Port Administration

A Review of the Structural and Legal Aspects

R.A.P. Douglas

August 1990

Discussion Paper

This is a document published informally by the World Bank. The views and interpretations herein are those of the author and should not be attributed to the World Bank, to its affiliated organizations, or to any individual acting on their behalf.
Port Administration

A Review of the Structural and Legal Aspects

Discussion Paper

August 1990
This is a document published informally by the World Bank. To ensure that the information contained in it is presented with the least possible delay, the typescript has not been prepared in accordance with the procedures appropriate for formal printed texts, and the World Bank accepts no responsibility for errors.

The World Bank does not accept responsibility for the views expressed herein, which are those of the authors and should not be attributed to the World Bank or to its affiliated organizations. The findings, interpretations, and conclusions are the results of research supported by the Bank; they do not necessarily represent official policy of the Bank. The designations employed, the presentation of material, and any maps used in this document are solely for the convenience of the reader and do not imply the expression of any opinion whatsoever on the part of the World Bank or its affiliates concerning the legal status of any country, territory, city, area, or of its authorities, or concerning the delimitations of its boundaries or national affiliation.

This study was prepared by Richard A.P. Douglas, OBE, who until his retirement in September 1988, was legal advisor to the British Ports Federation. After service in the UK Royal Navy followed by training in law, Mr. Douglas, became the legal advisor to the UK National Ports Council from 1964 until it was abolished in 1981, and during this period he was responsible for instructing Parliamentary Council in 1969 concerning the nationalization of the major UK ports and again in 1979 concerning the abolishment of the NPC and the "privatization" of the British Transport Docks Board leading to the 1981 Transport Act. Following his retirement, Mr. Douglas continues as part-time legal advisor to the British Ports Federation. Recently he has been closely associated with discussions on increasing the use of the private sector in port related activities. He is both an author and a contributor to a number of recognized books on dock and harbour law, pilotage, and port related legal matters. He prepared this report while a consultant to the Transport Division of the World Bank. The work was directed by Zvi Ra’anana, Senior Financial Analyst/Ports Advisor, Infrastructure and Energy Division, Latin America and Caribbean Technical Department.
PORT ADMINISTRATION: A REVIEW OF THE
STRUCTURAL AND LEGAL ASPECTS

TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Summary and Conclusions</th>
<th>i-iii</th>
</tr>
</thead>
<tbody>
<tr>
<td>I. General Introduction</td>
<td>1</td>
</tr>
<tr>
<td>Port Management Functions</td>
<td>1</td>
</tr>
<tr>
<td>Harbor Authorities Generally</td>
<td>2</td>
</tr>
<tr>
<td>Kinds of Harbor Authorities</td>
<td>4</td>
</tr>
<tr>
<td>II. Harbor Authorities in Great Britain</td>
<td>8</td>
</tr>
<tr>
<td>The Current Position</td>
<td>10</td>
</tr>
<tr>
<td>Arrangements Between Harbor Authorities and Private Cargo Handlers</td>
<td>13</td>
</tr>
<tr>
<td>Harbor Authority Charges</td>
<td>14</td>
</tr>
<tr>
<td>Borrowing Powers of British Harbor Authorities</td>
<td>14</td>
</tr>
<tr>
<td>Government Control over Port Development</td>
<td>15</td>
</tr>
<tr>
<td>Current Proposals for Privatization</td>
<td>15</td>
</tr>
<tr>
<td>Possible Changes Following Repeal of Dock Labor Scheme</td>
<td>16</td>
</tr>
<tr>
<td>III. Harbor Authorities in Other European Countries</td>
<td>17</td>
</tr>
<tr>
<td>General Position</td>
<td>17</td>
</tr>
<tr>
<td>A. The Port of Le Havre</td>
<td>17</td>
</tr>
<tr>
<td>The Council of Administration of Le Havre</td>
<td>18</td>
</tr>
<tr>
<td>The Director General</td>
<td>18</td>
</tr>
<tr>
<td>Port Development</td>
<td>18</td>
</tr>
<tr>
<td>Navigational Safety</td>
<td>19</td>
</tr>
<tr>
<td>Finance</td>
<td>19</td>
</tr>
<tr>
<td>Relationship of Harbor Authority with, and Role of</td>
<td>20</td>
</tr>
<tr>
<td>Private Commercial Companies</td>
<td>20</td>
</tr>
<tr>
<td>The Role of the Government</td>
<td>20</td>
</tr>
<tr>
<td>General Comments</td>
<td>20</td>
</tr>
<tr>
<td>B. The Ports of Bremen and Bremerhaven</td>
<td>21</td>
</tr>
<tr>
<td>The Harbor Authority and the Cargo Handling Company</td>
<td>21</td>
</tr>
<tr>
<td>Navigational Safety Functions</td>
<td>21</td>
</tr>
<tr>
<td>Provision of Cargo Handling Facilities</td>
<td>21</td>
</tr>
<tr>
<td>Finance</td>
<td>22</td>
</tr>
<tr>
<td>TABLE OF CONTENTS (contd.)</td>
<td>Page No.</td>
</tr>
<tr>
<td>----------------------------</td>
<td>---------</td>
</tr>
<tr>
<td>Cargo Handling</td>
<td>22</td>
</tr>
<tr>
<td>Constitution of BLG</td>
<td>22</td>
</tr>
<tr>
<td>Dock Workers</td>
<td>23</td>
</tr>
<tr>
<td>General Comments</td>
<td>23</td>
</tr>
<tr>
<td>C. The Port of Gothenberg</td>
<td>23</td>
</tr>
<tr>
<td>The Harbor Authority</td>
<td>23</td>
</tr>
<tr>
<td>Regulatory and Mandatory Powers</td>
<td>24</td>
</tr>
<tr>
<td>Acquisition of Shares in Company by Persons Other than City of Gothenberg</td>
<td>24</td>
</tr>
<tr>
<td>Board of Directors of Port of Gothenberg AB</td>
<td>24</td>
</tr>
<tr>
<td>Dock Workers</td>
<td>25</td>
</tr>
<tr>
<td>General Comments</td>
<td>25</td>
</tr>
<tr>
<td>D. Polish Ports</td>
<td>25</td>
</tr>
<tr>
<td>Background</td>
<td>25</td>
</tr>
<tr>
<td>Port Administration</td>
<td>25</td>
</tr>
<tr>
<td>Navigational Safety Function</td>
<td>25</td>
</tr>
<tr>
<td>The Harbor Authorities</td>
<td>26</td>
</tr>
<tr>
<td>Cargo Handling</td>
<td>26</td>
</tr>
<tr>
<td>Finance</td>
<td>27</td>
</tr>
<tr>
<td>Dock Workers</td>
<td>27</td>
</tr>
<tr>
<td>Smaller Polish Ports</td>
<td>27</td>
</tr>
<tr>
<td>General Comments</td>
<td>27</td>
</tr>
<tr>
<td>IV. OTHER HARBOR AUTHORITIES</td>
<td>28</td>
</tr>
<tr>
<td>An Australian Port - The Port of Brisbane</td>
<td>28</td>
</tr>
<tr>
<td>Constitution of Port of Brisbane Authority</td>
<td>28</td>
</tr>
<tr>
<td>Navigational Safety Functions</td>
<td>28</td>
</tr>
<tr>
<td>Provision of Cargo-Handling Infrastructure</td>
<td>28</td>
</tr>
<tr>
<td>Cargo-Handling</td>
<td>28</td>
</tr>
<tr>
<td>Finance</td>
<td>29</td>
</tr>
<tr>
<td>General Comment</td>
<td>29</td>
</tr>
<tr>
<td>New Zealand Ports - Port Companies Act 1988</td>
<td>29</td>
</tr>
<tr>
<td>General Purpose of Act</td>
<td>29</td>
</tr>
<tr>
<td>Duty of Harbor Boards to Establish Companies</td>
<td>30</td>
</tr>
<tr>
<td>Board of Directors of Port Company</td>
<td>31</td>
</tr>
<tr>
<td>Procedure for the Transfer of Commercial Undertaking to Port Company</td>
<td>31</td>
</tr>
<tr>
<td>General Comment</td>
<td>32</td>
</tr>
<tr>
<td>Thailand - Songkhla and Phuket Ports</td>
<td>32</td>
</tr>
<tr>
<td>The Background</td>
<td>32</td>
</tr>
<tr>
<td>The Terms of the Concession</td>
<td>32</td>
</tr>
<tr>
<td>General Comment</td>
<td>34</td>
</tr>
<tr>
<td>ANNEXES</td>
<td></td>
</tr>
<tr>
<td>1. Powers of Associated British Ports</td>
<td>35</td>
</tr>
</tbody>
</table>
PORT ADMINISTRATION: A REVIEW OF THE STRUCTURAL AND LEGAL ASPECTS

SUMMARY AND CONCLUSIONS

1. This is a Study of port administration from the legal and constitutional point of view. It is part of a larger study of port institutional reform which also includes economic and operational aspects.

2. The Study describes the legal and constitutional basis on which ports are managed in select number of developed countries of direct relevance. The position in the United Kingdom, where the most radical changes have taken place, is discussed in some detail. The Study also describes the constitutions and powers of the harbor authorities at the ports of Bremen and Bremerhaven, Gothenberg and Le Havre following visits to those ports and of the port of Brisbane based on correspondence with the harbor authority. It includes reports on the legal basis for the management of the major Polish ports following a meeting in Warsaw with officials of the Polish Department of Transport and, following desk studies, on the New Zealand Port Companies Act 1988 and of the proposals by the Royal Thai Government to grant a concession to the private sector to operate the new ports of Songkhla and Phuket.

3. The Study places some emphasis on recent measures and proposals to privatize harbor authorities or, in other ways, to increase the involvement of the private sector in the management of ports. Its primary purpose is to provide possible guidelines for the governments of developing countries who are considering the constitutional basis for the management of their ports. (It is of course appreciated that much depends on local circumstances and that it may not be practicable for a developing country to follow very closely the constitutional patterns of port management in the developed world.)

4. Chapter I of this Study analyzes the functions of harbor authorities and discusses which services are essentially in the nature of public ones and which are essentially commercial business activities.

5. Except in Britain and Sweden, among European countries, these distinctions are generally reflected in the constitutions and activities of harbor authorities. In most developed countries, cargo-handling is undertaken almost exclusively by private commercial companies, although at some ports, e.g. Bremen (paras 3.20 to 3.32) and the New Zealand ports (paras 4.12 to 4.27), the harbor authority has a substantial interest in the main cargo-handling company.

6. Conversely, dredging, the provision of navigational aids and the regulation of shipping movements are almost always the responsibility of public authorities who are also, usually, mainly responsible for the provision of the cargo-handling infrastructure--quays, jetties etc.--although it is often possible for private companies to construct their own terminals under license from a harbor authority. Even in Britain where there is currently some enthusiasm for the privatization of ports, the form which this has so far taken in the case of major ports (see paragraphs 2.23 to 2.25 and 2.47 to 2.49) involves the harbor authority remaining as a body whose functions are limited to statutory harbor
activities although as the subsidiary of a Companies Act company with the wide power usually enjoyed by such companies (as explained, the philosophy behind this arrangement is that, to some extent, it insulates the statutory duties and regulatory power of the harbor authority against the assumed purely commercial approach of the holding company).

7. Given the problems inherent in a private commercial company being responsible for certain functions of a harbor authority and the current position as respects the administration of harbors in developed countries there do seem to be grounds for caution before seeking to persuade the governments of developing countries that their major harbors, including the navigational safety functions there, should generally be managed by private commercial companies (that is, so far as legal and constitutional considerations are concerned-economic and operational considerations may indicate that privatization is desirable). At the same time, it seems clear that governments of developing countries should be advised that cargo-handling activities should always be undertaken by private commercial companies, although appropriate mechanisms for the protection of the public interest need to develop in such cases, especially where competition is limited.

8. A solution based on the British arrangements, so far (see paras 2.23 to 2.26 and 2.46 to 2.49), for the privatization of major ports, with the harbor authority remaining as a body limited to harbor functions but becoming the subsidiary of a private commercial company, may however be worth considering. It does seem to combine a degree of insulation for the public duties and regulatory powers against purely commercial pressures, with the advantages usually associated with a private commercial company. However, it might be difficult to implement this concept in some developing countries. Furthermore the wish to diversify activities, which is the chief motive for privatization in Britain, might not apply, except where circumstance similar to those in the UK exist—shallow water, finger piers, etc. the sort of diversification into real estate development might be worth considering.

9. If the Government of a developing country decides that it must control its major harbors directly it would seem difficult to improve on the sort of arrangement adopted by the Thai Government (see paras 4.28 to 4.31). However, as indicated in paras 1.16 and 4.31, there do appear to be advantages in having a independent harbor authority.

10. The French system of "ports autonomes" (paras 3.03 to 3.19) provides a halfway house where the Board and the General Manager are in some degree agents of Government but the central bureaucracy is not too closely involved in the detailed management of the port. However, as indicated in para 3.19, this somewhat complex system, with its emphasis on highly trained and experienced officials, (continuity of service) might not be easy for some developing countries to implement.

11. The Governments of developing countries may often therefore decide to think in terms of an ad hoc board as the harbor authority for a major port to be responsible for the navigational safety functions and possibly for the provision of the cargo-handling infrastructure (but not to undertake cargo-handling). The problem of course, is how the members of such a board should be appointed and the question is discussed in some
detail in paras 1.19 to 1.24. It is there suggested that the system of direct election by local residents, as in the case of the New Zealand Harbour Boards, would probably not be a practical solutions in most developing countries and that there were strong objections to the members being appointed as representatives of various interest affected by, or involved in, the management of the port.

12. If, however, there was strong pressure for a representative board, which might be the case, it might be worth considering the concept of a two-tier board (by analogy with the two-tier structure of a German company (paras 3.26 to 3.29). The top tier board could be a large body including representatives of shipowners, shippers and other relevant commercial interest and representatives of dock workers at the port as well as substantial government representation. Its functions would be limited to laying down general policy guidelines, approving major capital projects and, most important, appointing a small management board. The latter, composed of a few expert managers, would effectively be responsible for managing the port and should be appointed for terms of, say, 5-7 years, probably on the basis of contracts which could not be terminated (except for serious misconduct etc.) before the expiration of the term of appointment. There is believed to be no precedent for a public (as distinct from a company) board on this model, except in Mexico where a similar concept is being applied at least in the ports field, but the idea was considered by the British National Ports Council. It is not of course envisaged that such a public board should undertake cargo-handling. If it was desired that a harbor authority of this kind should have a stake in a cargo-handling company at the port this should presumably be via the upper-tier board.

13. A small board consisting of persons appointed by the Government on the basis of relevant knowledge and experience is at any rate the simplest solution. If political patronage can be avoided and trouble taken to select the right people (which it is suggested should not normally include serving civil servants) such a board should provide an efficient harbor authority. If this approach is adopted it is suggested that the model of the major British port trust described in paras 2.28 and 2.29 should be followed. It is suggested that, as in the case of a British port trust, members appointed by the Government should not be removable by Government (except on such grounds as incapacitating illness or misconduct) before the end of their terms of office thus securing that the board will have a substantial degree of independence and continuity of experience to learn the business. The inclusion on the board of a minority of executive officers, including the chief executive, on the lines of the arrangements described (para 2.28), is also, it is suggested, a course which might be followed.

14. The combination of such a board as harbor authority responsible for navigational safety functions, with a commercial company on the lines of a New Zealand Port Company (yet to be proven as worthy) (see paras 4.12 to 4.27) responsible for the provision of the cargo-handling infrastructure as well as cargo-handling operations, in which the harbor authority would have a substantial, and perhaps controlling, interest, appears to be an arrangement for the management of a major port which governments of developing countries might do well to consider.
PORT ADMINISTRATION: A REVIEW OF THE
STRUCTURAL AND LEGAL ASPECTS

I. GENERAL INTRODUCTION

Port Management Functions

1.01 The ports with which this study is concerned are commercial ports where, subject only to physical limitation such as depth of water, ships generally may load and unload cargo. In considering what is the best way to manage such a port it seems a good starting point to examine the functions which are relevant to the management of the port and who may perform them. Much will of course depend on local circumstances and, in particular, questions of who may perform a particular function may be determined to a large extent by local political and commercial considerations. The constitutional, legal and administrative system of the country concerned must also be taken into account. The following is therefore, necessarily, something of a generalization but, it is hoped, helps illustrate the possible options.

1.02 Perhaps the most basic functions in relation to the management of any significant commercial port are those to secure the safety and convenience of navigation in, and in the approaches to, the port for the ships which use it.

1.03 These functions include:

(a) the installation and maintenance of lights, buoys, and other navigational aids;

(b) the removal of wrecks and other obstructions;

(c) dredging to maintain navigational channels (the need for, or importance of, which will depend on the physical characteristics of the port);

(d) advising and/or directing ships as to their movements within the port and its approaches, including when they may enter the port, the channels they should use or refrain from using, when and where they should berth, etc. (this function will depend on the powers available and at larger ports may take the form of a sophisticated vessel traffic service).

1.04 These are essentially public service functions. The appropriate body to perform them is therefore, generally, the harbor authority (the possible nature of which is discussed below and which may be a body which is regarded for most purposes as "private"), the Government or another public body which perhaps, is responsible for carrying out all or some of the functions mentioned above in, or in the approaches to, ports generally in the country concerned. Even if the body which carries out these functions is a "private" body (a concept which is discussed below and which in the British context is exemplified by a company set up under the Companies Act of 1985 acting as harbor authority) the maximization of profit should not be the primary objective (although that is not to say that charges imposed on ships to pay for these services should not generate
a profit and still less that these services should not be efficient and cost effective).

1.05 Another function to serve the safety of navigation is the provision of a pilotage service. Although this also appears to be essentially a public service function, there is a long tradition in many countries of the pilot operating as a self-employed professional man. However, if the pilots who conduct ships into and out of the port are not employed by the harbor authority, the Government, or another public body established for the purpose, they should at least be licensed or approved by one or another of these.

1.06 Towage, the provision of tugs to assist in the berthing and maneuvering of ships at a port, might logically be regarded as a public service function. In practice, however, this service is almost always provided as a commercial business, sometimes by the harbor authority, but more usually by private business. Here too, a system of licensing by government or the port authority would be advisable.

1.07 The provision of facilities for cargo handling, both the infrastructure, the berths, quays and jetties, and the superstructure, the cranes and other cargo handling apparatus, are basic functions at any port. They may be undertaken either by the harbor authority or, as a commercial venture by a private body, in the latter case probably subject to a measure of regulation by the harbor authority, at least as respects the provision of infrastructure. Where the harbor authority provides cargo handling facilities this would appear to be a public service function, at any rate where the facilities are for the use of other persons, either the public generally or a particular private body to whom the facilities will be leased or for whose preferential or exclusive use they will be appropriated. It is common for the cargo handling infrastructure and the superstructure to be provided by separate persons. For example, a jetty may be constructed by a harbour authority and leased by the authority to a private commercial company which installs the cranes etc. The provision of berths, quays and jetties involves the acquisition of the requisite interests in, or rights over, land unless the person concerned already possesses such interests or rights.

1.08 The provision of warehouses and other storage facilities for cargo at a port is also a function which may be undertaken either by the harbor authority or a private body and similar considerations apply as in the case of the provision of cargo handling facilities.

1.09 Cargo handling itself, and the related storage of cargo, are essentially commercial functions. They may be undertaken by the harbor authority or by private commercial bodies.

Harbor Authorities Generally

1.10 The concept of a "harbor authority"--a body which is generally responsible for the local management of a port--is clearly a convenient one. It is believed that virtually all significant ports, at any rate in the developed world, are managed by recognized harbor authorities (whose functions are usually but not necessarily, limited to the management of the port).
1.11 A body will be a harbor authority for a port by virtue of being responsible in relation to the port for some or all of the port management functions specified above (leaving aside for this purpose the purely commercial functions of towage, storage and cargo handling.) In addition, a harbor authority will usually have power to regulate the activities of other persons at the port, perhaps by means of byelaws, and a number of incidental functions such as the leasing, or licensing, of moorings, the provision of security services and cleaning up pollution.

