

Republic of the Philippines  
Department of Transportation and Communications  
**MARITIME INDUSTRY AUTHORITY**  
PPL Bldg., 1000 United Nations Avenue, Ermita, Manila

**RULES AND REGULATIONS IMPLEMENTING REPUBLIC ACT NO. 9295, ENTITLED “AN ACT PROMOTING THE DEVELOPMENT OF PHILIPPINE DOMESTIC SHIPPING, SHIPBUILDING, AND SHIP REPAIR AND SHIP BREAKING, ORDAINING REFORMS IN GOVERNMENT POLICIES TOWARDS SHIPPING IN THE PHILIPPINES, AND FOR OTHER PURPOSES.”**

Pursuant to Paragraph 17, Section 10 of RA No. 9295, this Implementing Rules and Regulations (IRR) of Republic Act No. 9295, otherwise known as the “Domestic Shipping Development Act of 2004”, is hereby promulgated:

**RULE I**

**GENERAL PROVISIONS**

**Section 1. Objectives of the Act** - This IRR is hereby prescribed to carry out the objective to develop a strong, modern, safe and competitive domestic merchant fleet owned and controlled by Filipinos or by corporations at least sixty percent (60%) of the capital of which is owned by Filipinos and manned by qualified Filipino officers and crew, which shall:

- 1.1 Bridge our islands by ensuring safe, reliable, efficient, adequate and economical passenger and cargo service;
- 1.2 Encourage the dispersal of industry and the economic development of our regional communities by ensuring the availability of regular, reliable and efficient shipping services;
- 1.3 Ensure the growth of exports by providing necessary, competitive and economical domestic sea linkages;
- 1.4 Serve as naval and military auxiliary in times of war and other national emergencies; and,
- 1.5 Function as an employment support base for our Filipino seafarers.

**Section 2. Policy of the Act** - The following policies are hereby declared:

- 2.1. Promote deregulation in the domestic shipping industry, encourage effective competition, free enterprise and market driven rates that are sensitive to the demands of the public;
- 2.2. Promote Filipino ownership of vessels operated under the Philippine flag;

- 2.3. Attract private capital to invest in the shipping industry by creating a healthy and competitive investment and operating environment;
- 2.4. Provide necessary assistance and incentives for the continued growth of the Philippine domestic marine fleet;
- 2.5. Encourage the improvement and upgrading of the existing domestic merchant marine fleet and Filipino crew to meet international standards;
- 2.6. Ensure the continued viability of domestic shipping operations; and,
- 2.7. Encourage the development of a viable shipbuilding and ship repair industry to support the expansion and modernization of the Philippine domestic merchant marine fleet and its strict adherence to safety standards which will ensure the seaworthiness of all sea-borne structures.

**Section 3. Definition of Terms** – As used in and for purposes of this IRR, the following terms, whether in singular or plural, are hereby defined as follows:

**“Act”** refers to Republic Act No. 9295, entitled: “An Act Promoting the Development of Philippine Domestic Shipping, Shipbuilding, Ship Repair, and Ship Breaking, Ordaining Reforms in Government Policies Towards Shipping in the Philippines, and For Other Purposes”, otherwise known as the “Domestic Shipping Development Act of 2004”;

**“Administration”** refers to the Maritime Industry Authority or MARINA;

**“Capital Equipment”** refers to the shipyard equipment and machinery, including major components thereof, and other mechanical or electrical apparatus, whether fixed or movable, needed for the construction, repair, or breaking of ships;

**“Cargo Handling Equipment”** refers to any machinery, gear or equipment used by the ship operator or a duly authorized and licensed port operator to service or handle cargo, on board the vessel, at the pier, or in the terminal or container yard such as, but not limited to, cranes, forklifts, top lifts, stackers, tractor heads, containers, pallet boards, and the like, including all spare parts, replacement parts, appurtenances, accessories, articles, supplies and materials thereof;

**“Classed Ships”** refer to ships that are designed, constructed and/or maintained in accordance with the rules and standards of a MARINA-recognized or accredited classification society;

**“Classification Society”** refers to a non-profit organization recognized or accredited by the MARINA, which has the capability and competence to determine the fitness for continued service of a ship’s hull structure, mechanical and electrical equipment, provide classification and construction design as well as periodic through-life compliance verification of ships with the rules and standards set by the organization, issue necessary certifications required by the regulations of the Authority and by international conventions and codes of the International Maritime Organization (IMO), as well as provide such services comprising technical support, research and development on ship design and maintenance;

**“Commissioning of the Ship”** refers to the ceremony mandating the beginning of active service of the ship or beginning of the ship’s active service, which may refer to the date of launching, if available, or year built;

**“Certificate of Public Convenience (CPC)”** refers to an authority granted to a sole proprietor, partnership, cooperative, corporation, association to provide shipping service over a specified area or route, and leaving to it the flexibility to deploy ships to perform such service;

**“Domestic Shipping”** refers to the transport of passengers or cargo, or both, by ships duly registered and licensed under Philippine law to engage in trade and commerce between Philippine ports and within Philippine territorial or internal waters, for hire or compensation, with general or limited clientele, whether permanent, occasional or incidental, with or without fixed routes, and done for contractual or commercial purposes.

**“Domestic Ship Operator”** or **“Domestic Ship Owner”** which may be used interchangeably shall refer to a citizen of the Philippines, or a commercial partnership wholly owned by Filipinos, or a corporation at least sixty percent (60%) of the capital of which is owned by Filipinos, which is duly accredited by the MARINA under Memorandum Circular No. 79/79-A or their subsequent amendments to engage in the business of domestic shipping, which may include cooperative or association duly registered with relevant government agency;

**“Domestic Trade”** refers to the sale, barter or exchange of goods, materials or products within the Philippines;

**“Effective Competition”** refers to the state where the market is able to function effectively and bring about economic efficiency with the concurrence of all of the following conditions:

- a) Market forces operate freely as when market is able to perform its price allocation function properly;
- b) No barriers to entry/exit; and,
- c) Level playing field is when operators are on the same plane and no operator can wield power to abuse the market by having the ability to manipulate or dictate rates or carrying capacity of ships.

**“Engine”** refers to the main propulsion engine and/or the auxiliary engine of a ship;

**“High Speed Passenger Craft”** refers to a craft capable of maximum speed in meters per second (m/s) equal to or exceeding:

$$\nabla \geq 3.70 \Delta^{0.1667}$$

$\nabla$  where:  $\Delta$  = displacement corresponding to the design waterline in M<sup>3</sup>;

excluding craft the hull of which is supported completely clear above the water surface in non-displacement mode by aerodynamic forces generated by ground effect.

**“Importation”** refers to the direct purchase, lease or charter of newly constructed or previously owned ships, or the purchase of a ship’s spare parts, from foreign sources or from registered enterprises operating in special economic zones as this term is defined in Republic Act No. 7916 entitled “The Special Economic Zone Act of 1995”. Importation also includes the purchase of navigational, communication,

safety, rescue and life saving equipment, shipyards' capital equipment, machinery and its spare parts;

**"Insurance Company"** refers to any corporation or entity duly authorized/licensed under Philippine laws to engage in the business of marine insurance and duly registered with the Insurance Commission;

**"Safety Appliances and Equipment"** refers to those appliances/equipment (i.e. navigational, communication, fire fighting, life-saving) referred to in SOLAS 1974, Chapter III, Sections A and B, and the PMMRR 1997 Chapters VII, IX, X and XI or their amendments, and other relevant safety rules, regulations and codes;

**"MARINA-registered Domestic Shipowner/Operator"** refers to accredited Domestic Shipowner/Operator under MARINA MC 79/79-A or their subsequent amendments.

