

REGULATIONS ON THE DEVELOPMENT/CONSTRUCTION AND OPERATION OF PRIVATE PORTS

CPA ADMINISTRATIVE ORDER NO. 02-97, July 11, 1997

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Pursuant to R.A. 7621 and other relevant laws so as to expedite and ensure coordination in the processing of applications to develop/construct, and operate private ports, the following guidelines are hereby prescribed:

ARTICLE I

Preliminary Provisions

SECTION 1. Scope. — This Order shall apply to all parties seeking for permit to develop/construct, and operate a private port facility. It shall also specify the roles of CPA units and offices in the processing, evaluation and approval of these applications.

SECTION 2. Definition of Terms. — For the purpose of this Order, the following terms used herein shall be construed to mean as indicated:

2.1. Port Zone — an area within the territorial jurisdiction of the Authority proclaimed by the President for use as a port pursuant to law.

2.2 Foreshore — That part of the land immediately in front of the shore which is between high and low water marks, and alternately covered with water and left dry by the flux and reflux of the tides and not located in a port zone. It is indicated by the middle line between the highest and lowest tides.

2.3 Private Port — A port facility constructed and owned by a private person or entity as authorized by the government. It is classified according to the nature of its operation and purpose, thus:

2.3.1 Private Non-commercial Port — A port facility constructed and owned by a private person or entity as a component of or accessory to its own business or principal economic activity and which does not offer port services to the general public and exist exclusively for its own particular use and need.

2.3.2 Private Commercial Port — A port facility constructed and owned by a private person or entity which offers port services to the port users to the general public.

2.3.3 Marina — A port constructed for the exclusive use of securing motorboats, yachts and other pleasure crafts.

SECTION 3. General Policy Statements. —

3.1 The development/construction and operation of private ports is hereby encouraged subject only to the requirements of national security, public safety, and these regulations and to such regulations as may be issued hereafter by the Authority.

3.2 A private port facility may be established upon approval of the general proposal to develop/construct such private port facility from the CPA Board.

3.3 The Certificate of Registration/Permit to Operate a private port facility shall be for a period not to exceed twenty five (25) years. This may be renewable for another 25 years; provided, however, that in case of non-renewal, cancellation, or expiration of the permit, the private port facility or structure thus built on foreshore and other government owned land utilized for such private port operation, shall become the property of the Authority, free from all liens and encumbrances, unless such foreshore area has been authorized to be reclaimed and the corresponding land has become officially titled to the private port owner concerned.

3.4 The Certificate of Registration/Permit to Operate issued by the Authority shall authorize the holder to operate the private port owner concerned.

3.5 The Certificate of Registration/Permit to Operate shall be non-transferable. Any violation of this condition shall automatically terminate or revoke such registration/permit without need of further action by CPA

ARTICLE II

Procedures

SECTION 4. Criteria for Evaluation. —

As a general rule, all applications for the development/construction and operation of private ports shall be granted subject to compliance with this Order and other government laws and regulations.

For reference purpose the application shall include a summary of the following:

4.1 Site/location/distance/accessibility of applied foreshore area from other ports/public utilities and infrastructures;

4.2 Project scope, description, and technical specifications;

4.3 General port lay-out plan and development plan;

4.4 Company profile, to include a brief on its owners/stockholders.

SECTION 5. Clearance to Develop/Construct a Private Port Facility. —

5.1 Upon issuance by the DENR of an Environmental Clearance Certificate (ECC), the private port investor or owner shall file his formal letter of intent, in duplicate copies, with the Committee designated by the CPA Board of Commissioners (the "Committee") through the Engineering Services Division (ESD) together with additional requirements as contained 1- Annex 1* herein incorporated and all his construction and building plans with duly accomplished application for Permit to Develop/Construct (Annex 2*).

5.2 Upon receipt of completed documents, the ESD shall, within sixty (60) days evaluate the plans and documents and endorse the application for validation by the Committee.

5.3 The Committee shall determine, within one (1) week from date of ESD endorsement whether or not national security or safety is affected and once validated, the Committee shall submit the said documents for issuance of a permit to develop/construct by the General Manager.

5.4 The General Manager shall issue the permit to develop/construct upon payment of the permit to develop/construct fee in accordance with the following graduated fixed fees plus 10% VAT, to wit:

Project Cost Permit to Construct Fee

Below P10M P20,000

P10M & above P20,000 plus .001 (1/10 of 1%)

of the excess of P10 million but

not to exceed P150,000.00

Provided, That, in case the actual cost is more than the project cost, the permittee shall be liable to pay for the difference.

5.5 In case of denial of the proposal, the Office of the General Manager shall inform the applicant of such fact and the reasons therefor.

5.6 In all cases and at any stage of the application, there shall be no processing on applications of persons or entities with unpaid or unsettled obligations or liability to the Authority.

