

No. PD-13017/2/2014-PD. IV
Government of India
Ministry of Shipping
(Ports Wing)

Dated 5th November, 2019

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

CLARIFICATION CIRCULAR (LAND MANAGEMENT) No. 2 OF 2019-20

Subject: Issue of periodic revision of SoR for land and its applicability on PPP Projects.

Sir,

I am directed to refer to the above subject and to say that the Policy Guidelines for Land Management 2014 had been 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)). As per para 13(c) of PGLM, 2015, Schedule of Rates (SoR) of the port land is fixed by TAMP on the recommendations of the Board of Trustee of the concerned Port. Annual escalation not less than 2% is also fixed by the Port Trust Board and SoR is re-fixed once in every 5 years by TAMP.

2 For PPP projects land is provided by the Concessing Authority to the Concessionaire as per Concession Agreement. For some Concessions where the tariff is fixed upfront by TAMP the issue of revision of SoR by TAMP every 5 years was raised since it was provided in these Concession Agreements of PPP projects. The issue was raised because the Concessionaire had bid based on the SoR at the time of bidding and any revision outside of the periodical escalation will bring in uncertainty on the tariff affecting the viability of the project. This issue of periodic revision of SoR and its applicability on PPP Projects where tariff is fixed upfront by TAMP was raised by Chairman, VPT vide his letter dated 25.04.2019. It was brought to the notice that Article 9.1 of the Model Concession Agreement (MCA) 2018 stipulates that "*where the License Fee is paid on half yearly/yearly basis, it may also contain an escalation as may be stipulated by the Concessing Authority upfront in Bid Documents and periodic review of SoR, if any, will not be applicable*".

3. In this regard legal opinion was obtained by VPT which stated that "*the license fee is payable as fixed in Article 9.1 with escalation of 2% per annum and not on the basis of revised schedule of rates*".

4. TAMP had also issued the followings clarification to VPT vide its letter dated 27.12.2017:

(i) *As the VPT is aware, the handling charges (apart from storage charges and miscellaneous charges) were fixed upfront by TAMP based on the proposal filed by the VPT vide tariff Order No. Tamp/39/2008-VPT dated 12 February 2009, Order No. TAMP/17/2008-VPT dated 12 February 2009 and Order No. TAMP/58/2008-VPT dated 27 November 2009 following the upfront tariff fixation guidelines issues by Government in the year 2008 before inviting bids.*

(ii) *As regards the submission of VPT that TAMP Orders did not consider 5 years revision of land rentals over and above 2% annual escalation, it is clarified that clause 3.5.4 of the Tariff guidelines of 2008 stipulates that rentals for land, buildings and other port assets should be taken while fixing upfront tariff as per the Scale of Rates of the concerned Port Trust. Accordingly, the rates prescribed in the Scale of Rates of VPT prevailing at the relevant point of time were considered as proposed by the VPT at the relevant point of time while fixing upfront tariff for handling charges.*

(iii) *As per clause 2.8 of the upfront tariff guidelines of 2008, the handling charges fixed upfront are subject to only annual indexation to the extent of 60% of the variation in Wholesale Price Index (WPI). The 2008 Guidelines do not provide for enhancement of cargo handling charges prescribed for the PPP projects whenever revised lease rentals are notified. However, the cargo handling charges qualify for annual indexation to the extent of 60% of the variation in Wholesale Price Index (WPI) as per clause 2.8 of the upfront tariff guidelines of 2008 to meet inflation.*

5. To clarify the issue this Ministry had constituted a committee under the chairpersonship of Special Secretary & Financial Advisor of the Ministry of Shipping . This matter was discussed and deliberated in the Committee. The Committee took note of the provisions of the Concession Agreement, legal opinion taken by VPT and the views of TAMP wherein it is stated that the upfront tariff for a PPP project is fixed based on then prevailing SoR with annual escalation and periodic revision is not considered.

6. After detailed deliberations and in the light of new MCA of 2018, the Committee recommended that the revision of SOR for land every 5 years which is part of PPP project and where tariff was fixed upfront for the entire duration of the concession may not be in the overall interest of Major Ports. In order to take care of such PPP projects, the Committee suggested that, the extent of land which was finalized at the time of bidding and was licenced to PPP operator for the concession period at the prevailing SoR with escalation, the same SoR with yearly escalation in future should prevail throughout the concession period taking the spirit of Article 9.1 of the MCA 2018, legal opinion and TAMP's clarification. The above mentioned recommendation of the Committee has been accepted by the Government for implementation by the Ports.

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7. Accordingly, the Port Trusts are advised not to subject such land for revision of SoR from TAMP in the cases where the license fee/Lease rent was taken into account for determination of upfront tariff for the entire duration of the concession. Only an annual escalation of licence fee/lease rent may be taken.

8. This issues with the approval of Minister of State for Shipping (IC).

Yours faithfully,



(Rameshwar Kumar)

Under Secretary to the Government of India

Tele No. 23311659

Copy to:

- i. The Managing Director, Indian Port Association, New Delhi
- ii. Member (Finance), TAMP

Copy also to:

- i. PS to Secretary(S)
- ii. PPS to SS&FA
- iii. PS to JS(P)
- iv. All the Directors/ Deputy Secretary in Ports Wing/ CO(PB)