**"MARINA-registered Shipyards, Shipbuilders and/or Ship Repairers"** refers to licensed shipyards, shipbuilders and/or ship repairers under MARINA MC 95 or its subsequent amendments;

**"Metal Plates"** refers to the steel plates, marine-grade aluminum plates or other metal plates, used for the construction, repair, renovation, conversion or alteration of the ship;

**"Missionary Route"** refers to a route involving one or more areas that have either an existing non-regular shipping service or no existing shipping services due to geographic limitations and absence of economic and market viability;

**"Monopoly"** refers to a form of market structure in which one or only a few entities/companies dominate the total shipping service in a particular route/link;

**"Ship"** or **"Vessel"** which may be used interchangeably shall refer to any kind, class or type of craft or artificial contrivance capable of floating in water, designed to be used, or capable of being used, as a means of water transport in the domestic trade for the carriage of passengers or cargo, or both, utilizing its own motive power or that of another;

**"Shipbuilding"** refers to the design, construction, launching and outfitting of all types of ships and watercraft;

**"Shipper"** any person, partnership or corporation, or third party who are doing business of forwarding or consolidation, who shall procure for itself the services of a domestic shipowner/operator for the carriage of its cargo in the domestic trade upon payment of proper compensation;

**"Ship repair"** refers to the overhaul, refurbishment, renovation, improvement, or alteration of the hull, machineries, equipment, outfits and components of all types of ships;

**"Shipyard"** refers to the shipbuilding or repair facilities which have the capability to put vessels out of water in a drydock or to put vessels above the water surface in order to effect ship work on vessels, appendages, structure, machinery and equipment;

**"Shipbuilder"** or **"Ship repairer"** refers to a citizen of the Philippines, or a commercial partnership owned by majority of Filipinos, or a corporation incorporated

under the laws of the Philippines, the capital of which is owned or controlled in any proportion by Filipinos or by foreign nationals, or by corporation whether Filipino or foreign-owned, which is duly authorized by the MARINA to engage in the business of shipbuilding or ship repair or to otherwise operate a shipyard, graving dock or marine repair yard; and

“**Spare Parts**” refers to the replacement parts or components of a vessel, including but not limited to its hull, engines, machineries, equipment, appurtenances, necessities, accessories, articles, supplies, materials, steel plates, aluminum plates, other metal plates, communications equipment, and other parts or components thereof, installed aboard the ship necessary for its safe and efficient navigation and operation.

## **RULE II**

### **JURISDICTION; POWERS; AND DUTIES OF MARINA**

**Section 1. Jurisdiction; Powers; and Duties of MARINA.** – The MARINA shall have the power and authority to:

- 1.1 Register vessels;
- 1.2 Issue certificates of public convenience, or any extensions or amendments thereto, authorizing the operation of all kinds, classes and types of vessels in domestic shipping: Provided, That no such certificate shall be valid for a period of more than twenty-five (25) years;
- 1.3 Modify, suspend or revoke at any time, upon notice and hearing, any certificate, license or accreditation it may have issued to any domestic shipowner/operator;
- 1.4 Establish and prescribe routes, zones of areas of operations of domestic shipowners/operators;
- 1.5 Require any domestic shipowner/operator to provide shipping services to any coastal area, island or region in the country where such services are necessary for the development of the area, to meet emergency sealift requirements, or when public interest so requires;
- 1.6 Set safety standards for vessels in accordance with applicable conventions and regulations;
- 1.7 Require all domestic shipowners/operators to comply with operational and safety standards for vessels set by applicable conventions and regulations, maintain its vessels in safe and serviceable condition, meet the standards of safety of life at sea and safe manning requirements, and furnish safe, adequate, efficient, reliable and proper service at all times;
- 1.8 Inspect all vessels to ensure and enforce compliance with safety standards and other regulations;

- 1.9 Ensure that all domestic shipowners/operators shall have the financial capacity to provide and sustain safe, reliable, efficient and economical passenger or cargo service, or both;
- 1.10 Determine the impact which any new service shall have to the locality it will serve;
- 1.11 Adopt and enforce such rules and regulations which will ensure compliance by every domestic shipowner/operator with required safety standards and other rules and regulations on vessels safety;
- 1.12 Adopt such rules and regulations which ensure the reasonable stability of passengers and freight rates and, if necessary, to intervene in order to protect public interest;
- 1.13 Hear and adjudicate any complaint made in writing involving any violation of the law or the rules and regulations of the Authority;
- 1.14 Impose such fines and penalties on, including the revocation of licenses of, any domestic shipowner/operator who shall fail to maintain its vessels in safe and serviceable condition, or who shall violate or fail to comply with safety regulations;
- 1.15 Investigate any complaint made in writing against any domestic shipowner/operator, or any shipper, or any group of shippers regarding any matters involving violations of the provisions of the Act and this IRR;
- 1.16 Upon notice and hearing, impose such fines, suspend or revoke certificates of public convenience or other license issued, or otherwise penalize any shipowner/operator, shipper or group of shippers found violating the provisions of the Act and this IRR; and,
- 1.17 Issue rules and regulations necessary to implement the provisions of the Act and this IRR: Provided, that the rules and regulations cannot change or in any way amend or be contrary to the intent and purposes of the Act and this IRR.

### **RULE III**

#### **INVESTMENT INCENTIVES FOR DOMESTIC SHIPOWNERS/OPERATORS**

**Section 1. *Investment Incentives*** – To ensure the continued viability, and, to encourage investments in the domestic shipping industry, the following incentives shall be granted to qualified domestic shipowners/operators:

- 1.1 **Value-Added Tax (VAT) Exemption** - All MARINA-registered domestic shipowners/operators shall be exempt from payment of VAT for the following:
  - 1.1.1 Importation of passenger and/or cargo ships 150 GT and above, including engine and spare parts of the particular ship(s)

imported; provided, that the ships to be imported shall comply with the following requirements:

Type	Maximum Age from original date of commissioning
Passenger and/or Cargo Ships	15 years old
Tankers	10 years old
High Speed Passenger Crafts	5 years old

1.1.2 Importation of life-saving equipment, fire fighting systems, safety and rescue equipment, communication and navigational safety equipment, steel plates, and other metal plates including marine-grade aluminum plates, used for transport operations.

1.1.3 Importation of Cargo Handling Equipment that are reasonably needed and be used exclusively by the registered domestic shipowner/operator in its transport operations.

1.1.4 Sale, Transfer or Disposition of articles covered under 1.1.1 to 1.1.3 hereof.

1.2 **Net Operating Loss Carry Over** - A net operating loss in any taxable year immediately preceding the current taxable year, which had not been previously offset as a deduction from gross income shall be carried over for the next three (3) consecutive taxable years immediately following the year of such loss subject to the pertinent provisions of the National Internal Revenue Code of 1997, as amended.

The MARINA-registered domestic shipowner/operator availing of this incentive shall furnish the MARINA in writing on or before the end of May each year and every year thereafter a copy of the Audited Annual Operating (Financial) Report stamped received by the BIR.

1.3 **Accelerated Depreciation** - Fixed assets may be depreciated as follows:

1.3.1 To the extent of not more than twice as fast as the normal rate of depreciation or depreciated at normal rate of depreciation if the expected life is ten (10) years or less; or

1.3.2 Depreciation over any number of years between five (5) years and the expected life if the latter is more than ten (10) years, and the depreciation thereon allowed as deduction from taxable income.

The MARINA-registered domestic shipowner/operator availing of this incentive can depreciate their fixed assets in two (2) methods, above-cited, who shall notify the BIR at the beginning of the depreciation period which depreciation method will be used. Copy of such notice to the BIR shall be submitted to the MARINA.

**Section 2. Who may qualify** - Only MARINA-registered domestic shipowners/operators may avail of the incentives under the Act.

**Section 3. *Conditions for the Availment of VAT Exemption*** - The importation of the articles under Section 1 hereof shall be granted exemption from VAT subject to the following conditions:

- 3.1 Said articles are not manufactured domestically in sufficient quantity, of comparable quality and at reasonable prices, to be determined by the MARINA;
- 3.2 Said articles are directly imported by a MARINA-registered domestic shipowner/operator;
- 3.3 Said articles are reasonably-needed and will be used exclusively by the registered domestic shipowner/operator in its transport operations;
- 3.4 The approval of MARINA was obtained prior to the importation of said articles;
- 3.5 The applicant/importer shall comply with relevant rules and regulations of the Bureau of Customs; and,
- 3.6 Exemption from VAT on the importation of said articles shall be granted to all MARINA registered domestic shipowners/operators within a period of ten (10) years from the effectivity of the Act.

**Section 4. *Limitations/Restrictions on Sale, Transfer or Disposition of Imported Articles*** – Any sale, transfer or disposition of articles enumerated under Section 1 hereof shall be subject to the following limitations/restrictions:

- 4.1 Any sale, transfer or disposition of articles within ten (10) years from the effectivity of the Act to another MARINA-registered domestic shipowners/operators enjoying similar incentive shall require prior approval of MARINA;
- 4.2 Any sale, transfer or disposition made to non-exempt entity or to a party other than a MARINA-registered domestic shipowner/operator, within ten (10) years from the effectivity of the Act, both the vendor and the transferee or assignee shall be solidarily liable to pay twice the amount of VAT waived;
- 4.3 Any sale, transfer or disposition made after ten (10) years from the effectivity of the Act shall be made by informing MARINA in writing. Purchasers, transferees or recipients shall be considered the importers thereof, who shall be liable for any internal revenue tax on such importation. Tax due on such importation shall constitute a lien on the goods superior to all charges or liens on the goods, irrespective of the possessor thereof;
- 4.4 Failure to secure an Authority to Sell, Transfer or Dispose from MARINA prior to sale, transfer or disposition, both the vendor and the transferee or assignee shall be liable to pay twice the amount of VAT exemption given him.

