

Ports & Terminals

Contributing editor
Alex Kyriakoulis



2017

GETTING THE
DEAL THROUGH

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Ports & Terminals 2017

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CONTENTS

Global overview	5	Netherlands	72
Alex Kyriakoulis Holman Fenwick Willan LLP		Arnold J van Steenderen and Charlotte J van Steenderen Van Steenderen MainportLawyers BV	
Australia	8	Nigeria	77
Amanda Davidson and Christopher Eves Holman Fenwick Willan LLP		Ben Unaegbunam Adepetun Caxton-Martins Agbor & Segun (ACAS-Law)	
Brazil	13	Panama	82
Godofredo Mendes Vianna and Juliana Pizzolato Furtado Senna Law Offices Carl Kincaid – Mendes Vianna Advogados		Joel R Medina and Rudy Cedeño G Icaza, González-Ruiz & Alemán	
Canada	18	Paraguay	86
Shelley Chapelski and Greg Lewis Bull, Housser & Tupper LLP		Raúl Prono Toñanez and Juan Pablo Palacios Velázquez Palacios, Prono & Talavera	
China	22	Peru	92
Connie Chen and Joyce Fong Holman Fenwick Willan LLP		Francisco Arca Patiño and Carla Paoli Consigliere Estudio Arca & Paoli Abogados SAC	
Croatia	27	Portugal	97
Maja Dotlić and Gordan Stanković Law Firm Vukić & Partners Ltd		Jose Luis Moreira da Silva SRS Advogados, RL	
Cyprus	33	Russia	102
Costas Stamatiou, Kyriacos Kourtellos and Nikoletta Lambrou Andreas Neocleous & Co LLC		Alexander Mednikov Jurinflot	
Denmark	37	South Africa	106
Ulla Fabricius and Christian Benedictsens-Nislev NJORD Law Firm		Andrew Pike, Mark van Velden, Norma Wheeler and Karl Laureau Bowmans	
Germany	42	Sri Lanka	112
Benjamin Hub, Gernot-Rüdiger Engel and Christoph von Burgsdorff Luther Rechtsanwalts-gesellschaft mbH		Savantha De Saram and Jivan Goonetilleke DL & F De Saram	
India	47	Turkey	116
Krishan Singhania, SN Verma and Purvai Sharma Singhania & Co		Esin Çamlıbel and Grace Maral Burnett TURUNÇ	
Indonesia	53	United Kingdom	121
Arfidea D Saraswati, Gabriella MC Ticoalu and Tara Priscilla Ogilvie Arfidea Kadri Sahetapy-Engel Tisnadisastra (AKSET)		Alex Kyriakoulis and Joseph Botham Holman Fenwick Willan LLP	
Japan	59	United States	125
Mitsunari Taketani Tagawa Law Office		Matthew J Thomas Blank Rome LLP	
Mexico	64	Venezuela	130
Juan Carlos Serra and Rodolfo Barreda Basham, Ringe y Correa		José Alfredo Sabatino Pizzolante Sabatino Pizzolante Abogados Marítimos & Comerciales	

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General

1 Which are the key ports in your jurisdiction and what sort of facilities do they comprise? What is the primary purpose of the ports?

The key public ports in Indonesia are Tanjung Priok, Merak, Tanjung Perak and Batam Center. Most offer similar facilities, such as loading and unloading of containers, heavy machinery, bulk raw materials and imported and exported goods; vessel services; passenger transport; and ro-ro services for motor vehicles. The primary purpose of the ports commonly includes transshipment, gateway and passenger ferry transport.

In order to prepare the country for future growth and address infrastructure gaps, the government has made new port development a major priority. The Official 2015 Public Private Partnership Book lists several major port projects, including Maloy International Port (East Kalimantan), Kuala Tanjung International Hub Port (North Sumatera), Bitung International Hub Port (North Sulawesi) and the expansion of Kabil Port (Batam, Riau Island), among others.

Separately, the Indonesian government has proposed that 14 public ports be dedicated to coal export. Some of these are existing ports: Southern Aceh; Padang; Riau Bay; Jambi Bay; Port of Bengkulu; Tanjung Api-api in South Sumatera; Tarahan in Lampung; Balikpapan, Adang Bay, Berau and Maloy in East Kalimantan; and Taboneo, Sungai Danau and Batulicin in South Kalimantan.

