POLICY FOR AWARD OF WATERFRONT AND ASSOCIATED LAND TO PORT DEPENDENT INDUSTRIES IN MAJOR PORTS (CAPTIVE POLICY)

Background

1. The Government of India is committed to improve the level and quality of physical and social infrastructure in the country in pursuit of its goal of achieving national economic prosperity. In pursuance of this goal, the Government has envisaged a substantial role for Public-Private-Partnerships (PPPs) as a means for harnessing private sector investment and operational efficiencies in the provision of public utilities and services. Award of waterfront and associated land to Port Dependent Industries on PPP/captive basis is one of the areas which has been identified for participation/investment by the private sector in Major Ports.

2. Under the guidelines for private sector participation in Major Ports issued by the Ministry of Shipping [now renamed as Ministry of Ports, Shipping & Waterways (MoPS&W)] in 1996 and 1998, provisions were made, inter-alia, for award of waterfront and land on a captive basis to Port Based Industries qualifying the prescribed eligibility criteria, including Central/State Public Sector Undertakings (PSUs). The guidelines were only applicable to cases where 100% captive facilities (land/waterfront) including captive oil jetties, platforms or Single Buoy Moorings (SBM) were sought to be created by port based industries. The Guidelines allowed for award of facility to the port based industries without recourse to a tender provided that (a) they did not conflict with the Master Plan of the Port; (b) were port specific; and such proposals had the approval of the concerned Administrative Ministry and also the industry was willing to pay the maximum realization which was determined by the concerned Major Port. For this purpose, a port based industry was defined in the Guidelines as one which required 100% captive berths/back up area for the purpose of import of raw material and/or export of finished products and/or transportation of raw materials/finished products. General guidelines of Build, Operate and Transfer (BOT), wherever applicable, were applied to cases of captive facilities also.

3. However, following shortcomings, as regards to award of facilities for captive use, were experienced in the guidelines of 1996 and 1998:

(i) Absence of clearly defined benchmarks for price discovery for award of captive facilities.

(ii) Lack of clarity about the process to be followed for award of captive facilities.

(iii) Rigid definition of 'Port Based Industries' restricted the use of the captive facility for handling of captive cargo only and did not allow for handling of any other third party cargo in the captive facility. Though some captive facility project related agreements have a provision for use of idle capacity of the captive berths, in majority of the agreements there is no such provision. As a result, many captive berths allotted under the guidelines of 1996 and 1998 could achieve capacity utilization of only around 50% or less and the available spare capacities remained un-utilized due to restriction on handling of third party cargo.

4. Accordingly, to address the shortcomings of the 1996/1998 guidelines, as brought out above, the Captive Policy of 2016 was formulated. It addressed the shortcomings through the following measures:

(i) In place of 'Port Based Industry' requiring 100% captive berth/back up area, 'Port Dependent Industry' (PDI) was made eligible for award of waterfront and associated land for captive use.

(ii) The captive facility was allowed to handle both captive user and common user cargo in the manner comprehensively defined in the policy.

(iii) Award of a captive facility based on open competitive bidding, as in the case of common user facilities, was mandated wherein only Port Dependent Industries are eligible to participate in the process of bidding.

(iv) The appraisal and approval procedures laid down by the Government from time to time for PPP Projects was adopted for award of captive facilities also after making suitable modifications in the technical criteria regarding eligibility for participation in the bidding.

(v) The Model Concession Agreement (MCA) in vogue for private sector projects in Major Ports sector was primarily structured for development and operation of common user Public-Private-Partnership projects. The same Model Concession Agreement (as amended from time to time) was adopted for captive facilities also after incorporating specific deviations as may be necessitated for award of captive facilities in accordance with the Policy and as duly approved by the Competent Authority.

5. The existing Captive Policy of 2016 does not have specific provisions for award of waterfront and associated land to Government bodies, extension/renewal of the existing concessions for captive facilities, provision for addition of capacity/berths/jetties/SBM etc. by the existing Concessionaires and provisions for change of cargo to cater to the change in

business environment due to change in law and unforeseen circumstances. The need was therefore felt to revise the existing captive policy of 2016 to address these aspects as it would facilitate industries, which are substantially dependent on a Major Port for import and/or export of cargo, in carrying out their legitimate business operations within the larger PPP framework.

