

No. 11015/2/2012/D(Lands)
Government of India
Ministry of Defence

New Delhi
Dated 2nd February, 2016

To

1. The Chief of Army
2. The Chief of Air Staff
3. The Chief of Naval Staff
- ✓ 4. The Director General Defence Estates
5. The Chairman, Ordnance Factory Board, Kolkata
6. DG QA, New Delhi
7. DRDO New Delhi

Sub: Transfer of Defence land for Public utilities and Public infrastructure projects.

Sir,

The Ministry of Defence has been receiving requests for transfer of Defence land from Central Government Departments, State Governments and Organisations controlled by it as also local bodies, for execution of projects related to creation/up-gradation of Public infrastructure/utilities. Such requests have hitherto been processed in terms of MoD ID No. 11015/2/86/D(Land) dated 11.07.1986 and on the merits of each case. As a result of absence of any clearly laid down and comprehensive policy prescribing terms and conditions and procedures for processing such requests there have been delays and lack of uniformity in handling such requests. Several Ministries of the Government as also State Governments, have therefore, questioned the policy of the Ministry for providing Defence land and the time taken in arriving at a decision. The policy and procedure for providing defence land for Public utilities and Public infrastructure projects has therefore been reviewed in consultation with all stake holders in the Ministry. Following the review a Procedure for Transfer of Defence land for Public utilities and Public infrastructure projects was finalised and was circulated, vide this Ministry's letter of even number, dated 11.03.2015, to all Secretaries of the Ministries/Departments and all Chief Secretaries of the States & UTs. A copy of the same has also been circulated to Services and other Defence Organizations vide this Ministry's ID Note of even number dated 16.03.2015.

2. In order to complete the process of formulating a comprehensive policy on the subject of "Transfer of Defence land for Public utilities and Public infrastructure projects" it has been decided to additionally prescribe terms and conditions for different modes of Transfer of Defence Land and internal procedures for processing requests for transfer of Defence land from Central Government Departments, State Governments and Organisations controlled by it as also local bodies, for execution of projects related to creation/up-gradation of Public infrastructure/utilities. These are given in the following paragraphs.

3. **General Aspects:**

- a. Keeping in view the operational requirement of Armed Forces no Defence land is normally permitted to be transferred for non-Defence use.
- b. As an exception to this policy requests for Defence land received from Central Government departments, state Governments and organisations controlled by it as also

local bodies for execution of projects related to creation/upgradation of public infrastructure/utilities are considered on the merits of each case.

- c. Land may be transferred for Public infrastructure/utility projects such as Roads, Flyovers and Road Over Bridges, Airports, Railway lines, Metro rail projects, Petroleum, Gas, water, electricity and sewerage pipe lines etc. by the Ministry after satisfying itself that it can be alienated without compromising the essential functions of the user service or by making suitable alternative provisions to enable the user agency to carry on with its essential functions smoothly.
- d. Land will be considered for transfer only for projects being implemented by Central Government Departments, State Governments and organizations under their control as also by Local bodies. In the case of PPP projects transfer of Defence land will be considered only where the ownership of land will remain with the Government.
- e. Transfer of Defence land is normally on the basis of exchange of equal value land to be provided by indenting authority. If, however, IA is neither a land owning agency or does not have an arrangement with State /UT Governments for providing land for the project transfer is considered on payment of current market value of land.
- f. Land is also given on lease/license with premium and rent being fixed on the basis of nature of project.
- g. The mode and terms of transfer of land for such projects would depend, essentially, upon the nature of the project, purpose being served, rights sought in the land proposed for transfer, time frame of the requirement i.e. permanent, long term or short term.
- h. MoD shall retain the right to resume/reclaim ownership of the land transferred if the land is kept vacant or not used till a period of 5 years for the purpose for which it was transferred on refund of compensations originally received from the indenting agency in case of non utilisation of land. However compensation will not be refunded if land is utilised for other than the stated purpose without the prior approval of MoD.

4. **Procedure and time lines** for dealing with requests for transfer/alienation of defence land for Public Utilities and Public Infrastructure projects will be as specified vide letter no 11015/2/2012/D(Lands) dated 11.3.2015, communicated to Service Hqrs and other Defence Organisations vide ID Note of even number dated 16.3.2015.

