

REVISED 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.”

RULE I

GENERAL PROVISIONS

Section 1. This Revised Implementing Rules and Regulations, hereinafter called “R-IRR” is promulgated pursuant to Paragraph 17, Section 10 of RA No. 9295, otherwise known as the “Domestic Shipping Development Act of 2004”.

Section 2. *Declaration of Policy* – This R-IRR is hereby prescribed to carry out the policy of the State to:

- 2.1 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 exclusively by qualified and competent Filipino officers and crew, which shall: (a) bridge our islands by ensuring safe, reliable, efficient, adequate and economical passenger and cargo service; (b) encourage the dispersal of industry and the economic development of our regional communities by ensuring the availability of regular, reliable and efficient shipping services; (c) ensure the growth of exports trade by providing necessary, competitive and economical domestic sea linkages; (d) Serve as naval and military auxiliary in times of war and other national emergencies; and, (e) Function as an employment support base for our Filipino seafarers.
- 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 merchant fleet;
- 2.5 encourage the improvement and upgrading of the existing domestic merchant 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 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 R-IRR, the following terms, whether in singular or plural, are hereby defined:

“Abandonment of Service” refers to the unauthorized suspension, stoppage or withdrawal of ship’s service for a period of three (3) months, or non-service of the route since the issuance of the CPC;

“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;

“Articles” refers to engine, spare parts, cargo handling equipment, lifesaving equipment, safety and rescue equipment, communication and navigation safety equipment, steel plates and other metal plates, including marine-grade aluminum plates used for transport operation and the like;

“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;

“Certificate of Public Convenience” shall mean the license, ~~franchise~~ or authority issued by MARINA to a domestic ship operator to engage in domestic shipping;

“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, which may refer to the date of launching, if available, or year built;

“Date of Launching” refers to the date when a newly-built ship is released from the slipway into the water;

"Domestic Shipping" shall mean the transport of passengers or cargo, or both, by ships duly registered and licensed under Philippine law to engage in trade and commerce between and among 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" may be used interchangeably and shall mean 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 authorized by the Maritime Industry Authority (MARINA) to engage in the business or domestic shipping;

"Domestic Trade" shall mean 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 achieved and all 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, schedules or carrying capacity of ships.

"Engine" refers to the main propulsion and/or auxiliary source of power of the ship;

"Entity" refers to a sole proprietorship, partnership, cooperative, association or corporation, duly registered with the MARINA and other appropriate government agency;

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

$$3.70 \sqrt[3]{\nabla^{0.1667}}$$

where: ∇ = displacement corresponding to the design waterline in M³;

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" shall mean the direct purchase of newly constructed or previously owned ships, or the purchase of 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;"

"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;

"Liner Service" refers to the operation of a domestic ship operator which publicly offers its service without discrimination for the carriage of passengers and/or

cargoes, has regular ports of call or destination and fixed sailing schedules and frequencies;

“Local Purchase” refers to purchase of Philippine-registered domestic ships which are either locally-constructed or built abroad;

“MARINA” shall mean the Maritime Industry Authority;

“MARINA-registered Domestic Shipowner/Operator” as used in Rule II, refers to accredited domestic shipowner or operator under existing MARINA guidelines on accreditation and its subsequent amendments;

“MARINA-registered Shipyards, Shipbuilders and/or Ship Repairers” as used in Rule VIII, refers to licensed shipyards, shipbuilders and/or ship repairers under existing MARINA rules on licensing and 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;

“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;

“Monopolized Route” refers to a route/link served either by only one (1) franchised operator, by a group of franchised operators beneficially owned by a single individual, or by a family or corporation, or by a cartel, which results in the absence of competition, or lack of effective competition;

“Newly-Built Ship” refers to a ship constructed or to be constructed, on or after the effectivity of the Act and its R-IRR;

“Newspaper of National Circulation” refers to newspaper for the dissemination of a general character, which has been established, printed and published at regular intervals in a country, for at least one (1) year preceding the date of publication, notice or advertisement.

“Newspaper of Regional Circulation” refers to a newspaper published of regional form and character and distributed in identifiable geographic areas, districts or zones.

“Previously-Owned Ship” refers to a ship that is acquired through importation, bareboat charter with or without option to purchase, lease with or without irrevocable option to purchase, local construction, or local sale or charter, on or after the effectivity of the R-IRR;

“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;

“Ship” or “Vessel” may be used interchangeably and shall mean 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 floating in 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" shall mean the design, construction, launching and outfitting of all types of ships and watercraft;

"Ship repair" shall mean the overhaul, refurbishment, renovation, improvement, or alternation 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" shall mean 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;

"Spare Parts" shall mean the replacement parts or components of a vessel, including but not limited to its hull, engines, machineries, equipments, appurtenances, necessaries, 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;

"Suspension of Service" refers to any authorized stoppage of a vessel's service in its authorized route or portions thereof; and,

"Tramping Service" refers to a type of shipping service wherein the cargo freight rates are not published or advertised but are negotiated in the open market through fixtures, or similar negotiation by the shipper or cargo owner on the one hand, and the vessel owner/operator on the other, for the transportation of cargoes, normally bulk commodities, of full vessel capacity volume, under a contract of affreightment, either a voyage charter or successive voyage charters or time charter agreement, where the vessel does not observe a regular pattern of shipping service in liner routes and/or a fixed sailing schedule.

RULE II

INVESTMENT INCENTIVES

Section 4. Investment Incentives – To ensure the continued viability of domestic shipping industry, and to encourage investments in the domestic shipping industry, the following incentives shall be granted to qualified domestic ship operators:

4.1. **Value-Added Tax (VAT) Exemption** – All MARINA-registered domestic shipowners/ operators shall be exempt from payment of VAT for the following:

4.1.1. Importation and local purchase of passenger and/or cargo ships 150 GT and above including engine and spare parts of the particular ship(s) imported or locally purchased; provided that the ship to be imported shall comply with the following requirements:

Type	Maximum Age from original date of launching
Passenger/cargo	15 yrs old
Tanker	10 yrs old
High Speed Pass.	5 yrs old

4.1.2. 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.

