

6.3.3.3 Comparison between Port of Tg. Priok and Port of Osaka

(1) Outline of Japanese Port Administration System

1) Characteristics of the System

The central government supervises each port, which is under the direct management of local government, through the establishment of a national port plan, disbursement of subsidies, and construction.

The main responsibilities of port administration in Japan are the development and maintenance of port facilities, including not only projects undertaken at the local level, but also the maintenance and management of facilities put into operation by the central government.

In major Japanese ports, generally, almost all port services have been provided by the private sector. In this sense, it can be said port management bodies in Japan are "landlord-type" organizations.

2) Character of "Public Terminal"

In "Osaka Port", Osaka City manages six "Public Terminals" for "general use" (first come, first served system). In this case, the City allows the private stevedoring companies to operate the public terminals. The private stevedoring companies make a direct contract with shipping companies for providing stevedoring services. The City must not obstruct or interfere with such private affairs.

3) Character of "Semi-Public Terminal" managed by "Terminal Public Corporation"

Japanese system has a other unique aspect in management & operation of the terminals. In 1981, the "Terminal Public Corporations" were established in major Japanese ports (Tokyo and Osaka). This system allowed the introduction of private capital in addition to national financial investment and loan capital for the funding of container berth construction. It also allowed for the recovery of construction and administrative costs through the lease of such facilities to specified shipping companies ("exclusive use").

In container and conventional terminals operated by "Osaka Port Terminal Development Corporation", the corporation "leases" all conventional terminals as well as container terminals to private companies such as shipping and stevedoring firms.

In semi-public wharves operated by the corporation, almost all port services have been provided by the private sector. Therefore, the style also can be said to be "landlord-type".

The following "Figure 6.3.3.4" shows the relationship among related organizations, and The location of the corporation terminal is shown in "Figure 6.3.3.5". The container terminal operation at "Osaka Port" is summarized in "Table 6.3.3.4" and conventional

terminal operation at “Osaka Port” is referred to in “Table 6.3.3.5”.

4) Outline of Port Operation

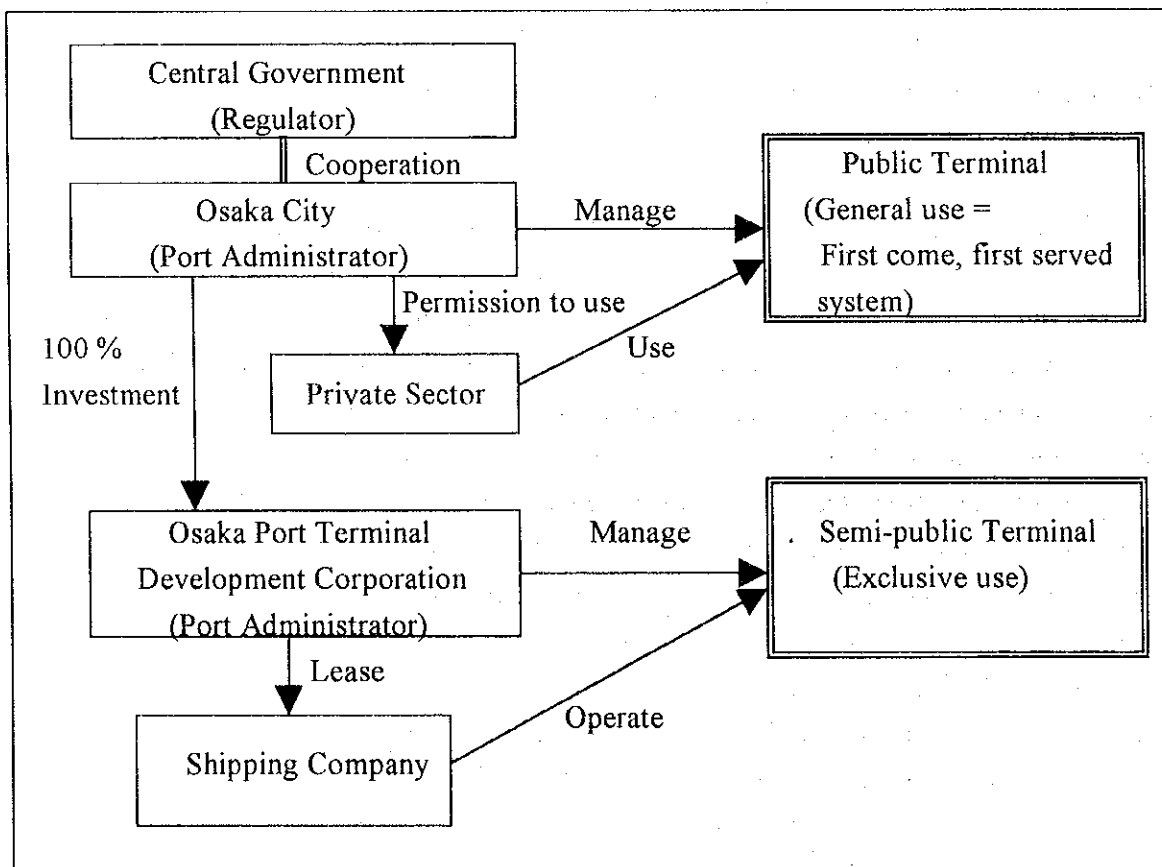
As explained, the port authorities in Japan are “landlord” bodies and are not deeply involved in day-to-day operations. Article 13 of the “Ports and Harbors Law” restricts port authorities from intervening with private companies, consistent with the spirit that port services should be provided by the private sector.

Only in cases when the private sector can’t provide necessary services do port administrators step in to offer these services.

Article 13 (Non-intervention with private enterprises)

1. The port authority must not obstruct or interfere with the fair activities of private enterprises in port transportation business, warehousing business and other businesses related to transportation and storage of goods or must not operate business in competition therewith.
2. The port authority must not give discriminatory treatment to any party with respect to the use of facilities and the operation and management of the port.

Figure 6.3.3.4 Relationship between Central & Local Government, Public Corporation and Private Sector in Japan



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Figure 6.3.3.5 Location of Terminals of Osaka Port Terminal Development Corporation

公社埠頭施設位置図

Location of Corporation Terminal

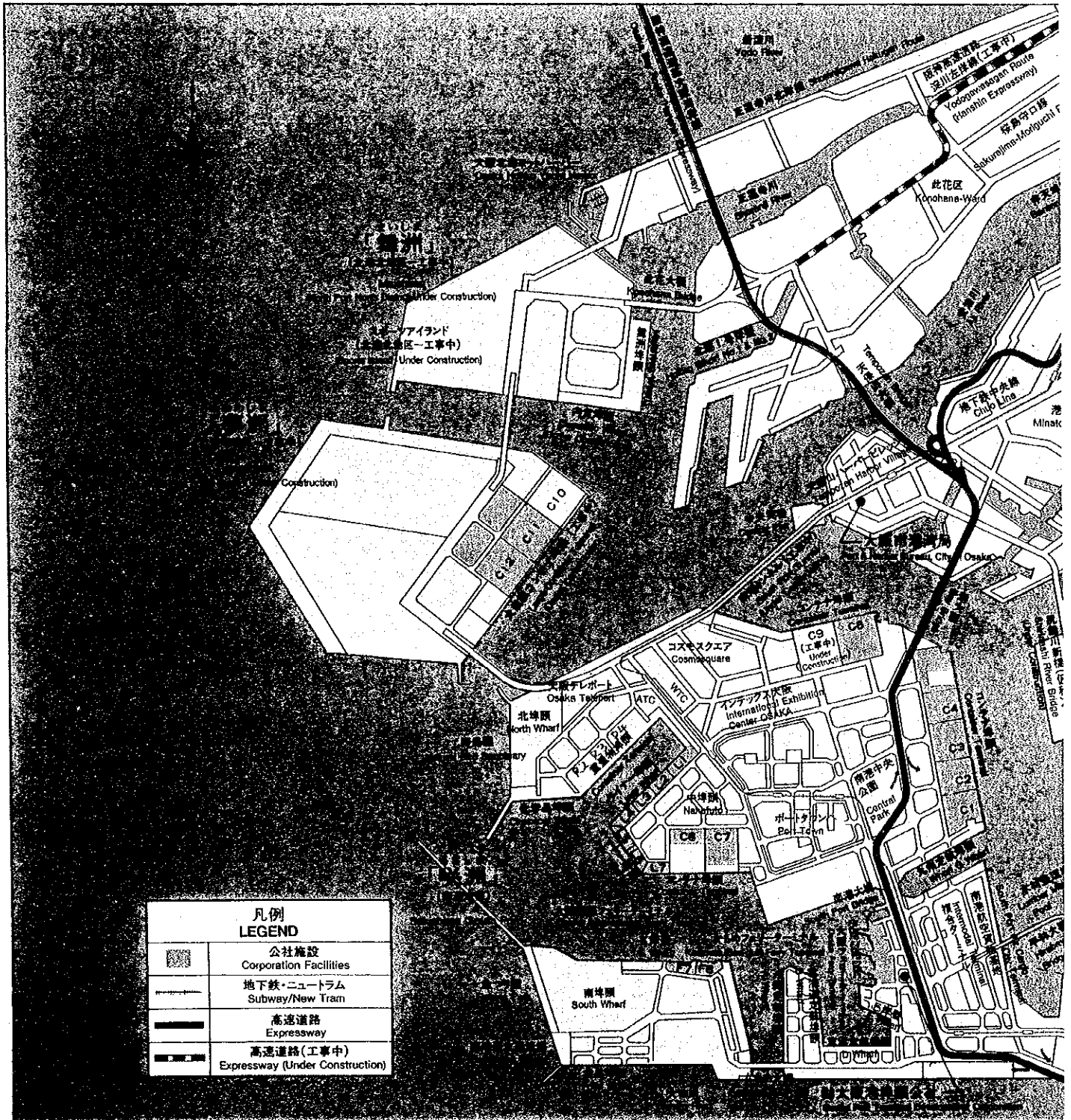


Figure 6.3.35 Location of Terminals of Osaka Port Terminal Development Corporation

