

REVISED GUIDELINES ON THE TRANSFER OF THE MANAGEMENT OF PPA PORTS TO LOCAL GOVERNMENT UNITS (LGUS) AND GOVERNMENT CORPORATIONS (GCS)

PPA ADMINISTRATIVE ORDER NO. 05-2007, November 09, 2007

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I. AUTHORITY

- a. Presidential Decree No. 857, as amended.
- b. OGCC Opinion No. 010, Series of 1996 and Opinion No. 210, Series of 1997.
- c. BoardCom Resolution No. 2007-1094 as confirmed by Board Resolution No. 2109 both dated 31 July 2007.

2. POLICY STATEMENT

The Philippine Ports Authority (PPA) is mandated to manage, operate, maintain and develop ports under its territorial or administrative jurisdiction. In special or exceptional cases, the management and operation of ports under PPA's administrative jurisdiction may be transferred temporarily to the LGU where it is located or to GC created by said LGU, subject to the provisions herein provided.

3. SCOPE

This Order covers those ports under the administrative jurisdiction of the PPA, which generally cater only to domestic vessels and cargoes and not categorized by PPA as vital or priority ports or among the ports programmed for development into international standards to make them globally competitive.

4. PURPOSE

- a. To clarify and update the guidelines and strengthen the implementation of the Memorandum of Agreement (MOA) between the PPA and the LGU or GC concerned.
- b. To prescribe the revised administrative procedures in the temporary transfer to the qualified LGU or GC the management, operation, maintenance and development of ports as may be allowed by the PPA.
- c. To allow LGU participation as herein defined, without abandoning PPA's statutory responsibility over ports in providing vital transport network linkages and services.
- d. To harmonize LGU empowerment pursuant to Republic Act No. 7160, vis-a-vis the statutory jurisdiction of the PPA over government ports pursuant to Presidential Decree No. 857, as amended.

5. DEFINITION OF TERMS

For purposes of this Order, the following terms shall mean or be understood to mean as follows:

- a. GC refers to government-owned or controlled corporation or unit organized/created by the LGU concerned

tasked by its charter to implement a program for the economic development of a specific territory and its operation of a port facility is directly or indirectly necessary, incidental or conducive to the attainment of its corporate goals and objectives.

b. Government Ports refer to public ports constructed, owned and maintained by the national government and under the administrative jurisdiction of the PPA.

c. LGU refers to the Municipal or City Government Unit as defined in the Local Government Code of the Philippines of 1991.

d. Supervision Fee refers to the amount paid by the LGU or GC to PPA, which is equivalent to ten (10%) percent of its collection from all domestic Wharfage, Storage and Usage Fees.

e. MOA refers to the Memorandum of Agreement entered into by and between PPA and the LGU or GC concerned. A copy of the proforma MOA is hereto attached as Annex "A[*]".

f. Port Charges or Dues refer to Usage Fees, Wharfage Dues and Storage Fees assessed against vessels and cargoes engaged in the domestic trade.

g. PPA Port System refers to those ports over which the PPA exercises jurisdiction and authority and accept responsibility for all functional areas of development to include planning and design, financing/loan servicing, rehabilitation/new construction/repair/ maintenance dredging, port administration/management/operations, regulation, revenue collection and all other activities relevant thereto; which in accordance with the thrusts and priorities of the government is necessary and vital for spurring regional development, providing critical link for the efficient and cheaper transport of cargoes and passengers between islands and for maintaining gateways to other international ports and markets; and where the PPA may likewise appropriate funds and other resources for the conduct of appropriate studies and development of new ports and the repair or maintenance of other existing ports to make these ports effective alternative mode of transport and foster interisland trade and commerce.

h. PPA Takeover refers to the resumption by PPA of the management, operation, maintenance and development of a port from an LGU or GC for cause in order to protect and promote public interest.

6. GENERAL GUIDELINES

a. When both the LGU and a GC signify to PPA the intention to operate and manage a port, preference shall be given to the LGU where the port is situated. A GC may be considered for the award of the management, operation, maintenance, and development of the port when endorsed by the LGU through appropriate resolution of the Sangguniang Bayan/Sangguniang Panlungsod.

b. The PPA may act on any application from the LGU or GC for the transfer of the management, operations, maintenance and development of a port provided that the application is complete with all the documentary requirements thereof and approved and supported by a Sangguniang Resolution for such purpose.

c. Ports qualified to be operated and managed by the LGU or GC may be the subject of a MOA between the PPA and the LGU or GC concerned. The contents of the MOA shall be in accordance with these guidelines.

