GUIDELINES TO BE FOLLOWED BY MAJOR PORT TRUSTS FOR PRIVATE SECTOR PARTICIPATION IN THE MAJOR PORTS

1. PREAMBLE

It has been assessed that major expansion is required in the port infrastructure sector in the country in order to handle the sea borne traffic on account of increasing foreign and coastal trade. In order to mobilise substantial resources required for the purpose and in order to improve efficiency, productivity and quality of service as well as to bring in competitiveness in port services, the port sector has been thrown open to private sector participation. This is in consonance with the general policy of liberalisation/globalisation of economy of Government of India. It is expected that private sector participation would result in reducing the gestation period for setting up new facilities, help bring in the latest technology and improved management techniques.

2. AREAS OF PRIVATISATION

The following areas have been identified for participation/investment by the private sector. These are indicative in nature and individual ports can expand the scope of activities after prior consultation with Central Government :-

a. Leasing out existing assets of the port.

i. Construction/creation of additional assets, such as:

a. construction and operation of container terminals.
b. Construction and operation of bulk, break bulk, multipurpose and specialised cargo berths.
c. Warehousing , container Freight Stations, storage facilities and tank farms.
d. Cranage/Handling Equipment.
e. Setting up of captive power plants.
f. Dry docking and ship repair facilities.

i. Leasing of equipment for port handling and leasing of floating crafts from the private sector.
ii. Pilotage

iii. Captive facilities for port based industries

Each port may identify specific projects for implementation through private sector participation.

3. LEGAL FRAME WORK

There is no legal bar to private sector participation in port facilities as per the provisions of the existing Major port Trusts Act, 1963 , as brought out below :

ACTIVITY	RELEVANT SECTION OF THE MAJOR PORT TRUST ACT, 1963
Lease of port's immovable and movable property viz. land, existing berths/super structure/equipments etc. (According to definition given in the MPT Act,1963 "Immovable property includes wharfage rights , all other rights exercisable on, over or in respect of any Land, wharf, dock or pier).	Section 34(1) & Section 42(3) read with Port Regulations, if any, made under Section 34(2).
Construction/installation of wharf, dock, quay, stage, jetty, pier erection or mooring and reclamation of foreshore within the port limit by private parties.	
Performance of any of the services to be rendered by the ports under Section 42(i) by a private party on terms and conditions fixed with the approval of Central Govt. and recovery of charges by the private party for the service rendered by them.	Section 46(1) read with Section 34.
Lease , farm, sell or alienate the rights of the Board to levy rates to other party with the approval of Government.	

	Section 42(3) and Section 42(4). Section 57

4. REGULATORY FRAMEWORK

The Port will continue to maintain its regulatory role under Major Port Trusts Act, 1963. However, for purpose of fixing and revising port tariffs, an independent Tariff Regulatory Authority will be set up. The tariff so fixed would be a ceiling and both the private entrepreneurs and the port would be free to charge less than such notified tariff. Till such a Regulatory Authority is set up, the present procedure, namely, that of Ports fixing the tariffs with the approval of Central Government will continue.

The Port should ensure that private investment does not result in the creation of private monopolies, and that private facilities are available to all users on equal and competitive terms. However, in the case of berths constructed or taken on lease by private entrepreneurs, they would be permitted to give priority berthing to their own ships and they would service other ships on a first come first served basis.

The private entrepreneurs will be obliged to protect the national interests like national security whenever necessary and required, and also honour priority berthing orders of Central government in this regard. The private entrepreneurs will also abide by the various statutory requirements on the protection of the environment, anti-pollution measures, safety, conservancy, etc. and also abide by the directives issued by the Government/Port in this regard from time to time.

The Ports will with the approval of the Central Government take steps to frame regulations under relevant sections of Major Port Trust Act consistent with these guidelines to enable sector participation in Port Sector.

Till such regulations are framed, cases will continue to be governed by these guidelines.

5. FEASIBILITY REPORT

In the case of identified projects for private sector participation, the

Ports may prepare feasibility reports either through their inhouse expertise or by engaging competent consultants after following the normal procedure of tendering/short listing. Approval of the Ministry of Surface Transport to undertake the feasibility study will be taken wherever necessary.

