

LAND POLICY FOR MAJOR PORTS, 2010

BACKGROUND

1(i) Around 95% of India's foreign trade by volume and 70% by value is transported through sea. Major Ports account for 75% of the total cargo by volume handled at Indian Ports. This underlines the importance of sustaining the growth and development of the Major Ports for their contribution to the Indian economy. With this objective in mind and also the adverse impact of economic down turn and rapid growth of minor ports on the traffic at the Major Ports it was felt that there was need to review the extant policies and suggest mid-term corrections, wherever necessary, in various policies governing the Major Ports, to sustain and improve the efficiency of the Major Ports.

(ii) Keeping the above factors in view, a committee was constituted by the Department of Shipping, vide order dated 21-1-2009, under the Chairmanship of the Additional Secretary and Financial Adviser, with Chairmen of a few major ports, MD (IPA) and Joint Secretary (Ports) as members.

(iii) The above Committee was given the following mandate:-

(a) to re-look at the policies which are directly having a bearing on the functioning of the Major Ports; and

(b) to recommend various steps for increasing efficiency of the ports and encourage the private enterprise in functioning of the major ports with a view to provide efficient and economic end to end solutions to the ultimate customers.

2. The Committee reviewed a host of policies including the Land Policy for Major Ports issued in 2004. It observed that Land Policy is one of the most significant policy frameworks guiding the overall functioning of the Port Sector. In all major ports the world over, land has been leveraged for optimizing the throughput and increasing revenue of ports. It is an established practice globally for ports to allot land for carrying out economic activity including establishing industry to ensure captive cargo to the port, thereby enhancing the sustainability of that port. Port lands have also been used to set up Special Economic Zones (SEZ) aimed at encouraging industrial development in and around the port. Other than the above, ports are generally expected to utilize their land, with port related activities being given the first priority and activities incidental to the port being treated as secondary in nature. Hence, optimum utilization of land is a matter of continuing importance to all ports. The Committee submitted its report

which has been examined and deliberated upon in the Ministry after which a 'draft Land Policy' was prepared. This draft Land Policy was put up on the web-site of the Ministry inviting comments and suggestions. A large number of responses was received by the Ministry. After considering all the aspects of the matter it has been decided that the Port Trusts shall follow the policy as enumerated in the subsequent paragraphs for allotment of port land.

3. The policy is applicable for all Major Port Trusts and Ennore Port except for land relating to Gandhidham Township of Kandla Port Trust.

4. This policy for land allotment **wherever relevant** would be applicable to all BOT projects also.

5. Land Use Plan

Every Major Port shall have a Land use plan covering the entire land owned and/or managed by the Port. ***Such plans shall be approved by the Board and a copy should be forwarded to the Government. Any proposal for revision of land use plan shall be published on the web-site of the Port Trust inviting objections and suggestions and shall be finalized by the Board after considering the objections and suggestions received.***

6. Land Allotment Policy

Land can be allotted either on licence or lease basis *as per approved land use plan/zoning.*

6.1 Land inside Custom bound area

6.1.1 Fresh allotment:

- a) Normally, land inside custom bound area shall be given on licence basis only. The licence may be granted by the Chairman. It may be granted up to a maximum period of 11 months and shall normally be in accordance with the Scale of Rates (SOR)/ rates approved by the competent authority. Any concession shall be given only with the approval of the Board. At the discretion of the Chairmen, such licence may also be given by inviting tenders. The licence can be renewed by the *Chairman twice. Further renewal shall be with the approval of the Board or by the Chairman, subject to ratification by the Board.* Each renewal of licence shall be treated as a fresh licence.

- b) The Chairman may also allot land inside custom bound area on medium term lease basis up to **10** years to port users for setting up of certain port related structures such as conveyors, silos, pipelines, temporary transit sheds, bagging and stitching plants, weigh-bridges but not permanent structures like tank farms, godowns and warehouses etc., with the prior approval of the Board. Such allotments may be either on tender basis or for captive use. Alternatively, ports may create such infrastructure on common user facility basis and recover charges from port users either on monthly basis or per unit basis as applicable to each facility.
- c) The allotment of land in Custom bound area may be for activities directly related to Port operations or for those which are not directly port related but aid the port activities and sea trade such as for setting up of duty free shop, communication centres, parking facilities, passenger facilities like shopping centres , cyber cafes, health clubs etc. and security related activities. All such proposals should be subject to necessary statutory and administrative approvals.

