

MARINA CIRCULAR NO. 2011 - 04

**TO : ALL DOMESTIC SHIPPING COMPANIES/OPERATORS/
CHARTERERS / OIL COMPANIES/ SHIP AGENTS/
PRIVATE/ PUBLIC CORPORATION/ PARTNERSHIP/
ASSOCIATION AND OTHER MARITIME ENTITIES
CONCERNED**

**SUBJECT : REVISED RULES ON THE TEMPORARY UTILIZATION OF
FOREIGN-REGISTERED SHIPS WITHIN THE NATIONAL
TERRITORY**

Pursuant to Presidential Decree No. 474, Executive Order No. 125, as amended, Sec. 6, Chapter III of the Republic Act (R.A.) No. 9295 and Sec. 6, Rule III of its Revised Implementing Rules and Regulations (R-IRR), the following rules shall govern the temporary utilization of foreign-registered ships within the national territory.

I. OBJECTIVE

To provide rules on the temporary use of foreign-registered ships within the national territory.

II. COVERAGE

This Circular shall apply to all domestic shipping companies / operators / charterers / oil companies / ship agents / private/public corporation/ partnership/association and other maritime entities intending to temporarily utilize foreign-registered ships within the national territory.

III. DEFINITION OF TERMS

1. **MARINA** – shall mean the Maritime Industry Authority
2. **DATE OF LAUNCHING** – shall mean the date when the newly-built ship is released into the water.
3. **DOUBLE HULL SHIP** – shall mean a ship constructed with double bottom tank and with wing tanks that extend from the main deck to the inner bottom plate or bottom plate and arranged such that the cargo tanks are located inboard of the wing tank.
4. **FOREIGN-REGISTERED SHIP** – shall mean a ship owned and/or operated by a foreign national or company, registered under foreign flag.
5. **NATIONAL AND PUBLIC INTEREST** – shall mean the welfare of the public and which warrants recognition, promotion and protection by the government and its agencies.

6. **TANKER** – shall mean a ship constructed or adopted for the carriage in bulk of liquid cargoes of an inflammable nature.
 - 6.1 **CHEMICAL TANKER** – shall mean a ship constructed or adopted for the carriage in bulk of any liquid products listed in Chapter 17 of the International Bulk Chemical code or its subsequent amendments.
 - 6.2 **GAS CARRIER** – shall mean a ship constructed or adopted for the carriage in bulk of any liquefied gas or other products listed in chapter 19 of the International Gas Carrier Code or its subsequent amendments.
 - 6.3 **OIL TANKER** – shall mean a ship constructed or adopted primarily to carry in bulk in its cargo spaces and includes combination carriers, any Noxious Liquid Substance (NLS) tanker as defined in Annex II of the present MARPOL Convention and any gas carriers as defined in Regulation 3.20 of Chapter II-1 of SOLAS '74, as amended, when carrying a cargo or part of oil in bulk.
 - 6.4 **TANKER BARGE** – shall mean the general name given to a flat bottomed, propelled or non-propelled, rigged or unrigged craft of full body and heavy construction especially adapted for the transport and/or storage of oil, chemical, noxious liquid substance (NLS), gasses and other inflammable, hazardous and pollutant cargo.
7. **TEMPORARY UTILIZATION** – shall mean the operation of a foreign-owned/registered ship in areas covered by this Circular and the Exclusive Economic Zone (EEZ), for a period as prescribed in this Circular.
8. **SHIP OR VESSEL** – which may be used interchangeably, 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 water transport and for other purposes.
9. **VESSEL AGE** – shall mean the age of the ship reckoned from ship's date of launching based on the Builder's Certificate or Certificate of Vessel Registry.

