



सत्यमेव जयते

भारत सरकार / GOVERNMENT OF INDIA

पोत परिवहन मंत्रालय / MINISTRY OF SHIPPING

नौवहन महानिदेशालय / DIRECTORATE GENERAL OF SHIPPING

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F. No. SD-9/CHART(82)/97-VI

Dated: 22.03.19

Shipping Development Circular No. 02 of 2019

Sub.: Guidelines for grant of licence to foreign flag vessels.

Background, Legal Provisions and Policy:

Whereas Section 406 of Part XIV of the Merchant Shipping Act, 1958 [Control of Indian ships and ships engaged in Coasting Trade], mandates that Indian ships and other ships chartered by Indian citizen or a company or a society, needs to be licensed by the Director General of Shipping. Such license can be granted subject to such conditions as may be specified by the Director General of Shipping.

2. Whereas section 407 of the same Part of the Act mandates that ships other than Indian ships or ships chartered by Indian entities, intending to engage in coastal trade of India, need to be licensed by the Director General of Shipping. Such license can be granted subject to such conditions as may be specified by the Director General of Shipping.

3. Whereas, in exercise of powers under the above sections of the Act, the Director General of Shipping has by way of Shipping Development Circular No.-2/2002 dated 08.11.2002 [F.No. SD-9/CHRT (82)/97-II], issued guidelines for grant of license to foreign flag vessels.

4. Whereas, under the existing licensing conditions under Section 406 and 407 of Merchant Shipping Act, 1958, the Right of First Refusal (RoFR) is available to Indian flag vessels.

5. Whereas, it is the express policy of the Government of India to encourage and promote manufacture and production of goods in India under 'Make in India', with a view to enhance income and employment. To give effect to this policy, the Department of Industrial Policy and Promotion (DIPP) has issued Public Procurement and 'Make in India' orders dated 15.6.2017 and 28.05.2018.

6. Whereas, Government of India has taken several steps to promote shipbuilding in India especially by providing long term subsidy for ship building under the shipbuilding financial assistance policy (2016-2026).

7. Whereas, Government of India intends to further incentivise shipbuilding by providing additional market access and business support to ships built in India.

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8. Whereas, it is felt that demand for the ships built in India can be promoted if the first priority in chartering of vessels and for engaging in coastal trade, is given to vessels built in India.

9. Whereas, a need has also been felt to review the licensing conditions keeping in view, (i) the Government of India's policy of promoting the Make in India initiative, (ii) the Public Procurement and Make in India orders dated 15.6.2017 and 28.05.2018 issued by DIPP, (iii) the need to give a long term strategic boost to the domestic shipbuilding industry, (iv) the need to encourage the domestic shipping industry to support the domestic shipbuilding industry, and (v) the need to develop self-reliance and a strong synergy among these vital industries for the overall long term development and economic growth of the country.

10. Whereas, the Notification No. 2 of 'Make in India' dated 13.02.19 [F.No. SY-13017/4/2017-SBR], issued by the Ministry of Shipping, Govt. of India, also requires the review of the guidelines on RoFR issued by the Director General of Shipping.

11. Now therefore in exercise of powers conferred under Section 406 and 407 of the Merchant Shipping Act, 1958, the Director General of Shipping, in supercession of previous guidelines relating to chartering and licensing of the vessels, is pleased to issue the following guidelines, for chartering or engagement of foreign flag vessels.

12. Chartering or engagement of foreign flag vessels done through tendering process, for all types of requirements:-

12.1. The charterer or the entity intending to get the vessel engaged or their authorized agents shall apply on the Portal of the Directorate General of Shipping [DGS]. The application for licence, payment of fee, its processing at DGS and grant of license will be completely online.

12.2. The chartering/engagement of vessels through "tender process" as mentioned above shall only be applicable for open/global tenders and chartering/engagement by other means shall be considered as "chartering/engagement through non-tender processes". The "tender process" shall be considered valid within the following definition:

12.2.1. Tenders shall be open or global tender, for which a tender advertisement has been duly published in a national or international news paper or commercial websites or website of the agency/organization/company floating the tender;

12.2.2. Tender contains technical specifications and commercial terms and conditions of the vessel provided in the tender advertisement. If there is a dispute relating to technical specifications of the vessel given in the tender advertisement, the matter may be referred to DGS for decision as to whether the Indian vessel with a slight difference in specifications should be chartered/engaged, and not the foreign flag vessel. As far as practicable, this decision will be taken after discussion with the concerned parties.