2 Describe any port reform that has been undertaken over the last few decades and the principal port model or models in your jurisdiction.

Formerly, Law No. 21 of 1992 on Shipping (the Old Shipping Law) gave a monopoly to port administrators (the representatives of the government at ports; ie, the port authority and port administrator unit) and four state-owned enterprises established under government regulations named PT Pelabuhan Indonesia (Pelindo) I, II, III and IV to perform port operations. Since the enactment of Law No. 17 of 2008 on Shipping (the Shipping Law), ports can be operated by an Indonesian private 'port business entity' (BUP) holding a port business entity licence (BUP Licence) through a concession agreement with the port authority (for commercial ports) or port administrator unit (for non-commercial ports).

The Shipping Law also introduced 'terminals for own interest', which are owned and operated by a private party to support their business activities inside a port working area and port interest area. Under the Old Shipping Law, private parties could only operate 'special ports' (now called 'special terminals'), which had to be outside a port working area and port interest area.

In short, the Shipping Law aims to separate the roles of port regulators and operators and encourage the participation of private parties in port operation.

3 Is there an overall state policy for the development of ports in your jurisdiction?

Article 9 of Government Regulation No. 61 of 2009 on Ports, as amended by Government Regulation No. 64 of 2015 (the Port Regulation), provides that existing and future ports shall follow the national port policy, location plan and port hierarchy. The national port

masterplan is determined by the Minister of Transportation (MOT) for a period of 20 years and can be reviewed every five years. The port location plan is based on national, provincial and regional spatial planning; social and economic development; natural resources potential; and strategic environmental development, either national or international.

4 What 'green port' principles are proposed or required for ports and terminals in your jurisdiction?

In general, the Port Regulation provides the obligation of port authorities and port business entities to preserve the environment and comply with prevailing environmental laws and regulations. The MOT must determine a port masterplan and port location stipulation based on an environmental feasibility study. The port authority, port administrator unit and BUPs also have a duty to preserve the environment and prevent pollution in port areas.

The Lamong Bay expansion of Tanjung Perak is said to be the first 'green' container terminal in Indonesia because it will use gas-fuelled modern equipment to reduce carbon emissions.

Legislative framework and regulation

5 Is there a legislative framework for port development or operations in your jurisdiction?

Yes. Port development is regulated under the Port Regulation, which allows privatisation through a concession agreement between the port authority and a private BUP. Further regulations are enacted at the presidential, ministerial and director general levels to administer technical matters, such as the procedure to obtain concessions through public tender or direct selection/appointment, as well as the minimum capital requirements for a BUP.

Public-private partnership (PPP) for ports is permitted under Presidential Regulation No. 38 of 2015 on Cooperation between the Government and Business Entities in the Provision of Infrastructure (the PPP Regulation).

6 Is there a regulatory authority for each port or for all ports in your jurisdiction?

Yes, all ports in Indonesia are subject to the following regulatory authorities:

- the port authority, which is responsible for regulations and development, control and supervision of the port. Port authorities are responsible for ports that are commercially operated;
- the port administrator unit, which is responsible for ports that are not yet commercially operated; and
- the harbourmaster, who is responsible for the safety and security of the port.

7 What are the key competences and powers of the port regulatory authority in your jurisdiction?

The port authority is responsible for:

- providing onshore and offshore land for the port;
- providing and maintaining anchor, port pool, cruise lane and road arrangement;
- providing and maintaining aids to navigation;
- ensuring safety and order in the port;

- ensuring and maintaining the sustainability of the port environment;
- preparing the port masterplan comprising the port working area and port interest area;
- suggesting a rate to be determined by the MOT, for use of water or land, and port facilities provided by the government, as well as port services convened by the port authorities in accordance with the prevailing laws and regulations; and
- ensuring smooth distribution of goods.

In addition to the competences above, the port authority is responsible for funding port operations.

The port administrator unit is responsible for:

- providing and maintaining anchor, port pool and shipping lane;
- providing and maintaining a navigation-shipping aid facility;
- ensuring safety and order in the port;
- ensuring and maintain sustainability of the port environment;
- preparing the port masterplan, comprising the port working area and port interest area;
- ensuring the smooth distribution of goods; and
- providing port facilities.

