

MEMORANDUM CIRCULAR NO. 106

TO : ALL SHIPOWNERS/OPERATORS IN THE DOMESTIC TRADE

SUBJECT : IMPLEMENTING RULES AND REGULATIONS ON E.O NO.185

In line with the national policy of pursuing a program of deregulation and fostering competition, provided it is not ruinous, and likewise to attract investments, and pursuant to Section 6 (a) and 6 (b) of PD No. 474, Section 12 (a), (b), (c), (h) and (k) of EO No. 125-A and Section 3 of EO No. 185 dated 28 June 1994, the following guidelines are hereby adopted:

I. OBJECTIVE

This Circular serves to provide consolidated policy guidelines intended to promote a more liberal/deregulated atmosphere for liner operations in the domestic shipping industry, within the purview of the mandate vested with the Maritime Industry Authority.

II. COVERAGE

This Circular shall apply to all persons, corporations, firms and entities engaged in the operation of a domestic water transportation service for compensation, commercial or public use, involving the carriage of passengers and/or cargoes between various ports and places in the Philippines, either as liner or tramper as the corresponding provisions herein would indicate.

III. DEFINITION OF TERMS – For purposes of this Circular the following terms or phrases shall have the meanings/definitions as herein below indicated;

1. **Certificate of Public Convenience (CPC)** – an authorization issued by the MARINA to a vessel for a domestic water transportation service for commercial/public use for which no franchise, either municipal or legislative is required by law.
2. **Provisional Authority (PA)** – the provisional or temporary permit issued by the MARINA to a vessel to operate a liner service, pending final determination of the application for issuance of CPC.
3. **Liner service** - The operation of domestic water transportation which publicly offers its services without discrimination to any user, has regular ports of call/destination and has fixed sailing schedules and frequency.

4. **Tramp Service** – the operation of a freight vessel which mostly does not run in any regular line but takes cargo wherever the shippers desire, is hired on a contractual basis or chartered by one or few shippers under mutually agreed terms and usually carries full cargoes of bulk commodities.
5. **Financial Capability** – as a requisite to the grant of CPC/PA, shall constitute the availability of funds to initiate/establish and maintain its operation and the availability of sufficient financial reserves to meet claims arising from accidents other than that sufficiently covered by the appropriate insurance coverage (e.g., P&I, Hull and Machinery, Passage, etc.).
6. **Public Interest/Convenience** – The common good; that which is for the benefit of all people or a majority thereof.
7. **Prior Operator Rule** – the priority given to an existing authorized operator in a route, and in each of the segments of the route, by virtue of a CPC/PA issued.
8. **Prior Applicant Rule** – the priority given to the first applicant, among the mass of various applicants, for a CPC.
9. **Protection of Investment** – the protection and conservation of investment, which have already been made by the public service operators.
10. **Wholesome/Constructive Competition** – when two (2) or more operators in a route/link compete for a share of the passenger and/or freight market on the basis of quality and efficiency in services, types of facilities and accommodations provided, and/or level of rates charged, resulting in the promotion of public interest and **convenience** and without endangering the financial viability of operations therein.
11. **Franchised Operator** – any operator that is issued a CPC.
12. **Authorized Operator** – any operator that is issued either a PA or a CPC.
13. **Authorized Route** - the pattern of ports of call starting and ending on the same port, as indicated in an existing CPC/PA granted by this Authority to a liner vessel.
14. **Innovative/Technologically-Advanced Service** – a type of vessel or shipping service/shipping trade which is not yet being provided by any other authorized operator in a given route.

