



VI. Guideline for the Government Regulation on the Shipping Law No.17/2008

1. Introduction

960. General practice of the law enforcement in Indonesia calls for the establishment of “Government Regulations” to set up the details of the actual implementation of the law, which is then followed by series of “Ministerial Decrees” to take care of further practical details. The Shipping Law No.17 has already come into effect on April 2008, giving some transitional period in certain area where the fundamental change is foreseen.

961. The Government Regulation regarding ports (hereinafter referred to as “G.R.”) was finalized in October 20, 2009 after year-long deliberation among the concerned authorities. It is understood that this G.R. is the first one completed amongst nine Government Regulations covering other area of shipping law.

962. The Shipping Law in its Chapter VII “Port” has entrusted the G.R. with task of establishment of further provision on following subjects:

Article No. in The Shipping Law	Subject
78	Port Principal Plan, Port Working Area, Port Interest Area
89	Port Authority, Port Management Unit
94(b) and 95	Port Business Entity and Service Standard
99	Permit for Port Construction/Operation
108	Special Terminal
112(2) and 113	Port Open for Foreign Trade/Penalty

963. Those subjects highlighted above are literally covering most of the area which distinguishes the regime under the new Shipping Law from the old one. The new Law dictates two major policies in the port sector, one is introduction of port management body, and the other is promotion of private sector participation in port development, management and operation.

964. The introduction of port management body aims to separate the role of regulator and operator in the development and management of the port. G.R. extensively describes management activities at port in Chapter IV for the purpose of making clear distinction between regulator function and operator function at the port.

965. The private sector participation is envisaged with the introduction of the new concept of Port Business Entity under the PPP framework initially set out by Presidential Regulation No.67 of 2005. Chapter IV of G.R. also provides essential details of commercial activities by private sector at port.

966. Necessary articles in G.R. for the promotion of PPP framework are considered to be major parts of article 78, article 89, article 94 (b), article 95, and article 99 of the law.

967. This chapter of the report is intended to provide the practical guideline for the G.R. In order to achieve the successful implementation of the new scheme under the new G.R., based on the new Shipping Law, the provision of G.R. may not be sufficient enough for daily conducts of port operation. While waiting for the establishment of Ministerial Decrees in some aspects, it would be of some help to refer to the guideline hereinafter provided as an additional tool for practical solution.



2. Guideline for the Government Regulation on Article 78 of the Shipping Law

2.1. Summary of G.R. on Port Principal Plan, Port Working Area and Port Interest Area

968. Port Principal Plan, Port Working Area (DLKr) and Port Interest Area (DLKp) are stipulated in Article 72 ~ Article 77 of the shipping law.

969. Article 73 and Article 74 stipulate that every port shall be obliged to maintain a Port Principal Plan which shall include a land allocation plan and a waters allocation plan. Furthermore, Article 75 stipulates that the Port Principal Plan is to be provided with a Port Working Area and Port Interest Area.

970. Article 75 explains that the Port Working Area shall consist of the land area used for the port activities of main facility and supporting facility, and waters used for the port activities of ship channel, docking place, place for load transfer between ships, dock for mooring and ship movement, piloting activity, ship repair place, and other activities according to the necessity.

971. Also explained in the same article, the Port Interest Area shall constitute outside Port Working Area of Waters used for navigation channel from and to port, the need of emergency, long-term port development, placement of dead ship, shipping trial run, piloting activity shipbuilding facility and maintenance.

972. Furthermore, it is stipulated that those areas shall be controlled by the state and managed by the port management body.

973. Article 76 on shipping law No.17/2008 stipulates that Port Principal Plan, Port Working Area and Port Interest Area shall be determined by the Minister upon the recommendation from Governor and Regent/Mayor in case of main port and national port and Governor or Regent/Mayor in case of feeder port

974. On the other hand, Port Principal Plan, Port Working Area and Port Interest Area are stipulated in Chapter III of the government regulation (G.R.). Some of articles, however, are nothing but be quoted from those of the shipping law. Therefore, additional and/or detail provisions are just summarized as follows.

975. G.R. clearly stipulates in Article 20 that Port Principal Plan shall be prepared by the port management body and include three types of planned period; namely a long term plan, a medium plan and a short term plan.

976. G.R. also stipulates in Article 28 that the determination of Port Principal Plan for main port and national port shall be stipulated by the Minister upon the recommendation from Governor and Regent/Mayor.

977. Abovementioned matters are stipulated by types and hierarchies of port in a same manner.

978. G.R. stipulates in Article 34 that in case of the Port Working Area is determined, the land management right and/or waters use right or beneficial right shall be granted pursuant to the relevant laws and regulations (same provision is seen in Article 75 (6) in the law).

979. G.R. also stipulates in Article 32 that the determination of Port Working Area and Port Interest Area for main port and national port shall be stipulated by the Minister upon the recommendation of Governor and Regent/Mayor.



980. Duties of the port management body within the Port Working Area of Land and Waters and Port Interest Area are stipulated in Article 35 respectively.

981. Port Principal Plan and Port Working Area are main subjects to propose guidelines for the implementation of the shipping law No.17/2008 because these concepts are key issues for securing the smooth port activities as well as providing clear guideline for the port business entity of its obligations and responsibilities and their concepts are similar to the Japanese port system.

982. These provisions such as Port Principal Plan and Port Working Area are very important for the smooth and effective operation and management of port. For smooth implementation of the law and G.R, several points such as the purpose and basic policy, items to be determined and the procedure etc. regarding Port Principal Plan and the purpose and definition, items to be regulated and the procedure etc. regarding Port Working Area should be made clear in proposed guidelines.

983. According to definition of the law, the Port Interest Area means waters outside the Port Working Area of Waters for use of the shipping safety purpose. Although securing the shipping safety is the main role of designation of port interest area, it serves other purposes as well. Port Interest Area is considered to indicate the territorial limits where PMB has to manage. Therefore, important points regarding the procedure, necessary regulation are proposed.

2.2. Guideline for the Stipulation of Port Principal Plan

2.2.1 Role of Port Principal Plan and Necessity of Port Planning Standard

984. Requirements for the Indonesian port sector are summarized as follows;

- a) Efficient and effective port development should be promoted to solve the shortage of port facilities appropriately.
- b) Well-coordinated port development plan should be essential to attract private sector's participation in port development.
- c) Systematic use of the spaces in and around port is essential to improve the efficiency and productivity of port activities.

985. Port Principal Plan clarifies the direction of a port's future development in this sense, it should be shared with private investors who might be able to help implement it.

986. As it is common sense that lots of people and business entities are involved in port activities, consensus as a whole is indispensable. Therefore, Port Principal Plan is a base for smooth implementation of port development, use and management.

987. Port Planning Standard is also very important for the formulation of Port Principal Plan.

988. Though there are some master plans for the development of port, most of those plans focus on the development of particular terminal(s) or a port without sufficient coordination of supply and demand (often seen as over supply) and comprehensive considerations and relations among facilities, ports and other items related to port activities, and hence it creates the barriers to port business entity to participate in investment with fear of so called traffic risks.

989. In order to clarify the national government's stance on port development, it is necessary to introduce a port planning standard. Without such a standard, it would be very difficult for agencies responsible for ports to properly formulate, evaluate and determinate an individual Port Principal Plan as well as to promote efficient and effective port development in order to cope with increasing traffic demand and realize efficient and safe transport in and around port while maintaining the consistency with supply-demand balance of all the ports in the nation. In particular, it is essential to introduce a



port planning standard for a country such as Indonesian which has hundreds of ports with various roles and facilities scattered across the archipelago.

990. Port planning standard includes basic ideas and items to be incorporated in the Port Principal Plan and every Port Principal Plan has to be in accordance with the port planning standard.

991. In the following sections, items to be planned in Port Principal Plan, documentation and map necessary for port planning and the procedure for the formulation and modification of Port Principal Plan are explained respectively to introduce port planning standard and formulate Port Principal Plan smoothly and effectively.

2.2.2 Items to be planned in Port Principal Plan

992. As Port Principal Plan has a role to make clear the direction of future development of a port, items which should be included in a plan have to be defined clearly in the beginning of port planning standard such as;

- (1) Policies for the development, utilization and preservation of ports as well as the conservation of the areas adjacent to the port.
- (2) Items relating to the volume of cargo handled, the number of passengers embarking and disembarking from ships, and various other capacities.
- (3) Items relating to the scale and arrangement of water area facilities, berthing facilities, and other port facilities in accordance with the capacities of the port.
- (4) Items relating to the development and conservation of port environments.
- (5) Other important items relating to the development, utilization, and preservation of ports as well as the conservation of the areas adjacent to the port.

993. Abovementioned items are basic and relatively abstract ideas in case of formulating a port principal plan. Therefore, more detailed items should be specified in the port planning standard for the fulfillment of the formulation of a port principal plan.

994. The following items should be planned in a port principal plan and the way of examination of each item should be prescribed in the following section.

- (1) Planning Policy of port
- (2) Capacity of port
- (3) Zoning
- (4) Development in each zone
- (5) Land reclamation and land use in each zone
- (6) Development of fundamental infrastructures
- (7) Other important items to be considered
- (8) Planning Map

A. Planning Policy of Port

995. With regard to the items related to the planning policy in the Port Principal Plan, the following matters should be formulated.

- i. History of the development of the port
- ii. Present situation of the use of port facilities, transportation of cargo and passengers, and land use in and around the port
- iii. Key issues related to the port development and the main purposes of the port development
- iv. Target year



v. Other important issues (if necessary)

996. In the formulation of the matters prescribed in the preceding paragraph, the following matters should be considered appropriately in an integrated and comprehensive manner.

- i. Natural conditions in and around the port
- ii. Social and economic conditions in and around the port
- iii. Conditions of transportation in and around the port (including maritime transportation and land transportation)
- iv. Safety in the port and favorable environment in terms of natural, living and working conditions

997. Regarding the target year, three planning periods are included in the Port Principal Plan; namely, long term (15-25 years), medium term (10-15 years), and short term (5-10 years) according to G.R. Generally speaking, the longer perspective increases the uncertainty while future port development cannot be properly considered in the shorter period. In case of Japan, the target year of the port plan is set, in general, ten to fifteen years into the future. However, this can be changed as necessary. In addition, this provision shall not preclude the formulation of the long-term vision for the development of the port of which target year is further future than a port plan. The important point is to set the target year clearly in each port principal plan.

998. Coordination of the related ports is also important in the formulation of the Port Principal Plan. On determining the planning policy and the capacity of the port, due consideration should be paid to the coordination with the related ports.

B. Capacity of Port

999. The total cargo throughput and the number of the passengers embarking and disembarking in the port should be determined using appropriate methods, taking into account the natural conditions and socio-economic conditions of the port and its hinterland.

1000. Due consideration should be paid for the innovation of the transportation and cargo handling method, changes of the traffic conditions, safety issue of the port, and preservation of the environment.

1001. For reference, the method called the unit productivity of wharves to evaluate the capacity of port in case of general cargo is introduced in Appendix-1.

C. Zoning

1002. Zoning of port should be conducted so as to appropriately secure the following matters;

- i. Safe and efficient use of Port Working Area of Waters
- ii. Safe and efficient transport in and around Port Working Area of Land
- iii. Efficient and effective land use in and around Port Working Area of Land
- iv. Efficient and effective port development

1003. In the formulation of the matters prescribed in the preceding paragraph, the following matters should be considered sufficiently in an integrated and comprehensive manner.

- i. Favorable use of Port Working Area of Land in and around port corresponding to the characteristics of the types of vessels, the commodities handled and existence or nonexistence of passengers.
- ii. Safety and efficiency of navigation of vessels in Port Working Area of Waters such as channels and basins.
- iii. Safety and efficiency of land transport in and around Port Working Area of Land.



- iv. Harmonization with urban planning as well as living and business environment around port working area of land.

1004. In the formulation of the matters prescribed in the paragraph 1002, the following points shall be specified.

- i. Location of the zone
- ii. Present function, use and issues related to each zone.
- iii. Future function and use expected at each zone
- iv. Key issues with regard to the matters prescribed in the preceding paragraph.

D. Development in each Zone

1005. With regard to the development in each zone, the following matters about the facilities should be determined so as to suit the future function and use expected at each zone as prescribed in the section of Zoning as well as in the section of Planning Policy.

- i. Purpose of the development of each facility
- ii. Scale and layout of each facility

1006. In the formulation of the matters prescribed in the preceding paragraph, the following matters shall be considered sufficiently.

1007. Furthermore, determination of the scale and layout of the facilities should be appropriate for the required capacity in total balance and one package, taking into account the national conditions, socio-economic conditions functioning of the existing facilities and preservation of the port and the adjacent area of the port.

(i) Water Facilities

1008. For the planning purpose, type, size and number of the vessels, wharf conditions shall be examined. The scale and layout of the water basins should be determined so as to guarantee the port to function fully, and so that the vessels can utilize them in a safe and smooth manner.

(ii) Mooring Facilities

1009. For the planning purpose, type, size and number of the vessels, type and volume of the cargo, cargo handling system, usage of the water basins, and facilities for the ISPS code shall be fully considered. The scale and layout of mooring facilities should be determined so as to ensure optimum utility, safety, and optimum productivity.

(iii) Protective Facilities

1010. The scale and layout of protective facilities should be determined so as to attain their functions taking into account the utilization of protected water facilities and mooring facilities as well as other relevant factors.

(iv) Port Transport Facilities

1011. For the planning purpose, traffic conditions in the port and in the vicinity of the port, and condition of utilization of the port facilities, etc. should be examined. The scale and layout of the facilities for traffics in the vicinity area of the port shall be determined so as to conform to the necessary volume and quality of the traffic demand.



(v) Passenger Facilities, Cargo Handling Facilities, Storage Facilities

1012. For the planning purpose, number and movement of passengers, condition for utilization of facilities, traffic flow in and around the port and security arrangement should be examined. The scale and layout of the land and facility for the passenger should be determined so that the passengers can use the facility in a safe and smooth way.

1013. For the planning purpose, type and volume of cargo, condition for utilization of wharves, traffic facilities in the port adjacent area, and security arrangement should be examined. The scale and layout of the facility and equipment for cargo handling and storage should be determined so that they can attain full function.

(vi) Facilities for Preservation of the Port Environment

1014. The scale and layout of the facilities for preservation of the port environment should be determined taking into account the natural conditions, utilization of port and its adjacent area and the activity of the industries so that the quality of the port environment can be reserved.

(vii) Facilities for Prevention of Pollution

1015. The scale and layout of the facilities for prevention of pollution should be determined taking into account the natural conditions, utilization of the port and its adjacent area, activity of the industry so that the pollution can properly be prevented. In this regard, compliance to the related laws and regulations should be maintained.

(viii) Facilities for Disaster Prevention

1016. The scale and layout of the facilities for disaster prevention should be determined taking into account the natural conditions, social and economic conditions, and the land use and business activities in and around the port.

1017. Abovementioned facilities are basic and major facilities for a port. Therefore, items prescribed in the preceding paragraphs have to be considered sufficiently whenever a port principal plan is formulated with inclusion of these facilities.

1018. Furthermore, according to the scale, role or function of a port, specific facility might be planned. Even in such a case, planning standard for the specific facility should be established beforehand and its scale and layout should be determined in line with the standard.

E. Land Reclamation and Land Use in each Zone

1019. The scale and layout of the land to be reclaimed in each zone should be determined in order to utilize the water's edge effectively for appropriate development, use and preservation of the port, taking into account the natural conditions, use of the port, safety in the port, as well as the impact on the natural and living environment in and around the port.

1020. Land use in each zone should be determined so as to promote the development, use and preservation of the port effectively and efficiently. In doing this, categories of land use should be in general as follows.

- (1) Terminal Space: The space in which terminal(s) exist or will be constructed with official approval.
- (2) Pier Space: The space behind or adjacent to terminal(s) which functions to support cargo handling or embarking and disembarking of passengers together with terminal(s). Otherwise,



the space where terminal(s) will be constructed but has not been officially approved and the layout(s) has/have not been decided yet.

- (3) Supporting Space: The space where the facilities and business activities support cargo handling and transportation in the port or passenger transport.
- (4) Transport Space: The space for land transport from/to the port
- (5) Green Space: Green space such as park or open space.
- (6) Amenity Space: The land for the facilities for tourism or recreation, etc.
- (7) Industrial Space: The land for Industry
- (8) Hazardous Space: The land for handling hazardous material such as petroleum, gas, etc. except for the area for Industrial Space.
- (9) Urban Space: The land for urban use
- (10) Reserved Space: The land where exact or detail land use has not been decided yet but is expected to be developed for future public use.

F. Development of Fundamental Infrastructures

1021. The term “fundamental infrastructures ” as used in this standard means infrastructures of which function and purpose are shared by multiple zones such as protective facilities like breakwaters, major port transport facilities like trunk roads, and major water facilities like trunk waterways, etc.

1022. In order to plan these facilities, the viewpoint of an integrated and comprehensive manner is requested. Therefore, the scale and layout of fundamental facilities should be determined with integrated and comprehensive considerations to promote the development, use and preservation of the port effectively and efficiently.

G. Other important Items to be considered

1023. In case that the function of a zone is changed in order to expand the capacity or to convert the land use etc., the reason and purpose of change of the function should be described in the port principal plan.

1024. For efficient port development and preservation of the natural environment in and around port, measures to effectively utilize dredged soil should be considered. In doing this, the natural conditions, effective implementation process and the other related factors should be considered.

1025. In case that development plans closely related to the port development in and around the port such as the development of industrial zone, electric power plants, urban development etc. arise necessary coordination should be described in the port principal plan.

1026. In case that there are other important items to be considered particularly for the port development, use and preservation, description of each of them should be included in the port principal plan.

H. Port Planning Map

1027. The items determined in the Port Principal Plan, such as the scale and layout of the facilities, zoning, land use etc., should be shown in the port planning map in a uniformed manner under the guidance of the Ministry of Transport.

1028. Display example of the port planning map prescribed in Japan is shown below.



Display example of the port plan map

Mooring facilities → Public wharf Passenger ship wharf and ferry boat wharf

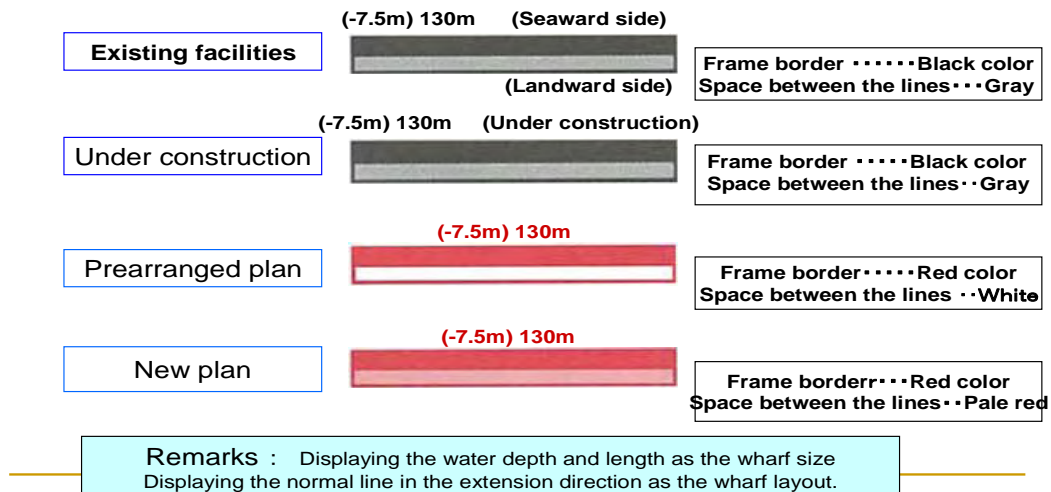


Figure 2.2-1 Display example of the Port Planning Map

1029. By preparing the map and showing the contents of the plan in a uniform manner, any person who is interested in the port development can easily understand the direction of future port development, and this will be particularly useful for the people from the private sector considering whether or not to invest in port

2.2.3 Documentation and Map necessary for Port Planning

1030. Documentation of the port planning is also indispensable because the port principal plan has a role to indicate an official intention of the port management body which is a government agency. Therefore, documentation of the port planning should be a part of the official procedure and open to the public in the course of the formulation.

1031. Documentation of the port planning should be made in a uniform manner and the contents of the documentation had better be prepared in a conventional format. Furthermore, items to be planned prescribed in the preceding section 2.2.2 should be included in the document

1032. For reference, a typical example of the documentation of the Port Principal Plan is shown below.

Typical example of the documentation of port planning in case of the Yokohama port

a. Documentation of the port planning constitute two types of document, namely a main document for port plan which is only authorized in accordance with the law and regulations and supporting documents which consist of material-1 and material-2.

b. Contents of the main document are as follows;

- I. Policy for port plans
 1. Demands on the Yokohama port
 2. Policies for the plan of the Yokohama port
- II. Port Capacity
- III. Function-specific plans formulated in the port plan
 1. Cargo distribution



- 1-1 Public wharf plan 1-2 Dedicated wharf plan 1-3 Water facilities plan
- 1-4 Protective facilities plan 1-5 Port transport facilities plan
- 2. Human use
 - 2-1 Facilities plan for improvement of the port environment
 - 2-2 Passenger wharf plan
- 3. Environment
 - 3-1 Facilities plan for improvement of the port environment
 - 3-2 Plan for waste disposal
- 4. Safety
 - 4-1 Facilities plan against large scale earthquakes
 - 4-2 Basins plan for small craft
- 5. Others
 - 5-1 Required facilities for the port to function as a hub for the international maritime transport network as well as for the domestic maritime transport network
 - 5-2 Measures for supplying goods to ships and others
- IV. Plans for land reclamation and land use
 - 1. Land use plan
 - 2. Land reclamation plan
 - 3. Plan for seaside beach
- V. Other items
 - 1. Specific zones for reconsideration of the use
- c. A port planning map is attached with the main document.
- d. Supporting documents
 - Material-1 is a document compiling the necessary data, information, documents and evidences collected and analyzed in the process of formulating the plan. Limits of the port water area and fund-raising plan are also prescribed in material-1.
 - Material-2 is a document compiling the result of the environment assessment.

1033. A port planning map is attached with the main document. Significance and role of the map has already explained in the preceding section “B.”. A planning map includes lots of variable information and preparation of the map reflecting the contents of the plan and its utilization is one of the keys for attracting potential private investors.

2.2.4 Procedure for the Formulation and Modification of Port Principal Plan

1034. Port Principal Plan is to be proposed by the port management body and be determined by the Minister in case of main port and national port upon the recommendation from the governor and regent/mayor according to the shipping law and G.R.

1035. However, the process of the determination and recommendation are not clear and the third parties including stakeholders and other interest groups should be involved in the process of the formulation for the port principal plan.

1036. It is, indeed, quite important for the port management body to make the process of the formulation of the plan clear and to involve the stakeholders and interest groups in the course of the formulation because lots of people and entities are taking part in port activities in spite of commercial or non-commercial activities and reaching a consensus among interest groups is key for achieving effective development, use and operation of the port; it also reduce the risk level for private investors which will attract greater investment.

1037. In the previous chapter, the central and local planning and regulatory committee are proposed to be established for the purpose of the official consultation with maritime community and other interest groups. Therefore, procedure for the formulation and amendment of the Port Principal Plan



should be constituted by making the most of the committee and be also specified in the regulation or degree.

1038. The standard procedure of it is as follows.

- (1) The port management body (PMB) prepares the draft port principal plan with reference to the basic policy and the port planning standard.
- (2) PMB consults the draft port principal plan with the local planning and regulatory committee.
- (3) The local planning and regulatory committee makes comments/recommendation, if any, after deliberation and submits them to PMB.
- (4) PMB also consults the draft port principal plan with governor and regent/mayor in respect of the conformity with the provincial and regent/city spatial plan.
- (5) PMB submits the port principal plan to MOT/ DGST with the recommendation from governor and regent/mayor.
- (6) The Minister of MOT examines the submitted port principal plan on the bases of the basic policy and the port planning standard. At the same time, MOT consults it with the central planning and regulatory committee.
- (7) The central planning and regulatory committee makes comments/recommendation, if any, after deliberation and submits them to MOT.
- (8) In case that the Minister concluded some amendment/modification are needed, the port principal plan would be returned to PMB for conducting necessary amendments. Then, some procedures from (1) to (7) are conducted again.
- (9) In case that the Minister concluded that no amendment/modification are needed, the Minister notifies PMB that port principal plan has been approved.
- (10) PMB has to make an official announcement the outline of the port principal plan after receiving the notification from the Minister.

1039. The prescribed procedure had better apply mainly in case of main port and national port. In case of feeder port, consultation with the central planning and regulatory committee may not be necessary. Furthermore, in case of minor change of the Port Principal Plan, consultation with the central planning and regulatory committee may not be needed even in case of main port and national port.

1040. The central/local planning and regulatory committee should generally have around 10 members with 3or 4 years term and consist of representatives from the related central government possibly from DGST, MOT, the related local government or regent/mayor, users of the port, concessionaire, operators, persons experienced in port planning, maritime affairs and so on.

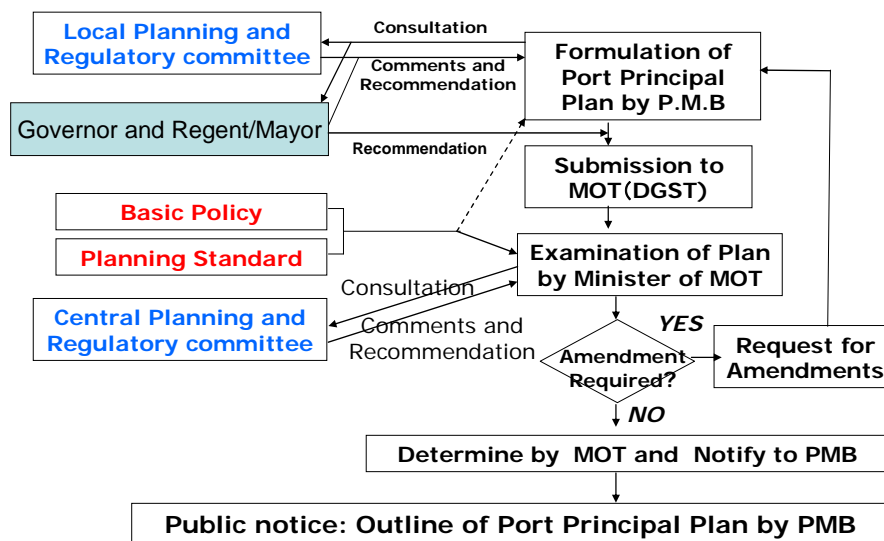


Figure 2.2-2 Procedure of Port Planning (in the case of main port & national port)

1041. For reference, a basic policy means the basic direction of port development, use and preservation formulated by the government which might be specified in the national port principal plan.

1042. In the case of Japan, the basic policy is stipulated in Article 3-2-2 of the Port and Harbor Law and shall prescribe the following items.

- (1) Items concerning the measures for the development, use and preservation of ports..
- (2) Basic items concerning the location, functions and capabilities of ports.
- (3) Basic items concerning the location and development of waterways designated to be developed and maintained.
- (4) Basic items concerning the environmental preservation to be considered for the development, use and preservation of ports and the development of waterways designated to be developed and maintained.
- (5) Basic items concerning the coordination among ports which have a close relationship from the viewpoint of their economy, nature and society

2.3. Guideline for the Stipulation and Management of Port Working Area and Port Interest Area

2.3.1 Objectives of Regulations on Port Working Area

1043. The shipping law defines that Port means a place consisting of land and/or waters with certain boundaries as a place for governmental and business activities which is used as moor, entrance and exit of passengers, and/or discharge of goods, in form of terminal and dock equipped with shipping safety and security facilities and supporting activities also as the place of change for intra and inter-mode transportation.

1044. In this definition, one of the most important points is that port consists of land area and waters area and it is an area connecting overland and maritime transportation / communication. In order to carry out port activities most effectively, such as warehousing, handling cargoes, cargo storage as well as port traffic and passenger, it is necessary to regulate the use of the port area which means areas of land and waters.



1045. In addition, effective use of the port area leads to further development and promotion of the port. In Indonesian archipelagoes, ports have essential roles as logistics and industrial bases and have greatly contributed to the national and regional economy and have to continue to do so in the future. Therefore, rules and regulations on the use of the port area should be established to ensure that port activities are carried out effectively and smoothly and contribute to the economic growth continuously.

1046. Objectives of setting Port Working Area is to carry out port activities most effectively, to ensure port functions sufficiently and for effective future development of the port. Furthermore, enhancing international competitiveness and contribution to the national economic growth and regional development are also pointed out as objectives for setting Port Working Area.

2.3.2 Definition and Deference between Indonesian System and Japanese System in terms of Legal Aspects

1047. Provisions regarding Port Working Area are summarized in section 2.1 and definition of Port Working Area as terminology is that it means waters and land area within port or special terminal directly used for activities of the relevant port.

1048. A remarkable point is that the concept of Port Working Area includes both waters area and land area.

1049. On the other hand, in case of Japanese port and harbor law, waters part and land part of the port area are understood as different concepts and stipulated separately. Waters part of the port area is defined as port water area and land part of the port area is defined as port land premise. Furthermore, port land premise is designated under the provisions of the City Planning Law, which means that land area of the port is a part of the city.

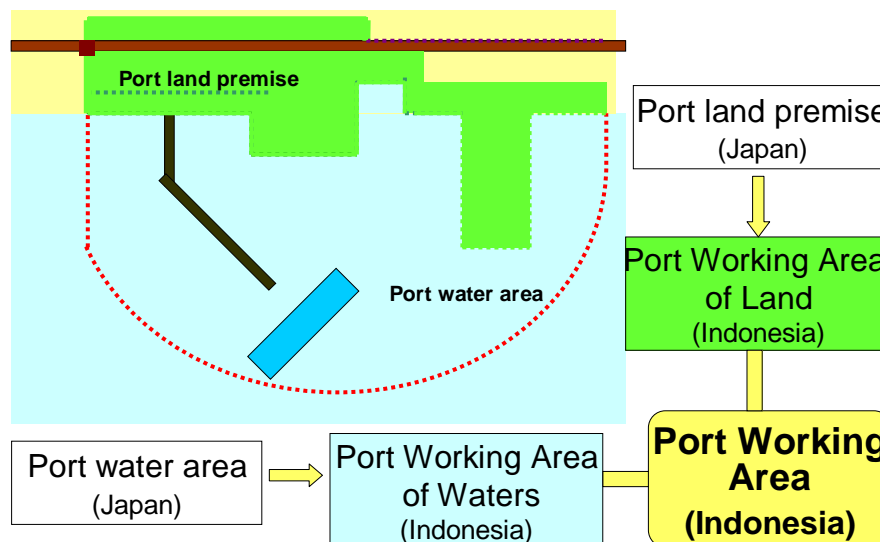


Figure 2.3-1 Relation between Port Working Area and Port water area and Port land premise

1050. Both port water area and port land premise are restricted areas and tools for ensuring port management and operation smoothly and effectively. To restrict an area means to impose limitations on someone's rights and activities in the area, therefore, it is necessary to make the purpose clear and to make the public understand the necessity of such restrictions, so that the area should be the minimum area required for management and operation of the port.



1051. In the Japanese port and harbor law, port water area and port land premise are defined respectively as follows;

- Port water area should be the minimum area required for the economic operation and management of the said water area as an independent port. The area is approved by the Minister of LIT or the local government.
- Port land premise must be limited to the minimum area required for the operation and management of the port. The port management body should manage and operate port land premise as integrated area with port water area.

1052. Purpose for setting these areas are not necessarily clear in the shipping law No.17/2008 and /or G.R., but they are supposed to be set to preserve port function. Furthermore, though the duties of the port management body which are stipulated in G.R., regulations in these areas are much more important and should be prescribed in some kind of a government document.

1053. Because it is commonly acknowledged that certain rules and regulations for land use are necessary to avoid the disorderly use or conflicting use of land for maintaining sound socio-economic activity in the potentially densely used land area. Similarly, certain rules and regulations for water area use are necessary to preserve the water area for sound socio-economic activity and to preserve the facilities in the water area.

2.3.3 Purpose of Designation of Port Working Area

1054. Major purposes of designation of Port Working Area of Waters are;

- to notify the public of the water area under the jurisdiction of the port management body and to let them know that activities in the area require authorization.
- to maintain the facilities (channels, basins, navigation aids and other protection facilities) in a good operational condition through controlling activities in the area and punishing illegal acts.

1055. Major purposes of designation of Port Working Area of Land are;

- to maintain the area exclusively used for port activities and separating it from the areas for other socio-economic activities.
- the area exclusively used for port activities such as warehousing, cargo handling/storage and port traffic usually need to be spacious, and these activities have low productivity in terms of land.
- the area once the land use is decided by market mechanism, such port activities are forced to move out of the port working area, because this area is more convenient for commercial use with higher land productivity.

1056. Within Port Working Area of Land, the port management body can also designate the zones for specific use to maintain sound and effective activities of different types. Port handles various types of cargo including dangerous cargo, dirty cargo, clean cargo, foodstuffs and cars as well as passenger.

1057. In case that these different types of cargo are handled within the same area, damages to certain types of cargoes might occur. In case that different types and sizes of cargo handling equipment are used in the same area, effective cargo handling might be hampered. In order to avoid such conflicting uses of the area, zoning is required.



2.3.4 Guideline for Regulations within Port Working Area

A. Port Working Area of Waters

(i) Significance

1058. Port Working Area of Waters represents the area wherein PMB and port business entity carry out port activities. PMB can implement duties which are defined in the shipping law No.17/2008 and G.R. Port Working Area of Waters represents the territorial limit wherein PMB grants permission for construction works. Any person wishing to construct a facility etc. in Port Working Area of Waters must obtain permission from PMB.

(ii) Regulations

1059. In the light of the purpose of designating Port Working Area of Waters, any person who intends to engage in works specified under any of the following items within Port Working Area of Waters must obtain permission from PMB.

- a. Proprietary use of water area (including the space above and the sea bottom as specified by government regulation, the same shall apply hereinafter) or public owned open spaces within Port Working Area of Waters.
- b. Mining of sand and earth in the water area or public owned open spaces within Port Working Area of Waters.
- c. Construction or improvement of water facilities, protective facilities, mooring facilities, canals and irrigation ditches or drainage ditches (excluding those facilities associated with proprietary use under item a.).
- d. Such acts as specified by government regulation which may seriously impede the development, utilization or preservation of the port.

1060. PMB should not grant permission in the following cases.

- a. Acts which may seriously impede the utilization or preservation of the port.
- b. Acts which may seriously obstruct the implementation of the port plan.
- c. Acts which may seriously interfere with the development or progress of the port.

1061. PMB should not grant permission for the use of Port Working Area of Waters except for the following cases.

- a. Cases in which the exclusive use of water area is necessary for construction, improvement, maintenance or restoration of water facilities, protective facilities, mooring facilities, port transportation facilities or navigation aid facilities.
- b. Cases in which the exclusive use of water area of necessary for salvaging a sunken ship or other objects.
- c. Cases in which the exclusive use of water area is necessary for the performance of acts specified by PMB.

(iii) Penalty

1062. Penalty should be imposed on any person who violates the regulations by fraud or other illegal means. Therefore, penalty provisions should be included in a ministerial decree or a decision made by a competent authority. In the case of the Japanese port and harbor law, it is stipulated that PMB may impose a penalty not exceeding five times the amount evaded.



(iv) Range of Port Working Area of Waters

1063. Port Working Area of Waters is a minimum area required for the economic operation and management as an independent port. The range of it means;

- a. the area where port facilities or planned port facilities exist.
- b. the area where vessels navigate, wait and anchor.
- c. the area where cargo handling and other port related activities are carried out.
- d. the area which is planned to be reclaimed for port related activities.
- e. the area for disposing of drift sand and jetsam which may hinder the maintenance of the port facilities.

1064. The area is not in conflict with the interest of the local public entities whose Port Working Area borders the proposed Port Working Area. The area does not exceed Port Interest Area as provided for in the shipping law No.17/2008.

B. Regulation within Port Working Area of Land

(i) Significance

1065. On the other hand, Port Working Area of Land also indicates the territorial limit to be managed and administrated by PMB. Port Working Area of Land indicates the territorial limit wherein new construction works or expansion plans must be reported. To secure safety, promote effective use of the port and prevent the environment, developers must submit a report whenever they intend to carry out new construction works or expand existing facilities in Port Working Area of Land. If PMB deems that new activities would have a negative impact, it can recommend modifications to submitted plans.

1066. Furthermore, Port Working Area of Land is the territorial limit of port facilities and is the area where PMB can regulate the construction of facilities. PMB can designate zones in Port Working Area of Land and it means that PMB regulates the use of land.

1067. Port Working Area of Land also indicates the area that PMB can force private entities, etc. in port to bear part of the cost of improvement or preservation of the environment.

(ii) Regulations

1068. In the light of the purpose of designating Port Working Area of Land, any person who intends to engage in the work specified under any of the following items within Port Working Area of Land must inform PMB.

- a. Reporting of acts engaged in Port Working Area of Land
 - Construction or improvement of water facilities, canals, irrigation ditches or drainage ditches.
 - Construction or improvement of waste disposal facilities.
 - Construction or expansion of a factory or a business establishment in which the total floor area or the total ground area exceeds the standard specified by government regulation.
 - Construction or improvement of facilities as specified by government regulation which may cause a major obstacle to the development, utilization or preservation of the port, such as facilities which handle explosives and other hazardous materials
- b. Regulation on construction of facilities
 - Any person who intends to construct a facility must comply with the regulation.



(iii) Penalty

1069. Penalty should be imposed on any person who carried out an act without reporting it beforehand, who changed the reported act without permission or submitted a false report, and who fails to carry out a recommended change. Therefore, provisions so as to clauses of penalty should be included in a ministerial degree concerned or a decision made by a competent authority

(iv) Range of Port Working Area of Land

1070. Port Working Area of Land is a minimum land area required for the operation and management of the port and PMB should manage and operate port working area of land as integrated area with Port Working Area of Waters. The range of it means;

- a. the area where port facilities exist.
- b. the area where cargo handling, cargo storage and the other works related to port activities are frequently carried out.
- c. the area where factories for carrying in or out raw materials via a port are located.
- d. the area that is necessary for prevention of pollution and conservation of environment.
- e. in addition, the area which is necessary for management and administration of proposed construction and land use.

(v) Zones in Port Working Area of Land

1071. In Port Working Area of Land, PMB may designate zones such as a Commercial port zone, Special cargo zone, Industrial port zone, Rail delivery zone, Fishing port zone, Bunker zone, Hazardous material zone, Marina zone and Scenic and recreation zone.

1072. Zones mean sub-areas in Port Working Area of Land, where no buildings or structures which seriously affect the objective of each zone and which are stipulated by the municipal ordinance or the ordinance of PMB should be constructed and no buildings or structures shall be altered as stipulated by the said ordinance through modification of the structure or changes in its use within the area of each zone.

Table 2.3-1 Definitions of zones

Name of zones	contents
Commercial port zone	Zone designed for handling passengers and general cargoes
Special cargo zone	Zone designed for handling coal, ores and other cargo which are normally handled in bulk
Industrial zone	Zone designed for the establishment of factories and other industrial facilities
Rail delivery zone	Zone designed for railway connection with ferryboats
Fishing port zone	Zone designed for handling marine products or for use by fishing boats to make necessary preparations for sailing out
Bunker zone	Zone designed for storing and supplying fuels to ships
Hazardous material zone	Zone designed for handling explosives and other hazardous materials
Marina zone	Zone designed for use by yachts, motor boats and other craft for sporting and recreational purpose
Scenic and recreation zone	Zone designed for preservation of scenery and promotion of welfare of harbor workers or persons visiting the port



2.3.5 Procedure to designate Port Working Area

1073. Port Working Area of Waters and Land are restricted areas. To restrict means to impose limitations on someone's rights and activities in the area. Therefore, it is necessary to make the purpose clear and to make the public understand the necessity of designating Port Working Area of Waters and Land. Furthermore, the procedure of designation of them should be open to the public

1074. G.R stipulates that same method with Port Principal Plan for the determination of Port Working Area shall be taken and Port Principal Plan, Port Working Area and Port Interest Area are closely related each other, so they had better be determined at the same time.

1075. Therefore, procedure for the designation of Port Working Area should be basically adopted as same as that of Port Principal Plan shown in Figure 2.3-2.

1076. However, considering that Port Working Area of Land is sometimes included in a part of city and citizen and stakeholders may be affected for the designation of it, it is recommendable that PMB should hold a public hearing and/or briefing in the process of the designation of Port Working Area prior to consult with the local planning and regulation council.

1077. Example procedure for holding a public hearing and/or briefing is shown below.

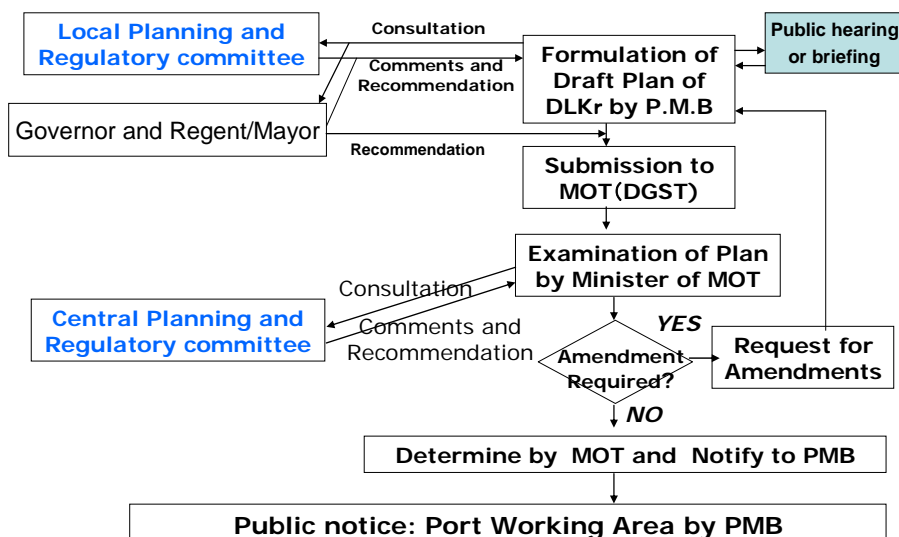


Figure 2.3-2 Procedure of Designation of Port Working Area
(in the case of main port & national port)

2.3.6 Guideline for the Stipulation and Management of Port Interest Area

1078. Main purpose of setting Port Interest Area is to secure the shipping safety. However, as explained in paragraph 4 of the previous section 2.1, port interest area is used for other purposes such as navigation channel from and to port, in case of emergency, long term port development, dead ship relocation, shipping trial run, pilotage, shipbuilding facilities and maintenance.

1079. Except for safety and order of port, a distinguishing feature for the use of Port Interest Area is that the uses for long term port development and shipbuilding facilities and maintenance are allowed. An area for long term port development may sometimes be a planned area for a port principal plan and shipbuilding facilities and maintenance is one of the port activities which may be needed some kind of



waters use right. But, G.R. stipulates that waters use right or beneficial right shall be granted to the activities carried out only in Port Working Area.

1080. Port Interest Area seems to be a reserved area for the future and a space for accommodating technological advancement. So far, there is no clear description so as to waters use right in Port Interest Area.

1081. In the case of Japan, the basic purpose of the port regulations law is to secure the safe navigation of vessels and maintain order in ports. This law designates the physical limits of ports which cover the port water area (which means the port working area of waters in Indonesia) as a general rule. The range of the physical limits is as same as or a little wider than that of the port water area. This law is under the jurisdiction of the Japan coast guard and stipulates regulations regarding entrance, departure and in-port procedures, prescribed channel and rules of sailing, dangerous objects, maintenance of channel, ship's lights and signals etc. to secure the shipping safety and order in ports.

1082. Port Interest Area is understood to be the territorial limits of port which PMB has to manage and can collect the port due (navigation aids due) from vessels using the port facilities, though the main purpose of setting Port Interest Area is to secure the shipping safety. From this point of view, important items which should be carried out as PMB are as follows.

1083. As long as Port Interest Area is an area mainly for the shipping safety, the uses which hamper the shipping safety and affect to the port activities within Port working Area should be regulated. Any person who intends to use the port interest area must submit an application to PMB and obtain permission from PMB. In case that the use affects to the shipping safety, PMB should consult with a harbormaster.

1084. Furthermore, permission except for the use related to the shipping safety should be a temporary or a short term one to avoid a continuous use which may generate the right of waters use.

1085. According to G.R, Port Interest Area and Port Working Area are always proposed and determined simultaneously and they are closely related to Port Principal Plan, so the procedure to designate port interest area is considered to be the same to that of Port Principal Plan. However, as Port Interest Area is aiming to secure the shipping safety, PMB should consult with a harbormaster

3. Guideline for the Government Regulation on Article 89 of the Shipping Law

3.1. Summary of G.R. on Port Management Body

1086. New Shipping Law stipulates that Port activity management and advancement, control, and supervision as referred to in section (1) letter a shall be conducted by port management body (Article 80 (3)). And details on port management body are provided in Paragraph 3 of the Law.

1087. Port Management Body is classified into Port Authority which shall be established in the commercial port and Port Management Unit which shall be established in non-commercial port, and further, Port Management Unit is classified into Governmental Port Management Unit and Regional Government Port Management Unit.

1088. It is also stipulated that Port Authority and Port Management Unit shall have the role as Government representative to give concession or any other form to Port Business Entity to conduct business activity at port as set forth in an agreement (Article 82 (4)) and concession proceeds obtained by Port Authority shall constitute state revenue in accordance with the provision of laws and regulations.



1089. Port Authority is regulated to perform the functions of regulation, development, control and supervision in respect of port activities with the following duties and responsibilities in Article 42 of GR.:

- To provide, control and supervise port land and water areas,
- To provide and maintain breakwater, port basin, navigation channel and road network,
- To guarantee the security and order at port,
- To guarantee and maintain the environmental conservation at port,
- To prepare the Port Principal Plan, Port Working Area and Port Interest Area,
- To guarantee smooth cargo flow, etc.

1090. In relation with PPP, the most important role and function of the Port Authority is to manage and supervise the port activities undertaken by the Port Business Entity for the protection of public interest as well as to provide effective and efficient environment for the Port Business Entity for his participation in the port activity.

1091. Therefore, in addition to the powers and responsibilities of the Port Authority stipulated in the GR, it is necessary to stipulate more in details for the management activities related with PPP in the port sector such as necessary organization of Port Authority for the management of concession, policy and procedure of concession, rules and procedure for compiling the port facilities ledger and auditing and accounting for the better management of the PPP in any other form such as Ministerial decision or DGST guideline.

3.2. Rules, Regulations and Management of Port Concession

3.2.1 Rules and Regulations

A. Allocation of Functions among MOT, DGST and Port Authority

1092. In order to effectively and efficiently implement the PPP scheme in port sector, allocation of roles and functions within public sector to clearly define which organization has what kind of powers and authority as well as responsibility is necessary as shown in Figure 3.2-1.

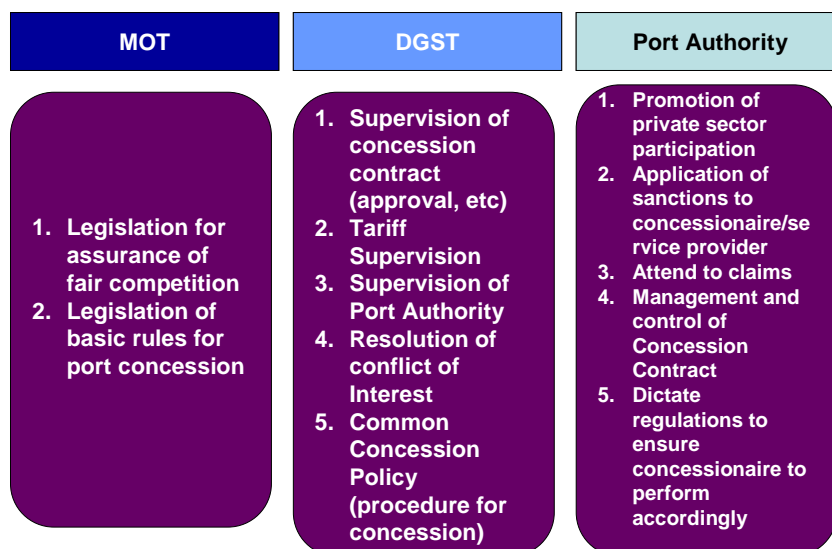


Figure 3.2-1 Allocation of Roles and Functions among MOT, DGST and Port Authority



B. Necessary Legislations

1093. In order to legislate for the assurance of fair competition in the port sector, following Ministerial Regulation is necessary to be stipulated as the port sector implementation regulation of PR. No.67/2005.

(i) Standard for Protecting Fair Competition

(1) Any act that has the intention or the result of restricting in an undue manner the competition among ports and providers of port services shall be expressly prohibited. For this purpose, the following shall be understood to be restrictions to fair competition:

- a) Charging prices that are lower than operational costs
- b) Offering services for free in addition to the officially published services
- c) Agreements of any kind for sharing quotas for servicing or supplying ships or cargo in order to establish of inter-connected price levels
- d) All transactions that are not in an official invoice including their prices, reductions or discounts detailed by each class, type of item or services or supplies provided. Such invoice shall give the details, for the user's knowledge, of the taxes or surcharges that were charged, including those for financing of the upper entities of the national port system.
- e) All those that contemplate the matter of the national entity responsible to guard the exercise of free competition
- f) Exercising a dominant position by some of the port operators

(2) To protect the user's right to the best information, the port operators shall provide at the disposal of the users, and publish and deliver to Port Authority in a manner that Port Authority decides, a list of rates for all the services or supplies offered in their installations.

(ii) Method of Implementation of Cooperation Project in Port Sector

1094. In the Presidential Regulation No.67/2005, only competitive bidding is stipulated for the cooperation with business entity for the provision of infrastructure. Considering the variety of concession form in the port sector, it is necessary to apply other mode of bidding and followings are better to be stipulated in the Ministerial Regulation as the implementation guideline for PPP scheme in the port sector.