12.3. The following procedure may be followed for the filing of applications and getting the licence;

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12.3.1. The entities intending to charter/engage the vessel, as well Indian ship-owners shall get themselves registered on DGS portal. The person getting registration shall be given the login ID & password only if he is authorized by these entities. This registration shall be permanent.

12.3.2. In case an Indian ship is not selected in the tender process, the DGS license shall be required. The entity shall file the details of foreign ship for which DGS license/permission is required, pay fee through Bharat Kosh, fill the transaction number at DGS portal, upload the documents along with work order and submit the application.

12.3.3. The application will be processed at the DGS and license will be issued online. The respective applicant may download the same after logging into the system.

13. Right of First Refusal:

"Right of first refusal" is a right which accrues to a bidder in a tendering process, who offers an Indian built vessel or an Indian flag vessel or an Indian chartered vessel and whose rate though not being the lowest is within 20% of price quoted by the lowest bidder, subject to his matching of the lowest rate offered by a bidder who offers a foreign built vessel. This right is conferred based upon the practices of the industry, and the deliberate intention of the Central Government towards encouragement and development of the Indian ship-building industry and the Indian shipping industry.

13.1. Unless the vessel offered is successful in the evaluation of technical bid, the bidder concerned will not be eligible to exercise the Right of First Refusal under this circular.

13.2. Whenever charter/engagement of vessel is undertaken through a tender process specified in Para 12.2, 12.2.1, 12.2.2, the provisions of these guidelines are required to be incorporated. Whether the guidelines have been incorporated in any tender or not, the said guidelines would be deemed to have been incorporated as a part of the tender documents.

13.3. RoFR would be exercised only in case the vessel being offered for charter by the lowest bidder L1 has been built outside India.

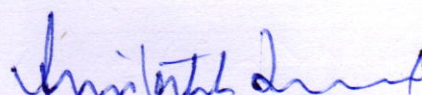
13.4. For any bidder to exercise RoFR, his financial bid should be within the Margin of Purchase Preference, which will be 20% of L1.

13.5. The two instances under which the RoFR may be exercised are:

13.5.1. The L1 bidder is a Foreigner or an entity registered outside India, offering a ship not built in India.

13.5.2. The L1 bidder is a Citizen of India OR company registered in India OR Society registered in India with a vessel registered/flagged in India or outside, offering a ship not built in India.

13.5.3. From amongst the bidders eligible to exercise RoFR, the priority to exercise this Right would lie in sequence mentioned in the chart below and in case more than one bidder is available in a particular category, then from the lowest to the highest bidder within the margin of purchase preference. The exercise of RoFR would cease as soon as an eligible bidder in order of priority matches L1. The first priority would be given to any bidder who offers an Indian built ship. In case none of the bidders offering Indian built vessels matches the L1 price, then RoFR would be offered to bidders who are either


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citizens of India or companies registered in India or societies registered in India offering a vessel registered/flagged in India or outside. In case none of the bidders eligible to exercise RoFR matches the L1 quote, then the charter shall be awarded to the L1 bidder. For further clarity regarding priority in exercise of RoFR, the table below may be referred to:-

Priority in RoFR	Country of Manufacture of ship = India	Bidder is either an Indian citizen OR Indian company or registered society OR offering an Indian flagged ship.
1	Y	Y
	Y	N
2	N	Y

13.6. It is clarified that, during the first instance as mentioned in Para 13.5.1 above, so long as bidders have bid within the margin of purchase preference, bidders offering a vessel built in India would be given the first priority to exercise RoFR, even if their bids are higher than the bidders falling under the category of second priority.

13.7. The bidder who exercises RoFR should meet the commercial requirement by matching the lowest Composite Effective Price. It is further clarified that there shall be no price preference in favour of any vessel. The Composite Effective Price is the derived figure from the various price inputs submitted by a bidder/participant in a tender process, wherein all the costs/inputs are summarized. While working out such Composite Effective Price, inputs such as daily hire/daily rate, mobilization/demobilization charges, call out rates and conversion charges etc. are taken into account.

14. Chartering or engagement of foreign flag vessels done without tendering process, for all types of requirements:

14.1. The charterer or the entities intending to get the vessel charter/engaged or their authorized agents shall apply on the e-Portal of the Directorate General of Shipping [DGS]. The application for licence, payment of fee, its processing at DGS and grant of license will be completely online. The following procedure may be followed for the filing of applications and getting the licence;

14.1.1. The entities intending to charter/engage the vessel, as well Indian ship-owners shall get themselves registered on DGS portal. The person getting registration shall be given the login ID & password only if he is authorized by these entities. This registration shall be permanent.