15. **Cost-effective/Competitive Shipping Service** – when two or more operators in a given route are charging rates commensurate to the level and quality of shipping service being provided, such that any variation in the level and quality of shipping service provided among the operators will result in corresponding variations in rates being charged by each operator. If the rates charged by the existing operators in a route do not vary despite differences in service, or are unusually high, or the service rendered is at the minimum level of the prescribed standards and not commensurate with the rates being charged, there is deemed to be lack of effective competition, in which case, effective competition would be fostered by the entry of a new operator which can either offer a better service at the given prevailing rate or lower rates at the same level of service being provided.
16. **Monopoly** – a situation where there is lack of effective competition, or a case when a market is served either by only one (1) franchised operators by a group of a franchised operators beneficially owned by a single individual, or by a family/corporation or by a cartel.
17. **Developmental Route** – an economically desirable route not being served presently by any franchised operator offering the same type of service. The route/link may then be considered developmental in respect to ship's technology, e.g. the route may be considered developed as far as banca services are concerned but considered developmental for conventional cargo vessels, or considered developed as far as conventional cargo vessels considered developmental for container operations. Economic desirability may be established when the areas served have agricultural, tourism, mining and/or industrial growth potentials or that the areas served need the link with developed regions for their subsistence and development.
18. **Reasonable Spacing of Sailing Schedules** – the minimum time difference to be allowed for the departure of vessels in a given port.
19. **Suspension/Withdrawal of Service** – the stoppage of a vessel's service in its authorized route or portions thereof.
20. **Abandonment of Service** – the unauthorized stoppage or suspension of a vessel's service in its authorized route or portions thereof for a period of four (4) months or more.
21. **Newly-Acquired vessels** – vessels acquired through importation, bareboat charter, with or without option to purchase, lease with or without irrevocable option to purchase or local construction.

22. **Link** – the connection between two (2) ports of call whether direct (i.e., no intervening port of call) or indirect (i.e., with one or more intervening ports of call).
23. **Vessel Rerouting** – the changing of the authorized routing pattern of a vessel.
24. **Vessel Replacement/Substitution** – the deployment of a vessel to serve as a replacement or substitute for an existing vessel authorized to operate in a given route.
25. **Addition/Expansion** – the introduction of an additional vessel, an increase in the vessel's sailing frequency in a given route, a replacement of a franchised vessel with a bigger vessel, or an increase in effective capacity of the franchised vessel through alterations, such as jumboization or rearrangement of the passenger accommodation plan.
26. **Authorized Sailing Frequency** – the number of trips/links a vessel can make at a given period of time as indicated in its PA/CPC.
27. **Fork Tariff System** – a system wherein rates are allowed to fluctuate between carefully defined upper and lower limits from a given reference/indicative rate.
28. **Class A** – as used in commodity classification for rates determination, includes generally lower high value manufactured goods.
29. **Class B&C** – as used in commodity classification rates determination, includes generally lower value manufactured goods, raw materials and agricultural products.

IV. POLICY GUIDELINES ON THE ISSUANCE OF CERTIFICATE OF PUBLIC CONVENIENCE (CPC)

A. General Policy Guidelines

1. Requisites before a CPC/PA may be granted

As provided for under Section 16 (a) , Chapter II of the Public Service Act (C.A. No. 146, as amended), the following requisites must be complied with before any CPC/PA may be granted;

- a. The applicant must be a citizen of the Philippines, or a corporation or co-partnership, association or joint-stock company constituted and organized under the laws of the Philippines, at least sixty (60) per centum of stocks or paid-up capital of which belongs entirely to the citizens of the Philippines;
 - b. The applicant must be financially capable of undertaking the proposed shipping service and meeting the responsibilities incident to its operations; and
 - c. The applicant must prove that the proposed operation of the public service, and the authorization to do business, will promote public interest in a proper and suitable manner. In addition to the above requisites, no vessel shall be issued a CPC/PA unless it has complied with prescribed safety requirements and service standards, as embodied in related rules, regulations and MARINA Memorandum Circulars.
2. Public interest or public convenience shall be the cardinal or primordial consideration in the grant of CPC/PA. While it is the duty of the government, as far as possible, to protect public utility operators against unfair and unjust competition, it is nevertheless obvious that public convenience must have the first consideration.

Public interest shall therefore prevail over “prior applicant”, “prior operator”, and “protection of investment” considerations. Finally, reasonable/wholesome/ constructive competition shall be allowed and encouraged to the extent possible.

3. The presumption of public need for a service shall be deemed in favor of the applicant, while the burden of proving that there is no need for a proposed service shall be with the oppositors.

b) Specific Policy Guidelines on Entry Into and Exit Out of the Industry.