1095. When implementing port concession, following shall be applied:

- a) Except for succeeding concessions with existing concessionaires, the Conceding Administration shall award concession rights based on competitive bid, competitive proposal, or sole source negotiation.
- b) Competitive bids shall be used when in the judgment of the Competent Authority that financial return is the only relevant criteria for selecting among prospective concessionaires.
- c) Competitive proposals shall be used when, in the judgment of the Competent Authority that criteria other than financial return to the Port are relevant to selecting a prospective concessionaire.
- d) Sole source negotiation shall be used only in those instances where, in the judgment of the Competent Authority, a prospective concessionaire offers services that are unique, patented, or otherwise demonstrated to be available only from a single source.



(iii) Regulatory Work of DGST

1096. DGST as the regulatory organization shall perform the followings;

- Supervision (approval, conflict resolution) of the concession agreement for the use, operation, maintenance, conservation and administration of port infrastructure and superstructure, including their restoration and construction under the jurisdiction of DGST
- Establish DGST concession policies and procedures to guide Port Authority with respect to concession
- The rates for services rendered to cargo and ships shall be established if all possible by the concessionaire and shall be presented by him in his technical bid, within the process of the respective bidding. If a bidder is allocated the concession, the rates offered in his bid may later be adjusted in accordance with the mechanisms established by DGST, the entity responsible for regulating, controlling and inspecting the port rates.
- Supervise the Port Authority in the implementation of concession including approval of concession plan, bid evaluation, finalization of contract.
- Resolve all conflict of Interests that may exist among concessionaire, holders of rights, and users of ports and maritime services.

(iv) Concession Implementation by Port Authority

1097. In order to implement the PPP scheme more efficiently and effectively, Port Authority shall;

- Promote the participation of the social and private sectors, and the municipalities in operating ports, terminals, marinas and port installations
- Apply sanctions to concessionaires or providers of maritime and port services in accordance with the obligations that each had assumed under contract
- Attend to the claims made by all the users of the maritime and port services provided in the ambit of its port
- Supervise and control the fulfillment of the concession contracts that are entered into with concessionaires, and private operators of ports and all the agents that participate in maritime activity
- Control the functioning of ports in accordance with the commitments assumed by the respective concessionaires and operators, and applying control to fulfill legal standards and port regulations.
- Control the services rendered by concessionaires, operators, and service providers to ships and cargo, insuring that the users of port services receive efficient, fair and egalitarian treatment
- Exercise the rights corresponding to the State, as established in the respective laws, to control and inspect for the fulfillment of the obligations assumed by the concessionaires and operators of ports and maritime activity
- Dictate regulations to insure that the holders of concessions and usage-permits establish plans and procedures for maintaining the goods used for the services in good condition during the period of said concessions and permits, and to make periodic reports to the DGST, which allow it to determine the level of fulfillment of said plans and procedures



3.2.2 Management of Concession

A. Institutional Settings

1098. In terms of PPP implementation scheme, Port Authority shall have the role as Government representative to give concession or any other form to Port Business Entity to conduct business activity at port as set forth in an agreement (New Shipping Law Article 82 (4)) and Concession Proceeds obtained by Port Authority as referred to in section (4) shall constitute state revenue in accordance with the provision of laws and regulations. (ditto (5))

1099. Hence, considering the PR 67/2005 and No.38/PMK.01/2006, institutional organization is recommended to set as in Figure 3.2-2.

1100. Considering the concession procedure set in the proposed DGST concession policy, structure of Port Authority is proposed as is shown in Figure 3.2-3 and Figure 3.2-4.

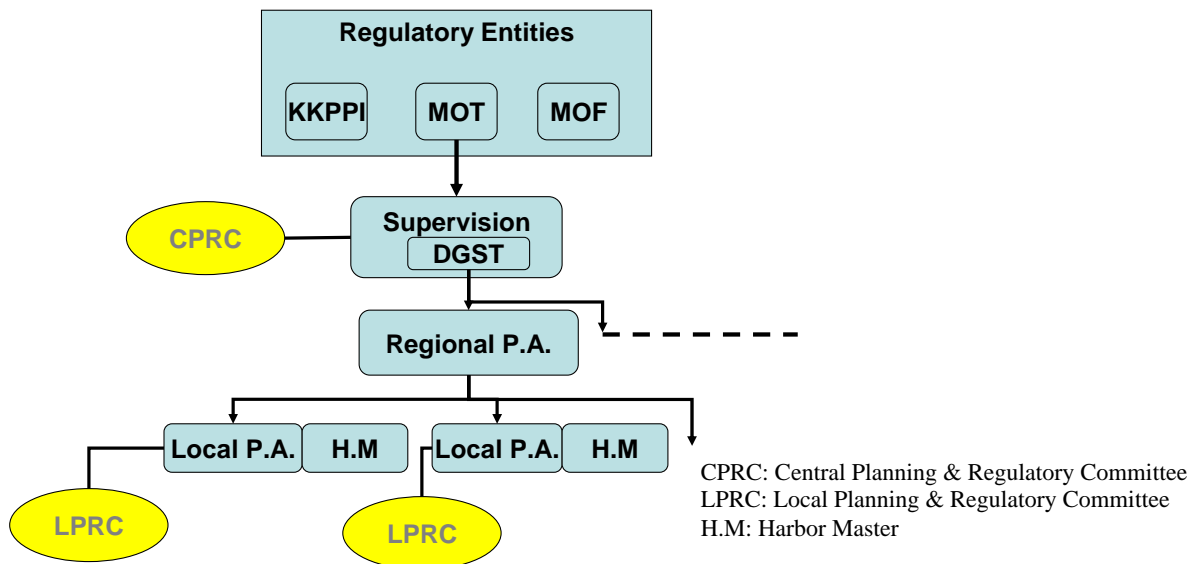


Figure 3.2-2 Institutional Settings for PPP implementation in Port Sector

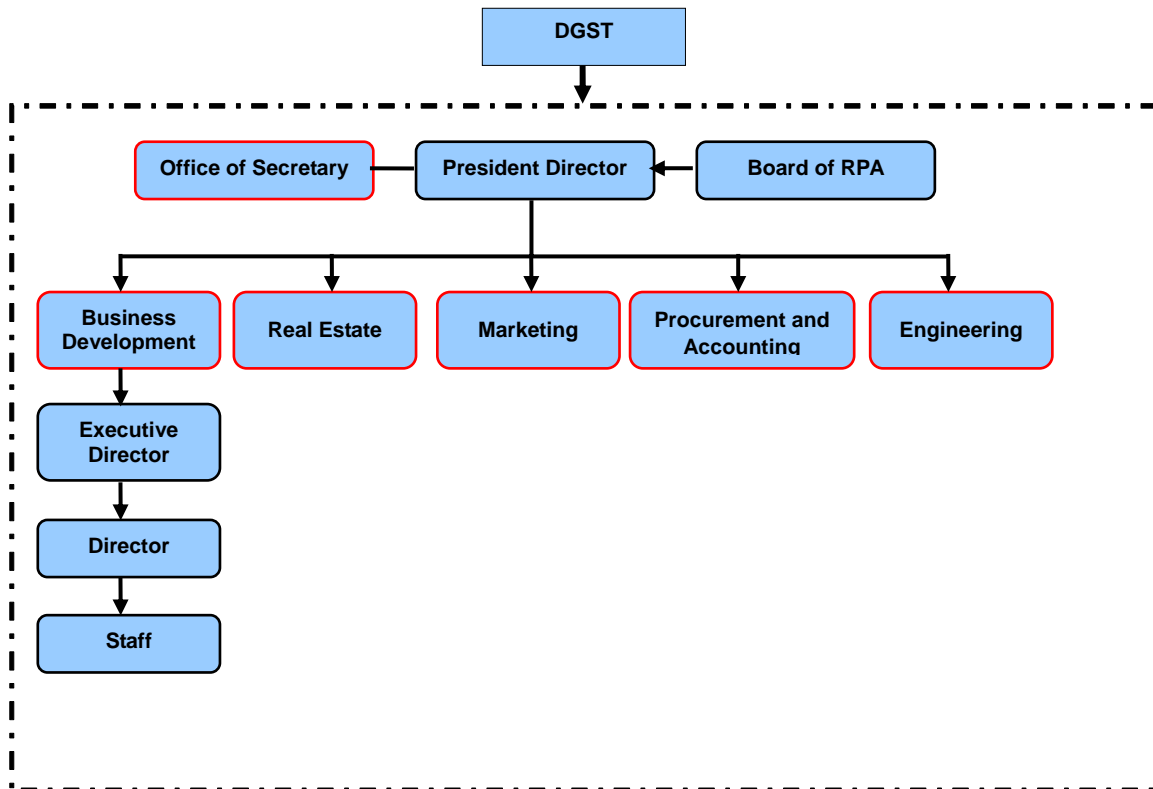


Figure 3.2-3 Institutional Setting of Port Authority

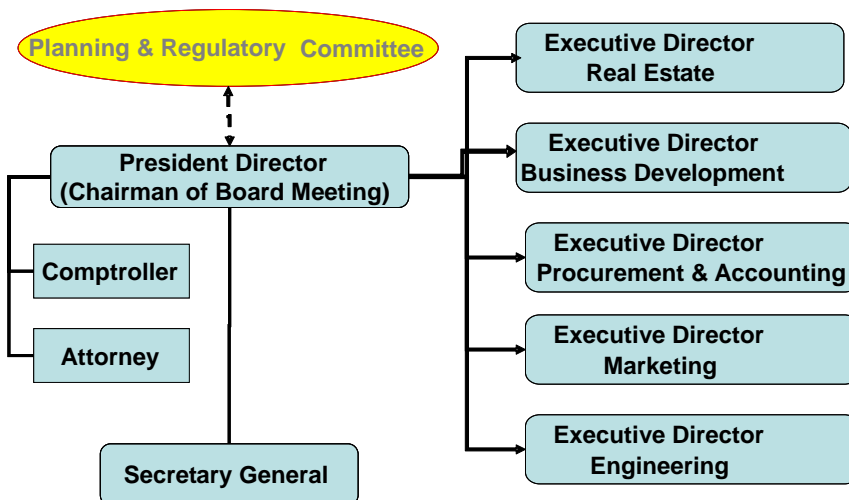


Figure 3.2-4 Structure of Port Authority

1101. Port Authority is to have the role as the Government representative in New Shipping Law. It plays the role to coordinate various business entities providing services and using port as well as to coordinate interests of central government and local government in terms of land and water area use as well as coordination with economic activities of the locale. It has also the role of providing port services required by service users in case they are not provided by Port Business Entity (Article 82-(2) of Shipping Law).

1102. Hence, it is desirable to form the board for decision of principal matters on management of port and board member consists of representatives of local government, IPC and central government for efficient and timely decision.



1103. Functions of each department of the Port Authority are proposed as follows;

(i) Office of Secretary

1104. Office of Secretary is responsible for general affairs and personal relations, personnel management and legal affairs.

1105. Office of Secretary will be composed of around 7 people including secretary general and it will have three sections- general affairs and personal relation, labor management and legal affairs as is shown in Figure 3.2-5.

(ii) Department of Real Estate

1106. Department of Real Estate is responsible for following matters;

- Responsible for maintaining and making public a revolving 1-month tickler log of all agreements showing their expiration dates and renegotiation dates and a comprehensive port-wide lease map indicating leased and unleased properties
- Responsible for reviewing the log and lease map on a regular basis to determine when leases will expire, minimizing properties under holdover, and when un-leased properties are available to market and take necessary action
- Responsible for recommending several alternate uses for the property

1107. It will have 5 members including director under executive director as is shown in Figure 3.2-6.

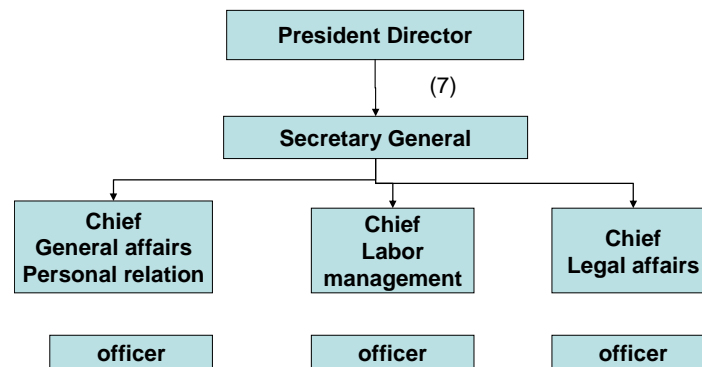


Figure 3.2-5 Office of Secretary

(iii) Department of Business Development

1108. Responsibilities of Department of Business Development are as follows;

- Responsible for setting business conditions for the concessionaire and/or lessee
- Responsible for financial management
- Responsible for permission for investment in the port area
- Responsible for economic regulations

1109. It will also have 5 members including director under executive director as is shown in Figure 3.2-6.



(iv) Department of Procurement and Accounting

1110. Responsibilities of Department of Procurement and Accounting are as follows;

- Responsible for the procurement of all the requirements for the operation of the Port Management Body
- Responsible for accounting of the Port Management Body

1111. It will also have 5 members including director under executive director as is shown in Figure 3.2-6.

(v) Department of Marketing

1112. Responsibilities of Department of Marketing are as follows;

- Responsible for Concession Process
- Responsible for Port Sales
- Responsible for tariff setting and supervision

1113. It will also have 5 members including director under executive director as is shown in Figure 3.2-7.

(vi) Department of Engineering

1114. Responsibilities of Department of Engineering are as follows;

- Responsible for planning & statistics
- Responsible for IT management
- Responsible for construction supervision and maintenance
- Responsible for technical regulations

1115. It will have 12 members including director under executive director as is shown in Figure 3.2-7.

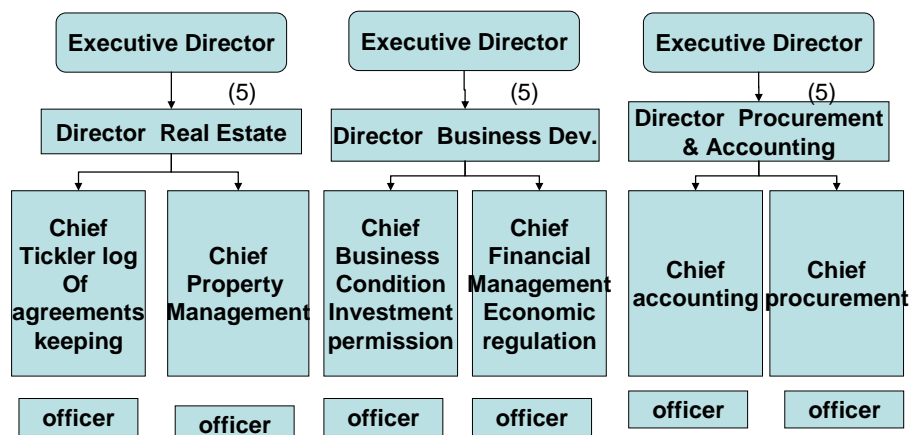


Figure 3.2-6 Departments of Real Estate, Business and Procurement & Accounting

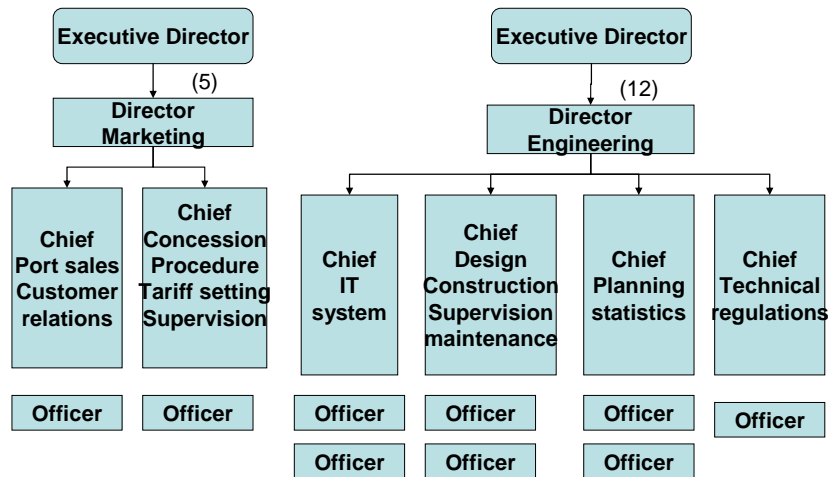


Figure 3.2-7 Department of Marketing and Engineering

(vii) Planning & Regulatory Committee

1116. The role of the Planning and Regulatory Committee is mainly to deliberate the Port Principal Plan and Regulation such as port by-law and also play the role for public consultation specified in PR No.67/2005.

1117. Member of the committee shall be composed of outsider of the Port Authority and they are desirably nominated among followings;

- Representative of regional port management body
- Representative of DGST
- Representative of Concessionaire
- Representative of Province
- Representative of Users
- Representative of the Operator
- Knowledge Person (1 for maritime affairs, 1 for transport planning)

B. DGST Policies and Procedures for Port Concession

(i) Policies

a) Objectives

1118. The objective of the Port's Real Estate Concession/Leasing Policy is to provide the following:

- 1) Recognizing existing relation ships with current concessionaire/tenant and their investment in the occupied terminal and premises;
- 2) Maintain fair and equitable methods for potential and existing concessionaire/tenant to conduct business with the Port;
- 3) Ensure that no one entity secures a competitive advantage by means of controlling a significant amount of Port property and/or berthing area;
- 4) Establish an approval process that is consistent with the PR No. 67/2005 and MOT & DGST



applicable policies and procedures;

- 5) Specify guidelines for selecting Qualified Concessionaire/Tenants to enter into concessions/leases for Available Property. Rate of Return shall not be the only criteria for the basis of selection. Other factors shall include public benefit and job maximization shall also be included;
- 6) Establish a process for assembling, sharing, and maintaining information related to the proposed selection and negotiation processes in an open and transparent manner;
- 7) Ensure consistency with the Port's Principal Plan and strategic objectives in conceding/leasing property;
- 8) Evaluate performance of concessions/leases annually based on financial viability, minimization of environmental impacts and maintenance of the facility.

b) Key Guiding Principles

1119. Key Guiding Principles area as follows:

- 1) The Port Authority shall foster a spirit of partnership with its tenants in the application of this concession/leasing policy, while fulfilling its duties as steward of vital public enterprises, assets and resources.
- 2) The Port Authority shall make port properties available on fair and reasonable terms without unjust discrimination.
- 3) The Port Authority shall retain effective management controls over the use of port property assets and will structure management controls in all concession/leases and rental agreements in order:
 - To achieve optimal use of port property assets;
 - To ensure that additional terminal capacity is not constructed prematurely, yet can be built when it is needed; and
 - To foster open and competitive access for new entrant and incumbent port tenants.
- 4) The Port Authority shall establish and maintain a level and structure of rents, fees and charges that are fair and equitable for all concessionaires/tenants, and which are based on current market land values.
- 5) The Port Authority shall establish minimum operational and maintenance standards for users of port property in order to promote safety, maintain appropriate levels and quality of service, and promote the orderly development of port properties.
- 6) The Port Authority shall actively monitor compliance with provisions of concession/lease agreements, shall give timely notice of non-compliance, shall employ available remedies to enforce compliance when reasonable cure periods have lapsed, and shall terminate agreements when appropriate in accordance with good business practices.
- 7) The Port Authority, in its role as a tidelands trustee, must take into account more than just the maximum revenue that can be generated by a new concession/lease. The Port Authority will also consider what is in the best interest of the State of Indonesia, including the essential role all commodities play in maintaining economic growth and job creation, and the need to maintain diversified mix of water dependent uses.
- 8) The Port Authority shall be open and transparent in its selection of new concessionaires/tenants and in concession/lease negotiations. The Executive Director will appoint a lead negotiator who will maintain notes and records of all meetings and negotiation sessions. These notes shall be maintained in the concession/lease files for review by all interest parties.



c) Applicability and Delegation of Authority

1120. Applicability and delegation of the port authority are as follows:

- 1) The Executive Director of the Port Authority is authorized to formulate, implement, and amend directives to implement this Policy. Directives which may substantively impact port concessionaire/tenant shall be prepared in consultation with such concessionaires/tenants.
- 2) The Executive Director shall formulate and recommend for approval by the Board lease provisions that are consistent with the Policy, which will be included in new concessions/leases, concession/lease extensions, and concession/lease modifications.
- 3) The policy addresses all types of agreements involving the use and occupancy of properties within the port for the lease of land, buildings, and improvements.
- 4) At the time a concession/lease is submitted to the Board, the Executive Director shall submit a written report (1) disclosing any proposed deviations from the Policy, (2) explaining the rationale for any such deviations, and (3) offering recommendations as to whether such deviations whatsoever from this Policy, the Board's action shall constitute an amendment or exception to the Policy for the narrow and limited purpose of approving said concession/lease.
- 5) The Policy is intended to provide a framework governing concession/leasing and rental decisions as they relate to (1) continuing concessions/leases with existing concessionaires/tenants; (2) development of new agreements and (3) amendments to existing agreements.
- 6) Nothing within this Policy shall be construed as conferring upon, nor shall it constitute the granting to any party (1) third party beneficiary rights, (2) a right of private enforcement, or (3) a private right of action. This Policy shall not grant any concessionaire/tenant or any user of any port property the right to enforce the terms and conditions of this Policy.
- 7) Nothing within this Policy shall be construed as overriding the terms and conditions of an existing concession/lease between the port and a concessionaire/tenant.
- 8) The Policy shall remain in effect until changed by subsequent DGST action.

d) Compliance

1121. The Port Authority shall strictly monitor compliance with concession/lease provisions.

- 1) The Director of Real Estate of the Port Authority shall monitor compliance with concession/lease provisions. The premises of each concession/lease shall be subject to periodic physical inspections coupled with concession/lease compliance evaluations. The premises inspection and concession/lease compliance evaluations should be conducted, as appropriate, with reasonable advance notification.
- 2) Failure to compliance with concession/lease provisions after being notified by the Executive Director, with concessionaire/tenant having been given appropriate time to correct the non-compliance, will place the concessionaire/tenant in default of their concession/lease. The Port Authority will proceed against the non-compliance with all concession/lease provisions, including environmental mitigations, maintenance of the facility and non-payment of concession fee/rent.

e) General Provisions

1122. The provisions of this section are applicable to conceding/leasing and rental actions for all classes of properties. However, certain classes of properties warrant additional provisions as elaborate in subsequent specification of this Policy.



- 1) No Unauthorized Use. All uses of port properties shall be specifically authorized pursuant to a concession/lease in accordance with this Policy, or by license, permit, or other formal agreement with the Port Authority. Provided that applicable concession fees, rents, charges, or revenue formulas have been established by the Board, the Executive Director, without Board approval may:
 - a) Execute concessions, leases, licenses, permits, or other formal agreements using standard forms in substantially the form approved by the Board by resolution, except when DGST consideration is required.
 - b) Issue a temporary or special use permit that allows an entity to engage in specific activities, in designated areas, and only for a specified period of time not to exceed 30 consecutive days.
 - c) Issue a permit or other form of license or agreement authorizing an entity to engage in a commercial activity at the port.
- 2) Qualified Users. All prospective industrial, commercial and retail users of port property shall meet, and adhere to, minimum standards with respect to financial capability and responsibility, management qualifications and experience, general reputation to conduct authorized uses, and such other factors as the Executive Director deems appropriate. The Executive Director, in consultation with the CFO is authorized to establish and periodically modify such standards and to permit exceptions to such standards. Additionally, all users shall be obliged to comply with applicable laws, rules, and regulations.

In selecting a Qualified User, the Policy and Procedures will ensure that no one entity secures a competitive advantage by means of controlling a significant amount of port property and/or berthing areas. This will be achieved by analyzing proposals from current concessionaires/tenants for vacant land to determine that their occupancy would result in the maximum use of the property, maintain the port's diversification of cargo and whether it would bring new customers to the port.

- 3) Consistency with Port Principal Plan. Proposed uses of port property shall comply with the Port Principal Plan in terms of appropriate land and water use and permitted activities.
- 4) Rents, Fees, and Charges. Rents, fees, and charges for the use of occupancy of port properties shall reflect fair market value Unless otherwise stated, rents shall reflect triple-net terms (inclusive of all property tax, insurance and utilities related to occupying the property). Subject to approval by the Board, the Executive Director shall determine the methods to be used for establishing rates. Such method shall produce rates that are uniform for each category of land/water use.
- 5) Term. The term of a concession/lease shall be determined by taking into account (1) the operational needs capital investment in development or in leasehold improvements by the concessionaire/tenant and (2) ability of the Port Authority to manage capacity and long-term port development.
- 6) Succeeding Leases for Existing Tenants: The Port Authority shall consider succeeding leases, of similar length or term, for existing tenants, subject to the following conditions: (1) the tenant has made substantial investment in leasehold capital improvements to the premises; (2) the tenant has a consistent record of good standing; (3) permitted uses in the proposed lease are consistent with applicable land use plans; (4) all parts of the premises proposed to be leased are or will be developed or used for permitted uses; (5) the tenant agrees to pay the fair market rent for the property as determined by certified appraiser, and (6) the tenant agrees to comply with the port environmental measures and criteria for operating a terminal or facility. Succeeding lease shall comply with applicable lease policies, minimum standards. Negotiation of a succeeding lease shall commence no later than twelve months before the lease expiration date.



(ii) Concession Procedure

1123. Port Property concessions extending beyond 15 years, and having an annual revenue beyond Competent Authority's signature authority, are subject to the following concession procedures. Competent Authority subsequent to a competitive bidder selection process outlined below and summarized in the flow chart, Figure 3.2-8 approves concessions of this type. Following the approval of the concession by Competent Authority, Conceding Administration signs the concession agreement with the Terminal Operator.

a) Terminal Operator Solicitation and Selection

Selection of pre-qualified bidders

1124. The Concession Evaluation Team (CET) will prepare a Request for Prequalification Application (RFPQA), notify the potential bidders regarding the availability of the property for concession and solicit further interest by advertising in trade publications, local newspapers, and, when appropriate, national and international publications. All RFPQAs shall state the Government's objective regarding the use of property for concession. The RFPQA scope shall include, but not be limited to minimum conditions relating to ;

- Scope of Bid, such as name of the Executing Agency Conceding Administration as the Employer of the concession contract, of the Borrower and Lender of the Loan, when appropriate, requirements of the Lender, etc.
- Submission of Applications, such as the address to submit, time schedule, language to be used, clarification meeting, when appropriate, etc.
- Qualification criteria
- General information of the applicants
- General experience record, such as annual turnover data for last 5 years
- Requirements for Joint Venture
- Joint Venture Agreement, such as the share of the Work undertaken by each partner, etc.
- Particular experience record, such as list of port terminal operation of similar nature and complexity to this concession contract during the last 10 years
- Financial capability, such as the audited financial statements for last 5 years, any evidence showing the applicant's financial position, sources of financing, etc.
- Litigation history

1125. The Port Authority Conceding Administration reserves the right to determine the validity of all Pre-Qualification documents received.

1126. The CET will review, assess and analyze all Pre-Qualification documents received, and make findings to support the Pre-Qualified Bidders recommendation. The CET's review of the Pre-Qualification documents received will be based on uniform criteria to be established and made public at the time of the RFPQA's preparation. The criteria will be based on the objectives contained in the RFPQA and the requested information.

1127. The Director of Marketing shall report the CET findings including the Pre-Qualification documents received, evaluation process utilized, the selection method, recommendation for Pre-Qualified Bidders to the Executive Director of Marketing for recommendation to the Board of Conceding Administration (BCA).

1128. Once the BCA has made its decision, the President Director shall instruct the Executive Director of Marketing to notify Pre-Qualified Bidders of the pre-qualification result. At the discretion of the President Director, instructions to Concession Evaluation Team (CET) may be provided.

Selection of terminal operator



1129. The Concession Evaluation Team (CET) (see paragraph 1147 for team members) will prepare a Request for Proposals (RFP), notify Pre-Qualified Bidders by e-mail and post for the submission of their proposals. The RFP scope shall include, but not be limited to minimum conditions relating to;

- operating requirements, such as terminal design, throughput volume, vessel calls, berth utilization and other terminal operating programs such as off-peak hours;
- environmental requirements, such as identification and observance of environmental policies and procedures relating to terminal construction and operations, maintenance, etc. including how the proposal intends to meet the policy of preventing pollution or controlling it to the maximum extent feasible;
- financial requirements, such as minimum annual guarantees, other revenues to the Port and the financial strength of the proposer; and
- general requirements as required by the Conceding Administration, such as insurance, affirmative action, etc.

1130. The Conceding Administration reserves the right to determine the commercial viability and validity of all proposals.

1131. The CET will review, assess and analyze all proposals, and make findings to support the most Qualified Bidder recommendation. The CET's review of the offers will be based on uniform criteria to be established and made public at the time of the RFP's preparation. The criteria will be based on the objectives contained in the RFP and the requested information. The CET's analysis and recommendation will be disclosed by the request of proposer(s).

1132. The Director of Marketing shall report the CET findings including the offers received, evaluation process utilized, a financial analyses summary, the selection method, recommendation for a Most Qualified Bidder to the Executive Director of Marketing for recommendation to the BCA.

1133. Once the BCA has made its decision, the President Director shall instruct the Executive Director of Marketing to begin exclusive clarification with the Most Qualified Bidder. At the discretion of the President Director, instructions to Concession Clarification Team (CCT) may be provide.

1134. If the CET determines it is necessary, a second or "back-up" Qualified Bidder will be identified in the CET's recommendations to the BCA.

b) Clarification

Concession clarification team

1135. The Concession Clarification Team (CCT) (see paragraph 1152 for team members) and the lead clarification officer will be selected by the Executive Director of Marketing to lead the clarification effort on behalf of Conceding Administration. The CCT shall clarify the submitted proposal with the Most Qualified Bidder(s) as instructed by the BCA. Should clarification reach an impasse with the Most Qualified Bidder, the Executive Director of Marketing will recommend to the BCA, and it may or may not determine, that clarification be terminated with the Most Qualified Bidder and commence clarification with the second or "back-up" qualified bidder. An impasse in clarification shall be determined by means of a recommendation from the CCT and concurred with by the Executive Director of Marketing for consideration by the President Director and the BCA.

Prior to clarification

1136. The Executive Director of Business Development will prepare a Term Sheet describing the parameters of the agreement's terms and conditions that will be recommended for clarification. The Term Sheet is to be prepared and submitted to the President Director, Executive Directors and



Attorney of Conceding Administration for review before clarification begins. Prior to completing the Term Sheet, the lead clarification officer shall:

- Discuss the matter with all other officers whose area of responsibility or expertise warrants. Such matters as a historical analysis of bidder's performance, environmental impacts, possible legal issues, and financial considerations shall be covered in the report.
- Consider the matter of other similar concessions and agreements and attempt to achieve an appropriate level of uniformity where necessary or appropriate and discuss the subject in the report.
- Request a Preliminary Financial Analysis (PFA) to the Director of Business Development, based on the latest approved form developed for that purpose. The request to the Director of Business Development should include, where appropriate, more than one scenario to be taken into consideration by the Director of Business Development in determining the rate of return and making the financial analysis and clearly identify any assumption the Director of Business Development is to use in calculating the rate of return.
- If the Director of Business Development disputes any assumption, the Director of Business Development shall nonetheless make an analysis based on the original assumption, together with an analysis based on the Director of Business Development's assumptions and the basis for the Director of Business Development's dispute. At such time as the various financial scenarios are presented to the BCA, the President Director will determine which assumption is to be utilized thereafter.
- The PFA is to be submitted directly to the CCT and should include a rate of return analysis based on the latest approved calculation method under the various scenarios agreed upon. The PFA may also include analysis of any aspect of the clarification affecting the finances of the Port, including, but not limited to: credit analysis of the Qualified Bidder; impact of the concession on the quality and magnitude of the Port's cash flow and profitability; any impact on the Port's financing plans; possible impact of the proposed concession on other agreements in the Port when appropriate, and analysis of deviation from the Port's rate of return policy.
- It is reasonable to assume that the Preliminary Financial Analysis will be made available within ten working days following receipt of the full written request. A shorter time period is expected for subsequent "what if" analysis
- Request an Environmental Report (PER) to the Director of Maritime Administration as to the current environmental condition at the proposed concession area and neighboring (if any) occupier's compliance and cooperation with the Port's objectives of minimizing pollution and controlling it to the extent feasible.
- It is the responsibility of the CCT to present the Term Sheet and recommendation to the President Director. To the extent that it is appropriate, the recommendations in a report should contain alternatives, on a diminishing scale, which would constitute acceptable "fall back" positions during clarification. The PFA (standard format, marked "CONFIDENTIAL") is to be attached to the Term Sheet and all subsequent Board reports, for confidential review by the BCA. The PER shall also be presented to the BCA

Initial clarification

1137. Following review of the Term Sheet by Executive Directors, the President Director shall authorize the lead clarification officer to initiate clarification, or, when called for by these procedures, discuss the recommendations with the BCA consistent with the articles of the incorporation and regulations. This includes consistency with BCA's ethics regulations relating to BCA members.

1138. Upon the determination by the President Director that the proposed concession agreement, amendment or periodic compensation adjustment is consistent with current BCA policy, the President Director may authorize the lead clarification officer to clarify in accordance with the report and recommendations and any clarification instructions from the BCA.



During clarification with the most qualified bidder

1139. At the outset of clarification, every effort will be made to agree on a reasonable period of time for the completion of clarification. The Most Qualified Bidder is to be informed that other alternatives, including other potential Qualified Bidders, will be considered if clarification cannot be concluded within a reasonable period of time.

1140. It is anticipated that during clarification certain deviation from the Term Sheet may have to be made, and it will be the responsibility of the lead clarification officer to determine whether additional authority needs to be obtained from the President Director. In the same manner, it will be the responsibility of the President Director to determine whether additional instructions should be obtained from the Board.

1141. Whenever counteroffers are made that affect compensation, the lead clarification officer shall request a revised financial analysis from the Director of Business Development (“Revised PFA”).

1142. At the time clarification has completed, the lead clarification officer shall request a final financial analysis (the “Director of Business Development Analysis”). This analysis shall provide the final assumptions, findings, and recommendation by the Director of Business Development. The Director of Business Development Analysis will be submitted directly to the lead clarification officer, the President Director, and the BCA.

Clarified agreement/document preparation

1143. Before the final draft document is submitted to a Successful Bidder for execution, it is to be reviewed and approved by the President Director or his/her designee and then the BCA.

1144. Once the concession agreement, or amendment adjustment has been clarified, it will be submitted with a proposed Board report, the Director of Business Development Analysis and Project Report to the BCA for approval and submitted to Attorney of the Port Authority for review as required under the regulation Following such review, the report will be submitted to the Conceding Administration for approval. If the proposed concession agreement, amendment or periodic compensation adjustment is not consistent with current BCA policies, a report with staff recommendations to modify or exempt this particular process from those policies will be submitted to the BCA for consideration in executive session.

After clarification

1145. Immediately following the execution and approval of the agreement or amendment, the Director of Marketing will prepare a memorandum for signature by the President Director, that will be sent to all relevant divisions and sections setting forth responsibility for implementation and ongoing administration of the agreement. The purpose of the memorandum is to highlight unusual provisions and deviations from standard practices and to provide special instructions as needed. If there are no deviations or unusual provisions, the memorandum should so state.

1146. At yearly intervals following the effective date of the agreement, the Director of marketing will request the Director of Business Development to perform a comparison of projected and actual revenue, cargo volume, and actual costs. The annual review will align with the periods reflected with the Director of Business Development report, such as fiscal year, calendar year, or compensation year periods. The report shall be transmitted to the President Director and BCA.

Concession team



1147. The CET shall be composed of at least seven (7) Port staff members including the Director of Business Development, to be selected from the following Departments of Port Authority:

- Real Estate
- Business Development
- Environment Management
- Engineering
- Marketing
- Procurement and Accounting
- Attorney (legal advisor only)

1148. The Director of Marketing shall direct the CET. The CET shall administer the proposal evaluation process for the selection of the Most Qualified Bidder and report any findings and recommendations to the BCA and President Director. The Attorney shall be the legal advisor to the CET and will not be a participant in the selection of any proposal.

1149. A written report shall be prepared which summarizes the findings and recommendations of the CET. All information gathered and assembled to produce the written report shall be collected and retained in the Marketing Division.

Concession clarification team

1150. The CCT will conduct clarification consistent with directives provided by the President Director.

1151. The CCT shall clarify with the parties authorized by the BCA.

1152. The Executive Director of Marketing shall assemble the CCT and advise the members of the CCT of any special instructions given to the team. The CCT will consist of a minimum of three persons, a lead clarification officer, Director of Business Development, and Director of Engineering. Attorney, shall participate only as the legal advisor to the clarification officer. The team will draw on the expertise of the Department's resource people throughout the clarification process. The lead clarification officer will determine if resource people will participate in clarification or be asked to provide backup and resource information outside of the clarification.

1153. It will be the responsibility of the lead clarification officer to keep the President Director and BCA informed of the clarification throughout the process, keep accurate notes and records of all clarification meetings, and prepare the written reports. The lead clarification officer is also responsible for ensuring all notes, records and correspondences relating to the clarification be collected and retained in the Marketing Division.

1154. While the lead clarification officer may assign a person reporting to him or her to assist, the lead clarification officer will maintain a high degree of familiarity with the clarification to be able to discuss the status of clarification with the President Director and the BCA at any time.

Administration

1155. All files, records, and materials compiled, generated, or assembled during the leasing process shall be centrally filed and administered in the Marketing Division.



Table 3.2-1 Concession Team

Division	Concession Evaluation (CET)	Concession Clarification (CCT)
Executive Director of Marketing		
Director of Business Development	X	
Attorney (Legal advisor)	X	X
Engineering	X	X
Environmental Management	X	X
Procurement and Accounting	X	
Marketing	X	X
Real Estate	X	*
*:To the extent practical, the Director of Real Estate shall always be a member of the CET		

1156. Another important role of the Port Authority in management of concession contract are to watch performance of the terminal and to secure the payment of concession fee agreed and record the facilities ledger with maintenance and renovation record to verify the assets kept by concessionaire and port authority in the financial statements.

1157. It is necessary to establish concrete standard for accounting and auditing the financial performance both of port authority and concessionaire as well as the compiling form of port facilities ledger.

1158. These issues on management of concession contract will be further detailed in the guideline on the implementation of Government Regulation related to Article 89 of new shipping law.

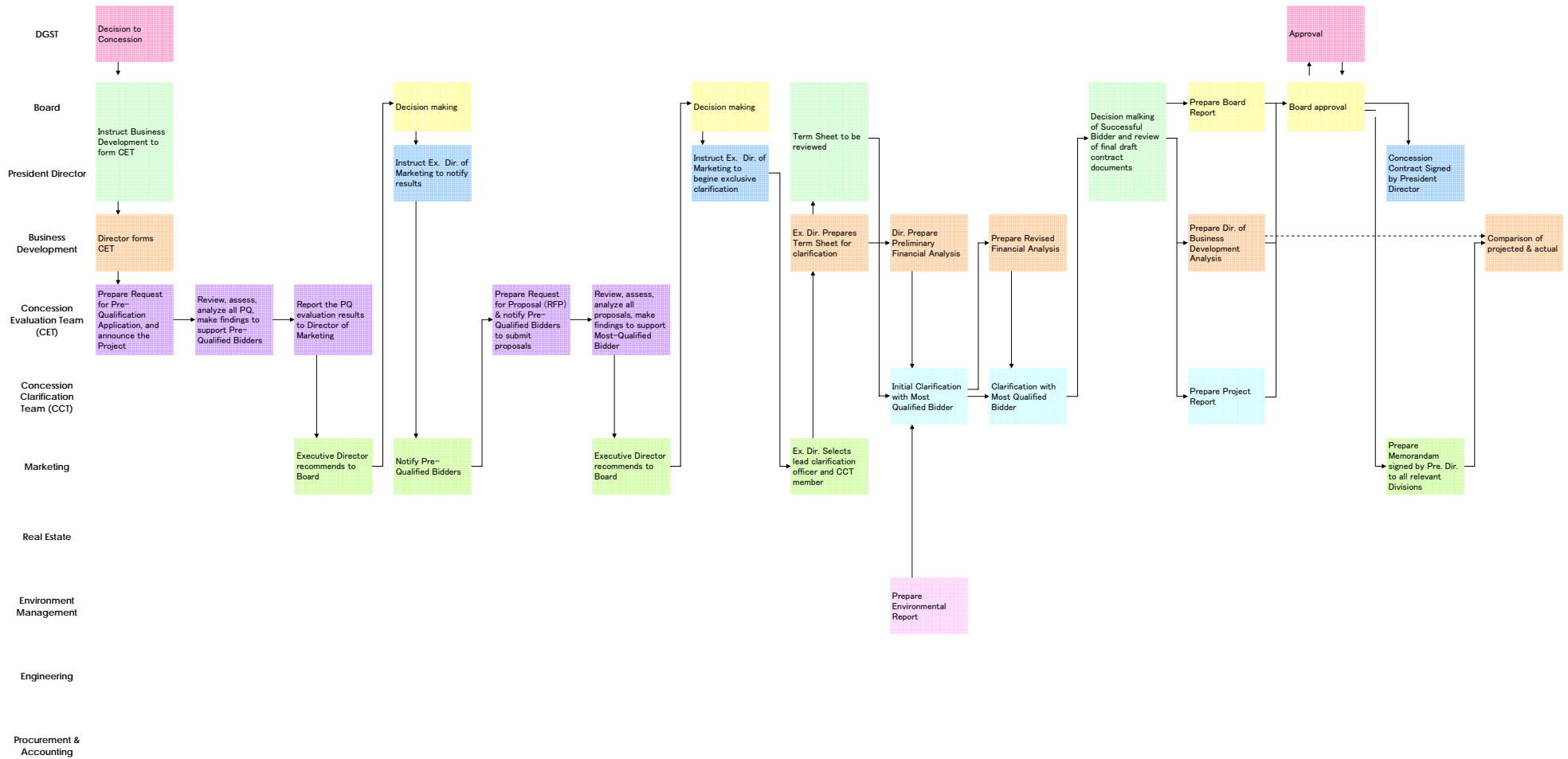


Figure 3.2-8 Procedure of Concession



3.3. Management and Supervision of Concession Contract

3.3.1 Port Facilities Ledger

A. Necessity of Compiling System for Port Facilities Ledger

1159. Port facilities ledger is a tool for management of port which is a principal role of PMB together with other tools as financial report and port statistics. As is stipulated in Article 42 of G.R. chapter IV on activity management at port, PMB shall perform the functions of regulation and development, control and supervision in respect of port activities, and it is stipulated in Article 65 that PMB shall act as government representative to grant concession or any other right to Port Business Entity with respect to commercial activities at port as embodied in an agreement.

1160. Although Duties and Responsibilities of PMB is a title of paragraph 6 in G.R. chapter IV and duties and responsibilities of PMB and its powers are stipulated in detail, any provisions for PMB's role or power regarding a concession contract are not stipulated in an explicit form.

1161. Judging from the context of the provisions, however, management and control for a concession contract can be easily understood to be one of the duties for PMB.

1162. An important role of PMB in the management of a concession contract is to monitor the performance of the terminal and to secure the payment of concession fee agreed and record the facilities ledger with the history of maintenance and renovation to verify the assets kept by the concessionaire and PMB in the financial statements.

1163. Therefore, it is necessary to establish a compiling system of port facilities ledger for both of PMB and concessionaire and to keep and update information and data on current status of facilities and equipment, throughput and financial conditions of all the terminals under its management ambit.

B. Purpose and Contents of Port Facilities Ledger

(i) To carry out regular and periodical inspection and monitoring for the operation

1164. Regular and periodical inspection of the facilities is conducted to investigate whether the leased facilities are properly maintained or repaired comparing the latest data of facilities and current condition. If some of the facilities are deteriorated beyond normal wear and tear, PMB has to order the lessee to recover them to the normal condition based on the lease contract.

1165. For these purposes, port facilities ledger must include data/information on handover date, original design, specification and historical record of maintenance, repair and/or refurbishment together with altered design

(ii) To inspect, monitor the fulfillment of obligations by parties of the infrastructure operation lease/purchase contract

1166. It is common for the lessee/concessionaire to be obliged to install necessary equipment and facilities and to achieve a performance target specified in the lease/concession contract. In order to monitor the fulfillment of such obligation, PMB has to record and keep data/information on facilities and equipment under the obligation of the lessee/concessionaire together with data/information on performance.



1167. For these purposes, port facilities ledger has to include data/information on numbers and specifications with nominal capacity of facilities and equipment together with their age.

(iii) To manage the asset on lease contract

1168. In order to audit the financial statements of the lessee/concessionaire and conduct the fair lease/purchase contract, PMB has to know the current conditions of facilities and equipment to value the current price of them.

1169. It is common that operators will use the facilities and equipment beyond their regulated life time. Life time and method of depreciation of the facilities and equipment are intentionally set to meet the legal purposes apart from their physical life. When PMB sets the lease/purchase price of these facilities and equipment, price is set either based on book value or fair market value which depends on the physical and economic life of the facilities and equipment.

1170. For this purpose, port facilities ledger has to include data/information necessary to value them; purchased cost, depreciated value and record of refurbishment value etc

(iv) To let the public know the responsible entity of management of facilities

1171. It is also duties of PMB to let the public know the responsible entity of the facilities and equipment. There might be a case in which users or people incur damage or loss and wish to make a claim to the entity responsible for managing and operating the facilities. For such purpose, PMB has a responsibility as a manager of public infrastructure to disclose the ownership/management responsibility of such facilities to the public.

1172. For this purpose, port facilities ledger has to include information on owner and manager of the facilities.

C. Composition, Updating and Reporting of Port Facilities Ledger

(i) Composition of Port Facilities Ledger

1173. Port facilities ledger consists of ledger sheets and drawings.

- Ledger sheets
 - General: Name of PMB, port area and classification of port, natural conditions of the port.
 - Individual facilities: Type, name, manager or owner name, length, width, depth, time of construction, construction cost and other items for grasping outline of each facility.
- Drawings
 - Location and cross-sections of facilities

(ii) Updating the Data

1174. Port facilities ledger has to contain the latest data to be most useful. Therefore, a method of updating the data is important.

- Data on construction and purchase of new facilities
 - The ledger is updated when new facilities are constructed.
 - The ledger is updated when new facilities are purchased/installed.
- Data on repair/maintenance/improvement
 - The ledger is updated when facilities are maintained/repared.



The ledger is updated when facilities are improved.

- Deletion of old data
The ledger is updated when the use of facilities are discontinued.
The ledger is updated when facilities are replaced.

(iii) Reporting the Data

1175. Ledger administration department in PMB has to collect updated reports regularly from each department/organization (construction department, maintenance and repair department and/or users*) and update the port facilities ledger regularly. (*) Users mean lessees/concessionaires

- a) When new facilities are constructed or purchased/installed
The construction department should report to the ledger administration department when construction has been completed and prior to the operation phase.
- b) When facilities are maintained, repaired or improved.
The operation department and/or maintenance/repair department and/or users report to the ledger administration department periodically (e.g. one per year) on maintenance issues.
- c) When facilities fall into disuse or equipment is replaced
The operation department and/or maintenance/repair department and/or users should report any change in the use of facilities or equipment to the ledger administration department.

D. Proposed Compiling System of Port Facilities Ledger

(i) Responsible Department in PMB

1176. In this report, the Study Team proposes the functional roles and responsibilities of PMB and also examines the institutional setting of PMB. Judging from the functions of each department and the characteristics of the said transaction, Department of Real Estate is suitable for managing a port facilities ledger

1177. In G.R, an organization of PMB is stipulated as consisting of at least three elements. Division of Port Operation Control & Supervision might fit to manage a port facilities ledger.

(ii) Method of Updating

1178. A method of updating the data is explained in C. (ii) of this section. A table below is put in order the relations among sections/departments of PMB by situation of facilities.

Table 3.3-1 Method of Updating

Situation	From	To	Frequency
New Facility	Construction section	Department of Real Estate	When construction (transfer) or installation
Large-scale Repair/Improvement	Management/maintenance section	Department of Real Estate	When repair or improvement
Maintenance	Management/maintenance section	Department of Real Estate	Annually
Lease contract Concession agreement	Lessee/concessionaire	Department of Real Estate	annually

Remarks: names of each section are tentative ones
They might belong to Dept. of Engineering of PMB



1179. In case that an updating system is established, Department of Real Estate of PMB should report the condition of facilities, including official book value based on the report from users with financial report to DGST.

(iii) Necessary Legal Framework

1180. Port facilities ledger is not defined in both the shipping law No.17/2008 and G.R. However, a sound legal framework for a port facilities ledger is necessary to establish a compiling system for it and manage and control a concession contract as mentioned in the preceding section A and B.

1181. Assuming that port facilities ledger obtains legal basis, provisions of it in law or government regulation might be that PMB must maintain a port facilities ledger and further provision shall specifies in government regulation or ministerial degree. Later in government regulation or ministerial degree, necessary items, method of updating, reporting and disclosing of port facilities ledger should be stipulated in detail.

1182. In case of Japan, Port and Harbor Law stipulates that PMB must make public the outline of port facilities under its management in accordance with the provisions of ministerial ordinance and maintain a port facilities ledger for the port under its management and matters concerning the port facilities ledger shall be provided for in ministerial ordinance.

