

Guidelines for grant of Licence for Contract of Affreightment (COA)

Shipping Development Circular No.1 of 2004

NO: SD-9/CHART(47)/03

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Sub: Guidelines for grant of Licence for Contract of Affreightment (COA)

In the Merchant Shipping Act, 1958 (Part XIV - entitled 'Control of Indian ships and ships engaged in Coasting Trade'), the provisions of Section 406 deal with Indian ships and chartered ships to be licensed and provisions of Section 407 deal with licensing of ships for coasting trade in India. As laid down in these sections, a licence can be granted by the Director-General of Shipping (hereinafter referred to as D.G. Shipping) for taking to sea from a port or place within and outside India of Indian or other ship by a citizen of India or a company or a co-operative society under Section 406. No ship other than an Indian ship or a ship chartered by a citizen of India shall engage in the coasting trade of India except under a licence granted by the D.G. Shipping under Section 407.

Sub-Section (3) of Section 406 and sub-section (2) of Section 407 of the said Act empowers the D.G. Shipping to grant a licence subject to such conditions as may be specified by him. Consolidated guidelines had been issued by the Director-General of Shipping in this regard vide S.D. Circular No. 2 of 2002 dated 08.11.2002.

The D.G. Shipping had issued SD Circular No. 10 of 2003 on 25.08.2003 stipulating guidelines for grant of licence in respect of Contract of Affreightment (COA) proposals. Subsequently, some representations were received from charterers and Indian National Shipowners' Association (INSA) seeking clarifications on the procedure involved in granting licence on COA cases. The issue has been discussed thread bare with the stakeholders to lay down revised procedure in respect of COA. Based on the feedback received from stakeholders and in consultation with the shipping industry and in supersession of SD Circular No. 10 of 2003, the following guidelines for the purpose of granting licence for vessels on COA proposals are laid down under section 406 and 407 of the M.S. Act 1958 referred to above :-

1. The period of licence on COA proposals shall normally be limited to one year. However, in exceptional cases where the charterer can furnish good and sufficient reasons, it may be extended for a further period of 2 years. The maximum permissible period shall be 3 years.

2. The charterer should circulate the enquiry/or invite International Competitive Bidding (ICB) from shipowners including Indian shipowners through INSA and Indian Coastal Conference (ICC), who shall intimate the charterer and the Directorate General of Shipping immediately and latest within three working days, about the availability of Indian flag vessels. Any claim made by the Indian shipowners thereafter shall not be entertained.

3. In case no offer is received from the Indian shipowners of INSA/ICC within 3 stipulated working days, the charterer shall be free to apply to Directorate General of Shipping for licence in favour of foreign flag vessels proposed to be chartered.

4. The Indian shipowners, who participate in the bid, shall be entitled to exercise the right of first refusal subject to the following conditions. Those shipowners who have not participated in the bid shall not have any right to claim the same at a later stage:-

- (i) The Indian flag vessels offered by the Indian shipowners should broadly satisfy all the technical and commercial requirements of the trade;
- (ii) The Indian shipowners shall be eligible to exercise the right of first refusal only if they match the lowest price quoted against foreign flag vessels. In case more than one party matches the lowest rate, the eligible party to participate in the bid shall be decided on the basis of the original rate quoted;

- (iii) The difference in the bid price between the Indian flag vessel exercising the right of first refusal and the lowest rate quoted by the foreign flag vessel shall be limited to 10%. In case the difference is more than 10%, the right of first refusal shall cease to exist;
- (iv) Indian shipowners shall identify and offer their own vessel(s) for the entire performance of the proposed COA. In case the vessel(s) offered by the Indian shipowners is under construction, such offers shall be considered only against an undertaking furnished by Indian shipowners that the vessel(s) shall be converted to Indian flag prior to the commencement of the contract;
- (v) In the absence of adequate number of Indian flag vessels, chartering of foreign flag vessels by Indian shipowners shall be permitted upto 2/3rd (two third) of the total requirement of the quantity of the contract. In case, Indian shipowners do not have 1/3rd (one third) of tonnage required, they will not be entitled to exercise the right of first refusal. The charterer will inform the Directorate General of Shipping, the quantity/volume of tonnage moved by Indian flag vessel versus foreign flag vessel on monthly basis to ensure fulfillment of this condition at the time of completion of the contract.
- (vi) In case the "right of first refusal" is exercised by the Indian shipowner, it shall be mandatory to deploy the same vessel(s) for the entire performance of the COA and Indian shipowner shall not be allowed to offer the same vessel(s) for any other COA. In contingent situations, Indian shipowner will be allowed to substitute the vessel(s) with other Indian flag vessel(s) from his own fleet, but not with any foreign flag vessel;
- (vii) To maintain transparency the charterer shall keep proper documentation to ensure that all records are maintained correctly to demonstrate fulfillment of 10% price difference criteria for right of first refusal.

5. The charterer shall submit the proposal for "in principle approval" after satisfying the above conditions and supported by necessary documents and requisite processing fee for the entire period of COA by Demand Draft drawn in favour of the Director General of Shipping. The initial fee shall be payable for estimated voyages as applicable in case of voyage permission. The charterer should furnish details on the type and number of vessels, nature and quantity of cargo proposed to be carried, loading and discharge ports, period of contract, etc. at the initial stage itself.

6. During the execution of the COA, the charterer shall submit the final proposal to the Directorate as and when the vessel(s) is/are identified supported with the requisite documents. At this stage the charterer shall pay 50% of voyage permission fee.

7. (i) If INSA or any of the Shipping Companies bring to the notice of the D.G. Shipping that a charterer has violated any of the provisions of these Guidelines while chartering foreign-flag vessels, the D.G. Shipping after due verification of the complaint shall take appropriate measures to penalize the charterer concerned as he may consider necessary to prevent recurrence of such events.

(ii) If there is a doubt that technical specifications of the vessel given in the enquiry / or ICB were drawn up with the deliberate intention of avoiding Indian-flag vessels, the matter may be referred to the D. G. Shipping for decision as to whether the Indian vessel with minor difference in specifications should be chartered, and not the foreign flag vessel. As far as practicable, this decision will be taken after discussion with the concerned parties.

(iii) If past payment due on charter of Indian-flag ships is not cleared in time, the D. G. Shipping may decide that no further licence is granted to applicants who are in such arrears.

8. For non-INSA/ICC Members, a copy of the enquiry shall, as has been the prevailing practice, be displayed on the notice board of the Office of the D. G. Shipping.

9. In case of dispute on any of the provisions contained in these guidelines, the decision of the D.G. Shipping shall be final and shall be binding on all the parties concerned.

10. In order to expedite national project-implementation, to increase Indian tonnage, to encourage development - of Indian hub-ports and sea-trade routes, both new or existing - and to tackle an emergency or overcome a crisis, the D. G. Shipping retains the right to take action as deemed fit, overriding any of the guidelines laid down hereinabove.

11. This circular is issued with the approval of the Director General of Shipping and ex officio Additional Secretary to the Government of India and shall come into force from the date of its issue.

Sd/-
(Naresh Salecha)
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