4.1.3. Sale, Transfer or Disposition of articles covered under 4.1.1 and 4.1.2 hereof.

However, in case of local purchase, if the exemption from the payment of VAT is availed of by the domestic shipowners/ operators, the ship builder shall no longer be entitled to avail of such incentives.

4.2. **Importation of Articles** - The importation of the articles to be used by the registered shipowner/operator shall be granted exemption from VAT subject to compliance with all of the following conditions:

4.2.1. Said articles are not manufactured domestically in sufficient quantity, of comparable quality and at reasonable prices, as certified by the MARINA;

4.2.2. Said articles are directly imported by a MARINA-registered domestic shipowner/ operator;

4.2.3. Said articles are reasonably-needed and will be used exclusively by the registered domestic shipowner/operator in its transport operations;

4.2.4. The approval of MARINA was obtained prior to the importation of said articles;

4.2.5. The applicant/importer shall comply with relevant rules and regulations of the Bureau of Customs; and,

4.2.6. 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.

4.3. **Limitations/Restrictions on Sale, Transfer or Disposition of Ships and Imported-Articles** – Any sale, transfer or disposition of ships and articles shall be subject to the following limitations/restrictions:

4.3.1. Any sale, transfer or disposition of ships and 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; and,

4.3.2. 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;

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 or local purchase of ships and importation of articles shall constitute a lien on the goods superior to all charges or liens on the goods, irrespective of the possessor thereof.

The Bureau of Internal Revenue (BIR) shall be furnished with the notice of actions taken by the MARINA.

4.3.3. 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.

4.4. **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.

4.5. **Accelerated depreciation** - Fixed assets may be depreciated as follows:

4.5.1. To the extent of not more than twice as fast as the normal rate of depreciation or depreciated at a normal rate of depreciation if the expected life is 10 years or less; or

4.5.2. Depreciation over any number of years between 5 years and the expected life the latter is more than 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 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.

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

4.7. **Application for Authority to Import or Sell, Transfer or Dispose Imported Ships and Articles**

4.7.1. All applications for Authority to Import or Local Purchase shall be filed under Oath with the MARINA together with the submission of a Sworn Certification that the conditions under Sections 4.1 and 4.2 hereof are present and the required documents covering applications for (a) Importation or local purchase of Ships and (b) Importation of Engine, Spare Parts, 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 MARINA letter-approval.

All applications to sell, transfer or dispose of imported articles, locally purchased ships or imported ships under Section 4.1.1 to 4.1.2 hereof shall be filed with MARINA together with the submission of the following documents:

- a. Sale, Transfer or Disposition of Imported or Locally Purchased Ships
 1. Letter of Application;
 2. Duly notarized Memorandum of Agreement (MOA)/Deed of Sale (DOS) or Bill of Sale (BOS);
 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;
 4. Copy of Certificates of Ownership and Vessel Registry (CO/CVR); and,
 5. Proof of payment of applicable processing fee.
- b. Sale, Transfer or Disposition of Imported Articles, as defined herein:
 1. Letter of Application;
 2. Duly notarized Memorandum of Agreement (MOA)/Deed of Sale (DOS) or Bill of Sale (BOS); and,
 3. Proof of payment of applicable processing fee.

4.8. **Application for Availment of Exemption from VAT** – All applications for VAT-Exemption on MARINA-approved importation and local purchase, sale, transfer or disposition of imported or locally purchased ships, imported articles such as but not limited to engines, spare parts, cargo handling equipment life-saving equipment, safety and rescue equipment and communication and navigational safety equipment, steel plates and other metal plates including marine grade aluminum plates, used for transport operations 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:

4.8.1. Duly accomplished MARINA-prescribed Application Form for Availment of VAT-Exemption; and,

4.8.2. Proof of payment of applicable processing fee.

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

4.9.1. 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 15th of the month after the end of each quarter.

4.9.2. Submission on or before 15th 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 III

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

Section 5. Authority to Operate – The authorization for a domestic shipowner/operator to engage in domestic shipping shall be in the form of a Certificate of Public Convenience (CPC). Such authorization shall only be granted to a qualified domestic shipowner or operator engaged in domestic shipping covering all the ships in its fleet.

5.1. Domestic shipowners or operators refer to:

5.1.1. Citizens of the Philippines; or,

5.1.2. Commercial partnership wholly owned by Filipinos, or,

5.1.3. Corporation at least sixty (60%) of the capital of which is owned by Filipinos, which is duly authorized by the MARINA to engage in the business of domestic shipping.

5.2. The following elements shall be satisfied for a domestic shipowner or operator to be considered as engaged in “domestic shipping”:

- 5.2.1. transports passengers or cargoes, or both;
 - 5.2.2. owns or operates ships duly registered and licensed under Philippine law;
 - 5.2.3. engages in trade and commerce between and among Philippine ports and within Philippine territorial or internal waters;
 - 5.2.4. provides services for hire or compensation, to a general or limited clientele, whether permanent, occasional or incidental, with or without fixed routes; and,
 - 5.2.5. offers services for contractual or commercial purposes.
- 5.3. 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 6. Foreign Vessels Engaged in Trade and Commerce in Philippine Territorial Waters

- 6.1. 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.
- 6.2. Ships to be temporarily utilized in the domestic trade shall be issued a Special Permit by the MARINA based on the following instances:
 - 6.2.1. There is no available or suitable Philippine-registered ship to provide the needed shipping service; and,
 - 6.2.2. Public interest warrants.
- 6.3. Ships to be temporarily utilized in the domestic trade shall be less than fifteen (15) years old at the time of application. The age of the ship is reckoned from the date of its launching.
- 6.4. Ships to be temporarily utilized in the domestic trade must be classed by International Association of Classification Societies (IACS) and other recognized international classification societies.
- 6.5. Ships to be temporarily utilized in the domestic trade are required to have adequate marine insurance from any P & I Club or fixed premium providers.
- 6.6. A Special Permit shall be issued on a month-to-month basis, or on a bi-monthly basis but no Special Permit shall have a duration of more than three (3) months per issuance.