(iv) Model Form for Port Facilities Ledger

1183. Model form-1 for name of PMB, port area and classification of port and model form-2 for facility are as follows:

Table 3.3-2 Model form-1 for name of PMB, port area and classification

Name of port management body		
Port working area	Area	
	Date of authorization	
Classification		

Table 3.3-3 Model form-2 for facilities

Facility No.		
Type of facility		
Name		
Manager name		
Owner name		
Handling productivity	Lift load (t)	
	Productivity (t/h)	
Type of packing		
Main handling cargo		
Construction start and end year	Start year	
	End year (Acquisition year)	
Total construction cost		
Depreciation period		
Current book value (year)		
Remarks		



3.3.2 Auditing and Accounting

1184. Under the new shipping law (17/2008), DGST shall have duty and responsibility to control and supervise the port management activities of the Port Authority. One of the important areas for control and supervision is to oversee the financial condition of the Port Authority. DGST should have appropriate auditing system for that purpose. At the same time, Port Authority should have same kind of audit system to check the accurate payment of concession fee by concessionaire.

1185. In this section, the financial reporting system adopted by port management body in Japan is introduced at first as a tool for establishing similar system in Indonesia, and then explore the possible form of financial reporting system for DGST and Port Authority.

A. Financial Reporting System of Port Management Bodies in Japan

1186. Port authorities or port management bodies in Japan have an established system to compile its financial statements and announce these to the public in order to assure accountability of their financial activities.

1187. Whereas some “corporative” port authorities generally take up a system which is adopted by private companies (compiling cash flows statements, income statements and balance sheet), most of the “public” port authority generally takes a financial reporting system which is usually used by the government and other public entities.

1188. Usually, they announce an annual financial statement, in which the revenue and expenditure in a specific fiscal year are clearly shown. However, all the financial aspects, including their current assets and/or debts, are not clearly recognized in the statements.

1189. The Japanese Government has imposed two obligations to the port authorities to monitor and administer their financial conditions. The related port organizations are also required to comply with these rules.

1190. One is a reporting system of the annual financial statements to the Central Government.

The other is a strict surveillance system on the public terminal corporations which manage the major container terminals in the Japanese main ports.

1191. This system has been established because the container terminals they manage had been transferred to these corporations from the Government with the discounted price, and also because container terminals are usually leased out for an exceptionally long period of time to public port facilities by these organizations.

1192. In the following sections, the financial reporting system of the port authorities are discussed, and followed by a brief introduction of the financial system of the public terminal corporations.

B. Ports and Harbors Act of Japan

(i) Duties of Reporting

1193. It is clearly stipulated in the Article 49 of the Ports and Harbor Act of Japan that a port management body (PMB) should annually report to the Ministry of Land, Infrastructure and Transport (MLIT) on its settlement of account in relation to the performance of the port.

1194. The Article 49 reads as follows: “A port management body of major ports should annually prepare and announce a report on the settlement of account in relation to the performance of its



business and other matters concerning the port. The copies thereof should also be submitted to the MLIT in accordance with the formalities specified in the ordinance of MLIT”.

(ii) Contents of Report

1195. Format and items to be reported to the MLIT are stipulated in the Article 13 of the ordinance.

1196. Upon receiving the reports, the MLIT reviews the financial performances of the PMBs.

1197. However, no authorities are awarded to the MLIT to issue the orders to the PMBs in relation to the contents of the reports.

1198. The Article 13 reads as follows: “An annual financial report (actually, a statement of cash flows) has to be submitted to the MLIT within 5 months after the end of the fiscal year.

1199. The established format with required item of the annual financial report is reproduced hereunder for reference:

No.1 Cash Flow Report on Port Administration

(as of end of March, 2000)

Income		Expenditure	
Items	Amount	Items	Amount
Port Charges		Administrative Expenditure	
Port Due		Personnel Expenses	
Water Facilities		Management Expenses	
Berthing Facilities		Conducting Port Surveys	
Berths		Compiling Port Statistics	
Buoys		Disaster Restoration Work	
Others		Maintenance Work	
Land Transport		Facility Management	
Railway		Lease fee payable	
Inland Waterway		Public Relation	
Others		Environment Control	
Handling Facilities		Port Welfare	
Equipments		Fees for leasing Land	
Storage Area		Others	
Warehouse			
Lumber Storage		Public Bonds Payable	
Passenger Facility		Public Bonds	
Storage Facilities		Disaster Restoration Work	
Open Storage Area		Capital	
Lumber Storage Area		Interest	
Others		Administrative Construction Work	
Disposal Treatment Facility		Capital	
Environment Control Facility		Interest	
Welfare Facility		Others	
Water Supply		Capital	
Ship Repair		Interest	
Tags			
Land		Transfer to General Account	
Building			
Others			
Charges on occupancy of assets			
Water Facility			
Extraction of Sand			



**The Study on the New Public Private Partnership Strategy
for the Port Development and Management in the Republic of Indonesia**

License on Land reclamation Other Charges Subsidies from Central Government Subsidy for compiling port stats. Subsidy for disaster restoration Subsidy for other items Subsidies from Local Government Income from Beneficiaries Dues of Beneficiaries Environment Dues of Beneficiaries Others Public Bonds Disaster Restoration Work Administrative Construction Work Sale of Property Others Income from General Account			
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No.2 Cash Flow Report on Facility Construction

(as of end of March, 2000)

Income		Expenditure	
Items	Amount	Items	Amount
Subsidy from Central Government Basic Facility Operating Facility Environmental Control Facility Subsidy from Local Government Basic Facility Operating Facility Environmental Control Facility Welfare Facility Income from beneficiaries Basic Facility Operating Facility Environmental Control Facility Welfare Facility Public Bonds Basic Facility Operating Facility Environmental Control Facility Welfare Facility Port Service Vessels Others		Administrative Expenditure for Construction Personnel Expenses Management Expenses Expenses on Port Surveys Construction of Basic Facilities Expenses on Construction by the Central Government Expenses on subsidized construction Construction of Operating facilities Expenses on Construction by the Central Government Expenses on subsidized construction Construction of Environmental Control Facility Expenses on Construction by the Central Government Expenses on subsidized construction Construction of Welfare Facility	



<p>Income Accrued from lending loan</p> <p>Others</p> <p>Income from General Account Basic Facility Operating Facility Environmental Control Facility Welfare Facility Port Service Vessels Resources accrued from investment Loans receivable others</p>	<p>Development of Port Service Vessel Investment</p> <p>Loan</p> <p>Others</p> <p>Public Bond Payable Public Bonds Basic Facility Capital Interests Operating Facility Capital Interests Environment Control Facility Capital Interests Welfare Facility Capital Interests Port Service Vessels Capital Interests Others Capital Interests</p> <p>Transfer to General Account</p>
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C. Reporting System of Port Management Bodies

1200. The ordinance regulates that the accounting items should be reported separately and specifically for the port management and for the port construction, because the expenditures on port construction account for a large portion in the port accounting.

1201. With these revealed data, it would be possible to see the outline of the financial condition of the PMBs, but it is still difficult to get an idea on the points such as, how much assets the PMBs have, or how much debts the PMBs have accumulated through the past activities.

1202. According to the relevant laws and regulations, the PMBs are not obliged to prepare full-scale financial statements, which is usually mandatory for private enterprises. This is because all the PMBs in Japan belong to the local governments and in most cases the PMBs are the local government themselves. All the budgetary considerations and accounting results for port management are incorporated into the budget and audit systems of the local governments.

1203. The whole financial activities of the local governments, including port management, have to be discussed and approved in the local assemblies.

1204. Since the ports are developed as one of the core infrastructure of local governments, it is not necessarily holding a financial independence, and thus no need to prepare full fledged financial reporting.



1205. The MLIT, on the other hand, demands that the PMBs should issue full-scale financial report. With these data in hand, the MLIT is able to get a full picture on the financial status of the ports in the country.

1206. However, as mentioned earlier, the MLIT is not awarded any authorities to issue any orders to make alterations on management systems of individual port authorities based on their reporting.

1207. In recent years, lots of local governments are striving to obtain a much clearer view on their financial status, though it is not mandatory by laws and regulations. They have begun to change their financial system from the public style to the private one, evaluating their financial status not only by cash flows in any given year but also by assets and debts accumulated.

1208. It is foreseen that in near future, a financial reporting system of the central and many local governments will follow suite and take up a system including balance sheet so that they can evaluate the total assets accumulated and debts incurred. In this context, it may be also foreseen that financial reporting systems of the PMBs could be changed according to the trends.

D. Financial Reporting System of Terminal Corporations

1209. Following is a brief history on the development of the container terminal in Japan.

1210. In order to quickly promote container terminal industry in Japan to catch up with the global trend of containerization in the international trade, the two public container terminal corporations were established by the central government in 1967. One corporation was established in Tokyo Bay area, the other was established in Osaka Bay area. These state-owned companies had developed two container terminals at each area. Then, the public container terminal corporations were dissolved in the 1980s in conformity with the central government's policy of decentralization of public sector. As results, four local container terminal corporations were newly set up in Tokyo, Yokohama, Osaka and Kobe. The four corporations have continued to develop and manage container terminals since then, and according to the latest statistics, the total throughput of the four terminals accounts for approximately 60% to 70% of the entire container throughput in Japan.

1211. The controlling government agency (MLIT) has imposed a strict financial reporting system to the corporations, partly because the facility currently owned by these corporations were financed by the central government using national fund at the initial stage, and partly because their public terminals are leased out to the specific private companies for longer period of time (ordinary public berths or terminals are open for any users).

1212. The ruling regulation, "The Act on Management and Administration of Specified Container Terminals for External Trade", was enacted in 1981. The following actions on the financial reporting were stipulated in the Act.

1213. Article 7-3: "The specified corporations (four corporations) have to prepare the balance sheets and cash flows statement covering the previous fiscal year together with the business plans for the current fiscal year within three months after the end of each fiscal year.

1214. Article 12: "The MLIT can order the specified corporations to take necessary measures in order to smoothly implement their duties, if it is deemed necessary"

1215. Article 13: "The MLIT can make the specified corporations to report on the activities and financial status when such action is deemed necessary, further MLIT personnel can inspect the business activities, the financial documents, bookkeeping materials and the other necessary items on site when such action is deemed necessary"



1216. The container terminal organizations in Japan have to comply with this strict surveillance rule in order to assure their financial soundness. As mentioned before, this is mainly because the public corporations are utilizing the terminal facilities initially financed by the national fund, and they are doing the business on long term lease contract with designated private operators.

E. Examples of Yokohama Terminal Corporation

1217. Yokohama Terminal Corporation produces a simplified version of profit and loss statement and balance sheet as a modification of standard format used by private companies.

1218. These are just streamlined examples for reporting on the financial performance of one of the container terminal corporations. For complete version of financial reporting, generally the following documents are required.

- Operating Statements (detailed description on the business activities, detailed income stream)
- Balance Sheet with detailed figures
- Income Statement with detailed figures
- Cash Flow Statement
- Detail of Capital and other Assets
- Other reports, depending on the necessity

1219. In this specific case, the financial reports of the corporation have to be discussed and approved at the Yokohama Local Assembly and audited by auditors appointed by the Mayor of Yokohama City. They have to report the MLIT after these internal reporting and auditing are completed.

F. Beyond the experience of Japanese Financial Reporting System

1220. Japan has established the two systems for reporting the financial performance of port activities. One is a very streamlined reporting system on income and expenses of port authorities.

1221. The other is full fledged reporting system which involves a concept of asset management which is currently applied to the four public terminal corporations in consideration of long-term lease contracts.

1222. On the occasion of establishment of the new Port Authority System in Indonesia, it would be indispensable to establish appropriate port financial reporting system for the sound development of the port. It is required that the all the financial activities on the public port facility have to be fully accountable to all other entities, including the government agencies concerned and the public at large.

1223. It is strongly recommended that the detailed financial reporting system be introduced at least for the large scale container terminals, because financial performance of these terminals, which are usually leased out to the private sector, has to be carefully monitored to make appropriate future decisions. Otherwise, the lack of financial reporting system could cause serious misconducts of the concessionaires in some cases.

G. Draft Plan for the Financial Reporting and Auditing System of PMB

(i) Purpose of Financial Reporting System

1224. Port Management Body is established for regulation and development, control and supervision of port activities.



1225. Under the new shipping law (17/2008), Port Management Body shall have the role as Government representative and grant the concession to Port Business Entity to conduct business activities at port. And concession proceeds received by the Port Authority are treated as state revenue.

1226. Therefore Port Authority bears prime responsibility to properly maintain financial records and report to the Government (MoT and DGST) regarding the financial status in accurate and timely manner.

1227. In addition to that, Port Authority is responsible to correctly control the concession revenue from the concessionaire (Port Business Entity). Since Port Authority manages the concession contract on behalf of the conceding administration, it is required to make it always transparent on the management of the concession contract in financial aspects.

1228. For that purpose, Port Authority has to establish clear guideline of the financial reporting format from the concessionaire (operator).

(ii) Principles on Financial Reporting and Auditing

1229. In the construction of the financial reports, following principles should be obeyed:

1230. Financial Report to be submitted by the concessionaire or lessee should basically follow the International Financial Reporting Standards (IFRS) and comply with the Indonesian Accounting law. It should consist of Profit and Loss Statement, Balance Sheet, Cash flow Statement with detailed interpretation and chairman's report.

1231. Financial Report to be submitted by Port Management Body should comply with the Indonesian Accounting law. It should consist of Profit and Loss Statement, Balance Sheet, Cashflow Statement with detailed interpretation and chairman's report.

1232. Financial statements should be constructed separately and independently for the segments of the business component based on the concession/lease contracts and other business undertaken by the Port Management Body.

1233. Financial statements should precisely reflect the financial statements submitted by the concessionaire/lessee and maintenance and repair expense. Revenue should be reported in separate account corresponding to respective contract.

1234. Detailed explanation to be attached as the schedules to the financial statement, which includes followings:

- Operating Statements (detailed description on the business activities, detailed income stream)
- Balance Sheet with detailed figures
- Income Statement with detailed figures
- Cash Flow Statement
- Detailed information on Capital and other assets
- Other information, depending on the needs

1235. The financial statements should be audited by external certified accountant.

1236. The Minister of Transportation can make the specified corporations to report to the Ministry on the activities and financial status, when such actions are deemed necessary, and moreover, he can



make DGST to inspect the business activities, the financial papers, book keeping materials, and the other necessary items on site when such actions are deemed necessary.

(iii) **Proposed Form of Financial Report by Port Management Body**

1237. Followings are the proposed form of Financial Report by Port Management Body:

Profit and Loss Statement

As of 31st December 2xxx (unit:million Rp.)

Expenses		Revenue	
Expenses on Container Terminals		Business Revenue	
Expenses on administration		Business Revenue	
Expenses on maintenance		Others	
Depreciation			
Loss in accrued expenses			
Expenses on general administration			
Other Expenses		Other Revenue	
Interest accrued		Interest accrued	
Others		Others	
Special Loss Account		Special Revenue Account	
		Withdrawal of funds	
Income of the term			
Total Expenses		Total Revenue	

Balance Sheet

As of 31st December 2xxx (unit:million Rp.)

Assets		Equity and Liabilities	
Tangible Assets		Liabilities	
Cash		Accounts payable	
Securities		Deposit payable	
Accounts receivable		Short term notes payable	
Others		Prepaid deposit	
Fixed Assets		Fixed liabilities	
Container terminal purchase price		Long term notes payable	
Accumulated Depreciation			
Reserves for Development		Accrued expenses payable	
Other Fixed Assets		Capital	
Tangible Assets		Retained Earnings	
Intangible Assets		Reserves for development	
Investment		Earnings of this term	
Others			
Total Assets		Total Equity and Liabilities	

(iv) **Sample of Financial Report by Operator**

1238. Following are the sample of financial reports by Terminal Operating Company based on International Financial Reporting Standard (IFRS). It should be reminded that these financial reports



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are to disclose Terminal Operating Company's business activities as much as possible in order to make fair and transparent ground of concession contract.

Income Statement					
For the year ended 31 December					
2008	2009		Notes	2009	2008
US\$'000	US\$'000			Mill. Rp	Mill. Rp
		Revenue	28		
		Direct operating cost	5		
		Other operating expenses	6		
		Administration and general expenses	7		
		Other income	8		
		Profit from operations			
		Net financing costs	9		
		Net profit for the year before tax			
		Deferred tax	25		
		Net profit for the year			

Balance Sheet					
At 31 December					
2008	2009		Notes	2009	2008
US\$'000	US\$'000			Mill. Rp	Mill. Rp
		ASSETS			
		Property and equipment	11		
		Intangible assets	12		
		Investments	13		
		Non-current portion of postive fair value			
		Value of derivatives	26		
		Total non-current assets			
		Inventories	14		
		Trade and other receivables	15		
		Cash and cash equivalents	16		
		Term deposits	17		
		Positive fair value of derivatives	26		
		Total current assets			
		TOTAL ASSETS			
		EQUITY			
		Share capital	18		
		Share premium	18		
		Legal reserve	18		
		Hedging surplus	26		
		Retained earnings			
		TOTAL EQUITY			
		LIABILITY			
		Non-current porttion of term loans	22		
		Deferred tax	25		
		Employees' end of service benefits	23		
		Total non-current liabilities			
		Trade and other payables	24		
		Current portion of term loans	22		
		Total current liabilities			
		TOTAL LIABILITIES			
		TOTAL EQUITY AND LIABILITIES			



Statement of Changes in Equity
for the year ended 31 December

	Share capital	Share premium	Legal reserve	Hedging surplus/ (deficit)	Retained earnings	Total
	Mill. Rp	Mill. Rp	Mill. Rp	Mill. Rp	Mill. Rp	Mill. Rp
1 January 2008						
Dividend paid						
Net profit for the year 2008						
Fair value adjustment						
Transfer						
31 December 2008						
Dividend paid						
Net profit for the year 2009						
Fair value adjustment						
Transfer						
31 December 2009						

	Share capital	Share premium	Legal reserve	Hedging surplus/ (deficit)	Retained earnings	Total
	US\$'000	US\$'000	US\$'000	US\$'000	US\$'000	US\$'000
1 January 2008						
Dividend paid						
Net profit for the year 2008						
Fair value adjustment						
Transfer						
31 December 2008						
Dividend paid						
Net profit for the year 2009						
Fair value adjustment						
Transfer						
31 December 2009						

Notes

Followings are sample expression of the notes to the financial statements which forms integral part of the financial statements:

1 Legal status and principal activities

XYZ Company (“the Company”) is registered as limited company (PT) in the Republic of Indonesia under the Indonesian law. The Company is primarily engaged in leasing, equipping, operating and managing Container Terminal facilities in _____ port in Indonesia.

2 Basis of preparation

(a) Statement of compliance

These financial statements have been prepared in accordance with the International Financial Standards (“IFRS”) and accounting law of the Republic of Indonesia.

(b) Basis of measurement and presentation currency

These financial statements are presented in Indonesian Rupiah (“Rp”) and United States Dollars (“US\$”) rounded off to the nearest thousand. The financial statements have been prepared under the historical cost basis modified for derivative financial instruments and investments available for sale, which are stated at fair value. Exchange rate considered for conversion is US\$1=Rp____.



The Accounting policies have been consistently applied by the Company and are consistent with those in the previous years.

3 Significant agreements

The company has entered into the following significant agreements

- (1) Concession agreement with the Port Authority of _____ Port to lease, equip, operate and manage _____ Container Terminal facilities (“Concession Agreement”) for a period of _____ years commencing from date, month, year (“Concession period”).

In consideration for granting the concessions, the Company pays concession fee to the Port Authority and is calculated as follows:

- A fixed fee of US\$ _____ per annum; and
- A variable fee calculated in accordance with the terms set out in the Concession Agreement

4 Significant accounting policies

The accounting policies set out below have been applied consistently by the Company and are consistent with those used in the previous year.

(a) Revenue

Revenue comprises income earned from services rendered in connection with the facilities provided at Container Terminal, and is recognized when earned. No revenue is recognized if there are significant uncertainties regarding recovery of the consideration due and associated costs.

(b) Net financial expense

Net financing expense comprises interest payable on borrowing and interest receivable on bank deposits. Interest income is recognized in the income statement as it accrues. Interest expense is recognized in the income statement as incurred.

(c) Employee benefit

Contributions to defined contribution retirement plan, for Indonesian employees, in accordance with the Indonesian Social Insurance Scheme, are recognized as expense in the income statement as incurred.

Provision for non-Indonesian employee terminal contributions, which is an unfunded defined benefit retirement plan, is made in accordance with Indonesian Labor Laws and calculated on the basis of the liability that would arise if the employment of all employees were terminated at the balance sheet date.

(d) Foreign currencies

Transaction in foreign currencies is translated to Indonesian Rupiah at the foreign exchange rate ruling at the date of transaction. Monetary assets and liabilities denominated in foreign currencies at the balance sheet date are translated to Indonesian Rupiah at the foreign exchange rate ruling at that date. Foreign exchange differences arising on transaction are recognized in the income statement Non-monetary assets and liabilities denominated in foreign currencies that are stated at historical cost, are translated to Indonesian Rupiah at the foreign exchange rate ruling at the date of the transaction.

(e) Derivative financial instruments and hedging

The Company uses derivative financial instruments to hedge its exposure to certain portion of its interest rate risks arising from financing activities. In accordance with its treasury policy, the Company does not hold or issue derivative financial instruments for trading purposes. However, derivatives that do not qualify for hedge accounting are accounted for as trading instruments.



Derivative financial instruments are recognized initially at cost. Subsequent to initial recognition, derivative financial instruments are stated at their fair value. Recognition of any resultant gain or loss depends on the nature of the item being hedged.

Where a derivative financial instrument is designated as a hedge of the variability in cash flows of a recognized liability, the effective part of any gain or loss on the derivative financial instrument is recognized directly in equity. The ineffective part of any gain or loss is recognized in the income statement immediately.

(f) Intangible asset

Expenditure incurred on initial studies for development of _____ Container Terminal have been capitalized by the Company. Capitalized development expenditure is stated at cost less accumulated amortization and impairment losses which is referred in accounting policy (l).

Amortization of development expenditure is charged to income statement on a straight line basis over the Concession period.

(g) Property and equipment

(1) Recognition and measurement

Item of property and equipment are stated at cost less accumulated depreciation and impairment losses which is referred in accounting policy (l). Subsequent expenditure is capitalized only when it increases the future economic benefits embodied in the item of property and equipment. All other expenditure is recognized in the income statement as an expense as incurred.

(2) Depreciation

Depreciation is charged to income statement. Capital work-in-progress is not depreciated. Depreciation on property and equipment is calculated so as to write off their cost by equal installments as follows:

Items	Years
Leasehold improvement	3-5
Quay gantry cranes	6-25
Rubber tire gantry cranes	15
Tractors and trailers	10-15
Forklifts and reach stackers	3-5
Marine equipment	25-30
Motor vehicles	3-5
Computer equipment and software	1-5
Furniture, fixture and equipment	3-5

(h) Investments

Investments are classified as available for sale and are stated at fair value, with any resultant gain or loss recognized in equity. The fair value of the investments available for sale is their quoted bid price at the balance sheet date. Available for sale investment are recognized or de-recognized by the Company on the date it commits to purchase or sell the investments.

(i) Receivables

Receivables are stated at their cost less impairment losses which is referred in accounting policy (l).

(j) Inventories

Inventories are stated at the lower cost and net realizable value. The cost of inventories is based on the weighted average principle and includes expenditure incurred in acquiring the inventories and bringing them to their existing location and condition.

(k) Cash and cash equivalents



Cash and cash equivalents comprises cash balances, balances with banks and short-term deposits with an original maturity of three months or less.

(l) Impairment

The carrying months of the Company's assets, other than inventories which is referred in accounting policy (j) and deferred tax assets which is referred in accounting policy (r), are reviewed at each balance sheet date to determine whether there is any indication of impairment. If any such indication exists, the assets' recoverable amount is estimated. An impairment loss is recognized in the income statement whenever the carrying amount of an asset or its cash-generating unit exceeds its recoverable amount.

The recoverable amount of the Company's receivables is calculated as the present value of expected future cash flows, discounted at the original interest rate inherent in the asset. Receivables with a short duration are not discounted.

(m) Dividends

Dividends are recognized as a liability in the period in which they are declared.

(n) Determination of Directors Remuneration

The Annual General Meeting determines the total remuneration of the Chairman, Deputy Chairman and other members of the Board of Directors in respect of Board Meetings, positions held and sub-committee duties, not exceeding three percent (3%) of the net annual profits after deduction of the legal reserve, the special reserve (if any), and payment of dividends of not less than five percent (5%) to all shareholders. Directors remuneration is recognized in the income statement.

(o) Payables & Provisions

Payables are stated at cost and provision is recognized in the balance sheet when the Company has a legal or constructive obligation as a result of a past event, and it is probable that an outflow of economic benefits will be required to settle the obligation. If the effect is material, provisions are determined by discounting the expected future cash flows at a pre-tax discount rates that reflects the current market assessments of the time value of money and, where appropriate, the risks specific to the liability.

(p) Interest bearing borrowings

Interest bearing borrowings are recognized initially at cost, less attributable transaction costs. Subsequent to initial recognition, interest bearing borrowings are stated at amortized cost with any difference between cost and redemption value being recognized in the income statement over the period of borrowings on an effective interest rate basis.

(q) Operating lease payments

Payments made under operating leases are recognized in the income statement on a straight-line basis over the term of the lease, increasing at the rate of 3% per annum.

(r) Income tax

Income tax on the results for the year comprises deferred tax. Income tax is recognized in the income statement except to the extent that it relates to items recognized directly to equity, in which case it is recognized in equity.

Deferred tax is provided using the balance sheet liability method on all temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for taxation purposes. Deferred tax is calculated on the basis of tax rates that are expected to apply to the period when the asset is realized or the liability is settled.

A deferred tax asset is recognized only to the extent that it is probable that future taxable profits will be available against which the unused tax losses and credits can be utilized. Deferred tax



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assets are reduced to the extent that it is no longer probable that the related tax benefit will be realized.

5 Direct operating costs

2008	2009	2009	2008
US\$'000	US\$'000	Mill. Rp	Mill. Rp
	Staff cost		
	Depreciation		
	Repair and maintenance		
	Power and fuel		
	Other expenses		

6 Other operating expenses

2008	2009	2009	2008
US\$'000	US\$'000	Mill. Rp	Mill. Rp
	Ground rent and concession fee		
	Depreciation		
	Others		

7 Administration and general expenses

2008	2009	2009	2008
US\$'000	US\$'000	Mill. Rp	Mill. Rp
	Staff costs		
	Depreciation		
	Sales and marketing		
	Systems and communications		
	legal and professional fees		
	Others		

8 Other income

2008	2009	2009	2008
US\$'000	US\$'000	Mill. Rp	Mill. Rp
	Professional service fee		
	Others		

9 Net financing costs

2008	2009	2009	2008
US\$'000	US\$'000	Mill. Rp	Mill. Rp
	Term loan interest		
	Other financing charges		
	Total financing cost		
	Interest income		

10 Salaries and related costs



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2008 US\$'000	2009 US\$'000		2009 Mill. Rp	2008 Mill. Rp
		Wages and salaries		
		Other benefits		
		Increase in liability for unfunded defined benefit retirement plan		
		Contribution to defined contribution retirement plan		
11 Property and equipment				
Details of property and equipment are set out in Schedule 1.				
Buildings are situated on the land leased up to the year 2xxx, from _____ Port Authority.				
Annual lease rental is Rp_____ and increases based on contractual terms agreed with _____ Port Authority.				
The depreciation charge has been allocated in the income statement as follow:				
2008 US\$'000	2009 US\$'000		2009 Mill. Rp	2008 Mill. Rp
		Direct operating costs		
		Other operating expenses		
		Administration expenses		
12 Intangible assets				
2008 US\$'000	2009 US\$'000		2009 Mill. Rp	2008 Mill. Rp
		Cost		
		1 January and 31 December		
		Cummulative amortization		
		1 January		
		Additions		
		31 December		
		Carrying amount		
		1 January		
		Additions		
		31 December		
13 Investments				
The Company has invested Rp_____ for the purchase of _____ shares of Company XYZ.				
14 Inventories				
2008 US\$'000	2009 US\$'000		2009 Mill. Rp	2008 Mill. Rp
		Spares and consumables		
		Less: Provision fore slow moving inventories		
15 Trade and other receivables				



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2008 US\$'000	2009 US\$'000		2009 Mill. Rp	2008 Mill. Rp
		Amount due from related parties		
		Trade receivables		
		Prepaid expenses		
		Other receivables		
<hr/>				
16 Cash and cash equivalents				
2008 US\$'000	2009 US\$'000		2009 Mill. Rp	2008 Mill. Rp
		Cash and bank balances		
		Call deposit accounts		
<hr/>				
During 2009, the call deposit accounts earned interest at the rates ranging between ___% to ___% per annum (2008: ___% to ___% per annum)				
17 Term deposits				
2008 US\$'000	2009 US\$'000		2009 Mill. Rp	2008 Mill. Rp
		Bank deposits with a maturity of three months or less		
		Bank deposits with a maturity of greater than three months		
		Debt service deposit		
<hr/>				
Bank deposits carry effective annual interest at rates ranging between ___% and ___% (2008: ___% and ___%) and include fixed deposit of Rp_____ (2008: Rp_____) with commercial banks in Indonesia, denominated in US Dollars.				
Under the terms of the debt financing agreement, the Company is required to maintain a debt service deposit equal to its next six months debt payments for the period until the financial installment of the term loan. The deposits are in US Dollars with commercial banks in Indonesia carrying effective annual interest rates ranging between ___% and ___% (2008: ___% and ___%).				
18 Dividend				
During the year, dividend of Rp_____ relating to 2008 were declared and paid.				
The Board of directors has proposed a cash dividend of Rp_____ per share, totaling Rp_____ which is subject to the approval of the shareholders at the Annual General Meeting.				
19 Term loan				
Characteristics and current status of long term loan should be stated here with the table showing the details. At 31 December 2009, the outstanding balances for two tranches are as follows:				



	Total	Payable within one year (Current portion)	Payable between 1 and 2 years	Payable between 2 and 5 years	Payable after 5 years
Mill. Rp					
Tranche 1					
Tranche 2					
Total					
US\$'000					
Tranche 1					
Tranche 2					
Total					

20 Employee's end of service benefits
Movements in the liability recognized in the balance sheet are as follows:

2008	2009	2009	2008
US\$'000	US\$'000	Mill. Rp	Mill. Rp
	1 January		
	Accruals during the year		
	End of service benefit paid		
	31 December		

21 Trade and other payables

2008	2009	2009	2008
US\$'000	US\$'000	Mill. Rp	Mill. Rp
	Trade payables		
	Amounts due to related parties		
	Accrued expenses and other liabilities		

22 Taxation
In accordance with Ministerial decision No._____, the Company had obtained a tax exemption for a period of 5 years commencing 2xxx.
The Company has been granted further tax exemption in accordance with Ministerial decision No._____, for a period of further five years commencing 2xxx.
Deferred tax liability represents the amount of income tax payable in future periods in respect of taxable temporary/timing differences between accounting and tax depreciation. The provision for deferred tax liability reserves the impact of incidence of in the future periods when carrying amount of assets would be recovered in the form of revenues, thereby matching the effective rates of tax to the actual tax rate.
The following provision as of 31 December 2009 indicates the status to equalize the impact of taxes over the revenue earning life of the assets.

2008	2009	2009	2008
US\$'000	US\$'000	Mill. Rp	Mill. Rp
	Tax depreciation		
	Tax loss at 31 December		

The assessments for the year 2004 to 2008 have not been finalized with the taxation authorities.

23 Derivative financial instruments and hedging deficit
The Term loan facilities of the Company bear interest at US\$ LIBOR plus applicable margins of __%.



In accordance with the term Loan Agreement, the Company has fixed the rates of interest applicable to the different Tranches through Interest Rate Swap agreements (“IRS”).
Results of gains and loss should be stated here

24 Related party transaction

The Company has entered into transactions with entities over which certain Directors may be able to exercise significant influence. In the normal course of business, the Company provides and avails services from related parties on commercial terms and at arms length. The term of providing and receiving such services are comparable with those that could be obtained from third parties. The volumes of significant-related-party transactions during the year and transactions with parties of more than 10% shareholding by the Company or the Directors were as follows:

2008	2009		2009	2008
US\$'000	US\$'000		Mill. Rp	Mill. Rp
		Revenue		
		ABC Shipping Services Co.		
		Others (individually not material)		
<hr/>				
		Purchases and service rendered		
		ABC Terminal Co.		
		ABB Towage Co.		
		ABC Shipping Agent		
		Others (individually not material)		
<hr/>				
		Management fees to ABC Terminal Co.		
		Directors' remuneration		
		Directors' sitting fees		

25 Segmental reporting

Operating Segment

For management purposes, the Company is organized into two major operating divisions, Container terminal and General Cargo Terminal. The Container terminal Division is engaged in leasing, equipping, operating and managing a Container Terminal. The General Cargo terminal is engaged in providing stevedoring and other cargo related services to vessels and cargo operators. All activities are undertaken in the Republic of Indonesia. These Divisions are the basis on which the Company reports its primary segment information as follows:



**The Study on the New Public Private Partnership Strategy
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	Container Terminal		G.C. Terminal		Total	
	2009	2008	2009	2008	2009	2008
	US\$'000	US\$'000	US\$'000	US\$'000	US\$'000	US\$'000
Revenue						
Direct operating cost						
Common costs						
Profit from operations						
Finance cost (net)						
Net profit for the year before tax						
Deferred tax						
Net profit for the year before tax						
Other Information						
Segment total Assets						
Inter division balances eliminated						
Total assets						
Segment total liabilities & equity						
Inter division balances eliminated						
Total liabilities & equity						
26 Commitment and contingencies						
	2008	2009		2009	2008	
	US\$'000	US\$'000		Mill. Rp	Mill. Rp	
			Capital expenditure commitments			
			Bank Guarantees			
Operating lease commitments						
The Company has entered into a lease agreement with _____ Port Authority in (Date) , which grants a lease of the land and infrastructure required for the Container Terminal facilities to the Company, for a term consistent with its _____ year Concession Period. Future lease payment commitments are as follows:						
	2008	2009		2009	2008	
	US\$'000	US\$'000		Mill. Rp	Mill. Rp	
			Not later than one year			
			Between one and five years			
			After five years			
			Total lease commitment			
27 Financial instruments						
Exposure to interest rate, credit, liquidity, currency and fair value risks arises in the normal course of the Company's business:						
Interest rate risk						
The Company adopts a policy of ensuring that at least 75% of its exposure to changes in interest rates on long-term loans is on a fixed rate basis. Interest rate swap, denominated in US Dollars, has been entered into to achieve this purpose. While this is subject to the risk of market rates changing subsequent to acquisition, such changes are generally offset by opposite efforts on the items being hedged.						
However the Company is also exposed to interest rate risk on its interest bearing assets and liabilities (bank deposits and 25% of term loans). The management monitors the interest rate risk by setting links on the on the interest rate gaps for stipulated period.						
Credit risk						
The Company seeks to limit its credit risk with respect to customers by setting credit limits for individual customers and monitoring outstanding receivables.						



The Company provides services to number of customers in Indonesia. Six top customers account for ___% of outstanding accounts receivable at 31 December 2009 (2005: six top customers accounted for ___%)

Liquidity risk

The Company limits its liquidity risk by ensuring bank facilities is available. The Company’s terms of service require amounts to be paid within 30 to 60 days of the date of sale. Trade payables are normally settled within 30 to 90 days of the date of purchase.

Currency risk

Currency risk arises from the possibility that changes in foreign exchange rates will affect the value of financial assets and liabilities. The Company has not hedged its currency exposure, the majority of which is denominated in US Dollars, as a significant part of its current and expected revenue flows will be in US Dollars.

28 Fair values of financial instruments

Financial instruments comprise financial assets and liabilities.

Financial assets consist of cash and bank balances, term deposits and receivables. Financial liabilities consist of payables, terms loans and accrued expenses. The fair values of the financial assets and liabilities at the balance sheet date are not materially different from their carrying values.

29 Comparative figures

Certain comparative figures have been reclassified in order to conform to the presentation of the current year. Such reclassification does not affect previously reported net profit or shareholders’ equity.

Schedule 1

Property and equipment (For the year ended 31 December 2009)

	Leasehold improvement	Quay Gantry cranes	Rubber tyre Gantry Cranes	Forklifts & reach stackers	Marine Equipments	Motor Vehicles	Computer Equipment & software	Furniture, Fixture & equipments	Capital work in progress	Total
	US\$'000	US\$'000	US\$'000	US\$'000	US\$'000	US\$'000	US\$'000	US\$'000	US\$'000	US\$'000
<u>Cost</u>										
1 January 2009										
Additions										
Transfer from CWIP										
Disposal										
31 December 2009										
<u>Accumulated depreciation</u>										
1 January 2009										
Depreciation for the year										
Disposal										
31 December 2009										
<u>Carrying amounts</u>										
31 December 2008										
31 December 2009										



4. Guideline for the Government Regulation on Article 94 of the Shipping Law

4.1. Summary of G.R. on Service Standard

1239. Business activities at a port are stipulated in Paragraph 4 of Chapter VII of the shipping law and Government Regulation and consist of port provisions and/or services related to ships, passengers and cargoes. The provision and services related to ships, passengers, and cargoes are stipulated as follows (Article 90 of the law and Article 69 of GR).

- Provision and/or service of jetty for mooring;
- Provision and/or service of fuel filling and clean water service;
- Provision and/or service of passenger and/or vehicle embarking and disembarking facility;
- Provision and/or service of jetty for the implementation of cargo and container loading and unloading;
- Provision and/or service of warehouse and cargo piling place, loading and unloading devices, and port equipment;
- Provision and/or service of container, liquid bulk, dry bulk, and Ro-Ro terminal;
- Provision and/or service of cargo loading and unloading;
- Provision and/or service of distribution center and cargo consolidation; and/or
- Provision and/or service of towage.

1240. Port Business Entity is obligated to conduct the port provision and/or service by the following manners (Article 94 of the law Article 73 of G.R).

- Provide and maintain port facility feasible;
- Provide service to port service users in accordance with the service standard stipulated by the Government;
- Maintain security, safety, and order at port facility operated;
- Participate in maintaining security, safety, and order relating to waterborne transport;
- Maintain environmental sustainability;
- Fulfill the obligations pursuant to the concession agreement ; and
- Conform to the provision of national as well as international laws and regulations.

1241. Port Authority is required to be established at commercial ports, and has power to perform the duties and responsibilities such as determining the operational performance standard of port service, which is evaluated annually (Article 66 of GR).

4.2. Guideline for Implementation of G.R. on Operational Performance Standard

1242. These regulations are a particular on service-basis and it can be construed as what is termed as Performance Standard. The Performance Standard on the current concession contact at JICT is prescribed by moves per hour per quay gantry crane (QGC) only.



1243. Performance standard is to be set for the purpose of securing the minimum service to the users as well as minimum revenue as one of the concession conditions.

1244. In the context above, however, the service efficiency at container terminals varies by operational systems and methods practiced by the operators; thus the moves of QGC is not enough to evaluate its efficiency. Accordingly, it is advisable to stipulate in the concession contract the performance standard by targeted minimum throughput volume (TEU) for container terminal.

1245. In case of general cargo terminal or bulk cargo terminal, it is better to stipulate in terms of minimum volume in either metric ton or long ton according to the unit in port statistics.

1246. The targeted volume, however, should vary by specification of terminals, vessels' type/size and type of containers to be handled (Local Import/Export, Transshipment, Empty to be stored as a depot at the terminal or not, etc.). The target volume is calculated based on the terminal capacity in general.

1247. The target volume is considered as the minimum performance obligation of the terminal operating company (TOC) to the conceding authority and it should be agreed upon at the concession clarification stage.

1248. It should be noted that the target volume is different from the maximum handling volume (capacity) of the terminal; it is smaller than the maximum capacity.

4.2.1 Terminal Capacity (either CY or Berth Capacities of the Terminal, whichever is smaller)

A. Container Yard (CY) Capacity

1249. CY capacity is constrained by explicit factors such as ground TEU slot numbers, stacking capacity of container handling equipment utilized at the terminal, average dwell-days of containers handled at there and weekly peak-factor (peak-day's volume/average day's volume in a normal week) of the terminal (see Figure 4.2-1).

1250. The capacity should be increased when the TOC uses higher-stacking machines than usual; though the efficiency of the terminal operation will be affected in certain degrees in peak-periods when the TOC stacks containers at their CY up to its maximum storable capacity.

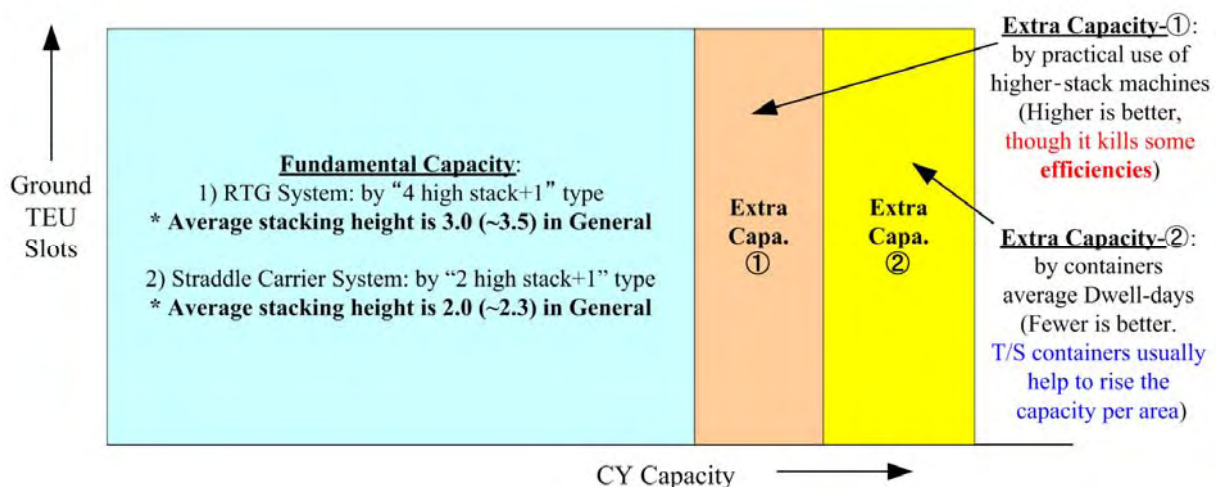


Figure 4.2-1 Basic concept of the CY Capacity



1251. The CY capacity of Bojonegara terminal 1 and 2 (600m x 600m) is estimated as 1,060,000 TEU per annum when the average container stacking height is 4.0 tiers, peak-factor is 1.3 and average containers dwell-days is 5.0 days, or 880,000 TEU when the average dwell-day of the containers is increased up to 6.0 days.

B. Berth (Apron) Capacity

1252. On the other hand, berth capacity (or integrated capacity) depends on both explicit factors as well as implicit factors, such as skills and/or know-how.

1253. The berth capacity can be calculated based on the quantity and capability of QGC, ships size to be accommodated, container handling volume per vessel-call, ships stowage conditions, skills of QGC drivers, skills of ship/CY planners and skills of CY/Gate operation controllers, although the last two (2) skills are deeply related to the CY capacity also (see Figure 4.2-2).

1254. When ships size as well as the volume per ship-call to handle becomes larger, QGC drivers can not only discharge and/or load containers with less affection of ships-heeling but also can stay for longer periods of time in the same hatch and thus handle more containers compared to the case of smaller ships during the stevedoring work; this helps the TOC to increase the ship's (GC's = Berth) operational productivity.

1255. Moreover, ship planners of such terminals can easily split the work-volume equally per assigned QGCs which helps the TOC to increase the equipment utilization rate up to the maximum throughout the operation.

1256. Another key factor for improving the Berth as well as CY capacities is the skill of CY planners who make working-plans of CY in weekly/daily basis in beforehand and control and manage the actual CY-operations, allocating the space of CY in a sophisticated manner not only by characteristics of containers such as export, import, transshipment and empty containers but also by vessel/voyage, destination, height, weight-range etc considering the ships' calling schedules.

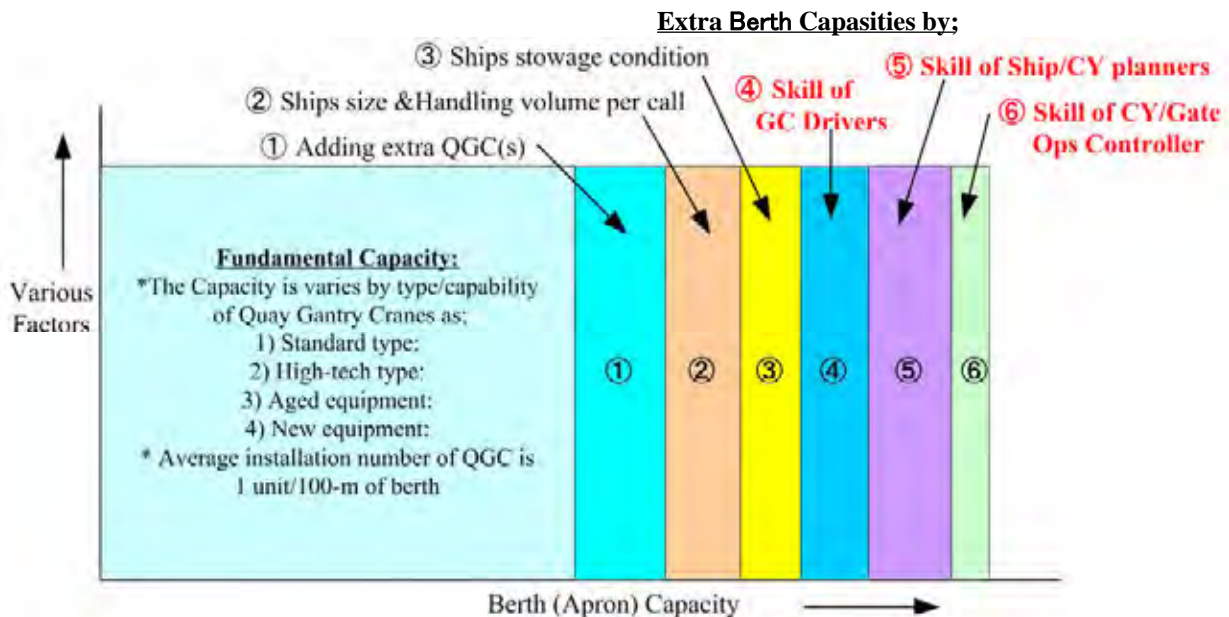


Figure 4.2-2 Basic Concept of the Berth (Apron) Capacity



1257. The berth capacity of Bojonegara terminal 1 and 2 is estimated as 930,000 TEU per annum when the average QGC's net-productivity is 30.0 moves, average handling volume per ship-call is 1,000 boxes and TEU/box ratio is 1.6; utilizing 3 QGCs throughout the operation with 45% (against 21.0 hours of maximum workable hours per day that is currently practiced at JICT/Koja terminals in Tg. Priok) of its utilization rate as the maximum.

1258. The berth capacity may increase to 950,000 TEU per annum when the average handling volume is increased from 1,000 to 1,500 boxes per call and other conditions are the same as stated above.

1259. The terminal capacity of Bojonegara 1 and 2 terminals, therefore, can be said to be around 900,000 TEU per annum as maximum. (See Figure 4.2-4 as a reference.)

4.2.2 Recommendable Target Throughput Volume as the Operational Performance Standard

1260. Recommendable minimum handling volume as the operational performance standard at terminals for concession is around 50%~60% of the terminal capacity, thus in the case of Bojonegara terminals 1 and 2, the volume should be around 500,000 TEU (450,000 ~540,000) per annum.

1261. Once a TOC of a terminal for concession reaches the target volume, most probably the TOC can generate certain profit from which the full amount of fixed concession-fee can be paid.

1262. However, a terminal's profitability varies according to the tariff rates applied as well as operational costs such as human cost, energy cost, loan amortization, lease/concession fees and so on; thus the volume as the minimum guarantee should be carefully calculated and accepted by the TOC when making a contract agreement.

1263. Furthermore, conceding authorities need to clarify and reach an agreement with TOCs concerning the maximum capacities of terminals for concession under various scenarios, such as when an additional QGC is installed or the CY is expanded etc.; it will also be necessary to stipulate the target years in the agreements when the TOCs have to reach the capacity volumes.

1264. Because the variable concession fee paid by TOCs to conceding authorities depends on the maximum capacities of terminals, a higher capacity generally translates into a higher fee.