14.1.2. The charterers/entity intending to charter/engage the vessel shall file the enquiry on DGS portal. The moment they pay the fee @ Rs. 5000/- and submit the enquiry, an e-mail/sms shall be sent to all Indian ship-owners giving information about the enquiry floated on DGS portal.

14.1.3. The Indian ship-owners may view the enquiry and offer their ships through DGS portal.

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14.1.4. Both parties may negotiate and finalize the deal. In case Indian vessel is chartered/engaged, no license will be required.

14.1.5. In case an Indian ship is not selected then DGS license shall be required. The entity shall file the details of foreign ship for which DGS license/permission is required, pay balance fee through Bharat Kosh and fill the transaction number at DGS portal, upload the documents alongwith work order and submit the application.

14.1.6. The application will be processed at the DGS and license will be issued online. The respective applicant may download the same after logging into the system.

15. Payments of fee for grant of license/permission:

15.1. A non-refundable fee for filing an enquiry shall be paid @ Rs. 5000/-. However, this amount shall be reduced from the total amount mentioned below, in case the license is required to be issued. No refund shall be made for enquiry fee even in case license is not required.

15.2. The applicants shall pay a fee @ Rs. One Lakh, for 30 days license/permission. A minimum sum of Rs. One Lakh has to be paid for license even if the period of license is less than 30 days.

15.3. After 30 days, fee @ Rs. 5000/- per day shall be paid. However, if applicant wants licence for full period of 30 days or its multiples then fee shall be paid, as per scale in Para 15.2.

15.4. The fee shall be paid through Bharat Kosh.

15.5. Fee once paid shall not be adjusted or refunded unless sufficient reason is submitted and accepted by the competent authority.

15.6. The maximum duration of the licence shall not exceed 730 days.

16. Payment of levy fee for operation of vessels in offshore fields:

The foreign vessels which are not classed with IRS and are above 25 years of age shall pay the levy fee at the following rate:

16.1. Self-propelled Offshore Service Vessels of all descriptions, viz. Anchor Handling Tug, Tug, Supply Vessels, Support Vessels, etc. shall pay levy fee @ One percentage (1%) of the rate of charter hire per day in US \$ multiplied by number of days for which licence/permission is issued.

16.2. Non-propelled vessels such as Dumb Barges, Pontoons, Non -propelled Accommodation Barges, Jack-up Rigs etc. shall pay levy fee @ 25% of the amount prescribed under para 16.1 above.

17. All the payments to Indian ships/ship-owners/Bidders will be made, on the basis of the following exchange rate clause;

17.1. Charter hire / freight / demurrage and all reimbursements/amounts, as payable to Indian Owners, will be paid in Indian rupees based on mean of TT buying & selling exchange rate of INR vis-a-vis USD, as declared by SBI (CAG branch), Mumbai, as on due date of payment. If this date is a bank holiday, the previous SBI working day on which such exchange rate is available, will be used for conversion.

Amith Kumar
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17.2. The para 17.1 above is intended to convey and have clarity on the provisions on exchange rate, in case payment is made in Indian Rupees. It does not convey that payment is to be made only in Indian Rupees.

17.3. It is further clarified that extant RBI & Government guidelines permit the Indian ship-owners/Bidders to quote the charter hire in foreign currency and receive payments of charter hire in the quoted currency in cases where contracts have been awarded under International Competitive Bidding (ICB) tenders and they shall be eligible to be paid in quoted currency, even if they have exercised RoFR.

18. Deployment of Indian Crew on foreign flag vessels:

Foreign flag vessels chartered /engaged for coastal operation shall deploy Indian seafarers at the following scale:

18.1. No obligation for employment of Indian seafarers and trainees up-to 30 days.

18.2. Above 30 days to 90 days: 1/3rd of the seafarers (officers and ratings) as per safe manning document or actual deployment, whichever is higher, shall be Indian seafarers holding Indian certificates under MS Act, 1958. The 15% of this 1/3rd shall be trainee cadets/officers from engine or deck side.

18.3. Above 90 days: 50% of the seafarers (officers and ratings) as per safe manning document or actual deployment, whichever is higher, shall be Indian seafarers holding Indian certificates under MS Act, 1958. The 15% of this 50% shall be trainee cadets/officers from engine or deck side.