Tenders will be invited for the project based on the Feasibility Report. The cost of preparation of the Feasibility Report would be recovered from the successful tenderer.

Projects to be executed through private sector participation need not be posed for approval of the investment to EFC/PIB. Even feasibility report for such projects need not go for clearance of Committee of PIB, since the cost of feasibility reports is ultimately to be recovered from the successful tenderer.

In the case where captive facilities are desired feasibility reports may be conducted by the entrepreneur/PSU desirous of constructing the facility. However, the feasibility report would be seen/scrutinised by the Port to see whether it meets the Port's approval.

(6) GUIDELINES ON PRIVATISATION

(i) Leasing out existing assets of the Port.

As far as leasing out the existing facilities to the private sector is concerned, such proposals should be normally considered only if such leasing will result in additional investment and augmentation/upgradation of the existing facilities/equipment and in increased traffic throughput/profitability/improvement in quality of service/better productivity. The proposals will be considered on a case to case basis on merits, subject to the following:-

a. The need will be assessed by the Port Trust Board.
b. Open tenders will be issued for leasing of existing assets to the private sector.
c. The period of lease will be decided upon by the respective Port Trust in each case, with the maximum period not exceeding 30 years. At the end of the lease period the assets will revert back to the Port free of cost including

equipment and augmented portion of assets, if any.

d. The lessee will undertake to keep the property of the Port leased to him in good condition and return it to the Port at the end of the lease period in good condition subject to fair wear and tear.
e. Bids will be invited based on two-cover system consisting of technical and financial bids. Financial bids of only those bidders will be opened who have been technically qualified.
f. The bidders will be asked to indicate in their financial bids (i) an upfront fee for the lease; (ii)royalty per tonne of the cargo to be handled; (iii) the minimum cargo which they will be willing to guarantee; (iv) the lease rent per unit area; and (v) any other financial parameter to be specified depending upon the facility to be leased.
g. Comparative financial evaluation of offers received from bidders who have been technically qualified will be based on the concept of maximum realization to the Port on Net Present Value basis calculated by using discounting rate as periodically fixed by the Government. Royalty for the purpose of analysis will be based on the minimum traffic which the entrepreneur guarantees.
h. In case any additional equipments are required to be put up by the entrepreneur, the Port will ensure that private entrepreneur puts up modern equipment and in new condition.

ii. Construction/creation of additional assets:

1. Construction and operation of container terminals.
2. Construction and operation of bulk, break bulk, multipurpose and specialized cargo berths
3. Warehousing, Container Freight Stations, storage facilities and tank farms.

CONDITIONS

a. The need for the project and the optimum land/waterfront required will be assessed by the Port Trust Board.
b. The requirement should be consistent with the Perspective Plan/Master Plan/Land Use Plan of the Port.
c. Open tenders will be invited for private sector participation on B.O.T. basis.

d. The period of licence including construction period will be decided upon by the respective Port Trust in each case, with the maximum period not exceeding 30 years.
e. At the end of the BOT period, all the assets shall revert back to the port free of cost.
f. Bids will be invited based on two-cover system consisting of technical and financial bids. Financial bids of only those bidders will be opened who have been technically qualified.
g. The bidders will be asked to indicated in their financial bids (i) an upfront fee for the licence; (ii) royalty per Tonne of the cargo to be handled; (iii) the minimum cargo which they will be willing to guarantee; (iv) the lease rent per unit area of land/waterfront; and (v) any other financial parameter to be specified depending upon the facility to be created.
h. Comparative financial evaluation of offers received from bidders who have been technically qualified will be based on the concept of maximum realization to the Port on Net Present Value basis calculated by using discounting rate as periodically fixed by the Government. Royalty for the purpose of analysis will be based on the minimum traffic which the entrepreneur guarantees.
i. It will be ensured by Port that the private entrepreneur puts up equipment using modern technology and in new condition.