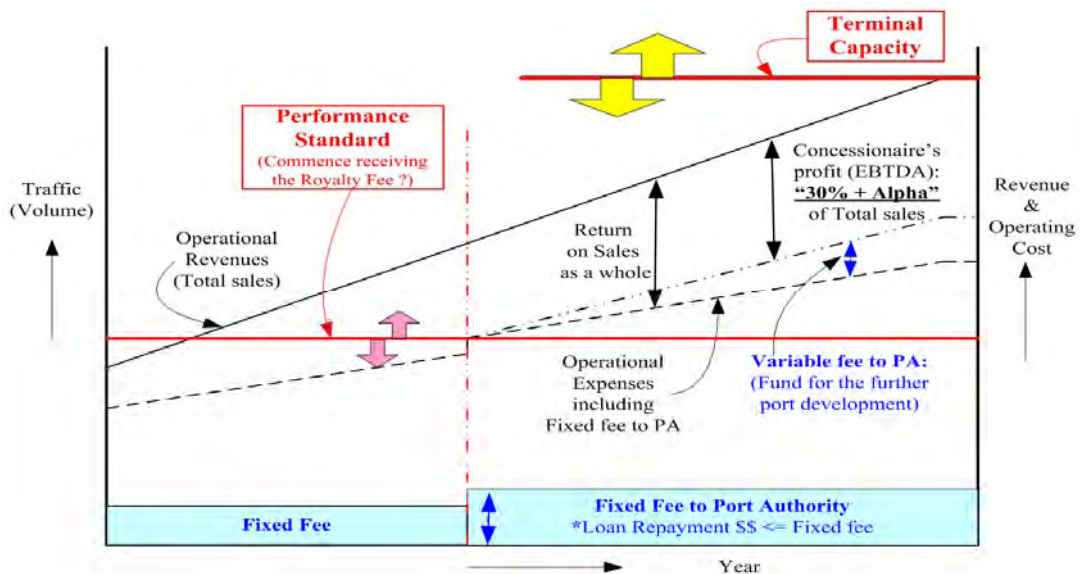


Figure 4.2-3 Basic concepts of Terminal Capacity and Performance Standard



Country	Japan	Japan	Korea	China	China	China	Singapore	Malaysia	Thailand	Indonesia
Port	Tokyo	Kobe	Busan	Quin Dao	Shan Hai	L. Chabang	Singapore	P. Pelepas	L. Chabang	Bojonegara
Terminal	Ooi CT-A	PI CT-B	N. Port CT	F. Gulf CT	Yang Shan	C-Terminal	PSA CT	PTP	C-Terminal	CT-1/2
Operational Form	Shipping Line	Shipping Line	Shipping Line	SL/Public	SL/Public	Shipping Line	Public	Shipping Line	Shipping Line	Public
1 Channel depth (m)	15.0	15.0	15.0	15.7	17.0	17.0	17.0	17.0	14.0	14.0
2 Berth depth (m)	15.0	15.0	15.0	17.0	16.0	14.6-16.0	15.0-17.0	15.0-17.0	12.0	14.0
3 Berth length (m)	680.0	700.0	700.0	3,460.0	3,000.0	16,000.0	3,600.0	3,600.0	300.0	600.0
4 Berth number (No.)	2	2	2	11	9	54	10	10	1	2
5 Square measure (ha)	27.5	25.1	29.8	225.0	240.0	600.0	176.4	176.4	10.5	36
6 Width of terminal (m):	405.0	358.7	400.0	650.3	800.0	375.0	490.0	490.0	350.0	600.0
7 CY ground TEU slot (TEU)	4,524	4,104	Unknown	26,000	32,000	19,000	19,000	19,000	1,867	6,300
8 GCs on Hand (Unit)	6	5	7	37	34	190	36	36	5	6

A. Specifications of the Terminal
by expected
Max. Capa.

8 Handling Volume	371,738	341,900	Unknown	5,016,666	3,614,202	18,168,919	3,437,500	456,376	562,500
9 TEU/Box ratio	1.65	1.50	Unknown	1.71	1.69	1.48	1.60	1.49	1.60
10 Average CY Dwell-days	3.7	4.1	Unknown	3.5	Unknown	within 2	2.5	4.5	5.0
11 CY Peak-factor	1.35	1.32	Unknown	Unknown	Unknown	Unknown	1.3	1.30	1.30
12 GC Prod'ty: Net (Box/hour)	38.5	37.5	28.0	38.0	30.0	35.0	32.0	35.0	30.0
Gross (Box/hour)	28.3	30.0	26.0	35.0	26.0	Unknown	25.0	28.0	26.0
Ratio; Gross/Net	74%	80%	93%	92%	87%	-	78%	80%	87%

B. Actual Container Handling Volume

1 GC Installation (Meters/unit)	113.3	140.0	100.0	93.5	88.2	84.2	100.0	60.0	100.0
2 Berth Efficiency: (Box/B-m/y)	547	488	-	1,450	1,205	1,136	955	1,521	938
(TEU/Berth-m/year)	902	733	1,922	2,486	2,036	1,681	1,528	2,267	1,500
3 Berth Efficiency: (Box/GC/y)	61,956	68,380	-	135,586	106,300	95,626	95,486	91,275	93,750
(TEU/GC/year)	102,228	102,567	192,249	232,432	179,647	141,526	152,778	136,000	150,000
4 CY Efficiency: (TEU/G.slot/y)	136	125	-	331	191	-	289	364	143
(TEU/Ha/year)	22,272	20,424	45,159	38,222	25,450	44,817	31,179	64,762	25,000

C. Capability & Efficiency
Prepared by OCDEI: T.ETO

Figure 4.2-4 Capacity and Specification of Major Terminals in the World in 2007



5. Guideline for the Government Regulation on Article 95 of the Shipping Law

5.1. Summary of G.R. on Port Business Entity

1265. Business activity at port is stipulated in Paragraph 4 of Chapter VII of shipping law and the activity of services may be conducted by any individual person and/or business entity of Indonesian Nationality (Article 91) and based on concession or other form from Port Authority set forth in an agreement (Article 92). The obligations of the port business entity are stipulated as follows (Article 94);

- Provide and maintain port facility
- Provide service to port service users in accordance with the service standard stipulated by the Government
- Maintain security, safety, and order at port facility operated
- Participate in maintaining security, safety and order relating to waterborne transport
- Maintain environmental sustainability
- Fulfill the obligations pursuant to concession in the agreement; and
- Conform to the provision of national as well as international laws and regulations

1266. G.R. stipulates in Art.68 that Commercial activities at port shall include; a. ship and passenger and/or cargo service provision and/or rendering; and b. port-related services.

1267. Port Business Entity shall, in the performance of its business activities at port, be obliges to have business permit issued by the Minister in case of main port and national port and the appointment of port business entity shall be made through the grant of concession from the port authority (Art.71 and 72 of G.R).

1268. Concession regarding port provision and/or service shall be granted to port business entity in the form of agreement and term of concession shall depend on investment fund payback and reasonable profit.

1269. G.R also stipulates that the grant of concession to port business entity shall be made through the mechanism of tender (Art. 74 of G.R).

1270. It is also stipulated that in the event of the period of concession has ended, port facilities resulting from such concession shall be transferred to Port Management Body and port management body shall appoint any port business entity to manage and provide port services following such transfer through the mechanism of tender.

1271. In addition to the grant of concession, G.R stipulates in Article 76 that Port Management Body may grant any other forms, such as land lease, warehouse lease and storage lease and so on, to port business entities and/or Indonesian individuals in order to carry out commercial activities embodied in the form of agreement.

1272. Concession proceeds and compensation received by the port authority shall be the state revenues that shall be used pursuant to laws and regulations (Art. 77 of G.R).

1273. Procedure and requirements of concession grant and revocation or any other forms are to be specified in Ministerial Regulation



5.2. Guideline for Implementation of G.R. on Port Business Entity

5.2.1 Duration of Concession

1274. Duration of concession period should be decided based on the financial assessment under relevant concession conditions such as initial investment, reinvestment for renewal of equipment and facilities, maintenance obligation and concession fees etc.

1275. Financial assessment should be conducted referring to the various financial indicators and not based on only FIRR as is shown in section IV-3 of the implementation guideline for PPP strategy attached in this report.

5.2.2 Conditions for the Revocation of Concession

1276. Revocation of concession should be conducted based on the conditions set forth in the respective concession contract following the necessary procedures specified in the contract based on the fair business rule.

1277. Presidential Regulation No.67/2005 stipulates the necessary provisions provided in cooperation agreement (concession agreement) which includes sanction in case the parties failed to meet the provisions of the agreement (Article 23 (1) h) and termination of the agreement (Article 23 (1) i).

1278. In the Ministerial Regulation on this matter, it should stipulate that concession agreement shall provide necessary clauses to clearly specifying the event of default and termination and consequences.

1279. Sample clauses for provision of event of default and termination are shown in Boxes.



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ARTICLE 00: EVENTS OF DEFAULT

(A) The following shall constitute concessionaire Events of Default under this Agreement : -

- (1) a breach by the concessionaire of any material term or condition of this Agreement or any other Project Agreement, including, but not limited to, any material breach of a representation, warranty, or covenant made in this Agreement or any other Project Agreement, which has a material adverse effect on the Project;
- (2) failure by the concessionaire to achieve a Commercial Operation Date or Financial Close save where such failure arises as a result of a the Conceding Administration Event of Default or as a result of a delay not the fault of the concessionaire on the relevant Handover Date;
- (3) Abandonment by the Concessionaire at any time during the Construction Period;
- (4) Abandonment by the concessionaire at any time during the Term;
- (5) any gross negligence, misrepresentation or willful misconduct by the concessionaire which has a material adverse effect on the Project;
- (6) any assignment by the concessionaire of its rights in violation of this Agreement except as agreed by the Parties;
- (7) a material adverse change occurs in the financial condition of the concessionaire which would affect the concessionaire's ability to fully perform all of its material obligations under this Agreement;
- (8) the concessionaire should suspend payment of all or any class of its debts, or announces an intention to do so, or a moratorium is declared in respect of any of its indebtedness, or the concessionaire is unable to or admits its inability to pay its debts as they fall due, or a resolution is passed to wind up or liquidate the concessionaire whether voluntary or compulsory;
- (9) the concessionaire's material failure to obtain, maintain and comply with the insurance requirements of this Agreement;
- (10) the concessionaire's failure to achieve performance target as set forth in Article XX.

(B) The following shall constitute Government/Conceding Authority Events of Default under this Agreement:-

- (1) a Specified Consent not being issued for unsupportable reasons upon application having been duly made by the concessionaire which has a material adverse effect on the Project;
- (2) a Specified Consent ceasing to remain in full force and effect (unless revoked for cause) or if granted for a limited period, not being renewed for unsupportable reasons upon application having been duly made, which has a material adverse effect on the Project;
- (3) the expropriation, compulsory acquisition or nationalization by the Conceding Administration of:-
 - (a) any part or whole of the shares of the concessionaire if the result would be for the Conceding Administration to acquire ownership or control of a majority of the shares in the concessionaire, or
 - (b) any assets or rights of the concessionaire which fundamentally and adversely affect the enjoyment by the concessionaire of any of its respective rights with respect to the Project assets, or the performance by the Concessionaire of any of their obligations pursuant to this Agreement;
- (4) failure by the Conceding Administration to achieve Handover Date within the Project Schedule (including any applicable grace periods) save where such failure arises as a result of an Event of Force Majeure or a concessionaire Event of Default or is otherwise attributable to the concessionaire;
- (5) Abandonment by the Conceding Administration at any time during the Construction Period;
- (6) a breach by the Conceding Administration of any material term or condition of this Agreement, including but not limited to any material breach of a representation, warranty or covenant made in this Agreement which has a material adverse effect on the Project;
- (7) any gross negligence, misrepresentation or willful misconduct by the Conceding Administration which has a material adverse effect on the Project; and
- (8) any assignment of rights by the Conceding Administration in violation of this Agreement except as agreed by the Parties.



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ARTICLE 00: TERMINATION AND CONSEQUENCES

(A) Termination for Convenience

(1) In the event that the Conceding Administration terminates this Agreement unilaterally without cause then the Conceding Administration shall deliver to the concessionaire a prior written notice of termination of not less than one hundred and eighty (180) Days specifying the termination date. If this Agreement is so terminated then the Conceding Administration shall-

(a) pay the outstanding liabilities of the concessionaire, including without limitation liabilities to the Lenders under the Finance Agreements, less any sum held in the name of the concessionaire in any escrow account for the purposes of making payments to the Lenders and insurance proceeds (if any) to the extent that there has been no default thereunder by concessionaire prior to the notice of termination;

(b) if the Conceding Administration terminates for convenience prior to the Commercial Operation Date, pay to the concessionaire a sum equal to all the audited third party development and other associated costs reasonably and exclusively incurred in connection with the Project. For the purposes of this Article, third party shall exclude any associates, subsidiaries or companies under the control of the Concessionaire members;

(c) if the Conceding Administration terminates for convenience during the Concession Period, pay to the concessionaire a sum equal to the Issued Share Capital of the concessionaire at the average price per share of the concessionaire shares on the _____ Security Trading Center for the three (3) year period immediately prior to the date of the notice of termination.

(2) If the Parties cannot agree on the value of the payments to be made under (1)(b) or (c) above, the matter shall be referred to an arbitrator appointed pursuant to Article 33 to determine. The Conceding Administration shall make payment of all items not disputed notwithstanding such referral.

(3) Repayment to the concessionaire for amounts due to Lenders contemplated in (1)(a) above shall be effected within ninety (90) Days of the date of actual termination together with payment of appropriate interest due in accordance with the Finance Agreements;

(4) Repayment to the concessionaire for amounts due under this Article 25(A) shall be effected within ninety (90) Days from the date of actual termination.

(B) Termination for Default

Should the Agreement be terminated following an Event of Default, either Party may proceed to arbitration in accordance with Article 33 to recover provable damages arising from the termination. Any claim for reimbursement of actual development and other associated costs incurred by a Party shall include those development and associated costs incurred in connection with the Project prior to Ratification and all additional costs properly, necessarily and directly incurred thereafter.

(C) Termination for Political Force Majeure

If this Agreement is terminated in accordance with Article XY(C)(2) then the Conceding Administration shall pay to the concessionaire :-

(1) a sum equal to the outstanding liabilities of the concessionaire, including without limitation liabilities to the Lenders under the Finance Agreements, less any sum held in the name of the concessionaire in any escrow accounts for the purposes of making, payment to the Lenders, to the extent that there has been no default thereunder by concessionaire prior to the notice of termination which sum shall be payable within ninety (90) Days of the date of actual termination together with payment of interest as provided under the Finance Agreements;

(2) a sum equal to the Owners Equity calculated on the date immediately prior to the date of notice of termination, to the extent not redeemed by the concessionaire; and

(3) a sum equal to those development and associated costs incurred by the Concessionaire in connection with the Project prior to Ratification and all additional costs reasonably, properly, necessarily and directly incurred by the concessionaire. If the Parties cannot agree on the value of the payments to be made under this Article 00(C)(3), then the matter shall be referred to an arbitrator appointed pursuant to Article YY to determine.



(E) Transfer of Project Assets on Termination
(1) Without prejudice to the foregoing provisions and the rights of each Party hereunder to seek compensation, in the event of termination of this Agreement whatever cause, the Conceding Administration shall be entitled (1) to enter and operate the Facility; and (2) to receive and use such drawings, designs, studies, materials, reports and other related documents prepared or procured by the Concessionaire in connection with the Project and the Facility to the date of termination.
(2) Upon termination of the Agreement prior to the expiration of the Term pursuant to Article 00(A), (B), or (C), and payment by the Conceding Administration thereunder, the Conceding Administration may elect to assume ownership and control of the Concessionaire Equipment and Additional Equipment. Upon such election the concessionaire shall transfer clear title to the Concessionaire Equipment and Additional Equipment to the Conceding Administration.
(3) In the event of termination of the Agreement by the Conceding Administration as a result of a concessionaire Event of Default, the concessionaire shall transfer clear title to the Concessionaire Equipment and Additional Equipment to the Conceding Administration upon payment by the Conceding Administration to the concessionaire of the lower of the appraised fair market value or the Net Book Value of the Concessionaire Equipment and Additional Equipment, adjusted for any liabilities to which said assets are subject and which are paid or assumed by the Conceding Administration.

5.2.3 Service Standard

1280. Service standard in terms of performance of the service will vary with the kind of services provided and provision of facilities and equipment as well as the commercial environment of the port. Hence it should be specified in each of the concession contract or agreement based on the business plan proposed by the concessionaire.

1281. More general requirement on operation of port business could be stipulated in the regulation in such a manner shown as follows;

- (a) Upon the issuance of a Commercial Operation Certificate, the Concessionaire shall have the responsibility for operating and maintaining and insuring the State Infrastructure and the State Equipment for the remaining duration of the Construction Period and, after issue of the Commercial Operation Certificate, for the duration of the Term or any extension thereof. Such insurance also shall be the responsibility of the Concessionaire for all Concessionaire Equipment and Additional Equipment.
- (b) Insofar as the same relates to the installation and commissioning of the Concessionaire Equipment and Additional Equipment, the Concessionaire will observe Jobsite work rules for safety, health and security in accordance with the Laws of the Republic of Indonesia.
- (c) The concessionaire shall be responsible, at its sole cost and expense, for operating and maintaining the Facility as a world-class terminal facility with such Concessionaire Equipment and Additional Equipment as may be necessary to meet such standard. The concessionaire shall maintain the Facility, including all State Equipment, Concessionaire Equipment and Additional Equipment in good serviceable condition so as to permit a high level of productivity and in accordance with Good International Practices.
- (d) The Concessionaire at its expense shall ensure that all necessary steps are taken to ensure protection of the environment at the Facility and that response measures are in place to respond to any spill or other event at the Facility or the adjacent waters that presents a risk to the environment. The Concessionaire shall comply with the Laws of the Republic of Indonesia and with any international conventions to which the Republic of Indonesia becomes a signatory in this respect.
- (e) In order to enhance and maximize the profit-making opportunity of the Facility, the Concessionaire shall ensure that an open and competitive commercial environment exists throughout the Term, and that the Concessionaire shall not adopt practices which would discourage competition.
- (f) The concessionaire shall operate, manage and maintain the Facility in accordance with Good International Practices.
- (g) The concessionaire warrants that all necessary personnel shall be employed for the efficient operation and management of the Facility. The concessionaire shall adopt a practice for training and employing Indonesian nationals with the objective of filling positions with Indonesian



nationals subject to availability, commensurate knowledge and experience for the relevant position.

5.2.4 Procedure of Concession Granting and Requirements

1282. Procedure of concession granting by the Port Authority is provided in the VI of the guideline for New PPP Strategy as the DGST Policy and Procedure for the Implementation by the Port Authority.

1283. As the requirements for the concessionaire as a port business entity, following shall be applied;

- The bids for concession made by national legal persons, established in accordance with Shipping Law and the Government Regulation, shall be admissible.
 - a) One or more partners who prove they have practiced in the business and labor environment of Indonesia. This member of the corporation shall be known as a “local partner”.
 - b). One or more partners who prove they have capability and international knowledge as port operators and in port development. This member of the corporation shall be known as a “port partner”; and
 - c). One or more partners as investors. This member of the corporation shall be known as an “investor partner”.
- The maximum participation of the partners described above in numbers a) and b) shall be 24.5% for each one of the subscribed capital of the corporate concessionaire. Greater participation than this by one of them must be authorized by the conceding administration, but in no case shall the sum of both participants be greater than 49% of the subscribed capital of the corporate concessionaire. The complementary stock for totaling 100% of the subscribed capital shall correspond to the investor partner.
- The corporate concessionaire shall have the form of a corporation with variable capital, established according to current standards, and its headquarters must be established in national territory before the signing of the respective contract.
- The concessionaire’s stock shall be nominative and their distribution shall reflect the participation of each one of the partners that make up the corporate concessionaire.
- Those who are in one of the following circumstances may not participate as a partner in a Corporate Concessionaire:
 - a) Having been condemned by a non-appealed sentence for the crimes of fraud, defalcation, crimes against public faith, crimes against property, misuse of public assets or contraband or fiscal fraud;
 - b) Be a debtor behind in payments with the Public Treasury;
 - c) Having been declared in bankruptcy or in bankruptcy proceedings, as long as the creditors were not restored;
 - d) Having defaulted on previous contracts entered into with any branches or organizations of the administration;
 - e) Being a spouse or second level relative by blood lineage or by marriage to the officials and employees who have the responsibility for the administration of the concession, the evaluation of bids, the allocation, and the signing of the contract or its supervision;
 - f) Companies dedicated to the construction of works, rendering of services, and consultation, or the supplying of goods, which have in their corporate composition partners that render services to the conceding institution or administration; and
 - g) The authorities and officials of the Executive, Legislative and Judicial Branches, military or police in active duty, and hierarchic officials of the conceding administration, up to the fourth level by blood lineage and second by marriage.



1284. In selecting the concessionaire, the Port Authority/Conceding Administration should consider at least the followings;

- a) The Port Investment Plan to be carried out by the concessionaire during the concession period in correspondence with the Port Principal Plan established by Port Authority;
- b) The basic plans for the use and operation of port infrastructure and superstructure, their maintenance and renewal; likewise the alignments related to their administration and the rendering of port services;
- c) The rate structure proposed for port services according to the item;
- d) The economic offer for the use of the concession, which includes the annual rent;
- e) The financial capacity of the partners that form the bidder, and the origin of their resources;
- f) The experience of the specialized operator;
- g) The economic evaluation of the development projects in the phases of design, construction, expansion and improvement of port infrastructure and superstructure for one or more stages throughout the concession period, and the corresponding analysis of their costs, benefits and profitability; and,
- h) Any other aspect of public interest or of specific importance.

1285. The bid that considers the commitment to absorb directly, or by means of subcontractors, the necessary specialized or operational human resources from among the personnel that are indemnified as a consequence of the port concession, shall have special importance.

5.2.5 Powers and Obligations of the Concessionaire

1286. In the implementation of granting concession to the port business entity, powers and obligations of the concessionaire should be clearly stipulated.

1287. The concessionaire shall have the powers granted him by the respective concession contract for administrating the transferred goods, but he may not perform any type of act to dispose of the received goods, without impairing their disuse or substitution due to the obsolescence, upon previous notification to the conceder.

1288. The concessionaire shall be under the obligation to:

- a) Develop the infrastructure and superstructure placed at his disposal under conditions of quality, efficiency and productivity for the operation of port services, at reasonable and internationally competitive prices;
- b) Pay the concession rent in the manner and conditions established by contract as the price for the right to develop the goods under the concession;
- c) Conserve the infrastructure under concession in a good operational state, carrying out, at his expense, the maintenance, repair and substitutions that are necessary in conformity with the conditions that were contractually assumed;
- d) Implement all the works for urbanization and infrastructure contractually agreed upon, under the stipulated terms, conditions and modalities;
- e) Maintain the infrastructure and superstructure in conditions of good hygiene, implementing for this purpose a regular and efficient system for collecting and disposing of waste;
- f) In the case of a total or master concession, control the entering and exiting of persons, merchandise and vehicles in the port's installations by adequately programming these movements, and avoid causing interference with the external circulation of vehicles; and for such purpose shall submit the internal rules of operation to the Port Authority for its approval;
- g) Organize vehicular and pedestrian circulation within the infrastructure and superstructure that were given to him in concession, installing adequate signals;



- h) Present periodically to the Port Authority, statistical reports on the items that it specifies and in the time periods and form that it determines;
- i) Inform the Port Authority every time that there is a happening that affects the port's operation or which constitute a risk to the operations, including the entering and exiting of dangerous cargo, accidents or averages that affect the infrastructure and superstructure, and any other happening that he considers the Port Authority should have knowledge of.
- j) Assume, within his fixed costs, the inherent costs for lighting, watchmen and safety of the port infrastructure and superstructure which were given in concession to him, not being able to directly charge these costs to users;
- k) Prepare contingency plans for taking preventive and immediate actions for the purpose of fighting fires, for industrial safety and the handling and transportation of dangerous merchandise;
- l) Install, within the concession ambit, a system for processing data with adequate software and hardware for their management, compatible with that of the Port Authority and that of the conceding institution or administration. The information to be transmitted shall basically be regarding the quantity, weight and volume of the merchandise entering or exiting and stored in the port, the movement and stay of ships and other information that the Port Authority requires;
- m) Assume liability for the eventual damages that the operation shall cause to third parties;
- n) Adopt the necessary measures so that the competent authority may carry out customs, sanitary, immigration and other controls connected with the police authority of Indonesian State, previous to the cargo's delivery;
- o) Insure the care of goods and the safety of persons within the concession ambit;
- p) Fulfill the port's internal rules of operation and the rates system, insuring that they are publicly known and are permanently displayed in the port ambit;
- q) Fulfill labor obligations, honoring and making others honor the current labor laws, the collective labor agreements that become applicable to the different activities to be realized; being are in effect and/or those that shall be applied in the future;
- r) Develop the rendering of all the services in compliance with international agreements on matters pertaining to seaports, subscribed by the Indonesian State; and
- s) Fulfill the technical and economic regulations and provisions established by the Port Authority.

1289. This listing is only declaratory, it being the concessionaire who shall render the services he is bound to contractually, fulfilling all the obligations assumed under the contract and the pertinent provisions contained in the laws of the Republic of Indonesia, related to the activities to be developed.

1290. The concessionaire shall have the following fundamental rights:

- a) Operate with exclusivity in the ambit given in concession by contract, being able to do this with any type of cargo in accordance with the port's purpose. Regarding flammable liquids in bulk or other cargo that could be dangerous and/or cargo that is usually handled in the port under such conditions, in the case of a Partial Concession, the Port Authority shall be notified of the operation beforehand, in order that it may take the measures it deems necessary for the safe and efficient management of such cargo. In the case of a Total Concession, the port's concessionaire assumes said responsibility, having to take all such measures in accordance with the standards that DGST sets regarding the matter, and with previous notification to DGST of such measures before carrying out the respective operations.
- b) Offer and charge for the services, to port users, for which he was authorized by the Port Authority; and,
- c) Contract, or subcontract third parties, for the rendering of services, likewise the leasing of spaces or use permits within the ambit that was given in concession.



1291. The concessionaire shall be responsible for the damages and injuries caused by operating the port installations, the goods that are used and before the personnel under his dependency. He shall also be responsible for all the damages and injuries caused by the providers of services, and suppliers or persons or organizations that realize or provide services or works under his charge, and who had been subcontracted at his expense.

6. Guideline for the Government Regulation on Article 99 of the Shipping Law

6.1. Summary of G.R. on Port Construction and Operation

1292. Port Construction and Operation are stipulated in Article 96 ~ Article 98 of the shipping law N0.17/2008.

1293. Article 96 stipulates that Port Construction shall be conducted based on permit from the Minister in case of main port and national port and the Governor or Regent/Mayor in case of feeder port and must fulfill port technical requirements and environment sustainability with consideration of the integrity of transportation between intra and inter mode.

1294. It is also stipulated in Article 97 that port may be operated only upon the completion of construction, fulfillment of operational requirements and obtaining permit which shall be granted by the Minister in case of main port and national port and the Governor or Regent/Mayor in case of feeder port.

1295. On Government Regulation (G.R), port construction is stipulated from Article 79 to Article 93 of Chapter V.

1296. Article 80 of G.R stipulates that seaport development shall be carried out upon obtaining the license of Minister in case of main port and national port, Governor in case of regional feeder port and Regent/Mayor in case of local feeder port and comply with the technical requirement of port, environmental conservation.

1297. Proponent of the port construction is stipulated in Article 87; a port business entity shall be the proponent in case of commercial port and port management unit shall be the proponent in case of non-commercial port. The license of port development shall be granted upon application of the port management body according to the provision of Article 91.

1298. Obligations of the organization which engages port development are stipulated in Article 87 (in case of port business entity and port management unit) as follows;

- a) to perform port development works, at the latest within 2 (two) year following the grant of port development permit;
- b) to perform port development works according to Port Principal Plan as decided;
- c) to report the implementation of port development activities periodically to Minister, Governor, or Regent/Mayor according to their respective authorities; and
- d) to be responsible for any impacts arising during the performance of the port development.

1299. An important point is that port development has to be conducted according to Port Principal Plan and this idea is prescribed in b. of the preceding paragraph and Article 79 and Article 89.

1300. As for port operation, conceding authority and requirements for permit of port operation, requirements for 24 hour operational services and upgrading of port operational capacity and obligations of port operating organizations etc. are stipulated from Article 94 to Article 104.



1301. Port operation shall be carried out by the port management body upon obtaining the license from the Minister in case of main port and national port and the Governor or Regent/Mayor in case of feeder port and requirements of port operation permit are stipulated in Article 94.

1302. Obligations of the port management body which engages port operation are stipulated in Article 103.

1303. Regarding port development and operation, further provisions such as technical standard, environmental preservation, method of supervision and operational requirements are proposed in the following section.

6.2. Guideline for Technical Regulations in Port Construction

6.2.1 Background

1304. Design codes play an important role to ensure the safety of facilities/structures and the convenience of using those things. Buildings shall be resistant against earth-quakes, winds and other external forces and resistant to fire, water and other natural disturbances. Roads and bridges shall bear a heavy load and have a width specified by their highway design code. Port facilities shall also follow design codes in order to ensure the safety of facilities and the convenience of port users and ship traffic.

1305. Together with the globalization of economic activities, such design codes are requested to meet the international standards and WTO agreement on Technical Barrier to Trade (TBT). WTO agreement recommends the performance based specification rather than ordinary design methods based on design specifications. The performance based design (PBD) and the limit state design (LSD) are the two key ideas complying with WTO agreement.

1306. Regulations on port facilities are usually stipulated by law or decree and details of such regulations are announced by competent authority. Relevant international standards, Eurocode, USA standard or other standards of developed countries are sometimes accepted as a standard which fit the requirements of a developing country.

1307. Developers/concessionaires are requested to build their facilities in accordance with the technical requirements stipulated by the government. The government also requests port management bodies to make their port development plan in accordance with their criterion on port development and environmental preservation.

6.2.2 WTO Requirements

A. TBT Agreement Key Points

1308. Following WTO Agreement on TBT in 1995, member countries are revising their own standards following this international agreement. Key points of the agreement are that member countries' technical regulations shall conform to the international standards, comply with the Code of Good Practice (see Box-2), and be checked by the conformity assessment.

Box-1: TBT Agreement Key Points

AGREEMENT ON TECHNICAL BARRIERS TO TRADE ("TBT Agreement")

- Provisions related to Technical Regulations of Central Government Bodies (Article 2-4) require that member states enforce their technical regulations based on international



standards.

- Provisions related to the adoption of Standards (Article 4-1) require that member states accept the Code of Good Practice concerning Central Standards Bodies' adoption of regulations.
- Provisions related to conformity assessment by Central Government Bodies (Article 5-4) require that member states utilize the Guides or Recommendations prescribed by International Standardizing Bodies as the base in preparing technical regulations, standards, and conformity assessment procedures.
- Provisions related to the Recognition of the results of conformity assessment procedures by Central Government Bodies (Article 6-1) require that member states recognize that overseas Conformity Assessment Bodies which have obtained Accreditation pursuant to the Guides or Recommendations prescribed by the International Standardizing Bodies have sufficient technical competence, and ensure the acceptance of the results whenever possible. Member countries are also encouraged to conduct Mutual Recognition negotiations pursuant to the results of conformity assessment procedures.

Box-2: Code of Good Practice

Annex 3 to TBT Agreement

The "Code of Good Practice" concerning the adoption of standards prescribes procedures standardizing bodies are to take in adopting standards.

- Prevention of the adoption of standards that may incur trade barriers
- Adoption of standards based on international standards
- Constructive participation in the adoption of international standards
- Publication of work plans concerning the adoption of standards at least once every six months.
- Declaration of comment reception public announcement periods for a period of at least for 60 days prior to the adoption of standards

B. Performance Based Specifications

1309. TBT agreement requests member countries to adopt technical regulations based on "product requirements in terms of performance" in stead of "design requirements or descriptive features".

1310. Requirements in terms of design or descriptive characteristics mean that products and outputs shall be approved by checking the whole process of design and construction including the configuration, ingredient, size, precision, production method and other details of materials, parts, structures and facilities.

1311. Requirements in terms of performance mean that products and outputs shall be examined only by checking the performance of materials, parts, structures and facilities.

1312. In case of breakwater construction, technical regulations based on the design and descriptive characteristics specify details of the design and construction, such as the strength of concrete, wave force, resisting power of the caisson, the coefficient of friction between the caisson and the rubble mound, safety factor against the design wave force, and other related conditions. Technical regulations based on the performance may specify the tolerable range of movement of a caisson against the design wave power. The evaluation of this type of design usually requires special skills and knowledge on waves and marine structures.



Box-3: TBT Agreement, Regulation based on the performance

Article 2, Section 2.8:

Wherever appropriate, Members shall specify technical regulations based on product requirements in terms of performance rather than design or descriptive characteristics.

C. ISO Standards related to Port Infrastructure

1313. While WTO recommends the adoption of ISO standards if available, no specific standard covers the design of port infrastructure except general standards like ISO 2394:1998 (General principles on reliability for structures) and ISO 3010:2001 (Basis for design of structures - Seismic actions on structures), ISO 21650:2007 (Actions from waves and currents on coastal structures)

1314. ISO 2394 stipulates that structures and structural elements shall be designed, constructed and maintained in a way that they are suitable for their use during the design working life and in an economic way. In particular they shall, with appropriate degree of reliability, fulfill the following requirement;

- 1) To perform adequately under all expected actions (serviceability limit state requirement)
- 2) To withstand extreme and/or frequently repeated actions occurring during their construction and anticipated use (ultimate limit state requirement)

Box-4: ISO2394: 1998 General principles on reliability for structure

- This International Standard specifies general principles for the verification of the reliability of structures subjected to known or foreseeable types of action. Reliability is considered in relation to the performance of the structure throughout its design working life.
- The general principles are applicable to the design of complete structures (buildings, bridges, industrial structures, etc.), the structural elements making up the structure and the foundations.
- This International Standard is also applicable to the successive stages in construction, namely the fabrication of structural elements, the transport and handling of the structural elements, their erection and all work on site, as well as the use of the structure during its design working life, including maintenance and repair.
- Generally the principles are also applicable to the structural appraisal of existing constructions or assessing changes of use.

Source: Document Details ISO 2394, American National Standard Institute

Box-5: ISO3010:2000 Basis for design of structures – Seismic actions on structures

- ISO 2394 presents basic methods for the determination of seismic actions on structures, and specifies methods of evaluating seismic actions for the earthquake-resistant design of buildings, towers, chimneys, and similar structures. Most of the principles are applicable also to structures such as bridges, dams, harbor installations, tunnels, fuel storage tanks, chemical plants, conventional power plants excluding nuclear power plants.

Source: International Organization for Standardization

Box-6: ISO21650: 2007 Actions from waves and currents on coastal structures

ISO 21650:2007 describes the principles of determining the wave and current actions on structures of the following types in the coastal zone and estuaries:

- Breakwaters:
- Rubble mound breakwaters;



- Vertical and composite breakwaters;
- Wave screens;
- Floating breakwaters;
- Coastal dykes;
- Seawalls;
- Cylindrical structures (jetties, dolphins, lighthouses, pipelines etc.).

ISO 21650:2007 does not include breakwater layout for harbors, layout of structures to manage sediment transport, scour and beach stability or the response of flexible dynamic structures, except vortex induced vibrations.

Design will be performed at different levels of detail:

- Concepts;
- Feasibility;
- Detailed design.

ISO 21650:2007 is aimed at serving the detailed design.

Source: International Organization for Standardization

6.2.3 Technical Regulations on Port Facilities

A. Necessity of Technical Regulations

1315. Technical regulations are necessary for ensuring the safety and productivity of port facilities, controlling concessionaires, and improving the performance of port. Technical regulations for operations are also required to ensure compliance with safety, labor, and environmental protection standards.

1316. World Bank report¹ pointed out the importance of technical regulations and indicates three types, i.e. technical regulations on investment, maintenance, and performance.

(i) Regulation of Investments

1317. Regulating investments is necessary only when the operator is himself responsible for the execution of the project. The Port Authority may then choose to impose a number of regulatory measures:

- A functional definition of required capacity, or traffic and throughput thresholds
- Construction standards to ensure that the work is satisfactorily executed; and
- Constraints or special specifications relating to security or protection of the environment.

1318. A concessionaire is requested to meet the performance standards.

(ii) Regulation of Maintenance

1319. Defective maintenance of port facilities creates three types of risks:

- Commercial risk for the operator as a consequence of the deterioration in the level of service

¹ Tool Kit Module 5, Financial Implications of Port Reform, World Bank, p24



offered to customers;

- Risk of default by the operator with respect to the public service obligations contained in the contract; and
- Risk of deterioration of assets during the term of the contract.

1320. In the case of a concession where assets are handed over to the Port Authority on termination of the contract, the need for regulation can go beyond a definition of functional obligations. It is normal for the concessioning authority to require that repair and maintenance work is correctly carried out to ensure that the installations are handed over in good operating condition at the end of the concession period. The concessioning authority can impose specific maintenance standards in the contract to ensure the satisfactory preservation of the assets.

(iii) Regulation of Performance

1321. The concessioning authority can include specific performance standards in the concession contract; e.g., minimum levels of productivity. Beyond productivity criteria and service standards, performance standards can also include a minimum capacity for the terminal. These standards might be based on investment levels or on direct measures of storage and throughput capacity.

B. Revision of Technical Regulation in Japanese Port and Harbor Law

1322. In order to comply with the Performance Based Specifications, the Japanese Port and Harbor Law was revised in May 2006 and entered into effect as of 1st April, 2007 (See Box-7). Relevant ordinance of the Ministry of Land, Infrastructure, Transport and Tourism (MLIT) and several public announcements on details of the ordinance were made by MLIT and entered into force as of 1st April 2007.

1323. Ministerial ordinance No.15 on 26 March 2007 requires that the designated port facilities shall be constructed in accordance with the new standards. The new standards stipulated that port facilities shall be designed, constructed and maintained to satisfy the required performance. Details of the standards are described in the Ministerial public announcements. Box-8 shows details of the regulation on the design of port facilities based on Performance Specifications

Box-7: Revision of Technical Regulations on Port Facilities

New Provisions (Performance Based Specifications)

1. Construction, improvement or maintenance of navigation channels, ship basins, breakwaters, revetments, mooring facilities and other port facilities specified by Government ordinance (hereinafter referred to the designated port facilities) shall be made in conformity with technical standards for the performance of the designated port facilities which shall be set by the ordinance of the Ministry of Land, Infrastructure and Transport, in addition to the provisions of other applicable laws or regulations, if any.

2. Those except the Government who plan to construct and improve the port facilities which are designated by the Ministerial ordinance as important facilities from the viewpoints of the safety of the public and the impact on public welfare among the designated port facilities shall obtain the approval of the Minister or the organization authorized by the Minister under the provision of the next article of this law (hereinafter referred to the registered evaluation organization). However, the approval shall not be necessary if the design of the abovementioned port facilities is made in accordance with the methods announced by the Minister.

3. Those who want to obtain the approval on the abovementioned port facilities shall apply to the Minister or the registered evaluation organization in accordance with Article 28-3 of the Ministerial Ordinance on Port and harbor Law.

(ARTICLE 56-2-2 Technical Standards for Port Facilities, Japanese Port and Harbor Law)



Box-8: Detailed Technical Regulations on Design of Port Facilities

1. The designated port facilities shall be designed to satisfy the requested performance under the conditions of their surrounding nature, their use and other situation of their location, and not to vitiate the stability during their construction.
2. The design of port facility shall be made in consideration of a proper life time of the port facility.
3. In addition to the above two provisions, necessary standards for the design of the designated port facilities shall be notified by the Ministerial public announcement.
(Article 2 Design of the designated port facilities, Ministerial Ordinance on Technical Standards for Port Facilities, No.15, 26 March 2007)

C. Assessment of Conformity to Technical Standards

1324. In order to make port facilities conform to technical standards, Japanese Port and Harbor Law stipulates that the design of important port facilities, which generate the public benefit and are fairly large in scale, shall be examined to ensure conformity with Technical Standard by an agency authorized by the Minister of MLIT, except a case that the special design method is used for smaller scale port facilities.

1325. Abovementioned design method is "Partial Coefficient Method" and small scale port facilities are:

- 1) Breakwaters on the seabed shallower than 10m,
- 2) Berthing facilities shallower than 10m, and
- 3) Sea wall for the waste disposal area which is constructed shallower than 10m.

1326. Procedure for the assessment of conformity to technical standards is shown in Figure 6.2-1.

1327. In Figure 6.2-1, authorized agency means the registered evaluation organization which is stipulated in the law and when such an organization exists, every project owner has to apply to this organization for assessment as far as port facilities to be constructed/improved are designated facilities, do not use designated methods for designing and are not smaller facilities than those of announced by the Minister.

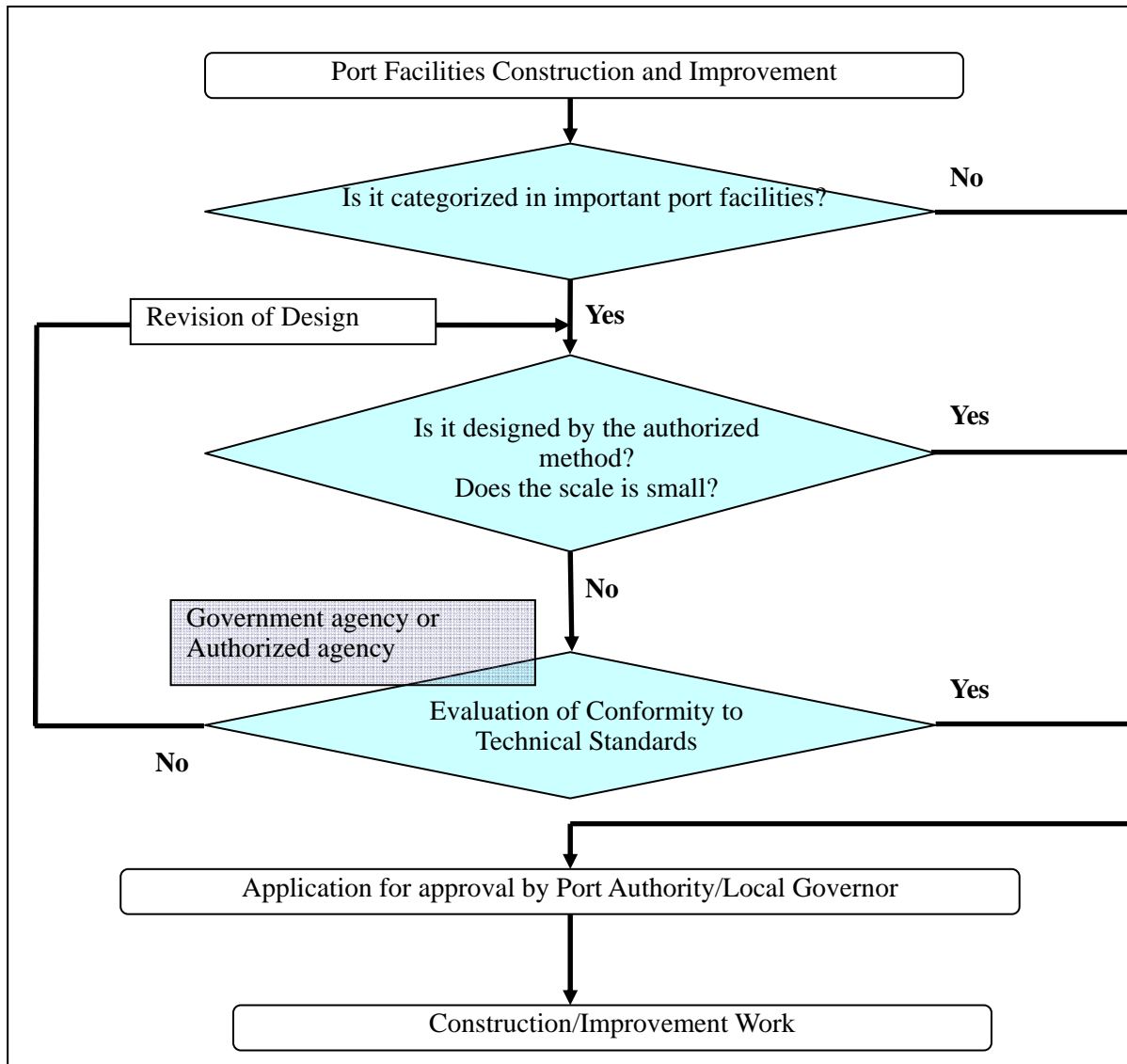


Figure 6.2-1 Assessment of Conformity to Technical Standard

D. Recommendations for Technical Standard

1328. Since private investments are encouraged to build port facilities and terminals, technical regulations and standards should be established and announced for the convenience of investors, construction and design companies and other entities interested in port projects. It is also necessary not only to ensure the safety of navigation channels, anchorages and port structures but also important for proper management of port.

1329. G.R stipulates only that port development shall comply with the technical requirements and the technical requirements shall include technical feasibility and technical design of port. Any description regarding technical regulations or standards for design of port facilities and port development/construction is not seen in G.R.

1330. In this connection, technical guidelines for design, construction and maintenance of port facilities should be prepared in consideration of following points.

- A new provision for mandatory technical regulations and non-mandatory technical standards



should be publicized as a decree or decision.

- Technical regulations should be examined from the view point of requirements in terms of performance rather than descriptive characteristics in due course.
- Besides the relevant regulations on construction projects stipulated by relevant authorities, PMB shall be responsible for assessing the conformity of port facilities to the technical regulations on port facilities.

6.3. Environmental Preservation

6.3.1 Compliance with Environment Impact Assessment

1331. Environment preservation and prevention of pollution in the port area are an important function for the port management body (PMB).

1332. In case of Japan, port and harbor law stipulates the following as a function of PMB that maintain port area and port facilities under the management of the Port Authority in good operating conditions (including the removal of floating materials, abandoned ships and other materials which may hinder the navigation of ships in the port area, clean water areas and prevent pollution within the port area). Others such as disposal of waste oil, removal of oils discharged into the port area and disposal of waste materials are also important role of PMB.

1333. Indonesian Government has implemented environment impact assessment system. Development projects in environmentally sensitive areas require environment impact assessment according to the living environmental management law established in 1997. The procedure known as "AMDAL", specifies that a project executing organization is required to submit the environment impact analysis, environmental management plan and environmental monitoring plan to the government agency concerned.

1334. According to the regulation by the Ministry of Environment regarding the type of business and/or activities for which environment impact assessment is mandatory, the scale/size of port projects which are obligated to follow AMDAL are prescribed. For example, in case of a wharf with sheet pile or open pile construction, AMDAL is required when the length is more than 200m or the area is more than 6,000 m² and when the length is more than 200m in case of revetment and/or breakwater.

1335. As PMB has a responsibility to keep the port area environmentally in a good condition, PMB has to pay attention to the daily activities of port and take necessary measures in accordance with AMDAL, if necessary, to preserve port environment and prevent pollution.

1336. On the other hand, there is a provision in the Japanese port and harbor law regarding sharing of cost for port environment improvement work that PMB may force the operators of these factories of business establishments within the port area to bear part of the cost of the improvement or preservation works of the environment of the port. As for the responsibility of PMB, it might be worth examining the introduction of cost sharing scheme for preserving environment in the port area.

6.3.2 Environmental and Social Considerations

1337. Today every development plan and project must be conducted an environment impact assessment by project proponent(s) to prevent or minimize the impact on the environment and local communities by using various measures in the stage of planning formation or before implementing the project.



1338. JICA (former JBIC, hereinafter referred as to JICA) conducts screenings and reviews of environmental and social considerations to confirm that the requirements are duly satisfied in making funding decision of Japanese yen loan. Therefore, every project proponent has to make effort and fulfill the requirement of it.

1339. Here, outline of the procedure for the confirmation of environmental and social consideration and environmental check list on port projects conducted by JICA are introduced.

1340. For the confirmation of environmental and social considerations, JICA is conducting the following items.

- a. classifies the project into one of the categories which are the following category A, category B, category C and category FI (hereinafter referred as to “ screening”)
 - Category A means it is likely to have significant adverse impact on the environment. Port sector constitutes one of sensitive sectors.
 - Category B means its potential adverse environmental impact is less adverse than that of category A projects.
 - Category C means it is likely to have minimal or no adverse environmental impact.
 - Category FI means it satisfies all of the following: the sub-projects cannot be specified prior to JICA’s approval of funding (or assessment of the project); and those sub-projects are expected to have potential impact on the environment, etc.
- b. conducts a review of environmental and social considerations when making a decision on funding, to confirm that the requirements are duly satisfied (hereinafter referred to as “environmental review”); and
- c. conducts monitoring and follow-up after the decision has been made on funding (hereinafter, such monitoring and follow-up processes will be simply referred to as “monitoring”).

1341. During the screening process, JICA classifies each project in terms of its potential environmental impact, taking into account such factors as: the sector and scale of the project, the substance, degree and uncertainty of its potential environmental impact and the environmental and social context of the proposed project site and surrounding areas. The subsequent environmental review will then be conducted in accordance with the procedures for that category.

1342. After the screening process, JICA carries out environmental reviews according to the following procedures for each category.

- Category A: Environmental reviews for Category A projects examine the potential negative and positive environmental impact of projects.
- Category B: The scope of environmental reviews for Category B projects may vary from project to project, but it is narrower than that for Category A projects.
- Category C: For projects in this category, environmental reviews will not proceed beyond screening.
- Category FI: JICA checks through the financial intermediary etc. to see whether appropriate environmental and social considerations as stated in the Guidelines are ensured for projects in this category.

1343. The corresponding environmental checklist for port sector which is shown in Box-1 will be referred to in conducting the aforementioned reviews.



Box-1: Environmental check list for port sector

(Abstraction of items “category” and “environmental item” from the checklist)

1. Permits and explanation
(1) EIA and Environmental Permit (2) Explanation to the Public
2. Mitigation Measures
(1) Air Quality (2) Water Quality (3) Wastes (4) Noise and Vibration
(5) Odor (6) Sediment
3. Natural Environment
(1) Protected Areas (2) Ecosystem (3) Hydrology (4) Topography and Geology
4. Social Environment
(1) Resettlement (2) Living and Livelihood (3) Heritage (4) Landscape
(5) Ethnic Minorities and Indigenous Peoples
5. Others
(1) Impacts during Construction (2) Monitoring
6. Note
Note on using Environmental Checklist

Source: Japan Bank for International Cooperation Guidelines for Confirmation of Environment and Social Consideration (April 2002, Japan Bank for International Cooperation)

1344. Regarding monitoring, JICA in principle confirms through the borrower over a certain period of time, the results of monitoring the items which have a significant environmental impact by the project proponents. This is in order to confirm the project proponents’ undertaking of environmental and social considerations for category A and B projects.

1345. The project proponent as a borrower has to follow the basic idea and satisfy the requirements. Especially, port project in general is apt to bring environmental effect to the vicinity of the project site. Therefore, environment impact assessment and social consideration have to be well prepared and these are one of the obligations of PMB.

6.3.3 International Convention for Environmental preservation

1346. Observance to the international convention in the field of maritime environment preservation is also an important obligation for PMB to preserve the environment of the port.

1347. The most important convention regulating and preventing marine pollution by ships is the IMO International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78). It covers accidental and operational oil pollution as well as pollution by chemicals, goods in packaged form, sewage, garbage and air pollution. In the convention, the standard regarding reception facility which should be provided in port for waste oil and other materials from ships has laid down. As Government of Indonesia has already ratified this convention, PMB has to carry out the duty continuously by providing facilities.