18.4. The Indian seafarers so engaged shall be distributed equally between the navigational and engine side to the possible extent.

18.5. All Indian seafarers which are obligatory under this circular may be replaced by trainee cadets.

18.6. The trainee cadets can be equally divided among engine and deck side to the possible extent.

18.7. Whenever the period of 30 or 90 days is not continuous, it shall be calculated on calendar year basis.

18.8. The fraction, if any shall be rounded off to the next higher integer.

19. All statutory certificates as applicable to the vessel shall be kept valid during the period of the license;

20. The vessel shall comply with the rules, regulations and guidelines issued from time to time by the DGS or Ministry of Shipping in respect of entry, maritime safety, security, pollution prevention, wreck removal, salvage, insurance and other requirements;

21. Penalty for deviations:

21.1 If it is noticed that a charterer has violated these Guidelines in chartering of foreign-flag vessels, the DG 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.

Amitha Singh
22/3/19

21.2. If there is a doubt that technical specifications of the vessel given in the tender advertisement were drawn up with the deliberate intention of avoiding Indian built or Indian-flag vessels, the matter may be referred to the DG Shipping for decision. As far as practicable, this decision will be taken after discussion with the concerned parties.

21.3. If any payment due to Indian entity for the services provided to any foreign flag vessel or the foreign entity is not cleared on time, the license granted to such vessels or other foreign flag vessels belonging such entity may be withdrawn, future application may be debarred and such entities, including Indian agencies representing them may be black listed.

22. Exceptions in public interest

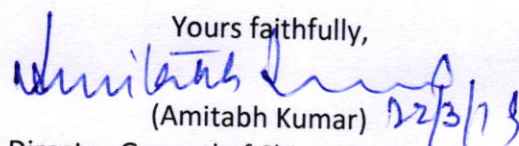
To expedite national project-implementation, to increase Indian tonnage, to encourage development- of Indian shipping including hub-ports and sea-trade routes, both new or existing - and to tackle an emergency or overcome a crisis, in the interest of Indian shipping or public interest, the DG Shipping retains the right to take action as deemed fit, overriding any of the guidelines laid down hereinabove.

23. Any grievance (except on RoFR) arising out of implementation of these guidelines shall be referred to the DG Shipping, Gol. The grievance on RoFR arising out of implementation of these guidelines shall be referred to the Ministry of Shipping, Govt. of India.

24. This Circular shall supersede the Shipping Development Circular 02 of 2002, 01 of 2004, 02 of 2004, 10 of 2003, 03 of 2006, 04 of 2008, 01 of 2010, 02 of 2010, 06 of 2010, 01 of 2013, 02 of 2014, 04 of 2015, 02 of 2018, and 01 of 2019.

25. This Circular shall come into force with immediate effect.

Yours faithfully,


(Amitabh Kumar) 22/3/18
Director General of Shipping

To,

1. All stakeholders/All Charterers/Shippers/All Indian Shipping Companies, through the official website of the DGS, Gol.
2. INSA/ICSSA/FOSMA/MASSA/Shipyards Association of India/CSL/ISBA/NUSI/MUI/IMF
3. Indian Private Ports and Terminals Association.

Copy also forwarded for kind information to the:

1. PS to Hon'ble Minister of Shipping/PS to Hon'ble Minister of State for Shipping, Gol.
2. Secretary to the Govt. of India, Ministry of Shipping, Transport Bhawan, 1, Sansad marg. New Delhi-110001
3. CEO, NITI Aayog, New Delhi.
4. Secretary, Department of Defence, South Block, Ministry of Defence, New Delhi.
5. Secretary, Department of Defence Production, Ministry of Defence, South Block, New Delhi- 110011.
6. Secretary, Department of Industrial Policy & Promotion, Udyog Bhawan, New Delhi-110011.

7. Secretary, Ministry of Petroleum and Natural Gas, A-Wing, Shastri Bhawan, Dr.Rajendra Prasad Road, New De1hi- 110011.
8. Secretary, Ministry of Chemicals and Fertilizers, A-Wing Shastri Bhawan, Dr.Rajendra Prasad Road, New Delhi-110011.
9. Secretary, Ministry of Steel, Udyog Bhawan, Dr. Maulala Azad Road, New Delhi,110011.
10. Secretary, Ministry of Home Affairs, North Block, Central Secretariat, New Delhi,110001.

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22/3/19