

PANORAMIC

PORTS & TERMINALS 2026

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HFW



LEXOLOGY

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Panoramic guide (formerly Getting the Deal Through) enabling side-by-side comparison of local insights, including into key ports; reform and port models; state development policy; green ports; legislative framework and regulation; public procurement and PPP; port development, construction and operation; corporate, finance, competition and dispute considerations; and recent trends.

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Global overview

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Ports and terminals today

The ports and terminals industry is evolving as ships get bigger and more technologically advanced, new ports are developed and existing ones are upgraded to meet new and more challenging demands. Additional players are entering the market as international operators, and the pressure to make the facilities and the wider maritime sector more sustainable is significant. There is increased competition for transshipment business, and many traditional domestic port operators are looking to replicate their success in international markets. The ports and terminals industry across the world is growing significantly and is attracting a number of international operators and investors through public-private partnerships.

Port facilities and the trades they service have had their fair share of impact from the conflict in Ukraine as routes adjust in light of sanctions and market shifts to cope with different supply and demand criteria. Odessa and the grain export business have been severely affected by the Russian invasion, and we have seen a number of European states adjust their terminal infrastructure to enable them to import gas, previously piped or shipped from Russia. It is a dynamic industry, and we have seen considerable evolution of late.

Ports and terminals remain vital to the global economy. Typically, they are the gateway through which a country trades with its main partners, and in many jurisdictions, the activity at the port itself represents a significant part of the domestic economy. In the United States and China, the world's two largest economies, the vast majority of imported and exported cargo moves through commercial ports. For coastal states and islands such as those in the Caribbean or the Mediterranean that rely heavily on tourism, particularly the cruise industry, ports are the lifeblood of their economies. The cruise industry has rebounded since the slump during the COVID-19 pandemic, with many of the cruise companies looking to invest in new state-of-the-art terminal facilities capable of handling their new, larger cruise ships. Controlling the entire cruise experience remains key for cruise lines, and the cruise terminal plays a vital part; this is not without its challenges, with some cities (such as Amsterdam, Venice, Nice and Cannes) restricting or banning large cruise ships from calling for fear of overwhelming an already saturated tourist market or permanently damaging key natural habitats.

In the container industry, the huge surge in demand post-COVID-19 placed an enormous strain on container terminals and, more recently, increased congestion around ports. This period represented a significant boost for shipping companies with freight and volume increases leading to a huge spike in profits. The order book for new and larger ships also increased, but the recent fall in demand and the slump in rates, combined with these new vessels coming on stream, is likely to put pressure on the shipping lines, which they will look to pass on to the terminal operators and others in their supply chain. A country's ports and terminals capability is often still seen as fundamental in defining its place in the global economy, an attitude reflected in the United Kingdom's reintroduction of freeports and

significant investment in ports in general following its departure from the European Union. The United Kingdom is still in the process of reshaping its regulatory landscape around ports and terminals post-Brexit and continues to face challenges around customs efficiency on EU imports and exports. Port privatisation is key in many jurisdictions, both as a means of attracting investment and international best practices from international operators into the port and also raising funds from the proceeds of the sale. Various jurisdictions are exploring privatisation projects, such as Saudi Arabia, which has awarded contracts relating to eight ports across the country, and Brazil, which is looking at various privatisation projects, including contracts relating to its flagship Port of Santos.

The increase in demand for gas from places like Qatar, which is then shipped on liquefied natural gas carriers, has led to an increase in demand for floating regasification facilities at terminals as a means of importing gas using relatively cheap and flexible infrastructure. The Russia-Ukraine war has disrupted gas supplies, particularly for Europe, leading to an increased reliance on alternative energy sources like LNG and the need for floating regasification facilities. Markets in Asia and South America are also increasingly adopting floating regasification facilities to meet their growing energy needs.

