessees have created permanent structures?

Answer : The Clause No. 10.2 reads as follows :

“Even though it would be ideal that land inside custom bond area is allotted on licence basis only, it is observed that some Major Ports have allotted land on long term lease basis inside the Custom bond area before the land policy guidelines issued in the year 2004 came into force and original lessees have created permanent structures on the land. The procedure outlined in para 11.3 will also be adopted for renewal of lease of such lands inside the custom bond area.”

Ministry of Shipping may clarify that the clause may read as follows :

¹¹Clause 11.2 (g) - For establishment of common utilities by local bodies like sewage plant, Government Schools, Colleges and Hospitals etc. land can be allotted by the Port Trusts on nomination basis provided allotment is in the interests of the Port Trusts. The land allotted to such entities to be used exclusively for the purpose which it has been allotted and under no circumstances, the usage can be changed. In case the leased land is not used for the purpose it is granted, the lease to be terminated and the land so allotted to be resumed by the Port. No transfer/ sub-letting of such lease will be permitted. Concession up to 75% on the annual lease rent arrived at on the basis of the updated SoR may be granted to government schools and colleges. Concessions in lease rent can be provided by the Port Trust Board as provided under para 11.2 (h) for establishment of common utilities by local bodies like sewage plant, hospitals, etc. provided they are in accordance with approved master plan of the city and the land is not required for the Port's own use.

¹² The concept of grant of land, outside custom bond area, for common utilities was provided in the 2015 Policy Guidelines but not in the 2014 Policy Guidelines.

“Even though it would be ideal that land inside custom bond area is allotted on licence basis only, it is observed that some Major Ports have allotted land on long term lease basis or licence basis inside the Custom bond area before the land policy guidelines issued in the year 2004 came into force. The dispensation which is extended to the lessees may also be extended to the licensees who created permanent structures within the custom bond area. The procedure outlined in para 11.3 will also be adopted for renewal of Lease/Licence of such lands inside the custom bond area.”

II. OUTSIDE CUSTOM BOND AREA - FRESH ALLOTMENT

7. Can land be allotted by tender for social, educational purposes as per the approved Land Use Plan? And if so, what would be the reserve price.

Answer: Land can be allotted as per Land Use Plan, subject to compliance with the terms of the Policy. In case of private entities, the land can be allotted on tender cum auction basis and in case of government bodies the land can be allotted on nomination basis at the SoR rate. Board can take the prevailing rate as levied by the urban authority/State Government, if any, while notifying the SOR. The basic price of the land for the tender cum auction would be rate of land as determined under Clause 18(c)¹³ of the 2014 Policy Guidelines and Clause 13 (c)¹⁴ of 2015 Policy Guidelines for the similar usage of land. If the ready reckoner rates for similar purposes are not available, then rates of the nearby Urban Authorities can be considered instead of the ready reckoner rates.

8. What are the conditions for grant of permission for the user who develops or augment a non-discriminatory common user facility such as floating structures (used in embarkation and disembarkation facilities) in the port where Port cannot provide such facility?

¹³Clause 18(c) - The Port Trust would make a proposal as outlined in Para 18(a) to TAMP for fixing the market value of the land. The TAMP would notify the market value of the land after following due process of consultation with stakeholders within 45 days of receipt of proposal. The Port Trust Board will fix a rate of annual escalation which would not be less than 2%.

¹⁴Clause 13 (c) - The Port Trust would make a proposal as outlined in Para 13(a) to TAMP for fixing the latest SoR of the land. The TAMP would notify the latest SoR of the land after following due process of consultation with stakeholders within 45 days of receipt of proposal. The Port Trust Board will fix a rate of annual escalation which would not be less than 2%. SoR would be refixed once in every 5 years by TAMP.

Answer: If a common user facility is required and the port is not in a position to provide Pontoons, Floating Jetty, etc. the Port may through a process of advertisement invite applications from private parties to set up such a facility as a common user facility.

The Port may not levy any charges to the user who has established such a floating facility if it meets the following criteria:

- (i) The facility is required to be provided by the Port for cargo handling/ passenger functions but the Port is not able to provide the facility;
- (ii) The facility is used as a common user facility;
- (iii) Operations and maintenance of the facility will be carried out by the facility provider; and
- (iv) Port will be free to levy any charges on the facility to any user other than the user who has established such a facility.

III. RENEWAL

9. In case there are no renewal clauses, the 2014 Policy Guidelines mandate that tender cum auction process must be embarked upon at the time of renewal. Is this applicable for renewals in relation to grant of land to private industry (on a going concern basis both inside and outside Custom bond area) which is engaged in port related activities?

Answer: As a general rule, where there is no renewal clause, tender cum auction process should be followed. In the above case, instead of embarking upon a tender cum auction process, it is suggested that the renewal, for an additional period of upto 30 years on nomination basis, may take place at the latest updated SoR. Such private industries (which are going concerns) assist the port in generating revenues as they engage in activities incidental or ancillary to port operations. Additionally, such private industries generate employment. Hence, for considering such renewal of the land for the industries already set up within the Port area, the following main criteria have to be fulfilled:

- i. It should be going concern and running at the time of renewal;
- ii. The industry should be port related and generating traffic for the port;
- iii. Industry should be such that it should fall in the activities to be carried in Section 'C' (Manufacturing Section in classification of NIC and tank farms situated within and outside custom bond area;

- iv. The land which will be allotted to the industry should have full utilisation for the purpose it was allotted at the time of renewal;
- v. Renewal is also subject to a clause that if any unutilized land¹⁵ is available with the industry within the allotted area, the port can take over such unutilized land; and
- vi. In such renewals, the industry should pay the lease rentals to the port upfront for the renewed period of another 30 years or annual lease rentals as per the current SORs notified by the TAMP.

Consequently, in the larger public interest and also to augment the revenue of the Port, it is suggested that the Shipping Ministry may relax the applicability of applying the tender cum auction process to such private industries in terms of Clause 20 (viii) of the 2014 Policy Guidelines and Clause 15 (8) (i) of the 2015 Policy Guidelines).

All the proposals satisfying the above criteria for renewal shall be sent to the Shipping Ministry for approval by the Empowered Committee.

10. In case there are no renewal clauses, the 2014 Policy Guidelines mandates that tender cum auction process must be embarked upon. Is this applicable in cases of land where the concerned property comprises of land vested in the Port upon which a full structure / building has been constructed and the title to such a full structure / building is not vested in the Port (and there is a full utilization of floor space index / floor area ratio)?