1.12 In many cases the port management functions specified above (again leaving aside the purely commercial functions) will be divided among two or more separate bodies and in such a case the body with, in aggregate, the more important functions, or, if some of the functions are performed by a national organization, the more locally based body, is likely to be the harbor authority for the port.

1.13 Perhaps the most characteristic functions of a harbor authority are those specified above to secure the safety and convenience of navigation in, and in the approaches to, a port. However, it is not uncommon for the installation and maintenance of navigational aids, the removal of wrecks and dredging, to be the responsibility of a national authority, at any rate in the approaches to, as distinct from in the close vicinity of, the docks. But the regulation of shipping in the port appears to be an essential function of any harbor authority (which is not simply a dock authority). In some ports, indeed, there are separate harbor authorities, one being responsible for the functions to secure the safety and convenience of navigation and the other (or others) responsible for the provision of facilities for cargo handling. Whether this is a good arrangement no doubt depends largely on local circumstances, including the physical characteristics of the port. It has been thought that, in general, there are operational advantages in integrating the navigational safety functions and the regulation of shipping with the function of providing and maintaining docks and wharves (see the Report of the Committee of Inquiry into the major ports of Great Britain published in 1962 usually known as the "Rochdale Report"). However, if it were thought to be important to distinguish between public service and purely commercial functions that might be an argument in the opposite direction.

1.14 Some harbor authorities carry out all or most of the port management functions specified above but, except in Britain and Sweden (and also in Singapore and Israel), it seems to be unusual in developed countries for a harbor authority itself to undertake cargo handling. It is more common for the harbor authority to act as landlord or regulator in relation to the docks and wharves at the port and to grant leases or concessions to private commercial bodies who carry out the cargo handling function there.

1.15 Before describing, in general terms, the different kinds of harbor authorities it may be pertinent to mention a general point about the nature of such authorities which seems to be of fairly wide application. A harbor authority, or at any rate one with a wide range of functions which include, but extend beyond, those to secure the safety of navigation, combines in perhaps a unique degree, the characteristics of both a public service body and of an ordinary commercial business. It is submitted that this state of affairs, which derives from the nature of a harbor authority's functions,
is inherent and applies whether, formally, the authority is a public or private body.

**Kinds of Harbor Authorities**

1.16 The variety of harbor authorities is theoretically very wide. One possibility of course is that the Government itself, or a government-owned organization, should be the harbor authority. This is the position in many developing countries and is thought to have certain disadvantages. In particular, a Government or nationalized organization is likely to be bureaucratic and to lack flexibility.

1.17 Municipal harbor authorities are another alternative. Most of the great ports of Northern Europe, including Rotterdam, Antwerp, Hamburg, and Bremen are managed by City Councils or State Governments and this system seems to have brought about the growth of the ports and their contribution to the economic welfare of these cities. It does appear to mean that the port is treated as part of the general transport infrastructure (with cargo handling carried out by private commercial business) rather than an independent entity. Municipal ports have been less successful in Britain.

1.18 To work well this system probably requires a high quality membership of the municipality who are prepared to delegate the management of the port to a small committee (and the port's General Manager) and to refrain so far as possible from interfering with the management of the port on extraneous grounds. It seems doubtful whether the municipal ownership of ports would often be the appropriate solution in developing countries.

1.19 A common form of harbor authority is the independent port board. The membership and size of ports boards are, of course, extremely varied. They include the boards of the autonomous French ports, the boards which manage some of the great ports in the USA, which consist largely of persons appointed by the local State and City governments, and the British port trust which is perhaps the best example of an independent port board but the composition of which varies quite widely. Clearly, the effectiveness of this type of harbor authority depends on the membership, both their quality and how they are appointed. The legal objectives of a port board and the constraints under which it operates are also important. If, as would be usual, the board is established by a legislative act, its activities are likely to be limited to the management of the port and Government approval may be required for important decisions.

1.20 There are broadly four ways in which the members of a port board may be appointed or elected;

(a) direct election by the inhabitants of the neighborhood generally; this is rare (although as indicated in para 4.14 the New Zealand Port Boards are elected in this way) and it seems doubtful whether the activities of the port would generally be of sufficient popular interest to make this a practical option;

(b) appointment or election by local interests concerned with the port, including traders and shipowners using the port, local authorities and perhaps local trade union branches representing the workers in the port;
(c) appointment by Government;

(d) co-option by other members of the board (but this would be ancillary to a system based on (b) or (c) above).

1.21 Membership based on the representation of local interests is common. The majority of members of most British port trusts were appointed or elected on this basis until the 1970s and it still applies to the membership of most medium and small port trusts. The disadvantages of this system is that members of the port board may tend to feel that their primary tasks is to defend or promote the interests they represent rather than the interests of the port. In some cases they may think of themselves as mere delegates.

1.22 It was largely because of these undesirable tendencies that, in the 1970s, the boards of most major British port trusts were reconstituted. The new constitutions provided for most of the members to be appointed by the Secretary of State for Transport, drawn from a range of relevant expertise and experience but not to represent particular interests. The new constitutions also provided for a minority of the board members to be co-opted from among the harbor authority's full-time officials and sometimes for the chief executive to be a member ex-officio. (This sort of non-representative constitution does not of course preclude informal arrangements for consultation with port users and others concerned with the operation of the port).

1.23 These reconstituted boards of major port trusts, which were intended to be more like the boards of commercial companies than the representative (and larger) boards which they replaced, have generally worked well. However, appointment of members of port boards by the Government may have potential disadvantages. In particular, there may be a danger that political patronage will become a factor.

1.24 However the members of a port board are appointed or elected, it is important that the number of members should be kept within bounds. The Rochdale Report recommended that 15 should be the maximum and the size of an effective working board should probably, as a rule, be less than that (one of the disadvantages of the representative basis of appointment is that it is usually difficult to avoid having too many members). The sizes of the reconstituted boards of the major British port trusts range from 8 to 14 with some flexibility in most cases. Misgivings about British port trusts have been expressed on the ground that they are not accountable to anyone, as a company is accountable to its shareholders or a nationalized body to the Government. This seems a somewhat theoretical point; it has not been demonstrated that this lack of accountability has affected the performance of port trusts. Nevertheless, it should perhaps be taken into account in considering which sort of harbor authority is appropriate in a developing country.

1.25 A class of harbor authority which is currently much discussed but is still rare in practice is the private commercial body—in the developed world a company set up in accordance with general company law rather than special legislation and financed mainly by equity capital—(although of course in developed countries such bodies carry out most of the cargo-handling and warehousing activities at ports except in Britain).
1.26 In some underdeveloped countries it may not be possible to raise equity capital on the market and even a private commercial body would presumably have to obtain finance for capital purposes from the Government (which might perhaps take the form of equity capital) unless it could raise sufficient funds from charges on users.

1.27 In this context, the probable characteristics of a private commercial body may perhaps be stated to be:

(a) primary motivation to maximize profit;

(b) relative freedom from Government control;

(c) relative freedom from legal constraints and ability to diversify activities.

1.28 Such a body might be likely to be more strongly commercially motivated than a port board or municipality. This might result in a more flexible and enterprising approach generally. A private commercial body might be more concerned to avoid wasteful expenditure and better able to turn resources to account.

1.29 On the other hand it may be questioned whether it is appropriate for a private commercial body, whose primary objective is to maximize profit, to be responsible for the function to secure navigational safety, at any rate at a major port. It is arguable however that there is no real clash between safety considerations and the maximization of profit if only because nothing is so damaging to commercial success as a perceived neglect of safety and particularly, of course, a serious accident.

1.30 A more substantial objection may be that a private commercial body is not suitable to carry out some of the regulatory functions of a harbor authority which may, for example, include licensing the construction and operation of cargo handling installations at the port by other persons who may be commercial competitors.

1.31 A point which has been made in the British context is that, if a harbor authority is a company (or at any rate a company set up under the Companies Act) there is a built-in mechanism for less efficient to be replaced by more efficient management by way of a takeover. This might not however apply in many developing countries.

1.32 Where harbor authorities are concerned the distinction between public and private bodies is often somewhat artificial and less than clear-cut. This is because of the nature of some harbor functions. If a company set up under general legislation is harbor authority for a major port it is, in some sense and for some purposes, a public body. It seems difficult to envisage a harbor authority managing a major commercial port on a purely contractual basis, without either duties to ensure the safety of navigation and provide cargo handling facilities or powers to regulate the activities of other persons at the port. It also seems virtually axiomatic that shippers and shipowners should have rights to use such a port which are not entirely at the discretion of the harbor authority.
1.33 Some of the examples which follow of port organization in the developed world show how attempts are being made to combine the enterprise and flexibility of a private commercial business with the public service ethos.
II. HARBOR AUTHORITIES IN GREAT BRITAIN

2.01 The history of the current pattern of harbor administration in Britain begins with the great surge of port development which took place in the nineteenth century with the coming of the steamship and the industrial revolution. With the development of great new dock systems, new harbor authorities were established with new codes of operational powers.

2.02 Each of these new harbor authorities was established by a separate Local Act of Parliament (except for the Port of London Authority which was established in 1908 by a Public Act) which defined the limits of the port and prescribed the authority's powers and duties. These normally included powers to build harbor works, install buoys and beacons, dredge the harbor and levy harbor dues (paras 2.39 and 2.40).

2.03 Originally, most harbor authorities in Britain were municipal councils although there were a few early examples of port trusts, notably the Dover Harbour Board which was established by Royal Charter in 1609 (long since superseded for practical purposes by the DHB's port statutes).

2.04 The new harbor authorities established in the nineteenth and early twentieth centuries were mainly of two kinds. One of these was the railway companies which had been established mostly about the middle of the nineteenth century and which developed a number of dock undertakings originally (of course) for the export or import of goods or the embarkation or disembarkation of passengers carried by rail.

2.05 The other, and more important, kind of harbor authority established at this time were bodies set up for the specific purpose of managing ports, not having a share capital or any express accountability to electors or to the Government and variously called authorities, boards, trusts or commissions. Generically, these bodies are usually called port trusts.

2.06 The new port trusts sometimes superseded municipal councils as harbor authorities.

2.07 During the same period two or three companies were established as harbor authorities by Local Act of Parliament, in particular the Manchester Ship Canal Company and the Felixstowe Dock and Railway Company, but no company established under general company legislation became harbor authority for a significant harbor until the 1980's. A statutory harbor company, like a port trust, is normally only empowered to carry out harbor activities. Its statutory power is not usually so wide and flexible as the power of a Companies Act company under its memorandum of association.

2.08 The port trusts established in the nineteenth and early twentieth centuries were often, originally, very large bodies, sometimes consisting of 30 or more members who were appointed or elected by interests concerned with the operation of the port including, in particular, shipowners, traders shipping cargo through the port, neighboring local authorities and, later, trades unions.

2.09 Some of the new harbor authorities set up during this period were responsible for both the navigational safety functions in the port and the
provision of docks and jetties. In other cases these basic functions were divided between two or more authorities.

2.10 After the Harbours Act 1964, navigational and dock functions were combined under one harbor authority in all the major estuarial ports except Harwich Haven and Milford Haven. The boards of many port trusts were reduced in size and, as mentioned below, in the case of major port trusts the composition of the boards was changed to make them more like the boards of commercial companies.

2.11 The railway ports were nationalized, along with the railways, in 1947. Later most of the former railway ports were vested in a nationalized body called the British Transport Docks Board and the so called "packet ports", used mainly for passenger traffic to the continent and Ireland, were vested in a subsidiary of British Rail called "Sealink".

2.12 In 1981 the BTDB was privatized but, having regard to its conservancy duties and regulatory powers, in the unusual and interesting way described below. Sealink was floated off and subsequently became a subsidiary of European Ferries (following further takeovers the position in respect of the ownership of the ports concerned is rather complex).

2.13 With regard to the loading and unloading of cargo, one of the principles embodied in the operational code which, in the nineteenth century, was applied to nearly all significant British ports was that the port is open to all members of the public on payment of dues for the loading and unloading of cargo and the embarking and disembarking of passengers. This principle was qualified to some extent, after about 1964, at a number of ports, by a power for the harbor authority to appropriate particular berths for the exclusive or preferential use of particular persons or traffics.

2.14 Until the last twenty-five years or so harbor authorities, although they provided the facilities for cargo handling, seldom engaged in the business themselves. Cargo handling was carried out by independent stevedoring companies who sometime had their own quay facilities, sometimes leased from the harbor authority, but more often simply owned mobile equipment and operated wherever they could at the docks and quays provided by the harbor authority (these were usually called "floating employers").

2.15 In 1947 most of the major British ports and some others became subject to the Dock Labor Scheme (most had individual schemes applied to them during the war). The scheme provided, inter alia, for registers of dock workers and port employers to be maintained and prohibited anyone other than a registered dock worker from being employed on dock work. In 1967 the scheme was modified to provide for practically all registered dock workers to be allocated to registered employers as permanent employees and at the same time a licensing system for port employers came into force, the licensing authority usually being the harbor authority for the port concerned but in a few cases the harbor authority for a neighboring larger port. In 1972 the so called Jones/Aldington Agreement in effect modified the Scheme by abolishing the unattached register of dock workers. One result of this was that, when a port employer at a scheme port went out of business, his dock worker employees had to be allocated to other employers at the port regardless of whether there was work for them or not. At some
ports this meant that the harbor authority became the employer of last resort.

2.16 The Dock Labor Scheme imposed a financial burden (the scheme was financed by contributions by registered employers) and substantial management constraints on port employers at the ports to which it applied including the harbor authorities.

2.17 Partly as a result of the Dock Labor Scheme and the licensing system, but also because of developments in cargo handling technology, floating employers had almost completely disappeared from the ports during the 1970s. The number of independent stevedoring companies with their own quay facilities has fallen considerably and, when the Dock Labor Scheme and the employer licensing systems were abolished in July 1989, harbor authorities and their subsidiary companies were carrying out most cargo handling at British ports (but some private wharfingers, mainly owning their own terminals, were still flourishing, e.g. Port Sutton Bridge at Wisbech in Lincolnshire, Walton Container Terminal Ltd. at Felixstowe and Convoys (Wharf) Ltd. among several others on the Thames).

The Current Position

2.18 Harbor authorities in Britain are probably more varied as respects their constitutions and functions than in any other country. A feature of the British system is the estuarial port where the harbor authority is responsible both for the navigational safety functions (which now include pilotage) and the provision of facilities for cargo handling and the storage of cargo. Such a harbor authority will probably also carry out cargo handling either directly or through subsidiaries although it may also grant leases of particular berths to, or appropriate berths for the exclusive or preferential use of, independent companies who carry out their own cargo handling. There may also be independent private wharfingers in the port owning their own terminals, the construction of which usually requires a license from the harbor authority.

2.19 In some estuaries, however, notably Harwich Haven, there is a harbor authority responsible only for navigational safety functions and one or more other harbor authorities which provide, and usually operate, docks and jetties.

2.20 In Britain there is no overall authority responsible for dredging or other conservancy functions within ports1 but the General Lighthouse Authorities—Trinity House in England and Wales—are responsible for providing navigational aids and raising wrecks in territorial waters outside port limits (exceptionally, Trinity House provides navigational aids within the port of London). The statutory limits of British ports often include an extensive area and are not usually restricted to the immediate vicinity of the docks.

2.21 Most harbor authorities in Britain are bodies created by statute which means, in the British context, that they can only do what is expressly authorized by statute or that which is reasonably incidental to

1/ As for instance the US Coastguard in the USA.
what is expressly authorized—in other words, apart from municipal
councils, their legal capacity is limited to harbor activities. On the
other hand a company set up under the Companies Act usually has much wider
and more flexible powers under its memorandum of association than a
statutory corporation and, as explained below, this is one of the grounds
on which current proposals for privatization are based. As also explained
below, the constitution of Associated British Ports (ABP) largely avoids
this limitation of powers.

2.22 ABP is the most important harbor authority in Britain. It manages
about a third, in terms of tonnage of cargo handled, of the country’s port
traffic in 21 different ports and terminals which include Southampton, the
Humber ports and the South Wales ports.

2.23 The constitution of ABP is unique. ABP, in itself, is a statutory
corporation without share capital which manages its ports mainly under
powers contained in Local Acts and orders and a code of powers contained in
the Transport Act 1981 (see Annex 1 to this paper) as well as certain
general powers, including the power to levy dues under the Harbours Act
1964, which are applicable to all harbor authorities. Essentially, its
legal capacity is limited to port related activities although its powers
are somewhat wider than those of most harbor authorities.

2.24 However, under the provisions of the Transport Act 1981, the
directors of ABP (of whom there must not be less than five nor more than
thirteen) are appointed by a company formed by the Secretary of State for
Transport and registered under the Companies Act 1985 known as Associated
British Ports Holdings plc. Essentially, therefore, ABP is the statutory
subsidiary of a Companies Act company. The directors of ABP are required
to pay to the holding company such sums as appear to the directors of ABP
to be justified by ABP’s profits. The holding company has certain specific
controls over ABP as respects borrowing limits and other matters but it has
no power to give directions to the directors of ABP as respects the
exercise of their powers and duties as a harbor authority. The holding
company can dismiss the directors of ABP but might well hesitate to do so
on an issue involving navigational safety or the exercise of regulatory
powers.

2.25 Under its memorandum of association the holding company has wide
and flexible powers which enable the total ABP organization to diversify
into non-port activities including, in particular, the development of
surplus harbor land. This has also enabled the ABP organization to set up
a joint company with several major private companies to manage a container
terminal at Southampton.

2.26 The arrangements described above appear to have important
advantages and may well provide a precedent for the privatization of other
major ports. The duty to ensure navigational safety and the regulatory
powers of the harbor authority are, to some extent, insulated against the
assumed purely commercial approach of the Companies Act company (even if
this is largely symbolic it emphasizes the spirit in which the public
service functions should be exercised). At the same time, the arrangements
enable private equity capital to be introduced in to the undertaking and
the commercial flexibility of a Companies Act company to be harnessed for
the benefit of the ports. In practice, it has proved very successful.
2.27 Most ports in Britain are managed by port trusts. In most cases the port trust is responsible for both the navigational safety functions (now including pilotage) and the provision of cargo handling facilities, often undertaking cargo handling itself. In a few cases, the port trust is responsible for the navigational safety functions only.

2.28 The size and composition of the boards of port trusts are prescribed by their Local Acts and orders and still vary quite widely. However, in the case of major port trusts there is now a common pattern. As indicated in paragraphs 1.22 to 1.24 above, this takes the form of a relatively small board, usually of variable size—for example, not less than 11 and not more than 13 members (some are smaller and one or two slightly larger than this)—of whom the majority, including the chairman, are appointed by the Secretary of State for Transport from among persons who have relevant knowledge and experience. The general manager (or whatever the chief executive officer of the authority is called) is usually a member ex officio and a specified, and often variable, number (often 2 or 3) of the other officers of the harbor authority are required to be co-opted. The members appointed by the Secretary of State serve for a specified period and cannot be dismissed by the Secretary of State so this form of constitution does not result in the port trust becoming a mere creature of the Government.

2.29 This type of constitution, providing for a board of reasonable size with, potentially, members of high quality and appropriate experience who do not see themselves as representing particular interests, and with a minority of executive members, appears to have much to commend it and has in general worked well. Its effectiveness does of course depend on the Government being prepared to go to considerable trouble to find the right members and not merely to make appointments on the basis of nominations from interests concerned with the port (although these should be consulted). It is also important that, so far as possible, politics should not come into the picture although this is difficult to avoid in the case of members drawn from local government.

2.30 The members of most of the smaller port trusts in Britain are appointed or elected by interests concerned with the operation of the port (para 1.21), including, in particular, shipowners using the port (the appointments are often made by the General Council of British Shipping after consulting such shipowners), traders shipping cargo through the port (the appointments are usually made by an appropriate representative body which may sometimes be the local chamber of commerce), neighboring local authorities and dock labor at the port (these appointments are usually made by the Transport and General Workers Union).

