

IMPLEMENTING GUIDELINES ON THE DOTC DEPARTMENT ORDER NO. 92-587 DEFINING THE POLICY FRAMEWORK ON THE REGULATION OF TRANSPORT SERVICES

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Pursuant to Section 3, paragraph 2 of DOTC Department Order No. 92-587 dated 30 March 1992 defining the policy framework on the regulation of transport services, the following guidelines in implementation thereof are hereby promulgated:

I

Scope of Coverage

The policy guidelines set forth under this Circular shall be limited to persons, corporations, firms or associations owning or operating vessels for transportation of passengers or goods, or both, for compensation, either as a liner or tramp service.

Liner service shall refer to the operation of domestic water transportation facilities which: (i) offer their services to the public indiscriminately; (ii) have regular ports of call/destination; (iii) have fixed sailing schedule (arrival-departure pattern) and sailing frequency, and (iv) charge passenger/freight rates fixed by the MARINA.

Tramp service shall refer to the transportation of cargoes on a contractual basis catering only to bulk cargoes of individual shippers/consolidators.

II

Definition of Terms

For purposes of this Circular, the following terms or phrases shall have the meanings/definitions as herein below:

- a. Certificate of Public Convenience: an authorization issued by the MARINA for the operation of a domestic water transportation service for public use for which no franchise either municipal or legislative, is required by law.
- b. Provisional Authority/Special Permit: the provisional or temporary permit issued by the MARINA to operate a line or service, pending final determination of the application for issuance of Certificate of Public Convenience. The following requisites should, however, be present: (1) that the case cannot be decided at once; and (2) that there is an urgent public need to be met.
- c. Filipino citizenship: that the applicant for a Certificate of Public Convenience is a citizen of the Philippines or a corporation, partnership, association or joint-stock company constituted and organized under the laws of the Philippines, of which at least sixty percent (60%) of its capital stock or paid-up capital belongs entirely to Philippine nationals.
- d. Financial capability: the capability of the applicant/operator to establish/initiate/maintain/sustain proposed/existing operations of the service and to meet claims arising from accidents.
- e. Public interest: the benefit for all the people.

- f. Authorized route: the pattern of ports of call starting and ending on the same port, indicated in an existing SP/PA/CPC granted by MARINA to a vessel.
- g. Monopoly: the existence of operation of one (1) franchised operator or a group of franchised operators in a particular route, whose actions or practices result in a lack of effective competition (which has the effect of a monopoly).
- h. Developmental route: route that handles domestic traffic serving a limited area, e.g., developing mining and manufacturing activities. These areas are necessarily called developmental, either because (1) they have agricultural, tourism, mining, industrial potentials, or (2) they need the link with developed regions for their subsistence and development. Operations along these routes are economically desirable, but not necessarily financially viable.
- i. Franchised operator: any operator that is issued a Certificate of Public Convenience.
- j. Prior operator: the priority of an existing authorized operator in a route and in each of the segments of the route by virtue of a PA/CPC.
- k. Prior applicant: the first applicant who is given the priority among the mass of various applicants for a Certificate of Public Convenience.
- l. Protection of investment: the protection and conservation of investments which have already been made by public service operators.
- m. Withdrawal from service: the suspension of a vessel's services in its authorized route or portions thereof.
- n. Abandonment from service: the unauthorized suspension of a vessel's services by the ship operator/shipowner in its authorized route or portions thereof for a period of four (4) months or more.
- o. Vessel rerouting: the changing of the authorized routing pattern of a vessel.
- p. Vessel replacement/substitution: the substitution of lost, obsolete, overaged, inefficient or unseaworthy tonnage.
- q. Addition/expansion: the introduction of an additional vessel or an increase in the vessel's sailing frequency in a given route or replacement with a bigger vessel.
- r. Scrapping: the permanent withdrawal of a vessel from all forms of shipping services for purposes of breaking it up or selling it to foreign buyers.
- s. Authorized sailing frequency: the number of trips/links a vessel can make at a given period of time as indicated in its SP/PA/CPC.
- t. Fork tariff system: a system wherein rates are allowed to fluctuate between carefully defined upper and lower limits.
- u. Class A: generally high value manufactured goods.
- v. Class B & C: generally lower value manufactured goods, raw materials and agriculture products.
- w. Class C (Basic): rice, palay, corn, corngrits, fruits and vegetables.
- x. Bulk shipping industry: an industry which specializes in the transport of large cargo parcels, i.e., those that fill a whole ship.

y. Bulk cargo: any cargo that is transported by sea in large consignments.

z. Consolidation: the process of despatching as one overall consignment under an Agent/Freight Forwarders sponsorship by Air, Rail, Container or Road haulage unit, a number of individual compatible consignments from various consignees to various consignors.

aa. Consolidator: a person or company (Freight Forwarders) undertaking consolidation or consignment.