**Section 5. *Application for Authority to Import or Sell, Transfer or Dispose Imported Articles*** –



- 5.1 All applications for Authority to Import shall be filed under oath with the MARINA together with the submission of a Sworn Certification that the conditions under Sections 3.1 to 3.3 hereof are present and the required documents covering applications for (a) Importation of Ships and (b) Importation of Engine, Spare Parts, Equipment, Cargo Handling Equipment, and/or Plates prescribed under MARINA MC 169 entitled, Streamlined Checklist of Documentary Requirements and Rationalized Standard Processing Time, or its subsequent amendments and proof of payment of processing fee per MARINA MC 183 or its subsequent amendments.

The authority to import shall be valid within ninety (90) days from the date of opening of the Letter of Credit or submission of proof of payment of acquired articles;

- 5.2 All applications to sell, transfer or dispose of articles imported under 1.1.1 to 1.1.3 hereof shall be filed with MARINA together with the submission of the following documents:

5.2.1 Sale, Transfer or Disposition of Imported Ships

- a. Letter of Application;
- b. Duly notarized Memorandum of Agreement (MOA)/Deed of Sale (DOS) or Bill of Sale (BOS);
- c. Duly notarized resolution of the company's Board of Directors, certified by the Board Secretary, authorizing the filing of application and authorizing the signatory to the MOA/DOS or BOS to act for and in behalf of the vendor/seller, if applicable;
- d. Copy of Certificates of Ownership and Vessel Registry (CO/CVR); and,\
- e. Proof of payment of processing fee per MARINA MC 183 or its subsequent amendments.

5.2.2 Sale, Transfer or Disposition of Imported Engine, Spare Parts, Equipment, Cargo Handling Equipment, and/or Plates

- a. Letter of Application;
- b. Duly notarized Memorandum of Agreement (MOA)/Deed of Sale (DOS) or Bill of Sale (BOS); and,
- c. Proof of payment of processing fee per MARINA MC 183 or its subsequent amendments.

**Section 6. Application for Availment of Exemption from VAT** – All applications for VAT-Exemption on MARINA-approved importation and sale, transfer or disposition of imported ships, engines, spare parts, cargo handling equipment and/or plates shall be filed under oath with the MARINA, and shall be issued a Qualification Certificate attesting that the applicant possesses the qualifications for availment of VAT Exemption, upon compliance with the following documentary requirements:

- 6.1. Duly accomplished MARINA-prescribed Application Form for Availment of VAT-Exemption; and,
- 6.2. Proof of payment of processing fee in the amount of Php300.00.

**Section 7. Reportorial Requirement** – All MARINA registered domestic shipowners/operators who availed of the VAT-Exemption shall comply with the following:

- 7.1 Submission of a Quarterly Report on the utilization, sale, transfer or disposition of articles imported or sold, transferred or disposed under the Act and this IRR on or before the 15<sup>th</sup> of the month after the end of each quarter.
- 7.2 Submission on or before 15<sup>th</sup> of January each year a Summarized Report on the utilization, sale, transfer or disposition of articles imported or sold, transferred or disposed under the Act and this IRR.

## **RULE IV**

### **DEREGULATION OF THE DOMESTIC SHIPPING INDUSTRY - AUTHORITY OF THE MARITIME INDUSTRY AUTHORITY**

**Section 1. Authority to Operate** - No franchise, certificate or any other form of authorization for the carriage of cargo or passenger, or both, in the domestic trade, shall be granted except to domestic shipowners/operators.

**Section 2. Issuance of CPC** – The MARINA, in the exercise of its quasi-judicial function, shall have the power and authority to issue Certificate of Public Convenience (CPC) or any amendments/extensions/ renewals thereto, to a sole proprietor/partnership/cooperative/corporation/association, taking into consideration the economic and beneficial effect which the proposed service shall have to the port, province or region which it proposes to serve, and the financial capacity of the domestic shipowner/operator to provide and sustain safe, reliable, adequate, efficient and economical service in accordance with the standards set by government regulations.

Every domestic shipowner/operator shall state in its application the route(s) it proposes to serve, and the service(s) it proposes to offer. Domestic shipowners/operators who do not intend to operate in a fixed route(s) shall nevertheless state in its application the service(s) it proposes to offer.

**Section 3. CPC Amendment** – An application for amendment to the CPC shall be required under any of, but not limited to, the following instances:

- 3.1 Permanent Addition or Deletion of a route/port/link; or,
- 3.2 Permanent Addition/Reduction/Replacement of Ship/Fleet or Change in Ship's Name; or,

- 3.3 Change in the legal personality of the grantee of the CPC, merger, consolidation of the entity/company, including sale, transfer or disposition to existing CPC grantees; or,
- 3.4 Change in name of the entity/corporation/partnership/cooperative.

**Section 4. Other Types of Operations Required to Secure CPC** – Owners/operators of ships engaged in other types of operations, for hire or compensation, such as, tug and barge operations, ferry operations/services, either offered by resort/hotel owners and/or catering to tourism and leisure/sports-related activities, as well as companies, associations or individuals who operate ships for their own use but offering their ships, for hire or compensation, whether permanent, occasional or incidental, with general or limited clientele, shall be required to secure CPC.

**Section 5. Validity of CPC** - The MARINA shall have the power and authority to issue a CPC to a domestic shipowner/operator of ship(s) whose hull is made of materials other than wood, as follows:

<b>Years of Operation</b>	<b>Validity of CPC</b>
More than 10 years	25 years
More than 5 years up to 10 years	15 years
5 years and below	10 years

For domestic shipowners/operators of wooden-hulled ships, the CPC shall be valid for a period of five (5) years. For domestic shipowners/operators operating ships whose hull are made of wood, steel and/or other materials, the CPC shall be valid for a period of five (5) years.

For domestic ship operators whose ships are chartered, the CPC shall be valid for a period co-terminus with the MARINA charter approval granted to the ship with the longest charter period.

The above provisions are without prejudice to the mandatory vessel retirement program for unclassified ships under Rule XVIII hereof.

**Section 6. Qualification Requirements** – Applicant shipowner/operator for a CPC must possess/comply with the following:

- 6.1 Must be a MARINA-registered shipowner/operator per MARINA MC 79/79-A or their subsequent amendments;
- 6.2 Must be financially capable to provide and sustain safe, reliable, adequate, efficient and economical service in undertaking the proposed shipping service. The applicant is deemed financially capable if it can be shown that there is excess in capitalization using the formula below, unless revised/amended:

**Capitalization = (Equity – fixed assets net of long-term liabilities) + total depreciation**

- 6.3 Must provide a service that has economic and beneficial effect on the port, province or region it proposes to serve, to be determined by the MARINA on the basis of any of the documents enumerated in subsection 7.1.6 herein.

**Section 7. Documentary Requirements** – The applicant shall submit the following documentary requirements in support of its application:

**7.1 For New/Extension/Renewal of CPC:**

- 7.1.1 Duly accomplished Application Form prescribed by the MARINA;
- 7.1.2 Copy of Certificate of Accreditation under MC 79/79-A and their amendments;
- 7.1.3 Updated/Latest Articles of Incorporation and By-Laws for corporations; or Articles of Partnership for partnerships; or DTI Certificate of Registration of Business Name for single proprietorships; or Articles of Cooperation for cooperatives;
- 7.1.4 Financial Statements;
- 7.1.5 Ship's Documents:
  - a. Certificate of Vessel Registry (CVR);
  - b. Certificate of Ownership (CO); and,
  - c. Coastwise License (CWL) or Bay and River License (BRL), or Pleasure Yacht License (PYL);
- 7.1.6 Any of the following documents showing economic and beneficial effect:
  - a. The estimated port dues and charges that are expected to be paid for the proposed service, and the estimated increase in the volume of passengers and cargoes to be transported in the route proposed to be served; or,
  - b. The estimated amount of taxes to be paid to the local government units where the intended service will be provided; or,
  - c. Sangguniang Bayan/Panlalawigan Resolution on the perceived economic benefit to the town/province where the applicant proposes to serve; or,
  - d. The estimated number of employment that may be generated in the proposed service; or,
  - e. Any study showing probable economic/beneficial effect to the port, province or region it proposes to serve.
- 7.1.7 Ship Safety Documents:
  - a. Ship Safety Certificates;
    - a.1 For Passenger Ships:
      - i. Passenger Ship Safety Certificate; and,
      - ii. Minimum Safe Manning Certificate;
    - a.2 For Cargo Ships:

