

The Mumbai Port Trust (Pension Fund) Regulations, 2004

UNION OF INDIA

India

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Rule

THE-MUMBAI-PORT-TRUST-PENSION-FUND-REGULATIONS-2004 of 2004

- Published on 21 May 2004
- Commenced on 21 May 2004
- [This is the version of this document from 21 May 2004.]
- [Note: The original publication document is not available and this content could not be verified.]

The Mumbai Port Trust (Pension Fund) Regulations, 2004 Published vide Notification No. G.S.R. 341(E), dated 21st May 2004 Ministry of Shipping (Ports Wing) G.S.R. 341(E). - In exercise of the powers conferred by Sub-Section (1) of Section 124, read with Sub-Section (1) of Section 132 of the Major Port Trusts Act, 1963 (38 of 1963), the Central Government hereby approves the Mumbai Port Trust (Pension Fund) Regulations, 2004 made by the Board of Trustees of Mumbai Port Trust as set out in the Schedule annexed to this Notification. The said Regulations shall come into force from the date of publication of this Notification in the Official Gazette.

Schedule

In exercise of the powers conferred by clause (b) of section 28 of Major Port Trusts Act, 1963 (38 of 1963), the Board of Trustees of the Port of Mumbai, with the approval of the Central Government, as required by sub-section (1) of section 124 of the said Act, hereby makes the following regulations.

1. Short title and commencement.

(1) These regulations may be called the 'Mumbai Port Trust (Pension Fund) Regulations, 2004'. (2) They shall come into force from the date of notification in the Gazette of India.

2. Definitions.

- In these regulations, unless the context otherwise requires :-(a) "Act" means the Major Port Trusts Act, 1963 (38 of 1963); (b) "Board" means the Board of Trustees for the Port of

Mumbai;(c)"Chairman" means the Chairman of the Board;(d)"Deputy Chairman" means 'Deputy Chairman' of the Board;(e)"Financial Adviser and Chief Accounts Officer" means the Financial Adviser and Chief Accounts Officer of the Board, or such other officer or officers of the Accounts Department as may be nominated by the Chairman from time to time for any specified purpose or purposes;(f)"Secretary" means the Secretary of the Board or such other officer or officers of Secretary's Department as may be nominated by Chairman from time to time for any specified purpose or purposes;(g)"Trustees on the Board representing port labour" means the Trustees appointed by the Ministry of Shipping from time to time to represent port labour;(h)"Employee" means employee of the Board whether permanent or temporary who has retired or superannuated or resigned or died or medically incapacitated from the service under the Board or whose services have been terminated by dismissal or removal or compulsorily retired by the Competent Authority of the Board but does not include any permanent or temporary employee of the Central or State Government or a local body or other authority on deputation with the Board;(i)"Fund" means the Mumbai Port Pension Fund constituted under regulation 3 below;(j)"General Account" means the general account of the Board;(k)"Pension Regulations" means all rules in the Bombay Port Trust Pension Regulations and orders of the Central Government as may be issued from time to time to provide pensions, gratuity and commutation of pension, family pension and ex-gratia pension;(l)"Provident Fund Regulations" mean all provisions in the Bombay Port Trust Rules of the Provident Fund as amended from time to time to provide for Board's Special Contribution to Provident Fund Account of employees subscribing to the Contributory Provident Fund;(m)"The Trustees" means the first Trustees of the Pension Fund or the survivors or survivor of them or other Trustees or Trustees for the time being hereof;(n)"Trust" means the Trust under which the Pension Fund is hereby established.