d. The authority of the LGU or GC to manage, operate, maintain and develop a government port, including the rendition of cargo handling and port-related services, shall be for a term of three (3) years.

e. Cargo handling and other port related services contracted out to third parties by the LGU or GC shall have a term not to exceed the stipulated period of the MOA between PPA and the LGU or GC. Provided, that the LGU or GC shall secure the prior approval of PPA, in any and all cases that cargo handling and other related services are

contracted out to a third party. The contract between the LGU or GC and its subcontractor shall be in such form and terms in accordance with the applicable PPA rules and regulations on the matter.

f. The development, repair and maintenance of ports managed and operated by LGU or GC pursuant to this Order shall be the sole and primary responsibility of said LGU or GC.

g. All development plans for the port by the LGU or GC shall have prior approval of PPA and shall conform to the overall master plan for all ports nationwide.

h. Unless already covered by law or presidential issuances, these ports shall be properly delineated giving the exact location of the port zone through an approved resolution of the Sangguniang Bayan or Sangguniang Panlungsod concerned.

7. PORT ELIGIBLE FOR TRANSFER TO LGU OR GC

The following ports may be managed, operated, maintained and developed by LGU or GC:

- a. Those that cater only to domestic vessels and cargoes with an annual cargo throughout of not more than 50,000 metric tons over a 3-year period and not categorized by PPA as vital or priority ports or among the ports programmed for development into international standards; or
- b. Those within the municipality and jurisdiction of the LGU.

8. OPERATIONAL REQUIREMENTS FOR THE TRANSFER OF PORT TO LGU OR GC

- a. The LGU or GC should maintain the standard minimum capitalization from Php250,000.00 to Php 500,000.00 and a working capital from Php50,000.00 to Php100,000.00.
- b. The LGU or GC shall have all the cargo handling equipment , tools, gears, and personnel necessary in the operation of the port.
- c. The management and supervisory officers of the LGU or GC should have at least three (3) years relevant technical and management experience in cargo handling business and/or port operations. The LGU or GC should maintain well-trained and skilled workers of every category in port operations.
- d. The organizational structure of the LGU of GC shall have a Port Operation Section to exclusively handle the port operations activities to ensure efficient services in the port.

9. POWERS, FUNCTIONS AND OBLIGATIONS OF LGU OR GC

Powers, duties, functions, obligations and responsibilities of LGU or GC so authorized to manage, operate, maintain and develop a port under these guidelines are:

- a. The LGU or GC may operate cargo handling and other related services within the port, or undertake any port-related economic activity therein.
- b. The LGU or GC shall be allowed to collect domestic port charges, cargo-handling fees and other dues prescribed by the PPA for the use of the port and for services rendered thereat. All revenues of the port shall accrue to the LGU or GC, and shall issue the corresponding receipt for their collection.
- c. The LGU or GC shall pay PPA a quarterly Supervision Fee equivalent to 10% of the total revenue from domestic port charges (whether collected or not). The remaining 90% of said port charges collection shall be considered as income of the LGU or GC.

The Supervision Fee shall be delivered to PPA on or before the 10th day after the end of every quarter to the supervising PMO concerned or thru its authorized depository bank.

d. The LGU or GC shall post the required Performance Security secured from the Government Service Insurance System (GSIS) or any reputable surety or insurance company in the amount of ONE HUNDRED THOUSAND (Php100,000.00) PESOS in favor of PPA to guarantee payment of the PPA quarterly Supervision Fee.

10. CANCELLATION OR TERMINATION OF MOA

The PPA may, without prejudice to other remedies against the LGU or GC, extra-judicially suspend, cancel or terminate the MOA on any of the following grounds:

- a. Failure of the LGU or GC to account and/or remit to the PPA the Supervision Fee due in accordance with Sec. 9(c) hereof.
- b. Failure of the LGU or GC to undertake the development, repairs and/or maintenance of the ports, structures and facilities covered by the MOA.
- c. Change of control arising from the sale, assignment, transfer or other disposition of the interests of the LGU or GC in the MOA, without prior approval from PPA.
- d. If the LGU or GC through any of its officials or employees, by taking advantage of their free access to the port premises and vessels calling at the port, engage in or knowingly fails to take action to prevent the commission of smuggling and other illegal activities.
- e. Refusal of the LGU or GC to make available to the PPA or the Commission on Audit (COA), its books of accounts and records pertaining to the management, operations, maintenance and development of the subject port.
- f. Imposition and/or collection of fees, dues or charges other than those allowed or authorized by PPA in the subject port.
- g. Violation of the DILG Memorandum Circular No. 2006-70, dated 26 June 2006, requiring that the LGUs shall refrain from enforcing any existing or future ordinance authorizing the levy of fees and taxes on inter-province transport of goods, regulatory fees from passengers in local ports, and other additional taxes, fees or charges in any form upon transporting goods and passengers.
- h. Violation or non-performance of other terms and conditions of the MOA and this Order.
- i. Any violation that may be directly or indirectly imputable to or committed by third parties to whom the LGU or government corporation may have contracted out the MOA.

