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**WORLD MARITIME UNIVERSITY**

Shanghai, China

**STUDY ON THE EFFECT OF THE PORT LAW  
ON THE DEVELOPMENT OF CHINESE PORTS**

By

**YUQI LI**

**China**

A research paper submitted to the World Maritime University in partial Fulfillment  
of the requirements for the award of the degree of

**MASTER OF SCIENCE**

In

**INTERNATIONAL TRANSPORT AND LOGISTICS**

**2006**

## **DECLARATION**

I certify that all the material in this dissertation that is not my own work has been identified, and that no material is included for which a degree has previously been conferred on me.

The contents of this dissertation reflect my own personal views, and are not necessarily endorsed by the University.

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## **ABSTRACT**

Title of Dissertation: **Study on the Effect of the Port Law on the Development of Chinese Ports**

Degree: **Master of Science in International Transport and Logistics**

The term "port" means region comprising the hinge of water-land transportation and the window of China open up to the outside world. The port industries also play an important role in the national economic. The Port Law is a law, which is used to adjust the legal relationship between the port operator and the ship owner, carrier, cargo, load and unload company. As the market is gradually opening after our country has joined the WTO, the management of ports is gradually connecting to the world at the same time. The Port Law is a milestone in our country's ports development history. This dissertation is concerned with the relatively managerial system, management mode, and cases. In particular, this study analyzes the effect of the Port Law on the development of Chinese ports industry in three aspects; there are port managerial system, diversified investment, financing subject and operating subject system under Port Law, pilotage managerial system.

It starts with an overview of the Port Law of P.R China and its background. The core content of the port managerial system is management model of separating government administration from enterprise management. The deepening reform of the port managerial system reform is on the way. The diversified investment, financing subject and main operating system collated and evaluate several kinds of modes, and give suggestion in author own idea. The pilotage system reform is the most sensitive part in the port system reform. The paper also use example to give suggestion to the pilotage system reform.

The concluding chapter indicates that the Port Law will accelerate the development of Chinese port industrial. China pots will develop leap-forwardly and will become the important part of the national economy.

**KEY WORDS:** Port Law of P.R China, Port Managerial System, Diversified Investment and Financing System, Operating subject System, Pilotage Managerial System

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## **LIST OF ABBREVIATIONS**

WTO	World Trade Organization
MPA	Singapore Maritime and Port Authority
PSA	Port of Singapore Authority
MSC	Mediterranean Shipping Company
COSCO	China Ocean Shipping Company
USD	U.S Dollars
NYK	Nippon Yusen Kaisha (Japanese Mail Steamship Company)
TEU	Twenty foot Equivalent Unit
FDI	Foreign Direct Investment

## CHAPTER 1

### INTRODUCTION

#### 1.1 Issue brought forward

The Port Law of the People's Republic of China (hereinafter called “*Port Law*” for short), adopted at the 3rd Meeting of the Standing Committee of the Tenth National People's Congress on June 28, 2003, is promulgated by the order of president Hu Jin Tao of People's Republic of China No.5, and go into effect as of January 1, 2004.

As the window of a nation opening to the outside and transportation hinge of water and land, port takes a crucial position in the national economy. *Port Law* is the law that adjusts the relationship between port operator and ship owner, carrier, stevedore Company. As market open wider after entering WTO of our country, the management of the port is gradually keep in phase with the world. *Port Law* is a landmark in the history of port development of our nation. The implementation of *Port Law* indicates the new step on legal construction of the port; indicates accordance of the port management with law of our country; indicates the new historical stage of port management against the law; indicates the new stage of entering to a positive circulation of port market and indicates the acceleration of connection of our national port management with international stage.

*Port Law* is a leading law of the national law system of waterborne transport. Firstly, the promulgation of *Port Law* establishes the national port managerial system of executing of both local government administration and separating government administration from enterprise management. Secondly, *Port Law* insures that government makes rational use of the port resources by port planning and management and reasonable layout of coastline. Meanwhile, *Port Law* establishes the regulation of diversify investment, operation infrastructure construction and port management. It also bring in the regulation of market enter admittance system for port business operator and competition principle of openness and fairness. Finally, *Port Law* set the protect regulation for port infrastructure and the regulation of port safe production, which means to set a supervision regulation on safe production of dangerous cargo. As our country entering in the period of economic construction of “The Eleventh Five-year Plan”, it is of great significance for the government organ and port operator to understand *Port Law* properly and find the subsistent problem of it.

Constitution work lasted for ten years; *Port Law* is the first all-round and systemic regulated law toward the port enterprise since foundation of the People’s Republic of China that was under three times of examination and consideration by twice National People’s Congress. Making the conclusion of the practical experience of decades of port management of the inland of the country for decades, and especially the experience of the reform and opening during more than twenty years, *Port Law* established a series of important legal regulation on planning, construction, maintains, operation and administration of the port by using and absorbing the beneficial operation on international port administration and legislation for reference. The promulgation and implement of *Port Law* will make further influence on the development of the port enterprises of the inland China. Therefore, it is very

imperative to research the influence of *Port Law* towards the development of Chinese port industry.

## **1.2 Research content**

The implement of *Port Law* will bring all round influences towards the development of port enterprise, and will accelerate the reform and development of the port industry in various aspects. I could not demonstrate the influences of *Port Law* towards port industry one by one; so just make the investigation of several aspects of the influence.

In the first part, the paper makes a generally demonstration on the significance of the theme chosen, the main content, the background of establishment and the main content of search for *Port Law*. In the second part, the paper makes the analyses of the port managerial system of *Port Law*, especially the analyses of management model of separating government administration from enterprise management, and analyses the problems emerge from the reform and put forward my own understanding. The third part mainly analyzes the all round opening of the port of our country in diversify investigation and financing toward the port and the reform of operational system, and discusses the reform of investigation, financing and port operator system that could be carried out by some ports and the way of diversity investigation, financing and the operational system reform that our nation could adopted after the implement of *Port Law*. The forth part solely discusses the reform towards the pilotage system in the port system, and puts forward my suggestion on the direction of the pilotage system reform that is the most sensitive part in the port system reform. The Fifth part makes the conclusion of the whole paper.

### **1.3 Means of research**

Through the comparison of the model between foreign port and port of our country, combined with situation in practice, the paper puts forward relatively reasonable suggestion and understanding by the concerned theory of comparative analytical method. Meanwhile, it is hope that this paper could offer some assistance to the foreign investor and colleague on the development of Chinese ports, and promote the application of the new management system of our country in some extent. I hope to supply some referenced suggestion on further deepening and exploration on the reform of port management system of our country.

## **CHAPTER 2**

### **THE MAIN CONTENTS OF PORT LAW OF THE PEOPLE'S REPUBLIC OF CHINA**

#### **2.1 Background of Establishment of the *Port Law***

##### **2.1.1 Current Condition of Native Port**

Port law of People's Republic of China, put into practice on Jan 1<sup>st</sup> in the year of 2004, is regarded as the leading law in terms of waterborne transport. The appearance of *Port Law* has ended up a history that China had no formal legislation for port operation and administration. Filling the blank is essentially important in China's communications and law-making progress. Statistics by the end of 2005 had indicated that productive berth above thousand tons of loading and discharging throughput at coastline city port numbered 2,770, of which includes 1110 berth, which are ten thousand tons throughput. Their cargo capacity had reached 2.5 billion tons, about 6.15million TEU of container. Container berths are numbered 203 in national wide, which permit 5.61million TEU containers in and out of port. The shipping of China has approached 1.5 billion tons from Jan to Oct in the year of 2005, increased by 16.3% compared with same period of last year; and large quantity cargo transportation at port had reached 2.88 billion tons from Jan to Oct in 2005, increased 18.3% compared with same period of last year; and large quantity container transport has been completed 54.235 million TEUs, increased 23.9% compared with same period of last



year. (The status quo and plans for coastal ports of China, 2005)

### **2.1.2 Background of the Enactment of the *Port Law***

#### **Management of Port In Initial China**

At the beginning of initial China, legislation about port was started. State of Department promulgated *Politics and Economy Committee of State of Department's Direction About Management of Shipping and Ports* on 26<sup>th</sup> July 1950. Although this 'direction' regulated important matters such as establishment of management organization, power of port management organization and partition of port zone, it is not legislation actually. It is a temporary arrangement and a "direction". State of Department promulgated *China's Temporary Regulations for Management of Port* on 23<sup>rd</sup> January 1954. Regarding of establishment of port bureau, power of port management, partition of port zone, it made detail regulations. Although it is a legislation of port, it limits to "ocean port". After 13<sup>th</sup> plenary meeting of Chinese Community Party and depth of policy of revolution and open, it does not satisfy development. This regulation was abolished by State of Department's Notice about abolishing some Regulations. This makes management of port returns to situation of no law to be followed. (Hong Jun Ye, 2003, p.2) In fact, after China was founded, regarding of plan, construction, maintenance, operation, management and so on of port, Chinese *Port Law* is blank.

#### **Course of Drafting for *Port Law* in 1990s**

Ministry of Communications began to make law for port since 1981. In 1994, Bureau of Ocean, River, Law and Transportation governed by Ministry of Communications drafted *Regulation about Management of Port, Regulation about Management of River Port* and

*Port Law* successively. Ministry of Communications strengthened to draft *Port Law* in 1994. *Port Law* was reported to State of Department on 28<sup>th</sup> Dec. 1995. It went through to get suggestions from bureaus of Ministry of Communications three times, get suggestions from field of Ministry of Communications twice, get suggestions from committees of State of Department one time since August 1994. Since the market was not perfect at that time, system of management was lagging and there are different opinions about civil relation of management of port, the *Port Law* was delayed.

### **Course of Discussion for *Port Law***

Revolution for management of port was performed in 2001, which cleared block for *Port Law*. Since 2002, enacting of *Port Law* was in finishing period. On 27<sup>th</sup> November 2002, Premier of Zhu RongJi hosted 65<sup>th</sup> standing meeting and *Port Law* (draft) was passed. It was reported to the Meeting of the Standing Committee of the National People's Congress. The *Port Law* was discussed for first time on 32nd Meeting of the Standing Committee of the Ninth National People's on 26th February 2003. The *Port Law* was discussed for second time on 2nd Meeting of the Standing Committee of the Tenth National People's Congress on 25th April 2003. The *Port Law* was discussed for third time on 3rd Meeting of the Standing Committee of the Tenth National People's Congress on 24th June 2003. Finally, *Port Law* was adopted by voting on 28th June 2003.

### **2.2 Brief Introduction of the *Port Law***

By summing up the experiences of inland port management over the past decades, especially the experiences during the 20 years' reform and opening up, and making use of many international useful methods for port management and legislation, *Port law* establishes a series of important laws in planning, construction, maintaining, operation, and

management of port. In the *Port law*, the following aspects are mainly stipulated:

### **2.2.1 Applying Scope of *Port law***

When talking about the applying scope of *Port law*, there are two conspicuous problems: the adjustment of fishery port, and the problem of shipper port. According to the function of port, port falls into two categories: commercial port and military port. Commercial ports refer to those ports for business use. Commercial port is a principal part of Chinese ports.

Though fishery port belongs to commercial port, a port administration authority has not carried out administration on fishery port so far. Over the past decades, fishery port is always under the management of fishery administration authorities. In the connection, the article 59 of *Port law* stipulates, “the competent fishery administration department of the people’s government at or above the county level shall be in charge of the administration of fishery ports. The specific measures in this regard shall be formulated by the State Council.” (Port law of P.R China, Article 59, 2003)

Ship-owner port can be divided into two categories: the special-purpose port for producing enterprises, such as coal ports and fuel ports that are constructed by power stations, crude oil port and finished oil product port that are constructed by oil refineries, iron ore ports, coal and steel product ports that are constructed by steelworks, and many other special-purposed port; The second one is the exclusive ports that are constructed by trade, warehouse and transportation enterprises.

*Port law* does not distinguish between public port and ship-owner port. All the operators engaging in port affairs are treated equally without discrimination. No matter in public ports or shipper ports, the operator can get the “Operation License”, and be seen as “port

operator” as long as it accords with the conditions of market admittance.

### **2.2.2 Port Managerial System.**

*Port law* defines the basic structure of China inland port managerial system. As the competent administrative department of central government, department of communications shall (1) carry out united administration on all the ports of the country, (2) be in charge of setting down program for all the ports of the country, (3) rationally make use of coastline resources according to related regulations, (4) Propose examination suggestions for large and medium-sized port construction projects, (5) draw up port developing policies and rules, and supervise the practice of these rules. For a port that comes under the administration of the competent department of communications under the people’s government of the province where it is located, the people’s government of province or local city shall carry out united administration on it according to the principle of “one port with one administration” (HongJun Ye, 2003,p97); As an absolute part of market, port enterprise shall be independent in management, assume sole responsibility for its profits or losses, and seek for self-development.

For the port managerial system, the relation between administration and enterprise is a content of great importance. Only by separate enterprise from administration structure, can port realize the plural and fair competition among port operators, and guarantee the definite property rights and self-beard obligations of port operators. Only by separate enterprise from administration structure, can government maintain the open, independent, fair, equal, cooperative, and competitive relations between port operators and between port operators and other market operators. Only by separate enterprise from administration structure, can government carry out effective macro-regulation and management. The separation of enterprise from administration structure is an important principle in *Port Law*, and is fully

presented in its legal articles. (HongJun Ye, 2003, p.101)

### **2.2.3 Port Planning Management**

Not only do the port have the function for cargo loading, unloading, for passengers to embark and disembark and for vessel to anchor and moor, but also a important place to develop processing industry, commercial industry, financial industry, tourism and information industry. The port is an imperative resource for the city. The article 4 of the *Port Law* stipulates that: “The State Council and the local people’s governments at or above the county level concerned shall embody the requirements of port development and planning in their plans of national economic and social development, protect and make rational use of the port recourses in accordance with law.” (Port law of P.R China, Article 4, 2003)

Although ports play an important role in the social economic development, not all the coastlines are suitable for port construction, because the port resource is non-renewable. It is the primary responsibility for the departments of port administration of all level to well managing, use and develop the precious port resources of the nation. Thus, the *Port Law* established a system of port layout. In accordance with the description of article 8 of *Port Law*, port plans could be separated in two parts, including port layout plans and port general plans. The port layout plans could be separated in two levels, embracing the national port layout plan and the port layout plan of province. Generally speaking, port layout plan include planning for the distribution system of ports in the area, use of water and land areas, use of coastline and the position, scale, quality and function of each port. A port general plan means the specific plan of one port for a given period of time, embracing the scope of water and land areas, division of the port area, handling capacity and types of calling vessels, the character and functions of the port, use of water and land areas, use of coastline

for the construction of port facilities, allocation of land for construction, the order of construction phases, etc. (Port law of P.R China, Article 8, 2003)

As a planning system, the *Port Law* also explicit the three aspects of relationship related to port planning:

Firstly, the relationship between port plans and other plans. The article 7 of *Port Law* stipulates that: “Port plans shall be drawn up in accordance with the requirements of national economic and social development and the needs of national defense, shall embody the principle of rational use of the coastline resources, shall comply with the plans for the network of cities and towns, and shall be connected and coordinated with the general plans for land use, general city plans, river basin plans, flood-control plans, marine function divisions, waterway transport development plans, development plans for other modes of transport and other relevant plans provided for by laws or administrative regulations.”(Port law of P.R China, Article 7, 2003) Secondly, the relationship between ports general plans and port layout plans. The article 8 of *Port Law* stipulates that: “The port general plan shall conform to the port layout plan.” The port general plan is set on the basis of all scale to exert all the port resources, and to distribute the port resources and plan relevant resources in the most effective way; the port layout plan is set in the view of exerting all local port resources. It is established only on the basis of the local resources situation. (Wei Wei Zhao, Gui Qiong Guo, 2003, p15) Third, the relationship between the national port layout plan and the layout plan of a province, autonomous region, or municipality directly under the Central Government. Considering this issue, *Port Law* do not make a direct regulation, but the article 9 of *Port Law* stipulates that: “With respect to the port layout plan of a province, autonomous region, or municipality directly under the Central Government, the people's government of the province, autonomous region, or municipality directly under the Central Government shall make arrangements to draw it up on the basis of the national port

layout plan and submit it to the competent department of communications under the State Council for comments and suggestions. If the said department puts forward no suggestions for revision within 30 days from the date it receives the plan submitted for its comments and suggestions, the port layout plan shall be promulgated for implementation by the people's government of the province, autonomous region, or municipality directly under the Central Government. If the competent department of communications under the State Council considers the plan not in conformity with the national port layout plan, it shall put forward its suggestions for revision within 30 days from the date it receives the plan. If the people's government of the relevant province, autonomous region, or municipality directly under the Central Government raises objections to the suggestions for revisions, it shall report to the State Council for decision.” (Port law of P.R China, Article 9, 2003) It shows that the port layout plan of the province, autonomous region, or municipality directly under the Central Government shall not conflict with the national port layout plan.

