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A COMMENT ON THE RENEGOTIATION PROVISIONS WITHIN THE CONTRACT OF TAIPEI PORT BOT PROJECT

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Abstract: The concept of renegotiation that was derived from the international production sharing contracts whose periods are usually quite lengthy is in conflict with the principle of the sanctity of traditional law. Following the trend of privatization in Taiwan, many infrastructure construction projects have been undertaken by private enterprises through an assorted number of BOT project consortiums. Due to the long contract periods of these BOT projects, various unforeseen uncertainties have been occurring which had not been anticipated during the initial signing of contracts, and hence, renegotiation talks have on numerous occasions been necessary for these BOT contracts, like many international contracts, to protect the financial interests of all parties concerned. In this paper, the Taipei port BOT contract is investigated to examine whether the possible difficulties of interest disequilibria, resembling several international contracting impediments, have also appeared in this particular contract. Certain aspects of this BOT contract seem to ascertain that governmental delays are to an extent protected by the renegotiation provisions in this contract. Furthermore, some unverifiable terms in the contract have yet to be clarified, and, thus, agency problems seem quite likely to occur during this contract period. On the other hand, the possibly increased value of this contract due to these renegotiation provisions has not been evaluated, either. Thus, we believe that these findings could perhaps be very beneficial and informative at the signing of such contracts to maintain the best of outcomes.

Key Words: Renegotiation provisions (clauses), Arbitration, Holdup effect, Agency problem, a first-best outcome.

1. PREFACE

Putting renegotiation clauses into a contract contradicts the traditional concept that a signed contract is unchangeable by law. Many natural resources exploitation projects in both undeveloped and developing countries have been controlled by industrialized nations by means of the production sharing method, where long-term contracts are often setup with the

host countries. Many incidents cannot be fully foreseen while signing these long-term contracts. For example, a host country usually finds great interest after a case has been successfully exploited, and afterwards, this host nation desires to change the originally agreed upon policy to obtain or grasp a not-so-well-defined interest in the contract. And, thus, in the process of grasping this undefined interest, some unforeseen risks often prevent the implementation of finalization of the contract according to the originally agreed clauses. In the aforementioned circumstances, such a lack of finalization might cause the necessity of re-negotiation clauses to be added.

In light of the prevailing global concept of privatization, numerous Taiwanese state-owned enterprises have followed this trend, and some of them have already attained privatization by various possible means. Some of the chargeable items that were originally handled by the Port Authority are now done by private enterprises through franchise agreements. To run the Port-related business, firstly enough capital must be provided by investments to make such facilities possible such as the waterway, wharfs, gantry cranes, moving equipment and warehouses. However, different forms fit different needs during the process of transfer. For those regions that were not invested in, those could be developed according to the amount required. If the investment is not sufficient for supporting a BOT project the way of agreement construction could be applied. If the requirement is to the facility that already exists, the method of leasing operations could be applied.

The Phase Ⅱ Construction Programs of the Taipei Harbor is one of the「Challenges of 2008 of the National Development Plan」. The Project contains seven international standard Container Berths, which are built by the method of dredging and backfilling, and the draft of the fairway is 14.5 meters; the total quay length is 2,366 meters; and the total area of the Base would reach 110 hectares. The approximate estimates of investment costs are at 208 billion NT dollars, with an operating capacity of 2 million and 80 thousand TEU (each container yard is calculated based on 400 thousand TEU.) This investment is much larger than most previous international commercial harbor franchise agreements or lease operations projects; therefore, the Central Government has provided several incentives to the private sector to encourage more investment. According to the Articles 8-1-1 in the special law for promoting investment from the private sector, the door is open for private enterprises to form a consortium company to carry out implementation of a BOT project.

Due to the large amount of investment and long-lasting contract period involved, the ultimate effect on parties, the competitiveness of Taiwanese international trade, and the resulting efficiency of port management will each be greatly influenced. To decrease the possibility of unexpected losses and potential arguments in executing the contract, renegotiation clauses have become very important to add in order to solve unexpected problems and increase the

possibility to successfully implement the contract in full. However to maximize the ability to execute the contract instead of creating a new barrier, it is important to make every aspect of the renegotiation clauses of the contract "crystal clear" and as complete as possible to better protect the interests of both/all parties involved.