III

Requisites before a Certificate of Public Convenience May Be Granted

Per Section 16(a), Chapter II of the Public Service Act (C.A. No. 146, as amended), the following requisites must be complied with before any certificate may be granted: (1) the applicant must be a citizen of the Philippines, or a corporation or co-partnership, association or joint-stock company constituted and organized under the laws of the Philippines, sixty percent (60%) at least of the stock or paid-up capital of which belongs entirely to citizens of the Philippines; (2) the applicant must be financially capable of undertaking the proposed shipping service and meeting the responsibilities incident to its operation and (3) the applicant must prove that the operations of the public service proposed and the authorization to do business will promote the public interest in a proper and suitable manner.

IV

Policy Guidelines on the Issuance of Certificates of Public Convenience

The issuance of a Certificate of Public Convenience is determined by public need. The presumption of public need for a service shall be deemed in favor of the applicant, while the burden of proving that there is no need for a proposed service shall be with the oppositor(s).

Subject to the underlying principle that the interest of public service shall be paramount, the following guidelines shall govern the issuance of a Certificate of Public Convenience, to all liner operators, to wit:

A. Entry Into and Exit Out of the Industry — The control in entry into and exit out of the industry shall be liberalized to introduce or enhance the level of competition in terms of the rates charged and the quality of service rendered by domestic water transportation operations as provided.

1. On the entry of Vessels and/or Operators in the interisland trade routes

1.1 To a Monopolized Route — There shall be a minimum of two (2) operators in any route/link. Links/routes presently serviced by one (1) operator shall be open for entry to at least one (1) additional operator.

1.2 To a Developmental Route — Operators that shall develop a link/route where there are no existing authorized operators/services shall be afforded protection of investment for a maximum period of five (5) years, after which, the link/route shall be open for entry to at least one (1) additional operator.

1.3 To an Already Established Route Served by Franchised Operator(s) — The entry of any additional operator in links/routes presently serviced by several existing authorized operators shall be allowed in, but not limited to, any of the following cases:

1.3.1

The new entrant may be able to provide a more cost-effective, competitive service than the existing/authorized operators.

1.3.2

The new entrant shall introduce quality of service improvements or innovative/technologically-advanced shipping services superior to those provided by existing/authorized operators.

1.3.3

The route/link warrants additional capital or it has been determined that existing authorized operator therein have not been sensitive to an increase in demand or offers to increase capacity only after another operator has offered to increase capacity.

1.3.4

New entrants will be admitted in routes where the actions or practices of existing/authorized operators result in the lack of effective competition.

1.3.5

The existing authorized operator(s) has abandoned its operation.

1.3.6

The existing authorized operator(s) has been violating the Public Service Law or the terms and conditions of its Certificate of Public Convenience.

2. On the abandonment/withdrawal/suspension of service

2.1

By an unauthorized total or partial abandonment/withdrawal/suspension of a vessel's services in its authorized route or portions thereof for a period of four (4) months or more, an operator may forfeit his right to his certificate.

2.2

An operator shall be allowed to withdraw/suspend his services in a route/link provided that the operator files a notice of withdrawal/suspension with the MARINA fifteen (15) days prior to such withdrawal/suspension and after informing the public of such withdrawal/suspension.

3. On vessel replacement/substitution and addition/expansion of shipping services by an existing/authorized operator

3.1

Existing/authorized operators may increase their capacity through replacement with a bigger vessel, the introduction of additional vessels or the increase in frequency of existing vessels after an application is filed with the MARINA.

3.2

No limits shall be placed on the capacity of a replacement vessel vis-a-vis the replaced vessel's capacity.

4. On vessel re-routing/amendment of authorized route/schedule/sailing frequency

4.1

Any change/amendment to the authorized routing pattern of a vessel can be undertaken by an existing authorized operator through the following: (i) omission/deletion of port(s), (ii) addition of another port(s), (iii) omission and subsequent addition of port(s), (iv) changing sequence of port calls, (v) retention of authorized routing pattern but with addition of one or more ports, and (vi) introduction of an entirely new route.