6.1.2 Renewal of existing leases: The following procedure will be adopted for renewal of leases of land inside the custom bound area. Such leases may have been given by some ports much before the guidelines issued in 2004 came into force. The said guidelines prohibit the allotment of land in custom bound area on lease basis:

- a) If there is no option for renewal in the existing lease agreement, guidelines governing fresh allotment shall apply. However, the right of refusal may be given to the present lessee subject to the condition that he is a bonafide lessee without any default. The renewal shall be subject to payment of rent at the prevailing SoR or the market value, whichever is higher.
- b) If the renewal option is there in the lease agreement, the port should assess if the land is required by the port for its own use. In case it is not required by it, 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 or the Market value, whichever is higher. Any concession shall be given only with the approval of the Board.

6.2 Land outside Custom bound area

6.2.1 Licence

Licence of land outside custom bound area may be for both port related and non port related activities, *with preference to port-related activities*. Licence of land outside custom bound area also will be governed by the same conditions as are applicable in case of land inside custom bound area. At the discretion of the Chairmen, such licence may also be given by inviting tenders. Only use and occupation of licensed land/structures will be permitted. The licence can be renewed twice by the Chairman. Further renewals shall be by the Board or by the Chairman in exigencies subject to ratification by the Board on expiry of the previous license period. Each renewal of licence shall be treated as a fresh licence.

6.2.2. Lease

6.2.2.1 Fresh Lease

- a) Land should be leased only in accordance with the land use plan.
- b) Land can be leased up to 30 years by the Port with the approval of the Board.
- c) Cases of fresh lease above thirty years and for a maximum period of up to 99 years shall be sent with the recommendation of the Port Trust Board to the Ministry for the consideration of the Empowered Committee comprising of Secretary (Shipping), AS&FA (Shipping), a representative of Department of Expenditure and a representative of the Planning Commission. Such cases will be finalized by the Ministry of Shipping.
- d) The Port Trusts should not entertain any proposal for allotment of land to religious institutions.
- e) For social and educational purposes, allotment will be in accordance with the land use plan and conditions as applicable to such allotments as decided by the Board.

- f) When entering into a joint venture for improving port connectivity, with any public *authority*, land required for such projects may be provided at nominal value.

- g) Land should normally be leased through a competitive bidding process and the reserve price of such plots shall normally be 6% of the market value of the plot in accordance with the ready reckoner published by State Government or the rates obtained in recent tenders for comparable land or Scale of Rates (SOR) prescribed by TAMP. However, Port Trust Boards are empowered to reduce the rates in specific cases, depending on the circumstances and for reasons to be recorded in writing. In case the Port Trust Board feels it necessary to reduce the rates below the ceiling prescribed by TAMP, such reduced rates can be fixed as the reserve price for purposes of the competitive bidding process, after recording the reasons in writing. In case the land is allotted for captive facilities under captive use policy, the lease rentals for the land allotted should be recovered from the user at scale of rates of the ports.

- h) Land can be allotted on nomination basis to Government Departments, CPSUs, SPSUs or private parties in accordance with SOR/Rates approved by the competent authority with due justification. Such allotment of land on nomination basis to Government Departments, CPSUs and SPSUs should be for exclusive use by them only and not for any joint venture, etc. entered into by them with private party/parties. Such allotments to Government Departments may be decided by the Board. All other proposals for allotment of land on nomination basis should first be evaluated by a Land Committee consisting of Dy. Chairman of the port, and a representative each of Finance, Estate and Traffic Departments. Thereafter, subject to approval of Port Trust Board, the proposals should be brought before the Empowered Committee for its *consideration*. Such cases will be finalized by the Ministry of Shipping.

- i) Land can be leased by the Port with the approval of the Board of Trustees only on upfront basis. *Upfront basis would mean one time consideration amount for the lease period and a nominal lease rent to be collected every year for the currency of lease period.* In case this is not possible, this may be done on annual lease basis with the approval of the Board, after recording detailed reasons for the same. Further in case of annual lease, the Port should keep one year's rentals as security.