SECTION 6. Certificate of Registration/Permit to Operate New and Existing Private Port Facility. — Private port investors who have satisfactorily established new port infrastructure as well as port owners/operators who have developed and operated their facilities prior to the issuance of these regulations shall register with the CPA.

6.1 Certificate of Registration and Permit to Operate New Private Port

The Authority, through the General Manager, shall issue within thirty (30) days from inspection of the completed facilities a Certificate of Registration and Permit to Operate a Private Port to the private port owner/operator who has submitted complete documentary requirements as stipulated in Annex 4* herein. Only private ports with official registration with CPA shall be entitled to discounted port dues and other privileges or incentives granted or that the Authority may hereafter grant.

6.2 Existing Private Ports with No Valid Operating Permit

All private ports known to be operating, but not in possession of valid operating permits issued by the Authority, shall be formally advised by the Authority to register within thirty (30) days from receipt of formal notice. Failure of the private port owners to register within said period shall permanently disqualify them from availing of private port privileges such as discounted port and cargo handling dues and other incentives. This is without prejudice to other legal remedies which the Authority may seek as may be warranted by the circumstances.

SECTION 7. Cargo Handling Permit. — Duly registered privately-owned ports shall be allowed to undertake cargo handling operations, either on their own or by contract, upon the issuance of its Certificate of Registration/Permit to Operate; provided that the contractor is accredited as a cargo-handler by the Authority. The private port owner/operator shall submit the monthly operational report (Annex 5*).

SECTION 8. Request for Improvement. — During the effectivity of the private port owner/operator's approved permit, no improvement/expansion/rehabilitation of existing private ports, except for annual preventive maintenance and repair purposes, shall be made unless a request is made to the Authority and approved by the latter.

ARTICLE III

Courses of Action on Expired Permit

SECTION 9. Committee Monitoring. — The Committee shall be responsible for monitoring all private ports operating within the jurisdiction of the Authority. It shall inventory all existing facilities and notify private ports with expiring CPA permits within the next one hundred eighty (180) days. Holders of expiring permits shall be advised to formalize their intention to renew occupancy of their respective premises, if interested. Otherwise,

non-application for renewal of the permit at least thirty (30) days from expiry date may be construed as an advice to effect turn-over of ownership rights to the Authority.

SECTION 10. Port with Expired CPA Permit to Operate. —

10.1 Private port privileges on discounted port and cargo handling dues payments shall cease to be effective upon expiration of the port's CPA Certificate of Registration/Permit To Operate unless otherwise renewed.

10.2 The privilege on discounted port and cargo handling dues payments shall however, be extended for as period not exceeding six (6) months, provided an application for the renewal of the CPA permit to operate shall be made prior to the expiration thereof. This extension shall be allowed to give the applicant sufficient time to complete his renewal documentation.

10.3 Owners/operators of private ports with expired CPA Permits which can no longer be renewed (those with expired second renewals) may still avail themselves of discounted port and cargo handling dues and payments provided the government portion of said port facilities are covered by a lease agreement with the Authority.

ARTICLE IV

Miscellaneous Provisions

SECTION 11. Penalty Clause. —

10.1 Without prejudice to other legal actions/remedies, violation of any of the provisions of these regulations shall be punished by imprisonment for not less than one (1) day but not more than six (6) years, and a fine of not less than P200 but not more than P100,000.00 as provided for under A.O. 13-77 in relation to P.D. 857, as amended and R.A. 7621.

10.2 Owners of private port facilities constructed without prior clearance and valid permit to construct issued by the Authority shall pay a penalty charge equivalent to 200% of the permit to construct fee provided under Section 5.4 hereof. The same penalty shall also apply to private port facilities which were constructed without prior clearance and valid permit to construct but allowed registration by the Authority.

SECTION 12. Grounds for Revocation. — Any violation of these rules and regulations and all other orders, circulars, and other issuances adopted/issued or as may hereafter be issued by the CPA, rules on safety, and national security shall likewise be a cause for revocation of any CPA permit given to the private port investor or owner.

SECTION 13. Visitorial Powers. — The private port operator shall allow, at any time, CPA officials and authorized CPA employees, entry into the private port premises to observe and inspect port operations activities and facilities in the exercise of CPA supervisory authority.

SECTION 14. Repository of Documents. — A copy of all documents, communications, records pertaining to private ports shall be submitted by all offices/divisions concerned to the office of the Manager of the ESD which shall keep and maintain the same for future reference.

SECTION 15. Repealing Clause. — All orders, rules and regulations, policies guidelines, memoranda or circulars issued and/or adopted by the CPA which are inconsistent herewith are hereby repealed.

SECTION 16. Separability Clause. — If any provision or section of this Order, or the application thereof of any person, corporate entity or circumstances is held invalid, the other provisions or sections of this Order shall not be affected and shall continue to be in full force and effect.

SECTION 17. Effectivity. — This Administrative Order shall take effect immediately.

Adopted: 11 July 1997

(SGD.) RAUL T. SANTOS
General Manager

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