



Republika ng Pilipinas
PANGASIWAAN NG DAUNGAN NG PILIPINAS
(PHILIPPINE PORTS AUTHORITY)
5th Floor BF Condominium
Aduana Intramuros Manila

P O BOX 62
TELEPHONE NOS 47-92 04
40-81 66
48-24 93

20 October 1982

PPA MEMORANDUM CIRCULAR
NO. 31 - 82

T O : ALL PORT MANAGERS
F R O M : THE GENERAL MANAGER
S U B J E C T : GUIDELINES ON LEASES OF LAND, BUILDINGS
AND OTHER IMPROVEMENTS INSIDE THE PORT ZONE

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I. RATIONALE

It is the declared policy of PPA to fully optimize the utilization and productivity of ports, particularly those with idle capacities and large back-up areas in order to increase the ratio of our operating revenue to our total operating assets, thereby ensuring the maintenance of our ROA target.

It is also within the corporate powers of the Authority to acquire, purchase, own, lease, mortgage, sell or otherwise dispose of any land, port facility, wharf, quay or property of any kind, whether movable or immovable. "Further, it is also within the Authority's corporate powers to levy dues, rates or charges for the use of the premises, works, appliances, facilities, or for services provided by or belonging to the Authority....."

Rental charges for land, buildings, or other improvements have historically provided the greater base for our non-traditional revenue. Hence, proper care must be given in the disposition and in the determination of the various lease terms and conditions. The following guidelines must be considered when negotiating for the fair amount of rental charges for PPA properties.

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DETERMINATION OF RENTAL CHARGES

1. Rental charges or pricing shall be a function of the demand for the area's utilization and the cost of the land and/or other structures.
2. The Port Manager shall consider the present supply/demand conditions in determining the rental rate. Pricing decisions shall be influenced by current market prices in the port's peripheral areas.
 - 2.1. If the demand for land utilization exceeds the available areas for lease, then the lease rate can be fixed higher than market prices. To comply with PPA's commitments to its foreign creditors, this rental rate must at least yield a 10% ROA annually based on the most current appraised value or the estimated market value, whichever is higher, of the land, buildings or other improvements.
 - 2.2. If there is a depressed demand because of the availability of land areas near the port, then the lease rate can be fixed at market rates or even lower than market rates in order to attract users. However, it shall not be less than the floor rates stated in Republic Act No. 2694 which fixes the minimum amount of rental as follows:
 - 2.2.1. Original land - 3% per annum of the assessed value plus 1% per annum of the cost of improvements.
 - 2.2.2. Reclaimed land - 4% of the appraised or re-appraised value of the land plus 2% of the appraised or re-appraised value of improvements.
 - 2.3. If the rental rate turns out to be less than 10% of the appraised value or estimated market value, whichever is higher, of the land/building/other improvements a written study and justification for Head Office approval must be submitted.
3. All initial rental rates for PPA properties shall be subject to Head Office approval.

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4. For late payment of rental dues, the following rates of interest and penalty shall be imposed:
 - 4.1. Interest charges, at a uniform rate of 1% per month; and
 - 4.2. Penalty charges, over and above the interest charges, as follows:
 - 4.2.1. 1% per month, if payment is made within two (2) months after the due date thereof.
 - 4.2.2. 2% per month, if payment is made thereafter.
 - 4.3. The "Guidelines on the Imposition of Uniform Interest and Penalty Charges on Late Payment of Port Dues and Charges" or any revision, thereof, shall be followed.

PROPERTY APPRAISAL

1. The primary basis for determining rental rates is the appraised value of the property. The Port Manager shall determine the appraised value of the property based on previous guidelines on appraisal procedures. (PPA Finance Special Order No. 11, Series of 1977, PPA Finance Order Memorandum Circular No. 1-81, Memoranda dated January 31, 1977 and July 1, 1978).
2. The summary of the appraised values of all land, buildings and other improvements made by the Port Manager shall be submitted in triplicate to the Treasury Department not later than September 30 of every year for validation. (2 copies for Treasury, 1 copy for BDD). The validated values shall be sent back to the PMUs at the beginning of the calendar year. These shall be the basis for determining rental rates.
3. THE APPRAISAL SHALL BE DONE SOLELY FOR THE PURPOSE OF DETERMINING THE RENTAL RATES, - IN NO CASE SHALL THE EXISTING BOOK VALUES OF THESE ASSETS BE CHANGED IN YOUR BOOK OF ACCOUNTS. CHANGES IN BOOK VALUE SHALL BE VALID ONLY IF HEAD OFFICE GIVES ITS APPROVAL AS EVIDENCED BY THE SIGNED AUTHORIZATION OF THE ASSISTANT GENERAL MANAGER FOR FINANCE AND ADMINISTRATION.

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DURATION OF THE LEASE

The duration of leases within the port area must be influenced by the projected utilization of the land and building for operational purposes and by the amount of capital investment of the lessee. Hence, before any lease proposal will be entertained, the port's Master Plan must be thoroughly reviewed.