Objectives

6. The Government of India has laid emphasis on port-led development as a key enabler for economic growth. Optimal utilization of land and waterfront at the disposal of the Major Ports is of critical importance in this context. The policy will help generate committed business for the Major Ports on a long term basis by facilitating the development and operation of dedicated port facilities by industries which are substantially dependent on a particular Major Port for import and/or export of their cargo and thus play a catalytic role in the eventual realization of the objectives of Port-led development. The objective of this Policy is to ensure uniformity and transparency in the procedure for awarding captive facilities.

Scope and Applicability

7. The Policy envisages granting concessions to Port Dependent Industries (PDIs) for establishing dedicated facilities at Major Ports to support the import and/or export of cargo, including its storage and processing, prior to onward transportation to the final destination. Such concessions shall be granted for a period not exceeding 30 years, with the possibility of extension for an additional 30 years, subject to the terms and conditions specified under this Policy. The scope of the Policy covers both the creation of new assets and the optimal utilization of currently unutilized existing assets, such as vacant berths, as well as the renewal or extension of concession agreements. This Policy shall be applicable to all Major Port Authorities and to Kamarajar Port Limited.

Date of Effect

8. This Policy shall come into effect from the date of issue.

Definitions

9. For the purpose of this Policy:

(i) "Captive Cargo'' means cargo handled by a Port Dependent Industry (PDI) at a facility for its own use.

(ii) "Concessionaire" for the purpose of this policy shall mean the PDI who has entered into a concession with the Major Port Authority for a fixed period through a concession agreement. For the purpose of extension and renewal, the existing Concessionaires, covered under the previous policies of 1996/1998 and 2016, shall also qualify as Concessionaire.

(iii) ''Designed Capacity'' means the capacity of the envisaged Facility as indicated in the Feasibility Report prepared for the Facility and accepted by the Major Port Authority concerned.

(iv) "Facility" means the dedicated facilities as envisaged in clause 7 of this Policy;

(v) "Gross Revenue" means the aggregate of all revenues chargeable from handling cargo other than Captive Cargo at a Facility and the notional revenue from Captive Cargo to be calculated on the basis of the notified tariff being charged at the Facility for cargo other than Captive Cargo;

(vi) "Major Port Authority" (or "Concessioning Authority" for the purpose of this policy) is as per the definition mentioned in the Major Ports Authority (MPA) Act, 2021.

(vii) "Minimum Guaranteed Cargo" means the minimum cargo handling levels for a Facility fixed in terms of this Policy;

(viii) "Policy" means the policy for 'Award of Waterfront and Associated Land to Port Dependent Industries in Major Ports (Captive Policy)' as set out in this document;

(ix) "Port Dependent Industry" (PDI) for the purpose of this policy means, with reference to a particular Major Port, any entity (including any of its Affiliates) which is dependent on that Major Port for import and/or export of at least 70% of the Designed Capacity of the proposed Facility for Captive Cargo. Such entity includes a Special Economic Zone (SEZ) and Free Trade Warehousing Zone (FTWZ) established under the SEZ Act.

Note 1: For determining the extent of dependence for import/export as indicated above, the average actual import/export by the said Port Dependent Industry (PDI) through the said Major Port during the 3 financial years immediately preceding the date of application for a Facility will be taken into account. Alternatively, the PDI may provide actual import/export details through some other Port in the last 3 years which is proposed to be shifted to the Facility. The average of 3 financial years, preceding the date of application, would be taken for determining the extent of dependence. For entities yet to commence operations or entities in operation for less than 3 years, the cargo projections will be considered for determining whether the entity can be treated as a Port Dependent Industry (PDI). The entity would need to furnish to the port, the cargo requirement projections as part of the feasibility report. The port authority shall examine the projections either in-house or have it evaluated by engaging Consultants. If the projected cargo requirement for the entity for a period of 3 years, starting from no later than 3rd year of the expected COD, is at least 70% of the Designed Capacity of the proposed Facility for Captive Cargo, the entity will be considered to qualify as a PDI.

Note 2: Government bodies which qualify as Port Dependent Industry (PDI) under sectors Fertilizer, Food, Oil, Petroleum and Gas, Coal and Steel or any other sector notified by the Ministry of Ports, Shipping & Waterways from time to time, shall be eligible for "Award of Waterfront and Associated Land to Government Bodies" as per Clause 19 of this policy.