1348. The Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (LDC), 1972, generally known as the London Convention, which has been updated by the 1996 Protocol lays down the measures to prevent the marine pollution by dumping waste materials from inland areas.

1349. Others such as the international convention for the Control and Management of Ships' Ballast Water and the international convention on Oil Pollution Preparedness, Response and Co-operation (OPRC) (A protocol to this convention (HNS Protocol) covers marine pollution by hazardous and noxious substances) are also deeply related to the port activities.



1350. The former one lays down to take suitable steps for preventing the marine environment effect with transportation of the ship's ballast water and the latter one lays down the preparedness and measures to minimize the marine pollution from the discharge of hazardous liquid materials upon the accident.

1351. Other international conventions related to the port environmental administration have also been deliberating. Marine environment protection committee (MEPC) of IMO is energetically active to preserve marine environment, so that PMB and related organization to the port should pay attention to the movement of MEPC.

6.4. Guideline for Operational Requirements

1352. Article 104 of G.R. is requesting further provisions and procedures for increasing the operational capacity of port facilities into 24 hour service and upgrading from general cargo service to container, liquid bulk or dry bulk service.

1353. Port operation, in general, is carried out according to demand, while always trying to increase efficiency. Basic requirements for port operation are to get hold of necessary personnel and equipment, secure safety and environmental conservation and provide necessary services.

1354. There are provisions in Article 98 and Article 100 for requirements for 24 hour operation and upgrading, and these requirements are all necessary for port operation. It is important not to impose minute requirements on port operation because such minute requirements may sometimes hamper port operation.

1355. As for 24 hour operation, which is common among the world's major ports in which Tg.Ptiok port are included, there is no clear criterion on what conditions are required for a port to provide 24 hour operation. As mentioned in the preceding paragraph, demand and basic requirements are the bases for 24 hours operation.

1356. Article 97 (3) of G.R. stipulates two conditions for the increase of port operation. In addition to these conditions, the following matters are also very important for realizing 24hour operation.

1357. Generally speaking, the cost of handling cargo in a 24 hour operation is relatively higher compared to that of the daytime operation and there is not necessarily enough demand in terms of profitability. Therefore, the feasibility of 24 hour operation should be examined carefully.

1358. In the feasibility examination, a key point is whether handling charge at night time will be set comparatively high or not. Pilotage charge, tug service and other ancillary service are necessary to be considered, too. Handling charge and other charges should be examined carefully to ensure that competitiveness is maintained. Because it is common that major ports do not introduce an extra charge even in sight time handling.

1359. A trial calculation is introduced. An terminal operation cost of 24 hours service will be expected to increase by 30 – 40 % compared to that of daytime service as a result of rough calculation using data of container terminal operation costs of a few Asian major ports. Therefore, demand (volume of cargo handling) has to at least meet the increased ratio of the operation cost or more in order to maintain the handling charge of 24 hours operation as same as that of the day time operation.

1360. Environmental assessment should be carried out before the commencement of 24 hour operation. Noise and vibration and other negative environmental impact might occur on account of the night time operation.



1361. Furthermore, 24 hour operation might affect the daily lives of surrounding residents and this should also be considered before a final decision is reached.

1362. In addition to the abovementioned requirements, it goes without saying that there must be an operator willing to intend to conduct 24 hour service.

1363. In case of a port open to foreign trade, functions of other government agencies such as custom, immigration and quarantine are essential. It is necessary for PMB coordinating with the harbormaster to set up an institutional framework for cooperation with such agencies.

1364. 24 hour operation sometimes includes two types of operational services; first one is to handle cargoes for 24 hours, and the other is to open the gate for 24 hours. 24 hour operation generally means the former one in world port circles. However, the latter one is becoming popular as well. Though, the major ports such as American ports, European ports, etc. have limitations on the service hours of gates, most of the Asian major ports have already realized the service of 24 hours gate opening.

1365. To extend the gate opening hours of the port, it should be made clear who shares the cost for the opening. Furthermore, this would likely affect the society surrounding the port because of the traffic of port related vehicles. Careful consideration is thus required.



Conclusion and Recommendation

1. Case Study

1. In order to study the applicability of the various types of PPP scheme, following different types of the port projects were reviewed as the case study projects.

Rehabilitation Project of Pier III of Tg. Priok Port

2. The project is under implementation by IPC2 and the objective of the case study is focus on how to apply new shipping law to the ongoing rehabilitation project.

3. According to the new shipping law, port management is entrusted to the newly established port authority and IPC becomes one of port business entity concentrating its business to those of operator on the same ground with private operators. Hence, in application of the new shipping law to the project, following two possible schemes are considered; port authority concedes the project to new operator after purchasing the project form IPC2, or port authority give concession right exclusively to IPC2 while IPC2 pays concession fee to the port authority.

4. As the result of evaluation, the project involves no typical risk caused by the favorable market and small scale of initial investment cost and hence either scheme has no financial problem.

5. As a conclusion from the case study, it can be said that port authority can succeed the business after transfer of the project or to give concession to new operator in the case of the project which has been operated without any problem, but it is better to extend the existing concession without tendering after transfer of the project.

New Port Development in Bojonegara

6. As to the new port development project in Bojonegara, concession for development, management and operation of all the port facilities was once tendered to the concessionaire forming JV with IPC2 resulting no tenderer.

7. PPP scheme for green field port development generally takes the form of master concession (development, management and operation of whole port), or partial concession (either in the form of BOT or joint development by public and private) and case study was conducted to study feasibility of above three schemes for Bojonegara new port development.

8. Schemes to be studied are; master concession, terminal development by BOT and other infrastructure is developed by the public, and infrastructure development including quaywall and gantry cranes by the public and superstructure development by the private.

9. As the result of the study, master concession is not appropriate in new port development which requires huge amount of initial investment including non profitable infrastructure like breakwater and channels because of required long period of time for recovery of initial investment, and BOT or joint development is more appropriate.

10. Even in the case of BOT, when it requires rather big amount of initial investment and involves traffic risk, some counter measures to avoid risks such as decreasing concession fees or tax exemption for the initial stage of operation is needed.



Pelaihari Coal Terminal Development Project

11. The facilities to be exclusively used by the private company for the transportation of its products or raw materials such as coal terminal is designated as special port in the new shipping law to be developed, managed and operated by the company. In this case study, following schemes are studied in order to provide the facilities for medium or small scale companies by the government assistance.

- The public provide the infrastructure and the private provide the superstructure by the assistance of non interest loan from the government.
- The private provides all the facilities by the assistance of non interest loan by the government.

12. As the result of analysis, it can be said that financial soundness is maintained in any case, leaving the issue whether such private company (ies) can prepare its own fund for initial investment.

13. Under the judgment that government assistance is justified from the political consideration that such assistance should be provided for the promotion of employment opportunity or of industries important to either nation or region as a whole, provision of infrastructure and leasing it to the company(ies) is appropriate scheme, and superstructure should be provided by the company(ies) itself within its financial capability.

2. New PPP Strategy on Development, Management and Operation of the Ports

14. The basic goal of government in increasing private participation is, as commonly acknowledged in most of the countries, to establish a more competitive and financially sustainable system of ports.

15. Port has an unique characteristics that it consists of various terminals such as container terminal, general cargo terminal, bulk cargo terminal and special terminal owned and operated by individual industry, and it has to provide unprofitable facilities such as breakwater and channels other than commercial facility of terminal and ancillary services such as bunkering, water supply, electricity supply, fire fighting, pilotage and towage etc. have to be provided for common use. Considering such unique characteristics, effective strategy designated specifically focus on port development and management is necessary.

16. The Study proposes to establish basic framework on the following issues as the basic direction of the strategy.

(1) Clear definition of roles and functions of the port related organizations and agencies

17. It is necessary to redefine the roles and functions of all the government agencies concerned with PPP, inter alia, those of agencies of central government, port management body and port business entity. The principle is recommended as follows;

- A central body, either Ministry of Transport or the council comprising senior representatives from relevant ministries, municipalities of port cities, and from Port Authorities, would work out national port policy and would establish the main sector regulations to be enforced by the Port Authorities/Port Management Body;
- The Port Authorities/port management body, autonomous public institutions, would be granted the right to use state-owned land, administer, maintain and develop port infrastructure assets, manage and enforce navigation safety measures, enforce environmental protection regulations,



monitor the concessions and leases governing non state sectors' activities in the port area, and market the port to attract new investors; and

- The introduced operating companies would carry out commercial activities related to cargo traffic management and handling and market their services to attract new port users.

(2) Establishment of legal framework on port concession

18. Basic principles on legal framework are set as follows;

- The private sector participation scheme is open to competitive bidding
- The private sector participation scheme has to be in line with government policy
- The port authority/port management body becomes the owner and manager of a “landlord port”.
- The scheme will concern partial introduction of private sector in full or in part
- The facilities/services will be managed and operated on a common user, non-discriminatory basis
- The operator of facilities has to be experienced in the activities to be carried out
- The bidder selected will set up a new local operating company
- Land ownership remains with the government or the public port authority/port management body
- Management and operational autonomy of the introduced operating company
- A priority objective of the private sector participation scheme is to boost performance levels maintaining the well balanced supply and demand condition of the facilities
- Another priority objective is the private funding of the extension of existing facilities or the construction of new facilities

19. In the Presidential Regulation No.67/2005, only competitive bidding is stipulated for the cooperation with business entity for the provision of infrastructure. Considering the variety of concession form in the port sector, it is necessary to apply other mode of bidding and followings are better to be stipulated in the Ministerial Regulation as the implementation guideline for PPP scheme in the port sector.

Type of Bid

- a. Except for succeeding concessions with existing concessionaires, the Conceding Administration shall award concession rights based on competitive bid, competitive proposal, or sole source negotiation.
- b. Competitive bids shall be used when in the judgment of the Competent Authority that financial return is the only relevant criteria for selecting among prospective concessionaires.
- c. Competitive proposals shall be used when, in the judgment of the Competent Authority that criteria other than financial return to the Port are relevant to selecting a prospective concessionaire.
- d. Sole source negotiation shall be used only in those instances where, in the judgment of the Competent Authority, a prospective concessionaire offers services that are unique, patented, or otherwise demonstrated to be available only from a single source.

Regulatory Work of DSGT

20. DSGT as the regulatory organization shall perform the followings;

- Supervision (approval, conflict resolution) of the concession agreement for the use, operation, maintenance, conservation and administration of port infrastructure and superstructure,



including their restoration and construction under the jurisdiction of DGST

- Establish DGST concession policies and procedures to guide Port Authority with respect to concession
- The rates for services rendered to cargo and ships shall be established if all possible by the concessionaire and shall be presented by him in his technical bid, within the process of the respective bidding. If a bidder is allocated the concession, the rates offered in his bid may later be adjusted in accordance with the mechanisms established by DGST, the entity responsible for regulating, controlling and inspecting the port rates.
- Supervise the Port Authority in the implementation of concession including approval of concession plan, bid evaluation, finalization of contract.
- Resolve all conflict of interests that may exist among concessionaire, holders of rights, and users of ports and maritime services.

Concession Implementation by Port Authority

21. In order to implement the PPP scheme more efficiently and effectively, Port Authority shall;

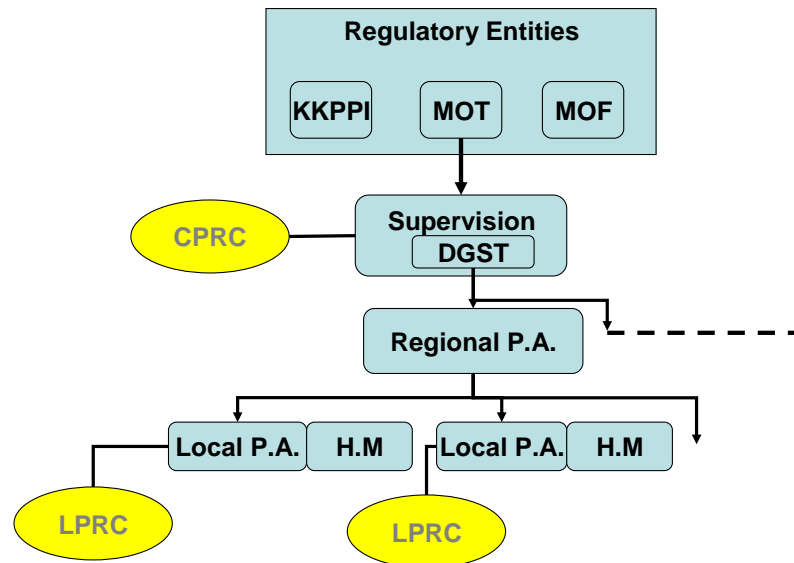
- Promote the participation of the social and private sectors, and the municipalities in operating ports, terminals, marinas and port installations
- Apply sanctions to concessionaires or providers of maritime and port services in accordance with the obligations that each had assumed under contract
- Attend to the claims made by all the users of the maritime and port services provided in the ambit of its port
- Supervise and control the fulfillment of the concession contracts that are entered into with concessionaires, and private operators of ports and all the agents that participate in maritime activity
- Control the functioning of ports in accordance with the commitments assumed by the respective concessionaires and operators, and applying control to fulfill legal standards and port regulations.
- Control the services rendered by concessionaires, operators, and service providers to ships and cargo, insuring that the users of port services receive efficient, fair and egalitarian treatment
- Exercise the rights corresponding to the State, as established in the respective laws, to control and inspect for the fulfillment of the obligations assumed by the concessionaires and operators of ports and maritime activity
- Dictate regulations to insure that the holders of concessions and usage-permits establish plans and procedures for maintaining the goods used for the services in good condition during the period of said concessions and permits, and to make periodic reports to the DGST, which allow it to determine the level of fulfillment of said plans and procedures

(3) Establishment of institutional framework for port concession

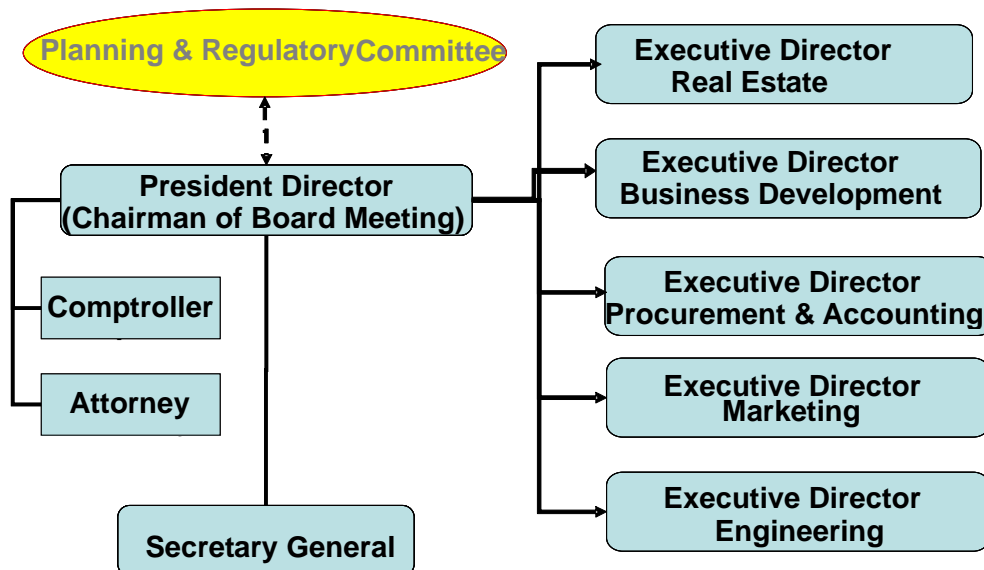
22. In order to effectively implement the port concession in compliance with the existing laws and regulations in Indonesia such as PR 67/2005 and No.38/PMK.01/2006 and legal framework recommended in (2) above, institutional framework is recommended to be set as shown in the following figures.



Institutional Relations



Institution of Port Authority



(4) **Establishment of framework for consultation with maritime community**

23. In the execution of administration and management of port, decisions taken by the government, port management body and operators sometime seriously affect on various interest groups. Such decisions include operation rule of the port, tariff structure, land and water area use, designation of restrictive areas and port development plan.

24. In the management of concession contract, coordination among terminal operator/concessionaire, PMB/conceding authority and users is necessary. Especially for the resolution of complaints and conflicting opinions among the interest groups, study and deliberation by fair and independent institution is necessary.

25. Concession contract should precisely define monitoring and reporting relationship of the port management body (conceder) in line with the ministry and private operator respectively. Implementation guideline should also be established together with the contract.



26. In doing so, particular attention should be paid to the establishment of official consultation procedures between the private port and maritime community and the local public monitoring bodies (PMB). These consultation procedures will be important in making certain that customers' concerns and suggestions about the functioning of the ports can be timely and regularly channeled to the ports' management boards or to the sector regulatory body.

27. In order to satisfy the needs mentioned above, establishment of such institution as ports council is recommended both for national level (Council for Minister) and local level (Council for the Chairman of PMB), and usually named as Ports Commission (or Ports Council) and established by law. Generally, such institution has an advisory role and provides input to the formulation of a national ports policy at national level and of individual port development plan and of by-laws of the PMB at local level.

(5) Establishment of Infrastructure Pricing Rule

28. The concession fee mechanism typically has a fixed and variable component. The fixed component can be a fee equivalent to a rent paid by the operator to the port authority for the use of land and facilities/utilities provided by the public sector. This fee also incorporates profit sharing; i.e., the rental fee effectively includes an element to reward the conceding authority for permitting the operator to profit from the operation of the terminal.

29. The variable component of the compensation to the conceding authority can be a payment by the operator of a fee based on the level of activity. This includes a minimum traffic threshold that can be used to share the traffic risk and indemnify the operator if the level falls below the predefined threshold. This latter approach may be most appropriate when there is significant uncertainty about the potential traffic moving through the terminal and when conceding authority desires to impose tight technical and pricing regulations.

30. The port authority could choose to set the initial level for the fixed and variable components of fees. However, these levels represent the most frequently adopted financial criterion for judging bids and, therefore, preferably should not be set by the port authority, but left for the bidders to propose.

31. Before tendering the concession, possible level of concession fees should be estimated through financial analysis based on the estimated financial statements of both Port Authority and Concessionaire. For the evaluation of the concession fees, following financial indicators are recommended to use rather than FIRR stated in the No.38/PMK.01/2006.

- FIRRs of conceding authority and concessionaire: this is the indicator to assess the financial viability of the project. The FIRR is the discount rate that makes the discounted costs and revenue over the project life equal, i.e. the rate "r" that satisfies the following formula:

$$\sum (B_i - C_i) / (1+r)^i - 1 = 0$$

Where B_i : Revenue in the i-th year

C_i : Cost in the i-th year

r: Discount rate

In this calculation, fund management income is excluded from the revenue and depreciation cost, repayment of the loan principal and interest on loans are excluded from the costs.

When the FIRR exceeds a certain threshold, the project is considered to be financially viable. The weighted average of the interest rates of various funds generated for the project is used as the threshold.



- Net Present Value (NPV) Ratio of Gross Profit to Turnover based on the assumption that the port is to be operated by the port authority itself. It is assumed that the operation by the concessionaire will be more efficient than the operation by the port authority and hence, the operation by the port authority is conducted at the higher tariff level with less amount of throughput.
- Return on Net Fixed Asset: This is the indicator to assess the profitability of the project and calculated by $(\text{Net operating Income}) / (\text{Total Fixed Assets}) \times 100\%$. It is necessary to keep the rate higher than the average interest rate of various funds for investments, which have different interest rates.
- Operating Ratio = $(\text{Operating Expenses}) / (\text{Operating Revenues}) \times 100\%$ and Working Ratio = $(\text{Operating Expenses} - \text{Depreciation Expenses}) / (\text{Operating Revenues}) \times 100\%$. The Operating Ratio shows the operational efficiency of the organization as an enterprise, while the Working Ratio shows the efficiency of the routine operations. When the Operating Ratio is less than 70~75% and the Working ratio is less than 50~60%, the operation of the organization is assessed to be efficient.
- Debt Service Coverage Ratio = $(\text{Net Operating Income} + \text{Depreciation Cost}) / (\text{Repayment and Interest on Long-term Loans})$. This indicator shows whether the operating income can cover the repayment of both the principal and the interest on long-term loans. The ratio should be higher than 1.0 and is desirable to be higher than 1.75.

(6) Establishment of human resource development system for port service

Port Labor Law

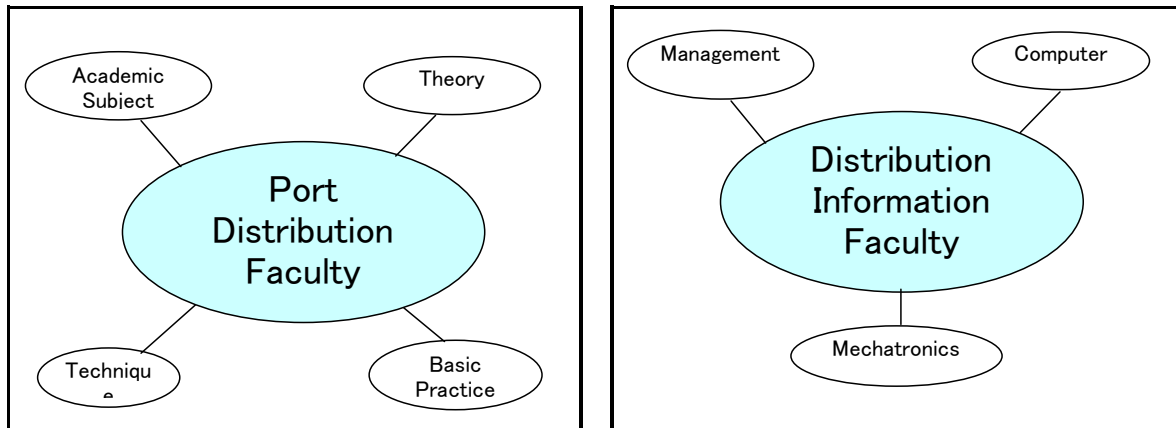
32. In order to procure the necessary human resource in the port sector and balance the demand and supply of human resource, establishment of the port labor law/act for securing port skilled workers may be effective.
33. Substance of the port labor law is to secure skilled workers through improvement of employment environment and workers' capability and Government shall formulate a plan for sustainable employment.
34. The plan shall include;
- current status of employment condition
 - target of supply and demand
 - preparation for training course
35. For securing the implementation of the plan, port sector entities should secure employment opportunities and train manpower and Government should subsidize to private sector entities and train manpower.

Port Training Institution

36. Although various maritime university and maritime schools are established to provide skilled human resource, it is said to be insufficient because most of them do not seem to have course specialized in port operation and management except STIP Jakarta which has port and shipping management faculty and also because of their wider coverage of training programs lacking concentrated training in skills and knowledge in the port sector. Necessary skills and knowledge for port labor are wide range even in the port sector, from management of port and trade to operation of port.



37. Therefore, establishment of national port college to increase the number of skilled port workers may be another alternative. The port college should have two courses; port distribution faculty to train for the maritime frontier, second distribution information faculty to train for the logistics engineer.



3. Implementation Guideline for the Government Regulation on Shipping Law

Guideline for the Implementation of Article 78 of Shipping Law on Port Principal Plan, Port Working Area (DLKr) and Port Interest Area (DLKp)

38. Port principal plan is the most basic tool to implement the development, management and operation of the port smoothly, and it should play the role of guideline for the private sector investment. Hence it is recommended to clearly define the planning procedure and port planning standard including the followings;

39. As the basic direction of port plan;

- Policies for the development, utilization and preservation of ports as well as the conservation of the areas adjacent to the port.
- Items relating to the volume of cargo handled, the number of passengers embarking and disembarking from ships, and various other capacities.
- Items relating to the scale and arrangement of water area facilities, berthing facilities, and other port facilities in accordance with the capacities of the port.
- Items relating to the development and conservation of port environments.
- Other important items relating to the development, utilization, and preservation of ports as well as the conservation of the areas adjacent to the port.

40. As the items to be planned;

- (1) Planning Policy of port
- (2) Capacity of port
- (3) Zoning
- (4) Development in each zone
- (5) Land reclamation and land use in each zone



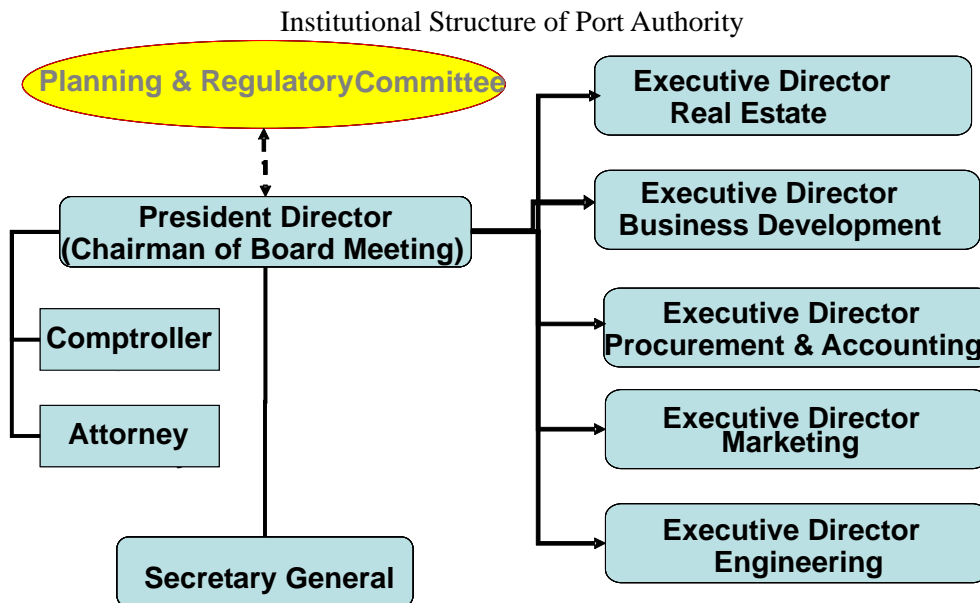
- (6) Development of fundamental infrastructures
- (7) Other important items to be considered
- (8) Planning Map

41. Details of these items are shown in the guideline.
42. Major purposes of designation of Port Working Area of Waters are;
- to notify the public of the water area under the jurisdiction of the port management body and to let them know that activities in the area require authorization.
 - to maintain the facilities (channels, basins, navigation aids and other protection facilities) in a good operational condition through controlling activities in the area and punishing illegal acts.
43. Major purposes of designation of Port Working Area of Land are;
- to maintain the area exclusively used for port activities and separating it from the areas for other socio-economic activities.
 - the area exclusively used for port activities such as warehousing, cargo handling/storage and port traffic usually need to be spacious, and these activities have low productivity in terms of land.
 - the area once the land use is decided by market mechanism, such port activities are forced to move out of the port working area, because this area is more convenient for commercial use with higher land productivity.
44. In order to effectively pursue these purposes, it is recommended to establish regulations including penalties against violation of the regulation on the management of these areas as well as rules and procedures to designate these areas. Details are shown in the guideline.



Guideline for the Government Regulation on Shipping Law Article 89 on Port Management Body

45. As a guideline for establishment of port management body for the implementation of PPP scheme, institutional structure of the port management body, and establishment of DGST policies and procedure for port concession is proposed. It is recommended to constitute the departments in port authority similar to the private sector for clearly defining the responsibility and authority of each department for effective implementation of concession scheme as shown in the following figure.



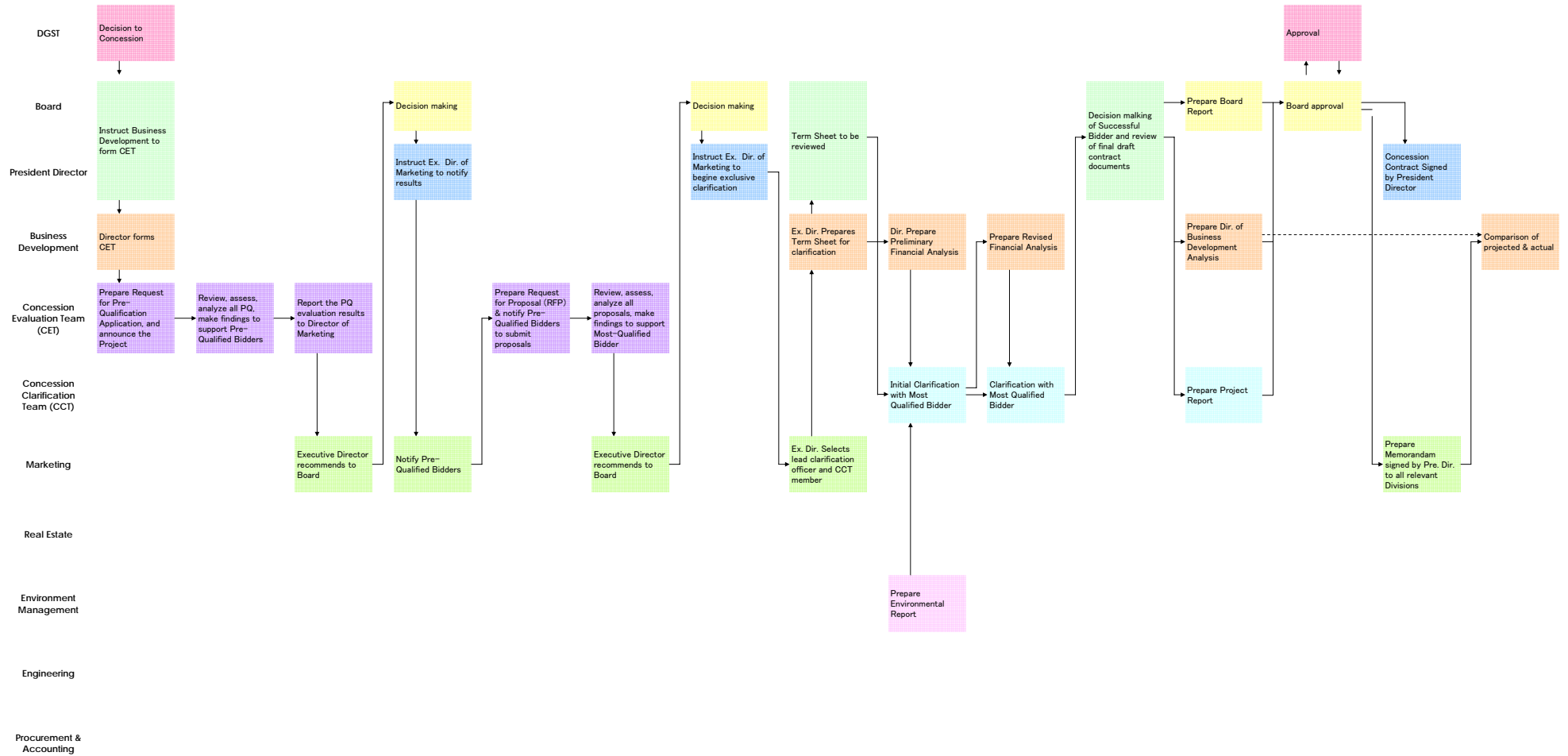
46. Responsibilities and authorities of each department is clearly defined in the DGST policies and procedures together with detailed procedure for the selection and management of concessionaire.

47. Summary of the procedure is shown in the following figure. It is necessary to revise the proposed DGST policies and procedure if the structure of port authority is changed from the proposed structure so as to clearly reallocate the functions of the proposed department without missing any functions stated.

48. It is also necessary to maintain the port facilities ledger for carrying out the function of regulator, inspection and monitoring the port operation, for inspection and monitoring the fulfillment of the obligations of the parties of the concession contract, for management of the assets held by port authority and for letting the public know the responsible entity of management of the port facilities following the guideline proposed on composition, upgrading and reporting of port facilities ledger.

49. Under the new shipping law (17/2008), DGST shall have duty and responsibility to control and supervise the port management activities of the Port Authority. One of the important areas for control and supervision is to oversee the financial condition of the Port Authority. DGST should have appropriate auditing system for that purpose. At the same time, Port Authority should have same kind of audit system to check the accurate payment of concession fee by concessionaire.

50. It is recommended to standardize the form of financial report and reporting procedure following the proposed format in this Study.



Procedure of Concession



Guideline for the Government regulation on Shipping Law Article 94 on Service Standard

51. The Performance Standard on the current concession contact at JICT is prescribed by moves per hour per quay gantry crane (QGC) only. Performance standard is to be set for the purpose of securing the minimum service to the users as well as minimum revenue as one of the concession conditions.

52. In the context above, however, the service efficiency at container terminals varies by operational systems and methods practiced by the operators; thus the moves of QGC is not enough to evaluate its efficiency. Accordingly, it is advisable to stipulate in the concession contract the performance standard by targeted minimum throughput volume (TEU) for container terminal.

53. In the case of general cargo terminal or bulk cargo terminal, it is better to stipulate in terms of minimum volume in either metric ton or long ton according to the unit in port statistics.

54. The targeted volume, however, should vary by specification of terminals, vessels' type/size and type of containers to be handled (Local Import/Export, Transshipment, Empty to be stored as a depot at the terminal or not, etc.). The target volume is calculated based on the terminal capacity in general. The target volume is considered as the minimum performance obligation of the terminal operating company (TOC) to the conceding authority and it should be agreed upon at the concession clarification stage.

Guideline for the Government Regulation on Shipping Law Article 95 on Port Business Entity

a Duration of Concession

55. Duration of concession period should be decided based on the financial assessment under relevant concession conditions such as initial investment, reinvestment for renewal of equipment and facilities, maintenance obligation and concession fees etc.

b Conditions for the Revocation of Concession

56. Revocation of concession should be conducted based on the conditions set forth in the respective concession contract following the necessary procedures specified in the contract based on the fair business rule.

57. In the Ministerial Regulation on this matter, it should stipulate that concession agreement shall provide necessary clauses to clearly specifying the event of default and termination and consequences referring to the sample clauses provided in this report.

c Powers and Obligations of the Concessionaire

58. In the implementation of granting concession to the port business entity, powers and obligations of the concessionaire should be clearly stipulated following the specification shown in 5.2.5 of this report.

Guideline for the Government Regulation on Shipping Law Article 99 on Port Construction and Operation



59. Since private investments are encouraged to build port facilities and terminals, technical regulations and standards should be established and announced for the convenience of investors, construction and design companies and other entities interested in port projects. It is also necessary not only to ensure the safety of navigation channels, anchorages and port structures but also important for proper management of port.

60. G.R stipulates only that port development shall comply with the technical requirements and the technical requirements shall include technical feasibility and technical design of port. Any description regarding technical regulations or standards for design of port facilities and port development/construction is not seen in G.R.

61. In this connection, technical guidelines for design, construction and maintenance of port facilities should be prepared in consideration of following points.

- A new provision for mandatory technical regulations and non-mandatory technical standards should be publicized as a decree or decision.
- Technical regulations should be examined from the view point of requirements in terms of performance rather than descriptive characteristics in due course.
- Besides the relevant regulations on construction projects stipulated by relevant authorities, PMB shall be responsible for assessing the conformity of port facilities to the technical regulations on port facilities.

62. Technical standard should be established in compliance with WTO agreement on Technical Barriers to Trade (TBT)

63. As to the criteria for designation of 24 hour operation of the port, Article 105 (3) of Government Regulation stipulates two conditions for the increase of port operation. In addition to these conditions, feasibility of 24 hour operation should be carefully examined.

64. In the feasibility examination, a key point is whether handling charge at night time will be set comparatively high or not. Pilotage charge, tug service and other ancillary service are necessary to be considered, too. Handling charge and other charges should be examined carefully to ensure that competitiveness is maintained. Because it is common that major ports do not introduce an extra charge even in sight time handling.

65. Environmental assessment should be carried out before the commencement of 24 hour operation. Noise and vibration and other negative environmental impact might occur on account of the night time operation.

66. Furthermore, 24 hour operation might affect the daily lives of surrounding residents and this should also be considered before a final decision is reached.

Appendix

Appendix - I

Method for evaluation of port capacity

In the preceding section, it was explained that the Seaport Planning Standard requests to formulate “Seaport Capacity” in Seaport Plan in Japan. In this section, the purpose of Seaport Capacity and the typical measures for its evaluation will be complementarily provided.

<The purpose of “Seaport Capacity”>

In terms of the management of implementation of Seaport Plan, it may happen to surface with the following cases.

- The performance of cargo throughput in the seaport is increasing and some of terminals are quite crowded. Whether the present Seaport Plan will provide sufficient facilities to satisfy the traffic demand or the present Seaport Plan shall be revised?
- A certain project to develop new terminal is being proposed. Though the existing Seaport Plan includes such development, the performance of cargo handled is not increasing so rapidly. Whether it should be to approve the commencement of the development or not?

As abovementioned, the management of the implementation of Seaport Plan requests to adjust the pace of the seaport development as well as, if necessary, to review the latest Seaport Plan. In order to judge such issues appropriately, it is necessary to measure the capacity of whole facilities in the seaport..

Thus, the purpose of “Seaport Capacity” could be said as follows;

In order to conduct the management of the implementation of Seaport Plan appropriately, such as adjustment of the pace of the development, decision to review the latest Seaport Plan and others, Seaport Capacity represents the whole capacity of the concerned seaport and is used in comparison with the performance of the total cargo volume handled or total number of passengers embarking and disembarking.

< The method for evaluation of “Seaport Capacity” >

In general, the capacity of a wharf depends on various factors such as water depth in its front, type of commodity, vessels’ sizes, loading/unloading equipments on it, the characteristics of labors and the navigation channel and so on. Though there are some ways to evaluate the capacity to calculate taking into account those factors, this section introduce the method using the unit productivity of wharves because of the following reasons;

- The purpose to evaluate “Seaport Capacity” is not determining the capacity of each wharf but evaluate the total capacity of the concerned seaport.
- This method is quite simple way.

The evaluation method by unit productivity of wharves is as the followings;

- 1) To set the unit productivity [A] (ton/ m) of wharves for general cargo

In general, the productivity of bulk cargo in terms of loading/unloading weight per unit length of wharf is bigger than the one of general cargo. This method convert respective capacities of wharves into capacities of wharf as general cargo which water depth in front of is deeper than 7.5 ms. In order to take into account the difference of respective commodities and water depths in front of respective wharves, this method use conversion factors.

Unit productivity [A] (ton/ m) of wharves for general cargo should be determined by the investigation of the actual situation because it depend on the country or region. As a reference, Japan formerly used the digit as the followings;

$$[A] (\text{ton/ m}) = 1,000 (\text{ton/ m})$$

If there is no base to determine this kind of productivity, abovementioned digit could be useful.

- 2) To make the list of all wharves in the concerned seaport

As a reference, the example of such a list is shown in Table 1.

Table 1

Wharf No.	Note.	Length (m)	Commodity		Water Depth	
				[B]	m	[C]
1	AA	90	Coal	2	5	2/3
2	BB	60	General	1	2.5	1/3
i	II	Li		Bi		Ci
N	NN	Ln		Bn		Cn

- 3) To set the conversion factor [B] for commodity

In general, the productivity of bulk cargo in terms of loading/unloading weight per unit length of wharf is bigger than the one of general cargo. Therefore the following digit was used formerly as the conversion factor [B] for commodity in Japan.

$$[B] = 1 : \text{General cargo}$$

$$[B] = 2 : \text{Bulk cargo}$$

- 4) To set the conversion factor [C] for water depth in front of the wharf

In general, the productivity of a wharf in shallow water is less than the one of wharf in

deep water. As a reference, the following digit was used in Japan as the conversion factor [C] for water depth in front of the wharf

Table 2

water depth in front of the wharf	the conversion factor [C]
2.1 m - 3.9 m	1/3
4.0 m - 7.4 m	2/3
7.5 m -	1

- 5) To calculate the summation of the capacity of the wharves in the concerned seaport
Total converted capacity [Z] of the concerned seaport is calculated by the following formula.

$$[Z] = A \sum_{I=1}^N B_i C_i L_i$$

< Evaluation of wharves to be developed in the planning of seaport >

In case that future demand of the concerned seaport is given by the other plan or demand forecast, this method is applicable to evaluate wharves to be developed in the planning of seaport as the followings;

U : the demand for general cargo in the target year (given) (ton)

V : the demand for bulk cargo in the target year (given) (ton)

Here W is the converted wharf length required for the future demand is about from 7.5 to 10 m water, W could be calculated as the following;

$$W = A (U + V / B)$$

Here X is the converted wharf length at present; X could be calculated as the followings;

$$X = A Z$$

Then, here Y is the converted wharf length to be developed; Y could be calculated as the followings;

$$Y = W - X$$

< Points requiring the attention >

As to the application of the abovementioned method, there are several points requiring the attention as the followings.

- Because this method shall be used to evaluate the total capacity of the concerned seaport, in case to evaluate the capacity of a particular wharf, this method could not be applicable and it is required to investigate more detail.

- Because the basis of this method is the productivity of a wharf which deals with general cargo in the water of which depth is about from 7.5m to 10m, the applicability of this method might decrease in the case that the concerned seaport has some wharves which water depths in front of them are far deeper than 10 m.
- This method doesn't take into account the characteristics of navigation channel, the limitation of ancillary services such as the number of tug boats, pilots and so on. Therefore, if such a conditions affect the capacity of seaports, other kinds of examinations is necessary.

Appendix-II

Model Rules and Regulations of Port Working Area of Waters and Land

It is necessary to designate certain restricted areas both for the water area and land area of ports which are under jurisdiction of PMB to prevent acts which may seriously impede the development, utilization or preservation of the port and acts of the nature which seriously impede the utilization of the port, or obstruct the implementation of the port principal plan, or interfere considerably with the development and progress of the port.

Hence, guidelines for the implementation of article 78 of the shipping law No.17/2008 needs additional provisions of rules and regulations on the restrictive measures of Port Working Area of Waters and Land together with the procedure of designation.

Proposed rules and regulations are shown in boxes below.

Box 1 : Designation of Port Working Area of Waters and Land

Article 1 (Port Working Area of Waters and Land)

1. Port Working Area of Waters and Land are the minimum areas required for the economic operation and management of the said areas as an independent port.
2. Minister of Transport when he designates the said areas shall make public the proposed areas and the period in which local public entities concerned are to give their opinion concerning the matter, and shall consult with any local public entity which has expressed its opinion. The period in which that the local public entities concerned are to give their opinion shall not be less than one month.
3. Minister of Transport when he designates the said areas shall take comments/recommendations from governor and regent/mayor concerned.

Box 2: Approval of works within Port Working Area of Waters

Article 2 (Approval of works within Port Working Area of Waters)

Any person who intends to engage in the work specified under any of the following items within a Port Working Area of Waters must obtain approval of the head of the Port Management Body.

- (1) Proprietary use of a water area (including the space above and the sea bottom as specified by Government ordinance; the same shall apply hereinafter) or public-owned open spaces within the port area.
- (2) Mining of sand and earth in the water area or public-owned open spaces within the port area.
- (3) Construction or improvement of water facilities, protective facilities, mooring facilities, canals and irrigation ditches or drainage ditches (excluding those facilities associated with proprietary use

under item (1)).

(4) Such acts as specified by government ordinance which may seriously impede the development, utilization or preservation of the port, with the exception of those acts specified in each of the preceding items.

2. When the acts referred to in the preceding paragraphs are of the nature which seriously impedes the utilization or preservation of the port or obstructs seriously the implementation of the port principal plan made public under the provisions Article ○○ or otherwise interferes considerably with the development and progress of the port, the head of the Port Management Body shall not give approval to such acts nor shall he give approval to proprietary use of the water area under item (1) or the act under item (4) of the preceding paragraph with regard to the water facilities under the management of the Port Management Body, except for the case which is otherwise specified by government ordinance.

3. When the acts under paragraph 1 are contemplated by the state, or a local public entity, "must obtain approval of the Port Management Body" in paragraph 1 shall read "must consult with the head of Port Management Body" and "nor shall he give approval" in the preceding paragraph shall read "shall agree to the proposal for negotiation".

4. The head of the Port Management Body may collect charges for proprietary use or mining sand and earth from the person who obtained authorization under items (1) and (2) of paragraph 1 for the water area or public-owned open spaces within the port area, this shall not apply to the act performed as a result of negotiations between the parties concerned under the provisions of the preceding paragraph.

5. The head of the Port Management Body may, in accordance with the regulations concerned or the decision made by the Chairman of the Board of Directors of the Port Authority, impose on the person who has evaded the charges for proprietary use or for mining sand and earth under the preceding paragraph by fraud or other illegal means a penalty not exceeding five times the amount evaded.

6. The proceeds from the charges for proprietary use and mining sand and earth under paragraph 4 and the penalty under the preceding paragraph shall be treated as revenue of the Port Management Body.

Box 1 Reporting of acts performed in Port Working Area of Land

Article 3 (Port Working Area of Land, Reporting of acts performed in Port Working Area of Land
Any person who intends to engage in any of the following acts within a port working area of land shall report that effect to the head of the port Management Body concerned not later than sixty (60) days prior to the start of the said work in accordance with the provisions of Ministry of Transport ordinance. Provided that this shall not apply when a person or persons granted permission under the provisions of Article 2 paragraph 1 are engaged in the work authorized or when a person or

persons referred to in paragraph 3 of the same article are engaged in the work which is agreed upon by the head of the Port Management Body under the provisions of the same paragraph.

- (1) Construction or improvement of water facilities, canals, irrigation ditches or drainage ditches.
- (2) Construction or improvement of waste disposal facilities specified by government ordinance other than those provided in the premises of factories and others specified in the following item (limited to those facilities which are used specifically for the treatment of waste generated in the said factories and others).
- (3) Construction or extension of a factory or a business establishment in which the total floor area of the work shops or the total ground area of the factory or the business establishment (hereinafter referred to as factories and others) located within one industrial complex exceed the standard specified by government ordinance (hereinafter referred to as factories and others).
- (4) Construction or improvement of such facilities as specified by government ordinance which may cause a major obstruction to the development, utilization or preservation of the port, except for those facilities specified in the preceding three items.

2. Any person who intends to make a report in accordance with the provisions of the preceding paragraph must submit a report containing the following information to the head of the Port Management Body.

(1) Name or title and address of a person concerned or name of the representative of a corporation concerned.

(2) Such information as described below in the case of works specified in items (1) and (2) of the preceding paragraph.

a. Location, type and design of the facilities concerned.

b. Plans for use of the facilities concerned

(3) Such information as specified below in the case of works given under item (3) of the preceding paragraph.

a. Location, type and ground area of factories and others and floor area of work shops.

b. Approximate quantity of incoming and outgoing cargo associated with the operation of factories and others and transport plan thereof.

c. Other matters specified by Ministry of Transport ordinance.

(4) Other matters specified by Ministry of Transport ordinance.

3. The report under the preceding paragraph must be accompanied by work specifications and other documents specified by Ministry of Transport ordinance.

4. Any person who has made a report under the provisions of paragraph 1, when intending to make changes in the matters referred to in items (2) through (4), paragraph 2 in relation to the work for which he has made a report, must notify the head of the Port Management Body of the effect not later than sixty (60) days prior to the start of the work necessitated by the said changes, in

accordance with the Ministry of Transport ordinance.

5. Any person who has made a report under the provisions of paragraph 1, in the event of any change in the matters referred to in item (1), paragraph 2 while the said work is in progress, shall report that effect to the head of the Port Management Body without delay.

6. The provisions of paragraph 3 shall apply mutatis mutandis to the reporting under the provisions of paragraph 4.

7. The head of the Port Management Body may, when he considers, upon receipt of a report under the provisions of paragraph 1 or 4, that the work being reported is not in conformity with the standards specified in the following items (Items (3) and (4) in the case of the work described in items (1), (2) and (4) of paragraph 1; the same shall apply to the following paragraph and paragraph 10), recommend, within sixty (60) days from the date on which the report is received, the person who made the report to change the plan or take necessary steps in relation to the said work.

(1) That the transport plan for cargo to be transported to and from the factories and others scheduled for construction or extension as a result of the operation thereof is appropriate upon comparison with the capabilities of port facilities in the said port or the port principal plan.

(2) That the quantity or the type of waste materials to be disposed of within the said port working area of waters and land (excluding the premises of the factories and others) out of the waste materials to be generated as a result of the operation of the factories and others scheduled for construction or extension is appropriate upon comparison with the plan for disposal of waste materials worked out under the port principal plan.

(3) That the said work will not be a major obstruction to the implementation of the port principal plan.

(4) That the said work is not likely to become a major obstruction to the utilization and preservation of the port.

8. The head of the Port Management Body may, when he considers, upon receipt of a report under the provisions of paragraph 1 or 4, that the work being reported (excluding the works referred to in items (2) and (4), paragraph 1) is not in conformity with the requirements specified in each item of the preceding paragraph and that, unless major changes are made in the port principal plan for water facilities, protective facilities, mooring facilities or port transport facilities, the execution of the said work will make the operation and management of the port extremely difficult, order the person making the report, within sixty (60) days from the date on which the report is received, to change the plan for the said work.

9. When the person referred to in Article 2 paragraph 3 intends to engage in the work specified in any of the items of paragraph 1 (excluding works specified in the provision to the same paragraph), he must report that effect to the head of the Port Management Body according to the formalities required for reporting specified in the same paragraph and when intending to make changes in the

matters already reported, must report that effect to the head of the Port Management Body according to the formalities required for reporting specified by the provisions of paragraph 4.

10. The head of the Port Management Body may, when he considers, upon receipt of a notification under the provision of the preceding paragraph, that the work for which the notification was made is not in conformity with the standards specified in each of the items of paragraph 7, request the person who has made notification, within sixty (60) days from the date on which the notification is made, to change the plan or take necessary steps for the said work.

Box 2 Designation of sub-Area in Port Working Area of Land

Article 4 (Designation of Zones)

The Port Management Body may designate zones as specified in the following items within the port working area of land.