The article 9 to article 12 of *Port Law* makes a clear regulation on the constitution and the revision procedure of port plans.

#### **2.2.4 Policy for Investment and Financing of Port**

*Port Law* made regulations for investment and financing of port from three parties, that is, investment by nation, financing from different parties, take in advantage of foreign capital.

Port provides necessary conditions for economy development of city and related zone. Investment for construction of port depends on important of port. Article 20 of *Port Law* regulated that the construction and maintenance of the port should invested by government. (Port law of P.R China, Article 20, 2003)

Regarding of rising for construction of port, there is no clear regulation in *Port Law*. However, *Port Law* encourages foreign economy organization and person to invest construction of port, to operate port, to be fair competition and to get interest by market rules. Beside this, article 20 of *Port Law* regulated that the State Council thereof shall enact the specific measures. This shows that government could establish fund as construction of port by investment of finance, bond of issuing and certain administrate ways.

Refer to current situation of Chinese mainland in construction and development of port, requirements for port in future and limitation of investment for construction of port by national finance and social capital, taking in advantage of foreign capital actively still will be adopted.

Whether government or national and international economic organization and person, they could perform any legal measures to raise and invest to construction of port.

### **2.2.5 Port Operation Administration**

*Port Law* has regulated the stipulation that the business and operation of port, which involves wharf services, storage, tally and logistics services for the passengers and cargos should be run with multi-operators who they compete mutually on the basis of equality under the macro-management of the central government. *Port Law* had indicated that market of port is open and transparent, which allows all sorts of managers adapted to the rules to walk freely into the market. Under such kind of spirit, the chapter III of *Port Law* has clearly regulates the “game rules” of port market, which include the standard of port market allow-in management, bases of relative facilities, qualified staffs and comprehensive policies for allow-in the market. No matter who the manager is and no matter whether the



capital belongs to native or to foreign country, the legal operation could be done if it had met all the requirements of the rules. Meanwhile, *Port Law* has also regulated the behavior of port manager, which involves offering good services on bases of equality, making the customers known the price before being served, avoid forcing customers to accept services, which is in the aim of keeping equal competition of China's market economy, guarantee the competitive relations among different port managers, and ameliorate the service and comprehensive power of port to a new height.

#### **2.2.6 Port Security Administration**

As an area of having dense labor, converged capitals and abundant human resources, the security of port has close tie with the economic benefit of corporation at port and close relation with the prosperity and life security of local people, especially essential for the development of local economy. To assure the good public order and environment of port and to save the security of facility at port and life-security and property of local people, the *Port Law* makes clear regulation on the rights and obligation for the managers, users of port and other relative persons who are connected with the security of facility at port and with safe management and relevant supervision. It has set rules for reporting vessels in-and-out and work concerned with dangerous cargo, for checking the potential dangerous activity at port and emergency rules, pilot rules and rules for supervising the security by the administration, especially detailed stated out the responsibility and function of port administration and marine matter administration.

## **CHAPTER 3**

### **EFFECT OF PORT LAW ON PORT MANAGERIAL SYSTEM**

#### **3.1 Effect of Port Law on Port managerial system**

The Port Law was finally gone into effect after it had passed the long enactment of ten years. Because that the Port Law has a close relationship with the port system reform, this reform is a necessary condition to the Port Law and the Port Law is also one the important impetuses of port system reform. (ZhengCai Chen, 2004, p.1)

##### **3.1.1 Foreign ports managerial system**

Before the Port Law was gone into effect, China had also summed up the foreign port management experience. The combination and development of Chinese port managerial system has been deeply influenced by the national or regional histories, economy, politics and traditional cultures. On the view of the world's scope, the concrete port management type sees a big diversity that different countries, the ports of one nation and a port all feature varied port managerial systems for different epochs. However, all the port managerial systems have their own characteristics with their own advantages and disadvantages. We can get a lot of beneficial revelations after looking around the managerial system of typical international advanced port. The managerial system of international port can be generally divided into two styles:

(a) the system mode of government classified management; and (b) a system mode of public-enterprise (companies) management port established with the government's investment. No matter which management mode is applied, the government is mainly in charge of the port planning and the construction and management of infrastructure and an enterprise runs the port businesses of cargo handling, barging and storage by means of market operations.

#### **3.1.1.1 Internationally executed modes of classified port management**

- Hong Kong features a relatively representative port that is privately operated and managed. Hong Kong Government is in charge of the functional positioning of port. Also it auctions the port land for privately operated. However, the land can only be operated within the government regulated port functional scope. The operated business of a private enterprise in Hong Kong rarely sees an administrative intervention. Moreover, the business can be priced freely. The characteristics of the operated Hong Kong port are as follows: The business skills of private enterprise are exerted thoroughly and the bureaucratism is decreased by the lowest degree. Meanwhile, the investment mode of private enterprise more or less restricts a long-term and large scale of strategic development of ports in Hong Kong.
- Singapore Harbor was developed into an international carrying-trade port. Because that it executes free-harbor policies with good services, Singapore Harbor have become the busiest port in the world, because there are 530 shipping lines linking with 700 or more ports around the world and it is the hinge of international shipping lines.
  - Relationship of administrative subordinateness of Singapore Harbor. As a city country, Singapore executes the one-stage port management

without relationship between the central and local governments. Singapore sets the Ministry of Communications, which is in charge of deciding the key guidelines and policies of countrywide Communications construction and development and publishing the countrywide Communications decrees. The Ministry of Communications sets a few special committees, functional authorities and special authorities, including the shipping related sectors Maritime Authority, Maritime Committee and Port Authority. Maritime Authority, as the functional department of the ministry, is in charge of the registration and navigational safety of ships and prevents the ships polluting the environment. The State Maritime Committee manages the nautical employment, welfare and training.

- The managerial system reform of Singapore Harbor. In January 1996, Singapore Harbor began to execute the managerial system of separated administration and enterprising, integrate the original port-authority executive and administrative departments and staff with the Maritime Authority and Maritime Committee and set up the Singapore Maritime and Port Authority. The authority is an independent organization under the leadership of the Ministry of Communications, executing the port management functions. The remained production and operating departments of former port authority are reformed into Port of Singapore Corporation Limited, which executes the stock system and privatization. After this reform, the original port authority is divided into Singapore Maritime and Port Authority (MPA) and Port of Singapore Corporation Limited (PSA). MPA mainly is in charge of handling controlling and technical points in the areas of port and sea transportation, covering the functions of port planning, port-affair

management and permit issuance. PSA changes from the previous legal organization into the business organization, making the business functions of investment, production and operation of port. At present, the government is a shareholder of PSA whose principal is appointed by the government. The port reform aims to execute the publishing of stock in order to make people hold the shares and achieve port privatization. The port privatization brings to Singapore's ports the following biggest change: The port enterprise efficiency is obviously improved, the staff's service attitude is obviously updated, the service consciousness is strengthened; the enterprise group enlarges the strength of diversified investment, enlarges the foreign investment, raises efficiency and decreases cost. In fact, this makes an enterprise that is engaged in the port operating business execute the stock-system reconstruction, expand its financing channels and make the market operating. The port privatization ties in other managerial systems, including: government investment system, the central managerial system and the free-harbor policy, commonly solidifying the position of Singapore as the international shipping center.

- The United States a land-privatization country whose coastline land resources belong to the federal government. The federal government hands over the resources for all the states governments developing ports. The states governments had established port authorities uniformly managing and operating the ports; or they had transferred these ports for the management of the cities. The federal government does not directly take part of the port operation, but sends the Cost Guard, which is in charge of dredging up the navigation channel, with the supports of port authorities of states and cities. For example, the Cost Guard helps seek and confirm dumpage sites for

materials dredged up from navigation channel. The United States port operation has three business modes, the Landlord Seaport, the Operator Seaport and the Combination Landlord Seaport. In The United States, there are 34 public ports that apply the landlord seaport, including the port authorities of Long Beach, Los Angeles, New York - New Jersey, New Orleans and Miami. This mode has a characteristic as follows: After the infrastructure is built, the financing of main project is carried out by a special organization; the port acts as a bond publisher to pay debts; and vendors who rent the docks pay hire to the port authorities. Port authorities also can apply another operating mode of assuming sole responsibility for their profits or losses. That is, they buy their own dock operating equipment and recruit employees for direct operating.

The management modes of above countries' ports are basically those of all-class governments' level-to-level management ports, with a common characteristic as follows: The government sets special port management organizations as the government administrative departments, with an aim to implement the port administrative functions on behalf of government. Generally, the port administrative departments do not participate in the production and operation activities of port enterprise, but are in charge of carrying out the administrative direction and supervision for port enterprise related operating environment and safe production as well as environment protection. At present, most of the countries in the world are practically executing the port management mode as a port managerial system.

### **3.1.1.2 The public enterprise style of government management port mode**

- Polish port managerial system. Polish Port Law selects a simple landlord seaport for the port operator. The responsibilities of these port authorities are regulated as: (1) the management of land and infrastructure; (2) the prediction, planning and plan of port development; (3) the construction, development, update and maintenance of port infrastructure; and (4) purchasing new land for using the port. The government acts as the port investment principal part to establish investment management companies so as to implement the uniform port management. These port investment management companies not only are port capital operating subjects, but also accept the government-authorized consignments to implement the port administrative functions. Although it seems on the style that the project-entity mode features the integrated characteristics of administration and enterprise, this mode is a managerial system that practically executes the separated administration and enterprise in operation. The port investment management companies do not directly take part of the port enterprise production operated activities. Russia and countries in East Europe have executed the port managerial system mode like Polish company systematic after the former Soviet Union disintegration.
- German port management mode. The biggest German Rhenish inland port, Duisburg Harbor, serves as an example. Duisburg Harbor Shareholding Co. is one of the state-owned stock-system companies or one of public enterprises managing the port on behalf of federation, state and city, each of which holds 1/3 of the capital of the company. Duisburg Harbor Joint-stock Company sees an important task to make the port take the leadership and achieve the social benefits. And this company is in charge

of not only the port infrastructure planning and construction management, but also the construction and management of port facilities for the collision avoidance, the anchoring in harbor, the leading of harbor roads and the land backfilling. After constructed, the infrastructure will be rent for the dock operating enterprises, and then it will be handled and adjusted by these enterprises, which will add the loading, and unloading machines, build warehouses and transfer the equipment for ship companies. The lease of lands and docks general sees an expiry of 25 years. (The federal government policies regulations it cannot exceeds 30 years) The joint-stock company does not aim to earn money, and it basically keeps the balance of income and expenditure. If sees a surplus of balance, the company will put a new investment into the port infrastructure construction. Main income sources of the company include: ① charging ships entering the harbor; ② charging ships berthing against docks; and ③ income from rented land. The state government and Europe Union will supply 50% of the deficient fee, and the other 50% will be paid up by the shareholding company's loans, which are made up by its earnings.

### **3.1.2 Port Law regulated port managerial system**

#### **3.1.2.1 Program of port managerial system reform**

Before the Port Law was gone into effect, the Chinese port managerial system has been twice reformed. Before 1984, the 38 main ports (3 costal ports and the 25 ones of Yangtze River) had been directly managed by the Ministry of Communications. With China Yangtze River Shipping Management Authority, the 25 ports of Yangtze River are the enterprises of integrated shipping and harbor affairs of the ministry. In



1984 or after 1987 especially, except the coastal port QinHuangDao directly led the Ministry of Communications; these ports had been changed into the port managerial systems, which “are dually led by the Ministry of Communications and local government with the primary local management.” For Yangtze River, Yangtze River Navigational Affairs Management Authority and Yangtze River Shipping Co. both team up respectively with an aim to manage the Yangtze River port and the Yangtze River trunk line passenger-and-cargo transportation. Also, the two water systems of Pearl River and Heilongjiang are adjusted on port managerial system. A port managerial system of “dual leaderships” is always the main Chinese port management mode. This management mode had played an active promoting role in the Chinese port development. However, it does not satisfy the requirements of socialism market economy because that many of the factors such as the external environment and port management have changed.

The core of a reform that began in November 2001 is as following: Transferring the whole port for the lower local levers, executing the central macroscopically adjustment, allowing local government to make concrete management, building an administrative system of “one port and one administration” for uniform management and promoting the port executive mechanism with the separation of administration and enterprise as well as the multi-company operation. Port Law just solidifies the management mode legally.

### **3.1.2.2 Port Law regulated port managerial system**

In this case, the core of Chinese port managerial system at present is as following: “Separating administration from enterprise to make the multi-company operation; and achieving one port and one administration for uniform management”. Port Law

stipulates the frames of Chinese port managerial system basically. That is, the Ministry of Communications acts as an administration-governing department of central government to carry out the uniform countrywide-port administration. Also, the department is in charge of working out the countrywide-port industry planning, adjusting and controlling the coastline resources up to the related regulations with reason, making the industry examination suggestions for big and mid-sized port-construction projects and publishing and supervising the port-industry development policies, rules and laws. The Communications (port) administrative department of province-class government is in charge of administratively managing the port within the administrative region. The port-governing department of people's government of a province or a city in which the port is located up makes the uniform administration up to the guideline of "one port and one administration." And a port enterprise acts as independent market principal part to be legally engaged in the related operation. Meanwhile, article 6 of Port Law stipulates: In accordance to the previous term stipulated port managerial system, the people's government of a city or county in which the port is located confirms a department, which is in charge of the concrete implementation of administration on this port; and the people's government of provinces, autonomous regions and municipalities in which the port is located confirms a department, which is in charge of the concrete implementation of administration on the port"(Port law of P.R China, Article 6, 2003) This clearly stipulates that the lowest level of organization of implementing management on the port is the people's government of county class. After Port Law has been implemented, the Chinese port management enters a new historical phase of legally making administration and lawfully managing the port.