A Special Permit shall be extended for a period not exceeding three (3) months or ninety (90) days for every extension. Period of extension shall be up to a maximum aggregate period of one

(1) year after which the ship shall be reverted to its original trading status.

- 6.7. The applicant shall submit the following documentary requirements for pre-acceptance:
 - 6.7.1. Letter of Application;
 - 6.7.2. Fixture Note or Contract of Affreightment or Time/Voyage Charter Agreement indicating the charter hire of the subject ship;
 - 6.7.3. 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;
 - 6.7.4. Valid Certificate of Ship Original Registry or Nationality, containing the ship's IMO Number;
 - 6.7.5. Class Certificate and latest Survey Report valid for the last six (6) months issued by a member of International Association of Classification Societies (IACS) and other Recognized International Classification Societies;
 - 6.7.6. Crew list indicating STCW certificates (number and validity) of the crew required certification;
 - 6.7.7. Certified true copy of P & I or equivalent Insurance Coverage, as applicable;
 - 6.7.8. SEC Registration (for branch offices of foreign owners/ charterers/ ship representative);
 - 6.7.9. 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);
 - 6.7.10. Clearance or Certificate of Non-availability of local ships to operate in the domestic trade issued by concerned/affected/appropriate shipping associations and organization;
 - 6.7.11. Contract of On-going or Awarded Project with appropriate government instrumentality;
 - 6.7.12. Proof of payment of applicable processing fee.

Section 7. *Issuance of Authority to Operate.*

- 7.1. The MARINA shall issue CPC and any amendment or extension thereof to domestic shipowners or operators who shall be required to file an Application for issuance of CPC at the Central Office or MARINA Regional Offices.
- 7.2. Every domestic shipowner or operator shall state in its application the service it proposes to offer, whether liner or tramping or both. For liner service, the domestic shipowner or operator shall indicate its ship/s grouped per type and the route/s to be served by each ship. For tramping service, the domestic shipowner or operator shall indicate its ship/s to be grouped per type with their corresponding area of operation. The domestic shipowner or operator shall indicate in its routes the exact location of the ports of origin and destination. In case there is no port, the applicant shall indicate the barangay, town, beach, sitio in the application.

7.3. Hearing on the Application for Issuance of CPC shall be in accordance with the MARINA Rules of Procedures and its subsequent amendments.

7.4. The CPC shall be issued upon compliance with the qualification, jurisdictional and documentary requirements herein set forth.

7.4.1. Qualification Requirements:

7.4.1.1. Must be a MARINA-accredited entity, pursuant to existing MARINA guidelines on accreditation and its subsequent amendments;

7.4.1.2. Must be financially capable to sustain its operations and meet claims arising from maritime accidents in accordance with the following standards:

a. For New Applicants - New Applicants for the issuance of a Certificate of Public Convenience shall be deemed financially capable when:

1. Cash on Hand is equivalent to six (6) months operating expense (based on the projected total operating expense for the year);
2. Compliance with the minimum capital requirement of MC 2006-3.
3. Documentary Requirements

Corporation/Cooperative/Partnership

- Projected Income Statement for one (1) year and Beginning Balance Sheet signed by the President or Chief Financial Officer (CFO) supported by a Bank Certification on Cash Balance/photocopy of Bank Statement or pass book;
- SEC Articles of Incorporation or SEC Certification on Paid-Capital
- Bank Certification on Cash Balance photo copy of Bank Statement or pass book

Single Proprietor

- Latest Income Tax Return for one (1) year and Beginning Balance Sheet signed by the Owner or Proprietor supported by a Bank Certification on Cash Balance/photocopy of Bank Statement or pass book
- DTI Certificate of Business Name Registration supported by the accomplished Application Form
- Projected Income Statement
- DTI Registration

- b. **For Existing Domestic Shipowner or Operator** - The financial capability of existing domestic ship owners and operators shall be determined using all of the following financial ratios with the corresponding standard/benchmark:

RATIO	FORMULA	STANDARD/ BENCHMARK
Liquidity	Current Ratio = $\frac{\text{Current Assets}}{\text{Current Liabilities}}$	1:1 and above
Solvency	Debt Ratio = $\frac{\text{Total Assets}}{\text{Total Liabilities}}$	1.25:1 and above
Profitability	Revenue –TOE	Breakeven and above

1. Result of the Financial Capability Evaluation for existing operators

Liquidity using Current Ratio

Existing operators with computed Current Ratio of 1:1 shall pass the Liquidity test.

Solvency using Debt Ratio

Existing operators with computed Debt Ratio of 1.25:1 and above shall pass the solvency test

Profitability

Existing operators with a positive net profit shall pass the profitability test.

2. All of the above ratios shall be computed to determine the financial capability of existing operators. However, consideration may be given to an operator whose computed ratio falls below the benchmark as follows;

Liquidity

Existing operators with computed current ratio of below 1:1 to 0.5 may be considered, provided the company posted profit for year.

Solvency

Existing operators with computed debt ratio of below 1.25:1- 1:1 can be considered, provided, the Actual Working Capital (Current Assets – Current Liability) is equivalent to two (2) months operating expense.

3. Existing domestic shipowner or operators who still fail to meet the above considerations shall be required to undertake any of the following:
 - Increase its capital; or
 - Retire unproductive/obsolete machineries and equipment, or
 - Adopt appropriate measures to improve the company's financial standing.
4. Existing operators shall be given two (2) months to improve its financial position. At the end of the second month, the operator shall be required to submit for re-evaluation an interim financial statements incorporating any of the above adjustments and the same shall be certified by a Certified Public Accountant (CPA).

Banca Operators shall also be given a period of two (2) months to improve its financial position. At the end of the second month, the operator shall be required to submit for re-evaluation, a notarized interim financial statements incorporating any of the above-applicable adjustment.

