

Dated 14<sup>th</sup> May, 2018

To,

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

CLARIFICATION CIRCULAR (LAND MANAGEMENT) No. 1 OF 2018

Subject: Clarifications on Policy Guidelines for Land Management, 2015 (PGLM 2015)

Sir(s),

I am directed to refer to the above subject and to say that the Policy Guidelines for Land Management 2014 were issued to all Major Ports for implementation. Later, some of the provisions of the Land Policy Guidelines, 2014 were further clarified to ease the implementation of the Policy Guidelines by the Major Ports vide letter No. PD-13017/2/2014-PD. IV dated 17<sup>th</sup> July, 2015 (hereinafter termed as Policy Guidelines for Land Management 2015 (PGLM, 2015)).

2. Many Ports have been continuously raising issues related to these guidelines and have been asking for both clarifications and modifications in the PGLM, 2015. Indian Port Association (IPA), an apex body of Major Ports was asked to deliberate and examine all such issues. IPA submitted its report, which was examined and again discussed with Chairmen of all Major Ports. Based on the suggestions received, the clarifications on these issues have now been finalised.

3. As per the provisions of para 15(vii) and para 15 (viii) of PGLM 2015, in case of any ambiguity or doubt regarding any provision, Ministry of Shipping has the powers to interpret, clarify and relax the provisions of these guidelines, in public interest, in case of difficulties in implementation of PGLM, 2015 within the overall framework and spirit of the guidelines.

4. Accordingly, these clarifications are issued in supersession of earlier clarifications issued vide letter No. PD-13017/3/2016-PD.VI on 1.5.2017 and 3.10.2017 with immediate effect under Section 111 of MPT Act, 1963.

5. Henceforth any clarification regarding Land Policy will be issued only in the form of 'CLARIFICATION CIRCULAR (LAND MANAGEMENT) No. ... of 2018'. All the clarification 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.

6. This issues with the approval of Minister of Shipping.

Yours faithfully,



(Rameshwar Kumar)

Under Secretary to the Govt. of India

Copy to:

- i. PMO (Shri Ajit Kumar, Deputy Secretary), South Block, New Delhi
- ii. Cabinet Secretariat (Shri S.G.P. Verghese, Director), Rashtrapati Bhavan, New Delhi
- iii. The Managing Director, Indian Port Association, New Delhi

(contd....on page 2)

- iv. The Director, Tariff Authority for Major Ports, Mazgaon, Mumbai
- v. The Director General, Directorate General of Lighthouses & Lightships, Noida, UP
- vi. The CMD, Shipping Corporation of India, Mumbai.
- vii. The Chairman, IWAI, Noida, UP.
- viii. The VC, IMU, Chennai.
- ix. The CMD, Cochin Shipyard Limited, Cochin.
- x. The CMD, Dredging Corporation of India, Visakhapatnam.
- xi. The Director General, Directorate General of Shipping, Mumbai.
- xii. The Chief Engineer, ALHW, Port Blair.
- xiii. The MD, Indian Port Rail Corporation Limited.
- xiv. The MD, Sagarmala Development Company Limited.

Copy also to:

- i. PS to Hon'ble Minister (S,RT&H,WR,RD&GR)/ 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 JS(P)/JS(S&A)/JS(SM)/Adviser(Econ.)/Adviser(MMH)/JS(LK)/JS(KT)
- iv. All the Directors in Ports Wing/ CO(PB)
- v. NIC- for uploading the same on the website of the Ministry of Shipping

CLARIFICATION CIRCULAR (LAND MANAGEMENT) No. 1 OF 2018

Subject: Clarifications on Policy Guidelines for Land Management, 2015 (PGLM 2015)

**Issue 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 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 Gandhidam, Deendayal Port which was appraised by the PIB and approved by the Minister Shipping and Minister 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/Organisations. The allotment would be strictly 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.
- (ii) Even for old residential areas no new norms like increased FAR, etc., should be considered and taken up for development.



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- (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.

**Issue 2:**

*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 2:**

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



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

**Issue 3:**

*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 3:**

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).

**Issue 4:**

*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 4:**

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 5:**

*There may be cases where land was 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?*



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**Clarification 5:**

No, only in cases where licence were granted prior to 2004 in the custom bond area and the licensees have built permanent structures can a fresh lease be granted following the principle as laid out in per Para 11.2. 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 6:**

*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 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?*

**Clarification 6:**

The methodology and the rates which shall apply for such cases is provided in detail in para 11.3 (c). As a measure of amplification the following points may also be incorporated:

- (i) Value of the structures shall be made by a Valuer who is mutually acceptable to both Port Trusts and the existing lessee. The valuer has to be selected by the parties amongst the panel of 3 valuers to be proposed by Port authority within a fixed time period. Here the mutual acceptance is of the Valuer and not the value of the structure.
- (ii) While the guidelines provide for EMD for a valid bid to be fixed at 10% of the latest SOR of the land being put on tender, there is no provision for EMD for the value of structures. An EMD for 10% of the value of the structures in the form of bank guarantee may also be taken from all bidders except the original lessee.
- (iii) The valuation of the structure should be done on a 'replacement' basis which is defined in Indian Accounting Standard (Ind AS 113) as Fair Value measurement on cost basis, that is, the current replacement value/cost of the asset i.e current market value of the original asset less the depreciation for the period of usage and obsolescence.

**Issue 7:**

*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*



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*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 2.01.2014 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 7:**

When the lease has expired, then for the existing lessee to be eligible for taking part in the bid 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 there is 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 case the earlier lessee is the successful bidder then the period of lease should be taken retrospectively and in case the lessee is not the successful bidder the lease is to be taken up prospectively. In cases where possession was taken by the port the lease would be effective prospectively. In 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 8:**

*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 8:**

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.



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**Issue 9:**

*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 9:**

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 10:**

*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 10:**

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.



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**Issue 11:**

*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:**

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 12:**

*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 12:**

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 13:**

*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 13:**

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.



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**Issue 14:**

*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 14:**

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

**Issue 15:**

*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 15:**

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



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**Issue 16:**

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

**Clarification 16:**

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.

**Issue 17:**

*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 17:**

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.



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**Issue 18:**

*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 18**

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.

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**\*POLICY GUIDELINES FOR LAND MANAGEMENT 2014 refers to the clarifications issued on 17<sup>th</sup> July, 2015 herein referred as PGLM 2015.**



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