### **3.1.3 Effect of Port Law on Port Managerial System**

On the view of Port Law, the port managerial system has been deeply reformed, a batch of new port management organizations urgently requires the legal administration to confirm the administrative authority, so as to make the just, open and sheer port industry managerial system under the legal environment. Port Law endows the port management organizations with a position of principal law-executing part, clarifies the contents of legal administration and strengthens the lawful seriousness of the country adjusting, controlling and managing the valuable resource planning of port. Also, Port Law presents a legal responsibility for people unable to make the legal administration. On the other hand, the Chinese port management speeds up a program of linking to the international convention. The jurisdiction of port management acts as a universal guideline of developed countries' port management. Linking to the international level means keeping to the international conventions. In the field of soft and hard environment, especially the soft environment, this aims to build the managerial system and mechanism environment, port environment, legal environment, information environment and market environment all of which can meet the requirements of international shipping business with the import and export trade, where the legal environment is involved in other several soft environments and plays a regulative role. In this case, linking the port law to the international level is the most important. Port Law presents the regulations of the reasonable planning, the port-resource protection, the reform expansion, the market cultivation and the encouragement and protection of competition, reflecting the Chinese port is linking to the international level.

Port Law solidifies the port executive mechanism with the separation of administration and enterprise as well as the apanage management and the multi-company operation. As a result, the law has been promoted for the countrywide port to apparently regulate the port management duties of all-class government

Communications and port administrative department port. This provides the government Communications and port administrative department with the following functions: fulfilling the whole planning, working out policies, maintaining the market order, publishing information, presenting organization and coordination, providing commonweal services with inspection and supervision. As the independent market principal part, a port enterprise ought to legally run its own business, assumes sole responsibility for their profits or losses and develops by itself. (Bo Ke Mao, 2003, p.11)

Port Law, after it has been implemented for years, plays a positive role in the port development.

- Administrative organization set properly and port management work enhanced.

At present, all local government related to the port conforms to the guideline of “one city, one port and one administration” and sets the port administrative organization, with an aim to concretely implementing the port administrative work. And with the implemented Port Law, the port administrative work is being legally promoted. Most of the local government has carried out the managerial system reform and promoted the port development practically in accordance with the situation. For example, Guangdong adopts the management mode of port shipping authority inside the Bureau of Communications; and ZheJiang adopts the management mode of port shipping authority outside the Bureau of Communications. Both ZheJiang and Guangdong adopt the management mode integrated with the port and shipping affairs, managing the sea transportation as a whole. For example, Guangzhou Harbor conforms to “one port and one administration” and a management principle of port administration merging shipping administration. Guangzhou

Port Bureau teams up newly on the basis of management functions of port and shipping administrations of Guangzhou Port Bureau and Guangzhou Shipping Bureau.

- Modern enterprising system reform increasingly deepened, port enterprising energy obviously enhanced.

All local government, while setting the port administrative organizations, conforms to the guideline of modern enterprise system, sets the port enterprises groups or port affairs companies, deepens the internal reform, simplifies the organizations and reduces the extra staff, so the enterprising energy is obviously enhanced.

For example, after the reform, Guangzhou has established Guangzhou Port Group Co., Ltd. to meet the requirements of modern enterprise system. This company is a state-owned sole-capital limited company featuring the legal person authorized by the municipal government. With a series of reforms, the port transportation production of Guangzhou Harbor achieves the fast and orderly development. The scales of its cargo throughput, container throughput as well as port facilities all jump up considerably. In 2005, the cargo throughput as of exceeds 250 million tons and the container throughput hit 4.68 million standard containers, jumping by 16.3% and 41.5% in comparison to 2004. The cargo throughput ranks third in the countrywide costal port. Guangzhou therefore establishes its position as follows: the modern international port able to load, unload and storage with multimodal transportation, logistics and bonded processing programs as well as the biggest comprehensive hinge port in South China.

- Peak of promoted planning and construction of countrywide port.

After the ports governed by all local government, port management departments think much of the port planning, construction and development. All of local government has made the port oriented planning of high starting point, high level and wide eyeshot. Based on the modification of planning, all local government develops the construction port of high level and big scale. According to statistics, the countrywide port had seen 35108 berths oriented to production by the end of 2004, jumping by 819 annually, when there were 944 10,000t-class berth jumping by 45. (Review of Key Work of Port Management in “Tenth Five-Year Plan” ,2005,p.2) In the first half of 2005, the coastal port realized an investment of 1.81 billion RMB, jumping 66.7% annually. With the fast expansion of port scale, all of the local port sees a good situation of fast development and strong stamina.

#### **3.1.4 Some Existing Problems of Port Managerial System**

Although the last round of system reform has ended, there is a state that the administration is not thoroughly separated from the enterprise because Port Law was published more hurriedly.

- Some of the port has been reformed on style with the changed trademark. It has not essentially separated the administration from the enterprise with the thoroughly reforming the port. Meanwhile, the situation of monopoly resource and operation has not been broken. At present, the port enterprise has not been unhooked from the countrywide coastal port’s administrative and undertaking organizations in pilotage, public infrastructure

construction and maintenance, engineering quality supervision, public security, education and health care.

- The teams of administrative organizations are weak, so they are hard to shoulder the legally endowed important responsibilities. At present, all local government port's administrative organizations are set for all kinds with varied names, low specifications, short outlay, unsmooth systems, organizations set in disorder and complex employees, so the port is hard to take the port administrative tasks.
- The port also sees a monopoly operation. Although the port system executes the separation of administration and enterprise, a phenomenon that the port is controlled by the state-owned monopoly enterprise cannot be wiped out for a short period. After the port managerial system reform, this phenomenon has not been wiped out although the administrative monopoly has been broken. It is hard to be changed for short period that the state-owned enterprise is the No.1 "with monopolized shares." In accordance to the "Year 1998 Countrywide Port Enterprise Ownership Structure and Its Changing Tendency," the Chinese existing port is still focused on the state-owned enterprise, and the ratio of capital or market shares hits over 96%, absolutely taking the ascendancy. Owing to the single ownership structure, the enterprise objectively forms the situation of monopoly of state-owned port enterprise. (Ping, Luo.,& Jun Feng, Zhu,2003,pp.26-29)
- It is a situation of administration not completely ready with unclear duties and powerless law execution. In accordance to regulations in Port Law, the port public infrastructure related construction and maintenance; the pilotage management, the engineering quality supervision and the levy of regulated fees all are port administrative functions. However, the relative

accessory rules and regulations lag behind so as to cause the unclear duties and powerless law execution.

If the above problems are not timely solved, it is possible to make some potential risks: (1) the port safety risk, (2) the port market freaky-development risk, (3) the resource monopoly-and-occupation risk, (4) the risk of administrative-team quality and completely weakened port administrative work.

I would like to give an example of JiangSu Province port managerial system reform in the following chapter.

### **Status quo of JiangSu port managerial system**



**Table 1 Jiangsu Port managerial system**

Administrative area	Port managerial system reform	Port management organization	
		Coastal Port	Inland river port
LianYunGang	Original Port Authority and port Committee jointly set up Port Administration Bureau directly under the leadership of municipal government	Port Administration Bureau	Transportation Administration Dept. of Communications Bureau
ZhenJiang			
NanTong	Port Authority and Communications Administration run business jointly with “two license tags and one work team.” SuZhou Government integrates 3 ports, ZhangJiaGang, TaiCang, ChangShu and then sets up SuZhou Port Authority. WuXi Port Authority only as the port leading organization. JiangYi Port Authority is responsible for the concrete administrative.	Port Administration Bureau Port Administration Department	Transportation (Shipping) Administration Dept. of Communications Bureau
NanJing			
SuZhou			
WuXi			
Yangzhou			
Changzhou			
HuaiAn, SuQian, YanCheng, XuZhou	Not set up Port Authority	Transportation Administration Dept. (integrated with Comprehensive Planning Dept.) of Communications Bureau acts for the port Administration functions	

**Existing problems**

- Port administration organization structure needs to be further improved and

perfected because: First, it strengthens the vertical managerial systems of 3 classes of port administrations in province, city and county without considering the industrial management, so as to make the all port administration come apart with disordered individual management works, which are hard to be promoted for the port efficiently; second, it does not completely settle down a point that the city should be braced up with port and the city is set with one port. Also, the organization does not achieve the uniform port management for another point that the port sees multiple administrations, which are reflected as follows: The coastline functional area is divided unclearly so as to waste the valuable coastline resources. Without a uniform port layout, coordinative development is missed for all of the port. This bans the combination of group advantages.

- The organization does not actually implement the port management functions. At present, the management organization of JiangSu's province and city-class port has set up, but it cannot actually implement the port administrative functions in accordance to Port Law, and Administrative License Law. Especially, the administrative planning and law execution ought to be further strengthened and perfected in the areas of efficient port-resource application and integration, port pilotage system and sea-affair management as well as port enterprise market operation and production management.

Weak port administrative measures. This is mainly reflected as: First, the uniform planning and control of Yangtze River banks and the port-resource optimization and integration all are not ready for long time; second, many proper necessary rule and regulations have not been clarified although Port Law, Administrative License Law and others have been implemented; and third, the law execution power of all local

port administrations is weak.

### **3.1.5 Suggestion of Solution**

To deal with a system for separation of administration and enterprise, the port industry sees the following 3 factors because that most of the existing Chinese ports are state-owned, singly-capitalized or shareholding enterprises: first is the ownership reform, second is the industry standard, third is the operating mechanism. (Guo Guang, Wang, 2003, p.27) Because that the ownership issue is decided by the state property management department supervision system, the industry standard is decided by the administrative system of the Ministry of Communications, the operating mechanism is restricted by the above two factors added together. The Port Law of P.R China settles down the separation of administration and enterprise in the category of Communications rules and laws. The State Council publishes the “Temporary regulations on enterprise state property supervision management,” solving the problem of the separation of administration and enterprise in the category of enterprise rules and laws. The above law and regulations reflect the speciality and enforcement interactively in the economic rules and laws and then form the category of capital and administration. It is predicable that the state-owned and port administrative departments can decide whether the port industry can advance with time:

#### **3.1.5.1 Port capital and port management**

The nationally invested port assets belong to the port operator and have nothing directly with the port management organization, Because that it conforms to the principle of separation of administration and enterprise, the port operator is an

independent market principal part, whose assets should be distributed independently with the proper rights of occupation, use, benefit and punishment. Other people cannot interfere with the assets. About the enterprise assets related country investment, the country can only enjoy the rights and interests of investor, i.e., the capital benefit, key decision and manager selection. The country is not able to interfere with the enterprise production operated activities. The enterprise conforms to market demand and organizes the production, with an aim to raise the productivity and economic benefits, so as to take the responsibility of reserving and adding value for the investor.

At present, most of state property big and mid-sized enterprises initially establish the modern enterprise system. However, the overall standard modern enterprise system has not been ready and perfect on the handling structure of legal person. The mechanism of encouraging and restricting operators is not healthy. The government social public management functions have not been truly separated from the state-owned capital-investor functions. This makes the state-owned capital investor unable to take its position. On the other hand, this causes the government making the enterprise administrative intervention and influencing the separation of administration and enterprise.

The port production and operating development will rise by the higher level of capital operation for a certain degree. In the port in which there is the single state-owned capital or shareholding, the port enterprise group takes the responsibility of state-owned capital operation and management. The departments of ownership operated-entity capital supervision ought to make the supervision work on the following arenas.

First, the supervision of the capital operation involved money collection should be made. That is, the capital-trade operation and the pursuit of shareholder's maximized rights and interests in the monetary and capital markets are filled with the financial risks. In the money collection involved in the occupation, assessment, reform and punishment of state-owned capital, the state-owned supervision department ought to implement the investor's capital ownership and executes the firm procedure control.

Second, the direction of capital operation is involved in the investment, placing an emphasis on the leading industry strategically regrouped on ownership and extending for the production-factor market. While the powered agent is in charge of the operation, the state-capital supervision department ought to implement the terminal control, i.e., the standard advance-&-retreat mechanism, and reserves the last rights of decision and approval. In order to make the extension risks become minimized.

Third, new operations are opened. The production is operated for the transportation or logistics market, and it is focused on raising the efficiency and core competitive power. The state-capital supervision department can authorize and appoint an agent who can independently operate the port and take the civil responsibility legal-person handling structure.

#### **3.1.5.2 Port management authorities has the core function of public management**

Port Law is confirmed as the following in the Chinese port administrative system: the central macroscopic adjustment and the local government oriented "one port and one administration." The new system breaks not only the original subsidiary port of "replacing the administration with enterprise," but also the local Communications

direct-led port of “replacing the enterprise with administration.” This is beneficial for us to make right law execution for the diversified port and create the opened market system.

The port administrative authorities have the following core functions: Making the public management, protecting the legal operation, encouraging the competition with reason and banning the monopoly operation. Only if it does not belong to any profiting subjects, can the public manager make the right “judgment.” All of the port should be fairly regarded no matter it is the original subsidiary port or the transferred port, the big port or the small port, the state-capital port or the foreign-capital port or the state-owned, single-capital, joint-stock port. The port is allowed to enter market competition where “survival of the fittest” .Of course, we must prevent the port becoming strong for the monopoly. Otherwise, the market rules will become useless and the “judge” cannot control the “athlete.” For example, the reform will be influenced if the port authorities make more “overflow” intervention or new administration.

#### **3.1.5.3 All government Become a service Supplier**

The two systems of state-capital supervision department and port governing department are different on power and profit. This is state-owned capital based on the port-industry-function field: The state-capital department is focused on the profit making of microscopic level; and the port-governing department is on the macroscopic social aims. With market economy increasingly developed, all kinds of logistics activities and economic relationships are complex. The system of rules and laws system cannot cure all diseases. The port is always attacked if encountering the practical troubles. Therefore, it is a popular willing that the government “executes

power for people” and takes the tenet of servicing the society. The national reform treasures small government and big service, so the new port system ought to place an emphasis on the service, decision and responsibility. On certain significance, the government invests the port service approximately with an aim to fulfill the legal obligations of raising the whole social welfare. In this case, we cannot make the difficult port run for present. Some of the freshwater port decays on function with heavy debts and many-year losses, so the related government organizations ought to take responsibilities to support the weak port. This is not a negative “clone”, but the developed resource for continuable use.