- i. Cargo Ship Safety Certificate; and,
  - ii. Minimum Safe Manning Certificate;
- a.3 For Tankers:
  - i. Cargo Ship Safety Construction Certificate;
  - ii. Cargo Ship Safety Equipment Certificate;
  - iii. Certificate of Fitness; and,
  - iv. Minimum Safe Manning Certificate;
- a.4 For Tugs, Dredgers and Barges:
  - i. Cargo Ship Safety Certificate; and,
  - ii. Minimum Safe Manning Certificate;
- a.5 For High Speed Crafts:
  - i. High Speed Craft Safety Certificate; and,
  - ii. Minimum Safe Manning Certificate;
- a.6 For Other Ships:
  - i. Passenger/Cargo Ship Safety Certificate; and,
  - ii. Minimum Safe Manning Certificate;
- a.7 Such other certificates/documents as may be prescribed by the MARINA.
- b. Class Certificate;
- c. Radio/Ship Station License (RSL/SSL);
- d. Document of Compliance (DOC); and,
- e. Safety Management Certificate (SMC);
- 7.1.8 Passenger and/or Cargo Insurance Coverage;
- 7.1.9 Other additional insurance and/or P&I Cover;
- 7.1.10 Civil Liability Convention (CLC) Certificate for Tankers and Barges carrying Persistent Oil;
- 7.1.11 Certificate of Compliance under MARINA MC Nos. 65/65-A; 121; 134; 150; and 196, including compliance with MARINA MC Nos. 72; 98; 135; and 136, as applicable, and their subsequent amendments;
- 7.1.12 Pictures of the ship, showing the name, port side, starboard side and astern view (with the size of 5" x 7"); and,
- 7.1.13 Proof of Payment of Processing Fee(s) pursuant to MARINA MC 183 and its subsequent amendment(s);
- 7.2 For Amendment of CPC:

- 7.2.1 Permanent Addition or Deletion of a route/port/link:
- a. Application for Amendment of CPC stating the reason(s) thereof;
  - b. For additional route/port/link, documents showing economic and beneficial effect pursuant subsection 7.1.6 of this Rule;
  - c. Proof of Payment of Processing Fee(s) pursuant to MARINA MC 183 and its subsequent amendment(s);
- 7.2.2 Permanent Addition/Reduction/Replacement of Ship/Fleet or Change in Ship's Name:
- a. Application for Amendment of CPC identifying the ship to be added/deleted/replaced and reason(s) thereof;
  - b. Financial Statements to reflect changes/adjustments in the capitalization requirement, as applicable;
  - c. Relevant documents under subsection 7.1.5, 7.1.7 up to 7.1.12, as applicable;
  - d. Proof of Payment of Processing Fee(s) pursuant to MARINA MC 183 and its subsequent amendment(s);
- 7.2.3 Change in the legal personality of the grantee of the CPC in cases enumerated under Section 3.3 hereof:
- a. Application Form stating the change in the legal personality of the grantee of the CPC, merger, consolidation or sale, transfer, or disposition to existing CPC grantees;
  - b. Amended Certificate of Accreditation under MARINA MC 79/79-A and their subsequent amendments;
  - c. Amended Articles of Incorporation/Partnership and SEC Certificate of Registration or New Certificate of Registration of Business Name for Single Proprietorship or Amended Articles of Cooperation and CDA Certificate of Registration;
  - d. Ship documents/ship safety certificates under Section 7.1.5, 7.1.7 up to 7.1.12 showing the new registered owner, as applicable;
  - e. Proof of Payment of Processing Fee(s) pursuant to MARINA MC 183 and its subsequent amendment(s);
- 7.2.4 Change in name of the entity/corporation/partnership/cooperative:
- a. Application Form stating the change in name of the entity/corporation/partnership/cooperative;
  - b. Amended Articles of Incorporation/Partnership and SEC Certificate of Registration or New Certificate of Registration of

Business Name for Single Proprietorship or Amended Articles of Cooperation and CDA Certificate of Registration;

- c. Ship documents/ship safety certificates under Section 7.1.5, 7.1.7 up to 7.1.12 showing the new registered owner, as applicable;
- d. Proof of Payment of Processing Fee(s) pursuant to MARINA MC 183 and its subsequent amendment(s);

It is understood that the requirements stated in the preceding subsections 7.1.5 as applicable, 7.1.7 up to 7.1.12 must be valid for the duration of the ship's operation. The duly renewed/updated/valid requirements shall be submitted within fifteen (15) days prior to their expiration.

**Section 8. Jurisdictional Requirements** – Proof of compliance with the jurisdictional requirements will be presented by applicant in a summary proceeding, as follows:

- 8.1 Affidavit of publication with the newspaper clipping;
- 8.2 Copy of the whole newspaper where the Order was published;
- 8.3 Photographs showing proof of the required posting of Order.

**Section 9. Procedure and Standard Processing Time in the Issuance of CPC and/or Amendments/Extensions/Renewals** – The following procedure, and standard processing time in the issuance of CPC and/or amendments/extensions/renewals thereof are hereby adopted:

**9.1 Procedure in the Issuance of CPC:**

**9.1.1 For New/Extension/Renewal:**

- a. The application for issuance of CPC shall be filed with the Central Office or the Maritime Regional Office where the applicant has its principal place of business or office;
- b. Only applications with complete and valid documentary requirements as provided in Section 7 hereof shall be accepted. Applications with incomplete requirements shall be returned to the applicant;
- c. For liner operations, the applicant shall state in its application the name(s) of the ship(s), route(s) it proposes to serve, and the service it proposes to offer. For tramp and other types of operations, the applicant shall state in its application the name(s) of the ship(s), the proposed area(s) of operation and the service it proposes to offer;
- d. Upon acceptance of the application, an Order shall be issued requiring the applicant to cause the publication of said Order containing therein the name(s) of the ship, the type of service, ship's routing pattern, sailing frequency(ies), sailing schedule(s) and the rate(s) to be adopted, in any of the five (5) major newspaper of national circulation, if the

route(s)/area(s) of operation to be served is national and/or inter-regional in scope. If the route(s)/area(s) to be served is local or intra-regional in scope, publication in a newspaper of local circulation is sufficient;

- e. The applicant shall simultaneously cause the posting of the aforementioned Order in conspicuous places of the affected ports, ships, grantee's premises, passenger terminals and ticketing offices;
- f. The MARINA shall cause the posting of such Order at the MARINA Central or Regional Offices and/or the MARINA website;
- g. The Applicant shall present the jurisdictional, qualification and documentary requirements in a summary proceeding to be conducted in the MARINA Central or Regional Office where the application was filed, within seven (7) days from date of publication/posting. Applicant will be required to make a written Formal Offer of Evidence (FOE) and submit his application for resolution/decision;
- h. Upon favorable evaluation of the jurisdictional, qualification and documentary requirements prescribed under Sections 6, 7 and 8 hereof, a Decision granting the Application and attaching the CPC will be issued to the applicant indicating therein the period of validity of the CPC, name of operator, name of ship, and routing pattern;
- i. An applicant who does not meet the jurisdictional/qualification/documentary requirements shall be issued an Order of Denial, or shall in writing, be required to rectify noted deficiencies, or to submit document(s) deemed necessary;
- j. Any subsequent change in the ship's sailing frequency(ies), sailing schedule(s) and rate(s) shall be published and posted seven (7) days before adoption thereof, and proof thereof shall be submitted to MARINA for posting in the website.

#### 9.1.2 For Amendment:

- a. The application for amendment of CPC stating therein the specific amendment sought to be approved shall be filed with the Central Office or the Maritime Regional Office where the applicant has its principal place of business or office;
- b. Only applications with complete and valid documentary requirements as provided in subsection 7.2 hereof shall be accepted. Applications with incomplete requirements shall be returned to the applicant. A subsequent Order shall be issued requiring the applicant to publish and post the amended application.
- c. In cases falling under Sections 3.1 and 3.2 hereof, upon acceptance of the application for amendment of CPC, the applicant shall cause the publication of the Order stating



therein the applicable amendments under Section 3 being sought, in any of the five (5) major newspaper of national circulation, if the route(s)/area(s) of operation to be served is national and/or inter-regional in scope. If the route(s)/area(s) to be served is local or intra-regional in scope, publication in a newspaper of local circulation is sufficient;

- d. The applicant shall simultaneously cause the posting of the aforementioned Order in conspicuous places of the affected ports, vessels, grantee's premises, passenger terminals and ticketing offices;
- e. The MARINA shall cause the posting thereof at the MARINA Central or Regional Offices and/or the MARINA website;
- f. The Applicant shall submit compliance with the jurisdictional, qualification and documentary requirements in a summary proceeding to be conducted in the MARINA Central or Regional Office where the application was filed, within seven (7) days from date of publication/posting;

Applicant will be required to make a written Formal Offer of Evidence and submit the application for resolution/decision

- g. Upon favorable evaluation of the jurisdictional, qualification and documentary requirements prescribed under Sections 6 and 7.2 hereof, a corresponding Rider for instances falling under Sections 3.1 and 3.2 hereof or a new Decision with CPC for instances falling under Sections 3.3 and 3.4 hereof showing the amendments will be issued to the applicant;
- h. An applicant who does not meet the jurisdictional/qualification/documentary requirements shall be issued an Order of Denial, or shall in writing be required to rectify noted deficiencies, or to submit document(s) deemed necessary.

