



## Bombay Chamber of Commerce & Industry

KS/ST&L/3997

October 20, 2010

Mr. Vijay Chibber  
Addl. Secretary & Financial Advisor  
Ministry of Shipping  
Government of India  
201, Transport Bhavan,  
1, Sansad Marg, New Delhi – 110 001.

*My dear Vijay,*

### **'Land Policy for Major Ports'**

The Ministry of Shipping vide OM dated August 25, 2010 has issued draft 'Land Policy for Major Ports', and had requested for feedback from the industry. The Bombay Chamber predominantly represents large and medium sized professionally managed companies from manufacturing and service sectors with more than 25% of members directly or indirectly connected with the ports, maritime and trade related activities. While we appreciate the general thrust of the draft policy and feel that it is comprehensive in its coverage of issues related to land allotment, we would like to put forth certain general observations on land policy and some specific points on the guidelines. We also list a few of industry recommendations. We hope these will merit your consideration.

#### **General Policies:**

1. The use of port land should be restricted to those businesses and industries that cannot function except in close proximity to a sea coast with a good draught, viz. ship building, ship repair, support services for offshore drilling and other deep sea operations such as off shore platform installation, etc. Port land should not be diverted to uses that do not take advantage of the proximity of the coast, for example development of residential complexes. The principle of 'comparative advantage' should be the deciding factor in the interest of efficient allocation of a scarce resource.
2. The port land may be used for related activities that will enhance the operational efficiency of ports such as development of dedicated freight corridors both rail and road for faster evacuation of cargo from the ports. However, it may be desirable not to reserve all such activities for the existing port trusts. Alternative mechanisms and arrangements including private public partnerships should be explored.

3. The draft policy envisages sustainability of the port operators by setting up special economic zone, industrial development in and around the port. The Bombay Chamber is of the opinion that these activities need not be carried out in the sea front but may be located well outside the port premises.

#### General Observations

1. To overcome complexities of land management, Government may consider creating SPVs in the style of a Port Land Development/Management Corporations to whom all lands of the port can be transferred for development and management. These SPCs may draw in their partners including from the private sector who have expertise in relevant areas of maritime and port related subjects.
2. For setting up a public private partnership or a Special Purpose Vehicle (SPV) with a private party, land owned by the port trust may be allowed to be treated as an equity contribution of the port. Such arrangements can also unlock the value in such real estate for port development. Obvious candidates for such projects would be development of warehouses and container freight handling stations.
3. The historical buildings and structures situated on port lands in cities like Mumbai and Kolkata must be preserved as heritage monuments and access to them provided without compromising port security to the general public.
4. A vigorous time bound campaign should be launched to repossess land allotted to any entity that is either not being used for the purpose for which it was handed over or has been diverted to other uses.
5. A graded and differentiated schedule of lease rent should be introduced to reflect the priorities of port development. For example, if cargo handling facilities are in critical supply, then lower rates may be charged when land is allotted for cargo handling facilities.
6. There should be some amount of flexibility in land allotment for projects of BOT operators. While it is necessary to make allotment for a sufficiently long time period keeping in mind the gestation lags for such projects and because large projects will necessarily require long periods for recovering costs, it needs to be ensured that there is scope for further expansion when the need arises in the future. Expansion requests should also be judged on merits and the project needs stated initially should not be treated as inflexible.
7. All leasehold lands, outside of the operational areas of the port and for which the lease period is long (say thirty years and longer) should be settled with the legal lessees as freehold land after payment of appropriate charges. This will unlock the value of the land, create a proper land market and allow flexibility of usage over time. It will also result in proper maintenance of structures and facilities erected on such lands through a proper incentive mechanism.

**Para Wise Specific Comments:**

1. In the context of land allotment for all BOT projects, para 5.1.1 highlights that land inside custom bonded can be allotted for 11 months on License basis. It should be specified that this provision does not apply to BOT projects where the land inside the Custom bound area is allotted on 30 years lease.
2. In para 5.2, license of land outside custom bonded area is to be allowed for both port related and non port related activities. Here preference should be given for port related activities and to avoid dispute, non-port related activities may also be specified. It is presumed that non-port related activities imply activities indirectly connected to port related activities and not independent of port related activities like setting up manufacturing units for domestic trade.

Differentiation should be between (a) Land that is used for Port Related Activities (b) Land that has been leased and has no connection to Maritime activities. The Mumbai Port is severely afflicted by second category. Such land should be released on a one-time payment ownership option or 99 years lease.

3. Under para 5.2.2, no distinction in allotment of fresh lands by lease is proposed between port related and non-port related purposes. It is desirable to give preference for lands required for port related purposes.
4. Under para 5.2.2.1 (h), it is provided that land can be allotted to Government Departments, CPSUs and SPSUs on nomination basis, but it is for exclusive use by them and not for any joint venture with other private parties. This provision needs to be relaxed. While the land allotted can be for the exclusive use of the concerned Govt. Department/CPSU/SPSU, they may like to avail the expertise of a private party in running the operations and enter into a joint venture.

Again under para 5.2.2.1 (h), it is mentioned that land can be allotted to private parties on nomination basis in accordance with the Scale of Rates. This is a welcome proposal and should certainly be made applicable to BOT Operators whose License Agreements signed with the ports have provisions for allotment of additional land by the port for the purpose of setting up of CFS etc.

5. Under para 5.2.2.3 (b), it is mentioned that the lessee may be allowed to sub let/partially sublet the leased premises to another party on payment of current market rates. Sometimes, it may be necessary for a BOT Operator to sub-lease a portion of the land inside the Custom bound area for a short period for carrying out certain port related activity. In such cases the sub-lease rentals should be levied as per the Scale of Rates rather than the market rates.
6. As per para 5.3 (1), the lease rental will be calculated on market value of the nearby land. The State Government's ready reckoner of the land values in the area or average rate of actual relevant transactions registered in the last three years in the vicinity of the port, or highest accepted tender of port land for similar transactions or the rates approved by an approved valuer will be taken into account in determination of market value. Determining the lease rents with reference to market value will defeat the very purpose of encouraging port development as the market value is normally exorbitant.

We hope our recommendations will merit your consideration.

Thanking you,

Yours sincerely,



Atindra Sen  
Director General

CC: Mr. K. Mohandas IAS, Secretary, Ministry of Shipping