Note 3: The terms 'import' and 'export' as used in this document refer to unloading/loading of cargo from/to any port irrespective of whether the origin/destination port is in India or overseas.

(x) "Royalty" means the charge per Metric Ton/ Twenty Feet Equivalent Unit (TEU) payable by the Concessionaire to the Major Port Authority in terms of this Policy.

(xi) Terms not specifically defined in this document, unless the context otherwise requires, shall have the same meaning assigned/ ascribed to them in the Model Concession Agreement (MCA) for Private Sector Projects in Major Ports issued by the Ministry of Ports, Shipping & Waterways.

(xii) "Waterfront" means the land facing water which can be used for construction of berths, jetties and other cargo handling facility.

(xiii) "Associated land" means land associated with the waterfront which can be made available for facilitating operations at captive berth for example backup area, storage area etc.

Methodology

10. Any Port Dependent Industry (PDI) desirous of setting up a Captive Facility or requests for expansion of the existing Captive facility, through award of additional waterfront and/or associated land, shall have a pre-feasibility/feasibility report prepared for the same and submit the report to the Major Port Authority concerned. The feasibility report should inter-alia, indicate the Designed Capacity envisaged and the land and waterfront required for setting up the Facility. Further, where a Major Port, based on a need assessment, Master Plan, or any other

relevant factor, is itself desirous of setting up a captive Facility (only fresh proposal), it may undertake a similar process for preparation of the feasibility report.

11. The Major Port Authority shall evaluate the feasibility report either in-house or have it evaluated by engaging Consultants for the purpose within a period of three months. On evaluation and acceptance of the need for a Facility for the PDI or PDIs in question, the Major Port Authority will examine the proposal keeping in view the availability of waterfront/land and surplus capacity, if any, available for the particular commodity for which a Facility is desired. Once a decision is taken to set up the Facility and approval is obtained from the Ministry of Ports, Shipping and Waterways, the Major Port Authority will initiate the process for selection of a Port Dependent Industry (PDI) for award of the Facility. Selection of the successful PDI will be made through open competitive bidding wherein only Port Dependent Industries (PDIs) are eligible to participate following single stage-two envelope bidding procedure, i.e., submission of qualification and price bid at same time. For Government bodies, as defined in Clause 19 of this policy, the award of captive facility will be done at market linked reserve price, without inviting competitive bids, subject to their qualifying the definition of Port Dependent Industry (PDI).

12. Port Dependent Industries (PDIs) as defined in Clause 9 above and having a minimum Net Worth equivalent to 30% of the Estimated Project Cost will be eligible to participate in the bidding process. The procedures as laid down by the Government of India from time to time for appraisal and approval of PPP projects will be followed after making suitable modifications in the eligibility criteria for participation in the bidding for the Facility.

13. Earnest Money Deposit (EMD) to the tune of 10% of the estimated project cost may normally be adopted by the Port Authority to discourage frivolous bidding. Selection of the successful bidder will be made on the basis of the royalty rate to be quoted by the bidders. The royalty rate will be the bidding criteria and is to be expressed as Rupees per Metric Ton/Twenty Feet Equivalent Unit (TEU).

14. The Major Port Authority shall fix a reserve price for royalty per Metric Ton/TEU for the project by considering the following factors:

14.1 Royalty from comparable captive berths either in the same Port or comparable captive berths from some other Major Ports.

14.2 Wharfage for the commodity as fixed by the Major Port Authority and pilotage, towage, navigational aid services, berth hire if applicable, Vessel Related Charges (VRC) if applicable, 14.3 Any other relevant factor to be decided by the Major Port Authority.

15. Reserve price is to be ascertained based on whether the concessionaire is investing or the Major Port Authority has invested in developing the berth or related infrastructure. In case the Major Port Authority has invested in developing the berth or related infrastructure, the reserve price should ensure a fair rate of return on investment through the projected cargo volumes.

16. Bid offers which are below the Reserve price fixed by the Major Port Authority shall be rejected.

17. The bidder from amongst those whose offer is either equal to or above the reserve price and who offers the highest royalty rate for the Facility to the Major Port Authority will be declared as the selected bidder. Single bid may also be considered if they are equal to or above the reserve level royalty rate.