5. **Terms and Conditions for different modes of Transfer of Defence Land.**

A. **Permanent Transfer of Land:** When land is required to be transferred permanently this would be done on the basis of the following principles:

- a) Permanent transfer of land should be done on the basis of exchange of equal value land to be provided by the Indenting Authority. However, for linear projects where the Indenting Authority is neither a land owning authority nor does it have an arrangement with the State/ UT governments for providing land for the project and is therefore unable to provide equal value land partly or fully in exchange, transfer may be considered on (balance/full) payment of current market value. Market value of land will be fixed by DGDE in all cases based on STR or circle/ guideline rates of the State Government Inter-Departmental rates of land transfer will be used only where a Project authority has been specifically allowed by the Cabinet to obtain land on this basis from other Government entities.
- b) Cash compensation in lieu of land will only be applicable where the indenting Authority is a Department/Ministry of the Central Government, State /UT Government and organisations fully owned and controlled by it as also local bodies.

- c) As regards permanent assets and services located on defence land proposed to be transferred or affected by the transfer in any manner, the present cost of construction/ reconstruction/ shifting/ relocation of the such assets and services as assessed by the MES/ CPWD/ DRDO or any other Public Works Organization would be deposited by the Indenting Authority with the Public Works Organization selected for the purpose by LMA/ MOD, before the land is handed over by the User Service/DEO to the Indenting Authority. The Public Works Organization will carry out the work of construction of such assets as a deposit work on alternative land, as per approval obtained from the competent authority by the User Service/Department/Organization. However, in the case of critical assets such as security wall etc. Indenting Authority should be asked to carry out the work of construction of these assets prior to demolition/removal of existing assets.
- d) Defence land transferred permanently for a public project will be the minimum land operationally required for the project and will not be used for any other purpose or sub-allotted/ alienated to any other entity without the approval of the Ministry of Defence.

B: Transfer of Land on Lease: When the land is neither required permanently nor its ownership rights are required to be transferred, it may be transferred on lease hold basis, as per the requirement, on payment of an annual rent and one time premium. Rent and premium would be charged by adhering to the following general principles-

- a) For public projects being implemented by the Central or State Government or by organisations/bodics owned or fully controlled by it and by local bodies with Government funding, rent will be calculated at normal rates i.e. 2.5% of value of land computed on the basis of STR, in case of Defence land situated within the limits of Cantonment. For Defence land located outside the Cantonment, rent will be calculated @ 2.5 % of value based on Circle/guidelines rates notified by the State Government. If this is not available, value of land will be calculated by taking average sales statistics of the past three years. No premium shall be charged for grant of lease in the above cases. These concessional terms will only be available if such projects are providing services to the Public or to Defence organisations free of cost or at concessional rates. These terms will also be applied where surface rights on the land being leased remains with the MoD as in the case of Under Ground sections of Metro projects, Petroleum and Gas main pipelines etc.
- b) For public projects executed by joint ventures between government and private entities and public projects being executed in the PPP mode where capital investment is mainly provided by joint ventures or private concessionaires, rent will be charged on commercial rate which will be double the rate as prescribed in sub-para (a) above. In addition, a onetime premium will be paid by the Indenting Authority which will be calculated as follows:-

Lease Period	Premium
If the lease period is less than or equal to 05 years	05 times the Annual Rent
If the lease period is more than 05 years but less than 30 years	Annual rent multiplied by the number of years for which lease is executed or 20 times of the Annual Rent whichever is lower.

- c) In case there is an ambiguity, the decision as to whether a public utility project falls in the first category [as in sub-para (a)] or in the second category [as in sub para (b)] shall

be taken by the Ministry of Defence after obtaining inputs from the concerned Administrative Ministry and DEA.

