

MARINA CIRCULAR NO. 2018-05

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

**SUBJECT : RULES IN THE ACQUISITION AND/OR OPERATION OF CRUISE
SHIPS**

Pursuant to Presidential Decree No. 474, Executive Order Nos. 125/125-A, and Republic Act No. 9295, the Rules in the Acquisition and/or Operation of Cruise Ships are hereby adopted and prescribed.

I. OBJECTIVES

This Circular provides rules and regulation on the acquisition and/or operation of cruise ships, towards achieving the following objectives:

1. To develop and promote the cruise shipping industry of the country.
2. To help promote the development of the tourism industry in the Philippines.
3. To ensure compliance of cruise ships with maritime safety rules and regulations.

II. COVERAGE

This Circular shall apply to all persons, corporations, partnerships, firms and entities intending to acquire and/or operate cruise ships, whether Philippine or Foreign-registered.

III. DEFINITION OF TERMS

1. **ACQUISITION** refers to the importation, bareboat charter, local construction and permanent conversion of ship's trading status from overseas operation to domestic operations.¹
2. **ADMINISTRATION** refers to the Maritime Industry Authority (MARINA).
3. **AUTHENTICATION** refers to an act of any Philippine Embassy/Consulate General to have any legal document issued in the foreign country where said Philippine Embassy/Consulate General is stationed to be acknowledged or authenticated ('consularized') and will bear the seal of the Embassy/Consulate General as well as the signature of the authenticating officer in order for that document to have any legal validity in the Philippines.²
4. **AUTHORITY TO IMPORT** refers to the document issued by the Administration to an importer of cruise ship after compliance with the requirements under Item VI.A hereof.

¹MC No. 104, Omnibus Guidelines for the Acquisition of Vessels for Domestic Operations and Fishing Vessels/Boat

²Department of Foreign Affairs (DFA) definition

5. **BAREBOAT CHARTER** refers to an arrangement for the hiring of a vessel whereby no administration or technical maintenance is included as part of the agreement. The charterer obtains possession and full control of the vessel along with the legal and financial responsibility for it.³
6. **CRUISE ITINERARY** refers to a planned route or journey of a cruise ship.
7. **CRUISE SHIP** refers to a type of passenger ship used for pleasure voyages in a journey where the voyage itself and the ship amenities and facilities are a part of the experience, with occasional port of calls in different destinations of interest that return passengers to their originating port with varied duration. Transportation is not the main purpose of cruise ships.
8. **DOMESTIC CRUISING** refers to the operation of cruise ships between and among Philippine ports, where passengers may be taken in or change over.
9. **DOMESTIC SHIP OPERATOR** or **DOMESTIC SHIP OWNER** may be used interchangeably and refers to a citizen of the Philippines, or a commercial partnership wholly owned by Filipinos, or a corporation at least sixty percent (60%) of the capital of which is owned by Filipinos, which is duly authorized by the Maritime Industry Authority to engage in the business of domestic shipping.⁴
10. **FOREIGN-REGISTERED SHIP** refers to a ship owned and/or operated by a foreign national or company, registered under foreign flag.⁵
11. **GROSS TONNAGE** refers to the measure of the overall size of a ship determined in accordance with the provision of the present International Convention on Tonnage Measurement of Ships, 1969 (ITC 69).⁶
12. **HOMEPORT** in a cruise industry refers to the port in which a ship will take on or change over the majority of its passengers while taking on stores, supplies and fuel.
13. **IMPORTATION** refers to the direct purchase of newly constructed or previously owned ships 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".⁷
14. **PASSENGER SHIP** refers to a ship authorized by the MARINA to carry passengers.⁸
15. **PROTECTION AND INDEMNITY INSURANCE** more commonly known as "P&I" insurance refers to a form of mutual maritime insurance provided by a P&I Club which provides cover for open-ended risks that traditional insurers are reluctant to insure such as, but not limited to, carrier's third-party risks for damage caused to cargo during carriage, war risks and risks of environmental damage such as oil spills and pollution. "Third parties" are any person, apart from the shipowner himself, who may have a legal or contractual claim against the ship, such as the passengers of the cruise ship themselves.

