

RULES AND REGULATIONS TO IMPLEMENT THE PROVISIONS OF REPUBLIC ACT NO. 7471, THE PHILIPPINE OVERSEAS SHIPPING DEVELOPMENT ACT

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Pursuant to the provisions of Sec. 10, thereof, these Rules and Regulations to Implement the Provisions of Republic Act No. 7471, the Philippine Overseas Shipping Development Act, are hereby promulgated:

Regulation I

Declaration of Policy and Definitions

SECTION 1.01 Declaration of Policy — It is hereby declared the policy of the Government of the Philippines to:

- a. Develop and maintain a Philippine Merchant Marine composed of well-equipped, safe, and modern vessels most suited for Philippine requirements and conditions, manned by qualified Filipino officers and crew, and owned and operated under the Philippine flag by citizens of the Philippines or by associations or corporations organized under the laws of the Philippines, at least sixty percent (60%) of the capital of which is owned by citizens of the Philippines;
- b. Assist in the development, recovery and expansion of Philippine Overseas Shipping capable of meeting the requirements of the expanding international trade of the Philippines;
- c. Provide assistance to Philippine Shipping Enterprises and encourage the long-range vessel acquisition, development, modernization and expansion through private investments without direct government financial assistance; and
- d. Create a healthy climate to attract private enterprises.

SECTION 1.02 Definitions — As used in Republic Act No. 7471 and these Rules and Regulations:

- a. Act means Republic Act No. 7471, the “Philippine Overseas Shipping Development Act”;
- b. Regulations mean these Rules and Regulations promulgated pursuant to the provisions of Section 10 of the Act;
- c. Philippine Overseas Shipping means the transport of goods and/or passengers by a Philippine-registered vessel beneficially/disponently owned and operated by a Philippine Shipping Enterprise, except when the ship is operated solely between ports in the Philippines.
- d. Philippine Shipping Enterprise means a citizen of the Philippines or an association or corporation organized under the laws of the Philippines at least sixty percent (60%) of the capital of which is owned by citizens of the Philippines, and exclusively engaged in Philippine Overseas Shipping;
- e. MARINA means the Maritime Industry Authority;
- f. Administrator means the Administrator of the MARINA;
- g. Monetary Authority means the Central Bank of the Philippines and any other agency in charge of foreign

exchange controls;

h. Governor means the head of the Monetary Authority;

i. DOF means the Department of Finance;

j. SecFinance means the Secretary of Finance;

k. BOC means the Bureau of Customs;

l. BIR means the Bureau of Internal Revenue;

m. Vessel means a vessel built, or to be constructed, which will be operated for Philippine Overseas Shipping, complying with classification standards of internationally recognized classification societies;

n. Spare Parts shall refer to any equipment, machineries, parts, materials, and supplies necessary for the maintenance and operation of the vessel;

o. Philippine registered vessel means a vessel registered in accordance with Philippine laws and regulations. Philippine registration can be categorized into two:

(i)

Permanent registration this refers to the registration of a vessel owned by a Philippine Shipping Enterprise;

(ii)

Temporary registration this refers to the registration of a vessel operated by a Philippine Shipping Enterprise as a disponent owner or demise owner as duly approved by the MARINA.

p. Acquisition of a vessel means the purchase or importation of a vessel, including acquisition by lease-purchase arrangements.

Regulation II

Qualifications of Applicants

SECTION 2.01 Qualifications of Applicants — To avail of the incentives under the Act, as implemented by these Regulations, a Philippine Shipping Enterprise must comply with the accreditation/registration requirements specified under MARINA Memorandum Circular No. 33-A or 51 as an overseas shipping company and with other qualifications as the MARINA may deem necessary.