- d) Depending upon the nature and intended utility of a particular public project, it will be within the competence of the Ministry of Defence to charge rent or premium, as the case may be, at different rates than those mentioned in sub-paras (a) and (b) above, provided that reasons thereof for approving a different rate shall be recorded in writing.
- e) The period of lease and provision for renewal will be decided on a case to case basis taking into account nature of the project, public purpose being served, ownership of the project and utility for the Defence Establishment and Cantonment. Renewal will also be subject to the condition that land continues to be used for the public purpose for which it was originally leased. For calculating rent at the time of extension or renewal of lease, the prevailing STR or value based on Circle/guidelines rates notified by the State Government, as the case may be, shall be adopted and the rent will be charged on the same principles as enunciated in sub-paras (a) and (b) above. However, no premium will be charged for extension or renewal of existing lease.
- f) Leases under para 5 B a) would be given for an initial period of 30 years extendable by two further periods of 30 years each i.e a total of 90 years. In case of other leases the term of the lease and schedule in which the lease will be executed will be decided, in consultation with DGDE, on case by case basis, depending upon the requirements in each case by suitably modifying the standard schedules provided under the CLAR, 1937. No part of the leased land will be used for purposes other than for which it has been leased and the land leased will not be sub-leased in full or part to any other entity without the approval of the MoD. In case of violation of any of the terms, lease will be terminated and the land will be taken back without paying any compensation for the infrastructure created there on.
- g) Depending upon the nature and intended utility of a particular public project, it will be within the competence of the Ministry of Defence to charge rent or premium, as the case may be, at rates different from those mentioned in sub-paras (a) and (b) above, provided that reasons therefore for approving a different rate shall be recorded in writing.

C. Permission to Use land on License Basis. : When only permission to do something on the defence land without grant of any easement or interest therein is required (such as construction of flyovers, Rail Over-bridges, laying electric cables, laying underground water or sewer pipe lines, domestic gas pipelines etc.) a license may be granted on payment of an annual license fee which shall be determined on following general principles:-

- a) For projects aimed at providing service or utility to public at large, proposed to be executed by the Central Government or a State Government or by organisations/bodies owned or fully controlled by them and by local bodies where the bulk of capital expenditure is to be borne by the Central, State or the Local Government, a nominal annual licence fee varying from Rs.1/- to Rs. 1000/- per sq. meter or running meter, depending on the nature of public use and utility for the Military Station/ Defence establishment/Cantonment will be charged. The specific range of licence fee chargeable under different categories will be subsequently worked out by DGDE and circulated.
- b) For projects proposed to be executed by joint ventures between government and private entities and public projects being executed in the PPP mode wherein capital expenditure is not mainly incurred by the Government and for projects executed on commercial terms, annual licence fee will be calculated at the rate of 2.5% of land value (normal rate) based on STR rates if the defence land is situated within the limits of Cantonment. For defence land located outside the Cantonment, annual licence fee

will be calculated at the rate of 2.5% of the present market value of the land as notified by the State Government or in its absence on the basis of cost of land calculated by taking average sales statistics of the past three years (Licence fee will be 2.5% of the cost of land so determined).

- c) No premium will be charged for grant of licence for purposes as in sub-para (a) and (b) above. Instead, a refundable security deposit, not exceeding 5% of cost of defence land involved in the project, as assessed by the DEO, will be deposited by the Indenting Authority with the DEO before the license for use of defence land is given by the DEO, on sanction by the Government. The refund of security will be made by the DEO on completion of the work and site clearance by the Indenting Authority. In case of non-compliance of any licence condition, claim by third party or damage etc., security deposit will be forfeited to the Government either in full or in part so as to indemnify the Government against any loss, claim or damage.
- d) The period of license and provision for renewal will be decided on a case to case basis taking into account nature of the project, public purpose being served, ownership of the project and utility for the Defence Establishment and Cantonment. Renewal will also be subject to the condition that land continues to be used for the public purpose for which it was originally licensed. For calculating rent at the time of extension or renewal of license same principles as enunciated in sub-paras (a) and (b) above shall apply.
- e) For licensing of any land vested in a Cantonment Board, similar procedure and terms as given in sub-paras (a) to (c) above shall apply, provided that the licence fee shall be payable to the Cantonment Board. Refundable security deposit in respect of land vested in a Cantonment Board shall also be deposited with the Board.
- f) The schedule in which the license will be executed will be decided on case-by-case basis, in consultation with DG DE, depending upon the requirements in each case by suitably modifying the standard schedule provided under the CLAR, 1937. No part of the licensed land will be used for purposes other than for which it has been licensed and the land licensed will not be sub-licensed in full or part to any other entity without the approval of the MoD.

6. **Procedures for processing cases are as follows:**

A. **Board of Officers**

On receipt of the Government order regarding 'in principle' approval for transfer of land and formal proposal of the Indenting Authority, a Board of Officers will be constituted by the User Service or Department in whose management the subject land is presently entrusted. The Board of Officers shall comprise representatives from LMA or user department, DEO, MES, State Revenue authorities and other stakeholders. The Board of Officers shall give its findings/ recommendations within 02 months of its constitution with regard to the following:

- (i) Complete details, location, area, survey number and present use of land which needs to be transferred, alienated or used (without transfer) for the proposed project for public purpose.
- (ii) Cost of land as assessed by the DEO based on current STR (if within Cantonment limits) or present market value (on the basis of rates notified by the State Govt or in its absence based on average sales statistics for the last three years), for lands located outside Cantonments.