Answer: As a general rule, where there is no renewal clause, tender cum auction process with right of first refusal (ROFR) must be followed. Once the Port embarks on a tender cum auction process, where the concerned property comprises of land vested in the Port upon which a full structure / building has been constructed and the title to such a full structure / building is not vested in the Port (and there is a full utilization of floor space index / floor area ratio), the Port is required to give vacant possession of the property to the successful bidder. Handing over vacated property may require eviction proceedings being initiated against the current occupant. Experience shows that eviction proceedings take decades to fructify.

In the above cases, after each Port has identified areas which are to be renewed and which are not required by the Port (renewal areas), the Port may at its discretion allot the land on SoR instead of tender cum auction

¹⁵For the purpose of these FAQs, 'unutilized land' shall mean the land where the entire floor space index / floor area space ratio has not been utilized for the structure and such land does not support, in any way, the full utilization of the business envisioned to be carried on from the land.

process basis. Accordingly, the Shipping Ministry may relax the requirement of renewal of grants in renewal areas to be on SoR basis as opposed to tender cum auction basis in accordance with the terms of Clause 20 (viii) of the 2014 Policy (Clause 15 (8) (i) of the 2015 Policy Guidelines) provided that (a) a Vetting Committee has scrutinized and approved the renewal proposal; and (b) a statement is made by the Board that it would be quite difficult to provide vacated property expeditiously to the successful bidder. The period of renewal maybe upto a period of 30 years and the renewal should be made only on an upfront premium basis. In case the renewal is to take place on an annual lease rental basis, it may be renewed only up to a period of 10 years. In such cases, the proposal should also be sent to the Shipping Ministry for consideration of the Empowered Committee for a decision on case to case basis.

11. Does the Port have to grant the renewal to public sector entities / Government bodies on tender cum auction basis who have been granted the land on nomination basis?

Answer: The renewal to public sector entities / Government bodies may be given at SoR as opposed to tender cum auction basis. This is because upon grant of fresh allotment for public sector entities / Government bodies, the same is done as per Clause 16.2(h) of 2014 Policy Guidelines and Clause 11.2(h) of 2015 Policy Guidelines on nomination basis at SoR rates which should apply at the time of renewal also. Accordingly, the Shipping Ministry may remove the doubt of applicability of SoR basis in the above scenario in terms of Clause 20 (vii) of the 2014 Policy Guidelines and Clause 15 (7) (i) of the 2015 Policy Guidelines.

12. Can renewal take place in relation to land granted to charitable organizations / religious places / social institutions / education institutions, registered and recognized trade unions of Port employees without tender cum auction process. And if yes, what are the rates which shall apply in such cases?

Answer: Normally, if there is no renewal clause, renewal cannot take place without tender cum auction process.

It is to be noted there are about 104 cases of allotment made in all the Ports for such purposes which may come up for renewal. Majority of these organisations are providing some public service.

13. Can renewals be granted to Government schools and colleges, and Government aided schools and colleges on a nomination and concessional rate basis. If yes, what are the rates of renewals applicable to them?

Answer: Renewal of lease can be granted on a nomination basis to Government schools and colleges where the concession on rates can be upto 75% of the annual lease rent arrived at on the basis of updated SoR and taking into account the rates, if available, for such intended purpose of land usage. While grant and concessional charges have been provided for fresh allotments to Government schools and colleges, (as per Clause 16.2(g)¹⁶ of 2014 Policy Guidelines and Clause 11.2(g) of 2015 Policy Guidelines) the same concept could also be applied for renewals. Above provision also applies to Government aided schools and colleges. Extension of the aforesaid concession to Government schools and colleges, and Government aided schools and colleges is in public interest and for their welfare. Accordingly, the above clarification for Government aided schools and colleges as well as renewals afforded to Government schools and colleges may be provided by utilising Clause 20 (vii) of the 2014 Policy Guidelines and Clause 15 (7) (i) of the 2015 Policy Guidelines).

IV. GENERAL PROVISIONS

14. What are the charges to be applied in relation to right of way granted to Government entities providing public utility services like water supply lines, drainage/sewage lines, rain water management, electric supply lines, telephone lines, railway lines, roads (including last mile connectivity for the services) etc.?

Answer: The 2014 Policy Guidelines do not provide for grant of right of way at concessional rates to Government entities providing public utilities. As public utilities serve the public at large and are basic in nature upto 50% concession which have been provided in the Policy to

¹⁶Clause 16.2(g) - For Government schools and colleges, land can be allotted by the Port Trusts on nomination basis provided allotment is in the interests of the Port Trusts. The land allotted to such entities to be used exclusively for the purpose for which it has been allotted and under no circumstances, the usage can be changed. In case the leased land is not used for the purpose it is granted, the lease to be terminated and the land so allotted to be resumed by the Port. No transfer/ sub letting of such lease will be permitted. Concession up to 75% on the annual lease rent arrived at on the basis of the updated / latest market value may be granted to government schools and colleges.

It is also very difficult to get these places vacated. In such cases, it may be better to renew the leases at the prevailing SoR rates. The rates of the nearest Urban Authority for the same purpose can be considered while giving renewal if ready reckoner rate for similar uses are not available.

In case of such renewals granted to religious places registered trade union of Port employees, it may take place by nomination at nominal rate provided that they are non-commercial in nature and the purpose of the occupation has not been changed. In case renewal is made at a nominal rate, the Board may be empowered to fix the rate on case to case basis with due justification and send it to Empowered Committee.

Accordingly, the Shipping Ministry may allow granting of the above renewals for the above-mentioned cases on nomination basis at SoR rates for similar usage or on nominal rates (and not on tender cum auction basis) upto 30 years in terms of Clause 20 (viii) of the 2014 Policy Guidelines Clause 15 (8) (i) of the 2015 Policy Guidelines). This relaxation may be provided, as the original grants for such cases were on nomination basis and if renewals are provided on tender cum auction basis the same may lead to protracted litigations.

For the purposes of above, charitable organisations would mean and include 'incorporated' entity (i.e. trust, society or company) occupying with the core objective of providing welfare support or social services to persons working for the Major Ports and the community thereof on a not-for-profit basis.

For the purpose of the above

(a) a charitable organization / religious place / social institutions / education institutions shall be eligible for such renewal only

- (i) if it is incorporated entity (trust, society or company) under the provisions of a legislation;
- (ii) it is working a non-commercial and not-for-profit motive;
- (iii) it has been registered with the charity commissioner as a public charitable trust;

(b) In case of Trade unions,

- (i) Such trade union should be a port employees registered under Trade Union Act and recognised by the Port as per extent Policy;

(c) In case of temples and religious institutions

- (i) It has to be registered with the endowment departments of the concerned State or concerned State authorities;
- (ii) It should work a non-commercial and not-for-profit motive

Government departments in case of fresh allotment of the lease (as per Clause 16.2(h) of 2014 policy guidelines and Clause 11.2(h) of 2015 Policy Guidelines) can be extended to the Government entities providing public utilities in terms of Clause 20 (viii) of the 2014 Policy Guidelines and Clause 15 (8) (i) of the 2015 Policy Guidelines).

