

Port Authority Models and Application Possible in Vietnam

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Abstract—In the world there are many port management models, each model has advantages and certain limitations, but in terms of the overall trend, the Port Authority is being applied to many major ports around the world. In Vietnam, the Port Authority has been also mentioned, and it has caused much controversy. Therefore, the applicability of the Port Authority in Vietnam is still a question for policy makers.

Index Terms—Board of port management and operation, port management model, Vietnam seaport, port authority.

I. INTRODUCTION

With more than 3,000 km of coastline, Vietnam has a number of advantages in maritime and the nation is implementing the strategy of "developing the country with strengths of sea". Therefore, ports are increasingly confirming the key role in the development of the maritime economics in particular and the national economy in general.

In the trend of the current port development, major seaports commonly applied port land-lord management model and port management in the form of the port authority. "Port Authority" is not a strange term to many countries around the world which is used hundreds of years ago; however, at the present in Vietnam, this view is not uniformly used and difficult to put into practical application. So what leads to the delay?

II. PORT MANAGEMENT MODELS AND PORT MANAGEMENT ORGANIZATIONS

A. Port Management Models

Currently in the world, there are 4 widely used port management models namely: Public service port, tool port, land-lord and fully privatized port .

1) Public service port

* The features of the model

Firstly, the state owns all the land and port waters, infrastructure and port channel.

Secondly, State invests in building the entire infrastructure in ports, including terminal infrastructure and public infrastructure in ports, including: quays, waterfront of quays; warehouses, yards, services facilities ... belong to hinterland; Port channel, aids to navigation system and other supporting works; simultaneously, State also invests in the procurement of equipment for cargo handling at the port.

Thirdly, State assign a state owned company (or corporation) operate directly infrastructure and handling

equipment, as well as direct management of human resources in ports and some other support services at the port.

* Advantages and limitations of the model

- *Advantages*: the investment in construction projects in infrastructure (wharves, warehouses, workshops...) and the investment in handling equipment (quay cranes, fork lifts, automobiles, tractors,...) are run by an organization in responsibility of state. Therefore, it has the advantage of ensuring consistent investment in construction, development and operation.

- Limitations:

- The need for large investments (both infrastructure and facilities for handling equipment at the port) so resources are distributed in investment and limited innovation, modernization of equipment;
- Since there is no involvement of the private sector, there are limitations in either attracting nor mobilizing the capital from this group;
- No flexibility in addressing needs of customers according to market mechanisms (As need the direction approval of a number of authorities which leads to the reducing opportunities to serve customers.
- Lack of competitiveness, lack of innovation, difficulties in utilizing the full potential of port operation and management with the highest efficiency;

Wasting in the use of resources and insufficient investment due to government intervention and dependence on the state's budget...

2) Tool port

* The features of the model

Firstly, the entire land, port waters area, infrastructure and port channels are owned by the State. The state invests in all the infrastructure in ports, including terminal infrastructure and public infrastructure in ports, including: quays, waterfront of quays; warehouses, yards, service facilities ... and all the investment in handling equipment at port.

Secondly, the State allows private organizations (or state-owned companies in some countries) to rent in order to do business: cargo handling services, warehouse and yard through port infrastructure renting contract; human resource management. Other support services such as: agents, pilot, towing, supply, repair,... at port which are implemented by both the State and Private.

* Pros and cons of this model

- *Advantages*: port infrastructure and port handling equipment investment are determined and supplied by a State agency. Therefore, port infrastructure and port handling equipment are chose carefully and invest highly, avoid duplication...

- Disadvantages:

- Because Port management Organization and private

companies take part in cargo handling at port together while private companies do not own Port's main facilities (such as big crane), which leads to conflict and enterprise expanding limitation in the future;

- Main facility investment at Port is decided by the State and allows private companies to operate. Therefore, investment is not effective because operator cannot decide to invest in big crane which has suitable features and capacity with customer's demand...

3) Landlord port

* Striking features of this model

Firstly, the State owns port waters and port lands as well as infrastructure and port channel; port infrastructure investment which includes wharf infrastructure and public infrastructure.

Secondly, the State allows private organizations to rent wharf in order to operate; rent port lands to build warehouse; invest all infrastructures for cargo handling, cargo transporting, warehousing and yard. Other services are provided by both the State and Private.