The inevitability of renegotiation clauses for the Taipei Port Project is one instance that has previously never occurred for such a large scale of investment. However, it seems quite likely that such clauses will be essential, resulting in a probable trend for other similar BOT contracts involved in large-scale contraction of buildings and leasing of operations. Hence, review of these renegotiation clauses of the Taipei Harbor BOT Project shall become even more vital to serve as a reference for handling of future disputes and other major construction and operations leasing agreements.

Renegotiation clauses originated from the exploitation contracts for energy mining projects, where long-term results and multicultural understanding and linguistic gaps between different countries existed. The reason why renegotiation clauses attract academic attention now is that this kind of addition seems to violate the commonly accepted view of the unchangeable spirit of signed contracts. On the other hand, the existence of renegotiation clauses cannot seem to solve every type of problem that arise in contracts; furthermore, added clauses might also destroy the mechanism used to solve the hold-up problem of the optional contract.

The second part of this paper is the literature review of previous related research on negotiation clauses; the third part will describe the forms of renegotiation clauses and the related content of contracts of the Taipei Port BOT Project, the fourth part will examine the character and the problems what will be aroused from the contracts, and the fifth part is the conclusion and suggestions of this paper.

2. LITERATURE REVIEW

The study of renegotiation clauses can be viewed from two varying perspectives. The legal perspective focuses on how multinational contracts for natural-resource exploitation was resolved. While host countries needed more feedback during the exploitation of natural resources by investors, procedures and components needed to be established to make the renegotiation clause more practical. The economic perspective focuses on how to design the best trading mechanism to guarantee the mutual interests of both sides. This concept is applicable regardless of industry or locality commodities involved.

Until now, the law and judicial system have been deemed as a part of circumstance according

to the study from the economic perspective, which is an exogenous variable. However, due to systematic defect or no clear confirmation found to these affairs occurred, we still can proceed in two directions of study independently.

2.1 The Legal Perspective

The last half-century has witnessed numerous examples of renegotiation in international business. Kolo and Waelde inspected many transnational agreements, such as the natural resources exploitation contracts in the 1960s and 1970s, the loan " rescheduling" of the 1980s following the debt crisis in many developing countries, and most recently the "restructuring" of project agreements and financings required by the Asian financial crisis of the late 1990s, and then raised the way to solve the dispute by international comparative law, international law and the practice of international contracts.

Salacuse believed that every executive who engaged in multinational business should obtain the knowledge and skills of handling renegotiation clauses. In another article, Salacuse pointed out that the discussions of renegotiation apply the term to three fundamentally different situations. Firstly, (A) Post-Deal Renegotiations follow the below-stated guiding principles: (1) Provide for Post-Deal Renegotiations in the original contact. (2) Individually and jointly review the history of the relationship during original contract. (3) Understood thoroughly the alternatives to the deal. Secondly, (B) Intra-Deal Renegotiations are focused on balancing the contractual stability and flexibility and follow these five approaches: (1) The implicit minor renegotiation clause (2) Review Clauses (3) Automatic adjustment clause (4) Open-term provisions (5) Renegotiation clauses. Thirdly, and lastly, (C) Extra-Deal Renegotiation is categorized by Salacuse as the need for extra-deal renegotiations due to (1) the parties imperfect contract and/or (2) changed circumstances. The characteristics, policies and skills of these three renegotiation situations are quite different; thus, we need to pay special attention to the case of Extra-Deal renegotiation due to the complexity and difficulty that has a great influence to both parties.

Berger pointed out that in modern-day international investment practice, especially in connection with the exploitation of natural resources, production-sharing agreements have come to take over the role of the classic concession agreement. These contracts are particularly vulnerable to disturbances in the commercial balance agreed to, or assumed by, the parties at the conclusion of the contract.
Berger had compared the difference in handling imbalance business interest problem in the case of contact without and with renegotiation clauses. In cases where there is no express renegotiation clause, investors frequently rely on either a force majeure clause included in the contract or the hardship concept of international contract law. And, in the drafting practice if

modern Production Sharing contracts, the parties always agree on precautions for an unfavorable alteration in the economic equilibrium of the contractual duties they assumed at the time of concluding the contract.
The agency (investor) problem caused by both contracting parties, such as holdup or collusion events, is often left undecided in the courts in most cases. Therefore, renegotiation clauses, such as the following, have emerged endlessly over the years: AMINOIL clause in 1964, Ghana/Shell clause in 1974, Ok Tedi clause in 1976, Lasmo clause in 1992 and Qatar clause in 1994.

