

MUMBAI PORT TRUST
ESTATE DIVISION

PROPOSAL FOR APPROVAL OF SCHEDULE OF RATES (SOR) FOR THE PERIOD FROM 01.10.2012 TO 30.09.2017 & FROM 01.10.2017 TO 30.09.2022 IN RESPECT OF MUMBAI PORT TRUST LETOUT LAND FALLING UNDER VARIOUS READY RECKONER ZONES APPLICABLE TO ALL THE EXPIRED LEASES/ FIFTEEN MONTHLY LEASES/ MONTHLY TENANCIES/ LICENSES OF THE PLOTS FOR RESIDENTIAL(HOME), MIXED USE (HOME+NON-HOME)

1. BACKGROUND:

Mumbai Port Trust owns about 944 Ha of land in Mumbai City. The land in the Mumbai city limits falls under the jurisdiction of A, B, C, M, G-North, E, F-North and F-South Wards and letout lands in outside island city of Mumbai. The said land stretches from Colaba to Wadala, Mahim, Worli, Govandi, Pir Pau, Mahul, Titwala etc. and is divided into 15 administrative units for management of these estates. The landed estates are divided into 2 main categories, viz. (i) lettable land and (ii) non-lettable land. Non-lettable land includes areas occupied by offices of sister department, administrative offices of Mumbai Port Trust, Port Trust quarters, Port Trust hospital, etc. The lettable category includes areas let out on long term leases, 15 monthly leases, monthly tenancies and licenses. There are also a few plots which are vacant and can be let out.

The Board vide TR 153 of 2021 accorded approval to Schedule of Rates (SoR) for the period from 01.10.2012 to 30.09.2017 and from 01.10.2017 to 30.09.2022 in respect of Mumbai Port Trust letout land falling under various Ready Reckoner Zones applicable to all the Expired leases/Fifteen Monthly leases/Monthly Tenancies/Licenses of the plots for Residential (Home) & Mixed Use (Home + Non-Home) occupations.

2. POLICY GUIDELINES:

a) The Land Management Policy Guidelines for Major Ports, 2010 issued by the Ministry was adopted by the Board vide TR No.21 of 2011 read with Supreme Court Judgement. The Ministry subsequently, with the approval of the cabinet, issued Land Policy guidelines for Land Management by Major Ports 2014 (PGLM), which was applicable for all Ports except for the land relating to the township areas of Kandla, Mumbai and Kolkata Port, for which it was stated that separate policy will be formulated. The amended policy guidelines were issued in 2015.

The Ministry vide clarification Circular (Land Management) No.1 of 2018 dated 14.05.2018, Clarification No.2 of 09.03.2019 and Clarification No.1 of 2019-20 dated 29.04.2019 issued clarification circular on various issues of PGLM 2014/15 extending the applicability of the PGLM 2015 to the non-home occupation/ commercial areas of the township areas of Mumbai, Kolkata and Kandla Port upto 31.03.2020 with a sunset clause. The PGLM 2015 has thus become applicable to the township areas of Mumbai Port Trust. The Ministry vide further letter dated 27.01.2021 has clarified that *“since PGLM 2014 has been approved by the cabinet, it is valid until it is revised by the cabinet. Hence, compiled PGLM,*

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2015 issued on 29.04.2019 will be applicable for both the land of major port trust and the township area subject to the condition mentioned in the letter dated 29.04.2019."

b) As per the PGLM-2015, the Land Allotment Committee is required to consider the following factors for determining the market value of the Port land:

- I) "a) State Government's Ready Reckoner of land values in the area, if available for similar classification/ activities.
b) Highest rate of actual relevant transactions registered in the last 3 years in the ports vicinity (the vicinity of the Port is to be decided by the respective Port Trust Boards) with an appropriate annual escalation rate to be approved by the Port Trust Board.
c) Highest accepted tender-cum-auction rate of Port land for similar transaction updated on the basis of the annual escalation rate approved by the Port Trust Board.
d) Rate arrived at by an approved valuer appointed for the purpose by the Port.
e) Other relevant factor as may be identified by the Port.

