

Guidelines for Grant of Licence to Foreign-Flag Vessels.

Shipping Development Circular No. 2 of 2002

Dated 8.11.2002

Sub : Guidelines for Grant of Licence to Foreign-Flag Vessels.

1. Legal Provisions and Objectives:

1.1 In public interest and to ensure transparency and equitable consideration for Indian shipowners, shippers, Project authorities, other public and private parties (citizens/companies/societies and PSUs and joint ventures), and above all, for the Indian consumers, the Director-General of Shipping is hereby pleased in supersession of all earlier guidelines to lay down the following guidelines for grant of licence for chartering of foreign-flag vessels for export, import, for coasting trade, implementation of projects etc.

1.2 In Part XIV - of the Merchant Shipping Act, 1958 - entitled 'Control of Indian ships and ships engaged in Coasting Trade', the provisions of Section 406 deal with Indian ships and chartered ships to be licensed and provisions of Section 407 deal with licensing of ships for coasting trade in India. As laid down in these sections, the licence has to be granted by the Director-General of Shipping (hereinafter referred to as D.G. Shipping) for taking to sea from a port or place within and outside India of Indian or other ship by a citizen of India or a company or a co-operative society under Section 406. The same is true for ship other than Indian ship or a ship chartered by a citizen of India or a company or a co-operative society for engaging in the coasting trade of India under Section 407.

1.3 Sub-Section (3) of Section 406 and sub-section (2) of Section 407 empower the D.G. Shipping to grant the licence subject to such conditions as may be specified by him. Consolidated guidelines had been issued by the Director-General of Shipping in this same regard vide No. SD-9/CHART(82)/97-II dated 27 March, 2000. As a result of experience gained during the last 21/2 years, it is felt necessary to issue the present updated and fresh guidelines.

1.4 It is well-known that in recent years, there has been a tremendous growth in the development of off-shore shipping industry in all its various aspects. It is necessary for the Central Government to ensure the growth and development of Indian off-shore sector, vessels, equipment etc. Consequently while considering the application for grant of licence to any foreign-flag vessel of any type to work in Indian waters anywhere in entire Exclusive Economic Zone, it will be necessary for D.G.Shipping to consider the effect on the growth and encouragement of Indian off-shore industry and vessels, irrespective of whether they are fitted with mechanical means of propulsion or not. Therefore, these Guidelines are applicable to all vessels, as defined under M.S. Act, supporting or performing any services/functions as enumerated below:-

- (i) Capital intensive assets such as Floating Storage and Offloading devices etc.
- (ii) Oil-field Support Services-rendering vessels engaged in towing, anchor-handling, dredging, off-shore drilling/production rigs, diving support, maintenance support, various types of surveys, cable laying, sea-bed mining operations, pipe-laying, lighterage, salvage marine construction, hook-up, supply and transport of passengers, goods and material, and
- (iii) Port and Terminal related support services-rendering vessels.

1.5 These guidelines shall be applicable to any foreign-flag vessel chartered by anyone for operation in the Indian Exclusive Economic Zone of India including its territorial waters and contiguous zone.

1.6 These Guidelines shall come into operation with immediate effect.

2. Chartering of foreign flag vessels for export/import

2.1 The Applicant should submit the enquiry consisting of details regarding specification of the requirement of vessel, quantity of cargo, nature of cargo, laycan, port of loading and discharge etc. to the Indian National Shipowners' Association (hereinafter referred to as INSA) and to the D.G. Shipping at least three working days prior to laycan. He should submit the application in the appropriate format as prescribed at Annex A, B, C & D with necessary fees, at least three working days prior to commencement of the laycan.