Berger further indicated that the arbitration agreement is required in order to put renegotiation clauses into full function. The arbitration power shall be given to the tribunal to solve the problem. In the meantime there is a clear definition in the contract about the trigger event during the negotiation and the procedure of the renegotiation

2.2 The Economic Perspective

Different from the Legal Perspective focusing on provisions and procedure, the Economic perspective emphasizes on the exchange mechanism, and to block the opportunistic behavior of both parties of the contract without applying for a legal solution.

The opportunistic behavior is a kind of long-existed governance problem. It can be found in Adam Smith's "The wealth of nations". However, it became more complicated following the development of modern economics, the size of business enterprises, and the greater amount of trade. After the analysis of Jensen and Meckling about the agency (investor) problem of the business managers using the economic approach, more studies spotlighted the concept that business managers were usually better at benefiting stockholders.

The first study on the opportunistic behavior was found in the Transactions Cost Economics written by Coase. Then Williamson developed a complete governance optional model, and indicated that there existed many incentives to drive one party to take advantage of the other by deceptive methods. Opportunism more often came while one party was in a disadvantageous position or difficulty. The stronger party could easily holdup or take advantage of the other weaker party. For example, when a contacting contract is signed between a port authority and a firm, the port authority guarantees to pay the total agreed amount in advance, thus, giving the firm a motive to possibly do shoddy work and/or use inferior materials. This is clearly an agency problem. On the contrary, the agreed amount should be paid only upon completion, and then, the port authority has the motive to request reduction by holdup the firm.

Khan, Tirole, Vickers and Yallow all believed that the privatization of the utility sector and basic infrastructure did not increase any efficiency, because of the incomplete legal system of many developing countries which handicapped the potential for efficiency. Without adequate legal reforms, efficiency cannot develop. Tirole discussed the opportunistic behavior originated from purchasing and negotiation clauses on the assumption of asymmetric information. He thought the white elephant phenomenon, a kind of overinvestment situation, is happening after the privatization of public utility businesses. If the contract were signed incompletely, the more white elephants and holdup situations would happen.. Besenko and Spulber suggested adopting periodic negotiations to maintain the benefit balance between contracting parties. Hart and Moore discussed the purchasing relationship between two private business partners, under the assumption that information is symmetric but unverifiable. Their research found under the uncompleted contract, buyer and seller fixed the price to purchase relationship-specific merchandise. If the contract allowed renegotiating the price after the reinvestment is completed, then the seller can obtain the unexpected profit. Aghion, P.M. Dewatripont and R. Roy and Noldeke, G. and K. Schmidt proposed the design of a buyer's option mechanism to solve the holdup problem. In their essay, the methods of financial hostages or per diem penalties were raised to intensify the bargaining power of both parties.

Che and Hausch, Segak and Harts and Moore, based on game theory, had proposed the renegotiation models to invalidate the optional contracts. Edlin and Hermalin still argued if the threat-point effect is exceeding the holdup effect, then the contract can find its first best outcome according to the design of purchasing options. Lyon and Rasmusen believed that part of the holdup problem could be handled by using a purchasing option. Saavedra indicated the overinvestment or under investment situations would occur if the contract body were the government. Therefore, it is very important to regulate the contract opportunistic behavior in the developing countries by establishing a better legal system. Chung studied the TIOLI (take it or leave it) option. Bassok and Anupindi, Li and Kouvelis, Tsay, Tsay and Lovejoy, Cachon and Lariviere all tried to find the way how to reach the first best outcome by using the method of renegotiation clauses and optional contract in different situations.
The above-mentioned essays all studied the case of one buyer. Plambeck and Tayler further studied the case of one seller and two buyers and the positive contribution to the benefits of the whole supply-chain system that were found in applying the renegotiation clause and optional contract.

In summary, the outcome of all of these studies, we found that no matter how the original contract was signed, when one party is losing the deserved benefit in executing the contract, the process of renegotiation is inevitable.