The control in entry into and exit out of the industry shall be liberalized to introduce and/or enhance the level of competition in terms of rates charged and the quality of service rendered by domestic water transportation operators as herein provided.

1. Opening-up of All Routes

Public interest and public convenience call for the levelling of the playing field for all existing and new operators in the domestic water transport industry. Competition, provided it is not ruinous,

should be the norm to open-up the industry to new investments and to stimulate further economic activity.

- 1.1 All routes/links shall have a minimum two (2) operators. Routes/links/ presently serviced by only one (1) operator, or monopolized or cartelized as determined by MARINA, shall be open for entry to additional operators.
- 1.2 All routes/links which have been serviced by any operator for an aggregate period of at least five (5) years shall be open for entry to additional operators without limit.

2. Encouraging Entry Into Development Routes

The entry of operator in developmental routes as determined by MARINA shall be encouraged. An operator who pioneers in the provision of a certain technological level/type of shipping service in developmental route shall be authorized to charge market-accepted freight and passage rates differing from the authorized fork-tariff, if availed of; Provided that the operator shall apply with MARINA for the adjustment in or adoption of such rates, the approval of which shall be accordingly granted; and Provided, further, that after five (5) years of such operation, the continued authorization of such rates, or adjustments thereof, shall be dependent on an evaluation undertaken by MARINA.

In the evaluation of applications involving entry into developmental routes, the term market-accepted rates shall be taken to mean liner shipping freight and passage rates which are reasonable and which the market can generally bear and/or which are agreed upon among concerned/affected parties. These maybe rates determined/prescribed by MARINA based on the general rate levels or based on cost using the submitted financial statements and other data, the traditional rates in the subject/link route, or any other rates satisfying the above-mentioned criteria.

3. Deregulating Entry of Newly Acquired Vessels Into Routes Already served By Franchised Operators

- 3.1 An existing or new operator who acquires a vessel through importation, bareboat with option to purchase, lease-purchase, or local construction, shall be granted a CPA/PA and allowed to operate such vessel in any route, even if already being served by existing franchised operators for less than

five (5) years, including developmental routes; Provided, that the prescribed application for CPC has been filed, and the basic requisites prior to issuance thereof have been complied with; Provided, further that upon filing the application for CPC, the presumption of public need shall be accorded in favor of the applicant, especially but not necessarily when any of the following conditions shall be shown to obtain:

- 3.1.1 The proposed operation shall introduce innovative, technologically-advanced, or pioneering shipping services in the route applied for, such as, but not limited to, the deployment of fast ferries, cruise vessels, container vessels and RoRo vessels, or the employment of modern and efficient on-board cargo handling equipment as an integral part of the vessel's operation;
- 3.1.2 The proposed operation shall introduce improvements in the quality of service being provided in the applied route/link;
- 3.1.3 The vessel proposed to be deployed shall serve as an improvement over the existing vessels operating therein, either in terms of the vessel's age, size, capacity, hull material and other vessel technical features;
- 3.1.4 The proposed operation shall foster cost effective/competitive shipping service in the route proposed to be served;
- 3.1.5 The proposed operation shall service priority tourist links as identified by the Department of Tourism in its Tourism Master Plan;

The condition that the proposed operation shall service priority tourist links as identified by the Department of Tourism in its Tourism Master Plan may likewise be satisfied using the DOT Master Plan or DOT accreditation as basis. Certifications from DOT shall be required prior to issuance of authority to operate.

3.1.6 The route/link applied for warrants additional operators/services, as determined by MARINA or by pertinent local government units, resulting in public invitations for additional services therein.

This condition covers cases where there is a duly verified and legitimate public clamor for additional shipping services and it has been determined that existing authorized operators in the route/link have not been sensitive to an increase in demand by offering to increase capacity only after another operator has offered to provide additional services therein: and

3.1.7 Where existing authorized operators have abandoned their operations in a given route.

In the deregulation of entry of newly acquired vessels, it is further clarified that determination of schedule of sailing as well as frequencies shall remain with the MARINA inasmuch as only entry to the route has been deregulated.

Any oppositor to the application shall bear the burden of proving that there is no need for the proposed service.

Provided, finally that the vessels issued CPC shall continuously serve its franchised route for at least one (1) year from date of issuance.