The harbourmaster is responsible for safety and security of the port, including implementation, supervision and law enforcement in the field of water transportation, ports and maritime environmental protection. In addition, the harbourmaster is responsible for search and rescue around the port vicinity.

8 How is a harbourmaster for a port in your jurisdiction appointed?

The Port Regulation provides that the harbourmaster will be appointed by a minister upon prior consultation with the relevant sectoral ministry (ie, appointment of a harbourmaster in a fishery port is subject to consultation with the Minister of Marine Affairs and Fisheries).

9 Are ports in your jurisdiction subject to specific national competition rules?

No. Since the reformation of the port regime through the enactment of the Shipping Law, BUPs are free to compete with one another in providing port services commercially in one or more terminals. However, this is subject to the general Indonesian anti-competition rules under Law No. 5 of 1999 on the Prohibition of Monopoly Practices and Unfair Business Competition (the Anti-Trust Law).

Under the Old Shipping Law, port business was monopolised by the government and the four Pelindos, which was permissible under Indonesia's Constitution and the Anti-Trust Law, which allow monopolies in sectors of production that are important for the livelihood of the state by state-owned enterprises or a body or institution formed or appointed by the government.

10 Are there regulations in relation to the tariffs that are imposed on ports and terminals users in your jurisdictions and how are tariffs collected?

Tariffs are determined based on public service, improvement of service quality, the interest of service users, improvement of the flow of services, return on investment and business development, as stipulated under the Port Regulation.

Tariffs for services provided by a BUP are determined based on the type, structure and tariff classification determined by the MOT using guidelines stipulated under MOT Regulation No. PM.95 of 2015 on Guidelines for Stipulation of Tariffs for Port Services by BUP. In the concession agreement, the initial tariff and tariff adjustments are agreed between the BUP and the port authority by considering the foregoing regulation.

Tariffs for services performed by the port authorities are determined by the port authorities themselves after consulting with the MOT. For ports commercialised by provincial and regional or city governments, tariffs will be determined based on regional regulation and will serve as regional income. Tariffs for non-commercial ports operated by the government are determined by government regulation and will be non-tax state revenue.

The collection of tariffs is performed by the relevant port authority.

11 Does the state have any public service obligations in relation to port access or services? Can it satisfy these obligations through a contract with a private party?

Yes, the state is obliged to provide certain public services in relation to port access or services.

A port must be constructed based on the port masterplan stipulated by the MOT in accordance with social and economic conditions, and shall fulfil a number of public facilities: among others, road and railway access to the terminals.

Port access can be fulfilled through a concession agreement with a private party.

12 Can a state entity enter into a joint venture with a port operator for the development or operation of a port in your jurisdiction? Is the state's stake in the venture subject to any percentage threshold?

Yes. A state-owned enterprise can operate a port on its own or it can enter into a joint venture (JV) with a port operator (either a local or foreign party) to create a BUP (a single purpose company established for port business) with minimum paid-up capital ranging from 25 billion rupiah to 1 trillion rupiah as regulated under MOT Regulation No. 45 of 2015 on Capital Requirements for Business Entities in the Field of Transportation. The state's stake in the venture is not subject to any percentage threshold. However, if the venture also wishes to hold a state entity's status then the state's share ownership in the venture must at least be 51 per cent.

13 Are there restrictions on foreign participation in port projects?

Yes. Based on Presidential Regulation No. 44 of 2016 on List of Business Fields Closed, and Business Fields Open, with Conditions, to Investment (the Negative Investment List), foreign capital ownership in a BUP is limited up to 49 per cent. However, if the BUP is publicly listed at the Indonesian Stock Exchange then such foreign restriction should not be applicable. If the port business is implemented through a PPP scheme, it is allowed to have up to 95 per cent foreign ownership during the period of concession.

Public procurement and PPP

14 Is the legislation governing procurement and PPP general or specific?

Both procurement and PPP for public services are specifically governed in Indonesia. Procurement is governed under Presidential Regulation No. 54 of 2010 on Procurement of Goods and Services by the Government (as amended by Regulation No. 35 of 2011 (First Amendment), Regulation No. 70 of 2012 (Second Amendment), Regulation No. 172 of 2014 (Third Amendment) and Regulation No. 4 of 2015 (Fourth Amendment)).