3. TAIPEI PORT BOT CONTRACT

A feasibility study and pre-plan was launched in June 1999, for the project of enlisting the private sector to participate in the Construction and Operation of the Taipei Port Container Storage and Transportation Center, i.e. "Taipei Port BOT Project". In February 2001, the Executive Yuan approved the project was to be handled according to the Law for Promotion of the Private Sector Participation in Infrastructure Projects. After 4 years of fluctuation, a formal contract consisting of 20 chapters was finally signed on August 28th, 2003. The following are to illuminate the related section of the renegotiation clauses

3.1 Renegotiation Terms

Chapter 18 is entitled "Communication, Coordination, and Dispute Settlement." Section 1, "Communication" stipulated maintaining both communication and negotiation in order to settle disputes between both parties. Section 2, "Coordination" stipulated establishing a "Coordination Committee" consisting of representatives sent by each party. In the Appendix 18.2, "Articles of Association of the Coordination Committee of Taipei Port Container Warehousing and Transportation Center, Articles 1 and 2 set out the Committee's missions and structure.
Section 3, the "Settlement of Disputes and Applicable Laws" has three subsections:

18.3.1 Arbitration

If no resolution on the dispute has been made three months after the Coordination Committee's mediation, or if any party has an objection against the resolution, both parties agree to lodge the dispute to arbitration in Taipei of the Republic of China in Chinese according to arbitration laws and procedures

18.3.2 Applicable Laws

The formulation, alteration, effectiveness, performance, and interpretation of any document related to the Contract shall be made according to the laws of the Republic of China. The Law for Promotion of Private Participation in Infrastructure Projects prevails when there are any inconsistencies.

18.3.3 Continuous Performance

When settling the dispute, both parties shall continue to perform this Contract except that the all terms of the Contract are terminated.

In Chapter 15 of the Contract, Section 1 states that severe natural and man-made disasters are Force Majeure. Section 2 defines that the "Exceptions" shall be those issues not attributable to Party B (Taipei Port Container Terminal Corporation) for geography or change of government

acts that may significantly affect construction and operation under the Contract. Section 3 sets out the procedures for notification and recognition of the Force Majeure and the exceptions. Section 4 sets out the consequences of the recognition. This section defines conditions for contract modification. Paragraph 15.4.5, "Termination of the Contract" provides that Taipei Port Container Terminal Corporation has the right to terminate the Contract.

3.2 Performance Bond

Chapter 14 defines the performance bond. It states that Taipei Port Container Terminal Corp. shall provide NT$700 million as a performance bond, which will be refunded NT$100 million upon the completion of each dock. After completion of all 7 docks the performance bond will be completely refunded. Therefore the operation period's performance bond is NT$300 million; resulting in the operating period's highest risk being the forfeit of NT$300 million.

3.3 Calculation of Project Expenses and Transfer Price

Regulations for docks construction expenses are set out in Chapter 12 of the Contract. The expenses are to be calculated according to the Project Budget Sheet and revised once a year. The adjustment amount for each revision shall not exceed 2% of the total price set in the General Project Budge Sheet.

3.4 Basic Fees, Changing Premium, Feedback Payment, and the Exemption and Half Exemption of Basic Fees

(1). Basic Fees

Basic fees are all-inclusive and include land rental, fixed premium, and changing premium not exceeding 250,000 TEUs, totaling NT$60 million/dock a year. Changing premiums are to be collected for the part exceeding 250,000 TEUs for each dock. Basic fees and changing premiums are subject to adjustment according to related regulations.

(2). Feedback Payment

If the annual rate of return on common shareholders' equity of any licensed company during the licensing period is above 30%, the licensed company shall retain 1.5% of the amount multiply the average return on common shareholders' equity by the rate above 30% as feedback payment for Taipei Port Company.

(3). Exemption and Half Exemption of the Basic Fees

The chapter's final section prescribed the conditions for basic fees' exemption and half exemption as follows:

- If the Pali-Wuku section of the Pali-Hsintien east-west expressway is not completed by March 31st, 2008, Party B shall pay Party A half of the basic fees during the period

of delay according to this Contract;

- If the section is not completed by March 31st, 2010, Party B will be exempt from the basic fees during the period of delay;
- If the period of delay does not exceed one year, the basic fees will be deducted in proportion accordingly.

3.5. Standards of the Port Operation Charge Rate and Conditions for Adjustment

The port operation charge rate is the Taipei Port Project Company's operating income during the licensing period based on the company's profit status. The following are important provisions:

(1) Charge rate and the conditions for and mode of adjustment during the licensing period are subject to the Ministry of Transportation and Communication regulations dated March 19t, 2003. Bottom elastic limit for dock charges is 60%, and the port charges limit is 80%. The contractual charge rate agreed between the company and shipping companies, shipper, and other subscribers is not limited by the elastic limits.