15. Whether the right of way permission shall be limited from jetties to the tank farms within and outside Port area?

Answer: While the 2014 Policy Guidelines provide the right of way permission to be limited from jetties to the tank farms within and outside Port area, it is clarified that the right of way provisions shall not be limited from the jetties to the tank farms but shall be within and outside the Port area. Such right of way permission may also be given in respect of other similar purposes such as telephone cables, OFC lines, telephone towers, electrical cables, road and rail lines too. Since it is not explicitly clear in the policy, the Shipping Ministry may issue a clarification under Clause 20 (vii) of the 2014 Policy Guidelines and Clause 15 (7) (i) of the 2015 Policy Guidelines) regarding the provisions of right of way permission.

16. In case where a lease has been granted post the 2014 Policy Guidelines coming into effect whether sub-letting of such a lease is permitted?

Answer: Currently, the 2014 Policy Guidelines provide that in case of any lease which is entered into after coming into effect of the 2014 Policy Guidelines, where the lessee is unable to utilise the entire land leased to him, the portion of the leased premises not required by him should be surrendered and no sub-letting should be permitted. It is to be clarified that the existing leases which were given before 2014 Land Policy came into being, can sublet the premises provided 50% of subletting fee is remitted to Port authorities. In case of new leases which are coming into effect after 2014, Land Policy being in force and the business model does not depend upon subletting, no subletting shall be permitted and any surplus land which is not used by the agency for the purpose it was allotted shall be taken over by the Port authority.

It is clarified that sub-letting shall be permitted in case the land has been allotted to the entities such as FTZ/SEZ, multi modal logistics park, mega food parks, free warehousing zone etc. wherein the business model is based on sub-letting only. The above are only illustrative in nature but

the main criteria is the business model of sub-letting. In such cases of sub-letting it is clarified that no sub-letting fee shall be levied.

Accordingly, the Shipping Ministry may issue a clarification under Clause 20 (vii) of the 2014 Policy Guidelines and Clause 15 (7) (i) of the 2015 Policy Guidelines) to provide sub-letting in relation *inter alia* to FTZ/SEZ, multi modal logistics park, mega food parks, free warehousing zone etc. wherein the business model is based on sub-letting and no sub-letting fee shall be levied thereon. The issue whether the business model is based on the sub-letting may be decided by the respective Boards of the Ports.

17. Would the Central Government approval be required for renewals in case the period of the grant exceeds 30 years on an aggregate basis (although the current renewal itself is less than or equal to 30 years) in terms of Section 34 of the MPT Act?

Answer: In case the renewal period exceeds 30 years taking into account the original lease period (although the current renewal itself is less than or equal to 30 years), in terms of Section 34 of the MPT Act read with the letter dated May 22, 2001 issued by the Shipping Ministry, approval of the Central Government is required. However, as the volume of the cases to be taken up by the Central Government would be quite substantial and thus the approval process cumbersome and time consuming, the Central Government may deem its approval to have been granted in case of such renewals in terms of Clause 20 (viii) of the 2014 Policy Guidelines and Clause 15 (8) (i) of the 2015 Policy Guidelines.

For the proper and effective implementation of the 2014 Policy Guidelines, each Board shall formulate their own procedural guidelines within the framework of the 2014 Policy. In all cases where the Shipping Ministry is issuing relaxation under Clause 20 (viii) of the 2014 Policy Guidelines (Clause 15(8)(i) of the 2015 Policy Guidelines), each individual proposal relating to private sector organisation, shall be approved by the Board after it has been vetted by the Land Allotment Committee.

380
5-6-18

No. PD-13017/2/2014-PD.IV
Government of India
Ministry of Shipping

DCM-024
050618

Dated 14th May, 2018

To,
The Chairmen of All Major Port Trusts &
CMD, Kamarajar Port Ltd.

CLARIFICATION CIRCULAR (LAND MANAGEMENT) No. 1 OF 2018

Subject: Clarifications on Policy Guidelines for Land Management, 2015 (PGLM 2015)

Sir(s),

I am directed to refer to the above subject and to say that the Policy Guidelines for Land Management 2014 were issued to all Major Ports for implementation. Later, some of the provisions of the Land Policy Guidelines, 2014 were further clarified to ease the implementation of the Policy Guidelines by the Major Ports vide letter No. PD-13017/2/2014-PD. IV dated 17th July, 2015 (hereinafter termed as Policy Guidelines for Land Management 2015 (PGLM, 2015)).

2. Many Ports have been continuously raising issues related to these guidelines and have been asking for both clarifications and modifications in the PGLM, 2015. Indian Port Association (IPA), an apex body of Major Ports was asked to deliberate and examine all such issues. IPA submitted its report, which was examined and again discussed with Chairmen of all Major Ports. Based on the suggestions received, the clarifications on these issues have now been finalised.

3. As per the provisions of para 15(vii) and para 15 (viii) of PGLM 2015, in case of any ambiguity or doubt regarding any provision, Ministry of Shipping has the powers to interpret, clarify and relax the provisions of these guidelines, in public interest, in case of difficulties in implementation of PGLM, 2015 within the overall framework and spirit of the guidelines.

4. Accordingly, these clarifications are issued in supersession of earlier clarifications issued vide letter No. PD-13017/3/2016-PD.VI on 1.5.2017 and 3.10.2017 with immediate effect under Section 111 of MPT Act, 1963.

5. Henceforth any clarification regarding Land Policy will be issued only in the form of 'CLARIFICATION CIRCULAR (LAND MANAGEMENT) No. ... of 2018'. All the clarification issued during a Financial Year will be valid till the end of Financial Year i.e. the Clarification Circular will have a sunset clause. All Clarification Circulars issued in a Financial Year that need to be retained will be consolidated into one Circular to be issued on 1st April of the succeeding year.

