

[CPA ADMINISTRATIVE ORDER NO. 02, July 16, 2010]

OMNIBUS POLICY AND GUIDELINES ON THE DEVELOPMENT, CONSTRUCTION AND OPERATION OF PRIVATE PORTS WITHIN THE TERRITORIAL JURISDICTION OF THE CEBU PORT AUTHORITY (CPA)

Pursuant to Republic Act No. 7621 (Charter of the Cebu Port Authority), Article IX of CPA Administrative Orders 01-2000 (CPA General Port Rules and Regulations) and Board Resolution No. 512-2010 dated 16 July 2010 of the 5th Cebu Port Commission, the following policy and guidelines are hereby prescribed for all concerned:

Article 1 Preliminary Provisions

SECTION 1. Policy - It is hereby the declared policy of the Authority to ensure coordination in the processing of applications to develop, construct and operate private ports consistent with Sections 5 (a) and 7 of Republic Act No. 7621 (Charter of the Cebu Port Authority).

SECTION 2. Scope - This order, shall apply to all parties seeking for permit to develop/construct and operate a private port facility. It shall also specify the roles of CPA units and offices in the processing, evaluation and approval of these applications.

SECTION 3. Definition of Terms - For the purpose of this Order, the following terms used herein shall be construed to mean as indicated:

3.1 Authority – means the Cebu Port Authority.

3.2 CHSP – Cargo Handling Service Provider, which means any person or entity engaged in the activity of rendering cargo handling services.

3.3 Port Charges – includes harbor fees, tonnage and wharfage dues, berthing or anchorage charges, port dues and any other dues or fees imposed by virtue of existing laws.

3.4 Tariff Rates - the schedule of rates which includes tolls, fees, dues and rent imposed by the Authority.

3.5 General Cargo Port – a port that undertakes the handling of cargoes for loading in general non-specialized stowage areas or standard shipping units, e.g., boxes, barrels, bales, crates, packages, bundles, and pallets.

3.6 Government Port - a port owned, managed, and operated by the Cebu Port Authority.

3.7 Government Share - the percentage share that the Authority collects from port charges, wharfage, and cargo-handling services in a private port.

3.8 Private Port - a port facility constructed, owned and operated by a private person or entity as authorized by the Authority. It is classified according to the nature of its operation and purpose, thus:

3.8.1 Private Non-Commercial Port - A port facility constructed, owned and operated by a private person or entity as a component of or accessory to its own business or principal, economic activity and which does not offer its facilities and services to the general public. Its use by third party is only incidental to its operation of the port in view of the availability of specialized and dedicated cargo handling gears and equipment used to handle, usually homogenous cargo, unique to the private port facility, and conducted on a limited and non-commercial basis;

3.8.2 Private Commercial Port – A port facility constructed, owned and operated by a private person or entity which offers its port and services to the general public.

3.9 Privilege Fee - the annual fee paid to the Authority upon the issuance of the Certificate of Registration/Permit to Operate a private commercial port.

3.10 Registered Private Port – a private port that has been duly issued a Certificate of Registration by the Authority.

3.11 Unregistered Private Port - a private port that has no Certificate of Registration with the Authority or whose registration has already expired.

Article 2

PARAMETERS AND GUIDELINES

SECTION 4. Nature of Operations - In considering an application for a Permit to Develop, Construct and Operate a private commercial port, the following parameters must be observed:

4.1 That it is not intended to operate as a general cargo port;

4.2 That it does not duplicate an equally functional facility or service adequately provided by the nearest government port or existing private port authorized by the Authority to operate, but that it provides for a facility and/or service which the government port is incapable of providing, when deemed necessary by the Authority;

4.3 That it should be obligated to accommodate spill-over demands from government ports when deemed necessary by the Authority;

4.4. That in totality, its sole purpose is to supplement the market demand for berths, storage and/or services.

SECTION 5. Government Share – The following government share from port charges, wharfage and cargo-handling services is prescribed for private commercial and non-commercial ports:

CLASSIFICATION			GOVERNMENT SHARE
Private Commercial Port	Port Charges	Wharfage	CHSP (Annual Gross Revenue)
Registered	50%	50%	10% from domestic Cargoes; 20% from foreign cargoes
Unregistered	100%	100%	
Private Non-Commercial Port			
Registered	50%	50%	
Unregistered	100%	100%	None

SECTION 6. Limitations in the Operation of Private Ports - The following limitations shall be imposed in the operation of private ports and shall be so indicated in the Certificate of Registration/Permit to Operate issued to the owner or operator concerned:

1. Private non-commercial ports shall be limited to operating as a component of or accessory to its own business or principal economic activity and shall not offer port services to the general public but shall exist generally for its own particular use and need. Its use by third party is only incidental to its operation of the port in view of the availability of specialized and dedicated cargo handling gears and equipment used to handle, usually homogenous cargo, unique to the private port facility, and conducted on a limited and non-commercial basis. Should it wish to operate as a commercial port, it shall have to follow the guidelines set by this Order in applying for a permit to develop, construct and operate as a commercial port.

2. Private commercial ports may offer port services to the general port users and not only as a mere component of the main business or activity of the owner or operator, but as the main business activity itself;

3. The owner or operator shall operate the private port subject to the following terms and conditions:

- 3.1 It shall only be for the duration specifically indicated in the Certificate of Registration/Permit to Operate;

- 3.2 The owner or operator shall operate the private port facility for a period of twenty five (25) years, but in no case shall exceed the term of its Foreshore Lease Agreement (FLA), provided, however, that in case of non-renewal, cancellation, or expiration of the permit, the private port facility or structure thus built on the foreshore and other government-

owned land utilized for such private port operation, shall become the property of the Authority, free from all liens and encumbrances, unless such foreshore area has been authorized to be reclaimed, and the corresponding land has become officially titled to the private port owner concerned.

3.3 The Certificate of Registration/Permit to Operate shall be non-transferable. Any violation of this condition shall automatically terminate or revoke such registration/permit without need of further action by the Authority;

3.4 The Certificate of Registration/Permit to Operate does not include the power to operate cargo-handling, portage and other related services, which are covered by separate and distinct permit/s;

3.5 The private port owner or operator shall pay such dues, fees, charges as may be due to the Authority during the lifetime of the permit;

3.6 The grantee shall maintain the facilities in good condition and shall be responsible for the safe, secured and efficient operations thereof as well as for any damage to property or person arising out of its operations;

3.7 No alterations or improvements, other than ordinary repair for wear and tear shall be made on the existing facilities (as shown on the As-Built plan to and stamped by the Authority) without prior approval of Authority;

3.8 The grantee shall allow the use of its facility to other port users in case of emergency, necessity, or congestion at the government pier upon written orders of the Authority;

3.9 The grantee shall comply with CPA existing and subsequent applicable rules, and other laws and regulations promulgated or to be promulgated by proper authorities. Failure of the grantee to comply with any of the conditions herein specified shall constitute sufficient ground for the Authority to revoke the permit after proper proceedings.

Article 3

PROCEDURE, PRIVATE PORT FEES AND OTHER RELATED CHARGES

Section 7. Criteria for Evaluation – As a general rule, all applications for the development, construction, and operation of private ports shall be granted subject to compliance with this Order and other government laws and regulations.

Section 8. Application for Permit to Construct - New private commercial ports as well as existing commercial ports which intend to expand or improve their facilities, shall be required to apply for a permit to Construct a Private Port with the Authority.