

GOVERNMENT OF INDIA  
MINISTRY OF SHIPPING  
(PORTS WING)

By Regd. Post

No. PT-17011/55/87-PT

New Delhi, the 8<sup>th</sup> March, 2004

To

The Chairmen,  
All Major Port Trusts except Kolkata and Mumbai Port Trusts.

SUBJECT: Land Policy for Major Ports.

Sir,

I am directed to refer to this Ministry's letter of even number dated 24<sup>th</sup> Feb., 2004 enclosing therewith the Land Policy for Major Ports for implementation by the Ports. Some minor typographical errors in assigning serial numbers in the said Land Policy for Major Ports have inadvertently occurred. The corrected copy of the Land Policy for Major Ports is enclosed.

Yours faithfully,

**Encl.: As above.**

  
( DAYA CHAND )

UNDER SECRETARY TO THE GOVT. OF INDIA

## LAND POLICY FOR MAJOR PORTS

### BACKGROUND

Land is one of the important resources with the Port Trusts for increasing traffic in 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 upto 30 years and in case the period of lease is for more than 30 years, prior approval of the Central Government is necessary. The second proviso of this sub-section, which is relevant in the matter, 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 terms 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 the allotment of land, the Ministry has been issuing guidelines from time to time. However, it is seen that of late, there were delays in deciding the cases, both, at the level of ports as well as in the Ministry. Such delays in allotment of land affect the port development. In the competitive environment that the ports operate now, it was felt that there is a need to review the guidelines issued in the past. It was, therefore, decided in the Port Chairmen's Conference held on 4.3.2003 that a Committee on Port Land Policy was set up under the Chairmanship of Chairman, JNPT vide Ministry's Order No. PT-17011/55/87-PT(Vol.III) dated 10.03.2003 to examine among other things the legal provisions, instructions issued from time to time to recommend a draft Land Policy which should be simple, clear, unambiguous and easy to implement. The Committee has submitted its report to the Ministry which has been examined and deliberated upon in the Ministry. After considering all aspects of the problems that are being faced at present and the fact that the ports have to operate in a very competitive environment it has been decided that the Port Trusts shall follow the policy as enumerated in the subsequent paragraphs for allotment of land.

3. This policy is applicable for all Major Port Trusts except Mumbai and Kolkata.

4. This policy for land allotment would not be applicable to BOT projects for which separate guidelines already exist.

## 5. Land Allotment Policy

### 5.1 Land inside Custom bound area

#### 5.1.1 Fresh allotment :

- a) The allotment of land in Custom bound area should be considered only for activities directly related to Port operations and in accordance with the guidelines issued by Ministry of Environment & Forests vide their Notification dated 20<sup>th</sup> February, 1991 and as amended from time to time. All such proposals should be subject to necessary statutory and administrative approvals.
- b) No sale or lease should be permitted. Land should be given on licence basis only. The licence may be up to a maximum period of 11 months and shall normally be in accordance with the Schedule of Rates (SoR)/rates approved by the competent authority. At the discretion of the Chairman, such licence may also be given by inviting tenders. The licence can be renewed at the expiry of the previous licence period. Each renewal of licence shall be treated as fresh licence.

#### 5.1.2 Renewal of Existing leases :

- a) If there is no option for renewal in the existing lease agreement, guidelines governing fresh allotment shall apply.
- b) If the renewal option is there and if land is not required by port for its own use, the port should then assess whether it is required for the purpose for which it was originally leased. If it is so required, it should be renewed for as short a period as possible and preferably in accordance with the SoR/rates approved by competent authority.

### 5.2 Land outside Custom bound area

Land can be allotted either on licence or lease basis.