公社埠頭施設位置図

Location of Corporation Terminal

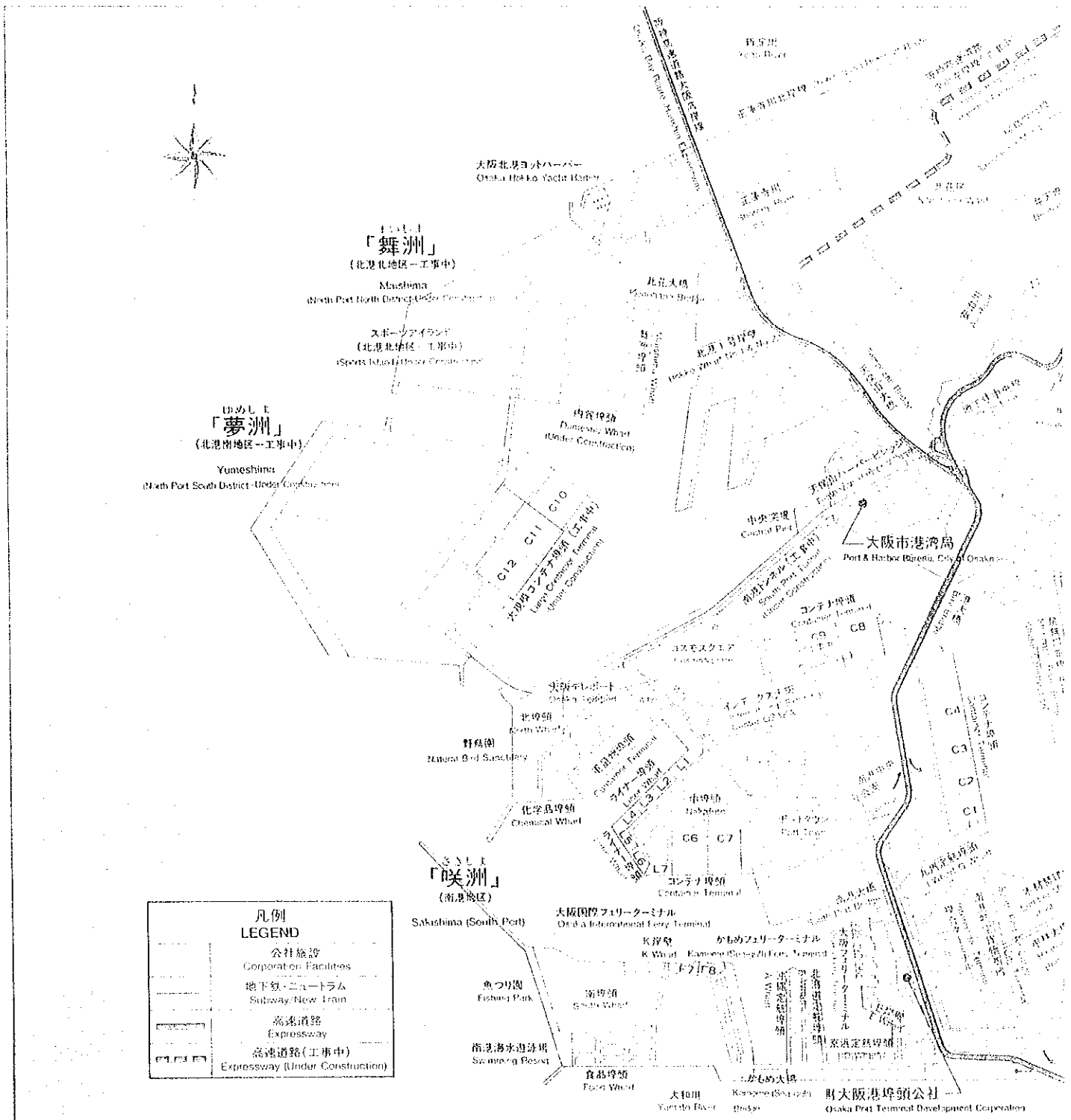


Table 6.3.3.4 Container Terminal Operation at "Osaka Port"

Management	Use	Berth No.	Length / Depth	Berthing Capacity (Tonnage)	Number of Gantry Cranes	Operation	
						Lessees	Terminal Operator
Osaka City	Public Container Terminal (General use)	R2	240m / -12m	20,000	3 units × 30.5t	Grant of use of facilities as appropriate	Private Sector
		R3	240m / -12m	20,000			
		R4	185m / -10m	10,000			
		C6	300m / -12m	35,000	3 units × 30.5t		
		C7	300m / -12m	35,000			
		C9	350m / -13m	45,000 (DW)	2 units × 40t		
Osaka Port Terminal Development Corporation	Semi-public Container Terminal (Exclusive use)	C1	350m / -13.5m	40,000	2 units	Hanjin Shipping Co. Ltd.	Private Stevedoring Company
		C2	350m / -13.5m	40,000	2 units	Mitsui O.S.K. Lines, Ltd.	
		C3	350m / -13.5m	40,000	2 units	Evergreen Uniglory Marine Co.	
		C4	350m / -13.5m	40,000	2 units	Neptune Orient Lines, Ltd.	
		C8	350 m / -13m	45,000	2 units	Kawasaki Kisen Kaisha, Ltd.	

Note : Data is as of May, 1996.

Source : City of Osaka

Table 6.3.3.5 Conventional Terminal Operation at "Osaka Port"

Management	Use	Berth No.	Length / Depth	Berthing Capacity (Tonnage)	Lessees	Routes
Osaka Port Terminal Development Corporation	Semi-Public Conventional Terminal (Exclusive use)	L1	200m / -10m	15,000	Japanese Private Stevedoring Company	Taiwan, North America
		L2	200m / -10m	15,000		Korea, Brazil, China, Indonesia
		L3	200m / -10m	15,000		Korea, Brazil
		L4	200m / -10m	15,000		North America
		L5	200m / -10m	15,000		South America, North Europe, Taiwan, China
		L6	200m / -10m	15,000		North America, China, Vietnam
		L7	200 m / -10m	15,000		Korea, Australia, Indonesia, Hong Kong, Bangkok, North America, Persian Gulf, China

Note : Besides the above terminals, there are many other public berths (City) for conventional cargoes based on "first come, first served system".

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(2) Comparison of Port Management & Operation between Indonesian and Japanese Port

Comparison between Port of Tg. Priok and Port of Osaka in Japan regarding working fields among government, port administrator and private sector can be summarized in the Table 6.3.3.6.

1) Regulatory Administrations

Basically, both in Japan and Indonesia, the overall administrations such as navigation safety, immigration and custom must be controlled by the "central government" from the view of national interests. That is because these works have much to do with the security and authority of the country.

2) Port Planning

In Japan, in principle, the Port Master Plan is established by local government (port

management body) through the approval of “Central Port Committee” and “Regional Port Committee”. In Indonesia, port planning should be established by cooperation between IPC (port management body) and the government.

3) Port Management and Operation

In “public terminals” or “semi-public terminals” in the Port of Osaka, utility, pilot and tug services are provided by private sector. However, only in case when the private sector can't provide necessary services, the port administrators can offer these services. Therefore, these services also have been provided by the city staff.

On the other hand, in Indonesian ports, most of those services are directly provided by IPC. But, IPC II attempts to introduce capital and technology of the private sector by some way or another. For example, IPC rents some “pilot boats” from the private sector, and the revenues are shared between them. Some “tug services” are offered by the private sector, and the revenues are shared between IPC and the private sector.

4) Terminal Operation

① Osaka port

As explained before, in Japan, the terminal operation at both “public” and “semi-public” terminals have been provided by the private sector. The particular points are as follows ;

- (a) “Public” terminals, which are directly managed by the city, are used on a “first come, first served” basis (general use). The city leaves the operation to the private companies through rent agreement. The operations are offered by the “private stevedoring companies”.
- (b) The operation of “semi-public” terminals, which are managed by “Port Terminal Development corporation” are left to shipping companies for “exclusive use” through lease-agreement. The cargo operations are conducted by private terminal operator based on individual contract with shipping companies or consignors, and port authorities are not involved in these activities.
- (c) That is, the port authorities in Japan are in a position to either “rent” or “lease” their facilities to those private companies.
- (d) The activities of the private sector are directly regulated and advised by the MOT through issue of licenses for cargo operations for each port.
- (e) The work conducted by cargo operations in Japan is not limited to stevedoring, but also includes longshoring, customs brokerage, shipping agency, cargo brokerage and trucking. In other words, cargo operators in Japan are eligible to function as freight forwarders, thus dealing with all logistics operation within a single company.

② Tg. Priok port

In Tg. Priok port, PSP in terminal operation has been advanced to some extent. Some terminal services such as stevedoring operation are already provided by IPC or private sector. In 1993, the port began experimenting with agreements in which private stevedoring companies are responsible for all operations within specified areas of the break-bulk sections of the port. In 1998, "joint operation" between IPC and the private sector at CT III has just started.

However, different from neighboring major ports in Asian countries, all terminal operations are not yet left to the private sector.

Table 6.3.3.6 Comparison between Port of Tg. Priok and Port of Osaka
Regarding the Working Fields

Function		Port of Tg. Priok Indonesia	Port of Osaka Japan
Regulatory administration	Navigation safety	Central Government	Central Government
	Immigration	Central Government	Central Government
	Custom	Central Government	Central Government
	Quarantine	Central Government	Central Government
	Security	Central Government	Central Government
Establishment of Port Master Plan		Central Government / IPC	Local Government / Central Government
Port management / operation	Management body	IPC	Local Government
	Utility supply	IPC	* Public wharf Local Government * Semi-public wharf Private Sector (Management Contract)
	Pilot service	IPC	Private Sector (Management Contract)
	Tug service	IPC / Private Sector	Local Government/ Private Sector (Management Contract)
Terminal operation	Cargo handling at container terminal	IPC	Private sector
	Cargo handling at conventional terminal	IPC / Private sector	Private Sector
	Stevedoring	IPC / Private sector	Private Sector
	Warehouse / shed	IPC / Private sector	Private Sector
	CFS	IPC	Private Sector
	Trucking	*IPC (from wharf to warehouse) *Private sector (from warehouse to factory)	Private Sector

Source : IPC II

City of Osaka

5) Types of Development, Management & Operation at the Container Terminal in Japan

The following Table 6.3.3.7 shows summary of administration at container terminal in Japan. While “Japanese public berth”(ex. managed by Osaka City) can be classified into No. ②, “Japanese semi-public berth”(ex. managed by Osaka Port Terminal Corporation) can be classified into No.③.

Table 6.3.3.7 Types of Development, Management & Operation at the Container Terminal in Japan

No	Port Type	Contract type	Planning & Supervision	Construction			Operation	
				Channel dredging	Site development	Terminal Facilities	Administrative Operations	Cargo handling
①	Operating Port	-	Public	Public	Public	Public	Public	Public
②	Tool Port (Japanese public berth)	Lease	Public	Public	Public	Public	Public	Private
③	Tool Port (Japanese semi-public berth)	Lease	Public	Public	Public	Public	Private	Private
④	Land-lord Port	Lease	Public	Public	Public	Private	Private	Private
⑤	BOT	BOT	Public	Public	Private	Private	Private	Private

Prepared by OCDI

6.3.3.4 Terminal Operations in Major Asian Ports

(1) General Explanation

At the neighboring major ports in Asian countries, the services of container terminal have been provided by private sector through lease, management or operation contract agreement. The following Table 6.3.3.8 shows the differences among lease, management and operation contracts.

Generally speaking, there are many different types, however, the most clear differences among them are in who develops the facilities and who provides cargo handling facilities with whose funding.

- 1) There are many different kinds of “lease agreement”. Generally, public sector leases only land to private sector, and private sector develops the terminal and provides machinery for itself. However, in another “lease agreement”, while public sector develops the terminal and yard, private sector rents the land & facilities and provides only machinery.
- 2) In a “management contract”, while public sector is usually responsible for the development of the terminal, private sector provides only machinery.
- 3) In an “operation contract”, private sector doesn’t need to provide even machinery. Therefore, while the contract term of management contract is long, that of operation contract is short.