A vast and increasing number of ports and terminals are globally in operation, and their operating structures, capabilities and objectives are diverse. Some ports have only a passenger or cruise terminal; others might also handle (or only handle) cargo, while others consist of one or more specialist terminals such as bulk, container, and liquid petroleum gas or liquid natural gas terminals. Terminals may then be further segmented into gateway terminals – that is, terminals used primarily for the importing of cargo – or transshipment terminals that move cargo from one vessel to another.

Constructing or developing a port or terminal generally requires significant financial investment, and governments and port authorities are not always willing or able to make such an investment. We have seen an increase in public-private partnership projects and countries running increasingly sophisticated tendering processes. Many countries still demonstrate nervousness and suspicion in allowing private enterprise to operate vital domestic infrastructure, and the concession terms and the negotiations reflect that concern. Striking the right balance is not always easy when trying to attract much-needed private capital and international standard operators (who will increase competitiveness for a discerning customer base of ship operators and customers), as well as access to international lenders.

At the same time, corporatisation and privatisation of ports have been shown to lead to increased profitability and enhanced employment opportunities. There have, consequently, been major changes in the ownership and operating structure of many ports, driven by the increasingly prominent role of the private sector both as a source of finance and as the provider of some (or in some cases all) of the services required for the successful operation of a modern port. This, in turn, has led to a diminished or altered role for the traditional owner and operator of a port: the port authority. Whatever the separation of roles between a port authority and a port operator or services provider, and whatever the type or location of the port, the most important party is ultimately the port customer. Without sufficient customers and volume, any ambitious new port is destined to be a white elephant, as indeed has happened in some countries. The shipping lines, which have grown in size and influence through the increase in cargo traffic, through consolidation and the resultant increased market share (sometimes as a result of strategic mergers and acquisitions (M&A))

and sometimes as a result of the demise of competitors, such as Hanjin), and through the establishment of pacts such as Gemini (between Maersk and Hapag Lloyd), the Ocean Alliance (between CMA CGM, Cosco, OOCL and Evergreen) and the Premier Alliance (between ONE, HMM and Yang Ming), are putting pressure on port operators to be more competitive and provide more efficient services. At the same time, the shipping lines are key drivers in the further development of ports; for example, the ever-increasing size of container ships being built on behalf of shipping lines (the two largest ever container ships (both over 24,000 twenty-foot equivalent units) were built for MSC in 2023) means that many container terminals will need to continue to invest in their infrastructure and superstructures or equipment to be able to attract the volume from such vessels. The prohibitive cost of these investments is an important factor in the rise of the private sector in ports. This, in turn, has led to consolidation among port operators through M&A activity and an increased number of joint ventures in relation to specific greenfield or brownfield port projects between port operators that otherwise compete with one another in other ports.

Getting a deal through – be it the development, operation, sale or purchase of a port or terminal – requires an understanding of the roles of all the key parties involved in a port or terminal project (such as the port authority, port operator, shipping lines and any employee unions) and the dynamics between them; the legislative and regulatory backgrounds; and the different services that need to be provided at a port (for example, marine services, cargo handling and safety) as well as who needs to provide them.

Environmental issues

The heightened global environmental awareness owing to climate change and health issues has not left the port sector unaffected. On the legislative side, there are obligations – for example, those in the European Union that require ships to burn fuel of 0.1 per cent sulphur content when within a Sulphur Emission Control Area and 0.5 per cent elsewhere within the European Union after 1 January 2020. Additionally, the implementation of the FuelEU Maritime Regulation now requires all ships calling at ports in the European Economic Area to monitor, record and ultimately reduce the intensity of greenhouse gas emissions in line with the Regulation. Furthermore, on a global scale, the International Maritime Organisation has also approved a Net-Zero Framework, which will implement mandatory reductions and pricing in relation to greenhouse gas emissions on all ships over 5,000 gross tonnage that operate in international trade globally.