18. The selected bidder will have to incorporate a Special Purpose Vehicle ("SPV") which will sign a Concession Agreement with the Major Port Authority for award of the Facility. For this purpose, the Major Port Authority shall adopt the MCA. The respective Major Port Authorities shall ensure that the Facility specific deviations as may be necessitated by the terms and conditions envisaged under this Policy are incorporated in the Concession Agreement to be signed with the SPV.

Award of Waterfront and Associated Land to Government Bodies

19. For the Government bodies qualifying as Port Dependent Industry (PDI) from Fertilizer, Food, Oil, Petroleum and Gas, Coal and Steel or any other sector as notified by the Ministry of Ports, Shipping and Waterways from time to time, as defined under Note-2 of Clause-9, the Major Port Authority may award fresh concession of the Port's waterfront and associated land, or extend/renew existing captive user's concession agreement, at reserve price without recourse to tender, after incorporating appropriate safeguards and subject to availability of waterfront and associated land. Eligible Government bodies, as defined under Note-2 of Clause-9 of this policy, would include Government Departments, Statutory Local Bodies, Statutory Authorities/Autonomous Organizations under Central/State Ministries, Central Public Sector Undertakings (CPSUs) and State Public Sector Undertakings (SPSUs) and/or a Joint venture where the government body is a majority shareholder and multistate Cooperative Societies (such as IFFCO, KRIBHCO etc.). In case there are more than one applications, the preference shall be given in the following order of priority: (i) Central Government/Ministry; (ii) Central Statutory Authorities/Autonomous Organizations;(iii) Central Public Sector Undertakings

(CPSUs); (v) State Government/Ministry; (v) State Statutory Authorities/Autonomous Organizations; (vi) State Public Sector Undertakings (SPSUs (vii) Statutory Local Bodies; and (viii) Joint venture where the government body is a majority shareholder (ix) Multistate Cooperative Societies. The award in such a case shall be at a reserve price calculated as per Clause 14 of the Policy.

20. **Renewal of Concession Agreement for existing Concessionaire**

20 (a) In case the Concessionaire is interested in renewal of its concession period and extension of its facility, the Concessionaire shall intimate the Concessioning Authority of its interest in renewal/extension not earlier than the 25th anniversary and not later than the 27th anniversary of the Appointed Date. The Major Port Authority may grant renewal/ extension to the existing Concessionaire subject to its performance and compliance as per Clause 27 of this policy. Such renewal/extension shall be awarded at the prevailing market linked reserve price at the time of renewal or at the prevailing payout to the Major Port Authority (duly indexed with annual escalation as per the existing Concession Agreement), whichever is higher, without recourse to tender. The maximum period of renewal/extension shall not exceed 30 years.

20 (b) In case expansion of capacity is requested at the time of renewal or extension, such request may also be considered by the Major Port Authority in accordance with the evaluation criteria prescribed under Clause 21 of the Policy. Upon completion of evaluation, renewal with expansion shall follow the process outlined in Clauses 20 (a).

20 (c) In case, Concessionaire does not intend to renew the licence, after completion of the maximum concession period of 30 years, the Concessionaire shall hand over/transfer the facility/assets, free of encumbrances, to the Major Port Authority in accordance with the terms of the concession agreement.

20 (d) Subsequently, the Major Port Authority shall undertake a fresh valuation of the assets transferred/to be transferred by the Port Dependent Industry (PDI)/Concessionaire to the Major Port Authority. Based on such valuation, the Major Port Authority shall decide whether the berth/facility should be operated directly by the Port Authority, operated on a PPP basis or be operated as Captive facility. Valuation shall normally be carried out by two credible valuers such as IBBI-approved valuers, bank-approved valuers, or IT-approved valuers. If the difference between the two valuations is less than 10%, the average of the two shall be accepted. If the difference exceeds 10%, a third valuation shall be obtained, and the two closest valuations shall be considered. The average of these two shall be accepted as the final valuation of the land/structures, etc. This will be followed by the prescribed standard procedures for awarding such facilities.