- j) 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

6.2.2.2 Renewal of Existing Leases

- a) The port should first 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 the lease.
- b) If the land is not required by the port for its own use, the port should then check whether land use is consistent with the Land Use Plan. If it is so, and if renewal is provided for in the existing lease agreement, it can be renewed for a total period not exceeding thirty years including the original lease period. The lease rent/upfront premium should not be less than prevailing SoR or on market value, whichever is higher. 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 for 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.
- d) Extension/renewal of any lease for the original lessee beyond 30 years would be made only after the recommendation of the Port Trust Board, recording clearly the reasons thereof, and the approval of the Empowered Committee. Such cases will be finalized by the Ministry of Shipping.
- e) After the expiry/termination/determination of lease and despite receiving the notice thereof, or forfeiture of lease on account of change of user, assignment etc., if the lessee continues to occupy it unauthorisedly, the lessee shall be liable to pay compensation for wrongful use and occupation at three (3) times the lease rent in accordance with the prevailing SoR till vacant possession is obtained.
- f) 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 from all encumbrances. If the port so decides for reasons to be recorded, it may also take over the structures on terms mutually agreed with the lease holder.

6.2.2.3 **General- Applicable to existing and new leases.**

- a) The lessee may be allowed to transfer the lease after obtaining prior approval of the Board of Trustees provided the transferee takes over the liability of the original lessee/ 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 on upfront basis (*rent*), the transfer may be allowed subject to the transferee agreeing to pay

- (i) 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; and
- (ii) A fee equal to 50% of the difference between the current upfront premium and the original upfront premium, calculated 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 $(B-A) \times 18/30$ 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 transfer may be allowed subject to the payment of

- (i) The charges prescribed at 6.2.2.3 (a) above; and
 - (ii) upfront premium, equivalent to the NPV of the lease rent calculated in prescribed at 6.3 (3) 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 to another party for the same purpose for which it was originally allotted. Such subletting shall be allowed on payment of current market rates applicable to the particular plot by the lessee for the remaining unexpired period of the lease. Also, 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) All proposals for transfer / subletting should be evaluated by the Land Committee and thereafter approved by the Board of Trustees.
- (d) Change of use of leased land can be permitted subject to such change being in conformity with the Land Use Policy/master plan of the port. Such change of use should be subject to payment of rates for the new usage as existing in the prevailing SoR/approved by the competent authority. Proposals for change of purpose shall be considered by the Port Trust Board after evaluation by the Land Committee.
- (e) 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. The Board of Trustees may permit the mortgage on collection of the fee fixed by the Government. 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. All proposals for grant of NOC for mortgage may be duly recommended by the Land Committee and approved by the Board of Trustees.
- (f) 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. Similarly, each lease agreement should specifically provide for surrender of lease if the land cannot be utilized for the purpose for which it is allotted, subject to prior notice by the lessee at least 3 months in advance.
- (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 or three times the market rate as the case may be, till vacant possession is obtained.
- h) If a lessee breaches/ violates provisions of Lease Agreement , the Port Trust Board reserves the right to impose appropriate penalty on the lessee or

cancel the lease depending on the nature/ magnitude of breach/ violation. Such penalty may be imposed after giving a reasonable opportunity to the lessee to present his case.

- (i) 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.
- (j) The port is at liberty to prescribe MGT/ MGR (Minimum Guaranteed Revenue) conditions for fresh leases, if deemed fit.
- (k) Licence fee for water area would be 50% of licence fee of abutting land.
- (l) The Government or the Major Ports will reserve the right to resume the possession of leased land in public interest before expiry of lease period. In such cases, the lessee may be given an option to relocate his activities in another suitable location to be offered by the Port.