5. Documentary Requirements for financial capability evaluation or re-evaluation:

Corporation/Cooperative/Partnership

- Duly accomplished Audited Annual Reports (with accompanying notes to financial statements) stamped received by the Bureau of Internal Revenue (BIR) and the Securities and Exchange Commission (SEC), and signed by the company's responsible Officers; or,
- Interim financial statements certified by a Certified Public Accountant (CPA) reflecting the adjustments to improve financial position.

Single Proprietor

- Duly accomplished Annual Report stamped received by the Bureau of Internal Revenue (BIR), signed by the owner/proprietor and notarized: or,
- Interim financial statements duly notarized to be submitted by motor banca operators or interim financial statements certified by a Certified Public Accountant(CPA) to be submitted by other single proprietors, reflecting the adjustments to improve financial position.

7.4.1.3. Must provide a service that has economic and beneficial effect on the port, province or region it proposes to serve, which may be shown by the following:

- a. The estimated port dues and charges to be paid for the proposed service; or
- b. The estimated increase in the volume of passengers and cargoes to be transported in the route proposed to be served; or,
- c. The estimated amount of taxes to be paid to the local government units where the intended service will be provided; or,
- d. Sangguniang Bayan/Panlalawigan Resolution; or,
- e. The estimated number of employment that may be generated in the proposed service; and,
- f. Feasibility study or other proof, showing economic/beneficial effect to the port, province or region it proposes to serve.

7.4.2. Jurisdictional Requirements

7.4.2.1. Newspaper of general circulation:

- a. Affidavit of publication in a newspaper of general circulation, together with the newspaper clipping; and,
- b. Copy of the whole newspaper where the Notice of Hearing was published;

- or -

7.4.2.2. Posting in the MARINA website:

- a. Printed page of the MARINA website; and,
- b. MISO Certification of posting;

- and -

7.4.2.3. Proof of service to affected authorized operators, shipping associations and other concerned parties, as determined by MARINA.

7.4.3. Documentary Requirements

7.4.3.1. Duly accomplished Application Form prescribed by the MARINA;

7.4.3.2. MARINA Accreditation;

7.4.3.3. 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.

7.4.3.4. Notarized Special Power of Attorney (for authorized representative per sole proprietorship/partnership);

7.4.3.5. Notarized Secretary's Certificate and Board Resolution (authorized representative per company or corporation);

7.4.3.6. Proof of Payment of applicable Processing Fee(s);

7.4.3.7. Charter Contracts, as applicable. In case of local charter of ships, there is no need to reflect the charterer's name in the ship's documents except in the insurance, Safety Management Certificate (SMC), Document of Compliance (DOC),

Radio/Ship Station License (RSL/SSL), and other documents as maybe deemed necessary;

7.4.3.8. 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);

7.4.3.9. Ship Safety Documents:

a. Ship Safety Certificates:

1. For Passenger Ships:
 - Passenger Ship Safety Certificate; and,
 - Minimum Safe Manning Certificate
2. For Cargo Ships:
 - Cargo Ship Safety Certificate; and,
 - Minimum Safe Manning Certificate.
3. For Tankers (other than gas tankers):
 - Cargo Ship Safety Construction Certificate;
 - Cargo Ship Safety Equipment Certificate; and,
 - Minimum Safe Manning Certificate
4. For Tankers Carrying Gas:
 - Cargo Ship Safety Construction Certificate;
 - Cargo Ship Safety Equipment Certificate;
 - Minimum Safe Manning Certificate; and,
 - Certificate of Fitness
5. For Tugs, Dredgers and Barges:
 - Cargo Ship Safety Certificate; and,
 - Minimum Safe Manning Certificate
6. For High Speed Crafts:
 - High Speed Craft Safety Certificate; and,
 - Minimum Safe Manning Certificate
7. For Other Ships:
 - Passenger/Cargo Ship Safety Certificate; and,
 - Minimum Safe Manning Certificate
8. Such other certificates/documents as may be prescribed by the MARINA

7.4.3.10. Class Certificate;

- 7.4.3.11. Radio/Ship Station License (RSL/SSL), regardless of tonnage;
- 7.4.3.12. Document of Compliance (DOC); and,
- 7.4.3.13. Safety Management Certificate (SMC);
- 7.4.3.14. Certificate of Berthing Window or Availability of Berthing Space, which shall indicate the following:
 - a. Berthing space window;
 - b. Time the ship can be accommodated by the berth;
 - c. That the ship can be safely accommodated at the berth given the draft limitation and other considerations (technical, natural conditions of the port, etc.)
- 7.4.3.15. Insurance Coverage
 - a. Passenger Insurance Coverage with an aggregate limit of liability in the amount of P 200,000.00 per passenger;
 - b. Marine Insurance Coverage
- 7.4.3.16. Oil Pollution Coverage
 - a. Civil Liability Convention Certificate (CLC) for Tankers and Barges Carrying Persistent Oil, as applicable;
 - b. Oil Pollution coverage for tankers and barges carrying non-persistent oil;
 - c. Third Party Liability (TPL) for Liquefied Petroleum Gas/Liquefied Nitrogen Gas (LNG) Carriers
- 7.4.3.17. Certificate of Compliance under the following MCs and their subsequent amendments, as applicable:
 - a. MC No. 65/65-A – Minimum Service Standards for Philippine Registered Inter-Island Passenger Vessels / Amendment to MC 65 on Minimum Service Standards for Philippine Registration of Inter-Island Passenger Vessels;
 - b. MC No. 121 – Policy Guidelines in the Regulation of High Speed Craft;
 - c. MC No. 134 – Minimum Services Standards for Motor Bancas Below 20 Gross Tons (GT)
 - d. MC No. 150 – Introduction of a Second Class, Non-Airconditioned Passenger Accommodation and Prescribing Minimum Service Standards;

- e. MC No.196 – Rules on the Introduction of Reclining Seat Accomodation on Passenger-Carrying Ships in the Inter-Island Trade
- f. MC No. 72 – Guidelines on the Implementation of At Least 10-minute Film on the Safety Features of Each Specific Passenger/Passenger-Cargo Vessels.
- g. MC No. 98 – Guidelines for Compliance with Republic Act No. 7277 and Batas Pambansa Bilang 344 Otherwise Known as Accessibility Law;
- h. MC No. 135 – Rules on the Implementation of Voice tape on the Safety Features of a Vessels; and,
- i. MC No. 136 – Amendment of Memorandum Circular No. 72 on the Rules on the Implementation of 1-minute Film on the Safety Features of a Vessel.