2.31 The boards of smaller port trusts are now usually of reasonable size, seldom exceeding 15 and often being substantially smaller. The theory behind this type of "representative" board is that appointment by interests concerned with the port results in the members having appropriate knowledge and experience and that members so appointed are concerned with the welfare of the port and not to represent the views of the interests which appointed them. The practice does not always conform to these principles. However, many of these smaller port trusts are successful and efficient bodies.
A number of British ports are managed by municipal councils. However, apart from the new oil ports at Sullom Voe and Scapa Flow which are owned, respectively, by the Shetland and Orkney Island Councils, Bristol is now the only important municipal port. On the whole the municipal ownership of commercial ports in Britain has not been successful in recent years which, of course, contrasts with the position in Northern Europe. Municipal ownership of mainly recreational harbors is another matter.

A few harbor authorities in Britain are companies created by statute. The most important of these are the Mersey Docks and Harbour Company (constituted in 1971 following the financial failure of the Mersey Docks and Harbour Board), the Manchester Ship Council Company and the Felixstowe Dock and Railway Company all of which have share capital. A statutory company is subject to the same limitations of legal capacity as a port trust but if it becomes a subsidiary of a Companies Act company, as Manchester and Felixstowe have, the wider powers of the holding company may be used in the interests of the port.

Felixstowe, which operates very much like an ordinary commercial company, has of course been very successful. However, the concept of a statutory company is now usually regarded as obsolete and it appears that other member states of the EEC find it difficult to understand this concept.

Apart from the special case of ABP which is discussed above, currently only one harbor authority in Britain, for important commercial ports, is a company formed and registered under the Companies Act. This is Sealink Harbours Limited which manages the ports formerly owned by British Rail and used mainly for passenger traffic to Ireland and the continent of Europe.

Arrangements Between Harbor Authorities and Private Cargo Handlers

As indicated above, most cargo handling at British ports is now carried on by harbor authorities and their subsidiaries (in 1966 harbor authorities generally were empowered to acquire companies engaged, or proposing to become engaged, wholly or mainly in cargo handling and many exercised that power). However, some terminals provided by harbor authorities are either leased by them to shipowners or other interests who carry on their own cargo handling or appropriated by the authority for the exclusive, or preferential use of such interests. Annex 2 to this Paper contains copies of the standard Terms and Conditions for Appropriated Berths and the standard form of lease used by the Mersey Docks and Harbour Company. These are believed to be reasonably representative of the usual forms of such agreements at major ports.

Terminals are also sometimes built by private interests within ports under license from the harbor authority. A current example is the major terminal at the Isle of Grain being constructed by Highland Aggregates plc. (or their subsidiary company) pursuant to a licence from the Medway Ports Authority.

Some harbor authorities are considering arrangements to join with private interests to set up joint companies to operate terminals within
ports but not all harbor authorities have power to do this. The only present example of such an arrangement is believed to be the joint company at Southampton referred to in paragraph 2.25 above.

Harbor Authority Charges

2.39 Apart from pilotage charges and a few special cases, charges made by harbor authorities in Britain are essentially of two kinds. There are dues which pay for the enjoyment of essential harbor or port works—e.g. the dredged channels, navigational aids, the quays and jetties—and there are further charges which pay for the enjoyment, usually optional, of ancillary services. The distinction between dues and other charges is now sometimes blurred by the levying of combined charges which comprise elements both of dues and other charges (the typical case is a charge levied at a container terminal which combines elements of a due charged for the use of the terminal by the ship and of a charge for handling the ship's cargo) but such combined charges, which are not subject to the safeguards for the user referred to below, which apply, respectively, to dues and to most other charges by harbor authorities, can only be levied by agreement with the user concerned.

2.40 Harbor authorities in Britain can now charge what dues they please for ships entering, using or leaving the harbor, for passengers embarking or disembarking at the harbor or for goods brought into, taken out of or carried through the harbor—but users and other persons substantially affected have the right to object to the Secretary of State for Transport to the dues imposed by the harbor authority or the level of them (until 1964 the maximum level of a harbor authority's dues were fixed by its Local Acts). On such an objection being made to him the Secretary of State, if he does not approve the due in question, has power to reduce it or rule that it should not be imposed either generally or in relation to a particular class of ships, passengers or goods. Pilotage charges levied by harbor authorities are subject to a similar right of objection to the Secretary of State who, however, only has power to reduce, and not to abrogate, such charges.

2.41 Other charges made by harbor authorities in Britain are generally required to be reasonable. What is a reasonable charge depends on all the circumstances of the case and, in the event of dispute, falls to be decided by the Courts (but there has so far never been a decision by the Courts on this question).

Borrowing Powers of British Harbor Authorities

2.42 All harbor authorities which are port trusts or statutory harbor companies now have power to borrow both for capital harbor purposes and temporarily up to limits which are specified in their respective Local Acts and orders, as amended (in the case of Acts and orders in force on January 1, 1986) by the Ports (Finance) Act 1985. Before that Act came into force there was a considerable variety of borrowing powers and in many cases the Secretary of State had power, administratively, to increase a harbor authority's borrowing limits. If a port trust or statutory harbor company now wishes to increase its borrowing limits it must promote a private Bill or an order subject to Parliamentary control.
2.43 The position as respects the borrowing powers of municipal harbor authorities is more complicated and the consent of the Secretary of State is often required. ABP has wide and flexible borrowing powers but the total amount of money borrowed by ABP and its subsidiaries must not exceed the limit, for the time being, set by its holding company, Associated British Ports Holdings plc.

**Government Control over Port Development, etc.**

2.44 Apart from the very few remaining nationalized ports (2 or 3 small harbors owned by the British Waterways Board) and municipal harbor authorities where, in addition to Ministerial sanction sometimes being required for borrowing there is a measure of direct Government control over capital expenditure, harbor authorities in Britain are now free from direct Government control on general economic grounds. The Government control over major port development provided for in the Harbours Act 1964 was abolished in 1985 and harbor authorities are free to make their own decisions as respects charges and borrowing, subject only to the constraints referred to above.

2.45 Although the Secretary of State still has power to make loans to harbor authorities they are now generally expected to borrow money on the market. The power of the Secretary of State to make grants to harbor authorities was abolished in 1981. The Minister of Agriculture, Fisheries and Food however still has power to make loans and grants for the development of harbors for fishery purposes. Apart from that, with the exception of the power of the Secretary of State to give special financial assistance to the ports of London and Liverpool, now coming to an end, and the temporary provisions (of the Dock Work Act 1989) for the Secretary of State to subsidize redundancy payments to dock workers, there are now no Government subsidies for British ports.

**Current Proposals for Privatization**

2.46 The (previous) Secretary of State for Transport had proposed that port trusts and municipal harbor authorities, at any rate for major ports, should take steps towards privatization. Government legislation to facilitate this, which might include a measure of compulsion for some major ports, has been considered but currently it is uncertain whether it will be introduced. It has been suggested that harbor authorities should promote their own legislation. Not all are enthusiastic. Some are concerned about the problems referred to in paragraphs 1.29 to 1.31.

2.47 So far the only port privatization measure which has been implemented since the Transport Act 1981 is the recent transfer of the relatively small harbor owned by Boston Borough Council to a company formed under the Companies Act 1985. The similar transfer of at least one other small municipal harbor is under consideration. However, two major harbor authorities, the Tees and Hartlepool Port Authority and the Clyde Port Authority, are promoting private legislation to privatize their respective ports. Their main reason for doing so is to obtain wider power to diversify their activities.

2.48 The pattern of the local privatization measures promoted by the Tees and Clyde authorities is basically similar to that of the
privatization of the former BTDB (paras 2.23 to 2.25) in that the functions of the body managing the harbor in question as harbor authority continues to be limited to the statutory functions of the harbor authority but such body becomes the subsidiary of a company formed under the Companies Act 1985 with the wide range of powers to engage in various activities which such a company normally has under its memorandum of association. But, for technical reasons, the body which, under these local measures becomes the harbor authority is not as in the case of the BTDB's successor, ABP, technically the same body (a statutory corporation without share capital) with a new name and constitution, but is itself a company formed under the Companies Act 1985 to which the existing port trust's undertaking is transferred. However, the successor company's powers are limited as if it were a statutory corporation and it must always remain a wholly owned subsidiary of the holding company.

2.49 In order to secure that the proceeds of these local privatizations ensue to the benefit of the ports concerned, each of these measures provides for the establishment of a Trust, the members of which are the former members of the port trust (which will be dissolved when its undertaking is transferred to the successor company). The holding company is required to issue to the Trust such securities as the Trust may direct. The Trust is then required to sell the securities and pay the proceeds to the holding company. When it has completed this function the Trust is to be dissolved. This is an ingenious proposal to enable the port to retain the proceeds of privatization.

Possible Changes Following Repeal of Dock Labor Scheme

2.50 The recent repeal of the Dock Labor Scheme and the employer licensing system is virtually certain to result in an increase in private cargo handling at British ports. It has been suggested, although this may be an extreme view, that over the next few years harbor authorities will revert to the landlord role and largely cease to carry out cargo handling themselves. It is possible that at some small and medium ports, the "floating employer" will re-appear. Some harbor authorities, while welcoming the repeal of the Scheme, are concerned about the limited control which they will now have over private cargo handling.

2.51 The repeal of the scheme is also bound to encourage privatization if only because shares in privatized port undertakings will be more readily saleable without the incubus of the Scheme.
III. HARBOR AUTHORITIES IN OTHER EUROPEAN COUNTRIES

General Position

3.01 Given the variety of port administrations in European states other than Britain it is only possible to generalize to a limited extent. However, it is fair to say that, whereas in Britain in recent years harbor authorities have been increasingly regarded as ordinary commercial businesses, in most other European countries (except perhaps the Scandinavian countries), ports are thought of as being rather part of the general transport infrastructure. The concept that ports should be used as centres for industrial development is also more prevalent in most of the other countries of Europe than in Britain. The point has been made above that a harbor authority for a major port has, inherently, characteristics both of a commercial business and of a public service body. In Britain the former aspect is currently emphasized but in most other European countries the public service aspect is still regarded as more fundamental, although at the same time increasing emphasis is being placed on a commercial approach to port administration.

3.02 It is perhaps partly as a consequence of this difference in attitudes that, while in Britain, as described above, most cargo handling and storage of cargo is now undertaken directly by harbor authorities and their subsidiary companies, in most other European countries (except Sweden and some Eastern European countries) these activities are carried out almost exclusively by private commercial businesses (often using, under leasing or licensing arrangements, terminals and equipment provided by harbor authorities). The legal structures for the administration of some major European ports are described below.

A. The Port of Le Havre

3.03 The Port of Le Havre is an example of the French Ports Autonomes—the half dozen or so major French ports. The general framework for the administration of such ports is laid down in an Act of the French Parliament the first article of which states that "autonomous ports are Government-owned corporations endowed with civil personality and financial autonomy placed under the authority of the Minister in charge of maritime ports and submitted to the economic and financial control of the Government." Individual ports are designated as Ports Autonomes by decree of the Conseil d'État. Such a decree prescribes the area, both of land and water, for the administration of which as a harbor, the port autonome concerned is to be responsible (as with British harbor authorities the water area within the port's limits is often extensive). The management of property within the port area is an important aspect of a port autonome's functions and this may include the development of port industrial zones.

3.04 The harbor authority for a port autonome consists of a Council of Administration and a Director General. The relationship between the Council and the Director and between the harbor authority and the Government (which appoints the Director and a substantial proportion of the members of the Council) constitutes a form of port administration which combines central Government control with a considerable degree of local autonomy and participation.
The Council of Administration of the Port of Le Havre

3.05 The Council of Administration consists of 26 members of whom 4 are appointed by the Le Havre Chamber of Commerce and Industry; 5 are appointed by neighboring local government authorities and local community organizations, 3 are appointed by the appropriate trade union to represent the staff of the harbor authority; 1 is appointed by the appropriate trade union to represent dock workers at the port; 3, being government officials, are appointed by the Government to represent the state; 2 are appointed by the Government, on the nomination of the Le Havre Chamber of Commerce and Industry, to represent port users. Eight are appointed by the Government because of their knowledge or experience of port problems, maritime navigation, transport or economic matters. In addition the Government appoints a Government Commissioner who is a civil engineer and a State Controller who is a financial expert. Both sit in on the Council's meetings in an advisory capacity.

3.06 The Council of Administration elects a president, a vice-president and a secretary from among its members. These persons constitute a Management Committee to which the Council may delegate broad decision making powers. The functions of the Council do not appear to be clearly defined but it is essentially a deliberative and consultative body which approves or rejects proposals submitted to it by the Director General. It is not therefore directly comparable with a British port trust or with the Board of Directors of a commercial company. Most of the members sit to represent particular interests and the three Government officials (and the Government Commissioner and the State Controller) to represent the central Government. The Council of Administration takes all major decisions relating to the administration of the port, subject to the consent of the Government in those cases where the decision involves a financial contribution from the Government or a major alteration in the physical characteristics of the port.

The Director General

3.07 The Director General of the Port of Le Havre is appointed by the Government. He is the chief officer and the executive agent of the harbor authority. He has authority, without reference to the Council of Administration, to appoint all other staff of the harbor authority (except the accountant who is also appointed by Government) and to determine their remuneration. He represents the harbor authority in all legal matters and carries out all negotiations on their behalf. He must however refer all important issues relating to the planning and management of the port to the Council of Administration. In particular, the Council must approve major investment proposals, port tariffs, the terms of concessions to private commercial companies and the purchase or disposal of land. In practice, the Director General liaises closely with the Chairman of the Council of Administration. The Code of Maritime Ports provides that, within the port area, the Director General exercises a general influence on all public services directly related to the exploitation of the port.

Port Development

3.08 The provisions of cargo handling facilities, both quays, jetties, cranes and other apparatus, is one of the basic functions of the harbor
Government consent is required where infrastructure works attract a state grant as mentioned below. It seems that the harbor authority could construct such works without Government consent if it was prepared to finance them entirely from other sources but this does not happen in practice. Concessions granted by the harbor authority to private commercial companies may authorize the latter to construct their own terminals or install their own cargo handling apparatus on terminals provided by the harbor authority. The harbor authority is also responsible for capital works required for navigational purposes or protection against the sea and again Government consent is required if, as is usually the case, a state grant is payable towards the cost of the works.

Navigational Safety Functions

3.09 The harbor authority controls and regulates the movement of shipping within the port. It is also responsible for dredging, both capital and maintenance. The provision of navigational aids within the port is shared by the harbor authority with the French national lighthouse authority. The latter provides the major navigational aids. Pilots, although a private group, are under the administrative control of the General Secretariat of the Mercantile Marine. Their salary scales are fixed by Ministerial decree following consultations with the interests concerned including the harbor authority. Towage services are provided by private interests whose charges are regulated by the Government.

Finance

3.10 A basic feature of the French autonomous ports system is the high level of Government grants towards the cost of infrastructure works provided by the harbor authority. The proportion of the cost met in this way varies with the nature of the works but in all cases covers the greater part of the cost. Relatively small grants from neighboring local authorities are also sometimes available. The Government also makes grants to meet the harbor authority's operational and maintenance expenditure for main locks, access channels, maintaining the depth of the outer harbor and sea defense works.

3.11 Port tariffs are fixed by the Council of Administration on a basis prescribed by law (except for a tax on passengers which is fixed by Government decree). Proposals for altering the level of port dues are the subject of a public inquiry and of consultation with the Customs and Maritime Affairs Services. The Government Commissioner (who as mentioned above sits in on meetings for the Council of Administration) may object to proposed tariffs and so may the Minister of Maritime Ports. Proposed tariffs are deemed to be approved if no such objection is made within a prescribed period.

3.12 The harbor authority's accounts are subject to public accounting rules and its annual budget is subject to the approval of the Minister of Maritime Ports and the Minister of the Economy and Finances.
Relationship of Harbor Authority with, and Role of, Private Commercial Companies

3.13 All cargo handling and warehousing at the port of Le Havre is carried out by private commercial companies, in nearly all cases at terminals provided by the harbor authority and generally using the harbor authority's cargo handling equipment. Cargo handling companies use the harbor authority's berths and equipment under the terms of concessions granted by the harbor authority. It is now usual for a company to be granted the preferential use of a particular berth and in such cases the company may install its own equipment although the use of equipment provided by the harbor authority is more common.

3.14 In two cases groups of cargo handling companies have been authorized to construct their own terminals on land leased by the harbor authority. These two concessions allow the operation of the proposed terminals to be closely monitored by the harbor authority. They authorize the companies concerned to levy their own charges on users of the terminals, subject to the control of the harbor authority. In this, and all cases where a concession grants a company the preferential use of a berth, the right is reserved to the harbor master to direct vessels not involved in the company's traffic to tie up at the berth if he considers this to be necessary.

3.15 Dock workers at Le Havre are not permanent employees of particular cargo handling companies but are allocated to such companies from a pool of registered men.

The Role of the Government

3.16 The administration of the port of Le Havre is under firm Government control in that:

(a) The Government appoints three officials as members of the Council of Administration and also the Government Commissioner and the State Controller who attend meetings of the Council as advisers and have direct access to the Government. The Government also appoints the Director General and the accountant.

(b) Major development is subject to Government consent because it is subsidized by the Government.

3.17 However, it appears that the initiative in port planning and development rests with the harbor authority (usually originating from the Director General) and that normally the Government approves or rejects the harbor authority's proposals which are subject to its consent and does not amend them or suggest alternatives. No doubt the Government officials who are members of, or who attend meetings of, the Council of Administration may influence its decisions in accordance with general Government policy.

General Comments

3.18 The Government of a developing country which wishes to retain close control over the development and planning of its major ports but to avoid the central bureaucracy being involved in the initiation of local
port planning or detailed administration may find the French system of
autonomous ports, exemplified by Le Havre, or at least the general pattern
which underlies it, interesting. It certainly appears to be successful in
France. Central government control does not seem to have inhibited a
commercial and competitive approach and the private sector is substantially
involved.

3.19 It is understood that this system of port administration has been
applied in some former French colonies. One problem may be that it does
seem to require expert and highly trained officials who may not be
available in some developing countries.

B. The Ports of Bremen and Bremerhaven

The Harbor Authority and the Cargo Handling Company

3.20 The ports of Bremen and Bremerhaven, situated some distance apart
on, and at the mouth of, the river Weser, are among the greatest ports of
Europe. Like most of the other great ports of Germany, Holland and Belgium
they are owned and administered by a local government authority and are not
legally or economically independent entities. The City of Bremen is the
harbor authority for both these ports although Bremerhaven is outside the
administrative area of the City of Bremen. The city owns the bed of the
sea and river within port limits and adjacent land used for port purposes.

3.21 The special feature of the ports of Bremen and Bremerhaven is that
most of the cargo handling activities at both these ports are the
responsibility of a company in which the City of Bremen holds the majority
of shares—the Bremer Lagerhaus Gesellschaft (hereafter referred to as
"BLG"). A somewhat similar arrangement prevails at the port of Hamburg but
there the proportion of cargo at the port handled by the company concerned
is much smaller.

Navigational Safety Functions

3.22 The City Council of Bremen is responsible for dredging,
navigational aids and the regulation of shipping within the ports of Bremen
and Bremerhaven. However, port limits only extend a short distance from
the terminals and in the seaward approaches to Bremerhaven and in the river
between Bremerhaven and Bremen these functions are the responsibility of
the Federal Government of West Germany. Pilotage, which is compulsory for
ships of more than a very limited tonnage, is carried out by self-employed
pilots under the supervision of the "Land" (state) Government in
Bremerhaven and of the Bremen City Council in Bremen. Outside port limits
the pilots are supervised by the Federal Government. Towage is provided by
private commercial companies.