3. Constitution of the Fund.

- A fund to be called as 'Mumbai Port Trust Pension Fund' shall be formed after creating an irrevocable Pension Fund Trust Deed to which the following shall be credited.(a)Accumulated balance in Pension Fund not exceeding initial contributions specified in Rule 88 of Income Tax Rules, 1962.(b)Such annual contribution from the General Account as the Chairman may decide, but not exceeding ordinary annual contribution specified in Rule 87 of Income Tax Rules, 1962 for meeting the future liability of payments on account of payment of pension, commuted value of pension death-cum-retirement gratuity/gratuity payable under payment of Gratuity Act, 1972, family pension, arrears on account of consolidation and/or review of pension, special contribution to PF A/c. in respect of employees governed by the Contributory Provident Fund Scheme, ex-gratia pension and payment as enumerated in Regulation 5 below.(c)Interests and profit on investments belonging to the fund.(d)Accumulated Board's contribution in respect of employees governed by contributory Provident Fund Scheme whose cases are settled under Pension Scheme.(e)Refund of any excess payment of pension etc. as may be recovered or refunded(f)Any other amount made over to the fund by way of gift or donation.(g)Other receipts.

4. Administration of the Fund.

- The Fund shall be administered by the Pension Fund Trust Chairman, Dy. Chairman, Financial Adviser and Chief Accounts Officer, Secretary and two Trustees on the Board representing the port labour shall be the first Trustees of the Pension Fund Trust as per the Trust Deed annexed to these regulations.

5. Expenditure from the Fund.

- Expenditure may be incurred out of the Fund for one or more of the following purposes, namely:-(a)Payment of pension and family pension and periodical relief thereon as admissible under the Pension Regulations to the employees or their family members or their dependants/legal heirs as the case may be.(b)Payment of gratuity, death-cum-retirement gratuity/gratuity payable under payment of Gratuity Act, 1972 as may be admissible under the pension regulations to the employees or their family members or their dependants/legal heirs as the case may be.(c)Payment of lumpsum commuted value of pension payable to the pensioner as admissible under the pension regulations;(d)Arrears on account of consolidation and/or review of pension.(e)Payment of special contribution to employees covered by the Contributory Provident Fund Scheme on retirement, death or on quitting service as the case may be and as admissible under the Provident Fund Regulations.(f)Any other retirement/terminal benefits payable to employees including ex-gratia pension and payment.

6. Disbursement of the Fund.

- Disbursement shall be made out of the Fund to the employees or their family members or their dependants/legal heirs as per the provisions of the pension regulations under specific sanction of the Chairman or Deputy Chairman or Financial Adviser and Chief Accounts Officer or Dy. Chief Accounts Officer or any other officer of the Accounts Department authorised for this purpose by the Trustees of Pension Fund.

7. Ceiling of the Fund.

- The maximum amount that may be accumulated in the Fund will be decided by the Trustees of Pension Fund Trust from time to time on the basis of actuarial valuation of liabilities towards payment of (i) pension, (ii) gratuity, (iii) death-cum-retirement gratuity, (iv) family pension, (v) ex-gratia pension, etc.

8. Investment of the Fund.

- All monies contributed to the fund or received or accrued by way of interest or otherwise to the Pension Fund shall, within 15 days from the date of contribution receipt of accrual as the case may be, be deposited in a scheduled bank excluding the requirement from time to time which may be kept as cash for meeting the expenses of the Trust. All monies that are not immediately required for

the purpose of the fund shall from time to time, be invested in accordance with Rule 85 read with Sub-rule (2) of Rule 67 and Rule 89 of Income Tax Rules, 1962, as may be amended from time to time, provided that the principal so invested and the interest thereon are payable in India.