- 9.2 ***Standard Processing Time in the Issuance of CPC*** – The MARINA shall issue the CPC within fifteen (15) working days upon acceptance of the written Formal Offer of Evidence (FOE) and declaration that the case is submitted for decision and after favorable evaluation of the jurisdictional, qualification and documentary requirements.

**Section 10. *Development of Routes, Zones or Areas of Operation*** - The MARINA shall establish, prescribe and foster the development of routes, zones or areas of operations to guide and advise domestic shipowners/operators where shipping services can be provided or are necessary in order to promote and spur economic activities.

For missionary routes, the MARINA shall prescribe liberalized rules and procedures pertaining to fees and charges, documentary requirements, and other incentives to protect its investment for a reasonable period as determined by the MARINA.

The MARINA shall develop an integrated sea transport network by identifying viable routes suitable for long haul liner routes, short haul ferry routes, RORO routes, tramp operations, feeder routes, and hub ports.

The MARINA shall maintain a database of ship's franchise inventory existing and potential domestic trade routes; inventory of ships per trade route/link; and, capacity of each ship both in the regional and national level.

## **RULE V**

### **FOREIGN SHIPS ENGAGED IN TRADE AND COMMERCE IN PHILIPPINE TERRITORIAL WATERS**

**Section 1. *Special Permit for Foreign Ships*** - No foreign ships shall be allowed to transport passengers or cargo between ports or places within the Philippine territorial waters, except upon the grant of Special Permit by the MARINA, when no domestic ship is available or suitable to provide the needed shipping service and public interest warrants the same.

**Section 2. *Instances warranting issuance of SP*** – The MARINA may issue Special Permit under any of the following instances:

- 2.1 There is no available Philippine-registered ship to transport the cargo to meet the shipping requirement as determined by the MARINA; or,
- 2.2 There is no suitable Philippine-registered ship to meet the specific requirements of the shipper or consignee, as determined by MARINA; or,
- 2.3 In instances when public interest warrants, as determined by the MARINA.

**Section 3. *Validity of the SP*** - The Special Permit shall be valid for the duration of the need as determined by the MARINA.

**Section 4. *Documentary Requirements*** – The applicant shall submit the following pre-approval Documentary requirements:

- 4.1.1 Pre-Approval Documentary Requirements:
  - 4.1.1 Letter of Application;
  - 4.1.2 Fixture Note/Contract of Affreightment/Time/Voyage Charter Agreement indicating the charter hire of the subject ship;
  - 4.1.3 Duly notarized Resolution of the company's Board of Directors, certified by the Board Secretary, authorizing the filing of the application and designating the officials/authorized representatives to represent the applicant-company/registered owner;
  - 4.1.4 Valid Certificate of Ship Original Registry/Nationality (for foreign flag only);
  - 4.1.5 Class Certificate/Latest Survey report;

- 4.1.6 Crew list indicating STCW certificates (number and Validity) of the crew required certification;
  - 4.1.7 Certified true copy of P&I/Insurance Coverage, as applicable;
  - 4.1.8 SEC Registration (for branch offices of foreign owners/ charterers/ship representative);
  - 4.1.9 Other related documents/contracts that would trace the operation/project involving the utilization of the ship (if there are two or more other companies involved in the project);
  - 4.1.10 Proof of payment of processing fee of Php 120,000.00 minimum/month/ship of Php 500.00/50 GT or fraction thereof, whichever is higher.
- 4.2 Post-Approval Documentary Requirements:
- 4.2.1 Duly notarized/authenticated Fixture Note/Contract of Affreightment/Time or Voyage Charter Agreement (notarized only if document is executed in the Philippines); and,
  - 4.2.2 Proof of payment of tax on non-resident foreign corporation/entity not engaged in trade or business in the Philippines but deriving income pursuant to Section 28-B of RA 8424.

## RULE VI

### SAFETY STANDARDS

**Section 1. Safety Standards** – All ships shall, at all times, be in seaworthy condition as to their hull and machinery, properly outfitted with adequate navigational aids and equipment, firefighting, life-saving, communication, and other safety appliances/equipment, operated and maintained in accordance with prescribed standards, and manned by duly licensed and competent ship crew.

The MARINA shall set, formulate or revise safety standards and requirements for ships and to ensure protection of the marine environment. It shall likewise implement and enforce such rules and regulations which will ensure compliance by every domestic shipowner/operator with required safety standards and other rules and regulations on ships.

**Section 2. Conformance with/Maintenance of Safety Standards** – The MARINA shall have the power to inspect ships and all equipment onboard ships to ensure conformance with/maintenance of safety standards.

Annual and such other required safety inspections of all ships shall be undertaken by qualified and trained ship safety inspectors of the MARINA. All relevant ship safety certificates required following such inspections shall be issued by the MARINA.

**Section 3. *Obligations of Domestic Shipowners/operators*** – All domestic shipowners/operators must comply, prior to and for the duration of the ships' operation, with operational and safety standards required by national laws and/or applicable international conventions, codes, rules and regulations.

**Section 4. *Adoption of Ship Safety Inspection System (SSIS)*** – In order to foster a systematic, uniform and effective conduct of ship safety inspection of all registered domestic ships, a Ship Safety Inspection System (SSIS) and a Manual for its implementation are hereby adopted. The SSIS and its Manual, and their amendments, shall henceforth serve as the guiding framework and reference to be used by the MARINA's inspectors in the conduct of all ship inspections to be undertaken prior to issuance of the appropriate ship safety certificates. The MARINA shall supervise, coordinate and provide guidance/resolution in the implementation of the SSIS and the Manual. It shall also foster a periodic review/evaluation of the SSIS and the Manual, and introduce amendments/improvements thereto.

**Section 5. *Ship Safety Certificates Required*** – All ships are required to carry on board the relevant or applicable ship safety certificates as specified in Section 7.1.7 of Rule IV.

## **RULE VII**

### **CLASSIFICATION OF SHIPS IN THE DOMESTIC TRADE**

**Section 1. *Classification of Newly-Acquired Ships*** - All ships, whether newly built or previously owned, which are acquired on or after the effectivity of the Act and this IRR shall be classed by a government-recognized/accredited classification society on the date of acquisition prior to their operation in the domestic trade. In the case of high-speed crafts, they shall be classed by an IACS-member classification society.

**Section 2. *Classification of Existing Ships*** - Existing ships acquired prior to the effectivity of the Act and this IRR, shall continue to be governed by applicable classification policies/requirements. In the case of high-speed crafts, they shall be classed by an IACS-member classification society.

**Section 3. *Monitoring, Verification and Audit of Classification Societies*** - The MARINA shall adopt policies, guidelines, standards and procedures for the monitoring and assessment of performance of recognized/accredited classification societies.

## **RULE VIII**

### **RATES**

**Section 1. *Right to Fix Rates*** – In order to encourage investments in the domestic shipping industry by existing domestic shipowners/operators and attract investment from new operators and investors, domestic shipowners/operators are hereby

authorized to establish/fix their own domestic shipping rates, passenger or cargo rates or both, provided, that effective competition is fostered and public interest is served.

**Section 2. *Conditions in Fixing Rates*** – Every domestic shipowner/operator shall have the right to fix its own passenger or cargo rates, or both, subject to the following:

- 2.1. Upon the effectivity of this IRR, all shipowners/operators with Entity/Company CPC shall submit under oath with the MARINA their Notice for the adoption of initial/subsequent upward or downward adjustment of deregulated rates as defined in the Act and this IRR, in a prescribed form, which shall indicate, among others, the name of covered ship(s), authorized route(s)/link(s), rate(s) per route/link and the grounds for the adjustment;
- 2.2. All shipowners/operators shall cause the publication of their Notice submitted to the MARINA in any of the five (5) major newspapers of national circulation, if the route(s)/area(s) of operation to be served is national and/or inter-regional in scope. If the route(s)/area(s) to be served is local or intra-regional in scope, publication in a newspaper of local circulation is sufficient;
- 2.3. All shipowners/operators shall likewise cause the posting of any initial/subsequent upward or downward adjustment of deregulated rates, including the effectivity thereof, in all conspicuous places at the affected port(s), vessel(s), company premises, passenger terminals and ticketing office(s).

The MARINA shall cause the posting thereof at the MARINA Central or Regional Offices and/or the MARINA website; and,

- 2.4. The upward or downward adjusted rate shall take effect seven (7) calendar days from the publication in accordance with Section 2.2 hereof.