#### **3.1.5.4 Port modern enterprise system**

Big and mid-sized port enterprises, as soon as possible, establish and perfect the modern enterprise system and set up the standard legal-person handling structure, so as to really make the “clear ownership, definite rights and obligations, the separation of administration and enterprise and the management science.” The small port executes privatization reform and activates enterprise development impetus. And the port enterprise ought to perfect the internal encourage and restriction mechanism, establishes the efficient employment and appointment mechanism as well as the achievement checking system.

I would like to continue my example about JiangSu Province.

Basic ideas for solve the existing problem of JiangSu Port Managerial system.

- Based on the status of JiangSu Port, construct the port administrative mode and rightly handle the following relationships: First, relationship between uniform layout planning and multiple investment construction; second,

relationship between different ports as well as sea route, shipping, sea affairs, pilotage and comprehensive department; third, relationship between cross-administrative-division port group and the "one port, one administration;" forth, perfecting the relationship between port environment and standard port administrative; and fifth, the relationship between remained historical problems and future development.

- On the basis of "Landlord Seaport" and in conformity to the guideline of different labor division of province-class and local port administrations, construct the JiangSu Port Administrative System as follows: The province-class port administration conforms to the development strategy and whole planning of national port industry and plays the roles of direction and uniform planning of port industry development and port-resource utilization, and the local port administrations are concretely responsible for the daily supervision of port construction and port market.
- Establish the legal port system as soon as possible. First, construct the complete system of port regulations based on the port and then build the appropriate managerial system. Second, clarify the laws to instruct and uniformly work out the port development and port-resource utilization. Depending on the laws, manage and control the resource planning of deep-water bank lines, coordinate the different port development scale and functional labor division, regulate the roles of different principal investment parties taking part of the port-resource development and utilization as well as the guarantee and restriction of rights and interest. And third, play the leadership and safeguard on the fairness and suitability of port-enterprise competition and efficiently execute supervision on port price.
- Cultivate the port enterprise group in order to make Jiangsu Port enterprise



take part of internationalized operation and provide them with reliable and efficient port service.

According to the analysis above, I have some measures to solve the problems.

- Establish the organization architecture of concentrated, uniform, varied and classified management and diversified labor division:

On the province-class management, uniformly integrate all the functions of port, sea route, pilotage and harbors along the banks of rivers and sea, in order to set up JiangSu Port Shipping Administration.

On local management, set the following 3 modes according to the characteristics of JiangSu Port: First, carry out the two-stage management mode on trial for port management commission and port administration in some important harbors; second, set independent port administration for local city where the port is located (concretely, the joint office of communications bureau is available); and third, the port administrations set by county-class governments are usable for the outside authorized units of city-class port authorities, so as to carry out the vertical management.

Inland river port management organizations ought to conform to the freshwater port managerial system, in order to gradually suit to principles up to the requirements of new port managerial system reform.

On the basis of the said JiangSu port administrative organization architecture, the province and local-class port administrations will be functionally divided according

to the principle of "classified management, interlaced labors," including:

The province-class port administrations follow the national port-industry development strategy and overall planning. It plays the instructive and uniformly planning roles in the port-industry development and the resource utilization, with the following main functions:

- Implement and execute the port related guidelines, policies, laws, regulations and rules, work out the all-province port policies and regulations; and become responsible for the overall anticipatory development strategic research and make the macroscopic policies
- Organize the workout of all-province port layout; be responsible for the execution of uniform administration the coastline, land and water areas of ports around the province; and approve the port-industry development planning and appraise big-sized port construction projects.
- Responsible for the port-shipping-resource supervision, manage the coastline uses and execute the port-shipping-project management; and responsible for the organization of maintenance and administration on the construction all-province port public infrastructure.
- In accordance with the state laws, regulations and rules as well as local port regulations, have supervision and management on the port-industry operating.
- Responsible for levying the administrative fee or charging it on behalf of others. For the enterprise operating-fee projects and prices, execute supervision and management according to the related regulations.

Local port administrations are concretely responsible for the daily supervision of port construction and market, with the following main functions:

- Implement execute the related state laws, regulations and rules, work out the related management regulations, coordinate the edition of complete port development planning and execute uniform administration on the port coastline, land and water areas.
  - With the supports of people's government and public finance of area where the port is located, become responsible for constructing and managing; and become in charge of the market investment and financing management of operating infrastructure and general projects.
  - Responsible for managing and supervising the port-operation market activities, hygienic epidemic prevention, environment protection. Also, coordinate the port related management with the direction, supervision and coordination of port security and become responsible for organizing, instructing and coordinating a variety of fault (accident) emergency treatment.
  - Responsible for the appraisal and approval of port related enterprise and efficiently supervise the operating enterprise's market behaviors.
  - Responsible for levying the administrative fee or charging it on behalf of others. For the enterprise operating-fee projects and prices, execute supervision and management according to the related regulations.
- Make the uniform planning and strengthen the coastline management and port-resource optimization.

Establish the province-class port planning and construction leading team (or commission), enhance all levels of planning management, adopt the economic, legal and suitable government intervening measures and implement government functions for planning management, policy workout, information instruction, standard order,

organization, coordination, supervision and examination.

Publish the methods of using and managing port coastline as soon as possible and sound in the area port planning system. The key points include the coastline-oriented application, appraisal and approval programs as well as the paid coastline uses.

In accordance to the guideline of “advantages mutually beneficial and both parties as winners,” integrate the port resources and achieve the optimization.

- In the port construction and operation, clarify the government leading position and role, actively promote the “landlord port mode” and explore the port financing system reform. First, as soon as possible smoothen the public infrastructure oriented construction, maintenance and managerial system. Second, as soon as possible smoothen the systems of pilotage management, shipping-project quality management and others. Third, recruit the port operating organizations in home and abroad to raise the port management level. Fourth, while actively promoting the “landlord port” mode, deepen the investment and financing system reform, establish the port investor system, further open the port market, widely absorb the social capitals and form a variety of multi-channel investment and financing systems.
- Perfect the port systems of policies and regulations, strengthen the construction of port-shipping supervision and law-execution teams and achieve the efficient supervision of orderly port market development.
- Make the strategic structure adjustment of state-owned port assets, set up big-sized port enterprise groups, deal with the market competition and

strengthen the port-group competition power. According to the Jiangsu port status quo, it is suggested that the administration adopt policies to encourage port enterprises and execute the regrouping and merges with capital as ties. Therefore, some big-sized port enterprise groups cross administrative areas will be set to take part of port competition. By means of the integration of port resource, the function switch of old harbors and the development of port market, the administration will gradually form a cross-area operating layout that is focused on the dock and container operations and extends to the international and domestic markets.

- Strengthen the pilotage and sea-affair managerial system reform.

In addition, the port company has an opportunity or challenge when it strives for the double-side favorable transnational merge, becomes the state-owned enterprise and makes the system innovation and strategic regroup. All the port enterprises must change ideology, develop market, improve service and raise quality. Depend on local government and related management departments, they ought to actively improve the port customs environment, enhance the cooperation of shipping companies, increase shipping lines, enlarges the regular ship density, endeavor to expand the resources of cargo and passengers, raise the legal-operating consciousness, enhance the enterprise management, decrease the operating cost, have the safe production well done, further mobilize the staff's activeness, actively adopts the existing national policies, activates the port enterprise stock capital with the introduction of merchant and capital, meets the planning requirements, try our best to expand the port enterprise production-and-operation scale, construct the facilities such as dock and storage, increasingly raise port technical equipment level and completely promotes the construction and development of Chinese international shipping center.

## **CHAPTER 4**

### **DIVERSIFIED INVESTMENT, FINANCING SUBJECT AND MAIN OPERATING SYSTEM UNDER PORT LAW**

#### **4.1 Port Law regulates diversified investment and financing subject and operated main system**

Port Law implementation confirms the port diversified investment subjects, as well as the port operation entry system and fair competition system, for privately capital, civil capital, so as to create a fair legal competition environment for foreign investors entering the port industry and make the Chinese port-privatization conditions. At present, economy globalization program increasingly speeds up and the Chinese economy growth is well off continuously. Meanwhile, the Chinese port still faces the long-term fierce competition of ports in neighbor countries and regions. The domestic port must play the market mechanism role, mobilize all-phase active factors, absorb multiple capital and power to construct the port facilities, take part of port operation, cultivate the diversified port investment and operating principal part and establish the new-style port operating system as well as the investment and financing systems, in order to activate the port development energy and raise the port service level. In accordance to Port Law, the port market is open and clarified; and any operators up to the legal conditions operated can enter the market. Port Law also encourages domestic and foreign economic organizations and individuals legally

investing to construct and operate the port and take part of the fair competition. The regulations benefit to establishing and perfecting the port investment and operating the principal-part diversified mechanism, so as to make the port service level increasingly raised and the comprehensive competition power increasingly strengthened. Port Law also stipulates the entry rules of port operation business as well as the basic market-entry conditions, including: related facilities, qualified employees and perfect system. Any investment or foreign and domestic capital can be put in the port if it conforms to the conditions. In addition, Port Law stipulates the port operating rules, including: providing the client with fair service and definite quotation, without enforced service and with an aim to realize the socialism market-economy fair competition principle and protect competition mechanism between port operators, so as to make the port service level and competition power both raised and achieve a purpose for port providing services for the economic and social development.

#### **4.1.1 Port investment and financing policies**

Port is an important guaranty for the economic development of city and related areas. It is also a component of national infrastructure. The country develops and constructs the port with an aim to meet the requirements of national economic development and provides services for society and foreign trade. (Hong Jun, Ye, 2003, p.165)

The importance of port makes it is necessary for government to invest in the port construction. Around the world, many countries take the multi-function advantages of port and treat port development policies as important parts of the development policies of national and local economy as well as the comprehensive transportation system, in order to make the port planning and construction firmly connect with the

development of national and local economy and achieve the port social benefits. In this case, the governments mainly support the port with favorable policies and bigger capital. Although more and more international ports become privately managed, the infrastructure investment subjects are still the central and local governments.

Article 20 of Port Law stipulates: Government is in charge of the infrastructure construction and maintenance of port, guaranteeing the necessary capital investment for those of the port's public sea route, bulwark and anchor. Promoting port development is a legal obligation of related government.

Article 5 of Port Law stipulates: Country encourages the domestic and foreign economic organizations and individuals legally investing and constructing the port. This refers to the port operating facilities and on the other hand, covers the port infrastructure.

In the collection of port construction capital, Port Law encourages the investment and construction of port facilities as well as the operation of port business and the achieved payment of market rules. The chapter, Port Operation presents the definite stipulation.

In accordance with the states of domestic port construction development and social economic development, as well as the restrictions of national finance and the whole social capital able to be invested in the port construction, the port construction will still actively adopt the foreign capitals in the future. On March 31, 2002, the State Council agreed that the Planning Committee, the Economy and Trade country Committee and the Ministry of Foreign Economy and Trade jointly publish the "Foreign-merchant Investment Industry Guideline Catalog," listing the construction



and operation of port public port facilities as projects in which the foreign-merchant investment is encouraged, without restriction on the investment ratios. (Hong Jun, Ye, 2003, p.174)

Article 20 of Port Law also stipulates: The State Council give added regulations for all classes of the people's government making the construction and maintenance capitals of port infrastructure. This means that government can make the port construction capital by means of the financial investment, bond publishing and certain administration. For example, the policies of levying the port construction fees are given domestically.

Therefore, the government or domestic or foreign economic organizations and individuals all can collect capital to invest the port facilities construction by all means.

#### **4.1.2 Port operated management**

Port Law stipulates the port business (including: providing passengers and cargo with port, storage, harbor operation, procedure and logistics) features the principle of plural entities and fair competition under the macroscopic government management. Article 3 of Port Law stipulates the definite "rules of game" under the principle. For example, it stipulates the entry rules of port-engaged business from Art.22 to Art.25, and it stipulates basic market entry conditions, including: related facilities, qualified employees and perfect system. Any investment or foreign and domestic capital can be put in the port if it conforms to the conditions. In addition, it stipulates the port operating rules from Art.26 to Art.29, including: providing the client with fair service and definite quotation, without enforced service and with an aim to realize the

socialism market-economy fair competition principle and protect competition mechanism between port operators, so as to make the port service level and competition power both raised and achieve a purpose for port providing services for the economic and social development.

## **4.2 Effect of Port Law on diversified investment and financing**

### **4.2.1 Foreign investment and financing modes**

In the area of port investment and financing, all countries in the world adopt the following popular means. (1) Government investment: The government investment of port infrastructure mainly refers to the financial appropriate funds. German Government takes more measures in the port infrastructure construction. (2) Establishment of special foundations: For example, The United States port levies the port maintenance tax depending on 0.04% of the values of loaded and unloaded cargo. This tax is wholly introduced into the “port maintenance consignment foundation” for the Income Dept. of Ministry of Finance making the sea-route maintenance specially. (3) Financial organization’s loan financing, including a traditional capital collection style that money is collected from the domestic and foreign financial markets, (4) Bond publishing is one of main methods for the United States collecting the port construction capital. Japan, France and the United Kingdom also use bond publishing to collect capital for port construction (5) Share publishing: China Yantian Harbor and international famous big ports such as German Hamburger Harbor all adopt the money-collection style. (6) Project financing (BOT): For example, it is used for Hong Kong No.8 Container Terminal. (7) Financing tenancy: it is an efficient method of updating the port equipment. The above methods perfect the Chinese port financing investment system. At present, the Chinese port is on the

phase of further deepening reform and perfecting port managerial system. The separation of administration and enterprise and the port business enterprising both make the Chinese port financing and investment conditions considerably raised and improved. Now, the Chinese port enterprises widely use the following financing and investment methods: government investment, the appropriate funds of port construction, adopting domestic and foreign loans, introducing the joint venture operating, shares publishing and other means. (The comparison analysis of the financing system in foreign country, 2003, p.1)

#### **4.2.2 Chinese port investment and financing diversified program**

Under the background of economic globalization, the international capital is fast expanded throughout the world, the international work division is more definite and the foreign economic activities are more frequent. After China's reform and entry into WTO, the national economy has merged the global economy and had an increasingly close relationship with the economy of other countries in the world. With the Chinese economy sustainable fast growth and increasingly raised degree of open to the outside world as well as the improved domestic investment environment, continuously the scale of foreign direct investment (FDI) is expanded and the investment field is widened. At present, China totally has 30 or more foreign-merchant invested port construction and operation projects, with a total investment of over 3 billion USD, where the foreign investment hit 60% or more. (Yong, Yang, 2005,2) Ports whose foreign investment scales are bigger include: Shenzhen Yantian Container Terminal, Shanghai Container Terminal and Qingdao Container Terminal. The newly added container throughput exceeds 10 million TEU.