At the same time, when awarding concessions, port authorities are increasingly examining port operators' green port credentials and proposals such as the following:

- use of cold ironing or shore power;
- zero emissions technology for port equipment and vehicles;
- sustainable power generation (that is, wind and solar);
- reduction or management of water run-off;
- effective dust suppression systems for dry bulk cargo (such as dry fog); and
- use of recycled concrete and other green construction materials.

In addition, some ports – such as the Port of Rotterdam, the Port of London, the Port of Amsterdam, the Port of Gothenburg, Hamburg Port and Copenhagen Malmö Port – provide

discounts on port dues to sustainable seagoing vessels, which are vessels that score highly on the Environmental Simulations International (an international benchmark for emissions from seagoing vessels) test. A growing move towards the introduction of similar discounts is evident throughout the European Union, and this development is sure to continue and affect the way in which ports are constructed and operated.

Commitments on maritime decarbonisation were also made at the COP29 United Nations climate change conference in November 2024. Over 50 maritime leaders signed a Call to Action to achieve 5–10 per cent adoption of green fuels such as ammonia and methanol by 2030. Other significant outcomes include a New Collective Quantified Goal on Climate Finance pledging that developing countries will provide at least US\$300 billion a year by 2035 for developing countries to respond and adapt to the impacts of climate change. This goal is intended to be a floor, with an aspiration to raise US\$1.3 trillion annually by 2035 from both public and private investment sources. COP29 also reached an agreement on carbon trading under Article 6 of the Paris Agreement, establishing the framework for bilateral carbon trading and a centralised crediting mechanism.

There is an international trend towards incentivising green change, particularly in sectors such as transport. Legislation like the Environment Act 2021 in the United Kingdom has had a significant impact on port development and operations. Ports are affected not only by regulations on air quality and pollution, but also by regulations that demand the preservation of natural habitats. In developing and expanding ports, parties now must consider how they will do so without affecting the existing natural environment. For example, from November 2023, proving that the impact of a development has been offset in such a way that it creates a net gain in biodiversity will become a condition to obtaining planning permission. This shift towards decarbonisation is already being reflected by companies like Maersk, which, at the time of writing, has a total of 14 dual-fuel methanol propulsion newbuild vessels in its fleet and has an additional five vessels in this new class of container ships on order. As uptake on vessels with green technology increases, the shift towards decarbonisation may quicken exponentially as it becomes cheaper to do so. Ports, as an integral part of supply chains, will need to follow suit.

An indirect effect of new green legislation on ports may be that they have to adapt to processing new types of cargo. At present, many ports worldwide have sophisticated facilities for processing bulk fossil fuels such as coal, which may have to be adapted or replaced to accommodate new types of bulk as fossil fuels are phased out.

Port authorities and operators

The port authority has traditionally been the governing body in most ports and is usually part of, or supervised by, a ministry (typically the merchant ministry, the ministry of transport or the ministry of public works) of the country's government. The powers and duties of port authorities include:

- establishing the standards and codes to be observed by the providers and users of marine and port services and facilities;
- controlling the navigation within the perimeter of the port and the approaches to the port (including providing adequate navigational aids and disseminating navigational information);

- regulating the charges and fees payable by users of the port facilities;
- providing marine and port services and facilities such as towage, pilotage and berth scheduling (and, where applicable, exercising licensing and regulatory functions in respect thereof); and
- generally improving, developing and promoting the use of the port.

Where the port authority is established at a national level, it may additionally be tasked with exercising regulatory functions in respect of merchant shipping, particularly in respect of safety at sea, the manning of vessels and the prevention of pollution at sea. Its functions may also include:

- promoting and safeguarding a competitive, fair and efficient market (to the extent that this is not the prerogative of an over-arching national competition policy administered by a competition commission or similar);
- developing, promoting and regulating employment and training within the shipping and port industries;
- promoting the development of merchant shipping;
- advising the government on matters relating to marine and port services and facilities (and on sea transportation generally); and
- representing the country at an international level (for example, at the International Maritime Organisation) in relation to marine and port matters generally.