* Pros and cons of this model

- Advantages:

- Because of assigning duties in port development investment clearly, profits between the State and Private organizations are harmonious;
- Private investors can invest in loading and unloading equipment (large crane) with appropriate feature and capacity meeting customer demand in an effective way, through long-term and stable contracts.
- The State can balance their investment and exploit the resources of organizations and individuals in port operation business; simultaneously, limiting the dispersion of state resources invested in port development. This maximizes the return of investment for state budget.
- The private enterprise will have many advantages in actively contracting with shippers, ship owners to carry out cargo handling effectively ... appropriate and meet market demand.

port's over capacity.

- The selection of other supporting services in port to ensure the balance of interests between public and private sector can be restricted.

4) Fully Privatized port

* The features of the model

First, State provides legal framework for investment and port development management;

Second, private companies can own the entire lands and waters of the port, invest in the construction of port infrastructure, factories, warehouses ... and procure equipment for loading and unloading (crane, forklift ...); manage human resources in handling services, transport, storage, warehousing and provide the majority of other supporting services.

* Advantages and limitations of the model

- Advantages

- Maximize the flexibility in port development due to no direct intervention of the Government;
- As owner of the entire lands and waters of the port, private investors can actively invest in building market-oriented seaports and in developing policies seaport charges in an appropriate way.
- The private organization is entitled to extend the scope of their business through the strategic location of the port; they can also obtain higher prices in the sale of land to build the port.

- Limitations of the model:

- Monopolistic behavior may arise; simultaneously land speculation in the port can cause risks for the State
- The central government or local authorities will lose their capacity to execute the long-term economic policy in port operations.
- The government will bear the high cost of acquisition in case it repurchases the lands and waters of the port to re-plan, or to shift the function of the port.

TABLE I. THESE MODELS ARE SUMMARIZED IN THE FOLLOWING TABLE

<i>Content</i>	<i>Model</i>	<i>Public service port</i>	<i>Tool port</i>	<i>Landlord port</i>	<i>Private service port</i>
Management of land, water, infrastructure		PUBLIC	PUBLIC	PUBLIC	PUBLIC
Key Equipment		PUBLIC	PUBLIC	PRIVATE	PRIVATE
Management body, direct port operators		PUBLIC	PRIVATE	PRIVATE	PRIVATE
Other services (pilotage, supplies, repair ...)		PUBLIC	PUBLIC & PRIVATE	PUBLIC & PRIVATE	PRIVATE
Investment funds		PUBLIC	PUBLIC	PUBLIC & PRIVATE	PRIVATE
Technological innovation				YES	YES
Flexibility in the business, high competitiveness				YES	YES
Market -oriented business				YES	YES
Monopoly					YES
The government implements a long-term economic policy		YES	YES	YES	

- Limitations of the model:

- The maximum concentration of resources for port operation from private companies should lead to

B. Port management organization

With 4 port management models as above, many coastal

countries have adopted different seaport management models, for example:

- Organization of port management is an agency of the central government
- Organization of port management is an agency of local government
- Organization of port management established under separate regulations, specifically by law: Port Authority (Port Authority - PA); Port management (Port Management Body - PMB)
- Organizations of port management as private organizations are specified separately by national laws.

Among models of port management institutions, Port Authority (PA) or Port Management Board (PMB) has the advantage of specializing in the field of investment and construction, leasing operation of seaports, proactively in port development, utilizing resources and capabilities of the public and private sectors.

This is not a new concept in port operation for maritime industry in Vietnam - Ministry of Transport, as port management model with "Port Authority" has been topic of a number of scientific research projects in Department-level and Ministerial level (carried out by Vietnam Maritime Bureau) in 2003-2007. However, so far the concept of port management model with "Port Authority" is less mentioned, especially no legal documents of Vietnam regulate the content, form, organization operation of "port authority" under port management model.

If one only analyzes the noun Authority, its meaning is very broad, such as: the power or right to give orders, make decisions, and enforce obedience. If paired with a noun or adjective one might find different combinations such as: Competent Authority; Local Authority; Public Authority; Regulatory Authority; and Port Authority.

With a concept like this, many countries (France, Belgium, the Netherlands, Japan, Singapore ...) applies the above phrase on port management model with "port authority" (the engine of the model) in accordance with national law.

In essence, "Port Authority" means an entity organized by the state to execute a number of functions of the port, including the state management function of the port (on decentralization) and business management function in port operation.

