

## **MEMORANDUM CIRCULAR NO.104**

**TO : ALL PERSONS AND ENTITIES CONCERNED**

**SUBJECT : OMNIBUS GUIDELINES FOR THE ACQUISITION OF VESSELS FOR DOMESTIC OPERATIONS AND FISHING VESSEL/BOAT**

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Pursuant to Presidential Decree No. 474 and Executive Order Nos. 125/125-A, and in consonance with the present policy of the government to liberalize vessel acquisitions, the following guidelines are hereby adopted:

### **I. OBJECTIVE**

This Memorandum Circular aims to provide rationalized guidelines in the implementation of the liberalization policy on vessel acquisition.

### **II. COVERAGE**

This Circular shall apply to all persons, corporations, partnerships, firms and entities acquiring vessels of any type intended for domestic operations and fishing vessels/boats for domestic or overseas use.

### **III. DEFINITION OF TERMS**

1. **ACQUISITION** - shall include importation (direct/outright/lease-purchase), bareboat charter under PD 760 local construction and permanent conversion of vessel's trading status from overseas operations to domestic operations.
2. **VESSEL** - shall refer to all crafts or artificial contrivance utilizing any source of motive power designed, used or capable of being used as a means of water transportation such as, but not limited to container, conventional, chemical tanker, crude oil and clean tanker, LPG, LNG and passenger vessels.
3. **DOMESTIC OPERATION** - shall refer to the utilization of vessel of any type within the Philippines.
4. **WATER TRANSPORT SERVICES** - shall refer to the use of vessels for hire or compensation, with general or limited clientele, whether permanent, occasional or incidental with or without fixed route, and done for commercial purposes.

5. VESSEL RE-STRUCTURING - shall mean major alteration such as, but not limited to re-engining(replacement) of major propulsion machinery to include major auxiliaries; jumboizing (lengthening) of vessel's hull; construction of additional deck above the main deck; enlargement, transfer or movement of superstructure; alteration or compartmentation affecting watertight bulkheads; and conversion of spaces into loads for liquids and/or holes for dry cargoes.
6. CONVERSION OF TRADING STATUS - shall mean the change of vessel's operation from overseas to domestic and vice-versa.
7. CONSTRUCTION - shall apply to vessels constructed locally or abroad, the keels of which are laid or which are at similar stage of construction or the assembly of that ship has commenced comprising at least 50 tonnes or 1% of the estimated mass of all structural material whichever is less.
8. VESSEL AGE - shall be reckoned from the date of the vessel's launching vis-à-vis the date of filing of application for acquisition.
9. MOTOR YACHT - a small water craft designed to accommodate a limited number of passengers and used for pleasure, tourism or commerce.
10. TUGBOAT - a mechanically propelled vessel of small tonnage with little or no cargo capacity, used for towing or pushing to assist vessels at sea, in or out harbors, rivers, and docks, and also for coastal or harbor towage of barges, lighters and other small craft.
11. BARGE - a general name given to a flat-bottomed, rigged or unrigged craft of full body and heavy construction (built of wood, iron, steel or concrete), especially adapted for the transportation of bulky freight such as coal or lumber, sand, stone, oil, etc.
12. PASSENGER VESSEL - shall mean a vessel which is authorized to carry more than twelve (12) passengers.
13. CARGO VESSEL - shall mean a vessel which is not a passenger vessel.
14. FISHING VESSEL - shall refer to a vessel/boat used for catching fish, whales or other living creatures of the sea and/or carriage thereof.
15. TANKER - shall refer to a vessel specially designed and constructed for the carriage of fluid cargoes in bulk. The vessel's holds are subdivided by longitudinal and transverse bulkheads so that each compartment forms a separate tank.

16. **PETROLEUM PRODUCTS/PETROLEUM BY-PRODUCTS CARRIER** - shall mean a vessel carrying bunker fuel, crude oil including dirty or black petroleum products such as heavy fuel oil; clean or white products such as gasoline, naphtha, aviation fuel, diesel oil, gas oil and similar products.
17. **CHEMICAL CARRIERS** - shall mean a vessel carrying dangerous cargo and/or products posing danger to the environment.
18. **LPG/LNG CARRIER** - shall mean a vessel carrying petroleum gas and liquid natural gas.
19. **HAZARDOUS CARGO** - shall mean any harmful, noxious or other substance which, if introduced to the sea, is liable to cause pollution.
20. **NON-HAZARDOUS CARGO** - shall refer to any substance not falling within the definition of "hazardous substance".
21. **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.

#### **IV. GENERAL PROVISIONS**

Vessels of any type, which are not wooden-hulled, (except in the case of local construction) shall be allowed for acquisition under these Guidelines.

#### **V. SPECIFIC PROVISIONS**

1. **AGE AND SIZE REQUIREMENTS**
  - a. There shall be no age size restriction for any type of vessels acquired under this Circular, except tankers and petroleum products/petroleum by-products carrier, which shall not be more than fifteen(15) years old.
2. **QUALIFICATION REQUIREMENTS**
  - a. Only persons/corporations/partnerships/firms/entities duly registered with SEC and/or DTI in accordance with Philippine laws shall be allowed to acquire vessels under these guidelines. Fishing companies/operators shall not submit registration documents therefor as these are required by the appropriate government agencies regulating their operations.