9. Interpretation.

- If any question arises relating to the interpretation of these regulations, the same shall be referred to Board of Trustees for decision. Annexure Trust Deed-Mumbai Port Trust Pension Fund This Deed of Trust is executed at Mumbai on this day of January 2004, between the Board of Trustees of Port of Mumbai incorporated under Bombay Port Trust Act, 1873 and thereafter governed by Bombay Port Trust Act 1879 and now governed under the Major Port Trust Act, 1963 as amended by Major Port (amended) Act 1974 having its office at Port House, S.V. Road, Ballard Estate, Mumbai-400001 (hereinafter called "The Board" which expressions shall where the context so admits include its successors and assigns) of the First Part and (1) Chairman, Mumbai Port Trust, Ex-officio (2) Dy. Chairman, Mumbai Port Trust, Ex-officio (3) Financial, Adviser & Chief Accounts Officer, Mumbai port Trust, Ex-officio and (4) Secretary, Mumbai Port Trust, Ex-officio (5) Two Trustees on the Board representing the Port Labour hereinafter referred to as the Trustees which expression shall, where the context so admits or requires include their successors and assigns of the Trustee on the Second Part. Whereas the Board has been in existence and providing the port services for over a century and was conferred with the exemption from income tax as per the provisions of Section 10(20) of the Income Tax Act, 1961 which has been withdrawn with effect from 1.4.2002 by the Finance Act, 2002. Whereas the Board is employing about 17021 employees and at present paying pension to about 26845 pensioners as on 31.3.2003. And Whereas the Board is liable to pay pension to its ex-employees in accordance with Mumbai Port Trust Employees (Pension) Regulations. Whereas the Board is having a Pension Fund created under Section 22(6A)(a) of Bombay Port Trust Act, 1879 for providing benefits to its officers/employees after their retirement and termination from their services as sanctioned by the Board by TR No. 937 of 1965 at its meeting held on 5.10.1965 and sanctioned by the Ministry of Surface Transport, Government of India by its letter No. 8-PE(42)/65 dated 4.11.1966 and has sanctioned by TR No. 137 at its meeting held on 11.9.2002 Mumbai Port Trust (Pension Fund) Regulations, 2002 and has also sanctioned by TR No. 5 at its meeting held on 13.1.2004, the amendments proposed to MbPT (Pension Fund) Regulations, 2002 and the creation of an irrevocable Trust for the said purpose subject to Central Government sanction. Whereas it has become necessary for the Trust to obtain the registration and approval of the Income Tax Department under the provisions contained in Schedule IV of the Income Tax Act, 1961 and accordingly this Trust Deed is executed for applying for and to obtain the registration and approval of the Income Tax Department for its existing Pension Fund. "The Fund" shall mean the Mumbai Port Trust Pension Fund (hereinafter referred to as "The Fund") the operation of which shall be governed primarily by these presents. Whereas the Trustees have agreed to act as Trustees of the Fund as per the terms of these presents and in accordance with the Rules and Regulations. Now This Deed Witnesseth That; Administration of Fund

- 1. Trust is Irrevocable :** These presents shall constitute a Trust upon which the Trust shall be Irrevocable and no moneys belonging to the Fund in the hands or the Trustees shall be recoverable by the Board, except as provided in the Rules.
- 2. Rules :** The Fund shall be governed by the Rules and any reference to the Rules in these presents shall mean the Mumbai Port Trust (Pension Fund) Regulations 2002 and Mumbai Port Trust Employees (Pension) Regulations for the time being in force and amendments thereto issued by the Ministry of Shipping, Government of India from time to time which shall be binding on the employees, their Nominees and the Trust.
- 3. Definition :** All words and expressions to which special meaning have been given in the Rules have the same meanings wherever they appear in these presents.
- 4. Date of Commencement :** The Fund shall be deemed to have taken effect from the date of sanction of Government to Mumbai Port Trust (Pension Fund) Regulations 2002.
- 5. The Fund :** The funds as on 1.4.2003 shall consist that of the balance of Pension Fund mentioned in the Balance sheet of the Board as on 31.3.2003, annexed to this Deed. The Trust Fund shall be vested with the Trustees. The Trustees shall have the entire custody, management and control of the Fund and shall decide all differences or disputes which may arise under these presents or under the Rules or disputes which may arise under these presents or under the Rules either as to the interpretation thereof or as to the rights and obligations of the Board or of the employees, the beneficiaries or of their nominees and the decision of the Trustees in all cases shall be final and binding on all parties concerned. Provided further that if the decisions have any bearing on the provisions of the Income Tax Act, 1961 or the Income Tax Rules 1962, it shall be forthwith reported to the Commissioner of Income Tax and if so required by him the Trustees shall review the decision. The Funds shall comprise of contributions from the Board, accumulations of such contribution, interest credited on such accumulations, securities acquired and capital gains, if any, from transfer of capital assets of the Fund.