III. DIFFERENT REVIEWS ON PORT AUTHORITY IN THE WORLD

A. The Concept of Port Authority

There are many different concepts of port authorities such as

- A government commission responsible for managing a port's trade and transportation infrastructure, such as harbours, tunnels and bridges; also in *plural*. [Oxford Dictionaries]

- In Canada and the United States, port authority (less commonly a port district) is a governmental or quasi-governmental public authority for a special-purpose district usually formed by a legislative body (or bodies) to operate ports and other transportation infrastructure.

Most port authorities are financially self-supporting. In addition to owning land, setting fees, and sometimes levying taxes, port districts can also operate shipping terminals, airports, railroads, and irrigation facilities.

Port authorities are usually governed by boards or commissions, which are commonly appointed by governmental chief executives, often from different jurisdictions.[1]. In Canada, the federal Minister of Transport selects the local chief executive board member and the rest of the board is appointed at the recommendation of port users to the federal Minister; while all Canadian port authorities have a federal or Crown charter called Letters Patent.

B. Role of Port Authorities

Ports usually have a governing body referred to as the port authority, port management, or port administration. Port authority is used widely to indicate any of these three terms.

The term port authority has been defined in various ways. In 1977, a commission of the European Union (EU) defined a port authority as a "State, Municipal, public, or private body, which is

Largely responsible for the tasks of construction, administration and sometimes the operation of port facilities and, in certain circumstances, for security". This definition is sufficiently broad to accommodate the various port management models existing within the EU and elsewhere.

Ports authorities may be established at all levels of government: national, regional, provincial, or local. The most common form is a local port authority, an authority administering only one port area. However, national port authorities still exist in various countries such as Tanzania, Sri Lanka, Nigeria, and Aruba.

The United Nations Conference on Trade and Development (UNCTAD) *Handbook for Port Planners in Developing Countries* lists the statutory powers of a national port authority as follows (on the assumption that operational decisions will be taken locally):

- *Investment*: Power to approve proposals for port investments in amounts above a certain figure. The criterion for approval would be that the proposal was broadly in accordance with a national plan, which the authority would maintain.
- *Financial policy*: Power to set common financial objectives for ports (for example required return on investment defined on a common basis), with a common policy on what infrastructure will be funded centrally versus locally, and advising the government on loan applications.
- *Tariff policy*: Power to regulate rates and charges as required to protect the public interest.
- *Labor policy*: Power to set common recruitment standards, a common wage structure, and common qualifications for promotion; and the power to approve common labor union procedures.
- *Licensing*: When appropriate, power to establish principles for licensing of port employees or agents
- *Information and research*: Power to collect, analyze, and disseminate statistical information on port

activity for general use, and to sponsor research into port matters as required.

- *Legal:* Power to act as legal advisor to local port authorities.

Increasingly, central governments implement seaport policies through the allocation of resources rather than through the exercise of wide-ranging regulatory powers.

While central governments should pursue macroeconomic objectives through an active seaport policy, port authority objectives should be more narrowly focused on port finances and operations.

It is a widely accepted opinion among port specialists that a port authority should have as a principal objective the full recovery of all port-related costs, including capital costs, plus an adequate return on capital. The full recovery of costs will help a port authority to:

- Maintain internal cost discipline.
- Attract outside investment and establish secure long-term cash flows.
- Stimulate innovation in the various functional areas to guarantee a long-term balance between costs and revenues, especially when faced with innovations by terminal operators, port users, rival ports, and hinterland operators.
- Generate internal cash flows needed to replace and expand port infrastructure and superstructure.
- Compete according to the rules of the market system, without excessive distortions of competition.
- Put limits on cross-subsidization, which may be rational from a marketing point of view (market penetration, traffic attraction), but which can undermine financial performance.
- Avoid dissipation of the port authority's asset base to satisfy objectives of third parties (for example, port users demanding the use of land in the port area without regard to the land's most economic use or port and city administrations using port authority assets to pursue general city goals).

Full cost recovery should be viewed as a minimum port authority objective; once this objective has been achieved, however, the port authority can pursue other-than-financial objectives considered desirable by the government or by itself.

