

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

Dated 29th April, 2019

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

CLARIFICATION CIRCULAR (LAND MANAGEMENT) No. 1 OF 2019-20

**Subject: Compilation of Policy Guidelines for Land Management 2015-
Clarifications issued therein - reg.**

Sir(s),

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)).

2. Many Major Ports had, however, raised various difficulties in implementing some of the provisions of PGLM, 2015 and requested for further clarifications on the same. Accordingly, Indian Port Association (IPA), an apex body of Major Ports was asked to deliberate on all such issues and submit a report. Based on the report submitted by IPA, the clarifications required to be issued were examined and again discussed with Chairmen of all Major Ports. To accommodate the various difficulties arising with regard to implementation of the guidelines so as to meet the practical exigencies & requirements in public interest, clarifications on these issues had been finalized and issued by the Ministry under the provisions of Para 15(vii) & (viii) of PGLM, 2015, on 14th May 2018 & 9th March, 2019 and on 16th October, 2018 with regard to classification/categorization of Port Land as per National Industrial Classification (NIC), 2008 (F.No. PD-25021/11/2015-VoCPT dated 16th October, 2018).

3. The various clarifications thus issued from time to time have been compiled by incorporating these clarifications below the relevant paras of PGLM, 2015 for ease of reference and clarity. Clarification Circular prescribing guidelines for establishing a Floating Storage Re-gasification Unit (FSRU) for LNG cargo in different ports issued vide F. No. PD-13/18/2018-PPP Cell dated 7th March, 2019 is at Annexure-I. Policy Guidelines for Land Management 2015 thus incorporating these clarifications are issued with immediate effect for implementation under Section 111 of MPT Act, 1963.

4. Henceforth any clarification regarding Land Policy will be issued only in the form of 'CLARIFICATION CIRCULAR (LAND MANAGEMENT) No. ... of 2019-20'. All the clarifications 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.

Yours faithfully,



(Rameshwar Kumar)

Under Secretary to the Govt. of India

Tel. No. 23311659

Enclosure: As above.

Copy to:

- i. The Managing Director, Indian Port Association, New Delhi

Copy also to:

- i. PS to Hon'ble Minister of Shipping / 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

Policy Guidelines for Land Management by Major Ports, 2015
(updated with clarifications issued upto 31.03.2019)

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, had 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: -

- i). To ensure that land resources are put to optimum use as per the approved Land Use Plan with focus on retaining /attracting port traffic;
- ii). To ensure that optimum value is realized by licensing / leasing Port land through a transparent tender-cum-auction methodology.
- iii). 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
- iv). 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.

Issue 5.1:

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 5.1:

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 Gandhidham, Deendayal Port which was appraised by the PIB and approved by the Minister of Shipping and Minister of 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/ organizations. The allotment would be strictly subject to the condition that the development will be for their own use and cannot be sold, leases 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.
- 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.

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.

Issue 9.4.1:

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 9.4.1:

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.

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).

Issue 10.1 (c):

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 10.1 (c):

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

Issue 10.1(d):

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 10.1 (d):

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).

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.

Issue 10.2 (i):

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 10.2 (i):

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 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.

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.

Issue 11.2 (c) (i):

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 11.2 (c) (i):

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 instalments and interest at the rate of G-Sec prevalent at the time of grant of lease should also be levied during the period of instalment. 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.

(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.

Issue 11.2 (d) (i):

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 11.2 (d)(i):

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.

(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.

Issue 11.2 (g) (i):

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 11.2 (g) (i):

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 11.2 (g)(ii):

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 11.2 (g) (ii):

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.

Issue 11.2 (g) (iii):

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 11.2 (g) (iii):

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 11.2 (g) (iv):

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 11.2 (g) (iv):

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.

- (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.

Issue 11.2 (j) (i):

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 11.2 (j) (i):

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 11.2 (j) (ii):

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 11.2 (j) (ii):

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 instalments and interest at the rate of G-Sec prevalent at the time of grant of lease should also be levied during the period of instalment. 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.

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.

Issue 11.3 (c) (i):

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 11.3 (c) (i):

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.

Issue 11.3 (c) (ii):

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)?

Clarification 11.3 (c) (ii):

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:

- a) 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 the value of the structure.
- b) 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.

- c) The valuation of the structure should be done on a 'replacement' basis following principles as defined in Indian Accounting Standard (Ind AS 113).

Issue 11.3 (c)(iii):

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 11.3 (c)(iii):

- 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.
- 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.

Issue 11.3 (f)(i):

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 11.3 (f) (i):

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 11.3 (f) (ii):

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 11.3 (f) (ii):

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.