The examples of following Asian ports shall be introduced in the next section.

- 1) Laem Chabang port in Thailand
- 2) Manila port in Philippines (MICT & South Harbor)
- 3) Keran port in Malaysia (North, South & West port)

Table 6.3.3.8 Differences among Lease, Management and Operation Contracts in Container Terminal Operation

Type		Contract Type	Developer of facilities	Funding	Management / operation	Collecting port charges	Ownership
Lease	Land lease	Lease contract	Private sector provides stevedoring services	Private	Private	Private	Public
	Lease	Lease Contract	Public / Private for only providing of machinery	Public / Private	Private	Private	Public
Management contract		Contract for stevedoring service (long term)	Public / Private for only providing of machinery	Public / Private funding for only cargo handling facilities	Public / Private	Private	Public
Operation contract		Contract for stevedoring service (short term)	Public	Public	Public / Private	Private	Public

Prepared by OCDI

(2) Laem Chabang Port in Thailand

1) General Explanation

The port managed by PAT (Port Authority of Thailand) started operation in 1991. It is designated as a full-scale seaport for international trade to render services to large container ships and bulk carriers which can't be accommodated at Bangkok port. It consists of 8 terminals, 5 (B1~B5) of which are container terminals, which can accommodate container ships of 30,000 to 50,000 DWT and containerized cargo of 4.5 million tons per year.

PAT constructed the basic facilities (quay, breakwater, channel basin, land reclamation & so on) at CT B1~B4. Only CT B5 has been developed under the "BOT-based" contract.

Since the government has the policy to encourage PSP so as to achieve high efficiency and to be internationally competitive, these container terminals have been privatized as follows ;

2) Container Terminal B1~B4

The present situation of terminal operation is shown in the following Table 6.3.3.9. The operation of all 4 container terminals is left to the private sector through "lease" or "contract out". All contractors of PAT include international companies. Most of the contract terms are relatively long, i.e., 12-year period, and can be renewed for another 5 years.

While PAT has obligations to provide all kinds of facilities including transtainers and trailers on "lease agreement", PAT has only to provide infrastructure on "contract out agreement". The operators have to pay PAT a certain amount of revenue per TEU of container throughput in return. Terminal B1 used to be directly operated by PAT. However, it was leased to a private company (Laem Chanang Terminals Ltd.) from 1995.

3) Container Terminal B5

Different from CT B1-4, the construction and operation of CT B5 was left to a tender based on BOT style in 1996. LCIT has started part of its operation since December 1997, and it expects full-scale operation in 1998. Under the BOT-based contract, LCIT has to build infrastructure such as quay wall and acquire all necessary facilities on its own. It was required to pay construction costs (about US\$60 million) as well as the rent (about US \$40 million).

4) Particularities of the Terminal Operation in Laem Chabang

- ① In Bangkok port, in principle, PAT does not leave all operation to private companies through lease or contract out, and directly manages and operates the terminals. Private

sector only participates in some operations such as cargo handling service. However, even Bangkok port has now strong pressure for more efficient management and operation.

- ② However, in Laem Chabang port, the operation of all container terminals is now left to international private sector. In this case, PAT plays only the role of “land-lord”. In the port, the concept of the operation is to secure the effective and efficient operation through the competition of “plural terminal operators”. Laem Chabang has a very good reputation as an efficient and user-oriented port.

Table 6.3.3.9 Terminal Operation in Laem Chabang in Thailand

Description	B2	B3	B4
Length	300m	300m	300m
Depth	-15m	-15m	-15m
Contract style	Lease	Contract out	Contract out
Management body	PAT	PAT	PAT
Contractor (Operator)	Evergreen Container Terminal Co., Ltd.	Eastern Sealaem Chabang Co., Ltd (=ESCO) * Consortium of Thai company (51%) & Japanese capital (49%)	Thai International Port Service Co., Ltd (=TIPS) (e.g.) TIPS Co. Ltd. & Japanese Shipping Lines
Contract year	1992	1992	1992
Terms of contract	12 years	12 years	12 years
Facilities provided by PAT	Terminal, Gantry crane, Yard, others Transtainer, Trailer	Terminal, Gantry crane, Yard, others	Terminal, Gantry crane, Yard, others
Equipment provided by counterpart	-	Transtainer, Trailer	Transtainer, Trailer
Lease charge	Fixed rent	Share of total terminal income PAT : contractor = 33% : 67%	

Description	B1	B5
Length	300m	450m
Depth	-15m	-15m
Contract style	Lease	Lease BOT base
Management body	PAT	PAT
Contractor (Operator)	Laem Chabang Container Terminal Co., Ltd (LCB)	Laem Chabang International Terminal Co., Ltd (LCIT) * P&O 49% That companies 51%
Contract year	1995	1996
Terms of contract	12 years	30 years
Facilities provided by PAT	Terminal, Gantry crane, Yard, others Transtainer, Trailer	-
Equipment provided by counterpart	-	Construction costs : About US\$60 million
Lease charge	Fixed rent	Lease charge for 30 years : About US\$40 million

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(2) Manila Port in the Philippines

1) Manila International Container Terminal (MICT)

Major container terminals at MICT have been operated by ICTSI since 1988 based on 25-year lease agreement.

2) Container Terminals at South Harbor in Manila Port

The operation of the container terminal at South Harbor has been left to the private sector (ATI = Asian Terminal Inc.). In this lease agreement, while PPA collects the port dues & berth fees from users for use of facilities, ATI gets stevedoring fees for containers from users.

Table 6.3.3.10 Terminal Operation in Manila Port

Port Name	Management Body	Contractor	Contract Type
Manila International Container Terminal (MICT)	PPA (Philippine Port Authority)	Consortium of private companies (ICTSI – International Container Terminal Services Inc.)	Lease (25-year lease agreement)
Container terminals at South Harbor in Manila port	PPA (Philippine Port Authority)	Asian Terminal Inc. (ATI)	Lease

Prepared by OCDI

(3) Keran Port in Malaysia

Terminal operations of almost all terminals (container terminals & non-container terminals) at the North, South & West ports are left to the private sector through “long-term” lease contract (21-year or 30-year lease). The details of the operations are referred to in “Appendix for Chapter 6.3.3”.

As a result of privatization, the jobs of KPA (Keran Port Authority) are limited to “formulating port master plan”, “supervising the standard for construction of facilities” and “managing small portions of the properties”.

To put it shortly, almost all services are provided by the private sector, and KPA (port management body) plays a role of only “land-lord”. The following Table 6.3.3.11. shows the summary of port service providers at Keran port.

Table 6.3.3.11 Summary of Port Service Provider at Keran Port

Port name	North Port	South Port	West Port
Terminal operation at CT	KCT	KPM	KMT
Terminal operation at other terminals	KPM	KPM	KMT
Other port services (pilot, tug & so on)	KPM	KPM	KPM

Prepared by OCDI

6.3.3.4 Recommendation

(1) General Concept

It is important for the government and IPC to invite the private sector in port activities by degrees. Generally, private sector involvement in those fields will bring not only efficient & effective works with lower costs for the government but also a higher level of services for users.

At the same time, the government shouldn't neglect the issues brought by PSP. For example, the disorder and uncontrolled private participation often causes excessive competition and therefore lower level of service. The government must make good use of the merits, gradually introducing the know-how & technology of the private sector.

(2) Recommendation

- 1) The government should promote PSP in port services except for "regulatory administration" and establishment of "Port Master Plan".
- 2) "Utility supply", "pilot service" and "tug service" should be widely opened to the private sector in order to provide sufficient service with lower fee. These services are relatively profitable for the private sector, and the services directly provided by IPC tend to be unreasonably costly, inefficient and ineffective. Therefore, it is very important for the government to encourage private sector involvement.
- 3) PSP in port services such as "terminal operation" should be promoted. The most effective way to make port activities more "market-oriented" is to introduce the private sector to port operation to a considerable extent.

While the government and IPC should take responsibility for the whole management & operation, it is advisable for the public sector to entrust the terminal operation to commercial private sector based on "market principles". As explained before, in major ports in the world including Japanese & neighboring Asian ports, the port management bodies play the role only of "land-lord".

- 4) Especially, the operation services of existing "container terminals" should be provide by the private companies through lease or management contract. In the near future, the operations of existing "full container terminals" for international vessels should be left to the private sector as shown in the following Table 6.3.3.12. However, the operation of other terminals should be directly provided by IPC for the time being.

Table 6.3.3.12 Existing Full Container Terminals in Indonesia

Port Name	Terminal Name	Length	Recommendable Contract
Belawan	Gobion Berth	500m	Lease or management contract
Tg. Priok	CT I	900m	Lease or management contract
	CT II	510m	Lease or management contract
	CT III	450m	* 2 Joint operation
Tg. Perak	CT II	500m	Lease or management contract
	CT III	500m	* 2 Joint operation
Tg. Emas	Container	345m	Lease or management contract
Panjang	Berth E	300m	Lease or management contract
Ujung Pandang	New Hatta	490m	Lease or management contract

* Note 1 : These terminals and container handling facilities are constructed by IPC.

2 : These terminals are being operated or will be operated by “joint operation”.

- 5) The government should strive to introduce “tool port type” or “land-lord port type” for terminals of “new ports” such as Bojonegara and Batam.
- 6) The “shipping company” (tenant) and “stevedoring company” (terminal operator) shall play a key role in container terminal operations. In “land lord type” ports, the shipping companies shall be given an opportunity to provide “superstructure” by themselves.
- 7) In “tool port” or “land-lord” ports, the effective and efficient operation will be promoted through the competition of “plural terminal operators” including IPCs.
- 8) It is a good idea for the government to encourage the merger of small-capital maritime related companies including shipping, stevedoring and warehouse companies so that those companies will be able to provide higher quality of services with lower prices for users.

6.3.4 Review of Possible Forms for Port Development and Operation

6.3.4.1 Scope of Works of PSP

(1) Present Situation of PSP Port Development Projects by Type

1) General

So far, progress has not been very rapid in introducing PSP into the port development. The few projects underway are mainly "joint venture type" agreements with IPC (Joint Operation) providing the infrastructure and the private sector providing equipment. Although DGSC wants to employ more "BOT-type", there are not so many BOT projects at present.

Furthermore, in general, the private sector is interested only in profitable port projects such as development and operation of container & bulk terminals. The government and IPC should patiently and carefully consider how to induce the private sector in port projects by some way or another.

2) Possible PSP Types by Business Segment

There are no well-established rules for deciding which projects should be implemented by PSP. The following Table 6.3.4.1 shows the scope of works which should be done by private sector in a booklet titled "INVESTMENT OPPORTUNITIES IN INDONESIAN PUBLIC PORTS" issued by DGSC on August 25, 1994.

It is important for the government and IPC to establish a clear mechanism for identifying and selecting PSP projects.

(2) Review of the Existing Scope of PSP Works

Generally, the existing standard is clear to investors. However, the following items also should be considered in classifying the scope.