- b. The domestic shipping companies/operators intending to acquire vessels hereunder for purposes of use as water transport services shall have been accredited under MARINA MC No. 79 or any amendment thereto. Shipyards must be accredited under MC No. 95 to qualify for vessel acquisition thru local construction.
- c. Those who acquired vessels for exclusive company/own use may be allowed to change the vessel's utilization into water transport services; provided, that prior MARINA approval thereof shall be secured and that the other requirements for acquisition of vessels for the latter purpose, such as accreditation, capitalization, citizenship, CPC/PA/SP, etc., as required herein and in existing guidelines, are complied with.
- d. Any person or entity intending to charter or import fishing vessels, except those to be used as fish carriers, are required to submit a clearance from the Bureau of Fisheries and Aquatic Resources (BFAR) indicating that the vessel/owner/charterer is qualified for issuance of a new Commercial Fishing Boat License(CFBL).

### 3. CLASSIFICATION REQUIREMENTS

- a. All vessels to be acquired under this Circular except motor yachts for personal use, wooden-hulled vessels and fishing vessels/boats, shall be classed by an international in local classification society recognized by MARINA prior to deployment or operation. The vessel's class shall be maintained and class survey reports, (annual and special) shall be submitted to the MARINA.
- b. On the other hand, acquisition of fishing vessels, boats shall be subject to the following conditions or requirements:
  - i. The vessel is in acceptable condition, without outstanding recommendations, as shown in the latest survey report prepared by a marine surveyor accredited by the government of the country of origin of the vessel. This fact has to be verified or confirmed by an actual MARINA survey to be conducted prior to the release of the vessel from the custody of the Bureau of Customs.
  - ii. Vessels 16 years old and over will be subject to ultrasonic thickness gauging by MARINA surveyors during drydocking prior to registration in the Philippines.

4. INSURANCE

- a. Tankers and barges hauling petroleum/petroleum by-products/chemicals/other hazardous cargoes shall be covered by Protection and Indemnity Clubs (P & I) or their equivalent against oil/marine pollution risks in the amount of US\$300 million and Tanker Owners Voluntary Agreement Concerning Liability for Oil Pollution (TOVALOP). Those hauling non-hazardous cargoes as well as Liquefied Petroleum Gas (LPG)/Liquid Natural Gas (LNG) carriers shall be covered against third party liability in the amount of US\$2 million to be secured from a recognized insurance company, P & I Clubs, or their equivalent.

5. ON BAREBOAT CHARTERED VESSELS

- a. The contract shall be valid and effective for a period which in no case shall be less than one (1) year. Pre-termination of bareboat charter party/(ies) within one (1) year from date of delivery of the vessel shall hold the charterer liable in the amount equivalent to the balance of the 4.5% withholding tax due for the whole year. The bareboat charterer shall not effect the deletion of the chartered vessel from Philippine registry without prior approval of MARINA.
- b. Any amendment to the charter party shall not be valid and binding without prior approval of the MARINA.
- c. There shall be no "off-hire" clause in the bareboat charter contract or party.
- d. The operation of the vessel shall be entirely in the hands of the Philippine bareboat charterer and shall be free from participation or interference by the foreign owner, except insofar as such acts shall be directly to protect his rights as owner thereof.
- e. The bareboat charterer shall be responsible for the payment of the 4.5% withholding tax on gross bareboat charter hire.

6. AUTHORITY TO OPERATE

All vessels except tugboats, non-propelled barges, motor yachts for personal use and fishing vessels/boats acquired under this Circular which shall be used as water transport services shall be required to secure from the MARINA authority to operate in the form of a Special Permit (SP), Provisional Authority (PA), or Certificate of Public Convenience(CPC)

prior to the vessel's deployment for domestic operation. Those not so required still need to secure Exemption Certificate (EC) from MARINA.

7. MANNING AND CREWING

All vessels under this Circular shall be completely manned with Filipino officers and crew and no foreign officer shall be allowed on board, except as supernumerary and as provided for by the Bureau of Fisheries and Aquatic Resources (BFAR) Administrative Order No. 191 dated 02 February 1995. Said officers and crew must be certificated according to pertinent national and international laws, rules and regulations.

8. VESSEL RE-STRUCTURING

Any structural conversion/rehabilitation of a vessel acquired hereunder shall require prior MARINA approval and shall be undertaken by MARINA registered shipyards.

9. LOCAL SALE/TRANSFER/LEASE OF VESSELS

Local sale/transfer/lease of vessels acquired under this Circular shall require prior MARINA approval. The requirements herein provided shall extend to buyers/transferees/successors-in-interest and authority to operate the vessel as water transport service shall not be issued unless such requirements have been complied with.

**VI. DOCUMENTARY REQUIREMENTS**

The documentary requirements shall be as prescribed in MARINA MC No. 85 and any amendment thereto.

**VII. PROCESSING FEE**

The payment of processing fee shall be in accordance with MARINA MC No. 77 and any amendment thereto.

**VIII. VIOLATIONS**

Violations of any provisions of this Circular shall be subject to administrative fines and penalties provided for in MARINA MC No. 50-A and other existing rules and regulations.

**IX. REPEALING CLAUSE**

Henceforth, the Implementing Rules and Regulations of PD 760 and MARINA Memorandum Circular Nos. 24, 24-A, 25-A, 25-B, 25-C, 25-E, 34, 34-A, 34-B, 34-C, 56, 56-A, and 81, including meritorious guidelines for fishing vessels, insofar as these are inconsistent with the provisions of this Circular, shall be deemed repealed/modified accordingly.

**X. EFFECTIVITY**

This Circular shall take effect fifteen (15) days after its publication once in a newspaper of general circulation in the Philippines.

06 April 1995, Manila, Philippines.

PACIENCIO M. BALBON, JR.  
Administrator

**SECRETARY'S CERTIFICATE**

This is to certify that Memorandum Circular No. 104 was approved in the Special Meeting of the Maritime Industry Board held on 06 April 1995.

EMERSON M. LORENZO  
Deputy Corporate Board Secretary

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