7.4.3.18. Pictures of the ship, showing the name, port side, starboard side and astern view (with the size of 5” x 7”);

7.5. The CPC shall be valid for a period of not more than twenty-five (25) years.

7.5.1. CPC of wooden hulled ships which shall have validity of five (5) years will not be renewed unless replaced by a ship whose hull design is approved by MARINA. If steel-hulled ship enters a route, the CPC of the wooden-hulled ships will be allowed to expire and no other CPC shall be issued to wooden-hulled ships.

7.5.2. Chartered ships shall be issued an individual CPC wherein the validity shall be based on the length of the charter agreement or co-terminus with the same.

7.5.3. For owned ship, validity of the CPC shall be the validity of the company’s CPC but shall be issued based on ship categorization or grouping.

7.6. The CPC shall be amended under the following instances:

7.6.1. Permanent Addition or Deletion of a route/link; or,

7.6.2. Permanent Addition/Reduction/Replacement of Ship/Fleet or Change in Ship’s Name; or,

7.6.3. Change in the Name of Entity; or,

7.6.4. Change in the type of operation/type of service; or,

- 7.6.5. Change in the type of cargo to be carried; or,
- 7.6.6. Change in the hull of the ship and other ship particulars; or,
- 7.6.7. Change in Sailing Frequencies/Schedule of Trips
- 7.7. The following documentary requirements shall be submitted with the application for Amendment of CPC:
 - 7.7.1. Permanent Addition or Deletion of a route/port/link:
 - 7.7.1.1. Application for Amendment of CPC stating the reason(s) thereof;
 - 7.7.1.2. For additional route or port or link, documents showing economic and beneficial effect;
 - 7.7.1.3. Certificate of Berthing Window or Availability of Berthing Space, which shall indicate the following:
 - a. Berthing space window;
 - b. Time the ship can be accommodated by the berth;
 - c. That the ship can be safely accommodated at the berth given the draft limitation and other considerations (technical, natural conditions of the port, etc.); and,
 - 7.7.1.4. Proof of Payment of applicable Processing Fee(s).
 - 7.7.2. Permanent Addition or Reduction or Replacement of Ship or Fleet, or Change in Ship's Name:
 - 7.7.2.1. Application for Amendment of CPC identifying the ship to be added, deleted or replaced and reason(s) thereof;
 - 7.7.2.2. Financial Statements to reflect changes or adjustments in the capitalization requirement, as applicable;
 - 7.7.2.3. In case of addition or replacement of ship, or change in ship's name, relevant documents under Section 7.4.3.8 of Rule III, as applicable;
 - 7.7.2.4. Certificate of Deletion from Philippine Registry in case of exportation or deletion of ship; and,
 - 7.7.2.5. Proof of Payment of applicable Processing Fee(s).
 - 7.7.3. Change in the name of entity:
 - 7.7.3.1. Application Form stating the change in name of the entity;
 - 7.7.3.2. MARINA Accreditation Certificate reflecting the new name of the entity;
 - 7.7.3.3. Ship documents and ship safety certificates under Section 7.4.3.8 of Rule III, as applicable;
 - 7.7.3.4. Proof of Payment of applicable Processing Fee(s).

7.7.4. Change in the type of operation or type of service:

- 7.7.4.1. Application for Amendment of CPC stating the new type of operation or service;
- 7.7.4.2. Ship documents and ship safety certificates under Section 7.4.3.8 and 7.4.3.9. of Rule III, indicating the new type of operation or service, as applicable, e.g., liner to tramper; carriage of passenger/cargo, coastwise to bay and river;
- 7.7.4.3. Proof of Payment of applicable Processing Fee(s).

7.7.5. Change in the type of cargo to be carried:

- 7.7.5.1. Application for Amendment of CPC stating the reason(s) thereof;
- 7.7.5.2. Ship documents and ship safety certificates under Section 7.4.3.8 and 7.4.3.9. of Rule III, showing the new type of cargo to be carried, as applicable, e.g., black to white products, persistent oil to non-persistent oil;
- 7.7.5.3. Oil Pollution Coverage
 - a. Civil Liability Convention Certificate (CLC) for Tankers and Barges Carrying Persistent Oil, as applicable;
 - b. Oil Pollution coverage for tankers and barges carrying non-persistent oil;
 - c. Third Party Liability (TPL) for Liquefied Petroleum Gas/Liquefied Nitrogen Gas (LNG) Carriers
- 7.7.5.4. Proof of payment of applicable Processing Fee(s)

7.7.6. Change in the hull of the ship and other ship particulars.

- 7.7.6.1. Application for Amendment of CPC stating the reason(s) thereof;
- 7.7.6.2. Ship documents/ship safety certificates under Section 7.4.3.8 and 7.4.3.9. showing the change in the hull of the ship and other ship particulars;
- 7.7.6.3. Oil Pollution Coverage
 - a. Civil Liability Convention Certificate (CLC) for Tankers and Barges Carrying Persistent Oil, as applicable;
 - b. Oil Pollution coverage for tankers and barges carrying non-persistent oil;
 - c. Third Party Liability (TPL) for Liquefied Petroleum Gas/Liquefied Nitrogen Gas (LNG) Carriers
- 7.7.6.4. Proof of payment of applicable Processing Fee(s)