6. This issues with the approval of Minister of Shipping.

Yours faithfully,

(Rameshwar Kumar)

Under Secretary to the Govt. of India

May
1918

CM (PP&D)

Copy to: M/DM's

Copy to:

- RAM
D.M.
- PMO (Shri Ajit Kumar, Deputy Secretary), South Block, New Delhi
 - Cabinet Secretariat (Shri S.G.P. Verghese, Director), Rashtrapati Bhavan, New Delhi
 - The Managing Director, Indian Port Association, New Delhi

(contd....on page 2)

- iv. The Director, Tariff Authority for Major Ports, Mazgaon, Mumbai
- v. The Director General, Directorate General of Lighthouses & Lightships, Noida, UP
- vi. The CMD, Shipping Corporation of India, Mumbai.
- vii. The Chairman, IWAI, Noida, UP.
- viii. The VC, IMU, Chennai.
- ix. The CMD, Cochin Shipyard Limited, Cochin.
- x. The CMD, Dredging Corporation of India, Visakhapatnam.
- xi. The Director General, Directorate General of Shipping, Mumbai.
- xii. The Chief Engineer, ALHW, Port Blair.
- xiii. The MD, Indian Port Rail Corporation Limited.
- xiv. The MD, Sagarmala Development Company Limited.

Copy also to:

- i. PS to Hon'ble Minister (S,RT&H,WR,RD&GR)/ Hon'ble MOS(S, Finance)/ Hon'ble MOS(S,RT&H,C&F)
- ii. PS to Secretary(S)/PPS to AS&FA
- iii. PPS/PS/PA to JS(P)/JS(S&A)/JS(SM)/Adviser(Econ.)/Adviser(MMH)/JS(LK)/JS(KT)
- iv. All the Directors in Ports Wing/ CO(PB)
- v. NIC- for uploading the same on the website of the Ministry of Shipping

CLARIFICATION CIRCULAR (LAND MANAGEMENT) No. 1 OF 2018

Subject: Clarifications on Policy Guidelines for Land Management, 2015 (PGLM 2015)

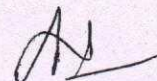
Issue 1:

PGLM 2015 provides in Para 5 that this policy guideline is applicable for all land in major ports except for the land relating to the township areas of Kandla, Mumbai and Kolkata ports. For these townships a separate policy is required to be formulated. Leases in these townships have been given mainly for residential and commercial purposes and some of these leases have either expired or are going to expire. Whether provisions of PGLM 2015 can be extended to these townships till formulation and application of a separate policy?

Clarification 1:

Townships are broadly defined as well delineated residential developments with supporting infrastructure. Thus, the bulk of the development in such townships is of residential units with other infrastructure supporting the residential development. In Mumbai and Kolkata, such residential areas developed on port land over long periods of time essentially because of the port activities. Similarly, at Kandla, both Gandhidam and Kandla townships developed due to the development of the Deendayal Port (then Kandla Port). PGLM 2015 clearly mentions that these policy guidelines are not applicable to township areas of Kandla, Mumbai and Kolkata ports. However, since there is already a large tract of existing township, the spirit of the extant Policy Guidelines is that no new residential/real-estate development should take place in these places without a separate policy for residential/real-estate development in place. Considering this broad aspect, the following is decided for the township areas of only Mumbai Port, Deendayal Port (Kandla) and Kolkata Port, excluding Haldia Dock Complex:

- (i) No new residential/real-estate development including individual residential unit should be taken up under PGLM 2015 except
 - (a) the township project at Gandhidam, Deendayal Port which was appraised by the PIB and approved by the Minister Shipping and Minister Finance and is an integral part of the Smart Industrial Port City, Kandla.
 - (b) allotment or development of land for residential purposes to Government Ministries/Departments/their subordinate, attached offices/Organisations. The allotment would be strictly subject to the condition that the development will be for their own use and cannot be sold, leased or let out to any other person/body in any manner whatsoever.
- (ii) Even for old residential areas no new norms like increased FAR, etc., should be considered and taken up for development.



(Rameshwar Kumar)

Under Secretary to the Govt. of India

CLARIFICATION CIRCULAR (LAND MANAGEMENT) No. 1 OF 2018

Subject: Clarifications on Policy Guidelines for Land Management, 2015 (PGLM 2015)

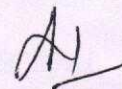
- (iii) However, renewal of leases within existing development can be taken up following Para 11.3 of PGLM 2015 on policy of renewal of existing/earlier leases.
- (iv) Land can be allotted by the way of fresh lease as per Para 11.2 (d) only for industrial, commercial purposes, etc., i.e. through tender-cum-auction methodology through a competitive bidding process over reserve price of such plots which shall be determined as per Para 13.
- (v) For establishment of common utilities only by local self-government bodies, methodology as indicated in Para 11.2 (g) may be adopted.
- (vi) Land can also be allotted by the way of fresh lease to entities as mentioned in Para 11.2(h) on nomination basis on market value as determined under Para 13 i.e. without any concessions. This should be subject to the condition that the development will be for their own use and cannot be sold, leased or let out to any other person/body in any manner whatsoever.
- (vii) All the above developments can be taken up provided these are in accordance with an approved Master Plan and the land is not required for the port's own use.

Issue 2:

Whether land within custom bond area can be allotted for PPP Projects for more than 5 years? If yes, what will be the methodology?

Clarification 2:

The Model Concession Agreement for PPP projects approved in 2018 provides for a concession period of 30 years. There could also be concession agreements entered by the port for periods less than 30 years but more than 5 years. Para 10.1 (b) provides for licence of land allotted inside custom bond areas for activities vital to port operations, or those which clearly aid port activities and security related activities for a maximum tenure of 5 years. However, if it is assessed that the requirement of land for PPP projects in custom bond areas is for more than 5 years, then land can be made part of the bidding process and provided for the period of Concession Agreement. If this land was not part of the bidding process on which the concession got determined then the land can also be provided as per specific provisions for allotment of land contained in the Concession Agreement. When there are no specific provisions for such allotment in the Concession Agreement, then land can be provided after proper assessment at 1.2 times of the latest SOR (as per the Model Concession Agreement for PPP projects, 2018) which would be the value notified under Para 13 (c) of



(Rameshwar Kumar)

Under Secretary to the Govt. of India

CLARIFICATION CIRCULAR (LAND MANAGEMENT) No. 1 OF 2018

Subject: Clarifications on Policy Guidelines for Land Management, 2015 (PGLM 2015)

PGLM 2015, on the recommendation of the Board and with the approval of the Ministry of Shipping through the Empowered Committee route.

Issue 3:

Whether land within custom bond area can be allotted to PSUs/Government bodies for more than 5 years? If yes, what will be the methodology?

Clarification 3:

Para 10.1 (b) provides that land inside custom bond areas for activities vital to port operations, or those which clearly aid port activities and security related activities can be allotted on nomination basis to CPSUs/SPSUs at the latest SOR which would be the value notified under Para 13 (c) of PGLM 2015. However, if it is established that the requirement of the land is for tenure of more than 5 years, then in exceptional circumstances, land can be allotted on licence/ lease basis for more than 5 years on nomination basis to PSUs/Government Bodies at the latest SOR which would be the value notified under Para 13(c).