Regulation III

Modes of Financing Vessel Acquisition

SECTION 3.01 Modes of Financing Vessel Acquisition — A Philippine Shipping Enterprise shall be allowed under this Act to acquire vessels to be financed under any of the following modes:

a. Financing from the Philippine Banking System;

b. Financing from sources other than the Philippine Banking System;

c. Financing from both the Philippine Banking System and other sources; or

d. Other acceptable modes of financing

Regulation IV

Incentives Under the Act

SECTION 4.01 Foreign Exchange Requirements Obtained from the Philippine Banking System — Foreign exchange requirements of Philippine Shipping Enterprises for:

- a. The purchase of vessels for registration under the Philippine flag;
- b. The payment of the costs of repairs, or drydocking, and refitting, reconditioning, repair, replacement of engines, auxiliary motors, generators, electrical machines and other charges for the operation and maintenance of the vessel, incurred in foreign countries;
- c. The importation of spare parts; and
- d. Other expenses required for the operation of the vessel in foreign ports or in the high seas;

when approved by the MARINA, shall be made available by the Philippine Banking System subject to the rules and regulations of the Monetary Authority.

Foreign exchange requirements for the servicing of foreign currency denominated obligation incurred to finance the acquisition of vessels under (a) above shall likewise be made available by the Philippine Banking System, provided that the said obligation has been duly approved by and registered with the Monetary Authority pursuant to existing regulations.

SECTION 4.02 Acquisition of Oceangoing Vessels Financed from Sources Other than the Philippine Banking System — A Philippine Shipping Enterprise may likewise acquire vessels for Philippine Overseas Shipping without securing the foreign exchange requirements therefor from the Philippine Banking System pursuant to Section 5 of this Act and in accordance with CB Circular 1353.

SECTION 4.03 Exemption from Import Duties and Taxes — The following importations by a Philippine Shipping Enterprise, when recommended by the MARINA, shall be exempt from import duties and taxes:

- a. Vessels for registration under the Philippine flag;
- b. Spare parts for the repair or overhaul of vessels, provided that such items are destined to either:

(i)

a Philippine-drydocking or repair facility accredited by the MARINA and registered as a customs-bonded warehouse, which will undertake the necessary repairs and works on the vessel, or

(ii)

the vessel in which the items are to be installed; provided, that if such imported items are found in locations other than the two (2) mentioned in (i) and (ii) above, or in places not authorized by the BOC, the person or entity found in possession of any of these items shall be liable for the full duties and taxes due thereof, and the applicable surcharges and other penalties.

SECTION 4.04 Suppliers' Tax Credit — Local manufacturers or dealers who sell machinery, equipment, materials, and spare parts to a Philippine Shipping Enterprise shall be entitled to a tax credit for the full amount of the import duties and taxes that had been actually paid thereon, subject to the approval of the SecFinance, upon the recommendation of the MARINA.

SECTION 4.05 Exemption from Income Tax — A Philippine Shipping Enterprise shall be exempt from payment of income tax on income derived directly from Philippine Overseas Shipping up to 5 May 2002, Provided, that:

a. The entire net income, after deducting not more than ten percent (10%) thereof for distribution of profits or declaration of dividends, which would otherwise be taxable under the provision of Title II of the National Internal Revenue Code, is actually reinvested in accordance with these Regulations not later than 5 May 2005 for:

(i) the construction, purchase, or acquisition of vessel and related equipment; and/or

(ii) the improvement or modernization of its vessels and related equipment.

b. The cumulative amount so reinvested shall not be distributed as profits or dividends until after 5 May 2012 or until the vessel or related equipment so acquired have been fully paid, whichever date comes earlier.

c. Any amount not so reinvested, or withdrawn prior to the expiration of the period stipulated in paragraphs (a) and (b) hereof, respectively, shall be subject to the payment of the corresponding income tax due thereon, including penalties, surcharges, and interests, as provided for in the National Internal Revenue code.

d. The income derived from Philippine Overseas Shipping entitled to exemption from the payment of income tax hereunder, is limited to income from the transport of goods and/or passengers overseas. It does not include income not directly related to transport of goods and passengers overseas.

e. A Philippine Shipping Enterprise availing itself of this incentive shall submit to the BIR reports and other documents that shall be prescribed in revenue regulations that shall be issued for this purpose.

Regulation V

Applications

SECTION 5.01 Application — All applications for incentives provided in the Act shall be filed in writing with the MARINA.