The PPP Regulation recently replaced the previous Presidential Regulation. Further, Presidential Regulation No. 78 of 2010 on Provision of Government Guarantees for PPP Infrastructure Projects through Indonesia Infrastructure Guarantee Fund (IIGF) (the IIGF Regulation) regulates guarantees on the financial obligations of PPP supervisors (the government or state-owned enterprise) through financial compensation to the business entity for infrastructure risks through a guarantee agreement.

PPP is also governed using a cross-sector regulatory framework. Minister of Finance (MOF) Regulation No. 260 of 2010 regulates the procedure for requesting and providing government guarantees, whereas MOF Regulation No. 223 of 2012 regulates the viability gap fund. BAPPENAS Regulation No. 4 of 2015 on Procedure to Implement Government and Business Entity Cooperation in the Provision of Infrastructure (BAPPENAS Reg. 4/2015) also provides procedures to implement a PPP.

15 May the government or relevant port authority consider proposals for port privatisation/PPP other than as part of a formal tender?

Yes, ports can be cooperated through a PPP scheme as affirmed by the PPP Regulation and BAPPENAS Reg. 4/2015 on Procedures to Implement Cooperation between the Government and Business Entities in the Provision of Infrastructure.

The PPP Regulation stipulates that a business entity may propose a PPP (unsolicited proposal) to the minister or head of the region if it:

- is technically integrated with the master plan of the relevant sector;
- is economically and financially feasible; and
- the business entity concerned has the financial capability to fund the provision of infrastructure.

The business entity must submit a feasibility study of the unsolicited proposal for the government's assessment. After the government approves the unsolicited proposal, a tender process should still be conducted. There are, however, special benefits for the initiator of the unsolicited proposal, whereby they will be granted:

- 10 per cent additional points in the tender assessment;
- the right to match the best bid in the tender; and
- the purchase of the intellectual property rights and documents attached to the unsolicited proposal by the minister or winner of the tender.

Direct appointment, as opposed to tender, can be conducted under certain conditions, namely:

- there is only one participant for the project;
- the proposed infrastructure has already been built by the same business entity;
- the business entity is the only entity which can provide the required technology for the infrastructure; or
- the business entity has acquired most of the land needed for the infrastructure.

16 What criteria are considered when awarding award port concessions and port joint venture agreements?

Under the Port Regulation, concessions can only be given to a BUP through a tender, assignment or appointment, with procedures further regulated under MOT Regulation No. 15 of 2015 as amended by Regulation No. 166 of 2015 on Concessions and other forms of Cooperation between the Government and BUP in the Field of Ports (MOT Reg. 15/2015). For granting of concession through assignment or appointment:

- the land must be owned by the BUP; and
- the whole investment must be implemented by the BUP, without using funds sourced from the state budget.

A BUP must be established as an Indonesian limited liability company, must meet minimum capital thresholds and, if foreign shareholders are involved, is in general subject to a maximum of 49 per cent foreign ownership.

17 Is there a model PPP agreement that is used for port projects? To what extent can the public body deviate from its terms?

The PPP Regulation stipulates that a PPP agreement shall contain the following provisions at least:

- scope of work;
- period of the project;
- guarantee;
- tariff and adjustment mechanism;
- rights and obligations, including risk allocation;
- performance service standard;
- share transfer before PPP commercially operates;
- sanction for default;
- termination of agreement;
- asset ownership;
- a tiered dispute settlement mechanism;
- a supervision mechanism for procurement;
- a change of work or service mechanism;
- mechanism of the government's right to take over or to give loans;
- utilisation and ownership of assets or its development to the PJKP (supervisor of the PPP project, which can be the minister or relevant head of the region);
- return of infrastructure assets or its development to the PJKP;
- force majeure;
- representations and warranties;
- Bahasa Indonesia as the governing language; and
- Indonesian law as the governing law.

Other than the mandatory provisions, the content of the agreement can be customised so far as it is not specifically regulated or restricted in the Regulation. For example, in the matter of determining return on investment, the business entity and the government can impose tariffs, availability payments or other means so long as it is not against the law. On the other hand, the PPP Regulation restricts the amount of government guarantee to 5 per cent of the total PPP investment value.