In some countries, a port authority exercising the regulatory functions mentioned above may actually be a body called the ports regulator, with one or more separate port authorities supervising the operational aspects of the country's ports.

Many countries have, in the past few decades, succumbed to pressure to devolve the responsibility for the improvement of ports and their performance to self-sustaining (incorporated) entities, and to eliminate the provision of governmental subsidies and other state aid to them. Stakeholders such as the shipping lines calling at ports, as well as terminal and logistics operators, have been clear about the need for a modernisation of port governance practices, with a view to improving performance and efficiency. This has largely been achieved through corporatisation. This is the process by which a public port enterprise is transformed into a private corporation (although, unless the corporatisation is followed by some form of privatisation, all or some of the equity in such a corporation remains in public hands following the corporatisation). Corporatisation leads to changes in the institutional structure of the port business, which in turn often leads to the increased involvement of the private sector in the exploitation and financing of port facilities, terminals and services. Port authorities have become more autonomous through the devolution of decision-making from the government to the port company's directors, who are accountable to the corporation's shareholders (be they the state or private institutions or individuals). This has produced greater transparency in relation to port authority development and the prioritisation of business and customer satisfaction.

True privatisation of port authorities – in other words, the sale of shares in the entity that owns the port land or exercises regulatory functions – is relatively rare. For example, the privatisation of the Piraeus and Thessaloniki ports in Greece through initial public offerings (IPOs) in the early 2000s was actually an offering of shares in companies that had

concessions to run the respective ports for a finite period of time. Similarly, the subsequent privatisation of those ports in the wake of the Greek debt crisis – that is, the sale of a majority stake in the Piraeus Port Authority to COSCO for €280.5 million and the sale of a majority stake in the Thessaloniki Port Authority to a consortium including Deutsche Invest Equity Partners GmbH, Terminal Link SAS and Belterra Investments for €232 million – is actually nothing more than the sale of shares in those two listed companies that were retained by the state at the time of the earlier IPOs. Of the larger developed countries, only the United Kingdom has implemented outright privatisation of some of its ports.

Rise of concessions

The term ‘privatisation’ is often used to describe something that is actually quite different from the United Kingdom’s model. It usually refers to the process of the port authority (or other relevant governmental body or entity with the relevant rights and powers) granting to a private party certain rights and obligations in relation to a port for a number of years under a concession agreement. This is, in essence, a public–private partnership. In these partnerships, governments (acting through the port authority) will retain – or rather, create – the role of port regulator and also often act as the provider or licensor of marine services and sometimes land developers. The private party will assume responsibility for the financing of the port development and for the running of port operations, theoretically for a sufficiently long period of time to make a return on its investment. The appeal of concessions is that states can transfer a major part of the financial and operational risks in developing and operating terminals to the private sector, while permitting them to retain ultimate ownership of the port land and responsibility for licensing port operations and construction activities, thereby safeguarding public interests.

Concession agreements and leasehold agreements are quite similar, and, in some jurisdictions, they are considered to be more or less the same thing. In practice, a concession agreement typically goes further than a lease in that it governs the entire relationship between the government and the private sector regarding the right to exploit port land and facilities, as well as the obligation to construct port infrastructure and provide superstructure. A lease is sometimes entered into in addition to a concession agreement so that the leaseholder’s (concessionaire’s) interest in the land can be registered with the relevant land registry or cadastre.

How far a government will go in terms of transferring responsibilities for port development or operations to the private sector through concessions depends on a number of factors, including:

- political considerations and the underlying constitution or legal regime;
- financial investment capabilities and the anticipated returns profile of the project;
- the extent of the port authority’s ability and desire to provide services in relation to the port; and
- the power of stevedores’ and other port employees’ unions.