- 1) The effective PSP program can be achieved based on careful thought and determination.
- 2) In port development, the scope of profitable facilities is limited, therefore the scope of works which should be done by PSP is naturally limited.
- 3) Besides, various kinds of conditions such as profitability of the projects, location and future prospects should be taken into consideration in applying the classification of PSP type.
- 4) However, as many PSP types as possible should be introduced. Especially, considering

the world trends in major ports , “lease” or “contract out” agreement shall be further utilized.

Table 6.3.4.1 Existing Scope of Works by Private Sector in Port of Indonesia

No	Business Segment	Description	Kind of Contract
1	Container Terminal	Development and Operation of ① Wharf ② Yard ③ CFS ④ Equipment	JO / BOT
2	Conventional Terminal	Development and Operation of ① Wharf ② Storage ③ Equipment	JO / BOT
3	Bulk Terminal	Development and operation of ① Wharf ② Storage ③ Equipment	JO / BOT
4	Passenger Terminal	Development and Operation of ① Wharf ② Passenger Terminal ③ Supporting Facilities	JO / BOT
5	Ship's Service	Pilotage and Towage Operation	-
6	Water Supply	Development and Operation of Water Supply	JO / BOT
7	Electricity Supply	Development and Operation of Electric Supply	JO / BOT
8	Handling Equipment	Procurement and Maintenance of Port Equipment	JO
9	Waste Ccollection	Development and Operation of Waste Collection, Reception	JO
10	Reclamation	Development and Operation of Reclamation	Land lease or Profit sharing
11	Port Services	Procurement and Operation of Information System	JO
12	Port Training	Port training Program	JO

Source : DGSC

(3) Recommendation

1) Operation of (Existing or New) Container, Conventional & Bulk Terminal

As explained in Chapter 6.3.3, the introduction of “lease” or “management contract” should be considered for the operation of container, conventional & bulk terminals.

2) Ship’s Service, Water Supply and Electric Supply

The introduction of PSP through “management contract” in the field of port services such as “pilotage”, “towage”, “utility” and other port services makes it possible for the government to provide the services to users at lower costs.

3) Handling Equipment and Waste Collection

In those fields, the employment of “contract out” agreements should be considered. Compared with the services directly provided by IPC, the services provided by the private sector will be cheaper for users.

4) Reclamation

In case of reclamation project, “BT” (Build and transfer) type also should be introduced.

The new scope of works by the private sector is envisioned in the following Table 6.3.4.2.

Table 6.3.4.2 New Scope of Works by Private Sector in Indonesian Ports


No	Business Segment	Description	Possible Forms
1	Container Terminal ① Wharf ② Yard ③ CFS ④ Equipment	Development & Operation	JO / BOT
		Operation	Lease / Contract Out
2	Conventional Terminal ① Wharf ② Yard ③ Equipment	Development & Operation	JO / BOT
		Operation	Lease / Contract Out
3	Bulk Terminal ① Wharf ② Storage ③ Equipment	Development & Operation	JO / BOT
		Operation	Lease / Contract Out
4	Passenger Terminal ① Wharf ② Terminal ③ Supporting Facilities	Development & Operation	JO / BOT
5	Ship's Service	Pilotage & Towage Operation	Contract Out
6	Water Supply	Development & Operation	JO / BOT
		Operation	Contract Out
7	Electricity Supply	Development & Operation	JO / BOT
		Operation	Contract Out
8	Handling Equipment	Procurement & Maintenance of Equipment	JO / Contract Out
9	Waste Collection	Development and Operation	JO
		Operation	Contract Out
10	Reclamation	Development and Operation of Reclamation	Land lease, Profit Sharing or BT (Built & Transfer)
11	Port Services	Procurement and Operation of Information System	JO
12	Port Training	Training Program	JO

6.3.4.2 Review of Possible Forms for Development Projects

(1) Classification of PSP Types

The classification of PSP types for port activities in Indonesia is shown in the following Table 6.3.4.3. As mentioned before, "Joint Operation" and "BOT" style are the most suitable for development and operation of large-scale facilities such as container, conventional, bulk and passenger terminals. However, Indonesia has little experience for JO and BOT projects of port development because the history of PSP projects is not very long.

Table 6.3.4.3 Classification of PSP Types

Degree of Privatization	PSP type	Role of each sector		
		Ownership	Management / Operation	Financial Risk
 Weak Strong	Management Contract	Public	Public / Private	Public
	Lease	Public / Private	Private / Public	Private / Public
	Concession	Public	Private	Private
	Joint Operation			
	BOT	Private → Public	Private	Private
	Joint Venture	Public / Private	Private	Private
	Public or stock floatation (Privatization)	Private	Private	Private

Prepared by OCDI

(2) Comparison of BOT and Joint Operation

The following Table 6.3.4.4 shows the merits and demerits of BOT and JO style. Features of BOT and JO schemes are described as follows.

- 1) BOT scheme has a lot of merits for the government and IPC. First, BOT will bring more efficient and effective cargo handling operation by the private sector, which is given more freedom for construction, management and operation.
- 2) For the government and IPC, BOT style is the best approach because gathering money for investment is not necessary nor is operation.

- 3) Originally, government or IPC must construct the facilities for themselves. However, if they employ PSP on BOT style, this is not necessary. Nevertheless, government can obtain state tax and IPC can obtain royalty and good will from the private sector.
- 4) However, in the BOT scheme, only the private sector runs a financial and operational risk from funding for port development to recovery of the investment.
- 5) During a certain period of time, private sector must withdraw all invested funds, and therefore the profitability of the project is extremely important in the BOT scheme.
- 6) Therefore, without clear prospect of certain profits, it will be difficult for the government or IPC to attract the private sector.
- 7) Compared with BOT, JO scheme is more moderate because these risks can be shared between IPC and the private sector.
- 8) However, private sector is often unsatisfied with JO because they are not given full discretion to manage and operate.

Table 6.3.4.4 Merits and Demerits of BOT and Joint Operation

Type of PSP	Merits	Demerits
BOT	<ol style="list-style-type: none"> ① The government or IPC doesn't need to collect funds for port development. ② The government or IPC has no financial risks. ③ The government can make the full use of know-how and technology of private sector. ④ The transfer of know-how and technology from private sector also can be expected. ⑤ BOT scheme promotes earlier implementation of the project. 	<ol style="list-style-type: none"> ① Only private sector burdens the risk from funding for development to recovery of investment. ② In many cases, government support is essential. ③ In many cases, appropriate incentive for tariff must be given to private sector.
Joint Operation	<ol style="list-style-type: none"> ① The risk can be shared between IPC & private sector. ② Both parties can make full use of know-how technology and of each parties. 	<ol style="list-style-type: none"> ① Private sector can't gain all profits. ② Private sector has no full discretion to develop and operate.

Prepared by OCDI

(3) Present Situation of BOT Projects

In Indonesia, "Joint Operation" type has actively been employed for large-scale development projects of container terminal at Tg. Priok and Tg. Perak port. On the other hand, there are not so many BOT-based large scale projects so far.

The following Table 6.3.4.5 shows the list of BOT Projects in the past. This includes development and operation of Bojonegara port, but few big projects have not been implemented for a variety of reasons including financial issues.

Table 6.3.4.5 Major BOT Projects in Indonesian Ports

No.	Project name (Day of Contract)	IPC	Total Investment	Current Situation
①	Development and management of clean water network at port of Tg. Priok (November 18, 1996)	II	Rp.17 billion	In the process of development of facilities
②	Development and operation of Bojonegara port at the Banten Bay (April 24, 1997)	II	Rp.1,439 billion	The land clearance reaches approximately 395ha (at 30-11-1997)
③	Development of Bulk Terminal at Panjang Port	II	-	Starting to use
④	Development of Bulk Terminal at Kotabaru, P. Laut South Kalimantan (November 10, 1994)	III	US\$113 million	Operation began at the end of 1996
⑤	Development of Bulk Terminal at Gresik Port	III	-	The contract was completed.

Source : DGSC

(4) Examples of BOT Projects in Other Countries

A lot of countries nearby have been trying to induce the private sector into BOT-based port projects one way or another. The situations of BOT projects in neighboring Asian countries (the Philippines, Thailand, Malaysia, Vietnam, and Myanmar) are summarized in Appendix for Chapter 6.3.4.

(5) Risks of BOT Projects

As mentioned before, in BOT projects, only private sector must take a risk from funding for development to recovery of the investment. The risks regarding BOT projects from the view point of the private sector are summarized in the following Table 6.3.4.6.

Table 6.3.4.6 Risks of BOT Projects

Imaginable Risks	Contents of Risks
1. Funding	<ul style="list-style-type: none"> ① Only private sector must take all risks from funding to recovery of the investment. ② Investors tend to be involved themselves in non-profitable infrastructure developments (e.g. channel dredging & land acquisition) ③ Construction costs tend to increase.
2. Financial risks	Long-term period of payment often brings financial risks. (e.g. foreign exchange risk & inflation)
3. Tariff	<ul style="list-style-type: none"> ① Tariff system exclusively & uniformly regulated by the government discourages PSP. ② The private sector has no discretion to amend the tariff in line with inflation rates.
4. Cargo volume	There is always a danger that "cargo volume" will be less than that projected.

Prepared by OCDI

(6) Establishment of Risk-Allocation Policy

BOT projects sometimes cause risks only to investors. In this case, all kinds of risks should be allocated, avoided or minimized as much as possible by the government so that private sector will participate in them more easily.

In order to eliminate or minimize the market risks, it is necessary to balance the risks between public and private sector. Especially, various kinds of government support are thought to be essential for large-scale projects based on BOT. The following measures should be considered carefully by the related government agencies (DGSC, MOC, BAPPENAS, MOF & so on) & IPC to avoid risks incurred to BOT participants.

1) Funding

① Government's Borrowing on behalf of Developer

The government can provide a long-term "soft loan" or "bond" with lower interest rate for the developer. For example, in the concession agreement for "the North-South Expressway" in Malaysia, the government agreed to provide a long-term soft loan to alleviate cash shortfalls if toll income fell below an agreed support level.

② Allowing of Issue of Government "Guaranteed Bonds"

The government also can allow the issue of bonds guaranteed by the government for the

developer. As explained in Chapter 6.1.3, In Japan bonds issued by 41 government corporations are now guaranteed by the government. The details are referred to in Chapter 6.1.3.

③ Allowing of Issue of Bonds with “Tax Credit”

In the U.S., the “Tax Credit System” offered by the government is often employed by public organizations. The system will possibly encourage the private sector participation in the port development. The details of the system shall be referred to in Chapter 6.1.3.

2) Tariff

① Deregulation to Tariff Determination

Successful negotiation with government or IPCs over tariff levels are crucial to project viability and the ability of the private sector to gain finance for the project. At least, the government and IPC have to determine “tariff rates” clearly before making a contract.