C. Objectives and Functions of a Port Authority

The third section of a ports law should delineate the objectives and functions of a port authority. Usually, a port authority exercises jurisdiction over a port territory, which should constitute an economic and functional unit. The establishment of a port authority as this legal entity is one of the major elements of a ports law (Box 5). The law provides the legal status for the port authority which might be a public entity or a corporate entity under the commercial code of the relevant country, such as a joint stock company. The law should also indicate which public entity has the right to establish a port authority in the event that the state is not doing so. This might be a region, province, city, or a combination.

In the case of corporatized or privatized port authorities,

linkages will be needed to the mercantile, corporate, or commercial code. Provisions should be included on shareholding, for example, or conforming changes made to commercial or corporate laws.

There is an important point affecting port authorities established as joint stock companies. Generally, port authorities are responsible for operating the entire port. In the event of a landlord port situation, a corporatized or privatized port authority must ensure a level playing field among many terminal operators and other service providers. To avoid conflicts

Of interest, the law should explicitly regulate the powers and duties of the port authority in relation to private operators with respect to investments and share participation.

Powers and duties of a port authority regarding land management require specific attention in the law. A landlord port authority is responsible for land management and overall port development. Special attention should be paid to the regulation of ownership and use of port land under the law. A port authority may own the land or have a perpetual or time-specific right to use the land. Powers to act as a land-lord may need to be specifically elaborated, as well as the limitations of such powers, such as the interdiction of the sale of port land. While the authority is engaged in, or provides for, construction of operational infrastructure, the maintenance of such infrastructure constitutes a duty for the authority. The ports law should specify the exact responsibilities of the port authority and those of the state with respect to investments in basic and operational infrastructure, maritime accesses, port access roads, and rail and waterway infrastructure as well as hinterland connections.

Generally, the objective of a port authority is to efficiently and economically manage the port. In a public landlord port, its objectives should be aligned with the macroeconomic goals of the state and the needs of the region, such as the creation of jobs, strengthening of the economic structure, and so forth.

Fundamental port functions that should be considered in the law include

- Administration, management, and physical development of the port area.
- Maintenance, rehabilitation, renovation, and construction of basic and operational infrastructure.
- Maintenance, rehabilitation, renovation, and construction of operational infrastructure (usually the construction of basic infrastructure is a responsibility of the state).
- Establishment of contractual (concession or lease) and other conditions (public license) for private operators to provide port services.
- Coordination of berthing and unberthing of vessels.
- Ensuring public order in the port area.
- Safeguarding the port environment.
- Port marketing.
- Port security

IV. VIETNAM'S VIEWPOINT ON PORT AUTHORITY

With the current port organization and management structure, adopting Port Authority in Vietnam seaports faces different opinions debated time to time. Many arguments are in favor of while others against this model.

A. Supporting Port Organization and Management Model as Port Authority

Derived from the current need, the urgency of port management in the spirit of the Resolution No.09-NQ/TW dated 09/02/2007, the Fourth Conference of the Party Central Committee on Operation Lock X Vietnam sea strategy to 2020; June 02 2014, Minister of Communications and Transport has assigned the Vietnam Maritime Administration to build scheme "Recommendations on seaport organization and management model, application testing on Lach Huyen Terminal - Hai Phong international gateway", which refers to the "Port Authority".

Based on the research results, the Ministry of Transport has bravely added to some aspects related to setting up "Port Authority" from the scheme into Vietnam Maritime Law (Adjusted in 2015) and explained to the Congress on this issue. According to the revision, adding some clauses to the Vietnam Maritime Law, in "Article 64b. Port Authority. Port Authority is the organization functions to invest, construct, operate and manage seaport infrastructure, logistics facility behind the port; performs certain State management functions within the assigned lands and waters".

The Ministry of Transport also determined that there are Port Authorities established in major ports such as Haiphong, not in every seaport.

The Port Authority is not in the Government System from Central to local organizations but is the unified collaboration from investment to effective port operation. This organization has functions of both state management and business.

At the National Assembly session in November 2015, before the approval of Vietnam Maritime Law 2015, "Port Authority" was changed into "Port Management Board" however this cannot fully express the essence of this matter, leaving the Ministry of Transport many hesitations. As a result, the argument of setting the Seaport Operation and Management Board as a State-owned company in the context that the Government is pushing equitization needs carefully considering. "When we need to mobilize resources for investment, whether Port Operation and Management Board will be equitized or not, if equitized, it is no longer called state-owned organization". Comparing functions and tasks, this model is not really a port management board thus the Congress is suggested to correctly use the word "Port Authority".

