

## MEMORANDUM CIRCULAR NO. 42

**TO : ALL OVERSEAS SHIPPING COMPANIES AND OTHER MARITIME ENTITIES CONCERNED.**

**SUBJECT : INTERIM GUIDELINES GOVERNING APPLICATIONS FOR BAREBOAT CHARTERING/REGISTRATION OF VESSELS UNDER P. D. 866/1711.**

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Please be informed that in its meeting on 08 July 1988, the Maritime Industry Board passed a resolution approving the following interim guidelines governing applications for bareboat chartering/registration of vessels under P. D. No. 866/1711, to wit.

A. For Existing Accredited Overseas Shipping Companies.

1. Henceforth, only existing accredited overseas shipping companies under Memorandum Circular No. 33 with a minimum paid up capital of P7,000,000.00 may be allowed to avail of the bareboat chartering program. The applicant company may be allowed to bareboat charter a maximum of two (2) vessels only : provided, however, that the bareboat charter of additional vessels , in excess of the two , may be allowed if the applicant shall put up an additional paid up-capital based on the size of the vessel to be chartered in accordance with the following schedule :

	<u>SIZE</u>	<u>ADDITIONAL PAID-UP CAPITAL</u>
i.	6,000 GRT and below	P1,000,000.00
ii.	over 6,000 to 25,000GRT	P2,000,000.00
iii	over 25,000GRT	P2,500,000.00

It is hereby understood that the paid-up capital requirements as abovestated shall constitute a pre-approval condition on the application , except for the applications filed within sixty(60) days from effectivity of this Memorandum Circular In which cases the same shall be made a post approval condition and shall be complied with by the applicant within the period specified by MARINA. Non-compliance with such post-approval condition shall warrant the imposition of a fine P200,000.00 and the cancellation of the authority to bareboat charter the relevant vessel.

The allowed period of charter under this Memorandum Circular shall be at least one(1) year, but shall not be longer than the period prescribed by law.

2. Further, applications herein shall submit proof of their management profile or reorganize the same if necessary, such that all officers of the company are citizens and permanent residents of the Philippines . the Chief Executive and Chief Operating Officers ( or if they are one or the same person, the next ranking Operating Officer also ) shall have at least five(5) years experience in shipping management , shipping operations and/or chartering . The Term “ Officers” in this paragraph shall mean those who are identified as such in the by-laws of the company and those who are not so identified , but have position titles and responsibilities pertaining to the operational control and management of the bare boat chartered vessel/s.
  
3. Furthermore, applicants herein shall submit proof that existing bare boat chartered vessels are under their full management and operational control. For this purpose, “operational control “ shall mean the exercise of all rights and responsibilities pertaining to the operation of the vessel, including accountability for expenses under the approved contract, such as (but not limited to) crew salaries, repairs and maintenance, store and provisions, hull and machinery insurance, P & I Insurance , chartering operations, radio maritime accounts, claims settlement, and similar expenses which are borne/undertaken by the Filipino bare boat chartered.
  
4. Finally, any change incorporate ownership or shares of stocks of the applicant-company after each accreditation under Memorandum Circular No. 33 will be subject to review and scrutiny by MARINA to determine the financial capability of the new stockholders and compliance with the allowable ratio of foreign investments, if any. For this purpose , the applicant shall submit to MARINA a Certificate of SEC containing the list of stockholders’ and their respective shares.

Any adverse finding on the change or transfer shall disqualify the applicant from applying from the bare boat charter of a new or additional vessel hereunder and the applicant shall be classified as a new company under Part B below.

5. The following additional documents shall be submitted in support of any application filed under Part A hereof:
  - a) Certified true copy of vessels Certificate of Registry .

