

PROPOSAL FOR APPROVAL OF SCALE OF RATES
FROM 01.10.2012 TO 30.09.2017 FOR LANDS LETOUT FOR NON-HOME
OCCUPATIONS IN OUTSIDE CUSTOM BOND AREA OF MUMBAI PORT TRUST

1. BACKGROUND:

MbPT owns about 944 Ha of land in Mumbai City, along the eastern coast of Mumbai in A, B, C, E, F (South), F (North), and G (North) wards of MCGM. These land parcels fall under 23 zones in the State Government Ready Reckoner published by the Collector, Mumbai from Colaba, Deonar & Borla and Malabar Hill divisions of Bombay District Collector / Suburban District Collector.

The MbPT land falls into 2 categories, viz. (i) lettable land comprising areas let out on long term leases, 15 monthly leases, monthly tenancies and licenses and (ii) non-lettable land, comprising Port's administrative offices, residential quarters, Hospital, etc. Few lettable plots are vacant. There is no provision for sale of Port Land on freehold basis.

The Board vide TR No.232 of 1982 revised the letting rates for land with effect from 01.10.1982. The said revision was based on scientific valuation done by M/s. Kirloskar Consultants. The revision of letting rates of Port Trust structures was approved vide TR No.273 of 1987. These revisions gave rise to prolonged litigation, which culminated in the Supreme Court deciding the matter in 2004 & 2006. As per the 'Compromise Proposals' upheld by the Supreme Court judgement with modification in rates of return and interest, the rates of letting were valid till 30.09.2012. There was a provision in the Compromise Proposals upheld by the Supreme Court which provided that notwithstanding the fixation of letting rates for 20 years for good and sufficient reasons, Board may review and revise the letting rates. In terms of the said provision the rentals were revised vide TR 127 of 2006 in respect of companies having paid up capital above Rs. 1 crore. The said revision is under challenge before the Bombay High Court. The issue of period of validity of the rents adjudicated by the Supreme Court was taken-up with the Attorney General who has confirmed that the rents fixed under Compromise Proposals are valid till 30.09.2012.

Ministry of Shipping, Govt. of India forwarded Policy Guidelines for Land Management 2014 (excluding township areas) for all Major Ports (PGLM 2014) and the same was accepted by Board vide TR 224 of 2014. A Committee (LAC) constituted vide TR 146 of 2014 and submitted its recommendations on SoR w.e.f. 1.10.2012 for Port lands outside custom bond area including Estate let out lands on 29.12.2014. Board Vide TR No. 222 of 2015, accepted the LAC report & proposed SoR for land areas outside custom bound area was approved by the Board on 16.01.2015. Opinion of Attorney General of India (AG) on applicability of Supreme Court Judgment post 30.09.2012 was sought in the matter.

Since, PGLM 2015 was not applicable to Township Areas, clarification of Ministry was sought by DO letter to Joint Secretary (Ports) on 03.04.2018. The grey areas in the TR 222 of 2015 were referred to P.T. Advocate Shri Buddy Ranganadhan and also taken up with Ministry of Shipping, Govt. of India. On seeking clarification on the issue of the applicability of PGLM 2015 to the Township areas of Mumbai, Kandla and Kolkata Ports.

Subsequently Ministry of Shipping, Govt. of India issued Clarification Circular No.1 of 2018 extending the PGLM 2015 to township areas of Mumbai, Kolkata and Kandla ports. The Clarification Circular No. 1 of 2018 provided revision of SoR for commercial occupations (non-home) but excluding occupations of residential units (home occupations) and also renewal of expired lease on land not required by port as per Master plan by tender cum auction method, subject to payment of all past arrears as per applicable SOR and on upfront payment above reserve price. Based on the said clarifications, Board approved action plan vide TR 61 of 2018.