**Section 3. *Monitoring Activities*** – In order to protect and safeguard public interest, the MARINA shall perform the following monitoring activities:

- 3.1 Inspect books and records of the shipowners/operators;
- 3.2 Assess the rates charged *vis-à-vis* the level and quality of service provided through the implementation of an amended Passenger Service Rating System (PSRS) and Cargo Service Rating System (CSRS); and,
- 3.3 Assess the Quarterly Report and the audited Annual Report of Operations and Finances, together with the copy of the Official Receipt (OR) of Quarterly and Monthly Common Carrier's Tax and other related tax payments to the BIR, which are hereto required to be submitted by domestic shipowners/operators, fifteen (15) days after each quarter and every June 30<sup>th</sup> of the following year, respectively.

**Section 4. *Instances Warranting MARINA's Intervention*** – The MARINA, through the Administrator, shall intervene, following the Rules on Summary Procedure as

prescribed in MARINA MC 74-A and its amendments, in any of the following circumstances:

- 4.1 Monopoly of a route/link, lack of effective competition in a route/link, and practices which constitute combinations in restraint of trade; or,
- 4.2 Any complaint against the rates charged and/or services rendered by the shipowners/operators provided sufficient basis/justification is submitted; or,
- 4.3 Any adverse findings/recommendations as a result of monitoring activities undertaken by the MARINA under Section 3 above; or,
- 4.4 Other analogous instances.

Upon confirmation/determination of any of the above circumstances, the MARINA shall issue an Order prescribing the appropriate corrective measures to be undertaken by the domestic shipowner/operator, such as but not limited to, prescribing rates commensurate to the ship's service level, or routes of operation, or upgrading the ship's service level to prescribed standard.

**Section 5. Government Cargoes** - Every domestic shipowner/operator shall have the obligation to carry mail on mutually agreed terms and conditions, and preferential negotiated conditions shall be given for the carriage of other government cargo.

## RULE IX

### COMPULSORY INSURANCE COVERAGE

**Section 1. Compulsory Insurance Coverage for Passenger and Cargo** –To meet its financial responsibility for any liability that may be incurred for any breach of the contract of carriage, the domestic shipowner/operator shall be required to submit annually the following, as applicable:

- 1.1. Adequate insurance coverage for each passenger in the amount not less than two hundred thousand pesos (Php 200,000.00) per manifested passenger, and the total amount of such coverage shall be equivalent to the total authorized number of passengers of the ship(s);
- 1.2. Adequate insurance coverage for cargo, in an amount to be computed in accordance with existing laws, rules and regulations, and the total amount of such coverage shall be equivalent to the total cargo capacity being offered by the vessel;
- 1.3. If a domestic shipowner/operator should offer both passenger and cargo service, then the total insurance coverage shall be in the total sum equivalent to that stipulated in paragraphs (1.1) and (1.2) of this Section; and

*Provided*, That if a domestic shipowner/operator should operate more than one (1) ship, the amount of insurance coverage required under this section for purposes of proving financial capacity, shall be the amount equivalent to the total

authorized number of passengers, or total cargo capacity, or both, of the largest operating ship which the domestic shipowner/operator may have, *Provided, further,* That the total insurance coverage which may be required of any domestic shipowner/operator shall not exceed the value of such ship: *Provided, finally,* That adequate insurance coverage shall be obtained from any duly licensed insurance company by the Office of the Insurance Commission (OIC) or international protection and indemnity association.

**Section 2. *Other Insurance Coverage*** - The MARINA may require every domestic shipowner/operator to obtain other insurance cover from duly licensed insurance companies/Protection and Indemnity Clubs or their equivalent against damage to, or degradation of, the marine environment, port facilities, coastal areas or deprivation of the livelihood of marginal fishing and other tourism amenities.

## **RULE X**

### **FEEES**

**Section 1. *Power to Fix, Collect and Receive Fees*** – The MARINA shall impose, fix, collect and receive, in accordance with the schedules approved by its Board, such fees necessary for rendering the services in the licensing, supervision, regulation, inspection, approval and accreditation of domestic shipowners/operators and the promotion and development of the country’s maritime industry.

Unless otherwise revised or amended, the fees prescribed under MARINA MC No. 183 and other relevant MCs for licenses, permits, or applications issued under this IRR shall continue to apply. The fees and charges prescribed under this IRR shall be subject to review and revision by the MARINA.

## **RULE XI**

### **MARINA TRUST FUND**

**Section 1. *Establishment of the MARINA Trust Fund*** - Pursuant to Section 17, Chapter VII, MARINA shall establish a Trust Fund.

**Section 2. *Sources of Funds*** - The Fund shall consist of fees collected from the licensing, supervision, regulation, inspection, approval and accreditation of domestic ship operators, and such other collections resulting from the promotion and development of the country’s maritime industry, and such other collections that may subsequently be prescribed by the MARINA Board for the rendition of service in pursuance of the purposes of the Act.

**Section 3. *Collection and Deposit*** - No payment shall be received by MARINA without the issuance of an Official Receipt in acknowledgement thereof.

The collection of fees and charges and such other funding sources for the Fund shall be separately recorded and directly deposited in the MARINA Trust Fund

Account in an authorized government depository bank. The interest income therefrom shall also accrue and be directly credited to the MARINA Trust Fund Account.

**Section 4. *Utilization of Funds*** - The Fund shall be used to cover operating expenses for plans, programs, projects and activities of the MARINA relative to the implementation/performance of its functions of licensing, supervision, regulation, inspection, approval and accreditation of domestic ship operators and promotion and development of the country's maritime industry.

**Section 5. *Disbursement of Funds*** - The income derived from the collection of fees and charges and such other funding sources as prescribed or to be prescribed by the MARINA Board pursuant to the Act shall be made available for the operational expenses of the activities for which the Fund was set up. Such Fund shall be considered self-perpetuating and self-liquidating and all expenditures incurred by virtue of the specific purposes of the Act shall be charged against the Fund in accordance with existing accounting and auditing rules and regulations.

Increments of, or the whole amount of the Fund shall be made available to the MARINA to finance such services/activities that are undertaken pursuant to the Act and this Rules.

To ensure unimpeded rendition of services to the public, avilment of the Fund shall be made only in such authorized government depository bank and shall not require any prior clearance or approval from any other government agency.

**Section 6. *Creation of MARINA Trust Fund Management Committee (MTFMC)*** – Pursuant to the power of MARINA to establish and manage a Trust Fund, a Trust Fund Management Committee is hereby constituted. The MTFMC shall be composed of the MARINA Administrator, Deputy Administrator for Planning, Deputy Administrator for Operations, AFO Director, PPO Director, MLAO Director, and one (1) representative each from the Philippine Interisland Shipping Association (PISA), Philippine Shippers Bureau (PSB) and the Resident COA Auditor. The Committee shall be responsible for the management and administration of the MARINA Trust Fund. Within thirty (30) days from effectivity of this Rules, the MTFMC shall issue guidelines on the disbursement and utilization of the Fund.

**Section 7. *Financial Audit*** – A financial audit shall be regularly conducted by the MARINA Internal Audit Service Unit (MIASU) to review, examine, conduct assessment/appraisal of financial and accounting matters of the Fund.

**Section 8. *Annual Report*** – The MARINA shall submit an annual report on the operations, fund usage and implementation of the provisions of the Act to the concerned government agencies.

The Annual Report shall contain, among others, the following: a) Total income credited to the Fund; b) Total utilization/disbursements from the Fund; and c) The yearend balance of the Fund.

## **RULE XII**

### **PROHIBITED ACTS AND PRACTICES**



**Section 1. *Prohibited Acts and Practices of Domestic Shipowners/Operators.***

– The MARINA shall have the power to impose such fines and penalties against every domestic shipowner/operator who shall:

- 1.1 Operate without a valid certificate of public convenience, accreditation or other form of authority required by the Act and this IRR;
- 1.2 Refuse to accept or carry any passenger or cargo without just cause, except for tramp operations;
- 1.3 Fail to maintain its vessels in safe and serviceable condition, or violate safety rules and regulations;
- 1.4 Fail to obtain or maintain adequate insurance coverage;
- 1.5 Fail to meet or maintain safe manning requirements;
- 1.6 Fail to submit the required Quarterly Report and an audited Annual Report of Operations and Finances, attaching the copy of the Official Receipt (OR) of Quarterly and Monthly Common Carriers Tax Payments to the Bureau of Internal Revenue;
- 1.7 Such other acts which the MARINA shall determine, after due notice and hearing, to be detrimental or prejudicial to the safety, stability and integrity of domestic shipping;
- 1.8 All prohibited acts defined under existing MARINA Circulars that are not inconsistent with this IRR shall remain in full force and effect.