<b>Table 2 The Statistics For China Ports Throughput, Foreign Direct Investment</b>			
Year	FDI (Hundred Million US dollar)	Accumulative Total FDI (Hundred Million US dollar)	Throughput of Main Ports (Hundred Million Tons)
1995	375.21	1348.69	8.02
1996	417.26	1765.95	8.52
1997	452.57	2218.51	9.08
1998	454.63	2673.13	9.22
1999	403.19	3076.31	10.52
2000	407.15	3483.46	12.56
2001	468.78	3952.23	14.26
2002	527.43	4479.66	16.66
2003	535.05	5014.71	19.65
Source: National Bureau of Statistics of China <a href="http://www.stats.gov.cn/">http://www.stats.gov.cn/</a>			

On the view of the Chinese port construction-capital sources for the recent years, the domestic in-budget investment approximately hits 1% of the total port construction investment, the domestic loans reach 20%, the port enterprise or undertaking company collects 51%, the adopted foreign capital is 8%, the appropriate fund is 7%, the locally collected money is 8%, other capital sources 5%. (Yi Nong, Lai.,& Gui Feng, Lin , 2005, p.30)In this case, the government construction and investment ratio will increasingly slowly. The market-oriented investment is gradually added. Only if the market oriented investment and financing is strengthened, can the port construction speed up to make the port throughput growth keep pace with the fast freight increase, so as to raise port competitive power and promote the Chinese

economy development. After Port Law has been implemented, the shareholding of foreign capital to the Chinese Mainland port investment will not have the 49% restriction.

Table 3 Part of China Port Invested by Foreign				
CITY	PORT NAME	PLAN (TEU)	FROEIGN INVESTOR	PERCENTAGE
Da Lian	Dalian Container Terminal	5*1800000	PSA/APM	49%
Shanghai	Shanghai Container Terminal	10*1000000	HPH	50%
Ningbo	Ningbo Beilun Terminal	3*800000	HPH	49%
Shenzhen	Ci Wan Container Terminal	2*500000	COSCO Pacific	32.5%
Xiamen	Xiamen International Container Terminal	2	HPH	49%
Shenzhen	Yantian Internatinal Container Terminal	5*4000000	HPH	73%
Guangzhou	Guangzhou Container Terminal	6	PSA	49%
Shanghai	Shanghai Pudong International Container Terminal	3*1600000	HPH	30%
			COSCO Pacific	20%
Source: Lai Yinong,& Lin Guifeng,(2005). The Analysis of Finance & Investment for Chinese Ports Development, <i>Transport Company Management</i> .1				

In addition, PSA, COSCO PACIFIC and A.P.Moller totally invest to Dalian container terminal the 600 million USD, in which Dalian Port Authority or PSA holds the 25% shares and each of the other two parties holds the 20%; Harbor of Tianjin Foreign Economy and Technology Cooperation Co. and NYK. Jointly invest to set up Tianjin Harbor Roll-Roll Port Co., Ltd., with the 60% and 40% of registered capital. Med. Shipping (Msc) and Ningbo Port Group Co., Ltd. jointly invest 250 million USD to

establish Ningbo ChuanShan International Container Terminal Co., Ltd. (Li An, Han., & Qing Ling, Ci., 2005, p.99) Of these cooperation and investment projects, an obvious characteristic is that the port affairs groups join hand with the shipping companies, with an aim to better combine the construction and the operation so as to make better economic benefits.

#### **4.2.3 Port investment and financing-diversified development**

Obviously, the port acts as a bridge or hinge between the domestic market and the international market. Under the promotion of foreign-merchant direct investment, it can be well developed promote and its position in the national economy can be further raised. The following can be predicted in the future port development:

- Government still plays an important role in the port financing and investment system

Based on the Chinese national situation, it is suggested that on the port infrastructure project investments featuring the social commonweal characters, government departments still participate in the port planning and investment as the investment subjects, in order to guarantee the regular development of Chinese ports. In addition, the government also can increase the enterprise capital investment by means of permitting the operation, interchange and direct transfer of land for a port construction project. Also, the government can select to publish construction bonds or give to the enterprise the loans of favorable policies. With levying the special taxes of port construction and development foundations, the government can guarantee achieve the roles of port infrastructure construction in financing and investment system. According to the

developments of 3 international ports Singapore, Hong Kong and Rotterdam, it is an predicated situation that government withdraws from the port-competition-facility investment field, with a key of enhancing the instruction strength of capital introducing policies, in order to exert the competitive power of promoting the Chinese port industry on maximum and efficiently wipe out the negative influences. (Oversea port investment management system and Chinese port privatization, 2003, p.11)

- Arrange and adjust financing and investment structures with reason

The port construction project ought to be diversified according to its functions, with an aim to further clarify obligations and responsibilities that the central government, local government and enterprise take as classified investment subjects, respectively, so as to execute the investment decision and managerial system integrated as “investment—decision—payment—risk taking.”

- Fully adopt market conditions and widen financing channels

At present, the Chinese financing channels ought to be further extended. For example, bond publishing has not been fully applied. New financing styles such as financing tenancy, BOT and TOT ought to be further practiced. In the operation-project financing area, China’s entry into WTO makes a better condition for China introducing foreign capital. However, it is to be deeply researched that under the same nationally favorable principles, how to better adopt the domestic civil capital investment for port construction. This is very significant to lower the port financing risks and raise the domestic capital power.

- After China's join into WTO, domestic port construction and operating market will be gradually opened to the outside world in order to deliver the cargo in the transportation service industry. In 2002, the following is wiped out in the modified document, "Foreign-merchant Investment Industry Instruction Catalog:" a regulation that the Chinese party must hold the main shares or take the leading position. Later, more and more foreign capitals (including: international Terminal carrier and shipping company) will enter the port or container terminal especially by means of joint venture or sole-capital enterprise. This must weaken the position of state-owned port enterprise market and make port competition situation with a variety of ownership.
- In recent years, it has been an uprising that big sized international shipping enterprises take part of the investment-operated port, with the port upsurge that international regular shipping companies becoming localized. The reason is because that the port can stabilize the cargo and lower operating risks if it owns more and bigger international shipping companies; and the shipping enterprises get personal services to avoid restrictions. This is the double-side profit making strategy. With the finished port company system reform, certainly more shipping enterprise will hold the port shares with investment in order to jointly operate and develop the port.

I would like to give an example for diversified investment and finance policies for JiangSu province. According to the analysis above, I would like to give some ideas for Jiangsu's port investment and finance policy.

#### ■ Principle and orientation of Jiangsu marine financing



- Advance the reform of marine and financing system
- Actively cultivate multiple financing channels
- Integrate the government support with market financing

■ Suggestion on JiangSu Port financing strategy

- Establish the port-construction appropriate development funds. Depending on the present state investment policies and the government capitals, it is suggested that the port-construction appropriate development funds of all levels of JiangSu Government are induced into the local finance, so as to form the stable sources of port construction capital. Also, it is considerable in the port infrastructure construction funds that the capitals of port cargo-owner enterprises are introduced into the said funds. Of these funds, the government capitals are used for the port public infrastructure. The construction of operating infrastructure sees an investment to be jointly put by the port operating enterprises and cargo-owner enterprise.
- Clarify responsibilities for government put free investment into public infrastructure, as well as uses of port construction fees
- Establish port-industry investment funds. The industry investment funds serve as capital supports for unlisted enterprises. The gains

of industry investment funds are from the bonus of invested project or the value-added capitals of shareholding-right investment. JiangSu adopts the industry investment funds because this can further expand the investment sources of port infrastructure construction reduce the debts.

- Adopt the government influence and provide favorable policies to instruct the private investment.
- Others: BOT financing, ASB financing and trust-applied financing

■ Suggestions of Jiangsu shipping enterprise financing strategy

- Work out the favorable policies. All classes of local government ought to set appropriate funds to aid shipping enterprises making development. And it ought to guarantee the timely and correct distribution of shipping enterprises' aid, so as to make these shipping enterprises see sufficient capital development space. On the basis of levying favorable policies from shipping enterprises, it is suggested to exempt income tax for the yearly launched independent-balance shipping enterprises on trial operation.
- Shipping enterprise mutual-aid guaranteeing fund. It features the shipping enterprise's own investment, service, risk, independent legal person and non-beneficial performance. Qualified shipping enterprise can be accepted as the members only if abiding by the rules of company and paying certain membership dues. The

members shipping enterprise can apply the volume of guaranteed loan several times more than the dues.

- Others: Domestic bank financing, overseas financing, capital market financing, ship financing, lease and nongovernmental capital.

### **4.3 Diversified Port Operating-subject System under Port Law**

#### **4.3.1 Cause of act of port privatization**

The implementation Port Law means that China speed up the port privatization. All countries in the world commonly select the port privatization as a style of port management reform. On the view of its cause, the port privatization is mainly divided into two phases: 1) the frauds of public department are exposed in the areas of port oriented construction, operated and management; and 2) the innovations of port owned technical advancement, transportation, production, organization and regulation may present opportunities.

On one hand, the comments of public ownership include the following. (1) The capital market supervision is missing. The managers of state-owned enterprises lack promoting tools such as stock and shareholding rights, so they are unable to fully and efficiently make investment on the view of long-term benefits. Owing to the restriction of missed external capital market, the managers of state-owned enterprise do not fear losing the jobs and work hard. (2) The government does not make reliable promises. The first one is the restriction of soft budget. Because that the government needs to consider the unemployment and social stability, it can help the state-owned

enterprise solve the operation difficulties. Therefore, the public enterprise lacks the bankrupt restriction and its managers rarely try their best to update the operating efficiency. Second, the manager specific capital investment is occupied. Third, the enterprise operation sees many aims. (Xin Zhu,Zhang.,& Feng,La,2000,p.68)The state-owned port enterprise is not capable of suiting to the market mechanism and adjustment mechanism. Because its competition mechanism is lost, the enterprise sees low efficiency, serious bureaucratism, and imperfect operating management and great loss, so as to obstruct the port development. All the governments in the world gradually know this: Not the “market failure”, but the “government failure” brings a series of unbelievable inefficient symptoms to the port operation. In this case, all the port related operation policies in the countries begin to be focused on the free competition and participation of civil departments, in order to correct privatization whose “regulations fail” on the port operation. (JiaQi, Yang & Hua, Lu, 2003,p.1)

On the other hand, the economy globalization, trade freedom and port market demand are increasingly expanded, so the technical development increasingly speeds up. The port has been changed from the single function of loading and unloading cargo into a node on the whole logistic chain, playing an important role. However, the natural monopoly of port is thickened. (Dong-Wook, Song , 2003, p.30) It is an epoch when the “comprehensive logistics” of international multi-style transportation industry are ready. (Jian Hua,Xu, 1997, p.43)This makes the port is integrated into the transportation chain with other transportation modes and nodes. In this case, transnational sea transportation companies are involved in the transportation chain and establish comprehensive logistics centers for all loops. Therefore, the port provided diversified service features both public and private cargo. The level of port efficiency not only depends on the port itself, but also has a relationship with the service level of whole transportation chain. Meanwhile, technological advancement

makes other transportation modes (railways, air and roads) replace the competition more fiercely and the port geologic monopoly advantage is gradually lost. In addition, the container and big ship both change the port infrastructure and water depth and sea-route conditions. The port industry is reformed from the labor style into the capital style. Gigantic capital gap is an issue that all countries face in the port construction development. The port privatization is just the efficient solution.

#### **4.3.2 Present state of port privatization of all countries in the world**

At present, all main countries execute the port privatization.

- Canada completely executes privatization for unimportant ports among the countrywide 548 ports. The government only legally makes the unnecessary supervision. The government draws up agreements with private enterprises regulating that within 5 years. The ports cannot be used for other purposes. In the ports cannot be operated for the meantime, the government has a right to draw them back. After the 5 years, the operators have the rights to use the ports for other purposes. The government degrades the personnel as low as possible. It only places the main restrictions on the safety and environment protection, so as to give more powers to the ports authorities.
- In 1970s, the United Kingdom first made the port privatization upsurge and transferred it for Europe quickly. In 1971, the United Kingdom government published the Methil Port Law, transferring Liverpool for Methil Port Affairs Co. (The government only held the 20% stock), so as to begin the United Kingdom port privatization program. In 1981, the United Kingdom government disbanded Transportation Port Affairs Committee and then established the United Kingdom

Port League, which was concretely in charge of the port privatization related port-capital sale. At present, the United Kingdom government does not hold shares in the 22 member ports of the league. In 1991, the United Kingdom published Port Law. Except the special cases, ports whose salerooms hit 5 million Pound or more must execute privatization. (Ming,Li, 2004, pp.40-42)

In addition, some other countries invoke the landlord-type port authority. Landlord port managerial system means that port authority own the port land, coastline and infrastructure on behalf of the countries. The port authority is mainly in charge of port planning, plan and operated tenancy, in order to guarantee the in-harbor safety, loading and unloading quality, maintenance port facilities and environment protection, etc. The port authority has uniformly developed the in-harbor land, port, sea route and other infrastructure and leased the port for the operating enterprises or shipping companies. The port authority charges certain rents.

- Rotterdam Harbor is also the typical landlord port. Rotterdam Government masters the port, coastline and infrastructure ownership. This government sets a port authority that is in charge of port development construction and daily management work. And this authority sets the business development dept. governing the investment and construction of port infrastructure, the approval and lease of port facilities and the levy of regulated fees. The port authority uniformly develops the land, port, sea route and other infrastructure in the port. By means of the tenancy, the private enterprise makes operation and the port authority charges a certain rent. The enterprise only needs to investment mechanical equipment, storage and other accessory facilities on the top of ports and recruit port workers and management employees.

- Since 1980s, German has carried out the port oriented stock-system reform and port-operated privatization reform. The federal state or city in which the port is localized should establish port management stock-system companies and make the management of port infrastructure on behalf of nation. 100% of the port capital is owned by the state. The operating style of infrastructure is perfect with favorable price. This leases the state-owned capital for civil companies by all means. The local government is the principal part of German port infrastructure investment. In the port, all infrastructure including roads, railway lines, port fronts, the water, electric and gas supplies and communication facilities are uniformly regulated and invested by the government; and all ground facilities and equipment are privately invested and set up. (Xue,Wang, 2004, p.10)

Landlord port has the biggest characteristic as follows: Setting up the long-range fixed investment and financing channels of the port infrastructure construction and management, without the all-class government investment (Practically, all classes of government do not make financial investment; even if there are legal regulations, they are not realized). The practices of ports in all countries testify: the Landlord port mode, and the circled development of port both are reliable guaranties to the long-range development and efficient management of port. No matter it is government classification management port of the enterprise management port of company system; the Landlord port undoubtedly is one of important policies and channels for promoting the port sustainable and stable development.

#### **4.3.3 Suggestions about the system of multiple-operating entities in ports of our country**

The system of multiple-operating entities in port market of our country is taking form

quickly. It is said that, in 2004, there were already 772 joint ventures or cooperative enterprises in Port of Tianjin; among those, there were 48 joint ventures, and the total investment was US\$840 million; and 64 domestic cooperative enterprises, total investment RMB4.3 billion. At Port of ZhangJiaGang, there are more than 30 companies, and 70% of which are private enterprise, and only there are the original state-owned port groups. Dalian City has 38 port companies, and the throughput of 4 of them has surpassed 10 million tons per year. In recent years, Rizhao City has implemented favorable, multi-facet policies to construct the port and operate the market, and now there are already 28 mid- and large-scale enterprises participating in the construction and operation of the port.