Issue 11.3 (f) (iii):

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

Clarification 11.3 (f) (iii):

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 Ministry of Shipping for obtaining the approval of Ministry of Urban Development.

- 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 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.

Issue 12 (B) (i):

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

Clarification 12 (B) (i):

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.

(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.

Issue 12 (E) (i):

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

Clarification 12 (E) (i):

- 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.

(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.

Issue 12 (F) (i):

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

Clarification 12 (F) (i):

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.

(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.

Issue 12 (I) (i):

How will Floating Storage Re-gasification Unit (FSRU) for Liquefied Natural Gas (LNG) be set up at various Major Ports and operated?

Clarification 12 (I) (i):

Detailed Guidelines for Establishing a Floating Storage Re-gasification Unit (FSRU) at Major Ports is at Annexure-I

(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.

Issue 13 (c)(i):

It has been brought to the notice of the Ministry that the present classification of the port lands and the fixation of SoR thereof is not uniform within and across the major ports leading to complications and disputes. This impacts the realization of revenue for the ports. How does the Port Land need to be classified/ categorized?

Clarification 13(c)(i):

For the lease, classification/ categorization of Port Land needs to be done as per National Industrial Classification (NIC), 2008.

(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.

Issue 14 (i):

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 14 (i):

The Right of Way permission for laying pipelines/conveyers, etc., from jetties to tank farms 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.

Issue 14 (ii):

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 14 (ii):

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.

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.

File NO. PD13/18/2018-PPPCell
Government of India
Ministry of Shipping
(Ports Wing)

1, Parliament Street
Transport Bhawan
Dated: 7th March, 2019

CLARIFICATION CIRCULAR (LAND MANAGEMENT) No.1 OF 2019

Subject: Guidelines for Establishing a Floating Storage Re-gasification Unit (FSRU) at Major Ports.

The demand for Liquefied Natural Gas (LNG) in the country has been increasing and it is the stated policy of the Government of India to double the share of LNG in the energy mix of the economy in the near future. LNG imports are substantial since domestic supply of LNG is not being able to meet the demand, for which supporting infrastructure requires to be developed. Floating Storage Regasification Units (FSRU) within port limits offer a low cost, fast track and flexible option even compared with traditional onshore terminals.

2. Some entities have shown interest to set up FSRU units in port limits. However, presently there are no specific guidelines on how FSRU units will be permitted to be set up and operate and therefore Indian Ports Association (IPA) was tasked to examine the issue and give its report. IPA submitted its report in September 2018.

3. After examining the report it has now been decided to bring uniformity in setting up and operation of Floating Storage Regasification Units (FSRU) for LNG cargo in different Ports, and that fundamentally it entails giving license of water area and is covered under Para 12.1 of Policy Guidelines For Land Management 2014(PGLM). The PGLM will be applicable for all matters concerning the license for FRSU.

4. Accordingly, the following Guidelines for Establishing Floating Storage Regasification Units (FSRU) at Major Ports may be followed:

4.1 Licence of Water area

(i) FSRUs can be set up by any entity within the Port limits. The entire investment of the gasification units as well as storage units including the pipelines shall be made by the entity setting up the FSRU unit.

(ii) In case of project initiated by the Port, they will prepare Pre-Feasibility Report to ascertain project capacity, cost of project, land/waterfront requirement etc. Also, any

entity desirous of setting up FSRU shall submit Pre-Feasibility Report. Such Pre-feasibility Report shall be examined by port, either in house or by engaging consultant, to ascertain project capacity, cost of project, land/waterfront requirement etc. and its financials. If found feasible in either case, then the Port shall proceed further for setting up the Project.

(iii) Port shall, thereafter, carry out transparent competitive bidding process as per Para 11.2(d) and 13 of PGLM. The project model will be Land License Model and the project entity shall be owner of the project assets and entitled to take away the same wherever feasible free of cost on expiry of lease period.

(iv) Water Area, Land area and any other facility/ permission such as ROW for pipelines shall be provided by the Port at applicable charges. License fee for Water Area at rate equal to 50% of License fee of abutting land (with escalation) is to be paid by the operator to Port for the water area occupied FSRU unit and shall be the reserve price for the bids to be invited.

(v) FSRU projects are to be taken up on license basis up to 30 years under the provisions of PGLM and the Board of Trustees shall be the competent authority for approval of the project as per MPT Act. For license above 30 years approval of the Ministry of Shipping through the Empowered Committee will be required as per Para 11.2(c) of PGLM.

4.2 Guidelines for bidding process

(i) Port may adopt "Single Stage e-Tendering" system of bidding. The rationale is that number of bidders will be limited and better financial quote will be made by bidder as competitors will not be known while bidding under this system.