2.2 INSA shall circulate the enquiry to its Member Companies who shall forward to the Applicant the offer they wish to make giving details of a suitable Indian flag vessel, Charter hire/freight etc. informing INSA that the offer has been made giving all details except the price offer and endorsing a copy of the offer made to the D. G. Shipping. The offers should be made by the INSA Members within not more than two working days after receipt of the enquiry in respect of all vessels, except Crude Carriers, Product Tankers, Chemical Carriers, Ammonia Tankers, Gas Carriers, Feeder and Container Vessels. In respect of these latter vessels, INSA Member Companies shall make their offers to the Applicant within one working day after receipt of the enquiry. INSA shall, in response to the enquiry of the Applicant, inform the D.G. Shipping of the offers made by its Member Companies and endorse a copy of the same to the Applicant Company within two working days after receipt of the enquiry in respect of all vessels except Crude Carriers, Chemical Carriers, Ammonia Tankers, Gas Carriers, Product Tankers, Feeder and Container Vessels. In respect of the latter category vessels, INSA shall in response to the enquiry of the Applicant inform the D.G. Shipping of the offers made by its Member Companies and endorse a copy of the same to the Applicant Company within one working day after receipt of the enquiry. In case no copies of offer are received by INSA from its member companies within the stipulated time, INSA shall inform the D.G. Shipping accordingly, with a copy of the same to the Applicant.

3. Chartering permission for Coasting Trade/Offshore Support Operation/Port-related Support Services for Spot Requirement

3.1 The Applicant should submit the enquiry consisting of details regarding specification of the requirement of vessel, quantity of cargo, nature of cargo, laycan, port of loading and discharge etc. to the Indian National Shipowners' Association (hereinafter referred to as INSA) and to the D.G. Shipping at least three working days prior to laycan. He should submit the application in the appropriate format as prescribed at Annex A, B, C & D with necessary fees, at least three working days prior to commencement of the laycan.

3.2 INSA shall circulate the enquiry to its Member Companies who shall forward to the Applicant the offers they wish to make giving details of a suitable Indian Flag Vessel, Charter hire etc., informing INSA that the offer has been made giving the details thereof except the price offer and endorsing copies of the offer made to the D. G. Shipping. The offers should be made by the INSA Members within not more than two working days after receipt of the enquiry in respect of all vessels, INSA shall in response to the enquiry of the applicant inform D. G. Shipping the offers made by its Member companies and endorse a copy of the same to the applicant company immediately within one day in respect of all vessels.

3.3 The procedure specified in the Guidelines (Paragraphs 2.1 - 2.2) also applies to all applications for permission for spot requirements for coasting trade and time or voyage charter of foreign flag vessels where no tender process has been followed for coasting trade. The Applicant shall however refer the enquiry to the Indian Coastal Conference (hereinafter referred to as ICC) as well as to INSA. The ICC shall also follow the same procedure as INSA as specified earlier in Paragraphs 2.1 to 2.2. However, Paragraphs 3.1 to 3.2 shall apply to all requirements in the Offshore Support Services and/or Port/Terminal Support Services where no tender process is followed.

4. Chartering of Vessels done through Tender Process for all types of Requirements

4.1 Unless the Indian vessel becomes successful in the evaluation of the technical bid, it will not of course be eligible for any consideration and support under the provisions of Section 407 of the M.S. Act, 1958.

4.2 Whenever charter of vessel is undertaken through a tender process, open, closed or global tender, or any other process of tender, the provisions of these guidelines are required to be incorporated. Whether the guidelines have been incorporated in any tender or not, the said guidelines would be deemed to have been incorporated as a part of the tender documents.

4.3 Every tender process would provide scope for Indian Citizens/Companies/Co-operative Societies having Indian flag vessels to participate in the said tender. Where the said Indian Citizens/Companies/ Co-operative Societies have failed either to participate or obtain the order, they cannot be allowed to obtain the same or part of the same work at any cost merely through the provisions found in Section 407 and Section 406 of the M.S. Act, 1958. In the said tender process, the right of first refusal will remain with the Indian vessel owner on his showing readiness to take up the job at the lowest price indicated by the foreign flag vessels.

"Right of first refusal" is a right which accrues to a bidder in a tendering process - who offers an Indian flag vessel and whose rate though not being the lowest - to be awarded the tender, subject to his matching of the lowest rate offered by a bidder who offers a foreign-flag vessel. This right is conferred based upon the practices of the industry, and the deliberate intention of the Central Government towards encouragement and development of the Indian shipping industry.