(2) The Company may immediately prepare a review and analysis report and submit it to the transportation administration for approval if the Taipei Port Container Charge Rate of the Company adjusted according to the approval of the transportation administration is implemented for over 2 years and for successive two years the minimum containers handled are met, but expected rate of return on common shareholders' equity for the two year are not reached, or significant increase of the operating costs caused by significant policy changes (including alteration or promulgation of laws), fast change of the ocean transportation market or the occurrence of the Force Majeure or exceptions set out in Chapter 15 of the Contract.

(3) The charge rate standard adjustment shall be made based on the rate of return on common shareholders' Company equity. The Company may formulate a plan to increase the charge rate if the rate of return is less than 25% of that of common shareholders' equity for the next year as set out in the approved financial plan, and after re-review the elastic charge rate.

3.6 Financing

Chapter 13 of the Contract stipulates that the Harbor Bureau shall, according to Section 2, Article 52, of the Law for Promotion of Private Participate in Infrastructure Projects, approve the Taipei Port Project Company may cause the assets, equipments and superficies acquired for the construction and operation burdened on a financing institution. At the same time, the Harbor Bureau agrees to assist the Harbor Port Project Company to apply for utilization of the "mid- and long-term capital" to the Economic Construction Committee of the Executive

Yuan.

3.7 Assessment of ongoing operations

In Section 2, Chapter 4, of the Contract, it is stipulated that if the Taipei Port Project Company satisfies the performance assessment upon the licensing period expiration, it has the priority to renew the contract for ongoing operations.

4. ANALYSIS ON THE CONTRACT CONTENTS

Terms on renegotiation have become important in multi-national contracts especially those on long-term, great risk, and large amount natural resources development. Taipei Port BOT project has the same characteristics. The domestic contract has the following characters: (1) no sovereignty-related problems; (2) no cultural differences; (3) no problems of space, contact can be made at any time; (4) no currency differences; (5) recognizable issues and easy to solve such problems comparing to multinational contracts. However, multinational contracts depend on international laws, international arbitration institutions, and pressure and credit between signatory countries, which are unavailable to the project company. In developed countries and societies with a highly developed democracy and well-built and independent legal system, the judicial system is the ultimate arbitration institution. If these conditions do not exist, problems in domestic may be more serious than in foreign countries. Both parties to the contract should make the terms and conditions complete, so as to avoid the weaker party from being exploited by the problems of agency and coercing in the contract's performance.

After reviewing the contents of the Taipei Port BOT Contract, the following sections will discuss the possible problems of agency and coercing from the respects of the completeness of the elements of law and handling procedures and the economic meanings of the provisions.

4.1 From the Legal Perspective

(1) Renegotiation provisions category

According to the classification of Salacuse renegotiation provisions, Taipei Port BOT Contract covers renegotiation terms at the end of the contract term and the contract term. Renegotiation at the end of the contract term refers to ongoing operation assessment set out in Section 2, Chapter 4. The other regular reviews on operation status and renegotiation items are renegotiation terms for the contract term. In addition, the Contract includes the non-contractual renegotiation so called by Salacuse in the contract term. That

is to say, it defines the amount of compensations for the effects of Force Majeure, exceptions, and change of policies. From this point of view, the contract covers a wide range of renegotiation.

(2) Renegotiation procedures

a. Trigger Event: The Contract clearly defines those issues subjected to renegotiation such as Force Majeure, exceptions, damage, and policy changes, etc. It clearly defines those items likely to be affected, such as the charge rate, operating volume, basic fees, and the determination of the rate of return on common shareholders' equity of Taipei Port Project Company.

b. Renegotiation participants and their mission: In Section 2, Chapter 18 entitled "Communication, Coordination, and Dispute Settlement" and provided to establish a Coordination Committee which consists of representatives sent by each party. In Appendix 18.2 "Articles of Association of the Coordination Committee of Taipei Port Container Warehousing and Transportation Center, Articles 2 and 3 set out the Committee's missions and structure. From the Articles of Association provisions, both parties appoint committee members but do not have to reach any resolutions. The Coordination Committee's main functions are to interpret the provisions of the Contract and exchange opinions, or to negotiate on disputes other than those concerning equity. For settling significant disputes, both parties do not rely on the Coordination Committee, which is reflected in the provision "Coordination period for the Coordination Committee will be three months, after that the dispute will be lodged for arbitration".

c. Insufficiency of Arbitration Terms: Provisions in the Contract on arbitration are limited to three paragraphs under 18.3. It is not clear from these three paragraphs whether it is necessary to apply for arbitration before initiating a legal action. Many possible negotiation results exist due to the Contract's complexity. Court judgment will not always meet the best interests of both parties; in addition, the court's judgment will take a long time, and therefore, legal proceedings are the final method. Before raising an action, multinational contracts try to settle disputes through an international arbitration institution. Some countries publicly accept international arbitration practices, which make the arbitration more functional.