(ii) The Bid documents will also include Draft License Agreement.

(iii) As stated, bidder shall pay water area charges to the port. The water area charges as per land policy shall be the minimum payable by the operator and shall be "Reserve Price" of the bid. Bidders will be invited to quote premium (%) over Reserve Price and bidder quoting highest premium shall be selected for award of the project. The total license rental for the license period (Total License Rental) will be payable on upfront basis.

(iv) The bidder will be required to furnish Solvency Certificate not older than 3 months issued by any Nationalized/ Scheduled Bank for an amount equal to Total License Rental payable by the bidder.

(v) Bidder will be required to provide Bid Security equal to Rs. 2 crore.

(vi) Since FSRU project typically costs around Rs.500 crore(excluding vessel cost), bidder shall provide Performance Security in the form of Bank Guarantee of 10% of the Project cost subject to a maximum of Rs.50 crore to ensure timely commissioning of the project which shall be forfeited if project is not completed in 2 years or any extended period, not exceeding 6 months, as approved by the Port. The port may also prescribe stage wise completion of the project and fix penalty for non-adherence to the schedule. Performance Security shall be refunded after successful commissioning of the project.

(vii) Bidder shall also provide a Bank Guarantee equal to 10% of Total Upfront premium throughout the license period towards meeting security and other operational requirements, prescribed in the Bid Document.

(viii) No MGT will be prescribed until 5 years after COD. MGT equal to 30% of Project capacity will be prescribed thereafter. On default for a continuous period of 3 years, license agreement may be liable to termination. However, licensee may be given an option to continue by paying wharfage for the shortfall in achievement of MGT.

4.3 General conditions for the Project

(i) The project entity shall obtain all applicable permits, licenses/ clearances etc. required for construction and operation of the project from time to time giving priority to safety. However, port shall provide assistance to the entity for the purpose of obtaining statutory clearances including tie-in connectivity for evacuating regasified LNG into the National Natural Gas Grid. The final responsibility of obtaining the permission shall lie with the entity.

(ii) The scope of project operation shall be discharge of LNG, its regasification, storage for the required period and supply/transportation through pipeline / smaller vessels/ Bunkering Vessels/ trucks to the importer. The operator shall be permitted to handle own LNG as well i.e. it can buy LNG, handle the same at the project and sell at market determined price.

(iii) Normal port charges like Port Dues, pilotage, wharfage and berth hire, where applicable, as being done in case of SPMs/SBM's will be paid to the Port as per prevalent SOR. If LNG is transported through barges, vessel related charges pertaining to barges shall be payable to Port.

(iv) In view of hazardous nature of the cargo, the entity would obtain adequate third party/ Public Liability Insurance as per law/ good industry practice.

(v) The projects shall comply with "The Petroleum and Natural Gas Regulatory Board (Technical Standards and Specifications including Safety Standards for Liquefied Natural Gas Facilities) Regulations, 2018", Performance Standards and any additional safety


standards, wherever required, will be prescribed with penalty provisions for shortfall in achievement.

(vi) Regulations are to be notified for minimum distance to be maintained from LNG operating ship to turning circle channel and basin and the safety aspects with regard to the existing jetty/berth to be considered for LNG operation.

(vii) On expiry of lease period, the Licensee shall remove at its own cost all Project Assets within 90 (ninety) days from expiry of the Lease Period from the Project Site/Port's Assets except for those which Port may be interested in taking over at a mutually agreed price and hand over peaceful possession of the Project Site and Port's Assets free of Encumbrance at its own cost in the same condition as was at the time of handing over to them by the Port.

(viii) Projects taken up as per this policy will not require separate Central Government Approval as per Section 42(3) of MPT Act 1963.

5. This issues with the approval of Hon'ble Minister of Shipping.


(Kanchan Bala Hamza)

Under Secretary to the Govt. of India

Tele: 23722252

Email: kb.hamza@nic.in

To,

- i. Chairmen/CMD, All Major Port Trust
- ii. MD, IPA

Copy to:

- i. The Director, Tariff Authority for Major Port, Mazgaon, Mumbai.
- ii. The Chairman, IWAI, Noida, U.P.

Copy also to:

- i. Hon'ble Minister (S,RT&H)/Hon'ble MOS(S,Finance)/Hon'ble MOS(S,RT&H, C&F)
- ii. PS to Secretary(S)
- iii. PS to Addl. Secretary
- iv. PPS/PS/PA to JS(P)/JS(S)/JS(SM)/Sr. Advisor (E)
- v. Dir (AC)/Dir (AKS)/Dir(SS)/CO(PB)
- vi. NIC-for uploading on the website of Ministry of Shipping.