- (iii) Present cost of construction/ reconstruction/ shifting/ relocation of permanent assets and services as assessed by the MES/DRDO/BRO/Cantonment Board or any other Public Works Organization which need to be dislocated or shifted in case land is alienated or allowed to be used for the intended purpose.
- (iv) Safety and security measures to be undertaken by the project authorities during construction phase and thereafter.
- (v) Draft MOU to be entered with the IA.

B. In cases where land is proposed to be transferred on "Exchange basis",

- (i) Joint survey report of representatives of User Service/Department, DEO, State Revenue authorities and Indenting Authority of alternative land proposed to be exchanged on equal value basis.
- (ii) State Revenue authorities shall certify that lands offered in exchange are free from all encumbrances.
- (iii) Cost assessment done by the DEO of lands proposed to be exchanged.

C. It shall be the joint responsibility of the User Service/Department, DEO and State Revenue authorities to complete the Board proceedings within 02 months and submit its recommendations.

D. The recommendations of the 'BOO' together with requisite land details, GLR/Revenue maps, site plan and certificates etc. shall be submitted to the LMA/User Service/Department. Two copies of recommendations of the Board of Officers shall also be given to the DEO.

E. The LMA of User Service or officer concerned of the Department shall forward to the Service HQ/Department HQ its recommendations alongwith the Board proceedings. While forwarding the Board proceedings LMA of User Service or command will also obtain views/comments of the appropriate authority of Directorate General of Defence Estates. Service HQ/Department will forward the Board proceedings alongwith its specific views to the Ministry after examining the recommendations of the Board of Officers and representative of DGDE. The Service HQ/Department should furnish its specific recommendations/views to the Ministry within one month from the date of receipt of Board proceedings by the LMA/officer concerned.

F. DEO shall also forward the proceedings/recommendations of the BOO, alongwith his views to PDDE who shall forward the same to DGDE with his specific views to the recommendations of DEO/ BOO. The Board Proceedings together with recommendations/ views of DEO and PD DE should reach DGDE within one month of receipt of Board proceedings by the DEO.

G. DGDE shall examine the recommendations/views of the Service HQ/Department and that of the PD DE/DEO concerned and submit a proposal to the Ministry within one month on the feasibility of alienating defence land and if so, the preferred mode of transfer, its modalities, costs and other terms and conditions.

H. Decision on transfer of defence land/working permission on Defence land

(i) MOD shall take a decision on transfer of land/grant of Working Permission to the indenting agency, in consultation with the User Service/Department/DG DE/other stakeholders within 01 month of having received the proposal from DGDE and will also finalize the mode of transfer together with other terms and conditions. It will simultaneously prepare and circulate a proposal for obtaining approval of the Cabinet for the transfer of Defence land.

(ii) After issuance of Government order granting working permission an agreement/MOU may be signed between all concerned incorporating all the terms and conditions. For this purpose standard MoUs may be drafted and kept ready to save time. In case any of the conditions of the MoUs are violated the same can be revoked and land taken back. Following the above the JA/Project authority will be allowed to commence work on the project subject to discharge of all obligations within the timelines agreed upon.

(iii) After Cabinet approval formal orders for transfer/exchange of land would be issued by MoD and formal handing over/taking over and correction of records will be undertaken by DGDE in consultation with the LMA/User Service.

7. All cases in which defence land is proposed to be transferred or alienated formal approval of the Cabinet will be sought.

8. This issues with the concurrence of Ministry of Defence (Fin) vide their U.O. No.24/Fin/W-I/16 dated 1.02.2016.

Yours faithfully,


(Surya Prakash)
Director (L&C)

Copy to:

1. The CGDA, Delhi Cantt
2. Ministry of Defence (Finance Division/W-I), New Delhi
3. The DGA (DS), L-II Block, Brassey Avenue, New Delhi
4. QMG Branch/ Plg (Lands)
5. D (Air-II)
6. D (Navy-III)
7. D (Q&C)
8. D (R&D)
9. D (QA)
10. D (GS-III)