7.7.7. Change in Sailing Frequencies/Schedule of Trips

- 7.7.7.1. Application for Amendment of CPC stating the reason(s) thereof;
- 7.7.7.2. Proposed change in sailing frequencies/schedule;

- 7.7.7.3. Certificate of Berthing Window or Availability of Berthing Space, which shall indicate the following:
 - a. Berthing space window;
 - b. Time the ship can be accommodated by the berth;
 - c. That the ship can be safely accommodated at the berth given the draft limitation and other considerations (technical, natural conditions of the port, etc.); and,
- 7.7.7.4. Proof of Payment of applicable Processing Fee(s).
- 7.8. A change in the legal personality of the CPC grantee shall require the filing of a new application for CPC.
- 7.9. The grantee of a CPC shall ensure the public of regular service in its authorized route or link. Suspension of service in a route or link shall not be allowed except under the following grounds:
 - 7.9.1. Maintenance or drydocking;
 - 7.9.2. Machine or engine trouble;
 - 7.9.3. Maritime casualty;
 - 7.9.4. Emergency sea lift operation;
 - 7.9.5. Peace and security problems in the route;
 - 7.9.6. Port repairs; and,
 - 7.9.7. Fortuitous event or force majeure.
- 7.10. If the suspension is expected or mandatory, a notice of suspension of service shall be filed with the MARINA or Maritime Regional Office, at least one (1) month prior to its effectivity and posting at conspicuous places at the ports, terminals and ships. If the suspension is unexpected or unscheduled, the notice shall be filed within two (2) days after the suspension of operation. The notice shall likewise indicate the schedule of resumption of service in the route or link. In both cases, an Order shall be issued authorizing the suspension of the operation of a particular ship for a specified period.

Any unauthorized suspension of service for a period of three (3) months shall be considered abandonment of service which shall result to imposition of fines and penalties, without prejudice to cancellation/revocation of its authority to operate subject to due process.

Section 8. *Deregulation of the Domestic Shipping Industry.* – Existing and prospective domestic shipping operators are encouraged to have new investments in the domestic shipping industry, and are hereby authorized to establish their own domestic shipping rates, provided that effective competition is fostered and public interest is served.

- 8.1. In fostering a free market shipping environment, the MARINA shall exercise its power to intervene, where it is established after due process that competition is compromised and public interest is threatened. In order to effectively implement its power to intervene, appropriate systems and procedures for regulatory intervention is herein established.

- 8.2. The MARINA shall, after due notice and hearing as provided in the existing MARINA Rules of Procedure and its subsequent amendments, intervene under any of the following circumstances:
 - 8.2.1. If there's a complaint filed against the shipowner relative to rates charged and/or services rendered; and/or,
 - 8.2.2. The rates charged are excessive or unreasonable.
- 8.3. The MARINA shall determine the validity and veracity of the complaint, through the conduct of, but not limited to the following activities:
 - 8.3.1. Evaluation of rates charged;
 - 8.3.2. Financial evaluation;
 - 8.3.3. Assessment of the quality of service provided; and,
 - 8.3.4. Market survey.
- 8.4. Appropriate measures may be prescribed to address the complaint and correct such concerns and deficiency/ies which will be beneficial to both operator and the public.
- 8.5. In order to validate the reasonableness of actual rates charges, the MARINA may *motu proprio* require the submission of additional documents as appropriate.
- 8.6. The MARINA shall monitor all shipping operations to ensure that public interest is protected and safeguarded by undertaking any or all of the following:
 - 8.6.1. Assess the rates charged *vis-à-vis* the level and quality of service provided under existing MARINA rules and regulations; and,
 - 8.6.2. 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 or operators, sixty (60) days after each quarter and every June 30th of the following year, respectively, with no extension.

Section 9. Safety Standards – All vessels operated by domestic ship operators shall at all times be in seaworthy condition, properly equipped with adequate life-saving, communication, safety and other equipment, operated and maintained in accordance with the standards set by MARINA.

All ships must be manned by duly licensed and competent vessel crew and shall comply with qualification standards set by MARINA for seafarers onboard its registered ships.

In the exercise of its power to inspect all ships and all equipment on board vessels, the MARINA shall undertake inspections in conformity with the Ship Safety Inspection System (SSIS), and ensure that all shipowners or operators shall maintain their ships in accordance with operational and safety standards required by existing laws and/or applicable international conventions, codes, rules and regulations for the duration of the ship's operational life.

All ships are required to carry on board the relevant or applicable ship safety certificates issued by MARINA.

Section 10. Jurisdiction; Powers; and Duties of MARINA. – The MARINA shall have the power and authority to:

- 10.1. Register vessels;
- 10.2. 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;
- 10.3. 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;
- 10.4. Establish and prescribe routes, zones of areas of operations of domestic shipowners/operators;
- 10.5. 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;
- 10.6. Set safety standards for vessels in accordance with applicable conventions and regulations;
- 10.7. 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;
- 10.8. Inspect all vessels to ensure and enforce compliance with safety standards and other regulations;
- 10.9. 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;
- 10.10. Determine the impact which any new service shall have to the locality it will serve;
- 10.11. 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;
- 10.12. 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;

- 10.13. Hear and adjudicate any complaint made in writing involving any violation of the law or the rules and regulations of the Authority;
- 10.14. 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;
- 10.15. 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 R-IRR;
- 10.16. 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 R-IRR; and,
- 10.17. 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 R-IRR.

RULE IV

RATES

Section 11. *Rates.* – Every domestic ship operator shall have the right to fix its own passenger or cargo rates, or both following the herein guidelines:

- 11.1. All domestic shipowners or operators applying for CPC shall submit their Matrix of initial passage and/or cargo rates indicating the name of ship and authorized route/link.
- 11.2. The domestic shipowner or operator shall inform the MARINA and the public of any subsequent upward rate adjustment either through the publication in either national or regional newspaper as applicable, or the posting thereof in all conspicuous places at the affected ports, ship, company premises, passenger terminals and ticketing office, two (2) weeks prior to effectivity.
- 11.3. All domestic shipowner or operator shall cause the posting of any downward rate adjustment in all conspicuous places at the affected ports, ship, company premises, passenger terminals and ticketing office. The downward adjustment of rates shall be effective immediately upon posting.