At present, government exclusively and uniformly stipulates the amount of port tariff. However, it is necessary for the government to delegate the determination power to IPC and the private sector. For example, in the future, the stevedoring charges for container cargoes should be determined based on the negotiations between shipping and stevedoring companies. The deregulation may encourage the private sector to participate in BOT projects (see Chapter 6.2.1).

② Allowing “Different” Tariff Rates & Tariff based on “Cost Accounting”

The tariff system regulated uniformly by the government often hinders PSP. Allowing different tariff rates determined based on “cost accounting” also will accelerate participation of the private sector (see Chapter 6.2.1).

③ Allowing Tariff Rate in Line with “Inflation” (Accurate Charge Adjustment Mechanism)

The government or IPC can adjust “port tariff” according to decree of inflation and “tax rate” in line with the financial situation. An accurate charge adjustment mechanism, which enables the developer’s rate of return to be adjusted to take into account increased costs and other monetary risks may provide some solutions.

3) Cargo Volume

① Introduction of "A Guaranteed Rate of Return System"

(a) General

There is always a danger that "cargo volume" will be less than that projected. In this case, some economists believe that this system is crucially important in BOT contracts so as not to deter investors, especially since a BOT contract has a finite duration. The system urges the government to guarantee a "rate of return" or a "minimum return percentage".

"A guaranteed rate of return system" is often employed especially for "power projects". For example, the purchaser must purchase an agreed amount of power in accordance with the contract, regardless of its needs and often regardless of whether the power is actually made available ("minimum take or pay clause").

Many Asian governments have been willing to at least to provide "a minimum return percentage". A government set "ceiling" on the developer's rate of return as low as certain percentage (e.g. 12~30%) in concession agreement. For example, the first five Malaysian independent "power projects" were guaranteed return of approximately 20%.

But if governments are worried about "excess profit", "a profit sharing formula" should be elaborated in the concession agreement.

(b) Application to Port Projects

In the transportation sector, so far governments have been reluctant to provide guarantees of minimum traffic (e.g. cargo volume). However, if the BOT project is taken as "a national priority", it would be one idea for the government or IPC to attract private sector participation in the concession agreement.

4) Incentive for Private Sector

① Offer of "Special Tax Concession" for "Prioritized" BOT Projects

"Special tax concession" is a practical measure to provide good incentives to private sector. The government has already introduced the system (The tax law came into effect in January 1995). This concession includes ;

- (a) Reduced "corporate tax"
- (b) A reduced rate of "withholding tax" on dividends
- (c) Accelerated depreciation & amortization
- (d) Extension of "loss carry period" for up to 10 years

The government shall apply the "tax incentive system" more positively to "prioritized"

BOT projects on a case-by-case basis.

5) Others

① Government's Full Responsibility for Related Infrastructure Development

The government can support the private sector by providing related infrastructure development in order to create a desirable condition. As mentioned, in principle, in port development projects, the government should be responsible for related infrastructure development (see Chapter 6.1.2). The reduction of total project costs will give good incentive to the private sector.

② Offer of "Offsetting Measures" (Other Profitable Concessions)

If the private sector suffers a deficit in a project, the government can offer other profitable development rights to private sector to raise income in order to offset the risks. The concept of secondary income sources is well developed for "airports" and "international ferry" operators. It is necessary for the government to consider the possibility of the application, however, it may be difficult to apply the measures to port development projects.

③ Government's Guarantee for Monetary Compensation

If the project fails, the government should be accountable. In the above-mentioned example of the toll road project in Malaysia, the government agreed to provide monetary compensation to reserve the right to impose lower than contractually agreed levels of tolls and fares. However, this is contrary to the basic idea of a BOT scheme, which transfers all financial risks to the private sector.

(7) Recommendation

Taking the above matters into consideration, the following recommendations can be made.

- 1) The government and IPC should promote BOT and JO schemes for large-scale port development projects such as development of container, conventional & bulk terminals.
- 2) The scheme should be judged on "a case by case basis".
- 3) In BOT based projects, appropriate "risk allocation policy" & "incentive measures" shall be considered carefully as "a national priority" among related government agencies.
- 4) In this case, the decree and type of the government support should be determined pragmatically and realistically on a case-by-case basis.

5) The preference of risk allocation policy shall be considered among the related organizations as seen in the following Table 6.3.4.7.

Table 6.3.4.7 Preference of Risk Allocation Policy for BOT Projects

Item	Preference	Risk Allocation Policy
1. Funding & Financial Risks	⊙	Government's borrowing on behalf of developer (eg. a long-term "soft loan" on "bond")
	⊙	Allowing of issue of government "guaranteed bonds"
	○	Allowing of issue of bonds with "tax credit"
2. Tariff	⊙	Deregulation to tariff determination
	⊙	Allowing "different" tariff rates & tariff based on "Cost Accounting"
	○	Allowing tariff rate in line with "Inflation" (Accurate charge adjustment mechanism)
3. Cargo Volume	△	Introduction of "A Guaranteed Rate of Return System"
4. Incentive for Private Sector	⊙	Offer of "special tax concession" for "prioritized" BOT projects ① Reduced "corporate tax" ② A reduced rate of "withholding tax" on dividends ③ Accelerated depreciation & amortization ④ Extension of "loss carry period" for up to 10 years
5. Others	⊙	Government's full responsibility for related infrastructure development
	△	Offer of "offsetting measures" (other profitable concessions)
	×	Government's guarantee for monetary compensation

Note : ⊙ Most preferable ○ Preferable △ Consideration × Difficult to adopt

6.3.5 Establishment of Transparent Selection Procedure for PSP

6.3.5.1 Establishment of Selection Criteria of PSP Applicants

(1) Present Criteria

In selecting private company to cooperate with IPC, the following criteria must be favored at present ;

- ① Foreign company together with local investor should form an “Indonesian Legal Entity” in the status of foreign investment scheme.
- ② The Indonesian Legal Entity should have a capability to share a minimum equity of 30% as investment finances.
- ③ Private company is preferably to have experience in the field of related port business.

(2) Review of the Present Criteria

1) Regarding ① (National Company Requirement)

From the viewpoint of fostering development of an immature domestic company, this criterion could be justified. However, as mentioned before, the regulation against foreign investment should be reevaluated in the near future.

2) Regarding ② (Minimum Equity of the Indonesia Legal Entity)

From the viewpoint of urging investment from the private sector, the requirement encourages Legal Entity to share more than minimum equity (30%).

3) Regarding ③ (Private Company's Experience)

It is desirable that the private company has rich experience in the field of related port business such as shipping and stevedoring company. Therefore, these experience should be highly evaluated. Furthermore, it may be good idea to extend the fields to other related companies such as bank and forwarding company.

For example, in port of “Kelang”, KTK, which operates KCT (port management body), is a partnership between “a forwarding company” and a shipping company.

(3) Recommendation

Taking account of the review, DGSC is required to clarify the selection criteria. It is desirable that the government should establish firm and concrete selection criteria in the "Guideline" based on the "Presidential Decree No.7". For arbitrary use of the selection criteria is sure to create distrust among the investors. In this case, the following criteria should also be considered.

- 1) The private sector should have enough funds, know-how, equipment and human resources to perform the port projects properly. These abilities should be evaluated from financial and technical aspects.
- 2) Private sector is not always required to have general experience in the sector and past performance on similar projects. However, such experience should be highly evaluated.
- 3) At the same time, other programs such as improvement program, management & operation system, maintenance program also should be evaluated.
- 4) Furthermore, the quality of service which will be provided should be evaluated.
- 5) The private sector must meet the legal requirements.

6.3.5.2 Introduction of Competitive Bidding System in Selection Procedure

(1) Importance of Clear Policy and Fair Procedure

1) General Explanation

As mentioned before, it is very important for the government to enhance the transparency of the whole system, especially the selection process. From the long term perspective, uncertain and arbitrary selection system may damage the credibility of the whole system. As a result, many private sectors may hesitate to invest in port development and operation. In this sense, it is essential to consider how to establish an open and clear selection procedure for the private sector.

The establishment of "Presidential Decree No.7" enables the government to promote transparent and clear bidding procedure. In this sense, the government should formulate more detailed "implementing regulations" and "Guideline" as soon as possible in order to guide IPCs and the private sector.

2) Issues of the Present Selection Procedure

As explained in the Progress Report, there are presently two kinds of procedures in PSP projects in Indonesian ports as follows ;

- ① Initiative comes from IPC
- ② Initiative comes from private sector (unsolicited proposal)

However, based on PSP projects in the past, the following observations can be made.

- ① Almost all projects are unsolicited even though DGSC has a list of port projects for PSP.
- ② These projects tend to be promoted behind the scenes and without notice of other investors.
- ③ In this case, the investment often leads to monopolization of capital, contrary to the true purpose of PSP. The monopolization causes inefficiency and increases operation cost.
- ④ As a result, private sector can't provide high quality services at low prices to users.
- ⑤ On the other hand, it takes a lot of time to obtain approval from the related government agencies including MOF. "Delay of approval" often distracts the attention of the private sector.

(2) Reasons to Introduce "Competitive" Bidding System

Therefore, it is very important for the government to introduce a more competitive and open selection process. The reasons can be summarized as follows ;

- 1) Allowing the participation of many investors makes it possible for the government or IPC to select the most efficient, cost-effective bidders.
- 2) The bidding process can encourage competition among bidders. As a result, the users can be provided with more efficient services at lower prices.
- 3) Transparent and fair bidding system encourages foreign investors to take part in port development projects.
- 4) Competitive bidding system is taken as a matter of course in the projects of major ports in neighboring countries. For example, in bidding of "Kelan container terminal" in 1987, the Malaysian government showed its enthusiasm for the participation of foreign investors although the government recently has not encouraged PSP by foreign investors.
- 5) In "Thailand", international competitive bidding is now required for all large projects. Furthermore, in "the Philippines", attracting foreign investment is a priority program of the government, and therefore, in principle, competitive bidding must be adopted.

(3) Examples of Major Port Projects in Other Countries and Toll-Road Projects in Indonesia

1) Example of Major Port Projects in Other Countries

Examples of competitive bidding of major port projects in other countries in the past can be summarized in the following Table 6.3.5.1.

2) Example of Toll-Road Projects in Indonesia

The history of toll-road projects promoted by "Jasa Marga" (BUMN) is introduced in the following Table 6.3.5.2. The selection of private sector for BOT projects was based on non-competitive bidding style at the third stage (from 1987-1993). However, the necessity of introducing international fund made it possible for the government to adopt competitive BOT and BTO basis in the fourth stage (1994 - present).

Table 6.3.5.1 Examples of Competitive Bidding for PSP in Other Countries

Name of Port		Contract type for bidding	Number of bidding participants
Leam Chabang in Thailand	B2 terminal in 1990	Lease	8 companies
	B3 terminal in 1992	Contract out	8 companies
	B4 terminal in 1992	Contract out	8 companies
Manila International Container Terminal in the Philippines in 1988		MITI scheme	7 consortiums
Kelan container terminal in Malaysia in 1987		Lease agreement	4 consortiums *Kons Terminal Kelang Sdn Bhd, KTK 80% Kontena nasional Sdn Bhd 20% P & O Australia Ltd.