6. Board to make contribution : The Board agrees to make the contributions to the Fund as provided in the Rules and also based on the actuarial valuation done by Life Insurance Corporation or any consulting actuaries registered with Actuarial Society of India to meet future liabilities and the Trustees shall utilize the same for payment of pension in accordance with the Rules.

7. Board to furnish all information and to pay all the expenses of Administration of the Fund : The Board further agrees to furnish to the Trustees all particulars regarding the employees and such other information as may be in the possession of the Board as the Trustees may require for the purposes of providing benefits under the Fund. All expenses incurred by the Trustees in connection with the administration of the Fund including the remuneration of a Secretary, if any or of a person to be employed by the Trustees and the audit fees shall be borne by the Board.

8. Power to amend the Fund by Trustees : The Trustees may at any time by a resolution in writing signed by not less than two of them and after obtaining the approval of the Board, the Ministry of Shipping, Government of India and the Commissioner of Income Tax, amend or modify the Fund.

Provided that no such alteration or variation shall be inconsistent with the main objects of the Fund nor shall such alteration or variation in any way prejudice the rights or Interests of any employee or his nominee. Provided further that any such alteration or variation shall become effective only with the consent of the Commissioner of Income Tax.

9. Board's rights in amending the rules of the Fund : The Board is entitled to bring in changes, amendments, or modifications in the Rules of the Fund with the consent of the Ministry of Shipping, Government of India and it shall be lawful for the Trust to give effect to the amendments with the approval of the Commissioner of Income Tax.

Provided that no notice is required to be given to the Trustees if the Commissioner of Income Tax requires as a condition for approval of the fund any amendment to be made taking effect from the date of commencement of the Fund.

10. Trustees to carry out the directions of the Board : The Trustees shall comply with and carry out such directions as evidenced by Resolutions of the Board as may be given to them by the Board from time to time in relation

to any matter with respect to which the Board has power under this deed or under the Rules.

11. Payment of Pension and Pensionary benefits : On behalf of the Board the Trustees shall provide for the payment of Pension and Pensionary benefits on termination of service or death or retirement of the employees or otherwise as provided in the Rules of the Fund. It is expressly provided that all benefits granted by the Funds shall be payable only in India.

12. Trustees Liability : The Trustees shall not at any time be made liable for more moneys than shall have actually come into their hands or for any sums exceeding the amount payable under the Rules. The Trustees shall be entitled to be indemnified by the Board against all proceedings, costs and expenses occasioned in connection with the Fund not arising from their willful negligence or dishonesty. The Trustees shall not be responsible for the correct calculation, recovery or of the contribution payable by the Board nor shall the Trustees be bound at the request of an employee or otherwise to take any proceedings against the Board for money which such employees may consider should have been paid by the Board to the Trustees on such employees accounts. It shall not be obligatory on the Trustees to take any legal proceedings against a Co-Trustee for any unlawful act committed by him/her which leads to a financial loss to the Fund.

13. Accounts : The accounts of the Fund shall be maintained in India and shall contain such particular and in such form as the Trustees shall think proper and as required by law of all financial transactions of the Fund. The financial statements of the Fund shall be prepared on financial year basis and the same shall be audited by the Comptroller and Auditor General of India.

The Comptroller and Auditor General of India shall have access to all books, papers, vouchers, accounts and documents connected with the Fund and shall in writing report to the Trustees on the receipts and payments accounts. A copy of the audited accounts shall be furnished to the Board. Tax Audit shall be carried out as per the provisions of Income Tax Act, 1961. Provisions Regarding Trustees

14. Number of Trustees : The number of Trustees shall be at least 6 and only individual(s) resident in India can be appointed as Trustee(s).