In accordance with the said action plan of TR 61 of 2018, in respect of Para 5(b), proposal on grey areas of TR 222 of 2015 was submitted to LAC. LAC report dated 2.8.2017 was placed before the Board on 2.8.2018. Vide TR 105 of 2018 Board approved LAC Report dated 2.8.2017 and also accepted the LAC recommendations that TAMP's approval to the said SoR is not necessary, in view of pending Writ Petition no. 1153 of 2000 filed by MbPT challenging the TAMP's jurisdiction. However, the issue of approval of TAMP to the new SoR remained pending for want of instructions from Ministry on withdrawal of Writ Petition and allowing TAMP to approve the SoR retrospectively, i.e. from 1.10.2012 onwards. This issue alongwith other issues such as interest rate on revised arrears, GST, FSI dispute etc. were taken with Ministry of Shipping, Govt. of India. Ministry of Shipping, Govt. of India directed TAMP to fix SoR w.e.f 01.10.2012 onwards for areas of MbPT including township areas vide letter dated 15.05.2019 and TAMP vide letter dated 15.07.2019 issued the clarification on non-applicability of TAMP notification to MbPT for the period prior 01.10.2012 and stated that same is treated as withdrawn by TAMP.

2. POLICY GUIDELINES:

The Land Management Policy Guidelines for Major Ports, 2010 issued by the Ministry was adopted by the Board vide TR No.21 of 2011 read with Supreme Court Judgement. The Ministry subsequently, with the approval of the cabinet, issued Land Policy guidelines for Land Management at Major Port 2014 (PGLM), which was applicable for all Ports except for the land relating to the township areas of Kandla, Mumbai and Kolkata Port, for which it was stated that separate policy will be formulated. The amended policy guidelines were issued in 2015.

The Ministry vide Circular No.1 of 2018 dated 14.05.2018 issued clarification circular extending the applicability of the PGLM 2015 to the non-home occupation / commercial area of the township areas of Mumbai, Kolkata and Kandla Port. Thus

the PGLM 2015 has become applicable to the commercial occupations of the township areas of Mumbai Port Trust.

In terms of the PGLM, 2015, SORs have to be recommended by LAC and approved by the Board and notified by the TAMP. The Board vide TR 146 of 2014 had constituted Land Allotment Committee headed by Dy. Chairman and comprising of Traffic Manager, FA&CAO, and Estate Manager as members to recommend new Schedule of Rates for estate lettings with effect from 01.10.2012. The recommendations of LAC Report on SOR was accepted by the Board vide TR 222 of 16.01.2015 proposing revisions of SOR at 6% return p.a. on land value as per Stamp Duty Ready Reckoner for the year 2012 with 4% increase every year. The said revision was also applicable to the way leave permission granted. Certain difficulties were encountered while computing the rents on the basis of SoR approved under TR No.222 of 2015 viz. the FSI to be taken into account for the purpose of billing, the rate to be applied for Home Occupations, the rates to be applied for Port Trust structures and the rates to be levied for Special Way leaves if the same is laid underground or overhead. Clarifications to the decisions under TR 222 of 2015 was approved by the Board vide TR 105 of 2018.

3. LEGAL ISSUES:

TAMP had vide notification No. TAMP/10/98-Misc of 15.03.2000 issued orders on its jurisdiction for framing scale of rates and statement of condition on the issue of applicability of SOR to all lands of all Major Ports. The said notification was challenged by the Mumbai Port by Writ Petition 1153 of 2000. However, subsequently by discussions/deliberations with the MoS and TAMP, MOS, GOI vide letter dated 15.05.2019 has requested to TAMP that 'consequent to the Policy Guidelines for Land Management 2015 (PGLM 2015) read with clarification on PGLM dated 14.05.2018, the SOR with effect from 01.10.2012 onwards be fixed by TAMP for all areas of Mumbai Port including Township areas. The SOR shall be declared only after the Writ Petition withdrawn by MbPT'. The subject matter was discussed with CLO / FA & CAO with TAMP officials on 03.06.2019 accordingly DO letter dated 11.06.2019 was issued to Member (Finance), TAMP by the Dy.Chairman, MbPT. TAMP vide No. TAMP/10/1998- Misc. dated 15.07.2019 replied that, TAMP Notification dated 28.03.2000 has become infructuous so far as MbPT is concerned and it is not applicable for MbPT for the period prior to 01.10.2012 and the same may be treated as withdrawn by TAMP. The Writ Petition was also withdrawn by High Court by order dated 08.08.2019.