II) The Land Allotment Committee shall, while recommending the latest market value for any land would normally take into account the highest of the factors mentioned in Para 13(a) above. Reserve price in terms of the annual lease rent would be latest SoR determined in accordance with Para 13 (a) and 13 (c) and would in no case be less than 6% of the latest value recommended by the Port trust.

III) The Port trust would make a proposal as outlined in Para 13 (a) to TAMP for fixing the latest SoR of the land. The TAMP would notify the latest SoR of the land after following due process of consultation with stake holders within 45 days of the receipt of the proposal. The Port trust board will fix a rate of annual escalation which would not be less than 2 %. SoR would be refixed once in every 5 years by TAMP".

3. LEGAL ISSUES:

TAMP had vide notification No. TAMP/10/98-Misc of 28.03.2000 issued orders dated 15.03.2000 on its jurisdiction for framing scale of rates and statement of condition on the issue of applicability of SOR to all lands of all Major Ports. The said notification was challenged by the Mumbai Port by Writ Petition 1153 of 2000. In the writ petition, by interim order dated 02.05.2000, the Bombay High Court had stayed the applicability of TAMP's order to areas not falling within Port limit and Port approaches. The issue of withdrawal of Writ Petition and necessary advice for the same was been taken up with the Ministry in the light of PGLM 2015. TAMP has since by letter dated 15th July 2019 intimated that TAMP is required to fix the SOR for all areas of Mumbai Port including Township areas with effect from 01.10.2012 onwards in terms of advisory from the Ministry of Shipping and therefore notification dated 28th March 2000 may be seen to have become infructuous. Therefore, the Writ Petition was also withdrawn by High Court order dated 08.08.2019.

4. LAC RECOMMENDATIONS:

Board vide TR 253 of 1991 had approved the compromise policy for settlement of litigation and renewal of leases and fixed SoR rates of Home and Non-Home occupations

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based percentage return of land values based on M/s Kirloskar consultants report in 1981. In the said TR, the letting rates for Home occupations were 20% of the Non-Home occupation rates. Further, vide TR No.31 dated 10.3.2004, approval was accorded to the acceptance of the Hon'ble Supreme Court Judgment dated 13.1.2004 with percentage return changed from 15% to 10% for Non-Home occupations and 12% to 8% for Home occupations. The said SC Judgment rates were valid for 20 years from 1992 i.e. upto 30.09.2012. Further on representation from residential occupants of MbPT land, Supreme Court vide order dated 09.01.2006, reduced the rate of return from 8% to 3% for residential (Home) occupations. Presently, all Home and Mixed (Home + Non-Home) occupations are billed as rent/compensation as per SC Judgment rates with 4% annual escalation in every October.

A) The SoR for Home and Mixed (Home + Non-Home) occupations for the period 2012-2017:

- (a) In the Ready Reckoner published by State Government, no distinction is made for land values (FMV) of Commercial (Non-Home occupations) and Residential (Home Occupations) lands. The same market value is recommended for residential use/ Home occupations as recommended for Non-Home occupations of the corresponding ready reckoner zones. Accordingly, the same FMV/SoR may be recommended to Mixed (Home + Non-Home) occupations. Since there is fixed percentage of return on FMV i.e. 6% provided in the PGLM 2015. Therefore, SoR for Home and Mixed (Home + Non-Home) occupations will be same as SoR of Non-Home occupations.
- (b) The proposed SoR for Home and Mixed (Home + Non-Home) occupations for the period 2012-17 is given in **Annexure I** based on 6% of return on land value as per Stamp Duty Ready Reckoner 2012 with annual escalation of 4% p.a. in every October and with revision of SoR every 5 years. Also for comparison, existing billed rates of compensation for these occupations as per SC Judgment rates are shown in **Annexure I-A**.