15. Appointment of Trustees to be made by the Board : The power of appointing the Trustees shall be vested with the Board which shall while making such appointments observe the limitations laid down in these presents and the Board shall also have power to fill up at any time any vacancy in the number of Trustees and to remove a Trustee by giving seven days notice in writing to the Trustees at his/her last known address and to the continuing Trustees. The Trust shall be under no obligation to fill the vacancy occasioned in respect of any Trustee so removed or any other vacancy, in the number of Trustees.

16. Retirement of Trustees : A Trustee may retire at anytime on giving seven days notice in writing to the Board and to the Chairman of the Trustees of the Fund of his/her desire to retire.

The office of Any Trustee shall be vacated if the Trustee being an employee ceases to be in the service of the Board or if he shall permanently leave India or for reasons of illness or infirmity or mental incapacity has become incompetent or incapable to act in the opinion of the other Trustees.

17. Meeting of the Trustees and quorum : The Trustees may meet together for conduct of business and adjourn and otherwise regulate their meetings and proceedings as they may think fit. Two Trustees present at the meeting shall be a quorum.

18. Voting at meeting : The Board shall nominate one of the Trustees to be the Chairman of the Trustees of the Fund. The Chairman, Mumbai Port Trust, ex-officio shall be Chairman of the Trustees of the Fund. The Board shall also nominate a Trustee to be the Deputy Chairman who shall act in the absence of the Chairman and exercise all the powers of the Chairman. Each Trustee present at the meeting shall be entitled to one vote on any matter arising thereat and in case of equality of votes the Chairman shall have second or casting vote.

19. Decision by majority : All matters considered at the meeting shall be decided by a majority of votes. The Trustees shall be at liberty to pass a resolution without any meeting of the Trustees, provided that such resolution

shall be evidenced in writing and passed by majority after being circulated.

20. Trustees' power to appoint a Secretary : The Trustees shall have power to appoint anyone of the Trustees to act as a Secretary of the Fund and the said Secretary may be vested with such power for management of the Trust as the Trustees may from time to time in their absolute discretion determine. The Financial Adviser and Chief Accounts Officer, Mumbai Port Trust, ex-officio shall act as Secretary of the Fund. For smooth functioning, the Secretary shall delegate powers to the Deputy Chief Accounts Officer/Accounts Officers of the Accounts Department who shall be authorized for the same. With the consent of the Board the Trustees shall be empowered to employ any person(s) to do any legal accounting or other work which they may consider necessary or expedient in connection with the management of the Fund or the assets thereof. It is however provided that no Trustee of the Fund shall be paid any remuneration for such services.

21. Signing of receipts, cheques and correspondence : All correspondence in relation to the operation of this Fund may be conducted by the Chairman or in his absence by the Deputy Chairman and in the absence of both by the Secretary. Receipts for money received may be signed by the Secretary or by the Deputy Chief Accounts Officer authorised by him in this behalf and in the absence of both by the Accounts Officer authorised for the same. Cheques on the new bank account for managing financial transactions relating to Pension Fund may be drawn and signed by the Chairman or the Deputy Chairman or by the Secretary of the Fund or the Deputy Chief Accounts Officer or any other Officer of the Accounts Department, Mumbai Port Trust authorised for the same. The Chairman or Deputy Chairman or the Secretary of the Fund or the Deputy Chief Accounts Officer or any other officer of the Accounts Department, Mumbai Port Trust shall operate the new bank account for managing financial transactions relating to Pension Fund.

22. Absence of a Trustee and power of remaining Trustees : If any Trustee or Trustees shall be temporarily absent from India the Trustee who shall remain in India shall during such absence have full powers to act under the Trust thereof as if they were the only Trustees of these presents.