³ MC 2017-04, Rules on the Importation of Passenger Ship

⁴ RA 9295, Domestic Shipping Development Act of 2004

⁵ MC 2011-04, Revised Rules on the Temporary Utilization of Foreign-Registered Ships within the National Territory

⁶ MC 2017-04, *supra*

⁷ RA 9295, *supra*

⁸ MC 2012-04, Rules in the Issuance of Domestic-Certificate of Competency (D-COC)

16. **P&I Club** refers to a mutual insurance association that provides risk pooling, information and representation for its members.
17. **SPECIAL PERMIT** – shall mean the permit to be issued by the MARINA for the temporary utilization of foreign-registered cruise ships for domestic cruising.
18. **SUPERNUMERARY** refers to a person who is not a crew of the ship and whose presence onboard is for a specific purpose other than to perform navigation, operation and management functions.⁹
19. **TRI-CITY/MULTI-CITY HOMEPORTING** refers to several ports where a cruise ship can take on or change over its passengers.

IV. GENERAL PROVISION

1. **Ship Acquisition through Importation or Bareboat Charter.** Companies/entities which intend to import a Cruise Ship, whether by direct purchase, lease or charter must secure an Authority to Import/Approval of Bareboat Charter from the Administration, in accordance with the Rules set under this Circular.

Who may file for the application of ship acquisition. Companies/ entities who intend to import a Cruise Ship, whether by direct purchase, lease or charter must be accredited under the Revised Guidelines on the Accreditation of Domestic Shipping Enterprises or Entities under MARINA Circular No. 2006-03, and its subsequent amendments.

Where to File Application. Application for the issuance of Authority to Import/Approval of Bareboat Charter shall be filed with the Domestic Shipping Service (DSS). Applicant shall submit and comply with all documentary requirements and pay the corresponding processing fee, as specified in Items VI.A and VII hereof.

2. **Ship Acquisition through Local Construction.** All cruise ships to be constructed and registered in the Philippines shall be subject to the provisions of MARINA Circular No. 2015-07, and its subsequent amendments.
3. **Issuance of Special Permit for Foreign Registered Cruise Ships to Operate in the Philippine Waters.** No foreign registered cruise ship shall be allowed to engage in domestic cruising except upon the grant of Special Permit by the MARINA in accordance with this Circular.

Who may file for the issuance of Special Permit. Companies/ entities who intend to operate foreign registered ships for domestic cruising should be accredited under Revised Guidelines on the Accreditation of Domestic Shipping Enterprises or Entities (MARINA Circular No. 2006-006) or Rules on the Accreditation of Maritime Enterprises (MARINA Circular No. 186), and its subsequent amendments.

Where to file issuance of Special Permit. Applications for Special Permits provided under this Circular shall be filed with the Domestic Shipping Service (DSS), upon submission of all the documentary requirements, and

⁹ MC 182, Rules in the Acquisition of Ships Under Presidential Decree (PD) 760, as amended

payment of the corresponding processing fee, as specified in Items VI.B and VII hereof.

Mandatory Insurance Cover. Cruise ships covered under this Rule shall have the Mandatory Marine Insurance to Cover Liabilities Arising from Pollution and Wreck Removal from recognized International Protection and Indemnity Club.

4. **Documents issued abroad.** All documents in foreign language shall be translated in English language and authenticated by the Philippine Embassy/Consulate General of the foreign country where documents originated.

V. SPECIFIC PROVISIONS

1. **MARINA Accreditation.** The domestic ship operator or domestic ship owner intending to acquire and/or operate cruise ships under this circular shall be accredited under MARINA Circular No. 2006-03 or its subsequent amendment.
2. **Age Requirements.** Cruise ships to be imported and/or chartered under this should not be more than 20 years old upon the filing of the application reckoned from the date of launching of the ship.

Ship re-structuring or re-building does not change the ship's age. A day more than the maximum age required in the importation of the cruise ship shall be more than the required maximum age requirement, hence, importation will no longer be allowed.

3. **Classification Requirements.** Cruise ships, whether newly built or previously owned, which are to be covered under this circular shall be classed by any member of the International Association of Classification Societies (IACS).
4. **Bareboat Chartered Cruise Ships.** Companies/entities which intend to acquire a Cruise Ship for domestic operation, through lease or charter shall comply with the following:
 - a. The contract shall be valid and effective for a period which in no case shall be less than one (1) year. Pre-termination of lease or charter within one (1) year from date of delivery of the ship shall hold the charterer liable in the amount equivalent to the balance of the 4.5% withholding tax due for the whole year. The bareboat charterer shall not affect the deletion of the chartered ship from Philippine registry without prior approval of the Administration.
 - b. Any amendment to the charter party shall not be valid and binding without prior approval of the Administration.
 - c. There shall be no "off-hire" clause in the bareboat charter contract or party.
 - d. The operation of the ship shall be entirely in the hands of the Philippine bareboat charterer and shall be free from participation or interference by the foreign owner, except insofar as such acts shall be directly to protect his rights as owner thereof.