18 What government approvals are required for the implementation of a port PPP agreement in your jurisdiction? Must any specific law be passed in your jurisdiction for this?

According to the PPP Regulation, before being able to sign a PPP agreement, the business entity must participate in and win the tender for the PPP project. If there is only one tender participant or if such business entity can meet certain requirements provided in the PPP Regulation as explained in question 15, they can be directly appointed to implement the PPP project.

19 On what basis are port projects in your jurisdiction typically implemented?

Port projects through concession between the port authority and BUP can be implemented with various schemes, including build-operate-transfer and build-own-operate-transfer as accommodated under the PPP Regulation. The Port Regulation states that after the concession period ends, the port shall be transferred or returned to the port authority, including the land and all facilities acquired or developed by the BUP throughout the concession period. Nonetheless, the port can be operated by the BUP again, through a joint utilisation cooperation scheme between the port authority and the BUP.

20 Is there a minimum or maximum term for port PPPs in your jurisdiction? What is the average term?

There is no minimum or maximum term for PPP in Indonesia. The period of a PPP project is freely determined in the PPP agreement considering the type, complexity and characteristics of the PPP project and the period of expected return on investment (ROI).

However, in the case of infrastructure in general, and ports in particular, 30 years is generally agreed following a common port concession period.

21 On what basis can the term be extended?

An extension may be given based on, among other things:

- the need for government support in the form of PPP to continue port operations;
- the economic scale of state revenues;
- the mutual consent of the parties; and
- the possibility of divestment of foreign share ownership in the port operator – because if the PPP is ceased, then foreign ownership must be reduced from up to 95 per cent to 49 per cent.

22 What fee structures are used in your jurisdiction? Are they subject to indexation?

In a PPP scheme (as regulated by the PPP Regulation), the method for returning the investment of the business entity shall be obtained from:

- tariff payment by users;
- availability payment; or
- another form, as long as it does not contradict prevailing laws and regulations.

The initial tariff and its adjustment formula will be determined by the PJKP based on the ROI. In the event that a tariff cannot be determined based on ROI expectations, the tariff shall be imposed based on the capability of the users whereby the government, to secure the business entity's ROI, will give feasibility support.

Availability payment will be given by the PJKP for the provision of infrastructure conducted by a business entity in the operational period determined under the PPP agreement. The availability payment will be determined by the PJKP considering the cost of funding, operational costs and the business entity's profits.

Update and trends

The government introduced direct assignment/direct appointment as a method of granting concession agreements to BUPs under MOT Reg. 15/2015. Prior to the enactment of MOT Reg. 15/2015, concessions could only be obtained through a public tender. Nonetheless, direct assignment is only viable if the BUP already owns the land and will implement the entire investment without using funds from the state budget.

To assure the quality of transportation services, the Government introduced minimum capital requirements for transportation companies, including the ones carrying out ports and/or terminal businesses under MOT Reg. 45/2015, which was followed up with specific requirements contained in the Negative Investment List enacted in May 2016. Directorate General of Sea Transportation Circular Letter No. PP.008/113/UPP.SBK-2016 restipulated the need to fulfil minimum paid-up capital requirements prior to applying for a terminal licence.

The minimum capital requirements between 25 billion rupiah to 1 trillion rupiah must be met before 24 February 2018. Failure to comply will be subject to administrative sanctions, including potential revocation of business licence, and criminal sanction of imprisonment or fine for continuing violations.

23 Does the government provide guarantees in relation to port PPPs or grant the port operator exclusivity?

A government infrastructure guarantee is available in a PPP scheme to secure the financial obligation of the PJKP to pay compensation to business entities for infrastructure risks based on the allocation stipulated under a guarantee agreement. Government guarantees are regulated under the PPP Regulation and the IIGF Regulation. The guarantee agreement shall be signed on the day or after the PPP agreement is executed by IIGF, as the guarantor given such right by the Minister of Finance, the PJKP and the BUP.

Port development and construction

24 What government approvals are required for a port operator to commence construction at the relevant port? How long does it typically take to obtain approvals?

To commence construction, the port authority must apply for a port construction licence from the:

- minister for main ports and collector ports;
- governor for regional feeder ports; and
- regent or mayor for local feeder ports.