Sec. 12. *Government Cargo.* – A domestic shipowner or operator granted with a CPC shall have the obligation to carry mail on mutually agreed terms and conditions and other government cargo at preferential and negotiated conditions.

Section 13. Monopolized Routes – In the case of monopolized routes as defined herein, the MARINA shall ensure that the rates charged are just and equitable to sustain the service taking into consideration the economic and beneficial effect which the service shall have to the port, province, island or region it proposes to serve, the volume of passengers and cargo available, the level and quality of service offered by the ship operator, and the available port facilities and terminal handling services: and the standards of service provided is in accordance with the relevant MARINA rules and regulations relative to service standards.

RULE V

COMPULSORY INSURANCE COVERAGE

Section 14. Compulsory Insurance Coverage for Passenger and Cargo. – To meet its financial responsibility for any liability which a domestic ship operator may incur for any breach of the contract of carriage, every domestic ship operators shall be required to submit annually the following:

- 14.1. Adequate insurance coverage for each passenger in an amount not less than two hundred thousand pesos (Php200,000.00) per passenger; and the total amount of such coverage shall be equivalent to the total authorized number of passengers of the ship;
- 14.2. The MARINA shall require every domestic shipowner or operator to secure adequate cargo liability insurance, to meet its financial responsibility for any liability which may be incurred for any breach of the contract of carriage.

Section 15. Other Insurance Coverage - The MARINA shall require every domestic shipowner or operator, and other maritime entities concerned operating any type of ships, for hire or compensation in the domestic trade, and tankers which require coverage as stipulated in MARINA Memorandum Circular No. 184 to obtain an adequate marine insurance covering liabilities arising out from oil pollution.

RULE VI

PROHIBITED ACTS AND PRACTICES

Section 16. Prohibited Acts and Practices of Domestic Ship Operators. – The MARINA shall have the power to impose such fines and penalties against every domestic ship operator who shall:

- 16.1. Operate without a valid certificate of public convenience, accreditation or other form of authority required by this Act;
- 16.2. Refuse to accept or carry any passenger or cargo without just cause;
- 16.3. Fail to maintain its vessels in safe and serviceable condition, or violate safety rules and regulations;
- 16.4. Fail to obtain or maintain adequate insurance coverage;

- 16.5. Fail to meet or maintain safe manning requirements; and,
- 16.6. 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.

RULE VII

FEES, FINES AND PENALTIES

Section 17. 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 or operators and the promotion and development of the country's maritime industry.

Unless otherwise revised or amended, the fees prescribed under existing MARINA Circulars covering the licensing, supervision, regulation, inspection, approval and accreditation of domestic shipowners/operators and the promotion and development of the country's maritime industry, under this revised IRR shall continue to apply. The fees and charges prescribed under this revised IRR shall be subject to review and revision by the MARINA.

MARINA shall establish and manage a Trust Fund to be sourced from the collection of annual tonnage fees and new fees and charges under this revised IRR. The Trust Fund shall be used to finance MARINA's programs and projects for the promotion and development of the country's maritime safety.

Section 18. Fines and Penalties. – The MARINA, upon notice and hearing and a determination of the existence of any breach or violation of the provisions of this Act or any rules and regulations issued pursuant thereto, shall have the power and authority to:

- 18.1. Suspend or revoke any certificate or public convenience, license, permit, accreditation, or other form of authority issued to any domestic ship operator who shall violate any provision of this Act or any rules and regulations issued pursuant thereto, or any condition imposed on such certificate of public convenience, license, permit or accreditation;
- 18.2. Impose applicable fines under existing MARINA Circulars on a domestic ship operator for:
 - 18.2.1. operating without a valid certificate of public convenience, license, permit, accreditation, or other form of authority;
 - 18.2.2. 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;

- 18.2.3. failure 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;
 - 18.2.4. failure to procure or renew required insurance policies;
 - 18.2.5. failure to meet or maintain safe manning requirements; and'
- 18.3. Impose such other fines and penalties under existing MARINA Circulars and their subsequent amendments in order to enforce the provisions of this revised IRR.

RULE VIII

SHIPBUILDING AND SHIP REPAIR

Section 19. *Shipbuilding and Ship Repair Investment Incentives.* – To encourage investments and to ensure the development of a viable shipbuilding and ship repair industry, the following incentives shall be granted:

- 19.1. ***Value-Added Tax (Vat) Exemption*** – All MARINA-registered shipbuilders and/or ship repairers, and shipbreakers shall be exempt from payment of value added tax for the importation of shipyard equipment including its major components and capital equipment, machinery, spare parts, life-saving, navigational equipment, steel plates, and other metal plates including marine-grade aluminium used and installed in the construction, repair, renovation, or alteration of any merchant marine ships operated or to be operated in the domestic trade.

Availment of exemption from value added tax shall include MARINA-registered boatbuilders/repairers, afloat repairers and ship breakers.

Items covered by the exemptions under this section shall be used either for the expansion, upgrading, modernization, etc. of shipyards and facilities and their operations, or for the construction, repair, renovation, alteration, etc., of merchant marine ships operated or to be operated in the domestic trade.

- 19.2. ***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.

19.3. **Accelerated Depreciation** – Fixed assets may be depreciated as follows:

19.3.1. 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

19.3.2. 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.

19.4. **Who may qualify** – All entities in the shipbuilding/ shiprepair industry which are registered with the MARINA under MARINA Circular No. 2007-02. Or its subsequent amendments, shall qualify for availment of the incentives under this Act, including registered shipbuilders/ ship repairers which are 100% foreign owned as defined in Sec. 3(n) of the Act.