Issue 4:

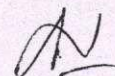
Whether land can be allotted for establishment of common utilities in the custom bond area? If yes, what will be the methodology and the rate applicable?

Clarification 4:

As far as possible common utilities in the custom bond area should be provided by the port either by itself or through outsourcing. Only in exceptional circumstances when it is not possible for the port to provide these utilities should land be allotted for such common utilities only to local bodies/Government agencies. In such cases, this should be done following the provision of common utilities outside the custom bond areas in Para 11.2 (g) read with Para 11.2 (h) of PGLM 2015.

Issue 5:

There may be cases where land was allotted on licence basis in custom bond area, the licence has been renewed periodically and the licencees have built permanent structures on the licenced land. Whether in such cases, the land can be allotted on lease basis as per Para 10.2 of PGLM 2015?



(Rameshwar Kumar)

Under Secretary to the Govt. of India

CLARIFICATION CIRCULAR (LAND MANAGEMENT) No. 1 OF 2018

Subject: Clarifications on Policy Guidelines for Land Management, 2015 (PGLM 2015)

Clarification 5:

No, only in cases where licence were granted prior to 2004 in the custom bond area and the licensees have built permanent structures can a fresh lease be granted following the principle as laid out in per Para 11.2. All such proposals would have to be recommended by the Port Trust Board and approved by the Ministry of Shipping through the Empowered Committee route.

Issue 6:

There are cases, where land was allotted on lease for setting up of industrial, service sector or commercial units. The units are still functioning as going concern and lease did not provide for renewal. What is the methodology to be adopted for grant of fresh lease, and what are the rates which shall apply?

Clarification 6:

The methodology and the rates which shall apply for such cases is provided in detail in para 11.3 (c). As a measure of amplification the following points may also be incorporated:

- (i) Value of the structures shall be made by a Valuer who is mutually acceptable to both Port Trusts and the existing lessee. The valuer has to be selected by the parties amongst the panel of 3 valuers to be proposed by Port authority within a fixed time period. Here the mutual acceptance is of the Valuer and not the value of the structure.
- (ii) While the guidelines provide for EMD for a valid bid to be fixed at 10% of the latest SOR of the land being put on tender, there is no provision for EMD for the value of structures. An EMD for 10% of the value of the structures in the form of bank guarantee may also be taken from all bidders except the original lessee.
- (iii) The valuation of the structure should be done on a 'replacement' basis which is defined in Indian Accounting Standard (Ind AS 113) as Fair Value measurement on cost basis, that is, the current replacement value/cost of the asset i.e current market value of the original asset less the depreciation for the period of usage and obsolescence.

Issue 7:

There are cases where land was allotted on lease for setting up of industrial, service sector and commercial units. The units are still functioning as going concern and lease did



(Rameshwar Kumar)

Under Secretary to the Govt. of India

CLARIFICATION CIRCULAR (LAND MANAGEMENT) No. 1 OF 2018

Subject: Clarifications on Policy Guidelines for Land Management, 2015 (PGLM 2015)

not provide for renewal. It has been decided to grant fresh lease as per Clarification 7. How is the period between the expiry of earlier lease and grant of fresh lease is to be treated? Also, If the lease has expired before 2.01.2014 i.e. prior to coming into effect of PGLM 2014, how is the period between the expiry of the earlier lease and grant of fresh lease is to be treated?

Clarification 7:

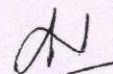
When the lease has expired, then for the existing lessee to be eligible for taking part in the bid should clear all dues including the value of the lease rental determined as per the SOR rates prevailing from time to time since the period of expiry of the lease and date of tender-cum auction. When there is delay in calling for tender is attributable to the Port authorities no penalty/interest should be charged from the lessee i.e it should be based on single rate at the prevailing SOR from time to time. The reserve price for the tender would anyhow be the latest SOR as per Para 13. In case the earlier lessee is the successful bidder then the period of lease should be taken retrospectively and in case the lessee is not the successful bidder the lease is to be taken up prospectively. In cases where possession was taken by the port the lease would be effective prospectively. In such cases even if the lease had expired before 2014, i.e. prior to coming into effect of PGLM 2014, the guidelines prescribed for renewal of existing/earlier leases as per Para 11.3 would apply.

Issue 8:

Whether land can be allotted outside custom bond area by a fresh lease for Social and Educational purposes as per approved land use plan? If yes, what would be the methodology?

Clarification 8:

Para 11.2 (g) and (h) provide for establishment of schools, colleges, hospitals, etc., by local/government bodies on nomination basis at the updated SOR rate and concession thereto. In case such social and education utilities have to be established by other than local/government bodies land can also be allotted on tender-cum-auction basis. While fixing up market value of the land as per Para 13 the Land Allotment Committee should consider the rates for land for similar purposes. If the ready reckoner for land for similar purposes is not available then the rates of the adjacent local authorities for similar purposes could also be considered while fixing the market value.



(Rameshwar Kumar)
Under Secretary to the Govt. of India

CLARIFICATION CIRCULAR (LAND MANAGEMENT) No. 1 OF 2018

Subject: Clarifications on Policy Guidelines for Land Management, 2015 (PGLM 2015)

Issue 9:

There are cases, where land was allotted on lease to charitable organizations/religious places/ social institution/ educational institutions/registered and recognized trade unions of Port employees, outside the custom bond area without following competitive bid methodology on nomination basis and also at concessional or nominal rates and the leases have expired. What is the methodology to be adopted for grant of fresh lease and what are the rates which shall apply?

Clarification 9:

Keeping in with the spirit of provision in Para 11.2 (g), renewal of leases for the following purposes only may be considered provided it is in accordance with the approved Master Plan/Land Use Plan and the land is not required for the port's own use:

- (i) Renewal of existing leases of Educational institutions, health and family welfare institutions, registered and recognized trade unions for port employees can be done on a nomination basis. Where these institutions are being run on commercial lines, then the annual lease rent should be charged on the basis of updated SOR for similar usage. In cases the organizations are being run without any commercial consideration, then concession in lease rent may be considered by the Port Trust Board up to 75%. All such proposals would have to be recommended by the Port Trust Board and approved by the Ministry of Shipping through the Empowered Committee route.

Issue 10:

There are cases, where land outside custom bond area was given to Government Schools and Colleges and Government aided schools and colleges on a nomination basis, at concessional rate and the lease has expired. What is the methodology to be adopted for grant of fresh leases and what are the rates which shall apply?