- (1) Commercial zone: That zone designed for handling passengers or general cargo.
- (2) Special cargo zone: That zone designed for handling coal, ores and other cargo which are normally handled in bulk.
- (3) Industrial zone: That Zone designed for the establishment of factories and other industrial facilities.
- (4) Rail delivery zone; That zone designed for railway connection with ferryboats.
- (5) Fishing port zone: That zone designed for handling marine products or for use by fishing boats to make necessary preparations for sailing out.
- (6) Bunker zone: That zone designed for storing and supplying fuels to ships.
- (7) Hazardous material zone: That zone designed for handling explosives and other hazardous materials.
- (8) Marine Zone: That zone designed for use by yachts, motor boats and other craft for sporting and recreational purposes.
- (9) Scenic and recreation zone: That zone designed for preservation of scenery and promotion of welfare of harbor workers or persons visiting the port.

2. Designation of zones under the preceding paragraph shall be limited to the area under the jurisdiction of the local public entity acting as Port Management Body.

Box 3 Restrictions within Zones

Article 5 (Restrictions within Zones)

No buildings or structures which seriously affect the objective of each zone and which specified by the government ordinance and the ordinance of the local public entity acting as the Port Management Body shall be constructed and no buildings or structures shall be altered as specified by the said

ordinance through modification of the structures or changes in its use within the area of zones specified in the preceding Article.

2. Central government or the local public entities under paragraph 1 may include a regulation in its ordinance for imposition of a fine not exceeding IDR XXX,XXX on any person who violated the provisions of the ordinance.

Box 4 Measures against illegal Structures

Article 6 (Measures against illegal Structures)

The head of the Port Management Body may order the owner or the occupant of the building or structure which was newly constructed or altered to a structure specified by the ordinance under paragraph 1 of the preceding Article in violation of the provisions of the same paragraph to remove, relocate or alter the structure or change its use.

2. The head of the Port Management Body, when intending to give orders under the preceding paragraph, must hold a hearing by serving a notice to the person to whom the orders are to be given indicating the date and place of the hearing and the outline of orders to be given.

3. The person summoned to the hearing and other persons who have interests in the matter must be given an opportunity to express their views and present evidence.

Box 5 Alteration of undesirable structures

Article 7 (Alteration of Undesirable Structures)

The head of the Port Management Body, when the building or structure within the Specific zone comes under the category specified in the ordinance which is enforced under Article 5 paragraph 1 and causes a major obstruction to the objective of the said zone, may order the owner or the occupant of the building or structure to alter, relocate or remove the said structure.

2. The provisions of paragraphs 2 and 3 of the preceding article shall apply mutatis mutandis when the head of the Port Management Body intends to give orders under the preceding paragraph.

3. The Port Management Body must, in relation to the loss resulting from the orders given under the provisions of Paragraph 1, compensate the owner or the occupant of the structure for a loss which would have been avoided under ordinary circumstances and a loss of returns which would have been obtained under ordinary circumstances but for the orders.

4. When the person who is entitled to receive compensation under the provisions of the preceding paragraph is dissatisfied with the amount of compensation determined by the Port Management Body, he may bring a suit against the Port Management Body for an increase of the amount of compensation, within three months from the day on which the notice indicating the amount of compensation is received.

Appendix-III

Model regulations on construction of facilities in Zones of Port Working Area of Land

**Model Regulation on construction facilities/structures
in each zone at port working area of land**

Date of issue: _____

No. of Regulation: _____

(Purpose)

Item 1: This regulation based on the port and harbor law of Japan (herein after referred to as “the Law”), shall establish the matters necessary to be regulated regarding the construction of structures which may obstruct activities of sub-areas in Port of “A”.

(Definition)

Item 2: In this regulation, sub-areas are defined as Commercial zone, Special cargo zone, Industrial zone, Rail delivery zone, Fishing port zone, Bunker zone, Hazardous material zone, Marina zone and scenic and recreation zone designated by the Law article 39 clause 1.

(Permissible Structures)

Item 3: Permissible Structures in each sub-area are as follows.

- (1) Structures permitted in the Commercial port zone are shown in attached list 1
- (2) Structures permitted in the Special cargo zone are shown in attached list 2
- (3) Structures permitted in the Industrial zone are shown in attached list 3
- (4) Structures permitted in the Rail delivery zone are shown in attached list 4
- (5) Structures permitted in the Fishing port zone are shown in attached list 5
- (6) Structures permitted in the Bunker zone are shown in attached list 6
- (7) Structures permitted in the Hazardous material zone are shown in attached list 7
- (8) Structures permitted in the Marina zone are shown in attached list 8
- (9) Structures permitted in the Scenic and recreation zone are shown in attached list 9

(Penalty)

Item 4: Any person in violation of article 5 paragraph 1(see Appendix-I) is subject to a maximum fine of IDR X,XXX,XXX.

(List 1) Structures which can be constructed in the Commercial port zone are as follows.

1. Port facilities defined in the Japanese Port and Harbor Law Article 2 Clause 5 Item from 2 to 9, Item from 9-3 to 10-2 and Item 12. (Except hazardous materials, oil storage facilities and cement silo.) (hereinafter referred to as “ the Law”)
2. Offices of maritime transportation business, Port transportation business, warehousing business, freight transportation business, trading business and tourist business, and incidental facilities
3. Branches of bank, insurance offices, and external facilities for the use of port-related persons
4. Wholesale exhibition facilities attached to cargo handling facilities or storage facilities, and distribution processing facilities, and incidental facilities.
5. Exhibition facilities for promotion of understanding about maritime and port and training facilities and incidental facilities
6. Information processing facilities and telecommunications facilities and incidental facilities for advancement of the port use
7. Truck terminal, wholesale market and the other distribution facilities for advancement of the port circulation function
8. Airport facilities
9. Rest rooms, clinics and other welfare facilities for the use of the port-related persons
10. Regional immigration bureau, customs, quarantine stations, plant protection places, animal quarantine stations, regional development bureau, regional transport bureau, regional coast guard headquarters, police station and fire station
11. Hotels, stores and restaurants for daily necessities, Ship chandlery stores and the other benefit facilities which are approved by the Head of Port Management Body.
12. Petrol stations for the use of port-related persons

(List 2) Structures which can be constructed in the Industrial port zone are as follows.

1. Port facilities defined in the Law Article 2 Clause 5 Item from 2 to 6, Item from 8 to 10-2 and Item 12.
2. Factories which depend on or are related to maritime transport for transport of raw material or product, and incidental facilities
3. Institutional facilities and incidental facilities which is ancillary item 2
4. Rest rooms, clinics and other welfare facilities for people work in item 2 and 3 facilities
5. Customs, regional development bureau, regional transport bureau, regional coast guard headquarters, police station and fire station
6. Stores and restaurants for daily necessities for people who work in item 2 and 3 facilities and the other benefit facilities approved by the Head of Port Management Body.

(List 3) Structures which can be constructed in the Special cargo zone are as follows.

1. Port facilities defined in the Law Article 2 Clause 5 Item from 2 to 10-2 and Item 12. (Except warehouses and foodstuff silo.)
2. Offices of maritime transportation business, Port transportation business, warehousing business, freight transportation business and incidental facilities
3. Regional development bureau, regional transport bureau, regional coast guard headquarters, police station, fire station and the other facilities approved by the Head of Port Management Body.

(List 4) Structures which can be constructed in the Rail delivery zone are as follows.

1. Port facilities defined in the Law Article 2 Clause 5 Item 2, item 4, item 5 and from Item from 8-2 to 10-2
2. Mooring facilities for railroad ferry
3. Other related facilities necessary for the railroad business

(List 5) Structures which can be constructed in the Fishing port zone are as follows.

1. Port facilities defined in the Law Article 2 Clause 5 Item 2, item 4, item 5 and from Item from 9 to 10-2
2. Mooring facilities, fuel supply facilities, water supply facilities and ice supply facilities for fishing boat
3. Repairing facilities and dockyard, and incident facilities for fishing boat
4. Fish storage facilities, fish dried space and the other facilities which are necessary for processing fishery products.
5. Refrigerated warehouse, cold storage warehouse and the other facilities for fishery products.
6. Ice plants and frozen factories, fishery products processing factories and the other ancillary facilities.
7. Net dried space, net storage warehouse and the other facilities for repairing and storage fishing equipment.
8. Rest rooms, clinics and other welfare facilities for the use of fishery-related persons
9. Offices of fishery products company, fishermen's associations and other groups' or company's offices which are approved by the Head of Port Management Body.
10. Police station, fire station and the other facilities approved by the Head of Port Management Body.
11. Stores and restaurants for daily necessities for fishermen's benefit and the other benefit facilities approved by the Head of Port Management Body.

(List 6) Structures which can be constructed in the Bunker zone are as follows.

1. Port facilities defined in the Law Article 2 Clause 5 Item from 2 to 5, item from 8-2 to 10-2

2. Coal storage yards, oil storage facilities and the other fuel storage facilities.
3. Offices of coal supplier and other fuel supplier.
4. Customs, Regional development bureau, regional transport bureau, police station, fire station and the other facilities approved by the Head of Port Management Body.

(List 7) Structures which can be constructed in the Hazardous material zone are as follows.

1. Port facilities defined in the Law Article 2 Clause 5 Item from 2 to 6, item from 8-2 to 10-2
2. Hazardous materials storage yards and warehouses, and oil storage facilities.
3. Fire extinguishing facilities and other disaster prevention facilities.
4. Offices of fuel supplier and those handling dangerous materials.
5. Police station, fire station and the other facilities approved by the Head of Port Management Body.

(List 8) Structures which can be constructed in the Marina zone are as follows.

1. Port facilities defined in the Law Article 2 Clause 5 Item from 7 to 10-2
2. Warehouses for ships for recreation and ship shelving facilities, and incidental facilities.
3. Auditoriums, offices for recreation by ships' users, facilities for sports or recreation, training facilities and the other facilities which are approved by the Head of Port Management Body.
4. Coast guard, Police station, fire station and the other public offices approved by the Head of Port Management Body.
5. Hotels, shops and restaurants for recreation by ships' users, facilities for sports or recreation, training facilities and the other benefit facilities approved by the Head of Port Management Body.

(List 9) Structures which can be constructed in the Scenic and Recreation zone are as follows.

1. Port facilities defined in the Law Article 2 Clause 5 Item from 2 to 5, item from 8-2 to 10-2
2. Exhibition facilities for promotion of understanding about maritime and port and training facilities and other similar facilities which are approved by the Head of Port Management Body.
3. Sports and recreation facilities for those who work in the port and the other benefit facilities which are approved by the Head of Port Management Body.
4. Coast guard, Police station, fire station and the other public offices which are approved by the Head of Port Management Body.
5. Rest rooms, clinics and other welfare facilities for the use of the port-related persons.

Appendix-IV

Model regulation on Proprietary use in Port Working Area of waters

Regulation on proprietary use in port working area of waters

Date of issue: _____

No. of Regulation: _____

(Purpose)

Item 1: This regulation based on the port and harbor law of Japan (herein after referred to as “the Law”), shall establish the matters necessary to be regulated regarding the proprietary use, mining of sand and earth and construction work in Port of “A”.

(Definition)

Item 2: In this regulation, terms are defined as follows,

(1) Permission for proprietary use of the port working area of waters

Permission for proprietary use of the port working area of waters (including the space above and the sea bottom as specified by Government ordinance; the same shall apply hereinafter) or public-owned open spaces within the port working area of waters.

(2) Permission for mining sand and earth in the port working area of waters

Permission for mining of sand and earth in the port working area of waters or public open spaces within the port working area of waters.

(3) Permission for construction work in the port working area of waters

Permission for construction or improvement of water facilities, protective facilities, mooring facilities, canals and irrigation ditches or drainage ditches.

(Application for permission)

Item 3: Within port of “A”, the person who requires permission to act in each preceding article must apply to Head of Port Management Body by the regulation beforehand.

(Period of permission)

Item 4: The period of the permission of proprietary use of the port working area of waters is less than X years.

(Continuing the proprietary use)

Item 5: When the person who has been permitted proprietary use of the port working area of waters intend to use said area continuously, the person must apply to the Head of Port Management Body

within 30 days before the expiring of the current permission period.

(Permission to change scope of activities)

Item 6: When the person who granted permission to carry out activities defined in Item 2 intend to change the scope of activities; the person must reapply to the Head of Port Management Body for permission.

(Reporting matters)

Item 7: Persons granted permission for activities defined in Item 2 must report any of the following occurs.

- (1) When the person changes address or name/title
- (2) When the person discontinues the act which has been permitted
- (3) When the person starts or finishes the construction works

(Prohibited matters)

Item 8: Persons granted permission for activities defined in Item 2 must not use the area for any other purpose.

2 The person who took the permission cannot transfer, sell, rent and use it as collateral.

(Restoring the original status)

Item 9: Persons granted permission under Article 2 must restore the area to its original status at the end of permission, when the activity is discontinued, construction works are finished or permission is revoked. A final examination by the Head of Port Management Body is also to be conducted.

(Charge of proprietary use and mining of sand and earth)

Article 10: Persons granted permission for activities defined in Item 2 must pay the fee for the proprietary use and mining of sand and earth within fixed date.

(Penalty)

Item 11: The Head of Port Management Body shall, in accordance with the regulations concerned, impose on the person who has evaded the charges for proprietary use or for mining sand and earth by fraud or other illegal means a penalty not exceeding five times the amount evaded.

Appendix-V

Reference: Definition of Port Facilities in Japanese Port and Harbor Law.

Article 2 (Definitions)

5. In this Law "port facilities" mean the facilities located within a Port Water Area and a Port Land Premise, specified in item (1) through item (11) and other facilities necessary for the utilization or management of a port, specified in item (12) through item (14).

- (1) Water facilities: Waterways, anchorage and basins for small craft.
- (2) Protective facilities: Breakwater, sand groins, sea walls, training walls, sluices, locks, revetment, dikes, jetties and parapets.
- (3) Mooring facilities: Wharve, mooring buoys, dolphins, lighters' wharves, floating piers, landing stages and slip ways.
- (4) Port transport facilities: Roads, parking lots, bridges, railways, tramways, canals and heliports.
- (5) Navigation aid facilities: Navigation aids and signaling, lighting and port communication facilities for the entry and clearance of ships.
- (6) Cargo handling facilities: Stationary cargo handling equipment, overhead rail cranes, cargo sorting area and transit sheds.
- (7) Passenger facilities: Fixed type passenger loading and unloading facilities, baggage offices, lounges and temporary living quarters.
- (8) Storage facilities: Warehouses, open storage yards, timber yards and ponds, coal storage yards, hazardous materials and oil storage facilities.
- (8)-2 Ship service facilities: Water supply facilities, fuel supply facilities, coal supply facilities (excluding those facilities specified in item (13)), ship repair facilities and small craft storage facilities.
- (9) Port pollution control facilities: Driving channels for purification of contaminated waters, buffer zones for pollution control and other facilities designed for pollution control in the port.
- (9)-2 Waste disposal facilities: Dikes for waste dumping area, waste receiving facilities, waste incinerators, waste crushers, waste oil disposal facilities and other facilities designed for disposal of wastes (excluding those facilities specified in item (13)).
- (9)-3 Port and harbor environmental protection facilities: Beaches, greens, open spaces, landscapes, rest rooms and other facilities designed for the protection of port and harbor environment.
- (10) Port welfare facilities: Rest rooms and temporary living quarters, clinics and other welfare and recreational facilities for ships' crew and harbor workers.
- (10)-2 Port management facilities: Port administration offices, warehouses for materials

necessary for port management and other facilities necessary for port management (excluding those facilities specified in item (14)).

- (11) Land for port facilities: Land for facilities specified in each of the preceding items.
- (12) Mobile facilities: Mobile cargo handling equipment and mobile passenger loading and unloading facilities.
- (13) Mobile facilities for port services: Tugboats used for assisting docking and undocking ships, vessels and vehicles used for supplying water, fuels and coal to ships and vessels and vehicles used for handling and transportation of wastes.
- (14) Mobile facilities for port management: Port cleaning boats, port ferries and other mobile facilities necessary for port management.

Appendix - VI

New Public-Private-Partnership Strategy on Development, Management and Operation of Ports in Indonesia

[Implementation Guideline]

I. Objectives

This guideline is drafted for the implementation of New PPP Strategy proposed in the JICA Study on The New Public Private Partnership Strategy for the Port Development, Management and Operation in the Republic of Indonesia by DGST for amendment and reform of current laws and regulations related to PPP implementation.

This Guideline is based on the following principles;

- The private sector participation scheme is open to competitive bidding
- The private sector participation scheme has to be in line with government policy
- The port authority/port management body becomes the owner and manager of a “landlord port”.
- The scheme will concern partial introduction of private sector in full or in part¹
- The facilities/services will be managed and operated on a common user, non-discriminatory basis
- The operator of facilities has to be experienced in the activities to be carried out
- The bidder selected will set up a new local operating company
- Land ownership remains with the government or the public port authority/port management body
- Management and operational autonomy of the introduced operating company
- A priority objective of the private sector participation scheme is to boost performance levels maintaining the well balanced supply and demand condition of the facilities
- Another priority objective is the private funding of the extension of existing facilities or the construction of new facilities²

II. PPP Module

In case of port concession, there are variety of PPP module ranging from permit of operation and short term lease of the facilities to BOT depending on the purpose and commercial environment of the port. Therefore, it is not appropriate to limit the concession with open competitive bidding although Presidential Regulation of the Republic of Indonesia No.67 of 2005 has stipulated only the case of open competitive bidding for the cooperation between the government and business entities in the provision of infrastructure.

1. Categories of Bidding Procedure

Although there are various types of possible bidding procedures, they can be divided into the following three categories:

- Competitive bidding
- Competitive negotiations
- Direct negotiations

¹ Partial privatization is the form to render some of the port operation such as terminal operation to private sector, and in full means to render all the operation to private sector and in part means not all the operation.

² This part is partly quoted from “Guideline for Port Authorities and Governments on the privatization of port facilities”

The main advantages of competitive bidding over competitive/direct negotiations are generally said to ensure transparency, to provide a market mechanism for selecting the best proposal and to stimulate interest among a broad range of potential bidders, whereas in competitive bidding there is possibility to encourage underbidding if renegotiation is possible later. In competitive bidding, it needs to be noted that transparency is ensured only if required bidding outputs are standardized and clearly defined.

On the other hand, competitive negotiations, a variant of competitive bidding, are generally said to be well suited to projects in which many technical variations are possible, there is much scope for innovation, and it would be difficult to secure project financing on the basis of standardized documents of concession agreement; the proposals are reviewed and selected that are technically responsive to the request for proposals. Competitive negotiations, however, are said to have disadvantages of less transparency than a pure competitive bidding approach due to a variety of technical and price grounds.

Direct negotiations occur most often where a project idea originates with a private sector rather than a public sector.

In the light of the nature and purpose of the Project with funds including JICA Loan, competitive bidding is considered to be an appropriate bidding procedure for the selection of concessionaire.

2. Type of Port Concession

There are many type of business activity at port as is stipulated in Article 90 (1) of Shipping Law which will be developed on the port infrastructure. Some of them will not be suitable for competitive bidding.

Typical type of leasing authority will be as follows;

- Agreement: Port-related services provided on port property
- Concession Agreement: Commercial use of publicly owned property (including port water area and port land premise) (long-term agreements, typically 25-30 years or more)
- Lease: Long-term agreements, typically 10-15 years
- Order: Port infrastructure (streets, sewers, etc.) (permits with public agencies)
- Permit: Fixed term leases
- Revocable Permit: leases that may be revoked with 30-120 days notice. (typically of indeterminate length)

This guideline is applied to the common use terminal and the following cases:

- (1) BOT, BTO of terminal: to give the right to use certain water area and land for construction and operation of terminal
- (2) Joint Development of Terminal: government provides infrastructure and concessionaire provides superstructure and establish special vehicle company jointly manage and operate the terminal
- (3) Terminal Lease (long-term and short-term): government provides all the main facilities and equipment and lease them to the terminal operator

The case where concession is given for development, management and operation of whole port (Master Concession) should not be allowed except for special consideration is given to the port authority. (Exceptional Case)

III. Identification and Stipulation of the Project Executed by Virtue of the Cooperation Agreement in Relation with Chapter III of the Presidential Regulation No.67 of 2005

1. Compliance with Port Principal Plan and 5 year Development Plan

The Port Authority shall identify the port infrastructure provision projects for which the cooperation shall be established with the Business Entity within the framework of 5year development plan of the port of its ambit.

PRNo.67 Chapter IV stipulates that the cooperation project proposed by business entity shall take into consideration the provision of Article 7 (1), but in order to comply with the infrastructure sector's strategic plan which, in the case of port, should be port principal plan and 5 year development plan. As is stated in the new PPP strategy, port principal plan and 5year development plan should have the role to define exact scale, function and location of terminals to be developed in respective port to avoid the duplicated development which causes serious traffic risk on business entity.

Once the port principal plan and 5 year development plan is stipulated taking into consideration of the proposed development by business entity, business entity can implement the cooperation in compliance with the regulations, and new proposal not included in the port principal plan and 5 year development plan should not be approved as long as it is stipulated in the port principal plan taking due administrative procedure because any of the port development plan should be in compliance with national port principal plan which has a function to coordinate each port principal plan in order to balance the demand and supply and to comply with socio-economic development target of the nation as a whole.

Every proposed project for which the cooperation will be established must accompanied by:

- a. feasibility study
- b. concession plan attached with proposed bidding method

The Port Authority shall consult with Port Planning and Regulatory Committee attached to the Port Authority.

The Port Authority shall get approval of the Minister of Transport before Tendering the Project for cooperation with business entity.

The Minister of Transport shall get the approval of the Minister of Finance when the Project involves certain type of government support specified in the Minister of Transport Regulation of the Application of PPP Scheme in Port Project (Tentative)

2. Concession Plan

Article 8 (b) of the Minister of Finance Regulation No.38/PMK.01/2006 stipulates that pre-feasibility study report, plan of the cooperation form, plan for project financing and source of fund, plan for offering of cooperation project, including schedule, process and evaluation method as well as documentation of the results of public consultation shall be submitted in requesting government support.

In the case of port concession, concession plan is prepared in inviting the business entity for participating in port development, management and operation project.

Concession Plan is used for getting approval of competent authorities on concession conditions to be set in

the concession contract and other conditions of business operation in the port to be negotiated between conceding authority/Port Authority and business entity which generally proposes its business plan in the tender documents.

Hence it has also the function of negotiation base of the business conditions.

Concession Plan shall include the followings and their reasonings;

- Background of the Project
- Applicable laws and regulations
- Purpose of concession
- Term and conditions of concession
- Objective area of concession (contents of business)
- Rights and Obligations of concessionaire and conceding authority (risk allocation)
- Concession price (concession fees)
- Investment requirements
- Minimum requirements to the bidders
- Constitution of concessionaire
- Procedure of bid evaluation

IV. Management of Risks and Contract

1. Risks Involved in the Port Project

Terminal operators usually manage risks of the concession of the port taking following steps;

- Risk identification
- Sharing of risks with the port authority, the State or other public authorities where this is justified or possible
- Sharing of risks with partners (eg., sponsors, customers, suppliers, subcontractors)
- Reduction of exposure to residual risks (or the probability of its occurrence)
- Reduction or limitation of the consequences of residual risks (eg., use of insurance, accruals)
- Adjustment of the expected rate of return according to the degree of residual risk

Two principles should be applied in situations where the activity of the operator represents delegated management of a public service;

- Reduction of the project's global risk (and consequently of the project cost) requires the proper allocation of risk. Risk sharing between conceding authority and concessionaire on the one hand, and the various sponsors and lenders on the other, must be based on analyses designed **to identify and allocate risks to those parties which can carry them best (with least negative impact)**.
- Any risks allocated to the operator will be reflected in a requirement for higher profits, in terms of level or duration, with a resultant increase in the cost of the service provided. It is, consequently, in the interest of the conceding authority to restrict, as far as possible, the unnecessary imposition of risks on the operator where the latter is not in a position to manage them. In other words, **it is undesirable to make the operator carry risks that the public sector would be able to carry at a lower cost.**

Here is the guideline developed by the World Bank to assess and manage various risks involved in the port concession.

1.1 Country Risks – Characteristics and Possibility-

1.1.1 Legal Risk

Legal risks arise in connection with the lack of precision in and the possibility of changes in the legislation and regulations governing the project. It must be assumed that a set of rules exist at the time the project is initiated.

Insufficient precision in applicable laws and regulations can lead to disputes and misinterpretations and therefore creates a risk. In some cases legal issues can be extremely complex, not only because laws and regulations can be subject to a variety of interpretations, but also in terms of jurisprudence.

Furthermore, common practice frequently imposes a number of mandatory rules in terms of port operation. Consequently, a thorough legal analysis should be undertaken prior to the implementation of the project.

Especially when the project is located in a locale unfamiliar to the operator, it is prudent to call on the services of local legal advisors specializing in the various disciplines involved in the project. This will help to reduce the incidence of circumstances that might delay project implementation.

The risk of non-compliance by the operator with legal or regulatory requirements through ignorance is one carried exclusively by the operator.

The risk of changes in legislation or regulations stems from the possibility the circumstances in effect at the time of their promulgation may change at a later date. One can argue that the operator is justified in calling for guarantees of the stability of the legal environment to guard against changes over which the operator has no control.

Nevertheless, any such guarantee of legal security should not come at the expense of fair competition among operators as long as continued operations of the public services not jeopardized.

On the other hand, in the case where management of public service is delegated to an operator, the operator is not in an ordinary business situation. Firstly, because the permanency of his activity is essential to ensure continuity of the public service. Secondly, because the degree of regulation imposed on the operator may well prevent the latter from adapting to such changes in the legal environment.

Consequently, it is desirable either to guarantee stability or to include a contract revision clause to avoid situations where change in the legislation or regulations could put the financial viability of the project in jeopardy.

The risk of changes in legislation relating to the environment can be particularly significant, and can materialize during the construction and/or the operational phase. Prior to any decision concerning privatization, the prudent conceding authority should undertake an environmental study of the project. Conventionally, such studies distinguish between the impact of the construction of marine infrastructure on the existing marine environment, management of pollution from ship wastes, management of dredging-induced contamination and management of pollution resulting from accidents.

With respect to environmental risk management, the aspects specific to environment-related regulations should be established prior to the bidding process and, where appropriate, negotiated at the time of signature

of the contract. Any increased construction costs caused by changes in environmental legislation during the life of concession should trigger renegotiation of the contract between the two parties to define the amount of and procedures for indemnification of the operator by the conceding authority.

1.1.2 Monetary Risk

In a country where the national economy is weak or unstable, macro-economic problems or fiscal rules imposed by the host country create a risk, for both shareholders and lenders, that the project may be unable to generate sufficient income in strong currencies.

The main monetary risks that can create this situation include exchange rate fluctuations, non-convertibility of the local currency into foreign currencies and non-transferability (i.e., funds cannot be exported from the host country).

Where the project can generate foreign currency income, which is frequently the case when services are invoiced to foreign ship-owners or shippers, the foreign exchange and convertibility problems can be easily overcome. The best way of hedging the transferability risk is for the operator to be paid via an account opened outside the host country (offshore account).

Use of such accounts frequently requires approval by the local authorities. When an offshore account can be opened, exchange controls or the prohibition of the export of foreign currency from the host country would have no direct impact on the economics of the project. In this case, monetary risk is not hedged, but eliminated.

In the contrary case, where no authorization can be obtained to open an offshore account, other measures must be considered. The concessionaire should seek convertibility and transferability guarantees from the government or central bank. Decisions about such guarantees often become political issues.

As for the exchange risk, this can be partially hedged by ensuring that the majority of expenses are paid in local currency; for example, by raising part of the debt in the currency of the host country. However, frequently this is not sufficient.

It is rarely possible to raise the required funding for large projects locally. Further, foreign investors must be remunerated in foreign currency. The latter also applies to part of the purchases and personnel expenses (expatriate personnel). Where conditions allow, hedging products (e.g., exchange rate swaps) can be used to manage the exchange risk.

If, on the contrary, such products do not exist due to the instability or weakness of the host country currency, the exchange risk represents a major problem as it can only be carried by the shareholders and/or lenders, unless an exchange rate guarantee can be obtained from the central bank of the host country. The latter solution can only be envisaged in the event the project is of critical importance for the host country. Such considerations again add a political element to management of exchange risk.

1.1.3 Economic Risk

Port activities form part of national and international transport chains. The volume of trade moving through these chains depends to a large extent on macro-economic factors, namely population, consumption, production, exports, etc. Consequently, the macro-economic situation and its expected evolution have strong impact on the level of activity in a port. It is essential to take this element into account in the market survey undertaken for the purpose of estimating the traffic and throughput risk.

1.1.4 Force Majeure

Force majeure generally covers all events outside the control of the company and events that cannot be reasonably predicted, or against which preventive measures cannot be taken at the time of signature of the contract, and which prevent the operator from meeting his contractual obligations. Apart from this general definition, cases of force majeure are generally stipulated in the contract. These include:

- Natural risks: climatic phenomena (cyclones and exceptionally heavy rainfall), earthquakes, tidal waves, volcanic eruptions;
- Industrial risks: fire, nuclear accident;
- Internal socio-political risks: strike, riot, civil war, guerrilla or terrorist activity; and
- Risks of war or armed conflict.

In certain contracts, unilateral decisions by the local authorities can be included in the list of events covered by force majeure, in particular where such decisions discriminate against the operator. These risks are included under country risks, as it is the national context that determines the probability of their occurrence. It is reasonable that, if any such event occurs, it should result in the suspension of reciprocal obligations of the parties involved, with a resultant limitation (although not elimination) of their consequences. The contract can also include procedures for sharing the burden of the consequences of such events between the parties, in particular where the operator is managing a delegated public service.

1.1.5 Interference or “restraint of princes” risk

Interference or “restraint of princes” risk covers those risks that relate to the direct intervention of the public authorities in the management of the project.

Public service requirements are normally defined in the contract specifications, and the conceding authority should not, in principle, interfere in any way during the construction or operating phases, provided concessionaire complies with these requirements. However conceding authorities frequently do intervene in the name of public service or for the protection of the users, for reasons of security, for the protection of environment, or simply on an arbitrary basis.

Such interference takes the form of the imposition of new operating requirements, additional investment or new constraints, the result of which is to increase operating costs or reduce revenue. Intervention by the government may be well-founded, but the concessionaire can then legitimately expect compensation from the conceding authority for the constraints imposed and indemnification of losses resulting from the conceding authority’s actions.

The best way of attenuating the interference risk is to have a contract that not only states unequivocally the objectives of the parties, but also specifies the limits on government authority to intervene. The contract may also include provisions that will obviate the need for arbitrary government intervention, e.g., price escalation clauses or the obligation to increase capacity above a certain traffic/throughput level.

Clearly, it is impossible to foresee all events that might give rise to intervention by the government. Hence, it is a good idea to include contract provisions that call for periodic meetings to discuss the status of the contract and allow for renegotiation of the contract to adjust the concession agreement to account for significant changes in circumstances.

1.1.6 Political Risk

The operator cannot control the risks inherent in decisions taken by public authorities. The operator naturally seeks protection against harmful decisions through the clauses of the contract by transferring this risk to the conceding authority. This is not sufficient, however, since non-compliance with the terms of the contract by the conceding authority or the government is just one of the risks facing the operator.

Additionally, the approval of contracts or the issuance of authorizations from administrative authorities can cause delays and increase costs for the operator. Finally, the risk of expropriation and nationalization are grouped under the designation of political risk.

Apart from the detailed analysis of contractual commitments, there is also the problem of the credibility of the applicable legal system. The effectiveness of contractual commitments depends initially on the mechanisms available for settling disputes. Recourse to international arbitration is desirable, involving a neutral jurisdiction applying recognized international rules, such as those of International Chamber of Commerce. Likewise, the applicable contract law can be that of a mutually acceptable third-party country.

This purely contractual approach, while useful, is frequently inadequate to ensure the acceptable management of the political risk. In practice, the arbitration phase of disputes is rarely reached, but when this the case it reflects degradation of relations to such an extent that the future of the project is very often threatened.

There is, however, another strategy to protect against political risks. As is the case to involve international organizations as a lender, It may be helpful to involve local sponsor or lending firms as investors to restrict political risks.

It is also usable to hedge a specific risk by the coverage of insurance policy, and such insurance policy can be gotten both from official insurance organization like MIGA and from private insurance company.

It involves too much difficulty to quantify political risk and there is no way to eliminate it nor to hedge it. Therefore, when identified political risk is too large and ability to mitigate it is too small, then operator will give up the project.

1.2 Project Risks – Characteristics and Possibility-

Project risks are those risks associated with the investment in and operation of the resources required for implementation of the project by the operator as set out in the contract between the operator and the Port Authority. The majority of these risks are carried by the operator, who consequently manages and assumes their consequences. Project risks include:

- Construction risks;
- Hand-over risks;
- Operating risks;
- Procurement risks;
- Financial risks; and
- Social risks

1.2.1 Construction risks

Risks associated with the construction of the project involve unforeseen cost increases or delays in

completion. A construction delay also translates into increased costs, principally for the operator, in the forms of penalties the operator may have to pay to the conceding authority or its customers under its contractual commitments, delays in start-up of the operational phase of the project, causing a loss of earnings and increased interim interest charges (interest due during the construction phase, most often capitalized).

In turn, the principal causes of excess costs or delays are design errors leading to the underestimation of the cost of equipment or work, or the time required to complete the job, inadequate assessment of local conditions (terrain in particular), which can necessitate modification of the original technical solution and poor management of the job site, poor co-ordination of the parties involved or the bankruptcy of a supplier or sub-contractor.

Concessionaire will review and check in details on the detailed design and require approval or modification of specifications to avoid or to properly share these risks between sponsor. When these actions are impossible, he will require sponsor to take all the construction risks.

Hedging of excess cost increases and completion delay risks by the operator is generally undertaken simultaneously. A common method of managing these risks is to transfer them to the construction company or equipment supplier. This is effected in a couple of ways. Where the project includes a major construction phase, the financial package generally requires the inclusion of the primary construction company among the project sponsors. The construction risk (and design risk where applicable) is then allocated to the shareholding construction company, enabling the non-construction company shareholders to avoid bearing a risk over which they have little or no control.

(Transfer of the risk to the shareholding construction company is achieved via the construction contract or the design and build contract. From the operator's perspective, then, the objective is to bind the construction company in a lump sum design and build turnkey contract that incorporates a performance guarantee and appropriate penalty clauses. This makes it possible to convert the construction risk of the project promoter into a credit risk for the construction company.)

Careful selection of a technically competent and financially sound construction company makes it possible to reduce both construction and credit risks because of the assumed capacity of the construction company to honor its contractual, technical and financial commitments.

It should also be noted that the sponsors of the project (future shareholders) and lenders to the project do not always carry the construction risk in the same way. The lenders will often call on the sponsors for a credit guarantee covering the construction phase, since the lender is protected by limited recourse for the operating period.

1.2.2 Hand-over risks

Hand-over risks arise when the operator takes over the management of existing infrastructure and facilities, undertakes operation and maintenance, and in some cases first has to undertake rehabilitation work. The general rule is that the operator takes over the existing facilities at his own risk and peril. The operator is authorized to carry out prior inspection of the facilities, to assess their condition and estimate the rehabilitation and maintenance costs to which he will be exposed.

Even with the ability to inspect facilities, it is desirable to include a clause in the concession contract to safeguard the concessionaire against recourse relating to events and conditions existing prior to the contract, thereby exempting the operator from resulting liabilities.

1.2.3 Operating risks

The concessionaire operates the facilities necessary to meet his contractual obligations at his cost, risk and peril. Consequently, operating risk is allocated entirely to the operator. Operating risk principally comprises:

- Non-performance risk, which can lead to payment of penalties to the conceding authority and adversely affect commercial operations (e.g., cause traffic levels to fall below expectations) and result in financial losses;
- Risk of operating cost overruns stemming from underestimating operating costs in the bid proposal (e.g., omitting a cost category or making a defective calculation) or inefficient management of the project by the operator; and
- Risk of loss of revenue not associated with a drop in traffic level; e.g., as a result of the non-collection of revenue, fraud or theft in a case where the operator has not complied with the procedures demanded by the insurers, and claims by customers or frontage residents.

Non-performance risks can be minimized by selecting an operator with recognized experience in port and terminal management. Cost overrun and loss of revenue risks can be transferred to the operator through use of a fixed-price contract between the master concessionaire and operator (which may provide for escalation by application of an indexing formula), with the possible inclusion of a variable component designed to reward better-than-expected commercial performance.

Concessionaires and Port Authorities should avoid cost-plus-fee type contracts with operators, since they do not transfer any of risks.

Like the project construction company, the operator may become one of the project sponsors. This then makes it possible to associate the operator at the outset with the definition of the operating system and its cost, thus making the operator fully responsible for the aspects of the project for which he will subsequently carry the risks.

Such measures, however, do not eliminate the operating risk completely. The responsibility of the operator is necessarily capped. Furthermore, this approach in fact converts the operating risk into a credit risk for the operating company. The latter generally has limited initial capital, which will not exceed its working capital requirement, as it has no investment expenses. The responsibility of the operating company can then be covered by shareholder guarantees or a bond system.

In any case, the concessionaire should have the resources to manage this endogenous operating risk, and it is therefore logical that it be allocated to the concessionaire in full.

1.2.4 Procurement risks

Procurement risks arise due to the potential non-availability of critical goods and services and unforeseen increases in the cost of external resources necessary for the project. This is significant for port projects since they often depend on public monopolies to supply critical services, for example for the supply of water and electricity.

Two approaches can help the operator to reduce or eliminate this risk. The operator can choose to produce the critical resource himself. For example, the installation of a dedicated generator in a refrigerated container park or refrigerated warehouse makes it possible to reduce the cost of the resource in some cases and limit

the risk of power cuts (which, in addition to simple interruption of the service, can cause damage to the merchandise). This solution often requires specific authorization from the local authorities. Furthermore, providing such goods and services oneself may not always be possible or financially feasible for the operator. Alternatively, the operator can sign a long-term purchase contract with the producer of the resource. This makes it possible to set the purchase cost using a pre-determined price escalation formula, and to limit the risk of a unilateral price adjustments or restrictions on supply. Further, the contract may include a clause to indemnify the operator against losses incurred in the event of interrupted supply of a critical resource. This is referred to as a "put or pay" contract³.

(The concessionaire may require the assistance of the conceding authority or the government to be able to conclude a "put or pay" contract with the public monopolies concerned. This usually can be justified in cases where the project has a substantial public service dimension.)

Where the procurement of imported supplies is concerned, the procurement risk can stem from customs-related problems; thus, it becomes a component of the country risk. In such cases, the conceding authority may reasonably bear a portion of the risk.

1.2.5 Financial risks

The operator bears all risks associated with raising the shareholders' equity or obtaining loans required for funding the project. Likewise, he carries all risks associated with formation of the project company (the Special Purpose Company or SPC). Contractual documents define the relationships among the various private players involved in the project (e.g., the shareholders' pact and loan agreement).

Apart from raising the initial tranche of shareholders' equity and loans, the establishment of standby credit loans should also be considered, as this makes it possible to fund any excess costs with which the project company may be confronted.

Likewise, the interest rate fluctuation risk is carried exclusively by the operator. This risk arises when loans used to fund the project are based on floating rates (e.g., Euribor plus margin). An increase in the reference rate consequently increases the amount of interest to be paid, and hence the project costs. This risk can be hedged by means of appropriate financial instruments (e.g., rate caps, ceilings on variable rates, rate swaps).

(Where projects are built or operated with the aid of subsidies, there is the risk that the government will fail to make good on its subsidy payments. This risk is relatively small where investment subsidies are concerned, as the construction phase covers a relatively short period. However, international agreements (e.g., the Marrakech Accords) or the dictates of internal law can still intervene to prevent the payment of subsidies.)

1.2.6 Social risk

The social risk arises when an operator may have to restructure its workforce and bear the cost of severance payments, retraining, etc. The risks of general strikes or civil disturbances in the host country are frequently

³ To pay for the failure of supply, Put and pay contract :pay for supply

classified as cases of force majeure (see country risk), which means that they are often only partially covered by the protections afforded in the contract. Additional insurance can be obtained to cover residual social risks.

The port sector presents special challenges relating to social risk. Dockworkers often enjoy a special status under national law, which may put the operator in the diminished position of merely acting as an employer of hired labour.

Port or terminal concessions, while requiring the operator to continue employing a portion of the existing personnel, often result in a very substantial reduction in the number of port workers (reductions of the order of 50 to 70 % are not exceptional). Although the Port Authority or government may give the concessionaire free reign to rationalize the port workforce, this alone is not sufficient to eliminate the social risk. The operator must also be assured that the local authorities have the capability to manage the social situation thus generated (e.g., through retraining, early retirement, relocation allowance, etc.). Otherwise, displaced port labor may seek recourse against the concessionaire.

In addition to the social risk relating to dockworkers, the presence in the port of other categories of personnel with special status (e.g., seamen, customs officers, Port Authority personnel) can amplify the social risks.

1.3 Commercial or Traffic Risk –Characteristics and Possibility-

Commercial risks arise from potential shortfalls in projected traffic and from pricing constraints. Traffic and pricing risks are significant in port reform projects due to the high degree of uncertainty associated with medium- or long term projections of port activity. These risks are affected by the operator's pricing decisions and by any price regulation imposed by government.

The nature of the partnership between the operator and the Port Authority leads, in practically every case, to sharing of traffic risk, both in terms of responsibility and consequences. The terms of the concession agreement effectively allocate these risks between the two parties. However, even though they are partners in port reform, there is a natural tension between the Port Authority as a custodian of the public interest and the operator as a profit maximizing business.

(Regulatory Risks)

(This relationship between the concessionaire and the Port Authority or other government agencies is important in defining the "rules of the game" for the concessionaire and, hence, his risks.)

The concessionaire generally desires to limit the scope of the "vertical partnerships" with the Port Authority, taking the view that his activity should be regulated predominantly by market conditions. Consequently, he seeks greater freedom of action in the management of his project to be in the strongest possible position to manage his risks.

The conceding authority is concerned with protecting the user, safeguarding the general interest, and avoiding abuse of dominant market positions. The conceding authority, consequently, seeks to restrict the operator's freedom of action through technical or economic regulatory measures.

(The search for a fair balance between regulation imposed by the conceding authority and the discipline imposed by the market is complex and effectively determines how the commercial risk will be shared.)

Regulation invariably generates costs. These include costs for the conceding authority in the form of

additional compensation it may have to pay to the concessionaire plus the direct costs of enforcing the regulations through inspections and other measures.

Regulation also generates costs for the concessionaire, which bears greater risks and has less freedom of action than it would in the absence of regulation. Thus, he will expect this higher risk level to be rewarded.

The costs of regulation are ultimately borne by the port users or by the taxpayer. Government regulation, therefore, should be kept to the minimum necessary to correct market imperfections and protect the public interest.

(The nature and extent of government regulation in connection with port reform are many and varied.) Ideally, the concessionaire and the Port Authority or other regulating entity can arrive at a situation acceptable to both parties by adjusting regulation and the guarantees and compensation allowed to achieve equitable sharing of risks.

Because situations affecting port reform vary so widely, there is no single set of rules applicable under all circumstances. Regulation by the conceding authority can be classified as either technical or economic. Over and above the contractual conditions included in the bid specifications, the conceding authority can retain a "right to know" concerning decisions taken by the concessionaire. The most commonly used techniques for this are to hold an equity interest in the project company and to hold a "golden share" or blocking minority. This enables the conceding authority to exercise oversight from within, but also can invalidate the risk sharing balance by introducing chronic interference by the concessioning authority in the management of the concessionaire company.

Despite its drawbacks, this form of government oversight is widespread. In over one-third of the privatized port terminals worldwide, the port or municipal authority owning the port also has an ownership interest in the terminal operator company. Control and monitoring of the concessionaire's behavior generally is best carried out through a well-drafted concession contract, making proper allowances for the conceding authority's interest in reviewing certain strategic decisions of the concessionaire. This will safeguard the conceding authority's role as an impartial regulator with all its operators, which runs the risk of being compromised if it becomes involved as an equity holder in any of the private parties it is supposed to oversee.

Sharing of risks, and the extent of required government oversight, can also be influenced by the nature of the terminal operations being concessioned. In case where the operator handles only his own traffic such as industrial bulk (e.g., ore or oil) and general cargoes (e.g., forest products, fruit), it is frequently the shipper, a group of several shippers, or the ship-owner himself who serves as the operator of the terminal. This type of special purpose operation does not necessarily represent a public service. Hence, it does not require systematic regulation by the Port Authority. Nevertheless, standards governing the maintenance of the facilities can be imposed for the preservation of the assets given in concession.

The administrative document formalizing the contractual relationship between the Port Authority and the operator of special purpose facilities merely needs to authorize the use of the site for the defined activity. A fixed fee is typically paid for the occupation of public land, and where appropriate, the provision of infrastructure or equipment by the public sector. Port dues billed directly to users (ship-owners and shippers) by the Port Authority already generate remuneration for the use of the "general" infrastructure, and therefore would not be further billed to the terminal operator.

In case of operator acting on behalf of a third party in a competitive situation, it is desirable for the traffic risk

to be carried in full by the concessionaire. This means that the concessionaire must be able to manage this risk by controlling the operating parameters affecting his competitive position. This assumes substantial freedom for the concessionaire in terms of investment, level of service and the tariff, although some limited regulation may still be necessary to ensure compliance with the public service obligations, preservation of public assets, and maintenance of minimum capacity.

On the other hand, the tariff can be set freely, as the market is regulated by competition. The contract is awarded to the candidate proposing the highest rental fee or the lowest subsidy requirement, whichever is relevant.

The case of operator acting for a third party in a monopoly situation is relatively common in developing countries, in particular in African and insular countries. The existence of a natural monopoly of the port terminal management activity undeniably introduces a public service dimension requiring close economic oversight. This can involve the setting of charges and award of the concession to the candidate proposing the highest fee (or lowest subsidy) or, alternatively, setting the amount of the fee (or subsidy), and awarding the concession to the candidate proposing the lowest weighted mean tariff rates.

Price escalation and indexing clauses are essential in all cases.

There are several ways that traffic risk and profit can be shared between the conceding authority and private operator. First, the conceding authority can guarantee that the monopoly will be protected from competition for a specified time or until a specified traffic level is reached. The agreement may contain clauses providing for modification of the regulatory system or even indemnifying the concessionaire from completion of the contract should the monopoly disappear.

Second, the conceding authority can guarantee minimum traffic levels when the volume of traffic forecast by the concessioning authority is regarded as highly uncertain by the concessionaire. When such uncertainties exist, the concession agreement typically limits the amount of the fixed part of the fee and introduces a variable part (reduction) if traffic fails to reach a minimum threshold, in order to protect the operator from significant revenue shortfalls.

Finally, the conceding authority and the operator can agree to share profits when traffic exceeds a specified volume.

Transit traffic refers to goods whose origin or destination is a country other than that of the port. Transshipment is the discharge of cargo/containers from one ship and the loading onto another in the same port (vessel-to-vessel). Both activities may have a positive impact on the economy of the country, generating opportunities for value-added activities, jobs, and national wealth.

Where the customer is not an economic unit in the country of the port, the government does not have the same interest in protecting the customer. Consequently, in the absence of any special agreement, there is little reason for the government to accept any of the risks associated with transit and transshipment traffic or to regulate economic activity by the operator.

In fact, the port may benefit from the operator's market dominance in handling transit traffic, which is disciplined by the existence of alternative transport systems (transit), the capacity of competing ports in the region (transshipment) and the degree of international competition. Under these circumstances, it is reasonable for the Port Authority to seek to obtain maximum profit from this favorable (although perhaps

transitory) situation.

In this case, regulation of the activity is not required, apart from the actual authorization and an obligation to preserve existing assets where appropriate. There is no need to subsidize the activity nor to share commercial risks, these being fully carried by the operator. On the other hand, the Port Authority will seek to maximize its profit, by awarding the concession to the highest bidder, namely the candidate proposing the most favorable profit-sharing arrangement (fixed and variable fee) to the authority.

The situation frequently existing in ports is a mixture of the configurations described above, further complicating decisions about the procedures to be adopted. This leads to a hybrid approach, combining compensation systems, regulatory oversight mechanisms, and encouragement of "situation rents" (highly profitable operations in select activities to help fund a needed public service that might otherwise generate a loss).

(The existence of a horizontal partnership between the various players in the port community on the one hand, and the transport chain on the other, was described earlier. The operator will often seek to combine the various services required by his customer into an integrated whole or, alternatively, give contractual guarantees to customers as to the level of service provided in these various domains.) It is logical for the Port Authority to provide the operator with guarantees concerning standards of facilities and performance of services in the port (e.g., depth of access, buoying, operating hours, ship services), whether provided directly by the Port Authority itself or delegated to other service providers within the framework of a vertical partnership.

These commitments, frequently grouped in a clause headed "conceding authority's obligations," can result in financial penalties against the Port Authority in the event of failure to meet its obligations. The resultant commercial risk for the operator is then transformed, theoretically, into a credit risk for the Port Authority.

Likewise, while it may be useful to include guarantees regarding land transport modes (e.g., hours of operation, access to carriers, creation of new infrastructure, maximum charge or minimum capacity for a rail service), the quality of the inter-modal service at the port is critical to efficient and cost effective operation and should be analyzed before the operator puts in a bid.

1.4 Contractual Risks –Characteristics and Possibility-

To protect both the conceding authority and the concessionaire, contracts typically include provisions governing the possibility of changed circumstances or disputes about contract implementation. The main elements of the contract governing such developments include revision clauses, contract termination or renewal clauses, early termination clauses and procedures for settlement of disputes.

(At the outset of the project it is impossible to foresee all the events that might arise over a period of several decades. This means that revisions will be required to adjust the terms of the contract to changing situations.) The conditions and procedures for these revisions must be defined; e.g., periodic revision at defined intervals, revision scheduled for key project dates, revision triggered when a particular throughput level is reached, or revision at the request of one or other of the parties.

The duration of the original contract period is a major risk consideration for the operator. The possibility for renewal or extension of the contract must be defined, as must the procedures for take-over or repurchase of the project assets on termination of the contract.