Some places in our country can privatize ports or entrust the ports to “landlords.” Port Authority and Marine Bureau should decide how to organize and manage the ports, and local governments and transportation investment companies should develop the infrastructure. The best pattern to operate a port is to make it a competitive market with private enterprise as the main part. Competition can optimize the allocation of resources. And we can finally achieve the separation of three rights: the equity ownership, the administrative right of local government, and the port companies’ rights to operate the port.

The proportion of private bid and public bid for constructing and operating ports will increase in some market-well-developed places.

- New ports can be constructed the same way as the real estate industry develops: the land and coastline belong to the country, and the infrastructure and facilities for operations will be developed or constructed by bidding privately or publicly. After ports are established, private enterprises will have the rights of operating



the ports for a period of time, and will pay fees for using the land and coastlines. After the operation period of time, the operation right should be return to government gratuitously. In managing the ports, the ones who invest should make decisions, and should carry the risks there incurred. The existing port authorities may take the same responsibility as that of Hong Kong Port Development Council and Hong Kong Marine Department: mainly responsible for assessing demand and forecasting and managing the development of ports, managing the plans, and guaranteeing that the investment and development in the ports are reasonable and scientific.

- Ports winning over investment, development and operation from foreign shipping company.

Ports and transportation enterprises cooperating strategically is inevitable when ports have to further innovate and develop the-third-party physical distribution. The coastland ports of our country should win over shipping enterprises to jointly develop and operate ports. As containers become larger, the operating risks of shipping companies are increasing. Currently, many large-scale shipping companies begin operation of ports to allow their own fleets enjoy safe and quick loading & unloading services, and to reduce the service and berth time, and reduce the cost of shipping. Maersk, and COSCO Group and China Shipping Group of our country have business in both shipping and invest in ports, possessing ports or hold shares of ports.

For local port authorities, there are two obvious advantages to choose famous international large-scale shipping companies to jointly invest and operating ports: firstly, with shares of shipping companies in port investment, the

operators of ports reduce their own investment in the ports for the constructions at the beginning, reduce the difficulty of financing; secondly, when shipping companies deploy their sea routes, they have to take into consideration of ports of joint ventures. For example, after becoming a shareholder in the front estuarine harbor of QingDao, Maersk increased its ports of call of sea route of Far East to Europe, and listed the front estuarine harbor of QingDao as one of its main ports of European Sea Route. Therefore, QingDao Port became the fastest port in North China that export to Europe, and more competitive.

In the Stage 4 construction of WaiGaoQiao of Shanghai, Shanghai International Port Affairs Group held 51% of the share of the 4 Container Berths, and Maersk 49%. When the Stage 4 construction was finished and put into operation, Maersk transferred one of the ocean routes from Stage 1 of WaiGaoQiao to Stage 4.

- According to the current situation of ports in our country, we suggest carrying out the “landlord” management at ports with ready conditions. The existing port affairs companies and other enterprises, which want to participate in the operation of ports, should be at the same scratch line, to let them compete fairly for the rights to operate the ports. And the enterprises and shipping companies decide whether or not to continue to employ the existing management or the workers. The existing equipment, storehouses, yards, and other support facilities should be transferred to the companies operating the ports. Plans need to be made to define the ranges of ports, and the lands within the ranges should be designed by the port authorities or governmental companies (like the Yangtze-River Mouth General Construction Company and the Three Gorges General Construction Company), and the infrastructure of ports should be well

developed according to design; and then, the authorities should rent the coastlines, at which port and warehouse can be constructed, to the operating companies to complete the facilities and do businesses. And the authorities will only charge the companies for using the land. Or the authorities should construct the coastlines into simple ports or warehouse, and then rent them to the operating enterprises, charging them for using the ports, warehouse or equipment.

Port industry is the frontline of Chinese opening-to-outside policy. When encouraging multiple kinds of investments to enter ports operation, the government should consider that if the foreign investment would affect our national safety, if the foreign investments would affect our port industry like what our national auto industry does. Recently, based on protecting national safety, the US rejected the proposal of Dubai Port International purchasing the US port. We can see that the governments of the western developed countries don't completely quit the control of foreign investment. Privatizing the operation of ports must not threaten national safety; and competition should be introduced, preventing any single company or any single port from monopolizing the market. And at the same time, we should see to it that the competitive edge of every port is increased. In this way, ports can be the new growth industry of our economy.

## **CHAPTER 5**

### **EFFECT OF PORT LAW ON PILOTAGE MANAGERIAL SYSTEM REFORM**

Pilotage, being called water guiding, port guiding, or river guiding, means that, within a water area (for example, port), professionals (pilots) get on ships (the pilots take no duty on the ship) to guide the ships and give the ships suggestions about steering, and finally guide the ships into or out of ports. Pilotage is a service of public safety at ports. On the other hand, ports are naturally a kind of facility of national defense. Pilotage rights are also related to national right of navigation, and therefore become a part of national sovereignty. As management of ports is further reformed, pilotage is reformed too. Reform of pilotage is an important part of reform of management of ports. And the reform is stipulated by Article 39 of Port law.

#### **5.1 Current Situation of Pilotage in Our Country**

##### **5.1.1 Effect of pilotage on port activities**

Currently, we are not rich in port resources. Furthermore, natural deficiency sometimes restrains large ships from entering or leaving ports (for example, the water is not deep enough). Our economy and import & export trade grow so fast but the capacity of our ports are not large enough; therefore, production at ports are very

busy. To make the production more efficient, all the parts of a port must closely cooperate with each other, and pilotage is a very important part. Particularly, container ships demand more of loading and unloading and berth time. Therefore in order to make sure to satisfy transport needs and release the pressure of berthing, pilots need to be there in or ahead of time. All the sections in the production chain at ports must closely cooperate with each other to guarantee the success of ports.

### **5.1.2 Cases Analyzing of Pilotage**

There are two patterns of pilotage in our country: (1) The pilotage stations are managed by port Group; (2) Governmental agencies managing pilotage.

Most ports adopt the first pattern. In the ports where most of the business is done by port Group Company, the benefit of the first pattern is obvious. In addition, the management and leadership of the Group Company are improving, thus the pilotage is efficient, and the successful production is guaranteed.

At some ports where many companies do the business, pilotage is still the first pattern. Since the situation at this kind of ports is different from the above-mentioned ports, and any single company does not do the business, this pattern of pilotage is efficient and fair in the same way as the first kind of ports.

Using the same pattern of pilotage at different kinds of ports, and the pilotage pattern is suitable for those ports, shows that the government keeps up with the time in pilotage management. Certainly, as ports keep innovating and as the number of people operating ports increases, pilotage will keep innovating too to adapt for development of economy and management.

Take JiangSu port pilotage managerial system as an example:

### **Status quo of JiangSu port pilotage managerial system**

JiangSu's existing port pilotage system is divided into two parts: The seaport pilotage mode is represented by administration in LianYunGang. As a subsidiary of LianYunGang Port Group Co., Ltd., LianYunGang Pilotage Co. is responsible for the administration. The pilotage coat is counted according to the state regulated fee rate. The JiangSu pilotage distance of Yangtze River port is 400km, between Ci lake River Delta and LiuHe River Delta. There are the self-owned operating pilotage organizations of Yangtze River Pilotage Center of Yangtze River Shipping Management Bureau, the pilotage stations of Jiangsu Maritime Affairs Administration as well as China Marine Group. And there are private organizations and individuals who make profits by means of Certificate of Marine Boatmen's Freshwater Route Shipping Quality.

### **Existing Problems**

- LianYunGang. At present, LianYunGang Pilotage Co. mainly provides shipping services for its subsidiary LianYunGang Port Group, with the problem of incorrect role. This is uniformity to the market economic rules and unfavorable to both the port industry fair competition and the long-term LianYunGang port development.
- The existing problems of Yangtze River in Jiangsu include:

- Many pilotage organizations coexist with seriously improper competition. Although many parties endeavor to solve the problem for long term, the uniform management cannot be achieved.
- A tie relationship between the pilotage industry and the port development is systematically missed. This does not meet the objective requirements of “one port, one pilotage” under the “seaport management” mode for Yangtze River, JiangSu Province.
- As a port factor, the pilotage resource is out of the jurisdiction of JiangSu, so the port administration cannot carry out the pilotage administration. This is disadvantageous to the development of local economic society.
- All pilotage organizations belong to the Yangtze River Maritime Affairs Administration and JiangSu Maritime Affairs Administration both which act as maritime-affair administrative organizations. This breaks the principle of properly separating the operation from the supervision and ignores the raised service quality for a certain degree.

## **5.2 Foreign Pilotage**

Other countries regard pilotage as a “pubic service,” but of course pilotage is not exactly the same in different countries, some of which, Turkey for example, regard pilotage as a “half-public service.” There are generally three patterns of pilotage in

foreign countries:

- The government manages pilotage uniformly. Governmental agencies are responsible for pilotage across a country, and the agencies have branches to administrate every part of pilotage respectively. Canada and Germany use this kind of pilotage. Canada has four pilotage agencies, which operate within their own jurisdictions, and all of them are responsible to Communications Minister. The US government doesn't directly manage ports (including pilotage), and the governments of the places where the ports are in manage ports.
- Piloted by a single organization. Some countries such as Australia establish in every state port management companies, which though represent the governments, implement industrial management. State governments are the biggest shareholders of port management companies, and are the chairmen of the board of directors. Since the governments significantly affect port management companies, pilotage is actually an exclusive trade of the governments.
- Competitive pilotage. There are not many case of this kind of pilotage. In this kind of pilotage, the government establishes an agency to manage national pilotage; according to the features of every port, private organizations are introduced into the operation. Turkey adopts this kind of pilotage to adapt to the market economy.

From the pilotage systems of countries or districts with developed marine transport,



we can find a common characteristic: pilotage is strictly controlled by the governments, and the control is of three aspects: 1. Controlling the entry into the pilotage industry; 2. Controlling pilotage; 3, making clear that pilotage organizations are not non-profitable.

### **5.3 Suggestion on Pilotage Reform**

Reform of pilotage is the focus of attention of all directions, especially at ports that mainly deal with foreign trade. I think pilotage should be separated from port enterprises put into port authorities, and we should introduce some competition in it. The existing pilotage units are managed by port enterprises. The pilotage units are not independent in employment, finance, and materials etc. On one hand, enterprises focus on economic effectiveness, but the major thing about pilotage is safety—the two purposes conflict with each other. Sometimes, in order to win supply of cargo or work against time, the enterprises may force the pilotage units to operate without considering pilotage rules or regulations. Some ports reduce their standards of the depths of water for operation, and produce in danger. On the other hand, for their own good, all pilotage units want advanced pilotage equipment, communication tools, and traffic tools to improve their pilotage efficiency and effectiveness and their payments, but they are restricted by their enterprises. But things like that really compromise the development of ports. But of course, we should also see that, pilotage income is really able to release the pressure of needs of funds of the enterprises. From the analysis of pilotage in the major coastal ports of our country, we can see that some of the pilotage units provide 90% of the total pilotage service for port Group Companies, the service range is with the port Group Companies, and pilotage forms an important part of port production. Pilotage from other port organizations accounts for only a small part. (Shen Kang, Cai.,& Yang Bo ,Ni.,2005,

p.16)

<b>Table 4 Proportion of Pilotage of Port Group Companies in Some Ports of Our Country in 2003</b>			
Ports	The Number of Ships	The Number of Ships Piloted	Ships Piloted by Port Group Companies (%)
Guangzhou	14,302	8,696	84
Dalian	15,392	12,775	83
Ningbo	14,701	11,262	90
Qingdao	19,200	13,000	100
Tianjin	14,621	15,982	97

Source: Shen Kang, Cai.,& Yang Bo ,Ni.(2005). A General Analysis of Reform of Pilotage in Our Country, *China Ports*, 3, p.16-17.

But in the long run, this kind of pilotage is not beneficial at all no matter to port companies or to pilotage units. We can see from other countries and Hong Kong that, managing pilotage as independent public units is the most reasonable pattern of pilotage management. The pilotage units are not subject to any companies, and won't affect the inner production of the companies. The pilotage will be fair, and pilotage units are free to improve their services to attract more ship owners and owners of cargo. Pilotage and production of companies will support and benefit each other. After being reformed, pilotage units in Shenzhen and Xiamen act positively under the new pilotage system, and the service quality is greatly improved. New system created good industrial working style, and greatly increased port production, and greatly promoted the development of the ports. (Jian Ping, Zhu, 2005, p.50) Also, in this way, the pilotage units in Shenzhen and Xiamen gained sustainable power to

develop: the pilotage teams are enlarging, the equipment is improving, and the culture in the pilotage units is improving too. But most importantly, the reform resulted excellent safety record.

But of course, when pilotage becomes a public affair, there appear some abuses: the units may monopolize national resources and therefore resources cannot be deployed reasonably; taking advantage of the unclear gap that the units are neither political units nor companies, but are also both political units and companies at the same time; taking advantage of the power given by both the governments and the companies but at the same time escaping from the control of both the governments and the companies; the services may be non-forcible and go against the purpose of reform; the services probably won't care about the fate of port production, and won't be able to consider and act for the good of production. Furthermore, because currently the supervising system is not complete, corruption will easily grow. In addition, improper reform may make the situation worse. Therefore, correctly dealing with the relationship between port companies and port authorities is very important. Now, the most pressing thing is to establish supervising units to guarantee the fairness of pilotage.

It's important for pilotage to become a public affair and be regarded as part of port authorities. Firstly, it is important to protect national sovereignty. Secondly, it's the requirement of laws and regulation. "The Pilotage Administrative Provisions" issued by the Ministry of Communications on January 1, 2002 pointed out that; the Ministry of Communications would be in charge of pilotage of the whole country. Marine affair units supervise pilotage; port administrations are responsible for the pilotage. Thirdly, pilotage is an important part for port administrations to serve the society. If pilotage was still vested in companies, some of the functions of port administrations

couldn't work. Fourthly, governmental pilotage is the guarantee of port safety and is important to maintain good orders at ports. In recent years, safety of marine transport has been improving, but pilotage accidents have been a lot, which exerted bad effect on society. (Desi, He.,& Jinqi, Ma.,& Jinle, Deng, 2005,p.51)The reasons for so many accidents were that the ships did apply for pilotage or there was no anybody exactly taking the responsibility in pilotage units.

Transferring pilotage units as a whole to port authorities is favorable to reducing man-induced disturbance to pilotage, to establishing safety managerial system, guaranteeing greater investment in pilotage, improving pilotage teams, and finally, reducing accidents. In addition, pilotage by port authorities is necessary to establish a fair competitive market.

Separated from port companies, pilotage units can be operated like companies. Industrial authorities manage the establishment of pilotage units, certify pilots, implement forcible pilotage, and make game rules. Pilotage units operate independently, assume sole responsibility for their profits or losses, and become special public units with clear property right and management regulations.