Occasionally a party to a contract does not request the arbitrator to interpret the renegotiation terms to get in the renegotiation procedure, but to modify the contract at the request of the party. The reasons being that there may be various negotiation results and parties may have

different opinions on how to modify the contract. In such situations, a traditional arbitration award resulting in a "yes or no" is not applicable. The arbitrators not only act as legal judges, but also have the power to create a satisfactory contractual relation between both parties. For domestic contracts such as the Taipei Port BOT Contract, since both parties have the same characteristics mentioned in the beginning of this section, it will helpful the contract's stability and smooth performance if there is an intermediary between both parties performing the function of arbitration and lubricant to prevent litigation before sufficient communication when a dispute arises.

4.2 From the Economic Perspective

(1) Special transferable commodity: the Taipei Port BOT project is to be built by Taipei Port Container Terminals Co., Ltd. and will be operated by the company after completion. Due to port facilities' exclusivity, after completion the container terminal will immediately become appropriative docks of the shipping companies – Evergreen, Yangming and Wanhai, the companies incorporate Taipei Port Container Terminal Co., Ltd. – in northern Taiwan, otherwise the project shall be handed over to Keelung Harbor Bureau. Therefore, the dock facilities are a special transferable commodity and the capacity of both parties is substitution.

(2) A contract with threats: Evergreen, Yangming, and Wanhai are Taiwan's top three shipping companies. Should these three companies move all their container ships which are berthed at ports all over Taiwan to Taipei Port, and assuming that a private company's operation efficiency is higher than that of the government company, the value brought to Taipei port by these companies will be greater than that brought by Keelung Harbor Bureau. Therefore, the contract has the effect of threats to Taipei Port Container Terminals Co., Ltd.

(3) No systematic risk: systematic risk is the threat to company operation caused by changes in the economic environment, such as the economic cycle, and social and political fluctuation, etc. The largest threat a company faces is systematic threat, which is also the source of the risk premium on shareholders' shares rate of return. As mentioned in the above section, agreement items outside the contract term have been included in the Taipei Port BOT contract term. Notwithstanding how environment changes, Taipei Port Company will acquire certain compensation through determination of the rate of return on common shareholders' equity. Therefore, with the Contract's protection, Taipei Port Company has no burden of systematic risk.

(4) Agency problem overrides the coercing problem: In a contract with shared profits or

production, the principal (government representatives) always tries to share the achievements of the agency (investor) with policy instruments he controls after the agency makes successful investment. In the Taipei Port BOT contract, Keelung Harbor Bureau includes all possible policy instruments in the contract as terms. In this condition, except that the government adopts rudest means to deny the contract's validity, the government has few way of coercing. Instead of that, agency problem exist for the in appropriation of the determination of negotiation items. Agency problems are caused by asymmetric information, and the principal cannot observe or can observe but not verify the agency's actions. In the Taipei Port BOT Contact, at least two items of renegotiation are aimed at the rate of return on common shareholders' equity. The calculation of this rate of return involves operating income and operating cost, while the operating income is related to harbor operating charge rate. Although negotiable, it can be observed and verified. However, the operating cost cannot be verified to the Harbor Bureau, especially those costs other than construction cost that are internal operation decisions and cannot observed by the Harbor Bureau. Therefore, assuming the selfish actions of a profit-making company, it cannot be assured that the agency problem will not occur.