19.5. **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:

19.5.1. Said articles are not manufactured domestically in sufficient quantity, of comparable quality and at reasonable prices;

19.5.2. Said articles are directly imported by a MARINA-registered shipbuilder and ship repairer; boatbuilders/repairers/afloat repairers and shipbreakers (ship re-cycling).

19.5.3. Said articles are reasonably-needed and will be used exclusively by the registered shipbuilder and ship repairer; boatbuilders/repairers/afloat repairers and shipbreakers (ship re-cycling).

Stockpile for a projected 6 months to 1 year consumption/utilization of basic construction materials like steel and metal plates, angle bars, including marine-grade aluminium is allowed for importation by a MARINA-registered entity to minimize time delay in the construction or repair of marine vessels.

- 19.5.4. The approval of MARINA was obtained prior to the importation of said articles; and shall be subject for inspection/verification.
 - 19.5.5. The applicant/importer shall comply with relevant rules and regulations of the Bureau of Customs; and,
 - 19.5.6. The shipbuilders and ship repairers boatbuilders/repairers/afloat repairers and shipbreakers (ship re-cycling) may avail of the exemption from value-added tax provided herein within a period of ten (10) years from the approval of the Act.
 - 19.5.7. In cases where a domestic ship owner avail the services of a local shipyard for new construction/ alteration/ renovation, exemption from Value Added Tax provided herein can be availed of by either the Shipbuilder or the Ship owner, but not applicable for both parties at the same instance.
- 19.6. **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:
- 19.6.1. 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 boatbuilders/repairers/afloat repairers and shipbreakers (ship re-cycling) enjoying similar incentive shall require prior approval of MARINA; and subject for assessment and inspection.
 - 19.6.2. Any sale, transfer or disposition made to non-exempt entity or to a party other than a MARINA-registered shipbuilder or repairer, boatbuilders/repairers/afloat repairers and shipbreakers (ship re-cycling) 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; and subject for assessment and inspection prior to MARINA approval.
- 19.7. **Application for Authority to Import or Sell, Transfer or Dispose Imported Articles** –
- 19.7.1 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 Section 3.1 and 3.2 hereof are present and the following documents:
 - 19.7.2 Letter of Application;
 - 19.7.3 Pro-forma invoice;
 - 19.7.4 Duly notarized Memorandum of agreement (MOA)/Deed of Sale (DOS) or Bill of Sale (BOS);

- 19.7.5 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;
- 19.7.6 For capital equipment such as floating docks or service boats, in addition to the foregoing documents, the following shall likewise be submitted:
 - 19.7.6.1. certificate of registry or nationality or builder's certificate/building contract; and,
 - 19.7.6.2. latest survey report or class certificate.
- 19.7.7 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.
- 19.7.8 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.
 - 19.7.8.1. All applications to sell, transfer or dispose of articles imported under Section 4.7 above shall be filed under oath with the MARINA together with the submission of the following documents:
 - 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 and,
 - d. Proof of payment of applicable processing fee.

19.8. 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:

- 19.8.1. Duly accomplished MARINA-prescribed Application Form for availment of VAT-Exemption; and,

19.8.2. Proof of payment of applicable processing fee.

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

19.9.1. 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 15th of the month after the end of each quarter.

Submission on or before 15th 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.

Section 20. Restriction on Vessel Importations. – Ten (10) years from the effective date of this 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.

In its first year of evaluation, the MARINA shall determine the capability of MARINA-registered shipyards to build new vessels below 500 GRT. 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.

The MARINA shall undertake a yearly evaluation of the progressive capabilities of all MARINA-registered shipyards to build larger classed vessels for the domestic trade in quantities sufficient to meet the demand of domestic ship owners and shall correspondingly adjust the size of vessels which may be sourced from MARINA-registered shipyards.

RULE IX

TRANSITORY PROVISIONS

Section. 21. Period of Transition. – Upon effectivity of this revised IRR, all domestic shipowners or operators shall comply with the provisions herein setforth.

Section 22. Classification of Vessels in the Domestic Trade. - 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.

22.1. Classification of such ships shall be governed by existing MARINA rules and guidelines on the classification of ships.

- 22.2. Existing ships acquired prior to the effectivity of the Act and this R-IRR, shall continue to be governed by applicable classification policies/requirements.
- 22.3. Wooden hull ships and motorbancas which are unable to comply with the classification requirement due to the absence of any MARINA recognized classification society to cover them, shall in the meantime be required to comply with the Ship Safety Inspection System (SSIS).
- 22.4. After a period of six months from the effectivity of this R-IRR, wooden-hull ships and motorbancas shall be required to submit class certificates.

Section 23. *Retirement of Old Vessels*

- 23.1. Classification shall be required for existing unclassified ships which have attained the following maximum age:
 - 23.1.1. Steel hull ships – 30 years
 - 23.1.2. Wooden hull ships – 20 years
 - 23.1.3. Motorbancas – 5 years

Otherwise, said ships shall be automatically de-listed from the Philippine registry.
- 23.2. The operators of ships that have reached the maximum allowable age shall have the option to have their ships classed, replaced with classed ships, or retired without any replacement.

RULE X

FINAL PROVISIONS

Section 24. *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 25. *Separability Clause* – If, for any reason, any section, subsection, sentence, clause or term of this revised IRR is held to be illegal, invalid or unconstitutional, such parts not affected by such declaration shall remain in full force and effect.

Section 26. *Repealing Clause* – All other issuances, rules and regulations or parts thereof, which are inconsistent with the provisions of this R-IRR are hereby repealed, amended or modified accordingly.

Section 27. Effectivity – This revised Rules and Regulations shall take effect immediately upon its publication once in a newspaper of general circulation.

Manila, Philippines, 26 October 2009.

(SIGNED) MARIA ELENA H. BAUTISTA
Administrator

SECRETARY'S CERTIFICATE

This is to certify that the Revised Implementing Rules and Regulations of Republic Act No. 9295 was approved during the Board Meeting of the Maritime Industry Board held on 19 October 2009.

(SIGNED) ATTY. VIRGILIO B. CALAG
Acting Corporate Board Secretary