(4) Cranage/Handling Equipment

CONDITIONS

a. The need for providing cranage/handling equipment by the private sector on an existing berth will be assessed by the Port.
b. Open tenders will be issued for private sector participation on B.O.T. basis.
c. Bids will be invited based on two-cover system consisting of technical and financial bids. Financial bids of only those bidders will be opened who have been technically qualified.
d. The financial evaluation will be done on the basis of maximum realization to the Port. The bidders will be asked to indicate in their financial bid (i) an upfront fee for the licence; (ii) royalty per Tonne of cargo to be handled; and (iii) the minimum cargo handling which the entrepreneur is willing to guarantee, or pay for.

There may not be any requirement to give any land on lease. If there is requirement for land for parking the equipment or for maintenance workshop etc., the financial bid should also contain the lease rent the bidder is willing to pay.

e. The period of licence shall be fixed by the Port Trust in each case keeping in view the useful life of the equipment. At the end of the licence period, the assets will revert to Port Trust free of cost.
f. The private entrepreneur will be required to install equipment using modern technology and in new condition.
g. The financial bids will be calculated on the basis of NPV of the returns to the Port, using a discount rate fixed periodically by the Government.

(5) Setting up of Captive Power Plants.

CONDITIONS

(a) The need for the project will be assessed by the Port.

(b) Guidelines of Ministry of Power and other authorities like Central Electricity Authority/State Electricity Board etc. have to be followed and clearances if any, obtained.

a. Open tenders will be invited with the stipulation that modern machinery/technology will be installed and in new condition.
b. Bids will be invited based on two-cover system consisting of technical and financial bids. Financial bids of only those bidders will be opened who have been technically qualified.
c. The private sector participation would be on BOT basis with a licence period to be decided by the Port Trust in each case with a maximum period not exceeding 30 years (including construction period) after which the facility will revert back to Port free of cost.
d. The tariff for the electricity sold to the Port would be fixed by the Port Trust in terms of the tender. It should in any case not be more than the State Electricity Board tariff applicable to the Port.
e. The Port may charge an upfront fee and lease rent for the

land for the Captive Power Plant at market rates. The basis of financial evaluation will be the lowest tariff quoted for sale of electricity to the Port.

f. Environmental clearance and other statutory clearances will be obtained by the Port Trust.
g. The electricity requirement of the Port should be fully met and thereafter the entrepreneur may be permitted to sell its surplus power.
h. Specified level of supply of power to the Port will be maintained by the BOT developer, failing which penalties should be imposed.

(6) Dry docking and ship repair facilities.

The basic principles will be the same as per Models (ii)(1), (ii)(2) and (ii)(3) above. However:

a. Financial evaluation will be based upon:

(i) an upfront fee.

i. the minimum guaranteed amount which the entrepreneur undertakes to pay per annum
ii. the lease rent per unit area for the land/waterfront.

a. The financial evaluation will be based on the concept of maximum realization to the Port, using NPV analysis.

ii. Leasing of equipment/floating crafts from the private sector.

These will be lease contracts, and evaluation would be on the basis of least cost to the Port. The Ports will have to ensure leasing of modern equipment/craft and in new condition. The equipment/craft can be taken on dry or wet lease. This can be combined with maintenance contract if require. If dry lease is resorted to, training of port personnel, if require, may also be included as part of the lease.

(iv) Pilotage

a. The need will be assessed by the Port Trust Board, on the basis of existing floating crafts/pilots.
b. Tenders with eligibility for only Indian Nationals will be floated in a two cover procedure.
c. The period of contract will be decided by the Port Trust Board.
d. Subject to being technically qualified/short listed by the Tender Evaluation Committee, the bidders will be financially evaluated on the basis of least cost to the Port.

(v) Captive facilities for Port based industries.

Cases where 100% captive facilities (land/waterfront) including captive oil jetties platforms or SBMs are sought by Port based industries, including Central/State PSUs, may be considered, if they do not conflict with the Master Plan of the Port. Such cases may be considered, without recourse to a tender, provided such industries are port specific and are approved by the concerned administrative Ministries, and the industry is willing to pay the maximum realisation which the port may determine taking into account all relevant factors. For this purpose, a port based industry will be one which requires 100% captive berths/back up area for the purposes of import of raw material and/or export of finished products and/or transportation of raw materials/finished products. General guidelines of BOT wherever applicable will be applied to cases of captive facilities.