## **RULE XIII**

### **FINES AND PENALTIES**

**Section 1. *Fines and Penalties.*** – The MARINA, upon notice and hearing and determination of the existence of any breach or violation of the provisions of the Act or any rules and regulations issued pursuant thereto, shall have the power and authority to:

- 1.1 Suspend or revoke any certificate or public convenience, license, permit, accreditation, or other form of authority issued to any domestic shipowner/operator who shall violate any provision of the Act or any rules and regulations issued pursuant thereto, or any condition imposed on such certificate of public convenience, license, permit or accreditation;
- 1.2 Impose a fine on a domestic shipowner/operator who shall operate without a valid certificate of public convenience, license, permit, accreditation, or other form of authority;
- 1.3 Impose a fine on a domestic shipowner/operator in an amount to be determined by the MARINA for refusing to accept, or to carry passengers or cargo, without just cause, or for engaging in any

prejudicial, discriminatory or disadvantageous act towards any class of passengers or shippers;

- 1.4 Impose a fine on any domestic shipowner/operator in an amount to be determined by the MARINA, or suspend or revoke the certificate of public convenience of such domestic shipowner/operator, or both, who shall fail to meet the standards of such safety or who refuses to comply with or violates safety regulations imposed by the MARINA or fails to maintain its vessels in safe and serviceable condition;
- 1.5 Impose a fine on any domestic shipowner/operator in an amount to be determined by the MARINA, or impose such other penalty, including the revocation of any certificate or license, who fails to procure or renew required insurance policies;
- 1.6 Impose a fine on any domestic shipowner/operator in an amount to be determined by the MARINA, or impose such other penalty, including the revocation of any certificate or license who fails to meet or maintain safe manning requirements;
- 1.7 Revoke, cancel, suspend, Certificate of Public Convenience, license, or otherwise refuse or deny action on application for availment of VAT exemption or other privileges for failure to submit the required Audited Quarterly/Annual Report of Operations and Finances in the case of corporation and/or partnership and to submit proof of Quarterly/Annual Tax Payments to the BIR; and,
- 1.8 Impose such other fines and penalties the MARINA may deem necessary and appropriate in order to enforce the provisions of the Act.

Unless otherwise amended or revised, the fines and penalties prescribed under MARINA MC 120 and other relevant MCs shall apply.

## **RULE XIV**

### **INVESTIGATION, HEARING AND ADJUDICATION**

**Section 1. *Power to Investigate*** – The MARINA has the power to investigate *motu proprio* or upon any complaint made in writing against any domestic shipowner/operator, or any shipper or group of shippers, or any shipbuilder and/or ship repairer, or such other entities regarding any matter involving violations of the provisions of the Act or this IRR and any of the rules and regulations issued by the MARINA.

**Section 2. *Power to Hear and Adjudicate*** – The MARINA has the power to hear and adjudicate any complaint made in writing involving any violation of the Act or this IRR and any of the rules and regulations issued by the MARINA.

**Section 3. *Rules of Procedure*** – The MARINA shall not be bound by the technical rules of procedure and evidence but shall proceed to hear and decide all cases, disputes or controversies in a most expeditious manner, employing all reasonable means to ascertain the facts of every case in accordance with justice and equity and the merits of the case. The Rules on Summary Procedure and other applicable

provisions prescribed under MARINA MC 74-A shall continue to be observed until otherwise amended or revised accordingly.

**Section 4. Power to Issue Summons** – The MARINA shall have the power to summon witnesses, administer oaths, take testimony, require the submission of reports, compel the production of books and documents, and issue *subpoena ad testificandum et subpoena duces tecum*, and enforce its orders, writs or processes through its deputized officers.

**Section 5. Rendition of Decision** – The case is deemed submitted for resolution upon termination of the period for reception of evidence and formal submission thereof. The case shall be decided by the concerned Central Office (CO)/Maritime Regional Office (MRO) within thirty (30) calendar days from submission as provided herein. All decisions determining the merits of cases shall be in writing, stating clearly and distinctly the facts and law on which they are based and signed by the CO/MRO Director/Officer-In-Charge (OIC).

Decisions and final orders shall be served by mail, personal service or publication as the case may require.

## **RULE XV**

### **APPEALS**

**Section 1. Appeal on Decisions Involving the CPC** – Any order, ruling, decision or resolution of the CO/MRO Director/OIC relating to the application for issuance of Entity/Company CPC shall become final and executory fifteen (15) days unless a Motion for Reconsideration is filed within the same period with the CO/MRO Director/OIC concerned after the receipt of a copy thereof by the party affected. The decision of the CO/MRO Director/OIC shall be final and executory unless within the same period an appeal to the MARINA Administrator has been perfected.

The order, ruling decision or resolution of the MARINA Administrator shall be final and executory within fifteen (15) days unless an administrative appeal is filed with the MARINA Board or petition for judicial review is filed with the Court of Appeals or Supreme Court in accordance with the provisions of the Revised Rules of Court.

**Section 2. Appeal on Other Decisions** - Any and all orders, rulings, decisions or resolutions of the CO/MRO Director/OIC other than those relating to the application for issuance of Entity/Company CPC shall become final and executory fifteen (15) days after the receipt of a copy thereof, unless a Motion for Reconsideration is filed within the same period with the CO/MRO Director/OIC concerned after the receipt of a copy thereof by the party affected. The decision of the CO/MRO Director/OIC shall be final and executory unless within the same period an appeal to the MARINA Administrator has been perfected.

The order, ruling decision or resolution of the MARINA Administrator shall be final and executory within fifteen (15) days unless an administrative appeal is filed with the MARINA Board.

**Section 3. Perfection of Appeal** – Appeal may be perfected by filing a Notice of Appeal with the MARINA Administrator and the concerned CO/MRO Director/OIC and a copy thereof served upon the adverse party fifteen (15) days from receipt of

the order, ruling, decision and upon payment of the corresponding docket fee of Php1,000.00.

## RULE XVI

### INVESTMENT INCENTIVES FOR SHIPBUILDING AND SHIP REPAIR

**Section 1. *Investment Incentives*** – To encourage investments and to ensure the development of a viable shipbuilding and ship repair industry, the following incentives shall be granted:

- 1.1 ***Value-Added Tax (VAT) Exemption*** - All MARINA-registered shipbuilders and/or ship repairers shall be exempt from payment of value added tax for the importation of capital equipment, machinery, spare parts, life-saving, navigational equipment, steel plates, and other metal plates including marine-grade aluminum used and installed in the construction, repair, renovation, or alteration of any merchant marine ships operated or to be operated in the domestic trade.
- 1.2 ***Net Operating Loss Carry Over*** - The net operating loss in any taxable year immediately preceding the current taxable year, which had not been previously offset as a deduction from gross income shall be carried over as a deduction from gross income for the next three (3) consecutive taxable years immediately following the year of such loss, subject to the pertinent provisions of the National Internal Revenue Code of 1997, as amended.

The MARINA-registered shipbuilder and/or ship repairer availing of this incentive shall furnish the MARINA in writing on or before the end of May of each year and every year thereafter a copy of the Audited Annual Operating (Financial) Report stamped received by the BIR.

- 1.3 ***Accelerated Depreciation*** – Fixed assets may be depreciated as follows:
  - 1.3.1. To the extent of not more than twice as fast as the normal rate of depreciation or depreciated at normal rate of depreciation if the expected life is ten (10) years or less; or
  - 1.3.2. Depreciation over any number of years between five (5) years and the expected life if the latter is more than ten (10) years, and the depreciation thereon allowed as deduction from taxable income.

The MARINA-registered shipbuilder and/or ship repairer availing of this incentive can depreciate their fixed assets in two (2) methods, above-cited, who shall notify the BIR at the beginning of the depreciation period which depreciation method will be used. Copy of such notice to the BIR shall be submitted to the MARINA.

**Section 2. *Who may qualify*** – Only MARINA-registered shipbuilders and/or ship repairers, **shipyards** may avail of the incentives under the Act and this IRR.

**Section 3. *Conditions for the Availment of VAT-Exemption*** - The importation of articles covered under Section 1 hereof, shall be granted exemption from VAT subject to the following conditions:

- 3.1. Said articles are not manufactured domestically in sufficient quantity, of comparable quality and at reasonable prices;
- 3.2. Said articles are directly imported by a MARINA-registered shipbuilder and ship repairer;
- 3.3. Said articles are reasonably-needed and will be used exclusively by the registered shipbuilder and ship repairer;
- 3.4. The approval of MARINA was obtained prior to the importation of said articles;
- 3.5. The applicant/importer shall comply with relevant rules and regulations of the Bureau of Customs; and,
- 3.6. The shipbuilders and ship repairers may avail of the exemption from value-added tax provided herein within a period of ten (10) years from the approval of the Act.

