

MIA RULES AND REGULATIONS TO IMPLEMENT PRESIDENTIAL DECREE NO. 760/886/1711

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Pursuant to Section 3 of Presidential Decree No. 760, as Amended by Presidential Decrees Nos. 866 and 1711, the following Rules and Regulations, Procedures and Guidelines are hereby Promulgated for the Bareboat Charter of Overseas Vessels for Temporary Philippine Registry

RULE I

Definition of Terms

SECTION 1. For purposes of these Rules and Regulations

MARINA refers to the Maritime Industry Authority.

Philippine national shall mean a citizen of the Philippines or a partnership or association wholly owned by and composed of citizens of the Philippines or of which at least sixty percent (60%) of the capital stock outstanding and entitled to vote is owned and held by Philippine citizens or a trustee of funds for pensions or other employee retirement or separation benefits, where the trustee is a Philippine national and at least sixty percent (60%) of the funds will accrue to the benefit of the Philippine national: Provided, That where a corporation and its non-Filipino stockholders own stock in an enterprise, at least sixty percent (60%) of the members of the governing board of both corporations must be Philippine nationals.

(c) Bareboat charter means a contract for the lease of a ship for a stipulated period of time, by virtue of which the lessee has complete possession and control of the ship, including the right to appoint the master and crew of the ship, for the duration of the lease.

(d) Lease-irrevocable-purchase refers to a ship financing scheme as approved by the Central Bank.

(e) Temporary Certificate of Philippine Registry shall mean the certificate issued to a foreign vessel under charter or lease to a Philippine national entitling the vessel so registered to all rights and privileges of a vessel of Philippine registry as well as the protection of Philippine law for so long as the same is valid and subsisting.

(f) Operation of the vessel shall mean those activities relating to the control, management and actual operation of the vessel as distinguished from the exercise by the foreign owner of his rights or ownership over the same.

(g) Crew shall mean the officers and crew members of the vessel.

(h) Supernumerary shall mean a person who is not a crew member whose presence on Board the vessel is merely tolerated and who has no power to interfere with the operation and management of the vessel.

(i) Owned-vessel refers to a Philippine-registered vessel acquired by Philippine nationals either through direct purchase or through a lease-irrevocable-purchase scheme wherein at least 50% of the price has been paid.

RULE II

General Provisions

SECTION 1. MARINA Approval off Charter Lease. — Any provision of law, decree, executive order, or rules and regulations to the contrary notwithstanding, any foreign-owned vessel under bareboat charter or lease to a Philippine national may be issued a Temporary Certificate of Philippine Registry upon prior approval by MARINA.

RULE III

Application for Authority to Charter

SECTION 1. Who may Apply. — Only Philippine nationals duly accredited by MARINA in accordance with Memorandum Circular No. __ dated __ may apply for authority to charter with MARINA.

SECTION 2. Supporting Documents . — The following documents shall be submitted to MARINA in support of the application:

- (a) Particulars of the vessel/s
- (b) Owner of the vessel/s and nationality
- (c) Registry of the vessel/s
- (d) Bareboat charter or lease-purchase agreement (pro-forma)
- (e) Bareboat hire
- (f) Nature of employment
 - f.1. Type of charter arrangement —
 - a. Voyage/trip charter (copy)
 - b. Time charter (copy)
 - c. Others (copy)
- (g) Time charter (pro-forma), if any
- (h) Time/charter hire
- (i) Time charterer's profile/background
- (j) Audited financial statement of proponent-company for the last three (3) years (certified true copy)
- (k) Financial viability
 - k.1 Projected profit and loss statement
 - k.2. Cashflow statement
 - k.3. Basic assumptions used in k.1 and k.2.
- (l) BIR receipts as proof of payment of the 4½% withholding tax broken down by vessel presently chartered by the company. Original receipt/s shall be verified against the xerox copies by MARINA.
- (m) General Arrangement and Capacity Plan of the vessel/s
- (n) Survey reports, Classification/SOLAS Certificates issued by a recognized classification society

(o) Authenticated copies of permanent residence and/or working visa of the expatriate personnel/officials of the company (Duplicate original/Certificate true copy)

(p) Duly authenticated resolutions of the company Board of Directors authorizing the company, through its duly designated responsible officer, to file the request or application with MARINA, and to bareboat charter specific vessel/s

(q) Oath of undertaking that the charterer shall be liable to pay MARINA, as penalty, the amount equivalent to the balance of the withholding taxes due for the whole year if the charter party is terminated within one (1) year from date of delivery of the vessel.