SECTION 5.02 Requirements for Acquisition and Importation of Vessels — For the acquisition of vessels, the application must be supported by the following:

a. On the Vessel

- General Arrangement and Capacity Plan;
- Latest Class Survey Report;
- Certificate of Class for Hull and Machinery;
- Current Certificate of Registry.

b. On the Applicant:

- Resolution of the Board of Directors, certified by the Board Secretary, authorizing the filing of the application and designating the officials/authorized representatives to represent the Applicant.

c. On the Registered Owners/Seller:

- Duly notarized/authenticated original copy of the Certificate of Good Standing (in English) recently issued by the State of Registry;
- Board Resolution of the registered owner/seller, authorizing the sale of the vessel and designating the officials/authorized representatives to represent the registered owners/seller. The resolution must be notarized in

the State where the document was issued/executed and verified/authenticated by the Philippine Embassy/Consulate concerned;

- Pro-forma Loan Agreement; if any;
- Memorandum of Agreement executed by and between the parties concerned;
- Approval by the Monetary Authority of the lease-purchase agreement/contract where the lease payments will be sourced from the Philippine Banking System;
- Other documents as the MARINA may require.

Upon approval by the MARINA of the acquisition/importation of the vessel, the following documents shall be submitted to the Agency within such period as may be determined by the MARINA.

- Duly notarized Loan Agreement, if any. If executed in a foreign country, the Loan Agreement must be in the English language, and verified/authenticated by the Philippine Embassy/Consulate concerned;
- Notarized Deed of Sale indicating that the vessel is free from any and all encumbrances and liens. If executed in a foreign country, the Deed of Sale must be in English, or a certified translation thereof in the English language and verified/authenticated by the Philippine Embassy/Consulate concerned;
- Original copy of the Certificate of Deletion of original registry issued by the State of original registry;
- A certified true copy of the vessel's Certificate of Ownership and Certificate of Philippine Registry;
- Protocol of Delivery and Acceptance, as verified/authenticated by the Philippine Embassy/Consulate concerned;
- Colored photographs (different angles) of the vessel showing the place of registry in the astern portion;
- Sworn statement of crew salaries and wages indicating therein the names of all crew members, their respective positions and corresponding salaries/wages;
- SOLAS Certificate issued by the Philippine Coast Guard (PCG) or a Classification Society authorized by the PCG;
- Radio Telephony/Telegraphy Certificate issued by the NTC or a Classification Society authorized by the NTC;
- Other documents as may be required by the MARINA.

SECTION 5.03 Requirements for Construction of Vessels — For the construction of vessels, the Application shall be supported by the following:

a. On the Vessel The following are required for submission in lieu of the documents required to be submitted under Section 5.02, (a):

- Notarized Shipbuilding Contract (if executed in a foreign country, the contract must be in the English language, or a certified translation thereof in the English language, and verified/authenticated by the Philippine Embassy/Consulate concerned);
- If the vessel is to be constructed in the Philippines, a breakdown of the Bill of Materials indicating therein the items to be imported by the applicant and the imported items to be supplied by local suppliers and for which Suppliers Tax Credit will be claimed;
- The proposed General Arrangement and Capacity Plans, as approved by an internationally recognized Classification Society;

- Proposed vessel's specifications;
- Copies of quotations from at least three (3) foreign shipbuilders if the vessel is for construction abroad, and three (3) copies of quotations from at least three (3) local shipbuilders if the vessel is to be constructed in the Philippines;
- Other documents the MARINA may so require.

b. On the Applicant Same as Section 5.02, b.

c. In the case of a Philippine contractor, the company must be duly accredited by the MARINA within the purview of Presidential Decree No. 666 and its implementing rules and regulations, and registered as a customs-bonded warehouse.

Upon approval by the MARINA of the Application, the following documents shall be submitted to the Agency within such period as may be required by the MARINA:

- Duly notarized Loan Agreement, if any. If executed in a foreign country, the Loan Agreement must be in the English language, and verified/authenticated by the Philippine Embassy/Consulate concerned;
- Certification from an internationally recognized Classification Society stating that the vessel shall be constructed in accordance with its Rules and Regulations;
- New building Certificate issued by the Shipbuilder;
- SOLAS Certificates issued by the PCG;
- Radio Telephony/Telegraphy Certificates issued by the NTC;
- Copies of the vessel's Certificate of Ownership and Permanent Certificate of Philippine Registry, as certified to be true copies of the originals by the PCG;
- Colored photographs (different angles) of the vessel showing the place of registry in the astern portion;
- Sworn Statement of crew salaries and wages indicating therein the names of all crew members, their respective positions and corresponding salaries/wages;
- Results of the Inclining Experiment and Stability Certificate issued by the PCG and/or by an Internationally recognized Classification Society;
- Loadline and Pollution Prevention Certificates issued by the PCG or an internationally recognized Classification Society;
- Certificate of Vessel's Class for Hull and Machinery;
- Other documents as may be required by the MARINA.

