

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 is 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 is 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:

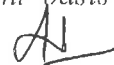
There are cases where port lands have been encroached by slum dwellers. Can rehabilitation/relocation/redevelopment of such slums can be undertaken?

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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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 licensee 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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Under Secretary to the Govt. of India