4.4 Right of first refusal will be applicable to:

(a) A vessel, which has been offered by an Indian bidder, and which remains under foreign flag on the date of the price bid opening, would be treated as a foreign-flag vessel for the purpose of bid evaluation. Accordingly, the lowest Indian-flag vessel would be granted the right of first refusal against the foreign-flag vessels including the foreign flag vessel(s) which are offered with an undertaking to convert to Indian flag prior to commencement of operations.

(b) Above the lowest tender with a foreign-flag vessel, where there are more than one Indian tenderer offering Indian flag vessel(s), then the first right of first refusal will be given to the lowest among such Indian tenderers, and on his failure to match the lowest tender, the next higher Indian tenderer will be given the offer and so on.

(c) The offer of any foreign flag vessel by an Indian bidder with an undertaking to convert it to Indian flag prior to commencement of operations but later than the price bid opening can be considered only when and if the Indian bidder/s offering Indian-flag vessel/s have failed to match the lowest price offered by the foreign-flag vessel. In such event the tender-awarding authority shall incorporate deterrent penalties in the award of tender to ensure that the bidder will convert the vessel to Indian flag before commencement of operations.

(d) Similarly, an Indian bidder who offers an Indian flag vessel(s) for a particular tender will not be granted licence by D. G. Shipping to charter a foreign flag vessel(s) for the same work either at the commencement of charter or at any time during the tenure of the charter. The Indian bidder will not be allowed to substitute the Indian flag vessel(s) with a vessel that was being constructed, contracted or flying a foreign flag at the time of bidding but was to be converted to Indian flag prior to commencement of operations, but later than the price bid opening. Nor will he be allowed to bring in another Indian-flag vessel from elsewhere hoping to replace it with a foreign-flag vessel, irrespective of whether tender process was followed or not. Such a request to grant licence for a foreign-flag vessel will not be granted by D.G. Shipping to replace an Indian-flag vessel.

(e) In short, both in (c) and (d), equity will be maintained to ensure a balance between both the objectives of encouraging the existing Indian-flag vessels on the one hand, and of encouraging the acquisition of new Indian tonnage, but with a slight tilt in favour of existing Indian-flag vessels since the investment here has already been made.

4.5 The party, which offers the Indian flag vessel, should meet the commercial requirement by matching the lowest composite effective price and there shall be no price preference in favour of the Indian flag vessels. If any expenditure incurred by the Indian vessel-owner is being borne by the charterer for the foreign-flag vessel that shall be suitably added to the price while comparing the costs. On such calculation if the Indian vessel is offered at the same price as the foreign vessel, the licence under Section 406 and/or 407 will not be granted for the said foreign-flag vessel.

Composite Effective Price is the derived figure from the various price inputs submitted by a bidder/participant in a tender process, wherein all the costs/inputs are summarized. While working out such Composite Effective Price, inputs such as daily hire/daily rate, mob/demob charges, call out rates and conversion charges etc. are taken into account.

5. Amendment to Licence already granted:

5.1 Amendment to licence will be governed by the following provisions:

- a) Not more than twice will amendments be allowed in respect of the same licence.
- b) If an amendment seeks variations in more than three parameters, it will be treated as a fresh case.
- c) Any variation on laycan exceeding one week on either side will be treated as a fresh case.
- d) The fees once paid will not be automatically refunded or adjusted again any fresh application. Separate and adequate justification for refund or adjustment will have to be advanced before the D. G. Shipping, and be accepted by him.
- e) A fresh case would mean that the applicant has to follow the procedure from the beginning once again.

6 Penalty for deviations:

6.1 If INSA or any of the Shipping Companies brings to the notice of the D.G. Shipping that a charterer has violated these Guidelines in chartering foreign-flag vessels, the D.G. Shipping after due verification of the complaint shall take appropriate measures to penalize the charterer concerned as he may consider necessary to prevent recurrence of such events.