There are about 1742 no. of Monthly Tenancies, 237 no. of Fifteen Monthly Leases and 625 no. of Expired Leases includes home occupations, non-home occupations and mixed occupations (home and non-home) falling in all 15 units as on 30.06.2021. Out of which 129 no. of home and mixed home occupations (home and non-home) falling in all 15 units are excluded from this SoR proposal.

4. Vide TR 222 Of 2015, Board approved the SoR 2012-2017 rates for non-home occupations of lands outside custom bond area. It was stated in the said TR 222 of 2015 is as follows

(a) *It was pointed out that several lessees have committed breach of subletting and commercially exploiting the Port's property at very high premiums, depriving MbPT of its rightful share. The instances of such breaches in a sample study undertaken by the Committee were nearly 79%. There is substantial increase in the land value after the Supreme Court judgement leading to substantial profit to the lessees as the land value is directly proportionate to the rent. To elucidate the point, it was informed that while the area in the vicinity command rental value of `237 to `1296 per sq.mtr., the Port is charging `18 to `39 per sq.mtr. The data gathered from the State Government authorities suggest a return of 9 to 12% of the land value. This indicates that the trade can absorb the cost of increased rent and still remain economical in the business.*

(b) *Continuing, it was stated that in the background of these facts, the Committee considered it necessary to bring the rent rates to some rational level. To work out a reasonable rate that can stand the legal scrutiny, the on-going rate in the surrounding areas was obtained from the Stamp Duty Registrar based on sales transactions, rental rates of office spaces were collected informally from few estate agencies, sales transaction of commercial premises at Bandra Kurla Complex (MMRDA), which are somewhat comparable to Ballard Estate and Apollo Reclamation Estate, were collected from Sub-Registrar's office. Furthermore, the principle pronounced by Supreme Court judgement and the five options set out in the Land Management Policy of 2014 were also considered. After detailed deliberation, the Committee proposed to determine the rates from 1.10.2012 by adopting 6% of Ready Reckoner, 2012 with 4% increase every year for non-home consumption (commercial properties) covered under Supreme Court judgement excluding the running leases and long leases. The new rates are applicable from 1.10.2012 and the arrears will be payable with an interest rate of 9%. However, the payment of arrears will be allowed at 4 quarterly instalments from the date of notification of this SOR. The Committee also recommended that the decision of the Central Government on authority for approval of cases beyond 30 years of occupation may have to be expedited. Alternatively, the cases exceeding 30 years of occupation can be forwarded to the Ministry for approval.*

5. **Board vide TR 105 of 2018 approved the LAC report on Grey areas of TR 222 of 2015 under Para 12, which is as under:**

“(a) The Board by TR No.61 dated 30.5.2018 has approved the Action Plan on clarification received from MoS, GOI on PGLM 2015. In terms of para 5(b) of the Action Plan, the L.A.C. Committee's Report on SoR dated 2.8.2017 on the grey areas of TR No.222 dated 16.1.2015 along with the clarifications received from the MoS, Govt. of India are placed before the Board for approval Annexure 1. In partial modification of

LAC report dated 2.8.2017, the EM has proposed that the said SoR will be made effective from 1.10.2012 to 30.9.2017 (5 years) only to commercial (non-home occupations). The list of non-home occupations is at Annexure 11.