B) The SoR for Home and Mixed (Home + Non-Home) occupations for the period 2017-2022 :

- (a) In terms of the PGLM, 2015, SOR has to be recommended by LAC and approved by the Board and notified by the TAMP. The Board vide TR 146 of 2014 had constituted Land Allotment Committee headed by Dy. Chairman and comprising of Traffic Manager, FA&CAO, and Estate Manager as members to recommend new Schedule of Rates for Estate lettings. The recommendations of LAC on revision of SOR 2017-22 at 6% return p.a. on fair market value (FMV) of land for base rate for FSI = 1.0 as per based on valuers report for various Ready Reckoner Zones for the year 2017-18 is worked out as per five factors provided in Para 13 of PGLM 2015 policy guidelines have been accepted by the Board by various Trustees' Resolutions. LAC has recommended 4% increase every year in October and the same was accepted by Board vide various Trustees Resolutions.
- (b) The proposed SoR for Home and Mixed (Home + Non-Home) occupations for the period 2017-22 is given in **Annexure-II** based on 6% of return on highest of five factors i.e. Fair Market Value of land as per Valuers report approved by the Board vide various TRs as recommended by LAC with annual escalation of 4% p.a. in every October and

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with revision of SoR every 5 years. Also for comparison, existing billed rates of compensation for these occupations as per SC Judgment rates are shown in **Annexure II-A**.

C) Application of FSI factor in calculation of actual quantum of compensation.

The computation of rentals/ compensation based on FSI consumed and areas will be likely to be contentious issue even after base SoR rates for one sq. mtr. of land are approved by TAMP. Linking of SoR rates of land to FSI consumed of the buildings / structures have several repercussions and complexities such as how to compute FSI, exemption of fungible FSI as per DC rules and permissible FSI, etc. To study these aspects in detail, vide TR 122 of 2021 the Board has accorded approval for formation of a committee of experts consisting of a retired Chief Engineer / Director of Planning of MCGM, Retired High Court Judge and a group of MbPT officials comprising Advisor (Planning), Chief Engineer, CLO, FA&CAO, Secretary and Estate Manager (I/C) alongwith Govt. registered Valuers on MbPT panel. Committee will give its recommendations on above issues and the matter will be brought before the LAC and Board for computation of actual rents/compensation on factors recommended by the Committee.

D) Port Trust is billing the monthly tenants with MCGM Property Cesses (WBT, SBT, EGC & ED) @ 55.5% of Annual Rent as per SC Judgement and recovery of the same was MbPT's responsibility.

LAC vide report dated 23.08.2021 recommended that same practice is to be followed in future, however, the MCGM cesses will be reworked out in accordance with the proposed SOR 2012-2017 and 2017-2022 as may be approved by the TAMP, in respect of all the monthly tenancies and licenses upto 11 months(home and hon-home occupations) of all the Ready Reckoner zones of Mumbai Port Trust land. The same is approved by the Board vide TR 155 of 2021.

E) All the demand notices of differential arrears as per the revised SoR for 2012-2017 and SoR 2017-2022 will be issued to all monthly tenancies, fifteen monthly leases, expired leases and licenses as a compensation for wrongful use of the premises without interest and giving time limit of 3 months from the date of receipt of demand notices and interest at the applicable rates will be charged for delayed payments subject to TAMP's approval.

5. PROPOSAL:

TAMP's approval is requested to the SOR approved by the Board vide TR 153 of 2021 for the period from 01.10.2012 to 30.09.2017 and 01.10.2017 to 30.09.2022 for Home & Mixed(Home + Non-Home) occupations as brought out in Annexures I & II. Copy of the relevant TR along with LAC report is enclosed herewith. These rates will be applicable to all the Expired Leases, Fifteen Monthly Leases, Monthly Tenancies and Licenses including vacant plots (for calculation of Reserve Price, Annual Rent/Upfront Premium for allotment) of the plots falling under the respective ready reckoner zones.

6. JUSTIFICATION:

The proposal is formulated in terms of the Land Policy Guidelines for Land Management 2015.

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Under section 49 of MPT Act, 1963 and para 13 (c) of PGLM-2015 TAMP's approval to the SOR for the period from 01.10.2012 to 30.09.2017 and 01.10.2017 to 30.09.2022 applicable to all Home, Mixed(Home+Non-Home) occupations of the Expired Leases, Fifteen Monthly Leases, Monthly Tenancies and Licenses including vacant plots (for calculation of Reserve Price, Annual Rent/Upfront Premium for allotment) of the plots falling under the respective Ready Reckoner zones.

7. CONTACT DETAILS:

Contact details of the registered tenants/lessees as available in the MbPT record are furnished in the enclosed statement.

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