- e. The lessee or charterer shall be responsible for the payment of the 4.5% withholding tax on gross bareboat charter hire.
- 5. **Manning and Crewing.** All Philippine registered cruise ships under this Circular shall be completely manned by Filipino officers and crew who are certificated in accordance with existing rules and regulations, except for supernumeraries.
- 6. **Registration and documentation.** All cruise ships imported under this circular shall be registered in the MARINA Central office after compliance of all post-approval conditions set in the Authority to Import. Likewise, all certificates and licenses shall be issued in the MARINA Central Office as Manila being its homeport.
- 7. **Authority to Operate.** Filipino shipowners/operators engage in domestic cruising shall be required to secure Certificate of Public Convenience before the Franchising Service, Central Office, MARINA, in accordance with the provisions of Republic Act 9295 and its IRR and its subsequent amendments, and to the MARINA Revised Rules Practice of Procedure.
- 8. **Special Permit to Engage in Domestic Cruising.** Special Permit maybe issued to foreign-registered cruise ship to engage in domestic cruising on the condition that there is no readily available and suitable Philippine-registered cruise ship operating within Philippine territorial waters where the cruise ship intends to operate.
 - a. The Special Permit shall be valid for a minimum period of one (1) month and maximum six (6) months, and may be renewed upon submission of the documentary requirements as stated in Item VI.B.
 - b. The grant of Special Permit to a cruise ship is a privilege which is subject to a revocation or suspension proceeding at any given time for any cause provided herein and to applicable national and international maritime safety rules and regulations after compliance with the requirements of due process.
 - c. The Special Permit may no longer be renewed once route being served by the foreign registered cruise ship in possession of a valid Special Permit is served by a domestic cruise ship operator.

VI. DOCUMENTARY REQUIREMENTS

A. ACQUISITION OF CRUISE SHIPS

The following documentary requirements are to be submitted with the DSS for the issuance of Authority to Import cruise ships:

- 1. Letter of Application indicating the cruise ship's area(s) of operation and the relevant particulars/features of the ship(s).
- 2. Original copies of the Deed of Sale, Charter Agreement and/or Memorandum of Agreement if executed in the Philippines; authenticated copies if executed in the foreign country.

3. Original copies of the Power of Attorney / Secretary's Certificate and/or Board Resolution authorizing the signatory to the Deed of Sale, Charter Agreement and/or Memorandum of Agreement if executed in the Philippines; authenticated copies if executed in the foreign country.
4. Copy of the valid government issued identification cards of the signatories to the Deed of Sale, Charter Agreement and/or Memorandum of Agreement affixing three original signatures in the said copies.
5. Copy of the latest certificate of good standing or company seal and/or business registration of the ship's registered owners/sellers showing its current list of directors or officers.
6. Copy of the Ship's Registry/Nationality or in case of new building, copy of the authenticated Shipbuilding Contract and Builder's Certificate.
7. General Arrangement Plan
8. Copy of the consent from the country where the ship is permanently registered in case the cruise ship is acquired through lease or charter.
9. IACS Clearance for ships to be constructed or IACS Class Certificate for ships already constructed.
10. Copy of the Mandatory Marine Insurance to Cover Liabilities Arising from Pollution and Wreck Removal from recognized International Protection and Indemnity Club.
11. Original copy of an affidavit executed by the applicant indicating the location of the ship at the time of the application and its estimated arrival in the Philippines, its intended port of entry and its country of origin.
12. Original copy of a Resolution of the company's Board of Directors, certified by the Board Secretary, authorizing the filing of the application and designating the official or authorized representative to represent the applicant company.

The following post-approval documentary requirements will be verified prior to the issuance of clearance for the ship's registration by the Administration:

1. Original copy of the Protocol of Delivery and Acceptance
2. For ships acquired through direct purchase, the original Deletion Certificate from the foreign registry where the ships was permanently registered.
3. For ships acquired through lease or charter, the original copy of the consent from the country where the ship is permanently registered for the said ship to be temporarily registered in the Philippines during the period of the lease or charter.
4. Original copy of a Certification that an inspection was conducted on the ship by the Administration prior to the release from the Bureau of Customs
5. Original copy of the proof of payment of duties and taxes
6. Original copy of the declaration of entry duly received by the Bureau of Customs

Note: Except for the Deletion Certificate, all original documents may be retained by the applicant after copies of the same are verified from the originals.

B. SPECIAL PERMIT TO ENGAGE IN DOMESTIC CRUISING

The following documentary or supporting documents shall be required for the issuance of Special Permit.