(b) In view of the clarification received from the MoS, Govt. of India dated 14.5.2018 in partial modification to LAC report dated 2.8.2017, the EM has proposed to exclude all residential occupations (home use) and mixed user occupations home and non-home and occupations given on nominal rents to Public Bodies and for Public amenities from implementation of new SoR. The revision of home and mixed user will be dealt separately after the receipt of new township policy.

(c) Presently, the all monthly bills of Monthly tenancy, fifteen monthly leases and expired leases are not revised as per SoR in absence of the new policy for Township Area and are still preferred as per rates laid down under Supreme Court Judgement 2004/ in few cases as per TR No. 127 of 2006 / as per the old contractual rents. After the Board's approval, demand notices will be issued for the period from 1.10.2012 to 30.9.2017 to all Non-Home occupations given on Monthly tenancies, fifteen monthly and Expired Leases of non-home (i.e. commercial uses) falling in Renewal as well as Redevelopment areas and where such termination notices served and /or where eviction suits have been filed.

(d) PGLM 2015 Clause No.11.3(h) provides for charging damages at 3 times of the current SoR after expiry of the lease. The new SoR approved under TR No. 222 of 2015 itself is 2 to 3 times higher than present billed amount which is at Supreme Court rate. Charging 3 times of current SoR in addition to interest on delayed payment would be impractical and may result into litigation and liability on account of payment of huge amount of GST which is payable on accrual basis. The issue of charging damages at 3 times of SoR will be taken up with MoS, Govt. of India.

(e) As regards condition of interest on arrears w.e.f 1.10.2012, Shri Buddy Ranganadhan, MbPT Advocate by his opinion dated 8.4.2015 had stated that MbPT has sought to revise rate of rent retrospectively w.e.f 1.10.2012, the levy of interest for this past period is likely to be strongly and severely challenged by the tenants on the anvil of article 14 of the Constitution of India. The tenants/occupants may argue before the Court that the MbPT could not expect them to pay interest on the revised rates which were never in existence in the said past period. In absence of demand notice or bills as per new SoR, no interest thereon can be recovered for past dues/arrears on account of revision of SoR, 2012-17 w.e.f. 1.10.2012 till revised bills of rent/ compensations are sent as per new rates of SoR 2018 and will only lead into additional litigation. However, as per Additional Solicitor General of India's opinion dated 17.8.2015 stating that **"The proposal in T.R.222 of 2015 regarding levying of interest w.e.f. 1.10.2012 is defensible in law in the light of Wadia judgement"**. The LAC's report dated 2.8.2017 on grey areas of TR No.222 of 2015 have recommended interest at 6% p.a. on the past arrears recoverable as per new SoR. Therefore, these aspects need to be looked into and the Board is requested to take decision on the issue of interest to be levied for the principal amount of arrears as per revised SoR (with GST) for the period from 1.10.2012 to be claimed from all non-home occupations of all eligible cases.

(f) For further period of 5 years from 1.10.2017 to 30.9.2022, new SoR will be placed before L.A.C and will be brought before the Board for eligible Non Home occupation.

Till the intervening period billing will be continued as per the present practice and rates as rent/ compensation. The bills will have a footnote that “This bill is provisional and without prejudice to the Board’s rights and contentions to revise the monthly bills as per Boards policy”. After resolving of GST issue, differential bills for compensation will be issued to all MT/FML and expired leases, leases terminated for the period from 1.10.2012 to 30.9.2017.”

6. Further the issue of seeking approval of TAMP to the SoR 2012-17 and other connected pending issues, therefore, the matter was resubmitted to LAC and the LAC report dated 13.08.2019 was submitted on 20.08.2019 to the Board. The same was deferred by the Board under TRs 114, 149 and 169 of 2019. Finally vide TR ____ of 2021, Board has accorded approval to the following action plan :

a. Approval of the TAMP for the revised SOR for the period 01.10.2012 to 30.09.2017

Approval of the TAMP is necessary for fixation of latest SoR and which has to be notified before making it applicable. One of the bone of contention was the TAMP’s notification dated 28/03/2000 which was challenged by the Mumbai Port Trust in the High Court of Mumbai. The Joint Director, TAMP vide e-mail dated 17.07.2019 has informed about the withdrawal of notification dated 28.03.2000. In view of the above, Writ Petition No.1153 of 2000 filed by MbPT challenging TAMP order dated 15.03.2000 is withdrawn vide High Court order dated 08.08.2019.

b. Recovery of Penalty and additional rents etc. for regularization of past breaches.