I have analysis the status quo and existing problem of JiangSu pilotage managerial system. The basic ideas and suggestions in my mind are as follow:

### **Basic ideas**

On the basis of international pilotage system conventions and the whole target and requirement of domestic port managerial system reform, the port pilotage organization is set in conformity to the principle "one port, one pilotage

organization.” Also, it is independent to any of commonwealth undertaking companies that make charge and payment by themselves outside port enterprises. Therefore, the reform of Jiangsu pilotage managerial system should follow the principal of domestic pilotage organization. According to the navigational conditions of Lianyungang and the Yangtze River as well as the requirements of pilotage, the pilotage organization should be established as “uniform management, safe instruction, fair service, high efficiency and honesty,”

### **Suggestion for JiangSu Province.**

- In accordance with *Port Law*, Maritime Traffic Safety Act, Traffic on Inland Waters Safety Administration Act and Pilotage Administrative Provisions and other laws, regulations and decrees, work out the uniform pilotage managerial system for the seaports of JiangSu. JiangSu Port Management Bureau is responsible for the pilotage administration of LianYunGang and the Yangtze River JiangSu under the jurisdiction. LianYunGang Pilotage Station and JiangSu Yangtze River Pilotage Center are set respectively, with the jurisdiction of several sub-organizations. The pilotage organization is an institution under the jurisdiction of port administrative departments. The pilot certificate and the pilotage safety are under the jurisdiction of Jiangsu Maritime Affairs Administration. This is proper to the establishment of efficient supervision system, because the requirements of both the establishment of fair-competition market and the port sustainable development.

- In accordance with the coastal port oriented principle of "one port, one pilotage organization," the public pilotage service platform is legally and uniformly constructed. Therefore, LianYunGang Pilotage Co. was separated from LianYunGang Port Group, and LianYunGang Pilotage Station is set up as an institution under the jurisdiction of LianYunGang Port Management Bureau. On the other hand, the Yangtze River Shipping Management Bureau of Ministry of Communications accepts the following under its jurisdiction: the staff, finance, materials, management and technical resources of JuangSu Section of Yangtze River Pilotage Center, in order to set up JiangSu Yangtze River Pilotage Center under the jurisdiction of LianYunGang Port Management Bureau.
- Strengthening the pilotage oriented systemic management. In this case, execute the uniform pilotage-industry-entry control, legally wipe out the illegal pilotage organizations and behaviors around the whole province and on the view of national strategy, actively encourage the marine boats going into the river. Also, the Ministry of Communications and the related departments are asked to work out the appropriate pilotage fee-rate table, with the monitored execution of pilotage organizations.
- Strengthening the guarantee and support of JiangSu presidial pilotage organization. In accordance to the development of JiangSu marine port industry, instruct the pilotage organizations having the development planning well done, guarantee the outlay, planning and infrastructure for JiangSu pilotage organization becoming

launched. For fixed terms, check the operating quality, financial status and technology with necessary intervention. The Yangtze River Pilotage Organization refers the successful means of The Yangtze River Pilotage Center, in order to uniformly manage the pilotage stations and distribute the pilots. And it conforms to the uniform quality managerial system, uses the uniform Internet pilotage management platform and executes a uniform and phased pilotage mode.

- Strengthening the sea route and infrastructure and actively make system innovations, so as to actively beautiful environment for ships' navigation or night flight.

Ports with various scales and structures, especially coastal ports, should be planed and managed by Authority of Communications. Multiple pilotage units are allowed to be established to form competition, and in turn to improve service quality. At the same time, since Port law was already imposed, pilotage of our country should go according to the Law, which, of course, should be modified if necessary.

## CHAPTER 6

### CONCLUSION

Historically, the enactment of the law of port symbolized the beginning of port reform in China. The launching of the law represented the start of a new round reform instead of the end of China's port reform. The law provided the legal protection for the great-leap-forward development of China port and legalized the achievements of deepening port reform. Innovation achievements of port management, systems, and mechanisms since the founding of China have been fully reflected in the process of establishing the law. As a fundamental law for port management, the port law has actively promoted the development of port since 2004, with the support of Central Government's policies. Now, China got its name in the list of countries with powerful port capability and port has become an important growth pole of national economy: The container throughput of Shanghai and Shenzhen ports respectively reached 10 million TEU, ranking first in the world. Meanwhile, China's total number of ports, overall scale and business volume of port are also among the first rank in the world.

The *Port Law* greatly stimulated the port development for over 2 years since its implementation. However, it is not perfect. The problems resulted from two factors: on one hand, the port law is only the fundamental law in the port management's legal system which still needs to be improved and requires others laws' support. On the



other hand, although the policy of separating administrative functions from enterprises management was formulated at the beginning of the port law implementation, yet the reform could not be carried out completely. Some regions only changed the name of enterprises, but still operated in light of old policy, such as port control over boat agency, cargo agency and other resources. We should realized that only a single port law can't solve all the problems; the port management reform can't be completed ether in one or two days and it takes time; port managerial system reform can also be influenced by other reforms such as over pilotage system reform, tally reforms and other related system reform. Within frame work of the port law, we should further the reform and adjustments of port system, accelerate the related reforms and speed up the establishment and implementation of corresponding laws, such as shipping law, vessel law.

China port system reform aims to improve port management so that can compete with those advanced ports in foreign countries. With the deepening of port system reform, the planning and building of China port tend to be more scientific and rational and will attract more overseas investment. With the improvement of port technology equipments and the development of key and whole-set technologies such as, intelligent systems, advanced cargo flow control system, and off-shore deep water ports, China ports will improve port capacity, cut down the operation coast, boost operation efficiency, improve inland transportation, so as to reach the international standard and to be capable for providing clients with diversified, individualized services. With deepening reform of pilotage system and implementation of related laws, China port will develop towards legalized management.

Meeting the new opportunities and challenges, China port industry will deepen reforms within the framework of the port law. As the pots become more closely

related to the cities and areas, China pots will develop leap-forwardly and will become the important part of the national economy.

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## **APPENDIX A**

### **Port Law of the People's Republic of China (Order of the President No.5)**

#### **Order of the President of the People's Republic of China**

##### **No. 5**

**The Port Law of the People's Republic of China, adopted at the 3rd Meeting of the Standing Committee of the Tenth National People's Congress of the People's Republic of China on June 28, 2003, is hereby promulgated and shall go into effect as of January 1, 2004.**

**Hu Jintao**

**President of the People's Republic of China**

**June 28, 2003**

#### **Port Law of the People's Republic of China**

*(Adopted at the 3rd Meeting of the Standing Committee of the Tenth National People's Congress on June 28, 2003)*

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Chapter I	General Provisions
Chapter II	Port Planning and Construction
Chapter III	Port Operation
Chapter IV	Port Safety and Supervision
Chapter V	Legal Responsibilities
Chapter VI	Supplementary Provisions

### *Chapter I*

#### **General Provisions**

**Article 1** This Law is enacted with a view to strengthening port administration, maintaining port safety and operational order, protecting the legitimate rights and interests of the parties and promoting the construction and development of ports.

**Article 2** This Law is applicable to the planning, construction, maintenance, operation and administration of ports and other relevant activities.

**Article 3** As used in this Law, the term "port" means a region comprising certain water and land areas, having the functions for vessels to enter, leave, lie at anchor and moor, for passengers to embark and disembark, and for cargo to be loaded, unloaded, lightered and stored, and being equipped with the necessary dock facilities.

A port may consist of one or more port areas.

**Article 4** The State Council and the local people's governments at or above the county level concerned shall embody the requirements of port development and planning in their plans of national economic and social development, protect and make rational use of the port resources in accordance with law.

**Article 5** The State encourages economic organizations and individuals at home and abroad to invest in port construction and operation in accordance with law, and protects the legitimate rights and interests of the investors.

**Article 6** The competent department of communications under the State Council shall be in charge of the administration of port affairs throughout the State.

The local people's governments shall, in accordance with the regulations on the system for port administration formulated by the State Council, decide on the administration of the port situated within their own administrative areas.

According to the port administration system decided on as prescribed in the preceding paragraph, for a port that comes under the administration of the people's government of the city or county where it is located, the said people's government shall assign a department to administer the port specifically; and for a port that comes under the administration of the people's government of a province, autonomous region, or municipality directly under the Central Government where it is located, the said people's government shall assign a department to administer the port specifically.



The departments assigned as per the provisions in the preceding paragraph to conduct specific port administration are hereinafter referred to as port administration authorities in general.

## *Chapter II*

### **Port Planning and Construction**

**Article 7** Port plans shall be drawn up in accordance with the requirements of national economic and social development and the needs of national defense, shall embody the principle of rational use of the coastline resources, shall comply with the plans for the network of cities and towns, and shall be connected and coordinated with the general plans for land use, general city plans, river basin plans, flood-control plans, marine function divisions, waterway transport development plans, development plans for other modes of transport and other relevant plans provided for by laws or administrative regulations.

In drawing up a port plan, specialists shall be invited to expound and prove it; and the effects on the environment shall be evaluated in accordance with law.

**Article 8** Port plans include port layout plans and port general plans.

A port layout plan means the plan for the geographical distribution of ports, embracing the national port layout plan and the port layout plan of a province, autonomous region, or municipality directly under the Central Government.

A port general plan means the specific plan of one port for a given period of time, embracing the scope of water and land areas, division of the port area, handling capacity and types of calling vessels, the character and functions of the port, use of

water and land areas, use of coastline for the construction of port facilities, allocation of land for construction, the order of construction phases, etc.

The port general plan shall conform to the port layout plan.

**Article 9** The national port layout plan shall be drawn up by the competent department of communications under the State Council after consulting with the relevant departments under the State Council and the military authorities concerned and shall be promulgated for implementation upon approval by the State Council.

With respect to the port layout plan of a province, autonomous region, or municipality directly under the Central Government, the people's government of the province, autonomous region, or municipality directly under the Central Government shall make arrangements to draw it up on the basis of the national port layout plan and submit it to the competent department of communications under the State Council for comments and suggestions. If the said department puts forward no suggestions for revision within 30 days from the date it receives the plan submitted for its comments and suggestions, the port layout plan shall be promulgated for implementation by the people's government of the province, autonomous region, or municipality directly under the Central Government. If the competent department of communications under the State Council considers the plan not in conformity with the national port layout plan, it shall put forward its suggestions for revision within 30 days from the date it receives the plan. If the people's government of the relevant province, autonomous region, or municipality directly under the Central Government raises objections to the suggestions for revisions, it shall report to the State Council for decision.

**Article 10** A port general plan shall be drawn up by the port administration authority after consulting with the relevant departments and the military authorities concerned.

**Article 11** With respect to the general plan of a major port with an important geographical position, a relatively great handling capacity and a fairly wide-spread effect on the economic development, the competent department of communications under the State Council shall consult with the relevant departments under the State Council and the military authorities concerned, before it gives approval to the plan in conjunction with the people's government of the relevant province, autonomous region, or municipality directly under the Central Government and promulgates it for implementation. The list of major ports shall be decided on and promulgated after the competent department of communications under the State Council consults with the relevant departments under the State Council.

The people's government of a province, autonomous region, or municipality directly under the Central Government shall decide on the major ports located there after consulting with the competent department of communications under the State Council. The general plans of the major ports shall be subject to approval and be promulgated for implementation by the people's government of the province, autonomous region, or municipality directly under the Central Government after consulting with the competent department of communications under the State Council.

The general plans of the ports other than the ones as specified in the preceding two paragraphs shall be promulgated for implementation upon approval by the people's government of the city or county where the ports are located and shall be

submitted to the people's government of the province, autonomous region, or municipality directly under the Central Government for the record.

The general plan of a port belonging to the category of the ports as specified in the first or second paragraph of this Article which is drawn up by the port administration authority of the people's government of a city or county shall be subject to examination and agreement by the said people's government before it is submitted for examination and approval.

**Article 12** Revision of port plans shall be made in accordance with the procedures for formulating port plans.

**Article 13** Where deep-water coastline is to be used for the construction of port facilities in the area covered by the port general plan, the matter shall be subject to approval by the competent department of communications under the State Council together with the department in charge of comprehensive and macro-economic regulation and control under the State Council. Where non-deep-water coastline is to be used for the construction of port facilities, the matter shall be subjected to approval by the port administration authority. However, where port coastline is to be used for the construction of a project, which has been approved, by the State Council or the department in charge of comprehensive and macro-economic regulation and control under the State Council, there shall be no need to go through the formalities of examination and approval separately for such use.

The standard of port deep-water coastlines shall be formulated by the competent department of communications under the State Council.

**Article 14** Port constructions shall conform to port plans. No port facilities shall be constructed at variance with port plans.

**Article 15** With respect to port construction projects subject to approval by the relevant authorities according to State regulations, the approval formalities shall be gone through in accordance with the relevant regulations of the State, and the projects shall conform to the relevant national standards and technical specifications.

The effect exerted by port construction projects on the environment shall be evaluated in accordance with law.

Safety facilities and environmental protection facilities for port construction projects shall be designed, constructed and put into use simultaneously with the subjects of the projects.

**Article 16** In port construction, land and water areas shall be used in conformity with the provisions of the laws and administrative regulations concerning administration of land and of the use of sea areas, administration of the river courses and of the fairways and administration of protection for military facilities, and other relevant laws and administrative regulations.

**Article 17** Places in ports for handling dangerous cargoes and special places for sanitation and pest elimination shall conform to the general plans of ports and the requirements of the State for safe production, protection against fire, inspection and quarantine, and environmental protection; the distance between such places and densely-populated districts and the passenger transport facilities in the port shall conform to the regulations of the relevant departments under the State Council; and such places shall be constructed only after the relevant formalities are gone through in accordance with law and approval is given by the port administration authorities.

**Article 18** Beacons and other auxiliary facilities shall be put up simultaneously with the construction of the port and their putting into use on schedule shall be guaranteed.

The construction of office facilities for the relevant administrative authorities in the port shall conform to the port general plan, and the expenses involved therefore shall not be apportioned among port operators.

**Article 19** Upon completion of construction, port facilities shall be put into use only after they are checked and accepted as qualified in accordance with the relevant regulations of the State.

The ownership of port facilities shall be determined in accordance with the provisions of relevant laws.

**Article 20** The relevant people's governments at or above the county level shall guarantee the necessary investment of funds in the construction and maintenance of the port infrastructures for public use, such as the fairways, breakwaters and anchorages. The specific measures thereof shall be formulated by the State Council.

**Article 21** The relevant people's governments at or above the county level shall take measures and make arrangements for the construction of facilities subsidiary to the port, such as fairways, railways, roads, water supply and drainage, power supply and telecommunications.

### *Chapter III*

## **Port Operation**

**Article 22** Whoever intends to operate a port shall submit a written application to the port administration authority for a port operation permit and register with the department for industry and commerce in accordance with law.

When granting permission for port operation, the port administration authority shall follow the principles of openness, impartiality and fairness.

Port operations include the operations of dock and other port facilities, port services for passenger transport, cargo loading, unloading, lightering and storing in the port area, and operations of tugs in port.

**Article 23** Whoever intends to obtain a port operation permit shall have fixed business places and the necessary facilities, equipment, professional technicians and managerial staff for the operations, and meet the other requirements provided for by laws and regulations.