1. SHORT-TERM LEASES

- 1.1. It is preferable that land leases be given on a short-term basis in order to afford enough flexibility and in order to ensure that these resources can be made available when the need arises. The leases can be renewed annually depending on future conditions.
- 1.2. The Port Manager can enter into one-year lease contracts as stated in PPA Administrative Order No. 09-80 on the delegation of authorities.

2. MEDIUM AND LONG-TERM LEASES

- 2.1. If the proposed lessee wishes to lease the real properties for more than one year, Head Office approval is required. PPA Memorandum Circular No. 19-81 (Guidelines on Non-Traditional Sources of Revenue) outlines the conditions that must be present before medium and long-term leases can be granted. Longer term leases may be granted in instances where construction of a permanent structure shall be done by the lessee, provided that:
 - 2.1.1. such construction is consistent with the port's approved Master Plan;
 - 2.1.2. the site of construction and leased area is within a non-operational area;
 - 2.1.3. there is no intended use for such area directly by the Authority for the proposed period of lease; and
 - 2.1.4. the intended use of the area by the lessee shall conform with the service expansion/development program of the PMU (Master Plan).

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- 2.2. As a rule of thumb, medium-term leases shall be from more than one year to five years and long-term leases shall be for a period of more than 5 years.

1. UTILIZATION OF THE LEASED PROPERTY

1. The lease contract should always contain a specific provision on the intended use of the area under lease.
2. Prospective lessees who will operate the leased area on a common-user basis shall have preference in the grant of a lease.
3. Leases to companies whose businesses are non-port related or whose intended utilization of the area is not supportive to port operational activities, shall require the approval of the General Manager regardless of the contract amount and duration.

2. RATE ADJUSTMENTS

1. The Authority shall reserve the right to increase its present rental rate anytime during the effectivity of the Lease Contract or Permit to Occupy to whatever amount deemed reasonable based on the current situation. The new rate becomes effective after a supplemental agreement has been signed.
2. As a general rule, rate adjustments on leases whose duration are for more than one year, shall be automatically increased by at least 10% per annum, depending on the agreement between PPA and the prospective lessor.
3. When the present rate is way below the required rate level, the Port Manager shall recommend to Head Office measures to raise the rates to present levels. In cases where the computed percentage increase over the present rental rates is over 100%, the adjustments shall be implemented on a staggered basis as a transition measure. The increases shall be spread equally over a certain period mutually acceptable to PPA and the lessee, but not to exceed five years.

The following steps can be taken in computing for the periodic increase until the adjusted rates have caught up with the required level:

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- 3.1. The adjusted value for the current year (r_b) shall be used as the initial base in computing for the staggered rate increase. The provisions of paragraph II shall guide the Port Managers in this exercise.
- 3.2. The term or the number of years (n) over which the increase shall be staggered must be determined.
- 3.3. The adjusted value for the current year (r_b) shall be readjusted to reflect the automatic annual percentage increase (x). The resulting computed rate shall be the prevailing rate at the end of the term (n).
- 3.4. The present unadjusted value or the existing rate (r_e) shall be subtracted from the readjusted value in #3.3.
- 3.5. The difference between the readjusted rate and the present rate shall be divided by the number of periods (semesters/quarters/etc.) over which the adjustment shall be spread out. This value represents the periodic increase over the existing rate.
- 3.6. The following formula summarizes the above discussions:

$$r_{inc/p} = \frac{r_b(100\% + x)^n - r_e}{p}$$

where: $r_{inc/p}$ = absolute value increase per period

r_b = adjusted rate for the current year

x = annual automatic percentage increase in rates

n = number of years over which the adjustment will be spread

r_e = existing rate

p = # of periods (semesters, quarters, etc.) over which the adjustment will be spread

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4. Adjusted rates must be uniform for given areas within the port. For instance, the rental rates for land in the Vitas area of the Port of Manila must be uniformly set at ₱xxx per square meter while the rates of areas along Marcos Road must also be uniformly set at ₱yyy per square meter.
5. All general rental rate adjustment programs for medium and long-term leases must be approved by Head Office. Proposals for rental rate adjustments must be sent to the Head Office in triplicate together with the summary of appraised values of all land and buildings in the PMU for submission on or before September 30 of each year. (Section III.2)

RIGHT OF PPA TO OWNERSHIP OF THE IMPROVEMENTS MADE BY THE LESSEE

1. All improvements made by the lessee on the land shall be automatically reverted to PPA at the end of the lease period free from all liens and encumbrances. This implies that PPA shall claim absolute ownership of the improvements at the end of the lease period, unless other qualifications or arrangements are stipulated in the contract.

During the lease period, the proportionate interest of PPA in the improvements at any one time shall be computed as follows:

$$\text{PPA's Interest} = \frac{t_e}{t_n - t_1}$$

- where: t_e = number of years the improvements have existed
- t_n = lease period (e.g. 10 years, 25 years, etc.)
- t_1 = number of years the contract has been in effect at the time the improvement was introduced

2. The lessee may not mortgage or use as a collateral any of the improvements it had introduced without the General Manager's written approval.
3. The lessee may not sub-lease or assign in part or in whole the property under lease without the General Manager's written approval.