11. TAKEOVER OF MANAGEMENT AND OPERATIONS OF PORTS FROM LGU OR GC

The PPA shall take over the management and operation of the port from the LGU or GC if the former deems it necessary to protect public interest. The PPA takeover shall be warranted under the following instances:

- a. In case of emergency such as strike, lockout, stoppage of work and other causes of similar nature, which will continue without let-up for over a period of one (1) week.
- b. In case of violation of any of the terms and conditions of the MOA or PPA rules and regulations.
- c. In case of cancellation, suspension or termination of the MOA.
- d. When so directed by a court of law.

e. In other cases or violations where the PPA deems that the takeover is warranted in order to protect and/or promote public interest.

12. PROCEDURES FOR THE TURNOVER OF PORTS

a. Interested LGU or GC shall coordinate with the Port Management Office (PMO) concerned, study pertinent PPA regulations, gather all information and data about the port or terminal the LGU or GC is interested in and submit its request or letter of intent.

b. The PMO concerned shall submit its recommendation thru the Port District Office (PDO) with the following documentary requirements:

(1) Letter-request from interested LGU for the transfer of the management, operations, maintenance and development of the port within its jurisdiction.

(2) Approved port delineation or a Sangguniang Bayan Resolution of the description of the exact location of the port zone taking into account the longitude and latitude coverage of the port.

(3) PMO report which includes justification and certification that subject port may be transferred to the LGU or GC as defined in this Order.

(4) PMO and PDO recommendation on the transfer of the port to the LGU.

c. The District Manager concerned shall indorse the same to Head Office (Attn: AGM for Operations), together with justifications.

d. Upon approval in principle by the General Manager, a directive will be sent to the District Manager concerned to convene a Transition Committee (TC) constituted by the Port Manager thru a PDO Special Order composed as follows:

Chairperson:

Port Manager of PMO concerned (where the port to be transferred is located)

Vice-Chairperson:

Mayor of the LGU or President/General Manager of the GC or Authorized Representative

Members:

Manager, Port Services Division

Manager, Engineering Services Division

Manager, Resource and Management Division

A Technical Working Group (TWG) shall be formed by the Port Manager concerned to assist the TC.

The functions of the TC shall be as follows:

(1) Ensure compilation of data on the port.

(2) Assist the LGU or GC to organize and train the staff to be involved in the operation of the port in accordance with these guidelines.

(3) Conduct assessment as to the readiness of the LGU or GC to operate and administer the port within 3 to 6 months after it was formed.

(4) Submit evaluation report to the General Manager thru the District Manager and the AGM for operations

with the following:

- (a) TC certification that trainings were conducted for the LGU staff to be deployed in the port and the LGUs readiness to operate and manage the port;
 - (b) Organizational set-up, operational systems and procedures of the LGU;
 - (c) TC endorsement to the General Manager for the turn over of the port to the LGU or GC; and
 - (d) Draft MOA between the LGU or GC and the PPA in accordance with the MOA format attached to this Order as Annex "A".
- e. Upon satisfactory assessment by the PDO concerned, the District Manager shall indorse the turnover, and forward the TC and PDO evaluation reports to Head Office (Attn: AGM for Operations).
- f. The Office of the AGM for Operations, upon final review of requirements, may recommend approval of the MOA by the General Manager. If the proposed MOA does not comply with pro-forma conditions prescribed in Annex "A" or deviates from the provisions of this Order, such MOA or recommendation must be indorsed to the Board for consideration.
- g. An appropriate ceremony for the turn-over may be scheduled by the General Manager for this purpose after the approval of the MOA.

13. PORT TARIFF

- a. Only PPA-prescribed tariff shall be charged in ports transferred to the LGU or GC.
- b. The authority to impose, fix, prescribe, increase or decrease port charges for the use of port facilities and provision of services rendered in the port transferred to the LGU or GC shall continue to remain with the PPA.
- c. The LGU or GC shall comply with DILG Memorandum Circular No. 2006-70 disallowing the LGU or GC from imposing fees, charges and taxes on the inter-province transport of goods and passengers.
- d. Where there is no existing PPA restructured cargo handling tariff for the port, the Authority shall prescribe said tariff before the transfer to and actual management and operation of the port by the LGU or GC.