Provision of Cargo Handling Facilities

3.23 The Bremen City Council provide, almost exclusively, the cargo
handling infrastructure—the quays and jetties—at the ports of Bremen and
Bremerhaven and also the passenger terminals. While it would be legally
possible for a company to build its own terminal at one of these ports on
land leased to it by the Bremen City Council (a sale of land at the ports
would be contrary to the City’s policy) this does not happen in practice.
The cargo handling superstructure--warehouses, cranes and other equipment--is provided by the companies which carry out the cargo handling and in most cases by the BLG.

Finance

3.24 Capital harbor works at Bremen and Bremerhaven are financed by the City of Bremen in the same way as its other capital works. There are no Federal Government grants or loans towards harbor works. The City of Bremen levies dues on ships using the ports and on cargo passing over the quays. The City charges commercial rents to the companies, including the BLG, which operate the terminals leased from the City of Bremen.

Cargo Handling

3.25 All cargo handling at the ports of Bremen and Bremerhaven is carried out by private companies at terminals leased from the City of Bremen usually for terms of 15 or 20 years. As mentioned above, the companies usually provide the cargo handling superstructure themselves. Most of the cargo at these ports is handled by the BLG. The BLG is responsible for the loading or unloading of all cargo at Bremerhaven except for oil and certain other bulk cargoes. In particular, it handles all containers there. The BLG is responsible for loading or unloading about 80 percent of cargo at the port of Bremen.

Constitution of BLG

3.26 The BLG is a company constituted under the general company law of the German Federal Republic. The City of Bremen holds 51 percent of the BLG's shares. In accordance with the Law of the German Federal Republic for companies of its size the BLG has a Supervisory Board half the members of which are elected by the shareholders and half appointed or elected as mentioned below to represent the BLG's employees, and an Executive Board the members of which are appointed by the Supervisory Board.

3.27 The Supervisory Board has 16 members. Of these 8 represent the employees, 5 being appointed by the relevant trades unions (1 to represent administrative staff) and 3 being directly elected by the employees. Of the 8 members elected by the shareholders, 4 are nominees of the City of Bremen and, given the City's shareholding, this proportion is likely to be maintained. The members of the Supervisory Board elect their chairman who, by tradition, is one of the members elected by shareholders who is not a nominee of the Bremen City Council. Where there is an equality of votes at a meeting of the Supervisory Board the Chairman has a casting vote.

3.28 In addition to appointing the Executive Board, the Supervisory Board lays down general policy guidelines and major investment proposed by the Executive Board is subject to the approval of the Supervisory Board. The Supervisory Board also appoints certain senior staff of the BLG apart from the members of the Executive Board.

3.29 The Executive Board consists of 6 members who are appointed on 5-year contracts. One member is appointed as President of the Board and the other members are responsible, respectively, for Operations, Finance, Technical matters, Marketing and Labor. Subject to the general guidelines
laid down by the Supervisory Board and that Board's approval of major investment proposals, the Executive Board is responsible for the policy and operations of the BLG.

Dock Workers

3.30 Dock workers at Bremen and Bremerhaven are employed by the companies who carry out cargo handling at these ports. The BLG therefore employs its own dock workers but does not generally employ stevedores working on board ship. In addition to dock workers who are regularly employed, the BLG and other employers at the ports have arranged with the Trades Union for a pool of workers to be available to make up any deficiency in the number required. These arrangements provide for fall back pay for members of the pool when there is no work for them.

General Comments

3.31 The concept of the port infrastructure being provided, and the navigational safety functions being carried out, by central or local government (in most developing countries probably the former) with cargo handling being the responsibility of a commercial company in which the Government has a substantial interest, may well be favored by some developing countries. Of course, instead of central or local government, one might think in terms of an ad hoc public body.

3.32 In this context, although the constitution of the BLG derives from the domestic law of the German Federal Republic, a constitution on basically similar lines for the cargo handling company, with a Supervisory Board, whose members include representatives of the work force and commercial interests as well as government nominees, and a small Executive Board, appointed by the Supervisory Board, able to manage the company without day to day interference, seems worth considering. It appears to work well for the BLG.

C. The Port of Gothenberg

The Harbor Authority

3.33 The harbor authority for the Port of Gothenberg, which is the largest port in Scandinavia, is a company known as the Port of Gothenberg A.B. Subject to the qualifications mentioned below about regulatory powers and the operation of the Vessel Traffic Management System, this company carries out all harbor functions within the port. It is responsible for navigational safety functions, including the provision of lights, buoys and other navigational aids and dredging (it is also, by agreement with the Swedish Shipping Administration, which is the body responsible for navigational safety in Swedish territorial waters outside port limits, responsible for dredging the channel outside the limits of the port which leads to the major oil terminal). Pilots are, however, employed by the Swedish Shipping Administration and towage services are provided by a separate commercial company. Under a recent agreement the VTS, both in the port and the approaches, will be operated by the Swedish Shipping Administration.
3.34 The Port of Gothenberg AB also provides all the cargo-handling infrastructure and superstructure within the port and is itself the only stevedore operating within the port. It would be possible, legally, for other companies to provide cargo-handling services and to construct their own terminals but this is unlikely to happen in practice. The oil terminals at the port are leased to oil companies who operate them and the passenger terminals are leased to ferry companies.

3.35 The Port of Gothenberg AB has complete discretion as to the charges it levies at the port. These include ship, passenger and cargo dues and charges for cargo-handling services. The company is responsible for raising the funds it requires for capital development. There are no Government or municipal grants.

3.36 The Port of Gothenberg AB is a company established under the general company law of Sweden and has wide power under its Memorandum of Association to carry out activities which are not necessarily related to the management of the port. It has taken advantage of this power. The company is wholly owned by the City Council of Gothenberg.

3.37 Until 1985 the City Council was the harbor authority and managed the harbor through a committee known as the Harbour Board. There were also until recent years a number of stevedoring companies operating in the port but with the development of containerization these eventually merged into one. At some time prior to 1985 the City Council acquired all the share capital in that company. In 1985 the City Council set up the Port of Gothenberg AB to exercise both the harbor authority and the cargo-handling functions at the Port of Gothenberg.

**Regulatory and Mandatory Powers**

3.38 However, under Swedish Law regulatory or mandatory powers cannot be exercised by an ordinary commercial company. It was therefore necessary for the City Council to exclude such powers from the Port of Gothenberg AB's remit. The Council has delegated the regulatory powers of the harbor authority to a body consisting of three persons—the President of the Port of Gothenberg AB, the Port Captain of the Port of Gothenberg and the Deputy Port Captain.

**Acquisition of Shares in Company by Persons Other than City of Gothenberg**

3.39 It would be possible, legally, for other persons to acquire shares in the Port of Gothenberg AB but at present it seems unlikely that the City Council would agree to sell.

**Board of Directors of Port of Gothenberg AB**

3.40 In accordance with Swedish Law the Board of Directors of the Port of Gothenberg AB consists of nine (voting) directors. Each political party which is represented on the City Council is entitled to elect a proportion of these directors in proportion to the number of seats which it holds on the Council. The persons so elected need not themselves be members of the City Council. Most of them are in practice either City Councillors or other politicians but other persons with appropriate professional expertise
have sometimes been appointed. The majority party on the City Council appoints the Chairman of the Board of Directors.

3.41 Also in accordance with Swedish Law, 4 persons appointed by the trades unions who represent the Company's employees in negotiations with the company sit on the Board but do not have the right to vote. Two of these non-voting directors are appointed by the union which represents dock workers at the port, one is appointed by the union which represents white collar workers and one by the union which represents supervisors.

Dock Workers

3.42 All dock workers in the port are employed by the Port of Gothenberg AB. There is no register of dock workers and some employment is on a casual basis.

General Comments

3.43 The arrangements at Gothenberg--which is clearly a highly efficient and successful port--are calculated to combine the advantages of a commercial company managing a port, including the ability to diversify into other activities, with ultimate control by a public body. However the composition of the Board of the company which results from municipal ownership may perhaps qualify some of the advantages of company management. The legal difficulty in Sweden about a commercial company exercising regulatory powers illustrates a wider problem.

3.44 The general aim of combining the management of a major port by a commercial company with ultimate public control may well be shared by the Governments of some developing countries although it might be difficult for them to follow the arrangements at Gothenberg in detail.

D. Polish Ports

Background

3.45 Poland has three large ports and a number of smaller ones. The three large ports, Gdansk, Cydnia and Stettin-Swinonyscie, are major ports by any standards.

Port Administration

3.46 The administration of Polish harbors is under the general supervision of the Ministry of Transport and Maritime Economy. A clear distinction is drawn between navigational safety functions and cargo handling.

Navigational Safety Function

3.47 Navigational safety functions are the responsibility of three Maritime Offices based, respectively, at Cydnia, Stupsk and Szirecin. The division of responsibilities between these three offices is on a geographical basis. Each is responsible for a length of coastline, including the ports situated on that length and the related navigable rivers and inland waterways.
3.48 Within its area of jurisdiction, each Maritime Office is responsible for the provision of lights, buoys, and other aids to navigation and the regulation of shipping, but the berthing and moving of vessels in harbor is controlled in liaison with the staff of the harbor authority (see para 3.51 below). Each Maritime Office appoints the harbor masters for the harbors within its area. The Maritime Offices are responsible for dredging within their respective areas outside harbors. Within a harbor dredging is carried out by the harbor authority but in accordance with requirements set by the Maritime Office.

3.49 Each Maritime Office licenses the pilots (both harbor and deep sea) who provide pilotage services within its area of jurisdiction. Pilots now provide their services as members of a cooperative. Charges for the services of harbor pilots are fixed at each harbor by the harbor authority.

3.50 The Maritime Offices are also responsible for preserving and enforcing safety regulations for dock work at harbors within their respective areas of jurisdiction. The Maritime Offices are funded by the Government.

The Harbor Authorities

3.51 The harbor authority at each of the three major ports mentioned above is a company established in accordance with general Polish company law but wholly owned by the Government. This is not a new state of affairs but each of these companies now enjoys a much higher degree of autonomy than was formerly the case. They also have powers to develop surplus harbor land for non-harbor purposes.

3.52 The Managing Director of each of these companies is appointed by the Minister of Transport. However, such an appointment follows the consideration of, and usually accords with, a recommendation submitted by a commission consisting of representatives of the Council of Employees at the port concerned and of the Ministry of Transport who invite applications for the post from suitably qualified persons and interview the applicants.

3.53 The Managing Director, when appointed, is then responsible for appointing the other members of the Board of Directors in consultation with the Council of Employees. There are usually 3 or 4 other directors, all full-time executives, and these would normally include a Finance Director, a Technical Director and a Director of Operation.

Cargo Handling

3.54 Each harbor authority is responsible for the provision of cargo-handling infrastructure (quays, jetties, etc.), cargo handling superstructure (cranes, forklift trucks, etc.) and storage facilities and itself provides the cargo-handling services. However, there is no legal bar to private commercial companies undertaking any of these functions and the harbor authorities are indeed seeking to enter into joint venture arrangements with such companies. The construction of new quays and jetties has to be licensed from the navigational safety point of view by the appropriate Maritime Offices.
Finance

3.55 Each of the harbor authorities for the major ports mentioned above is responsible for meeting its own capital expenditure and may borrow, usually from the Polish National Bank. Small Government contributions towards capital costs may sometimes be available.

3.56 However, in practice, each of three harbor authorities has to agree major projects with the Ministry of Transport. This is, in part, because, technically, land and capital facilities at ports are vested in the Government but this state of affair is currently under consideration.

3.57 Each harbor authority sets its own port tariff for:

(a) cargo-handling charges;

(b) storage of cargo; and

(c) tonnage dues on ships using the port.

At present the latter makes no contribution towards the cost of the navigational safety functions performed by the Maritime Offices.

Dock Workers

3.58 Dock workers are currently employed by the harbor authorities but if private commercial companies are to undertake cargo handling functions this might change.

Smaller Polish Ports

3.59 The management arrangements at the smaller Polish harbors are generally similar to those at the three major ports described above but capital expenditure at a smaller port would normally be funded by the Government. At one smaller port the harbor authority company is owned by the state shipping company.

General Comments

3.60 Arrangements for the management of Polish ports are currently under consideration. New ideas, including the possibility of municipal ownership in some cases, are on the agenda and clearly it is envisaged that there will be far more participation by private commercial companies. Funds on a large scale are required for investment in the ports.
IV. OTHER HARBOR AUTHORITIES

An Australian Port - The Port of Brisbane

4.01 The Port of Brisbane is among the principal ports of Australia and is the major port of the State of Queensland. Until 1976 it was administered, together with other ports in the State, by the Harbour Corporation of Queensland but in that year the Port of Brisbane Authority was established as an independent harbor authority with the general duty of managing and controlling the Port of Brisbane and all harbor works and other works pertaining to that port that are constructed by or are the property of the Port Authority as the Authority considers to be necessary or desirable.

Constitution of Port of Brisbane Authority

4.02 The Port of Brisbane Authority consists of a maximum of nine members, the actual number from time to time being determined by the Governor on the recommendation of the State Minister for Tourism and Marine Services. Members may include officers of the Port Authority or the Public Service of Queensland and, where such an officer is a member of the Port Authority and is unable to attend meetings, the person appointed to perform his duties as an officer of the Port Authority or the Public Service of Queensland may attend meetings of the Port Authority in his stead and, whilst so attending, has the full status of a member of the Port Authority.

4.03 Members of the Port Authority are appointed for a term of three years and, on the expiry of such term, are eligible for reappointment but a member may be removed from office by the Governor at any time.

4.04 The Chairman and Deputy-Chairman of the Port Authority are appointed by the Governor from among the members of the Authority for the time being.

Navigational Safety Functions

4.05 Dredging, the provision of navigational aids and the regulation of shipping are the responsibility of the Port of Brisbane Authority.

Provision of Cargo-Handling Infrastructure

4.06 The major terminals are provided by the Port Authority. Smaller wharves are usually constructed by private companies under licence from the Port Authority.

Cargo-Handling

4.07 The Port Authority has power itself to undertake cargo-handling and to enter into arrangements with other persons to establish joint stevedoring businesses. However, these powers have never been exercised. In practice all cargo-handling at the port is carried out by private commercial companies either at terminals provided by the Port Authority and leased to the cargo-handling companies or at wharves constructed by the companies under licence from the Port Authority.
Finance

4.08 The Port Authority’s revenue is derived from harbor dues, including wharfage dues, tonnage dues, mooring fees and crane charges and from rents and charges for the hire of plant.

4.09 The Port Authority may borrow or raise money from the Treasurer of Queensland, by the sale of debentures, bonds or inscribed stock charged on the revenues of the Port Authority or in such other way as may be approved by the Treasurer. Before entering into negotiations to borrow or raise money the Port Authority must obtain the sanction of the Treasurer and before the Port Authority borrows or raises money pursuant to negotiations sanctioned by the Treasurer the authority of the Governor must first be obtained.

General Comment

4.10 The constitution of the Brisbane Port Authority is similar to that of a major British Port Trust in that the members are appointed by Government, presumably for their expertise and experience, and not to represent particular interests (see para 2.28). However the Port Authority has less independence than a British Port Trust in that the Governor of Queensland may remove members from office at any time whereas the Secretary of State for Transport cannot normally remove a member of a British Port Trust before the expiry of the term for which he was appointed. And the fact that it is envisaged that the appointed members may include officers of the Public Service of Queensland seems to have an analogy with the membership of the Council of Administration of a French Port Autonome (para 3.05). As indicated above, the Government of Queensland also has firm control over borrowing by the Port Authority. This concept of the harbor authority as an appointed board of experts with wide administrative discretion to manage the port but under ultimate Government control may appeal to the Governments of some developing countries. It could avoid the bureaucracy involved in direct Government management of a port.

4.11 As at almost all major ports outside Great Britain cargo-handling is carried out exclusively by private companies.

New Zealand Ports - Post Companies Act 1988

General Purpose of Act

4.12 The purpose of the Port Companies Act 1988 is stated to be to promote and improve efficiency, economy and performance in the management and operation of the ports' commercial aspects. It aims to combine the advantages of the commercial activities of a port being carried out by a company established under general companies legislation (albeit under the ultimate control of public authorities) with those of the statutory duties relating to the safety of navigation being exercised by a public statutory authority.

4.13 For this purpose, the Act distinguishes between the "Port-related commercial undertaking of any Harbour Board" and "any undertaking that is a statutory function or duty of the Harbour Board relating to safety or good navigation."
4.14 Each of the Harbour Boards to which the Act applies (which are specified in the First Schedule to the Act) is a board established by a local Act of the New Zealand legislature, the members of which are elected by the residents of a prescribed area in the neighborhood of the port.

4.15 The Act defines "Port related commercial undertaking" in relation to each Harbour Board as the property and rights of the Harbour Board that-

(a) relate to the activities of commercial ships and other commercial vessels, and commercial hovercraft and commercial aircraft, or to the operation of facilities on a commercial basis for ships, vessels, hovercraft and aircraft of any kind; or

(b) facilitate the shipping or unshipping of goods or passengers.

4.16 This definition is expressed to include the provision by a Harbour Board of any building or facility wherever situated for use in connection with the handling, packing or unpacking of goods for shipping or unshipping through any port and items such as breakwaters and dredges and other items that, although they may not themselves be revenue producing and may have a number of purposes or uses, are nevertheless related to the operation of the port on a commercial basis.

4.17 The definition of "Port related commercial undertaking" is therefore very wide but it expressly excludes any undertaking that is a statutory function or duty of the Harbour Board relating to safety or good navigation.

Duty of Harbor Boards to Establish Companies

4.18 The Act required every Harbour Board within the time prescribed by the Act to form and register under general New Zealand companies legislation a company limited by shares, which should be a port company within the meaning of the Act. The memorandum and articles of association of the company had to be approved by the New Zealand minister of Transport and any amendment to the memorandum or articles must also be so approved. A Harbour Board cannot set up more than one port company but that company may have subsidiaries.

4.19 The shares issued on the incorporation of a port company had to be subscribed for by the Harbour Board or its nominees. Subsequently, shares in a port company may be issued, allotted or sold to any person or body but the articles of association were required to provide for a class of shares that carried 51% of the voting rights at any general meeting of the company and might be held only by the Harbour Board for the Port concerned, any other Harbour Board or by a local government authority. With regard to the latter, the articles could provide that a local government authority would only be entitled to hold such shares if some or all of the electors of the local government authority were also electors of the Harbour Board.

4.20 Thus, under the provisions of the Act, a port company, when originally formed, was effectively a subsidiary of the Harbour Board for the port concerned and, although shares with voting rights may subsequently be held by members of the public, a port company remains under the ultimate
control of public authorities although not necessarily of the Harbour Board.

Board of Directors of Port Company

4.21 With regard to the board of directors of a port company, the Act provided that the number of directors of each company should not be less than six and that not more than two members or employees of the Harbour Board or of any other Harbour Board or local government authority that holds shares in the company (of any class which confers voting rights) should be directors of the company.

4.22 The Act expressly states that the principal objective of every port company shall be to operate as a successful business and provides that the directors of each port company shall be persons who, in the opinion of those appointing them, will assist the company to achieve that objective.

Procedure for the Transfer of Commercial Undertaking to Port Company

4.23 The Act provided a procedure to prepare for the transfer of a Port Board's commercial undertaking to the port company. Within the time prescribed by the Act every Harbour Board was required to constitute and adequately fund an "Establishment Unit" which should comprise such persons as the Harbour Board considered appropriate. The function of an Establishment Unit was to prepare and agree upon a port company plan with the Harbour Board and in so doing (inter alia):

(a) identify the port related commercial undertakings of the Harbour Board;
(b) value those undertakings;
(c) determine the price that should be paid by the port company for those undertakings and the extent to which the price should be met by the issue of equity securities and debt securities to the Harbour Board;
(d) prepare in draft form a memorandum and articles of association for the port company.

4.24 The port company plan was also required to deal with detailed matters including the manner and timing of the transfer of the Harbour Board's port related commercial undertakings to the port company and the transfer of the staff.