Capacity Expansion for existing Concessionaire

21. Any existing Concessionaire requiring to add capacity, in addition to the existing berth/facility, for reasons such as increase in demand due to planned capacity addition, increase in productivity, etc., may request the Major Port Authority for construction of additional berths/jetties/SBM etc. as an extension to the existing berth/Facility. In such an event, the concerned Major Port Authority shall first ascertain the availability of waterfront and the scope of additional berths under the then existing Major Port Master Plan. Once the Major Port Authority is convinced after appropriate technical and commercial consideration that there is a scope for additional berth/jetty, they may consider the request of the existing Concessionaire, provided such request made by the Concessionaire is essentially backed and supported by the proof that the concessionaire has been able to maintain the average berth utilization to at least 75% of the designed capacity during 3 years preceding the date of application. In such an event, wherein the Major Port decides to consider the request of the existing PDI for capacity expansion for existing concessionaire, it shall be done only through a price discovery (open bidding method) wherein the existing Concessionaire should be given the Right of First Refusal ("ROFR") to match the bid offered by the Highest (H1) bidder. Port Dependent Industries (PDIs) for the same cargo profile shall be eligible to participate in a single stage bid process in order to avoid non-serious bidders. Appropriate conditions and safeguards should be clearly spelt out while considering/allowing the request of the existing Concessionaire for additional berths/jetties. In order to ensure that such additional facility, as an extension of the existing berths/facility, is not used as a leeway for extension of the concession period of the existing berths/facility, the concession period for the additional/expansion facility shall be co-terminus with that of the existing facility, including both the initial term and any renewed/extended term. For the Government entities, procedure given under Clause 19 shall apply for capacity expansion cases also.

Change in Law and Change in Cargo

22. This clause shall apply in case of Change in Law or Unforeseen Events that adversely impact project viability. A Change in Law shall include enactment or amendment of Indian laws, changes in tax rates, or judicial interpretations occurring after the Bid Date. Unforeseen events will only trigger after seven years of COD. If either or both situations i.e. change in law and unforeseen events resulting more than 25% EBITDA drop, more than 20% increase in capital expenditure, or makes construction unviable, it constitutes an Adverse Impact. In cases

of Adverse Impact, the Concessionaire may notify the Concessioning Authority. A Conciliation & Settlement Committee will be formed within 30 days to assess the situation and recommend remedies such as concession period extension (up to 10 years) or permission for cargo change. Financial compensation from the Authority will be excluded from settlement framework. If due to Change in Law or an Unforeseen Event the original cargo cannot be handled, the parties may revise the business plan and allow for new cargo. Performance assessment and revised master plans with respect to change of cargo are evaluated by an Independent Engineer and asset valuer. It should be ensured that cargo other than captive cargo should not go beyond 40% of Design Capacity in any case. The provisions of Article 13 of the Model Concession Agreement (MCA) 2021 shall apply for the Change in Law and Change in Cargo under this Policy.

23. In all the three events mentioned in Clause 19, 20 and 21 above, the concerned Major Port Authority shall follow the relevant part of the methodology mentioned under Clauses 10 to 18 of the Captive Policy and also reassess MGC, royalty performance criteria, design capacity, and payments to be made to the Concessioning Authority.

Minimum Guaranteed Cargo

24. Minimum Guaranteed Cargo ("MGC") will be fixed for a Facility by the Major Port Authority on a project specific basis before bidding. The MGC will be set at a minimum of 70% of the designed capacity including both captive cargo and other cargo. In case MGC is not achieved by the concessionaire, the concessionaire will need to pay royalty commensurate with the MGC irrespective of the actual volume handled by the berth. For avoidance of doubt, it is clarified that the royalty payable shall be on the cargo handled at 70% MGC or actual cargo whichever is higher. The MGC will be applicable within 4 years of award of the Facility to the concessionaire or 2 years from COD, whichever is earlier.

25. The concessionaire shall be allowed to handle non-captive cargo up to 30% of the designed capacity of the berth. Cargo other than captive cargo handled by the concessionaire shall meet norms relating to environments issued from time to time. Further, no change in cargo profile shall be allowed except with the prior approval of the Concessioning Authority. The concessionaire would need to submit monthly report to the Concessioning Authority on captive and non-captive cargo handled in the Facility.

26. The handling of non-captive cargo at a captive berth shall be limited to a maximum of 30% of the designed capacity of the berth. This cap may be relaxed by the Major Port Authority only under exceptional circumstances, specifically where:

(i) there is clear evidence of low utilization of the captive berth by the original user, and

(ii) there exists a concurrent shortage of cargo handling facilities for non-captive cargo at the Major Port.

26.1 Any such relaxation shall be subject to the following conditions:

(i) The relaxation shall not exceed 40% (to keep the captive nature intact) of the designed capacity of the captive berth under any circumstances.