Licences will be issued by the relevant authority within 30 days after receiving the application in a correct and complete manner, as regulated under the Port Regulation.

A port authority which has obtained a port construction licence may then grant a concession to a BUP to construct the port pursuant to a concession agreement.

25 Does the government or relevant port authority typically undertake any part of the port construction?

The Port Regulation stipulates that construction will be carried out by the holder of the port construction licence (port authorities for ports that are utilised commercially and port administrators for ports that are not yet utilised commercially), but their role in the construction work may be shifted to the BUP through a concession agreement.

26 Does the port operator have to adhere to any specific construction standards, and may it engage any contractor it wishes?

Yes, a BUP will have to adhere to specific construction standards provided in the port masterplan, feasibility study and the technical design approved by the issuer of the port construction licence.

27 What remedies are available for delays and defects in the construction of the port?

The Port Regulation stipulates that port authorities, port administrators and BUPs (upon bestowment of a concession from the port authorities) are obliged to commence construction within two years after

issuance of the port construction licence. Sanctions may be imposed for non-compliance with the concession agreement.

If the BUP subcontracts the construction to another company, any failure of construction work performed by the subcontractor will be subject to the sanctions available under Law No. 18 of 1999 on Construction Services, Government Regulation No. 29 of 2000 on Implementation of Construction Services and the construction agreement between the BUP and the contractor.

Port operations

28 What government approvals are required in your jurisdiction for a port operator to commence operations following construction? How long does it typically take to obtain approvals?

The port authorities must obtain a port operation licence from the relevant authorities to commence operation of the port. The port operation licence will be issued by the minister for main and collector ports, the governor for regional feeder ports and the regent or mayor for local feeder and river ports. The licence shall be issued within 30 days after receipt of a complete application and requirements. The port authority may engage a BUP through a concession agreement to operate the port.

29 What services does a port operator and what services does the port authority typically provide in your jurisdiction? Do the port authorities typically charge the port operator for any services?

As the port operator, a BUP may provide the following services:

- harbour services for ships to dock;
- refuelling and clean water services;
- loading and unloading of passengers and vehicles;
- harbour services for loading and unloading of goods and containers;
- warehouse, stockpiling, loading and unloading equipment and port equipment;
- container terminal services, liquid bulk, dry bulk and ro-ro;
- loading and unloading of goods;
- distribution centre and goods consolidation; and
- ship postponement services.

Port authorities may provide services needed by users that have not been fulfilled by the BUP, as provided under the Port Regulation.

For any port services provided by the BUP, the users will be charged a tariff, which will be collected by the port authority. The concession agreement will determine the amount and formula for calculating fees or compensation for the BUP, based on the tariff collected by the port authority, considering ROI for the BUP.

30 Does the government or relevant port authority typically give any commitments in relation to access to the hinterland? To what extent does it require the operator to finance development of access routes or interconnections?

The MOT, in granting or determining a port location that is requested by the government or regional government, shall consider the result of the feasibility study showing that such port location has accessibility to the hinterland.

The port master plan, determined by the MOT, shall also have main facilities in the form of road or railway access. Concessions cannot be given without making sure existing terminals and facilities (ie, access roads) can fulfil the demand on port services.

31 How do port authorities in your jurisdiction oversee terminal operations and in what circumstances may a port authority require the operator to suspend them?

As regulated under the Port Regulation, the port authority is obliged to:

- prepare a port services provision system and procedures based on guidelines stipulated by the MOT;
- maintain the order of ship and goods services, as well as other parties' activities in accordance with the stipulated port services provision system and procedure;
- supervise loading and unloading activities;
- implement an integrated system for information technology and communication for smooth distribution of goods; and
- coordinate with relevant parties for smooth distribution of goods.

In addition, they are authorised to set out operational standards for the provision of port services, to be evaluated annually.

Port authorities are authorised to suspend activities of the port operator or revoke the concession agreement if it is proven that the port operator did not conduct its business in accordance with the concession agreement.

32 In what circumstances may the port authorities in your jurisdiction access the port area or take over port operations?

When the concession agreement with the BUP has reached termination, all facilities in the port will be transferred or returned to the management of the port authority.

33 What remedies are available to the port authority or government against a port operator that fails to operate and maintain the port as agreed?