B. Inappropriate Adopting Port Organization and Management Model as Port Authority

In contrast to the above viewpoint, there are many suggestions that Vietnam is inappropriate to adopt the seaport operation and management model as Port Authority. That is expressed in National Assembly session in April 2015 in which several questions were raised up, for examples:

- Are there any differences between Port Authority and Maritime Administration? What is its organizational structure

and relation to other governing offices to avoid overlap? Whom does the Port Authority report to, Ministry of Transport or Government or other Offices?

While the draft functions of this organization is very broad, is this regulation in consistent with the Local Government Establishing Law?

There are also opinions that at the maritime area, there are many forces from State units and offices (such as Maritime Administration, border guards, customs, pest control department, fisheries surveillance authority,...) people, organizations, businesses, maritime service providers whose activities relates to not only Vietnamese citizens but also foreigners. Thus, it is necessary to have State organization which has enough functions, power and take responsibilities to coordinate, collaborate, harmonize and strictly manage activities in port area.

- Other ideas suggest that, the phrase "Port Authority" should not be used, there must be consensus understanding, otherwise a number of industrial zone will ask for "Industrial Park Authority" or "Airport Authority"...

- At the same time, there is argument that the name "Port Authority" is not correct because "Government Authority must have People Council".

At the Parliamentary meeting in November 2015, the issue of "Port Authority" again warmed up the debate.

- There are ideas that to match current situation, the draft law should indicate that this model is applied to some regional (new) seaports prescribed by the Government. Besides, the name "Port Authority" was replaced by "Port Operation and Management Board" to avoid misunderstandings at local authority level.

- Another opinion was raised up that no matter what word is used, this is a bisexual institution. That means "it has functions of a public authority and a business", petitions must be bisexual regulatory that the authorization will perform State functions while the other components perform as a business, similar to the model of Industrial Zone Management Board and Infrastructure Investment Company.

It is those arguments made the Congress choose a "safe" solution by adding "Port Operation and Management Board" into Article 87, 88 and 89 of the Maritime Law 2015.

Consequently, "Port Operation and Management Board is established by the Government, provided with the lands, port waters for planning, investment, construction, operation of seaport infrastructure and logistics facilities behind the port".

C. Causes of the Dissent

- The concepts, functions and duties of "Port Authority" and "Port Operation and Management Board" are not clearly distinguished. That has ruffled the application of operation and management model for ports in Vietnam.

- What law will "Port Authority" be subjected to, Business Law or Maritime Law?

- The most significant problem to solve is whom Port Authority will directly report to, Ministry of Transport or Local Authorities at the port?

- Are there any different effects that adopting Port Authority or Port Operation and Management Board will generate compared to our current port management model?

V. THE ABILITY TO APPLY PORT AUTHORITY IN VIETNAM

After the Maritime Law is approved, the definition of Port Operation and Management Board is officially used, in Articles 87, 88, 89. This shows that "Port Authority" has not been applied in Vietnam Ports. Instead, "Port Management and Operation Board"

Port Management and Operation Board are organizations established by the Government. Port Management and Operation is assigned port lands and port waters to plan, invest, construct development and operate the port infrastructure, the logistics facility behind the port. Departments which manage Port Management and Operation Board directly are Ministry of Transport, Ministry of Finance, Ministry of Planning and Investment, the Ministry of Natural Resources and Environment, Provincial People's Committees where the port locates at; the Ministry of Transport is the main Department.

There are duties of Port Management and Operation Board:

- Have Development Planning in general; development planning waters and lands in particular;
- Be invested and developed port infrastructure according to approved Plan;
- Have full power with the Logistics area behind port investment project;
- Enforce management regulations about port waters and port lands;
- Control the investment, operation, maintenance, repairmen of port instruction and logistics instruction behind port;
- Example, supervise activities of operators at port and logistics area behind port;
- Control, supply facilities and safety, pilot, tug and others;
- Decide service fee at port waters and port lands according to authorities's regulations;

With the tasks above, in the future, Port Management and Operation Boards will be one of the factors that help port to

develop commensurate with their potential. However, with the functions and tasks assigned, Port Management and Operation will work hard to promote all of the effects as the other countries in the world when applied in Vietnam. Therefore, in the future, with the speed of development and the current integration trend of ports in particular, the shipping industry in general, the Port Authority model will replace the Port Management and Operation Board model.

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