4.2

On amendments/adjustment of schedule and frequency of port calls, the MARINA shall see to it that an operator's proposed amendment in schedule will not conflict with those of the existing operator(s).

4.3

Vacated port(s)/link(s)/route as a result of the vessel rerouting proposal shall, likewise, be looked into insofar as adequacy/sufficiency of the remaining existing shipping services is concerned.

5. On quality of shipping service

5.1

MARINA Memorandum Circular No. 65 covering the Minimum Service Standards for Philippine Registered Interisland Passenger Vessels provides a set of standards to be used as basis for assessing the quality of existing shipping service. Compliance with this set of standards will ensure acceptable quality of shipping service for passenger comfort and convenience.

5.2

A link/route shall be declared warranting improvement in services subject to the following conditions:

5.2.1 The public, individually or collectively — in the latter case through their recognized organizations or legally constituted or authorized representatives/institutions — shall petition the MARINA on the need to improve the services of vessel(s) plying the routes/links in the affected area.

5.2.2 An independent survey/investigation shall be conducted by the MARINA to ascertain the validity of the need for an improvement in services. MARINA may include shipping association members in the fact-finding mission and/or inventory system as may be ascertained to determine compliance with quality of service standards.

6. On swapping/substitution, changes in sequence of port calls of purely cargo liner vessels — Considering that the level of service required of cargo liner service is not as demanding as that for a passenger liner service, liberalizing cargo liner operations within an operator's franchised areas/ports of call may result in improving optimum utilization of vessels and improved efficiency and response in the provision of cargo services. Cargo liner operators shall be allowed to swap/substitute vessels, change the sequence of port calls, amend schedule

and/or adjust the frequency of port calls, upon filing appropriate application with the MARINA, and provided that:

6.1

On vessel swapping, the swapped vessels shall adhere strictly to their authorized routes, sailing frequencies and sequencing of port calls. No limits shall be placed on the capacities of the swapped vessels.

6.2

Proposals effecting changes in the sequence of port calls shall be limited to the company's or to the vessel's authorized ports of call as determined by valid and subsisting franchises, provided that no new links shall result therefrom. New links are defined as port-to-port combinations created as a consequence of route combinations/amendments, which line areas are heretofore unserved by the liner operator but serviced by other franchised operators.

V

Rate and Fare Setting

The control in pricing shall be liberalized to introduce price competition complementary with the quality of service competition subject to prior notice and hearing.

A. On the general structure of rates

1. The existing authorized range of the fork tariff system for both passage and freight rates shall be increased from plus/minus five (+/-5) percent limit to a plus ten (+10) percent and minus fifteen (-15) percent limit on the indicative or reference rate which shall be made applicable to all common carriers engaged in the interisland liner shipping services in January 1993 as authorized under MARINA Memorandum Circular No. 67. The rate range shall be further increased to plus twenty (+20) percent and minus twenty-five (-25) percent in 1995.
2. The automatic fuel adjustment mechanism adopted and shall be made applicable to all interisland liner shipping vessels and is operative whenever fuel prices, basically diesel oil, bunker and special fuel oil, increase/decrease by at least ten percent (10%) as authorized under MARINA Memorandum Circular No. 67.
3. The passenger rate tariff structure and the freight rates in links/routes serviced by only one operator (developmental routes), shall follow the rate prescribed by government.

B. On passage rates

1. First and Second Class passage rates are deregulated provided that at least fifty percent (50%) of the authorized passenger capacity of the vessel shall be allocated and maintained for Third Class accommodation. Peak pricing for Third Class passage rates shall be introduced in 1993.
2. The minimum service standards for First, Second, and Third Class accommodations prescribed under MARINA Memorandum Circular No. 65 for Philippine Registered Interisland Passenger Vessels shall be implemented.

C. On Cargo Rates

1. Commodities are presently classified into Class A, Class B, Class C (Basic), wherein Class C (Basic) shall be reclassified into Class C in 1993. Reefer, transit, and livestock rates shall continue to be deregulated.

2. Class A and Class B freight rates shall be deregulated provided the operator files their tariff for Class A and Class B commodities, and any change thereafter with the MARINA.