#### 5.2.1 Lease

##### 5.2.1.1 Fresh Lease

- a) There should be no distinction between port related and non port-related purposes. Land should be leased only in accordance with the land use plan.
- b) Land can be leased up to 30 years by Port after Board's approval.
- c) For lease above thirty years, and for a maximum period of up to 99 years, prior approval of MOS is essential.
- d) The Port Trusts should not entertain any proposal for allotment of land to religious institutions. For different social purposes allotment will be in accordance with the land use plan and conditions as applicable to such allotments.
- e) When entering into a joint venture for improving port connectivity, with any public body, land required for such projects may be provided at nominal value.
- f) When entering into a joint venture for Special Economic Zone with any public body, the land required for such projects should be provided at nominal value only if other partners also bring land at nominal cost.
- g) Lease should be given by inviting tenders except in the following cases:
  - (i) To Government departments in accordance with SOR/rates approved by the competent authority.
  - (ii) CPSUs/SPSUs for commercial purposes at the discretion of the Port, for port-related uses in accordance with SOR/rates approved by competent authority. However, this allocation should be for use by CPSUs/SPSUs exclusively and not for any joint venture, etc. entered into by them with private parties.
- h) Land can be leased by the Port only on upfront basis. In case this is not possible, this may be done on annual lease basis with the approval of Board, after recording detailed reasons for the same. Further, in case of

annual lease, the Port should keep 5 years' rent OR 25% of rent of the total lease rent for the duration of lease as security, whichever is lower.

- (i) If land is leased on annual lease rental basis such rental should not be lower than the prevailing SOR/rates approved by the competent authority.

#### 5.2.1.2 Renewal of Existing Leases

- (a) The port should first identify if land is required for its own use.
- (b) If land is not required by port for its own use, the port should then identify whether land is required for the purpose for which it was originally leased or any other purpose consistent with the Land Use Plan. If it is so required and if renewal is provided for in the existing lease agreement, it should be renewed with the approval of the Board for a period not exceeding thirty years. The lease rent/upfront premium should not be less than the prevailing SoR/rates approved by the competent authority and or market value, as the case may be. No compensation will be payable by the port in the event of refusal to renew the lease.
- (c) If the option for renewal is not provided in the existing lease agreement, the port at its discretion, may decide to grant a fresh lease in favour of the existing lessee at the terms to be approved by the Board without public auction/tender. The lease rent/upfront premium should not be lower than the SoR duly updated or the market value as the case may be. In addition, a premium amounting to one year's rental as per the prevailing SoR shall be collected by the port.
- (d) After the expiry/termination/determination of lease, 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 lease rent in accordance with the prevailing SoR till vacant possession is obtained.

- (e) For existing leases, at the time of expiry/termination/determination of lease the provisions related to removal of structures will be applicable. If no such provisions exist, the lessee shall remove all structures at his own cost within three (3) months of expiry/termination/determination, failing which these will vest with the port free of all encumbrances. If the port so desires, it may also take over the structures on mutually agreed terms with the leaseholder.

**5.2.1.3 General – Applicable to existing and new leases:**

- (a) The lessee may be allowed to transfer the lease after obtaining prior approval of the Port provided the transferee takes over the liability of the original licensee/allottee. Such transfer shall be for the remaining duration of the lease and for purposes in accordance with the Land Use Plan of the port. To allow this transfer, the port shall recover-

(1) in case of leases granted on upfront basis

In the case of those lands which were originally given on lease rent, the transfer may be allowed subject to the transferee agreeing to pay the revised lease rent as prevalent at the time of transfer, subject to revision from time to time in the light of provisions contained in the original lease agreement. Further,

- A fee equal to 50% of the difference between the current upfront premium and the original upfront premium, weighted for the balance lease period. For example, if land was originally allotted on premium (A) for 30 years and after expiry of 12 years, it is proposed to transfer the land in question and at the time of transfer if the prevalent premium for 30 years lease period is (B), then the transfer fee shall be 50% of the amount  $(B-A) \times 18/30$ .

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Or

One (1) year's lease rentals based on present SoR,  
Whichever is higher.

- (2) In case of leases which were originally granted on annual lease rent basis in addition to the charges prescribed at 5.2.1.3 (a) above, transfer may be allowed subject to the payment of an upfront premium, equivalent to the NPV of the lease rent calculated as prescribed at 5.3(III) for the remaining period calculated in accordance with the prevailing SoR/rates approved by the competent authority.
- (b) The Lessee may be allowed to sublet/partially sublet the leased premises after obtaining prior approval of the port. Such subletting shall be for purposes in accordance with the Land Use Plan of the port and to allow this the port shall recover 12 months rent on prevailing SoR on pro-rata area basis, irrespective of the fact whether land was originally allotted on upfront basis or annual rental basis. It is clarified that original lessee continues to pay the full lease rent on annual rental basis, in case the original allotment was not on upfront premium basis.
- (c) Change of use of leased land can be permitted by the port subject to such change being in conformity with the Land Use Plan and subject to payment of higher rates for the new usage as existing in the prevailing SoR/approved by the competent authority.
- (d) NOC can be granted for mortgage of leasehold interest, along with the structures erected by the lessee thereon in favour of financial institutions/banks, subject to the Port retaining the first charge. Mortgage fee of 1% of the loan amount, subject to minimum of Rs.5,000/- would be charged by the port in each case. Terms and conditions governing such mortgage will be finalized by the Port on a case to case basis, after due legal scrutiny.