Early termination clauses define the conditions potentially leading to cancellation or early termination at the request of one party or another and the applicable procedures relating to penalties or compensation. These clauses must also be compatible with the underlying loan contracts signed by the operator, where these agreements provide for a lender's right to substitute another operator in the event of the bankruptcy of the original operator.

Sharing or mitigating the many risks associated with port projects frequently gives rise to contractual obligations and attendant financial sanctions if one party's or another's obligations are not met. Sanctions convert the risk into specific financial obligations (payment of penalties). This, in turn, generates the credit risk of the partner being unable to meet his financial obligations.⁴

The most efficient method of ensuring that the partners honor their financial commitments is to require bank bonds. These are frequently demanded from the concessionaire or by the operator from its private partners. The amounts and call conditions for these bonds must accurately reflect the respective commitments of the parties. On the other hand, the operator's credit risk with respect to the conceding authority cannot be covered by bonds, and generally remains a political risk.

2. Concession Contract & Risk Management in Port Project

2.1 Structure of Concession Contract

Concession contract for port development and management is generally structured with following agreements;

- Basic agreement on concession
- Agreement on construction of facilities and procurement of equipment
- Agreement on management and operation of terminal
- Agreement on transfer of the facilities
- Other general agreement

2.1.1 Basic Conditions

As the basic conditions on concession, followings are stipulated in the contract;

- Objective area and term of concession
- Incorporation of project company, founder members, subscription of issued share capital, prohibition of disposal of issued capital, novation contract, etc.
- Allocation of obligations of construction, procurement, project preparation, maintenance etc. between government/Port Authority and concessionaire/operator
- Mile stone (start day of construction, procurement, handover date, commercial operation date, date of transfer of project etc.)
- Basic rent, royalty/concession fee level and payment schedule
- Execution and delivery of agreement, permits and licenses
- Financial close

2.1.2 Construction and Procurement Obligations

Following obligations are stipulated as the construction and procurement agreement in the concession

⁴ This paragraph and next paragraph mention about so called credit risk and bonds

contract;

- Requirement, approval and alteration of design of facilities and equipment
- Requirement on site clearance, purchase and preparation of site (area, completion date and conditions etc.)
- Agreement on construction contract, co-beneficiary of liabilities, right to claim and handover procedure etc.)
- The same for equipment and commissioning test
- Standard and obligation of maintenance of facilities and equipment etc.

2.1.3 Management and Operation Agreement

As a management and operation agreement, the followings are specified in the concession contract;

- Conditions for facility usage and competition (minimum performance standard, penalty for default, conditions on sub-contract, prohibition of business at competitive ports, compliance with the rules and regulations of the Port etc)
- Rules on management and employment
- Procedure for agreement on tariffs and dues
- Obligations of concessionaire (productivity, inspection of equipment, certificate of insurance, protection of environment, security and safety, profit maximization, prohibition of exclusive use, marketing, business report etc)
- Obligations of government/ Port Authority (Issuance of operation permit, securing utility, purchase, use and transfer of foreign currency, land right, income tax and other taxes exemption, non Interference by the government, free usage of access road etc)
- Accounting and audit of concessionaire

2.1.4 Agreement on transfer of the facilities

As an agreement on transfer of the facilities, followings are specified in the concession contract;

- Rights and obligations on facilities to be transferred at expiration/termination
- Conditions and procedure of transfer of the project at expiration of contract
- Clearance of title free from mortgage, lien, charge, debt, encumbrance etc.
- Evaluation of project value at transfer

2.1.5 Other General Agreement

Other than those listed in 2.1.2~2.1.4, followings are specified in the concession contract;

- Definitions and interpretations
- Conditions of effectiveness
- Representations and warranties of the parties
- Insurance, indemnity
- Event of force majeure
- Conditions and effects of termination
- Conditions on waiver
- Notices
- Governing law and arbitration

- Entire agreement
- Severability
- Confidentiality
- Currency of payment
- Attachment & Others

2.2 Risk Management through Contract

Most of the risks involved in the port concession can be avoided by clearly stipulating the measures to be taken against any risk arisen and/or protecting measures against possible risks.

2.2.1 Specifications on Economic and Technical Requirements

As the countermeasures against undue deals of the concessionaire, various economic and technical requirements are stipulated in the concession contract as shown below;

As the economic requirements, the contract stipulates;

- To maintain the open and competitive commercial environment ⇒Anti-Monopoly
- To provide equal access and treatment for users
- To restrict the concessionaire to obtain the management right (more than 10% of the share, etc.) of the rival port in the region ⇒Avoiding conflicting competition with Rival Ports
- To restrict to operate the rival port within 2 years after termination of the concession contract
- To observe the laws and regulations
- To set the minimum tariff⇒ when the Concessionaire is the shipping company

As the technical requirements, contract specifies, for example, the followings;

- No requirements for the investment for future expansion ⇒Less Financial Risks
- Concessionaire's obligation to maintain and repair the facility ⇒Obligations defined clearly
- The requirements for achieving the performance target of 2 main line vessel calls per week and 600,000 TEU per year ⇒Performance Target
- Design Criteria & Technical Standards : Defined in Definition Study attached ⇒Very clear

2.2.2 Specification on Country Risks

(1) Legal Risks

As to the legal risks such as change of laws and regulations, it is difficult to specify possible countermeasures against every kind of changes, and hence it is necessary to clearly specify the rules to deal with these situation from the necessary action of notifying to the final solution of arbitration.

(2) Monetary Risks

To cope with the monetary risks, contract often specifies as follows;

- No restriction for buying & remitting foreign currencies and opening foreign currency bank account
 - Imposed withholding tax shall be offset
 - All charges and fees paid in local currency and rent and royalty fee in US\$
- ⇒Very few risks for Concessionaire ⇒Desirable bidding for Government to be expected

(3) Economic Risks

In case of the port handling international trade cargo, it is rare to face with risks arisen from the change in the domestic economic environment, especially in the case of transshipment port. Most serious risk arisen from change in economy will be appeared in the change of traffic volume and hence it is dealt with the agreement on traffic risk.

(4) Force Majeure

As to the risks arisen from the force majeure, both parties of contract are reasonably protected when contract precisely and in detail to stipulate the event of force majeure as follows, for example;

- Acts of God
- Acts of public enemies
- Restraints of governments, princes or people of any nation
- War, riots, insurrections and civil commotions
- Flood, fire and storm
- Restrictions due to quarantines and epidemics
- Strikes

(5) Interference Risks

To avoid any unreasonable interference from Government such as delay in obtaining permission and/or consent of Government, contract often specify that Government is timely to grant the permission and/or consent to concessionaire without any unreasonable delay and by doing so, concessionaire is protected from Government's delay by the specification to deal with the case of breach of contract.

It is also necessary to clearly define the concessionaire's obligations and procedure for obtaining permission and/or consent.

(6) Political Risks

The political risks are covered under the clauses of the force majeure in the contract. In order to cope with political force majeure, it is necessary to provide the definition of "Political Force Majeure" (excluding acts in defending the country from foreign attack, revolutionary and terrorists).

Following specifications is necessary to be provide together with the definition above;

- Additional cost shall be reimbursed by deducting from the Royalty Fee and Basic Rent. ⇒
Concessionaire protected
- Cannot be operated for a period exceeding 365 Days either Party may terminate this Agreement
⇒Procedures are provided for both parties

2.2.3 Specification on Project Risks

(1) Construction Risks

In order to cope with the construction risks, following items are necessary to be specified in the contract;

- Joint Research ⇒Scope of work, Technical & Design Spec., Financial Investment, Time Schedule, etc. determined ⇒Conditions well understood
- Prequalification Criteria for Contractor & Supplier
- Scope of Gov. and Concessionaire : Defined
- Insurance covering Infrastructure Construction
⇒Concessionaire : Co-insured & having right to pursue Contractor ⇒Protecting both Parties from Contractor
- Insurance Policies must be submitted to Gov. for ensuring the extent of coverage ⇒Protecting Gov.
- Equipment to be inspected by Gov.⇒Protecting Gov.

(2) Hand-Over Risks

In order to cope with the hand-over risks, followings are necessary to be specified in the contract;

- Concessionaire : insure including F.M. except Political F.M. after hand-over⇒Protecting Gov.
- Hand-Over Certificate :issued by Gov. without delay ⇒Concessionaire has a risk of dispute on issuing certificate (MOC to decide the final)
- Construction Delay : Contractor pays penalty and Liquidated Damages⇒Concessionaire not involved in Construction Agreement
- Performance Bond of Contractor : Assignable to Concessionaire⇒Protect both parties (Contractor bears the obligations)

(3) Operation Risks

Operation risks often arise when concession is given not by competitive bidding. Basically operation shall be conducted according to the business plan submitted by the concessionaire to the Government and hence it is necessary for the Government to monitor financial standing, default etc of concessionaire. It is also necessary to specify in the contract minimum handling volume and Government has to monitor default of concessionaire and necessary to specify for concessionaire to pay penalty when failing achievement and to get bonus when exceeded the requirement by, for example, reducing the concession fee.

(4) Procurement Risks

As to the procurement risks, it is natural to procure the utilities necessary for operation of terminal by the Government since in most cases, utility provision for the site including those for other users is generally under the responsibility of either local government or central government.

As to the procurement of materials and equipment for operation, they are often imported and hence import tax is desirably exempted for attracting bidders for desirable business plan to be offered.

Income tax exemption for certain period of time from the commencement of the operation to ease the financial burden of the concessionaire is also desirable.

These kinds of government support is not specified in the Regulation of the Minister of Finance No. 38/PMK.01/2006 but usually applied in case of port concession rather than giving compensation from state budget necessary to be approved by the DPR or giving extension of concession period since those countermeasures stipulated in the regulation is still unsecured in terms of approval by the Government. Exemption of taxes will not influence on the state budget and hence it is more pragmatic.

(5) Financial Risks

In order to avoid the financial risks to be taken by the Government, financing obligation of the concessionaire should be clearly defined in the contract for such issues as in shown below;

- In case of debt financing, it should be limited recourse basis
- Project financing plan is attached with contract and this plan must be updated and approved by the Government
- The whole investment amount is defined
- Ceiling of the debt to equity ratio such as (60/40) should be specified
- Borrowing period and interest rate should be specified

(6) Social Risks

In the case that existing workers at the port is obligated to continuously to be employed by the concessionaire, method for selecting workers and numbers should be clearly defined to reduce risks for concessionaire.

2.2.4 Specifications on Commercial/Traffic Risks

Government is in a position to protect the domestic users of the port and hence minimum handling volume should be specified in the contract, but not necessary in case of transshipment port. For the purpose of protecting Government from getting the necessary amount of payment from concessionaire to be paid back on investment, minimum requirement should be specified.

When Government having a position of regulator and of a shareholder of the operating company, conflict of interest in protecting the users against undue deal and profit gaining, and hence it is not desirable for the Government to hold such a position.

In order to secure the performance target, it is necessary to establish the minimum handling volume, and in some cases, to establish the grace period to achieve the target for easing burden of repayment by the concessionaire. In order to secure the necessary payment from concessionaire, clause to provide incentive and penalty should be specified.

2.2.5 Specification on Contractual Risks

In order to avoid the contractual risks, following clauses are provided:

1) Concessionaire Event of Default

- Breach of material terms of Contract
- Failure to provide Equipment ⇒ Financial Close provided ⇒ When failed, no Infrastructure work

commenced

- Breach of Contract due to willful conduct ⇒ Termination clauses provided, but hard to cover all
- Adverse changes of financial condition ⇒ Annual Business Plan furnished to Gov., Both parties have Auditing rights
- Breach of procuring insurance ⇒ Policies to Gov.
- Default due to achieving Performance Targets ⇒ Penalty and incentive / Termination clause

2) Government Event of Default

- Delay of licenses/permits granted or suspended
- Compulsory acquisition / nationalization of Project Company / its assets ⇒ Termination clauses provided
- Failure to achieve Handover Date ⇒ Contractor to pay Penalty and Liquidated Damages
- Abandonment of Construction
- Breach of material terms of Contract
- Breach of Contract due to willful conduct ⇒ Termination clauses provided, but hard to cover all

3) Termination Procedures

- Termination for Convenience : Gov. terminates unilaterally without cause ⇒ Gov. to pay outstanding liabilities of Concessionaire including to Lenders
- Termination for Default ⇒ Proceed to Arbitration to recover all costs incurred including one prior to signing Contract
- Termination for Political Force Majeure ⇒ Gov. to pay a sum equal to (1)outstanding liabilities (2)Owners Equity (3)other cost including prior to signing Contract
- Termination due to failure to achieve Performance Target ⇒ Gov. to pay to shareholders of Concessionaire to compensate fair market value of assets of Concessionaire

4) Governing Laws and Arbitration

- Governing Laws : Laws of the Country
- Dispute procedures : Discussion→Arbitration
- Arbitration procedures

⇒Applicable rules : ICC Rules ⇒Fair for both

⇒Dispute among Nationals ⇒Arbitration in the Country

⇒Dispute involving foreigner (>10%) & <\$3mil ⇒In the Country

⇒Dispute involving foreigner (>10%) & >\$3mil ⇒In Geneva, Switzerland

3. Duration of Concession Period

In applying the concession scheme to the port development, management and operation, duration of concession period becomes sometimes important issue.

In the tool kit published by the world bank, standard duration of concession period is listed as in Table 1 .

Necessary period of duration of concession depends on the nature of the concession, namely size of potential traffic volume, initial investment, and risk sharing scheme etc.

It can be, however, derived through financial analysis of the concession scheme. Financial analysis is conducted through the estimated financial statements both for conceding authority and concessionaire. In case of the port concession, financial soundness is evaluated by the following financial indicators;

- FIRRs of concessioning authority and concessionaire: this is the indicator to assess the financial viability of the project. The FIRR is the discount rate that makes the discounted costs and revenue over the project life equal, i.e. the rate “r” that satisfies the following formula:

$$\sum(B_i - C_i)/(1+r)^{i-1} = 0$$

Where B_i : Revenue in the i-th year

C_i : Cost in the i-th year

r : Discount rate

In this calculation, fund management income is excluded from the revenue and depreciation cost, repayment of the loan principal and interest on loans are excluded from the costs.

When the FIRR exceeds a certain threshold, the project is considered to be financially viable. The weighted average of the interest rates of various funds generated for the project is used as the threshold.

- Net Present Value (NPV) Ratio of Gross Profit to Turnover based on the assumption that the port is to be operated by the port authority itself. This is assumed that the operation by the concessionaire will be more efficient than the operation by the port authority and hence, the operation by the port authority is conducted at the higher tariff level with less amount of throughput.
- Return on Net Fixed Asset: This is the indicator to assess the profitability of the project and calculated by $(\text{Net operating Income})/(\text{Total Fixed Assets}) \times 100\%$. It is necessary to keep the rate higher than the average interest rate of various funds for investments, which have different interest rates.
- Operating Ratio = $(\text{Operating Expenses})/(\text{Operating Revenues}) \times 100\%$ and Working Ratio = $(\text{Operating Expenses} - \text{Depreciation Expenses})/(\text{Operating Revenues}) \times 100\%$. The Operating Ratio

shows the operational efficiency of the organization as an enterprise, while the Working Ratio shows the efficiency of the routine operations. When the Operating Ratio is less than 70~75% and the Working ratio is less than 50~60%, the operation of the organization is assessed to be efficient.

- Debt Service Coverage Ratio = (Net Operating Income + Depreciation Cost)/(Repayment and Interest on Long-term Loans). This indicator shows whether the operating income can cover the repayment of both the principal and the interest on long-term loans. The ratio should be higher than 1.0 and is desirable to be higher than 1.75.
- Retained Earning at the end of concession period: Both of the conceding authority and concessionaire will need the reinvestment capital by the end of depreciation period for continuous operation of port. Hence they will require the retained earning at amount necessary to reinvest on the same kind of terminal.

Necessary duration period of concession is decided as the period necessary and sufficient to maintain sound financial operation and to recover the initial investment cost

Table 1 Concession Term by Type of Concession

Comparative Characteristic of Landlord Port			
characteristics	Full Concession	Leasehold	Land Rent
term	25-35 years	25-35 years	10years
license	Depends on legislation	Depends on legislation	Depends on legislation
Government guarantee (tax, exchange rate, competition condition etc.)	yes	no	No
Obligation to assume port personnel liability	Often	no	No
Port assets may be pledged as security	yes	Depends on legislation	No
Performance monitoring by Port Authority			
Traffic guarantee by operator	Depends	Depends	No
Private investment in infrastructure	yes	no	No
Tariff control by Gov. or P.A	depends	no	No
Terminal management	Concessionaire or his chosen operator	lessee	Renter
payments	Fixed and variable	Lump-sum, mini-max	Fixed
Legal character of private party	JV often include shipping line	Mainly limited liability company	Limited liability company
Business plan required	yes	depends	No
Revision of user rights after contract period	yes	yes	Yes
Compensation for newly built facilities	depends	To be transferred to new lessee	Not applicable

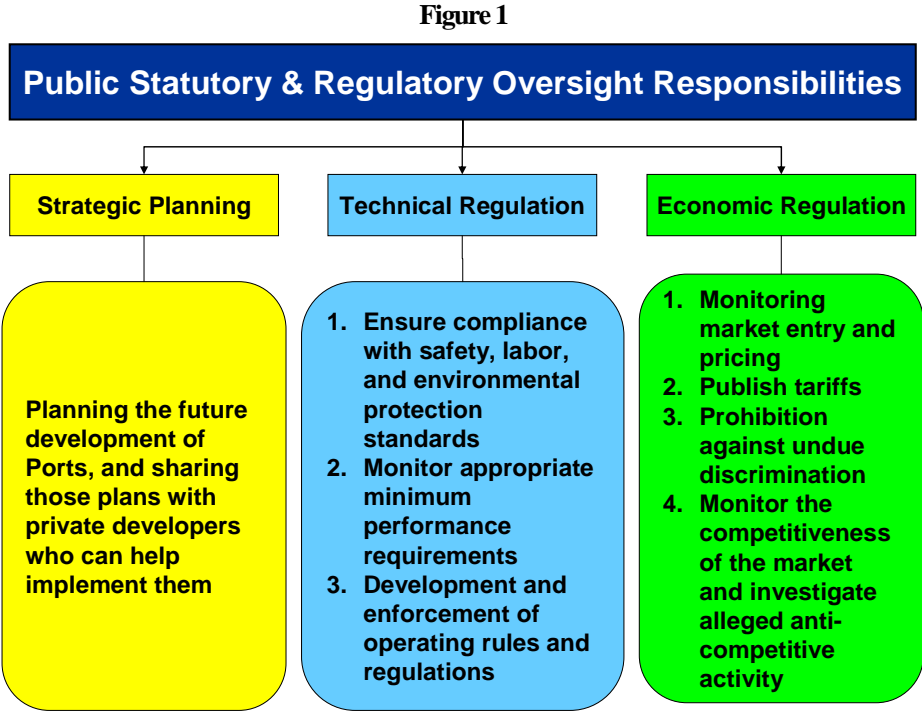
V. Legal and Institutional Framework

It is necessary to have the following institutional framework under the system that Port Authority is established as a landlord.

Public sector’s most important role is to protect the public interest in development, management and operation of port. Public statutory and regulatory oversight responsibilities are usually taken by the form of strategic planning, technical regulation and economic regulation as shown in Figure 1.

1. Strategic Planning

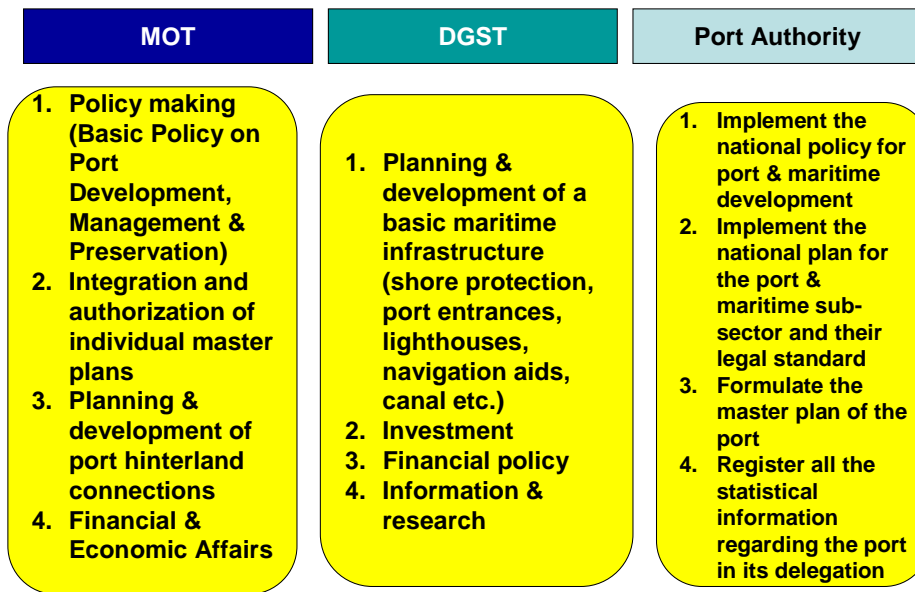
One of the obstacles against private sector to participate in port development, management and operation is the port development plans which are lacking function of balancing supply and demand for the future development. When port development plans are formulated as over supply of the infrastructure compared with potential future demand, private sector will face fear of over competition. Hence, firm foundation of well coordinated future development plan is secured through strategic planning.



In the strategic planning, each of the public sector’s role and function should be clearly defined in a well balanced manner considering the specific position of each organization.

Basic roles of MOT, DGST and Port Authority are shown in Figure 2.

Figure 2 Allocation of Functions for Strategic Planning



In the new shipping law, planning work of MOT, DGST and Port Authority are specified in articles 71-4, 72-1, 76-1, articles 72-1, 76-1, 78, 269-2, articles 83-1-f, 84-a, 83-1-a, 83-1,b, 83-1-c, 272-2 respectively and National Port Principal Plan is to be formulated for a twenty (20) year period. Considering the current conditions where various master plans are proposed by various organizations including private entity, port principal plan of such a long-term range is hardly to perform the function of coordinating demand and supply, and hence it is proposed to establish the system to formulate 5 year and annual investment plan considering the investment priority.

For this purpose, Government Regulation of New Shipping Law should stipulate following additional clauses;

MOT: Minister shall stipulate five (5) year and annual investment plan for port sector in consultation with Minister of Finance by type of financial resource.

DGST: DGST shall coordinate and integrate five (5) year and annual investment plan of individual port in accordance with Port Principal Plan.

DGST shall formulate financial policy of Port Authority for Main Port and National Port.

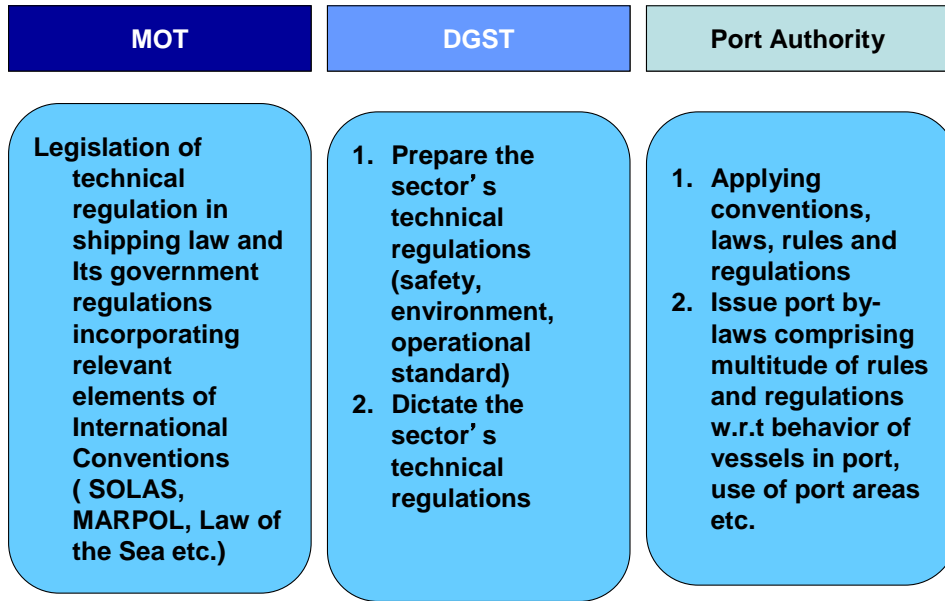
Port Authority: Port Authority shall arrange five year and annual investment plan in accordance with Port Principal Plan.

2. Technical Regulation

In the technical regulation, each of the public sector's role and function should also be clearly defined in a well balanced manner considering the specific position of each organization.

Basic roles of MOT, DGST and Port Authority are shown in Figure 3

Figure 3 Allocation of Roles for Technical Regulation



Technical regulation work of MOT, DGST and Port Authorities are specified in articles 48, 97-2-a, 96-1-a, 96-2, 111-4, 120,121,122, articles 49, 99, 104-2,113, 238, articles 83-1-d, 83-1-e, 84, 88-3, 234, 235, 236, 237, 84-c, 84-b of new shipping law.

For the role of Port Authority, it is, however, necessary to stipulate the following article considering the different environment of each port;

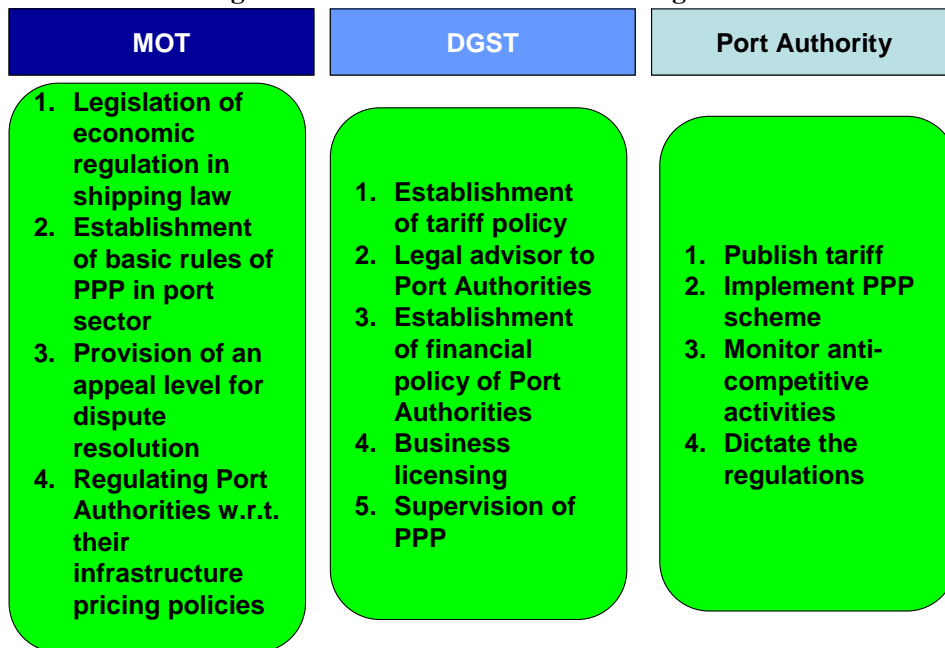
- Port Authority shall issue port by-laws with respect to behavior of vessels in port and use of port areas.

3. Economic Regulation

In the technical regulation, each of the public sector's role and function should also be clearly defined in a well balanced manner considering the specific position of each organization.

Basic roles of MOT, DGST and Port Authority are shown in Figure 4.

Figure 4 Allocation of Roles in Economic Regulation



Economic regulation works of MOT, DGST and Port Authority are stipulated in articles 33, 36, 91-1, 91-2, 91-5, 92, 94-b, 101-1, 101-2, 110-1, 110-2, articles 34, 37, 82-4, 82-5, 95, articles 83-1-g, 82-4 respectively.

4. Missing Links for Promotion of PPP in the Regulatory and Institutional Framework in Indonesia

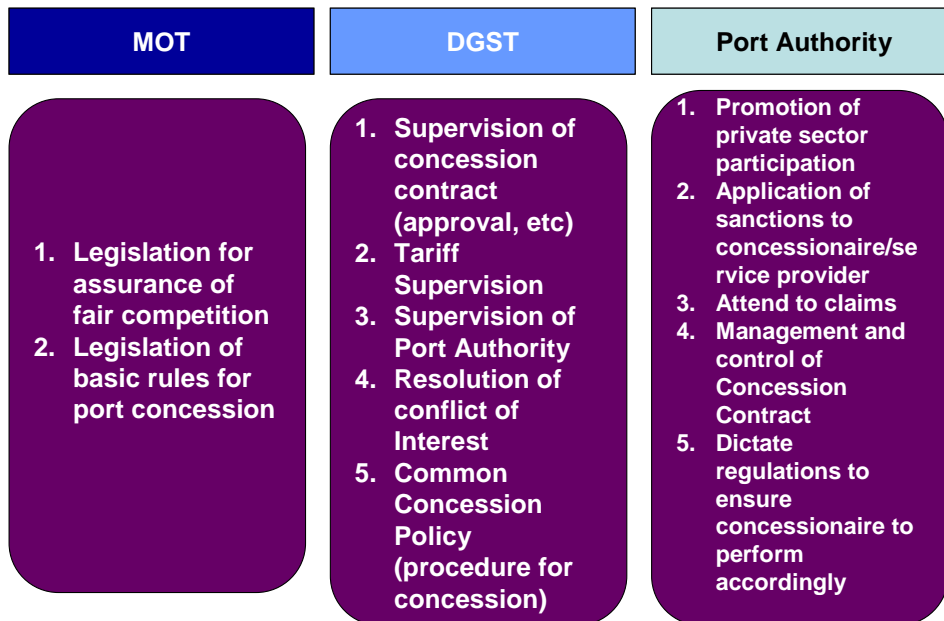
Neither New Shipping Law, nor Its Government Regulation does stipulate framework necessary for the promotion of PPP in the port sector. Most of the regulatory and institutional framework in Indonesia is stipulated either in Presidential Regulation or in Ministry of Finance Regulation.

These regulations cover issues on PPP for all sectors, and hence they tend to lack in sector specific details for their application. It is difficult to cover all the knowledge and skills specific to each sector by KKPPI and/or RMO and hence as to the sector specific issues, implementation rules and procedures are necessary to be decentralized.

4.1 Allocation of Functions among MOT, DGST and Port Authority

In order to effectively and efficiently implement the PPP scheme in port sector, allocation of roles and functions within public sector is necessary as shown in .

Figure 5 Allocation of Roles and Functions among MOT, DGST and Port Authority



4.2 Necessary Legislations

In order to legislate for the assurance of fair competition in the port sector, following Ministerial Regulation is necessary to be stipulated as the port sector implementation regulation of PR. No.67/2005.

Standard for protecting fair competition

(1) Any act that has the intention or the result of restricting in an undue manner the competition among ports and providers of port services shall be expressly prohibited. For this purpose, the following shall be understood to be restrictions to fair competition:

- a) Charging prices that are lower than operational costs
- b) Offering services for free in addition to the officially published services
- c) Agreements of any kind for sharing quotas for servicing or supplying ships or cargo in order to establish of inter-connected price levels
- d) All transactions that are not in an official invoice including their prices, reductions or discounts detailed by each class, type of item or services or supplies provided. Such invoice shall give the details, for the user's knowledge, of the taxes or surcharges that were charged, including those for financing of the upper entities of the national port system.
- e) All those that contemplate the matter of the national entity responsible to guard the exercise of free competition
- f) Exercising a dominant position by some of the port operators

(2) To protect the user's right to the best information, the port operators shall provide at the disposal of the users, and publish and deliver to Port Authority in a manner that Port Authority decides, a list of rates for all the services or supplies offered in their installations.

Method of Implementation of Cooperation Project in Port Sector

In the Presidential Regulation No.67/2005, only competitive bidding is stipulated for the cooperation with business entity for the provision of infrastructure. Considering the variety of concession form in the port sector, it is necessary to apply other mode of bidding and followings are better to be stipulated in the Ministerial Regulation as the implementation guideline for PPP scheme in the port sector.

(1) When implementing port concession, following shall be applied:

- a) Except for succeeding concessions with existing concessionaires, the Conceding Administration shall award concession rights based on competitive bid, competitive proposal, or sole source negotiation.
- b) Competitive bids shall be used when in the judgment of the Competent Authority that financial return is the only relevant criteria for selecting among prospective concessionaires.
- c) Competitive proposals shall be used when, in the judgment of the Competent Authority that criteria other than financial return to the Port are relevant to selecting a prospective concessionaire.
- d) Sole source negotiation shall be used only in those instances where, in the judgment of the Competent Authority, a prospective concessionaire offers services that are unique, patented, or otherwise demonstrated to be available only from a single source.

Regulatory Work of DGST

In order to implement the PPP project more efficiently and effectively, the role of DGST should be more clearly defined in the Ministerial Regulation as follows;

DGST as the regulatory organization shall perform the followings;

- Supervision (approval, conflict resolution) of the concession agreement for the use, operation, maintenance, conservation and administration of port infrastructure and superstructure, including their restoration and construction under the jurisdiction of DGST
- Establish DGST concession policies and procedures to guide Port Authority with respect to concession
- The rates for services rendered to cargo and ships shall be established if all possible by the concessionaire and shall be presented by him in his technical bid, within the process of the respective bidding. If a bidder is allocated the concession, the rates offered in his bid may later be adjusted in accordance with the mechanisms established by DGST, the entity responsible for regulating, controlling and inspecting the port rates.
- Supervise the Port Authority in the implementation of concession including approval of concession plan, bid evaluation, finalization of contract.
- Resolve all conflict of interests that may exist among concessionaire, holders of rights, and users of ports and maritime services.

Concession Implementation of Port Authority

In order to implement the PPP scheme more efficiently and effectively, Port Authority shall;

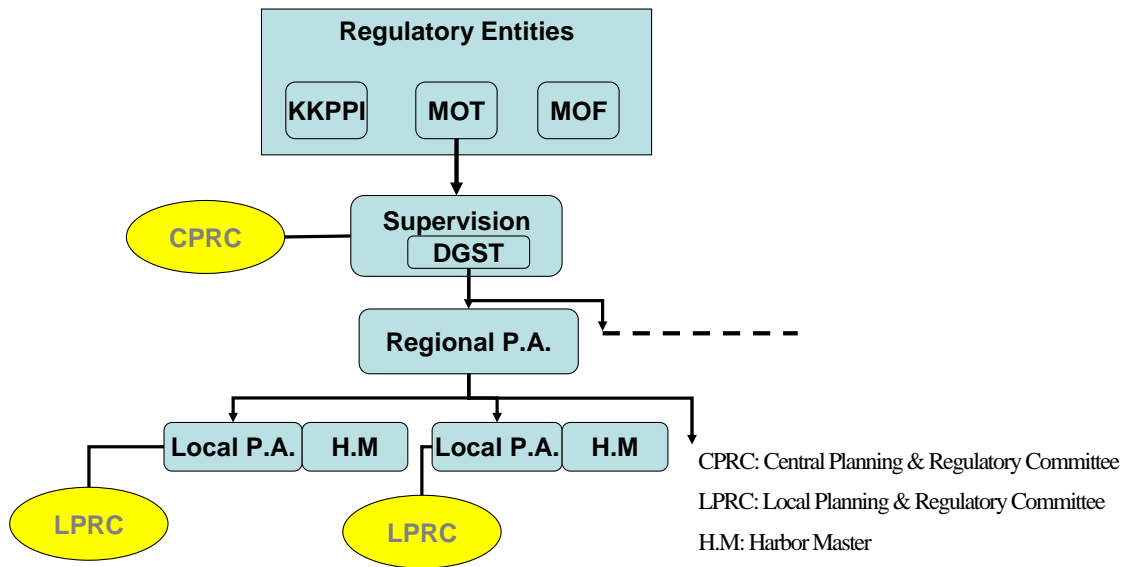
- Promote the participation of the social and private sectors, and the municipalities in operating ports, terminals, marinas and port installations
- Apply sanctions to concessionaires or providers of maritime and port services in accordance with the obligations that each had assumed under contract
- Attend to the claims made by all the users of the maritime and port services provided in the ambit of its port
- Supervise and control the fulfillment of the concession contracts that are entered into with concessionaires, and private operators of ports and all the agents that participate in maritime activity
- Control the functioning of ports in accordance with the commitments assumed by the respective concessionaires and operators, and applying control to fulfill legal standards and port regulations.
- Control the services rendered by concessionaires, operators, and service providers to ships and cargo, insuring tht the users of port services receive efficient, fair and egalitarian treatment
- Exercise the rights corresponding to the State, as established in the respective laws, to control and inspect for the fulfillment of the obligations assumed by the concessionaires and operators of ports and maritime activity
- Dictate regulations to insure that the holders of concessions and usage-permits establish plans and procedures for maintaining the goods used for the services in good condition during the period of said concessions and permits, and to make periodic reports to the DGST, which allow it to determine the level of fulfillment of said plans and procedures

5. Institutional Setting of Port Authority

In terms of PPP implementation scheme, Port Authority shall have the role as Government representative to give concession or any other form to Port Business Entity to conduct business activity at port as set forth in an agreement (New Shipping Law Article 82 (4)) and Concession Proceeds obtained by Port Authority as referred to in section (4) shall constitute state revenue in accordance with the provision of laws and regulations. (ditto (5))

Hence, considering the PR 67/2005 and No.38/PMK.01/2006, institutional organization is recommended to set as in Figure 6.

Figure 6 Institutional Setting for PPP scheme



Considering the concession procedure set in the proposed DGST concession policy, structure of Port Authority is proposed as is shown in Figure 7 and Figure 8.

Figure 7 Institutional Setting of Port Authority

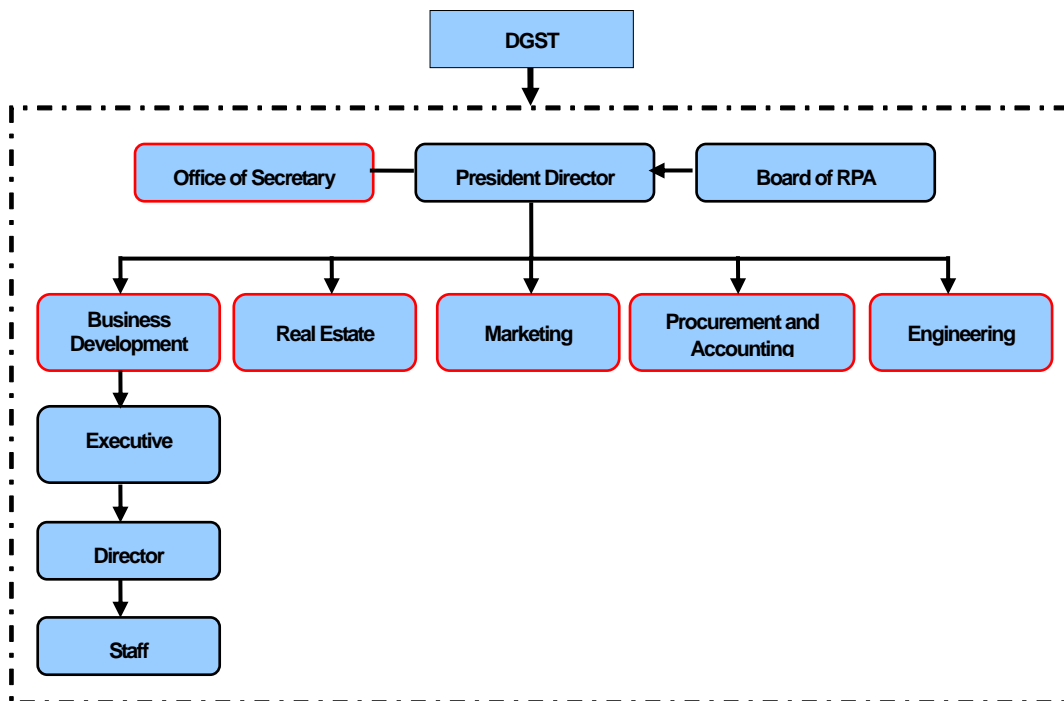
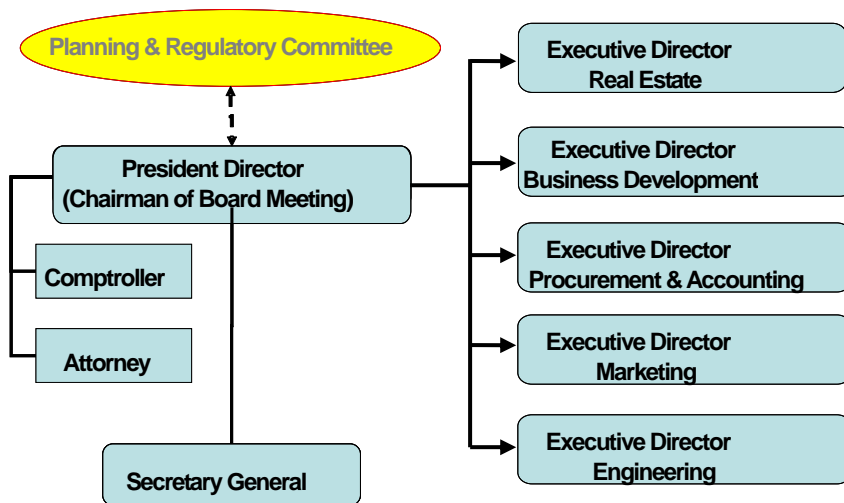


Figure 8 Structure of Port Authority



Port Authority is to have the role as the Government representative in New Shipping Law. It plays the role to coordinate various business entities providing services and using port as well as to coordinate interests of central government and local government in terms of land and water area use as well as coordination with economic activities of the locale. It has also the role of providing port services required by service users in case they are not provided by Port Business Entity (Article 82-(2) of Shipping Law).

Hence, it is desirable to form the board for decision of principal matters on management of port and board member consists of representatives of local government, IPC and central government for efficient and timely decision.

Functions of each department of the Port Authority are proposed as follows;

Office of Secretary

Office of Secretary is responsible for Responsible for general affairs and personal relations, personnel management and legal affairs.

Office of Secretary will be composed of around 7 people including secretary general and it will have three sections- general affairs and personal relation, labor management and legal affairs as is shown in Figure 9.

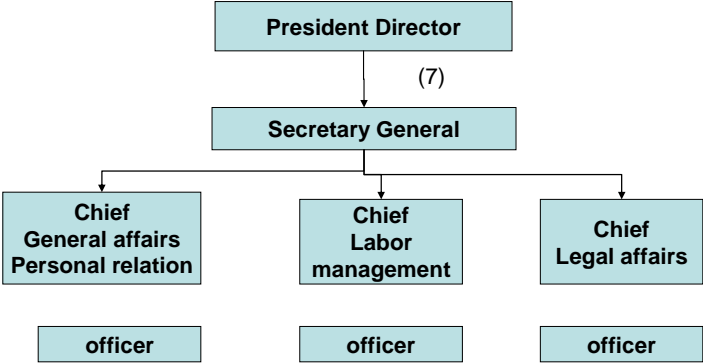
Department of Real Estate

Department of Real Estate is responsible for following matters;

- Responsible for maintaining and making public a revolving 1-month tickler log of all agreements showing their expiration dates and renegotiation dates and a comprehensive port-wide lease map indicating leased and unleased properties
- Responsible for reviewing the log and lease map on a regular basis to determine when leases will expire, minimizing properties under holdover, and when un-leased properties are available to market and take necessary action
- Responsible for recommending several alternate uses for the property

It will have 5 members including director under executive director as is shown in Figure 10.

Figure 9 Office of Secretary



Department of Business Development

Responsibilities of Department of Business Development are as follows;

- Responsible for setting business conditions for the concessionaire and/or lessee
- Responsible for financial management
- Responsible for permission for investment in the port area
- Responsible for economic regulations

It will also have 5 members including director under executive director as is shown in Figure 10.

Department of Procurement & Accounting

Responsibilities of Department of Procurement and Accounting are as follows;

- Responsible for the procurement of all the requirements for the operation of the Port Management Body
- Responsible for accounting of the Port Management Body

It will also have 5 members including director under executive director as is shown in Figure 10.

Department of Marketing

Responsibilities of Department of Marketing are as follows;

- Responsible for Concession Process
- Responsible for Port Sales
- Responsible for tariff setting and supervision

It will also have 5 members including director under executive director as is shown in Figure 11.

Department of Engineering

Responsibilities of Department of Engineering are as follows;

- Responsible for planning & statistics

- Responsible for IT management
- Responsible for construction supervision and maintenance
- Responsible for technical regulations

It will have 12 members including director under executive director as is shown in Figure 11.

Figure 10 Departments of Real Estate, Business and Procurement & Accounting

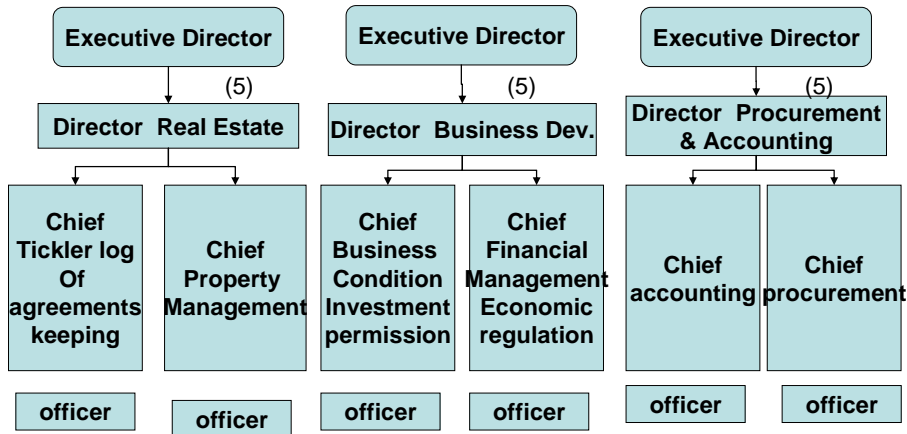
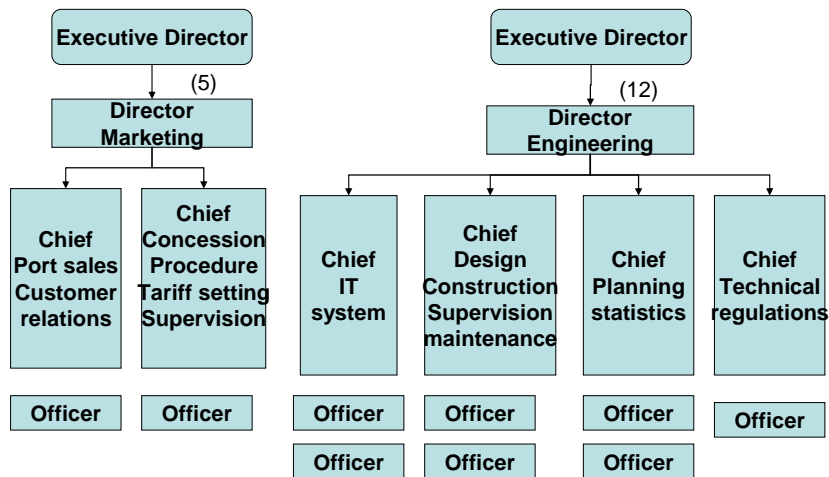


Figure 11 Department of Marketing and Engineering



Planning & Regulatory Committee

The role of the Planning and Regulatory Committee is mainly to deliberate the Port Principal Plan and Regulation such as port by-law and also play the role for public consultation specified in PR No.67/2005.

Member of the committee shall be composed of outsider of the Port Authority and they are desirably nominated among followings;

- Representative of regional port management body
- Representative of DGST
- Representative of Concessionaire
- Representative of Province
- Representative of Users
- Representative of the Operator
- Knowledge Person (1 for maritime affairs, 1 for transport planning)

VI. DGST Concession Policy and Procedure for the Implementation by the Port Authority⁵

1. Policies

1.1 Objectives

The objective of the Port's Real Estate Concession/Leasing Policy is to provide the following:

- 1) Recognizing existing relation ships with current concessionaire/tenant and their investment in the occupied terminal and premises;
- 2) Maintain fair and equitable methods for potential and existing concessionaire/tenant to conduct business with the Port;
- 3) Ensure that no one entity secures a competitive advantage by means of controlling a significant amount of Port property and/or berthing area;
- 4) Establish an approval process that is consistent with the the PR No. 67/2005 and MOT & DGST applicable posies and procedures;
- 5) Specify guidelines for selecting Qualified Concessionaire/Tenants to enter into concessions/leases for Available Property. Rate of Return shall not be the only criteria for the basis of selection. Other factors shall include public benefit and job maximization shall also be included;
- 6) Establish a process for assembling, sharing, and maintaining information related to the proposed selection and negotiation processes in an open and transparent manner;
- 7) Ensure consistency with the Port's Principal Plan and strategic objectives in conceding/leasing property;
- 8) Evaluate performance of concessions/leases annually based on financial viability, minimization of environmental impacts and maintenance of the facility.

1.2 Key Guiding Principles

- 1) The Port Authority shall foster a spirit of partnership with its tenants in the application of this concession/leasing policy, while fulfilling its duties as steward of vital public enterprises, assets and resources.
- 2) The Port Authority shall make port properties available on fair and reasonable terms without unjust discrimination.

⁵ This policy and procedures is modified from POLA Leasing Policy

- 3) The Port Authority shall retain effective management controls over the use of port property assets and will structure management controls in all concession/leases and rental agreements in order:
 - a) To achieve optimal use of port property assets;
 - b) To ensure that additional terminal capacity is not constructed prematurely, yet can be built when it is needed; and
 - c) To foster open and competitive access for new entrant and incumbent port tenants.
- 4) The Port Authority shall establish and maintain a level and structure of rents, fees and charges that are fair and equitable for all concessionaires/tenants, and which are based on current market land values.
- 5) The Port Authority shall establish minimum operational and maintenance standards for users of port property in order to promote safety, maintain appropriate levels and quality of service, and promote the orderly development of port properties.
- 6) The Port Authority shall actively monitor compliance with provisions of concession/lease agreements, shall give timely notice of non-compliance, shall employ available remedies to enforce compliance when reasonable cure periods have lapsed, and shall terminate agreements when appropriate in accordance with good business practices.
- 7) The Port Authority, in its role as a tidelands trustee, must take into account more than just the maximum revenue that can be generated by a new concession/lease. The Port Authority will also consider what is in the best interest of the State of Indonesia, including the essential role all commodities play in maintaining economic growth and job creation, and the need to maintain diversified mix of water dependent uses.
- 8) The Port Authority shall be open and transparent in its selection of new concessionaires/tenants and in concession/lease negotiations. The Executive Director will appoint a lead negotiator who will maintain notes and records of all meetings and negotiation sessions. These notes will be maintained in the concession/lease files for review by all interest parties.