4. Vessel Rerouting or Amendment of Authorized Route, Change In Sailing Schedules And Frequency.

Any change or amendment to the authorized routing pattern of a vessel can be undertaken by an existing authorized operator thru the following: (1) omission or deletion of port(s); (2) addition of other port(s); (3) omission and subsequent addition of port(s); (4) changing the sequence of port calls; (5) retention of authorized routing pattern but with addition of one or more ports. Vacated port(s) or link(s) or link(s)/route(s) as a result of the above shall be looked into by MARINA insofar as adequacy or sufficiency of the remaining existing shipping services is concerned.

Although this section deals with vessel rerouting/amendment of authorized route/change in sailing schedules and frequency, the change in sailing schedules and frequency was not included in the ways by which changes/amendments may be undertaken. It is however observed that the enumerated forms of change all entail a change in sailing schedule. Thus, applications for changes in sailing schedules shall be evaluated under this provision. In consideration of the fact that changes in sailing frequencies shall not mean omission/addition of ports, the provision on continuous shipping service in the previous link for at least one (1) year shall not apply.

An application for amendment of authorized route of a vessel previously authorized for tramping operations may be considered since it shall involve the change of route from a general, i.e., homeport to any port in the Philippines to a more specific route. Corollarily, applications for amendments from a specific route shall likewise be evaluated under this provision.

4.1 Approval shall be granted to applications for any of the above forms of change/amendment of authorized routing pattern by existing franchised vessels, provided that;

- No conflict in sailing schedules with other affected operators in the applied route/link shall result therefrom, otherwise, the MARINA shall prescribe, motu proprio, sailing schedules that will best serve public interest and convenience;
- No route or link shall be left unserved by the rerouting/route amendment, unless a substitute vessel from the applicant will be deployed therein, or vessels from other existing authorized operators are left serving the route/link.
- Shipping service in the previous route/link has been continuously rendered by the vessel for one (1) year from issuance of CPC.

4.2 If the rerouting/route amendment of a vessel is caused by the deployment of a newly-acquired vessel (either through importation, bareboat charter with option to purchase, lease purchase or local construction) into the authorized route of an operator/company, the policy of liberalized entry into any route under Sec. IV.B.3 above shall be applied.

- 4.3 If no newly-acquired vessel is involved and an application is filed for the rerouting/route amendment of a vessel, where an entirely new route will be served, a new application for CPC shall be filed and entry therein will depend on whether any of the conditions/circumstances enumerated in Sec. IV.B.3 above has been proven to obtain. Priority however, shall nevertheless be given to newly-acquired vessels brought into the fleet, subject to Sec. IV.B.3 of this Circular, in the grant of CPC to a given route.
- 4.4 In cases where only a temporary authority has so far been issued to a vessel, pending resolution of the basic application for CPC, an application for amendment of route/rerouting may be filed and considered by the MARINA, but the amended authority to be issued as a result thereof, shall be subject to the one (1) year maximum period to be cumulatively reckoned from the first PA issued in the original application.
5. The determination of reasonable sailing schedule shall be undertaken by the Authority in consideration of factors including, but not limited to (1) travel time; (2) type of vessel; (3) number of existing operators; (4) distance to be traversed ; (5) berthing space; and (6) whether ports to be served shall cater to tourists.

If the new entrant in the route proposes a time schedule earlier than those of the existing operator, this shall be allowed in acknowledgement of his recognition of need for services at the proposed time, unless previous acts of the existing operator will show his intention to provide an earlier service.

6. Henceforth, the entry of vessels into a given route shall be evaluated and considered by the MARINA notwithstanding the existing market conditions therein. However, market evaluations shall still be undertaken in the following instances:
- in the determination of the legitimacy of public clamor for additional shipping services;
 - in the determination of whether there has been an increase in demand;
 - when situation does not merit entry based on provisions cited therein; and
 - entry of a wood-hulled vessel into a developmental route where the existing vessel is steel-hulled.