1. Letter of Application indicating the cruise ship's itinerary, area(s) of operation and the relevant particulars/features of the ship(s).
2. 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.
3. If the application for the issuance of Special Permit is filed by an agent, the said agent shall submit an authorization, in a form of a Special Power of Attorney or an Appointment Letter, authorizing such agent to file the application for and in behalf of the applicant-company or charterer.
4. Cruise Itinerary. Applicants shall indicate in their application for issuance of Special Permit the cruise itinerary, particularly the area(s) of operation and routes to be served.
5. Ship's valid Certificate of Registry/Nationality.
6. Ship's valid Class Certificate and Latest Survey Report for the last six (6) months issued by members of the International Association of Classification Societies (IACS).
7. Endorsement from the Department of Tourism stating that the entry of the foreign registered cruise ship in the proposed route is beneficial to the tourism industry.
8. International Safety Management (ISM) related certificates;
9. International Ship and Port Facility Security (ISPS) Certificates;
10. Valid Safety Certificates, as follows (as applicable):
 - Passenger Ship Safety Certificate;
 - Minimum Safe Manning Certificate;
 - International Tonnage Certificate;
 - International Loadline Certificate;
 - International Oil Pollution Prevention Certificate
 - International Sewage Pollution Prevention Certificate
 - Conformance Test Report (for Long Range Identification Tracking [LRIT] System)
 - Continuous Synopsis Record
11. Crew list indicating STCW certificates (number and validity) of the crew.
12. Copy of the Mandatory Marine Insurance to Cover Liabilities Arising from Pollution and Wreck Removal from recognized International Protection and Indemnity Club.

VII. FEES AND CHARGES

Processing fee for the Issuance of Authority to Acquire cruise ships for domestic cruising shall be in the following schedule of fees:¹⁰

Cruise ships 10 years old and below	Php 12,400.00 per ship
Cruise ships over 10 years old	24,700.00 per ship

Processing fee for the Issuance of Special Permit to operate a foreign registered cruise ship in the Philippine waters shall be in the schedule of fees:¹¹

Foreign-registered cruise ships	Php 300,000.00 minimum per month per ship or Php600.00/50GT or fraction thereof, whichever is higher
Any amendment of Special Permit	Php 150,000.00 per ship

VIII. SANCTIONS AND PENALTIES

The following fines shall be imposed against the owner, charterer and/or agent for violation of this Circular after due notice and hearing:

Violation	Penalty	
1. Acquiring a Cruise Ship without securing the required Authority to Import	Ships of less than 1,000 GT	Php 500,000.00 plus perpetual disqualification from importation of ships
	Ships of 1,000 GT or more	Php 1,000,000.00 plus perpetual disqualification from importation of ships
2. Non-compliance with the conditions imposed in the Authority to Import	Php 200,000.00 per condition	
3. Operation of foreign-registered ship within Philippine territorial waters without Special Permit	Php5,000,000.00 per ship plus Php100,000.00 per day of operation	
4. Operation of foreign-registered ship within Philippine territorial waters with expired Special Permit	Php3,000,000.00 per ship plus Php75,000.00 per day of operation	
5. Violation of any provision or non-compliance with the post-approval conditions/documents stated in the Special Permit	Php1,000,000.00 and revocation plus Php50,000.00 per day of operation	
6. Submission of fraudulent	Php 1,000,000.00 plus perpetual disqualification	

¹⁰ MC 2015-05, Revised Fees and Charges

¹¹ MC 2011-04, supra

documents in any application under this Circular	from importation of ships and/or issuance of Special Permit. This is without prejudice to filing of criminal charges in a proper Court.
7. Violation of the terms and conditions of the CPC	The above penalties is without prejudice to the sanctions to be imposed against the Company for any violation of the terms and conditions of its CPC as provided for under existing rules and regulations.

Without prejudice to the foregoing sanctions, any violations of the MARINA rules and regulations, as well as to the terms and conditions of the Authority to Import and Special Permit may be a ground for detention of the ship.

IX. 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.

X. 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.

XI. EFFECTIVITY

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

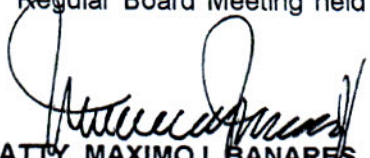
Manila, Philippines, JUL 13 2018.

BY AUTHORITY OF THE BOARD:


REY LEONARDO B GUERRERO
 Administrator

SECRETARY'S CERTIFICATE

This is to certify that the foregoing MARINA Circular No. 2018-05 has been approved by the MARINA Board in its 259th Regular Board Meeting held on 19 July 2018.


ATTY. MAXIMO I. BANARES, JR.
 Board Secretary

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 Business Mirror

Date of Submission to ONAR: 23 August 2018