VI

Determination of Financial Capability of PA/CPC Applicants

A. The issue of financial capability of applicants as a pre-condition to the issuance of CPC shall be construed as the simultaneous satisfaction of two basic financial requirements:

1. The availability of funds sufficient to establish/initiate and sustain operations — The applicant is deemed financially capable to establish/initiate and sustain operations if its actual working capital is equal to or greater than the required working capital, where:

Actual Working Capital = Current Assets minus Current Liabilities

Required Working Capital = Two months Operating, Administrative and Interest Expenses, minus two months Revenues (qualified by the Average Aging Receivables)

In case where the applicant is deemed not financially capable of undertaking a shipping service, the MARINA shall require him to undertake an increase in working capital equivalent to the computed deficiency. Proof of such increase and the corresponding documents, duly notarized, shall be submitted to MARINA for re-computation/re-evaluation of the applicant's financial capacity.

2. The availability of sufficient financial reserves to meet claims arising from accidents — The applicant is deemed financially capable to meet claims arising from accidents if he secures a satisfactory insurance coverage or any other form of security acceptable to the MARINA.

VII

Technical Evaluation

A. Basis for Technical Evaluation —

1. The MARINA shall ensure that vessels to be utilized for public convenience are seaworthy and properly maintained to enable the public utility operator to provide safe, reliable, comfortable and efficient shipping service.

2. The public utility operator, in the maritime sector assumes the responsibility for providing and maintaining safe, reliable, and efficient shipping service. On the other hand, the government should allow only those ships that meet established physical, technical and service standards to operate in the interisland trade.

3. The officers and crew of ships shall meet the established standards of competence.

4. Section 17(a) of the Public Service Act states that "The Commission (now MARINA) shall have power without previous hearing subject to established limitations and exceptions and saving provisions to the contrary: a) to require any public service to furnish safe, adequate, and proper service as the public interest may require and warrant; b) to enforce compliance with any standard rules, regulations, order or other requirement of this Act on the Commission".

B. Vessel Inspection Requirement —

1. Inspection requirement prior to issuance of SP/PA/CPC.

All vessels applying for CPC/PA/SP regardless of size and type of operations shall be inspected by MARINA

Surveyors prior to issuance of CPC/PA/SP to determine compliance with the provisions of the Philippine Merchant Marine Rules and Regulations (PMMRR) governing safety of life at sea and MARINA MC 65.

2. Re-evaluation and validation of passenger accommodation plans for existing vessel(s) to determine compliance with the provisions of the Philippine Merchant Marine Rules and Regulations (PMMRR) and MARINA MC 65.

MARINA Memorandum Circular No. 65 which provides a set of standards for assessing the quality of shipping service of Philippine — Registered Interisland Passenger Vessels shall be implemented.

Period of Validity of a Franchise

A. Period of Validity of CPC for Owned Tonnage

1. The duration or period of validity of a CPC will depend on the vessel's remaining economic life. For domestic vessels economic life shall be taken as twenty (20) years for steel-hulled ships and fifteen (15) years for wooden-hulled ships.

2. Motorized Bancas (35 GRT and Below) shall have a fixed duration of two (2) years.

B. Period of Validity for Chartered Tonnage — Vessels utilized for domestic trade under a Temporary Certificate of Philippine Registry/Bareboat Charter Arrangement shall be issued a CPC which shall be co-terminus with the Bareboat Charter Party.

(Note: For tramp operations only VI, VII and VIII above shall apply.)

IX

Penalties/Sanctions

Any violation of, or failure of the operators to comply with the guidelines hereinabove set forth shall constitute a sufficient ground for the disapproval of the application for Certificate of Public Convenience/Provisional Authority/Special permit and/or suspension/revocation/cancellation of the vessels's Certificate of public Convenience/Provisional Authority/Special Permit, as the case may be, in addition to the penalties provided under the Public Service Act, as amended, and other relevant rules and regulations of this Authority, after due notice and hearing.

X

Repealing Clause

This Memorandum Circular supersedes MARINA Memorandum Circular Nos. 26 and 39, and any provisions of existing MARINA rules and regulations, which are inconsistent with this Circular are hereby repealed or modified accordingly.

XI

Effectivity

This Memorandum Circular shall take effect fifteen (15) days after its publication once in a newspaper of general circulation in the Philippines.

Adopted: 22 Oct. 1992

(SGD.) PHILIP S. TUAZON

Administrator

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