(r) Other documents as maybe deemed relevant by MARINA.

SECTION 3. Filing Fee . — The applicant shall pay a filing fee of P10 ,000 per vessel for the first three (3) years and an additional P2,000 for every year in excess thereof.

RULE IV

Limitations/Restrictions on Charter or Lease

SECTION 1. Number of Vessels — The applicant may bareboat charter as many vessels as follows:

- a) if a non- shipowning company, a maximum of five (5) vessels;
- b) if a shipowning company, a maximum of seven (7) vessels for every owned — vessel.

SECTION 2. Period of Charter . — The allowable period of charter shall be as follows:

- a) for non- shipowning companies, a maximum of five (5) years;
- b) for shipowning companies, no limit provided it will not go beyond the year 1999.

SECTION 3. Age of Vessel . — The vessel to be chartered shall not be more than fifteen (15) years old, except in special cases as may be determined by MARINA.

SECTION 4. Name of Vessel . — The name of the vessel to be chartered shall be subject to MARINA approval.

SECTION 5. Class of Vessel. — The vessel must be classed by an internationally recognized classification society which shall be maintained throughout the duration of the charter party.

SECTION 6. Charter Provision . — The bareboat charter party must contain a provision that any amendment of the charter party shall not be valid and binding without the prior approval of MARINA.

RULE V

Obligations/Duties of the Bareboat Charterer

SECTION 1. Submission of Documents . — The following documents shall be submitted to MARINA by the bareboat charterer within such period as herein below provided:

- (a) Vessel's SOLAS certificates issued by a recognized classification society to the effect that the vessel s class is maintained, not later than sixty (60) days from date of delivery of vessel;
- (b) Colored photographs (different angles) of vessel showing the place of registry in the astern portion, not later than sixty (60) days from date of delivery of vessel;

- (c) Original copy of duly authenticated notarized lease-financing agreement, if applicable, not later than sixty (60) days after MARINA approval;
- (d) Original copy of duly authenticated/notarized bareboat and time charter parties not later than thirty (30) days from date of delivery of vessel and in no case beyond sixty (60) days from MARINA approval of charter;
- (e) Certified true copies of the Certificate of Philippine Registry and Protocol of Delivery and Acceptance, not later than sixty (60) days after MARINA approval of charter;
- (f) Copies of vessel's trading certificates under Philippine flag, not later than sixty (60) days from date of delivery of vessel;
- (g) Oath of undertaking binding the stockholders to be fully liable, jointly and severally, with the charterer, for the repatriation of vessel's crew, the payment of wages and of taxes due the Philippine government.

SECTION 2. Removal of Old Certificates, Display of Flag and Use of Call Sign. — The bareboat charterer shall, after Philippine registration of the vessel and after accepting delivery thereof, remove from the vessel all documents and/or certificates issued to the vessel by the original flag of registry and the vessel shall immediately and at all times during the charter period utilize the Philippine flag and call sign duly Issued and authorized.

SECTION 3. Manning by Filipino Crew . — The bareboat charterer shall completely man the vessel with Filipino officers and crew and no foreign officer shall be allowed on board, except as supernumerary.

SECTION 4. Freedom from Foreign Owners Interference . — The operation of the vessel shall be entirely in the hands of a Philippine bareboat charterer and shall be free from participation or interference by the foreign owner, except insofar as such acts shall be to directly protect his rights as owner thereof.

SECTION 5. Payment of Withholding Tax . — The bareboat charterer shall be responsible for the payment of the 4.5% withholding tax on gross bareboat charter hire.