SECTION 5.04 Requirements for the Importation of Spare Parts —

a. Pro-forma Invoice

b. Other documents as may be required by the MARINA.

SECTION 5.05 Requirements for Exemption from Income Tax — For exemption from the payment of income tax, the application in lieu of the documents required to be submitted under Sec. 5.02(a.) — On the Vessel Concerned shall be supported by the following:

- a. A favorable indorsement from the MARINA recommending that the Philippine Shipping Enterprise be entitled to income tax exemption, and issued a Certificate of Income-Tax Exemption;
- b. The documents required to be submitted in Section 5.02, (b) of these Regulations — On the applicant.
- c. Other documents that may be required by the MARINA and the BIR to be prescribed in revenue regulations to be issued for this purpose.

Regulation VI Implementation

SECTION 6.01 Disapproved Applications — Applications disapproved by the MARINA shall be returned to the applicant stating the grounds for the disapproval.

SECTION 6.02 Application Favorably Acted Upon — Applications favorably acted upon by the MARINA shall be implemented as follows:

- a. For Foreign Exchange Requirements Sourced from the Philippine Banking System for Purchase of Oceangoing Vessels and Transactions as Provided in Section 4 of the Act and Section 4.01 of these Rules — The same shall be favorably recommended by the MARINA to the Authorized Agent Banks (AABs) or to the Monetary Authority through its Management of External Debt Department (MEDD);
- b. For Acquisition of Oceangoing Vessels and Transactions as provided in Section 5 of the Act and Section 4.02 of these Rules — The same shall be immediately implemented by MARINA, subject to the conditions in Section 5 of the Act;
- c. For Exemption from Import Duties and Taxes — shall be favorably recommended to the BOC through the DOF;
- d. For Suppliers' Tax Credit — shall be favorably recommended to the SecFinance, through the One-Stop-Shop Inter-Agency Tax Credit and Duty Drawback Center created under Administrative Order No. 266;
- e. For Income Tax Exemption — shall be favorably recommended to the BIR for the issuance of a "Certificate of Income Tax Exemption" under R.A. No. 7471.

Regulation VII Registration and Deletion of Vessels

SECTION 7.01 Registration of Vessels — All vessels owned or operated by a Philippine Shipping Enterprises and availing of the incentives under the Act and these Regulations, shall be registered under the Philippine Flag. Said vessels can only be deleted from the Philippine Registry after the MARINA has determined that:

- a. No other Philippine Shipping Enterprise is interested in acquiring the vessel; or
- b. The vessel has to be scrapped.

SECTION 7.02 Deletion of Vessels — Applications for the deletion of Vessels from the Philippine Registry shall be filed with the MARINA and supported by the following documents:

- a. Approval by the MARINA of the importation, acquisition, construction, or operation of the vessel;
- b. Resolution of the Applicant's Board of Directors, certified by the Board Secretary, approving the filing of the Application and stating the reasons therefor.
- c. Proof that the vessel has been offered for sale to Philippine Shipping Enterprises through the shipping associations for at least sixty (60) days;

- d. Firm offer to purchase the vessel at scrap value, if any;
- e. Other documents as may be required by the MARINA.

Regulation VIII Appeals

SECTION 8.01 Administrative Appeals — An appeal from any decision of the MARINA hereunder may be taken to the Secretary of Transportation and Communications within thirty (30) days from receipt of the decision appealed from.

Regulation IX Requisition of Vessels

SECTION 9.01 Requisition of Vessels — The President of the Philippines may, in times of war and other national emergency, requisition, absolutely or temporarily, for any naval or military purpose, any and all vessels of Philippine Registry. The Government shall pay the owner or operator of the vessel, based on normal conditions at the time of requisition:

- a. The fair market value, if the vessel is taken absolutely; or
- b. The fair charter value, if the vessel is taken temporarily, for the period commencing from the takeover by the Government to the date the vessel is returned to its owner or operator.