IV. GENERAL PROVISIONS

1. The issuance by the MARINA of a Special Permit to foreign ship(s) to operate within the national territory shall be primarily predicated on the objective of insuring the provision of required shipping services where such is not readily available and suitable from the domestic fleet, so as not to prejudice efficient trade and commerce, delivery of critical services/commodities, and infrastructure and development projects. Cognizance is specifically given to oil exploration projects contracted by the government which requires specialized ships not normally available from the domestic fleet. In view of the capital-intensive investment requirement for such ships, and their short-term nature of utilization, the grant of Special Permit to such foreign ships, as well as the period of operation within the national territory, shall primarily take into account the vital importance that they play on the country's economic development.
2. Companies/ entities who intend to operate foreign registered ships within the national territory must secure Special Permit from the MARINA in accordance with the Rules set under this Circular;
3. Only companies/entities duly accredited by the MARINA under MARINA Circular No. 186 or 2006-003 and their subsequent amendments, whichever is applicable, can apply for issuance of Special Permit;
4. Application for issuance of Special Permit provided under this Circular shall be filed with the Domestic Shipping Office (DSO), upon submission of all the documentary requirements, and payment of the corresponding processing fee, as specified in item VII and VIII hereof;
5. All those covered by this Circular shall indicate in their application for issuance of Special Permit the service(s) they propose to offer and the routes, location or area of operation;
6. The issuance of a Special Permit under this Circular for the carriage of passenger or cargo shall be for a maximum period of one (1) year. Special Permit for other types of foreign ships shall be granted a longer period based on MARINA's evaluation of the temporary character of the need/demand to utilize foreign-registered ships, but not to exceed two (2) years, beyond which, the foreign ship will be required to be registered under the Philippine flag.
7. All applications filed under this Circular shall have a valid Contract/Fixture Note/Contract of Affreightment or Time/or Voyage Charter Contract;

8. All ships covered under this Circular, shall be classed by international organization recognized by their Flag Administration;
9. All ships covered under this Circular shall have the Mandatory Marine Insurance To Cover Liabilities Arising from Pollution and Wreck Removal from recognized International Protection and Indemnity Club;
10. All ships covered under this Circular shall pass safety inspection during the validity of the Special Permit;
11. All concerned companies/entities shall submit to the MARINA the Entry and Exit Clearance documents issued by the Bureau of Customs (BOC) to prove the actual arrival/departure date of the vessel/rig to and from the Philippines;
12. All foreign-registered ships covered under this Circular shall submit to the MARINA the LRIT (Long Range Identification and Tracking) Conformance Test Result.
13. For purposes of promoting the development of Philippine-registered domestic ships, the MARINA shall, prior to accepting the application, make verification from the concerned shipping association(s) as to the availability of a suitable domestic ship which can provide the same service before issuing a Special Permit to a foreign ship to operate within the national territory. In the event that the concerned association(s) has an available and suitable domestic ship to provide the same service, this should be immediately communicated to the MARINA, within seven (7) working days from date of receipt of MARINA's letter, providing the name and relevant particulars/ features of the ship(s), period of availability, and terms and conditions of hire. In the absence of such communication, the MARINA shall proceed with the evaluation/issuance of the Special Permit to foreign ship(s) applied for. Where there are available and suitable ships offered by the concerned association(s), the MARINA shall deny the application.
14. In cases where a foreign ship(s) will operate in the national territory by virtue of a contract entered into by the government or its instrumentalities, or that of a sovereign entity which has an agreement with the government, to operate a ship for commercial purposes, the Special Permit requirement will still apply, but the verification of availability of suitable domestic ships to provide the same service will no longer be necessary.

15. Ships owned by another sovereign entity performing any governmental function in the national territory, pursuant to any treaty or agreement, including foreign ships used incidental to such functions, shall not be covered by this Circular. The movement of these ships in the national territory shall be in accordance with international custom and practice governing such ships. However, the same will be covered by an implementing arrangement between MARINA and the appropriate Government agency.

V. SPECIFIC PROVISIONS

1. There is no age requirement except for tankers carrying oil in bulk which should not be more than 15 years old.
2. Tanker ship carrying oil in bulk must be double-hulled.
3. The Special Permit for the carriage of passenger or cargo to be issued shall be for a maximum validity period of six (6) months per issuance but not to exceed one (1) year. The Special Permit to be issued for other types of foreign-registered ships shall be for a maximum validity period of six (6) months per issuance but not to exceed two (2) years.