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CANCELLATION/TERMINATION OF THE LEASE CONTRACT

1. The Authority reserves the right to revoke the occupancy permit/lease contract anytime during the lease period with a 30-day notice for continuous violation or non-compliance with PPA rules and regulations as well as the other conditions of the contract. During the 30-day period, the lessee cannot remove any improvement without PPA's written consent.
2. If at anytime during the lease period, it is evident that the lessee is not using the property for which it was originally intended, PPA shall reserve the right to cancel the contract also on a thirty-day notice. For medium and long-term contracts, payment for the residual value of any improvement, if any, shall be negotiated and scheduled. However, PPA may lease out the property to other users even before payment has been effected.
3. The Port Manager may revoke any permit he has given, should there be sufficient grounds for termination. For medium and long-term leases and for those contracts that involve amounts greater than that delegated to Port Managers, the General Manager shall act on the termination based on the recommendation of the Port Manager. The General Manager or his representative shall also negotiate for the payment of improvements introduced by the lessor.

R E N E W A L

1. For short-term leases, a written intention to renew must be submitted to the Port Manager at least one (1) month before the expiration of the Permit to Occupy. However, the present lessee does not preempt the right to a permit renewal. The Port Manager shall consider the market opportunities and the highest yield he can derive from leasing his assets in awarding permits to occupy.
2. For medium and long-term leases, the lessee must inform PPA in writing at least six (6) months before the contract expiration, of his intention to renew; otherwise his right to request for renewal will be automatically forfeited.

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X. INSURANCE, TAXES AND OTHER INCIDENTAL EXPENSES

1. The cost of insurance for the leased buildings/other **structures** shall be for the account of the lessee.
2. All buildings and other structures shall be insured with the GSIS in favor of PPA.
3. All taxes and other incidental expenses shall be shouldered by the lessee.

I. FORMAT OF THE LEASE AGREEMENT

1. In order to differentiate the short-term leases from the long-term ones, the Port Manager shall issue "Permits to Occupy" to interested parties who wish to utilize the port's premises for their operations. (Sample attached). For medium and long-term leases, the standard lease contract format shall be used.
2. In order to ensure that the lessee has fully accepted the terms and conditions reflected in the permit, the conforme of their authorized representative must be sought. The permit must be returned to the originating PMU not later than 2 weeks from the date of the permit. Effectivity of the permit shall commence immediately after the conforme date. Head Office must be furnished with three (3) copies of all Permits to Occupy and Lease Contracts to be distributed as follows:

- 1 - General Manager
- 2 - R L A D
- 3 - B D D

3. For each reference, all lease contracts/permits to occupy shall be coded as follows:
 - 3.1. First and Second Digits - Originating PMU's letter code
(Ex.: BA - Batangas, CB - Cebu, etc.)
 - 3.2. Third and Fourth Digits - Type of agreement
 - 3.2.1. LC - Long Term Lease Contracts
 - 3.2.2. PO - Short-Term Permits to Occupy
 - 3.3. Fifth and Sixth Digits - Year

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3.4. Seventh, Eight and Ninth Digits - Sequence number
of Contract

For instance: BA-LC-82-001 is the code for the
first long-term contract for an
area in Batangas in 1982.

BA-PO-82-001 is the code for the
first permit to occupy an area in
Batangas in 1982.

The above guidelines shall serve to assist the Port
Managers who are hereby enjoined to review the various
provisions of their existing lease contracts including
those entered into by the Bureau of Customs before the
PPA takeover. A rental adjustment program based on the
re-appraised value of the property or the estimated market
value must be drawn by each PMU and submitted to Head Office
not later than 15 December 1982. For 1983 and thereafter,
the schedule stated in Paragraph III, Section 2 of these
Guidelines shall be followed.

For your guidance and compliance.



E. S. BACLIG, JR.



D A T E

Attention: _____

Subject : PERMIT TO OCCUPY
BA-PC-82-001

Dear Sir:

This is in reference to your letter dated _____
regarding your proposal to lease an area within _____
_____.

Please be informed that after due consideration and evaluation of your operational needs, the Philippine Ports Authority is allocating Lot No. _____ a _____ square meter area _____ for your use and occupancy. (Attached is a lay-out marked as Annex "A" for the exact boundary and location of your lot).

In this connection, you are hereby granted this Permit to Occupy, subject to the following terms and conditions:

1. Your Company shall pay a monthly rental in the amount of _____ (₱ _____ at ₱ _____ per square meter for _____ square meters, to be remitted at our _____ Collection Office within five (5) days after your receipt of this Permit and from hereon all succeeding payments shall be remitted on or before every fifth (5th) day of the current month. Rental payment not made on time shall be imposed and interest charge of 1% per month; and a penalty charge of 1% per month, if payment is made within two (2) months after the due date or 2% per month, if payment is made thereafter.
2. The Authority reserves the right to increase its present rental rate anytime during the effectivity of this Permit to whatever amount deemed reasonable based on the current situation.
3. The area shall be used primarily as _____

4. No other party shall use or occupy the area without the written consent of the Authority.