**Section 4. *Limitations/Restrictions on Sale, Transfer or Disposition of Imported Articles*** – Any sale, transfer or disposition of articles under Section 1 hereof, shall be subject to the following limitations/restrictions:

- 4.1 Any sale, transfer or disposition of articles under Section 19(a) of the Act within ten (10) years from its effectivity to another MARINA-registered shipbuilder or repairer enjoying similar incentive shall require prior approval of MARINA;
- 4.2 Any sale, transfer or disposition made to non-exempt entity or to a party other than a MARINA-registered shipbuilder or ship repairer, within ten (10) years from the effectivity of the Act, both the vendor and the transferee or assignee shall be solidarily liable to pay twice the amount of VAT waived;
- 4.3 Any sale, transfer or disposition made after ten (10) years from the effectivity of the Act shall be made by informing MARINA in writing. Purchasers, transferees or recipients shall be considered the importers thereof, who shall be liable for any internal revenue tax on such importation. Tax due on such importation shall constitute a lien on the goods superior to all charges or liens on the goods, irrespective of the possessor thereof.
- 4.4 Failure to secure an Authority to Sell, Transfer or Dispose from MARINA prior to sale, transfer or disposition, both the vendor and the transferee or assignee shall be liable to pay twice the amount of VAT exemption given him.

**Section 5. *Application for Authority to Import or Sell, Transfer or Dispose Imported Articles*** –

- 5.1 All applications for Authority to Import shall be filed under oath with the MARINA together with the submission of a Sworn Certification that the conditions under 3.1 to 3.3 hereof are present and the following documents:
- 5.1.1 Letter of Application;
  - 5.1.2 Pro-forma invoice;
  - 5.1.3 Duly notarized Memorandum of agreement (MOA)/Deed of Sale (DOS) or Bill of Sale (BOS);
  - 5.1.4 Duly notarized resolution of the company's Board of Directors, certified by the Board Secretary, authorizing the filing of application and authorizing the signatory to the MOA/DOS or BOS to act for and in behalf of the vendor/seller;
  - 5.1.5 For capital equipment such as floating docks or service boats, in addition to the foregoing documents, the following shall likewise be submitted:
    - a) certificate of registry or nationality or builder's certificate/building contract; and,
    - b) latest survey report or class certificate.
  - 5.1.6 Proof of payment of processing fee in the amount equivalent to 1% of the FOB value in the Pro-forma Invoice or Php10,000.00, whichever is lower.

The Authority to import shall be valid for a period of ninety (90) days from the opening of the Letter of Credit or submission of proof of payment of acquired articles.

- 5.2 All applications to sell, transfer or dispose of articles imported under 4.1 above shall be filed under oath with the MARINA together with the submission of the following documents:
- 5.2.1 Letter of Application;
  - 5.2.2 Duly notarized Memorandum of Agreement (MOA)/Deed of Sale (DOS) or Bill of Sale (BOS);
  - 5.2.3 Duly notarized resolution of the company's Board of Directors, certified by the Board Secretary, authorizing the filing of application and authorizing the signatory to the MOA/DOS or BOS to act for and in behalf of the vendor/seller, if applicable and,
  - 5.2.4 Proof of payment of processing fee in the amount of Php5,000.00.

**Section 6. Application for Availment of the VAT Exemption** – All applications for VAT Exemption on MARINA-approved importation and sale, transfer or disposition of imported articles shall be filed under oath with the MARINA, and shall be issued a Qualification Certificate attesting that the applicant possesses the

qualifications for availment of VAT Exemption, upon compliance with the following documentary requirements:

- 6.1 Duly accomplished MARINA-prescribed Application Form for availment of VAT-Exemption; and,
- 6.2 Proof of payment of processing fee in the amount of Php300.00.

**Section 7. Reportorial Requirement** – All MARINA-registered shipbuilders and/or shiprepairers who availed of the VAT-Exemption shall comply with the following:

- 7.3 Submission of a Quarterly Report on the utilization, sale, transfer or disposition of articles imported or sold, transferred or disposed under the Act and this IRR on or before the 15<sup>th</sup> of the month after the end of each quarter.
- 7.4 Submission on or before 15<sup>th</sup> of January each year a Summarized Report on the utilization, sale, transfer or disposition of articles imported or sold, transferred or disposed under the Act and this IRR.

## RULE XVII

### RESTRICTIONS ON VESSEL IMPORTATION

**Section 1. Annual Evaluation of Progressive Shipbuilding Capability** - The MARINA shall undertake an annual evaluation of the progressive capabilities of all MARINA-registered shipyards to build large classed vessels for the domestic trade in quantities sufficient to meet the demand of domestic shipowners/operators and shall correspondingly adjust the size of vessels, which may be sourced from MARINA-registered shipyards.

**Section 2. Shipbuilding Capability Assessment** – Ten (10) years from the effective date of the Act and every year thereafter, the MARINA shall evaluate and determine the progressive capability of MARINA-registered shipyards to build and construct new vessels for the domestic trade. By 2014, the MARINA shall determine the capability of MARINA-registered shipyards to build new vessels below 500 GRT.

**Section 3. Restrictions on Vessel Importation** – If, upon evaluation, the capability of MARINA-registered shipyards to build classed vessels below 500 GRT in quantities sufficient to meet domestic demand is proven, then all domestic ship operators shall be discouraged from importing new or previously owned vessels that are less than 500 GRT for the domestic trade and vessels built in MARINA-registered shipyards shall be given priority for entry in the Philippine Registry and allowed to operate in the domestic trade.

## RULE XVIII

### TRANSITORY PROVISIONS

**Section 1. *Period of Transition*** – Within Six (6) months upon the effectivity of this IRR, existing liner and tramp operators shall be required to file appropriate application for issuance of CPC under the Act and this IRR.

**Section 2. *Issuance of Ship Safety Certificates and other Ship Documents*** – The MARINA shall commence issuance of Ship Safety Certificates, as specified in Section 7.1.7 of Rule IV hereof, within six (6) months from the effectivity of this IRR. In the meantime, the Philippine Coast Guard (PCG), in the discharge of the MARINA deputized functions pursuant to Executive Order 125/125-A shall continue to issue ship safety certificates and other ship documents enumerated under Section V of MARINA MC 139. The ship safety documents issued by the PCG prior to and during the transition period shall continue to be valid until their expiration.

**Section 3. *Retirement of Old Ships*** – Immediately upon the effectivity of the Act, the MARINA shall prepare and implement a Mandatory Ship Retirement Program for all unclassified ships that fail to meet the classification standards of a government-recognized/accredited classification society.

All ships which have attained the maximum ship age stipulated by MARINA's Mandatory Ship Retirement Program and which do not carry a class certificate issued by a government-recognized/accredited classification society shall not be allowed to operate in the domestic trade and shall be automatically de-listed from the Philippine Registry of Ships.

## **RULE XIX**

### **FINAL PROVISIONS**

**Section 1. *Temporary Take-Over of Operations*** – In times of national emergency, when the public interest so requires, the State may, during emergencies and under reasonable terms prescribed by it, temporarily take over or direct the operations or any vessel engaged in domestic trade and commerce, or prescribe its rates or routes of operation. Immediately upon the cessation of the emergency, the State shall immediately reinstate to the domestic shipowner/operator the operation of the ship under the same terms and conditions existing prior to the occurrence of the emergency.

**Section 2. *Mandatory Review***. The MARINA shall undertake a mandatory review of this IRR at least once every two (2) years and as often as it may deem necessary, with the primary objective of promoting and developing the country's maritime industry.

**Section 2. *Separability Clause*** – If, for any reason, any section, subsection, sentence, clause or term of the Act and this IRR is held to be illegal, invalid or unconstitutional, such parts not affected by such declaration shall remain in full force and effect.

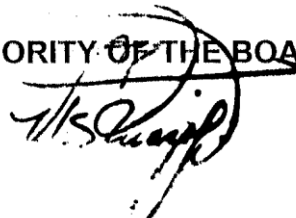
**Section 3. *Repealing Clause*** – The provisions of Commonwealth Act No. 146, insofar as the same applies to the operation, management, control and regulation of vessels, steamboats, steamship lines, ferries, water crafts and the like, as well as the provisions of Presidential Decree No. 474, Executive Order Nos. 125 and 125-A, and such other laws, presidential decrees, executive orders, issuances, rules and regulations or parts thereof, which are inconsistent with the provisions of the Act and this IRR are hereby repealed, amended or modified accordingly.



**Section 4. Effectivity** – This Rules and Regulations shall take effect immediately upon its publication once in a newspaper of general circulation.

Manila, Philippines, 30 November 2004.

BY AUTHORITY OF THE BOARD:



**VICENTE T. SUAZO, JR.**  
Administrator

### SECRETARY'S CERTIFICATE

This is to certify that the Implementing Rules and Regulations of Republic Act No. 9295 was approved during the Special Board Meeting of the Maritime Industry Board held on 30 November 2004.



**ATTY. GLORIA J. VICTORIA-BAÑAS**  
Corporate Board Secretary

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