Clarification 10:

The policy guidelines as at Para 11.2(g) for renewal of lease for Government schools and colleges should be followed *mutatis mutandis*. For Government aided schools and colleges, renewal may be done on annual lease rent basis arrived as per the latest and updated SOR for similar usage. For Government Schools and Colleges Port authorities may finalise cases which fall within their powers and in all other cases, however, they should be recommended by the Port Trust Board and approved by the Ministry of Shipping through the Empowered Committee route.



(Rameshwar Kumar)

Under Secretary to the Govt. of India

CLARIFICATION CIRCULAR (LAND MANAGEMENT) No. 1 OF 2018

Subject: Clarifications on Policy Guidelines for Land Management, 2015 (PGLM 2015)

Issue 11:

There are cases, where land outside custom bond area was given to Public sector entities/Government bodies on nomination basis and the lease have expired. What is the methodology to be adopted for grant of fresh lease and what are the rates which shall apply?

Clarification 11:

Keeping in with the spirit of grant of fresh leases to such organizations as per Para 11.2 (h), the renewal of lease in such cases could also be done on nomination basis. The concessions to be granted should also be as per Para 11.2 (h).

Issue 12:

There are cases where the original lease has expired or will expire and the lease provides for renewal clause. Whether the earlier period of lease would be counted/ taken into account for determining whether the renewal/grant of new lease is within the powers of Board of Trustees or is to be referred to Ministry of Shipping?

Clarification 12:

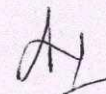
In such cases the renewal can be treated as fresh lease. As such whether the case will fall within the powers of the Board of Trustees or is to be referred to Ministry of Shipping would be determined by the period of renewal without taking into account the period of the earlier/past lease.

Issue 13:

There are cases where the original lease has expired or will expire and the lease does not provide for renewal clause. The land is put up for fresh grant of lease as per procedure laid in PGLM 2015. Whether the earlier period of lease would be counted/ taken into account for determining whether the renewal/grant of new lease is within the powers of Board of Trustees or is to be referred to Ministry of Shipping?

Clarification 13:

In all such cases every grant of lease without renewal option after the expiry of the original lease period must be treated as a fresh lease provided it has been put up for fresh tender-cum-auction for grant of fresh lease. Thus, whether this will fall within the powers of the Board or Ministry of Shipping would depend upon the period of fresh lease without considering the period of past lease.



(Rameshwar Kumar)
Under Secretary to the Govt. of India

CLARIFICATION CIRCULAR (LAND MANAGEMENT) No. 1 OF 2018

Subject: Clarifications on Policy Guidelines for Land Management, 2015 (PGLM 2015)

Issue 14:

PGLM 2015 provides in Para 11.2 (c) that lease of land for more than 30 years for capital intensive investment like tank farms, refineries etc., can be given. Whether the longer period of lease may also be extended to Free Trade Warehousing Zone/SEZ, multi modal logistics park, mega food park, etc.

Clarification 14:

The period of lease for capital intensive investments like tank farms, refineries, industrial units, Free Trade Warehousing Zone/SEZ, Multimodal logistic park, Mega food parks, etc. should be for more than 30 years as the business model for these activities is based on life longer than 30 years. The port may fix the tenure of lease for a period which is more than 30 years and the lease rental should be either upfront premium or premium payable in maximum 10 yearly installments and interest at the rate of G-Sec prevalent at the time of grant of lease should also be levied during the period of installment. All such proposals where the period of lease is more than the period within the powers of the Board, will have to be recommended by the Port Trust Board and approved by the Ministry of Shipping following the Empowered Committee route.

Issue 15:

PGLM 2015 provides in Para 11.2 (h) that land can also be allotted on nomination basis to Government Departments, Statutory Local Bodies, Statutory Authorities/Autonomous Organisations under State/Central Ministries, Central Public Sector Undertakings (CPSUs), State Public Sector Undertakings (SPSUs) and security agencies like State Police, CISF, Coast Guard and Navy, subject to the availability of land and on the basis of updated SoR. Whether the agencies to whom land is allotted on nomination basis can be given lease of land for a period upto 99 years by Port Trust Board and if so, the lease rental is to be calculated on annual premium basis or upfront premium basis.

Clarification 15:

In all cases where the land is being allotted on a nomination basis to institutions mentioned in Para 11.2 (h) the lease period should be fixed as 60 years and the lease rental should be either upfront premium or premium payable in maximum 10 yearly installments and interest at the rate of G-Sec prevalent at the time of grant of lease should also be levied during the period of installment. All such proposals will have to be recommended by the Port Trust Board and approved by the Ministry of Shipping following the Empowered Committee route.



(Rameshwar Kumar)

Under Secretary to the Govt. of India

CLARIFICATION CIRCULAR (LAND MANAGEMENT) No. 1 OF 2018

Subject: Clarifications on Policy Guidelines for Land Management, 2015 (PGLM 2015)

Issue 16:

Whether in cases where a lease has been granted post coming into effect of PGLM 2014, sub letting/leasing of such lease can be permitted/allowed?

Clarification 16:

No subletting/sub-leasing is allowed for leases given after 2014 as per PGLM 2015. However, subletting/sub-leasing shall be permitted in case the land has been allotted to entities such as FTZ/SEZ, Multimodal Logistic parks, Mega food parks, Free trade warehousing zones, etc., where the business model is based on subletting. In such cases no subletting fee shall be levied. The issue of whether the business model is based on the subletting or no may be decided by the respective Boards of ports.

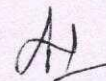
Issue 17:

Whether Right of way permission may be given for providing public utility services like water supply lines, drainage/sewage lines, rain water management channels, electric supply lines, telephone lines, telegraph lines, railway lines, roads (including last mile connectivity for the services), etc., by private, local bodies, public sector, government entities and what are the rates which shall apply? Is it necessary that the Right of Way permission is only from the Jetties?

Clarification 17:

The Right of Way permission for laying pipelines/conveyers, etc., from jetties to tank forms within and outside port area is provided in Para 14. This is only an indicative list. The Right of Way permission shall be extended for other similar purposes such as telegraph cables, OFC lines, telephone towers, electric cables, telegraph lines, etc. Such ROW permission can also be given for roads, railways where no licence/lease of land is involved, infrastructure is built and maintained by the funds of the permission holder and these facilities can also be used by the port, if needed, without levy of any charge. The charges to be levied for this Right of Way permission would be as per the Annexure 2 of PGLM 2015 detailing "Terms and conditions for issue of Right of Way permission for laying pipelines/conveyers, etc." However, where there is a specific Central Act/Statute which govern such Right of Way permission, the provisions under the said Central Act/Statute shall override these guidelines. A case in point is the specific permission for Right of Way under the Indian Telegraph Act, 1885 and the Indian Telegraph Right of Way Rules, 2016.