6.2 If there is a doubt that technical specifications of the vessel given in the tender advertisement were drawn up with the deliberate intention of avoiding Indian-flag vessels, the matter may be referred to the D. G. Shipping for decision as to whether the Indian vessel with minor difference in specifications should be chartered, and not the foreign flag vessel. As far as practicable, this decision will be taken after discussion with the concerned parties.

6.3 If past payment due on charter of Indian-flag ships is not cleared in time, the D. G. Shipping may decide that no further licence is granted to applicants who are in such arrears.

7. Non-INS/ICC Members

For non-INS/ICC Members, a copy of the enquiry shall, as has been the prevailing practice, be displayed on the notice board of the Office of the D. G. Shipping within the relevant time stipulated.

8. Exceptions in public interest

To expedite national project-implementation, to increase Indian tonnage, to encourage development - of Indian hub-ports and sea-trade routes, both new or existing - and to tackle an emergency or overcome a crisis, the D. G. Shipping retains the right to take action as deemed fit, overriding any of the guidelines laid down hereinabove.

ANNEXURE - 'A'

Proforma to be filled in for the purpose of Chartering of foreign flag vessel by EXPORTERS on voyage charter basis.

1. Name and address of the applicant..... :
2. Date of inquiry submitted to INSA..... :
3. Date of inquiry circulated to Indian: shipping companies 4. Whether any response received from.....:
- Indian shipping companies ?
- (i) If so details thereof.....:
- (ii) Reason for rejection of Indian flag.....: vessel, if offered.
5. (i) Name of the vessel to be chartered.....:
- (ii) Name and address of the owner.....:
- (iii) Flag.....:
- (iv) Year of built..... :
- (v) D.W.T. :
- (vi) G.R.T:
- (vii) Draft.....:
6. (i) Port of loading and likely date of.....: readiness.
- (ii) Port of discharge and likely date of.....:becoming free.
- (iii) Laycan.....:
7. (i) Name and Nature of cargo.....:

- (ii) Quantity of cargo to be carried.....:
8. Name of the vessels taken on voyage.....: charter during the last year with indication of D.G. Shipping letter and date of approval.

ANNEXURE - 'B'

Proforma to be filled in for the purpose of Chartering of a foreign flag vessel on Time Charter by Indian Shipping Company/Exporters.

1. Name and address of the applicant.....:
 2. Date of inquiry submitted to INSA.....:
 3. Date of inquiry circulated to Indian shipping companies
 4. Whether any response received from.....: Indian shipping companies ?
 - (i) If so details thereof.....:
 - (ii) Reason for rejection of Indian flag.....: vessel, if offered.
 5. (i) Name of the vessel to be chartered.....:
 - (ii) Name and address of the owner.....:
 - (iii) Flag..... :
 - (iv) Year of built.....:
 - (v) D.W.T..... :
 - (vi) G.R.T..... :
 - (vii) Draft..... :
 6. (i) Port and date of delivery/.....: re-delivery.(Port of loading & Port of discharge)
 - (ii) Nature and quantity of Cargo..... :proposed to be carried.
 - (iii) Laycan..... :
 7. Name of the vessels taken on voyage.....:charter during the last year withindication of D.G. Shipping letter anddate of approval.
- Authorised Signatory

ANNEXURE - 'C'

Proforma to be filled in for the purpose of Chartering of a foreign flag vessel by Exporter / Importer on voyage charter basis.

1. Name and address of the applicant.....:
2. Date of inquiry submitted to INSA.....:
3. Date of inquiry circulated to Indian shipping companies
4. Whether any response received from.....: Indian shipping companies ?
 - (i) If so details thereof.....:
 - (ii) Reason for rejection of Indian flag.....: vessel, if offered.
5. (i) Name of the vessel to be chartered.....:
- (ii) Name and address of the owners.....:
- (iii) Flag..... :
- (iv) Year of built..... :
- (v) D.W.T..... :
- (vi) G.R.T..... :
- (vii) Draft..... :
- (viii) Speed..... :
- (ix) Fuel consumption.....:
6. (i) Port of loading and date of.....:readiness
- (ii) Port of discharge and date of.....: becoming free
- (iii) Laycan..... :
7. (i) Name and nature of cargo.....:
- (ii) Quantity of cargo.....:
- (iii) Loading rate.....:
- (iv) Discharging rate.....:
- (v) Demurrage.....:

- (vi) Despatch..... :
- 8.(i) Freight rate per M.T. Payable.....:
- (ii) Currency in which payable.....:
- (iii) Quantity of cargo to be carried.....:
- (iv) Total freight payable in foreign.....:exchange
- (v) Brokerage, if payable and..... :how to be paid.
- 9.(I) Brief details of various foreign flag.....:vessels offered including the rates
.....at which offered.
- (ii) Reason for selecting the present:vessel.
- (iii) How does the proposed charter.....:hire compare with the prevailing
.....market rate.
8. Total foreign exchange earnings/.....:
- Savings on the shipments:-
- (i) C & F Price of the cargo to be.....:realised
- (ii) F.O.B. Price of the cargo.....:
- (iii) Freight in foreign exchange.....:
- (iv) Demurrage/Despatch Money.....:
- (v) Net foreign exchange earnings:
- (vi) Documents such as copy of the:contract/L.C. etc. to be furnished.
11. MARKET POSITION :
- (i) Market in the current freight market.....: trend for this cargo and withreference to
the trade route ?
- (ii) Please quote a few freight rates at.....:which this cargo was fixed in
.....comparable international tradeduring the last 2 months naming
.....specific vessels.
- (iii) What freight rates have been:reported by reputed publications/
.....brokers during the last 2 monthsfor identical size of ships.
12. (i) Name of the vessels taken on:voyage charter during last one year
.....with indication of D.G. Shippingletter and date of approval.
- (ii) Exact amount of freight paid in:respect of each vessel.
- (AUTHORISED SIGNATORY)

ANNEXURE - 'D'

Proforma to be filled in for the purpose of Chartering of a foreign flag vessel on Time Charter by Indian Shipping Company.

1. Name and address of the applicant.....:
2. Date of inquiry submitted to INSA.....:
3. Date of inquiry circulated to Indian:shipping companies
4. Whether any response received from.....: Indian shipping companies ?
- (i) If so details thereof.....: (ii) Reason for rejection of Indian flag.....:vessel, if offered.
- 5.(i) Name of the ship to be chartered.....:
- (ii) Name and address of the owners.....:
- (iii) Flag.....:
- (iv) Year of built.....:
- (v) D.W.T.:
- (vi) G.R.T.....:
- (vii) Draft.....:
- (viii) Speed.....:
- (ix) Fuel consumption.....:
6. (i) Port and date of delivery.....:
- (ii) Port and date of re-delivery:
- (iii) Port of loading.....:
- (iv) Port of discharge:.....
- (v) Radius of trading of the ship.....:
- (vi) Nature and quantity of cargo:you propose to carry.
- (vii) Laycan.....:
- 7.(i) Charter hire rate agreed.....:

(ii) Currency in which payable.....:

(iii) Period of charter.....:

(iv) Do you expect of charter period to.....:exceed the stated duration ? If yes,
.....please give details on expectedadditional duration and contingent
.....reasons thereof.

(v) Total amount of charter hire:payable for the whole transaction
.....including O.T.

(vi) Brokerage/Commission and how it:is to be paid. Please give for
.....exceeding the industry nor.m.

9. Brief details of other foreign flag vessels offered to you including the charter rates at which offered.

(a)

(b)

(c)

10. Net foreign exchange savings/.....: earnings estimated alongwithdetailed
calculations.

10. Market situation : (a) Please give trend of the time charter :rate in International market for this
.....type of ship and relevant internationaltrade. (b) Name specific ships & charter rates.....:
.....at which they were fixed in similar orcomparable position during the last
.....two months as reported by reputedshipping journals/brokers.

(i)

(ii)

(iii)

(iv)

(v)

(vi)

11. (a) Name of ships (with charter hire rate) : fixed by you earlier during last one
.....year with D.G. Shipping approval.

(b) Whether copies of charter parties:have been furnished in respect of
.....these charters to D.G. Shipping.

(AUTHORISED SIGNATORY)