6.3 (1) **Market value of land and Schedule of Rates (SoR)**

- (a) SoR for land will be recommended to the competent authority/TAMP, by a Committee as decided by the Board headed by the Chairman of the Port Trust. The Committee may take into account the applicable factors from among those listed below to determine the market value of port land:-
 - (i) State Government's ready reckoner of the land values 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 and in case of Mumbai Port Trust @ 4% 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 and in case of Mumbai Port Trust @ 4% escalation 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.
- (f) Insofar as fixing of SoR for Port land is concerned, TAMP shall have the jurisdiction for any land both within the customs bound area and outside it as long as the land is used exclusively for Port related activity. The SoR for all land of Major Ports will be fixed by TAMP.

(2) **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 comparable port land for similar transactions.

However, Port Trust Boards are empowered under provisions of law to reduce the rates below the ceiling prescribed in specific cases, depending on the circumstances and for reasons to be recorded in writing. In case the Port Trust Board feels it necessary to reduce the rates below the ceiling prescribed by TAMP, such reduced rates can be fixed as the reserve price for purposes of the competitive bidding process, after recording the reasons in writing. In case the land is allotted for captive facilities under captive user policy, the lease rentals for the land allotted should be recovered from the user at scale of rates of the ports.

(3) **Discount Rate**

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

(4) **Annual Lease Rental**

There shall be a specific provision in the lease agreements to be executed in future providing for escalation of rent by two percent (2%) per annum and in case of Mumbai Port Trust @ 4% escalation per annum.

6.4 Way Leave permission

The way-leave permission for laying pipelines from jetties to the tank farms within & outside port area shall be given on a temporary basis with approval of the Chairman. It shall neither be a lease nor a license. There shall not be any allotment of land to a party for giving way-leave permission. As far as possible, these shall be common user facilities and if the same pipeline is required by any other party, it shall be spared, on chargeable basis, by the party to whom way-leave permission is given. The party shall have to abide by conditions which are to be specified by the Port apart from paying way-leave charges. The conditions on which way-leave permission may be granted are enlisted in **Annexure-I**.

In case of way-leave permission for public utilities relevant rules applicable for such public utilities shall apply.

6.5 Administrative Reforms

- (i) All proposals for transfer of leases, change of purpose/use, mortgage of land, way leave permission shall be validated by a Land Committee in each port consisting of Deputy Chairman, representatives of Finance, Estates & Traffic Departments. The Land Committee shall submit such proposals, along with their recommendations, to the Board through the Chairman.
- (ii) Ports shall specify the time limit for processing various proposals and host the time limits on their websites.
- (iii) Ports shall computerize entire land management system into GIS based system.
- (iv) All the financial transactions related to land shall be made with authorized banks on-line (e-payment basis).

- (v) Details of market value assessed should also be published and displayed on the websites of Ports.

5.6 Any complete proposal received with Board's approval shall be considered by the Empowered Committee ordinarily within a time limit of 90 days.

5.7 Notwithstanding anything mentioned in the above paragraphs, the Ministry has powers to exempt or relax any of the provisions mentioned herein above in public interest.

Broad Terms and Conditions for issuance of Way-leave Permission for laying Pipelines

1. The parties shall be allowed to lay pipelines on way-leave and on 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 on lease.
3. Facility Compensation or Way-leave Charges shall be paid by all the parties, irrespective of the tiers existing in one way-leave (pedestal).
4. As far as possible, the pipelines may be allowed to be laid on common-user basis under mutual aid scheme. If any other party wants to use the pipelines, they may be given access on chargeable basis. There should not be any monopoly for any party over the pipelines.
5. Supervision charges@15% on the cost of the work (cost of the pipelines and laying) shall be paid by the parties to the Port Trust.
6. The Port Trust shall ensure that the wharfage and all other charges due to be paid by the party, be paid to the Port Trust for the cargo handled through the pipelines.
7. All statutory permissions including that of explosives and fire-safety etc., shall be obtained by the parties from the respective authorities.
8. 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.
9. 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.
10. The party shall follow all the relevant rules of the Port Trust and other statutory authorities such Chief Controller of Explosives, Nagpur and also provisions of other relevant statutes.
11. The party shall take adequate safety measures and patrolling of their pipelines round the clock at their own cost.
12. The Port Trust shall not be held responsible for any loss, damages, pilferage etc., of the products from pipelines.
13. Other usual operating conditions as relevant to the Port Trust may be incorporated by the Board.