No, it is not necessary that RoW permission is limited only from the Jetties and can be anywhere within the Port land as per the requirement.



(Rameshwar Kumar)
Under Secretary to the Govt. of India

CLARIFICATION CIRCULAR (LAND MANAGEMENT) No. 1 OF 2018

Subject: Clarifications on Policy Guidelines for Land Management, 2015 (PGLM 2015)

Issue 18:

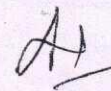
Whether way leave permission can be given for pipelines for tank farms located outside the Port Area? If so, what will be the methodology?

Clarification 18

The main function of the Port is to receive Cargo and thereafter to evacuate it. Storage of cargo can only be a very limited function of the Port. The evacuation of this cargo is by many means, like – Road, Rail, Coastal Shipping, Pipelines, Conveyers etc. Thus the cargo anyhow moves outside the Port. Movement of liquid by pipelines outside the Port can thus be taken as a normal activity of the Port and in no way should be restricted, otherwise there is danger of this cargo moving to some other nearby competing Port. Para 14 of PGLM, 2015 categorically provides for Right of way permission for laying pipelines/conveyers etc. from jetties to the tank farms within and outside Port area with broad terms & conditions. It also stipulates that each Port Trust Board may formulate and approve its own policy of granting way-leave permission. While formulating its own policy, Port Trust Board shall take all relevant factors into consideration such as extent of land available with Port, its tariff, land parcel available outside Port area, potential of additional Cargo throughput, chances of diversion of cargo, cost benefit analysis, etc. In addition, the following should be factored by Port Trust Board:

- (i) Extent of land available with the Port.
- (ii) While fixing the way leave charges, existing market conditions needs to be taken into account, so as to have a competitive environment for doing business. It may also be noted that by allowing way leave permission outside port area will help in avoiding the monopoly situations by existing tank farms owners inside port area.
- (iii) Ports will be entitled to revise its charges, as per the extant Guidelines and to facilitate competitiveness with tank farm owners inside and outside Port Area to whom way leave permission is given.
- (iv) Stimulates the growth of the Port, keeping in view the growth of trade in future.

***POLICY GUIDELINES FOR LAND MANAGEMENT 2014 refers to the clarifications issued on 17th July, 2015 herein referred as PGLM 2015.**



(Rameshwar Kumar)
Under Secretary to the Govt. of India



CHG-429
27-3-19

Indian Ports Association

आंक. नं. 1363
दि. 30/3/19

No. : IPA/GAD/Land management/2016-Vol.II

Dated : 11-3-2019

The Secretaries,
All Major Ports

**Sub : Clarification on Policy Guidelines for Land
Management, 2015 (PGLM 2015)**

Sir,

Please find enclosed herewith a copy letter No. PD-13017/2/2014-PD.IV dated
9-3-2019 received from Ministry of Shipping on the above subject.

Yours faithfully,

(Rajeev Puri)

Chief Administrative Officer

Encl : As above

Copy to the PS to Chairmen, Major Ports for kind information of Chairmen.

emepd)

30/3

M-III

2mb
30/3

DM-RAM

No. PD-13017/2/2014-PD.IV
Government of India
Ministry of Shipping

Dated 9th March, 2019

To,
The Chairmen of All Major Port Trusts & CMD, KPL

CLARIFICATION CIRCULAR (LAND MANAGEMENT) No. 2 OF 2019

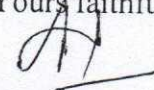
Subject: Clarifications on Policy Guidelines for Land Management, 2015 (PGLM 2015)

Sir(s),

I am directed to refer to the above subject and to say that the Policy Guidelines for Land Management 2014 were issued to all Major Ports for implementation. Later, some of the provisions of the Land Policy Guidelines, 2014 were further clarified to ease the implementation of the Policy Guidelines by the Major Ports vide letter No. PD-13017/2/2014-PD. IV dated 17th July, 2015 (hereinafter termed as Policy Guidelines for Land Management 2015 (PGLM, 2015)). Some of the issues were further clarified on 14.5.2018.

2. Subsequent to issue of the clarification No. 1 of 2018, many Major Ports came out with several difficulties in implementing PGLM 2015. In order to understand various issues and to find solutions within the framework of PGLM 2015 and Clarification No.1 of 2018, a 'Brainstorming Session' of all Major Port Chairmen was held on 25th & 26th September, 2018 to deliberate on Land Estate Issues of Major Ports. Based on the discussion, Chairman, MbPT & IPA vide letter dated 18.2.2019 forwarded the issues & clarifications to be issued the Ministry. The matter was further discussed with Chairman, MbPT. Based on the discussion, the clarification on some of the issues have have now been finalised.
3. As per the provisions of para 15(vii) and para 15 (viii) of PGLM 2015, in case of any ambiguity or doubt regarding any provision, Ministry of Shipping has the powers to interpret, clarify and relax the provisions of these guidelines, in public interest, in case of difficulties in implementation of PGLM, 2015 within the overall framework and spirit of the guidelines.
4. Accordingly, these clarifications are issued with immediate effect under Section 111 of MPT Act, 1963 and will be valid till the end of Financial Year 2018-19. All the Clarification Circulars issued in the Financial Year 2018-19 that need to be retained will be consolidated into one Circular to be issued on 1st April of the succeeding year.
5. This issues with the approval of Hon'ble Minister of Shipping.

Yours faithfully,



(Rameshwar Kumar)

Under Secretary to the Govt. of India

Copy to:

- i. The Managing Director, Indian Port Association, New Delhi
- ii. The Director, Tariff Authority for Major Ports & The Chairman, IWAI, Noida, UP

Copy also to:

- i. PS to Hon'ble Minister (S)/ Hon'ble MOS(S, Finance)/ Hon'ble MOS(S,RT&H,C&F)
- ii. PS to Secretary(S)/PPS to AS&FA
- iii. PPS/PS/PA to AS(S)/JS(P)/JS(S)/JS(SM)/Sr.Adviser(Eco.)/
- iv. All the Directors in Ports Wing/ CO(PB)
- v. NIC- for uploading the same on the website of the Ministry of Shipping

CLARIFICATION CIRCULAR (LAND MANAGEMENT) No. 2 OF 2019

Subject: Clarification on Policy Guidelines for Land Management, 2015 (PGLM 2015)

Issue 1:

There are cases where land was allotted on lease for setting up of industrial, service sector and commercial units. The units are still functioning as going concern and lease did not provide for renewal. It has been decided to grant fresh lease as per Clarification 7. How is the period between the expiry of earlier lease and grant of fresh lease to be treated? Also, if the lease has expired before 02.01.2014 i.e. prior to coming into effect of PGLM 2014, how is the period between the expiry of the earlier lease and grant of fresh lease to be treated?