SECTION 6. Submission of Oath of Undertaking . — The bareboat charterer shall submit to MARINA not later than thirty (30) days from approval of the charter an oath of undertaking, in such form as maybe prescribed, duly signed by its authorized representative to the effect that the bareboat charterer binds itself to comply with the foregoing provisions of Nos. 2, 3, 4 and 5 of this Rules failure in which shall warrant the imposition of the appropriate sanction hereinafter provided.

SECTION 7. Compliance With All Pertinent Laws. — The bareboat charterer shall comply with all laws, rules and regulations pertaining to Philippine flag vessels.

SECTION 8. Duty to Maintain Qualifications for Accreditation . — The bareboat charterer shall maintain all the qualifications for accreditation for the duration of the approved bareboat charter period.

SECTION 9. Other Duties and Obligations . — The bareboat charterer shall also comply with all the terms and conditions that may be imposed by MARINA in approving the application for bareboat charter or lease-purchase agreement.

SECTION 10. Deletion from Philippine Registry . — The bareboat charterer shall not effect the deletion of the chartered vessel from Philippine registry without the prior endorsement and/or approval of MARINA.

RULE VI

Sanctions

SECTION 1. Violation of Sections 1, 6, 7, 8 and 9 of Rule V. — Any violation of the obligations and duties of the bareboat charterer in Sections 1, 6, 7, 8 and 9 of the next preceding Rule shall be subject to the corresponding administrative fines and sanctions, as follows:

- (a) For the first violation by a fine of not more than P10 ,000;
- (b) For the second violation, by a fine of not less than P10 ,000 but not more than P20,000;
- (c) For the third violation, by a fine of not less than P10,000 but not more than P20,000 per month (or fraction thereof) of default and/or by revoking the approval of the bareboat charter and cancelling the Certificate of Philippine Registry, depending on the gravity of the violation;
- (d) For repeated and willful violation, the bareboat charterer shall, in addition to the appropriate fine and other sanctions be barred from bareboat chartering under P.D. 866/1711 in the future and shall be stricken out from the list of MARINA-accredited enterprises.

SECTION 2. Violation of Sections 2, 3, 4, 5 and 10 of Rule V. — Any violation of the obligations and duties of the bareboat charterer in Section 2, 3, 4, 5, and 10 of the next preceding Rule shall be subject to an administrative fine of P200 ,000 and the bareboat charterer shall be barred from bareboat chartering under P.D. 866/1711 for a maximum period of five (5) years.

SECTION 3. Violation of Other Laws . — Violations of other laws, rules and regulations pertaining to Philippine flag vessels shall be subject to the same penalties and fines provided herein.

SECTION 4. Additional Penalty, Consequences . — In addition to the penalties imposed for violations under Sections 1 and 3 above or in cases wherein the company is effectively barred from bareboat chartering and/or accreditation for bareboat chartering, the principal officers responsible for the commission of said violations shall be barred from engaging in bareboat chartering in the future, even if such principal officers were to organize a different and separate company.

SECTION 5. Due process, Hearing . — For purposes of imposing fines, penalties, or forfeitures, the MARINA, through its Legal Office and the Office of Overseas Shipping shall conduct a hearing to enable the shipping company to explain the circumstances of the violation. The said offices shall adopt their own set of procedures provided sufficient notice is given to all parties concerned.

SECTION 6. Decision and Appeal . — The findings and recommendation of the Office concerned shall be forwarded to the Administrator who shall render the decision. Said decision shall become final and executory after the lapse of fifteen (15) days from receipt of decision unless the same is appealed within the said period to the Minister of Transportation and Communications.

All existing MARINA rules and regulations and circulars not inconsistent herewith shall remain in full force and effect.

This Rules and Regulations shall take effect immediately.

Adopted: 29 May 1986

(SGD.) PHILIP S. TUAZON
Administrator

(SGD.) HERNANDO B. PEREZ
Minister of Transportation and Communications

Effective: 29 May 1986

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