1.3 Applicability and Delegation of Authority

The Executive Director of the Port Authority is authorized to formulate, implement, and amend directives to implement this Policy. Directives which may substantively impact port concessionaire/tenant shall be prepared in consultation with such concessionaires/tenants.

The Executive Director shall formulate and recommend for approval by the Board lease provisions that are consistent with the Policy, which will be included in new concessions/leases, concession/lease extensions, and concession/lease modifications.

The policy addresses all types of agreements involving the use and occupancy of properties within the port for the lease of land, buildings, and improvements.

At the time a concession/lease is submitted to the Board, the Executive Director shall submit a written report (1) disclosing any proposed deviations from the Policy, (2) explaining the rationale for any such deviations, and (3) offering recommendations as to whether such deviations whatsoever from this Policy, the Board's action shall constitute an amendment or exception to the Policy for the narrow and limited purpose of

approving said concession/lease.

The Policy is intended to provide a framework governing concession/leasing and rental decisions as they relate to (1) continuing concessions/leases with existing concessionaires/tenants; (2) development of new agreements and (3) amendments to existing agreements.

Nothing within this Policy shall be construed as conferring upon, nor shall it constitute the granting to any party (1) third party beneficiary rights, (2) a right of private enforcement, or (3) a private right of action. This Policy shall not grant any concessionaire/tenant or any user of any port property the right to enforce the terms and conditions of this Policy.

Nothing within this Policy shall be construed as overriding the terms and conditions of an existing concession/lease between the port and a concessionaire/tenant.

The Policy shall remain in effect until changed by subsequent DGST action.

1.4 Compliance

The Director of Real Estate of the Port Authority shall monitor compliance with concession/lease provisions. The premises of each concession/lease shall be subject to periodic physical inspections coupled with concession/lease compliance evaluations. The premises inspection and concession/lease compliance evaluations should be conducted, as appropriate, with reasonable advance notification.

Failure to compliance with concession/lease provisions after being notified by the Executive Director, with concessionaire/tenant having been given appropriate time to correct the non-compliance, will place the concessionaire/tenant in default of their concession/lease. The Port Authority will proceed against the non-compliance with all concession/lease provisions, including environmental mitigations, maintenance of the facility and non-payment of concession fee/rent.

1.5 General Provisions

The provisions of this section are applicable to conceding/leasing and rental actions for all classes of properties. However, certain classes of properties warrant additional provisions as elaborate in subsequent specification of this Policy.

- 1) No Unauthorized Use. All uses of port properties shall be specifically authorized pursuant to a concession/lease in accordance with this Policy, or by license, permit, or other formal agreement with the Port Authority. Provided that applicable concession fees, rents, charges, or revenue formulas have been established by the Board, the Executive Director, without Board approval may:
 - a) Execute concessions, leases, licenses, permits, or other formal agreements using standard forms in substantially the form approved by the Board by resolution, except when DGST consideration is required.
 - b) Issue a temporary or special use permit that allows an entity to engage in specific activities, in designated areas, and only for a specified period of time not to exceed 30 consecutive days.
 - c) Issue a permit or other form of license or agreement authorizing an entity to engage in a commercial activity at the port.
- 2) Qualified Users. All prospective industrial, commercial and retail users of port property shall meet, and

adhere to, minimum standards with respect to financial capability and responsibility, management qualifications and experience, general reputation to conduct authorized uses, and such other factors as the Executive Director deems appropriate. The Executive Director, in consultation with the CFO is authorized to establish and periodically modify such standards and to permit exceptions to such standards. Additionally, all users shall be obliged to comply with applicable laws, rules, and regulations.

In selecting a Qualified User, the Policy and Procedures will ensure that no one entity secures a competitive advantage by means of controlling a significant amount of port property and/or berthing areas. This will be achieved by analyzing proposals from current concessionaires/tenants for vacant land to determine that their occupancy would result in the maximum use of the property, maintain the port's diversification of cargo and whether it would bring new customers to the port.

- 3) Consistency with Port Principal Plan. Proposed uses of port property shall comply with the Port Principal Plan in terms of appropriate land and water use and permitted activities.
- 4) Rents, Fees, and Charges. Rents, fees, and charges for the use of occupancy of port properties shall reflect fair market value Unless otherwise stated, rents shall reflect triple-net terms (inclusive of all property tax, insurance and utilities related to occupying the property). Subject to approval by the Board, the Executive Director shall determine the methods to be used for establishing rates. Such method shall produce rates that are uniform for each category of land/water use.
- 5) Term. The term of a concession/lease shall be determined by taking into account (1) the operational needs capital investment in development or in leasehold improvements by the concessionaire/tenant and (2) ability of the Port Authority to manage capacity and long-term port development.
- 6) Succeeding Leases for Existing Tenants: The Port Authority shall consider succeeding leases, of similar length or term, for existing tenants, subject to the following conditions: (1) the tenant has made substantial investment in leasehold capital improvements to the premises; (2) the tenant has a consistent record of good standing; (3) permitted uses in the proposed lease are consistent with applicable land use plans; (4) all parts of the premises proposed to be leased are or will be developed or used for permitted uses; (5) the tenant agrees to pay the fair market rent for the property as determined by certified appraiser, and (6) the tenant agrees to comply with the port environmental measures and criteria for operating a terminal or facility. Succeeding lease shall comply with applicable lease policies, minimum standards. Negotiation of a succeeding lease shall commence no later than twelve months before the lease expiration date.

2. Concession Procedure

Port Property concessions extending beyond 15 years, and having an annual revenue beyond Competent Authority's signature authority, are subject to the following concession procedures. Competent Authority subsequent to a competitive bidder selection process outlined below and summarized in the flow chart, Figure No. 4 approves concessions of this type. Following the approval of the concession by Competent Authority, Conceding Administration signs the concession agreement with the Terminal Operator.

2.1 Terminal Operator Solicitation and Selection

Selection of Pre-qualified Bidders

The Concession Evaluation Team (CET) will prepare a Request for Prequalification Application (RFPQA), notify the potential bidders regarding the availability of the property for concession and solicit further interest by advertising in trade publications, local newspapers, and, when appropriate, national and international publications. All RFPQAs shall state the Government's objective regarding the use of property for concession. The RFPQA scope shall include, but not be limited to minimum conditions relating to ;

- Scope of Bid, such as name of the Executing Agency Conceding Administration as the Employer of the concession contract, of the Borrower and Lender of the Loan, when appropriate, requirements of the Lender, etc.
- Submission of Applications, such as the address to submit, time schedule, language to be used, clarification meeting, when appropriate, etc.
- Qualification criteria
- General information of the applicants
- General experience record, such as annual turnover data for last 5 years
- Requirements for Joint Venture
- Joint Venture Agreement, such as the share of the Work undertaken by each partner, etc.
- Particular experience record, such as list of port terminal operation of similar nature and complexity to this concession contract during the last 10 years
- Financial capability, such as the audited financial statements for last 5 years, any evidence showing the applicant's financial position, sources of financing, etc.
- Litigation history

The Port Authority Conceding Administration reserves the right to determine the validity of all Pre-Qualification documents received.

The CET will review, assess and analyze all Pre-Qualification documents received, and make findings to support the Pre-Qualified Bidders recommendation. The CET's review of the Pre-Qualification documents received will be based on uniform criteria to be established and made public at the time of the RFPQA's preparation. The criteria will be based on the objectives contained in the RFPQA and the requested information.

The Director of Marketing shall report the CET findings including the Pre-Qualification documents received, evaluation process utilized, the selection method, recommendation for Pre-Qualified Bidders to the Executive Director of Marketing for recommendation to the Board of Conceding Administration (BCA).

Once the BCA has made its decision, the President Director shall instruct the Executive Director of Marketing to notify Pre-Qualified Bidders of the pre-qualification result. At the discretion of the President Director, instructions to Concession Evaluation Team (CET) may be provided.

Selection of Terminal Operator

The Concession Evaluation Team (CET) will prepare a Request for Proposals (RFP), notify Pre-Qualified Bidders by e-mail and post for the submission of their proposals. The RFP scope shall include, but not be limited to minimum conditions relating to;

- operating requirements, such as terminal design, throughput volume, vessel calls, berth utilization and other terminal operating programs such as off-peak hours;
- environmental requirements, such as identification and observance of environmental policies and procedures relating to terminal construction and operations, maintenance, etc. including how the proposal intends to meet the policy of preventing pollution or controlling it to the maximum extent feasible;
- financial requirements, such as minimum annual guarantees, other revenues to the Port and the financial strength of the proposer; and
- general requirements as required by the Conceding Administration, such as insurance, affirmative action, etc.

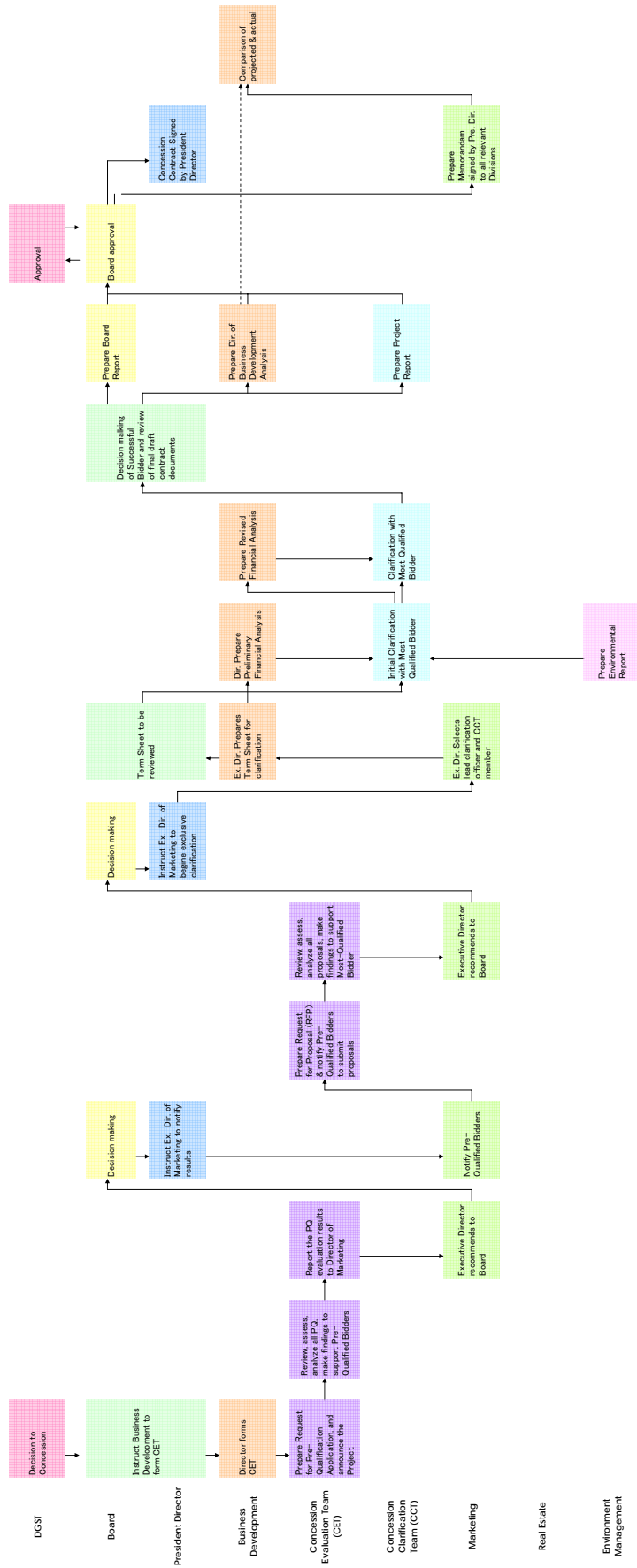
The Conceding Administration reserves the right to determine the commercial viability and validity of all proposals.

The CET will review, assess and analyze all proposals, and make findings to support the most Qualified Bidder recommendation. The CET's review of the offers will be based on uniform criteria to be established and made public at the time of the RFP's preparation. The criteria will be based on the objectives contained in the RFP and the requested information. The CET's analysis and recommendation will be disclosed by the request of proposer(s).

The Director of Marketing shall report the CET findings including the offers received, evaluation process utilized, a financial analyses summary, the selection method, recommendation for a Most Qualified Bidder to the Executive Director of Marketing for recommendation to the BCA.

Once the BCA has made its decision, the President Director shall instruct the Executive Director of Marketing to begin exclusive clarification with the Most Qualified Bidder. At the discretion of the President Director, instructions to Concession Clarification Team (CCT) may be provide.

If the CET determines it is necessary, a second or "back-up" Qualified Bidder will be identified in the CET's recommendations to the BCA.



DGST

Board

President Director

Business Development

Concession Evaluation Team (CET)

Concession Classification Team (CCT)

Marketing

Real Estate

Environment Management

Engineering

Procurement & Accounting

Clarification

Concession Clarification Team (CCT)

The Concession Clarification Team (CCT) and the lead clarification officer will be selected by the Executive Director of Marketing to lead the clarification effort on behalf of Conceding Administration. The CCT shall clarify the submitted proposal with the Most Qualified Bidder(s) as instructed by the BCA. Should clarification reach an impasse with the Most Qualified Bidder, the Executive Director of Marketing will recommend to the BCA, and it may or may not determine, that clarification be terminated with the Most Qualified Bidder and commence clarification with the second or “back-up” qualified bidder. An impasse in clarification shall be determined by means of a recommendation from the CCT and concurred with by the Executive Director of Marketing for consideration by the President Director and the BCA.

Prior to Clarification

The Executive Director of Business Development will prepare a Term Sheet describing the parameters of the agreement’s terms and conditions that will be recommended for clarification. The Term Sheet is to be prepared and submitted to the President Director, Executive Directors and Attorney of Conceding Administration for review before clarification begins. Prior to completing the Term Sheet, the lead clarification officer shall:

- Discuss the matter with all other officers whose area of responsibility or expertise warrants. Such matters as a historical analysis of bidder’s performance, environmental impacts, possible legal issues, and financial considerations shall be covered in the report.
- Consider the matter of other similar concessions and agreements and attempt to achieve an appropriate level of uniformity where necessary or appropriate and discuss the subject in the report.
- Request a Preliminary Financial Analysis (PFA) to the Director of Business Development, based on the latest approved form developed for that purpose. The request to the Director of Business Development should include, where appropriate, more than one scenario to be taken into consideration by the Director of Business Development in determining the rate of return and making the financial analysis and clearly identify any assumption the Director of Business Development is to use in calculating the rate of return.
- If the Director of Business Development disputes any assumption, the Director of Business Development shall nonetheless make an analysis based on the original assumption, together with an analysis based on the Director of Business Development’s assumptions and the basis for the Director of Business Development’s dispute. At such time as the various financial scenarios are presented to the BCA, the President Director will determine which assumption is to be utilized thereafter.
- The PFA is to be submitted directly to the CCT and should include a rate of return analysis based on the latest approved calculation method under the various scenarios agreed upon. The PFA may also include analysis of any aspect of the clarification affecting the finances of the Port, including, but not limited to: credit analysis of the Qualified Bidder; impact of the concession on the quality and magnitude of the Port's cash flow and profitability; any impact on the Port's financing plans; possible impact of the proposed concession on other agreements in the Port when appropriate, and

analysis of deviation from the Port's rate of return policy.

- It is reasonable to assume that the Preliminary Financial Analysis will be made available within ten working days following receipt of the full written request. A shorter time period is expected for subsequent "what if" analysis
- Request an Environmental Report (PER) to the Director of Maritime Administration as to the current environmental condition at the proposed concession area and neighboring (if any) occupier's compliance and cooperation with the Port's objectives of minimizing pollution and controlling it to the extent feasible.
- It is the responsibility of the CCT to present the Term Sheet and recommendation to the President Director. To the extent that it is appropriate, the recommendations in a report should contain alternatives, on a diminishing scale, which would constitute acceptable "fall back" positions during clarification. The PFA (standard format, marked "CONFIDENTIAL") is to be attached to the Term Sheet and all subsequent Board reports, for confidential review by the BCA. The PER shall also be presented to the BCTPA.

Initial Clarification

Following review of the Term Sheet by Executive Directors, the President Director shall authorize the lead clarification officer to initiate clarification, or, when called for by these procedures, discuss the recommendations with the BCA consistent with the articles of the incorporation and regulations, such as This includes consistency with BCA's ethics regulations relating to BCA members.

Upon the determination by the President Director that the proposed concession agreement, amendment or periodic compensation adjustment is consistent with current BCA policy, the President Director may authorize the lead clarification officer to clarify in accordance with the report and recommendations and any clarification instructions from the BCA.

During Clarification with the Most Qualified Bidder

At the outset of clarification, every effort will be made to agree on a reasonable period of time for the completion of clarification. The Most Qualified Bidder is to be informed that other alternatives, including other potential Qualified Bidders, will be considered if clarification cannot be concluded within a reasonable period of time.

It is anticipated that during clarification certain deviation from the Term Sheet may have to be made, and it will be the responsibility of the lead clarification officer to determine whether additional authority needs to be obtained from the President Director. In the same manner, it will be the responsibility of the President Director to determine whether additional instructions should be obtained from the Board.

Whenever counteroffers are made that affect compensation, the lead clarification officer shall request a revised financial analysis from the Director of Business Development ("Revised PFA").

At the time clarification has completed, the lead clarification officer shall request a final financial analysis (the "Director of Business Development Analysis"). This analysis shall provide the final assumptions, findings, and recommendation by the Director of Business Development. The Director of Business Development Analysis will be submitted directly to the lead clarification officer, the President Director, and the BCA.

Clarified Agreement/Document Preparation

Before the final draft document is submitted to a Successful Bidder for execution, it is to be reviewed and approved by the President Director or his/her designee and then the BCA.

Once the concession agreement, or amendment adjustment has been clarified, it will be submitted with a proposed Board report, the Director of Business Development Analysis and Project Report to the BCTPABCA for approval and submitted to Attorney of the Port Authority for review as required under the regulation Following such review, the report will be submitted to the Conceding Administration for approval. If the proposed concession agreement, amendment or periodic compensation adjustment is not consistent with current BCA policies, a report with staff recommendations to modify or exempt this particular process from those policies will be submitted to the BCA for consideration in executive session.

After Clarification

Immediately following the execution and approval of the agreement or amendment, the Director of Marketing will prepare a memorandum for signature by the President Director, that will be sent to all relevant divisions and sections setting forth responsibility for implementation and ongoing administration of the agreement. The purpose of the memorandum is to highlight unusual provisions and deviations from standard practices and to provide special instructions as needed. If there are no deviations or unusual provisions, the memorandum should so state.

At yearly intervals following the effective date of the agreement, the Director of marketing will request the Director of Business Development to perform a comparison of projected and actual revenue, cargo volume, and actual costs. The annual review will align with the periods reflected with the Director of Business Development report, such as fiscal year, calendar year, or compensation year periods. The report shall be transmitted to the President Director and BCA.

Concession Teams

Ad hoc concession evaluation and clarification teams will be designated for each proposed concession.

Concession Evaluation Team (CET)

The CET shall be composed of at least seven (7) Port staff members including the Director of Business Development, to be selected from the following Departments of Port Authority:

- Real Estate
- Business Development
- Environment Management
- Engineering
- Marketing
- Procurement & Accounting
- Attorney (legal advisor only)

The Director of Marketing shall direct the CET. The CET shall administer the proposal evaluation process for the selection of the Most Qualified Bidder and report any findings and recommendations to the BCA and President Director. The Attorney shall be the legal advisor to the CET and will not be a participant in the selection of any proposal.

A written report shall be prepared which summarizes the findings and recommendations of the CET. All information gathered and assembled to produce the written report shall be collected and retained in the Marketing Division.

Concession Clarification Team (CCT)

The CCT will conduct clarification consistent with directives provided by the President Director.

The CCT shall clarify with the parties authorized by the BCA.

The Executive Director of Marketing shall assemble the CCT and advise the members of the CCT of any special instructions given to the team. The CCT will consist of a minimum of three persons, a lead clarification officer, Director of Business Development, and Director of Engineering. Attorney, shall participate only as the legal advisor to the clarification officer. The team will draw on the expertise of the Department's resource people throughout the clarification process. The lead clarification officer will determine if resource people will participate in clarification or be asked to provide backup and resource information outside of the clarification.

It will be the responsibility of the lead clarification officer to keep the President Director and BCA informed of the clarification throughout the process, keep accurate notes and records of all clarification meetings, and prepare the written reports. The lead clarification officer is also responsible for ensuring all notes, records and correspondences relating to the clarification be collected and retained in the Marketing Division.

While the lead clarification officer may assign a person reporting to him or her to assist, the lead clarification officer will maintain a high degree of familiarity with the clarification to be able to discuss the status of clarification with the President Director and the BCA at any time.

Administration

All files, records, and materials compiled, generated, or assembled during the leasing process shall be centrally filed and administered in the Marketing Division.

Table2 Concession Teams

Division	Concession Evaluation (CET)	Concession Clarification (CCT)
Executive Director of Marketing		
Director of Business Development	X	
Attorney (Legal advisor)	X	X
Engineering	X	X
Environmental Management	X	X
Procurement and Accounting	X	
Marketing	X	X
Real Estate	X	*
*:To the extent practical, the Director of Real Estate shall always be a member of the CET		

Another important role of the Port Authority in management of concession contract are to watch performance of the terminal and to secure the payment of concession fee agreed and record the facilities ledger with maintenance and renovation record to verify the assets kept by concessionaire and port authority in the financial statements.

It is necessary to establish concrete standard for accounting and auditing the financial performance both of port authority and concessionaire as well as the compiling form of port facilities ledger.

These issues on management of concession contract will be further detailed in the guideline on the implementation of Government Regulation related to Article 89 of new shipping law.

Appendix-VII : Letter from DGST for Comments of the Draft Final Report



**DEPARTEMEN PERHUBUNGAN
DIREKTORAT JENDERAL PERHUBUNGAN LAUT
GEDUNG KARYA LT. 12 s/d 17**

JL. MEDAN MERDEKA BARAT No. 8
JAKARTA - 10110

TEL. : 3811308, 3813269, 3447017, 3842440
3845430, 3507576, 3813848
Pst. : 4209, 4214, 4227

TLX :
Fax. : 3811786, 3845430, 3507576

November 20, 2009

Mr. Hidehiko Kuroda
Leader of the JICA Study Team
The the Study on New Public Private Partnership Strategy
for the Port Development in the Republic of Indonesia

Re: Confirmation of No Additional Comments on the Draft Final Report

Dear Sir,

We would like to confirm that we do not have any additional comments further to our comments stated in the minutes of meeting on the draft final report which was signed by yourself and myself.

Thank you very much for your cooperation

Suwandi Saputro
Director of Port and Dredging
Directorate General of Sea
Transportation,
Ministry of Transportation
The Republic of Indonesia

Appendix-VIII (1)

MINUTES OF MEETING
ON
THE INCEPTION REPORT
FOR
THE STUDY ON
THE NEW PUBLIC PRIVATE PARTNERSHIP STRATEGY FOR THE PORT
DEVELOPMENT AND MANAGEMENT
IN THE REPUBLIC OF INDONESIA

AGREED UPON BETWEEN

DIRECTORATE GENERAL OF SEA TRANSPORTATION, MINISTRY OF TRANSPORTATION,
THE REPUBLIC OF INDONESIA

AND

JICA STUDY TEAM

JAKARTA, INDONESIA
Feb. 13, 2009



Mr. A. Choliz Kirom
Director of Port and Dredging,
Directorate General of
Sea Transportation,
Ministry of Transportation
The Republic of Indonesia
For Mr. Sunaryo, SH.
Director General,
DGST



Mr. Hidetiko KURODA
Leader of the Study Team
Japan International Cooperation Agency

A team for the Study on New Public Private Partnership Strategy for the Port Development in the Republic of Indonesia (hereinafter referred to as “the Study” and “the Study Team”) organized by the Japan International Cooperation Agency (hereinafter referred to as “JICA”) arrived at Jakarta in the Republic of Indonesia on the 1st of Feb. 2009.

The Study Team submitted thirty (30) copies of the Inception Report for the Study to the Directorate General of Sea Transportation (hereinafter referred to as DGST), Ministry of Transportation, the Republic of Indonesia.

A series of meetings on the Inception Report was held from the 4th to 12th of Feb. 2009 among the Study Team, DGST and other related Organization including Indonesia Port Corporation 2, 3 (hereinafter referred to as “IPCs”). A list of participants is attached in Annex I.

Main items discussed and/or confirmed during the meetings are as follows:

1. The Inception Report was basically accepted with following views and comments by the Indonesian side.
2. DGST suggested that a government regulation regarding redefinition of powers and authorities of related organization is under drafting and related detailed information shall be provided to the Study Team by DGST.
3. Bappenas pointed out that there are so many studies on PPP strategy and the Study should propose new strategy and the Study Team fully recognized the situation and responded that the Study will propose more specific and applicable strategy.
4. The Study Team pointed out the importance of effective and sufficient technical transfer during the Study, and requested DGST to designate the taskforce members capable to collaborate with the Study Team to have workshops for drafting guideline. DGST has designated taskforce as appeared in Annex II. In this connection, DGST requested that three (3) counterpart personnel are to be trained in Japan. The Study Team promised to convey this request to the JICA headquarters in Tokyo.
5. IPC2 suggested that the alignment of the facilities of Bojonegara Port were changed from the proposed location in the past JICA study because of newly arisen oil base development and avoiding rocky sea bed and requested the Study Team to give suggestion on the better alignment at the occasion of site visit. The Study Team replied that the issue will be considered in the Case Study.
6. The Study Team explained that investment plan for access road to the Bojonegara Port will be proposed in the study while negotiation and consultation with the Ministry of Public Work shall be conducted within Indonesian side. DGST fully understands the standpoint of the Study Team.
7. As a results of discussion, facilities for case study is tentatively set as 1 or 2 container terminal(s), breakwater, channel and access road of around 20km in Bojonegara port.
8. Objective facility for case study in Tg. Priok will be focused on a few numbers of berths on Pier III which will be converted to inter-island container terminal.
9. Objective facility for case study at Kintap will be discussed through careful discussion with IPC 3 and DGST as soon as possible.
10. Guideline for the implementation of government regulations covers those in relation with Articles 78, 89, 94, 95 and 99 of the new shipping law.

List of ParticipantsDate: 4th Feb. 2009

Place: "Serbaguna" Meeting Room, Karya Building 17th Floor, DGST-MOC

Agenda: Discussion on IC/R

No.	Name	Institution
<i>(Indonesian side)</i>		
	Mr. Leon Mochamad	Director of Sea Traffic, DGST
	Mr. Harri Boediarso	Directorate of Port & Dredging, DGST
	Mr. Chandra Irawan	Directorate of Port & Dredging, DGST
	Mr. Dwi Hernadji	Directorate of Sea Traffic, DGST
	Mr. M. Tohir	Directorate of Port & Dredging, DGST
	Mr. Irawan S	Directorate of Port & Dredging, DGST
	Mr. Dail Umawil Asii	Bappenas
	Mr. Tahmfdillah	Bappeda of South Kalimantan Province
	Mr. Yogie Nugraha	Planning Bureau, MOT
	Ms. Fina Ulya H	Planning Bureau, MOT
	Mr. Sudarmadi	Analysis Center of Partnership for Transportation Services, MOT
	Ms. Dyah Pitaloka	Analysis Center of Partnership for Transportation Services, MOT
	Ms. Ageng Fajarwati	Analysis Center of Partnership for Transportation Services, MOT
	Mrs. Herwin Nasution, SH	Law Division, DGST
	Mr. Anung T W	Law Division, DGST
	Mr. Eko Hadi R	Planning Division, DGST
	Mr. Brendhard	Planning Division, DGST
	Mr. Yudhonur S P	Planning Division, DGST
	Mr. Rifanie Komara	Planning Division, DGST
	Mr. Karim Lasene	Directorate of Port & Dredging, DGST
	Mr. Bambang Priyono	Directorate of Port & Dredging, DGST
	Mr. Darwin Purba	Directorate of Port & Dredging, DGST
	Mr. Lollan Andy	Directorate of Port & Dredging, DGST
	Mr. Amirullah	Directorate of Port & Dredging, DGST
	Mr. Sri Rahardjo	IPC II
	Mr. Agus Edi Santoso	IPC II
	Mr. Syamsu Rijal	IPC II
	Mr. Viranky	IPC II
	Mr. Nur Imam	IPC II
	Mr. Bangun Swastanto	IPC III
<i>(Japanese side)</i>		
	Mr. HIDEHIKO KURODA	OCDI
	Mr. NAOTA IKEDA	OCDI
	Mr. MASAYUKI FUJIKI	OCDI
	Mr. TERUKI ETO	OCDI
	Mr. TADAHIKO KAWADA	OCDI
	Mr. HIROSHI KATO	Ides inc.
	Mr. YASUO TAKAGAKI	JICA Expert

Annex II**List of Taskforce Member**

Ketua	:	Chandra Irawan	Ditpelpeng Ditjen Hubla
Wakil Ketua 1	:	Harri Boediarto	Ditpelpeng Ditjen Hubla
Wakil Ketua 2	:	Sri Rahardjo	PT. Pelindo II (Persero)
Anggota Sesditjen Hubla	:	1. Kemal Heryandri	Kabag. Perencanaan
		2. Sahat, SH Hubla	Kabag. Hukum Sesditjen
		3. Dail Umawil Asii	Bappenas
		4. Sudarmadi	PKPJT Dephub
		5. Dwi Hermadji	Ditlala Ditjen Hubla
		6. M. Tohir	Ditpelpeng Ditjen Hubla
		7. Eko Hadi R	Bag. Ren Sesditjen Hubla
		8. Brendhard	Bag. Ren Sesditjen Hubla
		9. A. Karim Lasena	Ditpelpeng Ditjen Hubla
		10. Edityawirman	Ditpelpeng Ditjen Hubla
		11. Wisnoe W	Ditpelpeng Ditjen Hubla
		12. Irawan S	Ditpelpeng Ditjen Hubla
		13. Rio I	Ditpelpeng Ditjen Hubla
		14. Bambang Priyono	Ditpelpeng Ditjen Hubla
		15. Sumarliah	Ditpelpeng Ditjen Hubla
		16. Ciptadi D. P	Ditpelpeng Ditjen Hubla
		17. Lollan Andy S P	Ditpelpeng Ditjen Hubla
		18. Darwin Purba	Ditpelpeng Ditjen Hubla
		19. Iwan S	Ditpelpeng Ditjen Hubla
		20. Amirullah	Ditpelpeng Ditjen Hubla
		21. Herwin Nasution, SH Hubla	Bag. Hukum Sesditjen
		22. Rifanie Komara	Bag. Ren Sesditjen Hubla
		23. Yogie Nugraha	Ro. Perencanaan Dephub
		24. Fina Ulya H	Ro. Perencanaan Dephub
		25. Bangun Swastanto	PT. Pelindo III (Persero)
		26. Agus Edi Santoso	PT. Pelindo II (Persero)
		27. Syamsu Rijal	PT. Pelindo II (Persero)
		28. Viranky	PT. Pelindo II (Persero)
		29. Nur Imam	PT. Pelindo II (Persero)
		30. Wakil Menko Perekonomian	
		31. Wakil Departemen Keuangan	
		32. Wakil Kementrian Negara BUMN	
		33. Wakil Bappeda Provinsi Banten	
		34. Wakil Bappeda Provinsi Kalsel	
		35. Wakil Bappeda Provinsi DKI Jakarta	

I. Sekeretariat

1. Yayu	Ditpelpeng Ditjen Hubla
2. Chusnin	Ditpelpeng Ditjen Hubla

Appendix-VIII (2)

**MINUTES OF MEETING
ON
THE INTERIM REPORT
FOR
THE STUDY
ON THE NEW PUBLIC PRIVATE PARTNERSHIP STRATEGY
FOR THE PORT DEVELOPMENT AND MANAGEMENT
IN THE REPUBLIC OF INDONESIA**

AGREED UPON BETWEEN

**DIRECTORATE GENERAL OF SEA TRANSPORTATION,
MINISTRY OF TRANSPORTATION, THE REPUBLIC OF INDONESIA
AND
JICA STUDY TEAM**

JAKARTA, INDONESIA

July 22, 2009



**Mr. Sawandi Saputro
Director of Port and Dredging
Directorate General of Sea Transportation,
Ministry of Transportation
The Republic of Indonesia
For Mr. Sunaryo, SH
Director General, DGST**



**Mr. Hidehiko Kuroda
Leader of the Study Team
Japan International Cooperation Agency**

The team of the Study on New Public Private Partnership Strategy for the Port Development in the Republic of Indonesia (hereinafter referred to as “the Study” and “the Study Team”) organized by Japan International Cooperation Agency (hereinafter referred to as “JICA”) arrived at Jakarta in the Republic of Indonesia on the 1st of July, 2009.

The Study Team submitted thirty (30) copies of the Interim Report for the Study to the Directorate General of Sea Transportation (hereinafter referred to as “DGST”) Ministry of Transportation, the Republic of Indonesia.

A series of meetings on the Interim Report was held from the 3rd to 22nd of July, 2009 among the Study Team, DGST and other related Organizations including Indonesian Port Corporation 2, 3 (hereinafter referred to as “IPCs”). Lists of participants are attached in Annex I ~ III.

Main items discussed and/or confirmed during the meeting are as follows:

1. The Interim Report was basically accepted with following views and comments by the Indonesian side.
2. DGST pointed out that the existing national port system doesn't function effectively because it was formulated around 10 years ago and the circumstances surrounding ports have changed. Therefore, in near future, the new national port system should be studied.
3. DGST requested that the introduction of the PPP scheme on ports is very important to deal with the requests of developing new container terminals and special terminals, therefore a variety of types and models for PPP adapted in the ports and guidelines to support smooth implementation of the Government Regulation should be presented in the Study.
4. The Study Team stated that the Study Team would be willing to present them through a series of workshops to be held from now on.
5. DGST suggested that preparation of the Government Regulation for the Shipping Law No.17 / 2008 was in a final stage and the Study Team requested for DGST to finalize the Government Regulation as soon as possible to draft the implementation guideline for the Regulation within the time limit given to us.
6. IPC2 pointed out that even after the enactment of the Shipping Law No. 17 / 2008, IPC2 would still hold their land and facilities and continue to operate the existing commercial ports and that number of companies to be separated from IPC2 would be less than 40 considering the financial capability.
7. The Study Team suggested that the interpretation of the Shipping Law No.17 / 2008 and its regulation should be discussed continuously among agencies concerned and a series of workshops would support for Indonesian side to attract the private investors.
8. The Study Team presented a tentative schedule of the workshops (see Annex IV) until the end of September and DGST basically agreed with it.
9. The Study Team informed that JICA would invite three (3) counterpart personnel to be

trained in Japan and asked DGST to submit the official application to JICA, DGST replied to submit it in a soonest time.



List of ParticipantsDate: 13th July, 2009Place: Meeting Room "Serbaguna", Karya Building 15th floor, DGST

Agenda: "Presentation and Discussion on Interim Report"

No.	Name	Institution
(Indonesian side)		
1.	Mr. Suwandi Saputro	Director of Port and Dredging
2.	Mr. Chandra Irawan	Directorate of Port and Dredging
3.	Mr. P. Aritonang	Directorate of Port and Dredging
4.	Mr. M. Tohir	Directorate of Port and Dredging
5.	Mr. A. Karim Lasena	Directorate of Port and Dredging
6.	Mr. Harry Boediarso	Directorate of Port and Dredging
7.	Mr. Erlan Abbas	Directorate of Port and Dredging
8.	Mr. Edityawirman	Directorate of Port and Dredging
9.	Mr. Ciptadi D.P.	Directorate of Port and Dredging
10.	Mr. Irawan S.	Directorate of Port and Dredging
11.	Mr. Syafrudin Syam	Directorate of Port and Dredging
12.	Mrs. Wisnu W.	Directorate of Port and Dredging
13.	Mr. Bambang P.	Directorate of Port and Dredging
14.	Mrs. Rusdah	Directorate of Port and Dredging
15.	Mr. Prawoto	Directorate of Port and Dredging
16.	Ms. Amin Nurjannah	Directorate of Port and Dredging
17.	Mr. Anung T.	Legal Division of DGST
18.	Mrs. Andjar Budi W.	Planning Division of DGST
19.	Mrs. Ernita Titis	Planning Division of DGST
20.	Mr. Andre Z.	PKKPJT
(Japanese side)		
21.	Mr. Hidebiko KURODA	OCDI
22.	Mr. Akira KOYAMA	OCDI
23.	Mr. Masayuki FUJIKI	OCDI
24.	Mr. Teruki ETO	OCDI
25.	Mr. Atsushi SATO	OCDI
26.	Mr. Satoshi HARADA	OCDI
27.	Mr. Hiroshi KATO	Ides inc.
28.	Mr. Nobuhide MIYAWAKI	Ides inc.
29.	Mr. Katsuhide NISHIZONO	JICA Expert

List of ParticipantsDate: 14th July, 2009Place: Meeting Room "Serba Guna", Karya Building 17th floor, DGST

Agenda: Presentation and Discussion on Interim Report

No.	Name	Institution
(Indonesian side: Taskforce Members)		
1.	Mr. Suwandi Saputro	Director of Port and Dredging
2.	Mr. Chandra Irawan	Directorate of Port and Dredging
3.	Mr. M. Tohir	Directorate of Port and Dredging
4.	Mr. A. Karim Lasena	Directorate of Port and Dredging
5.	Mr. Harry Boediarso	Directorate of Port and Dredging
6.	Mr. Erlan Abbas	Directorate of Port and Dredging
7.	Mr. Ciptadi D.P.	Directorate of Port and Dredging
8.	Mr. Irawan S.	Directorate of Port and Dredging
9.	Mr. Rio Irawan	Directorate of Port and Dredging
10.	Mrs. Rusdah	Directorate of Port and Dredging
11.	Mr. Prawoto	Directorate of Port and Dredging
12.	Ms. Amin Nurjannah	Directorate of Port and Dredging
13.	Mr. Agus A. Reza	Directorate of Port and Dredging
14.	Mr. Yusran Bakrie	Directorate of Port and Dredging
15.	Mrs. Chusnin T.	Directorate of Port and Dredging
16.	Ms. Yayu Tri A.	Directorate of Port and Dredging
17.	Mrs. Rani Yusnita	Directorate of Port and Dredging
18.	Mr. Husein Latief	IPC III
19.	Mr. Amarto Basuki	IPC III
20.	Mr. Saptono	IPC II
21.	Mr. Mulyadi	IPC II
22.	Mr. Sordarjoko	Legal Division of DGST
23.	Mr. Sulki'lli	Legal Division of DGST
24.	Mr. Anung T.	Legal Division of DGST
25.	Mrs. Andjar Budi W.	Planning Division of DGST
26.	Mr. Priyono	Legal Bureau of MOT
27.	Mr. Edi Purwanto	Legal Bureau of MOT
28.	Mr. Saladin A.	Planning Bureau of MOT
29.	Sarjito Hadi	Financial Bureau of MOT
30.	Mr. Zainuddin	DITKAPPEL
31.	Iman Satria	DITKAPPEL
32.	Mr. Darmawan	DITLALA
33.	Ms. Ajeng Fajarwati	PKKPJT

A

(Japanese side)

34. Mr. Hidehiko KURODA	OCDI
35. Mr. Akira KOYAMA	OCDI
36. Mr. Masayuki FUJIKI	OCDI
37. Mr. Teruki ETO	OCDI
38. Mr. Atsushi SATO	OCDI
39. Mr. Satoshi HARADA	OCDI
40. Mr. Hiroshi KATO	Ides inc.
41. Mr. Nobuhide MIYAWAKI	Ides inc.
42. Mr. Katsuhide NISHIZONO	JICA Expert



List of ParticipantsDate: 16th July, 2009Place: Meeting Room "Ditpelpeng", Karya Building 15th floor, DGST

Agenda: Discussion on the new Shipping Law and the draft Government Regulation

No.	Name	Institution
(Indonesian side)		
1.	Mr. Suwandi Saputro	Director of Port and Dredging
2.	Mr. Harry Boediarso	Directorate of Port and Dredging
3.	Mr. M. Tohir	Directorate of Port and Dredging
4.	Mr. Rio Irawan	Directorate of Port and Dredging
5.	Mr. Agus A. Reza	Directorate of Port and Dredging
6.	Mr. Edityawirman	Directorate of Port and Dredging
7.	Mr. Herry	Directorate of Port and Dredging
8.	Mr. Prawoto	Directorate of Port and Dredging
9.	Mr. Amin Nurjannah	Directorate of Port and Dredging
10.	Mr. Wawan	Directorate of Port and Dredging
11.	Mr. Ciptadi	Directorate of Port and Dredging
12.	Mr. Aries Wibowo	Directorate of Port and Dredging
13.	Mr. Ngatiyo	Directorate of Port and Dredging
14.	Mr. Suhendra	Directorate of Port and Dredging
15.	Mr. Joko Pujiyanto	Legal Division of DGST
16.	Mr. Anung Trijoko	Legal Division of DGST
17.	Mrs. Rita E.M.S	Planning Division of DGST
18.	Mrs. Ajeng Fajarwati	PKK PJT
(Japanese side)		
19.	Mr. Hidehiko KURODA	OCDI
20.	Mr. Akira KOYAMA	OCDI
21.	Mr. Masayuki FUJIKI	OCDI
22.	Mr. Teruki ETO	OCDI
23.	Mr. Nobuhide MIYAWAKI	Ides Inc.

Annex IV

Workshop Schedule (Jul 2009 – Sep 2009) (Tentative, as of 17th July 2009)							
Mo.	Date	Day & Hours	activity	text		Presenter	
July	13-Jul-09	Monday	10:00-11:30	Interim report	interim report	case studies	Koyama, Sato, Miyawaki
			11:30-13:00	Interim report	interim report	PPP strategy	Kuroda, Eto
	14-Jul-09	Tuesday	10:00-12:00	Interim report	interim report	PPP strategy	Kuroda
							Koyama, Sato, Miyawaki
	16-Jul-09	Thursday	10:00-11:30	Regulatory framework on PPP	Regulatory framework PA, DGST, MOT	summary of interim report Framework	Kuroda
				Regulatory framework on PPP	Q & A	Government regulation interpretation	DGST
	22-Jul-09	Wednesday	10:00-12:00	M/M discussion			
			17:00	M/M Sign			
	23-Jul-09	Thursday	AM	JICA			
			PM	Embassy			
27-Jul-09	Monday	10:00-11:30	Financial Analysis for PPP	Manual	Structure of Financial Model	Miyawaki/Kuroda	
		11:30-13:00	Points of concession agreements	PWP		Kuroda/Eto	
30-Jul-09	Thursday	10:00-11:30	Port Planning Standard			Koyama	
		11:30-13:00	Port Planning Standard	Discussion	What's are wrong with Indonesian Plan	DGST	
August	4-Aug-09	Tuesday	10:00-11:30	Port Planning Standard			Koyama,
			11:30-13:00	Documents necessary for port plan		Sample of Port Plan	Koyama
	11-Aug-09	Tuesday	10:00-11:30	Model Rules on Port Land Premises and Port Water Area			Koyama/Fujiki
			11:30-13:00	Qualification for the terminal operator			Eto
	18-Aug-09	Tuesday	10:00-11:30	Model Rules on Port Land Premises and Water Area			Koyama
			11:30-13:00	Model Rules on Port Land Premises and Water Area		Regulation in Indonesia on control of land area and water area	DGST
25-Aug-09	Tuesday	10:00-11:30	Technical Standard for the Construction of Port		CDIT system	Koyama	
		11:30-13:00	Guideline for PPP promotion		Tendering System	Eto	
September	1-Sep-09	Tuesday	10:00-11:30	Guideline for PPP promotion		Management of Concession Contract	Kuroda
			11:30-13:00	Guideline for PPP promotion		Management of Concession Contract	
	8-Sep-09	Tuesday	10:00-11:30	Risk Analysis on Port Concession			Nose
			11:30-13:00	Method for the evaluation of terminal capacity		L/m, Queuing theory,	Kuroda, Koyama
	15-Sep-09	Tuesday	10:00-11:30	Performance Standard		how to set the performance standard?	Kuroda
			11:30-13:00	Government regulation implementation guideline		Draft Discussion	Koyama, Kuroda
24-Sep-09	Thursday	10:00-11:30	Government regulation implementation guideline		Draft Discussion	Koyama, Kuroda	
		11:30-13:00	Government regulation implementation guideline		Draft Discussion	Koyama, Kuroda	

Appendix-VIII (3)

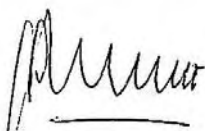
**MINUTES OF MEETING
ON
THE DRAFT FINAL REPORT
FOR
THE STUDY
ON THE NEW PUBLIC PRIVATE PARTNERSHIP STRATEGY
FOR THE PORT DEVELOPMENT AND MANAGEMENT
IN THE REPUBLIC OF INDONESIA**

AGREED UPON BETWEEN

**DIRECTORATE GENERAL OF SEA TRANSPORTATION,
MINISTRY OF TRANSPORTATION, THE REPUBLIC OF INDONESIA
AND
JICA STUDY TEAM**

JAKARTA, INDONESIA

November 5, 2009



**Mr. Suwandi Saputro
Director of Port and Dredging
Directorate General of Sea Transportation,
Ministry of Transportation
The Republic of Indonesia
For Mr. Sunaryo, SH
Director General, DGST**



**Mr. Hidehiko Kuroda
Leader of the Study Team
Japan International Cooperation Agency**

The team of the Study on New Public Private Partnership Strategy for the Port Development and Management in the Republic of Indonesia (hereinafter referred to as "the Study" and "the Study Team") organized by Japan International Cooperation Agency (hereinafter referred to as "JICA") arrived at Jakarta in the Republic of Indonesia on the 29th of October, 2009.

The Study Team submitted fifty (50) copies of the Draft Final Report for the Study to the Directorate General of Sea Transportation (hereinafter referred to as "DGST"), Ministry of Transportation, the Republic of Indonesia.

A series of meetings and a seminar on the Draft Final Report were held from the 2nd to 5th of November, 2009 among the Study Team, DGST and other related Organizations. Lists of participants of the meetings are attached in Annex I.

Main items discussed and/or confirmed during the meetings are as follows:

1. It was better to implement the Studying general PPP strategy and then select the appropriate project for its case study.
2. What Indonesia wants is the recipe to cope with the transition stage from current PELINDO oriented management to the management by Port Authority which is not included in the Scope of Work of the Study.
3. The Draft Final Report was basically accepted by the Indonesian side. Indonesian side shall submit official written comments on the Draft Final Report to the Study Team by the end of November for the finalization of the report.
4. DGST stated that the Government Regulation about Ports No.61/October 20/ 2009 for the new shipping law No.17/2008 was already signed by the President and DGST shall prepare necessary ministerial regulations referring to the guidelines concerning the PPP scheme proposed in the Study.
5. DGST also stated that four pilot port authorities are planning to be established by the end of this year as the first stage of reformation of port management system.
6. DGST pointed out the importance of capacity building of DGST and Port Authority through the effective technical assistance to enable them to implement the PPP scheme in port sector. The Study Team promised to convey DGST's desire to the JICA.

LIST OF ATTENDANT

DAY	: Thursday
DATE	: November 5 th , 2009
TIME	: 10.00 AM
AGENDA	: Presentation "Draft Final Report of PPP Study" by JICA Team Study
ROOM	: Meeting Room "Ditpelpeng", Karya Building 15 th floor Jl. Medan Merdeka Barat, No.8, Central Jakarta.
CHAIR PERSON	: Director of Port and Dredging

1. Suwandi Saputro, Mr	Director of Port and Dredging, DGST
2. Chandra Irawan, Mr	Directorate of Port and Dredging, DGST
3. Erlan Abbas, Mr	Directorate of Port and Dredging, DGST
4. Ciptadi D.P., Mr	Directorate of Port and Dredging, DGST
5. Rusdah, Mrs	Directorate of Port and Dredging, DGST
6. Bambang Priyono	Directorate of Port and Dredging, DGST
7. Agus Ahmed R, Mr	Directorate of Port and Dredging, DGST
8. Panahatan Panjaitan, Mr	Directorate of Port and Dredging, DGST
9. Zulkarnaen, Mr	Directorate of KPLP, DGST
10. Boss M., Mr	Directorate of Kappel, DGST
11. A. Fitri H., Ms	Directorate of Navigation, DGST
12. M. Arianto W., Mr	Directorate of Navigation, DGST
13. Samson Sinaga, Mr	Directorate of LALA, DGST
14. Woro, Ms	Legal Bureau of MOT
15. Tetra Miro, Mr	Financial Bureau of MOT
16. Inggita Dhairyya P., Ms	Financial Bureau of MOT
17. Yudhonur S.P., Mr	Planning Division of DGST
18. Andre Zulfa, Mr	PKKPJT of MOT
19. Johny M., Mr	Puslitbang, MOT
20. Pramestie Wulandary, Ms	IPC II
21. Susefyo, Mr	IPC II
22. M. Susilo, Mr	IPC II
23. Arief Prabowo, Mr	IPC III
24. Fadjar S., Mr	IPC III
25. Moch. Chairael, Mr	IPC III
26. Dail Umamil A.	Directorate of Transportation of Bappenas
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