VI. INSTANCES WARRANTING THE ISSUANCE OF SPECIAL PERMIT

The MARINA shall issue Special Permit based on the following:

1. There is no readily available and suitable Philippine-registered ship operating within the national territory for domestic trade to meet the specific shipping requirements of the shipper or consignee, as verified from the concerned shipping association and organization; and
2. When public interest warrants.

VII. DOCUMENTARY REQUIREMENTS

The following documentary requirements are to be submitted:

1. Letter of Application indicating the proposed service(s), routes, location or area of operation and the relevant particulars/features of the ship(s)
2. Duly notarized Fixture Note or Contract of Affreightment or duly authenticated and notarized Time or Voyage Charter Agreement duly signed by the ship's registered owners and charterers or their duly authorized representative with names of signatories printed on the Agreement.

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 representative(s) to sign the duly authenticated/notarized Time or Voyage Charter, for and in behalf of the applicant-company and the registered owners
4. Ship's valid Certificate of Registry/Nationality
5. Ship's valid Class Certificate and Latest Survey Report for the last six (6) months issued by members of the International Class Organization recognized by their Flag Administration
6. Contract from the appropriate government Agency stating the need for the employment of special purpose ships to carry out the approved Work Program or agreement/contract and for the period required by such work program

Log Carriers	:	Department of Environment and Natural Resources (DENR)
Oil/Gas Exploration, Development and Production, storage facility, floating storage units, floating production storage & Offloading units, Seismic Data Acquisition Vessels, Platform Supply/Support Vessels, Accommodation Vessels used in Oil/Gas Exploration Development and Production projects	:	Department of Energy (DOE)
Cable laying	:	National Telecommunications Commission (NTC)

7. ISM related certificates
8. International Ship and Port Facility Security (ISPS) Certificates
9. Valid Safety Certificates, as follows:
 - Cargo Ship Safety Certificate;
 - Cargo Ship Safety Equipment Certificate;
 - Cargo Ship Safety Construction Certificate;
 - Passenger Ship Safety Certificate;
 - Certificate of Fitness (Chemical or Gas Carrier);
 - Manning Certificate;
 - International Oil Pollution Prevention Certificate; and
 - International Tonnage Certificate
10. Crew list indicating STCW certificates (number and validity) of the crew
11. Applicant's SEC registration (for branch offices of foreign owners/charterers/ship representative(s))
12. MARINA Accreditation (as applicable)

13. Contract of ongoing or awarded project with government instrumentalities/agencies
14. 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)
15. LRIT compliance

Note: For renewal/extension of Special Permit, only documentary requirements that have expired shall be submitted.

VIII. PROCESSING FEE

- Foreign-registered ships - Php300,000.00 minimum/month/ship or
 Php600.00/50GT or fraction thereof, whichever is higher
- Any amendment of Special Permit - Php150,000.00/amendment

IX. SANCTIONS AND PENALTIES

The following fines shall be imposed for violation of this Circular after due notice and hearing:

1. Operation of foreign-registered ship within the national territory without Special Permit	Php5,000,000.00 per ship
2. Operation of foreign-registered ship within the national territory with expired Special Permit	Php3,000,000.00 per ship
3. Violation of any provision or non-compliance with the post-approval conditions/documents stated in the Special Permit	Php1,000,000.00 and revocation

X. REPEALING CLAUSE

Any provisions of existing MARINA Circulars, and its amendments, or Rules and Regulations, Orders or Decisions and other issuances or parts thereof which are inconsistent with this Circular are hereby repealed, amended or modified accordingly.

XI. SEPARABILITY CLAUSE

Should any provision or part of this Circular be declared by competent Authority to be invalid or unconstitutional, the remaining provisions or parts hereof shall remain in full force and effect and shall continue to be valid and effective.

XII. EFFECTIVITY

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

Manila, Philippines November 17, 2011.

BY AUTHORITY OF THE BOARD:

(Signed) **EMERSON M. LORENZO, CESO V**
Administrator

SECRETARY'S CERTIFICATION

This is to certify that MARINA Circular No. 2011- 04 was approved in the Meeting of the Maritime Industry Board held on November 17, 2011.

(Signed) **ATTY. VIRGILIO B. CALAG**
Acting Corporate Board Secretary

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