- in the determination of whether there has been an increase in demand;
7. Despite the preceding provisions for liberalized entry into any routes/links, the MARINA may however, limit or qualify further entry of additional vessels in a given route/link when the berthing and other facilities as well as other technical considerations in a given port can no longer accommodate additional vessels at a given time, subsequent to the prescription of reasonable sailing schedules therein.

8. Abandonment/Withdrawal/Suspension of Shipping Services

An authorized operator shall be allowed to withdraw/suspend his services in a route/link provided that a notice of withdrawal/suspension is filed with the MARINA fifteen (15) days prior to such and after informing the public of such decision. In cases where prior notice is not practicable, as in suspension of services after a marine casualty, major machinery damage, and other fortuitious events, the operator could file the notice with the MARINA within fifteen (15) days after the incident, and also provide in such notice an indication as to when the service may resume. By an unauthorized total or partial withdrawal/suspension of a vessel's services in its authorized route, or portions thereof, for a period of four (4) months or more, an operator shall be deemed to have abandoned his authorized route, or portions of the route, and or already forfeits, after hearing, his right to his authority.

9. Vessel Replacement/Substitution By An Existing/Authorized Operator

Existing authorized operators in a given route/link shall be allowed, upon filing the required application with the MARINA, the replacement of an operating vessel.

- 9.1 Replacement/substitution need not involve only bigger vessels but those of lesser capacities as well. The provision for replacement with bigger vessels without limit on capacity was a result of previous policy on replacement/substitution where the effect of an increase in capacity on the market is being considered.

- 9.2 Vessel replacement shall entail the revocation of the authority (CPC/PA/SP) of the vessels to be replaced. This shall be true even in cases where a vessel is sold or its ownership is transferred.

9.3 In cases when the vessel involved in replacement has been chartered from a franchised operator, then the authority of the original operator shall be revoked.

9.3.1 If the chartered vessel shall be deployed in a route where the charterer is an authorized operator whose vessel operating thereat shall be replaced by the chartered vessel, then this shall be considered as an application for replacement/substitution.

9.3.2 If the vessel owner, upon chartering out his vessel formerly deployed in the route, has decided to operate another vessel in its place in the same route, then this shall be considered as an application for vessel replacement/substitution.

2.10 Vessel Addition/Expansion of Shipping Services by An Existing/Authorized Operator

Existing CPC holders in a given route/link shall be allowed upon filing the required application with the MARINA to increase their capacity through:

- (a) introduction/deployment of additional vessels;
- (b) increase in the vessels sailing frequency, subject to Sec. IV.B.4.1 of this Circular; and
- © jumboization or rearrangement of the vessel's passenger accommodation plan, as duly approved by this Authority.

When the proposed additional vessel has been chartered from a franchised operator, the original franchise of the vessel should be revoked.

The herein policy shall be observed even after the authorized entry of additional vessels into the route/link, pursuant to Sec. IV.B.3 herein.

11. Swapping/Substitution/Changes In Sequence Of Port Calls Of Purely Cargo Liner Vessels

Considering that the level of service required of cargo liner service is not as demanding as that for a passenger liner service, liberalizing cargo liner operations within an operator's franchised areas/port of call is expected to result in improving optimum

utilization of vessels and improved efficiency and response in the provision of cargo services. Purely cargo liner operators shall therefore be allowed to swap/substitute vessels and/or change the sequence of port calls, upon filing the appropriate notice with the MARINA, and provided that:

- (a) On vessel swapping, the swapped vessels shall adhere strictly to their authorized routes, sailing frequencies and sequencing of port calls. No limits shall be placed on the capacities of the swapped vessels.
- (b) Proposals, effecting changes in the sequence of port calls shall be limited to the company's or to the vessels authorized port of call as determined by valid and subsisting franchises, provided that no new links shall result therefrom. New links are defined as port-to-port combinations created as a consequence of route combinations/amendments, which link areas are heretofore unserved by liner operator but served by other franchised operators. Where new links are created, approval shall depend on whether any of the conditions cited in Sec. IV.B.3 above obtain.
- (c) Instances involving temporary route swapping, route amendment, or vessel redeployment for purposes of making side trips or special trips to carry shut-out cargo or empty containers, shall be granted immediate authorization by this Authority provided that a notice is filed no less than three (3) days before the redeployment/swapping/etc. is initiated.