**Article 24** The port administration authority shall make a decision whether to grant or not to grant permission within 30 days from the date it receives the written application prescribed in the first paragraph of Article 22 of this Law. If it decides to grant permission, it shall issue a port operation permit to the applicant. If it refuses to do so, it shall inform the applicant of the fact in writing and give the reasons why.

**Article 25** Whoever intends to engage in port tallying shall obtain a permit in accordance with relevant regulations. Permission for port tallying shall be granted in adherence to the principles of openness, impartiality and fairness. The specific measures shall be formulated by the competent department of communications under the State Council.

A port tallyman shall do the tallying impartially and accurately; and he shall not concurrently engage in the loading, unloading and storing of cargoes as prescribed in the third paragraph of Article 22 of this Law.

**Article 26** In conducting operational activities, a port operator shall abide by the relevant laws and regulations and the rules governing port operations formulated by the competent department of communications under the State Council, perform in accordance with law the obligations agreed upon in contracts, and provide clients with fair and fine services.

A port operator engaged in passenger transport shall take effective measures to ensure the passengers' safety, provide them with quick and convenient services and keep a good environment for them when waiting to board a ship.

A port operator shall, in accordance with the laws and regulations concerning environmental protection, take effective measures to prevent and control pollution and hazards to the environment.

**Article 27** A port operator shall give first priority to the materials for use in emergency, materials for relief of disasters and materials urgently needed for the buildup of national defence.

**Article 28** At his business place, a port operator shall publicize the items of services on which fees are charged and the service rates. Unless publicized, they shall not be put into practice.

Where the rates of port operational fees are guided or fixed by the government in accordance with law, the port operator shall collect fees according to the relevant regulations.



**Article 29** The State encourages and protects fair competition in port operational activities.

A port operator shall not make a monopoly of the operation or conduct illegitimate competition and shall not by any means compel another person to accept the port services he provides.

**Article 30** The port administration authorities shall, in accordance with the provisions in the Statistics Law of the People's Republic of China and relevant administrative regulations, require the port operators to provide statistical data, the port operators shall provide truthful data.

The port administrative authorities shall, in accordance with the relevant regulations of the State, submit the statistical data provided by port operators to the authorities at a higher level without delay and shall keep the business secrets for the port operators.

**Article 31** The legitimate rights and interests of the port operators are protected by law. No units or individuals may apportion charges among the port operators or collect fees from them in violation of laws, or illegally interfere with the right of the port operators to make their own decisions for their operation.

#### *Chapter IV*

### **Port Safety and Supervision**

**Article 32** A port operator shall, in accordance with the provisions in the Law of the People's Republic of China on Work Safety and other relevant laws and regulations and the provisions of the rules formulated by the competent department

of communications under the State Council concerning safe operation of ports, tighten supervision over safe production, establish sound rules and regulations on the responsibility system for safe production, keep improving the conditions for safe production, take effective measures for safe production and ensure safe production.

A port operator shall, in accordance with law, make its own contingency plans against accidents due to dangerous cargoes, emergency plans for evacuation and rescue of passengers in a major accident due to lack of safe production and plans against natural disasters, and shall ensure the implementation of the plans.

**Article 33** A port administration authority shall formulate port contingency plan against accidents due to dangerous cargoes in port that may jeopardize public interests, emergency plans for evacuation and rescue of passengers in a major accident due to lack of safe production and plans against natural disasters, and shall establish a sound port emergency and rescue system major accidents due to lack of safe production in port.

**Article 34** Before a vessel enters or leaves a port, the matter shall be reported to the maritime administration authority in accordance with the provisions in laws and administrative regulations concerning waterway traffic safety. After receiving the report, the maritime administration authority shall, without delay, notify the port administration authority thereof.

Before a vessel carrying dangerous cargoes enters or leaves a port, the descriptions, characteristics and package of the cargoes and the time of entry or departure shall be reported to the maritime administration authority in accordance with the regulations of the competent department of communications under the State Council. After receiving the report, the maritime administration authority shall make the decision

whether to grant approval or not within the time limit specified by the competent department of communications under the State Council and notify the reporter and the port administration authority of the decision. However, fixed vessels navigating along fixed routes and carrying fixed categories of cargoes may make the report on a regular basis.

**Article 35** Before loading, unloading and lightering dangerous cargoes in a port area, the descriptions, characteristics and package of the cargoes and the time and place for the operations shall be reported to the port administration authority in accordance with the regulations of the competent department of communications under the State Council. After receiving the report, the said authority shall make the decision whether to grant approval or not within the time limit specified by the competent department of communications under the State Council and notify the reporter and the maritime administration authority of the decision.

**Article 36** A port administration authority shall, in accordance with law, conduct supervision and inspection of safe production in the port and maintain patrol of key docks where masses of passengers embark and disembark or relatively large quantities of cargoes are loaded and unloaded, or which are used for special purposes. If hidden dangers threatening safety are found during inspection, it shall instruct the party under inspection to eliminate, immediately or within a time limit, such dangers.

The department in charge of supervision of safe production and other departments concerned shall, within the limits of their respective duties, conduct supervision and inspection of safe production in the port in accordance with the provisions of laws and regulations.

**Article 37** Aquaculture and planting in the water area of a port is prohibited.

Excavation, demolition and other activities in a port area that may threaten port safety are prohibited; but where such activities are really needed for construction or other purposes, the necessary protective measures for safety shall be taken and the activities shall be reported to the port administration authority for approval; and where, according to the provisions of the laws and administrative regulations concerning waterway traffic safety, approval by the maritime administration authority is required, such activities shall, in addition, be reported to the said authority for approval.

Dumping of soil and sand and stone into the water area of a port and discharging of noxious and harmful substances in excess of the specified norms in violation of laws and regulations concerning environmental protection are prohibited.

**Article 38** With respect to the construction of bridges, submarine tunnels, hydropower stations and other projects that may change the hydrologic conditions of a port, the department responsible for examination and approval of such projects shall consult with the port administration authority beforehand.

**Article 39** With respect to vessels which need be piloted into or out of a port in accordance with the laws and administrative regulations concerning waterway traffic safety, an application for pilotage shall be submitted to the pilotage authority. The specific measures for pilotage shall be formulated by the competent department of communications under the State Council.

**Article 40** In conditions where passengers and cargoes are held up so that the port is blockaded, the port administration authority shall take effective measures in time to regulate the flow of passengers and cargoes; and when it deems it necessary,

the people's government of the city or county where the port is located may directly take measures to do so.

**Article 41** The port administration authority shall take charge of the formulation of the charter of the port under its administration and make the charter known to the public.

The contents of the port charter shall include the descriptions of the port's geographical position, fairway conditions, harbor depth, mechanical equipment, cargo handling capacity, etc., together with the specific measures taken by this port for the implementation of laws and regulations concerning port administration and the relevant regulations of the competent department of communications under the State Council.

**Article 42** The port administration authority shall supervise and inspect the implementation of this Law in compliance with its duties.

When exercising supervision and inspection in accordance with law, the supervisors or inspectors from the port administration authority shall have the right to ask the unit under inspection and the individuals concerned for relevant information and to look up and duplicate relevant materials.

The supervisor or inspector shall keep confidential the business secrets learnt during inspection.

The supervisor or inspector shall produce his law-enforcement papers when exercising supervision and inspection.

**Article 43** The supervisor or inspector shall keep a written record of the time, place and items of supervision and inspection, the problems found, and the solutions thereof, and the record shall be signed by the supervisor or inspector and the person in charge of the unit under inspection. Where the person in charge of the unit under inspection refuses to sign, the supervisor or inspector shall put such refusal on record and report it to the port administration authority.

**Article 44** The unit under inspection and individuals concerned shall accept the supervision and inspection conducted by the port administration authority in accordance with law, truthfully provide the relevant information and materials and shall not refuse to accept inspection, conceal the relevant information and materials, or provide false information and materials.

## *Chapter V*

### **Legal Responsibilities**

**Article 45** Whoever commits one of the following acts shall be instructed by the local people's government at or above the county level or by the port administration authority to rectify within a time limit; if he fails to do so at the expiration of the time limit, the authority that makes the decision for rectification within a time limit shall apply to the people's court for compulsory demolishing of the facilities constructed in violation of law; and a fine of not more than RMB 50,000 yuan may be imposed on him:

- (1) Constructing a port, dock or other port facilities at variance with port plans;
- or

(2) Using port coastlines in the construction of port facilities without obtaining approval in accordance with law.

Where the department in charge of examination and approval of construction projects grants approval to the construction of a project at variance with port plans, the persons directly in charge and the other persons directly responsible shall be given administrative sanctions in accordance with law.

**Article 46** Whoever, without obtaining approval in accordance with law, has places constructed in a port for handling dangerous cargoes or special places constructed for sanitation and pest elimination, or fails to keep the distance between the said places and the densely-populated districts or the passenger transport facilities in the port in conformity with the regulations of the relevant departments under the State Council shall be instructed by the port administration authority to stop their construction or use and to rectify within a time limit and may be imposed a fine of not more than 50,000 Yuan.

**Article 47** Whoever puts into use the handling facilities or passenger transport facilities which are not checked and accepted as qualified shall be instructed by the port administration authority to stop their use and to rectify within a time limit and may be imposed a fine of not more than 50,000 Yuan.

**Article 48** Whoever commits one of the following acts shall be instructed by the port administration authority to stop the illegal operation, and his illegal gains shall be confiscated; where the illegal gains exceed 100,000 Yuan, he shall, in addition, be fined not less than two times but not more than five times the illegal gains; and where the illegal gains are less than 100,000 Yuan, he shall be fined not less than 50,000 Yuan but not more than 200,000 Yuan:

- (1) Engaging in port operation without obtaining a port operation permit in accordance with law;
- (2) Engaging in port tallying without obtaining permission in accordance with law;  
or
- (3) In the case of a port tallyman, concurrently engaging in loading, unloading or storing cargoes.

For a person who commits the act specified in Sub-paragraph (3) of the preceding paragraph, if the circumstances are serious, his port tallying permit shall be revoked by the relevant competent authority.

**Article 49** Where a port operator does not give first priority to the materials for use in emergency, materials for relief of disasters and materials urgently needed for the buildup of national defence, he shall be instructed by the port administration authority to rectify; and if the consequences are serious, his port operation permit shall be revoked by the authority.

**Article 50** Where a port operator, in violation of the provisions of relevant laws and administrative regulations, makes a monopoly of the operation or conduct illegitimate competition, he shall bear legal responsibility in accordance with the provisions of relevant laws and administrative regulations.

**Article 51** Where a port operator violates of the provisions in Article 32 of this Law concerning safe production, he shall, in accordance with law, be sanctioned by the port administration authority or other departments charged with the duty of supervising safe production in accordance with law; if the circumstances are serious, the port administration authority shall revoke his port operation permit and shall



punish the principal leading member in accordance with law; and if a crime is constituted, the offender shall be investigated for criminal responsibility in accordance with law.

**Article 52** Where, before entering or leaving a port, a vessel fails to report to the maritime administration authority in accordance with the provisions in Article 34 of this Law, the said authority shall impose a punishment according to the provisions in the laws and administrative regulations concerning waterway traffic safety.

**Article 53** Whoever fails to report to and obtain approval from the port administration authority in accordance with law before loading, unloading and lightering dangerous cargoes in a port area shall be instructed by the port administration authority to stop the operation and shall be fined not less than 5,000 Yuan but not more than 50,000 Yuan.

**Article 54** Whoever engages in aquiculture or planting in the water area of a port shall be instructed by the maritime administration authority to rectify within a time limit; if he fails to do so at the expiration of the time limit, the cultivation and planting facilities shall be demolished compulsorily, and the expenses thus entailed shall be borne by the law-breaker; and he may be fined not more than 10,000 Yuan.

**Article 55** Whoever, without obtaining approval in accordance with law, engages in excavation, demolition or other activities in a port area that may threaten port safety, or dumps soil or sand and stone into the water area of a port shall be instructed by the port administration authority to stop the illegal acts and eliminate, within a time limit, the hidden dangers that threaten safety; if he fails to eliminate the hidden dangers at the expiration of the time limit, the dangers shall be eliminated compulsorily and the expenses thus entailed shall be borne by the law-breaker; he

shall be fined not less than 5,000 Yuan but not more than 50,000 Yuan; where, according to the provisions in the laws and administrative regulations concerning waterway traffic safety, punishment shall be imposed by the maritime administration authority, those provisions shall prevail; and if a crime is constituted, the offender shall be investigated for criminal responsibility in accordance with law.

**Article 56** Where the competent department of communications, the port administration authority or the maritime administration authority fails to perform its duties in accordance with law and commits one of the following acts, the persons directly in charge and the other persons directly responsible shall be given administrative sanctions in accordance with law; if a crime is constituted, criminal responsibility shall be investigated in accordance with law:

(1) In violation of law, approving the use of port coastlines for the construction of port facilities, or approving construction of places in port for handling dangerous cargoes or special places for sanitation and pest elimination, or approving the entry or departure of a vessel carrying dangerous cargoes, or approving the loading, unloading or lightering of dangerous cargoes in port;

(2) Granting permission for port operation or port tallying to applicants who do not meet the statutory requirements;

(3) Failing to revoke the permit obtained by a the port operator or port tallyman immediately after discovering that he no longer meets the statutory permission requirements; or

(4) Failing to perform the duties of supervision and inspection in accordance with law and failing to investigate and impose punishment on the construction of ports, docks or other port facilities at variance with port plans, on port operation or

port tallying engaged in without obtaining permission in accordance with law, on failure to comply with the regulations concerning administration of safe production, on acts threatening the safety of port operation, and on other acts violating the provisions of this Law.

**Article 57** Where an administrative organ interferes with the right of a port operator to make his own decisions for his operation, it shall be instructed by the administrative organ at the next higher level or a supervisory authority to rectify; where such an organ collects money or things of value from among port operators or collects fees from among them in violation of law, it shall be instructed to return the same; and if the circumstances are serious, the persons directly in charge and the other persons directly responsible shall be given administrative sanctions in accordance with law.

## *Chapter VI*

### **Supplementary Provisions**

**Article 58** To open a port to vessels navigating along international routes, the relevant people's government of the province, autonomous region, or municipality directly under the Central Government shall, in accordance with the relevant regulations of the States, consult the relevant departments under the State Council and the military authorities concerned and, after obtaining their consent, submit the matter to the State Council for approval.

**Article 59** The competent fishery administration department of the people's government at or above the county level shall be in charge of the administration of fishery ports. The specific measures in this regard shall be formulated by the State Council.

As used in the preceding paragraph, fishery ports mean man-made ports or natural harbors, including the special fishing harbors, special water areas for fishery and special anchorages for fishing boats in a multi-purpose port, which are specially in the service of fishery production, for fishing boats to anchor, to take shelter from the winds, to load and unload their catches and to replenish the supply of the necessities for fishing.

**Article 60** The measures for the construction and administration of military ports shall be formulated by the State Council and the Central Military Commission.

**Article 61** This Law shall go into effect as of January 1, 2004.

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