Clarification 1:

When the lease has expired and has no renewal clause, then the existing lessee to be eligible for taking part in the bid with ROFR should clear all dues including the value of the lease rental determined as per the SOR rates prevailing from time to time since the period of expiry of the lease and date of tender-cum-auction. When the delay in calling for tender is attributable to the Port authorities no penalty/interest should be charged from the lessee i.e. it should be based on single rate at the prevailing SOR from time to time. The reserve price for the tender would anyhow be the latest SOR as per Para 13. In the tender cum auction process the lease period should be reckoned prospectively. If the existing lessee becomes the successful bidder in the tender – cum - auction then the intervening period should be regularised by the Board. In all such cases, even if the lease had expired before 2014, i.e. prior to coming into effect of PGLM 2014, the guidelines prescribed for renewal of existing/earlier leases as per Para 11.3 would apply.

(This is issued in supersession of earlier clarification No. 7 issued on 14.5.2018)

Issue 2:

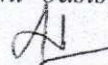
There are cases where port lands have been encroached by slum dwellers. Can rehabilitation/relocation/redevelopment of such slums can be undertaken?

Clarification 2:

For the purpose of freeing up encroachments leading to optimum utilization of land, the ports may consider the applicability of any Central Government approved Policy/ Scheme for slum rehabilitation/ redevelopment/relocation. For this purpose, Port may formulate proposal keeping the said Central Government Policy/ Scheme into consideration and submit it to MoS for obtaining the approval of the concerned Central Government Ministry. For example, if the proposal falls under Prime Minister Aavas Yojna (PMAY), the concerned port will submit the proposal formulated based on the guidelines of PMAY to MoS for obtaining the approval of Ministry of Urban Development.

Issue 3:

There are cases, where land was allotted on lease for setting up of industrial, service sector or commercial units. The units are still functioning as going concern and lease deed did not provide for renewal. What is the methodology to be adopted for grant of fresh lease, and what are the rates which shall apply? Should procedure for valuation of a structure be on a 'replacement' basis which is defined in Indian Accounting Standards (Ind AS 113)?



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Under Secretary to the Govt. of India

Clarification 3:

The methodology and the rates which shall apply for such cases is provided in detail in para 11.3 (c). As a measure of amplification the following points may also be incorporated:

- (i) Value of the structures shall be made by a Valuer who is mutually acceptable to both Port Trusts and the existing lessee. The valuer has to be selected by the parties amongst the panel of 3 valuers to be proposed by Port authority within a fixed time period. Here the mutual acceptance is of the Valuer and not the value of the structure.
- (ii) While the guidelines provide for EMD for a valid bid to be fixed at 10% of the latest SOR of the land being put on tender, there is no provision for EMD for the value of structures. An EMD for 10% of the value of the structures in the form of bank guarantee may also be taken from all bidders except the original lessee.
- (iii) The valuation of the structure should be done on a 'replacement' basis following principles as defined in Indian Accounting Standard (Ind AS 113).

(This is issued in supersession of earlier clarification No. 6 issued on 14.5.2018)

Issue 4:

There are cases where successful bidder has been finalized following the E-Tender cum E-Auction. However, any judicial orders/laws which come into effect after the bid due date and which prevent the successful bidder from optimal utilisation or development and any other factor which is not attributable to the bidder. How to deal with such cases with regard to rentals recoverable?

Clarification 4:

- (i) If the licensee/Port authority could not get the statutory clearances in the prescribed time and due to this the lessee is not able to proceed optimally or as per the agreement in the project, then to the extent of such delays no due should be recovered by the Port unless there is an express provision in the agreement after approval of the same by the Port Trust Board.
- (ii) If the successful bidder is prevented from optimal utilisation and development of the project as per the agreement, due to changes which are akin to change in law or akin to force majeure event then the Port at its sole discretion can consider waiver of dues during such period after approval of the same by the Port Trust Board.

Issue 5:

There may be cases where land has been allotted on licence basis in custom bond area, the licence has been renewed periodically and the licencees have built permanent structures on the licenced land. Whether in such cases, the land can be allotted on lease basis as per Para 10.2 of PGLM 2015.

Clarification 5:

No, only in cases where licence was granted prior to 2004 in the custom bond area and the licensees have built permanent structures can lease be granted following the principle as laid out in

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per Para 11.3. All such proposals would have to be recommended by the Port Trust Board and approved by the Ministry of Shipping through the Empowered Committee route.

(This is issued in supersession of earlier clarification No. 5 issued on 14.5.2018)

Issue 6:

There are cases where land is required to be allotted on immediate requirement of Port user for Cargo storage. How to allot such land on license basis?

Clarification 6:

As per para 9.4 of PGLM, 2015, Port may formulate the guidelines for License of land within and outside customs bonded area in accordance with the land use plan of the port and the spirit of the Land Policy Guidelines and get them approved at the Board level. The Ministry of Shipping should be kept informed of the guidelines.

Issue 7:

Whether extension of the construction period beyond the period stipulated in the para 12E of the PGLM, 2015 can be granted.

Clarification 7:

- (a) When the statutory clearances are required to be obtained by the port, the construction period by the lessee can be counted only from the time such clearances are obtained unless there is an express provision to the contrary in the agreement.
- (b) The stage wise construction could be prescribed and construction period can be counted for utilization of land stage wise.
- (C) Port may decide the additional lease premiums to be collected from the lessees for the delays in construction beyond the period of construction as stated in the agreement.

Issue 8:

Whether compensation @ 3xSoR should be charged when a party is declared an unauthorised occupant.

Clarification 8:


If the delay in issuing of fresh tender, after the issue of clarification on PGLM 2015 on 14.05.2018, is on the part of the Port then the lessee cannot be considered an unauthorised occupant and may not be charged compensation @ 3xSoR. All such cases should be duly processed by the Ports within two years from date of issue of clarification on PGLM 2015 which is 14.05.2018.

Issue 9:

What would be the G-Sec rate to be adopted as discounting factor for computation of Upfront premium if there is a time lag between invitation of tender and actual allotment.

Clarification 9:

G-Sec rate has to be the rate applicable at the time of invitation of tender as the bidder should have a clear idea of his liability.


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