Based on MOT Regulation No. 23 of 2015 on Improvement of Port Administrator Function at Commercial Ports, port authorities may impose the following sanctions for non-compliance, breach or deviation of port utilisation by BUPs:

- corrective action with respect to land utilisation of ports that is not in accordance with its function;
- licence suspension; and
- banning the imposition of tariffs by BUPs that do not perform their services.

Port authorities or the government may also resort to the concession agreement for remedies or sanctions.

34 What assets must port operators transfer to the relevant port authority on termination of a concession? Must port authorities pay any compensation for transferred assets?

The Port Regulation stipulates that, on termination of the concession agreement, port facilities and the land used during the concession period will be transferred or returned to the port authority in accordance with the concession agreement. The concession agreement will accommodate and ensure that the BUP will obtain its return on investment and reasonable profit during the concession period, including any expenditure for procurement and acquisition of assets.

Miscellaneous

35 Is a port operator that is to construct or operate a port in your jurisdiction permitted (or required) to do so via a special purpose vehicle (SPV)? Must it be incorporated in your jurisdiction?

Besides the port authorities and the state-owned enterprises, the only entity that can operate a port is a BUP through a concession agreement with the port authority. Based on the Port Regulation, a BUP must be a single-purpose entity established to operate in the field of ports, and it is restricted to do any activities other than port services business. Thus,

a BUP is a special purpose vehicle (SPV) and it must be in the form of an Indonesian limited liability company.

36 Are ownership interests in the port operator freely transferable?

We suppose a port operator, in this case a BUP, has ownership interest over the assets of the port only if the concession agreement is using the build-own-operate-transfer model or another model that requires the BUP to first own the assets during the concession. In such case, the assets procured and owned by the BUP are not freely transferable. The rationale is that at the end of the concession period all assets will be transferred to the port authority.

37 Can the port operator grant security over its rights under the PPP agreement to its project financing banks? Does a port authority in your jurisdiction typically agree to enter into direct agreements with the project financing banks and, if so, what are the key terms?

This depends on the PPP agreement. For the purpose of financing, the port operator should be permitted to encumber its port and facilities in favour of the lenders. Some 'right to step in' may also be granted by the port operator in favour of the creditors, under certain circumstances and subject to conditions under the regulations. Typically, the Indonesian government or port authorities would allow such securitisation provided that it is released prior to the end of the PPP term, because after the PPP ends, the ownership of the port and its facilities should be transferred to the port authority for continued operation by a state-owned or local government-owned entity.

On the other hand, the Indonesian government or port authority would not typically enter into an agreement with the project financing banks.

38 In what circumstances may agreements to construct or operate a port facility be varied or terminated?

An agreement to construct or operate a port facility will vary according to what is being agreed upon by the parties to the concession agreement, so long as it does not contravene the Port Regulation, which stipulates that a concession agreement must at least cover the following:

- scope of business activity;
- term of concession agreement;
- basic tariff and tariff adjustment formula;
- rights and obligations of the parties, including risk allocation;
- services performance standards as well as a customer complaint management procedure;
- sanctions;
- dispute settlement;
- termination of the concession agreement;
- prevailing law in the concession agreement is the law of the Republic of Indonesia;
- force majeure; and
- amendments to the concession agreement.



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An agreement to operate or to construct the port may be terminated due to expiry of the agreement, or if there is non-compliance by either of the parties.

39 What remedies are available to a government or port authority for contractual breach by a port operator?

As explained earlier, a port operator can only exercise their right in the port pursuant to the concession agreement. Non-compliance will result in termination of the agreement. The remedies that the government or port authority can resort to will depend on what is agreed between the parties as long as it is in compliance with the laws and regulations.

40 Must all port PPP agreements be governed by the laws of your jurisdiction?

Yes, all PPP agreements must be governed by the laws of the Republic of Indonesia. This is explicitly stipulated under the PPP Regulation.

41 How are disputes between the government or port authority and the port operator customarily settled?

The PPP Regulation provides that a PPP agreement shall contain a progressive dispute settlement mechanism through deliberation, mediation and arbitration or court if the parties fail to reach an amicable settlement.

Getting the Deal Through

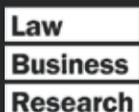
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