The Ministry by Clarification No.2 of 2019 provides the procedure for renewal of existing leases by following tender cum auction method, RoFR to existing lessees but subject to clearance of all past dues, as per applicable prevailing SoR from time to time for the period since the expiry of the lease and date of tender cum auction. Further, it is clearly stated that “When the delay in calling for tender (for renewal) is attributable to 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.” However, in the said issue No.1 of Clarification No.2 it is not clarified “whether not to charge additional rent/penalty/premium chargeable for regularization of past breaches, if any,”. Therefore, the following is recommended:

- i. Recover premium/penalty/additional rent, etc. for regularization of all past breaches such as subletting, unauthorised transfer/assignment, unauthorized change of user and unauthorised construction, mortgage, etc. as per applicable policy of the Board.
- ii. It is proposed to issue DO letter to Secretary, Ministry of Shipping, Govt. of India to issue suitable clarification that issue no. 1 of clarification no. 2 of PGLM 2015 “Not to charge penalty and interest for the intervening period”, may not be made applicable for MbPT and therefore to issue

necessary clarifications in terms of para 15 (vii), 15(viii) of PGLM 2015. Accordingly, draft letter is enclosed for approval.

- iii. Estate Manager to bring out a separate policy before the Board for regularization of past major breaches such as subletting, unauthorised assignment, unauthorized construction, change of user, mortgage, etc. for the period from 10.03.2004 onwards based on the PGLM 2015.

c. Levy of interest on differential arrears due to the revision

In view of the clarifications *ibid*, it is recommended that:

- i. No interest would be chargeable for the amounts of differential arrears for which no demands have been made by way of invoices or by demand notices. The interest on differential arrears as per updated SoR 2012-17 will not be applicable till raising of demand notice. Wherever the invoices of rent/compensation have already been raised interest at applicable rates will be chargeable from the date on which arrears became applicable.
- ii. After approval and Notification by TAMP, the demand will be raised in the form of demand notices. If the party fails to pay as per the demand notice within the stipulated time, i.e. 3 months from the issue of the demand notice, interest will be applicable as may be decided by TAMP.
- iii. The present interest rate @ 18% p.a. for delayed payments will continue to be charged on the past arrears and invoices of monthly bills raised which are being issued as per Supreme Court judgement dated 13.01.2004 as per TR 31 of 2004 or as per 127 of 2006 as at such rate as may be applicable from time to time.
- iv. Status: The interest rate on delayed payment is changed to 15% w.e.f. 01.03.2020 vide TR 296 dated 25.02.2020. The draft of demand notices to be issued to all MT/FML/ Expired leases (Non home occupation) will be vetted by CLO&A and will be issued after TAMP's approval to SoR 2012 to 2017.

d. GST payable on arrears considering the financial position of the port.

In terms of various provisions of the GST laws, once the differential bills are issued, the GST becomes payable immediately. This may have immediate financial implications of Rs. 295.79 Crores. This will have an impact on the cash flows of the Mumbai port. Hence, the LAC recommends the following for issue No. 'd' :-

- i. To Issue demand notices as recommended in earlier para c.i.
- ii. To issue proforma invoice pending resolution of GST issue, wherever the parties are clearing the past arrears as per the revised SOR for the period 2012-2017.
- iii. To take up the issue of payment of GST on differential arrears as per SoR on accrual basis with the GST Council, Govt. of India requesting them to examine the issue in view of existing litigation and non-recovery of rentals bills from existing lessees/tenants which is only 60% of present billed amount.