4.25 Every port company plan had to be approved by the Minister of Transport who had power to determine any disputes on relevant issues between the Establishment Unit and the Harbour Board and could modify the plan even as respects aspects agreed between these two bodies. The Minister also had, and has, power, on the application of a Harbour Board made with the approval of the establishment unit or port company, to include in any port company plan, as part of the approval of the plan or by way of amendment of an approved plan, any undertaking of the Harbour Board notwithstanding that it is not a port related commercial undertaking.
4.26 The Act provided for the port related commercial undertakings of each Harbour Board to be transferred to a port company in accordance with the port company plan as soon as practicable after the plan had been approved by the Minister of Transport.

**General Comment**

4.27 The New Zealand Port Companies Act 1988 provides an interesting precedent which the Governments of some developing countries may well wish to consider following. In setting up a new port organization one might think in terms of a statutory port board (not necessarily constituted on the same lines as a Harbour Board in New Zealand) with responsibility for the navigational safety functions in the port and the establishment under general company legislation of a commercial company, in which the port board would have a controlling, but not necessarily an exclusive, interest, with responsibility both for the provision, and operation, of cargo handling and warehousing facilities.

**Thailand - Songkhla and Phuket Ports**

**The Background**

4.28 The new deep water ports of Songkhla and Phuket have been constructed by the Royal Thai Government. That Government's stated policy is "to privatize the operation of the ports to the greatest extent practicable in order to ensure economic efficiency of the operations and maximize the participation of the private sector". To this end, the Thai Government decided to grant a concession which would allow the private sector to manage and operate the ports, retaining all revenues, in return for a payment to the Government.

4.29 The Thai Ministry of Finance invited selected applicants to submit tenders for the concession to manage and operate Songkhla and Phuket Ports. The concession has been awarded to a Thai company ("The Port Operating Company").

**The Terms of the Concession**

4.30 Under the terms of the concession, as indicated in the Tender Document:

(a) The Harbour Department of the Thai Government will be responsible for the maintenance of navigation aids, maintenance dredging in the access channels, turning areas and berths and the provision of a pilotage service (pilotage is compulsory for vessels over 500 GRT).

(b) Subject to the functions of the Harbour Department, the Port Operating Company is responsible for the safe and efficient management of the ports; for the provision of necessary cargo handling and floating equipment additional to that provided by the Government; for the operation and maintenance of all equipment; for the maintenance of the port infrastructure; and for the provision of all on-shore services (including stevedoring) which it wishes to supply.
(c) The ports must be operated as public ports and services to any ocean-going ships must be made available regardless of nationality subject to normal commercial requirements.

(d) The Port Operating Company must operate the ports in accordance with the laws, statutes, bylaws, regulations, policies and operating standards which may from time to time be specified by the Government or one of its agencies.

(e) The Port Operating Company may issue local byelaws, and trading terms and conditions but these must be approved in writing by the Government or its appointed agency.

(f) The Port Operating Company may charge port users for the use of the services and facilities of the ports. The Government will set upper and lower tariff limits and the Port Operating Company may adjust tariffs for berthing dues, wharfage, cargo handling, stevedoring, etc. within those limits. Any proposed changes in the tariff structure outside the limits set by the Government must be approved by the Government.

(g) The control of stevedoring is vested in the Port Operating Company, which is also responsible for the provision and conduct of any hired labor.

(h) The Port Operating Company must undertake the maintenance of the ports' assets in a manner which is to the entire satisfaction of the Government.

(i) The Port Operating Company is responsible for fire fighting (until the public fire brigade arrives and takes control), and for safety measures and security within the port areas.

(j) The Government will appoint a managing committee to administer the concession whose functions may include:

   (i) Monitoring the activities of the ports to ensure that they are within the law and regulations, recommending any necessary changes to the regulations as the need arises.

   (ii) Investigating any complaints from the public which have not been resolved through normal complaints procedures by the Port Operating Company.

   (iii) Monitoring the ports' performance under the concession with the Government, especially with regard to the quality of performance and the satisfactory maintenance of fixed assets.

   (iv) Suggesting minimum and maximum tariff levels and changes thereto.

   (v) Responding to requests to investigate alterations in tariff structure and tariff level by the Port Operating Company and users.
(vi) Requesting and receiving financial and operating statistics from the Port Operating Company, and checking these against data supplied by customs and shippers and preparing a full financial report on the use of the ports' assets.

(k) The Tender Document envisaged that the initial concession period would be at least 10 years but not exceeding 30 years with provision for review in the light of performance. The Document stated that the payment by the Port Operating Company to the Government would consist of two elements:

(i) a performance related payment, based on revenue sharing; and

(ii) a flat fee payment, which may be increased at 5 year intervals.

General Comment

4.31 These proposals for the management of harbors in Thailand in a way which gives a leading role to the private sector clearly constitute an interesting precedent for developing countries. It is not perhaps altogether clear who, under these proposals, is responsible for the control of shipping movement in the ports but, since this function is not specifically allocated to the Harbour Department, it seems that the Port Operating Company will be. It appears that the construction of any new major facilities at these ports would be undertaken by the Government rather than the Port Operating Company. So far as port users are concerned, the Port Operating Company will presumably be regarded as the harbor authority. However, the assets of the ports belong to the Thai Government and the Tender Document states that the Treasury Department will be responsible for them. The operation of the ports by the Port Operating Company will be subject to detailed monitoring by, or on behalf of, the Government. This might lead to some duplication of effort and possible an undue degree of bureaucratic control.
PORT ADMINISTRATION: A REVIEW OF THE
STRUCTURAL AND LEGAL ASPECTS

Powers of Associated British Ports

Preliminary

1. Each of the powers conferred on Associated British Ports by this Schedule is in addition to, and not in derogation of, any other power conferred on Associated British Ports by this Schedule or by any other enactment.

Operation of Harbors and Provision of Port Facilities

2. Associated British Ports has power to operate its harbors and to provide port facilities at them.

Consignment and Carriage of Goods

3. (1) Associated British Ports may consign goods on behalf of other persons to or from or on routes through its harbors.

   (2) Associated British Ports may carry goods by road on behalf of other persons to or from its harbors.

Activities as Ship's Agent

4. Associated British Ports may carry on at its harbors the activities of a ship's agent.

Storage of Goods

5. Associated British Ports may provide facilities for the storage of goods.

Development of Land

6. (1) Associated British Ports may develop in such manner as it thinks fit land belonging to it or to any of its subsidiaries.

   (2) Associated British Ports may in particular:

   (a) develop for use by other persons land belonging to it or to any of its subsidiaries, which is not otherwise required for the purposes of its business; or

   (b) where the use of such land for the purposes of its business can be combined with its use by other persons, develop the land by constructing or adapting buildings on it for use wholly or partly by other persons,

with a view to the disposal of any right or interest in the land or, as the case may be, the buildings or any part of the buildings, after the development is carried out.
(3) Where Associated British Ports proposes under this paragraph to develop any land as mentioned in subparagraph (2), it may acquire by agreement adjoining land for the purpose of developing it together with the other land.

(4) Except as provided by subparagraph (3), Associated British Ports does not have power to acquire land solely for the purpose of developing it as mentioned in subparagraph (2).

Pipelines

7. (1) Associated British Ports may construct and operate pipelines in Great Britain.

(2) The power conferred by subparagraph (1) includes power to construct and operate any works provided in connection with the operation of a pipeline.

(3) Associated British Ports does not have power to acquire land for the purpose of constructing pipelines except:

   (a) where the pipeline is, or is to be, mainly on land acquired for other purposes; or

   (b) where the pipeline is required for the purposes of the business of Associated British Ports other than the operation of pipelines.

Incidental Amenities and Facilities

8. (1) In places where those using the services and facilities provided by Associated British Ports or any of its subsidiaries may require them, Associated British Ports may provide both for them and for other persons facilities for the purchase and consumption of food and drink and such other amenities and facilities as appear to Associated British Ports appropriate.

   (2) Associated British Ports may, at any place where, in the exercise of the power conferred by subparagraph (1), it or any of its subsidiaries provides a car park, repair motor vehicles, both for persons using the car park and others, and sell to any such persons petrol, oil, spare parts and accessories for motor vehicles.

Other Activities

9. Associated British Ports may carry on any business which in its opinion can advantageously be carried on by reason for the fact that the business:

   (a) involves the use of machinery, plant or equipment of a kind used by Associated British Ports or any of its subsidiaries in connection with the operation of its harbors; or
(b) requires skills which employees of Associated British Ports or any of its subsidiaries have in connection with the operation of its harbors.

10. (1) Associated British Ports may manufacture for sale to any person and repair for any person anything which it considers can advantageously be so manufactured or repaired by reason of the fact that Associated British Ports or any of its subsidiaries has materials or facilities for, or skill in, the manufacture or repair of that thing in connection with its existing activities.

(2) Associated British Ports may sell to any person, and for that purpose purchase, anything which is of a kind which Associated British Ports or any of its subsidiaries purchases in the course of its existing activities.

(3) In this paragraph "existing activities" includes existing activities carried on by virtue of this paragraph.

11. Associated British Ports may provide for any person technical advice or assistance including research services as respects any matter in which it or any of its subsidiaries has skill or experience.

Acquisition of Further Harbor Undertakings

12. (1) Associated British Ports may, either alone or together with any other person, provide, maintain or operate harbors additional to those which it or any of its subsidiaries owns or manages by virtue of Part II of the Transport Act 1962 (which provided for the division of the undertaking of the British Transport Commission) or by virtue of a harbor reorganization scheme under the Harbours Act 1964.

(2) For the purposes of subparagraph (1) Associated British Ports may acquire by agreement any harbor undertaking, or any part of such an undertaking.

(3) Associated British Ports may subscribe for or acquire shares or securities of a body corporate which is wholly or mainly engaged, or which it is proposed should become wholly or mainly engaged, in the provision, maintenance or operation of a harbor.

Disposal and Discontinuance of Parts of Associated British Ports' Undertaking, etc.

13. (1) Associated British Ports may dispose of any part of its undertaking, or any property, which in its opinion is not required by it for the purposes of its business.

(2) Associated British Ports may dispose of or discontinue any part of its undertaking carried on by virtue of paragraph 9 or 10.

(3) Associated British Ports may dispose of or discontinue any part of its undertaking acquired under paragraph 12, and may dispose of any shares or securities subscribed for or acquired under that paragraph.
(4) The powers of disposal conferred by this paragraph include power:

(a) to dispose of property absolutely or for a term of years;

(b) to dispose of a right in, or interest over, property.

Power to Promote and Oppose Bills


(2) The power conferred by subparagraph (1) is in lieu or any power to promote or oppose Bills which Associated British Ports might otherwise possess as successor to the persons carrying on any undertaking, and, in particular, the persons carrying on any undertaking transferred to the British Transport Commission by the Transport Act 1947, but nothing in this subparagraph affects any power exercisable by Associated British Ports as successor to apply for orders and schemes, and oppose applications for orders and schemes, including orders and schemes subject to special parliamentary procedure.

(3) In the application of this paragraph to Scotland, "Bill in Parliament" includes an order under the Private Legislation Procedure (Scotland) Act 1936.

Training, Education and Research

15. (1) Associated British Ports may do anything it thinks fit for the purpose of advancing:

(a) the skill of its employees and those of its subsidiaries; or

(b) the efficiency and manner in which the equipment of Associated British Ports and its subsidiaries is operated, including making, or assisting the making, of provision for training and education.

(2) Associated British Ports may do anything which appears to it practicable or desirable for the purpose of:

(a) promoting research into matters affecting, or arising out of, the activities of Associated British Ports and its subsidiaries; or

(b) turning to account the results of any such research.

Provision of Accommodation, etc.

16. (1) Associated British Ports may provide houses, hostels and other like accommodation for its employees and those of its subsidiaries.

(2) Associated British Ports may make housing loans to such employees to assist them to acquire housing accommodation and may guarantee loans.
made for housing purposes to such employees by building societies and other bodies.

Pensions

17. (1) Associated British Ports may pay pensions and enter into obligations under pension schemes.

(2) Associated British Ports may lend money to be applied for the purposes of a pension scheme under which it, or any of its subsidiaries, pays employer's contributions or is subject to any other obligations.

Acquisition of Land

18. (1) Associated British Ports has power to acquire land for the purposes of its business.

(2) Subparagraph (1) is subject to paragraphs 6(4) and 7(3).

(3) Where it is proposed to dispose of any land belonging to Associated British Ports or any of its subsidiaries, Associated British Ports may acquire by agreement adjoining land for the purpose of disposing of it together with that land.

Compulsory Purchase of Land

19. (1) Subject to subparagraph (2), the Secretary of State may authorize Associated British Ports to purchase compulsorily any land in Great Britain which it requires for the purposes of its business; and the Acquisition of Land (Authorisation Procedure) Act 1946 shall apply as if Associated British Ports were a local authority within the meaning of that Act and as if this Act had been in force immediately before the commencement of that Act.

(2) This paragraph does not authorize Associated British Ports to purchase compulsorily:

(a) land required for the purposes of a business carried on by a subsidiary of Associated British Ports other than a wholly owned subsidiary;

(b) land required for the purposes of a business or activity carried on by virtue of paragraph 3(2), 4, 9 or 10;

(c) land required for the purpose of providing facilities for the storage of goods other than goods which have been or are to be loaded or unloaded in or carried through one of Associated British Ports' harbors; or

(d) land which Associated British Ports has power to acquire by agreement under paragraph 6(3) or 18(3).

(3) subject to subparagraph (4), the power of purchasing land compulsorily in this paragraph includes power to acquire an easement or other right over land by the creation of a new right.
(4) Subparagraph (3) does not apply to an easement or other right over any land which forms part of a common, open space or fuel or field garden allotment within the meaning of the Acquisition of Land (Authorisation Procedure) Act 1946.

(5) In the application of this paragraph to Scotland:

(a) for any reference to the Acquisition of Land (Authorisation Procedure) Act 1946 there is substituted a reference to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947;

(b) for any reference to an easement there is substituted a reference to a servitude; and

(c) the reference in subparagraph (4) to a fuel or field garden allotment is omitted.

Charges

20. (1) Subject to subparagraph (2), Associated British Ports may make such reasonable charges as it thinks fit for services and facilities provided by it or by its subsidiaries.

(2) This paragraph does not authorize:

(a) the levying of ship, passenger and goods dues within the meaning of the Harbours Act 1964; or

(b) the making of a charge in any case where an enactment relating to any of Associated British Ports' harbors expressly provides for freedom from charges or otherwise prohibits the making of any charge.

(3) The provisions of sections 27 to 48 of the Harbours, Docks and Piers Clauses Act 1847 (which provide for various matters connected with liability for and collection of the rates to be taken by the undertakers) as incorporated with or applied by any enactment relating to any of Associated British Ports' harbors apply to charges under this paragraph as if they were rates payable under that enactment.

Borrowing and Guarantees

21. (1) Subject to subparagraph (5), Associated British Ports may borrow money for any of the purposes of its business, whether of a capital or revenue nature and including any proposed exercise of the powers conferred by paragraph 12, and may do so in such a manner and on such terms as it considers expedient.

(2) Without prejudice to the generality of subparagraph (1), the power conferred by that subparagraph may be exercised:

(a) by the issue of debentures on such terms as Associated British Ports thinks fit;
(b) by borrowing from a bank on overdraft;

(c) by opening an acceptance credit with a bank or accepting house;

(d) by accepting money on deposit.

(3) Subject to subparagraph (5), Associated British Ports may, for the purposes of its business, give a guarantee for the benefit of any person for the purposes of an undertaking carried on by him or, where that person is a body corporate, any undertaking carried on by a subsidiary of that body corporate.

(4) Associated British Ports may, by way of security for any of its borrowing or any guarantee given by it, mortgage or charge all or any part of its undertaking, revenues, property or assets (present or future).

(5) The aggregate amount outstanding at any time of:

(a) the principal of money borrowed by Associated British Ports and its subsidiaries; and

(b) guarantees given by Associated British Ports and its subsidiaries,

shall not exceed the limit for the time being set by the Holding Company.

Restrictions on Certain Descriptions of Financial Arrangement

22. (1) The Holding Company may from time to time impose restrictions on the descriptions of financial arrangement which may be entered into by Associated British Ports and its subsidiaries.

(2) The Holding Company may, in particular, prohibit Associated British Ports and its subsidiaries from entering into specified descriptions of financial arrangement:

(a) absolutely, or

(b) without the consent of the Holding Company,

and may set a limit on the aggregate amount of the liabilities which Associated British Ports and its subsidiaries may incur in respect of arrangements of any specified description.

(3) Restrictions imposed under this paragraph may be varied or revoked by the Holding company from time to time.

General Supplementary Powers

23. Associated British Ports may purchase, manufacture or repair anything required for the purposes of its business.
24. Associated British Ports may acquire any undertaking or part of an undertaking if the assets of the undertaking or part are wholly or mainly assets which it requires for the purposes of its business.

25. Associated British Ports may, for the purposes of its business, subscribe for or acquire shares or securities of any body corporate.

26. Associated British Ports may, for the purpose of its business, lend money to any person for the purposes of an undertaking carried on by him or, where that person is a body corporate, any undertaking carried on by a subsidiary of that body corporate.

27. Associated British Ports may:
   (a) invest any sums not immediately required for the purposes of its business; and
   (b) turn its resources to account so far as not required for those purposes.

28. Associated British Ports may do all other things which in its opinion are necessary or expedient to facilitate the proper carrying on of its business.

Subsidiaries

29. (1) Associated British Ports may form and promote, or join with any other person in forming and promoting, a company for carrying on any activities which Associated British Ports has power to carry on.

   (2) Associated British Ports may enter into arrangements with a company formed in exercise of the powers conferred by subparagraph (1) for the transfer to that company from Associated British Ports or any of its subsidiaries, in such manner and on such terms (including payments by any of the parties to the arrangements to any other of them) as may be provided for by the arrangements, of any property, rights, liabilities or obligations of Associated British Ports or any of its subsidiaries relevant to the carrying on of the activities to be carried on by the company.

Working Agreements, etc.

30. (1) Associated British Ports may enter into an agreement with any person for the carrying on by that person, whether as agent of Associated British Ports or otherwise, of any of the activities which Associated British Ports may itself carry on.

   (2) Associated British Ports may enter into arrangements with a person with whom an agreement is made under subparagraph (1) for the transfer to that person from Associated British Ports or any of its subsidiaries, in such manner and on such terms (including payments by any of the parties to the arrangements to any other of them) as may be provided for by the arrangements, of any property, rights, liabilities or obligations of Associated British Ports or any of its subsidiaries relevant to the carrying on of the activities to be carried on by that person.
Powers in Relation to Public Transport Authorities

31. (1) Associated British Ports may purchase, manufacture or repair anything required for the purposes of the business of any public transport authority or any subsidiary of such an authority.

(2) Without prejudice to paragraph 30(1), Associated British Ports may enter into an agreement with a public transport authority or with a subsidiary of such an authority for the management, working and use by one party to the agreement of works, land or other property belonging to the other party, and with respect to the rendering of services and pooling of receipts or expenses.

(3) An agreement under subparagraph (2) may be entered into notwithstanding that it involves a delegation of functions under any enactment relating to any part of the undertaking of a party to the agreement.

(4) In this paragraph "public transport authority" means the British Railways Board, the British Waterways Board, the London Transport Executive, the Scottish Transport Group and the National Bus Company.

Interpretation

32. In this Schedule:

(a) references to selling and purchasing include references to supplying or obtaining by exchange, hire or hire-purchase;

(b) references to manufacture include references to construction and production;

(c) references to repair include references to maintenance; and

(d) references to goods include references to fish, livestock and animals of all descriptions.
PORT ADMINISTRATION: A REVIEW OF THE STRUCTURAL AND LEGAL ASPECTS

Terms and Conditions for Appropriated Berths
The Mersey Docks and Harbour Company, and Lease Contents

TERMS AND CONDITIONS
FOR
APPROPRIATED BERTHS

The within Conditions are intended and shall be deemed to replace the "General Rules & Regulations for the Working of Appropriated Berths" made pursuant to "The Mersey Dock (Corporation Purchase) Act 1861" Section 32.