(7) GENERAL TENDER CONDITIONS AND PROCEDURE

Private participation will be on the basis of open competitive bidding.

The tenders would be based on two cover system consisting of technical and price bids. After the issue of tender document, the port may arrange one or more pre-bid conferences for clarifications, if necessary.

The tender document will not give any kind of guarantee for financial returns to the entrepreneur.

The tender document should provide that port property, if any, being transferred to the entrepreneur, will be kept insured at the cost of the private entrepreneur. The private entrepreneur would not be permitted to transfer any asset by way of sub-lease, sale, sub-contract or any other method without the previous approval of the Port. The investors will not be allowed to abandon the services abruptly or dispose off land, machinery and other assets or to convert them partly or fully into non-port use.

All the provisions of the Major Port Trusts Act, 1963, Bye-Laws, Rules and Regulations made thereunder, any administrative or other directions given under the said Act, or the Scale of Rates or a statement of conditions prescribed under the said Act, the Customs Act, and all other statutory enactments in relation to the Port including labour laws shall be fully observed and complied with by the Licensee, and the Port shall be kept indemnified harmless from all claims or demands in this behalf, including any claims from labour.

The projects to be implemented through private sector should be given as wide a publicity as possible through advertisement in the national dailies. A copy of such advertisements in respect of major projects may also be sent to foreign Embassies/Consulates in India and may be given publicity in International journals.

The Tariff Regulatory Authority to be set up may fix a ceiling tariff and leave the private entrepreneur free to charge upto the ceiling at the rates to be notified by the entrepreneur. If the Tariff Regulatory Authority is satisfied, a suitable periodic increase(s) in tariff may be permitted on justified grounds. At the time of revision of tariff, again the revised tariff would only be a ceiling, with the Port and the entrepreneur having the freedom to charge below that tariff.

Environment clearance and other statutory clearances for privatisation projects would be obtained by the Port Trust or entrepreneur depending on the project and requirement.

Where Central/state Public Sector Undertakings are Port based industries and wish to create port facilities for their own captive use, they may be treated under the guidelines for port based industries. Other Central/State PSUs who wish to create port facilities as a common user facility and not for their own captive use need to come through the tendering route at par with private entrepreneur. However, Public Sector oil units would be treated as being port specific for the purpose of allowing them captive facilities and captive oil jetties/SBMs without recourse to the tender procedure.

Approval of the Central Government would be taken wherever necessary under Major Port Trusts Act, 1963.

(8) FOREIGN INVESTORS

Foreign investors can be considered for private sector projects if they have the necessary FIPB/Competent Authority clearances and have been registered as a company under the Indian Companies Act, or have the FIPB/ Competent Authority clearance and propose to be registered as a Company under the Indian Companies Act.

(9) PORT LABOUR

Before tendering out for private sector participation an existing port facility, ports should examine

a. the labour likely to be rendered surplus
b. possibility of redeploying and retraining such labour
c. after the above exercises, the port should identify the labour which has to be necessarily taken over with the facility and clearly bring it out in the tender document so that the intending tenderers are aware of the liability.
d. No retrenchment should be done without the concurrence of Labour and only in accordance with Industrial Disputes Act/relevant labour laws. However, voluntary retirement should be encouraged.
e. The lessee would be bound by all the labour laws of the country.
f. Conditions of service of transferred labour if any would not be inferior to what they enjoyed before.

(I0) GUIDELINES ON LEASE OF LAND

The guidelines on private sector participation and lease of land issued vide No.PD/11013/3/89-Pvt dated 12.4.1993, No.PT-17011/55/87-PT dated 1.4.1995 and vide No.PT-17011/55/87-PT dated 25.1.1996, to the extent they may be inconsistent with these guidelines, hereby stand superseded.