23. Investment of Fund Moneys : All monies contributed to the Fund or received or accrued by way of interest or otherwise to the Pension Fund shall, within 15 days from the date of contribution, receipt of accrual as the case may be, be deposited in a Scheduled Bank, excluding the requirement from time to time which may be kept as cash for meeting the expenses of the Trust. All monies that are not immediately required for the purpose of the Fund shall from time to time, be invested in accordance with Rule 85 read with sub-rule (2) of Rule 67 and Rule 89 of Income Tax Rules, 1962 as may be amended from time to time provided that the principal so invested and the interest thereon are payable in India.

Winding up of the Fund

24. The Fund shall be wound up in anyone of the following events :

Upon the winding up or dissolution of the Trust (unless such winding up or dissolution is for the purpose of amalgamation, reconstitution or reconstruction). For the purpose of the winding up of the Fund, the Trustees shall first realise the value of the assets of the Fund and amounts so realised shall be allocated in the manner described below to the employees who are in the service of the Board on the date of winding up of the Fund after meeting the liabilities in respect of the outstanding claims, if any, pertaining to the employees who ceased to be in the services of the Board prior to the date of such winding up. The Trustees shall then ascertain the amount of Pension and Pensionary benefits accruing and due to all the employees of the Fund according to the provisions of the Rules by reference to the salary of the employees as on the date winding up and the length of service completed by them. If the total amount realised exceeds the total liability in respect of Pension and Pensionary benefits ascertained as above the Trustees shall earmark for each employee, the amount of Pension and Pensionary benefits accrued and due to him under the Rules out of the moneys realised and utilise the excess to provide additional benefits to the employees in proportions of their accrued benefits. If the amounts so realized is less than the said accrued Pension and Pensionary benefits, as aforesaid, the total amount shall be allocated to each employee in proportion to his accrued Pension and Pensionary benefits. Provided always that the Trustees shall obtain prior approval of the Ministry of Shipping, Government of India and the Commissioner of Income Tax in regard to the arrangements to be made by them for winding up of the Fund. Notwithstanding anything whatsoever stated in the foregoing paragraphs, the Trustees shall have absolute and uncontrolled discretion to consult an Actuary and adopt any other methods or principles for the winding up of the Fund or make such arrangements or enter into such agreements as they may deem fit and as shall in the opinion of the Trustees serve as far as may be wishes of the employees and nominees provided that any such arrangements or agreements shall be made only after obtaining the prior approval of the Ministry of Shipping, Government of India and the Commissioner of Income Tax.

25. Winding up of the Trust for reconstruction : In the event of the Trust being wound up voluntarily or for the purpose of reconstruction, reconstitution or amalgamation with any other Entity, the Trustees may make such arrangement or enter into such agreements as approved by the Ministry of Shipping, Government of India and the Commissioner of Income Tax.

26. Jurisdiction: This Deed and any variation thereto shall be governed by the Laws of India and the Trust Fund hereof shall always be located in India.

In Witness where of the Parties to this Deed have set their Respective Hands, Signed, Sealed and Executed this Deed on the Day, Month and in the Year First herein above Mentioned in the Presence of :Signed, Sealed and DeliveredBy and on behalf of BoardShri V.S. Khadkikar, Manager (SOM), Mumbai Port TrustPursuant to Board Resolution No. 5 dated 13.1.2004In presence of

1.

) Shri _____

2.

) Shri _____The Common Seal of the Board ofTrustees of the Port of Mumbai wasAffixed in the presence ofKum. Saroj G. Tahiliani, Secretary,Mumbai Port Trust.Signed and DeliveredBy the above named

1.

) Smt. Rani Jadhav, I.A.S.Chairman, MbPT Ex-officio

2.

) Shri Ashok Kumar Bal, I.R.S.Dy. Chairman, MbPT Ex-officio

3.

) Shri K.K. Vaidyanathan,FA & CAO, MbPT Ex-officio

4.

) Kum. Saroj G. Tahiliani,Secretary, MbPT Ex-officio

5.

) Shri S.R. Kulkarni, Trustee representing Port Labour

6.

) Dr. Shanti Patel, Trustee representing Port LabourIn presence of

1.

) Shri _____

2.

) Shri _____