C. Specific Policy Guidelines on Quality of Shipping Services.

MARINA Memorandum Circular No. 65/65-A prescribing for the minimum Service Standards for Philippine Registered Interisland Passenger Vessels shall be implemented and shall be used as basis for assessing the quality of existing shipping service. Compliance with this set of standards will ensure acceptable quality of shipping service for passenger comfort and convenience.

- 1. A link/route shall be declared warranting improvement in services subject to the following conditions:
 - a) The public, individually or collective recognized organizations or legally constituted or authorized representative/institutions, shall petition the MARINA on

the need to improve the services of vessel plying the routes/links in the affected areas; and

- b) An independent survey/investigation shall be conducted by the MARINA to ascertain the validity of the need for an improvement in services. MARINA may include shipping association members and/or non-government organization representatives in the fact-finding mission and/or inventory system as may be ascertained to determine compliance with quality of service standards with quality of service standards.

D. Specific Policies Guidelines on Franchise Issuances.

1. Period of Validity of a CPC to be Issued.

Vessel Category/ Vessel's Age Upon CPC Issuance -----	CPC Validity -----
a) Steel-hulled vessels	
0 - 10 years old	----- 10 years
11 - & above	----- 5 years
b) Wooden-hulled vessels	
0 -5 years old	---- 5 years
6 years and above	---- 3 years
c) Motorized Bancas	Fixed duration of 2 year per CPC issuance, with a maximum of 4 CPC issuances.
d) Bareboatt Chartered Vessels Pursuant to P.D. 760/866	
0 - 10 years old -	10 years or co-terminus with the Bareboat Charter Party, whichever is shorter, but not to go beyond 1999 or the expiry of the bareboat chartering program.

11 years and above - 5 years or co-terminus with the approved Bareboat Charter Party, whichever is shorter, but not to go beyond 1999 or the expiry of the bareboat chartering program.

2. Issuance of Provisional Authority (PA) to Operate

Pending final determination of an application for CPC, temporary relief, by way of a PA, can be issued to a vessel applying in a given route/type of operation, upon determination by this Authority that it will promote public interest and convenience or there is an urgent public need for the said service, subject to existing quasi-judicial rules and procedures, and provided that the basic requirements as embodied in pertinent laws, rules, regulations and circulars have been complied with.

- a) For uncontested CPC applications, a PA with a maximum validity period of one (1) year shall be issued, and it shall be incumbent upon this Authority to arrive at a Decision on the basic application for CPC on or before the expiry of the PA issued, except in cases where the cause of delay is attributed to the applicant.
- b) For contested CPC applications, a PA with a maximum validity period of six (6) months, which may be extended for another six (6) months, shall be issued, and it shall be incumbent upon this Authority to arrive at a Decision on the basic application for CPC on or before the expiry of the first or second PA issued, except in cases where the cause of delay is attributed to the applicant.

The above provisions notwithstanding, the validity of the PA to be issued to vessels required to be classed and are still in the process of being classed shall be dependent on guidelines prescribed internally by this Authority.

3. An applicant for CPC who fails to comply with prescribed requirements within a period of one (1) year from the time of filing of the application shall lose his/her standing as a prior applicant/operator and his/her status as an oppositor to any application in the same route. Applications falling beyond the one

(1) year period as above stipulated shall be dismissed without prejudice to the re-filing of the same.