- (e) Each lease agreement should specifically provide for termination of lease, if the leased land is not utilized within two (2) years of allotment for the purpose for which it is allotted.
- (f) The renewal of the lease could be done on mutually agreed basis and this part could also be part of the Lease Deed Agreement. However where the total period exceeds 30 years, prior approval of the Central Government is necessary.
- (g) After the expiry/termination/determination of lease 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 times the lease rent, in accordance with the prevailing SoR, till vacant possession is obtained.
- (h) Every fresh lease agreement should henceforth provide that within three months of expiry/termination/determination of the lease the lessee shall remove all structures at his own cost, failing which these will vest with the port free of all encumbrances.
- (i) The Board of Trustees may consider dispensing with the MGT requirement in those cases which were finalized in the past on the basis of the guidelines of the Ministry of Shipping dated 15<sup>th</sup> February, 2000. Such waiver, after due examination of merits of each case, should be made only when the following conditions are fulfilled:-
  - (i) The lessee should clear all the outstanding dues including the lease rentals and wharfage on MGT;
  - (ii) At the time of next revision of the lease rental, whenever due, the Port Trust shall ensure that the revised rates of rent are enhanced to match the prevalent rate for similar land in the Port or its vicinity.



- (j) However, the port shall be at liberty to prescribe MGT conditions for fresh leases, if deemed fit.

5.2.2 **License:**

- (a) All licenses will be granted by the Chairman.
- (b) The license may be upto a maximum period of eleven (11) months and in accordance with the Schedule of Rates (SoR)/rates approved by the competent authority. At the discretion of the Chairman, such license can also be given without inviting tenders.
- (c) Only use and occupation of licensed land/structures will be permitted. Ownership will continue to vest in the port. Possession or exclusive possession of land/structures should not be handed over by the port.
- (d) Permanent structures shall not be allowed to be erected on licensed land.

5.3(l) **Market value of land and Schedule of Rates (SoR)**

- (a) SoR for land will be recommended to the competent authority/TAMP, by a Committee headed by the Chairman of the Port Trust. The Committee will take into account any/all of the following factors to determine the market value of port land:-
  - (i) State Government's ready reckoner of the land value in the area, if available.
  - (ii) Average rate of actual relevant transactions registered in last three years in the port's vicinity, adding 2% escalation per annum, as may be necessary.
  - (iii) Highest accepted tender of Port land for similar transactions.

- (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) SoR shall be arrived at, taking 6% of market value as rent per annum.
- (c) SoR shall be escalated by 2% per annum till such time that SoR is revised with the approval of the competent authority/TAMP.
- (d) SoR will be revised every five years.
- (e) SoR should vary in accordance with the purpose of land use. The Committee should recommend to the competent authority, varying SoR in accordance with the end use as reflected in the Land Use Plan.

(II) Reserve Price

The Land Allotment Committee shall, while fixing the reserve price and at the time of allotment, take into account the following factors:

- (i) Prevailing SoR.
- (ii) Accepted tender value of port land for similar transactions.

(III) Discount Rate

A discount rate equal to the rate of 6% plus actual escalation on lease rent shall be applied for arriving at upfront premium from annual rentals.

(IV) Annual Lease Rental

There shall be a specific provision in the lease agreements to be executed in future providing for escalation of lease rent by two (2) percent per annum.

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5.4 Any complete proposal received with Board's approval shall be approved ordinarily within a time limit of 90 days.

5.5 Notwithstanding anything mentioned in the above paragraphs, the Ministry shall have powers to exempt or relax any of the provisions mentioned herein above in public interests.

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