(5) A management contract with high profit and low risk: As the operation risk of losses caused by the operation environment change can be proofed by the terms on negotiation, to Keelung Harbor Bureau, it is like commissioning a professional company to manage the operation of the harbor facilities, all risks will be borne by the Harbor Bureau following the renegotiation terms. In addition, the Harbor Bureau agrees to give assistance in the application for mid- and long-term capital from the Economic Construction Committee of the Executive Yuan, and the Company may acquire preferential tax rates and loan interest rates according to the Law for Promotion of Private Participation in Infrastructure Projects, the operating cost and specific risk of Taipei Port will be greatly reduced. The acquisition of the feedback payment will be practical when the yearly rate of return on common shareholders' equity of Taipei Port Company exceeds 30%. Compared to its risks, the return is quite high.

(6) Underestimation of the Contract value: The terms on renegotiation brings flexibilities to Taipei Port Company in operation, such flexibilities will reduce its operating risks and costs, but also greatly affect the contract value. It will also vary the profit recognition in the profit sharing plan. In the Taipei Port Program assessment, if the added value brought by the terms on renegotiation is not considered, it will cause underestimation of the project's actual value.

5. CONCLUSIONS AND SUGGESTIONS

5.1 Conlusions

Following the global trend of privatization, many governmental enterprises became part of the private sector with long-term contracts. Due to the long-term nature of these contracts and some uncertainty; no one can totally foresee the future on the day of signing the contract(s). Therefore, the necessity of inserting re-negotiation clauses has arisen, especially in the business of exploitation natural resources in other countries.

The domestic BOT project contract is characterized with similar uncertainties during this lengthy time. However, domestic contracts have fewer communication obstacles than multinational contracts owing to the following five factors: (1) no sovereignty issue; (2) no culture gap issue; (3) no time and place difference issue; (4) no foreign exchange rate difference issue; (5) clearly-defined events. But, delegate ranking of domestic contract from government is usually lower than multinational contract. It can't support by adequate manpower in the case of domestic contract. And comparing to project company formed by the business alliance, the government side are weak in obtaining information and resources. In this situation, the hold-up problem and the agency issues created by domestic contract are no less than that comes from multination contract.

This paper is to study the efficiency of Taipei Port's project contract basing on the existing contract theory. According to the renegotiation and related clauses of contracts, following facts are found:

1. Many renegotiation clauses did exist in the BOT contract.
2. The "Coordination Committee" established according to the contract, is responsible for the explanations of the contents of the contract itself as well as the communication and coordination between the two parties. But, whenever the Committee can't solve the arguments between the parties, there are no proper established procedures to execute the function of arbitration.
3. The renegotiation clauses can be served to compensate, in terms of money, the influence from the system risks and related events which included force majeure, exemptions and alternation on policy. Therefore, the contract prevents the Taipei Port Company from the hold-up threat, and the function of optional trade can't be observed.
4. The renegotiation clauses can guarantee the return of investment for the shareholder of the Project Company not less than the expected 25%. That means it provides a certain degree of protection upon the operation risk of the Project Company. Furthermore, it is doubtful if those influences of the renegotiation clauses have been taken into consideration to revaluate the project

5. For the Keelung Harbor Bureau, to sign the contract means to consign second phase construction and management of the Taipei Port to the Project Company at a considerably high cost.
6. The content of the contract and the basic conditions of the Project Company might create a handicap for the operations of the container terminal, so the over-investment as well as the agency problem could very likely occur.
7. To sum up, obliviously the contract is not the best of possible outcome.

5.2 Suggestions

These findings on the Taipei Port BOT project indicate that the domestic production-sharing contract also applies renegotiation clauses to prevent issues of transaction costs similar to some multinational contracts. But in the process of that transaction, the Keelung Harbor Bureau stands in a weaker position due to the lack of a hold-up position in the contract. Also, those items cannot be observed or that can only be observed without rectification have been included in the calculation of revenue of the contract, which will likely cause the probability of agency issue in the future. The research in this paper suggests that by working through the operations of the Coordination Committee to correct the contents of the charter of arbitration; the arbitrator should be involved both for arbitration and for mediation resolve arguments better. Furthermore, to coordinate some common recognition on those items which cannot be proven, such as the internal expenditure of the company, which could be helpful in preventing the creation of possible agency problems.
Besides, on the establishment of a new contract in the future, the way to prevent the occurrence of possible transaction cost should be taken into consideration. Academically, research in the follow topics might bring about very revealing results: choose the right revaluating method to judge the contract value, to establish a proper rate of return for the investors, to apply the function of renegotiation clauses and optional trading according to the specific environment, to establish the best outcome of contract that can be used to balance the mutual interest of both parties, those are the meaningful and contributive subjects to be studied.

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