SECTION 9.02 Arbitration Committee — In case of disagreement, such fair market value or fair charter value shall be determined by an Arbitration Committee composed of:

- a. One (1) member to be appointed by the MARINA;
- b. One (1) member to be appointed by the owner or operator of the Vessel; and
- c. One (1) member, who shall preside over the deliberations of the Committee, as Chairman, to be appointed by the two (2) members so appointed.

SECTION 9.03 Decision — The decision of the Arbitration Committee shall be final and binding on both parties;

SECTION 9.04 Expenses — The expenses for the arbitration proceedings shall be paid by the losing party.

Regulation X Interpretation

SECTION 10.01 In the implementation of the Act and these regulations, such interpretation shall be adopted as will give full force and effect to the Declaration of Policy as enunciated in Section 2 of the Act and Regulation I of these Regulations.

Regulation XI Penal Provisions

SECTION 11.01 Penalties — Violations of the provisions of the Act and these Regulations shall be punished by a fine of not more than Ten Thousand (P10,000.00) Pesos, or imprisonment of not more than five (5) years, or both such fine and imprisonment at the discretion of the Court.

SECTION 11.02 Violations by an Association or Corporation — If the violation is committed by an association or corporation, the penalties prescribed shall be imposed on the President, the Chief Executive Officer, the Treasurer, and such other officials and employees responsible for the violation.

SECTION 11.03 Violations by a Government Official or Employee — If the violation is committed by a government official or employee, he shall, in addition to the penalties prescribed, be immediately dismissed from the government service and suffer all the administrative penalties accessory thereto, without need of further administrative proceedings.

Regulation XII

Annual Report

SECTION 12.01 Annual Report — The MARINA, in coordination with the Monetary Authority and the Department of Finance, shall submit an annual report to the President of the Philippines and the Congress of the Philippines on the implementation of the Act which report shall include:

- a. The amount of foreign exchange earned, acquired and spent by Philippine Shipping Enterprises;
- b. The amount of income tax and import duties and taxes for which exemptions have been granted;
- c. The additional oceangoing vessels constructed, purchased or acquired, the improvements made thereon, and the additional related equipment procured;
- d. Such other information as the MARINA may deem necessary or the President of the Philippines may require.

SECTION 12.02 Preparation of the Annual Report - The Annual Report shall be prepared by the MARINA in coordination with DOF and the Monetary Authority. The approved Annual Report shall be prepared in sufficient copies and signed by the Administrator.

SECTION 12.03 Distribution —

- a. The original Annual Report shall be submitted to the Office of the President;
- b. Copies of the Annual Report shall be submitted to the Office of the Senate President and the Office of the Speaker of the House;
- c. Copies of the Annual Report shall likewise be submitted to the Governor, the SecFinance, the Filipino Shipowners' Association, the Office of the Secretary of Transportation and Communications, the BOC, the BIR, the Commission on Audit, and the Philippine Coast Guard;
- d. Copies shall also be furnished to any other interested government or private agency upon request and payment of such fees as the MARINA shall determine.

Regulation XIII

Repealing Clause

SECTION 13.01 All rules and regulations, or parts thereof, inconsistent with the provisions of the Act and these Rules, are hereby repealed, amended, or modified accordingly.

Regulation XIV

Separability Clause

SECTION 14.01 Should any provision of the Regulations, or any part thereof, be declared by competent authority to be unconstitutional or invalid, the remaining provisions, or parts thereof, shall remain in full force and effect and continue to be valid and binding.

Regulation XV

Effectivity

SECTION 15.01 These Regulations shall take effect fifteen (15) days after its publication in a newspaper of general circulation in the Philippines.

Adopted: 17 Nov. 1992

(SGD.) RAMON R. DEL ROSARIO, JR.

Secretary

Department of Finance

(SGD.) JOSE L. CUISIA

Governor

Central Bank of the Philippines

(SGD.) PHILIP S. TUAZON

Administrator

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