(ii) The period of relaxation shall not exceed two (2) years in a continuous manner.

(iii) All proposals for relaxation must be supported by detailed justification and approved by the Board of the Major Port Authority, based on transparent and objective criteria.

No arrangement or agreement shall be entered into by the Port Authority and the Concessionaire that directly or indirectly circumvents the intent, conditions, or limitations of this clause.

Performance Standards and Compliance Monitoring

27. The Concessioning Authority shall define and incorporate project-specific minimum Performance Standards, based on feasibility studies and operational requirements identified for the project in the concession agreement. The Concessionaire shall comply with the Performance Standards set out in accordance with MCA, which shall be monitored through quarterly reviews of Concessionaire reports, Authority records, and the Monitoring Arrangement as per the concession agreement. In the event of a shortfall, the Concessioning Authority may levy liquidated damages in accordance with the methodology detailed in MCA. The Concessionaire shall have the right to make representations against such claims. The Concessionaire's obligation to meet Performance Standards shall be continuous throughout the Concession Period.

Designed capacity

28. The designed capacity for the facility shall be as per the clause 9(iii) of the policy.

29. The designed capacity shall be revised by the Major Port Authority on occurrence of any of the following events:

(i) Addition or up-gradation of berth, yard or evacuation equipment; or

(ii) Increase in draft of the berth; or

(iii) Change in vessel profile; or

(iv) Any breakthrough in technology with potential to improve productivity for the respective cargo; or

(v) Any other event that can substantially increase the capacity of the facility.

30. The Minimum Guaranteed Cargo (MGC) will be re-evaluated on revision of the designed capacity.

Priority and Preferential Berthing

31. Captive Cargo will have preferential and priority berthing over any other cargo.

32. The concessionaire may offer preferential or priority berthing to any one or more shipping lines or vessel owners/operators to optimize the use of the project facilities and services subject to the ceiling for handling cargo other than captive cargo. Such preferential or priority berthing shall be subject to the priority berthing norms as may be mutually determined by the parties (i.e. the Concessioning Authority and the concessionaire) in accordance with applicable laws and guidelines, if any, issued by the Government of India from time to time in that regard.

33. In case of others, the Facility will be available on a first come-first serve, common-user basis to any and all shipping lines, importers, exporters, shippers, consignees and receivers, and the Concessionaire shall refrain from indulging in any unfair or discriminatory practice against any user or potential user of the Facility.

Tariff

34. For cargo other than captive cargo handled, the concessionaire shall be entitled to recover from the users of the Facility, Tariff in accordance with the Revised guidelines for Determination of Tariff for Projects, i.e. the specific tariff rates along with conditions are to be determined, informed and published by the Concessionaires as per market conditions in respect of their respective Captive Projects also awarded as per Major Port Authorities Act, 2021.

Payments to the Concessioning Authority

35. The concessionaire will make payments to the Concessioning Authority (Major Port Authority) towards License Fee, Rent, Royalty and other charges for additional utilities or services made available to them by the Concessioning Authority in the following manner:

(i) License Fee as fixed by the Concessioning Authority concerned, as consideration for the use, in its capacity as a bare licensee of the project site and equipment comprised in the port's assets, if any, made available to the concessionaire as per the Concession Agreement. Such amount shall be paid by the Concessionaire either in lump sum or in half yearly/yearly instalments (as agreed upon with the Concessioning Authority). Where the fee is paid in half yearly/yearly basis, it will contain an annual escalation factor as may be stipulated by the Major Port / Concessioning Authority upfront in the bid document and in such cases, the periodic review of scale of rates (SOR), if any, will not be applicable. In addition, in cases where an existing facility is being given under the Concession, the value of assets including berth, back-up area created by the Major Port (other than those covered by the term "Port's Assets" as defined in the Concession Agreement) and handed over to the concessionaire shall be determined on replacement cost basis and recovered from the concessionaire upfront at the time of award of the Concession.

(ii) Royalty per month for the volume handled by the concessionaire will be payable for both captive & non-captive cargo handled at the Facility. Royalty rate will get escalated on the basis of wholesale price index annually. It is clarified in this connection that in the event of failure of the concessionaire to achieve the Minimum Guaranteed Cargo (MGC) levels in a year as prescribed in the Concession Agreement, the concessionaire would be liable to pay royalty amount for the MGC.