- b) Certificate of deletion or suspension of the original registry or consent to the bare boat charter registration by the State of original registry , as the case may be .
  - c) A document issued by the State of original registry providing details of the registered owners , the vessels name and ownership and registered mortgages ,(e.g., certificate of good standing ).
  - d) Articles of Incorporation of the vessels registered foreign owner duly authenticated by the Philippines Embassy /consulate concerned.
  - e) Duly authenticated Board resolution authorizing the company through its duly designated responsible officer to file and follow-up the application for chartering with MARINA and to execute and sign any oath of undertaking required by MARINA.
  - f) Proof of remittance of at least paid-up capital contribution of the foreign stockholder s, if any, duly certified by the receiving authorized agent bank.
  - g) Other documents as may be deemed relevant or necessary by MARINA.
6. Effective immediately , all MARINA accredited overseas shipping companies with owned tonnage of at least 2,500 DWT duly class for overseas operation shall be allowed to bare boat charter a maximum of seven (7) vessels for every owned vessel without any further change in their paid-up capital structure . The applicant shall be required to submit proof of ownership of owned tonnage such as a clean title, loan financing agreement ,mortgage document, and/or other documents, as MARINA may deem necessary.

Further , effective 01 June 1989, only MARINA accredited overseas shipping companies with owned tonnage as described above may apply for bare boat chartering under P.D> 866/1711,subject to the same terms and condition as above-provided .

If the applicant shall sell or dispose of its owned tonnage , it shall be given six (6) months from such sale to acquire or reinvest the proceeds thereof in the acquisition of a new vessel ; otherwise , it may no longer avail of the bare boat chartering privilege under P.D.866/1711.

In the case of a group of accredited affiliated companies the following rules shall apply:

- a) Within 30 days from date of effectivity of this Memorandum Circular , all affiliated companies must submit proof that they belong to the same management , either by way of a management contract or any other document acceptable to MARINA.
  - b) Should anyone of the affiliated companies have or acquire owned tonnage as forestalled, said company may be allowed to bare boat charter seven (7) additional vessels without any further change in its paid-up capital structure ; in which cases all its affiliated companies may be allowed to continue to avail of the bare boat chartering privilege subject to the allowable maximum number of vessels for non ship-owning companies under existing rules and the provisions of Item A-1 hereof.
  - c) Should the ship owning company decide to allocate the allowable additional seven (7) vessels in favor of its affiliated companies , the same may be allowed ; provided, however, that the paid-up capital of each of the affiliated companies in whose favor the allocation is made shall be at least P7,000,000.00.
7. The extension of existing bare boat charters by existing MARINA accredited overseas shipping companies may be allowed ; provided , however , that application therefore shall be filed by MARINA not earlier than sixty (60) days prior to the expiration of the original charter; provided further, that application shall have a paid-up capital of at least P7,000,000.00 if the term of the charter extends beyond May 31,1989. Applications receive after the expiry date of the original charter shall be treated as new ones .
  8. The MARINA shall periodically, and/or whenever deemed necessary, inspect the offices of the accredited companies interview their officers/employees and examine the accounts ,documentation and facilities of said companies , during reasonable hours of the day, to monitor and determine proper compliance with existing rules and regulations.
  9. The approval of all applications under Part A hereof shall be subject to the post-approval condition that if the charter party is pre-determined within one(1) year from date of deliver of the vessel , the charter shall be liable to pay MARINA ,as penalty , the amount equivalent to six (6) months withholding taxes , or the balance of the withholding taxes due for whole year , whichever is higher .;

B. For the New Companies

1. All new companies not heretofore been accredited by MARINA under Memorandum Circular No. 33 desiring to avail of the privilege of

chartering vessels under PD 866/1711 will have to be first accredited in accordance with new guidelines to prescribed by MARINA .

All provisions of Memorandum Circulars No. 33 and 38 and of the Rules and Regulation Implementing PD 763/866/1711 which are not contrary to or inconsistent with this Memorandum Circular shall remain in full force and effect.

This Memorandum Circular shall take effect immediately upon its publication Once in a newspaper of general circulation.

Manila, Philippines , 08 1998.

PHILIP S. TUAZON  
Administrator

APPROVED:

RAINERIO O. REYES  
Secretary of Transportation & Communications