Prepared by OCDI

Table 6.3.5.2 History of Toll-road Projects in Indonesia

Period	Project scale	Fund source	Selecting style
1978-early 1980's	53km	government funds	-
1983-1990	266km	Government guaranteed foreign loans & bonds	-
1987-1993 (overlapping)	573km	Private sector	non-competitive BOT bidding
1994 -	767km	Private sector	Competitive BOT & BTO bidding

Source : the Ministry of Public Works

(4) Example of Public Bidding Process in the Philippines

For reference, the example of public bidding process in the Philippines is referred in "Appendix for Chapter 6.3.5". In that country, competitive bidding process even in "unsolicited proposals" has been favored according to the "BOT law".

(5) Recommendation

1) Introduction of "Competitive" Bidding System

The most important thing in the selection process of private sector is to choose the lowest and most effective bidder through healthy and fair competition. In this sense, "Presidential Decree No.7 of 1998" will provide good guidance to the government and private sector.

Therefore, the following matters can be recommended ;

- ① The government should promote a competitive selection process.
- ② In this case, the government should pay more careful attention to secure fairness and neutrality of the selecting and enhance transparency of the whole process.
- ③ This principle is also applied to "unsolicited" proposals.
- ④ The examples of toll-road projects in Indonesia and in the Philippines provides a good reference for DGSC.
- ⑤ In order to attract potential private sector, the government and IPC need to make every effort to solicit interest and obtain competitive PSP tenders.

2) A Fast-Track Procedure for Small-Scale PSP Projects

The government should consider a fast-track procedure for small-scale projects in order to avoid time-consuming and bureaucratic procedures. Presidential decree has already introduced the procedure, but the system should be further improved.

3) Importance of Disclosure of PSP-Related Information

MOC and DGSC should make every effort to open the PSP-related information to the public as much as possible in order to upgrade the quality of PSP system and protect the interests of the public. Such efforts are sure to bear fruit in the future.

4) Necessity of Appropriate Involvement by DGSC

In bidding process, IPC has two aspects, i.e. "commercial corporation" and "neutral & public agency". It is difficult for IPC to be compatible with both aspects. DGSC is strongly required to instruct and supervise IPC and private sector from public view through the approval of MOU and contract in order to promote fair and healthy competition.

6.3.5.3 Foundation of “Internal Monitoring Committee” (The Third Party Neutral Organization)

(1) Outline

Disclosure of related information and monitoring of the whole process through the eyes of a neutral organization is emphasized so much not only in “developed countries” but also in “developing countries” like never before. In Southeast Asian countries, deregulation to domestic and foreign investment has been accelerating private sector participation in infrastructure development in the last ten years. However, more strong competition for pursuit of foreign investment can be expected among these countries.

On the other hand, the government will be required to reflect the opinions of users and to introduce views of persons of learning and experience so that PSP projects will be able to be user-friendly.

Taking the present situation and trends of the world into consideration, it is advisable for Indonesian government to introduce an appropriate “monitoring system” to MOC or DGSC prior to other Asian countries. In this case, foundation of “Internal Monitoring Committee” is a very good idea.

In Indonesia, “Presidential Decree No.7 (1998)” introduced “evaluation team” whose main purpose is to evaluate the offers from bidders. This is a very important and positive step. Thus, the details of the team should be mentioned in the following “implementing regulations” in order to clarify the roles, member compositions and so on.

However, at the same time, importance of the separation of “executing” & “monitoring” organizations and “ex post facto check system” should be carefully considered. For example, it is one idea to establish “a Monitoring Committee” in MOC, which is responsible for assessing the whole PSP projects of “transport sectors”.

(2) Purpose of the Monitoring Committee

The purpose of foundation of “ Internal Monitoring Committee “ is summarized as follows ;

- 1) To enhance transparency of the whole system and ensure confidence from investors
- 2) To promote the PSP projects in Indonesia for domestic and international private sector
- 3) To evaluate and assess the whole PSP system through eyes of the third party
- 4) To enhance the quality of the whole system by introducing ideas and opinions from experts

(3) Composition of the Committee

Taking account of the above character of the committee, government officials should be excluded or limited to “minimum numbers” in order to maintain neutrality and fairness. The member composition can be summarized as follows. It may be a good idea to reflect the opinions of domestic and foreign investors.

- | | |
|--------------------------------|--|
| 1) Number of committee members | Under 20 |
| 2) Fields of the members | Persons of learning and experience
Engineer, Architecture and Economist
Business people
Bankers
Lawyers
Government officials (Minimum number)
Others (Users, domestic & foreign investors) |
| 3) Selection of members | Selected by MOC or DGSC |

(4) Roles of the Committee and Expected Effects

1) Roles of the Committee

The roles of the Monitoring Committee are summarized as follows ;

- ① To assess, monitor and review the overall procedures including scope of working fields, selection criteria, selection procedure and implementation.
- ② To hear the opinions and views from users, and domestic & foreign investors
- ③ To give advice and recommendation to the Minister of Communication and related agencies including DGSC, BAPPENAS & state-owned companies
- ④ To open current, accurate and complete information of public-private sector participation and projects to the public
- ⑤ To issue “an annual report” to the public as well as government agencies
- ⑥ To arrange and keep-related documents for PSP projects
- ⑦ To hold seminars to promote PSP projects in Indonesia
- ⑧ Others

2) Expected Effects from the System

We can expect the following effects from this system. These effects are sure to upgrade the quality of the PSP projects in port activities.

- ① Enhancement of confidence of the whole system from private sector

The review and evaluation by the third neutral organization helps to enhance the transparency of the whole system and ensure confidence from the private sector.

② Promotion of PSP for investors

The activities of the internal monitoring committee will promote private sector participation.

③ Improvement of the whole system by introducing various kinds of opinions and know-how of the third party

The introduction of various opinions and know-how from the third party makes it possible for the government and IPC to improve the whole system.

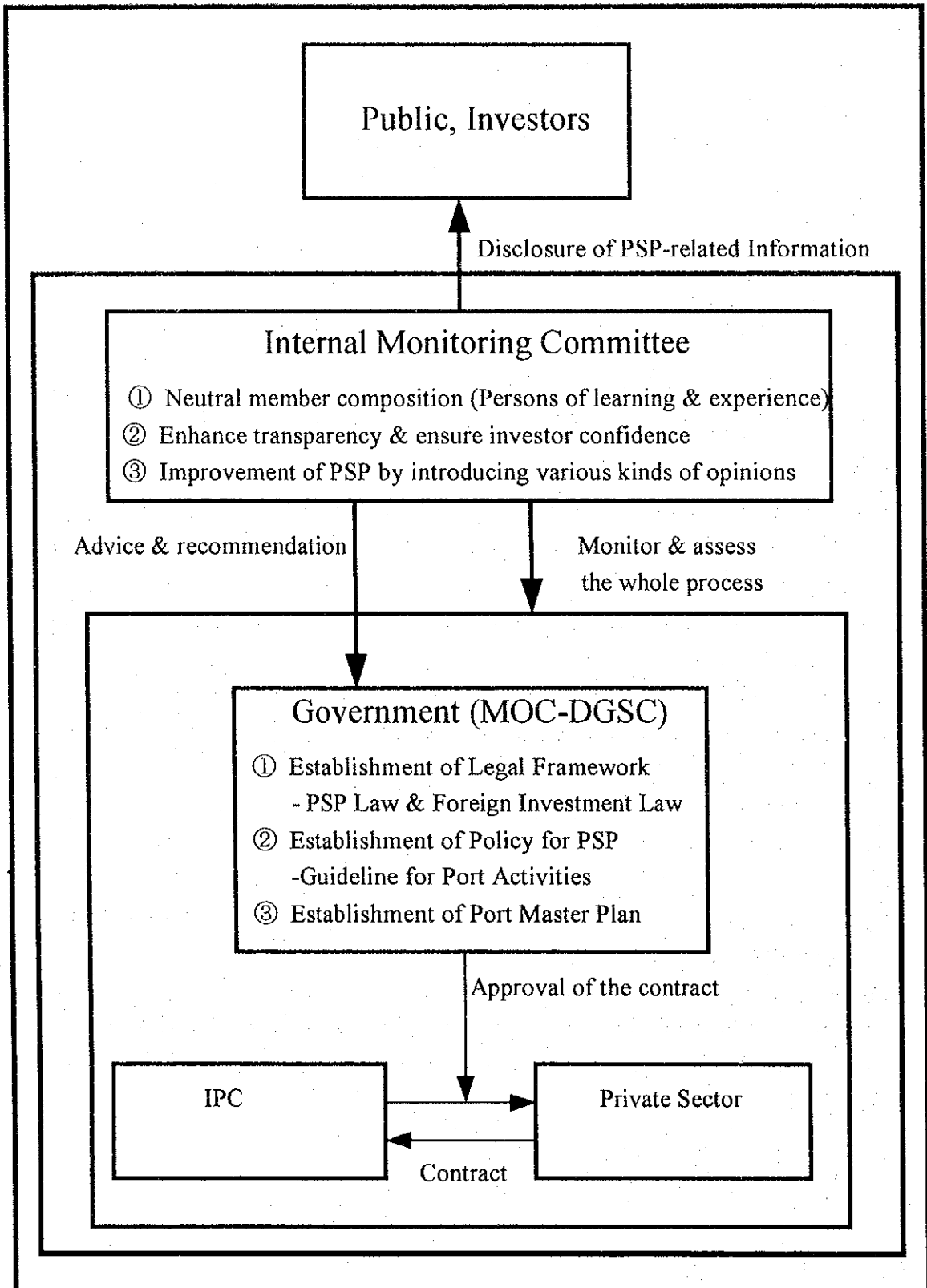
(5) Recommendation

Taking the mentioned matters into consideration, the following can be recommended ;

- 1) The monitoring from inside of the government (BAPPENAS) is not sufficient.
- 2) MOC (or DGSC) should establish the appropriate monitoring committee in MOC (or DGSC) whose members are possibly limited to persons of learning and experience, business people and other specialists.
- 3) The monitoring committee should be given appropriate authority to monitor and improve the whole PSP system.
- 4) Every year or every certain period, the monitoring committee should submit the recommendations to the related organizations and prepare the PSP related information for the public.
- 5) The government and the related State-owned Corporations should have the duty to respect the recommendations submitted by the committee.
- 6) The PSP related information should be open to the public.
- 7) In the future, it is more advisable for the government to have a “fully independent” – monitoring system.
- 8) In the future, separation of “regulatory” and “monitoring” organizations will become more important in Indonesia. While the former (executing agency) shall be responsible for day-to-day PSP affairs, the latter (monitoring organizations) should be for “ex post facto” check.

The envisioned “monitoring committee” is shown to in Figure 6.3.5.1.

Figure 6.3.5.1 Image of the Relationship among Organizations



Prepared by OCDI

6.3.6 Incentives Through Deregulation

6.3.6.1 General

(1) Importance of Deregulation and Foreign Investment

Generally speaking, it is important to give appropriate incentive to domestic and foreign investors through promoting deregulation in order to attract more investment. The more regulations the government dismantles, the more investment the government can obtain.