14. USE OF LETTER STATIONERY AND STANDARD SIGN BOARD

Corollary with the authority to operate and manage the port covered by a corresponding MOA, the LGU or GC shall use standard letter stationery as prescribed in Annex "B"[*] for all transactions relating to the management, operations, maintenance and development of the transferred port by the LGU or GC. Similarly, the LGU shall prepare and post a sign board at the gate of the port/terminal office of the transferred port, following the standard design, size of the sign board, size of letterings, and use of the LGU or GC seal, as prescribed in Annex "C*" hereof. The foregoing requirement shall be immediately complied with upon the turnover.

15. COMPLIANCE WITH REGULATIONS

During the term of the MOA, the LGU or GC shall strictly comply with all applicable laws, policies, guidelines and regulations, which are now or may hereafter be promulgated by the government and the PPA.

16. AUDIT OF PORTS TRANSFERRED TO LGU OR GC

- a. The PPA shall exercise its visitatorial powers over LGU or GC and conduct periodic performance audit on the administration and operations of ports transferred to them. For this purpose, pertinent provisions of the PPA Performance Standards and Rating System (PSRS) and its subsequent amendments shall be adopted for such performance audit.
- b. The LGU or GC shall make available at all times during office hours, for inspection, examination and audit by the PPA or the COA all books of accounts and records pertaining to the management, operation, maintenance and development of the port. The authority to inspect, examine and audit shall be exercised by the officials concerned pursuant to and within the limits of the duties and functions vested upon their respective offices by express provision of law.

17. ORGANIZATION OF MANPOWER REQUIREMENT

- a. The LGU or GC, through the Sangguniang Bayan or Sangguniang Panglungsod, shall be responsible for the organization of its manpower requirement.
- b. As a precondition to the actual takeover of a port by the LGU or GC, all concerned personnel tasked to manage and operate the port shall undertake appropriate training with the PPA. The cost of such training shall be borne by the LGU or GC.
- c. The organization for the port shall include those positions indicated in Annex “D”* hereof to ensure that the basic functions of port operations, port engineering and maintenance and billing and collections of port charges are carried out efficiently. All port workers hired by the LGU or GC shall not be considered employees of PPA.

18. RENEWAL OF AGREEMENT

The MOA entered into between PPA and the LGU or GC may be renewed subject to a “Very Satisfactory” rating resulting from the performance review, evaluation and approval by the General Manager or the PPA Board, if the General Manager so requires when conditions deviate from the provisions of this Order.

19. SETTLEMENT OF DISPUTES

The parties to the MOA hereby agree to submit all disputes and disagreements resulting from the implementation or interpretation of the MOA to an arbitration, as provided for under Republic Act No. 9285 otherwise known as the “Alternative Dispute Resolution Act of 2004”, before the Department of Justice.

20. VENUE OF ARBITRATION

The venue of arbitration shall be in Metro Manila.

21. RESERVATION CLAUSE

The PPA reserves the right to cancel any existing MOA and require the immediate return of the port transferred to the LGU or GC, when thrusts, programs and priorities of the national government necessitates the return of such port or the existence of any grounds mentioned in Section 10 of this Order.

22. SEPARABILITY CLAUSE

If any provision of this Order or the application of such provision to any person or circumstances is declared invalid, the other provisions hereof or the application of such provisions shall not be affected by such declaration.

23. REPEALING CLAUSE

PPA Administrative Order No. 02-98 dated 05 August 1998, PPA Memorandum Circular No. 13-99 dated 08 March 1999, PPA Memorandum Circular No. 40-99 dated 17 September 1999 and PPA unnumbered Memorandum dated 09 February 2000 re: Coordination with Concerned Government Officials; are hereby revoked and substituted by this Order. Likewise, all other PPA policies, rules and regulations or parts thereof inconsistent herewith, are deemed repealed or modified accordingly.

24. EFFECTIVITY

This Order shall take effect after fifteen (15) days following the completion of its publication in a newspaper of general circulation.

Adopted: 09 Nov. 2007

(SGD). ATTY. OSCAR M. SEVILLA
General Manager

[*] Text Available at Office of the National Administrative Register, U.P. Law Complex, Diliman, Quezon City.

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