V. INSTITUTIONAL MECHANISM

- A. Periodic inspection of vessels will be undertaken by this Authority to monitor compliance with M.C. No. 65/65-A relative to the passenger accommodation areas of vessels, as well as to assess the quality of service being provided, utilizing the Passenger Service System (PSRS) prescribed by this Authority. Any vessel found to provide First and/or Second Class Services below standards may either render the entire capacity of the vessel to be categorized as Third Class for which only Third Class Passage rates should be charged, or even render the vessel to be unfit for transporting passengers.
- B. This Authority shall likewise adopt an improved route monitoring mechanism and conduct route capacity measurement, or alternative evaluation schemes, of identified liner or ferry route/link. The results thereof shall serve as basis for the issuance of public advisory on routes deemed warranting the entry of additional operator, or to serve as guide on whether the further entry of additional operators in a certain route, for a particular category/type of shipping service, is still warranted.
- C. There shall be consultations to be jointly coordinated and conducted by this Authority and the Philippine Shipper's Bureau to address matters, issues or problems of common interests affecting the riding public, the shippers/cargo owners and the shipowners/operators, to be participated in by persons in their individual capacities, designated representatives of duly formed associations, non-governmental organizations, peoples organizations and even other government agencies. These consultations shall take place whenever requested by any of the above mentioned parties. The matters to be the subject of consultation shall include, but not limited to, tariff conditions, commodity classifications, adequacy and quality of shipping services, relevant rules, regulations, policies and procedures, etc.

VI. DETERMINATION OF FINANCIAL CAPABILITY OF PA/CPC APPLICANTS

- A. The issuance of financial capability of applicants as a pre-condition to the issuance of CPC shall be construed as the simultaneous satisfaction of the two (2) basic financial requirements:

1. The Availability of Funds Sufficient to Establish/Initiate and Sustain Operations.

The applicant is deemed financially capable to establish/initiate and sustain operations if its actual working capital is equal to or greater than the required working capital, where:

Actual Working Capital = Current Assets minus Current Liabilities

Required Working Capital = Two months operating, Administrative and Interest Expenses, minus two months Revenues (qualified by the average Aging Receivables)

In case where the applicant is not deemed financially capable of undertaking a shipping service, the MARINA shall require him to undertake an increase in working capital equivalent to the computed deficiency. Proof of such increase and the corresponding documents, under oath and duly notarized, shall be submitted to MARINA for re-computation/re-evaluation of the applicant's financial capability.

2. The Availability of Sufficient Financial Reserves to Meet Claims Arising From Accidents.

The applicant is deemed financially capable to meet claims arising from accidents if he secures a satisfactory insurance coverage or any other form of security acceptable to the MARINA.

VII. TECHNICAL EVALUATION

Section 17 (a) for the Public Service Act states that "the Commission (now MARINA) shall have power without previous hearing subject to established limitations and exceptions and saving provisions to the contrary: a) to require any public service to furnish safe, adequate, and proper service as public interest may require and warrant; b) to enforce compliance with any standard rules, regulations, order or other requirement of this Act on the Commission".

A. The MARINA shall ensure that vessels to be utilized for public convenience are seaworthy and properly maintained to enable the public utility operator to provide safe, reliable, comfortable and efficient shipping service.

- B. The public utility operator in the maritime sector assumes the responsibility for providing and maintaining safe, reliable, comfortable and efficient shipping service. On the other hand, the government should allow only those ships that meet the established physical, technical and service standards to operate in the interisland trade.
- C. The officers and crew of vessels shall meet the established standards of competence.

(Note : For tramp operations, only IV.D, VII, VIII and pertinent portions of VI shall apply.)

VIII. PENALTIES/SANCTIONS

Any violation of, or failure of the operators to comply with the policies/guidelines hereinabove set forth shall constitute a sufficient ground for the disapproval of the application for Certificate of Public Convenience/Provisional Authority and/or suspension/revocation/cancellation of the vessel's Authority, as the case may be, in addition to the penalties provided under the Public Service Act, as amended, and other relevant rules and regulations of this Authority, after due notice and hearing.

X. REPEALING CLAUSE

This Memorandum Circular supersedes MARINA Memorandum Circular Nos. 26, 39, 71 and the provision of Entry on the Specific Policy Guidelines on Entry Into and Exit Out of the Industry of the MARINA Memorandum Circular No. 80, any provisions of existing MARINA rules and regulations, are inconsistent with this Circular are hereby repealed or modified accordingly.

XI. EFFECTIVITY

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

Manila, Philippines, 06 April 1995.

BY THE AUTHORITY OF THE BOARD:

PACIENCIO M. BALBON, JR.
Administrator

SECRETARY'S CERTIFICATE

This is to certify that Memorandum Circular No. 106 was approved in the special meeting of the Maritime Industry Board held on 06 April 1995.

EMERSON M. LORENZO
Deputy Corporate Board Secretary

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