On the other hand, since the beginning of the 1990s, many foreign countries such as China and Vietnam have been making efforts to attract foreign direct capitals to infrastructure projects including port projects. Those countries are providing not only "comprehensive deregulation packages" (e.g. expansion of working fields for foreign investors) but also "fascinating tax credit systems" for those investors. They also have been modifying their systems flexibly to cope with the changes. The government must compete with those countries.

On the other hand, owing to lack of domestic capital and current monetary problem in Indonesia, foreign investment for large-scale projects will be inevitable. Foreign experience of PSP management, operational & financial skills will be crucial to the quality and quick implementation of port development projects. For example, at "Osaka Port", foreign capital shipping companies such as Taiwan, South Korea & Singapore have been playing key roles as excellent lessees. At "Laem Chabang Port" in Thailand, most container terminals are developed and operated by "joint venture companies" between local and foreign companies.

Thus, the government should arrange the "well-organized & trustworthy institutional frameworks", prepare "well-developed basic infrastructure" and provide "certain incentive package" to attract more foreign capital. In order to do so, "an appropriate tax incentive system" for foreign investment and prioritized BOT projects shall be carefully elaborated. Simplification of "licensing procedure" for foreign investors also should be promoted.

Furthermore, it is necessary for the government to be able to flexibly cope with any changes in the situation. Making reference to examples in other countries, the government should establish appropriate deregulatory and incentive measures.

(2) Issues of the Present Licensing System for Foreign Investors

The issues of the present licensing system can be summarized as follows ;

- 1) Bureaucratic, complicated & time-consuming procedures are preventing foreign investors from entering into PSP.
- 2) To set up a BOT project in Indonesia, sponsors must set up an "Indonesian Limited

Liability Company” whose sole purposes and activities are to raise finance, design, build, own and operate the port.

- 3) Although the law governing “Foreign Investment Companies” has been significantly relaxed in favor of foreign investment, the procedure required to establish an “Indonesian Company” remain cumbersome and unexpected delays are likely to occur.
- 4) A company acquires “Legal Entity Status” from the deed of establishment which is signed before a notary. However, the company doesn’t acquire “Limited Liability Status” until all establishment procedures have been completed. These include approval by the “Ministry of Justice”, “entry into the company’s register” and “publication of the articles of association” in the Indonesian State Gazette. The process can take longer than 3 months.

6.3.6.2 Recommendation

Based on the understanding of the importance of deregulation and foreign investment, the following deregulatory and incentive measures shall be carefully considered.

(1) Deregulation to Tariff Review Process

It is necessary for the government to delegate the tariff determination power to IPC and private sector. For example, in the future, the stevedoring charges for container cargoes should be determined on the negotiation between shipping and stevedoring companies. In principle, the determination of the tariff rates should be left to the market theory, and the government intervention should be limited to necessary and minimum scope (see Chapter 6.2.1).

(2) Expansion of Working Field of Port Services

The government should invite gradually the private sector in to port activities taking account of issues brought by PSP. Because private sector involvement in port services will result in not only more efficient works with lower costs for the government but also a higher level of services for users (see Chapter 6.3.3).

(3) Participation of “100% Foreign-Owned Company” in “Prioritized” Port Development Projects

Owing to the impact of the currency crisis, the number and amount of foreign investment has been decreasing rapidly. Taking the importance of foreign capital into consideration,

participation of “100% foreign-owned company” in “prioritized” port development projects should be carefully considered (see Chapter 6.3.2.3).

(4) Promotion of Participation of Foreign Capital in Port-Related Business such as “Freight Forwarding”

Forwarding network enables the shipping line to deliver the goods in the shortest possible time at competitive rates. “Government Regulation No.20”(1994) allows establishment of freight forwarding company for foreign capital (95%) in shape of physical plant such as depot container, trucking and others. However, foreign direct investment company is not allowed to participate. The government shall promote the participation of foreign capital in port-related business such as freight forwarding as shown for the following reasons.

- 1) The introduction in freight forwarding by foreign investment will contribute to promotion of value-added “multi-modal” and improvement of infrastructure in Indonesia.
- 2) The introduction of foreign capital in the business will bring in high technology and know-how to Indonesia.
- 3) The introduction of foreign capital will enable to reduce the total transportation cost through healthy competition.

(5) Tax Incentive System for “Foreign Investors” & “Prioritized BOT Projects”

The “existing tax system”, “existing tax incentive system for private sector” and “comparison of tax incentive system for foreign capitals” are summarized in the Appendix for Chapter 6.3.6.

1) Tax Incentive System for “Prioritized Projects” by “Foreign Investors”

The government should elaborate the following tax incentive system for foreign investors. In this case, it is useful to distinguish between “prioritized” and “non-prioritized” projects so as to create the differences in the degree of incentive.

- ① Exemption or reduction of corporate income tax for a certain period
- ② Exemption from import tax duties imposed on fixed assets such as machinery, tools and instruments
- ③ Exemption of import tax duties imposed on raw materials for a certain period
- ④ Exemption or reduction of withholding taxes on dividend, interests & royalties for a certain period

⑤ Exemption or reduction of other miscellaneous charges

2) Tax Incentive System for “ Prioritized BOT Projects”

The following appropriate tax concessions for the prioritized BOT projects should be taken into consideration.

- ① Reduction of corporate income tax for a certain period
- ② Accelerated depreciation and amortization
- ③ Extension of the loss carry period for a certain period
- ④ Reduction of withholding taxes on dividend for a certain period

(6) Simplification of Licensing Procedures for Foreign Investors

1) Promotion of “One Window Shop System” (=Lessening Bureaucratic Walls between Different Organizations, Agencies & Departments)

“One Window Shop System” allows private sector to deal with only one government office to obtain the necessary approvals and licenses. The system alleviates the problems associated with inconsistent policies between different government departments, particularly at local & central levels.

Except for investments in some sectors such as oil, gas, mining & banking, all other foreign investment must be approved by the BKPM. Just as the “SCCI” (State Committee for Cooperation & Investment) in Vietnam, the BKPM aims to function as a one-stop investor service.

However, at present, it is impossible for the foreign developer to deal exclusively with only BKPM in order to obtain necessary approval, permits and licenses because there are too many regional & local authorities. But, at the same time, the government is required to unify the authorities in charge of issue of licenses for their convenience. Therefore, BKPM should promote “One-stop” service to investors as much as possible.

2) Simplification of License Procedure

It is also an important task for the government to simplify the license procedure for foreign investors.

3) Reduction of Number and Volume of Related Documents

At the same time, it is important to reduce the number and volume of related documents by simplifying complicated and bureaucratic procedures.

CHAPTER 7 STRATEGY FOR EFFECTIVE PORT ADMINISTRATION, MANAGEMENT AND OPERATION

7.1 Administration and Management Policy

7.1.1 General

For effective port administration and management, it is crucial to transfer a certain amount of authority from the central government to respective port administrators. And it is necessary to ensure proper and balanced human resources. In addition, decision-making procedure for planning, financing, construction and management, etc. should be standardized according to the type and role of port.

In Indonesia, administrative authority tends to be centered and there is a lack of engineers, especially in lower branches or local governments. Also the responsibility for decision-making is not always clearly allocated to one particular agency. In addition, areas that should be under the jurisdiction of a port administrator are not clearly demarcated, which makes it difficult to establish a comprehensive port master plan.

Individual port administrators should hold enough number of technicians or engineers in order to strengthen the ability toward the era of decentralization. Also, different port areas, such as port working area (DLKR) or port safety area (DLKP), should be clearly allocated in order to guarantee smooth decision-making and conduct of daily port activities, and to ensure the space for future port development.

7.1.2 Policy for Commercial Port

(1) Concept and Criteria for Designation of Commercial Port

As far as so-called Commercial Port shall be managed and operated by IPCs, establishment of the concept and criteria for official designation of Commercial Port is vital in maintaining sound financial position and efficient port operation by IPCs. In fact, the potential commercial ports which have been periodically reviewed (normally every five years) and added in the category of "Commercial Port" are to be enrolled by each IPC management according to their geographical location.

Under the above current practice in selecting new commercial ports, unless present or future financial viability of the candidate ports is confirmed, IPCs, which are to be responsible in operating the ports, may not have positive incentive to operate such a port as a commercialized business entity. While it is understood that MOC/DGSC have a kind of rough criteria for designation of "Commercial Port" mostly on the basis of historical trend of cargo handling volume and future prospect, more reasonable concept or criteria needs to be

developed referring to following suggestions on the subject.

- 1) "Commercial Port" needs to be selected on the basis of reasonable assessment on its potential function including economic impacts on national/regional development, cargo handling capability, financial viability and other relevant features.
- 2) Under the above concept, candidate ports for "Commercial Port" need to be selected among those which are not enough commercially viable but have high potential to be a qualified commercial port. IPC could have positive incentive to make the qualified commercial port a well profitable port through its own will and efforts.
- 3) Even for the non-commercial ports of which financial positions are currently far below from normal "Commercial Port" standard, designation of such ports as IPC ports should be considered. If any industrial development is likely to be realized in their hinterland, the ports are expected to become well profitable by handling their potential industrial cargoes in near future.

(2) Structure of Commercial Port Administration

The Indonesian commercial ports are generally under administration of MOC/DGSC, and managed/operated by IPC except for commercial ferry ports under administration of DGLT. While the current administrative structure seems to function well in general, following points need to be examined and improved for more efficient and effective administration.

1) Planning function of MOC/DGSC for the commercial ports

Physical planning of commercial port facilities and their utilization management is considered a weak part of MOC/DGSC administration, particularly in coordinating with other administration agencies concerned. As an initial step of improvement of this function, it is recommended to strengthen the planning function of Planning Bureau of MOC through bestowing it with institutionally authorized power and adequate administrative capability for the assignment. (for the details of port planning system, see Section 7.2 "Formation and Authorization System of Port Master Plan")

- 2) Government financing system for maintaining and improving IPC port activities seems not fully justifiable mainly because of following reasons.
 - a) Effects of the government financial assistance on improving commercial incentives of IPCs are not clear. In other words, the system might spoil the independency of IPCs with intervention of central government and jeopardize their positive efforts in realizing more efficient and economic port operation for the users of the ports.
 - b) It is not clear whether the amount and allocation of the Government expenditure to IPCs are appropriate in the light of promoting fair competition among IPCs and private sector entities.
 - c) There are no definite conditions which must be complied with by IPCs when they receive the Government financial assistance.