Status: Estimated Rs.295.79 Crores of GST will be payable on account of differential arrears of about 2409 parties. The issue of payment of GST on accrual basis on differential arrears is being taken up with GST consultant by FA&CAO.

- e. It was further directed that computation of rentals/ compensation based on FSI consumed and areas will be likely to be contentious issue even after base SoR rates for one sq. mtr. of land are approved by TAMP. Linking of SoR rates of land to FSI consumed of the buildings / structures have several repercussions and complexities such as how to compute FSI, exemption of fungible FSI as per DC rules and permissible FSI, etc. Therefore, it is necessary to study these aspects in detail by committee of experts consisting of a retired Chief Engineer / Director of Planning of MCGM, Retired High Court Judge and a group of MbPT officials comprising Advisor (Planning), Chief Engineer, CLO, FA&CAO, Secretary and Estate Manager (I/C) alongwith Govt. registered Valuers on MbPT panel. Committee will give its recommendations on above issues and the matter will be brought before the LAC and Board for computation of actual rents/compensation on factors recommended by the Committee.
- f. The revised Scale of Rates for base rate for one Sqm of land for the period 2012-2017 will be applicable to township areas of all non-home occupations of Monthly tenancies, Fifteen Monthly leases and Expired leases from Unit 1 to Unit 15. The actual rentals/compensation for each plot will be worked out for each plot on the basis of factor approved by the Committee and the Board for higher or lower FSI as may FSI as per permissible or consumed. However, the SoR 2012-2017 will not be applicable to let out Port Trust structures, BDD chawls, and all home occupations and mixed home occupations.
- g. In terms of, Para 12(b) of TR 105 of 2018, "it was proposed to exclude all residential occupations (home use) and mixed user occupations home and non-home and occupations given on nominal rents to Public Bodies and for Public amenities from implementation of new SoR." However, for these excluded occupations a separate proposal will be brought before the TAMP with the approval of Board.
- h. Also, letout P.T. structures, fish based occupations of Ferry Wharf, Sassoon Dock occupations and land at Jawahar Dweep are excluded as they require special consideration on similar user basis by the valuer and LAC. For these occupations, the fixation of SOR rates with effect from 1/10/2012 onwards, a separate proposal will be brought before the TAMP with the approval of Board.

7. PROPOSAL:

In view of the above TAMP's approval is requested to the revised SOR for land areas as enclosed as Annexure-A as per Para 13 of PGLM 2015. The revised Scale of Rates for base rate for one Sq. Mtr. of land for the period 2012-2017 will be applicable to township areas of all non-home occupations of Monthly tenancies,

Fifteen Monthly leases and Expired leases from Unit 1 to Unit 15. The actual rentals/compensation will be worked out for each plot on the basis of factor approved by the Committee constituted by Board vide TR No. ___ of 2021 and the Board for higher or lower FSI as per permissible or consumed as may be applicable.

Unit/zone wise list of presently occupied lessees/tenants in the Estate letout lands with their legal status and litigation details alongwith their billing address, mobile/email available with this office.

Till such time as these rates are notified by TAMP, Board may permit to make demands of the past dues in terms of SOR for the period from 01.10.2012 to 30.09.2017. The SOR for the period from 01.10.2017 to 30.09.2022 is also being finalized by a panel of valuers. Once the Valuation Report is accepted by the LAC and approved by the Board, the proposal for the said period will also be brought up before the TAMP for approval.

8. JUSTIFICATION:

The proposal is formulated in terms of the Land Policy Guidelines for Land Management 2015.

TAMP's approval to the SOR for base rates of One Sq.M for the period from 01.10.2012 to 30.09.2017 enclosed as '**Annexure-I**' is requested. The actual rentals/compensation for each plot in outside custom bond area will be based on the factor approved by the Committee for actual permissible/consumed FSI as may be applicable.