(iii) Rent or other charges for any port premises (other than the Project Site/Project Assets) or additional utilities or services, made available by the Concessioning Authority to the Concessionaire as per rates specified in the Concession Agreement. Such rates shall be 1.2 times the Scale of Rates as notified by the competent authority in respect thereof from time to time. The charges in case of additional land will be 1.2 times of Scale of Rates as applicable at the time of giving additional land, where the fees is paid on half yearly/ yearly basis. The charges in respect of any port premises (other than the Project Site/Project Assets) or additional land, utilities or services, made available by the Concessioning Authority to the Concessionaire may be subject to escalation as may be stipulated by the Concessioning Authority upfront in the bid documents; and in such cases periodic review of SOR, if any, will not be applicable.

36. Occurrence of any of the following events will be treated as Events of Default:

(i) Failure by the concessionaire to achieve MGC as stipulated above for three consecutive years; or

(ii) Failure by the concessionaire to meet performance norms set by the Major Port / Concessioning Authority on an average over a period of 12 months.

36.1 However, the Concessionaire shall not be deemed to be in default if the non-achievement of any of the above two requirements is due to a substantial change in economic policies including the policy regarding import/export of a particular commodity as a result of which the throughput could not be achieved and the Concession would be liable to be terminated following due procedure as laid down in the Concession Agreement.

37. Any delay in payment of Royalty for three consecutive months or more than five times in the aggregate during the Concession period shall be treated as a Concessionaire Event of Default and the Concession is liable to be terminated following due procedure as laid down in the Concession Agreement.

Note: Liability for termination on occurrence of any of the above Events of Default is without prejudice to any other liability including termination on account of any other Event of Default as may be specified in the Project Concession Agreement.

Concessioning Authority's Rights to Step-in

38. In the event a Termination Notice due to a concessionaire Event of Default is issued by the Concessioning Authority to the Concessionaire, the Concessioning Authority shall have the rights to re-enter upon and take possession and control of the Project Site with Facility. The Concessioning Authority also assume such of the rights and obligations of the Concessionaire as may be specified in the Project Concession Agreement and reuse the Facility in accordance with the Project Concession Agreement from the date of Termination of Contract.

Compensation

39. Upon termination of a Concession Agreement due to a Force Majeure Event or an Event of Default by the Concessioning Authority/Concessionaire, compensation as per provisions of the Project Concession Agreement shall be paid to the Concessionaire. However, in the Event of expiry of Concession by efflux of time, the Concessionaire shall hand over/transfer peaceful possession of the Project site, Port's Assets, the Facility, etc. free of cost and Encumbrance to the Concessioning Authority.

Escrow Account

40. The Concessionaire shall maintain an Escrow Account for the period, purpose and in the format as provided for in the Concession Agreement.

Process timelines

41. Major Port Authorities shall ensure timely processing of bids and awarding of contract. The process starts from the submission of proposal by the Port Dependent Industry (PDI) to the signing of concession agreement and shall be completed within the timelines specified in the following schedule:

(i) Submission of Proposal with Feasibility Report - T

(ii) Evaluation of proposal and providing response to proposal - T + 3 months

(iii) Bidding process commences - T + 5 months

(iv) Identification of concessionaire T+7 months

(v) Signing of concession agreement T+ 9 months

General

42. Other terms and conditions will, in general, be as per the provisions in the MCA subject to deviations as approved by the Competent Authority.

43. The existing guidelines referred to in clauses 2, 3 and 4 above stands withdrawn with immediate effect.

44. In the event there is any inconsistency / conflict between the provisions of this Policy and any arrangement entered into by the Board from the date of the issuance of this Policy, the provisions of this Policy shall prevail.

45. In case of any ambiguity or doubt arising in regard to any provision, the Ministry would have the powers to interpret and clarify the same within the overall framework and spirit of this Policy.

46. In case a new law is enacted and notified by the legislature which replaces the MPA Act 2021, the provisions of the new law shall be applied in relation to this Policy. It is clarified that prior to enactment and notification of any new law replacing the MPA Act 2021, all relevant rules, regulations, notifications etc. issued and in force under the MPA Act 2021 shall apply to this Policy.

47. Any deviations/amendments in the policy, as required with passage of time and change circumstances, within the broad contours of the policy document approved by the Cabinet, to be done with the approval of Minister-in-charge of the Ministry of Ports, Shipping and Waterways.

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