Sometimes, a port authority will also, in addition to entering into a concession agreement, have an interest in the company that is granted the concession. By investing equity, the port authority participates in the economic success or failure of the concession and becomes more directly involved in port operations, but this is not always permitted. Such participation

may be acceptable if there is a monopoly in the port (and there is therefore no existing or potential intra-port competition), but in other cases a conflict of interest may arise between the roles of the port authority as an investor and as the regulator of the monopoly (unless the two roles have been adequately separated from one another). There is always a delicate balance between the state and private enterprise, and certainly, in our experience, private port operators are acutely aware of their responsibility to the wider community living and working in and around the port and invest time and money in various community-based initiatives.

Port concession tenders

Not all countries have the necessary legal frameworks to grant concessions. In some cases, there is a general law dealing with concessions that may cover ports, but if the country is implementing a wholesale privatisation of its ports, there may be a specific law in force. Sometimes a law needs to be passed specifically to enable the port authority to grant a concession or for the government to ratify the grant (and in some jurisdictions, for a specific concession). Generally, these laws set out the extent of any concession in terms of its duration and the port services for which the port operator may or may not take responsibility under the concession. They will sometimes also deal with the right of – or, as the case may be, prohibition on – the state or port authority taking an interest in the company (usually via a special purpose vehicle) that will be awarded the concession.

Where the granting of a concession is permitted under such laws, the awarding authority usually runs an open tender and awards the concession to the tenderer that offers the terms that are most beneficial to the state. These tenders are usually split into phases. In the first phase, tenderers typically evidence their technical qualifications and financial wherewithal to design, construct, finance, operate and maintain the port or terminal (or relevant services there). Subject to satisfying the technical and financial qualification criteria, tenderers then proceed to the next round, where they are given the opportunity to investigate the project further, comment on the concession terms and provide their binding offers. This round is sometimes followed by a further negotiation round with one or two of the tenderers.

The need for an open tender, as opposed to a bilateral negotiation with a port operator, is usually driven by the existence of national procurement rules designed to ensure that the state is achieving the best possible deal available to it at the time. A tender may also assist in countering claims that the terms of the concession constitute unlawful state aid, on the basis that the tender process will have served to test the market and that the terms are therefore the best achievable on an arm's-length basis. The need for a tender may also be driven by the involvement of international financing institutions such as the World Bank, the International Finance Corporation or the European Bank for Reconstruction and Development, which may require a transparent process to provide financing for the project. In our experience, these procurement processes have become increasingly common, together with the need for absolute transparency and objectivity in the selection process.

International financing institutions have shown increasing interest in the port sector, seeking ways to facilitate port reform by either providing expertise or direct financing through commercial loans or subscription for project bonds.

Some port category terminology

As a result of the changes in the way ports are organised, structured and managed following varying degrees of port reform, ports now tend to be categorised as either service ports, tool ports, landlord ports or fully privatised ports. Service and tool ports mainly focus on the realisation of public interests. Landlord ports have a mixed character and aim to strike a balance between public (port authority) and private (port industry) interests. Fully privatised ports focus on private (shareholder) interests.

In a service port, the port authority owns, maintains and operates every available asset, whether fixed or mobile. Such ports are usually ultimately controlled by the relevant ministry (such as public works, transport and maritime), with the director of the port being a civil servant appointed by the minister concerned. The number of service ports is declining, as many former service ports are gradually becoming landlord ports.

Tool ports are similar to service ports, but stevedoring is usually carried out by private firms.

The landlord port is characterised by its mixed public–private nature. Under this model, the port authority acts as the landlord and often as the regulatory body, while private companies carry out the port operations (especially stevedoring) pursuant to a concession.

The private port operators provide and maintain their own superstructure, including buildings (offices, sheds, warehouses, container freight stations and workshops), and purchase and install their own equipment on the terminal as required by their business.

Fully privatised ports are few in number and lead to the state no longer having any meaningful involvement or public policy interest in the port sector, although these ports are still subject to the overriding laws that affect all infrastructure assets, such as land planning and environmental and health and safety legislation.

** The information in this chapter was accurate as of July 2025.*



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