1st June, 1972
THE MERSEY DOCKS AND HARBOUR COMPANY

CONDITIONS

regulating the working of

APPROPRIATED BERTHS

1. Definitions

Unless the context otherwise requires:
"appropriated berth" means the premises and water space as shown on the annexed plan together with the buildings fixtures erections and other works erected or placed thereat.
"the Berthholders" means any Company person or Firm having the preferential use of the appropriated berth
"the Company" means The Mersey Docks and Harbour Company
"the charge" means the annual sum payable to the Company by the Berthholders in respect of their use of the appropriated berth
"Harbour Master" means the Port Manager, marine Operations Manager or other officer appointed by the Company to act as Harbour Master

2. Extent

(1) The Berthholders shall have the preferential but not the exclusive use of the appropriated berth.
(2) The Berthholders or the Company may determine the appropriation by the giving of twelve months notice in writing to the other.
(3) (i) The Company reserves to itself the right to use or to grant to other ship owners the use of the whole or any part of the appropriated berth during such time as it is not required by the Berthholders for the unloading loading delivery and receipt of cargo.
(ii) The Company reserves to itself the right at any time or times which it shall in its absolute discretion think proper to run dry any dock or part thereof for the purpose of repairing or cleansing the same or for any purpose whatsoever and the Berthholders shall have no claim whatsoever against the Company for loss damage or expense arising therefore or in any way connected therewith but the Company shall so far as circumstances permit give the Berthholders reasonable notice of its intention to run a dock dry and shall allow the Berthholders to have accommodation as near the appropriated berth as the Company may deem practicable for the loading and unloading of vessels.
(iii) If the appropriated berth or any part thereof shall be rendered incapable of use for the loading and unloading of vessels thereat in consequence of the exercise by the Company of its rights of running dry a dock and no reasonable alternative accommodation
is provided by the Company for the Berthholders' vessels then in such events the charge or a fair proportion thereof according to the extent of the incapacity sustained to the appropriated berth as aforesaid shall be suspended until such time as the appropriated berth or a part thereof shall again be rendered fit for the purpose aforesaid and the Berthholders shall be credited with a fair proportion of the other expenses of the appropriated berth wholly and exclusively incurred pursuant to these conditions for the period of and according to the extent of the incapacity PROVIDED ALWAYS that if the exercise of the said rights by the Company is caused by or arises from any act neglect or default of the Berthholders their agents servants independent contractors or any other person whomsoever in or on the appropriated berth or on any vessel with the Berthholders' permission express or implied or of the condition of any goods or cargo in or on the appropriated berth or on any vessel then in such event the charge and other expenses as aforesaid shall continue to be payable in full without any suspension or abatement thereof as aforesaid.

(4) The Company its servants agents and other persons authorized shall have the right at any time or times:
(i) to pass and repass over and along the appropriated berth or any part thereof for all purposes in connection with its rights and duties as the Harbour Authority for the Port of Liverpool.
(ii) to enter into the transit shed(s) to view the cargo passing through and the condition of the appropriated berth
(iii) to inspect and maintain the appropriated berth and the fire fighting and life saving equipment thereat;
(iv) to enter for any other reasonable purpose; and the Berthholders shall afford all reasonable facilities to give effect to the said rights.

3. Quay Rent

Goods deposited on the appropriated berth may remain thereon without payment of any quay rent until 5 p.m. on the third working day next after the day on which the goods were deposited but the Company shall be entitled to levy a quay rent at the rate prescribed in the Company's general rules and regulations in that regard for every day then next ensuing that such goods may remain on the appropriated berth but without prejudice to the Company's powers of removing any goods on the appropriated berth as contained in section 35 of The Mersey Docks (Corporation Purchase) Act 1861 and Section 29(3) of The Mersey Docks and Harbour Board Act 1920.

The Berthholders shall when requested by the Company furnish to them a written list of all goods landed or deposited at or removed from the appropriated berth showing the day on which the respective goods included in such list were landed deposited or removed as hereinbefore mentioned.
4. Use of Appropriated Berth

(1) The appropriated berth to be used only in the process of:
(i) loading and unloading cargo into and from vessels
(ii) moving/handling inward cargo landed from vessels and subsequent delivery
(iii) moving/handling outward cargo received at the appropriated berth for subsequent loading into vessels.
(2) The appropriated berth shall not be used for the lying up or repair of any vessel or any purpose other than as aforesaid without the consent of the Harbour Master which consent may be withheld at the Harbour Master's absolute discretion or granted upon such terms and conditions as the Harbour Master might see fit.
(3) Not more than 3% of the floor area of any transit shed at the appropriated berth may be used for the erection of offices or other purposes of the Berthholders, subject to all structural work done by or on behalf of the Berthholders at the appropriated berth being carried out in strict accordance with plans and specifications first submitted to and approved by and in compliance with any conditions imposed by the Company.

5. Accommodation for Customs Authorizations

Any accommodation which may be required by the Customs Authorities at the appropriated berth shall be provided by the Berthholders at their own expense.

6. Maintenance and Repair

(1) The Berthholders shall maintain in good repair and condition to the reasonable satisfaction of the Company all offices and other structures within the transit shed erected or exclusively occupied by them at the appropriated berth.
(2) The Berthholders shall repay to the Company all expenses (including Establishment Charges) incurred by them in maintaining in good repair and condition the appropriated berth except so far as the same relate to damage established as having been caused,
   (i) by ordinary wear and tear or by storm or tempest; or
   (ii) by fire lightning or explosion; or
   (iii) while the appropriated berth was not being used by the Berthholders their servants agents or independent contractors
(3) Notwithstanding anything in this condition the Berthholders shall remain liable for damage caused by the negligence or breach of duty of themselves their servants agents or independent contractors.

8. Cleaning
The Berthholders shall,

1. keep floors and other working surfaces and any stairways of the appropriated berth and such portions of any quay as are for the time being used by them, their servants, independent contractors or agents for the purpose of their operations, clean and free at all times from obstruction or substances likely to cause injury or damage to persons or property.

2. keep clean all the other parts of the interior of the appropriated berth and its fittings and the interior and exterior of the doors at reasonable intervals.

3. keep all door guide and slide rails door wheels and any roller shutter doors so cleaned, maintained and lubricated as to permit the doors to be freely opened and closed at all times.

If in the opinion of the Company the Berthholders fail to carry out any of the requirements of this condition the company shall be at liberty to do the work by its own workmen or by contractors and the Berthholders shall reimburse the Company the expense incurred by them in so doing.

9. **Factories Act Requirements**

The Berthholders shall be responsible for compliance with, and will indemnify the Company against any claims (including all costs in connection therewith) for damage for breach of the Factories Act 1961 (or any modification or re-enactment thereof) as though they were the occupiers of the appropriated berth and the provisions of Regulations 1, 2(b) and 3 of the Dock Regulations 1934 (or any modification or re-enactment of those provisions) as though they were the persons having the general management and control thereof PROVIDED that nothing in this Condition shall extend;

(i) to any breach of the said Act or the said Regulations occurring only whilst the appropriated berth is not being used by the Berthholders their servants agents or independent contractors or, (ii) to a defect in the structural condition of the realty comprised in the appropriated berth which existed at the date of the appropriation or of which the Berthholders have given the Company notice reasonably sufficient to enable them to take steps to remedy the breach.

10. **Other Statutory Requirements**

The Berthholders shall reimburse the Company any expense incurred by it in complying with any duty placed upon it (whether as owner of the appropriated berth or otherwise) by or under any statute for the time being in force (other than the Factories Act) for the benefit, welfare, health or safety of persons employed thereat whether as a separate class or as members of the general
11. Cranes and other Lifting Machinery

(1) The Berthholders shall have the right to the preferential use of the Company's cranes and other lifting machinery at the appropriated berth for the handling of cargo in transit through the Company's docks subject to the Berthholders paying for all electrical energy used thereby and providing while so used all necessary drivers and attendants therefor at their own expense. When not required by the Berthholders for the purpose aforesaid, such cranes and other lifting machinery may be allotted by the Company for use by other persons the cost of any electrical energy consumed while so allocated and a fair proportion of the charge being credited to the Berthholders.

(2) The Berthholders shall keep the said cranes, and other lifting machinery (including wires, ropes, chains, pipes and other gear pertaining thereto or used therewith) in good repair and condition to the satisfaction of the Company, damage by fire, lightning or explosion and by other users authorized by the Company as aforesaid excepted and except as aforesaid to ensure that they are in such repair and condition on the termination of their appropriation.

(3) The Berthholders shall be responsible for the carrying out of all such annealing or other treatment of the said cranes and other lifting machinery (including as aforesaid) as may be requisite to ensure compliance with the provisions of the Factories Act 1961 (or any modification or re-enactment thereof) and of any Regulations thereunder.

12. Fire Prevention Apparatus

(1) The Berthholders shall repay to the Company any cost incurred by it in maintaining in condition fit for use the fire buckets and other fire fighting apparatus provided by the Company at the appropriated berth and in replacing any such buckets or apparatus as may be lost or destroyed.

(2) The Berthholders shall adopt every precaution that may be necessary or expedient to prevent damage by fire (including the daily testing of fire telephones the maintenance of ready access to fire fighting appliances and the closing at the end of each working day of hinged hatch covers and divisional doors) or by any other cause and will obtain the approval of the Engineer-in-Chief of the Company to any gas or electric installations which may from time to time be laid down at the appropriated berth for the purposes of the Berthholders business.

13. Surface Loadings

The Berthholders shall not place on the appropriated berth or
on any part or floor thereof weights in excess of those which may from time to time be fixed in writing by the Company and to apply to the Engineer-in-Chief of the Company to have such weights fixed.

14. **Installations and Services**

(1) The Berthholders shall be allowed at their own expense to connect and keep connected during the continuance of the appropriation the installations and facilities in or on the appropriated berth with the main services of drainage water gas and electricity such connections to be made in such positions as shall be approved by the Engineer-in-Chief of the Company and at all times maintained by the Berthholders to the reasonable satisfaction of the said Engineer-in-Chief.

(2) The Berthholders shall have the use of such services as aforementioned as are provided at the appropriated berth and shall be responsible for the payment of all charges being at such rates as are charged from time to time by the appropriate authority for gas electricity and water consumed thereat for the rent of meters and for the maintenance of and repair of all damage sustained by the meters and all pipes and equipment on the user's side thereof. The charges for electricity as aforesaid shall be charged to the Berthholders by the Company at the published consumer tariff rate (Tariff 8) of the Mers______ North Wales Electricity Board or such equivalent tariff as may be in force from time to time.

15. **Insurance**

(1) The Company shall insure the appropriated berth excluding the Berthholders machinery plant and fittings thereat against loss or damage by fire lightning or explosion as described in the Company's policies of insurance and in case of destruction or damage by fire lightning or explosion as aforesaid (unless the insurance money becomes irrecoverable through any act or default of the Berthholders their agents servants independent contractors or may other person whomsoever in or o the appropriated berth or on any vessel with the Berthholders' permission express or implied) to rebuild and reinstate the same as speedily as possible.

(2) The Berthholders shall be responsible for insuring the appropriated berth against loss or damage by impact or collision and the cranes and other lifting machinery thereat against damage by break-down, damage by extraneous cause (other than fire lightning or explosion) and liability to third parties in the joint names of the Berthholders and the Company with an Insurance Company or Companies approved in writing by the Company in an amount which from time to time will in the opinion of the Company afford adequate cover against the risks of loss or damage as aforesaid and will produce to the Estate Manager of the Company whenever required the policy or policies of insurance and the receipt or receipts for
premiums thereon and in default thereof the Company may insure and keep insured the appropriated berth and the cranes and other lifting machinery thereat and pay the premiums payable in respect thereof and the premiums so paid and all incidental expenses shall be repaid by the Berthholders to the Company on demand. No requirements by the Company as to the amount of the _________ to be provided by the Berthholders shall be regarded as a warranty as to the sufficiency thereof for the purpose of rebuilding reparation or reinstatement of the appropriated berth or the cranes and other lifting machinery and if from any cause whatsoever the money received in respect of such insurance shall be insufficient for that purpose the Berthholders shall make good the deficiency.

16. Indemnity

(1) The Berthholders shall (subject to Clause 7(2)) be responsible for and provide against all the risks and contingencies of their use of the appropriated berth and will indemnify the Company against all proceedings and claims by third parties and expenses incidental thereto (including costs as between Solicitor and own Client) arising out of such use or (except so far as may be caused by other users authorized by the company pursuant to Clause 2(3)) out of the condition of the appropriated berth or the machinery plant or fittings thereat or therein or works ancillary thereto or of any act neglect or default of the Berthholders their contractors or agents or their respective servants.

(2) The Berthholders will also pay to the Company full compensation for all damage done to or suffered by the estate property or works of the Company and arising as aforesaid.

17. By-laws and Directions

The Berthholders shall obey all the Bye-laws and Regulations of the Company from time to time and all lawful directions of the Company's Harbour Master or other authorized officers.

18. Nuisance

The Berthholders shall not deposit or do not permit or suffer to be deposited or done at the appropriated berth anything which the Company the Port Health Authority or any other civil Authorities may consider dangerous or a nuisance.

19. Advertisements

The Berthholders shall not erect or put up any sign or advertisement at the appropriated berth without first obtaining the consent in writing of the Company which consent shall not be unreasonably withheld but may be subject to such terms and conditions as the Company may consider necessary.
20. **Local Rates**

In the event of any part of the appropriated berth being entered in the Valuation List as a separately rateable hereditament the Berthholders shall pay or bear the amount of the rates payable thereon.

21. **Protection of Goods**

All goods on or within the appropriated berth (except goods which are being loaded, discharged, received or handled by the Company) are the sole responsibility of the Berthholders in every respect. The Company have no custody of such goods and will not be responsible for loss or damage caused by fire, theft, weather or otherwise howsoever the Berthholders will indemnify the Company against all proceedings claims and expenses (including costs as between Solicitor and own client) whatsoever arising out of or in consequence of such loss or damage as aforesaid.

22. **Removal of Buildings**

The Berthholders shall not claim nor have any claim for compensation for any buildings, fixtures or other works machinery plant or fittings which may be erected or placed at the appropriated berth but the Berthholders may and shall if called upon to do so by the Company on the termination of this Agreement at their own cost remove any buildings fixtures or other works machinery plant or fittings which may have been erected or placed by or on behalf of the Berthholders at the appropriated berth and shall also at their own cost if so required after such removal or taking away leave the appropriated berth in good and substantial repair and condition and to the satisfaction of the Engineer-in-Chief of the Company.
<table>
<thead>
<tr>
<th>Clause No.</th>
<th>Clause</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Date and Description</td>
</tr>
<tr>
<td>2.</td>
<td>Parties</td>
</tr>
<tr>
<td>3. (a) to 3 (c)</td>
<td>Definition and interpretation</td>
</tr>
<tr>
<td>4.</td>
<td>Demise and rent</td>
</tr>
<tr>
<td>5.</td>
<td>Lessees covenants</td>
</tr>
<tr>
<td>5. (a)</td>
<td>Rent</td>
</tr>
<tr>
<td></td>
<td>(b) Rates and Taxes</td>
</tr>
<tr>
<td></td>
<td>(c) Insurance</td>
</tr>
<tr>
<td></td>
<td>(d) (i) Works</td>
</tr>
<tr>
<td></td>
<td>(d) (ii) Consents for works</td>
</tr>
<tr>
<td></td>
<td>(d) (iii) Repair</td>
</tr>
<tr>
<td></td>
<td>(d) (iv) Fencing</td>
</tr>
<tr>
<td></td>
<td>(e) Inspection of premises</td>
</tr>
<tr>
<td></td>
<td>(f) Gateman</td>
</tr>
<tr>
<td></td>
<td>(g) User</td>
</tr>
<tr>
<td></td>
<td>(h) Assignment and Subletting</td>
</tr>
<tr>
<td></td>
<td>(i) Bylaws</td>
</tr>
<tr>
<td></td>
<td>(j) Inflammable or dangerous articles</td>
</tr>
<tr>
<td></td>
<td>(k) Nuisance</td>
</tr>
<tr>
<td>Clause No.</td>
<td>Clause</td>
</tr>
<tr>
<td>-----------</td>
<td>--------------------------------------------</td>
</tr>
<tr>
<td>(l)</td>
<td>Materials falling into dock</td>
</tr>
<tr>
<td>(m)</td>
<td>Effluent entering drains</td>
</tr>
<tr>
<td>(n)</td>
<td>Weights</td>
</tr>
<tr>
<td>(o)</td>
<td>Signs</td>
</tr>
<tr>
<td>(p)</td>
<td>Indemnity</td>
</tr>
<tr>
<td>(q)</td>
<td>Alternations to premises</td>
</tr>
<tr>
<td>(r)</td>
<td>Telephones etc.</td>
</tr>
<tr>
<td>(s)</td>
<td>Notice board</td>
</tr>
<tr>
<td>(t)</td>
<td>Statues</td>
</tr>
<tr>
<td>(u)</td>
<td>Costs</td>
</tr>
<tr>
<td>6. (a)</td>
<td>Mains services</td>
</tr>
<tr>
<td></td>
<td>(b) Shipping of sludge</td>
</tr>
<tr>
<td></td>
<td>(c) Right of light</td>
</tr>
<tr>
<td></td>
<td>(d) No expense</td>
</tr>
<tr>
<td></td>
<td>(e) Quay use</td>
</tr>
<tr>
<td></td>
<td>(f) Lowering of level</td>
</tr>
<tr>
<td></td>
<td>(g) Removal of buildings</td>
</tr>
<tr>
<td></td>
<td>(h) Compensation</td>
</tr>
<tr>
<td></td>
<td>(i) Notices</td>
</tr>
<tr>
<td></td>
<td>(j) Sums due</td>
</tr>
<tr>
<td></td>
<td>(k) Statutory duties</td>
</tr>
<tr>
<td></td>
<td>(l) Diversion of sewers</td>
</tr>
<tr>
<td>(m) (i) to (v)</td>
<td>Rent review</td>
</tr>
<tr>
<td>Clause No.</td>
<td>Clause</td>
</tr>
<tr>
<td>-----------</td>
<td>--------------------------------------------</td>
</tr>
<tr>
<td>7. (a)</td>
<td>Quiet Enjoyment</td>
</tr>
<tr>
<td>7. (b)</td>
<td>Pre-emption</td>
</tr>
<tr>
<td>7. (c)</td>
<td>Repair of quay</td>
</tr>
</tbody>
</table>

First Schedule  
Description of premises

Second Schedule  
Easements rights and privileges in favor of Lessees

Third Schedule  
Exceptions and reservations in favor of Company

Fourth Schedule  
Charging agreement
Date and Description

1. THIS LEASE is dated the day of

Parties

2. The parties are:
   "the Company": THE MERSEY DOCKS AND HARBOUR COMPANY
   whose head office is situate at Port of Liverpool Building, Pier Head, Liverpool L3 1BZ
   "the Lessees"

Definitions and Interpretation

3.1 In this Lease the following terms shall (except where the context otherwise requires or there is express provision to the contrary) have the meanings respectively set against them

"the Accommodation Works": the road and other works to be carried out by the Lessees and described in

"the Building Works": the building works to be carried out by the Lessees and described in

"the Chief Engineer": the Chief Engineer of the Company (by whatever title he shall be known from time to time)

"the Company": shall include the estate owner for the time being of the reversion immediately expectant on the term hereby created

"the Lessees": shall include their permitted assigns

"the Lessees' vessels": any vessel owned or chartered by the Lessees and used by the Lessees for the disposal at sea
"the Marine Operations Manager": the marine Operations Manager of the Company (by whatever title he shall be known from time to time)

"the Company's representative": the person or persons appointed from time to time by the Company for the purposes of this lease

"the Perpetuity Period": the period of 80 years from the date hereof

"the Plan": the plan annexed hereto


"the Port": the Port of Liverpool as defined in The Mersey Docks and Harbour Act 1971

"the Premises": the property described in the First Schedule hereto

"the term": the term for which this Lease is granted as specified in clause 4 together with any statutory continuation thereof

3.2 The headings to clauses are for ease of reference only and shall not affect the construction hereof.

3.3 Unless the context otherwise requires the singular shall include the plural and vice versa and words importing gender shall include any other gender.