- 3) While exact assessment of expected effects (either positive or negative) of the current financing policy on IPCs is not considered easy, application of the policy may be improved by referring to following suggestions.
 - a) Any grant aids in initial investment to port facilities or in operation deficit of port service activities should gradually be abolished except for purely non-profit facilities or its operation like in the case of a small jetty used for transporting goods or passengers to/from remote islands to support its daily life.
 - b) Rather strict conditional grant system which requires that subject port facilities conform to the designated function and use, etc. should be introduced under well conceived guidelines prepared and agreed to by the relevant agencies including MOF, MOC, DGSC and IPCs.
- 4) Regarding private participation in the container terminal operation business, it is recommended in principle that a more non-conditional or deregulated contract system with the interested private entities should be applied. As a result, possible negative effects caused by monopolistic situation of IPCs port operation business under fair and efficient competitive business field will be avoided.
- 5) If the above policy does not seem successful for some reasons, it may be necessary to introduce a more effective control system of DGSC for operating, charging and reporting sections of IPCs in particular through strengthening DGSC functions as listed here below.
 - a) General supervising function for overall performance
 - b) Data collecting function for operating and accounting performance
 - c) Analyzing function for data and information reported
 - d) Advising and following up function for improving operating performance
 - e) Consulting function for proper personnel policy

(3) Streamlining of Ferry Service Administration

The current ferry service administration is rather complex and includes various issues and problem areas to be examined and improved such as a duplicate investment with public port facilities, inconsistency with other port plans and so on. On the basis of the findings of the Study Team on the current situation on this subject, objectives of the policy concerned can be identified as follows.

- 1) Effective coordination of port planning on ferry and other public port facilities
- 2) Realization of comprehensive water surface transport planning for passenger and cargo vehicle traffic
- 3) Simplification of the present administration system for effective and efficient decision making on a total ferry (including Ro/Ro and passenger vessel) service policy and practice

- 4) Creation of well designed business field for free competitive participation of private sector to water surface transport service operation for passenger traffic
- 5) Strengthening of legal and theoretical background of the subsidiary system currently applied to DGLT ferry service from viewpoint of the principle that “beneficiaries should pay the cost of service (beneficiaries principle)”.

While there may be conceived many countermeasures for the identified policy requirements, followings are considered useful to DGSC in coping with the subject.

- 1) More frequent direct policy dialogue and coordination between DGSC and DGLT on planning stage of ferry ports of DGLT and public ports of DGSC shall be conducted.
- 2) Strengthening of coordinating function of Planning Bureau of MOC for the subject through bestowing MOC with an institutionally authorized power and adequate administrative capability for overall port planning.
- 3) Establishment of a kind of “Special Coordinating Committee” as an official advisory organ to the Minister outside of the administrative organization of MOC for promoting effective coordination of the basic policy and port plans of both DGSC and DGLT with its independent views and proposals
- 4) Unification of a selected set of administrative function (ex. planning, budgeting, construction, safety control) on long distance ferry service and other sea transport service (in this case, definition of “long distance” may become the most critical issue)
- 5) Unification of total administrative function (institution, planning, budgeting, construction, procurement, maintenance, operation, charge/tariff and safety control) on all ferry, Ro/Ro and passenger boat services except for river-crossing ferry service which may be regarded as a part of local road network
- 6) Opening of government subsidized ferry service routes to free participation of private shipping lines for efficient and economic operation through fair business competition
- 7) Establishment of legal concept and definition of the target public services and facilities to which the government subsidiary system is applicable under reasonable justification
- 8) Legal designation of the special areas or districts (ex. extremely low-income areas or inconvenient remote islands, and other districts where special care of the government is required for some political reasons) to which the government can vest more preferential consideration on taxation and public utility charges for various services and facilities.

Among the above suggestions, items 1) to 3) are related to strengthening of coordination of port planning which is considered effective in improving investment and utilization efficiency of port facility for ferry and other cargo/passenger transport services. Item 1) is the most simple way of improvement without any requirement of institutional change but only limited effects may be expected. Items 2) and 3) require, however, organizational or

institutional innovation to some extent which needs more strong will and decision of the Government. Item 3) is more effective and recommendable if MOC could not manage the matter by themselves.

Items 4) and 5) are the policies to streamline current practice by unifying DGSC and DGLT assignments on ferry service administration. Item 5) recommends higher grade unification of assignments compared with the one of Item 4) which is considered more practical but less effective than item 5).

Institutional setup for Item 6) has already established and therefore the policy is supposed to be applicable to all private shipping lines. If there are any background which allows a kind of monopolistic operation of subsidized ferry routes by ASDP, such a situation needs to be improved whichever by the internal guidelines of MOC/DGLT or by the government regulation.

Items 7) and 8) are another approaches to keep fair and appropriate level and allocation of subsidiary budget to the ferry service line operators. This kind of policies are always required in deciding any subsidiary expense for all sectors of the government activities to maintain adequate transparency with reasonable justification, and thus to reduce unreasonable subsidiary expenditures of the government as well as to satisfy beneficiaries.

7.1.3 Policy for Non Commercial Port

(1) General

There are 656 public ports in Indonesia. While profitable 112 ports are managed and operated by IPCs, other non-profitable small 544 ports whose main purpose is to transport goods for people, are directly managed by the government represented by "Ministry of Communications Regional Offices" ("KANPEL").

In respect to port classification, only 10 ports are "international port" and other 534 ports are "local port". While the former are opened for international trade where foreign vessels could call directly, the latter are not opened.

The number of non-commercial ports is shown in the following Table 7.1.3.1. The Table shows that non-commercial ports have been playing an important role especially for transportation in isolated islands such as IrianJaya and Maluku.

Table 7.1.3.1 Number of Non-Commercial Ports by Island

Islands	Sumatra	Jawa	kalimantan	Sulawesi	IrianJaya	Others	Total
Number	129	48	24	128	108	107	544

Source : DGSC

(2) Purposes of Non-Commercial Ports and Roles of KANPEL

1) Purposes of Non-Commercial Ports

The main purposes of non-commercial ports are summarized as follows ;

- ① To secure the livelihood of the people living in remote areas by distributing the indispensable goods to the people
- ② To contribute to development & improvement of regional economy by loading & unloading goods, commodities and others

2) Roles of KANPEL

As stipulated in the "Minister Decree No.35 of 1993", the non-commercial ports are administered and managed by "KANPEL"(MOC Regional Offices), which are installed at each non-commercial ports. KANPEL is under the control of "KANWIL" (regional office of the national government), which are located in each province. KANPEL offices are

classified into 4 classes (Class II ~ V) according to their importance of functions.

The main roles of the KANPEL in non-commercial ports can be summarized as follows ;

- ① To arrange the operational working plan of port service activities and harbor affairs
- ② To provide the port service in the port working area such as berthage, wharfage, storage & utility to users and to collect port charges form users
- ③ To control and maintain the harbor basin and channel
- ④ To prepare, control and handle the implementation of port activities
- ⑤ To conduct maritime safety and orderliness in the port working area and to conduct SAR (search and rescue)
- ⑥ To prevent and tackle the fire and pollution in the port area (environmental matters)
- ⑦ To develop and maintain the channel & basin, port facilities and others
- ⑧ To coordinate with all government agencies and organizations such as IPC
- ⑨ Other related activities

(3) Port Facilities of Non-Commercial Ports

The present situation of port facilities and port development in non-commercial ports are summarized as follows ;

- 1) In 544 ports, 262 ports have efficient berthing facilities and other 282 ports don't have.
- 2) Especially, only 16 ports in 45 ports have port facilities in "North Sumatra", only 12 ports in 33 ports have them in "Southeast Sulawesi", and only 29 ports in 108 ports have in "Irian Jaya".
- 3) REPELITA VI put stress on improvement of activities of the non-commercial ports to support the standard of living in remote areas.
- 4) Until the 4th year of REPELITA VI, 113 berthing facilities are constructed or upgraded in 23 provinces.
- 5) 60% of berthing facilities are developed in the eastern Indonesia including 11 ports facilities financed by "Maritime Transportation Sector Loan (by OECF)". Still 282 non-commercial ports have no efficient berthing facilities.
- 6) The result of technical studies for port development performed by DGSC says that 25 new locations are selected to construct port facilities.

(4) National Budget for Port Development

The government (DGSC) directly allocates national budget for the development and operation of non-commercial ports. As a matter of course, most of non-commercial port can't cover the development and operational costs with the operational revenues.

1) Allocation of National Budget for the Port Development

The allocation of the national budget for port development to IPC ports and non-commercial ports in the last three years is referred to in Chapter 6.1.2 (Table 6.1.2.1). The Table shows that the allocation for non-commercial ports increase from 30% (Rp.67,457 million) in FY 1996 to 49% (Rp.138,061 million) in FY 1997, while the allocation for IPC ports decreases from 70 % (Rp.159,359 million) in FY 1996 to 51% (Rp.146,019 million) in FY 1997.

Due to the financial crisis of the country and subsequent constraints of national budget, the increase of national budget for non-commercial ports can't be expected.

2) Revenue from Operation of the Non-Commercial Ports

In non-commercial ports, the government collect port charges such as port dues, berthing dues, wharfage, storage fees and others from users. The total amount of tariff revenues in the last three years coming from the operation of "non-commercial" ports is referred to in Chapter 6.1.2 (Table 6.1.2.7). The revenue is Rp.9,791 million in FY 1995 and Rp.11,497 million in FY 1996.

Although revenues has increased, it still fall short of covering the expenditures for port development. In FY 1996-97, only 17 % of the expenditures on non-commercial ports are covered by the revenue. It is necessary for the government to consider how to increase the national budget for the port development (see Chapter 6.1.2).

(5) Recommendation

Taking above-mentioned matters into consideration, the following recommendation can be made.

1) Increase of National Budget for Development of Non-Commercial Ports

Taking account of insufficient facilities and importance of the non-commercial ports, the national budget for the developments shall be increased. DGSC should increase the national budget. In order to do, DGSC should consider carefully the following measures.

- ① To establish "Special Account System" for development of non-commercial ports facilities (see "Chapter 6.1.2)
- ② To collect port charges without fail
- ③ To increase tariff rate as necessary (adjustment to cope with inflation)

2) Strengthening of Functions of KANWIL & KANPEL

Direct management of non-commercial port affairs handled by DGSC cause inefficient operation for the government and inconvenience for users. In order to improve the managing and operational system of non-commercial ports, the functions of regional office of MOC (KANWIL & KANPEL) for formulating "Port Master Plan" should be strengthened.

It is one idea to transfer the specific authority of licensing procedure for "special port & wharf" (e.g. for wharves with length less than 50 meters) and "environmental assessment" for small-scale projects to KANWIL. In order to do so, human resources of KANWIL & KANPEL also should be strengthened.

3) Transfer Management of Minor Non-Commercial Ports to Local Governments

DGSC should gradually promote to transfer the management of minor non-commercial ports to the local governments due to the following reasons ;

- ① Direct management of non-commercial ports executed by the central government may cause inefficient operation and high burdens for the government.
- ② It is advisable that local affairs should be dealt with in accordance with actual circumstances of the local areas and people.
- ③ This idea will agree with the concept of decentralization and promotion of local autonomy, which is very common in developed countries (U.S.A, Japan & most European countries).

In this case, the following concrete measures should be carefully examined among related agencies.

- ① The central government shall constructs and maintains the non-commercial ports at its own funds.
- ② A part of tariff revenues should be transferred to the local government for the management.