3.4 Any covenant by the Lessees not to do or omit to do (as the case may be) an act or thing shall be deemed to include an obligation not to permit or suffer such act or thing to be done or omitted (as the case may be).

3.5 Reference in this Lease to any statutory provisions includes reference to any consolidation re-enactment or modification thereof.
Demise and Rent

4. THAT in consideration of the rent charges and covenants on the part of the Lessees hereinafter reserved and contained the Company HEREBY DEMISES unto the Lessees the Premises TOGETHER WITH (but to the exclusion of all other liberties easements rights or advantages except as are granted herein) the rights set out in the Second Schedule hereto all such rights to be so far as necessary for the enjoyment of the Premises and in common with the Company and all others so authorized by the Company and all other persons entitled thereto EXCEPTING AND RESERVING to the Company and to others authorized by the Company or entitled thereto the rights set out in the Third Schedule hereto TO HOLD the same except and reserved as aforesaid unto the Lessees for the term of Two hundred years from the First day of January One thousand nine hundred and eighty four inclusive but determinable nevertheless as hereinafter provided YIELDING AND PAYING therefor the yearly rents ascertained in accordance with the Fifth Schedule hereto and so in proportion for any less period than a year the first payment of rent for the period from the First day of January One thousand nine hundred and eighty-four to the quarter day next following to be made on the execution hereof and subsequent equal quarterly payments to be made in advance on the First day of January the First day of April the First day of July and the First day of October in each year of the said term.

Lessees covenants

5. THE Lessees for the Lessees and the Lessees’ successors in title and assigns to the intent that the obligation may continue throughout the said term HEREBY COVENANT with the Company as follows:

Rent

5.1 THAT they will pay the rent hereinbefore reserved an made payable at the times and in manner aforesaid without any deduction PROVIDED that if any of the said quarterly payments of rent or any part thereof is not paid within seven days of the due date for payment thereof the Lessees will pay interest thereon from the due date until payment thereof at the rate per annum of two percent above the Lloyds Bank seven day deposit rate in force at the date when the said quarterly payment became due.

Rates and taxes

5.2 THAT they will from time to time discharge and bear all rates taxes charges duties burdens impositions assessments and outgoings
whatsoever whether Parliamentary Parochial or of any other
description which now are or may at any time during the term hereby
created by rated taxed charged imposed or assessed (whether or not
of a novel nature) upon the Premises or any part thereof or on the
owner or occupier thereof respectively or payable by either
including a due proportion of all such payments as aforesaid as may
be rated taxed charged imposed or assessed upon or in respect of any
premises of which the Premises form part.

Insurance

5.3 THAT they will at all times during the term hereby created keep the
Premises and the fixtures and fittings from time to time therein
insured against loss or damage by fire or explosion in the joint
names of the Lessees and the Company with an Insurance Company or
Companies approved in writing by the company in an amount which from
time to time will in the opinion of the Company in the event of the
Premises and fixtures and fittings therein being wholly destroyed
by fire or explosion pay for the modern replacement thereof and will
produce to the Company's representative annually and whenever
required the policy or policies of such insurance and the receipt
or receipts for premiums thereon and in default thereof the Company
may (without prejudice to the power of re-entry hereinafter
contained) insure and keep insured in manner aforesaid the Premises
and fixtures and fittings therein and pay the premiums payable in
respect thereof and the premiums so paid and all incidental expenses
shall be repaid by the Lessees to the Company on demand and if the
Premises or the fixtures and fittings therein or any part thereof
shall at any time during the term hereby created be destroyed or
damaged by fire or explosion then and as often as the same shall
happen all monies received in respect of such insurance shall
forthwith be laid out in the modern replacement of the Premises and
the fixtures and fittings therein to the reasonable satisfaction of
the Chief Engineer. No requirement by the Company as to the amount
of the insurance to be provided by the Lessees shall be regarded as
a warranty as to the sufficiency thereof for the purpose of modern
replacement of the Premises and the fixtures and fittings therein
and if from any cause whatsoever the monies received in respect of
such insurance shall be insufficient for that purpose the Lessees
shall make good the deficiency AND the Lessees shall in the event
of the Premises or fixtures and fittings therein or any part thereof
being damaged or destroyed and the insurance money under any policy
of insurance effecting thereon being partly or wholly irrecoverable
by reason of any act or default of the Lessees forthwith rebuild and
reinstate at their own expense the Premises and fixtures and
fittings therein or such part destroyed or damaged to the reasonable
satisfaction and under the supervision of the Chief Engineer the
Lessees being allowed towards the expenses of so doing the amount
(if any) actually received in respect of each damage or destruction
under any such insurance.

Works

5.4.1 THAT they will perform at their own expense certain works of demolition and construction for the purpose of preparing the Premises and constructing thereon prior to the end of the year of the term hereby created a sewage treatment plant and prior to the end of the year of the term hereby created facilities for the storage and shipping of sludge all in accordance with the plans drawings and specifications referred to in Clause 5.4.2

Consents for work

5.4.2 THAT they will obtain necessary consents and approvals and will complete the Works to the reasonable satisfaction of the Chief Engineer and in all respects of any Local or Public Authority having jurisdiction in the matter in accordance with plans drawings and specifications previous submitted to the Chief Engineer and approved by the Company in writing. Such approval by the Company (which shall not be unreasonably withheld) shall not place upon the Company any responsibility in connection therewith.

Repair

5.4.3 WITHOUT prejudice to the foregoing that they will from time to time and at all times during the term hereby created keep in a condition and state of repair such that they do not and will not cause a nuisance to the Company's adjoining property and in all respects to the reasonable satisfaction of the Chief Engineer the whole of the Premises and all additions thereto and all buildings structures fixtures fittings and all other works from time to time thereon or thereunder and will (subject to clause 6.7 thereof) at the expiration or sooner determination of the term hereby created deliver up the Premises to the Company in such repair and condition.

Fencing

5.4.4 THAT they will provide during the first year of the term hereby created and thereafter maintained good and substantial fencing along all the boundaries of the Premises indicated on the Plan and marked with a "T" mark to the reasonable satisfaction of the Chief Engineer and will thereafter at all times during the term hereby created keep the said fencing and all fences walls (including the wall along the easterly boundary of the Premises) or other boundary structures to the Premises in good and substantial repair and condition and in all respects to the reasonable satisfaction of the Chief Engineer. The fence provided in accordance with this Clause along the Northern boundary of the Premises shall have, at a position agreed by the
Chief Engineer a pedestrian access gate.

Inspection of Premises

5.5 THAT they will permit the Company and all persons authorized by them upon giving reasonable notice to the Lessees to enter at all reasonable times (provided that the requirements as to reasonable notice and times shall not apply in the event of an emergency) upon the Premises to inspect the same and the machinery plant and fittings thereat and will within one calendar month after notice in writing of any defect and wants of repair shall have been given or left at the Premises for the Lessees well and sufficiently repair and make good such defects and wants of repair in such manner as may be directed by the Company and if so required under the inspection of such person as may be appointed by the Company and in default thereof the Company shall be at liberty by themselves their contractors or servants at the expense of the Lessees to repair and amend all defects and wants of repair in respect whereof notice shall have been given or left as aforesaid and the expenses thereby incurred as certified by the Chief Engineer shall be paid to the Company by the Lessees on demand AND SECONDLY to inspect, maintain, repair and renew any of the Company's services and facilities thereat the Company performing such operations as expeditiously as possible and making good at its own expense and as expeditiously as possible any damage occasioned to the Premises thereby.

Gateman

5.6 THAT they will provide facilities whether by the posting of a gateman watchman or security warden at the Premises or otherwise to ensure that access to and egress from the Premises by the Company in accordance with the provisions herein contained is available at all times as the same may be necessary and in a safe and sound manner.

User

5.7 THAT they will not use the Premises for any purposes whatsoever other than for:

5.7.1 the performance of the Works, treatment of sewage and, in accordance with the provisions of the Charging Agreement hereinafter referred to, the shipping from the berth at the Premises, and storage in connection therewith, of sewage sludge,

5.7.2 any other use associated with the Lessees statutory powers as a water undertaking such other use to be with the consent of the Company such consent not to be unreasonably withheld. The refusal of the Company to consent to the shipment of sewage sludge from other than the berth at the premises shall not be an unreasonable withholding of consent.
AND the obtaining of any necessary planning and other requisite statutory permissions and consents in connection with the aforesaid use shall be the sole responsibility of the Lessees and it is hereby agreed and acknowledged by the Lessees that notwithstanding the foregoing provisions as to user the Company does not thereby make or give and has not at any time made or given to the Lessees or to any person on behalf of the Lessees any representation or warranty that the said use or any other use of the Premises or any part thereof is or will be a permitted use thereof within the provision of the Planning Acts and the notwithstanding that any such use may not now or at any time hereafter be a permitted use as aforesaid the lessees shall not be entitled to any relief or compensation whatsoever in respect thereof from the Company.

Assignment or subletting

5.8 THAT they will not assign underlet or otherwise part with possession of the Premises or any part thereof for all or any part of the said term unless each of the following conditions is fulfilled;
5.8.1 the Lessees have offered to surrender the Lease or part thereof to the Company without consideration at the expiry of four weeks from such offer
5.8.2 the company has not within two weeks of such offer accepted the same
5.8.3 not more than six months have elapsed since the last such offer and then not to assign underlet or part with the possession of the Premises or any part thereof without the previous consent in writing of the Company which consent shall not be unreasonably withheld PROVIDED ALWAYS that upon any assignment underletting or tenancy agreement the Lessees shall pay the Company’s solicitors charges for every such consent and shall at their own expense obtain a direct covenant by the assignee underlessee or tenant as the case may be with the Company in such form as the Company may reasonably require to observe and perform the covenants and conditions of this Lease and to pay the rent hereby reserved and should the Lessees desire to assign or underlet the Premises to a limited company the Lessees shall before doing so procure that two directors thereof shall jointly and severally covenant with the Company as sureties for the limited company that they will pay and make good to the Company all losses, costs and expenses sustained by the Company through the default of the limited company to pay the rent reserved by this Lessees' covenants and conditions herein contained AND within one month after any transfer or devolution of the Lessees' interest in the Premises or any part thereof to produce to the Company a copy of the instrument or other document whereunder the same was made or which evidences the same.
Bylaws

5.9 THAT they will obey all the Bylaws and Regulations of the Company in force from time to time.

Inflammable or dangerous articles

5.10 NOT without the prior written consent of the Company having been obtained to store or bring upon the Premises any articles of a specially combustible inflammable or dangerous nature and not to do or to permit or to suffer anything by reason whereof any insurance effected on the Premises may be rendered void or voidable or whereby the rate of premium thereon may be increased and at all times to adopt every precaution that may be necessary or expedient to prevent damage by fire explosion or by any other cause.

Nuisance

5.11 THAT they will not deposit do or suffer on the Premises or any part thereof any act matter or thing whatsoever which may be a nuisance or cause annoyance damage or disturbance to the Company or the owners lessees or occupiers of any adjoining or neighboring property. This clause is without prejudice to the Lessees' right to use the Premises for the purposes specified in clause 5.7 hereof provided that the Lessees take all reasonable and practicable measures to prevent or minimize any nuisance annoyance damage or disturbance caused thereby or resulting therefrom.

Materials falling into dock

5.12 THAT they will take all reasonable precautions to prevent materials substances articles or other deposits (including spillages of oil) from falling into or entering the Company's Dock system or escaping from the Premises an din any such event the Lessees shall be responsible for removing the same from the said Dock system or otherwise making good the damage at the Lessees' own expense.

Effluent entering drains

5.13 THAT they will take all reasonable precautions to prevent any effluent from entering any of the drains of the Company on or adjacent to the Premises without first obtaining the consent of the Company.

Weights

5.14 THAT they will not place on the Premises nor on any part or floor thereof weights in excess of those which may from time to time be
fixed in writing by the Company and that they will apply to the
Chief Engineer to have such weights fixed.

Signs and Lights

5.15 THAT they will not erect nor put up any sign or advertisement at the
Premises without first obtaining the consent in writing of the
company which consent may be subject to such terms and conditions
as the Company may reasonably consider necessary. AND THAT they
will not put up any light at the Premises which in the reasonable
opinion of the Company may interfere with or be mistaken for a
navigational light or other aid to navigation.

Indemnity

5.16 THAT they will be responsible for and provide against all risks and
contingencies whatsoever that may arise in respect of their
occupation or use of the Premises and will indemnify the Company
against all proceedings claims and expenses (including legal costs
on a full indemnity basis) whatsoever arising out of or in
consequence of the business operations and works carried on at the
Premises or of the condition of the Premises or the machinery plant
or fixtures or fittings thereat or works ancillary thereto or of any
act neglect or default of the Lessees their contractors servants
agents licensees or invitees.
The Lessees will pay to the Company full compensation for all damage
occasioned to or suffered by the estate property or works of the
company and arising as aforesaid.

Alterations to Premises

5.17 THAT they will not subject to the performance of the Works make any
alterations to the Premises nor erect, construct or place any new
buildings, fixtures, sewers, drains, tanks, pipe lines, erections
or other works over upon in or under the Premises without first
obtaining the consent in writing of the Company which may be subject
to such terms and conditions as the Company may consider necessary
and the approval by the Company of plans and specifications of all
work proposed to be done PROVIDED ALWAYS that such consent or
approval shall not place upon the Company any liability for any loss
or damage incurred as a result of such alterations or works and
PROVIDED FURTHER that all work carried out by or on behalf of the
Lessees shall be to the reasonable satisfaction of the Chief
Engineer and in strict accordance with the said approved plans and
specifications.
Telephone etc.

5.18 THAT they will permit the Company and all persons authorized by the
upon giving reasonable notice (unless the giving of such notice is
not possible due to an emergency) to the Lessees to enter upon the
Premises to place or affix gas, oil, water drain and other pipes and
telegraphic telephonic and electric wires, poles, cables and
accessories over upon in or under the Premises and to repair alter
or remove any or all or such pipes, wires, poles, cables and
accessories as now are or may during the term hereby created be so
placed or affixed and the Company shall make good any damage caused
to the Premises thereby.

Notice board

5.19 THAT at all times during the six calendar months immediately
preceding the expiration or sooner determination of the term hereby
granted to permit the Company or their agents to affix and retain
without interference upon some suitable part of the Premises a
notice board or notices announcing that the same are to be let or
sold and to permit all persons with written authority from the
Company or its agents to enter and view the Premises at all
reasonable times in the daytime without interruption.

Statues

5.20 THAT they will comply during the said term with all the requirements
of any Statute for the time being in force or any Statutory
Instrument or Regulations made thereunder in connection with the
Premises or the business, operations or works carried on thereat
whether imposed on the owner or occupier of the Premises and shall
indemnify the Company from and against all claims and demands in
respect thereof.

Costs

5.21 THAT they will pay the Company's Solicitor's costs of the incidental
to the preparation of this Lease and a Counterpart thereof and the
Stamp Duty on such Lease and Counterpart.

Planning

5.22.1 THAT they will not commit any breach of planning control

5.22.2 THAT they will not without the consent in writing of the
Company (such consent not to be unreasonably withheld) apply for
planning permission to carry out any development in or upon the
Premises and in any event to supply to the Company a copy of any
application for planning permission together with such plans and
other documents as the Company may reasonably require and to supply to the Company a copy of any planning permission granted to the Lessees.

5.22.3 THAT they will pay and satisfy any charge that may be imposed upon any breach by the Lessees of planning control or otherwise under the Planning Acts.

5.22.4 THAT they will unless the Company shall otherwise direct carry out before the expiry or sooner determination of this Lease any works required to be carried out to or upon the Premises as a condition of any planning permission which may have been granted during the term of this Lease irrespective of the date before which such works were thereby required to be carried out.

5.22.5 THAT they will on receipt of any notice order or proposal made given or issued to the Lessees by a planning authority under or by virtue of the Planning Acts insofar as the same relates to or affects the Premises give full particulars thereof within seven days from such receipt to the Company and subject as aforesaid without delay and at the Lessees' expense to take all reasonable or necessary steps to comply with such notice or order and (if so required by and at the expense of the Company) to make or join in making such representation in respect of any such notice order or proposal as the Company may reasonably require.

5.22.6 Expressions used in this clause shall be construed in accordance with the Planning Acts.

6. PROVIDED ALWAYS AND IT IS HEREBY AGREED as follows:

Mains services

6.1 THAT the Lessees shall (in addition to any other sums payable by the under the terms of this Lease) bear the costs of the supply of any mains services consumed by them at the Premises and if any such services are supplied by the Company the Company shall bill the Lessees separately thereof.

Shipping of sludge

6.2 THAT the terms of the Sixth Schedule hereto shall apply in relation to the shipping of sewage sludge from the Premises and non compliance by the Company or the Lessees with the terms thereof shall constitute a breach of this Lease.

Right of light

6.3 THAT the Lessees shall not have or become entitled to any right of
light or air or access which will interfere with the free use and enjoyment for any purpose whatsoever of any other land or buildings.

No expense

6.4 THAT the Company shall not be at any expense in connection with the Premises and all machinery plant fixtures or fittings and goods thereat shall be at the sole risk and expense of the Lessees.

Quay use

6.5 THAT the Lessees shall be allowed the preferential but not the exclusive use of the quay colored green and the berth space hatched yellow on the Plan on the East side of Sandon Half-Tide Dock for the Lessees vessels capable at the date hereof being handled thereat but such user shall be subject to the regulations of the Port applicable from time to time by the Marine Operations Manager. After 31st December 1997 the Company may terminate such use by the giving of three years notice in writing to the Lessees provided that if there are other docks in Liverpool which are to continue to be operated by the Company after the expiry of such notice then the Company shall so far as practical offer to the Lessees alternative facilities in those docks on terms similar so far as possible to those contained or referred to in this Lease.

Lowering of level

6.6 THAT the Company have the right to any time or times which they shall in their discretion think proper to lower the level of or to run dry the Liverpool Docks system or any part thereof for the purpose of repairing or cleansing the same or for any other purpose connected with the good management of the Port and the Lessees shall have no claim whatsoever against the Company for any loss, damage or expense arising therefrom or in any way connected therewith BUT the Company shall so far as circumstances permit give the Lessees reasonable notice of their intention to run the said Dock system dry AND if for any reason beyond the control of the Company the Liverpool Dock System shall become unusable for vessels proceeding to or from the Premises the Lessees shall have no claim whatsoever against the Company for loss damage or expense arising therefrom or in any way connected therewith.

Removal of Building

6.7 THAT the Lessees may on quitting the Premises all rent due hereunder having previously been paid and if called upon to do so by the Company shall during the last six months preceding the expiry or sooner determination of the term hereby created at their own expense remove all or any buildings, structures, fixtures, sewers, drains,
tanks, pipelines, erections or other works machinery plant or fittings which may have been erected or placed by or on behalf of the Lessees at the Premises and shall also at their own expense if so required by the Company after such removal make good the Premises to the satisfaction of the Chief Engineer.

Compensation

6.8 THAT the Lessees shall not be entitled to any compensation under Part II of the Landlord and Tenant Act 1954 except in a case in which Part II of the said Act does not permit compensation to be excluded or reduced.

Notices

6.9 THE provisions of Section 196 of the Law of Property Act 1925 as amended by the Recorded Delivery Service Act 1962 shall apply to any notice required to be served under this Lease.

Sums due

6.10 THAT all sums which under this Lease shall become payable by the Lessees to the Company shall in default be recoverable as rent in arrear by distress or by any other legal way or means.

Statutory duties

6.11 THE rights of the Lessees granted herein shall at all times be subject to the duties and obligations which the Company may necessarily have to perform from time to time by virtue of any Act of Parliament or the order of any Public Authority.

Diversion of services

6.12 THAT the Lessees shall be responsible for locating the position of and thereafter at the expense of the Lessees protecting or diverting such services and sewers as are required in the opinion of the Company to be protected or diverted in consequence of the Lessees' use of the Premises.

Licence to deposit

6.13 THAT if the Licence to deposit sewage sludge at sea granted to the Lessees by the Ministry of Agriculture Fisheries and Food, or any body which assumes the duties of that Ministry in regard to such a License, is revoked or substantially varied by the Ministry or such other body so that it is no longer permissible for the Lessees to deposit sewage sludge at sea then the Lessee may on giving to the company six months notice in writing request a surrender of that part of the Premises as is used by the Lessees for the shipping and
storage in connection therewith of sewage sludge. On being satisfied that the said Licence has been so revoked or varied the Company will at the end of such period of notice grant to the Lessees a surrender free of consideration (other than payment of Solicitors costs) of the said part of the Premises. The rent payable under Clause 4 hereof (as may be varied from time to time in accordance with the Fifth Schedule hereto) shall be reduced as from the date of such surrender by the same percentage as the area of land surrendered bears to the whole of the Premises immediately prior to the date of such surrender.

Re-entry

6.14 THAT if the rent hereby reserved or any part thereof shall be in arrear for twenty one days (whether legally demanded or not) or if the Lessees shall do or omit to do any act or thing whatsoever in breach or non-performance or non-observance of any of the covenants or agreements herein contained and on their part to be performed and observed or if the Lessees shall make compositions with their creditors or declare that they hold the Premises upon any trust or carry on the business under a supervision order or if the Lessees (being a company) shall enter into liquidation whether compulsorily or voluntarily (not being a voluntary liquidation for the purpose of reconstruction) or shall have an Administration Order made under the Insolvency Act 1986 or (being a person or firm) be adjudicated bankrupt or if a Receiver be appointed or a Sequestration Order be made in respect of the Lessees' property or if any execution or distress be levied at any part of the Premises then and thenceforth in any of the said events and at all times afterwards it shall be lawful for the company to enter in and upon the Premises or any part thereof in the name of the whole and expel the Lessees therefrom without giving notice to quit and upon such entry the rights of the Lessees herein shall absolutely cease and determine but without prejudice to the rights of the Company with respect to the rent in arrear or in respect of any breach of the covenants by the Lessees herein contained.

Determination of term

6.15 THAT if the Premises or any part thereof are required for the purpose of erecting a transit shed or improving or making alterations to the Company's Dock Estate or of developing the trade of the Port or for the use by the Company in connection with their Docks Undertaking the Company may determine the term hereby created at any time after the expiration of ___ years from the commencement thereof by giving to the Lessees ___ calendar months notice in writing to quit or if the Company or the Lessees shall be desirous of determining the said term at the end of the ___ year thereof and of such their desire shall have given to the other of them ___
months previous notice in writing then immediately upon the expiration of the said notice to quit or of the said ____ years (whichever it may be) this Lease shall be void and of no effect except only for the purpose of enforcing the payment of rent and performance of the covenants up to the determination of the term hereby created.

Entire Agreement

6.16 This Lease embodies the entire agreement of the parties relating to the Premises or to any of the matters dealt with by any of the provisions of this Lease.

Covenants by, the Company

7. AND THE COMPANY HEREBY COVENANTS WITH THE LESSEES:

Quiet enjoyment

7.1 THAT the Lessees paying the rent and other sums hereby made payable and performing and observing all and singular the terms covenants provisions and agreements herein contained may peaceably and quietly hold and enjoy the Premises without any interruption by the Company or any person lawfully claiming by from or under them.

Pre-Emption

7.2 THAT if at any time hereafter during the term hereby created the company shall desire to sell its estate and interest in the Premises the Company will before proceeding to offer the same for sale give notice of such desire to the Lessees who shall forthwith make an offer in writing to purchase the same and if no such offer on the Part of the Lessees is received by the Company within one month of the date of service of the said notice or if the offer received within that time is not satisfactory to the Company the Company shall be free to accept any other offer to purchase the Premises and THAT the Company will not at any time accept any offer for the purchase of the Premises made by someone other than the Lessees without first offering to sell the same to the Lessees in accordance with the provisions of this Clause.

Repair of quay

7.3 THAT the Company shall keep the quay colored green on the Plan in a state of repair and condition such that the Lessee's vessels are able to berth alongside. If the Lessees preferential use of the
berth space and quay specified in Clause 6.5 hereof is terminated in accordance with the said Clause then as from the date of expiry of the requisite notice thereunder the Company shall only be required to keep the said quay in a state of repair and condition such that it does not and will not cause a nuisance to the Premises.

IN WITNESS whereof the parties hereto have hereunto affixed their Common Seals the day and year first before written.
THE FIRST SCHEDULE

All those two pieces of land situate respectively at Sandon Dock Liverpool and at the entrance from the River Mersey to Sandon Half-Tide Dock Liverpool TOGETHER WITH the buildings, structures, fixtures and fittings and other works which now are or may during the term hereby created be erected or placed on in over or under the said land AND WHICH for the purpose of identification are more particularly delineated and shown edged red on the Plan.

THE SECOND SCHEDULE

Easements rights and privileges granted in favor of the Lessees

(1) The free passage and running (subject to temporary interruption for repair alteration or replacement) of water, soil, gas or electricity to and from the Premises in and through the sewers, drains, pipes, wires, cables and ducts laid or to be laid within the Perpetuity Period in through and under the adjoining premises of the Company.

(2) The right at all times and for the purpose of proceeding to or from the out fall marked "A" on the plan in connection with the construction and subsequent maintenance renewal and inspection of the said out fall with or without vehicles to pass or repass over and along the land the land colored purple on the Plan PROVIDED ALWAYS THAT the Lessees shall contribute a proportion of the cost of repair and maintenance of the said land colored purple according to user AND PROVIDED ALSO THAT the said land colored purple shall be kept clear of obstruction at all times and the Lessees shall unless necessary in connection with the said purpose under no circumstances and at no time place or deposit or permit to be placed or deposited on the said land colored purple any vehicle item article or material AND PROVIDED ALSO THAT the Company shall be entitled to vary at any time the route or position of this right of way whether temporarily or permanently subject to the Company providing the Lessees with a reasonable alternative route or position.

(3) The right to construct and thereafter maintain and inspect at the Lessees' cost and to the satisfaction of the Chief Engineer a roadway for the purpose specified in Clause 1 of this Schedule on that part of the said right of way at the North West corner of Sandon Half Tide Dock and which is hatched black on the Plan.

(4) The right on the giving of reasonable prior notice to the Company to enter on such part or parts of the quay area adjoining the said out fall as is necessary from time to time to construct and thereafter maintain, inspect and renew the said out fall.

(5) The right to lay construct use maintain inspect and renew at the
Lessee's cost
(a) a tunnel under Sandon Half Tide Dock between the points marked "A" and "B" on the Plan and within the limits of deviation shown by the area hatched green on the Plan, such tunnel to be used for the purpose of draining and carrying off water from the Lessee's sewage treatment works at the Premises into the River Mersey.
(b) a sludge main adjacent to the North East boundary of the Premises and between the points marked "C" and "D" on the Plan to be used for the purpose of carrying sewage to the Lessee's said sewage treatment works.
(c) a fence between the points marked "E" and "F" on the Plan.

(6) The Lessee shall in respect of the aforesaid rights forthwith make good to the satisfaction of the Chief Engineer all damage occasioned to the Company's estate property or works by the exercise of any such right. Without prejudice to Clause 5.4 any works or operations which are to be performed in connection with or arising out of the said rights shall be completed to the reasonable satisfaction of the Chief Engineer and in accordance with plans, drawings and specifications previously submitted to the Chief Engineer and approved by him in writing. Such approval (which shall not be unreasonably withheld) shall not place upon the Chief Engineer any responsibility in connection therewith.

(7) The right of support and shelter and all other rights now or hereafter belonging to or enjoyed by the Premises over all adjacent or neighboring land or buildings an interest wherein in possession or reversion is at any time during the term hereby granted vested in the Company.

THE THIRD SCHEDULE

Exceptions and reservations in favor of the Company and others authorized by the Company or entitled thereto.

(1) The right of free passage and running of water and soil in and through the sewers, drains and channels made or to be made at any time during the term hereby granted upon through or under the Premises and the free and uninterrupted use of all gas, electric, telephone and other pipes, wires and cables upon through or under the same.

(2) All rights of light, air and other easements and rights (but without prejudice to those hereinbefore granted to the Lessee) now or hereafter belonging to or enjoyed by any adjacent or neighboring land or building in on over or in respect of the Premises.

(3) The right to build on or rebuild or alter any adjacent or neighboring land or buildings in any manner whatsoever or otherwise deal therewith notwithstanding that the light or air to the Premises is in any such case.
thereby diminished or prejudicially affected.

(4) The right to support and shelter and all other rights now or hereafter belonging to or enjoyed by all adjacent or neighboring land or buildings an interest wherein in possession or reversion is at any time during the term hereby granted vested in the Company.

(5) The right to enter upon the Premises at all reasonable times (except in an emergency) for the purpose of inspecting, maintaining, repairing and renewing the sewer known as Beacons Gutter Outfall and, to the extent that it runs under the Premises, colored brown on the Plan.

(6) The right to enter on the Premises upon the giving (except in the case of an emergency) of reasonable notice to the Lessees for the purpose of inspecting, maintaining and renewing Sandon Half Tide Dock and the East quay and wall thereof or to prevent or deal with an emergency of whatever nature in or adjacent to the said Dock.

THE FOURTH SCHEDULE

Rent Review

(1) In this Lease "review date" means the _____ day of _______ in the year 19____ and in every ______ year thereafter and "review period" means the period starting with any review date up to the next review date or starting with the last review date up to the end of the term hereof.

(2) The yearly rent shall be:
(a) until the first review date the rent of _________ and _________
(b) during each successive review period a rent equal to the rent previously payable hereunder or such revised rent as may be ascertained as herein provided whichever be the greater.

(3) Such revised rent for any review period may be agreed at any time between the Company and the Lessees or (in the absence of agreement) determined not earlier than the relevant review date by an arbitrator such arbitrator to be nominated in the absence of agreement by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors on the application of the Company or the Lessees made not earlier than six months before the relevant review date but not later than the end of the relevant review period and so that in the case of such arbitration the revised rent to be awarded by the arbitrator shall be such as he shall decide should be the yearly rent at which the Premises might reasonably be expected to be let on the open market as between a
willing lessor and a willing lessee at the relevant review date:
(a) On the following assumptions at that date:
   (1) That the Premises:
      (a) are available to let on the open market without a fine
      or premium with vacant possession by a willing landlord to a
      willing tenant for a term equivalent to the original term of
      the Lease
      (b) are to be let as a whole subject to the terms of this
      Lease (other than the amount of the rent hereby reserved but
      including the provisions for review of that rent)
      (c) are fit and available for immediate occupation
      (d) may be used for any of the purposes permitted by this
      Lease as varied or extended by any licence granted pursuant
      thereto
      (ii) That the covenants herein contained on the part of the
      Company and the Lessees have been fully performed and observed
      (iii) That no work has been carried out to the Premises which
      has diminished the rental value and that in case the Premises
      have been destroyed or damaged they have been fully restored
      (iv) That no reduction is to be made to take account of any
      rental concession which on a new letting with vacant
      possession might be granted to the incoming tenant for a
      period within which its fitting out works would take place
      (v) That a willing tenant will commence paying rent
      immediately on the grant of the Lease without any deduction
      being made in respect of rent concessions
   (b) But disregarding:
      (i) any effect on rent of the fact that the Lessees their
      sublessees or their respective predecessors in title have been
      in occupation of the Premises
      (ii) any goodwill attached to the Premises by reason of the
      carrying on threat of the business of the Lessees their
      sublessees or their predecessors in title in their respective
      businesses and
      (iii) any increase in rental value of the Premises
      attributable to the existence at the relevant review date of
      any improvement to the Premises or any part thereof carried
      out with consent where required otherwise than in pursuance
      of an obligation to the Company or its predecessors in title
      except obligations requiring compliance with statutes or
      directions of local authorities or other bodies exercising
      powers under Statute or Royal Charter by the Lessees its sub-
      tenants or their respective predecessors in title during the
      said term or during any period of occupation prior thereto
      arising out of an agreement to grant such term.

(4) IT IS HEREBY FURTHER PROVIDED in relation to the ascertainment and
payment of revised rent as follows:
(a) The arbitration shall be conducted in accordance with the Arbitration Acts 1950 and 19879 or any statutory modification or reenactment thereof for the time being in force with the further provision that if the arbitrator nominated pursuant to clause (3) hereof shall die or decline to act the President for the time being of the Royal Institution of Chartered Surveyors or the person acting on his behalf may on the application of either the Company or the Lessees by writing discharge the arbitrator and appoint another in his place.
(b) When the amount of any rent to be ascertained as hereinbefore provided shall have been so ascertained memoranda thereof shall thereupon be signed by or on behalf of the Company and the Lessees and annexed to this Lease and counterpart thereof and the Lessees shall pay the Company's reasonable costs in respect thereof.
(c) (i) If the revised rent payable on and from any review date has not been agreed by the review date rent shall continue to be payable at the rate previously payable and forthwith upon the revised rent being ascertained the Lessees shall pay to the Company any shortfall between the rent and the revised rent payable up to and on the preceding quarterday together with the interest on any shortfall at the seven day deposit rate of Lloyds Bank such interest to be calculated on a day to day basis from the relevant review date on which it would have been payable if the revised rent had then been ascertained to the date of actual payment of any shortfall and the interest so payable shall be recoverable in the same manner as rent in arrear or as the case may be as debt.
(ii) for the purposes of this provision the revised rent shall be deemed to have been ascertained on the date when the same has been agreed between the parties or as the case may be the date of the award of the arbitrator.
(d) If either the Company or the Lessees shall fail to pay any costs awarded against it in an arbitration under the provisions hereof within twenty-one days of the same being demanded by the arbitrator the other shall be entitled to pay the same and the amount so paid shall be repaid by the party chargeable on demand.

THE FIFTH SCHEDULE
CHARGING AGREEMENT

1. This Agreement shall commence on 1st January 1988 or if earlier the first arrival of one of the Lessees' vessels at the berth at East Sandon Half Tide Dock and shall continue thereafter for the duration of the within written Lease and irrespective of the usage if any of the said berth by the Lessees' vessels.

2.2 The Lessees shall pay to the Company an annual charge, (hereinafter called "the Annual Composite Charge") in lieu of the published
charges on vessels and goods for the Port which would otherwise be applicable in respect of the arising out of the Lessees use and the use by the Lessees vessels of the berth at East Sandon Half Tide dock in accordance with the Lease. The Annual Composite Charge shall be payable annually (pro rata for part of a year) during the term of this lease in four equal installments, quarterly in advance. The first payment shall be due on 1st January 1988 or if the said first arrival of one of the Lessees' vessels is earlier, then the first payment shall be due on whichever of the dates 1st January, 1st April, 1st July or 1st October in the relevant year shall last occur prior to the said first arrival.

2.3 The Annual Composite Charge shall be based on a rate of 550,000 (Five hundred and fifty thousand pounds) per annum for the year commencing 1st January 1981. This rate shall be reviewed and adjusted as at 1st January in each year thereafter including the 1st January 1982 and 1st January 1983, such adjustment being made at the rate of 1% corresponding to each 1% movement in the General Index of Retail Prices - all items for the United Kingdom as between the 1st November of the year preceding the calendar year completed immediately prior to the 1st January to which the review relates, to the 1st November of the said calendar year so completed and as published monthly by the Department of Employment (based on 100 in January 1974 and at present appearing in Table 6.4 of the "Department of Employment Gazette").

2.4 In the event of a change in the base or composition of the above Index or the cessation of publication of the said Index the parties hereto shall forthwith agree an alternative Index with the object of placing both parties as near as possible in the position in which they would have been had there been no such change or cessation.

2.5 In the event that in any year the aforesaid adjustments cannot be calculated as provided above as a result of the required Index figures not being available at the relevant review date, then the Annual Charge shall continue to be payable at the rate previously payable and the adjustments shall be made as soon as is reasonably possible after the required Index figures have become available and shall be applied retrospectively as from and including the 1st January in the year of the review and thenceforth until the next Review Date. The Lessees shall pay to the Company forthwith upon the revised Annual Charge being ascertained any shortfall between the Annual Charge being ascertained any shortfall between the Annual Charge previously payable and the revised Annual Charge payable up to and on the preceding month together with the interest on such shortfall at the rate of three per cent per annum above the Lloyds Bank Base Rate calculated on a day to day basis from the relevant Review Date to the date of actual payment of any shortfall.
2.6 The Annual Composite Charge shall not in any year be less than that applicable in the previous year.

3.1 If the operations of loading and/or discharging the Lessees vessels at the said berth are disrupted for reasons that are wholly attributable to and within the control of the Company or if the Lessees' vessels are prevented for such reasons from entering or leaving the Port for the purposes of sludge disposal, then the Company shall grant the Lessees a rebate of 1/52nd off the Annual Composite Charge, applicable at the time of disruption, for each complete period of 7 successive days that the operations of the Lessees are so disrupted.

3.2 For the avoidance of doubt, where the operations of the Lessees' vessels are disrupted for reasons that are not wholly attributable to and within the control of the Company, the Company shall not be liable to the Lessees in any way whatsoever for such disruption.

4.1 The lessees shall be responsible for and provide against all risks and contingencies including death or personal injury of any person or damage to any property whatsoever that may arise in respect of their use of the Company's Docks and will indemnify the Company against all proceedings, claims and expenses whatsoever in respect of death and or personal injury and or damage to property arising out of or in consequence of the following.

4.1.1 Any Act neglect or default of the shipowner charterer part owner manager operator disponet owner Master mariner pilot or any servants of the Lessees in the navigation or in the management of the Lessees' vessels, including the loading and discharging of cargo including sludge, stores and bunkers.

4.1.2 Any act neglect or default of the Lessees, their contractors (except the Company), agents or their respective servants whomsoever in or on the Company's Docks in connection with the use thereof by the Lessees' vessels or on any vessel with the permission express or implied of the Lessees.

4.1.3 Any inherent quality or defect of any goods or cargo including sludge in or on the said docks or on any vessel.

4.2 The Lessees shall pay to the Company full compensation for all damage done to or suffered by the property or equipment owned by the Company arising from the use of the said Docks by the Lessees' vessels.

5.1 The Lessees shall take all precautions to avoid spillage on the quay, on the deck of the Lessees' vessels, or into a dock
particularly during the handling of any liquid or substance and any such spillages are to be reported immediately to the appropriate Senior Dock Master.

5.2 The Lessees shall be responsible for the cleaning at their cost of all spillages both on the quay and in the said Docks, to the satisfaction of the Company’s Marine Operations Manager.

6. Except as provided in Clause 3 of this Schedule the Company shall not be liable to the Lessees for any delay loss or damage caused directly or indirectly by:

6.1 Act of God; war; riots; or adverse rain, hail, snow, wind or other adverse weather conditions; nor

6.2 Strikes, lock-outs or industrial actions or disputes whether within or outside the Company’s direct control; nor

6.3 Any other cause whatsoever reasonably outside the Company’s direct or indirect control preventing delaying or hindering the fulfillment of any of its obligations hereunder.

7. This Agreement can only be terminated in the event that and with effect from the date that this Lease is terminated.

8. Any dispute or difference between the Company and the Lessees as to the interpretation of this Schedule shall be referred to a single arbitrator if the parties can agree upon one or in default of their agreement one to be appointed by the President for the time being of the Law Society and in either case subject to the provisions of the Arbitration Act 1950 or any statutory modification or re-enactment thereof for the time being in force. The Arbitrator appointed as aforesaid shall not cause the Annual Composite Charge to be reduced below the level specified herein nor, if the charges are subsequently increased in accordance with Clause 2.2 hereof, below the levels to which they are so increased.
THE COMMON SEAL of the
MERSEY DOCKS AND HARBOUR COMPANY
was hereunto affixed in
the presence of:

THE COMMON SEAL of
was
hereunto affixed in
the presence of: